

# THE CONGRESSIONAL BUDGET PROCESS

COMMITTEE PRINT

BERNARD SANDERS, *Chairman*

COMMITTEE ON THE BUDGET  
UNITED STATES SENATE

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## FOREWORD

This volume explains, in excruciating detail, how the congressional budget process works. That process gives new meaning to the word Byzantine.

Let's be clear: no one would intentionally design something like this.

This process is needlessly complicated. Americans deserve a simpler, more transparent budget process.

This process is bound by precedent, but many of these precedents are known to only a few. Secret law is not fair law. This volume makes public precedents that Democrats have collected. We welcome others to join us and make other precedents public.

This process vests a great deal of power in the hands of the Senate Parliamentarian, who does not answer to voters, to often make arbitrary decisions to block changes in law that would substantially improve the lives of working families supported by the overwhelming majority of the American people without a super-majority of 60 votes. As this volume makes clear, in the budget process, those decisions have empowered a minority of Senators to block a raise in the minimum wage, sensible immigration reform, a cap on the price of insulin, and many other common-sense initiatives.

A fair system would respond to the demands of the American people. The congressional budget process fails that test.

I hope that by laying out this story, this volume will highlight the weaknesses in the current system and spur reform. We need a more democratic system that allows the will of the American people to prevail.

Bernie Sanders

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In this volume,  
**statutory text appears in bold,**  
**statutory text that is no longer operative appears in smaller bold font,**  
**as do lists of accounts,**  
commentary appears in unbolded font,  
quotations of 50 words or more appear in smaller font,  
and footnotes appear in very small font.



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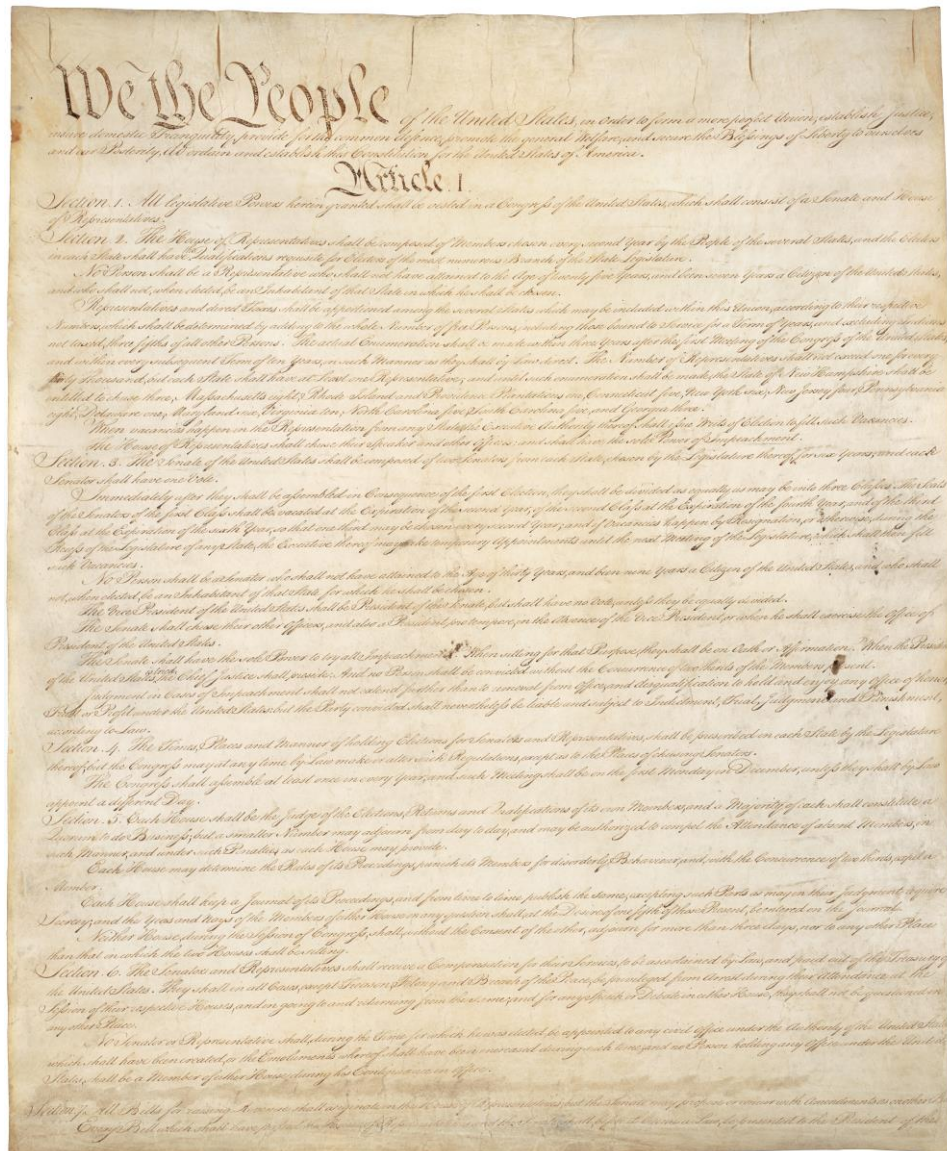
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# **CONSTITUTION**



## The United States Constitution

Photo: Wikimedia

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# Constitutional Underpinnings

**B**udgeting is about power. It's about the power to distribute scarce resources. As Andrew Jackson wrote in an 1833 veto message, "Money is power."<sup>1</sup>

Those who control the budget decide who gets what. The budget process is how they decide.

The Barons who confronted King John in 1215 to secure the Magna Carta understood this. A leading authority on Medieval Britain said about Magna Carta: "The pre-eminent concern . . . was money."<sup>2</sup>

Parliament understood this in 1641 when it created the Ways and Means Committee as "an important development in legislative efforts to restrain the financial prerogatives of the Crown."<sup>3</sup>

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<sup>1</sup> Andrew Jackson, pocket veto message (Dec. 4, 1833), in SEN. J. 20, 30 (Dec. 5, 1833).

<sup>2</sup> DAVID CARPENTER, MAGNA CARTA 26 (2015).

<sup>3</sup> KENNON, DONALD R. & REBECCA M. ROGERS, [THE COMMITTEE ON WAYS AND MEANS: A BICENTENNIAL HISTORY: 1789–1989](#), H.R. Doc. No. 100-244, at 6–7 (1989).

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And the Drafters of the Constitution understood this when they wrote, “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”<sup>4</sup>

James Madison recounted the British experience when he wrote about the budget powers of the House of Representatives:

They, in a word, hold the purse that powerful instrument by which we behold, in the history of the British Constitution, an infant and humble representation of the people gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of the government. This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.<sup>5</sup>

The Constitution thus provides the underpinnings for our Nation’s budget process. This volume thus begins with Constitutional provisions related to the budget.

The drafters of the Congressional Budget Act wanted to reassert Congress’ constitutional powers.<sup>6</sup> Senator Sam Ervin, the sponsor of the Senate version of the bill that would become the Budget Act, said upon introducing the bill:

We are much concerned in the Congress at this time with recapturing the power of the purse, with which the Constitution provides Congress the authority, but if Congress is to reacquire this power in a way to serve the best interests of the people of the United States, we are going to have to have a measure such as that . . . proposed in the bill which I have introduced today, to establish measures which will keep Congress within the field of financial responsibility . . .<sup>7</sup>

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<sup>4</sup> U.S. CONST. art. I, § 9, cl. 7, *infra* p. 36.

<sup>5</sup> THE FEDERALIST NO. 58, at 359 (James Madison) (Clinton Rossiter ed., 1961).

<sup>6</sup> See 119 CONG. REC. 11,863 (Apr. 11, 1973) (statement of Sen. Brock, a cosponsor of the bill) (“I am delighted with and grateful for the action the Senator from North Carolina [Sen. Ervin] has taken . . . to see that Congress reasserted its constitutional rights and responsibilities. . . . I honestly believe that we have made more progress in achieving honest reform and honest reassertion of the constitutional rights of the Congress of the United States this year than we have in the preceding 10 years that I have served in the two bodies . . .”); *id.* (statement of Sen. Ervin, sponsor of the bill); *id.* at 11,864 (statement of Sen. Ervin) (“I have the abiding conviction that the machinery provided in the bill introduced by me . . . will work well to enable Congress to set its affairs in order in respect to the exercise of its constitutional powers of the purse.”).

<sup>7</sup> *Id.* at 11,863 (statement of Sen. Ervin).

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Senator Ervin said this within 2 months of his becoming Chair of the Select Committee on Presidential Campaign Activities—the Watergate Committee.<sup>8</sup> That Congress was much concerned with righting the balance of power between Congress and the President. The Congress that passed the Congressional Budget Act of 1974 to reclaim the power of the purse also began impeachment proceedings against President Nixon,<sup>9</sup> enacted the Federal Election Campaign Act Amendments of 1974 to rein in electoral abuses,<sup>10</sup> adopted the War Powers Resolution to reassert congressional war powers,<sup>11</sup> and passed the Trade Act of 1974 to reassert congressional prerogatives over international trade.<sup>12</sup>

The Congressional Budget Act layered new institutions—Budget Committees and the Congressional Budget Office—on top of the existing structures. And the Budget Act layered new procedures on top of existing procedures. In *Riddick's Senate Procedure*, the premier authority on Senate procedure, the Senate Parliamentarian noted: “The provisions of the Congressional Budget Act of 1974 supplement rather than supplant Senate procedure, and therefore they are not the exclusive means to achieve the purposes for which they were enacted.”<sup>13</sup> This volume details those Budget Act procedures.

Budgets tell a lot about who we are and what we value. President Joe Biden has said: “My father had an expression: ‘Don’t tell me what you value. Show me your budget—and I’ll tell you what you value.’”<sup>14</sup> This volume examines the structures that sustain Congress’ power of the purse, and that in turn determine whether Congress achieves what it values most.

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<sup>8</sup> See U.S. Senate, *Select Committee on Presidential Campaign Activities*.

<sup>9</sup> Resolution providing appropriate power to the Committee on the Judiciary to conduct an investigation of whether sufficient grounds exist to impeach Richard M. Nixon, President of the United States, H. Res. 803, 93d Cong. (1974) (adopted); *Summary of Information: Hearings Before the H. Comm. on the Judiciary*, 93d Cong. (1974); H. COMM. ON THE JUDICIARY, 93D CONG., IMPEACHMENT OF RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES, H.R. REP. NO. 93-1305 (1974).

<sup>10</sup> Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263. The Senate considered the Federal Election Campaign Act Amendments immediately after passage of the Congressional Budget Act. See 120 CONG. REC. 7938 (Mar. 22, 1974).

<sup>11</sup> War Powers Resolution, Pub. L. No. 93-148, 87 Stat. 555 (1973).

<sup>12</sup> Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978.

<sup>13</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 629 (1992) (footnotes renumbered and reformatted).

<sup>14</sup> President Biden, *Tweet* (Mar. 28, 2022).

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Preamble

**We the People** of the United States, in  
Order to form a more perfect Union, establish Justice,  
insure domestic Tranquility, provide for the common  
defence, promote the general Welfare, and secure the  
Blessings of Liberty to ourselves and our Posterity, do  
ordain and establish this Constitution for the United  
States of America.

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### The Preamble

The Congressional Research Service's annotation of the Constitution discusses how the Constitution's Preamble can inform constitutional interpretation<sup>15</sup>:

Although the preamble is not a source of power for any department of the Federal Government,<sup>[16]</sup> the Supreme Court has often referred to it as evidence of the origin, scope, and purpose of the Constitution.<sup>[17]</sup> "Its true office," wrote Joseph Story in his Commentaries, "is to expound the nature and extent and application of the powers actually conferred by the Constitution, and not substantively to create them. For example, the preamble declares one object to be, 'provide for the common defence.' No one can doubt that this does not enlarge the powers of Congress to pass any measures which they deem useful for the common defence. But suppose the terms of a given power admit of two constructions, the one more restrictive, the other more liberal, and each of them is consistent with the words, but is, and ought to be, governed by the intent of the power; if one could promote and the other defeat the common defence, ought not the former, upon the soundest principles of interpretation, to be adopted?"<sup>[18]</sup>

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<sup>15</sup> CONG. RSCH. SERV., [THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION](#) 55 (Michael J. Garcia, Caitlain Devereaux Lewis, Andrew Nolan, Meghan Totten & Ashley Tyson eds., 2017) (footnotes renumbered and reformatted).

<sup>16</sup> [Jacobson v. Massachusetts](#), 197 U.S. 11 (1905).

<sup>17</sup> *E.g.*, the Court has read the preamble as bearing witness that the Constitution emanated from the people and was not the act of sovereign and independent States. [McCulloch v. Maryland](#), 17 U.S. (4 Wheat.) 316 (1819); [Chisholm v. Georgia](#), 2 U.S. (2 Dall.) 419 (1793); [Martin v. Hunter's Lessee](#), 14 U.S. (1 Wheat.) 304 (1816), and that it was made for, and is binding only in, the United States. [Downes v. Bidwell](#), 182 U.S. 244 (1901); [In re Ross](#), 140 U.S. 453, 464 (1891).

<sup>18</sup> 1 JOSEPH STORY, [COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES](#) 462 (1833). For an exegesis of the preamble phrase by phrase, see MORTIMER J. ADLER & WILLIAM GORMAN, [THE AMERICAN TESTAMENT](#) 63–118 (1975).



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Art. I, § 1     **All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.**

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## The Legislative Power

Central to Congress exercising its power of the purse is its ability to legislate. Congress acts most forcefully when it presents bills to the President to be signed into law. Thus, to assert its power of the purse, the Congress that wrote of the Congressional Budget Act of 1974 created fast-track legislative procedures. It did the same to assert congressional prerogatives over war in the War Powers Resolution<sup>19</sup> and to assert congressional prerogatives over international trade in the Trade Act of 1974.<sup>20</sup>

Their implicit enemy was the filibuster.<sup>21</sup> The congressional budget process is most fundamentally a work-around to get past the Senate's filibuster so that Congress can exercise its power over fiscal policy.

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<sup>19</sup> [War Powers Resolution](#), Pub. L. No. 93-148, 87 Stat. 555 (1973).

<sup>20</sup> [Trade Act of 1974](#), Pub. L. No. 93-618, 88 Stat. 1978.

<sup>21</sup> On the filibuster generally, see, e.g., *Examining the Filibuster: Hearings Before the S. Comm. on Rules & Admin.*, 111th Cong. (2010); CHRISTOPHER M. DAVIS & STANLEY BACH, CONG. RSCH. SERV., [98-425, INVOKING CLOTURE IN THE SENATE](#) (2017); RICHARD BETH & VALERIE HEITSHUSEN, CONG. RSCH. SERV., [RL30360, FILIBUSTERS AND CLOTURE IN THE SENATE](#) (2014); CONG. RSCH. SERV., [SENATE CLOTURE RULE: LIMITATION OF DEBATE IN THE SENATE OF THE UNITED STATES & LEGISLATIVE HISTORY OF PARAGRAPH 2 OF RULE XXII OF THE STANDING RULES OF THE UNITED STATES SENATE \(CLOTURE RULE\)](#) (Comm. Print 2011); FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE 282-334](#) (1992); RICHARD A. ARENBERG & ROBERT B. DOVE, [DEFENDING THE FILIBUSTER: THE SOUL OF THE SENATE](#) (rev. ed. 2012); ADAM JENTLESON, [KILL SWITCH: THE RISE OF THE MODERN SENATE AND THE CRIPPLING OF AMERICAN DEMOCRACY](#) (2021); MOLLY E. REYNOLDS, [EXCEPTIONS TO THE RULE: THE POLITICS OF FILIBUSTER LIMITATIONS IN THE U.S. SENATE](#) (2017); SARAH A. BINDER & STEVEN S. SMITH, [POLITICS OR PRINCIPLE: FILIBUSTERING IN THE UNITED STATES SENATE](#) (1996); Mitch McConnell, *The Filibuster Plays a Crucial Role*, N.Y. TIMES, Aug. 23, 2019, at A23; Harry Reid, *Abolish the Senate Filibuster*, N.Y. TIMES, Aug. 13, 2019, at A21; Ezra Klein, *The Definitive Case for Ending the Filibuster: Every Argument for the Filibuster, Considered and Debunked*, Vox, Oct. 1, 2020, 7:30 AM; Ezra Klein, *The Senate Has Become a Dadaist Nightmare: No One Would Ever Design a Legislative Body that Worked This Way*, N.Y. TIMES, Feb. 4, 2021; Ezra Klein, *This Is Not How the Senate Is Supposed To Work: Paralyzed by the Filibuster, the Senate Has Found a Terrible Way To Legislate*, Vox, Sept. 29, 2017, 8:40 AM; William G. Dauster, *The Senate in Transition or How I Learned To Stop Worrying and Love the Nuclear Option*, 19 N.Y.U. J. OF LEGIS. & PUB. POL'Y 631 (Dec. 2016); William G. Dauster, *The Great Holdup: How the Senate and the Filibuster Thwart Gun Legislation Most Americans Want*, 9 LEGIS. & POL'Y BRIEF 37 (May 2020); Martin B. Gold & Dimple Gupta, *The Constitutional Option to Change Senate Rules and Procedures: A Majoritarian Means to Over Come the Filibuster*, 28 HARV. J.L. & PUB. POL'Y 205 (2004); Peter W. Stevenson & Amber Phillips, *The Filibuster, Explained: Its Meaning, History and Why Democrats Want To Change It or Even End It Entirely*, WASH. POST, Oct. 22, 2021, 1:50 PM, updated July 1, 2022, 2:20 PM; LAUREN COHEN BELL, [FILIBUSTERING IN THE U.S. SENATE](#) (2010); GEORGE DOUGLAS DION, [TURNING THE LEGISLATIVE THUMBSCREW: MINORITY RIGHTS AND PROCEDURAL CHANGE IN LEGISLATIVE POLITICS](#) (1997); FRANKLIN L. BURDETTE, [FILIBUSTERING IN THE SENATE](#) (1940); 2 ROBERT C. BYRD, [THE SENATE, 1789-1989: ADDRESSES ON THE HISTORY OF THE UNITED STATES SENATE](#) 93-163 (1991); ROBERT A. CARO, [MASTER OF THE SENATE: THE YEARS OF LYNDON JOHNSON](#) 92-105 (2002); MARTIN B. GOLD, [SENATE PROCEDURE AND PRACTICE](#) 35-63 (4th ed. 2018); GREGORY KOGER, [FILIBUSTERING: A](#)

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Art. I, § 3     **The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.**

**The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.**

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### **President of the Senate**

“The vice president’s real power derives from his relationship with the president,” said Bruce Reed, Vice President Biden’s Chief of Staff.<sup>22</sup> And former Vice Presidential Chief of Staff Ron Klain recounted, “I worked for two vice presidents who spent most of their days, every day with the president.”<sup>23</sup>

Vice Presidential historian Joel Kramer Goldstein observed in 1982: “As Vice Presidents have become increasingly active in their institutional and political roles, they have devoted less time to their constitutional function of presiding over the Senate. They chair Senate sessions rarely.”<sup>24</sup>

It was not always so. The Congressional Research Service’s Christopher Davis has reported, “[P]rior to 1900, . . . Vice Presidents routinely presided over the chamber and Presidents pro tempore were elected to serve only for limited periods when the Vice President was absent or ill or the office was vacated.”<sup>25</sup>

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POLITICAL HISTORY OF OBSTRUCTION IN THE HOUSE AND SENATE (2010); GREGORY J. WAWRO & ERIC SCHICKLER, *FILIBUSTER: OBSTRUCTION AND LAWMAKING IN THE U.S. SENATE* (2006); Richard A. Arenberg, *Five Myths About the Filibuster: It’s Not a Long-Winded Speech, and It’s Not Unconstitutional*, WASH. POST (May 3, 2019); Richard A. Arenberg, *U.S. Senate Filibuster Reform Is Unnecessary*, WASH. POST (July 11, 2013); Ronald Brownstein, *Abolishing the Filibuster Is Unavoidable for Democrats*, THE ATLANTIC (Aug. 22, 2019); Bill Dauster, *It’s Not Mr. Smith Goes to Washington: The Senate Filibuster Ain’t What It Used To Be*, WASH. MONTHLY, Nov. 1996, at 34; John Oliver, *Filibuster*, YouTube (Sept. 8, 2019).

<sup>22</sup> KATE ANDERSEN BROWER, *FIRST IN LINE* 11–12 (2018).

<sup>23</sup> *Id.* at 23.

<sup>24</sup> JOEL KRAMER GOLDSTEIN, *THE MODERN AMERICAN VICE PRESIDENCY: THE TRANSFORMATION OF A POLITICAL INSTITUTION* 142 (1982).

<sup>25</sup> CHRISTOPHER M. DAVIS, CONG. RSCH. SERV., *RL30960, THE PRESIDENT PRO TEMPORE OF THE SENATE: HISTORY AND AUTHORITY OF THE OFFICE* summary (2015).



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America's second Vice President, Thomas Jefferson, began his *Manual of Parliamentary Practice* with a contemplation of the Vice President's role as President of the Senate:

The Constitution of the United States establishing a legislature for the Union under certain forms, authorises each branch of it "to determine the rules of its own proceedings." The Senate have accordingly formed some rules for its own government: but these going only to few cases, they have referred to the decision of their President, without debate and without appeal, all questions of order arising either under their own rules, or where they have provided none. This places under the discretion of the President a very extensive field of decision, and one which, irregularly exercised, would have a powerful effect on the proceedings and determinations of the house. The President must feel weightily and seriously this confidence in his discretion; and the necessity of recurring, for its government, to some known system of rules, that he may neither leave himself free to indulge caprice or passion, nor open to the imputation of them. But to what system of rules is he to recur, as supplementary to be those of the Senate?<sup>26</sup>

Historian Joel Goldstein observes how modern Vice Presidents exercise the "discretion" of which Jefferson wrote

The authority to make procedural rulings provides a second source [in addition to breaking ties] of minimal power. Vice Presidents make few such decisions; when they do, they generally follow the prompting of the parliamentarian. Occasionally, however, they can issue judgments that will affect policy outcomes.<sup>27</sup>

In *Riddick's Senate Procedure*, the Parliamentarian discussed the precedential value of these opinions from the Chair:

Responses by the Chair to parliamentary inquiries are not decisions by the Chair and not subject to appeal. They are precedents of lower probative value than are rulings of the Chair or votes of the Senate on an appeal (or on a point of order submitted to the Senate for its decision). Despite the fact that they carry less weight than these other classes of precedents, they do express the opinion of the Chair and guide the Senate in the absence of a stronger precedent to the contrary.<sup>28</sup>

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<sup>26</sup> THOMAS JEFFERSON, *A MANUAL OF PARLIAMENTARY PRACTICE* v (Clark & Maynard, 1874) (1801).

<sup>27</sup> JOEL KRAMER GOLDSTEIN, *THE MODERN AMERICAN VICE PRESIDENCY: THE TRANSFORMATION OF A POLITICAL INSTITUTION* 143 (1982).

<sup>28</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 145 (1992).

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Even so, in *Riddick's Senate Procedure*, the Parliamentarian described the Vice President's role as constrained<sup>29</sup>:

The Vice President should not participate in debate; but on different occasions he has made long statements from the chair.<sup>[30]</sup> The Vice President may address the Senate on his rulings at the indulgence of the Senate or with unanimous consent.<sup>[31]</sup>

Senate Rule I implements the constitutional clause on the President Pro Tempore, providing:

#### APPOINTMENT OF A SENATOR TO THE CHAIR

1. In the absence of the Vice President, the Senate shall choose a President pro tempore, who shall hold the office and execute the duties thereof during the pleasure of the Senate and until another is elected or his term of office as a Senator expires.

2. In the absence of the Vice President, and pending the election of a President pro tempore, the Acting President pro tempore or the Secretary of the Senate, or in his absence the Assistant Secretary, shall perform the duties of the Chair.

3. The President pro tempore shall have the right to name in open Senate or, if absent, in writing, a Senator to perform the duties of the Chair, including the signing of duly enrolled bills and joint resolutions but such substitution shall not extend beyond an adjournment, except by unanimous consent; and the Senator so named shall have the right to name in open session, or, if absent, in writing, a Senator to perform the duties of the Chair, but not to extend beyond an adjournment, except by unanimous consent.<sup>32</sup>

The Congressional Research Service's Christopher Davis has written: "Although the President pro tempore's powers are limited and not comparable to those of the Speaker of the House, as the chamber's presiding officer, he is authorized to perform certain duties. For example, he may decide points of order (subject to appeal) . . . ." <sup>33</sup>

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<sup>29</sup> *Id.* at 1391–92 (footnotes renumbered and reformatted).

<sup>30</sup> 96 CONG. REC. 17,117–18 (Jan. 2, 1951); 97 CONG. REC. 4 (Jan. 3, 1951); *id.* at 13,714 (Oct. 20, 1951); 99 CONG. REC. 1506 (Mar. 2, 1953); 98 CONG. REC. 4051–52 (Apr. 17, 1952); *id.* at 3147–48 (Mar. 31, 1952); 97 CONG. REC. 11,160 (Sept. 12, 1951); *id.* at 9845 (Aug. 13, 1951).

<sup>31</sup> 123 CONG. REC. 31,916–21 (Oct. 3, 1977).

<sup>32</sup> SENATE RULE I.

<sup>33</sup> CHRISTOPHER M. DAVIS, CONG. RSCH. SERV., RL30960, *THE PRESIDENT PRO TEMPORE OF THE SENATE: HISTORY AND AUTHORITY OF THE OFFICE* summary (2015).

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In their procedural rulings, the Vice President and the President Pro Tempore are guided by precedent. They generally follow the legal principle of *stare decisis*, from the Latin for “to stand by things decided.”<sup>34</sup>

Legal scholar Karl Llewellyn explained the concept:

[I]n any judicial system rules of law arise sooner or later out of such decisions of cases, as rules of action arise out of the solution of practical problems, whether or not such formulations are desired, intended or consciously recognized. These generalizations contained in, or built upon, past decisions, when taken as normative for future disputes, create a legal system of precedent. Precedent, however, is operative before it is recognized. Toward its operation drive all those phases of human make-up which build habit in the individual and institutions in the group: laziness as to the reworking of a problem once solved; the time and energy saved by routine, especially under any pressure of business; the values of routine as a curb on arbitrariness and as a prop of weakness, inexperience and instability; the social values of predictability; the power of whatever exists to produce expectations and the power of expectations to become normative. The force of precedent in the law is heightened by an additional factor: that curious, almost universal, sense of justice which urges that all men are properly to be treated alike in like circumstances. As the social system varies we meet infinite variations as to what men or treatments or circumstances are to be classed as “like”; but the pressure to accept the views of the time and place remains.<sup>35</sup>

Similarly, the Supreme Court has discussed the value of precedent:

*Stare decisis* plays an important role in our case law, and we have explained that it serves many valuable ends. It protects the interests of those who have taken action in reliance on a past decision. See *[Planned Parenthood of Southeastern Pa. v.] Casey*, 505 U. S., at 856 (joint opinion); see also *Payne v. Tennessee*, 501 U. S. 808, 828 (1991). It “reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation.” *Kimble [v. Marvel Entertainment, LLC]*, 576 U. S., at 455. It fosters “evenhanded” decisionmaking by requiring that like cases be decided in a like manner. *Payne*, 501 U. S., at 827. It “contributes to the actual and perceived integrity of the judicial process.” *Ibid.* And it restrains judicial hubris and reminds us to respect the judgment of those who have grappled with important questions in the past. “Precedent is a way of accumulating and passing down the learning of past generations, a font of

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<sup>34</sup> *Stare decisis*, BLACK’S LAW DICTIONARY (11th ed. 2019).

<sup>35</sup> Karl N. Llewellyn, *Case Law*, in 3 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 249 (1930).

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established wisdom richer than what can be found in any single judge or panel of judges.” N. Gorsuch, *A Republic, If You Can Keep It* 217 (2019).<sup>36</sup>

To help the Vice President keep track of Senate precedents, by 1923, the Senate’s Journal Clerk, Charles Watkins, had become the Vice President’s unofficial adviser on floor procedure.<sup>37</sup> In July 1935, the Senate made that job official, creating the office of the Senate Parliamentarian, which Watkins held through 1964.<sup>38</sup>

In 1955, Senator Francis Case said of Watkins: “He is as a seeing-eye dog to guide the newcomers through parliamentary mazes and a rod and a staff to those who preside. It might be said that he sits only a little lower than the angels and dispenses wisdom like an oracle.”<sup>39</sup> The same might be said of Watkins’s five successors as Parliamentarian.

Years	Parliamentarian
1935–1964	Charles L. Watkins
1964–1974	Floyd Riddick
1974–1981	Murray Zweben
1981–1987	Bob Dove
1987–1995	Alan Frumin
1995–2001	Bob Dove
2001–2012	Alan Frumin
2012–present	Elizabeth MacDonough

Based on Senate Rules and precedents, the Parliamentarian reads and refers to committees thousands of bills and resolutions introduced in the Senate or received from the House and additional thousands of executive communications received from the executive branch. From the start, Parliamentarians “advise both sides in any controversy when advice [is] asked” and “promise that the secrets . . . amassed concerning strategies, dilemmas, personalities, personal problems and other matters . . . remain secrets.”<sup>40</sup>

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<sup>36</sup> *Dobbs v. Jackson Women’s Health Org.*, \_ U.S. \_ (2022).

<sup>37</sup> C.P. Trussell, *Senate Aide Ends a 59-Year Career: Charles L. Watkins Retires as the Parliamentarian*, N.Y. TIMES, Dec. 31, 1964, at 5; RICHARD A. BAKER, *July 1, 1935: First Official Parliamentarian Named*, in 200 NOTABLE DAYS: SENATE STORIES • 1787 TO 2002, at 143 (2006).

<sup>38</sup> C.P. Trussell, *Senate Aide Ends a 59-Year Career: Charles L. Watkins Retires as the Parliamentarian*, N.Y. TIMES, Dec. 31, 1964, at 5; RICHARD A. BAKER, *July 1, 1935: First Official Parliamentarian Named*, in 200 NOTABLE DAYS: SENATE STORIES • 1787 TO 2002, at 143 (2006).

<sup>39</sup> RICHARD A. BAKER, *July 1, 1935: First Official Parliamentarian Named*, in 200 NOTABLE DAYS: SENATE STORIES • 1787 TO 2002, at 143 (2006).

<sup>40</sup> C.P. Trussell, *Senate Aide Ends a 59-Year Career: Charles L. Watkins Retires as the Parliamentarian*, N.Y. TIMES, Dec. 31, 1964, at 5.

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As will be discussed below,<sup>41</sup> the Parliamentarian also sits as a tribunal to decide procedural matters. Counsels for committees and Senators – and sometimes Senators themselves – argue before the Parliamentarian much as lawyers do in a small town with only one judge.<sup>42</sup> The Senate has thus placed the Parliamentarian in a difficult position – having not infrequently to dash Senators’ cherished dreams.

Judges memorialize the precedents that they create in written opinions. Parliamentarians have recorded their precedents in five editions of an authoritative book called *Senate Procedure*, last updated in 1992.<sup>43</sup> More recently, the Parliamentarian has issued opinions in e-mails and sometimes in letters to Senators.<sup>44</sup> A major purpose of this volume is to collect parliamentary precedents that relate to the congressional budget process, most of which have accumulated since the last edition of *Senate Procedure*. This volume collects and makes public precedents that Democratic staff have collected. It is not exhaustive, however, as the Parliamentarian’s office and Republican staff have noted other precedents to which the present author does not have access.

In *Gulliver’s Travels*, Jonathan Swift mocked lawyerly reliance on precedent:

It is a Maxim among these lawyers, that whatever hath been done before, may legally be done again: and therefore they take special Care to record all the Decisions formerly made against common Justice and the general Reason of Mankind. These under the Name of Precedents they produce as Authorities to justify the most iniquitous Opinions; and the Judges never fail of directing accordingly.<sup>45</sup>

The Supreme Court has explained that it does not consider the rule of adherence to precedent as absolute:

We have long recognized, however, that *stare decisis* is “not an inexorable command,” *Pearson v. Callahan*, 555 U. S. 223, 233 (2009)

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<sup>41</sup> See *infra* p. 500.

<sup>42</sup> The author is indebted to Staff of S. Comm. on Fin. for this analogy.

<sup>43</sup> CHARLES L. WATKINS & FLOYD M. RIDDICK, [SENATE PROCEDURE: PRECEDENTS AND PRACTICES](#) (1958); CHARLES L. WATKINS & FLOYD M. RIDDICK, [SENATE PROCEDURE: PRECEDENTS AND PRACTICES](#) (1964); FLOYD M. RIDDICK, *SENATE PROCEDURE: PRECEDENTS AND PRACTICES* (1974); FLOYD M. RIDDICK, *SENATE PROCEDURE: PRECEDENTS AND PRACTICES* (1981); FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) (1992).

<sup>44</sup> See Letter from Alan S. Frumin to William H. Frist (May 14, 2004); Letter from Alan S. Frumin to John Cornyn (May 1, 2008).

<sup>45</sup> JONATHAN SWIFT, [GULLIVER’S TRAVELS](#) 211 (Albert J. Rivero ed., W.W. Norton 2002) (1726).

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(internal quotation marks omitted), and it “is at its weakest when we interpret the Constitution,” *Agostini v. Felton*, 521 U. S. 203, 235 (1997). It has been said that it is sometimes more important that an issue “be settled than that it be settled right.” *Kimble*, 576 U. S., at 455 (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting)). But when it comes to the interpretation of the Constitution—the “great charter of our liberties,” which was meant “to endure through a long lapse of ages,” *Martin v. Hunter’s Lessee*, 1 Wheat. 304, 326 (1816) (opinion for the Court by Story, J.)—we place a high value on having the matter “settled right.” In addition, when one of our constitutional decisions goes astray, the country is usually stuck with the bad decision unless we correct our own mistake. An erroneous constitutional decision can be fixed by amending the Constitution, but our Constitution is notoriously hard to amend. See Art. V; *Kimble*, 576 U. S., at 456. Therefore, in appropriate circumstances we must be willing to reconsider and, if necessary, overrule constitutional decisions.<sup>46</sup>

Justice John Paul Stevens (writing jointly with Justices Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor) complained that changes in personnel also account for overruling precedent:

In the end, the Court’s rejection of *Austin* [*v. Michigan Chamber of Commerce*] and *McConnell* [*v. Federal Election Comm’n*] comes down to nothing more than its disagreement with their results. Virtually every one of its arguments was made and rejected in those cases, and the majority opinion is essentially an amalgamation of resuscitated dissents. The only relevant thing that has changed since *Austin* and *McConnell* is the composition of this Court. Today’s ruling thus strikes at the vitals of *stare decisis*, “the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion” that “permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals.” *Vasquez v. Hillery*, 474 U. S. 254, 265 (1986).<sup>47</sup>

Similarly, Justice Breyer (writing jointly with Justices Sotomayor and Elena Kagan) wrote of another overruling, “The Court reverses course today for one reason and one reason only: because the composition of this Court has changed.”<sup>48</sup> And former Attorney General Eric Holder has said, “[T]he decisions of the last two days . . . are solely the result of a change in Court personnel.”<sup>49</sup>

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<sup>46</sup> *Dobbs v. Jackson Women’s Health Org.*, \_ U.S. \_ (2022).

<sup>47</sup> *Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 414 (2010) (Stevens, J., dissenting).

<sup>48</sup> *Dobbs v. Jackson Women’s Health Org.*, \_ U.S. \_ (2022) (Breyer, J., dissenting).

<sup>49</sup> Eric Holder, *Tweet*, June 24, 2022. See also Laurence H. Tribe, *Deconstructing Dobbs*, N.Y. REV. OF BOOKS, Sept. 22, 2022, at 81 (“Observers had to conclude that only the changed composition of the Court . . . could

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So, too, changes in who sits as Parliamentarian have changed whether and how the Senate follows precedent. As will be discussed below,<sup>50</sup> when Senator Bob Dole regained the job of Majority Leader in 1995, he reinstated a former Parliamentarian with a consequential result for the budget process. Not long thereafter, Majority Leader Trent Lott fired that same Parliamentarian.<sup>51</sup> Sometimes Members of Congress call on the Senate to change the Parliamentarian to change procedural results.<sup>52</sup>

Budget Committee Chair Bernie Sanders has questioned the Senate's practice of vesting so much power in the Parliamentarian, saying:

[M]ore importantly, it is an absurd process that we allow an unelected staffer, somebody who works for the Senate, not elected by anybody, to make a decision as to whether 30 million Americans get a pay raise or not. I don't care how the Parliamentarian rules. No Parliamentarian should have that power.

If people here want to vote against raising the minimum wage, you have that right. You want to vote for it, and I hope you do, you have that right. But we should not shuffle off that responsibility to an unelected staffer. That is wrong.<sup>53</sup>

One satirist attributed “arcane power” to the Parliamentarian, describing the Parliamentarian as the “figure” who tells Senators, “It can't be done”—even though “their interpretations are not even technically binding.”<sup>54</sup>

And that last part is true. The Presiding Officer, not the Parliamentarian, has the constitutional power to issue rulings. In the words of former Parliamentarian Alan Frumin: “The parliamentarian simply gives advice and whoever is presiding over the Senate doesn't have to take that

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explain the sudden shift.”); Robert Barnes, *Supreme Court Set To Resume as Its Approval Takes a Beating*, WASH. POST, Sept. 29, 2022, at A1 (Justice Elena Kagan said: “It just doesn't look like law when some new judges appointed by a new president come in and start just tossing out the old stuff.”).

<sup>50</sup> See *infra* p. 435.

<sup>51</sup> Alexander Bolton, *Cruz: Let's Overrule Senate Officer To Expand ObamaCare Bill*, THE HILL, Mar. 9, 2017, 4:58 PM; David E. Rosenbaum, *Rules Keeper Is Dismissed by Senate, Official Says*, N.Y. TIMES, May 8, 2001, at A20.

<sup>52</sup> See, e.g., *Tweet*, Ilhan Omar, Feb. 25, 2021, 8:36 PM; Dominic Rushe, *Ilhan Omar Leads Calls To Fire Senate Official Who Scuppered \$15 Wage Rise*, THE GUARDIAN, Feb. 26, 2021, 9:37 AM.

<sup>53</sup> 167 CONG. REC. S1221 (daily ed. Mar. 5, 2021).

<sup>54</sup> Alexandra Petri, *In a Galaxy Far, Far Away, the Parliamentarian Is Our Only Hope*, WASH. POST, Sept. 25, 2021, at A19.



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advice.”<sup>55</sup> And a reporter quoted a similar statement by former Parliamentarian Bob Dove: “Dove also noted that Vice President Joe Biden, in his Constitutional role as President of the Senate, is the ultimate authority and could overrule the parliamentarian. He added, though, that ‘no vice president, frankly, since Nelson Rockefeller in 1975, has exercised that right.’”<sup>56</sup>

In the context of efforts to reform the filibuster, Vice Presidents Richard Nixon,<sup>57</sup> Hubert Humphrey,<sup>58</sup> and Nelson Rockefeller<sup>59</sup> each stated opinions and recognized Senators apparently at variance with the advice of the Parliamentarian.<sup>60</sup> The opinions of these Vice President gave rise to a still unproven legal theory called the “Constitutional Option,” in which a simple majority of the Senate could determine its own rules at the beginning of a Senate.<sup>61</sup>

Thus, in 1957, in response to a parliamentary inquiry, Vice President Nixon gave what he admitted was “only his own opinion” on the constitutionality of Senate Rule XXII, acknowledging that under the Senate’s precedents, the Presiding Officer does not decide such matters.<sup>62</sup>

At the beginning of the next Congress, the Vice President reaffirmed his prior constitutional interpretation:

The question of constitutionality lies within the power of the Senate itself to decide. The Constitution gives to the Senate the power to make its rules. That means that the Members of the Senate have the right to determine the rules under which the Senate will operate. This right, in the opinion of the Chair, is one which can be exercised by and is lodged in a majority of the Members of the Senate. This right, in the opinion of the Chair, in order to be operative also implies the constitutional right that the majority has the

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<sup>55</sup> Maria Sacchetti, *Senate Parliamentarian Rules against Immigration Measure in Budget Bill*, WASH. POST, Sept. 19, 2021.

<sup>56</sup> Jeffrey Young, *Healthcare Reform and Reconciliation a Bad Mix, Ex-Parliamentarian Says*, THE HILL, Feb. 16, 2010, 9:10 PM.

<sup>57</sup> 103 CONG. REC. 178–79 (Jan. 4, 1957); *id.* at 6, 8–9 (Jan. 7, 1959); 107 CONG. REC. 11–12 (Jan. 3, 1961); *id.* at 74 (Jan. 4, 1961).

<sup>58</sup> 115 CONG. REC. 592–93 (Jan. 14, 1969).

<sup>59</sup> 121 CONG. REC. 3839–40, 3847 (Feb. 20, 1975); *id.* at 4370–72 (Feb. 26, 1975).

<sup>60</sup> See generally JOEL KRAMER GOLDSTEIN, *THE MODERN AMERICAN VICE PRESIDENCY: THE TRANSFORMATION OF A POLITICAL INSTITUTION* 143–45 (1982); WALTER J. OLESZEK, CONG. RSCH. SERV., *R44395, AMENDING SENATE RULES AT THE START OF A NEW CONGRESS, 1953–1975: AN ANALYSIS WITH AN AFTERWORD TO 2015*, at 13–15, 17, 22–24, 46–47, 56, 59, 60–61, 65–66, 73–74 (2016).

<sup>61</sup> See generally Martin B. Gold & Dimple Gupta, *The Constitutional Option to Change Senate Rules and Procedures: A Majoritarian Means to Over Come the Filibuster*, 28 HARV. J.L. & PUB. POL’Y 205 (2004).

<sup>62</sup> 103 CONG. REC. 178 (Jan. 4, 1957).



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power to cut off debate in order to exercise the right of changing or determining the rules.<sup>63</sup>

Senator Richard Russell of Georgia, a defender of the filibuster who disagreed with Vice President Nixon's opinion, had this exchange with the Vice President, making clear that Senator Russell believed that the Vice President had not always followed the Parliamentarian's advice:

Mr. RUSSELL. . . .

I should like to ask the Chair whether he has held that after the Senate has agreed unanimously to consider the resolution, a point of order against the resolution can be made.

The VICE PRESIDENT. At any stage of the proceeding, a point of order can be raised against the resolution, according to the Parliamentarian.

Mr. RUSSELL. I appreciate the fact that the Chair has consulted the Parliamentarian at this stage of the proceedings. I hope that habit will obtain in the future, if it has not in the past.<sup>64</sup>

The next day, in response to an inquiry by Senator Russell, Vice President Nixon explained that in his decision making, the Vice President had a constitutional responsibility above his responsibility to the Senate rules:

The Chair is bound by the rules of the Senate, as adopted by the Senate. The Chair also has a constitutional responsibility. The Chair has indicated on several occasions, moreover, that while it is the opinion of the Chair that the Senate rules, in the respects to which the Chair has referred, are not in accordance with constitutional mandate, it is only the Chair's opinion, and that question, if it is raised, will be submitted to the Senate itself for its decision.<sup>65</sup>

Senator Russell then sought to demonstrate how unusual it had been for Vice President Nixon to issue his opinions. Senator Russell and the Vice President had the following exchange:

Mr. RUSSELL. Does the Chair arrive at that conclusion of his right to render these advisory opinions under his constitutional position as a

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<sup>63</sup> *Id.* at 8–9.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 97.

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member of the executive branch of the Government, or in his status as Presiding Officer of the Senate?

The VICE PRESIDENT. The Chair renders that opinion in his status as Presiding Officer of the Senate. The Chair should point out he renders this opinion only in response to parliamentary inquiries which have been propounded by various Members of the Senate.

Mr. RUSSELL. They have been very freely propounded, and the Chair has freely answered; but can the Chair point to any precedent where any Presiding Officer of the Senate has sought to rule that any rule of the Senate is unconstitutional? I realize precedents are considered by some today to be obnoxious. Some persons today consider it indelicate to mention precedents.

The VICE PRESIDENT. The Chair has no precedent at hand, but the Chair points out that it is very common for Presiding Officers to indicate their opinions with regard to the rules of the Senate and other matters. If there is any doubt about it, the Chair suggests that Members of the Senate read the various briefs presented to the Presiding Officer on this question.

Mr. RUSSELL. I have labored through a brief which was submitted to the Chair, but I found in the brief nothing which, in my opinion, would give the Chair the right to declare a rule of the Senate unconstitutional. Of course, the Chair has a right to construe the rules and apply them; but to strike one down by an advisory opinion is, in my opinion, something new.

The VICE PRESIDENT. If the Senator will allow the Chair to state his position correctly, the Chair has not been so presumptuous as to strike down a rule of the Senate. The Chair has been careful to state that he was expressing his opinion only as to constitutionality.

Mr. RUSSELL. It would be a rather effective death of a rule if the Chair were convinced it was unconstitutional.

The VICE PRESIDENT. The Chair is of the opinion that that is true, but the Chair has made it clear that it was only within the jurisdiction and discretion of the Senate to make the decision. The Senator from Georgia may disagree with the Chair's opinion, as the Chair realizes he does. The Senator from Georgia certainly has every right to express that opinion. But the Chair believes that when a parliamentary inquiry is propounded to him he should attempt to respond to the inquiry as fully as the facts seem to require response for the guidance of the Senate, and its consideration.<sup>66</sup>

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<sup>66</sup> *Id.*

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Senator Russell concluded by stating his view that Vice President Nixon's opinions had been inconsistent with Senate precedent:

I am a great believer in free speech in the Senate of the United States, and I am perfectly willing to accord that privilege to the member of the executive branch who presides over this body; but I have had some question about the rulings of the Chair on rules of the Senate which have been developed in a period of more than 170 years—opinions that some rules were applicable, and that, in his opinion, some were inapplicable.<sup>67</sup>

Again in 1961, Vice President Nixon acknowledged from the Chair that he was then disregarding the Parliamentarian, at the same time insisting that he had not done so in prior instances:

The present occupant of the Chair must in frankness inform the Senate that for the first time in his 6 years of service he is making a ruling from the Chair which is not entirely in accord with the advice of the Parliamentarian, who is inclined to believe that because this resolution is in the nature of a privileged resolution . . . it might not have that effect. However, the occupant of the Chair does not dare to make that ruling. The ruling of the occupant of the Chair, unless it is overruled by the Senate, is that, in the absence of an agreement, this would change the situation.<sup>68</sup>

In testimony before the Senate Rules and Administration Committee, former Parliamentarian Bob Dove recounted three subsequent incidents where the Vice President disregarded the Parliamentarian's advice:

The year after I came the Vice President of the United States, Hubert Humphrey, and the Senator from South Dakota at that time, George McGovern, came up with a strategy to change the filibuster rule, a strategy which would involve the Vice President ruling that a resolution which had not yet been adopted would be enforced by the chair, a resolution to change the filibuster rule, and it would be enforced on the basis that a point of order against it had been tabled.

. . . I really thought this was a way of cutting the Gordian knot, a phrase that Senator Javits used on the floor, and was secretly behind it. The parliamentarian was not, and the Vice President was not ruling based on the advice of the parliamentarian.

The Vice President did so rule. The Vice President was overturned by the Senate so that attempt came to naught.

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<sup>67</sup> *Id.* at 98.

<sup>68</sup> 107 CONG. REC. 74 (Jan. 4, 1961).

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Two years later in 1969 in the final days of Vice President Hubert Humphrey's time as vice president, he came up with another way of changing Rule 22. He said from the chair that if a cloture motion was voted on, quote, ["]at the beginning of the Congress[,] which had never had any significance in the Senate in the past[,] and the vote was by majority, that he would rule that cloture had been invoked on a rules change, and he [did] so rule. And once again the Senate overturned him. So that attempt came to naught.

Then in 1975 Vice President Nelson Rockefeller together with Senator Walter Mondale of Minnesota and Senator Pearson of Kansas managed to do what Vice President Hubert Humphrey and Senator McGovern had tried to do only they did it successfully this time or I would say semi-successfully.

Yes, the Vice President ruled that the resolution could not be debated and for days the Senate had no debate but it had votes, and the only way the Vice President was able to shut that down was to start refusing to recognize Senators.

I had some qualms about that at the time. Evidently the Vice President had qualms about that because he came back two weeks afterward to apologize to the Senate for refusing to recognize Senators. But of course at that point it was a little late. The rule had been changed.<sup>69</sup>

As one might expect, Presiding Officers have also disregarded the advice of the Parliamentarian on minor housekeeping matters.<sup>70</sup>

More recently, in March 2017, Senator Ted Cruz asserted, "Under the Budget Act of 1974, which is what governs reconciliation, it is the presiding officer, the vice president of the United States, who rules on what's permissible on reconciliation and what is not."<sup>71</sup> "You don't have to override the parliamentarian or get a new parliamentarian," Senator Cruz said.<sup>72</sup> "Under the statute, it is the vice president who rules. It is the presiding officer who makes the decision. The parliamentarian advises on that question."<sup>73</sup>

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<sup>69</sup> *Examining the Filibuster: Hearings Before the S. Comm. on Rules & Admin.*, 111th Cong. (2010) (statement of Robert B. Dove).

<sup>70</sup> See, e.g., PATRICK LEAHY, *THE ROAD TAKEN: A MEMOIR* 99–100 (2022) (Presiding Officer declining to heed the Parliamentarian's advice to call a Senator to order for smoking a cigar on the Senate floor).

<sup>71</sup> Alexander Bolton, *Cruz: Let's Overrule Senate Officer To Expand ObamaCare Bill*, THE HILL, Mar. 9, 2017, 4:58 PM.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

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Similarly, during a 2019 Presidential election debate, Senator Sanders suggested:

[W]hat I would support, absolutely, is passing major legislation, the gun legislation the people here are talking about, Medicare for all, climate change legislation that saves the planet. I will not wait for 60 votes to make that happen, and you can do it in a variety of ways. You can do that through budget reconciliation law. You have a vice president who will, in fact, tell the Senate what is appropriate and what is not, what is in order and what is not.<sup>74</sup>

In a September 2019 statement, Senator Sanders said:

[T]he budget reconciliation process, with 50 votes, has been used time and time again to pass major pieces of legislation. Under our Constitution and the rules of the Senate, it is the vice president who determines what is and is not permissible under budget reconciliation. While a president does not have the power to abolish the filibuster, I can tell you that a vice president in a Bernie Sanders administration will determine that a Green New Deal, Medicare for All and other bold progressive legislation can pass through the Senate under reconciliation and is not in violation of the rules.<sup>75</sup>

In 2021, Congresswoman Pramila Jayapal explained, “The Senate parliamentarian issues an advisory opinion. The VP can overrule them — as has been done before.”<sup>76</sup> And Congressman Ro Khanna said:

The progressive base understands that Vice President Harris can disregard the parliamentarian. [Vice President Nelson] Rockefeller did it in 1975 and according to parliamentarian Robert Dove, Vice President [Hubert] Humphrey did routinely. There is no way any senator would sink the final [coronavirus] bill, despite what they may say now. This simply comes down to whether the VP will choose to include the \$15 [minimum wage increase in the reconciliation bill] or not.<sup>77</sup>

In March 2021, several Members of Congress wrote President Biden and Vice President Harris to urge the Vice President to disregard the

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<sup>74</sup> [The October Democratic Debate Transcript](#), WASH. POST (Oct. 16, 2019).

<sup>75</sup> [Senator Sanders’ Statement on Passing the Green New Deal in the Senate with a Simple Majority](#), Sunrise Movement (@sunrisemvmt), TWITTER, (Sept. 6, 2019, 2:22 PM).

<sup>76</sup> [Tweet](#), Pramila Jayapal (Feb. 25, 2021).

<sup>77</sup> Jacqueline Alemany, [Power Up: Liberals Mount Pressure Campaign To Overrule Senate Parliamentarian on Minimum Wage](#), WASH. POST, Feb. 26, 2021, 6:43 AM.

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Parliamentarian.<sup>78</sup> Similarly, in September of 2021, several Members of Congress called on the Presiding Officer to override the Parliamentarian.<sup>79</sup> And in November 2021, several groups released a memo outlining how the Presiding Officer could disregard the Parliamentarian's advice.<sup>80</sup>

Former Senate Leadership staffer Adam Jentleson suggested in 2021:

[O]nly senators and the vice president preside over and vote in the Senate, and they have final say over what gets included in reconciliation bills. Rather than acting as automatons who simply read the rulings that the staff hands them (literally), they can include civil rights in the forthcoming reconciliation bill and, when the parliamentarian rules against it, Vice President Kamala Harris can issue her own ruling countermanding the parliamentarian. Fifty senators can sustain Harris's ruling and pass voting rights, without ever having to vote to alter the filibuster itself.<sup>81</sup>

In the end, the Senate itself decides. The Senate has overruled the Chair dozens of times.<sup>82</sup> Each time it does so, the Senate creates new precedent. In *Riddick's Senate Procedure*, the Parliamentarian explained:

Any ruling by the Chair in response to a point of order made by a Senator is subject to an appeal. If no appeal is taken, the ruling of the Chair

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<sup>78</sup> Letter from Ro Khanna, Cori Bush, Rashida Tlaib, Jamaal Bowman, Mondaire Jones, Ilhan Omar, Mark Pocan, Bennie G. Thompson, Earl Blumenauer, Alan Lowenthal, Marie Newman, Veronica Escobar, Raúl Grijalva, Gerald E. Connolly, Mark DeSaulnier, Betty McCollum, Andy Levin, Pramila Jayapal, Jesús G. "Chuy" García, Barbara Lee, Debbie Dingell, Ritchie Torres & Alexandria Ocasio-Cortez to Joseph R. Biden & Kamala D. Harris, (Mar. 1, 2021); Press Release, Ro Khanna, [Progressives Urge Biden Administration To Override Senate Parliamentarian](#) (Mar. 1, 2021); Ro Khanna, [Override the Parliamentarian. Or End the Filibuster. Americans Need a \\$15 Minimum Wage](#), WASH. POST, Mar. 5, 2021, 4:25 PM.

<sup>79</sup> [Tweet](#), Congressman Chuy García (Sept. 29, 2021); [Tweet](#), Ilhan Omar (Sept. 19, 2021); Suzanne Monyak, [House Democrats Press Senate Leaders To Override Parliamentarian on Immigration: They 'Strongly' Urged Senate Leaders To Ignore Her Immigration-Related Rulings](#), ROLL CALL, Oct. 21, 2021, 4:55 PM.

<sup>80</sup> Suzanne Monyak, [Democrats Pitch Parliamentarian on Immigration Relief](#), ROLL CALL, Dec. 1, 2021, 10:50 AM.

<sup>81</sup> Adam Jentleson, [When Will Biden Join the Fight for Voting Rights?](#) N.Y. TIMES, Aug. 29, 2021.

<sup>82</sup> See, e.g., 165 CONG. REC. S2225–26 (daily ed. Apr. 3, 2019); *id.* at S2220; 163 CONG. REC. S2389–90 (daily ed. Apr. 6, 2017); 159 CONG. REC. S8417–18 (daily ed. Nov. 21, 2013); 157 CONG. REC. S6315 (daily ed. Oct. 6, 2011); 146 CONG. REC. S4063–65 (daily ed. May 17, 2000); 142 CONG. REC. S12,231–32 (daily ed. Oct. 3, 1996); 141 CONG. REC. S4034–35 (daily ed. Mar. 16, 1995); 138 CONG. REC. 19,471–76 (July 27, 1992); 137 CONG. REC. 33,790–96 (Nov. 22, 1991); 136 CONG. REC. 8591–93 (Apr. 27, 1990); 135 CONG. REC. 29,164–70 (Nov. 15, 1989); *id.* at 20,462–63 (Sept. 14, 1989); 133 CONG. REC. 12,252–56 (May 13, 1987); 132 CONG. REC. 26,139–54 (Sept. 25, 1986); 131 CONG. REC. 35,871 (Dec. 11, 1985); 130 CONG. REC. 19,527–28 (June 28, 1984); 129 CONG. REC. 31,665–74 (Nov. 9, 1983); *id.* at 29,503–11 (Oct. 27, 1983); *id.* at 22,423–28 (Aug. 3, 1983); 128 CONG. REC. 14,834 (June 23, 1982); 127 CONG. REC. 21,912–13 (Sept. 24, 1981); 126 CONG. REC. 33,557–58 (Dec. 11, 1980); *id.* at 31,060–63 (Nov. 25, 1980); *id.* at 13,876–77 (June 10, 1980); *id.* at 13,864–69 (June 10, 1980); *id.* at 4729–32 (Mar. 5, 1980); *id.* at 1201–03 (Jan. 30, 1980); 95 CONG. REC. 10,742–67 (Aug. 4, 1949); *id.* at 10,262–78 (July 27, 1949); *id.* at 2125–31, 2214–75 (Mar. 10–11, 1949); 94 CONG. REC. 6552–61 (May 27, 1948); *id.* at 5219–39, 5293–94 (May 4–5, 1948); 93 CONG. REC. 8423–30 (July 3, 1947); 90 CONG. REC. 3037–49 (Mar. 24, 1944); 88 CONG. REC. 9335 (Dec. 4, 1942); 70 CONG. REC. 4558 (Feb. 27, 1929).

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stands as the judgment of the Senate and becomes a precedent for the guidance of the Senate in the future.

Any Senator[] may take an appeal from a ruling of the Chair, and when this occurs the question is stated, “Shall the decision of the Chair stand as the judgment of the Senate?” Unless the Chair is supported by a majority vote of the Senate, the decision of the Chair is overruled. This decision of the Senate becomes a precedent for the Senate to follow in its future procedure until altered or reversed by a subsequent decision of the Chair or by a vote of the Senate.<sup>83</sup>

In a series of four instances of overruling the Chair starting in November 2013,<sup>84</sup> the Senate has both changed Senate procedure on nominations and laid out a path for future Senate majorities to exercise more direct control over Senate procedure more generally, if it chooses to do so.<sup>85</sup> Thus, all the discussion of precedents that follows in this volume is subject to the significant caveat that a majority of the Senate has the power to, and may well decide to, do otherwise.

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<sup>83</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 145 (1992).

<sup>84</sup> [159 CONG. REC. S8417–18](#) (daily ed. Nov. 21, 2013) (that the vote on cloture under rule XXII for all nominations other than for the Supreme Court of the United States is by majority vote); [163 CONG. REC. S2389–90](#) (daily ed. Apr. 6, 2017) (that the vote on cloture, under the precedent set on November 21, 2013, is a majority vote for all nominations); [165 CONG. REC. S2220](#) (daily ed. Apr. 3, 2019) (that postcloture time under rule XXII for all executive branch nominations other than a position at level 1 of the Executive Schedule under section 5312 of title 5 of the United States Code is 2 hours.); *id.* at [S2225–26](#) (that the postcloture time under rule XXII for all judicial nominations, other than circuit courts or Supreme Court of the United States, is 2 hours).

<sup>85</sup> See generally William G. Dauster, [The Senate in Transition or How I Learned To Stop Worrying and Love the Nuclear Option](#), 19 N.Y.U. J. OF LEGIS. & PUB. POL’Y 631 (Dec. 2016).



### **Rulemaking Power**

The Supreme Court has said that it will not question Congress' rulemaking beyond determining that its rules comport with the Constitution and fundamental rights. When in 1892 the Court considered the question of whether Congress had properly enacted a particular law, the Court discussed the House's quorum rule and concluded:

The action taken [by the House] was in direct compliance with this [quorum] rule. The question, therefore, is as to the validity of this rule, and not what methods the Speaker may of his own motion resort to for determining the presence of a quorum, nor what matters the Speaker or clerk may of their own volition place upon the journal. Neither do the advantages or disadvantages, the wisdom or folly, of such a rule present any matters for judicial consideration. With the courts the question is only one of power. The Constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and within the limitations, suggested, absolute and beyond the challenge of any other body or tribunal.<sup>86</sup>

The Supreme Court has also addressed the rulemaking power in other cases.<sup>87</sup>

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<sup>86</sup> [United States v. Ballin](#), 144 U.S. 1, 5 (1892).

<sup>87</sup> [United States v. Smith](#), 286 U.S. 6 (1932); [Christoffel v. United States](#), 338 U.S. 84 (1949); [United States v. Bryan](#), 339 U.S. 323 (1950); [Yellin v. United States](#), 374 U.S. 109 (1963); [Powell v. McCormack](#), 395 U.S. 486 (1969).



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The Congressional Research Service's annotation of the Constitution says of the rulemaking power<sup>88</sup>:

### Rules of Proceedings

In the exercise of their constitutional power to determine their rules of proceedings, the Houses of Congress may not “ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the house. . . . The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.”<sup>[89]</sup> If a rule affects private rights, its construction becomes a judicial question. In *United States v. Smith*,<sup>[90]</sup> the Court held that the Senate's reconsideration of a presidential nominee for chairman of the Federal Power Commission, after it had confirmed him and he had taken the oath of office, was not warranted by its rules and did not deprive the appointee of his title to the office. In *Christoffel v. United States*,<sup>[91]</sup> a sharply divided Court upset a conviction for perjury in a federal district court of a witness who had denied under oath before a House committee any affiliation with Communist programs. The reversal was on the ground that, because a quorum of the committee, although present at the outset, was not present at the time of the alleged perjury, testimony before it was not before a “competent tribunal” within the sense of the District of Columbia Code.<sup>[92]</sup> Four Justices, in an opinion by Justice [Robert] Jackson, dissented, arguing that, under the rules and practices of the House, “a quorum once established is presumed to continue unless and until a point of no quorum is raised” and that the Court was, in effect, invalidating this rule, thereby invalidating at the same time the rule of self-limitation observed by courts “where such an issue is tendered.”<sup>[93]</sup>

The Appointments Clause provides that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States,

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<sup>88</sup> CONG. RSCH. SERV., *THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION* 134–35 (Michael J. Garcia, Caitlain Devereaux Lewis, Andrew Nolan, Meghan Totten & Ashley Tyson eds., 2017) (footnotes renumbered and reformatted).

<sup>89</sup> *United States v. Ballin*, 144 U.S. 1, 5 (1892). The Senate is “a continuing body.” *McGrain v. Daugherty*, 273 U.S. 135, 181–82 (1927). Hence its rules remain in force from Congress to Congress except as they are changed from time to time, whereas those of the House are readopted at the outset of each new Congress.

<sup>90</sup> *United States v. Smith*, 286 U.S. 6 (1932).

<sup>91</sup> *Christoffel v. United States*, 338 U.S. 84 (1949).

<sup>92</sup> *Id.* at 87–90.

<sup>93</sup> *Id.* at 92–95.

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whose Appointments are not herein otherwise provided for, and which shall be established by Law. . . .”<sup>[94]</sup> The Constitution provides that “Each House may determine the Rules of its Proceedings,”<sup>[95]</sup> and the Senate has enacted a cloture rule<sup>[96]</sup> requiring a supermajority vote (60 votes) to close debate on any matter pending before the Senate. Absent the invocation of cloture or some other means of ending debate, matters can remain before the Senate indefinitely. The practice of preventing closure is known as a filibuster. Although no provision of the Constitution expressly requires that the Senate or House act by majority vote in enacting legislation or in exercising their other constitutional powers, the framers of the Constitution were committed to a majority rule as a general principle.<sup>[97]</sup> These facts have given rise to disagreement as to the constitutionality of the filibuster as applied to judicial nominees – disagreement over whether the “Advice and Consent” of the Senate means the majority of the Senate and not a super-majority. The constitutionality of the filibuster has been challenged in court several times, but those cases have never reached the merits of the issue.<sup>[98]</sup> More recently, the Senate interpreted its rules to require only a simple majority to invoke cloture on most nominations.<sup>[99]</sup>

Congress expressly enacted the Congressional Budget Act of 1974 as an exercise of its constitutional rulemaking power, reserving to itself “the constitutional right . . . to change such rules . . . at any time, in the same manner, and to the same extent as in the case of any other rule.”<sup>100</sup> Since then, Congress has included similar language in nearly all significant budget process legislation.<sup>101</sup> And since 1993, Congress has regularly

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<sup>94</sup> U.S. CONST. art. II, § 2, cl. 2.

<sup>95</sup> U.S. CONST. art. I, § 5, cl. 2, *infra* p. 24.

<sup>96</sup> Senate Rule XXII, ¶ 2.

<sup>97</sup> See, e.g., THE FEDERALIST NO. 58, 397 (James Madison) (Jacob E. Cooke ed., 1961) (Madison, responding to objections that the Constitution should have required “more than a majority . . . for a quorum, and in particular cases, if not in all, more than a majority of a quorum for a decision,” asserted that such requirements would be inconsistent with majority rule, which is “the fundamental principle of free government”); *id.*, NO. 22, at 138–39 (Alexander Hamilton) (Hamilton observed that “equal suffrage among the States under the Articles of Confederation contradicts that fundamental maxim of republican government which requires that the sense of the majority should prevail”).

<sup>98</sup> See, e.g., *Common Cause v. Biden*, 748 F.3d 1280 (D.C. Cir. 2014); *Judicial Watch, Inc. v. United States Senate*, 432 F.3d 359 (D.C. Cir. 2005); *Page v. Shelby*, 995 F. Supp. 23 (D.D.C. 1998). The constitutionality of the filibuster has been a subject of debate for legal scholars. See, e.g., Josh Chafetz & Michael J. Gerhardt, *Debate, Is the Filibuster Constitutional?*, 158 U. PA. L. REV. 245 (2010).

<sup>99</sup> 159 CONG. REC. S8416–18 (daily ed. Nov. 21, 2013).

<sup>100</sup> Congressional Budget Act of 1974, Pub. L. No. 93-344, § 904(a), 88 Stat. 297, 331, 2 U.S.C. § 621 note, *infra* p. 884.

<sup>101</sup> See *Balanced Budget and Emergency Deficit Control Act of 1985* (Gramm-Rudman-Hollings), Pub. L. No. 99-177, § 271(c), 99 Stat. 1038, 1094, 2 U.S.C. § 900 note (subsequently redesignated as § 271(d)); *Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987*, Pub. L. No. 100-119, § 213, 101 Stat. 754, 787–88, 2 U.S.C. § 900 note; *Budget Enforcement Act of 1990*, Pub. L. No. 101-508, § 13305, 104 Stat. 1388-573, 1388-627 to 1388-628, 2 U.S.C. § 900 note; *Omnibus Budget Reconciliation Act of 1993*, Pub. L. No. 103-66, § 14004, 107 Stat. 312, 685, 2 U.S.C. § 900 note; *Unfunded Mandates Reform Act of 1995*, Pub. L. No. 104-4, § 108, 109 Stat. 48, 63–64, 2 U.S.C. § 1515; *Budget Control Act of 2011*, Pub. L. No. 112-25, §§

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included similar language in budget resolutions to make clear that certain provisions in those budget resolutions were to be considered as rules of the Senate or House.<sup>102</sup>

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301, 404, 125 Stat. 240, 255, 265–66, [31 U.S.C. § 3101A\(g\)](#), [2 U.S.C. § 900](#) note; [Bipartisan Budget Act of 2013](#), Pub. L. No. 113-67, § 118, 127 Stat. 1165, 1174; [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, § 209, 133 Stat. 1049, 1057.

<sup>102</sup> [S. Con. Res. 14](#), [117th Cong.](#) § 4016 (2021) (adopted); [S. Con. Res. 5](#), [117th Cong.](#) § 4008 (2021) (adopted); [H. Con. Res. 71](#), [115th Cong.](#) §§ 4206, 5207 (2017) (adopted); [S. Con. Res. 3](#), [115th Cong.](#) § 4004 (2017) (adopted); [S. Con. Res. 11](#), [114th Cong.](#) § 3405 (2015) (adopted); [S. Con. Res. 13](#), [111th Cong.](#) §§ 415, 429, 123 Stat. 3506, 3540, 3545 (2009); [S. Con. Res. 70](#), [110th Cong.](#) § 325, 122 Stat. 5143, 5182 (2008); [S. Con. Res. 21](#), [110th Cong.](#) § 213, 121 Stat. 2590, 2613 (2007); [H. Con. Res. 95](#), [109th Cong.](#) § 409, 119 Stat. 3633, 3656 (2005); [H. Con. Res. 83](#), [107th Cong.](#) § 222, 115 Stat. 2486, 2510 (2001); [H. Con. Res. 290](#), [106th Cong.](#) § 234, 114 Stat. 3139, 3160 (2000); [H. Con. Res. 68](#), [106th Cong.](#) § 213, 113 Stat. 1968, 1988–89 (1999); [H. Con. Res. 84](#), [105th Cong.](#) § 213, 111 Stat. 2710, 2738 (1997); [H. Con. Res. 178](#), [104th Cong.](#) § 306, 110 Stat. 4434, 4461 (1996); [H. Con. Res. 67](#), [104th Cong.](#) § 211, 109 Stat. 996, 1025–26 (1995); [H. Con. Res. 218](#), [103d Cong.](#) § 28, 108 Stat. 5075, 5098 (1994); [H. Con. Res. 64](#), [103d Cong.](#) § 12(g), 107 Stat. 2508, 2534 (1993).

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Art. I, § 7     **All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.**

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### The Origination Clause<sup>103</sup>

The Congressional Research Service’s annotation of the Constitution says of the Origination Clause<sup>104</sup>:

#### Revenue Bills

Insertion of this clause was another of the devices sanctioned by the Framers to preserve and enforce the separation of powers.<sup>[105]</sup> It applies, in the context of the permissibility of Senate amendments to a House-passed bill, to all bills for collecting revenue—revenue decreasing as well as revenue increasing—rather than simply to just those bills that increase revenue.<sup>[106]</sup>

Only bills to levy taxes in the strict sense of the word are comprehended by the phrase “all bills for raising revenue”; bills for other purposes, which incidentally create revenue, are not included.<sup>[107]</sup> Thus, a Senate-initiated bill that provided for a monetary “special assessment” to pay into a crime victims fund did not violate the clause, because it was a statute that created and raised revenue to support a particular governmental program and was not a law raising revenue to support Government generally.<sup>[108]</sup> An act providing a national currency secured by a pledge of bonds of the United

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<sup>103</sup> See generally JAMES V. SATURNO, CONG. RSCH. SERV., [R46558, THE ORIGINATION CLAUSE OF THE U.S. CONSTITUTION: INTERPRETATION AND ENFORCEMENT](#) (2020); Michael W. Evans, “A Source of Frequent and Obstinate Altercations”: The History and Application of the Origination Clause, TAX ANALYSTS, Nov. 29, 2004; *The Original Meaning of the Origination Clause: Hearing Before the Subcomm. on the Const. & Civ. Just. of the H. Comm. on the Judiciary*, 114th Cong. (2016); *The Original Meaning of the Origination Clause: Hearing Before the Subcomm. on the Const. & Civ. Just. of the H. Comm. on the Judiciary*, 113th Cong. (2014).

<sup>104</sup> CONG. RSCH. SERV., [THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION](#) 148–49 (Michael J. Garcia, Caitlain Devereaux Lewis, Andrew Nolan, Meghan Totten & Ashley Tyson eds., 2017) (footnotes renumbered and reformatted).

<sup>105</sup> [THE FEDERALIST NO. 58](#), 392–95 (James Madison) (Jacob E. Cooke ed., 1961); see *United States v. Munoz-Flores*, 495 U.S. 385, 393–95 (1990).

<sup>106</sup> The issue of coverage is sometimes important, as in the case of the [Tax Equity and Fiscal Responsibility Act of 1982](#), Pub. L. No. 97-248, 96 Stat. 324, in which the House passed a bill that provided for a net loss in revenue and the Senate amended the bill to provide a revenue increase of more than \$98 billion over 3 years. Attacks on the law as a violation of the origination clause failed before assertions of political question, standing, and other doctrines. *E.g.*, *Texas Ass’n of Concerned Taxpayers v. United States*, 772 F.2d 163 (5th Cir. 1985); *Moore v. U.S. House of Representatives*, 733 F.2d 946 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1106 (1985).

<sup>107</sup> 2 JOSEPH STORY, [COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES](#) § 880 (1833).

<sup>108</sup> *United States v. Munoz-Flores*, 495 U.S. 385 (1990).

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States, which, “in the furtherance of that object, and also to meet the expenses attending the execution of the act,” imposed a tax on the circulating notes of national banks was held not to be a revenue measure which must originate in the House of Representatives.<sup>[109]</sup> Neither was a bill that provided that the District of Columbia should raise by taxation and pay to designated railroad companies a specified sum for the elimination of grade crossings and the construction of a railway station.<sup>[110]</sup> The substitution of a corporation tax for an inheritance tax,<sup>[111]</sup> and the addition of a section imposing an excise tax upon the use of foreign-built pleasure yachts,<sup>[112]</sup> have been held to be within the Senate’s constitutional power to propose amendments.

In the Senate, the Presiding Officer submits questions related to the Origination Clause directly to the Senate for determination by a simple-majority vote.<sup>113</sup> In *Riddick’s Senate Procedure*, the Parliamentarian explained<sup>114</sup>:

#### **Constitutionality of Amendments:**

....

The question of the constitutionality of a measure originating in the Senate as being revenue raising in nature or the constitutionality of a revenue-raising amendment is submitted by the Presiding Officer directly to the Senate for determination.<sup>[115]</sup>

A point of order that an amendment proposing to raise revenue should originate in the House raises a constitutional question and the Chair has no authority to rule on such a point of order. Such a point of order is submitted to the Senate for decision. The question is: Is it the judgment of the Senate that the point of order is well taken? Such a point of order is debatable and is decided by majority vote.<sup>[116]</sup>

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<sup>109</sup> *Twin City Bank v. Nebeker*, 167 U.S. 196 (1897).

<sup>110</sup> *Millard v. Roberts*, 202 U.S. 429 (1906).

<sup>111</sup> *Flint v. Stone Tracy Co.*, 220 U.S. 107, 143 (1911).

<sup>112</sup> *Rainey v. United States*, 232 U.S. 310 (1914).

<sup>113</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK’S SENATE PROCEDURE* 52–54 (1992).

<sup>114</sup> *Id.* (footnotes renumbered and reformatted).

<sup>115</sup> 65 CONG. REC. 1025–27 (June 16, 1924); 111 CONG. REC. 22,583, 22,589 (Sept. 1, 1965); 1931 SEN. J. 317 (Mar. 2, 1931); 101 CONG. REC. 10,542 (July 14, 1955); 94 CONG. REC. 4493–94 (Apr. 15, 1948); 92 CONG. REC. 4604–05, 4689 (May 8, 1946); 84 CONG. REC. 6339–49 (May 31, 1939); 82 CONG. REC. 1615 (Dec. 16, 1937); 1935 SEN. J. 228–29 (Mar. 28, 1935); 1932 SEN. J. 48 (Dec. 17, 1932); 82 CONG. REC. 1613 (Dec. 16, 1937); 107 CONG. REC. 9749–50 (June 7, 1961); 123 CONG. REC. 26,313–20 (Aug. 3, 1977); see also 86 CONG. REC. 10,594, 10,627, 10,642, 10,644 (Aug. 20, 1940).

<sup>116</sup> 115 CONG. REC. 28,267 (Oct. 2, 1969); 113 CONG. REC. 26,823 (Sept. 26, 1967); 123 CONG. REC. 26,313–20 (Aug. 3, 1977).

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When a point of order is made against an amendment under the Constitution (on the grounds that the amendment would raise revenue and therefore should originate in the House), the Chair has no authority to rule on the point of order, but submits for debate and decision the question “Is it in order to offer such an amendment to the pending bill?”<sup>[117]</sup>

When a point of order is made against an amendment on the grounds that it violates the Constitution, that point of order must be submitted by the Chair to the Senate for a vote, and when so submitted is subject to a motion to table;<sup>[118]</sup> but if the Senate is operating under cloture the point of order is not debatable.<sup>[119]</sup>

A point of order that an amendment which proposes an appropriation is out of order on a Senate bill was construed by the Chair to be tantamount to making a Constitutional point of order, and the Chair advised that it would submit that question to the Senate for decision.<sup>[120]</sup>

It is not within the province of the Presiding Officer to rule a bill or an amendment out of order on the ground that it is unconstitutional;<sup>[121]</sup> the Presiding Officer has no authority or power to pass on the constitutionality of a measure or amendment; that is a matter for the Senate itself to decide.<sup>[122]</sup>

An amendment proposing to give the President authority to veto line items in appropriations acts was voted by the Senate to give rise to a point of order under the Constitution.<sup>[123]</sup>

A Senate amendment which provides for tax refunds, proposed to a House bill, is not a revenue-raising measure, and may originate in the Senate.<sup>[124]</sup>

The House of Representatives plays the main role in enforcing the Origination Clause through what some call the “blue slip.” The Congressional Research Service’s Jim Saturno explained:

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<sup>117</sup> 129 CONG. REC. 27,781–83 (Oct. 7, 1983).

<sup>118</sup> 132 CONG. REC. 1517–18 (Feb. 4, 1986); 131 CONG. REC. 30,244–47 (Nov. 1, 1985); 130 CONG. REC. 10,859, 10,870 (May 3, 1984).

<sup>119</sup> 132 CONG. REC. 1517–18 (Feb. 4, 1986).

<sup>120</sup> 129 CONG. REC. 18,609 (July 12, 1983).

<sup>121</sup> 15 CONG. REC. 2720 (Apr. 7, 1884); *see also* 115 CONG. REC. 28,267 (Oct. 2, 1969); 113 CONG. REC. 26,823 (Sept. 26, 1967); 123 CONG. REC. 26,313–20 (Aug. 3, 1977).

<sup>122</sup> 126 CONG. REC. 17,638–40 (June 28, 1980); 22 CONG. REC. 1319 (Jan. 14, 1891); 62 CONG. REC. 11,964–65 (Aug. 30, 1922); 76 CONG. REC. 627 (Dec. 17, 1932); 66 CONG. REC. 2939 (Feb. 3, 1925); 66 CONG. REC. 2344–55, 2358 (Jan. 23, 1925); 66 CONG. REC. 2273–74 (Jan. 22, 1925); 31 CONG. REC. 3356 (Mar. 30, 1898); *see also* 77 CONG. REC. 2551 (Apr. 28, 1933).

<sup>123</sup> 130 CONG. REC. 10,859, 10,870 (May 3, 1984).

<sup>124</sup> *See* House precedent of 76 CONG. REC. 1867–68 (Jan. 16, 1933).

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## The House

As it is the House that is most frequently called upon to enforce the Origination Clause, its precedents have played a primary role in defining what makes a bill for raising revenue.<sup>[125]</sup>

The rules and practices of the House use the concept of “revenue” in two separate but related procedures, first in connection with enforcing House prerogatives under the Origination Clause when considering a resolution to return a bill to the Senate (a “blue-slip resolution”) and second when enforcing within the House the exclusive jurisdiction of the House Committee on Ways and Means over all measures “carrying a tax or tariff.”<sup>[126]</sup> . . .

In both instances, the House applies a broad standard based on a provision-by-provision review of whether the measure in question has revenue-affecting potential and not simply whether it would raise or lower revenues directly. For example, any change in import restrictions may be regarded by the House as falling within the purview of the Origination Clause, because it could have an impact on tariff revenues. In 1992, the House returned to the Senate a bill (S. 884, 102nd Congress) to require the President to impose economic sanctions, including a ban on certain imports, against countries that fail to eliminate large-scale driftnet fishing.<sup>[127]</sup> In 1999, the House returned to the Senate a bill (S. 254, 106th Congress) effectively banning the import of certain assault weapon attachments.<sup>[128]</sup>

House precedent, as articulated by the policy of recent Speakers of the House, construes the chamber’s prerogatives broadly to include “any meaningful revenue proposal” but may also include other types of receipts that may not fall strictly within a technical definition of revenues. This interpretation is framed by the Speaker in terms of House committee jurisdictions and referrals, but it also informs the House’s understanding of what constitutes nonrevenue receipts that are not subject to the Origination Clause. While the House rules grant exclusive jurisdiction over

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<sup>125</sup> House precedents concerning the Origination Clause may be found in: 2 ASHER C. HINDS, *HINDS’ PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES INCLUDING REFERENCES TO PROVISIONS OF THE CONSTITUTION, THE LAWS, AND DECISIONS OF THE UNITED STATES SENATE*, ch. 47 (1907); 6 CLARENCE CANNON, *CANNON’S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES INCLUDING REFERENCES TO PROVISIONS OF THE CONSTITUTION, THE LAWS, AND DECISIONS OF THE UNITED STATES SENATE*, ch. 180 (1935); 3 LEWIS DESCHLER, *DESCHLER’S PRECEDENTS OF THE UNITED STATES HOUSE OF REPRESENTATIVES INCLUDING REFERENCES TO PROVISIONS OF THE CONSTITUTION AND LAWS, AND TO DECISIONS OF THE COURTS*, ch. 13, part C (1977).

<sup>126</sup> House Rule XXI, cl. 5(a).

<sup>127</sup> 138 CONG. REC. 3377 (Feb. 25, 1992) (regarding S. 884, 102d Cong. (as passed by Senate, Aug. 1, 1991)).

<sup>128</sup> 145 CONG. REC. H5677–80 (daily ed. July 15, 1999) (regarding S. 254, 106th Cong. (as passed by Senate, May 20, 1999)).



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revenues to the Ways and Means Committee, they also allow for various other standing committees of the House to consider legislation concerning nonrevenue receipts, such as

user, regulatory and other fees, charges, and assessments levied on a class directly availing itself of, or directly subject to, a governmental service, program, or activity, but not on the general public, as measures to be utilized solely to support, subject to annual appropriations, the service, program, or activity . . . for which such fees, charges, and assessments are established and collected and not to finance the costs of Government generally. The fee must be paid by a class benefitting from the service, program or activity, or being regulated by the agency; in short, there must be a reasonable connection between the payors and the agency or function receiving the fee.<sup>[129]</sup>

Therefore, the House regards nonrevenue receipts to the government to be those based on some type of voluntary or business transaction. In this context, civil and criminal penalties are not regarded as revenue in the constitutional sense under the general premise that malfeasance is elective and therefore does not involve a tax on involuntary behavior.<sup>130</sup>

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<sup>129</sup> 137 CONG. REC. 66 (Jan. 3, 1991).

<sup>130</sup> JAMES V. SATURNO, CONG. RSCH. SERV., R46558, THE ORIGINATION CLAUSE OF THE U.S. CONSTITUTION: INTERPRETATION AND ENFORCEMENT 3–4 (2020) (footnotes renumbered and reformatted).



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Art. I, § 8    **The Congress shall have Power**

**To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;**

**To borrow Money on the credit of the United States; . . . .**

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**The Power To Tax and Spend**

The Constitution grants Congress certain enumerated powers, first among which is the power to “tax and spend.”<sup>131</sup> The Supreme Court has said:

In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder. Nearly two centuries ago, Chief Justice Marshall observed that “the question respecting the extent of the powers actually granted” to the Federal Government “is perpetually arising, and will probably continue to arise, as long as our system shall exist.” *McCulloch v. Maryland*, 4 Wheat. 316, 405 (1819). . . .

The Federal Government “is acknowledged by all to be one of enumerated powers.” *Ibid.* That is, rather than granting general authority to perform all the conceivable functions of government, the Constitution lists, or enumerates, the Federal Government’s powers. Congress may, for example, “coin Money,” “establish Post Offices,” and “raise and support Armies.” Art. I, §8, cls. 5, 7, 12. The enumeration of powers is also a limitation of powers, because “[t]he enumeration presupposes something not enumerated.” *Gibbons v. Ogden*, 9 Wheat. 1, 195 (1824). The Constitution’s express conferral of some powers makes clear that it does not grant others. And the Federal Government “can exercise only the powers granted to it.” *McCulloch, supra*, at 405.

. . . .

Congress may also “lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.” U. S. Const., Art. I, §8, cl. 1. Put simply, Congress

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<sup>131</sup> [National Federation of Independent Business v. Sebelius](#), 567 U.S. 519, 537 (2012).

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may tax and spend. This grant gives the Federal Government considerable influence even in areas where it cannot directly regulate. The Federal Government may enact a tax on an activity that it cannot authorize, forbid, or otherwise control. See, e.g., *License Tax Cases*, 5 Wall. 462, 471 (1867). And in exercising its spending power, Congress may offer funds to the States, and may condition those offers on compliance with specified conditions. See, e.g., *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666, 686 (1999). These offers may well induce the States to adopt policies that the Federal Government itself could not impose. See, e.g., *South Dakota v. Dole*, 483 U.S. 203, 205–206 (1987) (conditioning federal highway funds on States raising their drinking age to 21).<sup>132</sup>

The Congressional Research Service’s Victoria Killion has described the Constitution’s limits on the conditions that the Federal Government can place on its spending:

The Spending Clause of the U.S. Constitution (Article I, Section 8, Clause 1) gives Congress broad power to authorize spending for the “general Welfare.” The Necessary and Proper Clause (Article I, Section 8, Clause 18) supplements Congress’s spending authority, allowing Congress to restrict how federal funds are used. Congress can also place requirements on the recipients of federal funds to regulate their conduct in exchange for federal funding.

While funding conditions such as these are common, they are subject to constitutional limitations. First, funding conditions must provide clear notice to the recipient of what actions are required in exchange for federal funds and the consequences of noncompliance. Second, funding conditions must be related to the purposes of the federally funded program or activity—though the required degree of connection is unsettled. Third, although Congress may incentivize states to adopt a particular policy in order to obtain specific federal funds, it may not coerce state participation. Congress may not, for example, tie an existing funding source on which a state has come to rely on compliance with a new kind of requirement. Fourth, the funding condition may not violate an independent constitutional bar or the related unconstitutional conditions doctrine. For example, Congress may not require governmental recipients, as a condition of receiving federal funds, to take an action that would violate an individual’s freedom of speech or free exercise of religion.

Whether a funding recipient is a state or a private entity may affect the applicability of these four general limits on funding conditions. While federalism—that is, the division of power between the federal government

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<sup>132</sup> *Id.* at 533–35, 537.

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and the states—is a basis for many of these constitutional limits, the Supreme Court has not squarely addressed whether each limit applies regardless of whether the recipient is a state.<sup>133</sup>

A leading source for House procedure, *Deschler-Brown-Johnson-Sullivan Precedents*, explains the role of article I, section 8:

Pursuant to article I, section 8 of the Constitution of the United States, Congress retains the “power of the purse,” encompassing the authority to lay and collect taxes, pay debts, and borrow money on the credit of the United States. Furthermore, section 9 requires that all money drawn from the Treasury be in “consequence of appropriations made by law.” Apart from these simple prescriptions, however, the Constitution does not provide specific mechanisms for managing the nation’s finances. Instead, the congressional budgeting process has grown and evolved over time. What exists today is a complex system involving the interaction of a variety of laws (enacted over several decades), executive action, congressional rulemaking designed to guide budgetary policy, and additional congressional rules created to enforce budgetary decisions.<sup>134</sup>

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<sup>133</sup> VICTORIA L. KILLION, CONG. RSCH. SERV., [R46827, FUNDING CONDITIONS: CONSTITUTIONAL LIMITS ON CONGRESS’S SPENDING POWER](#), summary (2021).

<sup>134</sup> 18 LEWIS DESCHLER ET AL., [DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS 3](#) (2013) (footnotes omitted).

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Art. I, § 9    **No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time. . . .**

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### **The Appropriations Clause**

The Supreme Court has written of this clause: “The provision of the Constitution (cl. 7, § 9, Art. I) that ‘No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law’ was intended as a restriction upon the disbursing authority of the Executive department . . . .”<sup>135</sup>

The Government Accountability Office’s General Counsel has written of this clause:

Time and again, the Supreme Court has reaffirmed that this clause means exactly what its straightforward language suggests: “no money can be paid out of the Treasury unless it has been appropriated by an act of Congress.” *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 321 (1937). This principle, when stated differently, reveals a tenet that is of critical importance to every agency, every officer, every employee of the federal government:

“The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.”

*United States v. MacCollom*, 426 U.S. 317, 321 (1976). This quintessential axiom animates the entire body of appropriations law. As James Madison and subsequent constitutional scholars have recognized, the congressional power of the purse is a key element of the constitutional framework of checks and balances. Accordingly, Congress’s power of the purse does not manifest as a reservation of congressional authority to *disapprove* of federal expenditures. Rather, the Constitution vests in Congress the power and duty to affirmatively *authorize* all expenditures. Regardless of the nature of the payment—a salary, a payment promised under a contract, a payment ordered by a court—a federal agency may not make such a payment and, indeed, may not even incur a liability for such a payment, unless Congress has made funding authority available. Indeed, a federal agency is a creature of law and can only carry out any of its functions to

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<sup>135</sup> [Cincinnati Soap Co. v. United States](#), 301 U.S. 308, 321 (1936).

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the extent authorized by law. *See, e.g., Atlantic City Electric Co. v. Federal Energy Regulatory Commission*, 295 F.3d 1, 8 (D.C. Cir. 2002). *See also* B-323449, Aug. 14, 2012; B-288266, Jan. 27, 2003. Therefore, agencies must operate not only in accordance with the funding levels Congress has permitted, but also in accordance with their authorizing statutes.

The axiom that obligations and expenditures are permitted only in accordance with an appropriation made by law is not limited to funds drawn from the so-called “general fund” of the Treasury, which is where the government deposits the bulk of its tax receipts. Instead, any government obligation or expenditure whatsoever – whether it is derived from the general fund, from fees arising from the government’s businesslike activities, or from any other source – may be made only as authorized by an appropriation. Some government activities are financed by permanent appropriations, and some of these derive their funds from fees rather than taxes. Congress need not appropriate funds for these activities on an annual basis to ensure their continued operation.

Nevertheless, such activities are financed using appropriated funds, and absent any statute stating otherwise, such activities are subject to the limitations imposed by law upon the use of all appropriated amounts. Whenever “the Congress specifies the manner in which a Federal entity shall be funded and makes such funds available for obligation and expenditure, that constitutes an appropriation, whether the language is found in an appropriation act or in other legislation.” B-193573, Dec. 19, 1979.

The Constitution does not detail how Congress is to implement its constitutional power of the purse, but provides Congress with the power to enact statutes to protect and exercise this power. U.S. Const., art. I, § 9, cl. 7 (Congress may make all laws “necessary and proper” for carrying into effect Congress’s legislative powers). Congress has done this through, among other ways, the annual budget and appropriations process and through a series of permanent statutes that establish controls on the use of appropriated funds. As one court has put it:

“[The Appropriations Clause] is not self-defining and Congress has plenary power to give meaning to the provision. The Congressionally chosen method of implementing the requirements of Article I, section 9, clause 7 is to be found in various statutory provisions.”

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*Harrington v. Bush*, 553 F.2d 190, 194–95 (D.C. Cir. 1977) (footnote omitted).  
E.g., *Walker v. Department of Housing & Urban Development*, 912 F.2d 819, 829  
(5th Cir. 1990).<sup>136</sup>

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<sup>136</sup> OFF. OF THE GEN. COUNS., U.S. GOV'T ACCOUNTABILITY OFF., [GAO-16-463SP](#), [PRINCIPLES OF FEDERAL APPROPRIATIONS LAW](#) 1-5 to 1-7 (4th ed. 2016) (footnotes omitted).

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Amend. XVI **The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.**

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### Income Tax

Professor Robert Dahl listed the lack of fiscal power among the original Constitution's failings:

*Congressional power.* Finally, the powers of Congress were limited in ways that could, and at times did, prevent the federal government from regulating or controlling the economy by means that all modern democratic governments have adopted. Without the power to tax incomes, for example, fiscal policy, not to say measures like Social Security, would be impossible. . . . Although it would be anachronistic to charge the Framers with lack of foresight in these matters, unless the constitution could be altered by amendment or by heroic reinterpretation of its provisions—presumably by what I have just called judicial legislation—it would prevent representatives of later majorities from adopting the policies they believed were necessary to achieve efficiency, fairness, and security in a complex post-agrarian society.<sup>137</sup>

As the Nation faced the challenges of the Civil War, this defect became more apparent. Historian Roger Lowenstein recounted:

After the Revolutionary War, the failure to create a federal taxing authority had undone the original American framework, the Articles of Confederation, by leaving the government, financially, at the mercy of the states. "It was mainly on account of this great defect that a convention was called, and the present Constitution framed," [Representative Thaddeus] Stevens said. Thus he identified the need for a vigorous taxing power as central to the origins of the government that the North, now, was fighting to defend.<sup>138</sup>

The Congressional Research Service's annotation of the Constitution recounts the history of the Sixteenth Amendment thereafter<sup>139</sup>:

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<sup>137</sup> ROBERT A. DAHL, [HOW DEMOCRATIC IS THE AMERICAN CONSTITUTION?](#) 19–20 (2d ed. 2003) (footnote omitted).

<sup>138</sup> ROGER LOWENSTEIN, [WAYS AND MEANS: LINCOLN AND HIS CABINET AND THE FINANCING OF THE CIVIL WAR](#) 58 (2022).

<sup>139</sup> CONG. RSCH. SERV., [THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION](#) 2275–76 (Michael J. Garcia, Caitlain Devereaux Lewis, Andrew Nolan, Meghan Totten & Ashley Tyson eds., 2017) (footnotes renumbered and reformatted).

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The ratification of the Sixteenth Amendment was the direct consequence of the Court's 1895 decision in *Pollock v. Farmers' Loan & Trust Co.*<sup>[140]</sup> holding unconstitutional Congress's attempt of the previous year to tax incomes uniformly throughout the United States.<sup>[141]</sup> A tax on incomes derived from property,<sup>[142]</sup> the Court declared, was a "direct tax," which Congress, under the terms of Article I, § 2, and § 9, could impose only by the rule of apportionment according to population. Scarcely fifteen years earlier the Justices had unanimously sustained<sup>[143]</sup> the collection of a similar tax during the Civil War,<sup>[144]</sup> the only other occasion preceding the Sixteenth Amendment in which Congress had used this method of raising revenue.<sup>[145]</sup>

During the years between the *Pollock* decision in 1895 and the ratification of the Sixteenth Amendment in 1913, the Court gave evidence of a greater awareness of the dangerous consequences to national solvency that *Pollock* threatened, and partially circumvented the threat, either by taking refuge in redefinitions of "direct tax" or by emphasizing the history of excise taxation. Thus, in a series of cases, notably *Nicol v. Ames*,<sup>[146]</sup> *Knowlton v. Moore*,<sup>[147]</sup> and *Patton v. Brady*,<sup>[148]</sup> the Court held the following taxes to have been levied merely upon one of the "incidents of ownership" and hence to be excises: a tax that involved affixing revenue stamps to memoranda evidencing the sale of merchandise on commodity exchanges, an inheritance tax, and a war revenue tax upon tobacco on which the hitherto imposed excise tax had already been paid and that was held by the manufacturer for resale.

Under this approach, the Court found it possible to sustain a corporate income tax as an excise "measured by income" on the privilege of doing business in corporate form.<sup>[149]</sup> The adoption of the Sixteenth Amendment,

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<sup>140</sup> *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429 (1895); *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601 (1895) (rehearing).

<sup>141</sup> *An Act to reduce taxation, to provide revenue for the Government, and for other purposes*, ch. 349, § 27, 28 Stat. 509, 553 (1894).

<sup>142</sup> The Court conceded that taxes on incomes from "professions, trades, employments, or vocations" levied by this Act were excise taxes and therefore valid. The entire statute, however, was voided on the ground that Congress never intended to permit the entire "burden of the tax to be borne by professions, trades, employments, or vocations" after real estate and personal property had been exempted. *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601, 635 (1895) (rehearing).

<sup>143</sup> *Springer v. United States*, 102 U.S. 586 (1881).

<sup>144</sup> *An Act to provide Internal Revenue to support the Government, to pay Interest on the Public Debt, and for other Purposes*, ch. 173, § 116, 13 Stat. 223, 281 (1864).

<sup>145</sup> For an account of the *Pollock* decision, see CONG. RSCH. SERV., *From the Hylton to the Pollock Case, in THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION* 395 (Michael J. Garcia, Caitlain Devereaux Lewis, Andrew Nolan, Meghan Totten & Ashley Tyson eds., 2017).

<sup>146</sup> *Nicol v. Ames*, 173 U.S. 509 (1899).

<sup>147</sup> *Knowlton v. Moore*, 178 U.S. 41 (1900).

<sup>148</sup> *Patton v. Brady*, 184 U.S. 608 (1902).

<sup>149</sup> *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911).



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however, put an end to speculation whether the Court, unaided by constitutional amendment, would persist along these lines of construction until it had reversed its holding in *Pollock*. Indeed, in its initial appraisal<sup>[150]</sup> of the Amendment, it classified income taxes as being inherently “indirect.” “[T]he command of the Amendment that all income taxes shall not be subject to apportionment by a consideration of the sources from which the taxed income may be derived, forbids the application to such taxes of the rule applied in the *Pollock* Case by which alone such taxes were removed from the great class of excises, duties and imports subject to the rule of uniformity and were placed under the other or direct class.”<sup>[151]</sup> “[T]he Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged . . . .”<sup>[152]</sup>

The Court’s 1916 protestations notwithstanding, Professors Joseph Fishkin, William Forbath, and Erik Jensen have written: “The Sixteenth Amendment, ratified in 1913, played a central role in building up the powerful American federal government of the twentieth century by making it possible to enact a modern, nationwide income tax. Before long, the income tax would become by far the federal government’s largest source of revenue.”<sup>153</sup>

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<sup>150</sup> *Brushaber v. Union Pac. R.R.*, 240 U.S. 1 (1916); *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916); *Tyee Realty Co. v. Anderson*, 240 U.S. 115 (1916).

<sup>151</sup> *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 18–19 (1916).

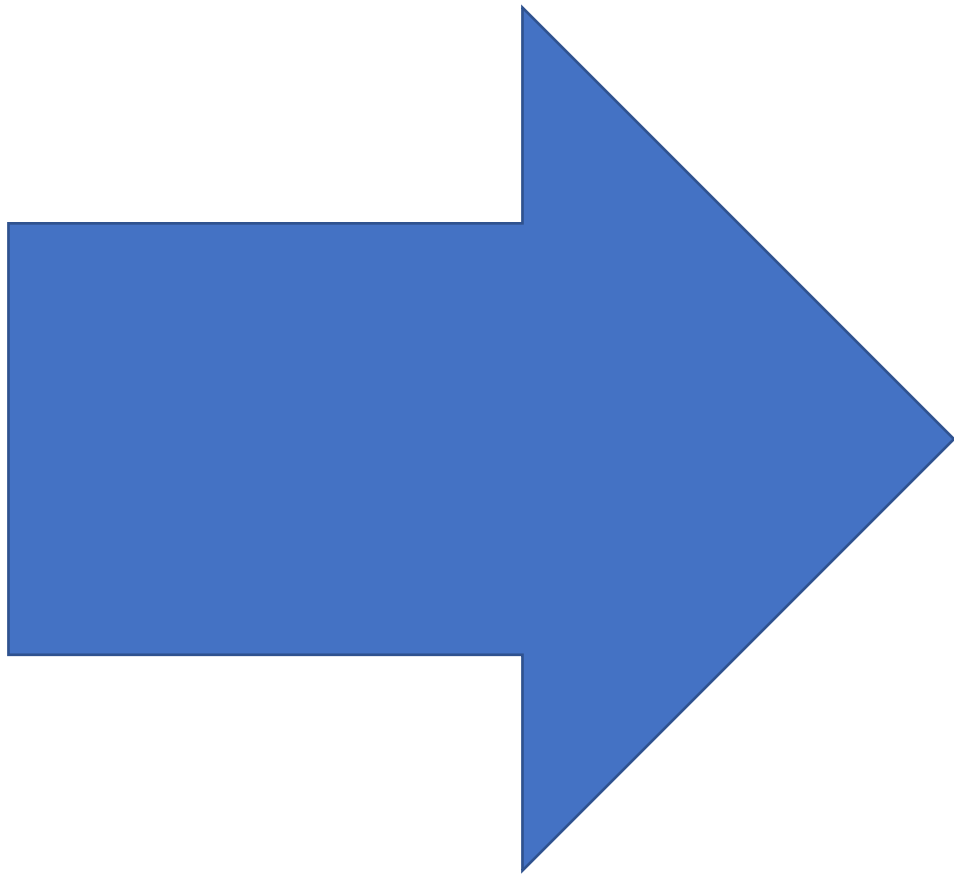
<sup>152</sup> *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112 (1916).

<sup>153</sup> Joseph R. Fishkin, William E. Forbath & Erik M. Jensen, Nat’l Const. Ctr., *The Sixteenth Amendment*.

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## **CONGRESSIONAL BUDGET ACT**



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# Purposes

Why budget? As it drafted what would become the Congressional Budget Act of 1974, Congress spoke of improving control of spending,<sup>154</sup> making determinations about fiscal policy,<sup>155</sup> and setting national priorities.<sup>156</sup> When Congress enacted the Budget Act, it stated these reasons to budget among the Act’s avowed purposes.<sup>157</sup>

Two events drove Congress to enact the Budget Act. First, President Richard Nixon was testing the limits of presidential control of spending that Congress had directed by law.<sup>158</sup> In response, Congress wanted to reassert its fiscal powers. Second, mandatory spending that did not receive annual review by the Appropriations Committees was set to exceed appropriated spending.<sup>159</sup> So Congress no longer had a single committee that looked at the overall budget picture.

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<sup>154</sup> H.R. REP. NO. 93-658, at 16 (1973).

<sup>155</sup> S. REP. NO. 93-688, at 1 (1974).

<sup>156</sup> H.R. REP. NO. 93-1101, at 49 (1974) (Conf. Rep.).

<sup>157</sup> [Congressional Budget Act of 1974 § 2](#), 2 U.S.C. § 621, *infra* p. 49, sets forth the purposes of the Congressional Budget and Impoundment Control Act of 1974.

<sup>158</sup> *See infra* p. 911.

<sup>159</sup> Total mandatory spending (including net interest) exceeded discretionary spending starting in 1975. Off. of Mgmt. & Budget, Exec. Off. of the President, [Historical Tables](#): Table 8.1—Outlays by Budget Enforcement Act Category: 1962–2027 (2022).

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In its November 1973 report on the Budget and Impoundment Control Act of 1973, the House Rules Committee explained: “The purpose of this legislation is to improve congressional control of budget outlays by (1) establishing a legislative budget process for determining national policies and priorities and (2) providing for congressional review of any impoundment of funds by the executive branch.”<sup>160</sup>

In its report on the Congressional Budget Act of 1974, the Senate Committee on Rules and Administration explained the purpose of its bill:

#### **PURPOSE OF S. 1541**

The purpose of S. 1541 is to establish a Congressional budget process, through which all spending decisions will be related to each other and to revenues. This requires the Congress to focus on four broad policy questions, and to reach explicit determinations about them:

1. How much money is needed, and how much can be provided responsibly, to finance all Federal programs?
2. How will available money be divided among these programs?
3. How much revenue will be derived from existing tax provisions and should this be increased or decreased?
4. What amount of Federal surplus or deficit would be consistent with sound economic policy?<sup>161</sup>

The joint statement of managers accompanying the conference report on the Congressional Budget and Impoundment Control Act of 1974 explained:

#### **SECTION 2. DECLARATION OF PURPOSES**

The House bill did not contain a statement of purposes. The Senate amendment declared as the purposes of the legislation: the establishment of national goals and priorities; the annual determination of appropriate levels of revenues and expenditures; assuring the most effective use of Federal revenues; and assuring effective control of the budget process. The Senate amendment also stated various means of accomplishing these purposes.

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<sup>160</sup> H.R. REP. NO. 93-658, at 16 (1973).

<sup>161</sup> S. REP. NO. 93-688, at 1 (1974).

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The conference substitute declares that it is essential to: assure congressional budget control; provide for the congressional determination of the appropriate level of Federal revenues and expenditures; provide a system of impoundment control; establish national budget priorities; and provide for the furnishing of information to Congress by the executive branch.<sup>162</sup>

Congressional Budget Act section 2 appeared in the originally-enacted Budget Act just as it does today.<sup>163</sup>

During Senate debate on the conference report, Senator Sam Ervin, the bill's sponsor and Manager, submitted "a brief statement which summarizes the principal budget control features of the conference report,"<sup>164</sup> which said:

Titles I through IX of the conference report on H.R. 7130 may be cited as the "Congressional Budget Act of 1974". They provide the procedures and other reforms which are intended to enable the Congress to enact a comprehensive congressional budget each year.

Title X, which may be cited alone as the "Impoundment Control Act of 1974", provides procedures to effectively control the practice of Executive impoundment of appropriated funds.<sup>165</sup>

Also during Senate debate on the conference report, Senator Edmund Muskie, who would soon thereafter become the first Budget Committee Chair, explained the bill's purposes:

Mr. President, this legislation is the best kind of reform measure—self-reform. It will give Congress the means to deal in an orderly and comprehensive fashion with our most important decisions—those of budget policy and national priorities.

The Congressional Budget and Impoundment Control Act of 1974 is perhaps the most important bill Congress will consider this session.

It is designed to give Congress the information and staff necessary to determine each year how much money the Government has, how much it

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<sup>162</sup> H.R. REP. NO. 93-1101, at 49 (1974) (Conf. Rep.).

<sup>163</sup> See [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 2, 88 Stat. 297, 298.

<sup>164</sup> [120 CONG. REC. 20,465](#) (June 21, 1974).

<sup>165</sup> *Id.*

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should take in, and how much it should spend, before determining what to buy with the taxpayers' dollars.

During the past half century, the Congress has witnessed a steady erosion of its control over the budget. In contrast, we have seen a consistent escalation of executive influence over budget and fiscal policies.

The Congressional Budget and Impoundment Control Act of 1974 will give us the means to reverse that erosion. It can reform the most serious shortcomings in the system by which Congress currently considers the budget.

It will provide the Congress with additional resources it needs, both in terms of staff and information, to make independent decisions on budget policies.

It will establish a realistic timetable for congressional consideration of the budget, enabling Congress to complete its work on the budget before the beginning of each new fiscal year.

It will, for the first time, provide Congress with the mechanism for overall, comprehensive consideration of budget policies.<sup>166</sup>

On July 12, 1974, upon signing the Congressional Budget and Impoundment Control Act of 1974, President Richard Nixon issued a statement that in part gave his views of the purposes of the Act.<sup>167</sup>

In *Riddick's Senate Procedure*, the Parliamentarian explained the purposes of the Congressional Budget and Impoundment Control Act of 1974:

The Congressional Budget and Impoundment Control Act of 1974 was enacted to establish a congressional budget process for the determination of national budget priorities, the appropriate level of total revenues, expenditures and debt for each year, and for legislation review of impoundments proposed by the President.<sup>168</sup>

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<sup>166</sup> *Id.* at 20,468.

<sup>167</sup> Statement About the Congressional Budget and Impoundment Control Act of 1974, 1974 PUB. PAPERS 587–88 (July 12, 1974).

<sup>168</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 502 (1992).



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## CONGRESSIONAL DECLARATION OF PURPOSE<sup>169</sup>

- 2           **SEC. 2.**<sup>170</sup> **The Congress declares that it is essential –**
- 2(1)           **(1) to assure effective congressional control over the  
budgetary process;**
- 2(2)           **(2) to provide for the congressional determination  
each year of the appropriate level of Federal [revenues](#)<sup>171</sup>  
and expenditures;**
- 2(3)           **(3) to provide a system of impoundment control;<sup>172</sup>**
- 2(4)           **(4) to establish national budget priorities; and**
- 2(5)           **(5) to provide for the furnishing of information by  
the executive branch in a manner that will assist the  
Congress in discharging its duties.**
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### Revenues

Although the Congressional Budget Act does not define “revenues,” the Government Accountability Office defines the term as follows:

As used in the congressional budget process, a synonym for governmental receipts. Revenues result from amounts that result from the government’s exercise of its sovereign power to tax or otherwise compel payment or from

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<sup>169</sup> Congress’ purposes for the Congressional Budget Act of 1974 have substantive import because Congressional Budget Act of 1974 § 301(b) provides that a “concurrent resolution on the budget may . . . set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act.” [Congressional Budget Act of 1974 § 301\(b\)](#), 2 U.S.C. § 632(b), *infra* p. 134.

<sup>170</sup> Congressional Budget Act of 1974 § 2 is codified as amended at [2 U.S.C. § 621](#). Congressional Budget Act of 1974 § 2 was formerly codified as 31 U.S.C. § 1301, prior to the 1982 general revision and enactment of Title 31, Money and Finance, in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>171</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *infra* p. 49, defines “revenues.”

<sup>172</sup> [Impoundment Control Act of 1974](#), 2 U.S.C. §§ 681–688, *infra* p. 921, creates this system.

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gifts to the government. Article I, Section 7, of the U.S. Constitution requires that revenue bills originate in the House of Representatives.<sup>173</sup>

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<sup>173</sup> U.S. GOV'T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005).

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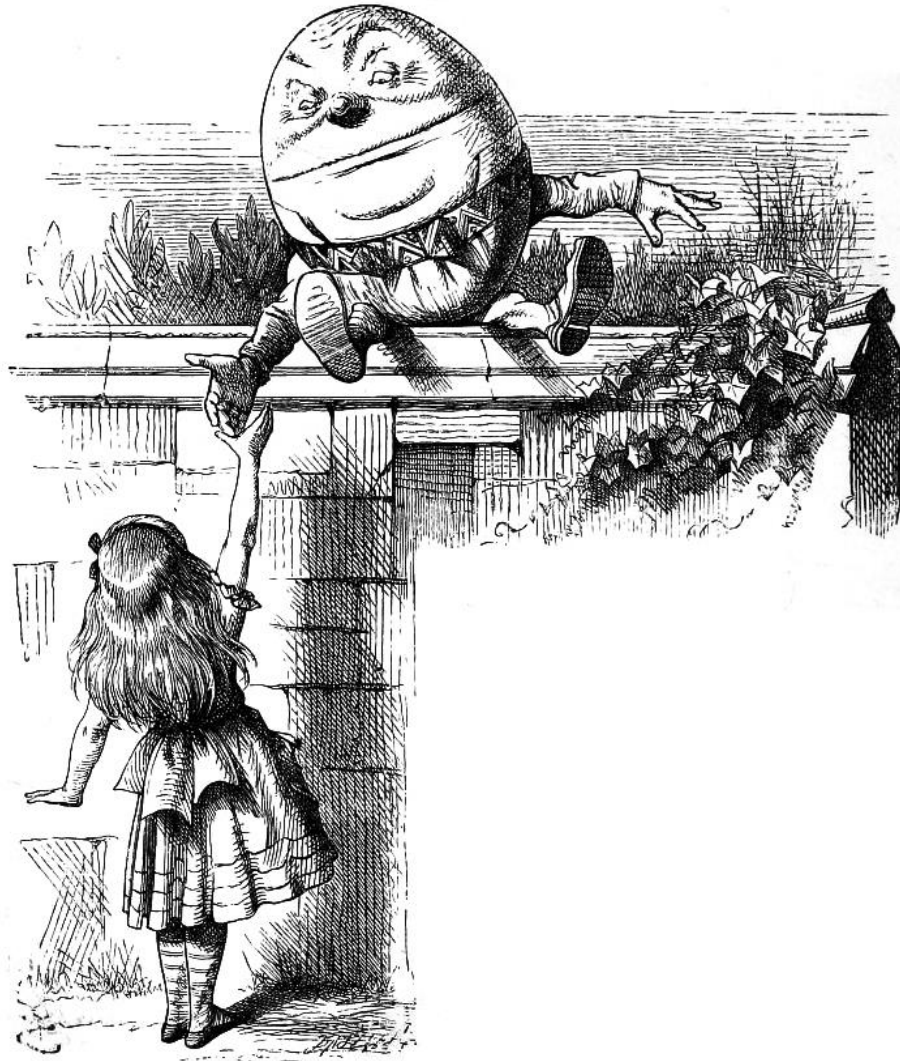


Illustration by John Tenniel from  
*Through the Looking Glass*

1871

Wikimedia

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# Definitions

“‘W hen I use a word,’ Humpty Dumpty said in rather a scornful tone, ‘it means just what I choose it to mean—neither more nor less.’

“‘The question is,’ said Alice, ‘whether you can make words mean so many different things.’

“‘The question is,’ said Humpty-Dumpty, ‘which is to be the master—that’s all.’”<sup>174</sup>

Reading this exchange, philosophy professor Roger Holmes asked:

*May we, like Humpty-Dumpty, make our words mean whatever we choose them to mean? One thinks of a Soviet delegate using “democracy” in a U.N. debate. May we pay our words extra, or is this the stuff that propaganda is made of? Do we have an obligation to past usage? In one sense words are our masters, or communication would be impossible. In another, we are the masters; otherwise there could be no poetry.*<sup>175</sup>

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<sup>174</sup> LEWIS CARROLL, *THROUGH THE LOOKING GLASS* 124 (1871).

<sup>175</sup> Roger W. Holmes, *The Philosopher’s “Alice in Wonderland,”* 19 ANTIOCH REV. 133-49 (Summer 1959).

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Alas, law is rarely poetry. And thus in law, words must be our masters, and we owe an obligation to past usage.

The Supreme Court has said: “Statutory definitions control the meaning of statutory words . . . in the usual case.”<sup>176</sup> And the Court said in connection with another statute, “the Act is to be interpreted as a symmetrical and coherent regulatory scheme, one in which the operative words have a consistent meaning throughout.”<sup>177</sup>

Budget process laws use many terms. And those laws define terms in many places—in the Congressional Budget Act,<sup>178</sup> in the Impoundment Control Act,<sup>179</sup> in the Balanced Budget and Emergency Deficit Control Act,<sup>180</sup> in the Federal Credit Reform Act,<sup>181</sup> in the Statutory Pay-As-You-Go Act,<sup>182</sup> and in budget resolutions.<sup>183</sup> In addition to defining new terms, the Balanced Budget and Emergency Deficit Control Act adopted definitions in the Congressional Budget Act,<sup>184</sup> and the Statutory Pay-As-You-Go Act adopted definitions in both the Congressional Budget Act and the Balanced Budget and Emergency Deficit Control Act.<sup>185</sup> This volume collects all of these statutory definitions in a glossary as an appendix.<sup>186</sup>

But these laws do not define all significant budget terms. For example, these laws do not define the terms “receipts,” “revenue,” or “tax.” The Government Accountability Office<sup>187</sup> and the Congressional Budget Office<sup>188</sup> have both published useful, authoritative glossaries to supplement the statutory definitions.

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<sup>176</sup> *Burgess v. United States*, 553 U.S. 124, 129–30 (2008) (quoting *Lawson v. Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949)); see generally VICTORIA L. KILLION, CONG. RSCH. SERV., *Definitions*, in [R46484, UNDERSTANDING FEDERAL LEGISLATION: A SECTION-BY-SECTION GUIDE TO KEY LEGAL CONSIDERATIONS](#) 35–42 (2021).

<sup>177</sup> *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995).

<sup>178</sup> *Congressional Budget Act of 1974* §§ 3, 310(b), 421, 2 U.S.C. §§ 622, 641(b), 658, *infra* pp. 55, 529, 803.

<sup>179</sup> *Impoundment Control Act of 1974* § 1011, 2 U.S.C. § 682, *infra* p. 923.

<sup>180</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* §§ 250(c), 251(b)(2)(B)(ii), 256(g)(2), 2 U.S.C. §§ 900(c), 901(b)(2)(B)(ii), 906(g)(2), *infra* pp. 977, 997, 1097.

<sup>181</sup> *Federal Credit Reform Act of 1990* § 502, 2 U.S.C. § 661a, *infra* p. 850.

<sup>182</sup> *Statutory Pay-As-You-Go Act of 2010* § 3, 2 U.S.C. § 932, *infra* p. 1150.

<sup>183</sup> S. Con. Res. 70, 110th Cong. § 314(b), 122 Stat. 5143, 5179 (2008), *infra* p. 1221; H. Con. Res 71, 115th Cong. § 4106(a)(3) (2017) (adopted), *infra* p. 1246; S. Con. Res. 14, 117th Cong. §§ 4001(a)(4), 4001(a)(5), 4002(a)(2), 4003(a)(2) (2021) (adopted), *infra* pp. 1258, 1259, 1262, 1267.

<sup>184</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(1), 2 U.S.C. § 900(c)(1), *infra* pp. 977.

<sup>185</sup> *Statutory Pay-As-You-Go Act of 2010* § 3(2), 2 U.S.C. § 932(2), *infra* p. 1150.

<sup>186</sup> See *infra* p. 1542.

<sup>187</sup> U.S. GOV'T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* (2005).

<sup>188</sup> CONG. BUDGET OFF., *GLOSSARY* (2016).

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## DEFINITIONS<sup>189</sup>

3           **SEC. 3.**<sup>190</sup> For purposes of **this Act**<sup>191</sup> —

3(1)           **(1) The terms “budget outlays” and “outlays”**<sup>192</sup> mean, with respect to any fiscal year, expenditures and net lending of funds under **budget authority**<sup>193</sup> during such year.

3(2)           **(2) BUDGET AUTHORITY**<sup>194</sup> AND NEW BUDGET AUTHORITY. —

3(2)(A)           **(A) IN GENERAL.** — The term “budget authority”<sup>195</sup> means the authority provided by Federal law to incur financial obligations, as follows:

3(2)(A)(i)           **(i) provisions of law that make funds available for obligation and expenditure (other than borrowing authority**<sup>196</sup>**), including the authority to obligate and expend the proceeds of offsetting receipts and collections;**

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<sup>189</sup> Budget process laws define terms in many places. See [Congressional Budget Act of 1974 §§ 3, 310\(b\), 421](#), 2 U.S.C. §§ 622, 641(b), 658, *supra* p. 55, *infra* pp. 529, 803; [Impoundment Control Act of 1974 § 1011](#), 2 U.S.C. § 682, *infra* p. 923; [Balanced Budget and Emergency Deficit Control Act of 1985 §§ 250\(c\), 251\(b\)\(2\)\(B\)\(ii\), 256\(g\)\(2\)](#), 2 U.S.C. §§ 900(c), 901(b)(2)(B)(ii), 906(g)(2), *infra* pp. 977, 997, 1097; [Federal Credit Reform Act of 1990 § 502](#), 2 U.S.C. § 661a, *infra* p. 850; [Statutory Pay-As-You-Go Act of 2010 § 3](#), 2 U.S.C. § 932, *infra* p. 1150; [S. Con. Res. 70, 110th Cong. § 314\(b\)](#), 122 Stat. 5143, 5179 (2008), *infra* p. 1221; [H. Con. Res. 71, 115th Cong. § 4106\(a\)\(3\)](#) (2017) (adopted), *infra* p. 1246; [S. Con. Res. 14, 117th Cong. §§ 4001\(a\)\(4\), 4001\(a\)\(5\), 4002\(a\)\(2\), 4003\(a\)\(2\)](#) (2021) (adopted), *infra* pp. 1258, 1259, 1262, 1267. For a glossary collecting these definitions in budget process law, see *infra* p. 1542.

<sup>190</sup> Congressional Budget Act of 1974 § 3 is codified as amended at [2 U.S.C. § 622](#). Congressional Budget Act of 1974 § 3 was formerly codified as 31 U.S.C. § 1302, prior to the 1982 general revision and enactment of Title 31, Money and Finance, in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>191</sup> [Congressional Budget and Impoundment Control Act of 1974](#), 2 U.S.C. §§ 601–688, pp. 49–969.

<sup>192</sup> For a discussion of budget authority and outlays, see *infra* p. 60.

<sup>193</sup> [Congressional Budget Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>194</sup> For a discussion of budget authority and outlays, see *infra* p. 60.

<sup>195</sup> For a discussion of budget authority and outlays, see *infra* p. 60.

<sup>196</sup> [Congressional Budget Act of 1974 § 3\(2\)\(A\)\(ii\)](#), 2 U.S.C. § 622(2)(A)(ii), *supra* p. 56, defines “borrowing authority.”

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- 3(2)(A)(ii) (ii) **borrowing authority**, which means authority granted to a Federal entity to borrow and obligate and expend the borrowed funds, including through the issuance of promissory notes or other monetary credits;
- 3(2)(A)(iii) (iii) **contract authority**, which means the making of funds available for obligation but not for expenditure; and
- 3(2)(A)(iv) (iv) **offsetting receipts and collections as negative budget authority**, and the reduction thereof as positive budget authority.
- 3(2)(B) (B) **LIMITATIONS ON BUDGET AUTHORITY.**—With respect to **the Federal Hospital Insurance Trust Fund**,<sup>197</sup> **the Supplementary Medical Insurance Trust Fund**,<sup>198</sup> **the Unemployment Trust Fund**,<sup>199</sup> and **the railroad retirement account**,<sup>200</sup> any amount that is precluded from obligation in a fiscal year by a provision of law (such as a limitation or a benefit formula) shall not be budget authority in that year.
- 3(2)(C) (C) **NEW BUDGET AUTHORITY.**—The term “new budget authority” means, with respect to a fiscal year—
- 3(2)(C)(i) (i) **budget authority**<sup>201</sup> that first becomes available for obligation in that year, including

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<sup>197</sup> [Social Security Amendments of 1965](#), Pub. L. No. 89-97, § 102(a), 79 Stat. 286, 299, created the Federal Hospital Insurance Trust Fund at [Social Security Act of 1935 § 1817](#), 42 U.S.C. § 1395i. The Hospital Insurance Trust Fund relates to Medicare Part A.

<sup>198</sup> [Social Security Amendments of 1965](#), Pub. L. No. 89-97, § 102(a), 79 Stat. 286, 308, created the Supplementary Medical Insurance Trust Fund at [Social Security Act of 1935 § 1841](#), 42 U.S.C. § 1395t. The Supplementary Medical Insurance Trust Fund relates to Medicare Part B, which covers physician services and medical supplies, and Part D, which covers prescription drugs.

<sup>199</sup> [Social Security Act of 1935 § 904](#), 42 U.S.C. § 1104, created the Unemployment Trust Fund.

<sup>200</sup> [45 U.S.C. §§ 201–231v](#) addresses “Retirement of Railroad Employees.”

<sup>201</sup> [Congressional Budget Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”



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**budget authority**<sup>202</sup> that becomes available in that year [a]<sup>203</sup> a result of a reappropriation; or

3(2)(C)(ii)

(ii) a change in any **account**<sup>204</sup> in the availability of unobligated balances of **budget authority**<sup>205</sup> carried over from a prior year, resulting from a provision of law first effective in that year;

and includes a change in the estimated level of new **budget authority** provided in indefinite amounts by existing law.

3(3)

(3) The term “tax expenditures”<sup>206</sup> means those **revenue**<sup>207</sup> losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability; and the term “tax expenditures budget” means an enumeration of such tax expenditures.

3(4)

(4) The term “concurrent resolution on the budget” means —

3(4)(A)

(A) a concurrent resolution setting forth the congressional budget for the United States Government for a fiscal year as provided in **section 301**;<sup>208</sup> and

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<sup>202</sup> Congressional Budget Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>203</sup> Congressional Budget Act of 1974 § 3(2)(C)(i), as added by Budget Enforcement Act of 1990, Pub. L. No. 101-508, § 13211, 104 Stat. 1388-573, 1388-620, originally said only “s” here. The House Office of the Law Revision Counsel, which maintains the U.S. Code, suggests, “Probably should be ‘as’.” 2 U.S.C. § 622 note.

<sup>204</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

<sup>205</sup> Congressional Budget Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>206</sup> For a discussion of tax expenditures, see *infra* p. 61.

<sup>207</sup> U.S. GOV'T ACCOUNTABILITY OFF., A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS 87 (2005), *supra* p. 49, defines “revenues.”

<sup>208</sup> Congressional Budget Act of 1974 § 301, 2 U.S.C. § 632, *infra* p. 132, addresses “Annual Adoption of Concurrent Resolution on the Budget.”

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- 3(4)(B) (B) any other concurrent resolution revising the congressional budget for the United States Government for a fiscal year as described in [section 304](#).<sup>209</sup>
- 3(5) (5) The term “appropriation Act” means an Act referred to in [section 105 of title 1, United States Code](#).<sup>210</sup>
- 3(6) (6) The term “deficit” means, with respect to a fiscal year, the amount by which [outlays](#)<sup>211</sup> exceed[]<sup>212</sup> receipts during that year.
- 3(7) (7) The term “surplus” means, with respect to a fiscal year, the amount by which receipts exceed[]<sup>213</sup> [outlays](#)<sup>214</sup> during that year.
- 3(8) (8) The term “government-sponsored enterprise” means a corporate entity created by a law of the United States that –
- 3(8)(A)(i) (A)(i) has a Federal charter authorized by law;
- 3(8)(A)(ii) (ii) is privately owned, as evidenced by capital stock owned by private entities or individuals;

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<sup>209</sup> [Congressional Budget Act of 1974 § 304](#), 2 U.S.C. § 635, *infra* p. 244, addresses “Permissible Revisions of Concurrent Resolutions on the Budget.”

<sup>210</sup> 1 U.S.C. § 105 says: “The style and title of all Acts making appropriations for the support of Government shall be as follows: ‘An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year).’” 1 U.S.C. § 105.

<sup>211</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>212</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), as added by Budget Enforcement Act of 1990, Pub. L. No. 101-508, § 13112(a)(2), 104 Stat. 1388-573, 1388-607, originally said “exceeds” here. The House Office of the Law Revision Counsel, which maintains the U.S. Code, suggests, “Probably should be ‘exceed’,” as the subject “outlays” is plural. 2 U.S.C. § 622 note.

<sup>213</sup> [Congressional Budget Act of 1974 § 3\(7\)](#), as added by Budget Enforcement Act of 1990, Pub. L. No. 101-508, § 13112(a)(2), 104 Stat. 1388-573, 1388-607, originally said “exceeds” here. The House Office of the Law Revision Counsel, which maintains the U.S. Code, suggests, “Probably should be ‘exceed’,” as the subject “receipts” is plural. 2 U.S.C. § 622 note.

<sup>214</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

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- 3(8)(A)(iii) (iii) is under the direction of a board of directors, a majority of which is elected by private owners;
- 3(8)(A)(iv) (iv) is a financial institution with power to –
- 3(8)(A)(iv)(I) (I) make loans or **loan guarantees**<sup>215</sup> for limited purposes such as to provide credit for specific borrowers or one sector; and
- 3(8)(A)(iv)(II) (II) raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts; and
- 3(8)(B)(i) (B)(i) does not exercise powers that are reserved to the Government as sovereign (such as the power to tax or to regulate interstate commerce);
- 3(8)(B)(ii) (ii) does not have the power to commit the Government financially (but it may be a recipient of a **loan guarantee commitment**<sup>216</sup> made by the Government); and
- 3(8)(B)(iii) (iii) has employees whose salaries and expenses are paid by the enterprise and are not Federal employees subject to **title 5 of the United States Code**.<sup>217</sup>
- 3(9) (9) The term “entitlement authority”<sup>218</sup> means –
- 3(9)(A) (A) the authority to make payments (including loans and grants), the **budget authority**<sup>219</sup> for which
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<sup>215</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *infra* p. 850, defines “loan guarantee.”

<sup>216</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *infra* p. 851, defines “loan guarantee commitment.”

<sup>217</sup> Title 5 of the United States Code, 5 U.S.C. §§ 101–10302, addresses “Government Organization and Employees.”

<sup>218</sup> Cf. Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *infra* p. 980, which defines “direct spending.” For a discussion of entitlement authority, see *infra* p. 62.

<sup>219</sup> Congressional Budget Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

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is not provided for in advance by [appropriation Acts](#),<sup>220</sup> to any person or government if, under the provisions of the law containing that authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by that law; and

3(9)(B) (B) the food stamp program.<sup>221</sup>

3(10) (10) The term “credit authority” means authority to incur [direct loan obligations](#)<sup>222</sup> or to incur primary [loan guarantee commitments](#).<sup>223</sup>

3(11) (11) The terms “[emergency](#)”<sup>224</sup> and “[unanticipated](#)”<sup>225</sup> have the meanings given to such terms in [section 250\(c\) of the Balanced Budget and Emergency Deficit Control Act of 1985](#).<sup>226</sup>

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*Budget Authority and Outlays*—In *Riddick’s Senate Procedure*, the Parliamentarian described budget authority and outlays:

Tides III and IV of the Act set out timetables and limitations for the consideration of certain types of measures. To this end, the Act defines budget authority, outlays, and spending authority (including entitlement authority), and imposes restrictions on the timing of their consideration and the effect of their enactment. Budget authority means the authority provided by Federal law to incur financial obligations. Appropriations are

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<sup>220</sup> [Congressional Budget Act of 1974 § 3\(5\)](#), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of [1 U.S.C. § 105](#).

<sup>221</sup> [Food, Conservation, and Energy Act of 2008](#), Pub. L. No. 110-246, § 4001, 122 Stat. 1651, 1853 (2008) (the 2008 Farm Bill) renamed the Food Stamp Program as the Supplemental Nutrition Assistance Program (SNAP). [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)\(B\)](#), 2 U.S.C. § 932(2)(B), *infra* p. 1150, provides that the reference to the Food Stamp Program formerly in [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)\(C\)](#), 2 U.S.C. § 900(c)(8)(C), *infra* p. 981, shall be deemed to be a reference to the Supplemental Nutrition Assistance Program.

<sup>222</sup> [Federal Credit Reform Act of 1990 § 502\(2\)](#), 2 U.S.C. § 661a(2), *infra* p. 850, defines “direct loan obligation.”

<sup>223</sup> [Federal Credit Reform Act of 1990 § 502\(4\)](#), 2 U.S.C. § 661a(4), *infra* p. 851, defines “loan guarantee commitment.”

<sup>224</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *infra* p. 983, defines “emergency.” For a discussion of emergencies, see *infra* p. 63.

<sup>225</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(21\)](#), 2 U.S.C. § 900(c)(21), *infra* p. 983, defines “unanticipated.”

<sup>226</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)](#), 2 U.S.C. § 900(c), *infra* p. 977.

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the most common form of budget authority. Outlays are expenditures (and net lending of funds) made under budget authority. Spending authority is often referred to as “backdoor spending” because by definition budget authority for it is not provided in advance by appropriations acts. It includes the following: authority to enter into contracts that obligate the United States to make outlays; borrowing authority which makes the United States liable for indebtedness; and entitlement authority “to make payments (including loans and grants) . . . to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law.”<sup>227</sup>

Commenting on this section, the *House Rules and Manual* explains:

Amounts of liquidating cash provided in the annual bill making appropriations for the Department of Transportation are not new budget authority within the meaning of this section, but are merely funds to liquidate contractual obligations previously incurred pursuant to new discretionary contract authority previously reported from and scored against allocations to the Committee on Public Works and Transportation (now Transportation and Infrastructure) as the authority to enter into obligations that will result in immediate or future outlays (July 30, 1986, p. 18154).<sup>228</sup>

**Tax Expenditures**—Budget Act [section 301\(e\)\(2\)\(E\)](#) requires the report to accompany a budget resolution to include “the estimated levels of tax expenditures (the tax expenditures budget) by major items and functional categories for the President’s budget and in the resolution.”<sup>229</sup>

During Senate debate on the conference report on the Budget Act, Senators Sam Ervin, Jacob Javits, and Charles Percy discussed tax expenditures at some length.<sup>230</sup>

The Senate Budget Committee regularly publishes background material (prepared by the Congressional Research Service) on tax expenditures,<sup>231</sup> as

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<sup>227</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 502 (1992).

<sup>228</sup> JASON A. SMITH, [CONSTITUTION, JEFFERSON’S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, ONE HUNDRED SEVENTEENTH CONGRESS 1078](#) (2021).

<sup>229</sup> [Congressional Budget Act of 1974 § 301\(e\)\(2\)\(E\)](#), 2 U.S.C. § 632(e)(2)(E), *infra* p. 169.

<sup>230</sup> [120 CONG. REC. 20,466–68](#) (June 21, 1974).

<sup>231</sup> See STAFF OF S. COMM. ON THE BUDGET, 116TH CONG., [TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS](#) (Comm. Print 2020); STAFF OF S. COMM. ON THE BUDGET, 115TH CONG., [TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS](#) (Comm. Print 2018); STAFF OF S. COMM. ON THE BUDGET, 114TH CONG., [TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS](#) (Comm. Print 2016); STAFF OF S. COMM. ON THE BUDGET, 113TH CONG., [TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS](#) (Comm. Print 2014); STAFF OF S. COMM. ON THE BUDGET, 112TH CONG., [TAX EXPENDITURES:](#)

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does the Joint Committee on Taxation,<sup>232</sup> the Congressional Budget Office,<sup>233</sup> the Congressional Research Service,<sup>234</sup> the Treasury Department,<sup>235</sup> and the Government Accountability Office.<sup>236</sup>

**Entitlement Authority**—Budget process laws use several related terms to describe spending that occurs even without annual appropriations, including “entitlement authority,”<sup>237</sup> “direct spending,”<sup>238</sup> and “mandatory spending.”<sup>239</sup> Such spending is often contrasted to “discretionary spending,”<sup>240</sup> which is subject to annual appropriations.

The President’s fiscal year 2023 budget proposed shifting the Indian Health Service, Contract Support Costs, and Indian Self-Determination and Education Assistance Act of 1975 section 105(l) leases from discretionary to mandatory funding.<sup>241</sup>

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COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS (Comm. Print 2012); STAFF OF S. COMM. ON THE BUDGET, 111TH CONG., [TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS](#) (Comm. Print 2010); STAFF OF S. COMM. ON THE BUDGET, 110TH CONG., [TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS](#) (Comm. Print 2008); STAFF OF S. COMM. ON THE BUDGET, 109TH CONG., [TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS](#) (Comm. Print 2006); STAFF OF S. COMM. ON THE BUDGET, 108TH CONG., [TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS](#) (Comm. Print 2004); STAFF OF S. COMM. ON THE BUDGET, 105TH CONG., [TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS](#) (Comm. Print 1998); STAFF OF S. COMM. ON THE BUDGET, 102D CONG., [TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS](#) (Comm. Print 1992); STAFF OF S. COMM. ON THE BUDGET, 99TH CONG., [TAX EXPENDITURES: RELATIONSHIPS TO SPENDING PROGRAMS AND BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS](#) (Comm. Print 1986); STAFF OF S. COMM. ON THE BUDGET, 97TH CONG., [TAX EXPENDITURES: RELATIONSHIPS TO SPENDING PROGRAMS AND BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS](#) (Comm. Print 1982).

<sup>232</sup> See, e.g., JOINT COMM. ON TAX’N, [ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2020–2024](#) (2020).

<sup>233</sup> See, e.g., CONG. BUDGET OFF., [THE DISTRIBUTION OF MAJOR TAX EXPENDITURES IN 2019](#) (2021); Joshua Shakin, Cong. Budget Off., [Tax Expenditures](#) (Mar. 17, 2017); Doug Elmendorf, Cong. Budget Off., [Projections of Tax Expenditures](#) (June 19, 2014); CONG. BUDGET OFF., [THE DISTRIBUTION OF MAJOR TAX EXPENDITURES IN THE INDIVIDUAL INCOME TAX SYSTEM](#) (2013); Cong. Budget Off., [Tax Expenditures Have a Major Impact on the Federal Budget](#) (Feb. 3, 2012); CONG. BUDGET OFF., [TAX EXPENDITURES: BUDGET CONTROL OPTIONS AND FIVE-YEAR BUDGET PROJECTIONS FOR FISCAL YEARS 1983–1987](#) (1982); Statement of Alice M. Rivlin, Director, Congressional Budget Office, before the Committee on the Budget United States Senate (Nov. 24, 1981).

<sup>234</sup> See, e.g., GRANT A. DRIESSEN, CONG. RSCH. SERV., [R44530, SPENDING AND TAX EXPENDITURES: DISTINCTIONS AND MAJOR PROGRAMS](#) (2019).

<sup>235</sup> See, e.g., U.S. DEP’T OF THE TREASURY, [TAX EXPENDITURES](#) (2021).

<sup>236</sup> 1 U.S.C. § 105.

<sup>237</sup> [Congressional Budget Act of 1974 § 3\(9\)](#), 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.”

<sup>238</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *infra* p. 980, defines “direct spending.”

<sup>239</sup> See, e.g., [Congressional Budget Act of 1974 § 404](#), 2 U.S.C. § 654, *infra* p. 796; [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(C\)](#), 2 U.S.C. § 932(4)(C), *infra* p. 1152.

<sup>240</sup> See, e.g., [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *infra* p. 977 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *infra* p. 986), which defines “discretionary spending limit.”

<sup>241</sup> OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, [BUDGET OF THE U.S. GOVERNMENT: FISCAL YEAR 2023](#), at 23, 32, 65–66, 78, 127, 137 n.4, 140 n.6 (2022).

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*Emergency*—Designation of a provision—usually spending—as “emergency” has several consequences. Under Congressional Budget Act [section 314\(d\)](#), in the House of Representatives, a provision designated as an emergency does not count for Budget Act purposes.<sup>242</sup> Congressional Budget Act [section 314\(e\)](#) creates a Senate point of order against an emergency designation.<sup>243</sup> Balanced Budget and Emergency Deficit Control Act [section 251\(b\)\(2\)\(A\)](#) provides for adjustments so that emergency appropriations do not count for discretionary spending limit purposes.<sup>244</sup> Balanced Budget and Emergency Deficit Control Act [section 252\(e\)](#) similarly removes emergency direct spending and revenue provisions from pay-as-you-go enforcement.<sup>245</sup> Statutory Pay-As-You-Go Act of 2010 [section 4\(g\)](#) excludes emergencies from counting under that act.<sup>246</sup> And [section 4001](#) the fiscal year 2022 budget resolution exempts emergencies from congressional enforcement.<sup>247</sup>

Budget Control Act of 2011 section 105 added paragraph (11).<sup>248</sup> The criteria that the Balanced Budget and Emergency Deficit Control Act uses to define “emergency” trace back to a 1991 Office of Management and Budget report.<sup>249</sup>

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<sup>242</sup> Congressional Budget Act of 1974 § 314(d), 2 U.S.C. § 645(d), *supra* p. 767.

<sup>243</sup> Congressional Budget Act of 1974 § 314(e), 2 U.S.C. § 645(e), *supra* p. 768.

<sup>244</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(A), 2 U.S.C. § 901(b)(2)(A), *supra* p. 994.

<sup>245</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 252(e), 2 U.S.C. § 902(e), *supra* p. 1047.

<sup>246</sup> Statutory Pay-As-You-Go Act of 2010 § 4(g), 2 U.S.C. § 933(g), *infra* p. 1173.

<sup>247</sup> S. Con. Res. 14, 117th Cong. § 4001 (2021) (adopted), *infra* p. 1256.

<sup>248</sup> Budget Control Act of 2011, Pub. L. No. 112-25, § 105(b), 125 Stat. 240, 247.

<sup>249</sup> Off. of Mgmt. & Budget, Exec. Off. of the President, *Report on the Costs of Domestic and International Emergencies and on the Threats Posed by the Kuwaiti Oil Fires* ii (June 27, 1991); see generally William G. Dauster, *Budget Emergencies*, 18 J. OF LEGIS. 249–315 (1992).







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# The Budget Committees

Whose job should it be to look at the big picture of fiscal policy? From 1789 to 1865, it was the House Ways and Means Committee and the Senate Finance Committee.<sup>250</sup>

But when the Civil War resulted in dramatically greater spending and needs for revenues, Congress decided to disperse those committees' power. Historians Donald Kennon and Rebecca Rogers recounted the Civil War's effects on the Ways and Means Committee:

The war years marked a turning point in a second fundamental sense because the House rules were revised in 1865 to divide the committee's authority over finance with the creation of two new committees. The breakup of the committee was motivated by pragmatic and political reasons, rather than by philosophical or procedural considerations. The workload was too great for one nine-member body; furthermore, in the minds of many members, too much power was concentrated in the hands

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<sup>250</sup> See DONALD R. KENNON & REBECCA M. ROGERS, [THE COMMITTEE ON WAYS AND MEANS: A BICENTENNIAL HISTORY: 1789-1989](#), H.R. DOC. NO. 100-244, at 23-172 (1989); STAFF OF S. COMM. ON FIN., 97TH CONG., [HISTORY OF THE COMMITTEE ON FINANCE: UNITED STATES SENATE](#), S. DOC. NO. 97-5 (1981).

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of Thaddeus Stevens. The result was that the control over finances in the House was decentralized among three committees. From 1865 on, the Committee be confined to the major jurisdictional area of Ways and Means would of revenue.<sup>251</sup>

While the Ways and Means and Finance Committees retained control of the nation's revenues, the new Appropriations Committees took control over annual spending bills.<sup>252</sup>

With the growth of mandatory spending that does not require annual appropriation—notably with the enactment of Social Security in 1935 and Medicare and Medicaid in 1965—annual appropriations began to account for less than spending on mandatory programs by 1975.<sup>253</sup> No one committee was looking at the big fiscal picture. This was part of the reason that Congress created the Budget Committees.

The Senate Budget Committee recounted the Committee's history:

The Budget Committee is one of the Senate's newer committees, created by the Congressional Budget and Impoundment Control Act of 1974. While the Committee has seen its duties and functions change over the years due to the enactment of new laws and changes to Senate budget responsibilities, the Committee remains responsible for drafting budget plans for Congress and for monitoring and enforcing rules surrounding spending, revenue, and the federal budget.

### **Why was the Budget Committee created?**

Article I of the Constitution of the United States assigns to Congress key budgetary functions, often referred to collectively as the “power of the purse.” But the Constitution did not specifically detail the procedures Congress should follow in exercising this role, and it delegates to the House of Representatives and the Senate the power for each to develop its

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<sup>251</sup> DONALD R. KENNON & REBECCA M. ROGERS, [THE COMMITTEE ON WAYS AND MEANS: A BICENTENNIAL HISTORY: 1789-1989](#), H.R. Doc. No. 100-244, at 172 (1989).

<sup>252</sup> See generally FRANCIS S. HEWITT, STAFF OF S. COMM. ON APPROPRIATIONS, 90TH CONG., COMMITTEE ON APPROPRIATIONS: UNITED STATES SENATE: 100TH ANNIVERSARY: 1867–1967, S. DOC. NO. 21 (1967); STAFF OF H. COMM. ON APPROPRIATIONS, 111TH CONG., [A CONCISE HISTORY OF THE HOUSE OF REPRESENTATIVES COMMITTEE ON APPROPRIATIONS](#) (Comm. Print 2010); STAFF OF S. COMM. ON APPROPRIATIONS, 103D CONG., [COMMITTEE ON APPROPRIATIONS: UNITED STATES SENATE: 126TH ANNIVERSARY: 1867–1993](#), S. DOC. NO. 103-17 (1995); STAFF OF S. COMM. ON APPROPRIATIONS, 107TH CONG., [COMMITTEE ON APPROPRIATIONS: UNITED STATES SENATE: 135TH ANNIVERSARY: 1867–2002](#), S. DOC. NO. 107-13 (2002); STAFF OF S. COMM. ON APPROPRIATIONS, 109TH CONG., [COMMITTEE ON APPROPRIATIONS: UNITED STATES SENATE: 138TH ANNIVERSARY: 1867–2005](#), S. DOC. NO. 109-5 (2005); STAFF OF S. COMM. ON APPROPRIATIONS, 110TH CONG., [COMMITTEE ON APPROPRIATIONS: UNITED STATES SENATE: 1867–2008](#), S. DOC. NO. 110-14 (2008).

<sup>253</sup> See Off. of Mgmt. & Budget, Exec. Off. of the President, [Table 8.1—Outlays by Budget Enforcement Act Category: 1962–2027](#) (2022).

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own rules and processes. As a result, the approach to budgeting was decentralized and fragmented for most of the first 200 years of Congressional history.

In the period leading up to 1974, Congress made several attempts to reform its ad hoc budgeting processes. These included requiring an overall fiscal plan, combining all appropriations into one bill, and establishing statutory spending limits. All of these efforts were unsuccessful. A debt limit increase bill enacted in 1972 (P.L. 92-599) established a Congressional Joint Study Committee on Budget Control. The final report of that Committee, issued in 1973, recommended the establishment of Budget Committees in the House and Senate.

At the same time, Congress disagreed with the Executive Branch's use of its impoundment authority, in which it withheld previously enacted spending.

So, Congress passed the 1974 Act, which established the House and Senate Budget Committees with the mandate of publicly presenting and adopting a Congressional budget to manage the nation's finances and establish a concrete fiscal vision. In addition, the Act made changes to the impoundment process.

### **What does the Budget Committee do?**

The Budget Committee's principal responsibility is to develop a concurrent resolution on the budget to serve as the framework for congressional action on spending, revenue, and debt-limit legislation. Each chamber introduces its own resolution, which, when jointly agreed to by the House and the Senate, becomes the so called "budget resolution." The adoption of the resolution does not result in a new law of the United States, as the president does not sign the resolution.

The Senate Budget Committee is also responsible for the enforcement of this concurrent resolution and associated budget laws. Budget enforcement is accomplished by informing senators when budget "points of order" apply because of violations to the budget, and by working with other committees during the crafting of legislation to address potential violations. The committee also tracks the appropriations process throughout the year to make sure that spending levels in appropriations bills conform to the levels set forth in the budget resolution.

Through the budget resolution, the Committee can also initiate and enforce the budget reconciliation process, a piece of legislation that is written to bring about specific identified fiscal goals. A reconciliation bill, if passed and signed by the president, carries with it the full force of law. The Committee also holds hearings on the economy, oversight hearings to

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monitor the performance of government agencies, and hearings to consider nominations for the president's Office of Management and Budget.<sup>254</sup>

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<sup>254</sup> Staff of S. Comm. on the Budget, [Committee History](#).

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# TITLE I

## ESTABLISHMENT OF HOUSE AND SENATE BUDGET COMMITTEES

### BUDGET COMMITTEE OF THE HOUSE OF REPRESENTATIVES

101(a) SEC. 101. (a) [Clause 1 of Rule X of the Rules of the House of Representatives](#)<sup>255</sup> is amended by redesignating paragraphs (e) through (u) as paragraphs (f) through (v), respectively, and by inserting after paragraph (d) the following new paragraph:

“(e) Committee on the Budget, to consist of twenty-three Members<sup>256</sup> as follows:

“(1) five Members who are members of the Committee on Appropriations;

“(2) five Members who are members of the Committee on Ways and Means;

“(3) eleven Members who are members of other standing committees;

“(4) one Member from the leadership of the majority party; and

“(5) one Member from the leadership of the minority party.

No Member shall serve as a member of the Committee on the Budget during more than two Congresses in any period of five successive Congresses beginning after 1974 (disregarding for

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<sup>255</sup> [House Rule X](#) addresses “Organization of Committees.” For the opening of the rule, see *infra* p. 72.

<sup>256</sup> For the text of the House Democratic Caucus rule that now addresses Budget Committee membership, see *infra* p. 73.

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this purpose any service performed as a member of such committee for less than a full session in any Congress). All selections of Members to serve on the committee shall be made without regard to seniority.”

- 101(b) (b) **Rule X of the Rules of the House of Representatives**<sup>257</sup> is amended by adding at the end thereof the following new clause:

“6. For carrying out the purposes set forth in clause 5 of **Rule XI**,<sup>258</sup> the Committee on the Budget or any subcommittee thereof is authorized to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books or papers or documents or vouchers by subp[on]ena or otherwise, and to take such testimony and records, as it deems necessary. Subp[on]enas may be issued over the signature of the chairman of the committee or of any member of the committee designated by him; and may be served by any person designated by such chairman or member. The chairman of the committee, or any member thereof, may administer oaths to witnesses.”

- 101(c) (c) **Rule XI of the Rules of the House of Representatives**<sup>259</sup> is amended by redesignating clauses 5 through 33 as clauses 6 through 34, respectively, and by inserting after clause 4 the following new clause:

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<sup>257</sup> **House Rule X** addresses “Organization of Committees.” For the current text of the paragraph of House Rule X addressing the Budget Committee, see *infra* p. 72.

<sup>258</sup> **House Rule XI** addresses “Procedures of Committees and Unfinished Business.”

<sup>259</sup> *Id.*

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## **“5. Committee on the Budget**

**“(a) All concurrent resolutions on the budget<sup>260</sup> (as defined in section 3(a)(4) of the Congressional Budget Act of 1974<sup>261</sup>) and other matters required to be referred to the committee under titles III<sup>262</sup> and IV<sup>263</sup> of that Act.**

**“(b) The committee shall have the duty –**

**“(1) to report the matters required to be reported by it under titles III<sup>264</sup> and IV<sup>265</sup> of the Congressional Budget Act of 1974;**

**“(2) to make continuing studies of the effect on budget outlays<sup>266</sup> of relevant existing and proposed legislation and to report the results of such studies to the House on a recurring basis;**

**“(3) to request and evaluate continuing studies of tax expenditures,<sup>267</sup> to devise methods of coordinating tax expenditures,<sup>268</sup> policies, and programs with direct budget outlays,<sup>269</sup> and to report the results of such studies to the House on a recurring basis; and**

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<sup>260</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>261</sup> Now Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57.

<sup>262</sup> Congressional Budget Act of 1974 tit. III, §§ 300–315, 2 U.S.C. §§ 631–645a, *infra* pp. 113–782, addresses “Congressional Budget Process.”

<sup>263</sup> Congressional Budget Act of 1974 tit. IV, §§ 401–428, 2 U.S.C. §§ 651–658g, *infra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>264</sup> Congressional Budget Act of 1974 tit. III, §§ 300–315, 2 U.S.C. §§ 631–645a, *infra* pp. 113–782, addresses “Congressional Budget Process.”

<sup>265</sup> Congressional Budget Act of 1974 tit. IV, §§ 401–428, 2 U.S.C. §§ 651–658g, *infra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>266</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

<sup>267</sup> Congressional Budget Act of 1974 § 3(3), 2 U.S.C. § 622(3), *supra* p. 57, defines “tax expenditures.”

<sup>268</sup> *Id.*

<sup>269</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

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**“(4) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties.”**

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*Clause 1 of Rule X of the Rules of the House of Representatives* – [House Rule X](#) begins:

RULE X  
ORGANIZATION OF COMMITTEES

*Committees and their legislative jurisdictions*

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:<sup>270</sup>

*Rule X of the Rules of the House of Representatives* – The paragraph of [House Rule X](#) addressing the Budget Committee now reads:

(d) Committee on the Budget.

(1) Concurrent resolutions on the budget (as defined in section 3(4) of the Congressional Budget Act of 1974), other matters required to be referred to the committee under titles III and IV of that Act, and other measures setting forth appropriate levels of budget totals for the United States Government.

(2) Budget process generally.

(3) Establishment, extension, and enforcement of special controls over the Federal budget, including the budgetary treatment of offbudget Federal agencies and measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.<sup>271</sup>

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<sup>270</sup> [House Rule X\(1\)](#), 117th Cong. (2021).

<sup>271</sup> [House Rule X\(1\)\(d\)](#), 117th Cong. (2021).



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*Membership of the Committee*—House Democratic Caucus rules now address the membership of the House Budget Committee:

- C. With respect to the Committee on the Budget:
1. The Speaker shall appoint a Leadership Member of the Committee on the Budget; and
  2. Steering and Policy shall nominate for membership on the Committee and election by the Caucus:
    - a) When the Democratic Party is the majority party of the House of Representatives, three Members of the Committee on Appropriations, three Members of the Committee on Ways and Means, at least one Member of the Committee on Rules, and the requisite number of Members of other Committees to fill all remaining Democratic seats.
    - b) When the Democratic Party is not the majority party of the House of Representatives, two Members of the Committee on Appropriations, two Members of the Committee on Ways and Means, and the requisite number of Members of other committees to fill all remaining Democratic seats.
  3. All selections of Members to serve on the Committee shall be made without regard to seniority.
  4. A list of said nominees shall be distributed to all Members of the Caucus prior to the election meeting described in Rule 20.<sup>272</sup>

Note that Senate Rules do not require the Senate Budget Committee to include Members of other standing committees, as does this House rule.

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<sup>272</sup> House Democratic Caucus, [Rules of the Democratic Caucus, 117th Cong.](#), rule 19(c) (2021).

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## BUDGET COMMITTEE OF THE SENATE

102(a) SEC. 102. (a) Paragraph 1 of [rule XXV of the Standing Rules of the Senate](#)<sup>273</sup> is amended by adding at the end thereof the following new subparagraph:

XXV(r)(1) “(r)(1) Committee on the Budget, to which committee shall be referred all [concurrent resolutions on the budget](#)<sup>274</sup> (as defined in [section 3\(a\)\(4\) of the Congressional Budget Act of 1974](#)<sup>275</sup>) and all other matters required to be referred to that committee under [titles III](#)<sup>276</sup> and [IV](#)<sup>277</sup> of that Act, and messages, petitions, memorials, and other matters relating thereto.

XXV(r)(2) “(2) Such committee shall have the duty<sup>278</sup> —

XXV(r)(2)(A) “(A) to report the matters required to be reported by it under [titles III](#)<sup>279</sup> and [IV](#)<sup>280</sup> of the Cong[r]essional<sup>281</sup> Budget Act of 1974;

XXV(r)(2)(B) “(B) to make continuing studies of the effect on [budget outlays](#)<sup>282</sup> of relevant existing and proposed legislation and to report the results of such studies to the Senate on a recurring basis;

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<sup>273</sup> Senate Rule XXV addresses “Standing Committees.” For the opening of paragraph 1, see *infra* p. 77.

<sup>274</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>275</sup> Now [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57.

<sup>276</sup> [Congressional Budget Act of 1974 tit. III, §§ 300–315](#), 2 U.S.C. §§ 631–645a, *infra* pp. 113–782, addresses “Congressional Budget Process.”

<sup>277</sup> [Congressional Budget Act of 1974 tit. IV, §§ 401–428](#), 2 U.S.C. §§ 651–658g, *infra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>278</sup> For a discussion of the Budget Committee’s duties, see *infra* p. 77.

<sup>279</sup> [Congressional Budget Act of 1974 tit. III, §§ 300–315](#), 2 U.S.C. §§ 631–645a, *infra* pp. 113–782, addresses “Congressional Budget Process.”

<sup>280</sup> [Congressional Budget Act of 1974 tit. IV, §§ 401–428](#), 2 U.S.C. §§ 651–658g, *infra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>281</sup> [Congressional Budget Act of 1974 §§ 401–428](#), 2 U.S.C. §§ 651–658g, *infra* p. 783.

<sup>282</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

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XXV(r)(2)(C)

“(C) to request and evaluate continuing studies of **tax expenditures**,<sup>283</sup> to devise methods of coordinating **tax expenditures**,<sup>284</sup> policies, and programs with direct **budget outlays**,<sup>285</sup> and to report the results of such studies to the Senate on a recurring basis; and

XXV(r)(2)(D)

“(D) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties.”

102(b)

(b) The table contained in paragraph 2 of **rule XXV of the Standing Rules of the Senate**<sup>286</sup> is amended by inserting after—

“Banking, Housing and Urban Affairs . . . 15”

the following:

“Budget . . . . . 15”.<sup>287</sup>

102(c)

(c) Paragraph 6 of **rule XXV of the Standing Rules of the Senate**<sup>288</sup> is amended by adding at the end thereof the following new subparagraph:

“(h) For purposes of the first sentence of subparagraph (a), membership on the Committee on the Budget shall not be taken into account until that date occurring during the first session of the Ninety-fifth Congress, upon which the appointment of the majority and minority party members of the standing committees of the Senate is initially completed.”

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<sup>283</sup> **Congressional Budget Act of 1974 § 3(3)**, 2 U.S.C. § 622(3), *supra* p. 57, defines “tax expenditures.”

<sup>284</sup> *Id.*

<sup>285</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

<sup>286</sup> **Senate Rule XXV** addresses “Standing Committees.”

<sup>287</sup> The beginning of **Senate Rule XXV, ¶ 2**, says: “Except as otherwise provided by paragraph 4 of this rule, each of the following standing committees shall consist of the number of Senators set forth in the following table on the line on which the name of that committee appears:”

<sup>288</sup> **Senate Rule XXV** addresses “Standing Committees.”

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- 102(d)           **(d) Each meeting of the Committee on the Budget of the Senate, or any subcommittee thereof, including meetings to conduct hearings,<sup>289</sup> shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions –**
- 102(d)(1)           **(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;**
- 102(d)(2)           **(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;**
- 102(d)(3)           **(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;**
- 102(d)(4)           **(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement; or**
- 102(d)(5)           **(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if –**
- 102(d)(5)(A)           **(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or**
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<sup>289</sup> For a discussion of a special rule regarding Budget Committee hearings, see *infra* p. 77.

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102(d)(5)(B)

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

102(e)

(e) Paragraph 7(b) of [rule XXV of the Standing Rules of the Senate](#)<sup>290</sup> and [section 133A \(b\) of the Legislative Reorganization Act of 1946](#)<sup>291</sup> shall not apply to the Committee on the Budget of the Senate.

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*Paragraph 1 of Rule XXV of the Standing Rules of the Senate*—Senate Rule XXV begins:

1. The following standing committees shall be appointed at the commencement of each Congress, and shall continue and have the power to act until their successors are appointed, with leave to report by bill or otherwise on matters within their respective jurisdictions.<sup>292</sup>

*Such Committee Shall Have the Duty*—In *Riddick's Senate Procedure*, the Parliamentarian explained the Budget Committee's duties:

The Act created new instrumentalities to serve Congress: Budget Committees in the Senate and House and a Congressional Budget Office. The Act gives the committees three major assignments: (1) to report the concurrent resolutions on the budget each year, and reconciliation bills when appropriate (2) to study the effects of existing and proposed legislation on the budget, and (3) to oversee the operations of the Congressional Budget Office.<sup>293</sup>

*Meetings To Conduct Hearings*—Unlike most committees, the Budget Committee can hold hearings without consent when the Senate is in session. Senate Rule XXVI, paragraph 5(a), explicitly exempts the Senate Budget and Appropriations Committees from the rule's requirement that

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<sup>290</sup> [Senate Rule XXV](#) addresses "Standing Committees."

<sup>291</sup> [Legislative Reorganization Act of 1970](#), Pub. L. No. 91-510, §§ 111–112, 84 Stat. 1140, 1151, added [Legislative Reorganization Act of 1946 § 133A\(b\)](#). For the text of § 133A(b), see *infra* p. 78.

<sup>292</sup> [Senate Rule XXV](#) addresses "Standing Committees."

<sup>293</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 502 (1992).

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when the Senate is in session, no committee of the Senate or any subcommittee thereof may meet, without special leave, after the conclusion of the first two hours after the meeting of the Senate commenced and in no case after two o'clock postmeridian unless consent therefor has been obtained from the majority leader and the minority leader (or in the event of the absence of either of such leaders, from his designee).<sup>294</sup>

***Section 133A(b) of the Legislative Reorganization Act of 1946***—As added by the Legislative Reorganization Act of 1970, section 1331A(b) said:

(b) Each hearing conducted by each standing, select, or special committee of the Senate (except the Committee on Appropriations) shall be open to the public except when the committee determines that the testimony to be taken at that hearing may relate to a matter of national security, may tend to reflect adversely on the character or reputation of the witness or any other individual, or may divulge matters deemed confidential under other provisions of law or Government regulation.<sup>295</sup>

***Membership of the Committee***—Note that Senate Rules do not require the Senate Budget Committee to include Members of other standing committees, as do House Democratic Caucus rules.<sup>296</sup> In the 1980s and 1990s, Senators Nancy Kassebaum and Daniel Inouye submitted interesting proposals (which the Senate did not adopt) to reconstitute the Budget Committee to include the Chairs of other standing committees.<sup>297</sup>

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<sup>294</sup> [Senate Rule XXVI ¶ 5\(a\)](#).

<sup>295</sup> [Legislative Reorganization Act of 1970](#), Pub. L. No. 91-510, §§ 111–112, 84 Stat. 1140, 1151.

<sup>296</sup> *See supra* p. 73.

<sup>297</sup> *See* [Resolution to amend the rules of the Senate to improve legislative efficiency, and for other purposes](#), S. Res. 66, 102d Cong. (as introduced, Feb. 28, 1991) (replacing the Budget Committee with a Leadership Committee on National Priorities); [Resolution to amend the rules of the Senate to improve legislative efficiency, and for other purposes](#), S. Res. 131, 101st Cong. (as introduced, May 18, 1989) (same); A resolution to amend the rules of the Senate to improve legislative efficiency, and for other purposes, S. Res. 260, 100th Cong., [133 CONG. REC. 21,752–56](#) (as introduced, July 30, 1987) (same); Fiscal Procedures Reform Act of 1987, S. 1362, 100th Cong., [133 CONG. REC. 16,152–57](#) (as introduced, June 16, 1987) (transferring the duties of the Budget Committee to a reconstituted Appropriations Committee).

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Congressional Budget Office



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# Congressional Budget Office

**I**n its publication, *An Introduction to the Congressional Budget Office*, the Office recounts:

Lawmakers created the Congressional Budget Office to give the Congress a stronger role in budget matters. Established under the Congressional Budget Act of 1974, CBO provides objective, nonpartisan information to support the budget process and to help the Congress make effective budget and economic policy. In carrying out that mission, the agency offers an alternative to the information provided by the Office of Management and Budget and other agencies in the executive branch.

The Congress sets CBO's priorities. CBO's chief responsibility under the Budget Act is to help the House and Senate Budget Committees with the matters under their jurisdiction. CBO also supports other Congressional committees—particularly Appropriations, Finance, and Ways and Means—and the Congressional leadership.

Each year, the agency's economists and budget analysts produce thousands of formal and informal cost estimates for proposed legislation, as well as dozens of reports and other materials on a variety of topics. CBO conducts objective, impartial analysis and hires employees without regard

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to political affiliation. CBO does not make policy recommendations. Most of CBO's work is available to the Congress and the public on the agency's website, [www.cbo.gov](http://www.cbo.gov).<sup>298</sup>

The Congressional Budget Office also recounts the history that led to the Office's creation:

Beginning in the early 1920s, the President began to assume more prominence in setting the federal budget. The Budget and Accounting Act of 1921 gave the President overall responsibility for budget planning by requiring him to submit an annual, comprehensive budget proposal to the Congress; that act also expanded the President's control over budgetary information by establishing the Bureau of the Budget (renamed the Office of Management and Budget in 1971). By contrast, the Congress lacked institutional capacity to establish and enforce budgetary priorities, coordinate actions on spending and revenue legislation, or develop budgetary and economic information independently of the executive branch.

Conflict between the legislative and executive branches reached a high point during the summer of 1974, when Members of Congress objected to President Richard Nixon's threats to withhold Congressional appropriations for programs that were inconsistent with his policies (a process known as impoundment). The dispute led to the enactment of the Congressional Budget and Impoundment Control Act of 1974 in July of that year.

That act reasserted the Congress's constitutional control over the budget by establishing new procedures for controlling impoundments and by instituting a formal process through which the Congress could develop, coordinate, and enforce its own budgetary priorities independently of the President. In addition, the law created new legislative institutions to implement the new Congressional budget process: the House and Senate Budget Committees to oversee execution of the budget process and the Congressional Budget Office to provide the Budget Committees and the Congress with objective, impartial information about budgetary and economic issues. The agency began operating on February 24, 1975, when Alice Rivlin was appointed its first Director.

Since its founding, CBO has had ten Directors. Their names and terms of office are as follows:

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<sup>298</sup> CONG. BUDGET OFF., [AN INTRODUCTION TO THE CONGRESSIONAL BUDGET OFFICE 1](#) (2021).

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Alice M. Rivlin	February 24, 1975–August 31, 1983
Rudolph G. Penner	September 1, 1983–April 28, 1987
Robert D. Reischauer	March 6, 1989–February 28, 1995
June E. O’Neill	March 1, 1995–January 29, 1999
Dan L. Crippen	February 3, 1999–January 3, 2003
Douglas Holtz-Eakin	February 5, 2003–December 29, 2005
Peter R. Orszag	January 18, 2007–November 25, 2008
Douglas W. Elmendorf	January 22, 2009–March 31, 2015
Keith Hall	April 1, 2015–May 31, 2019
Phillip Swagel	June 3, 2019–

During gaps between Directors, the agency has been led by Acting Directors. CBO’s Acting Directors have been Edward M. Gramlich, James L. Blum, Barry Anderson, Donald B. Marron, and Robert A. Sunshine.<sup>299</sup>

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<sup>299</sup> Cong. Budget Off., [History](#).

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## TITLE II CONGRESSIONAL BUDGET OFFICE

### ESTABLISHMENT OF OFFICE

201(a) SEC. 201.<sup>300</sup> (a) IN GENERAL —

201(a)(1) (1) There is established an office of the Congress to be known as the Congressional Budget Office (hereinafter in [this title](#)<sup>301</sup> referred to as the “Office”). The [Office](#)<sup>302</sup> shall be headed by a Director; and there shall be a Deputy Director who shall perform such duties as may be assigned to him by the Director and, during the absence or incapacity of the Director or during a vacancy in that office, shall act as Director.

201(a)(2) (2) The Director shall be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate<sup>303</sup> after considering recommendations received from the Committees on the Budget of the House and the Senate, without regard to political affiliation and solely on the basis of his fitness to perform his duties. The Deputy Director shall be appointed by the Director.

201(a)(3) (3) The term of office of the Director shall be 4 years and shall expire on January 3 of the year preceding each Presidential election.<sup>304</sup> Any individual appointed as Director to fill a vacancy prior to the expiration of a

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<sup>300</sup> Congressional Budget Act of 1974 § 201 is codified as amended at [2 U.S.C. § 601](#).

<sup>301</sup> Title II, [Congressional Budget Act of 1974 §§ 201–203](#), 2 U.S.C. §§ 601–603.

<sup>302</sup> [Congressional Budget Act of 1974 § 201\(a\)\(1\)](#), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>303</sup> *See, e.g.*, [157 CONG. REC. S263, H500](#) (daily ed. Jan. 26, 2011) (Doug Elmendorf); [155 CONG. REC. H487](#) (daily ed. Jan. 23, 2009) (Doug Elmendorf); *id.* at [S759](#) (daily ed. Jan. 22, 2009) (Doug Elmendorf).

<sup>304</sup> Terms of Directors of the Congressional Budget Office thus expired on January 3, 1983 (for Alice Rivlin), on January 3, 1987 (for Rudy Penner), on January 3, 1991 (for Bob Reischauer, who was reappointed), on January 3, 1995 (for Bob Reischauer), on January 3, 1999 (for June O’Neill), on January 3, 2003 (for Dan Crippen), on January 3, 2007 (for Doug Holtz-Eakin, who had by then already resigned), on January 3, 2011 (for Doug Elmendorf, who was reappointed), on January 3, 2015 (for Doug Elmendorf), and on January 3, 2019 (for Keith Hall), and will expire on January 3, 2023 (for Phill Swagel).

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term shall serve only for the unexpired portion of that term. An individual serving as Director at the expiration of a term may continue to serve until his successor is appointed. Any Deputy Director shall serve until the expiration of the term of office of the Director who appointed him (and until his successor is appointed), unless sooner removed by the Director.

201(a)(4) (4) The Director may be removed by either House by resolution.

201(a)(5)(A) (5)(A) The Director shall receive compensation at an annual rate of pay that is equal to the maximum rate of pay in effect under [section 105\(f\) of the Legislative Branch Appropriation Act, 1968 \(2 U.S.C. 4575\(f\)\)](#).<sup>305</sup>

201(a)(5)(B) (B) The Deputy Director shall receive compensation at an annual rate of pay that is \$1,000 less than the annual rate of pay received by the Director, as determined under subparagraph (A).

201(b) (b) PERSONNEL. — The Director shall appoint and fix the compensation of such personnel as may be necessary to carry out the duties and functions of the [Office](#).<sup>306</sup> All personnel of the [Office](#)<sup>307</sup> shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties. The Director may prescribe the duties and responsibilities of the personnel of the [Office](#),<sup>308</sup> and delegate to them authority to perform any of the duties, powers, and functions imposed on the [Office](#)<sup>309</sup> or on the Director. For purposes of pay (other than pay of the Director and Deputy Director) and

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<sup>305</sup> [Legislative Branch Appropriation Act, 1968, § 105\(f\)](#), 2 U.S.C. § 4575(f), provides a “general limitation” to § 105, which addresses “Gross Rate of Compensation of Employees Paid by Secretary of Senate.” For the text of § 105(f), see *infra* p. 88. [Further Consolidated Appropriations Act, 2020](#), Pub. L. No. 116-94, 133 Stat. 2534 (2019), amended Congressional Budget Act of 1974 § 201(a)(5)(A) to read “the maximum rate of pay in effect under section 105(f) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 4575(f)).”

<sup>306</sup> [Congressional Budget Act of 1974 § 201\(a\)\(1\)](#), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

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employment benefits, rights, and privileges, all personnel of the **Office**<sup>310</sup> shall be treated as if they were employees of the House of Representatives.

201(c) (c) EXPERTS AND CONSULTANTS.—In carrying out the duties and functions of the **Office**,<sup>311</sup> the Director may procure the temporary (not to exceed one year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or, in the case of individual experts or consultants, by employment at rates of pay not in excess of the daily equivalent of the highest rate of basic pay payable under the General Schedule of **section 5332 of title 5, United States Code**.<sup>312</sup>

201(d) (d) RELATIONSHIP TO EXECUTIVE BRANCH.—The Director is authorized to secure information, data, estimates, and statistics directly from the various departments, agencies, and establishments of the executive branch of Government and the regulatory agencies and commissions of the Government. All such departments, agencies, establishments, and regulatory agencies and commissions shall furnish the Director any available material which he determines to be necessary in the performance of his duties and functions (other than material the disclosure of which would be a violation of law). The Director is also authorized, upon agreement with the head of any such department, **agency**,<sup>313</sup> establishment, or regulatory **agency**<sup>314</sup> or commission, to utilize its services, facilities, and personnel with or without reimbursement; and the head of each such department, **agency**,<sup>315</sup> establishment, or regulatory

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<sup>310</sup> *Id.*

<sup>311</sup> **Congressional Budget Act of 1974 § 201(a)(1)**, 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>312</sup> **5 U.S.C. § 5332** addresses “The General Schedule” For the text of § 5332, see *infra* p. 89.

<sup>313</sup> **Congressional Budget Act of 1974 § 421(1)**, 2 U.S.C. § 658(1), *infra* p. 803, defines “agency,” adopting, in part, the definition of **5 U.S.C. § 551(1)**, *infra* p. 813.

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

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agency<sup>316</sup> or commission is authorized to provide the Office<sup>317</sup> such services, facilities, and personnel.

- 201(e) (e) **RELATIONSHIP TO OTHER AGENCIES OF CONGRESS.**— In carrying out the duties and functions of the Office,<sup>318</sup> and for the purpose of coordinating the operations of the Office<sup>319</sup> with those of other congressional agencies with a view to utilizing most effectively the information, services, and capabilities of all such agencies in carrying out the various responsibilities assigned to each, the Director is authorized to obtain information, data, estimates, and statistics developed by the Government Accountability Office, and the Library of Congress, and (upon agreement with them) to utilize their services, facilities, and personnel with or without reimbursement. The Comptroller General,<sup>320</sup> and the Librarian of Congress are authorized to provide the Office<sup>321</sup> with the information, data, estimates, and statistics, and the services, facilities, and personnel, referred to in the preceding sentence.
- 201(f) (f) **REVENUE**<sup>322</sup> **ESTIMATES.**— For the purposes of revenue<sup>323</sup> legislation which is income, estate and gift, excise, and payroll taxes (i.e., Social Security), considered or enacted in any session of Congress, the Congressional Budget Office<sup>324</sup> shall use exclusively during that session of Congress revenue<sup>325</sup> estimates provided to it by the Joint

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<sup>316</sup> *Id.*

<sup>317</sup> Congressional Budget Act of 1974 § 201(a)(1), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>318</sup> Congressional Budget Act of 1974 § 201(a)(1), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>319</sup> *Id.*

<sup>320</sup> Impoundment Control Act of 1974 § 1011(2), 2 U.S.C. § 682(2), *infra* p. 924, defines “Comptroller General.”

<sup>321</sup> Congressional Budget Act of 1974 § 201(a)(1), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>322</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>323</sup> *Id.*

<sup>324</sup> Congressional Budget Act of 1974 § 201(a)(1), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>325</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

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Committee on Taxation. During that session of Congress such [revenue](#)<sup>326</sup> estimates shall be transmitted by the Congressional Budget Office to any committee of the House of Representatives or the Senate requesting such estimates, and shall be used by such Committees in determining such estimates. The Budget Committees of the Senate and House shall determine all estimates with respect to scoring points of order and with respect to the execution of [the purposes of this Act](#).<sup>327</sup>

201(g) (g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the [Office](#)<sup>328</sup> for each fiscal year such sums as may be necessary to enable it to carry out its duties and functions. Until sums are first appropriated pursuant to the preceding sentence, but for a period not exceeding 12 months following the effective date of [this subsection](#),<sup>329</sup> the expenses of the [Office](#)<sup>330</sup> shall be paid from the contingent fund of the Senate, in accordance with [the paragraph relating to the contingent fund of the Senate under the heading “UNDER LEGISLATIVE” in the Act of October 1, 1888 \(28 Stat. 546; 2 U.S.C. 68\)](#),<sup>331</sup> and upon vouchers approved by the Director.

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*Section 105(f) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 4575(f))*—Section 105(f) provides:

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<sup>326</sup> *Id.*

<sup>327</sup> [Congressional Budget Act of 1974 § 2](#), 2 U.S.C. § 621, *supra* p. 49, sets forth the purposes of the Congressional Budget and Impoundment Control Act of 1974.

<sup>328</sup> [Congressional Budget Act of 1974 § 201\(a\)\(1\)](#), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>329</sup> [Congressional Budget Act of 1974 § 201\(g\)](#), 2 U.S.C. § 601(g), *supra* p. 88, addresses “Authorization of Appropriations.”

<sup>330</sup> [Congressional Budget Act of 1974 § 201\(a\)\(1\)](#), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>331</sup> The contingent fund of the Senate under the heading “UNDER LEGISLATIVE” in the Act of October 1, 1888 (28 Stat. 546; 2 U.S.C. 68) now appears at [2 U.S.C. § 6503](#), *infra* p. 89, which addresses “Payments from Senate Contingent Fund.” [An Act to make technical amendments to update statutory references to certain provisions classified to title 2, United States Code, title 50, United States Code, and title 52, United States Code](#), H.R. 5677, 117th Cong. (2022) would update this reference.



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**(f) General limitation**

No officer or employee whose compensation is disbursed by the Secretary of the Senate shall be paid gross compensation at a rate less than \$3,164 or in excess of \$173,900, unless expressly authorized by law. The limitation on the minimum rate of gross compensation under this subsection shall not apply to any member or civilian employee of the Capitol Police whose compensation is disbursed by the Secretary of the Senate.<sup>332</sup>

*The General Schedule of section 5332 of title 5, United States Code* – Section 5332 provides:

**§ 5332. The General Schedule**

(a)(1) The General Schedule, the symbol for which is “GS”, is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this subchapter applies is entitled to basic pay in accordance with the General Schedule.

(2) The General Schedule is a schedule of annual rates of basic pay, consisting of 15 grades, designated “GS-1” through “GS-15”, consecutively, with 10 rates of pay for each such grade. The rates of pay of the General Schedule are adjusted in accordance with section 5303.

(b) When payment is made on the basis of an hourly, daily, weekly, or biweekly rate, the rate is computed from the appropriate annual rate of basic pay named by subsection (a) of this section in accordance with the rules prescribed by section 5504(b) of this title.<sup>333</sup>

*The Contingent Fund of the Senate Under the Heading “UNDER LEGISLATIVE” in the Act of October 1, 1888 (28 Stat. 546; 2 U.S.C. 68)* – This provision now appears at 2 U.S.C. § 6503, which states:

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<sup>332</sup> Legislative Branch Appropriation Act, 1968, § 105(f), 2 U.S.C. § 4575(f).

<sup>333</sup> 5 U.S.C. § 5332.

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**§ 6503. Payments from Senate contingent fund**

No payment shall be made from the contingent fund of the Senate unless sanctioned by the Committee on Rules and Administration of the Senate. Payments made upon vouchers or abstracts of disbursements of salaries approved by said Committee shall be deemed, held, and taken, and are declared to be conclusive upon all the departments and officers of the Government: Provided, That no payment shall be made from said contingent fund as additional salary or compensation to any officer or employee of the Senate.<sup>334</sup>

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<sup>334</sup> 2 U.S.C. § 6503.

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## DUTIES AND FUNCTIONS

- 202(a) **SEC. 202.**<sup>335</sup> (a) **ASSISTANCE TO BUDGET COMMITTEES.**— It shall be the primary duty and function of the **Office**<sup>336</sup> to provide to the Committees on the Budget of both Houses information which will assist such committees in the discharge of all matters within their jurisdictions, including
- 202(a)(1) (1) information with respect to the budget, appropriation bills, and other bills authorizing or providing **new budget authority**<sup>337</sup> or **tax expenditures**,<sup>338</sup>
- 202(a)(2) (2) information with respect to **revenues**,<sup>339</sup> receipts, estimated future **revenues**<sup>340</sup> and receipts, and changing **revenue**<sup>341</sup> conditions, and
- 202(a)(3) (3) such related information as such Committees may request.
- 202(b) (b) **ASSISTANCE TO COMMITTEES ON APPROPRIATIONS, WAYS AND MEANS, AND FINANCE.**— At the request of the Committee on Appropriations of either House, the Committee on Ways and Means of the House of Representatives, or the Committee on Finance of the Senate, the **Office**<sup>342</sup> shall provide to such Committee any information which will assist it in the discharge of matters within its jurisdiction, including information described in

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<sup>335</sup> Congressional Budget Act of 1974 § 202 is codified as amended at [2 U.S.C. § 602](#).

<sup>336</sup> [Congressional Budget Act of 1974 § 201\(a\)\(1\)](#), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>337</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>338</sup> [Congressional Budget Act of 1974 § 3\(3\)](#), 2 U.S.C. § 622(3), *supra* p. 57, defines “tax expenditures.”

<sup>339</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

<sup>342</sup> [Congressional Budget Act of 1974 § 201\(a\)\(1\)](#), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

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**clauses (1)<sup>343</sup> and (2)<sup>344</sup> of subsection (a) and such related information as the Committee may request.**

202(c) **(c) ASSISTANCE TO OTHER COMMITTEES AND MEMBERS. —**

202(c)(1) **(1) At the request of any other committee of the House of Representatives or the Senate or any joint committee of the Congress, the Office<sup>345</sup> shall provide to such committee or joint committee any information compiled in carrying out clauses (1)<sup>346</sup> and (2)<sup>347</sup> of subsection (a), and, to the extent practicable, such additional information related to the foregoing as may be requested.**

202(c)(2) **(2) At the request of any committee of the Senate or the House of Representatives, the Office<sup>348</sup> shall, to the extent practicable, consult with and assist such committee in analyzing the budgetary or financial impact of any proposed legislation that may have —**

202(c)(2)(A) **(A) a significant budgetary impact on State,<sup>349</sup> local,<sup>350</sup> or tribal governments;<sup>351</sup>**

202(c)(2)(B) **(B) a significant financial impact on the private sector;<sup>352</sup> or**

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<sup>343</sup> Congressional Budget Act of 1974 § 202(a)(1), 2 U.S.C. § 602(a)(1), *supra* p. 91.

<sup>344</sup> Congressional Budget Act of 1974 § 202(a)(2), 2 U.S.C. § 602(a)(2), *supra* p. 91.

<sup>345</sup> Congressional Budget Act of 1974 § 201(a)(1), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>346</sup> Congressional Budget Act of 1974 § 202(a)(1), 2 U.S.C. § 602(a)(1), *supra* p. 91.

<sup>347</sup> Congressional Budget Act of 1974 § 202(a)(2), 2 U.S.C. § 602(a)(2), *supra* p. 91.

<sup>348</sup> Congressional Budget Act of 1974 § 201(a)(1), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>349</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>350</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>351</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>352</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *infra* p. 812, defines “private sector.”

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- 202(c)(2)(C) (C) a significant employment impact on the private sector.<sup>353</sup>
- 202(c)(3) (3) At the request of any Member of the House or Senate, the Office<sup>354</sup> shall provide to such Member any information compiled in carrying out clauses (1)<sup>355</sup> and (2)<sup>356</sup> of subsection (a), and, to the extent available, such additional information related to the foregoing as may be requested.
- 202(d) (d) ASSIGNMENT OF OFFICE<sup>357</sup> PERSONNEL TO COMMITTEES AND JOINT COMMITTEES.— At the request of the Committee on the Budget of either House, personnel of the Office<sup>358</sup> shall be assigned, on a temporary basis, to assist such committee. At the request of any other committee of either House or any joint committee of the Congress, personnel of the Office<sup>359</sup> may be assigned, on a temporary basis, to assist such committee or joint committee with respect to matters directly related to the applicable provisions of subsection (b)<sup>360</sup> or (c).<sup>361</sup>
- 202(e) (e) REPORTS TO BUDGET COMMITTEES. —
- 202(e)(1) (1) On or before February 15 of each year, the Director shall submit to the Committees on the Budget of the House of Representatives and the Senate a report, for the fiscal year commencing on October 1 of that year, with respect to fiscal policy, including

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<sup>353</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *infra* p. 812, defines “private sector.”

<sup>354</sup> Congressional Budget Act of 1974 § 201(a)(1), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>355</sup> Congressional Budget Act of 1974 § 202(a)(1), 2 U.S.C. § 602(a)(1), *supra* p. 91.

<sup>356</sup> Congressional Budget Act of 1974 § 202(a)(2), 2 U.S.C. § 602(a)(2), *supra* p. 91.

<sup>357</sup> Congressional Budget Act of 1974 § 201(a)(1), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

<sup>360</sup> Congressional Budget Act of 1974 § 202(b), 2 U.S.C. § 602(b), *supra* p. 91.

<sup>361</sup> Congressional Budget Act of 1974 § 202(c), 2 U.S.C. § 602(c), *supra* p. 92.

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- 202(e)(1)(A) (A) alternative levels of total **revenues**,<sup>362</sup> total **new budget authority**,<sup>363</sup> and total **outlays**<sup>364</sup> (including related **surpluses**<sup>365</sup> and **deficits**<sup>366</sup>),
- 202(e)(1)(B) (B) the levels of **tax expenditures**<sup>367</sup> under existing law, taking into account projected economic factors and any changes in such levels based on proposals in the budget submitted by the President for such fiscal year, and
- 202(e)(1)(C) (C) a statement of the levels of **budget authority**<sup>368</sup> and **outlays**<sup>369</sup> for each program assumed to be extended in the **baseline**,<sup>370</sup> as provided in **section 257(b)(2)(A)**<sup>371</sup> and for excise taxes assumed to be extended under **section 257(b)(2)(C)**<sup>372</sup> of the Balanced Budget and Emergency Deficit Control Act of 1985.

Such report shall also include a discussion of national budget priorities, including alternative ways of allocating **new budget authority**<sup>373</sup> and **budget outlays**<sup>374</sup> for such fiscal year among major programs or functional categories, taking into account how such alternative allocations will meet major national needs

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<sup>362</sup> U.S. GOV'T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines "revenues."

<sup>363</sup> *Congressional Budget Act of 1974 § 3(2)(C)*, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines "new budget authority."

<sup>364</sup> *Congressional Budget Act of 1974 § 3(1)*, 2 U.S.C. § 622(1), *supra* p. 55, defines "outlays."

<sup>365</sup> *Congressional Budget Act of 1974 § 3(7)*, 2 U.S.C. § 622(7), *supra* p. 58, defines "surplus."

<sup>366</sup> *Congressional Budget Act of 1974 § 3(6)*, 2 U.S.C. § 622(6), *supra* p. 58, defines "deficit."

<sup>367</sup> *Congressional Budget Act of 1974 § 3(3)*, 2 U.S.C. § 622(3), *supra* p. 57, defines "tax expenditures."

<sup>368</sup> *Congressional Budget Act of 1974 § 3(2)(A)*, 2 U.S.C. § 622(2)(A), *supra* p. 55, defines "budget authority."

<sup>369</sup> *Congressional Budget Act of 1974 § 3(1)*, 2 U.S.C. § 622(1), *supra* p. 55, defines "outlays."

<sup>370</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5)*, 2 U.S.C. § 900(c)(5), *infra* p. 980, defines "baseline" by reference to *Balanced Budget and Emergency Deficit Control Act of 1985 § 257*, 2 U.S.C. § 907, *infra* p. 980.

<sup>371</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 257(b)(2)(A)*, 2 U.S.C. § 907(b)(2)(A), *infra* p. 1111.

<sup>372</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 257(b)(2)(C)*, 2 U.S.C. § 907(b)(2)(C), *infra* p. 1112.

<sup>373</sup> *Congressional Budget Act of 1974 § 3(2)(C)*, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines "new budget authority."

<sup>374</sup> *Congressional Budget Act of 1974 § 3(1)*, 2 U.S.C. § 622(1), *supra* p. 55, defines "budget outlays."

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and affect balanced growth and development of the United States.

202(e)(2)        (2) The Director shall from time to time submit to the Committees on the Budget of the House of Representatives and the Senate such further reports (including reports revising the report required by [paragraph \(1\)](#)<sup>375</sup>) as may be necessary or appropriate to provide such Committees with information, data, and analyses for the performance of their duties and functions.

202(e)(3)        (3) On or before January 15 of each year, the Director, after consultation with the appropriate committees of the House of Representatives and Senate, shall submit to the Congress a report listing

202(e)(3)(A)        (A) all programs and activities funded during the fiscal year ending September 30 of that calendar year for which authorizations for appropriations have not been enacted for that fiscal year,<sup>376</sup> and

202(e)(3)(B)        (B) all programs and activities for which authorizations for appropriations have been enacted for the fiscal year ending September 30 of that calendar year, but for which no authorizations for appropriations have been enacted for the fiscal year beginning October 1 of that calendar year.<sup>377</sup>

202(f)            (f) **USE OF COMPUTERS AND OTHER TECHNIQUES.**— The Director may equip the [Office](#)<sup>378</sup> with up-to-date computer capability (upon approval of the Committee on House Oversight of the House of Representatives and the Committee on Rules and Administration of the Senate), obtain the services of experts and consultants in computer

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<sup>375</sup> [Congressional Budget Act of 1974 § 202\(e\)\(1\)](#), 2 U.S.C. § 602(e)(1), *supra* p. 93.

<sup>376</sup> For examples of such reports, see *infra* p. 98.

<sup>377</sup> *Id.*

<sup>378</sup> [Congressional Budget Act of 1974 § 201\(a\)\(1\)](#), 2 U.S.C. § 601(a)(1), *supra* p. 84, defines “office” as the Congressional Budget Office.

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technology, and develop techniques for the evaluation of budgetary requirements.

202(g) (g) STUDIES.—

202(g)(1) (1) CONTINUING STUDIES.—The Director of the Congressional Budget Office shall conduct continuing studies to enhance comparisons of **budget outlays**,<sup>379</sup> **credit authority**,<sup>380</sup> and **tax expenditures**.<sup>381</sup>

202(g)(2) (2) **FEDERAL MANDATE**<sup>382</sup> STUDIES.—

202(g)(2)(A) (A) At the request of any Chairman or ranking member of the minority of a Committee of the Senate or the House of Representatives, the Director shall, to the extent practicable, conduct a study of a legislative proposal containing a **Federal mandate**.<sup>383</sup>

202(g)(2)(B) (B) In conducting a study on intergovernmental mandates under **subparagraph (A)**,<sup>384</sup> the Director shall—

202(g)(2)(B)(i) (i) solicit and consider information or comments from elected officials (including their designated representatives) of **State**,<sup>385</sup> **local**,<sup>386</sup> or **tribal governments**<sup>387</sup> as may provide helpful information or comments;

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<sup>379</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

<sup>380</sup> Congressional Budget Act of 1974 § 3(10), 2 U.S.C. § 622(10), *supra* p. 60, defines “credit authority.”

<sup>381</sup> Congressional Budget Act of 1974 § 3(3), 2 U.S.C. § 622(3), *supra* p. 57, defines “tax expenditures.”

<sup>382</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *infra* p. 811, defines “Federal mandate.”

<sup>383</sup> *Id.*

<sup>384</sup> Congressional Budget Act of 1974 § 202(g)(2)(A), 2 U.S.C. § 602(g)(2)(A), *supra* p. 96.

<sup>385</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>386</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>387</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”



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- 202(g)(2)(B)(ii) (ii) consider establishing advisory panels of elected officials or their designated representatives, of **State**,<sup>388</sup> **local**,<sup>389</sup> or **tribal governments**<sup>390</sup> if the Director determines that such advisory panels would be helpful in performing responsibilities of the Director under **this section**,<sup>391</sup> and
- 202(g)(2)(B)(iii) (iii) if, and to the extent that the Director determines that accurate estimates are reasonably feasible, include estimates of –
- 202(g)(2)(B)(iii)(I) (I) the future **direct cost**<sup>392</sup> of the **Federal mandate**<sup>393</sup> to the extent that such costs significantly differ from or extend beyond the 5-year period after the mandate is first effective; and
- 202(g)(2)(B)(iii)(II) (II) any disproportionate **budgetary effects**<sup>394</sup> of **Federal mandates**<sup>395</sup> upon particular industries or sectors of the economy, **States**,<sup>396</sup> regions, and urban or rural or other types of communities, as appropriate.
- 202(g)(2)(C) (C) In conducting a study on **private sector mandates**<sup>397</sup> under **subparagraph (A)**,<sup>398</sup> the Director
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<sup>388</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>389</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>390</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>391</sup> Congressional Budget Act of 1974 § 202, 2 U.S.C. § 602, *supra* p. 91, addresses “Duties and Functions” of CBO.

<sup>392</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *infra* p. 803, defines “direct costs.”

<sup>393</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *infra* p. 811, defines “Federal mandate.”

<sup>394</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *infra* p. 1151, defines “budgetary effects.”

<sup>395</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *infra* p. 811, defines “Federal mandate.”

<sup>396</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>397</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *infra* p. 811, defines “Federal private sector mandate.”

<sup>398</sup> Congressional Budget Act of 1974 § 202(g)(2)(A), 2 U.S.C. § 602(g)(2)(A), *supra* p. 96.

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shall provide estimates, if and to the extent that the Director determines that such estimates are reasonably feasible, of—

- 202(g)(2)(C)(i) (i) future costs of **Federal private sector mandates**<sup>399</sup> to the extent that such mandates differ significantly from or extend beyond the 5-year time period referred to in **subparagraph (B)(iii)(I)**;<sup>400</sup>
- 202(g)(2)(C)(ii) (ii) any disproportionate financial effects of **Federal private sector mandates**<sup>401</sup> and of any Federal financial assistance in the bill or joint resolution upon any particular industries or sectors of the economy, **States**,<sup>402</sup> regions, and urban or rural or other types of communities; and
- 202(g)(2)(C)(iii) (iii) the effect of **Federal private sector mandates**<sup>403</sup> in the bill or joint resolution on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services.

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*Programs and Activities . . . for Which Authorizations for Appropriations Have Not Been Enacted*—CBO issues reports on such programs at least annually.<sup>404</sup>

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<sup>399</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *infra* p. 811, defines “Federal private sector mandate.”

<sup>400</sup> Congressional Budget Act of 1974 § 202(g)(2)(B)(iii)(I), 2 U.S.C. § 602(g)(2)(B)(iii)(I), *supra* p. 97.

<sup>401</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *infra* p. 811, defines “Federal private sector mandate.”

<sup>402</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>403</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *infra* p. 811, defines “Federal private sector mandate.”

<sup>404</sup> See, e.g., CONG. BUDGET OFF., EXPIRED AND EXPIRING AUTHORIZATIONS OF APPROPRIATIONS FOR FISCAL YEAR 2022 (2022); CONG. BUDGET OFF., EXPIRED AND EXPIRING AUTHORIZATIONS OF APPROPRIATIONS FOR FISCAL YEAR 2022—INFORMATION FOR LEGISLATION ENACTED THROUGH SEPTEMBER 30, 2021 (2022); CONG. BUDGET OFF., EXPIRED AND EXPIRING AUTHORIZATIONS OF APPROPRIATIONS: FISCAL YEAR 2021 (2021); CONG. BUDGET OFF., EXPIRED AND EXPIRING AUTHORIZATIONS OF APPROPRIATIONS: FISCAL YEAR 2020 (2020); CONG. BUDGET OFF., EXPIRED AND EXPIRING AUTHORIZATIONS OF

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UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS (IN THIS VERSION: APPENDIX MATERIAL IS SORTED BY APPROPRIATION ACT) (2007); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS (IN THIS VERSION: APPENDIX MATERIAL IS SORTED BY HOUSE AUTHORIZING COMMITTEE) (2006); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS (IN THIS VERSION: APPENDIX MATERIAL IS SORTED BY SENATE AUTHORIZING COMMITTEE) (2006); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS (IN THIS VERSION: APPENDIX MATERIAL IS SORTED BY APPROPRIATION ACT) (2006); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS (IN THIS VERSION: APPENDIX MATERIAL IS SORTED BY HOUSE AUTHORIZING COMMITTEE) (2005); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS (IN THIS VERSION: APPENDIX MATERIAL IS SORTED BY SENATE AUTHORIZING COMMITTEE) (2005); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS (IN THIS VERSION: APPENDIX MATERIAL IS SORTED BY APPROPRIATIONS SUBCOMMITTEE) (2005); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS PURSUANT TO SECTION 202(e)(3) OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT, AS AMENDED (HOUSE VERSION) (2004); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS PURSUANT TO SECTION 202(e)(3) OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT, AS AMENDED (SENATE VERSION) (2004); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS PURSUANT TO SECTION 202(e)(3) OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT, AS AMENDED (APPROPRIATIONS VERSION) (2004); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS PURSUANT TO SECTION 202(e)(3) OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT, AS AMENDED (HOUSE) (2003); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS PURSUANT TO SECTION 202(e)(3) OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT, AS AMENDED (SENATE) (2003); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS PURSUANT TO SECTION 202(e)(3) OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT, AS AMENDED (APPROPRIATIONS) (2003); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS PURSUANT TO SECTION 202(e)(3) OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT, AS AMENDED: HOUSE (2002); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS PURSUANT TO SECTION 202(e)(3) OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT, AS AMENDED: SENATE (2002); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS PURSUANT TO SECTION 202(e)(3) OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT, AS AMENDED: APPROPRIATIONS (2002); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS PURSUANT TO SECTION 202(e)(3) OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT, AS AMENDED [HOUSE] (2001); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS PURSUANT TO SECTION 202(e)(3) OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT, AS AMENDED [SENATE] (2001); CONG. BUDGET OFF., UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS (2000).

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## PUBLIC ACCESS TO BUDGET DATA

- 203(a)      **SEC. 203.**<sup>405</sup> (a) **RIGHT TO COPY.**— Except as provided in **subsections (c),**<sup>406</sup> **(d),**<sup>407</sup> and **(e),**<sup>408</sup> the Director shall make all information, data, estimates, and statistics obtained under **section 201(d)**<sup>409</sup> and **(e)**<sup>410</sup> available for public copying during normal business hours, subject to reasonable **rules**<sup>411</sup> and **regulations,**<sup>412</sup> and shall to the extent practicable, at the request of any person, furnish a copy of any such information, data, estimates, or statistics upon payment by such person of the cost of making and furnishing such copy.
- 203(b)      (b) **INDEX.**— The Director shall develop and maintain filing, coding, and indexing systems that identify the information, data, estimates, and statistics to which **subsection (a)**<sup>413</sup> applies and shall make such systems available for public use during normal business hours.
- 203(c)      (c) **EXCEPTIONS.**— **Subsection (a)**<sup>414</sup> shall not apply to information, data, estimates, and statistics —
- 203(c)(1)      (1) which are specifically exempted from disclosure by law; or
- 203(c)(2)      (2) which the Director determines will disclose —

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<sup>405</sup> Congressional Budget Act of 1974 § 203 is codified as amended at [2 U.S.C. § 603](#).

<sup>406</sup> [Congressional Budget Act of 1974 § 203\(c\)](#), 2 U.S.C. § 603(c), *infra* p. 101, addresses “Exceptions.”

<sup>407</sup> [Congressional Budget Act of 1974 § 203\(d\)](#), 2 U.S.C. § 603(d), *infra* p. 102, addresses “Information Obtained for Committees and Members.”

<sup>408</sup> [Congressional Budget Act of 1974 § 203\(e\)](#), 2 U.S.C. § 603(e), *infra* p. 102, addresses “Level of Confidentiality.”

<sup>409</sup> [Congressional Budget Act of 1974 § 201\(d\)](#), 2 U.S.C. § 601(d), *supra* p. 86, addresses “Relationship to Executive Branch.”

<sup>410</sup> [Congressional Budget Act of 1974 § 201\(e\)](#), 2 U.S.C. § 601(e), *supra* p. 87, addresses “Relationship to Other Agencies of Congress.”

<sup>411</sup> [Congressional Budget Act of 1974 § 421\(10\)](#), 2 U.S.C. § 658(10), *infra* p. 812, defines “rule” by adopting the definition of [5 U.S.C. § 601\(2\)](#), *infra* p. 814.

<sup>412</sup> [Congressional Budget Act of 1974 § 421\(10\)](#), 2 U.S.C. § 658(10), *infra* p. 812, defines “regulation” by adopting the definition of [5 U.S.C. § 601\(2\)](#), *infra* p. 814.

<sup>413</sup> [Congressional Budget Act of 1974 § 203\(a\)](#), 2 U.S.C. § 603(a), *supra* p. 101, addresses “Right To Copy.”

<sup>414</sup> *Id.*

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- 203(c)(2)(A) (A) matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;
- 203(c)(2)(B) (B) information relating to trade secrets or financial or commercial information pertaining specifically to a given person if the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or
- 203(c)(2)(C) (C) personnel or medical data or similar data the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- unless the portions containing such matters, information, or data have been excised.
- 203(d) (d) INFORMATION OBTAINED FOR COMMITTEES AND MEMBERS.—**Subsection (a)**<sup>415</sup> shall apply to any information, data, estimates, and statistics obtained at the request of any committee, joint committee, or Member unless such committee, joint committee, or Member has instructed the Director not to make such information, data, estimates, or statistics available for public copying.
- 203(e) (e) LEVEL OF CONFIDENTIALITY.—With respect to information, data, estimates, and statistics obtained under **sections 201(d)**<sup>416</sup> and **201(e)**,<sup>417</sup> the Director shall maintain the same level of confidentiality as is required by law of the department, **agency**,<sup>418</sup> establishment, or regulatory
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<sup>415</sup> Congressional Budget Act of 1974 § 203(a), 2 U.S.C. § 603(a), *supra* p. 101, addresses “Right To Copy.”

<sup>416</sup> Congressional Budget Act of 1974 § 201(d), 2 U.S.C. § 601(d), *supra* p. 86, addresses “Relationship to Executive Branch.”

<sup>417</sup> Congressional Budget Act of 1974 § 201(e), 2 U.S.C. § 601(e), *supra* p. 87, addresses “Relationship to Other Agencies of Congress.”

<sup>418</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *infra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *infra* p. 813.



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**agency<sup>419</sup> or commission from which it is obtained. Officers and employees of the Congressional Budget Office shall be subject to the same statutory penalties for unauthorized disclosure or use as officers or employees of the department, agency,<sup>420</sup> establishment, or regulatory agency<sup>421</sup> or commission from which it is obtained.**

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*Legislative History* – Section 203 appeared in the original Budget Act much as it does now, except without subsection (e) and a reference to subsection (e) in subsection (a).<sup>422</sup> The Consolidated Appropriations Act, 2001, added subsection (e) and the reference to it.<sup>423</sup>

The joint statement of managers accompanying the conference report on the Budget Act explained:

SECTION 203. PUBLIC ACCESS TO BUDGET DATA

The Senate amendment provided for access to copy budget information obtained by the Budget Office from the executive branch and congressional agencies. This right would not apply to certain excepted categories or to information obtained for committees or Members who specifically instructed that such information not be made available to the public.

The conference substitute is substantially the same as the Senate provision. This section provides that the Director of the Congressional Budget Offices shall permit the public to copy information obtained from the executive branch or congressional agencies, pursuant to subsections 201(d) and 201(e), respectively. The right of public access and copying is to be subject to reasonable rules and regulations, with the person requesting the information paying the costs. The Budget Office is to maintain an index of available information to facilitate public access. The right of public access does not apply to information specifically exempted from disclosure by law, national defense information, confidential business data, or personnel or medical data. Information obtained by the Budget Office at

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<sup>419</sup> [Congressional Budget Act of 1974 § 421\(1\)](#), 2 U.S.C. § 658(1), *infra* p. 803, defines “agency,” adopting, in part, the definition of [5 U.S.C. § 551\(1\)](#), *infra* p. 813.

<sup>420</sup> *Id.*

<sup>421</sup> *Id.*

<sup>422</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 203, 88 Stat. 297, 305 (amended 2000).

<sup>423</sup> [Consolidated Appropriations Act, 2001](#), Pub. L. No. 106-554, § 1(a)(7), 114 Stat. 2763 (2000) (enacting H.R. 5662, 106th Cong. (2000), § 310(b) of which amended the Congressional Budget Act).

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the request of a committee or Member may not be made available to the public if such committee or Member requests that it not be disclosed.<sup>424</sup>

The Consolidated Appropriations Act, 2001, provided for the enactment of “H.R. 5662, as introduced on December 14, 2000.”<sup>425</sup> H.R. 5662 provided (in relevant part):

**SEC. 310. DISCLOSURE OF CERTAIN INFORMATION TO CONGRESSIONAL BUDGET OFFICE.**

**(a) DISCLOSURE OF CERTAIN TAX INFORMATION. —**

(1) IN GENERAL.—Subsection (j) of section 6103 [of the Internal Revenue Code of 1986 ([26 U.S.C. § 6103](#))] (relating to statistical use) is amended by adding at the end the following new paragraph:

“(6) CONGRESSIONAL BUDGET OFFICE.—Upon written request by the Director of the Congressional Budget Office, the Secretary shall furnish to officers and employees of the Congressional Budget Office return information for the purpose of, but only to the extent necessary for, long-term models of the social security and medicare programs.”.

(2) RECORDKEEPING SAFEGUARDS.—Section 6103(p) is amended —

(A) in paragraph (4) —

(i) in the matter preceding subparagraph (A), by inserting “the Congressional Budget Office,” after “General Accounting Office,”

(ii) in subparagraph (E), by striking “commission or the General Accounting Office” and inserting “commission, the General Accounting Office, or the Congressional Budget Office”,

(iii) in subparagraph (F)(ii), by striking “or the General Accounting Office,” and inserting “the General Accounting Office, or the Congressional Budget Office,” and

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<sup>424</sup> H.R. REP. NO. 93-1101, at 55 (1974) (Conf. Rep.).

<sup>425</sup> [Consolidated Appropriations Act, 2001](#), Pub. L. No. 106-554, § 1(a)(7), 114 Stat. 2763 (2000) (enacting H.R. 5662, 106th Cong. § 310(b) (2000)).



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(iv) in the matter following subparagraph (F), by inserting “or the Congressional Budget Office” after “General Accounting Office” both places it appears,

(B) in paragraph (5), by striking “commissions and the General Accounting Office” and inserting “commissions, the General Accounting Office, and the Congressional Budget Office”, and

(C) in paragraph (6)(A), by inserting “and the Congressional Budget Office” after “commissions”.

(b) CONFIDENTIALITY OF RECORDS. —

(1) IN GENERAL. —Section 203 of the Congressional Budget Act of 1974 (2 U.S.C. 603) is amended by adding at the end the following:

“(e) LEVEL OF CONFIDENTIALITY.—With respect to information, data, estimates, and statistics obtained under sections 201(d) and 201(e), the Director shall maintain the same level of confidentiality as is required by law of the department, agency, establishment, or regulatory agency or commission from which it is obtained. Officers and employees of the Congressional Budget Office shall be subject to the same statutory penalties for unauthorized disclosure or use as officers or employees of the department, agency, establishment, or regulatory agency or commission from which it is obtained.”.

(2) CONFORMING AMENDMENT.—Subsection (a) of section 203 of such Act is amended by striking “subsections (c) and (d)” and inserting “subsections (c), (d), and (e)”.<sup>426</sup>

The joint statement of managers accompanying the conference report on the Consolidated Appropriations Act, 2001, explained:

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<sup>426</sup> H.R. 5662, 106th Cong. § 310(b) (2000), as enacted by Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 1(a)(7), 114 Stat. 2763 (2000).

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J. DISCLOSURE OF RETURN INFORMATION TO THE CONGRESSIONAL BUDGET  
OFFICE (SEC. 310 OF THE BILL AND NEW SEC. 6103(j)(6) OF THE CODE)

PRESENT LAW

Federal tax returns and return information are confidential and cannot be disclosed unless authorized by the [Internal Revenue] Code. Section 6103 authorizes certain agencies to receive tax returns and return information for statistical use and for other specified purposes.<sup>[427]</sup> Section 6103 also permits the Secretary of the Treasury (“the Secretary”) to provide return information to any person authorized to receive it by any mode or means that the Secretary determines necessary or appropriate.<sup>[428]</sup> Persons making unauthorized disclosures or inspections of tax returns and return information are subject to criminal and civil penalties.<sup>[429]</sup>

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

*Disclosure of return information*

The Congressional Budget Office (“CBO”) is in the process of developing the capability to make projections of the Social Security and Medicare programs over long periods of time. To facilitate the development and operation of long-term models of Social Security and Medicare, CBO needs continuing access to records from the IRS. Specifically, CBO seeks two SSA files that contain return information—the Social Security Earnings Record and the Master Beneficiary Record. These files contain individual earnings data compiled from tax returns (Forms W-2), which are protected from disclosure by section 6103. In addition, CBO may request other records, including those matched with survey data.

The conference agreement amends section 6103 to permit the Secretary to furnish to CBO return information to the extent such information is necessary for purposes of CBO’s long-term models of Social Security and

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<sup>427</sup> E.g., [Internal Revenue Code of 1986 § 6103\(j\) & 6103\(l\)\(1\) & \(5\)](#), 26 U.S.C. § 6103(j) & (l)(1) & (5).

<sup>428</sup> [Internal Revenue Code of 1986 § 6103\(p\)\(2\)\(B\)](#), 26 U.S.C. § 6103(p)(2)(B).

<sup>429</sup> See [Internal Revenue Code of 1986 §§ 7431, 7213, and 7213A](#), 26 U.S.C. §§ 7431, 7213 & 7213A.

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Medicare. This authority extends to the development, operation, and maintenance by CBO of its long-term models of Social Security and Medicare. It is the intent of Congress that all requests for information made by CBO under this provision be made to the Secretary and that the Secretary use his authority under section 6103(p)(2) such that the SSA or other agency can furnish directly to CBO, for purposes of CBO's long-term models of Social Security and Medicare, the files they possess that incorporate return information. It is also the intent of Congress that the Secretary furnish such other return information under this provision as is necessary for purposes of CBO's Social Security and Medicare long-term models.

Under the provision, CBO is subject to the present-law safeguard requirements for tax returns and return information.<sup>[430]</sup> Further, CBO is prohibited from disclosing any tax returns and return information received under this provision except in a form that cannot be associated with, or otherwise identify, directly or indirectly a particular taxpayer. Present-law civil and criminal penalties apply to the unauthorized disclosure or inspection of tax returns or return information.<sup>[431]</sup>

*Addition of general CBO confidentiality provisions*

The conference agreement adds to the Congressional Budget Act of 1974<sup>[432]</sup> additional confidentiality provisions which would require CBO to provide the same level of confidentiality to data it obtains from other agencies as that to which the agencies themselves are subject. Officials and employees of CBO would be subject to the same statutory penalties for unauthorized disclosure as the employees of the agencies from which CBO obtain the data.<sup>433</sup>

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<sup>430</sup> [Internal Revenue Code of 1986 § 6103\(p\)\(4\)](#), 26 U.S.C. § 6103(p)(4).

<sup>431</sup> See Internal Revenue Code of 1986 §§ 7431, 7213 & 7213A, [26 U.S.C. §§ 7431, 7213 & 7213A](#).

<sup>432</sup> [2 U.S.C. § 601\(d\)](#).

<sup>433</sup> [H.R. REP. NO. 106-1033](#), at 1020-21 (2000) (Conf. Rep.) (footnotes renumbered and reformatted).

June.		May.		April.		March.		February.		January.	
1	2	1	2	1	2	1	2	1	2	1	2
3	4	3	4	3	4	3	4	3	4	3	4
5	6	5	6	5	6	5	6	5	6	5	6
7	8	7	8	7	8	7	8	7	8	7	8
9	10	9	10	9	10	9	10	9	10	9	10
11	12	11	12	11	12	11	12	11	12	11	12
13	14	13	14	13	14	13	14	13	14	13	14
15	16	15	16	15	16	15	16	15	16	15	16
17	18	17	18	17	18	17	18	17	18	17	18
19	20	19	20	19	20	19	20	19	20	19	20
21	22	21	22	21	22	21	22	21	22	21	22
23	24	23	24	23	24	23	24	23	24	23	24
25	26	25	26	25	26	25	26	25	26	25	26
27	28	27	28	27	28	27	28	27	28	27	28
29	30	29	30	29	30	29	30	29	30	29	30
31		31		31		31		31		31	

Photo: Wikimedia

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# The Fiscal Year

**H**ow often should one budget? In his statement introducing the Congressional Budgetary Procedures Act of 1973, Senator Sam Ervin said: “The essence of any budget, whether that of a family or a nation, is advance planning.”<sup>434</sup> But how far in advance should one plan?

Many organizations plan for a fiscal year. They align their planning horizon to the time that it takes our planet to circle the nearest star. The congressional budget process follows this model.

But, as the Congressional Research Service’s Jim Saturno describes, some have questioned this schedule:

Despite the perceived or actual permanence of much federal spending, the process of formulating, enacting, and executing budgets has remained characteristically annual. This annual budget cycle poses a dilemma for Congress. On the one hand, annual review of spending legislation can afford Congress the opportunity to maximize its influence concerning the operation of various programs and policies. On the other hand, many

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<sup>434</sup> 119 CONG. REC. 11,860 (Apr. 11, 1973).



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Members have expressed concern with the high percentage of congressional workload that is devoted to budgetary matters.

An annual budget cycle, however, is dependent on the timely enactment of budgetary legislation. Consideration of individual pieces of budgetary legislation is often closely linked to consideration of other pieces, so that delays in consideration of one measure may have an impact on the timing of consideration of all subsequent budgetary legislation. In recent years, final action on appropriations measures has occurred an average of 106 days after the start of the fiscal year on October 1 . . . . The result has often been frustration with the budget process and a desire to reduce the number or frequency of budget measures that need to be considered.

The budget process has sometimes been criticized as unnecessarily repetitive as well, with some questions being debated in various forms several times each year. Defense policy, for example, may be debated in terms of its priority in the context of the overall budget in the budget resolution, in terms of policy and planning in an authorization measure, and in terms of funding levels in an appropriations bill, only to have the entire process repeated the next year. Although not every program is addressed in all three aspects every year, critics contend that repetition prevents efficient consideration and contributes to the overall complexity of the budget process, as well as to inefficiency and delay.

. . . .

A number of possible reforms, such as automatic continuing resolutions, joint budget resolutions, or merging the authorization and appropriations processes — have been advanced, at least in part, in the hope that they could make the budget process operate in a more timely fashion.

. . .

Another possible approach to addressing this concern is to change the budget cycle from one year to two years. By reducing the frequency of budgetary actions, and better separating their consideration, proponents of such a reform contend that Congress would be able to undertake each stage with more attention to detail.<sup>435</sup>

Members of Congress have thus introduced many bills incorporating this idea to move to a 2-year budget cycle.<sup>436</sup> Members of Congress may

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<sup>435</sup> JAMES V. SATURNO, CONG. RSCH. SERV., [R44732, BIENNIAL BUDGETING: ISSUES, OPTIONS, AND CONGRESSIONAL ACTIONS 1–2](#) (2017) (footnote omitted).

<sup>436</sup> See, e.g., [Fix Funding First Act](#), S. 1807, 116th Cong. (as introduced, June 12, 2019); [Biennial Budgeting and Appropriations Act](#), S. 284, 116th Cong. (as introduced, Jan. 30, 2019); [Biennial Budgeting and](#)

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devote much time and effort to such discussions. But one might reasonably questions whether any particular time horizon would have a different effect from another.

The drafters of the Congressional Budget Act followed existing traditions and set out a plan for an annual fiscal year. In *Riddick's Senate Procedure*, the Parliamentarian described the Congressional Budget Act's timetable and the changes that the Act made to the fiscal year:

Tides III and IV of the Act set out timetables and limitations for the consideration of certain types of measures. To this end, the Act defines budget authority, outlays, and spending authority (including entitlement authority), and imposes restrictions on the timing of their consideration and the effect of their enactment. . . .

The Budget Act changed the fiscal year from July 1 through June 30, to October 1 through September 30. The Act prescribes deadlines for the completion of various congressional actions which establish the budgetary framework for the upcoming fiscal year. At the beginning of the calendar year, the Budget Committees receive the President's proposed budget, and soon thereafter they receive from each standing committee recommendations on their expected expenditure requirements for the upcoming fiscal year, as well as testimony from Members of Congress, officials of the executive branch, and other appropriate persons concerning the need for Federal expenditures. From this information, the Budget Committees report to their respective Houses a "concurrent resolution on the budget."<sup>437</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 layered on another series of deadlines,<sup>438</sup> although many of these were for reports that the law no longer requires.

Do these many budget law deadlines have any effect? In *Riddick's Senate Procedure*, under the heading "Rulemaking Power," the Parliamentarian

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[Appropriations Act](#), S. 306, 115th Cong. (as introduced, Feb. 6, 2017); [Biennial Appropriations Act](#), S. 385, 114th Cong. (as introduced, Feb. 5, 2015); [Biennial Budgeting and Appropriations Act](#), S. 150, 114th Cong. (as introduced, Jan. 13, 2015); [Biennial Appropriations Act](#), S. 625, 113th Cong. (as introduced, Mar. 20, 2013); [Biennial Budgeting and Appropriations Act](#), S. 554, 113th Cong. (as introduced, Mar. 13, 2013); [Budget Reform Act of 2013](#), S. 280, 113th Cong. (as introduced, Feb. 12, 2013); [Biennial Appropriations Act](#), S. 1274, 112th Cong. (as introduced, June 23, 2011); [Biennial Budgeting and Appropriations Act](#), S. 211, 112th Cong. (as introduced, Jan. 27, 2011); [Biennial Budgeting and Appropriations Act](#), S. 169, 111th Cong. (as introduced, Jan. 8, 2009); [Biennial Budgeting and Appropriations Act](#), S. 2627, 110th Cong. (as introduced, Feb. 13, 2008); [Biennial Budgeting and Appropriations Act](#), S. 877, 109th Cong. (as introduced, Apr. 21, 2005).

<sup>437</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 502 (1992).

<sup>438</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254\(a\)](#), 2 U.S.C. § 904(a), *infra* p. 1060.

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noted: “The Congress has, on several occasions, missed deadlines set out in the Budget Act for the adoption of either budget resolutions or reconciliation bills.”<sup>439</sup>

Note, however, that the Presiding Officer enforced<sup>440</sup> language in the Balanced Budget and Emergency Deficit Control Act of 1985 providing: “A vote on final passage of a joint resolution reported . . . or discharged pursuant to paragraph (3) shall be taken on or before the close of the fifth calendar day of session . . . .”<sup>441</sup>

And as discussed below,<sup>442</sup> the Presiding Officer also gives effect to the April 1 deadline for the Budget Committee to report a budget resolution. When the Budget Committee fails to meet this deadline, precedent provides the remedy of automatically discharging all budget resolutions from the Committee.

Apart from these exceptional cases, Budget Act deadlines tend to function mostly as suggestions.

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<sup>439</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 635–36 (1992) (citing, for example, the following budget resolutions adopted when the deadline was May 15: [S. Con. Res. 19, 95th Cong.](#), 91 Stat. 1670 (May 17, 1977); [S. Con. Res. 80, 95th Cong.](#), 92 Stat. 3870 (May 17, 1978); [H. Con. Res. 107, 96th Cong.](#), 93 Stat. 1413 (May 24, 1979); [H. Con. Res. 307, 96th Cong.](#), 94 Stat. 3655 (June 12, 1980); [H. Con. Res. 115, 97th Cong.](#), 95 Stat. 1743 (May 21, 1981); [S. Con. Res. 92, 97th Cong.](#), 96 Stat. 2647 (June 23, 1982); [H. Con. Res. 91, 98th Cong.](#), 97 Stat. 1501 (June 23, 1983); [H. Con. Res. 280, 98th Cong.](#), 98 Stat. 3484 (Oct. 1, 1984); and [S. Con. Res. 32, 99th Cong.](#), 99 Stat. 1941 (Aug. 1, 1985); and the following adopted when the deadline was advanced to April 15 (pursuant to [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, 99 Stat. 1037): [[S. Con. Res. 120, 99th Cong.](#), 100 Stat. 4354 (June 27, 1986)]; [H. Con. Res. 93, 100th Cong.](#), 101 Stat. 1986 (June 25, 1987); [H. Con. Res. 268, 100th Cong.](#), 102 Stat. 4875 (June 6, 1988); [H. Con. Res. 106, 101st Cong.](#), 103 Stat. 2540 (May 18, 1989); and [H. Con. Res. 310, 101st Cong.](#), 104 Stat. 5163 (Oct. 9, 1990); and the following reconciliation bill that was passed after the September 25 deadline in the original Budget Act: [Omnibus Reconciliation Act of 1980](#), Pub. L. No. 96-499, 94 Stat. 2599 (Dec. 3, 1980); and the following reconciliation bills that were passed after the new deadline of June 15 (pursuant to [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1055): [Consolidated Omnibus Budget Reconciliation Act of 1985](#), Pub. L. No. 99-272, 100 Stat. 82 (Mar. 20, 1986); [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, 100 Stat. 1874 (Oct. 17, 1986); [Omnibus Budget Reconciliation Act of 1987](#), Pub. L. No. 100-203, 101 Stat. 1330 (Dec. 22, 1987); [Omnibus Budget Reconciliation Act of 1989](#), Pub. L. No. 101-239, 103 Stat. 2106 (Nov. 22, 1989); and [Omnibus Budget Reconciliation Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388 (Oct. 27, 1990)).

<sup>440</sup> See *infra* p. 1122.

<sup>441</sup> Former [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 254(a)(4)(A), 99 Stat. 1038, 1079, now [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)\(4\)\(A\)](#), 2 U.S.C. § 907a(a)(4)(A), *infra* p. 1120.

<sup>442</sup> See *infra* p. 116.



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## TITLE III CONGRESSIONAL BUDGET PROCESS

### TIMETABLE<sup>443</sup>

300        SEC. 300.<sup>444</sup> The timetable with respect to the congressional budget process for any fiscal year is as follows:

On or before:	Action to be completed:
First Monday in February <sup>445</sup> .....	President submits his budget.
February 15 .....	Congressional Budget Office submits report to Budget Committees.
Not later than 6 weeks after President submits Budget .....	Committees submit views and estimates <sup>446</sup> to Budget Committees.
April 1 <sup>447</sup> .....	Senate Budget Committee reports <sup>448</sup> <b>concurrent resolution on the budget.</b> <sup>449</sup>

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<sup>443</sup> The Parliamentarian has observed that “this office has generally favored reading the [Congressional Budget Act] to advance a budget process over the frustration thereof by the imposition of a strict timetable.” E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Reconciliation Instructions (Sept. 1, 2017, 12:52 PM).

<sup>444</sup> Congressional Budget Act of 1974 § 300 is codified as amended at [2 U.S.C. § 631](#).

<sup>445</sup> For a listing of when Presidents actually submitted their budgets, see *infra* p. 114.

<sup>446</sup> [Congressional Budget Act of 1974 § 301\(d\)](#), 2 U.S.C. § 632(d), *infra* p. 152, requires these views and estimates. For a discussion of views and estimates, see *infra* p. 154.

<sup>447</sup> If the Senate Budget Committee misses this deadline, then budget resolutions submitted will be automatically discharged. See *infra* p. 116.

<sup>448</sup> For a discussion of requirements for reporting, see *infra* p. 120.

<sup>449</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

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April 15 <sup>450</sup> .....	Congress completes action on <b>concurrent resolution on the budget.</b> <sup>451</sup>
May 15 .....	Annual appropriation bills may be considered in the House.
June 10 .....	House Appropriations Committee reports last annual appropriation bill.
June 15 <sup>452</sup> .....	Congress completes action on reconciliation legislation.
June 30 .....	House completes action on annual appropriation bills.
October 1 .....	Fiscal year begins.

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### Dates of Presidents' Budgets

*First Monday in February* – Presidents have submitted their budgets on these dates<sup>453</sup>:

President	Fiscal Year	Date Submitted	Original Deadline
Ford	1976	Feb. 3, 1975	Jan. 28, 1975
Ford	1977	Jan. 21, 1976	Feb. 2, 1976

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<sup>450</sup> [Congressional Budget Act of 1974 § 301\(a\)](#), 2 U.S.C. § 632(a), *infra* p. 132, requires that “[o]n or before April 15 of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1 of such year.” The Parliamentarian has advised that failing to meet this deadline for completing a budget resolution does not vitiate Budget Act points of order. *See infra* p. 121.

<sup>451</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>452</sup> This deadline for completing reconciliation is not enforced. The Parliamentarian has noted that “the [Congressional Budget Act] has been amended with respect to this issue (removing a deadline from [section] 310 but leaving a June 15th deadline in [section] 300, which makes things confusing.” E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Reconciliation Instructions (Sept. 1, 2017, 12:52 PM).

<sup>453</sup> MICHELLE D. CHRISTENSEN, CONG. RSCH. SERV., [R43163, THE PRESIDENT’S BUDGET: OVERVIEW OF STRUCTURE AND TIMING OF SUBMISSION TO CONGRESS](#) (2016); TAYLOR N. RICCARD, MICHELLE D. CHRISTENSEN & ROBERT KEITH, CONG. RSCH. SERV., [RS20752, SUBMISSION OF THE PRESIDENT’S BUDGET IN TRANSITION YEARS](#) (2021); GovInfo, [Budget of the United States Government](#).

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President	Fiscal Year	Date Submitted	Original Deadline
Ford	1978	Jan. 17, 1977	Jan. 18, 1977
Carter	1979	Jan. 20, 1978	Feb. 2, 1978
Carter	1980	Jan. 22, 1979	Jan. 29, 1979
Carter	1981	Jan. 28, 1980	Jan. 17, 1980
Carter	1982	Jan. 15, 1981	Jan. 19, 1981
Reagan	1983	Feb. 8, 1982	Feb. 8, 1982
Reagan	1984	Jan. 31, 1983	Jan. 17, 1983
Reagan	1985	Feb. 1, 1984	Feb. 6, 1984
Reagan	1986	Feb. 4, 1985	Jan. 17, 1985
Reagan	1987	Feb. 5, 1986	Feb. 5, 1986
Reagan	1988	Jan. 5, 1987	Jan. 5, 1987
Reagan	1989	Feb. 18, 1988	Jan. 4, 1988
Reagan	1990	Jan. 9, 1989	Jan. 9, 1989
G.H.W. Bush	1991	Jan. 29, 1990	Jan. 8, 1990
G.H.W. Bush	1992	Feb. 4, 1991	Feb. 4, 1991
G.H.W. Bush	1993	Jan. 29, 1992	Feb. 3, 1992
Clinton	1994	Apr. 8, 1993	Feb. 1, 1993
Clinton	1995	Feb. 7, 1994	Feb. 7, 1994
Clinton	1996	Feb. 6, 1995	Feb. 6, 1995
Clinton	1997	Mar. 19, 1996	Feb. 5, 1996
Clinton	1998	Feb. 6, 1997	Feb. 3, 1997
Clinton	1999	Feb. 2, 1998	Feb. 2, 1998
Clinton	2000	Feb. 1, 1999	Feb. 1, 1999
Clinton	2001	Feb. 7, 2000	Feb. 7, 2000
G.W. Bush	2002	Apr. 9, 2001	Feb. 5, 2001
G.W. Bush	2003	Feb. 4, 2002	Feb. 4, 2002
G.W. Bush	2004	Feb. 3, 2003	Feb. 3, 2003
G.W. Bush	2005	Feb. 2, 2004	Feb. 2, 2004
G.W. Bush	2006	Feb. 7, 2005	Feb. 7, 2005
G.W. Bush	2007	Feb. 6, 2006	Feb. 6, 2006
G.W. Bush	2008	Feb. 5, 2007	Feb. 5, 2007
G.W. Bush	2009	Feb. 4, 2008	Feb. 4, 2008
Obama	2010	May 7, 2009	Feb. 2, 2009
Obama	2011	Feb. 1, 2010	Feb. 1, 2010
Obama	2012	Feb. 14, 2011	Feb. 7, 2011
Obama	2013	Feb. 13, 2012	Feb. 6, 2012
Obama	2014	Apr. 10, 2013	Feb. 4, 2013
Obama	2015	Mar. 4, 2014	Feb. 3, 2014
Obama	2016	Feb. 2, 2015	Feb. 2, 2015
Obama	2017	Feb. 9, 2016	Feb. 1, 2016
Trump	2018	Mar. 16, 2017	Feb. 6, 2017
Trump	2019	Feb. 12, 2018	Feb. 5, 2018
Trump	2020	Mar. 11, 2019	Feb. 4, 2019
Trump	2021	Feb. 10, 2020	Feb. 3, 2020
Biden	2022	May 28, 2021	Feb. 1, 2021
Biden	2023	Mar. 28, 2022	Feb. 7, 2022

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Congress has on several occasions extended a particular year's deadline by statute.<sup>454</sup>

### Automatic Discharge

*Senate Budget Committee reports concurrent resolution on the budget—*  
Pursuant to this deadline, the Parliamentarian has explained in *Riddick's Senate Procedure*:

If the Budget Committee has not reported a budget resolution by the deadline set out in the act, the committee will be discharged from such a resolution if one had been referred to it. When the Budget Committee has not reported a concurrent resolution on the budget for a fiscal year by the deadline in section 300 of the Budget Act, a concurrent resolution on the budget for that fiscal year which is submitted thereafter will be referred to that committee, immediately discharged, and placed on the Calendar.<sup>455</sup>

The Presiding Officer has followed this precedent on numerous occasions.<sup>456</sup>

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<sup>454</sup> See, e.g., [Joint Resolution providing for the convening of the second session of the One Hundred First Congress](#), Pub. L. No. 101-228, § 4, 103 Stat. 1945 (1989) (from Jan. 8, 1990, to Jan. 22, 1990); [Joint Resolution extending the time within which the President may transmit the Budget Message and the Economic Report to the Congress and extending the time within which the Joint Economic Committee shall file its report](#), Pub. L. No. 99-1, 99 Stat. 3 (1985) (from Jan. 17, 1985, to Feb. 4, 1985); [Joint Resolution establishing the dates for submission of the Budget and Economic Report](#), Pub. L. No. 97-469, 96 Stat. 2582 (1983) (from Jan. 17, 1983, to Jan. 31, 1983); [Joint Resolution extending the dates for submission of the President's Budget and Economic Report](#), Pub. L. No. 96-186, 93 Stat. 1338 (1980) (from Jan. 17, 1980 to Jan. 28, 1980); [Joint Resolution extending the time within which the President may transmit the Budget Message and the Economic Report to the Congress and extending the time within which the Joint Economic Committee shall file its report](#), Pub. L. No. 93-1, 87 Stat. 3 (1973) (extended to Jan. 29, 1973); [Joint Resolution extending the date for transmission of the Budget and the Economic Report](#), Pub. L. No. 89-1, 79 Stat. 3 (1965) (extended to Jan. 25, 1965).

<sup>455</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 599 (1992) (footnotes omitted).

<sup>456</sup> See, e.g., [S. Con. Res. 43, 117th Cong.](#) (as placed on Calendar, July 19, 2022); [S. Con. Res. 41, 117th Cong.](#) (as placed on Calendar, June 6, 2022); [S. Con. Res. 14, 117th Cong.](#) (2021) (as placed on Calendar, Aug. 9, 2021); [S. Con. Res. 13, 117th Cong.](#) (as placed on Calendar, Aug. 5, 2021). [S. Con. Res. 5, 117th Cong.](#) (2021) (as placed on Calendar, Feb. 2, 2021); [S. Con. Res. 37, 115th Cong.](#) (as placed on Calendar, Apr. 18, 2018); [S. Con. Res. 36, 115th Cong.](#) (as placed on Calendar, Apr. 18, 2018); [S. Con. Res. 3, 115th Cong.](#) (as placed on Calendar, Jan. 3, 2017); [H. Con. Res. 96, 113th Cong.](#) (as placed on Calendar Apr. 11, 2014), 160 CONG. REC. S2405 (daily ed. Apr. 11, 2014); [S. Con. Res. 44, 112th Cong.](#) (as placed on Calendar, May 8, 2012); [S. Con. Res. 42, 112th Cong.](#) (as placed on Calendar, Apr. 26, 2012), 158 CONG. REC. S2833 (daily ed. Apr. 26, 2012); [S. Con. Res. 41, 112th Cong.](#) (as placed on Calendar, Apr. 17, 2012); [S. Con. Res. 37, 112th Cong.](#) (as placed on Calendar, Apr. 17, 2012); [H. Con. Res. 112, 112th Cong.](#) (as placed on Calendar, Apr. 16, 2012), 158 CONG. REC. at S2324 (daily ed. Apr. 16, 2012); [S. Con. Res. 40, 112th Cong.](#) (as placed on Calendar, Apr. 16, 2012), 158 CONG. REC. at S2324 (daily ed. Apr. 16, 2012); [S. Con. Res. 21, 112th Cong.](#) (as placed on Calendar, May 23, 2011); [S. Con. Res. 20, 112th Cong.](#) (as placed on Calendar, May 19, 2011); [S. Con. Res. 19, 112th Cong.](#) (as placed on Calendar, May 19, 2011); [S. Con. Res. 18, 112th Cong.](#) (as placed on Calendar, May 19, 2011); [H. Con. Res. 34, 112th Cong.](#) (as placed on Calendar, May 2, 2011), 157 CONG. REC. S2578 (daily ed. May 2, 2011); [S. Con. Res. 60, 111th Cong.](#) (as placed on Calendar, Apr. 26, 2010); [S. Con. Res. 20, 107th Cong.](#) (as placed on

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In a footnote to this precedent in *Riddick's Senate Procedure*, the Parliamentarian recounted one incident where a budget was discharged on the same day as another was reported:

H. Con. Res. 280 was discharged even though the Senate Budget Committee did report a budget resolution on the same date (S. Con. Res. 106), since the Senate was in adjournment on April 15 and therefore H. Con. Res. 280 could not have been discharged on that date. It was discharged as soon thereafter as was possible, authority having been given in advance for committees to report measures on April 18, notwithstanding the adjournment of the Senate. See also S. Con. Res. 110, Apr. 2, 1990 (Apr. 1 being a Sunday), 101-2, Record, p. S 3696.<sup>457</sup>

The Budget Committee's reporting stops this automatic discharge process. In April 2011, Budget Committee counsel asked the Parliamentarian:

The question is about discharging [the Senate Budget Committee] from consideration of budget resolutions after April 1. My understanding is that automatic discharges stop once [the Senate Budget Committee] reports a concurrent resolution on the budget. Do you envision other circumstances that could stop the automatic discharge process? For example, if a concurrent resolution were on the calendar and a motion to proceed to it is made, would a successful vote on the motion end the automatic discharges? Or would the Senate have to go some step further, for example, a vote on passage? Or, moving in the other direction, could an unsuccessful vote on the motion to proceed stop automatic discharges?<sup>458</sup>

The Parliamentarian responded:

I'm not aware of anything other than the reporting by the Senate Budget Committee of a concurrent resolution on the budget envisioned by title 3 of the Budget Act that would turn off the automatic discharge from the committee of other such current resolutions on the budget. In your

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Calendar, Apr. 2, 2001); [H. Con. Res. 83, 107th Cong.](#) (as placed on Calendar, Apr. 2, 2001); S. Con. Res. 104, 103d Cong. (as placed on Calendar, Apr. 1, 1992), H. Con. Res. 287, 103d Cong. (as placed on Calendar, Apr. 1, 1992), [139 CONG. REC. 7803](#) (Apr. 1, 1992); 137 CONG. REC. S4489 (daily ed. Mar. 29, 1990); 136 CONG. REC. 9482 (daily ed. May 4, 1990); *id.* at S4287 (daily ed. Apr. 5, 1990); *id.* at S3696 (daily ed. Apr. 2, 1990); 1984 SEN. J. 216 (Apr. 18, 1984); 129 CONG. REC. S4726 (daily ed. Apr. 15, 1983); *see generally* JAMES V. SATURNO & MEGAN S. LYNCH, CONG. RSCH. SERV., [IN11693, THE BUDGET RESOLUTION AND THE SENATE'S AUTOMATIC DISCHARGE PROCESS](#) (2021).

<sup>457</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 599 n.61 (1992).

<sup>458</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re question on CBA Sec 300 automatic discharge (Apr. 10, 2011, 5:31 PM).

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hypothetical scenario, how would such a concurrent resolution have gotten to the Calendar?<sup>459</sup>

In a 2011 call thereafter, the Parliamentarian's office did not say whether other actions could stop the automatic discharge rule from operating. After this call, Budget Committee counsel concluded that "it is probably safe to say that the passage by Congress of a concurrent resolution on the budget ends the automatic discharge," "[l]ess certain" would be "whether Senate passage of a concurrent resolution but the failure of a conference report would stop automatic discharges," and "even less certain is whether the mere adoption of a motion to proceed would be enough."<sup>460</sup>

In November 2016, the Parliamentarian advised that the automatic discharge of budget resolutions would cease at the end of the first fiscal year covered by such resolutions, saying, "We all agree that October 1st is the limit on auto-discharge."<sup>461</sup>

In 2020, the Parliamentarian explained the automatic discharge precedent:

Auto-discharge after April 1 of a particular fiscal year (to the Calendar and not the floor) is available when the committee has not acted, there is no controlling budget resolution (coined under the [Congressional Budget Act] and passed by both Houses) for the fiscal year at issue, and there is time remaining in the fiscal year at issue.<sup>462</sup>

On February 2, 2021, Budget Committee Chair Sanders submitted the budget resolution for fiscal year 2021,<sup>463</sup> the Presiding Officer placed it on the calendar,<sup>464</sup> the Majority Leader moved to proceed to it,<sup>465</sup> and the Senate proceeded to it,<sup>466</sup> all in the same calendar day.

In March 2017, the Parliamentarian expressed concern about the ramifications if this automatic discharge procedure were allowed for

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<sup>459</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re question on CBA Sec 300 automatic discharge (Apr. 10, 2011, 11:22 PM).

<sup>460</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re question on CBA Sec 300 automatic discharge (Apr. 12, 2011, 2:57 PM).

<sup>461</sup> Staff of S. Comm. on the Budget, Notes from Parls meeting on November 30, 2016 (Dec. 6, 2016).

<sup>462</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>463</sup> [167 CONG. REC. S253](#) (daily ed. Feb. 2, 2021).

<sup>464</sup> *Id.*

<sup>465</sup> *Id.* at [S225](#).

<sup>466</sup> *Id.* at [S226](#).

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revised budget resolutions under section 304. The Parliamentarian noted that one distinction between a first budget resolution and a revised budget resolution is that a revised resolution is an option, it is not mandatory.<sup>467</sup>

Then in May 2021, the Parliamentarian advised that this automatic discharge procedure does not apply to revised budget resolutions.<sup>468</sup> The Parliamentarian wrote:

3. Can the Presiding Officer place a revised budget resolution on the Calendar pursuant to the precedent of April 15, 1983?

The purpose of the auto-discharge, a creation of the Office of the Parliamentarian, was to advance the budget process in accordance with the deadlines for required action under section 300 of the [Congressional Budget Act]. When the Budget committee fails to report a budget resolution to the Senate, any properly drafted, introduced resolution is placed on the calendar and is subject to a privileged motion to proceed. This does not occur on some random date. It happens any time after April 1, the deadline in the [Congressional Budget Act] for the Senate Budget Committee to report a concurrent resolution on the budget and continues while the committee is still not in compliance with that requirement.

Unlike the 301 resolution, a section 304 resolution is an optional procedure untethered to the section 300 structure. There is no deadline for its reporting from committee or its completion in the Senate. In fact, 304's requirement with respect to timing is that a 304 resolution come *after* a resolution is agreed to pursuant to 301. Thus, applying auto-discharge to a 304 resolution would mean that to turn off auto-discharge, the Budget Committee would have to report a 304 as soon as there was a budget resolution adopted for a fiscal year. The motion to proceed to that resolution would be privileged. 304 revisions from Committee would be crafted as meaningless, stop-gap measures or shells for future consideration, further eroding the budget process. If the Committee failed to so report, every 304 resolution introduced would be placed on the Calendar and motions to proceed to them would be privileged as soon as the ink was dry on the 301 resolution.

That kind of chaos was not at all what was intended with auto-discharge. Rather, the purpose of auto-discharge is to provide an incentive for committee compliance with the law and to provide a

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<sup>467</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 31, 2017, at 1 (Apr. 3, 2017).

<sup>468</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Staff of S. Republican Leader re 304 (May 28, 2021, 1:13 PM).

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remedy when compliance with and through the mandatory processes of the [Congressional Budget Act] have not been met. Auto-discharge is not appropriate for a 304 resolution.<sup>469</sup>

## Reporting

Senate Rule XXVI provides: “The vote of any committee to report a measure or matter shall require the concurrence of a majority of the members of the committee who are present.”<sup>470</sup> Interpreting this requirement, the Parliamentarian has advised:

Committees must have a majority of the committee present at the time of the vote to constitute a quorum. In order to report out a nomination, measure or treaty, the “yes” votes must come from those present in the committee room only and must outnumber the “no” votes—whether the no votes are those are in committee or by proxy. No committee is required to allow proxy votes, and some do not at all or on the issue of reporting, but if a committee does allow proxies, only those votes not in favor of reporting will count. This advice has been given by my office for at least 45 years—perhaps more. When it comes to the issue of a tie vote, the application of the rule and this advice is the same. A tie vote is achieved by counting the “yes” votes to report in the room and the “no” votes in and out of the room. If those numbers are the same, the tie is achieved. Positive proxies cannot be used to establish a tie vote. “No” votes by those present or by proxy count.<sup>471</sup>

The Parliamentarian has advised, however, that internal committee matters generally are up to committees, and the Parliamentarian will not get involved. For example, the Parliamentarian has said that the Parliamentarian’s office will not get involved with the Budget Committee Chair’s decision to rule out of order a motion by a Committee Member that the Committee report a resolution other than the one scheduled for markup, the Committee’s decision to report several resolutions, or the Committee’s decision to require Committee amendments to be offset.<sup>472</sup>

And Senate Rule XXVI provides:

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<sup>469</sup> *Id.*

<sup>470</sup> [Senate Rule XXVI](#) ¶ 7(a)(3).

<sup>471</sup> E-mail from Staff of S. Majority Leader to Democratic Staff Directors re Parls Advice on Voting To Report (Apr. 22, 2021, 10:28 AM); E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian (Apr. 22, 2021, 11:09 AM).

<sup>472</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re notes from meeting with Parls (Mar. 5, 2002, 3:19 PM).



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Action by any committee in reporting any measure or matter in accordance with the requirements of this subparagraph shall constitute the ratification by the committee of all action theretofore taken by the committee with respect to that measure or matter, including votes taken upon the measure or matter or any amendment thereto, and no point of order shall lie with respect to that measure or matter on the ground that such previous action with respect thereto by such committee was not taken in compliance with such requirements.<sup>473</sup>

### Failing To Complete a Budget Resolution

*April 15* – In *Riddick’s Senate Procedure*, the Parliamentarian explained that failing to meet the Budget Act deadline for completing a budget resolution does not vitiate Budget Act points of order<sup>474</sup>:

Congress has on several occasions failed to complete action on the concurrent resolution on the budget by the deadline set out in the Act,<sup>[475]</sup> and the Chair has stated, in response to a parliamentary inquiry, that the failure of Congress to complete action on the budget resolution by this deadline would have no effect on points of order relating to allocations to committees.<sup>[476]</sup>

### Deeming Resolutions

In the absence of agreement on a budget resolution, Houses of Congress have often adopted deeming resolutions that perform some budget resolution functions until Congress can adopt a budget resolution pursuant to Congressional Budget Act section 301.<sup>477</sup> In particular, deeming

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<sup>473</sup> [Senate Rule XXVI](#) ¶ 7(a)(3).

<sup>474</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 599–600 (1992) (footnotes renumbered and reformatted).

<sup>475</sup> The Parliamentarian’s footnote here states:

*See for example*, the following budget resolutions, which were adopted when the deadline was May 15: [S. Con. Res. 19](#), 95-1, (May 17, 1977); [S. Con. Res. 80](#), 95-2, (May 17, 1978); [H. Con. Res. 107](#), 96-1, (May 24, 1979); [H. Con. Res. 307](#), 96-2, (June 12, 1980); [H. Con. Res. 115](#), 97-1, (May 21, 1981); [S. Con. Res. 92](#), 97-2 (June 23, 1982); [H. Con. Res. 91](#), 98-1, (June 23, 1983); [H. Con. Res. 280](#), 98-2, (Oct. 1, 1984); and [S. Con. Res. 32](#), 99-1, (Aug. 1, 1985), *see also* the following which were adopted after the deadline was advanced to April 15 (pursuant to [Pub. L. 99-177](#), Dec. 12, 1985): [[S. Con. Res. 120](#)], 99-2, ([June 27], 1986); [H. Con. Res. 93](#), 100-1, (June 25, 1987); and [H. Con. Res. 268](#), 100-2, (June 6, 1988); [H. Con. Res. 106](#), 101-1, (May 18, 1989); and [H. Con. Res. 310](#), 101-2, (Oct. 9, 1990).

FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 599–600 n.63 (1992).

<sup>476</sup> *See* [132 CONG. REC. 19,796–98](#) (Aug. 7, 1986).

<sup>477</sup> *See generally* MEGAN S. LYNCH & ROBERT KEITH, CONG. RSCH. SERV., [R44296, DEEMING RESOLUTIONS: BUDGET ENFORCEMENT IN THE ABSENCE OF A BUDGET RESOLUTION](#) (2021); MEGAN S. LYNCH, CONG. RSCH. SERV., [IF10680, WHEN CONGRESS DOES NOT AGREE ON A BUDGET RESOLUTION: USE OF EXISTING BUDGET ENFORCEMENT AND DEEMING RESOLUTIONS](#) (2017); 18 LEWIS DESCHLER, WILLIAM HOLMES BROWN, CHARLES W. JOHNSON & JOHN V. SULLIVAN, [DESCHLER-BROWN-](#)

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resolutions usually provide a path for the appropriations process to begin before a budget resolution's formal allocation of budget authority to the Appropriations Committees under Congressional Budget Act section 302(a).<sup>478</sup> Congress has used such measures in at least 12 separate fiscal years.<sup>479</sup>

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JOHNSON-SULLIVAN PRECEDENTS 253–64 (2013); CHARLES W. JOHNSON, JOHN V. SULLIVAN & THOMAS J. WICKHAM, JR., *HOUSE PRACTICE: A GUIDE TO THE RULES, PRECEDENTS, AND PROCEDURES OF THE HOUSE* 205 (2017).

<sup>478</sup> Congressional Budget Act of 1974 § 302(a), 2 U.S.C. § 633(a), *infra* p. 185, addresses “Committee Spending Allocations.”

<sup>479</sup> See [A Resolution providing section 302 allocations to the Committee on Appropriations](#), S. Res. 209, 105th Cong. (adopted Apr. 2, 1998); [Resolution providing for consideration of the bill \(H.R. 4059\) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 1999, and for other purposes](#), H. Res. 477, 105th Cong. § 2 (adopted June 19, 1998); [Resolution to amend Senate Resolution 209 in order to provide budget levels in the Senate for purposes of fiscal year 1999 and include the appropriate budgetary levels for fiscal years 2000, 2001, 2002, and 2003](#), S. Res. 312, 105th Cong. (adopted Oct. 21, 1998); [Resolution providing for consideration of the bill \(H.R. 4775\) making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes](#), H. Res. 428, 107th Cong. § 2 (adopted May 22, 2002); [Resolution providing for the consideration of the conference report to accompany the concurrent resolution \(S. Con. Res. 95\) setting forth the congressional budget for the United States Government for fiscal year 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2009, and for other purposes](#), H. Res. 649, 108th Cong. § 2 (adopted May 19, 2004); [Department of Defense Appropriations Act, 2005](#), Pub. L. No. 108-287, § 14007, 118 Stat. 951, 1014 (2004); [Resolution providing for consideration of the bill \(H.R. 5386\) making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2007, and for other purposes](#), H. Res. 818, 109th Cong. (adopted May 18, 2006); [Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006](#), Pub. L. No. 109-234, § 7035, 120 Stat. 418, 489–90 (2006); [Resolution providing for consideration of the Senate amendments to the bill \(H.R. 4899\) 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, 111th Cong. § 4 (adopted July 1, 2010) (adopting [Resolution providing for budget enforcement for fiscal year 2011](#), H. Res. 1493, 111th Cong. (2010)); [Resolution providing for consideration of the bill \(H.R. 2017\) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2012, and for other purposes](#), H. Res. 287, 112th Cong. (adopted June 1, 2011); [Budget Control Act of 2011](#), Pub. L. No. 112-25, § 106, 125 Stat. 240, 247–49; [Resolution providing for consideration of the bill \(H.R. 4089\) to protect and enhance opportunities for recreational hunting, fishing and shooting, and for other purposes](#), H. Res. 614, 112th Cong. § 2 (adopted Apr. 17, 2012); [Resolution providing for consideration of the bill \(H.R. 5326\) making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2013, and for other purposes](#), H. Res. 643, 112th Cong. § 2 (adopted May 8, 2012); [Resolution providing for consideration of the bill \(H.R. 2216\) making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2014, and for other purposes; and providing for consideration of the bill \(H.R. 2217\) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2014, and for other purposes](#), H. Res. 243, 113th Cong. § 3 (adopted June 4, 2013); [Bipartisan Budget Act of 2013](#), Pub. L. No. 113-67, §§ 111, 115, 127 Stat. 1165, 1169–70, 1172–73; [Bipartisan Budget Act of 2018](#), Pub. L. No. 115-123, §§ 30103–30104, 132 Stat. 64, 123–25; [Resolution providing for budget enforcement for fiscal year 2020](#), H. Res. 293, 116th Cong. § 1 (adopted Apr. 9, 2019); [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, §§ 201, 202, 204, 205, 133 Stat. 1049, 1050–54; [Resolution providing for budget allocations, and for other purposes](#), H. Res. 1151, 117th Cong. (adopted June 8, 2022); MEGAN S. LYNCH & ROBERT KEITH, CONG. RSCH. SERV., [R44296, DEEMING RESOLUTIONS: BUDGET ENFORCEMENT IN THE ABSENCE OF A BUDGET RESOLUTION](#) 6–7 (2021).

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Congress adopts these measures as an exercise of its rulemaking power under article I, section 5, clause 2 of the Constitution,<sup>480</sup> as acknowledged in Congressional Budget Act section 904(a),<sup>481</sup> which states that Congress enacted the Congressional Budget Act “with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.”<sup>482</sup> Congress has explicitly invoked this Constitutional authority with regard to several deeming provisions (among other provisions).<sup>483</sup>

Typically, a House of Congress adopts such a deeming measure as a simple resolution,<sup>484</sup> but sometimes Congress enacts such a measure as part

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<sup>480</sup> U.S. CONST. art. I, § 5, cl. 2, *supra* p. 24.

<sup>481</sup> Congressional Budget Act of 1974 § 904(a), 2 U.S.C. § 621 note, *infra* p. 884.

<sup>482</sup> *Id.*

<sup>483</sup> Bipartisan Budget Act of 2013, Pub. L. No. 113-67, § 118, 127 Stat. 1165, 1174; Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 30105, 132 Stat. 64, 126; Bipartisan Budget Act of 2019, Pub. L. No. 116-37, § 209, 133 Stat. 1049, 1057.

<sup>484</sup> See A Resolution providing section 302 allocations to the Committee on Appropriations, S. Res. 209, 105th Cong. (adopted Apr. 2, 1998); Resolution providing for consideration of the bill (H.R. 4059) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 1999, and for other purposes, H. Res. 477, 105th Cong. § 2 (adopted June 19, 1998); Resolution to amend Senate Resolution 209 in order to provide budget levels in the Senate for purposes of fiscal year 1999 and include the appropriate budgetary levels for fiscal years 2000, 2001, 2002, and 2003, S. Res. 312, 105th Cong. (adopted Oct. 21, 1998); Resolution providing for consideration of the bill (H.R. 4775) making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes, H. Res. 428, 107th Cong. § 2 (adopted May 22, 2002); Resolution providing for the consideration of the conference report to accompany the concurrent resolution (S. Con. Res. 95) setting forth the congressional budget for the United States Government for fiscal year 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2009, and for other purposes, H. Res. 649, 108th Cong. § 2 (adopted May 19, 2004); Resolution providing for consideration of the bill (H.R. 5386) making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2007, and for other purposes, H. Res. 818, 109th Cong. (adopted May 18, 2006); Resolution providing for consideration of the Senate amendments to the bill (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, 111th Cong. § 4 (adopted July 1, 2010) (adopting Resolution providing for budget enforcement for fiscal year 2011, H. Res. 1493, 111th Cong. (2010)); Resolution providing for consideration of the bill (H.R. 2017) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2012, and for other purposes, H. Res. 287, 112th Cong. (adopted June 1, 2011); Resolution providing for consideration of the bill (H.R. 4089) to protect and enhance opportunities for recreational hunting, fishing and shooting, and for other purposes, H. Res. 614, 112th Cong. § 2 (adopted Apr. 17, 2012); Resolution providing for consideration of the bill (H.R. 5326) making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2013, and for other purposes, H. Res. 643, 112th Cong. § 2 (adopted May 8, 2012); Resolution providing for consideration of the bill (H.R. 2216) making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2014, and for other purposes; and providing for consideration of the bill (H.R. 2217) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2014, and for other purposes, H. Res. 243, 113th Cong. § 3 (adopted June 4, 2013); Resolution providing for budget enforcement for fiscal year 2020, H. Res. 293, 116th

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of a larger bill.<sup>485</sup> The House of Representatives has sometimes adopted such a deeming resolution without the Senate adopting a parallel measure.<sup>486</sup> Frequently, the House has adopted such a deeming resolution as part of a rule for other legislation.<sup>487</sup>

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Cong. § 1 (adopted Apr. 9, 2019); [Resolution providing for budget allocations, and for other purposes](#), H. Res. 1151, 117th Cong. (adopted June 8, 2022).

<sup>485</sup> See [Department of Defense Appropriations Act, 2005](#), Pub. L. No. 108-287, § 14007, 118 Stat. 951, 1014 (2004); [Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006](#), Pub. L. No. 109-234, § 7035, 120 Stat. 418, 489–90 (2006); [Budget Control Act of 2011](#), Pub. L. No. 112-25, § 106, 125 Stat. 240, 247–49; [Bipartisan Budget Act of 2013](#), Pub. L. No. 113-67, §§ 111, 115, 127 Stat. 1165, 1169–70, 1172–73; [Bipartisan Budget Act of 2018](#), Pub. L. No. 115-123, §§ 30103–30104, 132 Stat. 64, 123–25; [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, §§ 201, 202, 204, 205, 133 Stat. 1049, 1050–54.

<sup>486</sup> See [Resolution providing for consideration of the bill \(H.R. 4775\) making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes](#), H. Res. 428, 107th Cong. § 2 (adopted May 22, 2002); [Resolution providing for consideration of the Senate amendments to the bill \(H.R. 4899\) 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, 111th Cong. § 4 (adopted July 1, 2010) (adopting [Resolution providing for budget enforcement for fiscal year 2011](#), H. Res. 1493, 111th Cong. (2010)); [Resolution providing for consideration of the bill \(H.R. 2377\) to authorize the issuance of extreme risk protection orders; providing for consideration of the bill \(H.R. 7910\) to amend title 18, United States Code, to provide for an increased age limit on the purchase of certain firearms, prevent gun trafficking, modernize the prohibition on untraceable firearms, encourage the safe storage of firearms, and for other purposes; and for other purposes](#), H. Res. 1153, 117th Cong. § 5 (adopted June 8, 2022) (adopting [Resolution providing for budget allocations, and for other purposes](#), H. Res. 1151, 117th Cong. (2022)); MEGAN S. LYNCH & ROBERT KEITH, CONG. RSCH. SERV., [R44296, DEEMING RESOLUTIONS: BUDGET ENFORCEMENT IN THE ABSENCE OF A BUDGET RESOLUTION 6–7](#) (2021).

<sup>487</sup> See [Resolution providing for consideration of the bill \(H.R. 4059\) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 1999, and for other purposes](#), H. Res. 477, 105th Cong. § 2 (adopted June 19, 1998); [Resolution providing for consideration of the bill \(H.R. 4775\) making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes](#), H. Res. 428, 107th Cong. § 2 (adopted May 22, 2002); [Resolution providing for the consideration of the conference report to accompany the concurrent resolution \(S. Con. Res. 95\) setting forth the congressional budget for the United States Government for fiscal year 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2009, and for other purposes](#), H. Res. 649, 108th Cong. § 2 (adopted May 19, 2004); [Resolution providing for consideration of the bill \(H.R. 5386\) making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2007, and for other purposes](#), H. Res. 818, 109th Cong. (adopted May 18, 2006); [Resolution providing for consideration of the Senate amendments to the bill \(H.R. 4899\) 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, 111th Cong. § 4 (adopted July 1, 2010); [Resolution providing for consideration of the bill \(H.R. 2017\) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2012, and for other purposes](#), H. Res. 287, 112th Cong. (adopted June 1, 2011); [Resolution providing for consideration of the bill \(H.R. 4089\) to protect and enhance opportunities for recreational hunting, fishing and shooting, and for other purposes](#), H. Res. 614, 112th Cong. § 2 (adopted Apr. 17, 2012); [Resolution providing for consideration of the bill \(H.R. 5326\) making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2013, and for other purposes](#), H. Res. 643, 112th Cong. § 2 (adopted May 8, 2012); [Resolution providing for consideration of the bill \(H.R. 2216\) making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2014, and for other purposes; and providing for consideration of the bill \(H.R. 2217\) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2014, and for other purposes](#), H. Res. 243, 113th Cong. § 3 (adopted June 4, 2013); [Resolution providing for consideration of the bill \(H.R. 2377\) to authorize the issuance](#)

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The Parliamentarian has confirmed that in the Senate, deeming resolutions are fully debatable and amendable, and thus can be filibustered.<sup>488</sup>

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of extreme risk protection orders; providing for consideration of the bill (H.R. 7910) to amend title 18, United States Code, to provide for an increased age limit on the purchase of certain firearms, prevent gun trafficking, modernize the prohibition on untraceable firearms, encourage the safe storage of firearms, and for other purposes; and for other purposes, H. Res. 1153, 117th Cong. § 5 (adopted June 8, 2022) (adopting [Resolution providing for budget allocations, and for other purposes](#), H. Res. 1151, 117th Cong. (2022)).

<sup>488</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re notes from meeting with Parls (Mar. 5, 2002, 3:19 PM).

CONGRESSIONAL BUDGET DETERMINATION

*Resolved by the House of Representatives (the Senate concurring),*  
That the Congress hereby determines, pursuant to section 301(a) of  
the Congressional Budget Act of 1974, that for the fiscal year begin-  
ning on July 1, 1975—

(1) the appropriate level of total budget outlays is  
\$367,000,000,000;

(2) the appropriate level of total new budget authority is  
\$395,800,000,000;

(3) the amount of the deficit in the budget which is appropri-  
ate in the light of economic conditions and all other relevant  
factors is \$68,820,000,000;

(4) the recommended level of Federal revenues is  
\$298,180,000,000, and the amount by which the aggregate level of  
Federal revenues should be decreased is \$3,400,000,000; and

(5) the appropriate level of the public debt is \$617,600,000,000,  
and the amount by which the temporary statutory limit on such  
debt should accordingly be increased is \$86,600,000,000.

Passed May 14, 1975.

May 14, 1975  
[H. Con. Res. 218]  
  
31 USC 1322.

## The First Budget Resolution

Statutes at Large

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# Budget Resolutions

**H**ow important is a budget? The drafters of the Congressional Budget Act thought that Congress' doing a budget was very important. They thus gave the budget resolution extraordinary procedures. They wanted Congress to get the budget done.

In his statement introducing the Congressional Budgetary Procedures Act of 1973 (an early version of what became the Congressional Budget Act), Senator Sam Ervin envisioned that “The concurrent resolutions . . . shall be highly privileged in each House . . .”<sup>489</sup> Senator Ervin said, “the concurrent resolutions would be considered in each House under rules of limited debate.”<sup>490</sup> And from the first version of the bill Senator Ervin introduced, time for debate of the budget resolution was limited.<sup>491</sup> Because Senators could thus not filibuster the budget, a simple majority of the Senate would pass the budget resolution.

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<sup>489</sup> [119 CONG. REC. 11,860](#) (Apr. 11, 1973).

<sup>490</sup> *Id.* at 11,864.

<sup>491</sup> Congressional Budgetary Procedures Act of 1973, S. 1541, 93rd Cong. § 9(f)(3), [119 CONG. REC. 11,862](#) (Apr. 11, 1973) (“Debate on such concurrent resolution shall not exceed ten hours, which shall be divided equally between those favoring and those opposing the concurrent resolution.”)

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In 2008, the Parliamentarian described how remarkable budget resolutions are:

The fundamental distinguishing procedural principle of the Senate is that, as a general rule, measures and matters are fully debatable. There is no way for a simple majority of the Senate to force an end to debate and to compel action on a particular measure or matter. As you well know, this single fact gives great power to each individual Senator, and enables individual Senators and determined groups of Senators to exert influence in the Senate disproportionate to their numbers. This is the one indispensable aspect of Senate procedure that enables the Senate to protect its political minority as no other legislative body does. A second significant and related aspect of Senate procedure is that, generally, measures are subject to amendment with little substantive restriction. Unlike the House of Representatives, the Senate has no general requirement that amendments be germane to the measure to which they are proposed.

As a limited exception to these general principles, a small group of measures are considered to be both privileged for consideration, meaning that they are proceeded to on a nondebatable motion, and also privileged for disposition, meaning that they are considered under a limitation of debate. Usually such measures are either unamendable, or subject to only germane amendments. Two examples of the former are bills implementing free trade agreements (considered under the Trade Act of 1974, as amended), and joint resolutions disapproving proposed rules issued by federal agencies (considered under the Congressional Review Act). Two common examples of the latter are budget resolutions and budget reconciliation bills (considered under the Congressional Budget Act of 1974, as amended). Note as well that all conference reports are privileged for consideration, but only a small class of conference reports is privileged for disposition, among them budget resolutions and budget reconciliation bills. When any privilege is granted to a measure in the Senate, the content of the measure is closely examined and strictly limited.<sup>492</sup>

Thus, in 2002, the Parliamentarian advised that in general, the Parliamentarian is skeptical of including provisions that would normally require 60 votes in a budget resolution, and is particularly skeptical of including provisions that would affect fast-track procedures like reconciliation in a budget resolution.<sup>493</sup> And in 2009, the Parliamentarian noted that the Parliamentarian's office starts with the concern that the office

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<sup>492</sup> Letter from Alan S. Frumin to John Cornyn (May 1, 2008).

<sup>493</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re notes from meeting with Parls (Mar. 5, 2002, 3:19 PM).



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is skeptical of anything receiving fast track procedures, not going through regular order.<sup>494</sup>

The Congressional Research Service's Bill Heniff Jr. described budget resolutions generally:

The Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended; 2 U.S.C. 601-688) provides for the annual adoption of a concurrent resolution on the budget each year. The congressional budget resolution represents a budget plan for the upcoming fiscal year and at least the following four fiscal years. As a concurrent resolution, it is not presented to the President for his signature and thus does not become law. Instead, when adopted by Congress, the budget resolution serves as an agreement between the House and Senate on a congressional budget plan. As such, it provides the framework for subsequent legislative action on budget matters during each congressional session.

. . . . A second budget resolution for a fiscal year was adopted in each of the first seven years, and a third budget resolution was adopted in one year (for FY1977). Since 1982, Congress has considered only one budget resolution for each fiscal year. Congress initially was required to cover only the upcoming fiscal year in the budget resolution, but over the years Congress has expanded this time frame. Currently, the budget resolution must include at least five fiscal years.<sup>495</sup>

In *Riddick's Senate Procedure*, the Parliamentarian described what budget resolutions may include:

This budget resolution must set forth the appropriate level of total outlays and new budget authority, outlays and budget authority for each major functional category of the Government, total revenues, the deficit or surplus in the budget, the public debt for the next fiscal year and for purposes of Senate enforcement, Social Security outlays and revenues. In addition to these required provisions, the resolution may contain "reconciliation instructions," which are directions to one or more of the committees of the Senate (and their House counterparts) to recommend changes in laws, bills, or resolutions within their jurisdictions to achieve a specified amount of budgetary savings. A budget resolution may also include certain other debt and trust fund displays, set forth pay-as-you-go procedures, and "set forth such other matters, and require such other

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<sup>494</sup> Parliamentarian Meeting: January 19, 2009: 4:45-5:10 p.m.: Task Force Legislation.

<sup>495</sup> BILL HENIFF JR., CONG. RSCH. SERV., [RL30297, CONGRESSIONAL BUDGET RESOLUTIONS: HISTORICAL INFORMATION](#), summary (2015).

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procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act.”<sup>496</sup>

The House and Senate have acted on numerous budget resolutions in various stages—committee consideration, floor consideration, and final adoption.<sup>497</sup> Since 1974, Congress has adopted 43 budget resolutions.<sup>498</sup>

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<sup>496</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK’S SENATE PROCEDURE* 502–03 (1992).

<sup>497</sup> *S. Con. Res. 14, 117th Cong.* (2021) (adopted); *S. Con. Res. 5, 117th Cong.* (2021) (adopted); *S. Con. Res. 12, 116th Cong.* (as reported by S. Comm. on the Budget, Apr. 1, 2019); *H. Con. Res. 128, 115th Cong.* (as reported by H. Comm. on the Budget, July 13, 2018); *H. Con. Res. 71, 115th Cong.* (2017) (adopted); *S. Con. Res. 3, 115th Cong.* (2017) (adopted); *S. Con. Res. 11, 114th Cong.* (2015) (adopted); *H. Con. Res. 96, 113th Cong.* (as passed by House, Apr. 10, 2014); *S. Con. Res. 8, 113th Cong.* (as passed by House, Oct. 16, 2013); *S. Con. Res. 8, 113th Cong.* (as passed by Senate, Mar. 23, 2013); *H. Con. Res. 112, 112th Cong.* (as passed by House, Mar. 29, 2012); *H. Con. Res. 34, 112th Cong.* (as passed by House, Apr. 15, 2011); *S. Con. Res. 60, 111th Cong.* (as reported by S. Comm. on the Budget, Apr. 26, 2010); *S. Con. Res. 13, 111th Cong.*, 123 Stat. 3506 (2009); *S. Con. “, 110th Cong.*, 122 Stat. 5143 (2008); *S. Con. Res. 21, 110th Cong.*, 121 Stat. 2590 (2007); *H. Con. Res. 376, 109th Cong.* (as passed by House, May 18, 2006); *S. Con. Res. 83, 109th Cong.* (as passed by Senate, Mar. 16, 2006); *H. Con. Res. 95, 109th Cong.*, 119 Stat. 3633 (2005); *S. Con. Res. 95, 108th Cong.* (Conf. Rep. as passed by House, May 19, 2004); *S. Con. Res. 95, 108th Cong.* (as passed by Senate, Mar. 12, 2004); *H. Con. Res. 95, 108th Cong.*, 117 Stat. 2910 (2003); *H. Con. Res. 353, 107th Cong.* (as passed by House, Mar. 20, 2002); *H. Con. Res. 83, 107th Cong.*, 115 Stat. 2486 (2001); *H. Con. Res. 290, 106th Cong.*, 114 Stat. 3139 (2000); *H. Con. Res. 68, 106th Cong.*, 113 Stat. 1968 (1999); *H. Con. Res. 284, 105th Cong.* (as passed by Senate, June 15, 1998); *H. Con. Res. 284, 105th Cong.* (as passed by House, June 5, 1998); *H. Con. Res. 84, 105th Cong.*, 111 Stat. 2710 (1997); *H. Con. Res. 178, 104th Cong.*, 110 Stat. 4434 (1996); *H. Con. Res. 67, 104th Cong.*, 109 Stat. 996 (1995); *H. Con. Res. 218, 103d Cong.*, 108 Stat. 5075 (1994); *H. Con. Res. 64, 103d Cong.*, 107 Stat. 2508 (1993); *H. Con. Res. 287, 102d Cong.*, 106 Stat. 5165 (1992); *H. Con. Res. 121, 102d Cong.*, 105 Stat. 2414 (1991); *H. Con. Res. 310, 101st Cong.*, 104 Stat. 5163 (1990); *H. Con. Res. 106, 101st Cong.*, 103 Stat. 2540 (1989); *H. Con. Res. 268, 100th Cong.*, 102 Stat. 4875 (1988); *H. Con. Res. 93, 100th Cong.*, 101 Stat. 1986 (1987); *S. Con. Res. 120, 99th Cong.*, 100 Stat. 4354 (1986); *S. Con. Res. 32, 99th Cong.*, 99 Stat. 1941 (1985); *H. Con. Res. 280, 98th Cong.*, 98 Stat. 3484 (1984); *H. Con. Res. 91, 98th Cong.*, 97 Stat. 1501 (1983); *S. Con. Res. 92, 97th Cong.*, 96 Stat. 2647 (1982); *S. Con. Res. 50, 97th Cong.*, 95 Stat. 1778 (1981); *H. Con. Res. 115, 97th Cong.*, 95 Stat. 1743 (1981); *S. Con. Res. 9, 97th Cong.* (as passed by Senate, Apr. 2, 1981); *H. Con. Res. 448, 96th Cong.*, 94 Stat. 3680 (1980); *H. Con. Res. 307, 96th Cong.*, 94 Stat. 3655 (1980); *S. Con. Res. 53, 96th Cong.*, 93 Stat. 1428 (1979); *H. Con. Res. 107, 96th Cong.*, 93 Stat. 1413 (1979); *H. Con. Res. 683, 95th Cong.*, 92 Stat. 3878 (1978); *S. Con. Res. 80, 95th Cong.*, 92 Stat. 3870 (1978); *H. Con. Res. 341, 95th Cong.*, 91 Stat. 1683 (1977); *S. Con. Res. 19, 95th Cong.*, 91 Stat. 1670 (1977); *S. Con. Res. 10, 95th Cong.*, 91 Stat. 1666 (1977); *S. Con. Res. 139, 94th Cong.*, 90 Stat. 3044 (1976); *S. Con. Res. 109, 94th Cong.*, 90 Stat. 3029 (1976); *H. Con. Res. 466, 94th Cong.*, 89 Stat. 1209 (1975); *H. Con. Res. 218, 94th Cong.*, 89 Stat. 1197 (1975).

<sup>498</sup> *S. Con. Res. 14, 117th Cong.* (2021) (adopted); *S. Con. Res. 5, 117th Cong.* (2021) (adopted); *H. Con. Res. 71, 115th Cong.* (2017) (adopted); *S. Con. Res. 3, 115th Cong.* (2017) (adopted); *S. Con. Res. 11, 114th Cong.* (2015) (adopted); *S. Con. Res. 13, 111th Cong.*, 123 Stat. 3506 (2009); *S. Con. 70, 110th Cong.*, 122 Stat. 5143 (2008); *S. Con. Res. 21, 110th Cong.*, 121 Stat. 2590 (2007); *H. Con. Res. 95, 109th Cong.*, 119 Stat. 3633 (2005); *H. Con. Res. 95, 108th Cong.*, 117 Stat. 2910 (2003); *H. Con. Res. 83, 107th Cong.*, 115 Stat. 2486 (2001); *H. Con. Res. 290, 106th Cong.*, 114 Stat. 3139 (2000); *H. Con. Res. 68, 106th Cong.*, 113 Stat. 1968 (1999); *H. Con. Res. 84, 105th Cong.*, 111 Stat. 2710 (1997); *H. Con. Res. 178, 104th Cong.*, 110 Stat. 4434 (1996); *H. Con. Res. 67, 104th Cong.*, 109 Stat. 996 (1995); *H. Con. Res. 218, 103d Cong.*, 108 Stat. 5075 (1994); *H. Con. Res. 64, 103d Cong.*, 107 Stat. 2508 (1993); *H. Con. Res. 287, 102d Cong.*, 106 Stat. 5165 (1992); *H. Con. Res. 121, 102d Cong.*, 105 Stat. 2414 (1991); *H. Con. Res. 310, 101st Cong.*, 104 Stat. 5163 (1990); *H. Con. Res. 106, 101st Cong.*, 103 Stat. 2540 (1989); *H. Con. Res. 268, 100th Cong.*, 102 Stat. 4875 (1988); *H. Con. Res. 93, 100th Cong.*, 101 Stat. 1986 (1987); *S. Con. Res. 120, 99th Cong.*, 100 Stat. 4354 (1986); *S. Con. Res. 32, 99th Cong.*, 99 Stat. 1941 (1985); *H. Con. Res. 280, 98th Cong.*, 98 Stat. 3484 (1984); *H. Con. Res. 91, 98th Cong.*, 97 Stat. 1501 (1983); *S. Con. Res. 92, 97th Cong.*, 96 Stat. 2647 (1982); *S. Con. Res. 50, 97th Cong.*, 95 Stat. 1778 (1981); *H. Con. Res. 115, 97th Cong.*, 95 Stat. 1743 (1981); *H. Con. Res. 448, 96th Cong.*, 94 Stat.

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Thirteen budget resolutions have passed one Chamber only to die in the other Chamber.<sup>499</sup> On several occasions, the Senate has voted down motions to proceed to budget resolutions (usually resolutions placed on the Calendar that bypassed the Budget Committee).<sup>500</sup> One budget resolution conference report passed the House but not the Senate.<sup>501</sup> The House and Senate Budget Committees have each reported budget resolutions that went no further.<sup>502</sup> In the Senate, the Budget Committee's reporting blocks other resolutions from being discharged and placed on the Calendar.<sup>503</sup>

Agreeing to a budget resolution is the first step in unlocking the powerful reconciliation process.<sup>504</sup> Creating a reconciliation bill is increasingly Congress' main motivation in agreeing to a budget resolution.

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3680 (1980); [H. Con. Res. 307, 96th Cong.](#), 94 Stat. 3655 (1980); [S. Con. Res. 53, 96th Cong.](#), 93 Stat. 1428 (1979); [H. Con. Res. 107, 96th Cong.](#), 93 Stat. 1413 (1979); [H. Con. Res. 683, 95th Cong.](#), 92 Stat. 3878 (1978); [S. Con. Res. 80, 95th Cong.](#), 92 Stat. 3870 (1978); [H. Con. Res. 341, 95th Cong.](#), 91 Stat. 1683 (1977); [S. Con. Res. 19, 95th Cong.](#), 91 Stat. 1670 (1977); [S. Con. Res. 10, 95th Cong.](#), 91 Stat. 1666 (1977); [S. Con. Res. 139, 94th Cong.](#), 90 Stat. 3044 (1976); [S. Con. Res. 109, 94th Cong.](#), 90 Stat. 3029 (1976); [H. Con. Res. 466, 94th Cong.](#), 89 Stat. 1209 (1975); [H. Con. Res. 218, 94th Cong.](#), 89 Stat. 1197 (1975).

<sup>499</sup> [H. Con. Res. 96, 113th Cong.](#) (as passed by House, Apr. 10, 2014); [S. Con. Res. 8, 113th Cong.](#) (as passed by House, Oct. 16, 2013); [S. Con. Res. 8, 113th Cong.](#) (as passed by Senate, Mar. 23, 2013); [H. Con. Res. 112, 112th Cong.](#) (as passed by House, Mar. 29, 2012); [H. Con. Res. 34, 112th Cong.](#) (as passed by House, Apr. 15, 2011); [H. Con. Res. 376, 109th Cong.](#) (as passed by House, May 18, 2006); [S. Con. Res. 83, 109th Cong.](#) (as passed by Senate, Mar. 16, 2006); [S. Con. Res. 95, 108th Cong.](#) (Conf. Rep. as passed by House, May 19, 2004); [S. Con. Res. 95, 108th Cong.](#) (as passed by Senate, Mar. 12, 2004); [H. Con. Res. 353, 107th Cong.](#) (as passed by House, Mar. 20, 2002); [H. Con. Res. 284, 105th Cong.](#) (as passed by Senate, June 15, 1998); [H. Con. Res. 284, 105th Cong.](#) (as passed by House, June 5, 1998); [S. Con. Res. 9, 97th Cong.](#) (as passed by Senate, Apr. 2, 1981).

<sup>500</sup> [168 CONG. REC. S3527](#) (daily ed. July 20, 2022); [168 CONG. REC. S2960](#) (daily ed. June 15, 2022); [158 CONG. REC. S3220–22](#) (daily ed. May 16, 2012); [157 CONG. REC. S3332–33](#) (daily ed. May 25, 2011).

<sup>501</sup> [S. Con. Res. 95, 108th Cong.](#) (Conf. Rep. as passed by House, May 19, 2004).

<sup>502</sup> [S. Con. Res. 12, 116th Cong.](#) (as reported by S. Comm. on the Budget, Apr. 1, 2019); [H. Con. Res. 128, 115th Cong.](#) (as reported by H. Comm. on the Budget, July 13, 2018); [S. Con. Res. 60, 111th Cong.](#) (as reported by S. Comm. on the Budget, Apr. 26, 2010).

<sup>503</sup> See *supra* p. 117.

<sup>504</sup> See *infra* p. 409

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## ANNUAL ADOPTION OF CONCURRENT RESOLUTION ON THE BUDGET<sup>505</sup>

- 301(a)            SEC. 301.<sup>506</sup> (a) CONTENT OF CONCURRENT RESOLUTION ON THE BUDGET.<sup>507</sup> — On or before April 15 of each year,<sup>508</sup> the Congress shall complete action on a concurrent resolution on the budget<sup>509</sup> for the fiscal year beginning on October 1 of such year. The concurrent resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of such year and for at least each of the 4 ensuing fiscal years for the following —
- 301(a)(1)            (1) totals of new budget authority<sup>510</sup> and outlays;<sup>511</sup>
- 301(a)(2)            (2) total Federal revenues<sup>512</sup> and the amount, if any, by which the aggregate level of Federal revenues<sup>513</sup> should be increased or decreased by bills and resolutions to be reported by the appropriate committees;
- 301(a)(3)            (3) the surplus<sup>514</sup> or deficit<sup>515</sup> in the budget;

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<sup>505</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>506</sup> Congressional Budget Act of 1974 § 301 is codified as amended at 2 U.S.C. § 632.

<sup>507</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>508</sup> The Parliamentarian has advised that failing to meet this deadline for completing a budget resolution does not vitiate Budget Act points of order. *See supra* p. 121.

<sup>509</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>510</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>511</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>512</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>513</sup> *Id.*

<sup>514</sup> Congressional Budget Act of 1974 § 3(7), 2 U.S.C. § 622(7), *supra* p. 58, defines “surplus.”

<sup>515</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

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- 301(a)(4) (4) **new budget authority**<sup>516</sup> and **outlays**<sup>517</sup> for each major functional category, based on allocations of the total levels set forth pursuant to **paragraph (1)**;<sup>518</sup>
- 301(a)(5) (5) the public debt;<sup>519</sup>
- 301(a)(6) (6) for purposes of Senate enforcement under **this title**,<sup>520</sup> **outlays**<sup>521</sup> of the old-age, survivors, and disability insurance program established under **title II of the Social Security Act**<sup>522</sup> for the fiscal year of the resolution and for each of the 4 succeeding fiscal years; and
- 301(a)(7) (7) for purposes of Senate enforcement under **this title**,<sup>523</sup> **revenues**<sup>524</sup> of the old-age, survivors, and disability insurance program established under **title II of the Social Security Act**<sup>525</sup> (and the **related provisions of the Internal Revenue Code of 1986**<sup>526</sup>) for the fiscal year of the resolution and for each of the 4 succeeding fiscal years.<sup>527</sup>
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<sup>516</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>517</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>518</sup> Congressional Budget Act of 1974 § 301(a)(1), 2 U.S.C. § 632(a)(1), *supra* p. 132.

<sup>519</sup> For a discussion of the debt limit, see *infra* p. 137.

<sup>520</sup> Congressional Budget Act of 1974 tit. III, §§ 300–315, 2 U.S.C. §§ 631–645a, pp. 113–782, addresses “Congressional Budget Process.”

<sup>521</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>522</sup> Social Security Act tit. II, 42 U.S.C. §§ 401–434, addresses “Federal Old-Age, Survivors, and Disability Insurance Benefits.”

<sup>523</sup> Congressional Budget Act of 1974 tit. III, §§ 300–315, 2 U.S.C. §§ 631–645a, pp. 113–782, addresses “Congressional Budget Process.”

<sup>524</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>525</sup> Social Security Act tit. II, 42 U.S.C. §§ 401–434, addresses “Federal Old-Age, Survivors, and Disability Insurance Benefits.”

<sup>526</sup> Internal Revenue Code of 1986 §§ 3101(a), (c); 3102; 3111(a), (c)–(f); 3112; 3121–3134; 1401–1403; 3501–3512; 26 U.S.C. §§ 3101(a), (c); 3102; 3111(a), (c)–(f); 3112; 3121–3134; 1401–1403; 3501–3512; relate to the Old-Age, Survivors, and Disability Insurance Program.

<sup>527</sup> The budget resolution for Fiscal Year 1992 addressed Accounting Treatment of Social Security Revenues. *H. Con. Res. 121, 102d Cong.* § 8, 105 Stat. 2414, 2429 (1991). The budget resolution for fiscal year 1993 created a Social Security Fire Wall Point of Order in the Senate. *H. Con. Res. 287, 102d Cong.* § 12, 106 Stat. 5165, 5186 (1992). The budget resolution for fiscal year 1994 repeated that point of order. *H. Con. Res. 64, 103d Cong.* § 10, 107 Stat. 2508, 2532–33 (1993).

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The concurrent resolution shall not include<sup>528</sup> the outlays<sup>529</sup> and revenue<sup>530</sup> totals of the old-age, survivors, and disability insurance program established under title II of the Social Security Act<sup>531</sup> or the related provisions of the Internal Revenue Code of 1986<sup>532</sup> in the surplus<sup>533</sup> or deficit<sup>534</sup> totals required by this subsection<sup>535</sup> or in any other surplus<sup>536</sup> or deficit<sup>537</sup> totals required by this title.<sup>538</sup>

301(b) (b) ADDITIONAL MATTERS IN CONCURRENT RESOLUTION. – The concurrent resolution on the budget<sup>539</sup> may –

301(b)(1) (1) set forth, if required by subsection (f),<sup>540</sup> the calendar year in which, in the opinion of the Congress, the goals for reducing unemployment set forth in section 4(b) of the Employment Act of 1946<sup>541</sup> should be achieved;

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<sup>528</sup> Where a budget resolution included Social Security amounts in on-budget deficit figures in violation of Congressional Budget Act of 1974 § 301(a), the Parliamentarian’s office advised that a Senator arguably could raise a point of order against the motion to proceed to the resolution, because the resolution included something that it “shall not include.” E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re Paul budget (May 24, 2011, 2:40 PM) (reporting a conversation with Off. of S. Parliamentarian).

<sup>529</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>530</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>531</sup> Social Security Act tit. II, 42 U.S.C. §§ 401–434, addresses “Federal Old-Age, Survivors, and Disability Insurance Benefits.”

<sup>532</sup> Internal Revenue Code of 1986 §§ 3101(a), (c); 3102; 3111(a), (c)–(f); 3112; 3121–3134, 1401–1403, 3501–3512, 26 U.S.C. §§ 3101(a), (c); 3102; 3111(a), (c)–(f); 3112; 3121–3134, 1401–1403, 3501–3512, relate to the the Old-Age, Survivors, and Disability Insurance Program.

<sup>533</sup> Congressional Budget Act of 1974 § 3(7), 2 U.S.C. § 622(7), *supra* p. 58, defines “surplus.”

<sup>534</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>535</sup> Congressional Budget Act of 1974 § 301(a), 2 U.S.C. § 632(a), *supra* p. 132, addresses “Content of Concurrent Resolution on the Budget.”

<sup>536</sup> Congressional Budget Act of 1974 § 3(7), 2 U.S.C. § 622(7), *supra* p. 58, defines “surplus.”

<sup>537</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>538</sup> Congressional Budget Act of 1974 tit. III, §§ 300–315, 2 U.S.C. §§ 631–645a, pp. 113–782, addresses “Congressional Budget Process.”

<sup>539</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>540</sup> Congressional Budget Act of 1974 § 301(f), 2 U.S.C. § 632(f), *infra* p. 170, addresses “Achievement of Goals for Reducing Unemployment.”

<sup>541</sup> Employment Act of 1946 § 4(b), 15 U.S.C. § 1022a(b), *infra* p. 136, addresses “Interim Numerical Goals for Initial Economic Reports.”



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- 301(b)(2) (2) include reconciliation directives described in [section 310](#);<sup>542</sup>
- 301(b)(3) (3) require a procedure under which all or certain bills or resolutions providing [new budget authority](#)<sup>543</sup> or new [entitlement authority](#)<sup>544</sup> for such fiscal year shall not be enrolled until the Congress has completed action on any reconciliation bill or [reconciliation resolution](#)<sup>545</sup> or both required by such concurrent resolution to be reported in accordance with [section 310\(b\)](#);<sup>546</sup>
- 301(b)(4) (4) set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out [the purposes of this Act](#);<sup>547</sup>
- 301(b)(5) (5) include a heading entitled “Debt Increase as Measure of [Deficit](#)”<sup>548</sup> in which the concurrent resolution shall set forth the amounts by which the debt subject to limit (in [section 3101 of title 31](#)<sup>549</sup>) has increased or would increase in each of the relevant fiscal years;
- 301(b)(6) (6) include a heading entitled “Display of Federal Retirement Trust Fund Balances” in which the concurrent resolution shall set forth the balances of the Federal retirement trust funds;
- 301(b)(7) (7) set forth procedures in the Senate whereby committee allocations, aggregates, and other levels can
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<sup>542</sup> [Congressional Budget Act of 1974 § 310](#), 2 U.S.C. § 641, *infra* p. 514, addresses “Reconciliation.”

<sup>543</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>544</sup> [Congressional Budget Act of 1974 § 3\(9\)](#), 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.”

<sup>545</sup> [Congressional Budget Act of 1974 § 310\(b\)](#), 2 U.S.C. § 641(b), *infra* p. 529, defines “reconciliation resolution.”

<sup>546</sup> [Congressional Budget Act of 1974 § 310\(b\)](#), 2 U.S.C. § 641(b), *infra* p. 528, addresses “Legislative procedure” with regard to reconciliation.

<sup>547</sup> [Congressional Budget Act of 1974 § 2](#), 2 U.S.C. § 621, *supra* p. 49, sets forth the purposes of the Congressional Budget and Impoundment Control Act of 1974.

<sup>548</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>549</sup> [31 U.S.C. § 3101](#), *infra* p. 137, addresses the “Public Debt Limit.”

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be revised for legislation if that legislation would not increase the **deficit**,<sup>550</sup> or would not increase the **deficit**<sup>551</sup> when taken with other legislation enacted after the adoption of the resolution, for the first fiscal year or the total period of fiscal years covered by the resolution;

301(b)(8)           **(8) set forth procedures to effectuate pay-as-you-go in the House of Representatives; and**

301(b)(9)           **(9) set forth **direct loan obligation**<sup>552</sup> and primary **loan guarantee commitment**<sup>553</sup> levels.**

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### Economic Goals

*Section 4(b) of the Employment Act of 1946* provides:

**(b) Interim numerical goals for initial Economic Reports**

The medium-term goals in the first three Economic Reports and, subject to the provisions of subsection (d), in each Economic Report thereafter shall include (as part of the five-year goals in each Economic Report) interim numerical goals for —

(1) reducing the rate of unemployment, as set forth pursuant to section 1022(d) of this title, to not more than 3 per centum among individuals aged twenty and over and 4 per centum among individuals aged sixteen and over within a period not extending beyond the fifth calendar year after the first such Economic Report;

(2) reducing the rate of inflation, as set forth pursuant to section 1022(e) of this title, to not more than 3 per centum within a period not extending beyond the fifth calendar year after the first such Economic Report: Provided, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals

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<sup>550</sup> *Congressional Budget Act of 1974 § 3(6)*, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>551</sup> *Id.*

<sup>552</sup> *Federal Credit Reform Act of 1990 § 502(2)*, 2 U.S.C. § 661a(2), *infra* p. 850, defines “direct loan obligation.”

<sup>553</sup> *Federal Credit Reform Act of 1990 § 502(4)*, 2 U.S.C. § 661a(4), *infra* p. 851, defines “loan guarantee commitment.”



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and timetables specified in clause (1) of this subsection for the reduction of unemployment; and

(3) reducing the share of the Nation's gross national product accounted for by Federal outlays to 21 per centum or less by 1981, and to 20 per centum or less by 1983 and thereafter, or the lowest level consistent with national needs and priorities: Provided, That policies and programs for achieving the goal specified in this clause shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

For purposes of this subsection, the first Economic Report shall be the Report issued in the first calendar year after October 27, 1978.<sup>554</sup>

### **The Elastic Clause**

*Such other matters, and require such other procedures*—The Parliamentarian has acknowledged that points of order and reserve funds created by budget resolutions survive from one Congress to another.<sup>555</sup> On another occasion, the Parliamentarian advised that in the absence of a budget resolution for a fiscal year, reserve funds from the previous year's budget resolution are still available, unless the reserve fund contains some explicit language to the contrary.<sup>556</sup>

The Parliamentarian advised that a budget resolution may permissibly change an emergency designation point of order or a paygo point of order, as those were both done in previous budget resolutions. Similarly, if the Budget Committee wanted to strike an advance appropriation point of order in a previous budget resolution, that would be permissible too, as it was in a resolution.<sup>557</sup>

### **The Debt Limit**

*Section 3101 of title 31*—Section 3101 provides:

#### **§ 3101. Public debt limit**

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<sup>554</sup> [Employment Act of 1946 § 4\(b\)](#), 15 U.S.C. § 1022a(b).

<sup>555</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on February 10, 2016 .

<sup>556</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re notes from meeting with Parls (Mar. 5, 2002, 3:19 PM).

<sup>557</sup> *Id.*

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(a) In this section, the current redemption value of an obligation issued on a discount basis and redeemable before maturity at the option of its holder is deemed to be the face amount of the obligation.

(b) The face amount of obligations issued under this chapter and the face amount of obligations whose principal and interest are guaranteed by the United States Government (except guaranteed obligations held by the Secretary of the Treasury) may not be more than \$14,294,000,000,000, outstanding at one time, subject to changes periodically made in that amount as provided by law through the congressional budget process described in Rule XLIX of the Rules of the House of Representatives or as provided by section 3101A or otherwise.

(c) For purposes of this section, the face amount, for any month, of any obligation issued on a discount basis that is not redeemable before maturity at the option of the holder of the obligation is an amount equal to the sum of —

(1) the original issue price of the obligation, plus

(2) the portion of the discount on the obligation attributable to periods before the beginning of such month (as determined under the principles of section 1272(a) of the Internal Revenue Code of 1986 without regard to any exceptions contained in paragraph (2) of such section).<sup>558</sup>

The Second Liberty Bond Act of 1917 created the statutory limit on the public debt. That law provided (in relevant part):

[T]he Secretary of the Treasury, with the approval of the President is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law, not exceeding in the aggregate \$7,538,945,460, and to issue therefor bonds of the United States . . . .<sup>559</sup>

Since then, Congress has repeatedly enacted legislation to change the statutory limit on the public debt.<sup>560</sup>

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<sup>558</sup> [31 U.S.C. § 3101](#).

<sup>559</sup> [Second Liberty Bond Act of 1917](#), Pub. L. No. 65-43, 40 Stat. 288 (1917) (current version at [31 U.S.C. § 3101](#)); *see generally* D. ANDREW AUSTIN, CONG. RSCH. SERV., [RL31967, THE DEBT LIMIT: HISTORY AND RECENT INCREASES](#) (2015).

<sup>560</sup> [An Act to amend the Second Liberty Bond Act](#), Pub. L. No. 74-3, § 5, 49 Stat. 20, 21 (1935); [An Act to amend the Second Liberty Bond Act, as amended](#), Pub. L. No. 75-552, § 2, 52 Stat. 447 (1938); [An Act to amend the Second Liberty Bond Act, as amended](#), Pub. L. No. 76-201, 53 Stat. 1071 (1939); [Revenue Act of 1940](#), Pub. L. No. 76-656, § 302, 54 Stat. 516, 526 (1940); [Public Debt Act of 1941](#), Pub. L. No. 77-7, § 2(a), 55

Stat. 7 (1941); [Public Debt Act of 1942](#), Pub. L. No. 77-510, § 2, 56 Stat. 189 (1942); [Public Debt Act of 1943](#), Pub. L. No. 78-34, § 2, 57 Stat. 63 (1943); [Public Debt Act of 1944](#), Pub. L. No. 78-333, § 2, 58 Stat. 272 (1944); [Public Debt Act of 1945](#), Pub. L. No. 79-28, § 2, 59 Stat. 47 (1945); [Public Debt Act of 1946](#), Pub. L. No. 79-455, § 1, 60 Stat. 316 (1946); [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 84-678, 70 Stat. 519 (1956); [An Act to increase the public debt limit](#), Pub. L. No. 85-912, 72 Stat. 1758 (1958); [An Act to increase the amount of obligations, issued under the Second Liberty Bond Act, which may be outstanding at any one time](#), Pub. L. No. 86-74, §§ 1-2, 73 Stat. 156 (1959); [An Act to increase the public debt limit set forth in section 21 of the Second Liberty Bond Act, and for other purposes](#), Pub. L. No. 90-39, § 1, 81 Stat. 99 (1967); [An Act to increase the public debt limit set forth in section 21 of the Second Liberty Bond Act](#), Pub. L. No. 91-8, §§ 1-2, 83 Stat. 7 (1969); [An Act to increase the public debt limit set forth in section 21 of the Second Liberty Bond Act](#), Pub. L. No. 91-301, §§ 1-2, 84 Stat. 368 (1970); [An Act to increase the public debt limit set forth in section 21 of the Second Liberty Bond Act, and for other purposes](#), Pub. L. No. 92-5, § 1, 85 Stat. 5 (1971); [An Act to provide for a temporary increase in the public debt limit, and to amend the Rules of the House of Representatives to make possible the establishment of the public debt limit in the future as a part of the congressional budget process](#), Pub. L. No. 96-78, § 101(a), 93 Stat. 591 (1979) (the Act that created the Gephardt Rule); [Joint Resolution to provide for a temporary increase in the public debt limit](#), Pub. L. No. 97-49, 95 Stat. 956 (1981); [Joint Resolution to provide for a temporary increase in the public debt limit](#), Pub. L. No. 97-204, 96 Stat. 130 (1982); [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, "Money and Finance"](#), Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982); [An Act to increase the permanent public debt limit, and for other purposes](#), Pub. L. No. 98-34, § 1(a), 97 Stat. 196 (1983); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 98-161, 97 Stat. 1012 (1983); [An Act to increase the statutory limit on the public debt](#), Pub. L. No. 98-342, § 1(a), 98 Stat. 313 (1984); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 98-475, 98 Stat. 2206 (1984); [An Act to temporarily increase the limit on the public debt and to restore the investments of the Social Security Trust Funds and other trust funds](#), Pub. L. No. 99-155, § 1, 99 Stat. 814 (1985); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 99-177, § 1, 99 Stat. 1037 (1985) (the same joint resolution as the Balanced Budget and Emergency Deficit Control Act of 1985, Gramm-Rudman-Hollings); [An Act to increase the statutory limit on the public debt](#), Pub. L. No. 99-384, 100 Stat. 818 (1986); [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, § 8201, 100 Stat. 1874, 1968; [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 100-40, § 1(a), 101 Stat. 308 (1987); [An Act to provide for a temporary extension of the public debt limit](#), Pub. L. No. 100-80, § 1(a), 101 Stat. 542 (1987); [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 100-84, 101 Stat. 550 (1987); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 100-119, § 1, 101 Stat. 754 (1987) (the same joint resolution as the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987); [An Act to increase the statutory limit on the public debt, and for other purposes](#), Pub. L. No. 101-72, § 1, 103 Stat. 182 (1989); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 101-140, § 1, 103 Stat. 830 (1989); [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 101-350, § 1, 104 Stat. 403 (1990); [An Act to extend the temporary increase in the public debt limit](#), Pub. L. No. 101-405, § 1, 104 Stat. 878 (1990); [Joint Resolution making further continuing appropriations for the fiscal year 1991, and for other purposes](#), Pub. L. No. 101-412, § 114, 104 Stat. 894, 897 (1990); [Joint Resolution making further continuing appropriations for the fiscal year 1991, and for other purposes](#), Pub. L. No. 101-444, § 114, 104 Stat. 1030, 1033 (1990); [Joint Resolution making further continuing appropriations for the fiscal year 1991, and for other purposes](#), Pub. L. No. 101-461, § 114, 104 Stat. 1075, 1078 (1990); [Joint Resolution making further continuing appropriations for the fiscal year 1991, and for other purposes](#), Pub. L. No. 101-467, § 106, 104 Stat. 1086, 1087 (1990); [Omnibus Budget Reconciliation Act of 1990](#), Pub. L. No. 101-508, § 11901, 104 Stat. 1388, 1388-560; [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 103-12, 107 Stat. 42 (1993); [Omnibus Budget Reconciliation Act of 1993](#), Pub. L. No. 103-66, § 13411, 107 Stat. 312, 565; [An Act to guarantee the timely payment of Social Security benefits in March 1996](#), Pub. L. No. 104-103, 110 Stat. 55 (1996); [An Act to guarantee the continuing full investment of Social Security and other Federal funds in obligations of the United States](#), Pub. L. No. 104-115, § 1(d), 110 Stat. 825 (1996); [Contract with America Advancement Act of 1996](#), Pub. L. No. 104-121, § 301, 110 Stat. 847, 875; [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 5701, 111 Stat. 251, 648; [An Act to amend title 31 of the United States Code to increase the public debt limit](#), Pub. L. No. 107-199, § 1, 116 Stat. 734 (2002); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 108-24, 117 Stat. 710 (2003); [An Act to amend title 31 of the United States Code to increase the public debt limit](#), Pub. L. No. 108-415, § 1, 118 Stat. 2337 (2004); [Joint Resolution increasing the statutory](#)

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In 1935, Congress amended the Second Liberty Bond Act to create a new section for the debt limit:

The Second Liberty Bond Act, as amended, is further amended by adding a new section, as follows:

“SEC. 21. The face amount of certificates of indebtedness and Treasury bills authorized by section 5 of this Act, certificates of indebtedness authorized by section 6 of the First Liberty Bond Act, and notes authorized by section 18 of this Act shall not exceed in the aggregate \$20,000,000,000 outstanding at any one time.”<sup>561</sup>

From 1938 until the recodification of title 31 of the United States Code in 1982,<sup>562</sup> Congress changed the debt limit by amending this section of the

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limit on the public debt, Pub. L. No. 109-182, 120 Stat. 289 (2006); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 110-91, 121 Stat. 988 (2007); [Housing and Economic Recovery Act of 2008](#), Pub. L. No. 110-289, § 3083, 122 Stat. 2654, 2908 (2008); [Emergency Economic Stabilization Act of 2008](#), Pub. L. No. 110-343, § 122, 122 Stat. 3765, 3790 (2008); [American Recovery and Reinvestment Act of 2009](#), Pub. L. No. 111-5, § 1604, 123 Stat. 115, 366; [An Act to permit continued financing of Government operations](#), Pub. L. No. 111-123, § 1, 123 Stat. 3483 (2009); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, 124 Stat. 8 (2010) (the same joint resolution as the Statutory Pay-As-You-Go Act of 2010); [Budget Control Act of 2011](#), Pub. L. No. 112-25, § 301, 125 Stat. 240, 251–55 (adding 31 U.S.C. § 3101A, Presidential modification of the debt ceiling (the McConnell Rule)); [No Budget, No Pay Act of 2013](#), Pub. L. No. 113-3, § 2, 127 Stat. 51; [Default Prevention Act of 2013](#), Pub. L. No. 113-46, § 1002, 127 Stat. 558, 566–70; [Temporary Debt Limit Extension Act](#), Pub. L. No. 113-83, §§ 2–3, 128 Stat. 1011–12 (2014); [Bipartisan Budget Act of 2015](#), Pub. L. No. 114-74, §§ 901–902, 129 Stat. 584, 620–21; [Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017](#), Pub. L. No. 115-56, § 101, 131 Stat. 1129, 1139 (2017); [Bipartisan Budget Act of 2018](#), Pub. L. No. 115-123, § 30301, 132 Stat. 64, 132–33; [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, § 301, 133 Stat. 1049, 1057–58; [An Act to provide for the publication by the Secretary of Health and Human Services of physical activity recommendations for Americans](#), Pub. L. No. 117-50, § 1 (2021).

<sup>561</sup> [An Act to amend the Second Liberty Bond Act](#), Pub. L. No. 74-3, § 5, 49 Stat. 20, 21 (1935).

<sup>562</sup> [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance”](#), Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982) (codifying 31 U.S.C. § 3101(b) to read “The face amount of obligations issued under this chapter and the face amount of obligations whose principal and interest are I guaranteed by the United States Government (except guaranteed obligations held by the Secretary of the Treasury) may not be more than \$400,000,000,000 outstanding at one time, subject to changes periodically made in that amount as provided by law through the congressional budget process described in Rule XLIX of the Rules of the House of Representatives or otherwise.”).

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Second Liberty Bond Act.<sup>563</sup> After the 1982 recodification, Congress changed the debt limit by reference to 31 U.S.C. § 3101(b).<sup>564</sup>

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<sup>563</sup> [An Act to amend the Second Liberty Bond Act, as amended](#), Pub. L. No. 75-552, § 2, 52 Stat. 447 (1938) (“Sec. 2. Section 21 of the Second Liberty Bond Act, as amended (U.S.C., title 31, sec. 757b), is amended to read as follows: ‘Sec. 21. The face amount of bonds, certificates of indebtedness, Treasury bills, and notes issued under the authority of this Act, and certificates of indebtedness issued under the authority of section 6 of the First Liberty Bond Act, shall not exceed in the aggregate \$45,000,000,000 outstanding at any one time: Provided, That the face amount of bonds issued under the authority of this Act shall not exceed in the aggregate \$30,000,000,000 outstanding at any one time.’”); [An Act to amend the Second Liberty Bond Act, as amended](#), Pub. L. No. 76-201, 53 Stat. 1071 (1939) (“section 21 of the Second Liberty Bond Act (49 Stat. 21, as amended; U.S.C., Supp. IV, title 31, sec. 757b), is amended by striking out the following proviso: ‘Provided, That the face amount of bonds issued under the authority of this Act shall not exceed in the aggregate \$30,000,000,000 outstanding at any one time.’”); [Revenue Act of 1940](#), Pub. L. No. 76-656, § 302, 54 Stat. 516, 526 (1940) (“Section 21 of the Second Liberty Bond Act, as amended, is hereby further amended by inserting ‘(a)’ after ‘21.’ and by adding at the end of such section a new paragraph as follows: ‘(b) In addition to the amount authorized by the preceding paragraph of this section, any obligations authorized by sections 5 and 18 of this Act, as amended, not exceed in the aggregate \$4,000,000,000 outstanding at any one time, less any retirements made from the special fund made available under section 301 of the Revenue Act of 1940, may be issued under said sections to provide the Treasury with funds to meet any expenditures made, after June 30, 1940, for the national defense, or to reimburse the general fund of the Treasury therefor. Any such obligations so issued shall be designated “National Defense Series.”’”); [Public Debt Act of 1941](#), Pub. L. No. 77-7, § 2(a), 55 Stat. 7 (1941) (“Section 21 of the Second Liberty Bond Act, as amended, is further amended to read as follows: ‘Sec. 21. The face amount of obligations issued under the authority of this Act shall not exceed in the aggregate \$65,000,000,000 outstanding at any one time.’”); [Public Debt Act of 1942](#), Pub. L. No. 77-510, § 2, 56 Stat. 189 (1942) (“Section 21 of the Second Liberty Bond Act, as amended, is further amended to read as follows: ‘Sec. 21. The face amount of obligations issued under the authority of this Act shall not exceed in the aggregate \$125,000,000,000 outstanding at any one time.’”); [Public Debt Act of 1943](#), Pub. L. No. 78-34, § 2, 57 Stat. 63 (1943) (“Section 21 of the Second Liberty Bond Act, as amended, is further amended to read as follows: ‘Sec. 21. The face amount of obligations issued under the authority of this Act shall not exceed in the aggregate \$210,000,000,000 outstanding at any one time.’”); [Public Debt Act of 1944](#), Pub. L. No. 78-333, § 2, 58 Stat. 272 (1944) (“section 21 of the Second Liberty Bond Act, as amended, is further amended to read as follows: ‘Sec. 21. The face amount of obligations issued under the authority of this Act shall not exceed in the aggregate \$260,000,000,000 outstanding at any one time.’”); [Public Debt Act of 1945](#), Pub. L. No. 79-28, § 2, 59 Stat. 47 (1945) (“Section 21 of the Second Liberty Bond Act, as amended, is further amended to read as follows: ‘Sec. 21. The face amount of obligations issued under authority of this Act, and the face amount of obligations guaranteed as to principal and interest by the United States (except such guaranteed obligations as may be held by the Secretary of the Treasury), shall not exceed in the aggregate \$300,000,000,000 outstanding at any one time.’”); [Public Debt Act of 1946](#), Pub. L. No. 79-455, § 1, 60 Stat. 316 (1946) (“section 21 of the Second Liberty Bond Act, as amended, is hereby amended to read as follows: ‘Sec. 21. The face amount of obligations issued under authority of this Act, and the face amount of obligations guaranteed as to principal and interest by the United States (except such guaranteed obligations as may be held by the Secretary of the Treasury), shall not exceed in the aggregate \$275,000,000,000 outstanding at any one time. . . .’”); [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 84-678, 70 Stat. 519 (1956) (“during the period beginning on July 1, 1956, and ending on June 30, 1957, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act, as amended, shall be temporarily increased by \$3,000,000,000.”); [An Act to increase the public debt limit](#), Pub. L. No. 85-912, 72 Stat. 1758 (1958) (“section 21 of the Second Liberty Bond Act, as amended (31 U.S.C., sec. 757b), is amended to read as follows: ‘Sec. 21. The face amount of obligations issued under authority of this Act, and the face amount of obligations guaranteed as to principal and interest by the United States (except such guaranteed obligations as may be held by the Secretary of the Treasury), shall not exceed in the aggregate \$283,000,000,000 outstanding at any one time. The current redemption value of any obligation issued on a discount basis which is redeemable prior to maturity at the option of the holder thereof shall be considered, for the purposes of this section, to be the face amount of such obligation.’”); [An Act to increase the amount of obligations, issued under the Second Liberty Bond Act, which may be outstanding at any one time](#), Pub. L. No. 86-74, §§ 1–2, 73 Stat. 156 (1959) (“the first sentence of section 21 of the Second Liberty Bond Act, as



amended (31 U.S.C., sec. 757b), is amended to read as follows: ‘The face amount of obligations issued under authority of this Act, and the face amount of obligations guaranteed as to principal and interest by the United States (except such guaranteed obligations as may be held by the Secretary of the Treasury), shall not exceed in the aggregate \$285,000,000,000 outstanding at any one time.’ SEC. 2. During the period beginning on July 1, 1959, and ending on June 30, 1960, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act, as amended, shall be temporarily increased by \$10,000,000,000.”); [An Act to increase the public debt limit set forth in section 21 of the Second Liberty Bond Act, and for other purposes](#), Pub. L. No. 90-39, § 1, 81 Stat. 99 (1967) (“the first sentence of section 21 of the Second Liberty Bond Act (31 U.S.C. 757b) is amended by striking out ‘\$285,000,000,000’ and inserting in lieu thereof ‘\$358,000,000,000’.”); [An Act to increase the public debt limit set forth in section 21 of the Second Liberty Bond Act](#), Pub. L. No. 91-8, §§ 1–2, 83 Stat. 7 (1969) (“the first sentence of section 21 of the Second Liberty Bond Act (31 U.S.C. 757b) is amended by striking out ‘\$358,000,000,000’ and inserting in lieu thereof ‘\$365,000,000,000’.” SEC. 2. During the period beginning on the date of the enactment of this Act and ending on June 30, 1970, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act shall be temporarily increased by \$12,000,000,000.”); [An Act to increase the public debt limit set forth in section 21 of the Second Liberty Bond Act](#), Pub. L. No. 91-301, §§ 1–2, 84 Stat. 368 (1970) (“the first sentence of section 21 of the Second Liberty Bond Act (31 U.S.C. 757b) is amended by striking out ‘\$365,000,000,000’ and inserting in lieu thereof ‘\$380,000,000,000’.” SEC. 2. During the period ending on June 30, 1971, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act shall be temporarily increased by \$15,000,000,000.”); [An Act to increase the public debt limit set forth in section 21 of the Second Liberty Bond Act, and for other purposes](#), Pub. L. No. 92-5, § 1, 85 Stat. 5 (1971) (“the first sentence of section 21 of the Second Liberty Bond Act (31 U.S.C. 757b) is amended by striking out ‘\$380,000,000,000’ and inserting in lieu thereof ‘\$400,000,000,000’.”); [An Act to provide for a temporary increase in the public debt limit, and to amend the Rules of the House of Representatives to make possible the establishment of the public debt limit in the future as a part of the congressional budget process](#), Pub. L. No. 96-78, § 101(a), 93 Stat. 591 (1979) (“During the period beginning on the date of the enactment of this Act and ending on May 31, 1980, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act (31 U.S.C. 757b) shall be temporarily increased by \$479,000,000,000.”) (the same Act as created the Gephardt Rule); [Joint Resolution to provide for a temporary increase in the public debt limit](#), Pub. L. No. 97-49, 95 Stat. 956 (1981) (“during the period beginning on October 1, 1981, and ending on September 30, 1982, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act (31 U.S.C. 757b) shall be temporarily increased by \$679,800,000,000.”); [Joint Resolution to provide for a temporary increase in the public debt limit](#), Pub. L. No. 97-204, 96 Stat. 130 (1982) (“during the period beginning on the date of the enactment of this Act and ending on September 30, 1982, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act (31 U.S.C. 757b) shall be temporarily increased by \$743,100,000,000”).

<sup>564</sup> [An Act to increase the permanent public debt limit, and for other purposes](#), Pub. L. No. 98-34, § 1(a), 97 Stat. 196 (1983) (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out ‘\$400,000,000,000’ and inserting in lieu thereof ‘\$1,389,000,000,000’.”); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 98-161, 97 Stat. 1012 (1983) (“subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof ‘\$1,389,000,000,000, or \$1,490,000,000,000 on and after October 1, 1983,’.”); [An Act to increase the statutory limit on the public debt](#), Pub. L. No. 98-342, § 1(a), 98 Stat. 313 (1984) (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out ‘may not be more’ and all that follows down through ‘outstanding at one time’ and insert in lieu thereof ‘may not be more than \$1,573,000,000,000 outstanding at one time’.”); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 98-475, 98 Stat. 2206 (1984) (“subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof ‘\$1,575,700,000,000, or \$1,823,800,000,000 on and after October 1, 1984,’.”); [An Act to temporarily increase the limit on the public debt and to restore the investments of the Social Security Trust Funds and other trust funds](#), Pub. L. No. 99-155, §1, 99 Stat. 814 (1985) (“during the period beginning on the date of the enactment of this Act and ending on December 6, 1985, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased by an amount determined by the Secretary of the Treasury as necessary to permit the United States to meet its obligations.”); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 99-177, § 1, 99 Stat. 1037 (1985) (“subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such

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subsection and inserting in lieu thereof '\$1,847,800,000,000, or \$2,078,700,000,000 on and after October 1, 1985.'") (the same joint resolution as the Balanced Budget and Emergency Deficit Control Act of 1985); [An Act to increase the statutory limit on the public debt](#), Pub. L. No. 99-384, 100 Stat. 818 (1986) ("subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof '\$2,111,000,000,000.'"); [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, § 8201, 100 Stat. 1874, 1968 ("During the period beginning on the date of the enactment of this Act and ending on May 15, 1987, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased by \$189,000,000,000."); [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 100-40, § 1(a), 101 Stat. 308 (1987) ("during the period beginning on the date of the enactment of this Act and ending on July 17, 1987, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be equal to \$2,320,000,000,000."); [An Act to provide for a temporary extension of the public debt limit](#), Pub. L. No. 100-80, § 1(a), 101 Stat. 542 (1987) ("(a) subsection (a) of the first section of the Act of May 15, 1987, entitled 'An Act to provide for a temporary increase in the public debt limit' (Public Law 100-40) is amended by striking out 'July 17, 1987' and inserting in lieu thereof 'August 6, 1987'. (b) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act."); [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 100-84, 101 Stat. 550 (1987) ("during the period beginning on the date of the enactment of this Act and ending on September 23, 1987, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be equal to \$2,352,000,000,000."); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 100-119, § 1, 101 Stat. 754 (1987) ("subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection, and inserting in lieu thereof '\$2,800,000,000,000.'") (the same joint resolution as the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987); [An Act to increase the statutory limit on the public debt, and for other purposes](#), Pub. L. No. 101-72, § 1, 103 Stat. 182 (1989) ("During the period beginning on the date of the enactment of this Act and ending on October 31, 1989, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased by \$70,000,000,000."); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 101-140, § 1, 103 Stat. 830 (1989) ("subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection, and inserting in lieu thereof '\$3,122,700,000,000.'"); [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 101-350, § 1, 104 Stat. 403 (1990) ("During the period beginning on the date of the enactment of this Act and ending on October 2, 1990, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased to \$3,195,000,000,000."); [An Act to extend the temporary increase in the public debt limit](#), Pub. L. No. 101-405, § 1, 104 Stat. 878 (1990) ("Section 1 of Public Law 101-350 is amended by striking 'October 2, 1990' and inserting 'October 6, 1990.'"); [Joint Resolution making further continuing appropriations for the fiscal year 1991, and for other purposes](#), Pub. L. No. 101-412, § 114, 104 Stat. 894, 897 (1990) ("Section 1 of Public Law 101-350 is amended by striking 'October 6, 1990' and inserting 'October 19, 1990.'"); [Joint Resolution making further continuing appropriations for the fiscal year 1991, and for other purposes](#), Pub. L. No. 101-444, § 114, 104 Stat. 1030, 1033 (1990) ("Section 1 of Public Law 101-350 is amended by striking 'October 19, 1990' and inserting 'October 24, 1990.'"); [Joint Resolution making further continuing appropriations for the fiscal year 1991, and for other purposes](#), Pub. L. No. 101-461, § 114, 104 Stat. 1075, 1078 (1990) ("Section 1 of Public Law 101-350 is amended by striking 'October 24, 1990' and inserting 'October 27, 1990.'"); [Joint Resolution making further continuing appropriations for the fiscal year 1991, and for other purposes](#), Pub. L. No. 101-467, § 106, 104 Stat. 1086, 1087 (1990) ("Du[r]ing the period beginning on the date of the enactment of this joint resolution and until November 5, 1990, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased to \$3,230,000,000,000."); [Omnibus Budget Reconciliation Act of 1990](#), Pub. L. No. 101-508, § 11901, 104 Stat. 1388, 1388-560 ("Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar limitation contained in such subsection and inserting '\$4,145,000,000,000.'"); [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 103-12, 107 Stat. 42 (1993) ("During the period beginning on the date of the enactment of this Act and ending on September 30, 1993, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased to \$4,370,000,000,000."); [Omnibus Budget Reconciliation Act of 1993](#), Pub. L. No. 103-66, § 13411, 107 Stat. 312, 565 ("Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof '\$4,900,000,000,000.'"); [An Act to guarantee the timely payment of Social Security benefits in March 1996](#), Pub. L. No. 104-103, 110 Stat. 55

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(1996) (“In addition to any other authority provided by law, the Secretary of the Treasury may issue under chapter 31 of title 31, United States Code, obligations of the United States before March 1, 1996, in an amount equal to the monthly insurance benefits payable under title II of the Social Security Act in March 1996.”); [An Act to guarantee the continuing full investment of Social Security and other Federal funds in obligations of the United States](#), Pub. L. No. 104-115, § 1(d), 110 Stat. 825 (1996) (“Subparagraph (B) of section 1(c)(2) of Public Law 104–103 is amended by striking ‘March 15, 1996’ and inserting ‘March 30, 1996’.”); [Contract with America Advancement Act of 1996](#), Pub. L. No. 104-121, § 301, 110 Stat. 847, 875 (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar limitation contained in such subsection and inserting ‘\$5,500,000,000,000.’”); [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 5701, 111 Stat. 251, 648 (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar amount contained therein and inserting ‘\$5,950,000,000,000.’”); [An Act to amend title 31 of the United States Code to increase the public debt limit](#), Pub. L. No. 107-199, § 1, 116 Stat. 734 (2002) (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking “\$5,950,000,000,000” and inserting ‘\$6,400,000,000,000.’”); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 108-24, 117 Stat. 710 (2003) (“subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof \$7,384,000,000,000.”); [An Act to amend title 31 of the United States Code to increase the public debt limit](#), Pub. L. No. 108-415, § 1, 118 Stat. 2337 (2004) (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking ‘\$7,384,000,000,000’ and inserting ‘\$8,184,000,000,000.’”); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 109-182, 120 Stat. 289 (2006) (“subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof \$8,965,000,000,000.”); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 110-91, 121 Stat. 988 (2007) (“subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof \$9,815,000,000,000.”); [Housing and Economic Recovery Act of 2008](#), Pub. L. No. 110-289, § 3083, 122 Stat. 2654, 2908 (2008) (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof \$10,615,000,000,000.”); [Emergency Economic Stabilization Act of 2008](#), Pub. L. No. 110-343, § 122, 122 Stat. 3765, 3790 (2008) (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting ‘\$11,315,000,000,000.’”); [American Recovery and Reinvestment Act of 2009](#), Pub. L. No. 111-5, § 1604, 123 Stat. 115, 366 (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting ‘\$12,104,000,000,000.’”); [An Act to permit continued financing of Government operations](#), Pub. L. No. 111-123, § 1, 123 Stat. 3483 (2009) (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar amount contained therein and inserting ‘\$12,394,000,000,000.’”); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, 124 Stat. 8 (2010) (“subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof \$14,294,000,000,000.”) (the same joint resolution as the Statutory Pay-As-You-Go Act of 2010); [Budget Control Act of 2011](#), Pub. L. No. 112-25, § 301, 125 Stat. 240, 251–55 (“If, not later than December 31, 2011, the President submits a written certification to Congress that the President has determined that the debt subject to limit is within \$100,000,000,000 of the limit in section 3101(b) and that further borrowing is required to meet existing commitments, the Secretary of the Treasury may exercise authority to borrow an additional \$900,000,000,000, subject to the enactment of a joint resolution of disapproval enacted pursuant to this section.”; adding 31 U.S.C. § 3101A, Presidential modification of the debt ceiling (the “McConnell Rule”)); [No Budget, No Pay Act of 2013](#), Pub. L. No. 113-3, § 2, 127 Stat. 51 (“Section 3101(b) of title 31, United State Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on May 18, 2013.”); [Default Prevention Act of 2013](#), Pub. L. No. 113-46, § 1002, 127 Stat. 558, 566–70 (“Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date on which the President submits to Congress a certification under subsection (b) and ending on February 7, 2014.”; employing the McConnell Rule); [Temporary Debt Limit Extension Act](#), Pub. L. No. 113-83, §§ 2–3, 128 Stat. 1011–12 (2014) (“Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on March 15, 2015.”); [Bipartisan Budget Act of 2015](#), Pub. L. No. 114-74, §§ 901–902, 129 Stat. 584, 620–21 (“Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on March 15, 2017.”); [Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017](#), Pub. L. No. 115-56, § 101, 131 Stat. 1129, 1139 (2017) (“Section 3101(b) of title 31,



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In and after 1956, Congress also occasionally temporarily increased the debt limit for specified periods of time, combining both times and amounts.<sup>565</sup>

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United States Code, shall not apply for the period beginning on the date of enactment of this Act and ending on December 8, 2017.”); [Bipartisan Budget Act of 2018](#), Pub. L. No. 115-123, § 30301, 132 Stat. 64, 132–33 (“Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on March 1, 2019.”); [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, § 301, 133 Stat. 1049, 1057–58 (“Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on July 31, 2021.”); [An Act to provide for the publication by the Secretary of Health and Human Services of physical activity recommendations for Americans](#), Pub. L. No. 117-50, § 1 (2021) (“The limitation under section 3101(b) of title 31, United States Code, as most recently increased by section 301 of the Bipartisan Budget Act of 2019 (31 U.S.C. 3101 note), is increased by \$480,000,000,000.”).

<sup>565</sup> [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 84-678, 70 Stat. 519 (1956) (“during the period beginning on July 1, 1956, and ending on June 30, 1957, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act, as amended, shall be temporarily increased by \$3,000,000,000.”); [An Act to increase the amount of obligations, issued under the Second Liberty Bond Act, which may be outstanding at any one time](#), Pub. L. No. 86-74, § 2, 73 Stat. 156 (1959) (“During the period beginning on July 1, 1959, and ending on June 30, 1960, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act, as amended, shall be temporarily increased by \$10,000,000,000.”); [An Act to increase the public debt limit set forth in section 21 of the Second Liberty Bond Act](#), Pub. L. No. 91-8, § 2, 83 Stat. 7 (1969) (“During the period beginning on the date of the enactment of this Act and ending on June 30, 1970, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act shall be temporarily increased by \$12,000,000,000.”); [An Act to increase the public debt limit set forth in section 21 of the Second Liberty Bond Act](#), Pub. L. No. 91-301, § 2, 84 Stat. 368 (1970) (“During the period ending on June 30, 1971, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act shall be temporarily increased by \$15,000,000,000.”); [An Act to provide for a temporary increase in the public debt limit, and to amend the Rules of the House of Representatives to make possible the establishment of the public debt limit in the future as a part of the congressional budget process](#), Pub. L. No. 96-78, § 101(a), 93 Stat. 591 (1979) (“During the period beginning on the date of the enactment of this Act and ending on May 31, 1980, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act (31 U.S.C. 757b) shall be temporarily increased by \$479,000,000,000.”) (the same Act as created the Gephardt Rule); [Joint Resolution to provide for a temporary increase in the public debt limit](#), Pub. L. No. 97-49, 95 Stat. 956 (1981) (“during the period beginning on October 1, 1981, and ending on September 30, 1982, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act (31 U.S.C. 757b) shall be temporarily increased by \$679,800,000,000.”); [Joint Resolution to provide for a temporary increase in the public debt limit](#), Pub. L. No. 97-204, 96 Stat. 130 (1982) (“during the period beginning on the date of the enactment of this Act and ending on September 30, 1982, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act (31 U.S.C. 757b) shall be temporarily increased by \$743,100,000,000”); [An Act to temporarily increase the limit on the public debt and to restore the investments of the Social Security Trust Funds and other trust funds](#), Pub. L. No. 99-155, §1, 99 Stat. 814 (1985) (“during the period beginning on the date of the enactment of this Act and ending on December 6, 1985, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased by an amount determined by the Secretary of the Treasury as necessary to permit the United States to meet its obligations.”); [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, § 8201, 100 Stat. 1874, 1968 (“During the period beginning on the date of the enactment of this Act and ending on May 15, 1987, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased by \$189,000,000,000.”); [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 100-40, § 1(a), 101 Stat. 308 (1987) (“during the period beginning on the date of the enactment of this Act and ending on July 17, 1987, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be equal to \$2,320,000,000,000.”); [An Act to provide for a temporary extension of the public debt limit](#), Pub. L. No. 100-80, § 1(a), 101 Stat. 542 (1987) (“(a) subsection (a) of the first section of the Act of May 15, 1987, entitled ‘An Act to provide for a temporary increase in the

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In and after 2013, Congress has suspended the application of the debt limit for specified periods of time.<sup>566</sup> In the period starting with 2013 and

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public debt limit' (Public Law 100-40) is amended by striking out 'July 17, 1987' and inserting in lieu thereof 'August 6, 1987'. (b) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act."); [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 100-84, 101 Stat. 550 (1987) ("during the period beginning on the date of the enactment of this Act and ending on September 23, 1987, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be equal to \$2,352,000,000,000."); [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 100-119, § 1, 101 Stat. 754 (1987); [An Act to increase the statutory limit on the public debt, and for other purposes](#), Pub. L. No. 101-72, § 1, 103 Stat. 182 (1989) ("During the period beginning on the date of the enactment of this Act and ending on October 31, 1989, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased by \$70,000,000,000."); [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 101-350, § 1, 104 Stat. 403 (1990) ("During the period beginning on the date of the enactment of this Act and ending on October 2, 1990, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased to \$3,195,000,000,000."); [An Act to extend the temporary increase in the public debt limit](#), Pub. L. No. 101-405, § 1, 104 Stat. 878 (1990) ("Section 1 of Public Law 101-350 is amended by striking 'October 2, 1990' and inserting 'October 6, 1990'."); [Joint Resolution making further continuing appropriations for the fiscal year 1991, and for other purposes](#), Pub. L. No. 101-412, § 114, 104 Stat. 894, 897 (1990) ("Section 1 of Public Law 101-350 is amended by striking 'October 6, 1990' and inserting 'October 19, 1990'."); [Joint Resolution making further continuing appropriations for the fiscal year 1991, and for other purposes](#), Pub. L. No. 101-444, § 114, 104 Stat. 1030, 1033 (1990) ("Section 1 of Public Law 101-350 is amended by striking 'October 19, 1990' and inserting 'October 24, 1990'."); [Joint Resolution making further continuing appropriations for the fiscal year 1991, and for other purposes](#), Pub. L. No. 101-461, § 114, 104 Stat. 1075, 1078 (1990) ("Section 1 of Public Law 101-350 is amended by striking 'October 24, 1990' and inserting 'October 27, 1990'."); [Joint Resolution making further continuing appropriations for the fiscal year 1991, and for other purposes](#), Pub. L. No. 101-467, § 106, 104 Stat. 1086, 1087 (1990) ("Du[r]ing the period beginning on the date of the enactment of this joint resolution and until November 5, 1990, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased to \$3,230,000,000,000."); [An Act to provide for a temporary increase in the public debt limit](#), Pub. L. No. 103-12, 107 Stat. 42 (1993) ("During the period beginning on the date of the enactment of this Act and ending on September 30, 1993, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased to \$4,370,000,000,000."); [An Act to guarantee the timely payment of Social Security benefits in March 1996](#), Pub. L. No. 104-103, 110 Stat. 55 (1996) ("In addition to any other authority provided by law, the Secretary of the Treasury may issue under chapter 31 of title 31, United States Code, obligations of the United States before March 1, 1996, in an amount equal to the monthly insurance benefits payable under title II of the Social Security Act in March 1996."); [An Act to guarantee the continuing full investment of Social Security and other Federal funds in obligations of the United States](#), Pub. L. No. 104-115, § 1(d), 110 Stat. 825 (1996) ("Subparagraph (B) of section 1(c)(2) of Public Law 104-103 is amended by striking 'March 15, 1996' and inserting 'March 30, 1996'").

<sup>566</sup> [No Budget, No Pay Act of 2013](#), Pub. L. No. 113-3, § 2, 127 Stat. 51 ("Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on May 18, 2013."); [Default Prevention Act of 2013](#), Pub. L. No. 113-46, § 1002, 127 Stat. 558, 566-70 ("Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date on which the President submits to Congress a certification under subsection (b) and ending on February 7, 2014."; employing the McConnell Rule); [Temporary Debt Limit Extension Act](#), Pub. L. No. 113-83, §§ 2-3, 128 Stat. 1011-12 (2014) ("Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on March 15, 2015."); [Bipartisan Budget Act of 2015](#), Pub. L. No. 114-74, §§ 901-902, 129 Stat. 584, 620-21 ("Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on March 15, 2017."); [Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017](#), Pub. L. No. 115-56, § 101, 131 Stat. 1129, 1139 (2017) ("Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of enactment of this Act and ending on December 8, 2017."); [Bipartisan Budget Act of 2018](#), Pub. L. No. 115-123, § 30301, 132 Stat. 64, 132-33 ("Section 3101(b)

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extending to the present, Congress has increased the debt limit by an amount only once,<sup>567</sup> preferring seven times to suspend the debt limit for periods of time.<sup>568</sup> Six of these times, Congress did so with very simple language, stating simply, “Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on \_\_\_\_\_.”<sup>569</sup>

Observers have compared the debt limit to “a bear trap in their bedroom”<sup>570</sup> or “a piranha-filled lagoon right next to the swing set.”<sup>571</sup>

The Budget Control Act of 2011 created a process, which some call the “McConnell Rule,”<sup>572</sup> in which Congress delegated authority to the Treasury Secretary to raise the debt limit subject to a fast-track resolution of

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of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on March 1, 2019.”); [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, § 301, 133 Stat. 1049, 1057–58 (“Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on July 31, 2021.”).

<sup>567</sup> [An Act to provide for the publication by the Secretary of Health and Human Services of physical activity recommendations for Americans](#), Pub. L. No. 117-50, § 1 (2021) (“The limitation under section 3101(b) of title 31, United States Code, as most recently increased by section 301 of the Bipartisan Budget Act of 2019 (31 U.S.C. 3101 note), is increased by \$480,000,000,000.”).

<sup>568</sup> [No Budget, No Pay Act of 2013](#), Pub. L. No. 113-3, § 2, 127 Stat. 51; [Default Prevention Act of 2013](#), Pub. L. No. 113-46, § 1002, 127 Stat. 558, 566–70; [Temporary Debt Limit Extension Act](#), Pub. L. No. 113-83, §§ 2–3, 128 Stat. 1011–12 (2014); [Bipartisan Budget Act of 2015](#), Pub. L. No. 114-74, §§ 901–902, 129 Stat. 584, 620–21; [Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017](#), Pub. L. No. 115-56, § 101, 131 Stat. 1129, 1139 (2017); [Bipartisan Budget Act of 2018](#), Pub. L. No. 115-123, § 30301, 132 Stat. 64, 132–33; [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, § 301, 133 Stat. 1049, 1057–58; see generally D. ANDREW AUSTIN, CONG. RSCH. SERV., [R43389, THE DEBT LIMIT SINCE 2011](#) (2021).

<sup>569</sup> [No Budget, No Pay Act of 2013](#), Pub. L. No. 113-3, § 2, 127 Stat. 51 (“Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on May 18, 2013.”); [Temporary Debt Limit Extension Act](#), Pub. L. No. 113-83, §§ 2–3, 128 Stat. 1011–12 (2014) (“Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on March 15, 2015.”); [Bipartisan Budget Act of 2015](#), Pub. L. No. 114-74, §§ 901–902, 129 Stat. 584, 620–21 (“Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on March 15, 2017.”); [Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017](#), Pub. L. No. 115-56, § 101, 131 Stat. 1129, 1139 (2017) (“Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of enactment of this Act and ending on December 8, 2017.”); [Bipartisan Budget Act of 2018](#), Pub. L. No. 115-123, § 30301, 132 Stat. 64, 132–33 (“Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on March 1, 2019.”); [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, § 301, 133 Stat. 1049, 1057–58 (“Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on July 31, 2021.”).

<sup>570</sup> *Opportunities to Significantly Improve the Federal Budget Process: Hearing before the Joint Select Committee on Budget and Appropriations Process Reform*, 115th Cong. (Apr. 17, 2018) (statement of Sen. Sheldon Whitehouse).

<sup>571</sup> *Transcript: The Rachel Maddow Show, 9/21/21*, MSNBC (Sept. 21, 2021, 9:00 PM).

<sup>572</sup> E.g., Jonathan Cohn, *The Silver Bullet Nobody Is Discussing*, NEW REPUBLIC, Oct. 11, 2013; Editorial: *How to Disarm the Debt-Ceiling Threat for Good*, N.Y. TIMES, Oct. 22, 2013, at A22; Mario Trujillo, *Senate Democrats To Call for “McConnell Rule” on Debt Ceiling*, THE HILL, Oct. 29, 2013, 11:30 AM.

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disapproval that the President could veto.<sup>573</sup> The Default Prevention Act of 2013 followed this model,<sup>574</sup> but incorporated a suspension as opposed to an amount, stating: “Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date on which the President submits to Congress a certification under subsection (b) and ending on February 7, 2014.”<sup>575</sup>

In December 2021, Congress created a one-time fast-track procedure to allow the Senate to increase the debt limit that year without a filibuster:

**SEC. 8. EXPEDITED PROCEDURES FOR CONSIDERING AN INCREASE IN THE DEBT LIMIT.**

(a) **DEFINITION.**—In this section, the term “joint resolution” means a joint resolution—

(1) that is introduced by the Majority Leader of the Senate, or a designee, during the period beginning on the date of enactment of this Act and ending on December 31, 2021;

(2) which does not have a preamble;

(3) the title of which is as follows: “Joint resolution relating to increasing the debt limit.”; and

(4) the matter after the resolving clause of which is as follows: “That the limitation under section 3101(b) of title 31, United States Code, as most recently increased by Public Law 117-50 (31 U.S.C. 3101 note), is increased by \$\_\_\_\_\_.”, the blank space being appropriately filled in with the dollar amount of the increase.

(b) **EXPEDITED CONSIDERATION IN SENATE.**—

(1) **PLACEMENT ON CALENDAR.**—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(2) **PROCEEDING TO CONSIDERATION.**—

(A) **IN GENERAL.**—Notwithstanding rule XXII of the Standing Rules of the Senate, it is in order, not later than January 15, 2022 (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution.

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<sup>573</sup> [Budget Control Act of 2011](#), Pub. L. No. 112-25, § 301, 125 Stat. 240, 251–55.

<sup>574</sup> [Default Prevention Act of 2013](#), Pub. L. No. 113-46, § 1002, 127 Stat. 558, 566–70.

<sup>575</sup> [Default Prevention Act of 2013](#), Pub. L. No. 113-46, § 1002(c)(1), 127 Stat. 558, 567.

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(B) PROCEDURE.—For a motion to proceed to the consideration of the joint resolution—

(i) all points of order against the motion are waived;

(ii) the motion is not debatable;

(iii) the motion is not subject to a motion to postpone;

(iv) a motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order; and

(v) if the motion is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(3) FLOOR CONSIDERATION.—

(A) IN GENERAL.—If the Senate proceeds to consideration of the joint resolution—

(i) all points of order against the joint resolution (and against consideration of the joint resolution) are waived;

(ii) debate on the joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the Chairman and Ranking Member of the Committee on Finance;

(iii) an amendment to the joint resolution is not in order;

(iv) a motion to postpone or a motion to commit the joint resolution is not in order; and

(v) a motion to proceed to the consideration of other business is not in order.

(B) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on the joint resolution and a single quorum call if requested in accordance with the rules of the Senate.

(C) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of this paragraph or the rules of the Senate, as the case may be, to the procedure relating to the joint resolution shall be decided without debate.

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(D) SINGLE MEASURE AUTHORIZED.—It shall not be in order to consider more than 1 joint resolution under the procedures under this paragraph.

(E) SUNSET.—It shall not be in order to consider a joint resolution under the procedures under this paragraph after January 16, 2022.

(4) RULES OF THE SENATE.—This subsection is enacted by Congress —

(A) as an exercise of the rulemaking power of the Senate, and as such is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a joint resolution, and supersede other rules only to the extent that they are inconsistent with such rules; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.<sup>576</sup>

As discussed below,<sup>577</sup> Budget Act section 310(a)(3)<sup>578</sup> provides that reconciliation legislation may increase the debt limit.

### Reserve Funds

Budget Act section 301(b)(7) empowers budget resolutions to include reserve funds.<sup>579</sup> The Parliamentarian has been very deferential to the Budget Committee Chair's discretion with respect to the application of reserve funds.<sup>580</sup> In October 2015, the Parliamentarian reported that the Parliamentarian's office had been asked before to police the use of reserve funds, but to the Parliamentarian's knowledge, the office had never weighed in on the Chair's authority to make adjustments using a reserve fund.<sup>581</sup> And when asked in March 2017 what latitude the Parliamentarian would give the Budget Committee Chair in choosing whether to employ reserve funds, the Parliamentarian replied that the Chair had complete

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<sup>576</sup> [Protecting Medicare and American Farmers from Sequester Cuts Act](#), Pub. L. No. 117-71, § 8, 135 Stat. 1506, 1508–10 (2021) (creating the fast-track process); *see also* [Joint resolution relating to increasing the debt limit](#), Pub. L. No. 117-73, 135 Stat. 1514 (2021) (increasing the debt limit pursuant to that process).

<sup>577</sup> *See infra* p. 521.

<sup>578</sup> [Congressional Budget Act of 1974 § 310\(a\)\(3\)](#), 2 U.S.C. § 641(a)(3), *infra* p. 515.

<sup>579</sup> [Congressional Budget Act of 1974 § 301\(b\)\(7\)](#), 2 U.S.C. § 632(b)(7), *supra* p. 135.

<sup>580</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 31, 2017, at 2 (Apr. 3, 2017).

<sup>581</sup> Staff of S. Comm. on the Budget, Reconciliation Meeting #1 with Parliamentarians (Oct. 15, 2015).

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discretion with reserve funds, and the Parliamentarian was not going to police them.<sup>582</sup>

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<sup>582</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 23, 2017, at 2 (Mar. 31, 2017).



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301(c) (c) CONSIDERATION OF PROCEDURES OR MATTERS WHICH HAVE EFFECT OF CHANGING ANY RULE OF HOUSE. — If the Committee on the Budget of the House of Representatives reports any [concurrent resolution on the budget](#)<sup>583</sup> which includes any procedure or matter which has the effect of changing any rule of the House of Representatives, such concurrent resolution shall then be referred to the Committee on Rules with instructions to report it within five calendar days (not counting any day on which the House is not in session). The Committee on Rules shall have jurisdiction to report any concurrent resolution referred to it under [this paragraph](#)<sup>584</sup> with an amendment or amendments changing or striking out any such procedure or matter.

301(d) (d) VIEWS AND ESTIMATES<sup>585</sup> OF OTHER COMMITTEES. — Within 6 weeks after the President submits a budget under [section 1105\(a\) of title 31](#),<sup>586</sup> or at such time as may be requested by the Committee on the Budget, each committee of the House of Representatives having legislative jurisdiction shall submit to the Committee on the Budget of the House and each committee of the Senate having legislative jurisdiction shall submit to the Committee on the Budget of the Senate its views and estimates (as determined by the committee making such submission) with respect to all matters set forth in [subsections \(a\)](#)<sup>587</sup> and [\(b\)](#)<sup>588</sup> which relate to matters within the jurisdiction or functions of such committee. The Joint Economic Committee shall submit to the Committees on the Budget of both Houses its recommendations as to the fiscal policy appropriate to the goals of the [Employment](#)

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<sup>583</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>584</sup> [Congressional Budget Act of 1974 § 301\(c\)](#), 2 U.S.C. § 632(c), *supra* p. 152, addresses “Consideration of Procedures or Matters Which Have Effect of Changing Any Rule of House.”

<sup>585</sup> For a discussion of views and estimates, see *infra* p. 154.

<sup>586</sup> [31 U.S.C. § 1105](#), *infra* p. 156, addresses “Budget Contents and Submission to Congress.”

<sup>587</sup> [Congressional Budget Act of 1974 § 301\(a\)](#), 2 U.S.C. § 632(a), *supra* p. 132, addresses “Content of Concurrent Resolution on the Budget.”

<sup>588</sup> [Congressional Budget Act of 1974 § 301\(b\)](#), 2 U.S.C. § 632(b), *supra* p. 134, addresses “Additional Matters in Concurrent Resolution.”



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**Act of 1946.**<sup>589</sup> Any other committee of the House of Representatives or the Senate may submit to the Committee on the Budget of its House, and any joint committee of the Congress may submit to the Committees on the Budget of both Houses, its views and estimates with respect to all matters set forth in **subsections (a)**<sup>590</sup> and **(b)**<sup>591</sup> which relate to matters within its jurisdiction or functions. Any Committee<sup>592</sup> of the House of Representatives or the Senate that anticipates that the committee will consider any proposed legislation establishing, amending, or reauthorizing any Federal program likely to have a significant budgetary impact on any **State**,<sup>593</sup> **local**,<sup>594</sup> or **tribal government**,<sup>595</sup> or likely to have a significant financial impact on the **private sector**,<sup>596</sup> including any legislative proposal submitted by the executive branch likely to have such a budgetary or financial impact, shall include its views and estimates on that proposal to the Committee on the Budget of the applicable House.

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<sup>589</sup> **Employment Act of 1946**, 15 U.S.C. §§ 1021–1025.

<sup>590</sup> **Congressional Budget Act of 1974 § 301(a)**, 2 U.S.C. § 632(a), *supra* p. 132, addresses “Content of Concurrent Resolution on the Budget.”

<sup>591</sup> **Congressional Budget Act of 1974 § 301(b)**, 2 U.S.C. § 632(b), *supra* p. 134, addresses “Additional Matters in Concurrent Resolution.”

<sup>592</sup> The House Office of the Law Revision Counsel, which maintains the U.S. Code, suggests: “So in original. Probably should not be capitalized.” 2 U.S.C. § 632(d) note.

<sup>593</sup> **Congressional Budget Act of 1974 § 421(12)**, 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>594</sup> **Congressional Budget Act of 1974 § 421(8)**, 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>595</sup> **Congressional Budget Act of 1974 § 421(13)**, 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>596</sup> **Congressional Budget Act of 1974 § 421(9)**, 2 U.S.C. § 658(9), *infra* p. 812, defines “private sector.”

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## Views and Estimates

The Senate Budget Committee traditionally includes these views and estimates in its committee report<sup>597</sup> or print<sup>598</sup> on the budget resolution. The Budget Committees have sometimes published these views and estimates as a separate document.<sup>599</sup> The House Committee on Small Business has often met formally to adopt its views and estimates.<sup>600</sup> The House Veterans' Affairs Committee has often issued its views and estimates as committee prints.<sup>601</sup>

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<sup>597</sup> See, e.g., S. COMM. ON THE BUDGET, 107TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET: FY 2003](#), S. REP. NO. 107-141, at 72 (2002); S. COMM. ON THE BUDGET, 106TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET: FY 2001](#), S. REP. NO. 106-251, at 62 (2000); S. COMM. ON THE BUDGET, 106TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET: FY 2000](#), S. REP. NO. 106-27, at 92 (1999); S. COMM. ON THE BUDGET, 105TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET: FY 1999](#), S. REP. NO. 105-170, at 77 (1998); S. COMM. ON THE BUDGET, 104TH CONG., [FY 1997 CONCURRENT RESOLUTION ON THE BUDGET](#), S. REP. NO. 104-271, at 96 (1996); S. COMM. ON THE BUDGET, 104TH CONG., [FY 1996 CONCURRENT RESOLUTION ON THE BUDGET](#), S. REP. NO. 104-82, at 133 (1995).

<sup>598</sup> See, e.g., S. COMM. ON THE BUDGET, 117TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FISCAL YEAR 2022](#), at 115 (Comm. Print 2021); S. COMM. ON THE BUDGET, 116TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FISCAL YEAR 2020](#), at 63 (Comm. Print 2019); S. COMM. ON THE BUDGET, 115TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FISCAL YEAR 2018](#), at 63 (Comm. Print 2017); S. COMM. ON THE BUDGET, 114TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2016](#), at 69 (Comm. Print 2015); S. COMM. ON THE BUDGET, 113TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2014](#), at 189 (Comm. Print 2013) (with [Errata](#)); S. COMM. ON THE BUDGET, 111TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2011](#), at 68 (Comm. Print 2010) (with [Errata](#)); S. COMM. ON THE BUDGET, 111TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2010](#), at 66 (Comm. Print 2009); S. COMM. ON THE BUDGET, 110TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2009](#), at 58 (Comm. Print 2008); S. COMM. ON THE BUDGET, 110TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2008](#), at 50 (Comm. Print 2007); S. COMM. ON THE BUDGET, 109TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2007](#), at 55 (Comm. Print 2006); S. COMM. ON THE BUDGET, 109TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2006](#), at 61 (Comm. Print 2005); S. COMM. ON THE BUDGET, 108TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2005](#), at 63 (Comm. Print 2004); S. COMM. ON THE BUDGET, 108TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2004](#), at 76 (Comm. Print 2003).

<sup>599</sup> See, e.g., S. COMM. ON THE BUDGET, 117TH CONG., [VIEWS AND ESTIMATES WITH RESPECT TO THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2023](#) (Comm. Print 2022); H. COMM. ON THE BUDGET, 111TH CONG., [VIEWS AND ESTIMATES OF COMMITTEES OF THE HOUSE \(WITH ADDITIONAL, SUPPLEMENTAL, AND MINORITY VIEWS\) ON THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2011](#) (Comm. Print 2010); H. COMM. ON THE BUDGET, 111TH CONG., [VIEWS AND ESTIMATES OF COMMITTEES OF THE HOUSE \(WITH ADDITIONAL, SUPPLEMENTAL, AND MINORITY VIEWS\) ON THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010](#) (Comm. Print 2009); S. COMM. ON THE BUDGET, 102D CONG., [VIEWS AND ESTIMATES WITH RESPECT TO THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1993](#) (Comm. Print 1992).

<sup>600</sup> See, e.g., [Committee's Budget Views and Estimates for Fiscal Year 2021: Hearing Before the H. Comm. on Small Bus.](#), 116th Cong. (2020); [Markup of: Budget Views and Estimates for Fiscal Year 2017: Hearing Before the H. Comm. on Small Bus.](#), 115th Cong. (2017); [Markup of Committee Views and Estimates on the Small Business Administration's FY 2015 Budget Hearing Before the H. Comm. on Small Bus.](#), 113th Cong. (2015); [Meeting To Consider the Committee's Views and Estimates on the Small Business Administration Fiscal Year 2014 Budget: Hearing Before the H. Comm. on Small Bus.](#), 113th Cong. (2013); [Markup of Committee Views and Estimates on the Small Business Administration FY2013 Budget, H.R. 3850, H.R. 3851, H.R. 4121, H.R. 3893, H.R. 3980, and H.R. 4118: Hearing Before the H. Comm. on Small Bus.](#), 112th Cong. (2013); [Markup of the Small Business Administration Fiscal Year 2012 Budget: Hearing Before the H. Comm. on Small Bus.](#), 112th Cong. (2011); [Markup on Views and Estimates of SBA Budget for Fiscal Year 2011: Hearing Before the H. Comm. on Small Bus.](#), 111th Cong. (2010); [Full Committee Markup on Views and Estimates of the SBA Budget for Fiscal Year 2010: Hearing Before the H. Comm. on Small Bus.](#), 111th Cong. (2009); [Full Committee Markup of Views and Estimates of the Small Business Administration's Proposed Budget for Fiscal Year 2009: Meeting of the H. Comm. on Small Bus.](#), 110th Cong. (2008); [Full Committee Markup of Views and Estimates](#)

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House Rule X, clause 4(f), provides:

**Budget Act responsibilities**

(f)(1) Each standing committee shall submit to the Committee on the Budget not later than six weeks after the submission of the budget by the President, or at such time as the Committee on the Budget may request—

(A) its views and estimates with respect to all matters to be set forth in the concurrent resolution on the budget for the ensuing fiscal year that are within its jurisdiction or functions; and

(B) an estimate of the total amounts of new budget authority, and budget outlays resulting therefrom, to be provided or authorized in all bills and resolutions within its jurisdiction that it intends to be effective during that fiscal year.

(2) The views and estimates submitted by the Committee on Ways and Means under subparagraph (1) shall include a specific recommendation, made after holding public hearings, as to the appropriate level of the public debt that should be set forth in the concurrent resolution on the budget.<sup>602</sup>

And House Rule X, clause 11(c)(3), provides:

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*on the Small Business Administration's Proposed Budget for FY 2008: Meeting of the H. Comm. on Small Bus.*, 110th Cong. (2008).

<sup>601</sup> See, e.g., H. COMM. ON VETERANS' AFFS., 112TH CONG., *REPORT TO THE COMMITTEE ON THE BUDGET FROM THE COMMITTEE ON VETERANS' AFFAIRS SUBMITTED PURSUANT TO SECTION 301 OF THE CONGRESSIONAL BUDGET ACT OF 1974 ON THE BUDGET PROPOSED FOR FISCAL YEAR 2012* (Comm. Print 2011); H. COMM. ON VETERANS' AFFS., 111TH CONG., *REPORT TO THE COMMITTEE ON THE BUDGET FROM THE COMMITTEE ON VETERANS' AFFAIRS SUBMITTED PURSUANT TO SECTION 301 OF THE CONGRESSIONAL BUDGET ACT OF 1974 ON THE BUDGET PROPOSED FOR FISCAL YEAR 2011* (Comm. Print 2010); H. COMM. ON VETERANS' AFFS., 111TH CONG., *REPORT TO THE COMMITTEE ON THE BUDGET FROM THE COMMITTEE ON VETERANS' AFFAIRS SUBMITTED PURSUANT TO SECTION 301 OF THE CONGRESSIONAL BUDGET ACT OF 1974 ON THE BUDGET PROPOSED FOR FISCAL YEAR 2010* (Comm. Print 2009); H. COMM. ON VETERANS' AFFS., 110TH CONG., *REPORT TO THE COMMITTEE ON THE BUDGET FROM THE COMMITTEE ON VETERANS' AFFAIRS SUBMITTED PURSUANT TO SECTION 301 OF THE CONGRESSIONAL BUDGET ACT OF 1974 ON THE BUDGET PROPOSED FOR FISCAL YEAR 2009* (Comm. Print 2008); H. COMM. ON VETERANS' AFFS., 110TH CONG., *REPORT TO THE COMMITTEE ON THE BUDGET FROM THE COMMITTEE ON VETERANS' AFFAIRS SUBMITTED PURSUANT TO SECTION 301 OF THE CONGRESSIONAL BUDGET ACT OF 1974 ON THE BUDGET PROPOSED FOR FISCAL YEAR 2008* (Comm. Print 2007); H. COMM. ON VETERANS' AFFS., 108TH CONG., *REPORT TO THE COMMITTEE ON THE BUDGET FROM THE COMMITTEE ON VETERANS' AFFAIRS SUBMITTED PURSUANT TO SECTION 301 OF THE CONGRESSIONAL BUDGET ACT OF 1974 ON THE BUDGET PROPOSED FOR FISCAL YEAR 2005* (Comm. Print 2004); H. COMM. ON VETERANS' AFFS., 107TH CONG., *REPORT TO THE COMMITTEE ON THE BUDGET FROM THE COMMITTEE ON VETERANS' AFFAIRS SUBMITTED PURSUANT TO SECTION 301 OF THE CONGRESSIONAL BUDGET ACT OF 1974 ON THE BUDGET PROPOSED FOR FISCAL YEAR 2003* (Comm. Print 2002); H. COMM. ON VETERANS' AFFS., 106TH CONG., *REPORT TO THE COMMITTEE ON THE BUDGET FROM THE COMMITTEE ON VETERANS' AFFAIRS SUBMITTED PURSUANT TO SECTION 301 OF THE CONGRESSIONAL BUDGET ACT OF 1974 ON THE BUDGET PROPOSED FOR FISCAL YEAR 2000* (Comm. Print 1999); H. COMM. ON VETERANS' AFFS., 105TH CONG., *REPORT TO THE COMMITTEE ON THE BUDGET FROM THE COMMITTEE ON VETERANS' AFFAIRS SUBMITTED PURSUANT TO SECTION 301 OF THE CONGRESSIONAL BUDGET ACT OF 1974 ON THE BUDGET PROPOSED FOR FISCAL YEAR 1999* (Comm. Print 1998).

<sup>602</sup> House Rule X, clause 4(f), 117th Cong. (2021).

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(3) Within six weeks after the President submits a budget under section 1105(a) of title 31, United States Code, or at such time as the Committee on the Budget may request, the select committee shall submit to the Committee on the Budget the views and estimates described in section 301(d) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.<sup>603</sup>

*at such time as may be requested by the Committee on the Budget* – For example, in 2022, the Senate Budget Committee Chair and Ranking Republican Member asked that committees submit their views and estimates no later than Friday, May 13<sup>604</sup> – 6 weeks and 4 days after OMB released the President’s fiscal year 2023 budget (on Monday, March 28).

### **The President’s Budget**

*Section 1105(a) of title 31* – Section 1105 provides:

#### **§ 1105. Budget contents and submission to Congress**

(a) On or after the first Monday in January but not later than the first Monday in February of each year, the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

- (1) information on activities and functions of the Government.
- (2) when practicable, information on costs and achievements of Government programs.
- (3) other desirable classifications of information.
- (4) a reconciliation of the summary information on expenditures with proposed appropriations.
- (5) except as provided in subsection (b) of this section, estimated expenditures and proposed appropriations the President decides are necessary to support the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year.

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<sup>603</sup> [House Rule X, clause 11\(c\)\(3\)](#), 117th Cong. (2021).

<sup>604</sup> See, e.g., Letter from Bernard Sanders & Lindsey O. Graham to Ron Wyden & Mike Crapo (Apr. 13, 2022).

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(6) estimated receipts of the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year under –

(A) laws in effect when the budget is submitted; and

(B) proposals in the budget to increase revenues.

(7) appropriations, expenditures, and receipts of the Government in the prior fiscal year.

(8) estimated expenditures and receipts, and appropriations and proposed appropriations, of the Government for the current fiscal year.

(9) balanced statements of the –

(A) condition of the Treasury at the end of the prior fiscal year;

(B) estimated condition of the Treasury at the end of the current fiscal year; and

(C) estimated condition of the Treasury at the end of the fiscal year for which the budget is submitted if financial proposals in the budget are adopted.

(10) essential information about the debt of the Government.

(11) other financial information the President decides is desirable to explain in practicable detail the financial condition of the Government.

(12) for each proposal in the budget for legislation that would establish or expand a Government activity or function, a table showing –

(A) the amount proposed in the budget for appropriation and for expenditure because of the proposal in the fiscal year for which the budget is submitted; and

(B) the estimated appropriation required because of the proposal for each of the 4 fiscal years after that year that the proposal will be in effect.

(13) an allowance for additional estimated expenditures and proposed appropriations for the fiscal year for which the budget is submitted.

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(14) an allowance for unanticipated uncontrollable expenditures for that year.

(15) a separate statement on each of the items referred to in section 301(a)(1)–(5) of the Congressional Budget Act of 1974 (2 U.S.C. 632(a)(1)–(5)).

(16) the level of tax expenditures under existing law in the tax expenditures budget (as defined in section 3(a)(3) of the Congressional Budget Act of 1974 (2 U.S.C. 622(a)(3)) for the fiscal year for which the budget is submitted, considering projected economic factors and changes in the existing levels based on proposals in the budget.

(17) information on estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for grants, contracts, and other payments under each program for which there is an authorization of appropriations for that following fiscal year when the appropriations are authorized to be included in an appropriation law for the fiscal year before the fiscal year in which the appropriation is to be available for obligation.

(18) a comparison of the total amount of budget outlays for the prior fiscal year, estimated in the budget submitted for that year, for each major program having relatively uncontrollable outlays with the total amount of outlays for that program in that year.

(19) a comparison of the total amount of receipts for the prior fiscal year, estimated in the budget submitted for that year, with receipts received in that year, and for each major source of receipts, a comparison of the amount of receipts estimated in that budget with the amount of receipts from that source in that year.

(20) an analysis and explanation of the differences between each amount compared under clauses (18) and (19) of this subsection.

(21) a horizontal budget showing –

(A) the programs for meteorology and of the National Climate Program established under section 5 of the National Climate Program Act (15 U.S.C. 2904);

(B) specific aspects of the program of, and appropriations for, each agency; and

(C) estimated goals and financial requirements.

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(22) a statement of budget authority, proposed budget authority, budget outlays, and proposed budget outlays, and descriptive information in terms of —

(A) a detailed structure of national needs that refers to the missions and programs of agencies (as defined in section 101 of this title); and

(B) the missions and basic programs.

(23) separate appropriation accounts for appropriations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).

(24) recommendations on the return of Government capital to the Treasury by a mixed-ownership corporation (as defined in section 9101(2) of this title) that the President decides are desirable.

(25) a separate appropriation account for appropriations for each Office of Inspector General of an establishment defined under section 11(2) 1 of the Inspector General Act of 1978.

(26) a separate statement of the amount of appropriations requested for the Office of National Drug Control Policy and each program of the National Drug Control Program.

(27) a separate statement of the amount of appropriations requested for the Office of Federal Financial Management.

(28) beginning with fiscal year 1999, a Federal Government performance plan for the overall budget as provided for under section 1115.

(29) information about the Violent Crime Reduction Trust Fund, including a separate statement of amounts in that Trust Fund.

(30) an analysis displaying, by agency, proposed reductions in full-time equivalent positions compared to the current year's level in order to comply with section 5 of the Federal Workforce Restructuring Act of 1994.

(31) a separate statement of the amount of appropriations requested for the Chief Financial Officer in the Executive Office of the President.

(32) a statement of the levels of budget authority and outlays for each program assumed to be extended in the baseline as provided in section 257(b)(2)(A) and for excise taxes assumed to be extended under

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section 257(b)(2)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(33) a separate appropriation account for appropriations for the Council of the Inspectors General on Integrity and Efficiency, and, included in that account, a separate statement of the aggregate amount of appropriations requested for each academy maintained by the Council of the Inspectors General on Integrity and Efficiency.

(34) with respect to the amount of appropriations requested for use by the Export-Import Bank of the United States, a separate statement of the amount requested for its program budget, the amount requested for its administrative expenses, and of the amount requested for its administrative expenses, the amount requested for technology expenses.

(35)(A)(i) a detailed, separate analysis, by budget function, by agency, and by initiative area (as determined by the administration) for the prior fiscal year, the current fiscal year, the fiscal years for which the budget is submitted, and the ensuing fiscal year identifying the amounts of gross and net appropriations or obligational authority and outlays that contribute to cybersecurity, with separate displays for mandatory and discretionary amounts, including —

(I) summaries of the total amount of such appropriations or new obligational authority and outlays requested for cybersecurity;

(II) an estimate of the current service levels of cybersecurity spending;

(III) the most recent risk assessment and summary of cybersecurity needs in each initiative area (as determined by the administration); and

(IV) an estimate of user fees collected by the Federal Government on behalf of cybersecurity activities;

(ii) with respect to subclauses (I) through (IV) of clause (i), amounts shall be provided by account for each program, project and activity; and

(iii) an estimate of expenditures for cybersecurity activities by State and local governments and the private sector for the prior fiscal year and the current fiscal year.

(B) Prior to implementing this paragraph, including determining what Federal activities or accounts constitute cybersecurity for



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purposes of budgetary classification, the Office of Management and Budget shall consult with the Committees on Appropriations and the Committees on the Budget of the House of Representatives and the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Government Affairs of the Senate.

(36) as supplementary materials, a separate analysis of the budgetary effects for all prior fiscal years, the current fiscal year, the fiscal year for which the budget is submitted, and ensuing fiscal years of the actions the Secretary of the Treasury has taken or plans to take using any authority provided in the Emergency Economic Stabilization Act of 2008, including —

(A) an estimate of the current value of all assets purchased, sold, and guaranteed under the authority provided in the Emergency Economic Stabilization Act of 2008 using methodology required by the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and section 123 of the Emergency Economic Stabilization Act of 2008;

(B) an estimate of the deficit, the debt held by the public, and the gross Federal debt using methodology required by the Federal Credit Reform Act of 1990 and section 123 of the Emergency Economic Stabilization Act of 2008;

(C) an estimate of the current value of all assets purchased, sold, and guaranteed under the authority provided in the Emergency Economic Stabilization Act of 2008 calculated on a cash basis;

(D) a revised estimate of the deficit, the debt held by the public, and the gross Federal debt, substituting the cash-based estimates in subparagraph (C) for the estimates calculated under subparagraph (A) pursuant to the Federal Credit Reform Act of 1990 and section 123 of the Emergency Economic Stabilization Act of 2008; and

(E) the portion of the deficit which can be attributed to any action taken by the Secretary using authority provided by the Emergency Economic Stabilization Act of 2008 and the extent to which the change in the deficit since the most recent estimate is due to a reestimate using the methodology required by the Federal Credit Reform Act of 1990 and section 123 of the Emergency Economic Stabilization Act of 2008.

(37) information on estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for the following accounts of the Department of Veterans Affairs:

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(A) Veterans Benefits Administration, Compensation and Pensions.

(B) Veterans Benefits Administration, Readjustment Benefits.

(C) Veterans Benefits Administration, Veterans Insurance and Indemnities.

(D) Veterans Health Administration, Medical Services.

(E) Veterans Health Administration, Medical Support and Compliance.

(F) Veterans Health Administration, Medical Facilities.

(G) Veterans Health Administration, Medical Community Care.

(38) a separate statement for the Crow Settlement Fund established under section 411 of the Crow Tribe Water Rights Settlement Act of 2010, which shall include the estimated amount of deposits into the Fund, obligations, and outlays from the Fund.

(39) the list of plans and reports, as provided for under section 1125, that agencies identified for elimination or consolidation because the plans and reports are determined outdated or duplicative of other required plans and reports.

(b) Estimated expenditures and proposed appropriations for the legislative branch and the judicial branch to be included in each budget under subsection (a)(5) of this section shall be submitted to the President before October 16 of each year and included in the budget by the President without change.

(c) The President shall recommend in the budget appropriate action to meet an estimated deficiency when the estimated receipts for the fiscal year for which the budget is submitted (under laws in effect when the budget is submitted) and the estimated amounts in the Treasury at the end of the current fiscal year available for expenditure in the fiscal year for which the budget is submitted, are less than the estimated expenditures for that year. The President shall make recommendations required by the public interest when the estimated receipts and estimated amounts in the Treasury are more than the estimated expenditures.

(d) When the President submits a budget or supporting information about a budget, the President shall include a statement on all changes

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about the current fiscal year that were made before the budget or information was submitted.

(e)(1) The President shall submit with materials related to each budget transmitted under subsection (a) on or after January 1, 1985, an analysis for the ensuing fiscal year that shall identify requested appropriations or new obligational authority and outlays for each major program that may be classified as a public civilian capital investment program and for each major program that may be classified as a military capital investment program, and shall contain summaries of the total amount of such appropriations or new obligational authority and outlays for public civilian capital investment programs and summaries of the total amount of such appropriations or new obligational authority and outlays for military capital investment programs. In addition, the analysis under this paragraph shall contain –

(A) an estimate of the current service levels of public civilian capital investment and of military capital investment and alternative high and low levels of such investments over a period of ten years in current dollars and over a period of five years in constant dollars;

(B) the most recent assessment analysis and summary, in a standard format, of public civilian capital investment needs in each major program area over a period of ten years;

(C) an identification and analysis of the principal policy issues that affect estimated public civilian capital investment needs for each major program; and

(D) an identification and analysis of factors that affect estimated public civilian capital investment needs for each major program, including but not limited to the following factors:

(i) economic assumptions;

(ii) engineering standards;

(iii) estimates of spending for operation and maintenance;

(iv) estimates of expenditures for similar investments by State and local governments; and

(v) estimates of demand for public services derived from such capital investments and estimates of the service capacity of such investments.

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To the extent that any analysis required by this paragraph relates to any program for which Federal financial assistance is distributed under a formula prescribed by law, such analysis shall be organized by State and within each State by major metropolitan area if data are available.

(2) For purposes of this subsection, any appropriation, new obligational authority, or outlay shall be classified as a public civilian capital investment to the extent that such appropriation, authority, or outlay will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for a number of years and is not classified as a military capital investment under paragraph (3). Such assets shall include (but not be limited to) –

- (A) roadways or bridges,
- (B) airports or airway facilities,
- (C) mass transportation systems,
- (D) wastewater treatment or related facilities,
- (E) water resources projects,
- (F) hospitals,
- (G) resource recovery facilities,
- (H) public buildings,
- (I) space or communications facilities,
- (J) railroads, and
- (K) federally assisted housing.

(3) For purposes of this subsection, any appropriation, new obligational authority, or outlay shall be classified as a military capital investment to the extent that such appropriation, authority, or outlay will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for purposes of national defense and security for a number of years. Such assets shall include military bases, posts, installations, and facilities.

(4) Criteria and guidelines for use in the identification of public civilian and military capital investments, for distinguishing between public civilian and military capital investments, and for distinguishing between major and nonmajor capital investment programs shall be issued by the

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Director of the Office of Management and Budget after consultation with the Comptroller General and the Congressional Budget Office. The analysis submitted under this subsection shall be accompanied by an explanation of such criteria and guidelines.

(5) For purposes of this subsection —

(A) the term “construction” includes the design, planning, and erection of new structures and facilities, the expansion of existing structures and facilities, the reconstruction of a project at an existing site or adjacent to an existing site, and the installation of initial and replacement equipment for such structures and facilities;

(B) the term “acquisition” includes the addition of land, sites, equipment, structures, facilities, or rolling stock by purchase, lease-purchase, trade, or donation; and

(C) the term “rehabilitation” includes the alteration of or correction of deficiencies in an existing structure or facility so as to extend the useful life or improve the effectiveness of the structure or facility, the modernization or replacement of equipment at an existing structure or facility, and the modernization of, or replacement of parts for, rolling stock.

(f) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared in a manner consistent with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 that apply to that and subsequent fiscal years.

(g)(1) The Director of the Office of Management and Budget shall establish the funding for advisory and assistance services for each department and agency as a separate object class in each budget annually submitted to the Congress under this section.

(2)(A) In paragraph (1), except as provided in subparagraph (B), the term “advisory and assistance services” means the following services when provided by nongovernmental sources:

(i) Management and professional support services.

(ii) Studies, analyses, and evaluations.

(iii) Engineering and technical services.

(B) In paragraph (1), the term “advisory and assistance services” does not include the following services:

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(i) Routine automated data processing and telecommunications services unless such services are an integral part of a contract for the procurement of advisory and assistance services.

(ii) Architectural and engineering services, as defined in section 1102 of title 40.

(iii) Research on basic mathematics or medical, biological, physical, social, psychological, or other phenomena.

(h)(1) If there is a medicare funding warning under section 801(a)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 made in a year, the President shall submit to Congress, within the 15-day period beginning on the date of the budget submission to Congress under subsection (a) for the succeeding year, proposed legislation to respond to such warning.

(2) Paragraph (1) does not apply if, during the year in which the warning is made, legislation is enacted which eliminates excess general revenue medicare funding (as defined in section 801(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003) for the 7-fiscal-year reporting period, as certified by the Board of Trustees of each medicare trust fund (as defined in section 801(c)(5) of such Act) not later than 30 days after the date of the enactment of such legislation.

(i)(1) The Director of the Office of Management and Budget shall make publicly available on a website, and continuously update, a tabular list for each fiscal year of each agency that submits budget justification materials, which shall include —

(A) the name of the agency;

(B) a unique identifier that identifies the agency;

(C) to the extent practicable, the date on which the budget justification materials of the agency are first submitted to Congress;

(D) the date on which the budget justification materials of the agency are posted online under section 3 of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note);

(E) the uniform resource locator where the budget justification materials are published on the website of the agency; and

(F) a single data set that contains the information described in subparagraphs (A) through (E) with respect to the agency for all fiscal years for which budget justifications of the agency are made available

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under section 3 of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note) in a structured data format.

(2)(A) Each agency that submits budget justification materials shall make the materials available on the website of the agency, in accordance with the policies established by the Director of the Office of Management and Budget under subparagraph (B).

(B) Not later than 1 year after the date of enactment of this subsection, the Director of the Office of Management and Budget, in consultation with the Secretary of the Treasury, shall establish policies and data standards for agencies relating to making available materials under subparagraph (A), which shall include guidelines for making budget justification materials available in a format aligned with the requirements of section 3(b)(2)(C) of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note) and using a uniform resource locator that is in a consistent format across agencies and is descriptive, memorable, and pronounceable, such as the format of “agencyname.gov/budget”.

(C) If the Director of the Office of Management and Budget maintains a public website that contains the budget of the United States Government submitted under subsection (a) and any related materials, such website shall also contain a link to the tabular list required under paragraph (1).

(3) In this subsection, the term “budget justification materials” has the meaning given that term in section 3(b)(2) of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note).<sup>605</sup>

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<sup>605</sup> 31 U.S.C. § 1105.

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301(e) (e) HEARINGS AND REPORT. —

301(e)(1) (1) IN GENERAL.—In developing the [concurrent resolution on the budget](#)<sup>606</sup> referred to in [subsection \(a\)](#)<sup>607</sup> for each fiscal year, the Committee on the Budget of each House shall hold hearings and shall receive testimony from Members of Congress and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as the committee deems desirable. Each of the recommendations as to short-term and medium-term goals set forth in the report submitted by the members of the Joint Economic Committee under [subsection \(d\)](#)<sup>608</sup> may be considered by the Committee on the Budget of each House as part of its consideration of such concurrent resolution, and its report may reflect its views thereon, including its views on how the estimates of [revenues](#)<sup>609</sup> and levels of [budget authority](#)<sup>610</sup> and [outlays](#)<sup>611</sup> set forth in such concurrent resolution are designed to achieve any goals it is recommending.

301(e)(2) (2) REQUIRED CONTENTS OF REPORT.<sup>612</sup>—The report accompanying the resolution shall include—

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<sup>606</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>607</sup> [Congressional Budget Act of 1974 § 301\(a\)](#), 2 U.S.C. § 632(a), *supra* p. 132, addresses “Content of Concurrent Resolution on the Budget.”

<sup>608</sup> [Congressional Budget Act of 1974 § 301\(d\)](#), 2 U.S.C. § 632(d), *supra* p. 152, addresses “Views and Estimates of Other Committees.”

<sup>609</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>610</sup> [Congressional Budget Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>611</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>612</sup> The Parliamentarian has advised that there is no requirement that the Budget Committee file a written report to accompany a budget resolution that the Committee reports. E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re notes from meeting with Parls (Mar. 5, 2002, 3:19 PM).



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- 301(e)(2)(A) (A) a comparison of the levels of total **new budget authority**,<sup>613</sup> total **outlays**,<sup>614</sup> total **revenues**,<sup>615</sup> and the **surplus**<sup>616</sup> or **deficit**<sup>617</sup> for each fiscal year set forth in the resolution with those requested in the budget submitted by the President;
- 301(e)(2)(B) (B) with respect to each major functional category, an estimate of total **new budget authority**<sup>618</sup> and total **outlays**,<sup>619</sup> with the estimates divided between discretionary and mandatory amounts;
- 301(e)(2)(C) (C) the economic assumptions that underlie each of the matters set forth in the resolution and any alternative economic assumptions and objectives the committee considered;
- 301(e)(2)(D) (D) information, data, and comparisons indicating the manner in which, and the basis on which, the committee determined each of the matters set forth in the resolution;
- 301(e)(2)(E) (E) the estimated levels of **tax expenditures**<sup>620</sup> (the **tax expenditures budget**<sup>621</sup>) by major items and functional categories for the President's budget and in the resolution; and
- 301(e)(2)(F) (F) allocations described in **section 302(a)**.<sup>622</sup>
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<sup>613</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines "new budget authority."

<sup>614</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines "outlays."

<sup>615</sup> U.S. GOV'T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines "revenues."

<sup>616</sup> Congressional Budget Act of 1974 § 3(7), 2 U.S.C. § 622(7), *supra* p. 58, defines "surplus."

<sup>617</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines "deficit."

<sup>618</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines "new budget authority."

<sup>619</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines "outlays."

<sup>620</sup> Congressional Budget Act of 1974 § 3(3), 2 U.S.C. § 622(3), *supra* p. 57, defines "tax expenditures."

<sup>621</sup> Congressional Budget Act of 1974 § 3(3), 2 U.S.C. § 622(3), *supra* p. 57, defines "tax expenditures budget."

<sup>622</sup> Congressional Budget Act of 1974 § 302(a), 2 U.S.C. § 633(a), *infra* p. 185, addresses "Committee Spending Allocations."

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- 301(e)(3) **(3) ADDITIONAL CONTENTS OF REPORT.—**The report accompanying the resolution may include—
- 301(e)(3)(A) **(A)** a statement of any significant changes in the proposed levels of Federal assistance to **State**<sup>623</sup> and **local governments**;<sup>624</sup>
- 301(e)(3)(B) **(B)** an allocation of the level of Federal **revenues**<sup>625</sup> recommended in the resolution among the major sources of such **revenues**;<sup>626</sup>
- 301(e)(3)(C) **(C)** information, data, and comparisons on the share of total Federal budget **outlays**<sup>627</sup> and of gross domestic product devoted to investment in the budget submitted by the President and in the resolution;
- 301(e)(3)(D) **(D)** the assumed levels of **budget authority**<sup>628</sup> and **outlays**<sup>629</sup> for public buildings, with a division between amounts for construction and repair and for rental payments; and
- 301(e)(3)(E) **(E)** other matters, relating to the budget and to fiscal policy, that the committee deems appropriate.
- 301(f) **(f) ACHIEVEMENT OF GOALS FOR REDUCING UNEMPLOYMENT.—**

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<sup>623</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>624</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>625</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>626</sup> *Id.*

<sup>627</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>628</sup> Congressional Budget Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>629</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

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301(f)(1) (1) If, pursuant to [section 4\(c\) of the Employment Act of 1946](#),<sup>630</sup> the President recommends in the Economic Report that the goals for reducing unemployment set forth in [section 4\(b\) of such Act](#)<sup>631</sup> be achieved in a year after the close of the five-year period prescribed by such subsection, the [concurrent resolution on the budget](#)<sup>632</sup> for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

301(f)(2) (2) After the Congress has expressed its opinion pursuant to [paragraph \(1\)](#)<sup>633</sup> as to the year in which the goals for reducing unemployment set forth in [section 4\(b\) of the Employment Act of 1946](#)<sup>634</sup> can be achieved, if, pursuant to [section 4\(e\) of such Act](#),<sup>635</sup> the President recommends in the Economic Report that such goals be achieved in a year which is different from the year in which the Congress has expressed its opinion that such goals should be achieved, either in its action pursuant to [paragraph \(1\)](#)<sup>636</sup> or in its most recent action pursuant to [this paragraph](#),<sup>637</sup> the [concurrent resolution on the budget](#)<sup>638</sup> for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

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<sup>630</sup> [Employment Act of 1946 § 4\(c\)](#), 15 U.S.C. § 1022a(c), *infra* p. 172, addresses “Achievement of Full Employment, Balanced Budget, Zero Inflation Rate, and 20 Per Centum Level of Federal Outlays as a Proportion of Gross National Product for Succeeding Economic Reports.”

<sup>631</sup> [Employment Act of 1946 § 4\(b\)](#), 15 U.S.C. § 1022a(b), *supra* p. 136, addresses “Interim Numerical Goals for Initial Economic Reports.”

<sup>632</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>633</sup> [Congressional Budget Act of 1974 § 301\(f\)\(1\)](#), 2 U.S.C. § 632(f)(1), *supra* p. 171.

<sup>634</sup> [Employment Act of 1946 § 4\(b\)](#), 15 U.S.C. § 1022a(b), *supra* p. 136, addresses “Interim Numerical Goals for Initial Economic Reports.”

<sup>635</sup> [Employment Act of 1946 § 4\(e\)](#), 15 U.S.C. § 1022a(e), *infra* p. 173, addresses “Interim Numerical Goals for Succeeding Economic Reports.”

<sup>636</sup> [Congressional Budget Act of 1974 § 301\(f\)\(1\)](#), 2 U.S.C. § 632(f)(1), *supra* p. 171.

<sup>637</sup> [Congressional Budget Act of 1974 § 301\(f\)\(2\)](#), 2 U.S.C. § 632(f)(2), *supra* p. 171.

<sup>638</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

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301(f)(3)

(3) It shall be in order to amend the provision of such resolution setting forth such year only if the amendment thereto also proposes to alter the estimates, amounts, and levels (as described in [subsection \(a\)](#)<sup>639</sup>) set forth in such resolution in [germane](#)<sup>640</sup> fashion in order to be consistent with the economic goals (as described in [sections 3\(a\)\(2\)](#)<sup>641</sup> and [4\(b\)](#)<sup>642</sup> of the Employment Act of 1946) which such amendment proposes can be achieved by the year specified in such amendment.

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### Additional Economic Goals

*Section 4(c) of the Employment Act of 1946* — Section 4(c) provides:

**(c) Achievement of full employment, balanced budget, zero inflation rate, and 20 per centum level of Federal outlays as a proportion of gross national product for succeeding Economic Reports**

(1) Upon achievement of the 3 and 4 per centum goals specified in subsection (b)(1), each succeeding Economic Report shall have the goal of achieving as soon as practicable and maintaining thereafter full employment and a balanced budget.

(2) Upon achievement of the 3 per centum goal specified in subsection (b)(2), each succeeding Economic Report shall have the goal of achieving by 1988 a rate of inflation of zero per centum: Provided, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

(3) Upon achievement of the 20 per centum goal specified in subsection (b)(3), each succeeding Economic Report shall have the goal of establishing the share of an expanding gross national product accounted for by Federal outlays at a level of 20 per centum or less, or the lowest level consistent

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<sup>639</sup> [Congressional Budget Act of 1974 § 301\(a\)](#), 2 U.S.C. § 632(a), *supra* p. 132, addresses “Content of Concurrent Resolution on the Budget.”

<sup>640</sup> For a discussion of germaneness, see *infra* p. 268.

<sup>641</sup> [Employment Act of 1946 § 3\(a\)\(2\)](#), 15 U.S.C. § 1022(a)(2), *infra* p. 173, addresses the Economic Report of the President.

<sup>642</sup> [Employment Act of 1946 § 4\(b\)](#), 15 U.S.C. § 1022a(b), *supra* p. 136, addresses “Interim Numerical Goals for Initial Economic Reports.”

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with national needs and priorities: Provided, That policies and programs for achieving the goal specified in this clause shall be designed so as not to impede achievement of the goals and timetables specified in subsection (b)(1) for the reduction of unemployment.<sup>643</sup>

*Section 4(e) of such Act*—Section 4(e) provides:

**(e) Interim numerical goals for succeeding Economic Reports**

If, after achievement of the 3 and 4 per centum goals specified in subsection (b), the unemployment rate for a year as set forth pursuant to section 1022(d) of this title is more than 3 per centum among individuals aged twenty and over or more than 4 per centum among individuals aged sixteen and over, the next Economic Report after such rate is set forth and each succeeding Economic Report shall include (as part of the five-year goals in each Economic Report) the interim numerical goal of reducing unemployment to not more than the levels specified in subsection (b)(1) as soon as practicable but not later than the fifth calendar year after the first such Economic Report, counting as the first calendar year the year in which such Economic Report is issued: Provided, That, if the President finds it necessary, the President may, under the authority provided in subsection (d), recommend modification of the timetable provided for in this subsection for the reduction of unemployment, and for the purposes of section 304 of the Full Employment and Balanced Growth Act of 1978, such recommendation by the President shall be treated as a recommendation made under subsection (d) of this section.<sup>644</sup>

*Sections 3(a)(2) . . . of the Employment Act of 1946*—Section 3(a)(2) provides:

(2)(A) annual numerical goals for employment and unemployment, production, real income, productivity, Federal outlays as a proportion of gross national product, and prices for the calendar year in which the Economic Report is transmitted and for the following calendar year, designated as short-term goals, which shall be consistent with achieving as rapidly as feasible the goals of full employment and production, increased real income, balanced growth, fiscal policies that would establish the share of an expanding gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities, a balanced Federal budget, adequate productivity growth, price stability, achievement of an improved trade balance, and proper attention to national priorities; and

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<sup>643</sup> [Employment Act of 1946 § 4\(c\)](#), 15 U.S.C. § 1022a(c).

<sup>644</sup> [Employment Act of 1946 § 4\(e\)](#), 15 U.S.C. § 1022a(e).

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(B) annual numerical goals as specified in subparagraph (A) for the three successive calendar years, designated as medium term goals;<sup>645</sup>

## Report

The Parliamentarian has advised that there is no requirement that the Budget Committee file a written report to accompany a budget resolution that the Committee reports. If, however, the Committee does file a written report, it has to lay over for 48 hours from the time that the Bill Clerk stamps it after it has been printed and received from the Government Publishing Office, excluding Sundays and legal holidays.<sup>646</sup> As a result, the Budget Committee has on several occasions ordered budget resolutions and reconciliation bills reported without a written report, instead issuing a committee print.<sup>647</sup>

The Parliamentarian has advised that there is no time deadline for filing a written report after the Committee has ordered the resolution reported, except for the stipulation in the Budget Committee rules stating, “When the committee has ordered a measure or recommendation reported, following final action, the report thereon shall be filed in the Senate at the earliest time.”<sup>648</sup> Budget Committee rules do require that any Senator on the Committee who gives notice of an intention to file views shall be entitled to not less than 3 calendar days in which to file such views in writing with the committee clerk. Thus, the Chair can announce at the end of the markup that the Committee intends to file the report by a date and time certain and

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<sup>645</sup> [Employment Act of 1946 § 3\(a\)\(2\)](#), 15 U.S.C. § 1022(a)(2).

<sup>646</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re notes from meeting with Parls (Mar. 5, 2002, 3:19 PM).

<sup>647</sup> For examples of committee prints for budget resolutions and reconciliation bills, see S. COMM. ON THE BUDGET, 117TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FISCAL YEAR 2022](#) (Comm. Print 2021); S. COMM. ON THE BUDGET, 116TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FISCAL YEAR 2020](#) (Comm. Print 2019); S. COMM. ON THE BUDGET, 115TH CONG., [RECONCILIATION RECOMMENDATIONS PURSUANT TO H. CON. RES. 71: COMMITTEE RECOMMENDATIONS AS SUBMITTED TO THE COMMITTEE ON THE BUDGET PURSUANT TO H. CON. RES. 71](#) (Comm. Print 2017); S. COMM. ON THE BUDGET, 115TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FISCAL YEAR 2018](#) (Comm. Print 2017); S. COMM. ON THE BUDGET, 114TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2016](#) (Comm. Print 2015); S. COMM. ON THE BUDGET, 113TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2014](#) (Comm. Print 2013) (with [Errata](#)); S. COMM. ON THE BUDGET, 111TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2011](#) (Comm. Print 2010) (with [Errata](#)); S. COMM. ON THE BUDGET, 111TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2010](#) (Comm. Print 2009); S. COMM. ON THE BUDGET, 110TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2009](#) (Comm. Print 2008); S. COMM. ON THE BUDGET, 110TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2008](#) (Comm. Print 2007); S. COMM. ON THE BUDGET, 109TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2007](#) (Comm. Print 2006); S. COMM. ON THE BUDGET, 109TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2006](#) (Comm. Print 2005); S. COMM. ON THE BUDGET, 108TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2005](#) (Comm. Print 2004); S. COMM. ON THE BUDGET, 108TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2004](#) (Comm. Print 2003). Note that for some of these prints, the Budget Committee did not formally act at all.

<sup>648</sup> S. Comm. on the Budget, 117th Cong., Rules of Procedure, R. VII(1), [167 CONG. REC. S761–62](#) (daily ed. Feb. 22, 2021).

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require that Senators wishing to submit written views do so no later than a certain date. If the Committee decides not to file a written report, there is no requirement that the Committee publish any views.<sup>649</sup>

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<sup>649</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re notes from meeting with Parls (Mar. 5, 2002, 3:19 PM).



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- 301(g) (g) ECONOMIC ASSUMPTIONS. —
- 301(g)(1) (1) It shall not be in order in the Senate to consider any **concurrent resolution on the budget**<sup>650</sup> for a fiscal year, or any amendment thereto, or any conference report thereon, that sets forth amounts and levels that are determined on the basis of more than one set of economic and technical assumptions.
- 301(g)(2) (2) The joint explanatory statement accompanying a conference report on a **concurrent resolution on the budget**<sup>651</sup> shall set forth the common economic assumptions upon which such joint statement and conference report are based, or upon which any amendment contained in the joint explanatory statement to be proposed by the conferees in the case of technical disagreement, is based.
- 301(g)(3) (3) Subject to periodic reestimation based on changed economic conditions or technical estimates, determinations under **titles III**<sup>652</sup> and **IV**<sup>653</sup> of the Congressional Budget Act of 1974 shall be based upon such common economic and technical assumptions.
- 301(h) (h) BUDGET COMMITTEE’S CONSULTATION WITH COMMITTEES.—The Committee on the Budget of the House of Representatives shall consult with the committees of its House having legislative jurisdiction during the preparation, consideration, and enforcement of the **concurrent resolution on the budget**<sup>654</sup> with respect to all matters which relate to the jurisdiction or functions of such committees.
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<sup>650</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>651</sup> *Id.*

<sup>652</sup> Congressional Budget Act of 1974 tit. III, §§ 300–315, 2 U.S.C. §§ 631–645a, pp. 113–782, addresses “Congressional Budget Process.”

<sup>653</sup> Congressional Budget Act of 1974 tit. IV, §§ 401–428, 2 U.S.C. §§ 651–658g, *infra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>654</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”



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301(i) (i) SOCIAL SECURITY POINT OF ORDER.—It shall not be in order in the Senate to consider any **concurrent resolution on the budget**<sup>655</sup> (or amendment, motion, or conference report on the resolution) that would decrease the excess of social security **revenues**<sup>656</sup> over social security **outlays**<sup>657</sup> in any of the fiscal years covered by the concurrent resolution. No change in **chapter 1 of the Internal Revenue Code of 1986**<sup>658</sup> shall be treated as affecting the amount of social security **revenues**<sup>659</sup> unless such provision changes the income tax treatment of social security benefits.

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Where a budget resolution would have worsened Social Security relative to the baseline in violation of section 301(i), the Parliamentarian's office advised that a Senator arguably could raise a point of order against the motion to proceed to the resolution.<sup>660</sup>

If the Presiding Officer sustains a point of order under this section against a House amendment between Houses, then the effect will be as if the Senate had disagreed to that House amendment. Thus, when asked:

In the current House budget resolution, there is a \$1B decrease in social security revenues over outlays. This triggers a Senate point of order under 301(i) of the Congressional Budget Act, and this point of order currently has a 60-vote waiver. We expect that we will send the Senate resolution to the House, they will strike our language and insert theirs, and return it to the Senate with a request for a conference. At that time can the point of order be raised preventing us from going to conference unless the [point of order] is waived? Or can we proceed to conference and work to strike it there so there is no point of order against the conference report. If the

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<sup>655</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>656</sup> U.S. GOV'T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>657</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>658</sup> The Budget Act here refers to subtitle A, chapter 1, [Internal Revenue Code of 1986 §§ 1–1400Z-2](#), 26 U.S.C. §§ 1–1400Z-2, which address “Normal Taxes and Surtaxes.”

<sup>659</sup> U.S. GOV'T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>660</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re Paul budget (May 24, 2011, 2:40 PM) (reporting a conversation with Off. of S. Parliamentarian).

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former, we obviously need to know soon so we can inform the House of the issue.,<sup>661</sup>

the Parliamentarian responded: “The effect of sustaining a point of order against a House amendment is that the Senate has disagreed to that amendment.”<sup>662</sup>

Budget Counsel prepared the following summary of 301(i) enforcement during the era of Senator Mike Enzi’s chairmanship. In some respects, this enforcement differed from that in earlier years under Senators Kent Conrad and Patty Murray.

**Budget Resolutions**

**301(i) General**—Point of order against budget resolutions that would “decrease the excess of social security revenues over social security outlays . . .”

**Exception (301(i) not triggered)**—Changes to chapter 1 of the Internal Revenue Code (IRC) are not treated as affecting social security revenues.

**Exception to exception (301(i) triggered)**—The provision changes the income tax treatment of social security benefits.

- Chapter 1 of the IRC is titled “Normal Taxes and Surtaxes” and encompasses IRC Sections 1 – 1400U3. Therefore, if the resolution has off-budget effects from changes to a code section within this number range it should fit the 301(i) chapter 1 exception.<sup>663</sup>

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<sup>661</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re Budget Resolution Point of Order/Conference question (Mar 29, 2009).

<sup>662</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Budget Resolution Point of Order/Conference question (Mar. 29, 2009, 7:28 PM).

<sup>663</sup> Staff of S. Comm. on the Budget, Social Security Budget Points of Order, *in* E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Off-Budget Effects in America Competes (Mar. 8, 2022, 7:22 PM).

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Photo: Wikimedia

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# Points of Order

A budget has meaning only insofar as people follow it. How does the Congressional budget process ensure that the budget has consequence?

In his statement introducing the Congressional Budgetary Procedures Act of 1973, Senator Sam Ervin said that “a simple spending ceiling, without a mechanism to implement that ceiling, is nothing more than a stop-gap measure.”<sup>664</sup> Senator Ervin said: “I believe the legislation I have been describing today goes well beyond such temporary action. It can be the basis for the total rebuilding of the structure of fiscal responsibility . . . .”<sup>665</sup>

One of the key means of building that fiscal responsibility is the opportunity that the Budget Act gives any Senator to raise a procedural objection—a point of order—against a measure that would violate Budget Act strictures.

In *Riddick’s Senate Procedure*, the Parliamentarian described points of order generally:

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<sup>664</sup> 119 CONG. REC. 11,860 (Apr. 11, 1973).

<sup>665</sup> *Id.*

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Points of order or questions of order are directed against present actions being taken or proposed to be taken by the Senate and deemed to be contrary to the rules, practices, and precedents of the Senate.

Unless by unanimous consent points of order are precluded, or are not timely, any Senator when recognized may make a point of order against any attempted procedure or action to be taken by the Senate, and the Chair is required to rule thereon without debate; but under Senate precedents, the Chair may entertain a discussion thereof for his own edification. Under Rule XX, if the Chair submits the question to the Senate for decision, the matter would be debatable.

Any ruling by the Chair not appealed or which is sustained by vote of the Senate, or any verdict by the Senate on a point of order, becomes a precedent of the Senate which the Senate follows just as it would its rules, unless and until the Senate in its wisdom should reverse or modify that decision.<sup>666</sup>

Note that Congressional Budget Act points of order are not self-enforcing. A Senator must raise a point of order for a prohibition in the Act to have effect. The Budget Act thus relies on points of order from the floor for its enforcement.<sup>667</sup>

Points of order provide an important means of enforcing the budget. The Congressional Research Service's Jim Saturno explains:

The Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended) created a process that Congress uses each year to establish and enforce the parameters for budgetary legislation. Enforcement of budgetary decisions is accomplished through the use of points of order, and through the reconciliation process. Points of order are prohibitions against certain types of legislation or congressional actions. These prohibitions are enforced when a Member raises a point of order against legislation that may violate these rules when it is considered by the House or Senate.<sup>668</sup>

The Budget Act creates the opportunity for points of order with language like that in section 302(c) and section 302(f)(2), "it shall not be in

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<sup>666</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 987 (1992).

<sup>667</sup> See Senate Precedent PRL19840621-001, [130 CONG. REC. 17,754](#) (June 21, 1984) (inquiry of Sen. Hatfield regarding Budget Act § 303).

<sup>668</sup> JAMES V. SATURNO, CONG. RSCH. SERV., [97-865, POINTS OF ORDER IN THE CONGRESSIONAL BUDGET PROCESS](#), summary (2015).

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order . . . to . . . .”<sup>669</sup> Budget process law uses similar language at several points, each time creating the possibility for points of order.<sup>670</sup> Other mandatory language also creates the possibility for points of order.<sup>671</sup>

The Budget Act enforces the budget resolution through the allocation of budgetary resources among committees. Committees then need to make sure that their legislation does not exceed the committee’s appropriate amounts of resources. In *Riddick’s Senate Procedure*, the Parliamentarian described the process of allocations and enforcement under Budget Act section 302:

The joint explanatory statement accompanying the conference report on the budget resolution sets out allocations of budget authority and outlays to each committee that has jurisdiction over legislation that

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<sup>669</sup> See [Congressional Budget Act of 1974 § 302\(c\)](#), 2 U.S.C. § 633(c), *infra* p. 192; [Congressional Budget Act of 1974 § 302\(f\)\(2\)](#), 2 U.S.C. § 633(f)(2), *infra* p. 202.

<sup>670</sup> See [Congressional Budget Act of 1974 § 301\(g\)\(1\)](#), 2 U.S.C. § 632(g)(1), *supra* p. 176 (economic and technical assumptions); [Congressional Budget Act of 1974 § 301\(i\)](#), 2 U.S.C. § 632(i), *supra* p. 177 (Social Security); [Congressional Budget Act of 1974 § 302\(c\)](#), 2 U.S.C. § 633(c), *infra* p. 192 (before suballocations); [Congressional Budget Act of 1974 § 302\(f\)\(1\)](#), 2 U.S.C. § 633(f)(1), *infra* p. 202 (exceeding allocation); [Congressional Budget Act of 1974 § 302\(f\)\(2\)](#), 2 U.S.C. § 633(f)(2), *infra* p. 202 (exceeding allocation); [Congressional Budget Act of 1974 § 303\(a\)](#), 2 U.S.C. § 634(a), *infra* p. 219 (before budget resolution); [Congressional Budget Act of 1974 § 303\(c\)\(1\)](#), 2 U.S.C. § 634(c)(1), *infra* p. 227 (before allocation); [Congressional Budget Act of 1974 § 305\(d\)](#), 2 U.S.C. § 636(d), *infra* p. 314 (mathematical consistency); [Congressional Budget Act of 1974 § 309](#), 2 U.S.C. § 640, *infra* p. 405 (adjournment before appropriation); [Congressional Budget Act of 1974 § 310\(d\)\(1\)](#), 2 U.S.C. § 641(d)(1), *infra* p. 544 (increasing deficit relative to reconciliation instructions); [Congressional Budget Act of 1974 § 310\(d\)\(2\)](#), 2 U.S.C. § 641(d)(2), *infra* p. 544 (increasing deficit relative to reconciliation instructions); [Congressional Budget Act of 1974 § 310\(f\)](#), 2 U.S.C. § 641(f), *infra* p. 555 (completion of reconciliation); [Congressional Budget Act of 1974 § 310\(g\)](#), 2 U.S.C. § 641(g), *infra* p. 559 (Social Security); [Congressional Budget Act of 1974 § 311\(a\)\(1\)](#), 2 U.S.C. § 642(a)(1), *infra* p. 573 (aggregates); [Congressional Budget Act of 1974 § 311\(a\)\(3\)](#), 2 U.S.C. § 642(a)(3), *infra* p. 575 (Social Security); [Congressional Budget Act of 1974 § 312\(b\)\(1\)](#), 2 U.S.C. § 643(b)(1), *infra* p. 613 (discretionary spending limits); [Congressional Budget Act of 1974 § 312\(c\)](#), 2 U.S.C. § 643(c), *infra* p. 613 (maximum deficit amount); [Congressional Budget Act of 1974 § 314\(f\)](#), 2 U.S.C. § 645(f), *infra* p. 772 (discretionary spending limits); [Congressional Budget Act of 1974 § 401\(a\)](#), 2 U.S.C. § 651(a), *infra* p. 783 (legislation not subject to appropriations); [Congressional Budget Act of 1974 § 401\(b\)\(1\)](#), 2 U.S.C. § 651(b)(1), *infra* p. 784 (entitlements); [Congressional Budget Act of 1974 § 425\(a\)](#), 2 U.S.C. § 658d(a), *infra* p. 828 (mandates); [Balanced Budget and Emergency Deficit Control Act of 1985 § 258A\(b\)\(3\)\(C\)\(ii\)](#), 2 U.S.C. § 907b(b)(3)(C)(ii), *infra* 1126 (mathematical consistency); [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(h\)\(2\)](#), 2 U.S.C. § 907c(h)(2), *infra* p. 1134 (mathematical consistency); [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(h\)\(3\)](#), 2 U.S.C. § 907c(h)(3), *infra* p. 1134 (deficit neutrality); [Balanced Budget and Emergency Deficit Control Act of 1985 § 258C\(a\)\(5\)](#), 2 U.S.C. § 907d(a)(5), *infra* p. 1140 (maximum deficit amount); [Statutory Pay-As-You-Go Act of 2010 § 13\(a\)](#), 2 U.S.C. § 939(a), *infra* p. 1214 (Social Security); [S. Con. Res. 70, 110th Cong. § 314\(a\)](#), 122 Stat. 5143, 5179 (2008), *infra* p. 1220 (changes in mandatory programs); [S. Con. Res. 13, 111th Cong. § 404\(a\)](#), 123 Stat. 3506, 3538 (2009), *infra* p. 1229 (short-term deficit); [S. Con. Res. 11, 114th Cong. § 3101\(b\)](#) (2015) (adopted), *infra* p. 1237 (long-term deficit); [H. Con. Res. 71, 115th Cong. § 4106\(a\)\(1\)](#) (2017) (adopted), *infra* p. 1245 (Senate paygo); [S. Con. Res. 14, 117th Cong. § 4002\(a\)\(1\)](#) (2021) (adopted), *infra* p. 1262 (advance appropriations).

<sup>671</sup> See, e.g., [Congressional Budget Act of 1974 § 305\(b\)\(2\)](#), 2 U.S.C. § 636(b)(2), *infra* p. 255 (“No amendment that is not germane to the provisions of such concurrent resolution shall be received.”); FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 619 (1992) (citing [127 CONG. REC. 6039](#) (Apr. 1, 1981)).

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provides budget or spending authority. Upon the adoption of the conference report, the Appropriations Committee must subdivide its allocation among its subcommittees, and other committees receiving allocations must subdivide their allocations among their subcommittees or among programs within their jurisdictions. These allocations (known as “crosswalks”) guide Congress in its subsequent consideration of measures that provide budget or spending authority.

Compliance with congressional budgetary discipline is enforced through several points of order at various stages of the budget cycle. . . . Another point of order will lie under the Act as amended in 1990 against proposals providing budget authority, credit authority or entitlement authority within the jurisdiction of the Senate Appropriations Committee until that committee has subdivided this allocation as required above; and still another point of order will lie against a proposal which breaches these subdivisions or the allocations to the full committee (other than the Appropriations Committee).<sup>672</sup>

These committee allocations are central to enforcement of Congress’ budget goals. Points of order under section 302 have been among those Senators most frequently raise.<sup>673</sup>

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<sup>672</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 503 (1992).

<sup>673</sup> See *infra* p. 1276.



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## COMMITTEE ALLOCATIONS

302(a) SEC. 302.<sup>674</sup> (a) COMMITTEE SPENDING ALLOCATIONS. —

302(a)(1) (1) ALLOCATION AMONG COMMITTEES.—The joint explanatory statement accompanying a conference report on a [concurrent resolution on the budget](#)<sup>675</sup> shall include an allocation, consistent with the resolution recommended in the conference report, of the levels for the first fiscal year of the resolution, for at least each of the ensuing 4 fiscal years, and a total for that period of fiscal years (except in the case of the Committee on Appropriations only for the fiscal year of that resolution) of —

302(a)(1)(A) (A) total [new budget authority](#);<sup>676</sup> and

302(a)(1)(B) (B) total [outlays](#);<sup>677</sup>

among each committee of the House of Representatives or the Senate that has jurisdiction over legislation providing or creating such amounts.

302(a)(2) (2) NO DOUBLE COUNTING.—In the House of Representatives, any item allocated to one committee may not be allocated to another committee.

302(a)(3) (3) FURTHER DIVISION OF AMOUNTS. —

302(a)(3)(A) (A) IN THE SENATE.—In the Senate, the amount allocated to the Committee on Appropriations shall be further divided among the categories specified in

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<sup>674</sup> Congressional Budget Act of 1974 § 302 is codified as amended at [2 U.S.C. § 633](#). Congressional Budget Act of 1974 § 302 was formerly codified as 31 U.S.C. § 1323, prior to the 1982 general revision and enactment of Title 31, Money and Finance in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>675</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>676</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>677</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

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section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985<sup>678</sup> and shall not exceed the limits for each category<sup>679</sup> set forth in section 251(c) of that Act.<sup>680</sup>

302(a)(3)(B) (B) IN THE HOUSE.—In the House of Representatives, the amounts allocated to each committee for each fiscal year, other than the Committee on Appropriations, shall be further divided between amounts provided or required by law on the date of filing of that conference report and amounts not so provided or required. The amounts allocated to the Committee on Appropriations shall be further divided—

302(a)(3)(B)(i) (i) between discretionary and mandatory amounts or programs, as appropriate; and

302(a)(3)(B)(ii) (ii) consistent with the categories specified in section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985.<sup>681</sup>

302(a)(4) (4) AMOUNTS NOT ALLOCATED.—In the House of Representatives or the Senate, if a committee receives no allocation of new budget authority<sup>682</sup> or outlays,<sup>683</sup>

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<sup>678</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4), 2 U.S.C. § 900(c)(4), *infra* p. 978, defines “nonsecurity category,” “security category,” “discretionary category,” “revised security category,” “revised nonsecurity category,” and “category.” The Bipartisan Budget Act of 2013 set discretionary spending limits for only the revised security category and revised nonsecurity category, and those only through Fiscal Year 2021. Bipartisan Budget Act of 2013 § 101, 2 U.S.C. § 901(c). For Fiscal Year 2022 and after, these categories are no longer binding.

<sup>679</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F), 2 U.S.C. § 900(c)(4)(F), *infra* p. 979, defines “category.” For proposed changes to categories, *see infra* p. 188.

<sup>680</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(c), 2 U.S.C. § 901(c), *infra* p. 1005, addresses “Discretionary Spending Limit.”

<sup>681</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4), 2 U.S.C. § 900(c)(4), *infra* p. 978, defines “nonsecurity category,” “security category,” “discretionary category,” “revised security category,” “revised nonsecurity category,” and “category.” The Bipartisan Budget Act of 2013 set discretionary spending limits for only the revised security category and revised nonsecurity category, and those only through Fiscal Year 2021. Bipartisan Budget Act of 2013 § 101, 2 U.S.C. § 901(c). For Fiscal Year 2022 and after, these categories are no longer binding.

<sup>682</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>683</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

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that committee shall be deemed to have received an allocation equal to zero for **new budget authority**<sup>684</sup> or **outlays**.<sup>685</sup>

302(a)(5)                    **(5) ADJUSTING ALLOCATION OF DISCRETIONARY SPENDING IN THE HOUSE OF REPRESENTATIVES —**

302(a)(5)(A)                **(A) If a **concurrent resolution on the budget**<sup>686</sup> is not adopted by April 15,<sup>687</sup> the chairman of the Committee on the Budget of the House of Representatives shall submit to the House, as soon as practicable, an allocation under **paragraph (1)**<sup>688</sup> to the Committee on Appropriations consistent with the discretionary spending levels in the most recently agreed to **concurrent resolution on the budget**<sup>689</sup> for the appropriate fiscal year covered by that resolution.**

302(a)(5)(B)                **(B) As soon as practicable after an allocation under **paragraph (1)**<sup>690</sup> is submitted under **this section**,<sup>691</sup> the Committee on Appropriations shall make suballocations and report those suballocations to the House of Representatives.**

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*The Joint Explanatory Statement Accompanying a Conference Report —*  
When Congress has adopted budget resolution conference reports, the joint

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<sup>684</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>685</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>686</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>687</sup> Congressional Budget Act of 1974 § 301(a), 2 U.S.C. § 632(a), *supra* p. 132, requires that “[o]n or before April 15 of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1 of such year.”

<sup>688</sup> Congressional Budget Act of 1974 § 302(a)(1), 2 U.S.C. § 633(a)(1), *supra* p. 132, addresses “Allocation Among Committees.”

<sup>689</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>690</sup> Congressional Budget Act of 1974 § 302(a)(1), 2 U.S.C. § 633(a)(1), *supra* p. 132, addresses “Allocation Among Committees.”

<sup>691</sup> Congressional Budget Act of 1974 § 302, 2 U.S.C. § 633, *supra* p. 185, addresses “Committee Allocations.”

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statements accompanying the conference reports have generally included such allocations.<sup>692</sup>

Budget resolutions have for several years provided for filings when Congress adopts a budget resolution without a conference,<sup>693</sup> and Budget Chairs have then made filings pursuant to those budget resolutions.<sup>694</sup> Budget Committee Chairs have filed revised allocations.<sup>695</sup> And Budget Committee Chairs have filed allocations pursuant to deeming resolutions.<sup>696</sup>

*category*—The President’s fiscal year 2023 budget presents the Veterans Affairs Medical Care Program separate from either the defense or non-defense discretionary category, in effect treating it as a distinct third category.<sup>697</sup> Conveying the President’s fiscal year 2023 budget request to Congress, the Director of the Office of Management and Budget explained: “For non-defense programs, the 2023 Budget proposes to separate out the Veterans Affairs (VA) medical care program from other non-defense discretionary spending in order to transparently display the VA medical care program’s faster growth relative to other programs.”<sup>698</sup>

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<sup>692</sup> See, e.g., [CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2016](#), H.R. REP. NO. 114-96, at 205–09 (2015) (Conf. Rep.); [CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010](#), H.R. REP. NO. 111-89, at 141–48 (2009) (Conf. Rep.); [CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2009](#), H.R. REP. NO. 110-659, at 135–42 (2008) (Conf. Rep.); [CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2008](#), H.R. REP. NO. 110-153, at 125–32 (2007) (Conf. Rep.); [CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2006](#), H.R. REP. NO. 109-62, at 85–89 (2005) (Conf. Rep.).

<sup>693</sup> See [S. Con. Res. 14](#), 117th Cong. § 4006 (2021) (adopted); [S. Con. Res. 5](#), 117th Cong. § 4001 (2021) (adopted); [H. Con. Res. 71](#), 115th Cong. §§ 4113, 5206 (2017) (adopted); [S. Con. Res. 3](#), 115th Cong. § 4001 (2017) (adopted).

<sup>694</sup> See, e.g., [167 CONG. REC. S986–88](#) (daily ed. Mar. 2, 2021); [167 CONG. REC. S6667–68](#) (daily ed. Sept. 23, 2021).

<sup>695</sup> See, e.g., [168 CONG. REC. S3151](#) (daily ed. June 23, 2022); *id.* at [S947](#) (daily ed. Mar. 2, 2022); *id.* at [S570](#) (daily ed. Feb. 8, 2022).

<sup>696</sup> See, e.g., [168 CONG. REC. H5731](#) (daily ed. June 21, 2022).

<sup>697</sup> OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, [BUDGET OF THE U.S. GOVERNMENT: FISCAL YEAR 2023](#), at 136, 140 (2022).

<sup>698</sup> Letter from Shalanda D. Young to Bernie Sanders (Mar. 28, 2022) (conveying “Significant Presentation and Technical Changes in the Budget of the United States Government Fiscal Year 2023”).

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302(b)

(b) SUBALLOCATIONS BY APPROPRIATIONS COMMITTEES.—As soon as practicable after a [concurrent resolution on the budget](#)<sup>699</sup> is agreed to, the Committee on Appropriations of each House (after consulting with the Committee on Appropriations of the other House) shall suballocate each amount allocated to it for the [budget year](#)<sup>700</sup> under [subsection \(a\)](#)<sup>701</sup> among its subcommittees. Each Committee on Appropriations shall promptly report to its House suballocations made or revised under [this subsection](#).<sup>702</sup> The Committee on Appropriations of the House of Representatives shall further divide among its subcommittees the divisions made under [subsection \(a\)\(3\)\(B\)](#)<sup>703</sup> and promptly report those divisions to the House.

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*Suballocations by Appropriations Committees*—The Senate Appropriations Committee generally reports initial suballocations under the title “Allocation to Subcommittees of Budget Totals . . . .”<sup>704</sup>

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<sup>699</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>700</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *infra* p. 982, defines “budget year.”

<sup>701</sup> [Congressional Budget Act of 1974 § 302\(a\)](#), 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>702</sup> [Congressional Budget Act of 1974 § 302\(b\)](#), 2 U.S.C. § 633(b), *supra* p. 189, addresses “Suballocations by Appropriations Committees.”

<sup>703</sup> [Congressional Budget Act of 1974 § 302\(a\)\(3\)\(B\)](#), 2 U.S.C. § 633(a)(3)(B), *supra* p. 186, addresses “Further Division of Amounts” “In the House.”

<sup>704</sup> *E.g.*, S. COMM. ON APPROPRIATIONS, 116TH CONG., S. COMM. ON APPROPRIATIONS, 116TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2020](#), S. REP. NO. 116-104 (2019); S. COMM. ON APPROPRIATIONS, 115TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 115-260 (2018); S. COMM. ON APPROPRIATIONS, 115TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2018](#), S. REP. NO. 115-219 (2018); S. COMM. ON APPROPRIATIONS, 114TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2017](#), S. REP. NO. 114-238 (2016); S. COMM. ON APPROPRIATIONS, 114TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2016](#), S. REP. NO. 114-55 (2015); S. COMM. ON APPROPRIATIONS, 113TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2015](#), S. REP. NO. 113-163 (2014); S. COMM. ON APPROPRIATIONS, 112TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2013](#), S. REP. NO. 112-156 (2012); S. COMM. ON APPROPRIATIONS, 112TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2012](#), S. REP. NO. 112-76 (2011); S. COMM. ON APPROPRIATIONS, 111TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION, FISCAL YEAR 2010](#), S. REP. NO. 111-30 (2009); S. COMM. ON APPROPRIATIONS, 111TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION, FISCAL YEAR 2009](#), S. REP. NO. 111-22 (2009); S. COMM. ON APPROPRIATIONS, 110TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION, FISCAL YEAR 2009](#), S. REP. NO. 110-393 (2008); S. COMM. ON APPROPRIATIONS, 110TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION, FISCAL YEAR 2008](#), S. REP. NO. 110-392 (2008); S. COMM. ON APPROPRIATIONS, 110TH CONG.,

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The House Appropriations Committee generally reports initial suballocations under the title “Report on the Suballocation of Budget Allocations for Fiscal Year . . . .”<sup>705</sup> In 1998, the Committee entitled its initial

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[ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2008](#), S. REP. NO. 110-86 (2007); S. COMM. ON APPROPRIATIONS, 110TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2007](#), S. REP. NO. 110-74 (2007); S. COMM. ON APPROPRIATIONS, 109TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2007](#), S. REP. NO. 109-268 (2006); S. COMM. ON APPROPRIATIONS, 109TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2006](#), S. REP. NO. 109-77 (2005); S. COMM. ON APPROPRIATIONS, 108TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2005](#), S. REP. NO. 108-336 (2004); S. COMM. ON APPROPRIATIONS, 108TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2004](#), S. REP. NO. 108-77 (2003); S. COMM. ON APPROPRIATIONS, 107TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2002](#), S. REP. NO. 107-34 (2001); S. COMM. ON APPROPRIATIONS, 106TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2001](#), S. REP. NO. 106-296 (2000); S. COMM. ON APPROPRIATIONS, 106TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2000](#), S. REP. NO. 106-52 (1999); S. COMM. ON APPROPRIATIONS, 105TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1999](#), S. REP. NO. 105-191 (1998); S. COMM. ON APPROPRIATIONS, 105TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1998](#), S. REP. NO. 105-31 (1997); S. COMM. ON APPROPRIATIONS, 104TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1997](#), S. REP. NO. 104-285 (1996); S. COMM. ON APPROPRIATIONS, 104TH CONG., [ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1996](#), S. REP. NO. 104-115 (1995).

<sup>705</sup> *E.g.*, H. COMM. ON APPROPRIATIONS, 117TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2023](#), H.R. REP. NO. 117-\_\_ (2022); H. COMM. ON APPROPRIATIONS, 117TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2022](#), H.R. REP. NO. 117-78 (2021); H. COMM. ON APPROPRIATIONS, 116TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2021](#), H.R. REP. NO. 116-443 (2020); H. COMM. ON APPROPRIATIONS, 116TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2020](#), H.R. REP. NO. 116-59 (2019); H. COMM. ON APPROPRIATIONS, 115TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2019](#), H.R. REP. NO. 115-710 (2018); H. COMM. ON APPROPRIATIONS, 114TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2016](#), H.R. REP. NO. 114-97 (2015); H. COMM. ON APPROPRIATIONS, 113TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2014](#), H.R. REP. NO. 113-96 (2013); H. COMM. ON APPROPRIATIONS, 112TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2013](#), H.R. REP. NO. 112-465 (2012); H. COMM. ON APPROPRIATIONS, 112TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2012](#), H.R. REP. NO. 112-96 (2011); H. COMM. ON APPROPRIATIONS, 111TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2011](#), H.R. REP. NO. 111-565 (2010); H. COMM. ON APPROPRIATIONS, 111TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2010](#), H.R. REP. NO. 111-148 (2009); H. COMM. ON APPROPRIATIONS, 110TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2009](#), H.R. REP. NO. 110-746 (2008); H. COMM. ON APPROPRIATIONS, 110TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2008](#), H.R. REP. NO. 110-183 (2007); H. COMM. ON APPROPRIATIONS, 109TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2007](#), H.R. REP. NO. 109-471 (2006); H. COMM. ON APPROPRIATIONS, 109TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2006](#), H.R. REP. NO. 109-78 (2005); H. COMM. ON APPROPRIATIONS, 108TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2005](#), H.R. REP. NO. 108-543 (2004); H. COMM. ON APPROPRIATIONS, 108TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2004](#), H.R. REP. NO. 108-171 (2003); H. COMM. ON APPROPRIATIONS, 107TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2003](#), H.R. REP. NO. 107-529 (2002); H. COMM. ON APPROPRIATIONS, 107TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2001](#), H.R. REP. NO. 107-104 (2001); H. COMM. ON APPROPRIATIONS, 107TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2002](#), H.R. REP. NO. 107-100 (2001); H. COMM. ON APPROPRIATIONS, 106TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2001](#), H.R. REP. NO. 106-617 (2000); H. COMM. ON APPROPRIATIONS, 106TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2000](#), H.R. REP. NO. 106-163 (1999); H. COMM. ON APPROPRIATIONS, 106TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 1999](#), H.R. REP. NO. 106-124 (1999).

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report “Report on the Suballocation of Budget Totals for Fiscal Year 1999.”<sup>706</sup> Before 1998, the Committee entitled its initial reports “Report on the Subdivision of Budget Totals for Fiscal Year . . . .”<sup>707</sup> In 2014, the Committee issued a “Report on the Interim Suballocation of Budget Allocations for Fiscal Year 2015”.<sup>708</sup>

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<sup>706</sup> H. COMM. ON APPROPRIATIONS, 105TH CONG., [REPORT ON THE SUBALLOCATION OF BUDGET TOTALS FOR FISCAL YEAR 1999](#), H.R. REP. NO. 105-590 (1998).

<sup>707</sup> *E.g.*, H. COMM. ON APPROPRIATIONS, 105TH CONG., [REPORT ON THE SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1998](#), H.R. REP. NO. 105-151 (1997); H. COMM. ON APPROPRIATIONS, 104TH CONG., [REPORT ON THE SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1997](#), H.R. REP. NO. 104-624 (1996); H. COMM. ON APPROPRIATIONS, 104TH CONG., [REPORT ON THE SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1997](#), H.R. REP. NO. 104-594 (1996); H. COMM. ON APPROPRIATIONS, 104TH CONG., [REPORT ON THE SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1996](#), H.R. REP. NO. 104-175 (1995); H. COMM. ON APPROPRIATIONS, 104TH CONG., [REPORT ON THE SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1996](#), H.R. REP. NO. 104-142 (1995).

<sup>708</sup> H. COMM. ON APPROPRIATIONS, 113TH CONG., [REPORT ON THE INTERIM SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2015](#), H.R. REP. NO. 113-425 (2014).



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302(c)

**(c) POINT OF ORDER.—**After the Committee on Appropriations has received an allocation pursuant to [subsection \(a\)](#)<sup>709</sup> for a fiscal year, it shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report within the jurisdiction of that committee providing [new budget authority](#)<sup>710</sup> for that fiscal year, until that committee makes the suballocations required by [subsection \(b\)](#).<sup>711</sup>

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*Point of Order—Riddick’s Senate Procedure* records several instances of the application of section 302(c)<sup>712</sup>:

A point of order will lie under section 302(c) of the Congressional Budget Act of 1974 against an amendment which provides new budget authority or new direct spending authority if such amendment is within the jurisdiction of a committee which has received an allocation of such authority pursuant to section 302(a) of that Act, but which has not reported to the Senate a division of its allocation among its subcommittees or among programs within its jurisdiction as required by section 302(b) of that Act.<sup>[713]</sup>

A point of order will lie under section 302(c) of the Congressional Budget Act of 1974 against the consideration of an amendment which provides an entitlement within the jurisdiction of a committee which has received an allocation of such authority pursuant to section 302(a) of the Congressional Budget Act of 1974 if that committee has not subdivided such authority among its subcommittees or among programs within its jurisdiction.<sup>[714]</sup> . . .

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<sup>709</sup> [Congressional Budget Act of 1974 § 302\(a\)](#), 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>710</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” The Congressional Budget Act makes no exception for very small amounts; even a “negligible” violation can subject legislation to a point of order under the Budget Act. Senate Precedent PRL19761001-001, [122 CONG. REC. 34,550–51](#) (Oct. 1, 1976) (point of order by Sen. Haskell under Congressional Budget Act of 1974 § 311(a)).

<sup>711</sup> [Congressional Budget Act of 1974 § 302\(b\)](#), 2 U.S.C. § 633(b), *supra* p. 189, addresses “Suballocations by Appropriations Committees.”

<sup>712</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 587–88 (1992) (footnotes renumbered and reformatted).

<sup>713</sup> [132 CONG. REC. 18,518](#) (July 31, 1986).

<sup>714</sup> *Id.* at 18,735–36 (Aug. 1, 1986).



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A point of order will lie under section 302(c) of the Congressional Budget Act of 1974 against a bill which provides new budget authority or new direct spending authority (as defined in section 401(c)(2) of that Act) if such bill is within the jurisdiction of a committee which has received an allocation of such authority pursuant to section 302(a) of the Act, but which has not reported to the Senate its division of such allocation among its subcommittees or among programs within its jurisdiction, under section 302(b) of the Act. However, if under section 302(a) of the Congressional Budget Act of 1974, a committee has received an allocation of new budget authority or new direct spending authority (as defined in section 401(c)(2) of that Act), but has not filed with the Senate its division of such allocation among its subcommittees or among programs over which it has jurisdiction, no point of order will lie under section 302(f) of the Act for exceeding such suballocations because there is no basis from which to determine if the suballocations have been exceeded. The Chair does not keep a list of the committees that have filed allocation divisions required by section 302(b) of the Congressional Budget Act.<sup>[715]</sup>

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<sup>715</sup> *Id.* at 19,796–98 (Aug. 7, 1986).

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- 302(d) (d) **SUBSEQUENT CONCURRENT RESOLUTIONS.**—In the case of a [concurrent resolution on the budget](#) referred to in [section 304](#),<sup>716</sup> the allocations under [subsection \(a\)](#)<sup>717</sup> and the subdivisions under [subsection \(b\)](#)<sup>718</sup> shall be required only to the extent necessary to take into account revisions made in the most recently agreed to [concurrent resolution on the budget](#).<sup>719</sup>
- 302(e) (e) **ALTERATION OF ALLOCATIONS.**—At any time after a committee reports the allocations required to be made under [subsection \(b\)](#),<sup>720</sup> such committee may report to its House an alteration of such allocations. Any alteration of such allocations must be consistent with any actions already taken by its House on legislation within the committee’s jurisdiction.
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*Alteration of Allocations*—The Senate Appropriations Committee generally reports the first revised suballocations under the title “Revised Allocation to Subcommittees of Budget Totals . . . .”<sup>721</sup> The Committee then

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<sup>716</sup> [Congressional Budget Act of 1974 § 304](#), 2 U.S.C. § 635, *infra* p. 244, addresses “Permissible Revisions of Concurrent Resolutions on the Budget.”

<sup>717</sup> [Congressional Budget Act of 1974 § 302\(a\)](#), 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>718</sup> [Congressional Budget Act of 1974 § 302\(b\)](#), 2 U.S.C. § 633(b), *supra* p. 189, addresses “Suballocations by Appropriations Committees.”

<sup>719</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>720</sup> [Congressional Budget Act of 1974 § 302\(b\)](#), 2 U.S.C. § 633(b), *supra* p. 189, addresses “Suballocations by Appropriations Committees.”

<sup>721</sup> *E.g.*, S. COMM. ON APPROPRIATIONS, 116TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2020](#), S. REP. NO. 116-106 (2019); S. COMM. ON APPROPRIATIONS, 115TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 115-267 (2018); S. COMM. ON APPROPRIATIONS, 114TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2017](#), S. REP. NO. 114-253 (2016); S. COMM. ON APPROPRIATIONS, 114TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2016](#), S. REP. NO. 114-61 (2015); S. COMM. ON APPROPRIATIONS, 113TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2015](#), S. REP. NO. 113-193 (2014); S. COMM. ON APPROPRIATIONS, 112TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2013](#), S. REP. NO. 112-160 (2012); S. COMM. ON APPROPRIATIONS, 112TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2012](#), S. REP. NO. 112-81 (2011); S. COMM. ON APPROPRIATIONS, 111TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION, FISCAL YEAR 2010](#), S. REP. NO. 111-32 (2009); S. COMM. ON APPROPRIATIONS, 111TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION, FISCAL YEAR 2009](#), S. REP. NO. 111-28 (2009); S. COMM. ON APPROPRIATIONS, 110TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION, FISCAL YEAR 2009](#), S. REP. NO. 110-402 (2008); S. COMM. ON APPROPRIATIONS, 110TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2007](#), S. REP. NO. 110-108 (2007); S. COMM. ON APPROPRIATIONS, 110TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT](#)

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generally calls all subsequent revisions “Further Revised Allocation to Subcommittees of Budget Totals . . . .”<sup>722</sup> Before 1997, all subsequent

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[RESOLUTION FOR FISCAL YEAR 2008](#), S. REP. NO. 110-87 (2007); S. COMM. ON APPROPRIATIONS, 109TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2007](#), S. REP. NO. 109-350 (2006); S. COMM. ON APPROPRIATIONS, 109TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2006](#), S. REP. NO. 109-95 (2005); S. COMM. ON APPROPRIATIONS, 108TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2005](#), S. REP. NO. 108-337 (2004); S. COMM. ON APPROPRIATIONS, 107TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2001](#), S. REP. NO. 107-44 (2001); S. COMM. ON APPROPRIATIONS, 107TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2002](#), S. REP. NO. 107-35 (2001); S. COMM. ON APPROPRIATIONS, 106TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2001](#), S. REP. NO. 106-303 (2000); S. COMM. ON APPROPRIATIONS, 106TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2000](#), S. REP. NO. 106-56 (1999); S. COMM. ON APPROPRIATIONS, 105TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 1999](#), S. REP. NO. 105-199 (1998); S. COMM. ON APPROPRIATIONS, 105TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1998](#), S. REP. NO. 105-46 (1997).

<sup>722</sup> *E.g.*, S. COMM. ON APPROPRIATIONS, 116TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2020](#), S. REP. NO. 116-224 (2020); S. COMM. ON APPROPRIATIONS, 116TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2020](#), S. REP. NO. 116-223 (2020); S. COMM. ON APPROPRIATIONS, 116TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2020](#), S. REP. NO. 116-207 (2020); S. COMM. ON APPROPRIATIONS, 116TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2020](#), S. REP. NO. 116-181 (2019); S. COMM. ON APPROPRIATIONS, 116TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2020](#), S. REP. NO. 116-139 (2019); S. COMM. ON APPROPRIATIONS, 116TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2020](#), S. REP. NO. 116-122 (2019); S. COMM. ON APPROPRIATIONS, 116TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2020](#), S. REP. NO. 116-121 (2019); S. COMM. ON APPROPRIATIONS, 116TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 116-52 (2019); S. COMM. ON APPROPRIATIONS, 116TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 116-42 (2019); S. COMM. ON APPROPRIATIONS, 116TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 116-1 (2019); S. COMM. ON APPROPRIATIONS, 115TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 115-340 (2018); S. COMM. ON APPROPRIATIONS, 115TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 115-338 (2018); S. COMM. ON APPROPRIATIONS, 115TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 115-337 (2018); S. COMM. ON APPROPRIATIONS, 115TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 115-323 (2018); S. COMM. ON APPROPRIATIONS, 115TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 115-287 (2018); S. COMM. ON APPROPRIATIONS, 115TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 115-280 (2018); S. COMM. ON APPROPRIATIONS, 115TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 115-279 (2018); S. COMM. ON APPROPRIATIONS, 115TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2019](#), S. REP. NO. 115-273 (2018); S. COMM. ON APPROPRIATIONS, 115TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2017](#), S. REP. NO. 115-154 (2017); S. COMM. ON APPROPRIATIONS, 115TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2017](#), S. REP. NO. 115-43 (2017); S. COMM. ON APPROPRIATIONS, 115TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2017](#), S. REP. NO. 115-1 (2017); S. COMM. ON APPROPRIATIONS, 114TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2017](#), S. REP. NO. 114-405 (2016); S. COMM. ON APPROPRIATIONS, 114TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEARS 2016 AND 2017](#), S. REP. NO. 114-358 (2016); S. COMM. ON APPROPRIATIONS, 114TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEARS 2016 AND 2017](#), S. REP. NO. 114-286 (2016); S. COMM. ON APPROPRIATIONS, 114TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2017](#), S. REP. NO. 114-278 (2016); S. COMM. ON APPROPRIATIONS, 114TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEARS 2016 AND 2017](#), S. REP. NO. 114-273 (2016); S. COMM. ON APPROPRIATIONS, 114TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FOR FISCAL YEAR 2017](#), S. REP. NO. 114-257 (2016); S. COMM. ON APPROPRIATIONS, 114TH CONG., [FURTHER REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 2016](#), S. REP. NO. 114-197 (2015);

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The House Appropriations Committee generally calls all revisions “Report on the Revised Suballocation of Budget Allocations for Fiscal Year . . . .”<sup>724</sup> In 2019, the Committee twice issued a “Report on the Further

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1996, S. REP. NO. 104-240 (1996); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1996](#), S. REP. NO. 104-238 (1996); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1996](#), S. REP. NO. 104-237 (1996); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1996](#), S. REP. NO. 104-228 (1996); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1996](#), S. REP. NO. 104-184 (1995); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1996](#), S. REP. NO. 104-180 (1995); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1996](#), S. REP. NO. 104-165 (1995); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1996](#), S. REP. NO. 104-149 (1995); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1996](#), S. REP. NO. 104-146 (1995); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1996](#), S. REP. NO. 104-141 (1995); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1996](#), S. REP. NO. 104-138 (1995); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1996](#), S. REP. NO. 104-122 (1995); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1995](#), S. REP. NO. 104-84 (1995); S. COMM. ON APPROPRIATIONS, 104TH CONG., [REVISED ALLOCATION TO SUBCOMMITTEES OF BUDGET TOTALS FROM THE CONCURRENT RESOLUTION FOR FISCAL YEAR 1995](#), S. REP. NO. 104-26 (1995).

<sup>724</sup> *E.g.*, H. COMM. ON APPROPRIATIONS, 117TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2022](#), H.R. REP. NO. 117-91 (2021); H. COMM. ON APPROPRIATIONS, 116TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2021](#), H.R. REP. NO. 116-454 (2020); H. COMM. ON APPROPRIATIONS, 116TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2020](#), H.R. REP. NO. 116-80 (2019); H. COMM. ON APPROPRIATIONS, 115TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2019](#), H.R. REP. NO. 115-897 (2018); H. COMM. ON APPROPRIATIONS, 115TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2019](#), H.R. REP. NO. 115-779 (2018); H. COMM. ON APPROPRIATIONS, 114TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2016](#), H.R. REP. NO. 114-198 (2015); H. COMM. ON APPROPRIATIONS, 114TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2016](#), H.R. REP. NO. 114-118 (2015); H. COMM. ON APPROPRIATIONS, 113TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2015](#), H.R. REP. NO. 113-474 (2014); H. COMM. ON APPROPRIATIONS, 113TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2015](#), H.R. REP. NO. 113-454 (2014); H. COMM. ON APPROPRIATIONS, 113TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2014](#), H.R. REP. NO. 113-143 (2013); H. COMM. ON APPROPRIATIONS, 112TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2013](#), H.R. REP. NO. 112-489 (2012); H. COMM. ON APPROPRIATIONS, 112TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2012](#), H.R. REP. NO. 112-104 (2011); H. COMM. ON APPROPRIATIONS, 112TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2011](#), H.R. REP. NO. 112-12 (2011); H. COMM. ON APPROPRIATIONS, 111TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2010](#), H.R. REP. NO. 111-238 (2009); H. COMM. ON APPROPRIATIONS, 111TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2010](#), H.R. REP. NO. 111-204 (2009); H. COMM. ON APPROPRIATIONS, 111TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2010](#), H.R. REP. NO. 111-174 (2009); H. COMM. ON APPROPRIATIONS, 110TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2008](#), H.R. REP. NO. 110-747 (2008); H. COMM. ON APPROPRIATIONS, 110TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2008](#), H.R. REP. NO. 110-236 (2007); H. COMM. ON APPROPRIATIONS, 110TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2008](#), H.R. REP. NO. 110-212 (2007); H. COMM. ON APPROPRIATIONS, 110TH CONG., [REPORT ON THE REVISED SUBALLOCATION OF BUDGET ALLOCATIONS FOR FISCAL YEAR 2007](#), H.R. REP. NO. 110-182 (2007); H. COMM. ON APPROPRIATIONS, 110TH CONG., [REPORT ON THE REVISED SUBALLOCATION](#)





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Committee generally called subsequent revisions “Report on the Revised Subdivision of Budget Totals for Fiscal Year . . . .”<sup>727</sup> In 1997, the Committee issued a “Supplemental Report on the Revised Subdivision of Budget Totals for Fiscal Year 1998.”<sup>728</sup>

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<sup>727</sup> *E.g.*, H. COMM. ON APPROPRIATIONS, 105TH CONG., [REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1998](#), H.R. REP. NO. 105-302 (1997); H. COMM. ON APPROPRIATIONS, 105TH CONG., [REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1998](#), H.R. REP. NO. 105-287 (1997); H. COMM. ON APPROPRIATIONS, 105TH CONG., [REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1998](#), H.R. REP. NO. 105-286 (1997); H. COMM. ON APPROPRIATIONS, 105TH CONG., [REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1998](#), H.R. REP. NO. 105-260 (1997); H. COMM. ON APPROPRIATIONS, 105TH CONG., [REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1998](#), H.R. REP. NO. 105-215 (1997); H. COMM. ON APPROPRIATIONS, 105TH CONG., [REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1998](#), H.R. REP. NO. 105-185 (1997); H. COMM. ON APPROPRIATIONS, 105TH CONG., [REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1998](#), H.R. REP. NO. 105-182 (1997); H. COMM. ON APPROPRIATIONS, 104TH CONG., [REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1997](#), H.R. REP. NO. 104-727 (1996); H. COMM. ON APPROPRIATIONS, 104TH CONG., [REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1997](#), H.R. REP. NO. 104-672 (1996); H. COMM. ON APPROPRIATIONS, 104TH CONG., [REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1996](#), H.R. REP. NO. 104-380 (1995); H. COMM. ON APPROPRIATIONS, 104TH CONG., [REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1996](#), H.R. REP. NO. 104-266 (1995); H. COMM. ON APPROPRIATIONS, 104TH CONG., [REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1996](#), H.R. REP. NO. 104-197 (1995).

<sup>728</sup> H. COMM. ON APPROPRIATIONS, 105TH CONG., [SUPPLEMENTAL REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1998](#), H.R. REP. NO. 105-185, PART 2 (1997).

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- 302(f) (f) LEGISLATION SUBJECT TO POINT OF ORDER. —
- 302(f)(1) (1) IN THE HOUSE OF REPRESENTATIVES.<sup>729</sup> — After the Congress has completed action on a **concurrent resolution on the budget**<sup>730</sup> for a fiscal year, it shall not be in order in the House of Representatives to consider any bill, joint resolution, or amendment providing **new budget authority**<sup>731</sup> for any fiscal year, or any conference report on any such bill or joint resolution, if —
- 302(f)(1)(A) (A) the enactment of such bill or resolution as reported;
- 302(f)(1)(B) (B) the adoption and enactment of such amendment; or
- 302(f)(1)(C) (C) the enactment of such bill or resolution in the form recommended in such conference report,
- would cause the applicable allocation of **new budget authority**<sup>732</sup> made under **subsection (a)**<sup>733</sup> or **(b)**<sup>734</sup> for the first fiscal year or the total of fiscal years to be exceeded.
- 302(f)(2) (2) IN THE SENATE. — After a **concurrent resolution on the budget**<sup>735</sup> is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution,

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<sup>729</sup> Congressional Budget Act of 1974 § 302(g)(1)(A), 2 U.S.C. § 633(g)(1)(A), *infra* p. 211, provides an additional pay-as-you-go exception in the House of Representatives.

<sup>730</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>731</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>732</sup> *Id.*

<sup>733</sup> Congressional Budget Act of 1974 § 302(a), 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>734</sup> Congressional Budget Act of 1974 § 302(b), 2 U.S.C. § 633(b), *supra* p. 189, addresses “Suballocations by Appropriations Committees.”

<sup>735</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

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amendment, motion, or conference report that would cause<sup>736</sup> —

302(f)(2)(A)

(A) in the case of any committee except the Committee on Appropriations, the applicable allocation of **new budget authority**<sup>737</sup> or **outlays**<sup>738</sup> under **subsection (a)**<sup>739</sup> for the first fiscal year or the total of fiscal years to be exceeded; or

302(f)(2)(B)

(B) in the case of the Committee on Appropriations, the applicable suballocation of **new budget authority**<sup>740</sup> or **outlays**<sup>741</sup> under **subsection (b)**<sup>742</sup> to be exceeded.

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*Point of Order—Riddick’s Senate Procedure* records several instances of the application of section 302(f)<sup>743</sup>:

**Allocations to Committees:**

A point of order will lie under section 302(f) of the Congressional Budget Act of 1974 (as amended) against an amendment which provides new budget authority which would cause the appropriate allocation to a subcommittee reported under section 302(b) of that Act in conjunction with the budget resolution for the relevant fiscal year to be exceeded.<sup>[744]</sup>

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<sup>736</sup> The Congressional Budget Act makes no exception for very small amounts; even a “negligible” violation can subject legislation to a point of order under the Budget Act. Senate Precedent PRL19761001-001, **122 CONG. REC. 34,550–51** (Oct. 1, 1976) (point of order by Sen. Haskell under Congressional Budget Act of 1974 § 311(a)).

<sup>737</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>738</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>739</sup> **Congressional Budget Act of 1974 § 302(a)**, 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>740</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>741</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>742</sup> **Congressional Budget Act of 1974 § 302(b)**, 2 U.S.C. § 633(b), *supra* p. 189, addresses “Suballocations by Appropriations Committees.”

<sup>743</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK’S SENATE PROCEDURE* 586–89 (1992) (footnotes renumbered and reformatted).

<sup>744</sup> **132 CONG. REC. 27,916–17** (Oct. 2, 1986); **133 CONG. REC. 27,789–90** (Oct. 14, 1987).

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A point of order will lie under section 302(f) of the Congressional Budget Act of 1974 against an amendment which by increasing an obligation ceiling would increase outlays, such that the appropriate level of outlays allocated under section 302(b) of that Act to the committee having jurisdiction over the subject matter of the amendment would be exceeded.<sup>[745]</sup>

....

An amendment to the Treasury-Postal Service Appropriations Act, which would have provided appropriations for the employment of additional Internal Revenue Service personnel was ruled out of order under section 302(f) of the Budget Act, since the amendment would have caused the allocation of outlays to the Treasury Subcommittee of the Appropriations Committee to be exceeded.<sup>[746]</sup>

The Chair has sustained a point of order under sections 302(f) (and 311(a) of the Budget Act against an amendment to a supplemental appropriations act, which would have provided funds for anti-drug programs, since the amendment would have caused breaches in the outlay allocations of several subcommittees (as well as a breach in the overall outlay ceiling for that year). An appeal from the ruling of the Chair was tabled.<sup>[747]</sup>

The Chair has sustained a point of order under section 302(f) of the Budget Act after a motion to waive that section was tabled, against an amendment to a supplemental appropriations act that proposed to rescind a certain amount of budget authority within the jurisdiction of one subcommittee of the Appropriations Committee, and provide the same amount of budget authority for a purpose within another subcommittee's jurisdiction, since the result would have been to exceed the level of budget authority and outlays allocated to that second subcommittee.<sup>[748]</sup> The Chair has sustained a point of order under section 302(f) of the Act (after a motion to waive that section had failed) against an amendment to a supplemental appropriations act that would have transferred budget authority among several subcommittees of the Appropriations Committee, since the adoption of that amendment would have caused one of those subcommittees to exceed its allocation of budget authority and outlays.<sup>[749]</sup>

The Chair sustained a point of order under sections 302(f) and 311(a) of the Budget Act against a deficit neutral amendment to a supplemental

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<sup>745</sup> 132 CONG. REC. 25,758–60 (Sept. 24, 1986).

<sup>746</sup> 136 CONG. REC. S12,791, S12,801–06 (Sept. 11, 1990).

<sup>747</sup> 135 CONG. REC. S5927, S5930–32 (June 1, 1989).

<sup>748</sup> 135 CONG. REC. S5899, S5906 (June 1, 1989).

<sup>749</sup> 136 CONG. REC. S5296, S5351–52 (Apr. 30, 1990).

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appropriations act, after the Senate tabled a motion to waive all the provisions of that Act for the consideration of the amendment. The amendment would have increased taxes and earmarked those revenues for anti-drug programs. This would have increased outlays, causing the allocation of outlays to the relevant subcommittee to be exceeded and breaching the aggregate outlay ceiling.<sup>[750]</sup>

Separately, *Riddick's Senate Procedure* also recorded precedents applicable to section 302(f)<sup>751</sup>:

In the House, an amendment which provided additional budget authority and caused additional budget outlays in excess of limitations contained in the concurrent resolution on the budget for a fiscal year was subject to a point of order under section 311 of the Congressional Budget Act, and this included an amendment which proposed to strike language in a bill, the adoption of which would have had this effect.<sup>[752]</sup>

....

An amendment which is so tailored as to increase budget authority at one point in a bill while decreasing it at another, and which would be in order if it were considered en bloc, if divided, will be subject to points of order in regard to those divisions which increase budget authority.<sup>[753]</sup>

The Parliamentarian's office has noted as a precedent an instance of a point of order being raised under this subsection against a conference report that incorporated other bills by reference, writing:

The Senate waived the relevant provisions of the Congressional Budget Act for consideration of a conference report, rendering moot a §302(f) point of order that the conference report increased budget authority and outlays and would cause the conference report to exceed the Committee's allocations under the budget resolution, even though the conference report contained no substantive text but incorporated the text of another bill by reference.<sup>754</sup>

The Parliamentarian's office further recorded:

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<sup>750</sup> 135 CONG. REC. S5946, S5958 (June 1, 1989).

<sup>751</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 593–94 (footnotes renumbered and reformatted).

<sup>752</sup> 127 CONG. REC. 9315 (May 12, 1981).

<sup>753</sup> *Id.* at 10,436–38 (May 20, 1981).

<sup>754</sup> Off. of the Sec'y of the Senate, *Senate Precedent* PRL20001012-002.

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On October 12, 2000, the Senate was considering the conference report to accompany H.R. 4205, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. Mr. Kerrey (of Nebraska) raised a point of order that the conference report would cause the Armed Services Committee to exceed its allocation for budget authority and outlays as set forth in the budget resolution, in violation of §302(f) of the Congressional Budget Act. The conference report contained no substantive text but incorporated by reference the text of H.R. 5408. Mr. Warner (of Virginia) moved to waive the Congressional Budget Act for consideration of the conference report, which was agreed to by a vote of 84 yeas to 9 nays. The conference report was subsequently adopted by a vote of 90 yeas to 3 nays.

Mr. KERREY. Mr. President, I make a point of order the pending Defense authorization conference report violates section 302(f) of the Congressional Budget Act of 1974.

Mr. WARNER. Mr. President, I move to waive the relevant provisions of the Budget Act with respect to the conference report to accompany H.R. 4205, and I ask for the yeas and nays.

\* \* \*

Mr. KERREY.

The Defense authorization conference report is our first opportunity to do so. Contained in this bill is an authorization that drastically expands the health care entitlement of military retirees over the age of 65—a provision that costs more than was allocated to the Armed Services Committee under current law. The cost of this provision violates our budget rules because it mandates \$60 billion in new mandatory spending beyond what is authorized in our budget resolution. Because this provision violates the Budget Act, at least 60 Senators must vote to ignore the budget resolution. While fully I expect 60 Senators will vote to do just that, I hope the debate this afternoon provides us with a better perspective on what we are about to do with the people's money.

The provision we are debating about increases health care spending on 1.2 million military retirees and will cost, according to CBO, \$60 billion over the next 10 years. But this number is deceiving. By 2010, the annual cost will be nearly \$10 billion. I think we have a duty to ask ourselves what problem are we attempting to solve at an eventual annual cost of \$10 billion? The provision in the conference report would allow military retirees to remain in TriCare when they turn 65 and would allow these retirees to continue to receive health care provided by the Department of Defense. Currently, when military retirees turn 65, they must

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transition from a more generous health insurance program called TRICARE to a less generous program called Medicare where co-payments and deductibles are higher. By changing the law, we will in essence be providing a subsidy for military retiree health insurance coverage that contains no deductibles or co-payments and a generous prescription drug benefit. Imagine the cost if we did the same for all Medicare beneficiaries.

\* \* \*

The PRESIDING OFFICER [Mr. Sessions of Alabama]. The question is on agreeing to the motion to waive the Budget Act. The yeas and nays have been ordered. The Clerk will call the roll.

\* \* \*

The PRESIDING OFFICER. On this vote, the yeas are 84, the nays are 9. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.<sup>755</sup>

The Parliamentarian's office has noted as a precedent an instance of a point of order under this subsection against a substitute amendment, even though the Senate had invoked cloture on the amendment, writing: "When the Senate has invoked cloture on a substitute amendment to a bill, a point of order under the Budget Act is in order against the substitute amendment."<sup>756</sup> The Parliamentarian's office recorded:

On February 12, 2004, the Senate was considering S. 1072, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, to which was pending a substitute amendment, Amdt. No. 2285, offered by Mr. Inhofe (of Oklahoma). Cloture had been invoked on the substitute amendment by a vote of 86 yeas to 11 nays. Mr. McCain (of Arizona) raised a point of order that the substitute amendment increased spending in the transportation bill in excess of the allocations under the budget resolution to the Finance, Banking, and Commerce Committees, in violation of §302 of the Congressional Budget Act (CBA). Mr. Bond (of Missouri) moved to waive all points of order under the CBA for consideration of the substitute—as currently constituted—and the underlying bill, as amended with the substitute. In response to an inquiry from Mr. McCain, the Presiding Officer responded that the motion to waive was not required to be in writing. Mr. McCain asked that it be sent to the desk, to which request Mr. Bond complied.

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<sup>755</sup> *Id.* (quoting 146 CONG. REC. 22,531–32, 22,541 (Oct. 12, 2000)).

<sup>756</sup> Off. of the Sec'y of the Senate, [Senate Precedent PRL20040212-004](#).

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Mr. McCAIN.

\* \* \*

The current budget resolution provided \$231 billion for the EPW Committee to spend on its portion of the bill. That is the current budget resolution. The pending EPW proposal would instead provide \$255 billion, or \$24 billion over the current budget resolution by which we are to be abiding.

The current budget resolution provided \$37 billion for the Banking Committee to spend on its transit portion of this bill. The Banking Committee proposal contained in the pending bill provides \$46 billion or 25 percent over the budget resolution.

I guess I have to ask a question about this body's adherence to the budget resolution. We spend arduous days, and then with a vote-athon that is the most unpleasant day and evening of the year—certainly for me and I believe for most of my colleagues—we come up with a budget resolution and one we at least commit to abide by.

This bill, at least in two instances which I am bringing to your attention, is \$24 billion over the current budget resolution by EPW, and 25 percent or \$9 billion over the budget resolution by the Banking Committee.

\* \* \*

Therefore, I raise the point of order against the substitute amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER [Mr. Brownback of Kansas]. The Senator from Missouri.

Mr. BOND. Pursuant to section 904, I move to waive all Budget Act points of order for consideration of the pending substitute in its current status and the underlying bill as amended by the substitute.

The PRESIDING OFFICER. The motion to waive is debatable.<sup>757</sup>

The Parliamentarian's office has noted as a precedent an instance of curing a point of order under this subsection with a modification, writing:

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<sup>757</sup> *Id.* (quoting 150 CONG. REC. S1206–07 (daily ed. Feb. 12, 2004)).



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“The modification of an amendment to cure a Congressional Budget Act point of order against the amendment renders moot both the point of order and a motion to waive that point of order.”<sup>758</sup> The Parliamentarian’s office recorded:

Mr. STEVENS. Mr. President, we have provided \$25 million to respond in this bill for the National Guard counterdrug program. We already have \$20 million for childcare, \$20 million for family counseling, \$18 million for National Guard and assistance centers, for a total of \$58.6 million.

The Senator’s amendment adds \$60 million for childcare and \$20 million for family assistance centers but, as he said, we have already gone in excess of the President’s request. We have tried to balance the requirement to fight the war on global terrorism and maintenance for our technological advantage against potential rivals and the care of our service members and their families.

We have worked closely with the Department of Defense to identify these requirements. We believe the Senator’s amendment is subject to a point of order.

We raise a point of order under section 302(f) of the Congressional Budget Act that the amendment provides for spending in excess of the 302(b) allocations under the fiscal year 2006 concurrent resolution on the budget.

Having raised that, does the Senator wish to waive that point of order?

Mr. DAYTON. I do.

Mr. STEVENS. The Senator moves to waive the point of order. I ask for the yeas and nays on the motion to waive the point of order that I have submitted.

\* \* \*

Mr. STEVENS. Mr. President, I send to the desk a modification to Senator Dayton’s amendment.

The PRESIDING OFFICER. Is there objection to the modification?

Without objection, it is so ordered.

The amendment, as further modified, is as follows:

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<sup>758</sup> Off. of the Sec’y of the Senate, [Senate Precedent PRL20051006-001](#).

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At the appropriate place, insert the following: (1) Availability of amount. — Of the amount appropriated by title II under the heading “OPERATION AND MAINTENANCE, DEFENSE-WIDE”, up to \$60,000,000 may be made available as follows:

(A) Up to \$50,000,000 may be made available for childcare services for families of members of the Armed Forces.

(B) Up to \$10,000,000 may be made available for family assistance centers that primarily serve members of the Armed Forces and their families.

(b) NATIONAL GUARD COUNTERDRUG SUPPORT ACTIVITIES. —

(1) AVAILABILITY OF AMOUNT. — Of the amount appropriated by title VI under the heading “DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES”, up to \$40,000,000 may be available for the purpose of National Guard counterdrug support activities.

(2) SUPPLEMENT NOT SUPPLANT. — The amount available under paragraph (2) for the purpose specified in that paragraph is in addition to any other amounts available under title VI for that purpose.

Mr. STEVENS. Mr. President, I ask unanimous consent that the modified amendment be considered and that it be adopted.

The PRESIDING OFFICER. Is there objection?

The amendment (No. 1896), as further modified, was agreed to.<sup>759</sup>

*Division of Amendments* — In *Riddick’s Senate Procedure*, the Parliamentarian noted a precedent involving the application of Budget Act points of order against a part of an amendment after it was divided:

An amendment that is so tailored as to increase budget authority at one point in a bill while decreasing it at another, and which would be in order if it were considered en bloc, if divided, will be subject to points of order in regard to those divisions which increase budget authority.<sup>760</sup>

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<sup>759</sup> *Id.* (quoting 151 CONG. REC. 22,461, 22,463 (Oct. 6, 2005)).

<sup>760</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK’S SENATE PROCEDURE* 618 (1992) (citing 127 CONG. REC. 10,436–38 (May 20, 1981)).

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- 302(g) (g) PAY-AS-YOU-GO EXCEPTION IN THE HOUSE. —
- 302(g)(1) (1) IN GENERAL. —
- 302(g)(1)(A) (A) Subsection (f)(1)<sup>761</sup> and, after April 15,<sup>762</sup> section 303(a)<sup>763</sup> shall not apply to any bill or joint resolution, as reported, amendment thereto, or conference report thereon if, for each fiscal year covered by the most recently agreed to concurrent resolution on the budget<sup>764</sup> —
- 302(g)(1)(A)(i) (i) the enactment of that bill or resolution as reported;
- 302(g)(1)(A)(ii) (ii) the adoption and enactment of that amendment; or
- 302(g)(1)(A)(iii) (iii) the enactment of that bill or resolution in the form recommended in that conference report,
- would not increase the deficit,<sup>765</sup> and, if the sum of any revenue<sup>766</sup> increases provided in legislation already enacted during the current session (when added to revenue<sup>767</sup> increases, if any, in excess of any outlay<sup>768</sup> increase provided by the legislation proposed for consideration) is at least as great as the sum of the amount, if any, by which the aggregate level of Federal

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<sup>761</sup> Congressional Budget Act of 1974 § 302(f)(1), 2 U.S.C. § 633(f)(1), *supra* p. 202, addresses “Legislation Subject to Point of Order” “In the House of Representatives.”

<sup>762</sup> Congressional Budget Act of 1974 § 301(a), 2 U.S.C. § 632(a), *supra* p. 132, requires that “[o]n or before April 15 of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1 of such year.”

<sup>763</sup> Congressional Budget Act of 1974 § 303(a), 2 U.S.C. § 634(a), *infra* p. 219, addresses “Concurrent Resolution on the Budget Must Be Adopted Before Budget-Related Legislation Is Considered” “In General.”

<sup>764</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>765</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>766</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>767</sup> *Id.*

<sup>768</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

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**revenues**<sup>769</sup> should be increased as set forth in that concurrent resolution and the amount, if any, by which **revenues**<sup>770</sup> are to be increased pursuant to pay-as-you-go procedures under **section 301(b)(8)**,<sup>771</sup> if included in that concurrent resolution.

302(g)(1)(B) (B) **Section 311(a)**,<sup>772</sup> as that section applies to **revenues**,<sup>773</sup> shall not apply to any bill, joint resolution, amendment thereto, or conference report thereon if, for each fiscal year covered by the most recently agreed to **concurrent resolution on the budget**<sup>774</sup> —

302(g)(1)(B)(i) (i) the enactment of that bill or resolution as reported;

302(g)(1)(B)(ii) (ii) the adoption and enactment of that amendment; or

302(g)(1)(B)(iii) (iii) the enactment of that bill or resolution in the form recommended in that conference report,

would not increase the **deficit**,<sup>775</sup> and, if the sum of any **outlay**<sup>776</sup> reductions provided in legislation already enacted during the current session (when added to **outlay**<sup>777</sup> reductions, if any, in excess of any **revenue**<sup>778</sup> reduction provided by the legislation

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<sup>769</sup> U.S. GOV'T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines "revenues."

<sup>770</sup> *Id.*

<sup>771</sup> *Congressional Budget Act of 1974 § 301(b)(8)*, 2 U.S.C. § 632(b)(8), *supra* p. 136, provides that budget resolutions may "set forth procedures to effectuate pay-as-you-go in the House of Representatives."

<sup>772</sup> *Congressional Budget Act of 1974 § 311(a)*, 2 U.S.C. § 642(a), *infra* p. 573, addresses "Enforcement of Budget Aggregates."

<sup>773</sup> U.S. GOV'T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines "revenues."

<sup>774</sup> *Congressional Budget Act of 1974 § 3(4)*, 2 U.S.C. § 622(4), *supra* p. 57, defines "concurrent resolution on the budget."

<sup>775</sup> *Congressional Budget Act of 1974 § 3(6)*, 2 U.S.C. § 622(6), *supra* p. 58, defines "deficit."

<sup>776</sup> *Congressional Budget Act of 1974 § 3(1)*, 2 U.S.C. § 622(1), *supra* p. 55, defines "outlays."

<sup>777</sup> *Id.*

<sup>778</sup> U.S. GOV'T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines "revenues."

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proposed for consideration) is at least as great as the sum of the amount, if any, by which the aggregate level of Federal [outlays](#)<sup>779</sup> should be reduced as required by that concurrent resolution and the amount, if any, by which [outlays](#)<sup>780</sup> are to be reduced pursuant to pay-as-you-go procedures under [section 301\(b\)\(8\)](#),<sup>781</sup> if included in that concurrent resolution.

302(g)(2) (2) REVISED ALLOCATIONS. —

302(g)(2)(A) (A) As soon as practicable after Congress agrees to a bill or joint resolution that would have been subject to a point of order under [subsection \(f\)\(1\)](#)<sup>782</sup> but for the exception provided in [paragraph \(1\)\(A\)](#)<sup>783</sup> or would have been subject to a point of order under [section 311\(a\)](#)<sup>784</sup> but for the exception provided in [paragraph \(1\)\(B\)](#),<sup>785</sup> the chairman of the Committee on the Budget of the House of Representatives shall file with the House appropriately revised allocations under [subsection \(a\)](#)<sup>786</sup> and revised functional levels and budget aggregates to reflect that bill.

302(g)(2)(B) (B) Such revised allocations, functional levels, and budget aggregates shall be considered for the purposes of [this Act](#)<sup>787</sup> as allocations, functional levels, and budget aggregates

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<sup>779</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>780</sup> *Id.*

<sup>781</sup> [Congressional Budget Act of 1974 § 301\(b\)\(8\)](#), 2 U.S.C. § 632(b)(8), *supra* p. 136, provides that budget resolutions may “set forth procedures to effectuate pay-as-you-go in the House of Representatives.”

<sup>782</sup> [Congressional Budget Act of 1974 § 302\(f\)\(1\)](#), 2 U.S.C. § 633(f)(1), *supra* p. 202, addresses “Legislation Subject to Point of Order” “In the House of Representatives.”

<sup>783</sup> [Congressional Budget Act of 1974 § 302\(g\)\(1\)\(A\)](#), 2 U.S.C. § 633(g)(1)(A), *supra* p. 211.

<sup>784</sup> [Congressional Budget Act of 1974 § 311\(a\)](#), 2 U.S.C. § 642(a), *infra* p. 573, addresses “Enforcement of Budget Aggregates.”

<sup>785</sup> [Congressional Budget Act of 1974 § 302\(g\)\(1\)\(B\)](#), 2 U.S.C. § 633(g)(1)(B), *supra* p. 212.

<sup>786</sup> [Congressional Budget Act of 1974 § 302\(a\)](#), 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>787</sup> [Congressional Budget and Impoundment Control Act of 1974](#), 2 U.S.C. §§ 601–688, pp. 49–969.

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contained in the most recently agreed to  
**concurrent resolution on the budget.**<sup>788</sup>

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<sup>788</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

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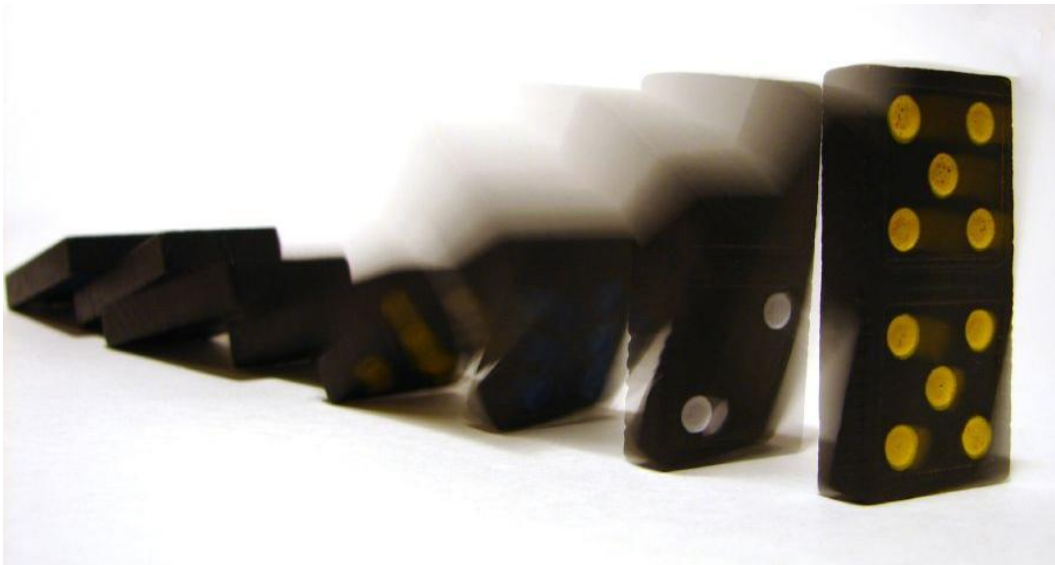


Photo: Wikimedia



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# Sequencing

**D**oes Congress have to adopt a budget before legislating on fiscal matters? The drafters of the Budget Act thought that it should. Budget Act section 303 enforces this idea.

The first Budget Committee Chair, Senator Edmund Muskie, explained the purpose of this subsection:

It is not difficult to understand why this provision, section 303, was inserted in the Budget Act. That provision says that when we are dealing with the next budget year all spending decisions are to be considered together in the first concurrent budget resolution so that when we begin to authorize spending for the next budget year we do so having in mind all of the spending pressures and demands we are being asked to consider.<sup>789</sup>

In *Riddick's Senate Procedure*, the Parliamentarian described the point of order generally:

Compliance with congressional budgetary discipline is enforced through several points of order at various stages of the budget cycle. For

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<sup>789</sup> 124 CONG. REC. 9390 (Apr. 10, 1978).

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example, a point of order will lie against the consideration of any bill or resolution that provides new budget authority, new entitlement authority, new credit authority, increases or decreases in the public debt limit or increases or decreases in revenues for a fiscal year, until the concurrent resolution on the budget for that fiscal year has been agreed to.<sup>790</sup>

Note that the points of order under this section require only a simple majority to waive.<sup>791</sup> Since the Balanced Budget and Emergency Deficit Control Act of 1985 increased the majority needed to waive many other points of order to 60 votes, Senators have chosen to raise points of order under section 303 less frequently.

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<sup>790</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 503 (1992).

<sup>791</sup> *See infra* p. 888.

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**CONCURRENT RESOLUTION  
ON THE BUDGET<sup>792</sup>  
MUST BE ADOPTED  
BEFORE BUDGET-RELATED LEGISLATION  
IS CONSIDERED**

303(a)        **SEC. 303.<sup>793</sup> (a) IN GENERAL.—Until the [concurrent resolution on the budget](#)<sup>794</sup> for a fiscal year has been agreed to, [it shall not be in order](#)<sup>795</sup> in the House of Representatives, with respect to the first fiscal year covered by that resolution, or the Senate, with respect to any fiscal year covered by that resolution, to consider any bill or joint resolution, amendment or motion thereto, or [conference report](#)<sup>796</sup> thereon that<sup>797</sup> —**

303(a)(1)        **(1) first provides [new budget authority](#)<sup>798</sup> for that fiscal year;**

303(a)(2)        **(2) first provides an increase or decrease in [revenues](#)<sup>799</sup> during that fiscal year;**

303(a)(3)        **(3) provides an increase or decrease in the public debt limit to become effective during that fiscal year;**

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<sup>792</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>793</sup> Congressional Budget Act of 1974 § 303 is codified as amended at [2 U.S.C. § 634](#). Congressional Budget Act of 1974 § 303 was formerly codified as 31 U.S.C. § 1324, prior to the 1982 general revision and enactment of Title 31, Money and Finance, in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>794</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>795</sup> For discussion of this point of order, see *infra* p. 220.

<sup>796</sup> For discussion of the application of this point of order to conference reports, see *infra* p. 225.

<sup>797</sup> The Congressional Budget Act makes no exception for very small amounts; even a “negligible” violation can subject legislation to a point of order under the Budget Act. Senate Precedent PRL19761001-001, [122 CONG. REC. 34,550–51](#) (Oct. 1, 1976) (point of order by Sen. Haskell under Congressional Budget Act of 1974 § 311(a)).

<sup>798</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>799</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

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303(a)(4)                   **(4) in the Senate only, first provides new entitlement authority<sup>800</sup> for that fiscal year; or**

303(a)(5)                   **(5) in the Senate only, first provides for an increase or decrease in outlays<sup>801</sup> for that fiscal year.**

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*Point of Order*—In *Riddick's Senate Procedure*, the Parliamentarian discussed precedents under section 303(a)<sup>802</sup>:

Under section 303(a) of the Budget Act of 1974, it is not in order to consider legislation proposing new budget authority, either in a bill or a conference report, until “. . . the concurrent resolution on the budget for such year has been agreed to pursuant to section 301”.<sup>[803]</sup>

. . . .

Bills, or amendments thereto, which violate section 303(a) of the Budget Act are subject to points of order, but they may be considered by the Senate if waiver resolutions have been submitted and agreed to allowing such proposals to be in order.<sup>[804]</sup>

An amendment providing new budget authority for a fiscal year in advance of the fiscal year for which the budget resolution had been agreed to, was ruled out of order.<sup>[805]</sup> The sponsor of the amendment then offered the amendment modified to provide the budget authority for the current fiscal year (for which a budget resolution had been agreed to), and in response to an inquiry, the Chair indicated that as so altered the amendment was in order.<sup>[806]</sup>

. . . .

The prohibition contained in section 303(a) of the Congressional Budget Act of 1974 against considering measures which provide new budget authority for a fiscal year before the concurrent resolution on the

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<sup>800</sup> Congressional Budget Act of 1974 § 3(9), 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.”

<sup>801</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>802</sup> *Id.* at 593–94, 608–10, 620 (footnotes renumbered and reformatted); *see also id.* at 619.

<sup>803</sup> Congressional Budget Act of 1974 § 303(a), 2 U.S.C. § 634(a), *supra* p. 219; 124 CONG. REC. 9383–403 (Apr. 10, 1978).

<sup>804</sup> 123 CONG. REC. 36,773–97 (Nov. 3, 1977).

<sup>805</sup> 122 CONG. REC. 34,550–51 (Oct. 1, 1976).

<sup>806</sup> *Id.* at 34,552–53.

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budget for that fiscal year has been agreed to is not self-enforcing, and requires a point of order from the floor for its enforcement.<sup>[807]</sup>

....

An amendment which creates a new entitlement which would begin in a fiscal year before the budget resolution for that fiscal year had been adopted would be out of order under section 303(a) of the Act.<sup>[808]</sup> An amendment that proposes the creation of an entitlement that would become effective during a fiscal year before the first concurrent resolution on the budget for that fiscal year has been agreed to, is not in order under section 303(a) of the Congressional Budget Act of 1974, and does not fall within the exceptions contained in section 303(b) of that Act.<sup>[809]</sup>

An entitlement which begins in a year subsequent to the year for which the concurrent resolution on the budget applies (an “out year”) is out of order under section 303 of the Congressional Budget Act of 1974.<sup>[810]</sup>

A point of order would lie against a conference report under section 303(a) of the Congressional Budget Act of 1974, if that report contained entitlements which were to first become effective in a fiscal year after the fiscal year to which the most recently agreed to concurrent resolution on the budget applied.<sup>[811]</sup>

....

A point of order raised in April 1976 under section 303(a) of the Congressional Budget Act of 1974 was not sustained against a bill that provided new entitlement authority to become effective in the current fiscal year (for which the relevant budget resolution had been adopted) when a point of order under section 401(b) was discussed but not asserted.<sup>[812]</sup>

The Senate has adopted a motion to waive section 303(a) of the Budget Act for the consideration of a committee amendment which created an entitlement to begin in a fiscal year before the concurrent resolution on the budget for that fiscal year had been agreed to.<sup>[813]</sup>

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<sup>807</sup> 130 CONG. REC. 17,754 (June 21, 1984).

<sup>808</sup> Congressional Budget Act of 1974 § 303(a), 2 U.S.C. § 634(a), *supra* p. 219; 124 CONG. REC. 26,106–08 (Aug. 15, 1978).

<sup>809</sup> Congressional Budget Act of 1974 § 303(b), 2 U.S.C. § 634(b), *supra* p. 227; 129 CONG. REC. 18,991, 19,011, 19,018 (July 13, 1983).

<sup>810</sup> 130 CONG. REC. 16,101–02, 16,104 (June 13, 1984).

<sup>811</sup> See 132 CONG. REC. 32,375 (Oct. 16, 1986).

<sup>812</sup> 122 CONG. REC. 9382–90 (Apr. 5, 1976).

<sup>813</sup> 135 CONG. REC. 22,504, 22,511–12 (Sept. 29, 1989).

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. . . .

Prior to the adoption of the concurrent resolution on the budget for the upcoming fiscal year (which begins in October of the current year), a bill which would result in a loss of revenues for the upcoming fiscal year is subject to a point of order under section 303 of the Congressional Budget Act of 1974, despite the fact that a complete substitute with no such revenue impact was pending thereto.<sup>[814]</sup>

Elsewhere in *Riddick's Senate Procedure*, the Parliamentarian discussed precedents under this section affecting revenue bills and amendments<sup>815</sup>:

#### **Revenue Bills and Amendments Under the Budget Act:**

. . . .

Bills, resolutions, and amendments on revenue will be ruled out of order, if a point of order is made and sustained, to the effect that such proposals do not comply with the requirements of the Budget Act. Such proposed legislative measures have been ruled out of order by the Chair because they failed to comply with sections 303, 306, and 311 of the Budget Act, as follows:

An amendment (in this case, a committee amendment) which would increase or decrease revenues for a fiscal year, offered before the concurrent resolution on the budget had been adopted, is subject to a point of order under section 303(a)(2) of the Budget Act, unless the change in revenues first becomes effective in a fiscal year following the fiscal year to which the concurrent resolution applies. Pending the ruling by the Chair in this instance, the chairman of the committee which had reported the measure was authorized by a poll of that committee to modify the committee amendment to change the effective date of the revenue provisions at issue from October 1, 1978, (the first day of fiscal 1979) to September 30, 1978 (the last day of fiscal 1978), thereby removing the basis for the point of order (since Congress had adopted a Budget Resolution for fiscal 1978).<sup>[816]</sup>

On October 5, 1978, the Chair sustained a point of order under section 303(a) of the Budget Act, against an amendment which provided for a decrease in revenues to become effective during a fiscal year before the

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<sup>814</sup> 132 CONG. REC. 549–50 (Jan. 27, 1986).

<sup>815</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 631–34 (1992) (footnotes renumbered and reformatted).

<sup>816</sup> 123 CONG. REC. 34,903–04 (Oct. 25, 1977).

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adoption of the concurrent resolution on the budget for such year. The Chair had determined that the amendment did not come under the “out year” exception contained in section 303(b), which provides that: “subsection (a) does not apply to any bill or resolution \* \* \* increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies.” An appeal was taken from the decision of the Chair and the Chair was overruled.<sup>[817]</sup> Section 303(b) was amended in 1990 to limit the “out year” exception to only a “bill or resolution making advance appropriations for the fiscal year to which the concurrent resolution applies and the two succeeding fiscal years.”<sup>[818]</sup>

. . . .

Prior to the adoption of the concurrent resolution on the budget a fiscal year (which begins in October of the current year), a bill which would result in a loss of revenues for that fiscal year is subject to a point of order under section 303 of the Congressional Budget Act of 1974, despite the fact that a complete substitute with no such revenue impact was pending thereto.<sup>[819]</sup>

. . . .

An amendment that results in a loss of revenues in a fiscal year for which Congress has not adopted the concurrent resolution on the Budget required by the Congressional Budget Act of 1974 (the resolution being in conference), is subject to a point of order under section 303 of that Act, unless that decrease in revenues is to first become effective in a fiscal year following the fiscal year to which such concurrent resolution applies.<sup>[820]</sup>

. . . .

. . . . A conference report which would result in a change in revenues for a fiscal year is subject to a point of order under section 303(a) of the Congressional Budget Act of 1974, if the concurrent resolution for that fiscal year had not been adopted by Congress.<sup>[821]</sup>

. . . .

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<sup>817</sup> 124 CONG. REC. 33,945–52 (Oct. 5, 1978).

<sup>818</sup> Congressional Budget Act of 1974 § 303(b), 2 U.S.C. § 634(b), *infra* p. 227, as amended by the Budget Enforcement Act of 1990, Pub. L. No. 101-508, § 13205(b)(1), 104 Stat. 1388, 1388-616 to 1388-617.

<sup>819</sup> 132 CONG. REC. 549–50 (Jan. 27, 1986).

<sup>820</sup> 131 CONG. REC. 17,301–02, 17,307 (June 26, 1985).

<sup>821</sup> *Id.* at 12,354 (May 16, 1985).

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An amendment specified in a unanimous consent agreement is subject to points of order under the Congressional Budget Act of 1974, and if such amendment changes revenues for a fiscal year at a time when there is no concurrent resolution on the budget for that year, it violates section 303(a) of the Budget Act.<sup>[822]</sup>

Section 303(a) prohibits legislation that would create entitlement authority that would become effective before Congress has agreed to a budget resolution for the fiscal year.<sup>823</sup> In the 1980s and early 1990s, an entitlement that began in a year beyond those that the budget resolution was viewed to violate section 303(a).<sup>824</sup> In 2005, however, the Parliamentarian's office advised that the point of order applies only from the time that Congress convenes in January until Congress adopts a budget resolution.<sup>825</sup> The Parliamentarian's office advised, "Our intent was to reinvigorate the need for the budget resolution and not to prevent longer [term] changes in policy, (presumably those may have even been considered in the context of developing the resolution.)"<sup>826</sup>

Entitlements begin in the year payments are made, not when benefits vest.<sup>827</sup>

Budget Act section 315 circumscribes the application of this point of order in the House.<sup>828</sup>

***Modifying a Committee Amendment To Avoid a Point of Order—In Riddick's Senate Procedure,*** the Parliamentarian discussed a precedent where a committee modified a committee amendment in the face of a point of order under this section:

#### **Modify Committee Amendment:**

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<sup>822</sup> 132 CONG. REC. 14,992–94 (June 24, 1986).

<sup>823</sup> Senate Precedent PRL19830713-004, 129 CONG. REC. S9826, S9845, S9852 (daily ed. July 13, 1983).

<sup>824</sup> Senate Precedent PRL19840613-002, 130 CONG. REC. S7070–71, S7102–12, S7175, S7181 (daily ed. June 13, 1984); see also Senate Precedent PRL19861016-002, 132 CONG. REC. S16,419–20, S16,611–13 (daily ed. Oct. 16, 1986) (precedent headnote states that a point of order would lie against a conference report if that conference report contained entitlements to become effective in years beyond the resolution; point of order waived); WILLIAM G. DAUSTER, *BUDGET PROCESS LAW ANNOTATED: 1993 EDITION* 108 n.302 (Comm. Print 1993).

<sup>825</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re just to confirm re: 303 (June 14, 2005, 2:37 PM).

<sup>826</sup> E-mail from Staff of the S. Comm. on the Budget to Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re just to confirm re: 303 (June 14, 2005, 2:37 PM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re just to confirm re: 303 (June 14, 2005, 11:47 AM).

<sup>827</sup> Senate Precedent PRL19840613-002, 130 CONG. REC. S7107 (daily ed. June 13, 1984) (inquiry of Sen. Armstrong).

<sup>828</sup> *Congressional Budget Act of 1974 § 315*, 2 U.S.C. § 645a, *infra* p. 782, addresses "Effect of Adoption of Special Order of Business in the House of Representatives."



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A committee amendment which would increase or decrease revenues for a fiscal year, offered before the concurrent resolution on the budget has been adopted, is subject to a point of order under section 303(a)(2) of the Budget Act, unless the change in revenues first becomes effective in a fiscal year following the fiscal year to which the concurrent resolution applies. Pending the ruling by the Chair in this instance, the Chairman of the committee which had reported the measure was authorized by a poll of that committee to modify the committee amendment to change the effective date of the revenue provisions at issue from October 1, 1978 (the first day of fiscal year 1979) to September 30, 1978 (the last day of fiscal year 1978), thereby removing the basis for the point of order (since Congress had adopted a budget resolution for fiscal year 1978).<sup>829</sup>

**Conference report**—Section 303(a) originally did not explicitly mention conference reports. Nonetheless, the section applied to conference reports by precedent. In *Riddick's Senate Procedure*, the Parliamentarian discussed this history<sup>830</sup>:

Conference reports were not explicitly included in section 303 of the Budget Act as originally enacted in 1974.<sup>[831]</sup> However, on three occasions statements by the Chair or actions of the Senate reflected the belief that section 303 was applicable to conference reports.

In 1978, the Chair stated in response to an inquiry that a conference report containing amendments made in conference would be subject to a section 303 point of order under the Congressional Budget Act if those amendments contained matter that violated that section.<sup>[832]</sup> In that instance, a motion was made and adopted under section 904(b) of the Act to waive section 303(a) for the consideration of the conference report at issue.<sup>[833]</sup>

On another occasion, the Chair stated that a conference report which would have resulted in a change in revenues for the upcoming fiscal year would be subject to a point of order under section 303(a) of the Congressional Budget Act of 1974, since the concurrent resolution for that fiscal year had not yet been adopted by Congress.<sup>[834]</sup>

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<sup>829</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 612 (1992) (citing 123 CONG. REC. 34,903–04 (Oct. 25, 1977)).

<sup>830</sup> *Id.* at 602–03 (1992) (footnotes renumbered and reformatted); see also *id.* at 619–20.

<sup>831</sup> *Congressional Budget Act of 1974*, Pub. L. No. 93-344, § 303, 88 Stat 297, 309 (as enacted).

<sup>832</sup> See 124 CONG. REC. 9390 (Apr. 10, 1978).

<sup>833</sup> See *id.* at 9383–403 (Apr. 10, 1978).

<sup>834</sup> See 131 CONG. REC. 12,354 (May 16, 1985).

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On a third occasion, a motion was made and adopted under section 904(b) of the Act to waive section 303(a) for the consideration of a conference report that contained entitlements which were to first become effective in a fiscal year after the fiscal year to which the most recently agreed to concurrent resolution on the budget applied.<sup>[835]</sup>

The belief in evidence in the three foregoing cases was codified when section 303 was amended in 1990 to explicitly include conference reports.<sup>[836]</sup>

***Resolutions To Waive Section 303(a)*** – In *Riddick's Senate Procedure*, the Parliamentarian discussed an instance of the former practice of the Senate's adopting resolutions to waive this subsection:

The Senate has by unanimous consent adopted en bloc four resolutions reported by the Budget Committee, three of which waived section 303(a) of the Budget Act for the consideration of certain amendments to a specified bill, and one of which proposed to add a new section at the end of an unspecified bill. The resolutions were submitted by individual senators and referred to the Budget Committee, and were not original resolutions reported by the committee of the Senate that had reported the measure in question, and then referred to the Budget Committee pursuant to section 303(c).<sup>837</sup>

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<sup>835</sup> See 132 CONG. REC. 32,375–76, 32,408–09 (Oct. 16, 1986).

<sup>836</sup> Congressional Budget Act of 1974 § 303(a), 2 U.S.C. § 634(a), *supra* p. 219, as amended by Budget Enforcement Act of 1990, Pub. L. No. 101-508, § 13207(a)(1)(C), 104 Stat. 1388, 1388-617.

<sup>837</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 629 (1992) (citing 123 CONG. REC. 36,795–97 (Nov. 3, 1977)).

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- 303(b)           **(b) EXCEPTIONS IN THE HOUSE.—**In the House of Representatives, subsection (a) does not apply<sup>838</sup> —
- 303(b)(1)(A)       **(1)(A)** to any bill or joint resolution, as reported, providing advance discretionary **new budget authority**<sup>839</sup> that first becomes available for the first or second fiscal year after the **budget year**;<sup>840</sup> or
- 303(b)(1)(B)       **(B)** to any bill or joint resolution, as reported, first increasing or decreasing **revenues**<sup>841</sup> in a fiscal year following the fiscal year to which the concurrent resolution applies;
- 303(b)(2)           **(2)** after May 15, to any general appropriation bill or amendment thereto; or
- 303(b)(3)           **(3)** to any bill or joint resolution unless it is reported by a committee.
- 303(c)           **(c) APPLICATION TO APPROPRIATION MEASURES IN THE SENATE.—**
- 303(c)(1)           **(1) IN GENERAL.—**Until the **concurrent resolution on the budget**<sup>842</sup> for a fiscal year has been agreed to and an allocation has been made to the Committee on Appropriations of the Senate under **section 302(a)**<sup>843</sup> for that year, it shall not be in order in the Senate to consider any appropriation bill or joint resolution, amendment or motion thereto, or conference report thereon for that year or any subsequent year.
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<sup>838</sup> *Congressional Budget Act of 1974 § 302(g)(1)(A)*, 2 U.S.C. § 633(g)(1)(A), *supra* p. 211, provides an additional pay-as-you-go exception in the House of Representatives.

<sup>839</sup> *Congressional Budget Act of 1974 § 3(2)(C)*, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>840</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *infra* p. 982, defines “budget year.”

<sup>841</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>842</sup> *Congressional Budget Act of 1974 § 3(4)*, 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>843</sup> *Congressional Budget Act of 1974 § 302(a)*, 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

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303(c)(2)

(2) EXCEPTION.—[Paragraph \(1\)](#)<sup>844</sup> does not apply to [appropriations legislation](#)<sup>845</sup> making [advance appropriations](#)<sup>846</sup> for the first or second fiscal year after the year the allocation referred to in that paragraph is made.

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*Appropriations Legislation Making Advance Appropriations*—In *Riddick's Senate Procedure*, the Parliamentarian discussed a precedent under the predecessor to this exception<sup>847</sup>:

A significant precedent occurred with respect to what is known as the “out-year exception” contained in section 303(b) of the Budget Act to the restrictions contained in section 303(a) of the Act, against the consideration of proposals with specified budgetary consequences before adoption of the budget resolution for the relevant fiscal year. On October 5, 1978, the Chair sustained a point of order under section 303(a) of the Budget Act, against an amendment which provided for a decrease in revenues to become effective during a fiscal year before the adoption of the concurrent resolution on the budget for such year, after the Chair determined that the amendment was not excepted by section 303(b), which provides that: “subsection (a) does not apply to any bill or resolution \* \* \* increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies.” On appeal, the decision of the Chair was overruled.<sup>[848]</sup> This “out-year exception” was changed in 1990 to apply only to a “bill or resolution making advance appropriations for the fiscal year to which the concurrent resolution applies and the two succeeding fiscal years.”<sup>[849]</sup>

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<sup>844</sup> [Congressional Budget Act of 1974 § 303\(c\)\(1\)](#), 2 U.S.C. § 634(c)(1), *infra* p. 227, addresses “Application to Appropriation Measures in Senate” “In General.”

<sup>845</sup> [Congressional Budget Act of 1974 § 3\(5\)](#), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>846</sup> [S. Con. Res. 14, 117th Cong. § 4002\(a\)\(2\)](#) (2021) (adopted), *infra* p. 1262 (in the Senate) & [S. Con. Res. 14, 117th Cong. § 4003\(a\)\(2\)](#), *infra* p. 1267 (in the House) define “advance appropriation.”

<sup>847</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 618 (1992) (footnotes renumbered and reformatted).

<sup>848</sup> [124 CONG. REC. 33,945–52](#) (Oct. 5, 1978).

<sup>849</sup> [Congressional Budget Act of 1974 § 303\(b\)](#), 2 U.S.C. § 634(b), *infra* p. 227, as amended by the [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13205(b)(1), 104 Stat. 1388, 1388-616 to 1388-617.

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**REVISED**

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# Revised Budget Resolutions

**H**ow often can Congress adopt a budget? The drafters of the Budget Act expected that Congress would revise budget resolutions frequently. The joint statement of managers to accompany the Budget Act said:

The managers expect that in addition to the two concurrent resolutions required in May and September, Congress may adopt at least one additional resolution each year, either in conjunction with its consideration of supplemental appropriations or pursuant to the issuance of updated figures for the current fiscal year in the President's budget. Furthermore, whenever there are sharp revisions in the revenue or spending estimates or major developments in the economy it is expected that Congress would review its latest budget resolution and consider possible revisions.<sup>850</sup>

Section 304 appeared in the original Budget Act as follows:

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<sup>850</sup> S. REP. NO. 93-924, at 61 (1974) (Conf. Rep.).

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PERMISSIBLE REVISIONS OF  
CONCURRENT RESOLUTIONS OF THE BUDGET

SEC. 304. At any time after the first concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301, and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises the concurrent resolution on the budget for such fiscal year most recently agreed to.<sup>851</sup>

The Budget Act originally provided that Congress would adopt budget resolutions at least twice a year.<sup>852</sup> At first, from fiscal years 1976 through 1982, Congress adopted at least two budget resolutions per fiscal year.<sup>853</sup> Indeed, in February 1977, Congress adopted a *third* budget resolution for fiscal year 1977 “pursuant to section 304 of the Congressional Budget Act of 1974.”<sup>854</sup>

In Fiscal Year 1981, the Senate passed three revisions of the initial Fiscal Year 1981 budget resolution. In March 1980, the Democratic-controlled Congress under President Carter adopted an initial budget resolution for Fiscal Year 1981.<sup>855</sup> At the end of the Democratic Congress, Congress adopted a revised resolution for Fiscal Year 1981.<sup>856</sup> After the newly-elected Republican Senate took office under President Reagan, the Senate

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<sup>851</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 304, 88 Stat. 297, 310 (amended 1985, 1987, 1990 & 1997).

<sup>852</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, §§ 300, 301, 310, 88 Stat. 297, 306–08, 314 (amended 1985).

<sup>853</sup> [First Concurrent Resolution on the Budget—Fiscal Year 1976](#), H. Con. Res. 218, 94th Cong., 89 Stat. 1197 (1975); [Second Concurrent Resolution on the Budget—Fiscal Year 1976](#), H. Con. Res. 466, 94th Cong., 89 Stat. 1209 (1975); [First Concurrent Resolution on the Budget—Fiscal Year 1977](#), S. Con. Res. 109, 94th Cong., 90 Stat. 3029 (1976); [Second Concurrent Resolution on the Budget—Fiscal Year 1977](#), S. Con. Res. 139, 94th Cong., 90 Stat. 3044 (1976); [Third Concurrent Resolution on the Budget—Fiscal Year 1977](#), S. Con. Res. 10, 95th Cong., 91 Stat. 1666 (1977); [First Concurrent Resolution on the Budget: Fiscal Year 1978](#), S. Con. Res. 19, 95th Cong., 91 Stat. 1670 (1977); [Second Concurrent Resolution on the Budget—Fiscal Year 1978](#), H. Con. Res. 341, 95th Cong., 91 Stat. 1683 (1977); [First Concurrent Resolution on the Budget—Fiscal Year 1979](#), S. Con. Res. 80, 95th Cong., 92 Stat. 3870 (1978); [Second Concurrent Resolution on the Budget—Fiscal Year 1979](#), H. Con. Res. 683, 95th Cong., 92 Stat. 3878 (1978); [First Concurrent Resolution on the Budget—Fiscal Year 1980](#), H. Con. Res. 107, 96th Cong., 93 Stat. 1413 (1979); [Second Concurrent Resolution on the Budget—Fiscal Year 1980](#), S. Con. Res. 53, 96th Cong., 93 Stat. 1428 (1979); [First Concurrent Resolution on the Budget—Fiscal Year 1981](#), H. Con. Res. 307, 96th Cong., 94 Stat. 3655 (1980); [Second Concurrent Resolution on the Budget—Fiscal Year 1981](#), H. Con. Res. 448, 96th Cong., 94 Stat. 3680 (1980); [First Concurrent Resolution on the Budget—Fiscal Year 1982](#), H. Con. Res. 115, 97th Cong., 95 Stat. 1743 (1981); [Second Concurrent Resolution on the Budget—Fiscal Year 1982](#), S. Con. Res. 50, 97th Cong., 95 Stat. 1778 (1981).

<sup>854</sup> [Third Concurrent Resolution on the Budget—Fiscal Year 1977](#), S. Con. Res. 10, 95th Cong., 91 Stat. 1666 (1977).

<sup>855</sup> [H. Con. Res. 307, 96th Cong.](#), 94 Stat. 3655 (1980).

<sup>856</sup> [Concurrent resolution revising the Congressional budget for the United States Government for the fiscal years 1981, 1982, and 1983](#), H. Con. Res. 448, 96th Cong., 94 Stat. 3680 (1980).



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considered a revised Fiscal Year 1981 budget.<sup>857</sup> Although the Senate passed the resolution, the House failed to act on this resolution. Fourteen days after the Senate acted on that resolution, another budget resolution was introduced. The Congress then agreed to that concurrent resolution, which revised the Fiscal Year 1981 budget in the same resolution as the first Fiscal Year 1982 resolution.<sup>858</sup> This led to the reconciliation bill that enacted the first Reagan budget cuts.<sup>859</sup>

Congress chose not to adopt second budget resolutions in fiscal years 1983 through 1986. And the Balanced Budget and Emergency Deficit Control Act of 1985 abolished the requirement that Congress adopt second budget resolutions.<sup>860</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 designated the existing provisions as subsection (a), struck out “first,” added “or reaffirms,” and added subsection (b), so that section 304 then read as follows:

PERMISSIBLE REVISIONS OF  
CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 304. (a) *IN GENERAL.* – At any time after the ~~first~~ concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301, and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises *or reaffirms* the concurrent resolution on the budget for such fiscal year most recently agreed to.

(b) *MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED.* – *The provisions of section 301(i) shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 301(i) (and amendments thereto and conference reports thereon).*<sup>861</sup>

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<sup>857</sup> Concurrent resolution revising the Congressional Budget for the United States Government for the fiscal years 1981, 1982, and 1983, S. Con. Res. 9, 97th Cong. (1981) (agreed to in Senate Apr. 2, 1981).

<sup>858</sup> [Concurrent resolution revising the congressional budget for the United States Government for the fiscal year 1981 and setting forth the congressional budget for the United States Government for the fiscal years 1982, 1983, and 1984](#), H. Con. Res. 115, 97th Cong., 95 Stat. 1743 (1981).

<sup>859</sup> [Omnibus Budget Reconciliation Act of 1981](#), Pub. L. No. 97-35, 95 Stat. 357 (1981).

<sup>860</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1037, 1040–55.

<sup>861</sup> *Id.* at 1047.

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The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added subsection (c) at the end of section 304, so that section 304 then read:

PERMISSIBLE REVISIONS OF  
CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 304. (a) IN GENERAL. — At any time after the concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301, and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises or reaffirms the concurrent resolution on the budget for such fiscal year most recently agreed to.

(b) MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED. — The provisions of section 301(i) shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 301(i) (and amendments thereto and conference reports thereon).

(c) ECONOMIC ASSUMPTIONS. — *The provisions of section 301(g) shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 301(g) (and amendments thereto and conference reports thereon).*<sup>862</sup>

The Budget Enforcement Act of 1990 struck subsection (b) and renumbered subsection (c) as subsection (b), so that section 304 then read:

PERMISSIBLE REVISIONS OF  
CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 304. (a) IN GENERAL. — At any time after the concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301, and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises or reaffirms the concurrent resolution on the budget for such fiscal year most recently agreed to.

~~(b) MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED. — The provisions of section 301(i) shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto and~~

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<sup>862</sup> [Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987](#), Pub. L. No. 100-119, § 208(b), 101 Stat. 754, 786.

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~~conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 301(i) (and amendments thereto and conference reports thereon).~~

~~(e) ECONOMIC ASSUMPTIONS.—The provisions of section 301(g) shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 301(g) (and amendments thereto and conference reports thereon).~~<sup>863</sup>

Finally, the Balanced Budget Act of 1997 struck subsection (b), so that section 304 thereafter read:

PERMISSIBLE REVISIONS OF  
CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 304. ~~(a) IN GENERAL.—~~At any time after the concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301, and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises or reaffirms the concurrent resolution on the budget for such fiscal year most recently agreed to.

~~(b) ECONOMIC ASSUMPTIONS.—The provisions of section 301(g) shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 301(g) (and amendments thereto and conference reports thereon).~~<sup>864</sup>

The joint statement of managers to accompany the Balanced Budget Act explained how the drafters of that change to section 304 intended the section to be read:

Subsection 304(a) provides the authority for Congress to revise a budget resolution at any time. Subsection (b) provides that section 301(g), regarding economic assumptions, applies to revisions to budget resolutions. This subsection is not needed and raises an ambiguity with respect to whether other provisions of the Budget Act apply to revisions of a budget resolution.

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<sup>863</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13112(a)(8), 104 Stat. 1388, 1388-608.

<sup>864</sup> [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10108, 111 Stat. 251, 684 (current version at 2 U.S.C. § 635).

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By repealing subsection 304(b), the conferees intend that all provisions of the Budget Act apply to revised budget resolutions unless there is a specific exception made for a revision to a budget resolution, such as section 305(b) which provides for only 10 hours of debate on a revision to a budget resolution.<sup>865</sup>

With this amendment, Congress thus affirmed that revised budget resolutions pursuant to section 304 were meant to be just like initial budget resolutions. Thus, revised budget resolutions, like regular budget resolutions, are fast-track vehicles with limited debate and the prospect of a vote-a-rama.<sup>866</sup>

In many years, Congress has revised the budget for the current fiscal year as part of the budget resolution for the upcoming fiscal year.<sup>867</sup> And several budget resolutions revised a current fiscal year's levels without explicitly stating that they were revisions.<sup>868</sup> The House also once voted down a resolution revising the previously adopted budget resolution.<sup>869</sup>

In November 2016, the Parliamentarian said that it is not settled how many times Congress can use section 304 in a fiscal year.<sup>870</sup>

In March 2017, the Parliamentarian said that at first glance the Parliamentarian did not know what would be different with a resolution under section 304 from a resolution under section 301. When asked whether the majority could use a resolution under section 304 just to spin off reconciliation instructions, the Parliamentarian noted that before 1985, it was required to do two budget resolutions. The Parliamentarian's office noted that there were at least two instances when the second resolution seemed to be only spinning off instructions; in one case the resolution only passed the Senate, and in the other it passed both the Senate and House. The Parliamentarian's office referred to the second budget resolution for fiscal year 1981. When asked whether the pre-1985 process had bearing in

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<sup>865</sup> H.R. Rep. No 105-217, at 989–90 (1997).

<sup>866</sup> See *infra* p. 259.

<sup>867</sup> See [H. Con. Res. 83, 107th Cong.](#), 115 Stat. 2486 (2001); [H. Con. Res. 290, 106th Cong.](#), 114 Stat. 3139 (2000); [S. Con. Res. 32, 99th Cong.](#), 99 Stat. 1941 (1985); [H. Con. Res. 280, 98th Cong.](#), 98 Stat. 3484 (1984); [H. Con. Res. 91, 98th Cong.](#), 97 Stat. 1501 (1983); [S. Con. Res. 92, 97th Cong.](#), 96 Stat. 2647 (1982); [H. Con. Res. 115, 97th Cong.](#), 95 Stat. 1743 (1981); [H. Con. Res. 107, 96th Cong.](#), 93 Stat. 1413 (1979).

<sup>868</sup> See [S. Con. Res. 13, 111th Cong.](#), 123 Stat. 3506 (2009); [S. Con. Res. 70, 110th Cong.](#), 122 Stat. 5143 (2008); [S. Con. Res. 21, 110th Cong.](#), 121 Stat. 2590 (2007); [H. Con. Res. 95, 109th Cong.](#), 119 Stat. 3633 (2005); [H. Con. Res. 95, 108th Cong.](#), 117 Stat. 2910 (2003).

<sup>869</sup> See [H. Con. Res. 122, 104th Cong.](#) (2009) (as introduced Dec. 18, 1995).

<sup>870</sup> Staff of S. Comm. on the Budget, Notes from Parls meeting on November 30, 2016 (Dec. 6, 2016).

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2017 given that the law had changed in the interim, the Parliamentarian indicated that pre-1985 arguments would carry some weight.<sup>871</sup>

In April 2021, the Parliamentarian confirmed that a revised budget resolution pursuant to Congressional Budget Act section 304 may contain reconciliation instructions, saying:

Section 304 of the [Congressional Budget Act], as amended, provides for “a concurrent resolution on the budget which revises or reaffirms the concurrent resolution on the budget for such fiscal year most recently agreed to.” The question we address today is solely the threshold matter of whether a 304 resolution may contain reconciliation instructions. We believe that the appropriate answer is “yes.”

The [Congressional Budget Act] defines a “concurrent resolution” in section 3(4) as a 301 resolution, “and (B) any other concurrent resolution revising the congressional budget for the United States Government for a fiscal year as described in section 304.” Nowhere in the [Congressional Budget Act] is reconciliation precluded from a 304 resolution. [The Balanced Budget and Emergency Deficit Control Act of 1985] radically changed the second required resolution and reconciliation process of 310 and it amended 304 to include the word “reaffirm” which was taken from 310, making the single sentence section 304 remarkably similar (though now optional) to the language in the old 310 second resolution and reconciliation process. 304 was not repealed, which it easily could have been. Instead, its uses were augmented. In addition, when the definition of “concurrent resolution” in section 3(4) was amended to remove a reference to 310, drafters left 304 in place (renumbering appropriately).

Finally, 304 is procedural in nature, like 305 (which itself makes reference to 304). There is no content required or prohibited. Where 301 and 310 prescribe content, 304 simply gives Congress the authority to consider revisions of a 301 budget resolution, the permissible content of which is set out in 301. 301(b)(2) permits reconciliation directives in a concurrent resolution on the budget which, as noted above, includes a resolution under 304 as defined by the [Congressional Budget Act].<sup>872</sup>

In May 2021, the Parliamentarian further advised:

As discussed earlier this year in regard to section 304, the definition of “concurrent resolution on the budget” in section 3 of the Congressional

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<sup>871</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 31, 2017, at 1 (Apr. 3, 2017).

<sup>872</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader (Apr. 5, 2021).

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Budget Act (CBA) refers to a concurrent resolution on the budget under section 301, "... and (B) any other concurrent resolution revising the congressional budget for the United States Government for a fiscal year as *described* in section 304." (emphasis added). The one sentence section 304 is more of an outline than a description. And the CBA does not define the terms "revise" or "reaffirm." But the legislative history of 304, while not voluminous, is instructive. The statement of managers on 304 at the drafting of the CBA in 1974 is as follows:

#### SECTION 304. PERMISSIBLE REVISIONS

The House and Senate versions authorized the adoption of additional budget resolutions. The conference substitute contains the authority to adopt additional budget resolutions during the fiscal year. The managers expect that in addition to the two concurrent resolutions required in May and September, Congress may adopt, at least one additional resolution each year, either in conjunction with its consideration of supplemental appropriations or pursuant to the issuance of updated figures for the current fiscal year in the President's budget. Furthermore, whenever there are sharp revisions in the revenue or spending estimates or major developments in the economy it is expected that Congress would review its latest budget resolution and consider possible revisions.

Moreover, the discussion about the use of 304 in 1977, and the ways in which it was in fact used in 1980 and 1981, show that those Senators closest to its inception believed 304 to be a flexible tool for Congress to quickly address national emergencies and marked changes in the economy. Members of both parties believed such flexibility was a strength of the new budget process.

When a Democratic Majority used 304 for the first time in 1977, the Chairman of the Senate Budget Committee (Sen. Muskie) wrote in the report to accompany, "the Committee notes that the purpose contained in the Budget Act for such additional resolutions is to meet changed conditions . . ." The Republican Ranking Member on the Senate Budget Committee (Sen. Bellmon), along with his Republican colleagues (including soon to be Chairman Sen. Domenici) wrote, "[T]his Concurrent Budget Resolution again demonstrates that the Congressional Budget Process is flexible enough to permit adjustment when economic or emergency conditions warrant . . ." Senator Domenici, in a new Congress in 1981, crafted a resolution using section 304 to propose revisions to the budget resolution from the previous calendar year and to issue reconciliation instructions for the current fiscal year when there had been none in that most recently adopted 301 resolution.

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In addition, Congress regularly revises current fiscal year 301 resolutions without fanfare. As stated in the report to accompany H. Con. Res. 290 (106th Cong.), “The authority to revise the current year levels is set forth in section 304 of the Congressional Budget and Impoundment Control Act of 1974 [Budget Act]. These revised levels supersede those established and adjusted pursuant to H. Con. Res. 68 for all purposes under the Budget Act, including to enforce sections 302(f) and 311(a) of the Budget Act . . .” (H. Rep. No. 106-577, pp. 39-40).

While members of both parties lauded the nimble nature of the 304 revision in 1977, each cautioned against its regular use. On behalf of the committee, Chairman Muskie wrote the following,

“... your Committee notes that the need to assure effective Congressional control of the budget requires that, to the maximum extent possible, Congress foresee all possible needs for the fiscal year when it adopts the Second Budget Resolution so that additional resolutions will be the exception and not the rule.” (S. Rept. No. 95-9, pp. 4-5).

“The purpose contemplated in the Budget Act for such additional resolutions is to meet *changed* conditions, not to take account of matters which might have been considered in connection with the Budget Resolution most recently adopted by the Congress.” (S. Rept. No. 95-9, p. 35, emphasis in original).

Ranking member Bellmon and his colleagues expressed similar views:

“This Concurrent Budget Resolution again demonstrates that the Congressional Budget Process is flexible enough to permit adjustment when economic or emergency conditions warrant but the process should not be viewed as being so flexible as to allow for changes whenever an economic statistic moves in an adverse direction. It is anticipated that this Third Concurrent Resolution will prove to be a unique budgetary event, and that future years will require only the normal First and Second Budget Resolutions.” (S. Rept. No. 95-9 p. 101).

The drafters and early users of 304 uniformly believed that it was to be used in extraordinary circumstances and not for things that should have been or could have been foreseen and handled in a 301 resolution. The potential for abuse was clear in 1974 and is all the more obvious now. Abuse of 304—overuse and over-reliance on a hyper-fast track procedure in the ordinarily deliberative Senate—will change the culture of the institution to the detriment of the committee and amendment processes and the rights of *all* Senators. Limits on the breadth and frequency of

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deployment of 304, however, will depend on adherence to the original purpose of the section and the good judgment and restraint of all involved.

With those things in mind, the answers to the 3 questions we have been discussing are set forth below.

1. Does an initial budget resolution pursuant to Congressional Budget Act section 301 limit the reconciliation instructions that a revised budget resolution pursuant to Congressional Budget Act section 304 may contain?

The plain language of the statement of managers in 1974 shows that Congress expected to revise 301 resolutions using 304, and Congress did, on several occasions, revise or seek to revise 301 resolutions in various ways—changes in levels and enforcement and even reconciliation. The language of the CBA does not constrain the content of 304 beyond stating that such a resolution may revise or reaffirm the most recently agreed to concurrent resolution on the budget for that fiscal year. It is not reasonable to conclude that Congress would draft a provision, the stated purposes of which was to permit it to adjust the budget in the face of an emergency or new economic data, while at the same time denying itself the use of all of the tools available in the Congressional Budget Act to achieve those new goals.

In addition, the guidance proscribing more than one reconciliation bill of each category under 310 (or a combination bill) per instruction-per resolution from the Parliamentarian in the late 90s/early 2000s (commonly referred to as a “3 bites at the apple” test) is inapplicable here because that “apple” advice applies to each resolution rather than each fiscal year.

Thus, we do not find that a 304 revision would be restricted in scope due to the contents of a 301 resolution or the execution of reconciliation instructions under a 301 resolution.

2. Does the Congressional Budget Act limit the number of times that Congress may revise a budget resolution pursuant to Congressional Budget Act section 304?

There has been much discussion of the phrase “a concurrent resolution” in 304 and whether it serves to limit the number of 304 resolutions that can be considered in one fiscal year. There has also been some discussion of the header of 304: “Permissible Revisions of Concurrent Resolutions on the Budget.” More salient than either of those competing phrases in 304 is the legislative history on the matter which plainly states in several places that multiple 304



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resolutions were contemplated. Here, again, is the language from the statement of managers in the report to accompany the 1974 Act in full:

The House and Senate versions authorized the adoption of *additional budget resolutions*. The conference substitute contains the authority to adopt *additional budget resolutions during the fiscal year*. The managers expect that *in addition to the two concurrent resolutions* required in May and September, Congress may adopt, *at least one additional resolution each year* either in conjunction with its consideration of supplemental appropriations or pursuant to the issuance of updated figures for the current fiscal year in the President's budget. Furthermore, whenever there are sharp revisions in the revenue or spending estimates or major developments in the economy *it is expected that Congress would review its latest budget resolution and consider possible revisions*.

Clearly, multiple resolutions (beyond those that were mandatory in May & September) were considered in order by the drafters. In fact, multiple revisions to the FY81 budget resolution were adopted by the House and Senate over the course of 2 calendar years spanning 2 Congresses, with the Senate agreeing to one additional resolution that contained reconciliation instructions for the then current fiscal year where none had previously existed (the House did not agree to that resolution). And though these examples predate the '85 revision, where the mandatory, multiple budget resolutions were eliminated, 304 was left in place and amended to include, in addition to the existing authority to revise, authority to "reaffirm" the most recent concurrent resolution.

Thus, there is no reason to believe that 304 cannot be used, perhaps serially, as it previously has been, to revise the most recently adopted concurrent resolution.

3. Can the Presiding Officer place a revised budget resolution on the Calendar pursuant to the precedent of April 15, 1983?

The purpose of the auto-discharge, a creation of the Office of the Parliamentarian, was to advance the budget process in accordance with the deadlines for required action under section 300 of the CBA. When the Budget committee fails to report a budget resolution to the Senate, any properly drafted, introduced resolution is placed on the calendar and is subject to a privileged motion to proceed. This does not occur on some random date. It happens any time after April 1, the deadline in the CBA for the Senate Budget Committee

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to report a concurrent resolution on the budget and continues while the committee is still not in compliance with that requirement.

Unlike the 301 resolution, a section 304 resolution is an optional procedure untethered to the section 300 structure. There is no deadline for its reporting from committee or its completion in the Senate. In fact, 304's requirement with respect to timing is that a 304 resolution come *after* a resolution is agreed to pursuant to 301. Thus, applying auto-discharge to a 304 resolution would mean that to turn off auto-discharge, the Budget Committee would have to report a 304 as soon as there was a budget resolution adopted for a fiscal year. The motion to proceed to that resolution would be privileged. 304 revisions from Committee would be crafted as meaningless, stop-gap measures or shells for future consideration, further eroding the budget process. If the Committee failed to so report, every 304 resolution introduced would be placed on the Calendar and motions to proceed to them would be privileged as soon as the ink was dry on the 301 resolution.

That kind of chaos was not at all what was intended with auto-discharge. Rather, the purpose of auto-discharge is to provide an incentive for committee compliance with the law and to provide a remedy when compliance with and through the mandatory processes of the [Congressional Budget Act] have not been met. Auto-discharge is not appropriate for a 304 resolution.<sup>873</sup>

In September of 2021, the Parliamentarian advised:

Consistent with our guidance earlier this year in which we said that the [Congressional Budget Act] does not dictate the contents of a 304 concurrent resolution, we would advise that a 304 resolution could consist of a revision to S. Con. Res. 14 that adds only reconciliation instructions for the adjustment of the statutory limit on the public debt. That concurrent resolution would not be eligible for auto-discharge if introduced and referred in the Senate and would be referred to the Budget Committee if originated in the House and received by the Senate. The provisions of S. Res. 27 permitting a motion to discharge upon a tie vote on the question of reporting the measure from committee would apply. Consistent with the [Congressional Budget Act] and Senate precedents, the concurrent resolution would not be required to lay over a day once reported or discharged, and a motion to proceed to it would be privileged. Germaneness of amendments would be pr[e]scribed by the text of the 304 concurrent resolution and could be very narrow if the concurrent

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<sup>873</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Staff of S. Republican Leader re 304 (May 28, 2021, 1:13 PM).

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resolution was also very narrow. As there is currently no instruction for reconciling the debt limit, the adoption of a narrowly drafted concurrent resolution which does not directly amend the existing instructions in S. Con. Res. 14 would not impact the current process underway in the House and Senate in furtherance of the existing deficit instruction. As with other reconciliation measures, a 304 generated reconciliation bill could be placed on the calendar under Rule XIV.<sup>874</sup>

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<sup>874</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Fin. re 304/reconciliation (Sept. 28, 2021, 4:28 PM).

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## PERMISSIBLE REVISIONS OF CONCURRENT RESOLUTIONS ON THE BUDGET<sup>875</sup>

304        **SEC. 304.**<sup>876</sup> — At any time after the **concurrent resolution on the budget**<sup>877</sup> for a fiscal year has been agreed to pursuant to **section 301**,<sup>878</sup> and before the end of such fiscal year,<sup>879</sup> the two Houses may adopt a **concurrent resolution on the budget**<sup>880</sup> which revises or reaffirms<sup>881</sup> the **concurrent resolution on the budget**<sup>882</sup> for such fiscal year most recently agreed to.

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<sup>875</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>876</sup> Congressional Budget Act of 1974 § 304 is codified as amended at [2 U.S.C. § 635](#). Congressional Budget Act of 1974 § 304 was formerly codified as 31 U.S.C. § 1325, prior to the 1982 general revision and enactment of Title 31, Money and Finance in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982). The Balanced Budget Act of 1997 repealed what formerly was Congressional Budget Act of 1974 § 304(b), regarding economic assumptions, and thus struck out the heading “(a) IN GENERAL” after “SEC. 304.” [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10108, 111 Stat. 251, 684.

<sup>877</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 201\(b\)](#) changed “after the first concurrent resolution on the budget” to “after the concurrent resolution on the budget” (dropping the word “first”) here as part of a revision of all of Budget Act title III that (among other things) dropped the requirement for a second budget resolution.

<sup>878</sup> [Congressional Budget Act of 1974 § 301](#), 2 U.S.C. § 632, *supra* p. 132, addresses “Annual Adoption of Concurrent Resolution on the Budget.”

<sup>879</sup> The Parliamentarian advised (in October 2006) that Congress’ ability to revise a budget resolution under this section is not available beyond the end of the fiscal year covered by that budget resolution. E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian (Oct. 25, 2006, 10:52 PM). The Parliamentarian’s office also questioned the propriety of the House, which is not a continuing body, revising a budget resolution of a previous Congress. E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian (Oct. 26, 2006, 8:54 AM).

<sup>880</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>881</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 201\(b\)](#) added the words “or affirms” here as part of a revision of all of Budget Act title III. [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat., 1037, 1047. The joint statement of managers to accompany that act characterized this language as an affirmation of existing law, saying, “This subsection retains current law by providing that Congress may revise or reaffirm a budget resolution for a fiscal year at any time after the annual budget resolution required by section 301 is adopted.” H.R. REP. NO. 99-433, at 107 (1985). This addition of the words “or affirms” is the one enduring growth to this section between the language as originally enacted and the present text.

<sup>882</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

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## The Senate Chamber

Photo: The United States Senate

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# Floor Procedures

What makes the congressional budget process special is its floor procedures. Because the Budget Act limits time for debate, it ensures that a simple majority will prevail. This is not remarkable in the House of Representatives, where the majority regularly prevails. But as one a Member of Congress once said, “In the Senate, you can’t go to the bathroom without sixty votes.”<sup>883</sup>

In 2008, the Parliamentarian described how budget resolution floor procedures vary from normal Senate procedures:

The fundamental distinguishing procedural principle of the Senate is that, as a general rule, measures and matters are fully debatable. There is no way for a simple majority of the Senate to force an end to debate and to compel action on a particular measure or matter. As you well know, this single fact gives great power to each individual Senator, and enables individual Senators and determined groups of Senators to exert influence in the Senate disproportionate to their numbers. This is the one

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<sup>883</sup> See [146 CONG. REC. S4174](#) (daily ed. May 18, 2000) (statement of Sen. Feingold quoting a Democratic Member of Congress).

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indispensable aspect of Senate procedure that enables the Senate to protect its political minority as no other legislative body does. A second-significant and related aspect of Senate procedure is that, generally, measures are subject to amendment with little substantive restriction. Unlike the House of Representatives, the Senate has no general requirement that amendments be germane to the measure to which they are proposed.

As a limited exception to these general principles, a small group of measures are considered to be both privileged for consideration, meaning that they are proceeded to on a nondebatable motion, and also privileged for disposition, meaning that they are considered under a limitation of debate. Usually such measures are either unamendable, or subject to only germane amendments. Two examples of the former are bills implementing free trade agreements (considered under the Trade Act of 1974, as amended), and joint resolutions disapproving proposed rules issued by federal agencies (considered under the Congressional Review Act). Two common examples of the latter are budget resolutions and budget reconciliation bills (considered under the Congressional Budget Act of 1974, as amended).<sup>884</sup>

In the 1990s, the Parliamentarian described the relationship between the time limit and the germaneness requirement as a type of bargain that the Senate strikes: The Senate agrees to consider the measure more rapidly than the general rules would allow. But in exchange, Senators know that what they will consider will be what they expected.

In *Riddick's Senate Procedure*, the Parliamentarian described budget resolution procedures:

By precedent, budget resolutions and reconciliation bills are privileged for consideration. Under the terms of the Budget Act, time for debate on these measures and amendments thereto is limited, and amendments must be germane. Flexibility is allowed during the amendment process to permit the consideration of certain amendments which might otherwise be out of order (as amending the measure in more than one place or amending language previously agreed to), as long as the amendment makes or maintains mathematical consistency in the measure.<sup>885</sup>

Also in *Riddick's Senate Procedure*, the Parliamentarian compared Budget Act provisions for debate<sup>886</sup>:

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<sup>884</sup> Letter from Alan S. Frumin to John Cornyn (May 1, 2008).

<sup>885</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 503 (1992).

<sup>886</sup> *Id.* at 605.



# *Debate of measures considered under the provisions of the Congressional Budget and Impoundment Control Act of 1974*<sup>1</sup>

## [Length of time for debate designated in hours]

	General debate <sup>2</sup>	Amendments to <sup>3</sup>	Amendments to amendments <sup>3</sup>	Debatable motions and appeals <sup>3</sup>	Recommit <sup>4</sup>	Conference Report <sup>5</sup>	Motions and appeals <sup>3</sup>	Amendments in disagreement <sup>6</sup>	Request for further conference <sup>7</sup>
Concurrent Resolution on budget (305(b)) <sup>8</sup> .....	50	2	1	1	1	10	1	1/2	1
Revised Concurrent Resolution on budget (304(a)).....	15	2	1	1	1	10	1	1/2	1
Reconciliation bill.....	20	2	1	1	1	10	1	1/2	1
Reconciliation resolution.....	20	2	1	1	1	10	1	1/2	1
Waiver resolution (303(b)).....	1	9 0	9 0	1/3	1/3	NA	1/3	NA	NA
Rescission bills.....	10	2	1	1	1	2	1/2	1/2	1
Deferral resolution.....	10	9 0	9 0	1	9 0	NA	9 0	NA	NA

<sup>1</sup> Further limitations on time for debate by motion in order and not debatable.

<sup>2</sup> Definition in each instance includes debate on all amendments thereto (when in order) and debatable motions and appeals in connection therewith and time to be divided between the majority and minority leaders or their designees.

<sup>3</sup> Time divided between mover and manager of the measure except if manager in favor thereof the time goes to the minority leader. All amendments must be germane. Amend out of order unless instructions for not to exceed 3 days, except in case of waiver resolutions with debate divided as in <sup>3</sup>.

<sup>4</sup> General debate divided between majority and minority leaders or their designees.

<sup>5</sup> Time for debate equally divided between manager and minority leader. Debate on instructions to conferees is limited to 1/2 hour with amendments thereto at 20 minutes with the time equally divided between the mover and the manager of the measure, except if the manager favors the proposition the time goes to the minority leader.

<sup>6</sup> Under the Budget Act as amended by Public Law 95-523, Humphrey-Hawkins Act, following the opening statements on the First Concurrent Resolution on the budget by the chairman and ranking minority member of the Senate Budget Committee, there shall be a period of up to 4 hours for debate on economic goals and policies.

<sup>7</sup> Not in order.

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## PROVISIONS RELATING TO CONSIDERATION OF CONCURRENT RESOLUTIONS ON THE BUDGET<sup>887</sup>

305(a)            **SEC. 305.<sup>888</sup> (a) PROCEDURE IN THE HOUSE AFTER REPORT  
OF COMMITTEE; DEBATE —**

305(a)(1)            **(1) When a [concurrent resolution on the budget](#)<sup>889</sup>  
has been reported by the Committee on the Budget  
of the House of Representatives and has been  
referred to the appropriate calendar of the House, it  
shall be in order on any day thereafter, subject to  
[clause 4 of rule XIII of the Rules of the House of  
Representatives](#),<sup>890</sup> to move to proceed to the  
consideration of the concurrent resolution. The  
motion is highly privileged and is not debatable. An  
amendment to the motion is not in order and it is not  
in order to move to reconsider the vote by which the  
motion is agreed to or disagreed to.**

305(a)(2)            **(2) General debate on any [concurrent resolution on  
the budget](#)<sup>891</sup> in the House of Representatives shall be  
limited to not more than 10 hours, which shall be  
divided equally between the majority and minority  
parties, plus such additional hours of debate as are  
consumed pursuant to [paragraph \(3\)](#).<sup>892</sup> A motion  
further to limit debate is not debatable. A motion to  
recommit the concurrent resolution is not in order, and  
it is not in order to move to reconsider the vote by**

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<sup>887</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>888</sup> Congressional Budget Act of 1974 § 305 is codified as amended at [2 U.S.C. § 636](#). Congressional Budget Act of 1974 § 305 was formerly codified as 31 U.S.C. § 1326, prior to the 1982 general revision and enactment of Title 31, Money and Finance in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>889</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>890</sup> [House Rule XIII](#), clause 4, 117th Cong. (2021), *infra* p. 252, addresses “Availability of reports.”

<sup>891</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>892</sup> [Congressional Budget Act of 1974 § 305\(a\)\(3\)](#), 2 U.S.C. § 636(a)(3), *infra* p. 251.

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which the concurrent resolution is agreed to or disagreed to.

305(a)(3) (3) Following the presentation of opening statements on the [concurrent resolution on the budget](#)<sup>893</sup> for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the House, there shall be a period of up to four hours for debate on economic goals and policies.

305(a)(4) (4) Only if a [concurrent resolution on the budget](#)<sup>894</sup> reported by the Committee on the Budget of the House sets forth the economic goals (as described in [sections 3\(a\)\(2\)](#)<sup>895</sup> and [\(4\)\(b\) of the Full Employment Act of 1946](#)<sup>896</sup>) which the estimates, amounts, and levels (as described in [section 301\(a\)](#)<sup>897</sup>) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.

305(a)(5) (5) Consideration of any [concurrent resolution on the budget](#)<sup>898</sup> by the House of Representatives shall be in the Committee of the Whole, and the resolution shall be considered for amendment under the five-minute rule in accordance with the applicable provisions of [rule XVIII of the Rules of the House of Representatives](#).<sup>899</sup> After the Committee rises and

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<sup>893</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>894</sup> *Id.*

<sup>895</sup> [Employment Act of 1946 § 3\(a\)\(2\)](#), 15 U.S.C. § 1022(a)(2), *supra* p. 173, addresses the Economic Report of the President.

<sup>896</sup> [Employment Act of 1946 § 4\(b\)](#), 15 U.S.C. § 1022a(b), *supra* p. 136, addresses “Interim Numerical Goals for Initial Economic Reports.”

<sup>897</sup> [Congressional Budget Act of 1974 § 301\(a\)](#), 2 U.S.C. § 632(a), *supra* p. 132, addresses “Content of Concurrent Resolution on the Budget.”

<sup>898</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>899</sup> [House Rule XVIII](#) addresses “The Committee of the Whole House on the State of the Union.”

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reports the resolution back to the House, the previous question shall be considered as ordered on the resolution and any amendments thereto to final passage without intervening motion; except that it shall be in order at any time prior to final passage (notwithstanding any other rule or provision of law) to adopt an amendment (or a series of amendments) changing any figure or figures in the resolution as so reported to the extent necessary to achieve **mathematical consistency**.<sup>900</sup>

305(a)(6) (6) Debate in the House of Representatives on the conference report on any **concurrent resolution on the budget**<sup>901</sup> shall be limited to not more than 5 hours, which shall be divided equally between the majority and minority parties. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

305(a)(7) (7) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any **concurrent resolution on the budget**<sup>902</sup> shall be decided without debate.

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*Clause 4 of rule XIII of the Rules of the House of Representatives provides:*

*Availability of reports*

4. (a)(1) Except as specified in subparagraph (2), it shall not be in order to consider in the House a measure or matter reported by a committee until the proposed text of each report (except views referred to in clause 2(l) of

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<sup>900</sup> For a discussion of mathematical consistency, see *infra* p. 303.

<sup>901</sup> **Congressional Budget Act of 1974 § 3(4)**, 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>902</sup> *Id.*

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rule XI) of a committee on that measure or matter has been available to Members, Delegates, and the Resident Commissioner for 72 hours.

(2) Subparagraph (1) does not apply to—

(A) a resolution providing a rule, joint rule, or order of business reported by the Committee on Rules considered under clause 6;

(B) a resolution providing amounts from the applicable accounts described in clause 1(k)(1) of rule X reported by the Committee on House Administration considered under clause 6 of rule X;

(C) a resolution presenting a question of the privileges of the House reported by any committee;

(D) a measure for the declaration of war, or the declaration of a national emergency, by Congress; and

(E) a measure providing for the disapproval of a decision, determination, or action by a Government agency that would become, or continue to be, effective unless disapproved or otherwise invalidated by one or both Houses of Congress. In this subdivision the term “Government agency” includes any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or of the government of the District of Columbia.

(b) A committee that reports a measure or matter shall make every reasonable effort to have its hearings thereon (if any) printed and available for distribution to Members, Delegates, and the Resident Commissioner before the consideration of the measure or matter in the House.<sup>903</sup>

***Legislative History*** – The Balanced Budget Act of 1997 amended section 305(a)(1).<sup>904</sup> Prior to amendment, paragraph (1) provided:

(1) When the Committee on the Budget of the House of Representatives has reported any concurrent resolution on the budget, it is in order at any time after the fifth day (excluding Saturdays, Sundays, and legal holidays) following the day on which the report upon such resolution by the Committee on the Budget has been available to Members of the House and, if applicable, after the first day (excluding Saturdays, Sundays, and legal holidays) following the day on which a report upon such resolution by the Committee on Rules pursuant to section 301(c) has been available to

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<sup>903</sup> [House Rule XIII](#), cl. 4, 117th Cong. (2021).

<sup>904</sup> [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10109, 111 Stat. 251, 684–85.

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Members of the House (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the concurrent resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.<sup>905</sup>

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<sup>905</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 305(a)(1), 88 Stat. 297, 310 (amended 1997).

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305(b)           **(b) PROCEDURE IN THE SENATE AFTER REPORT<sup>906</sup> OF  
COMMITTEE; [DEBATE](#);<sup>907</sup> AMENDMENTS —**

305(b)(1)           **(1) [Debate](#)<sup>908</sup> in the Senate on any [concurrent resolution on the budget](#),<sup>909</sup> and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 50 hours,<sup>910</sup> except that with respect to any concurrent resolution referred to in [section 304](#)<sup>911</sup> all such debate shall be limited to not more than 15 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.**

305(b)(2)           **(2) [Debate](#)<sup>912</sup> in the Senate on any amendment to a [concurrent resolution on the budget](#)<sup>913</sup> shall be limited to 2 hours,<sup>914</sup> to be equally divided between, and controlled by, the mover and the manager of the**

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<sup>906</sup> For examples of committee prints for budget resolutions and reconciliation bills, see S. COMM. ON THE BUDGET, 117TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FISCAL YEAR 2022](#) (Comm. Print 2021); S. COMM. ON THE BUDGET, 116TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FISCAL YEAR 2020](#) (Comm. Print 2019); S. COMM. ON THE BUDGET, 115TH CONG., [RECONCILIATION RECOMMENDATIONS PURSUANT TO H. CON. RES. 71: COMMITTEE RECOMMENDATIONS AS SUBMITTED TO THE COMMITTEE ON THE BUDGET PURSUANT TO H. CON. RES. 71](#) (Comm. Print 2017); S. COMM. ON THE BUDGET, 115TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FISCAL YEAR 2018](#) (Comm. Print 2017); S. COMM. ON THE BUDGET, 114TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2016](#) (Comm. Print 2015); S. COMM. ON THE BUDGET, 113TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2014](#) (Comm. Print 2013) (with [Errata](#)); S. COMM. ON THE BUDGET, 111TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2011](#) (Comm. Print 2010) (with [Errata](#)); S. COMM. ON THE BUDGET, 111TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2010](#) (Comm. Print 2009); S. COMM. ON THE BUDGET, 110TH CONG., [CONCURRENT RESOLUTION ON THE BUDGET FY 2009](#) (Comm. Print 2008). Note that for some of these prints, the Budget Committee did not formally act at all. The Parliamentarian has noted that language from such committee prints has been treated as authoritative. Staff of S. Comm. on the Budget, Notes from Meeting with Parls (October 2, 2017) (Oct. 2, 2017).

<sup>907</sup> For discussion of debate under this section, see *infra* p. 257.

<sup>908</sup> *Id.*

<sup>909</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>910</sup> In contrast, [Congressional Budget Act of 1974 § 310\(e\)\(2\)](#), 2 U.S.C. § 641(e)(2), *infra* p. 552, limits debate on a reconciliation bill to 20 hours, and [Congressional Budget Act of 1974 § 305\(c\)\(2\)](#), 2 U.S.C. § 636(c)(2), *infra* p. 305, limits debate on a conference report to 10 hours.

<sup>911</sup> [Congressional Budget Act of 1974 § 304](#), 2 U.S.C. § 635, *supra* p. 244, addresses “Permissible Revisions of Concurrent Resolutions on the Budget.”

<sup>912</sup> For discussion of debate under this section, see *infra* p. 257.

<sup>913</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>914</sup> As the Senate increasingly considers budget resolution and reconciliation bill amendments as part of vote-a-ramas, note that in practice, the Senate typically provides by unanimous consent for 2 minutes of debate (equally divided) on each amendment in a vote-a-rama. On vote-a-ramas generally, see *infra* p. 259.

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**concurrent resolution**,<sup>915</sup> and debate on any amendment to an amendment, debatable motion, or appeal shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, except that in the event the manager of the concurrent resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. No amendment that is not **germane**<sup>916</sup> to the provisions of such concurrent resolution shall be received. Such leaders, or either of them, may, from the time under their control on the passage of the concurrent resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

305(b)(3)        (3) Following the presentation of opening statements on the **concurrent resolution on the budget**<sup>917</sup> for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the Senate, there shall be a period of up to four hours for debate on economic goals and policies.<sup>918</sup>

305(b)(4)        (4) Subject to the other limitations of **this Act**,<sup>919</sup> only if a **concurrent resolution on the budget**<sup>920</sup> reported by the Committee on the Budget of the Senate sets forth the economic goals (as described in **sections 3(a)(2)**<sup>921</sup> and **(4)(b)**<sup>922</sup> of the Employment Act of 1946) which the estimates, amounts, and levels (as described in **section**

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<sup>915</sup> For a discussion of the Leaders' right to debate time under this section, see *infra* p. 261.

<sup>916</sup> For a discussion of germaneness, see *infra* p. 268.

<sup>917</sup> **Congressional Budget Act of 1974 § 3(4)**, 2 U.S.C. § 622(4), *supra* p. 57, defines "concurrent resolution on the budget."

<sup>918</sup> This practice has not been followed during the consideration of recent budget resolutions. For an example of this practice, see **140 CONG. REC. 5844** (Mar. 22, 1994) (statement of Sen. Sasser).

<sup>919</sup> **Congressional Budget and Impoundment Control Act of 1974**, 2 U.S.C. §§ 601–688, pp. 49–969.

<sup>920</sup> **Congressional Budget Act of 1974 § 3(4)**, 2 U.S.C. § 622(4), *supra* p. 57, defines "concurrent resolution on the budget."

<sup>921</sup> **Employment Act of 1946 § 3(a)(2)**, 15 U.S.C. § 1022(a)(2), *supra* p. 173, addresses the Economic Report of the President.

<sup>922</sup> **Employment Act of 1946 § 4(b)**, 15 U.S.C. § 1022a(b), *supra* p. 136, addresses "Interim Numerical Goals for Initial Economic Reports."



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**301(a)**<sup>923</sup>) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in **germane**<sup>924</sup> fashion in order to be consistent with the goals proposed in such amendment.

305(b)(5)           **(5) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution.**

305(b)(6)           **(6) Notwithstanding any other rule, an amendment or series of amendments to a **concurrent resolution on the budget**<sup>925</sup> proposed in the Senate shall always be in order if such amendment or series of amendments proposes to change any figure or figures then contained in such concurrent resolution so as to make such concurrent resolution **mathematically consistent**<sup>926</sup> or so as to maintain **such consistency**.<sup>927</sup>**

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*Debate*—In *Riddick's Senate Procedure*, the Parliamentarian discussed debate under this subsection<sup>928</sup>:

When proceeding with the consideration of amendments to any of the budget resolutions, debate on amendments is limited to two hours, and

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<sup>923</sup> **Congressional Budget Act of 1974 § 301(a)**, 2 U.S.C. § 632(a), *supra* p. 132, addresses “Content of Concurrent Resolution on the Budget.”

<sup>924</sup> For a discussion of germaneness, see *infra* p. 268.

<sup>925</sup> **Congressional Budget Act of 1974 § 3(4)**, 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>926</sup> For a discussion of mathematical consistency, see *infra* p. 303.

<sup>927</sup> *Id.*

<sup>928</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, **RIDDICK'S SENATE PROCEDURE** 606 (1992) (footnotes renumbered and reformatted).

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under the Budget Act, any amendment to an amendment is not in order until the time for debate on the first amendment has expired, except by unanimous consent.<sup>[929]</sup>

The time for a quorum call during the consideration of an amendment to a congressional budget resolution is taken from the time allowed on that amendment, the same procedure utilized when the Senate is considering business under unanimous consent agreements; unanimous consent could be granted for it not to be counted.<sup>[930]</sup>

When the Senate is considering a bill under the Congressional Budget Act, time for debate on an appeal or motion is controlled by the appellant or moving Senator and the majority leader or his designee.<sup>[931]</sup>

When the time on a budget resolution or reconciliation bill has expired, any motion relating thereto, such as a motion to instruct the conferees, is decided without debate.<sup>[932]</sup>

**Quorum Calls**— Also in *Riddick's Senate Procedure*, the Parliamentarian advised:

**Quorum:**

The time for a quorum call during the consideration of an amendment to a concurrent resolution on the budget is taken from the time allotted on an amendment, just as when the Senate is operating under a unanimous consent agreement, unless unanimous consent is granted for it not to be counted.<sup>933</sup>

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<sup>929</sup> 125 CONG. REC. 24,797–803 (Sept. 17, 1979).

<sup>930</sup> 125 CONG. REC. 25,183–84 (Sept. 19, 1979).

<sup>931</sup> 128 CONG. REC. 16,997–99 (July 20, 1982).

<sup>932</sup> 127 CONG. REC. 15,599–600 (July 14, 1981).

<sup>933</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 621 (1992) (citing 125 CONG. REC. 25,183–84 (Sept. 19, 1979)).

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## Vote-a-Rama

At the end of the time for debate on a bill or resolution, Senators may call up amendments for the Senate to vote on without debate.<sup>934</sup> Such a practice has been called a “vote-a-rama.”<sup>935</sup>

This is so because this paragraph limits debate, not consideration (as Senate’s cloture rule does<sup>936</sup>). As a result, after debate time has concluded, Senators can offer a potentially unlimited number of amendments on which debate would occur only by unanimous consent. This process of multiple stacked votes—popularly known as a “vote-a-rama”<sup>937</sup>—has become the norm since 1993.<sup>938</sup>

Senator Sheldon Whitehouse, a senior Member of the Budget Committee, describes the process “when the Senate budget process opens the floor to amendments (in the process known irreverently as ‘vote-a-rama’),” as “mostly symbolic budget vote exercises,” for “a budget amendment in the ‘vote-a-rama’ . . . wouldn’t even have changed the actual law.”<sup>939</sup>

Similarly, Majority Leader George Mitchell described the process leading into the first vote-a-rama:

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<sup>934</sup> Cf. 128 CONG. REC. S15,711 (daily ed. Dec. 20, 1982) (inquiries of Sen. Byrd; where a unanimous consent agreement provides for a vote at a time certain, when that time arrives amendments may be offered and voted on without debate). (The Chair uses precedents under unanimous consent agreements to interpret provisions of the Congressional Budget Act that use the language used in unanimous consent agreements. See 127 CONG. REC. S3148 (daily ed. Apr. 1, 1981).)

<sup>935</sup> See, e.g., MEGAN S. LYNCH & JAMES V. SATURNO, CONG. RSCH. SERV., R44058, THE BUDGET RECONCILIATION PROCESS: STAGES OF CONSIDERATION 8 (2021).

<sup>936</sup> Senate Rule XXII.

<sup>937</sup> See, e.g., Giovanni Russonell, *What’s in a Vote-a-Rama? Senate Democrats Are Racing To Pass President Biden’s \$1.9 Trillion Stimulus Bill. That Doesn’t Mean Things Are Moving Fast*, N.Y. TIMES, Mar. 5, 2021; Jennifer Scholtes & Caitlin Emma, *“Vote-a-rama” To Give GOP a Chance To Inflict Pain on Dems*, POLITICO, Feb. 4, 2021, 4:30 AM; David A. Graham, *What on Earth Is a Vote-A-Rama? The Old, Weird Senate Procedure Used To Pass Budget Bills*, ATLANTIC, Mar. 22, 2013; Stephanie Lai, *Junk Food and Caffeine Fuel Senate All-Nighter To Salvage Left’s Agenda*, N.Y. TIMES, Aug. 8, 2022, at A16.

<sup>938</sup> See Memorandum from Bill Heniff Jr., Analyst on Congress and the Legislative Process, Cong. Rsch. Serv., to Senate Committee on the Budget, Attention Bill Dauster re Senate Consideration of Budget Resolutions: Number of Roll Call Votes During the “Vote-arama” (i.e., After Debate Time Has Expired) (Oct. 6, 2021); Memorandum from Bill Heniff Jr., Analyst on Congress and the Legislative Process, Cong. Rsch. Serv., to Senate Committee on the Budget, Attention Bill Dauster re Senate Consideration of Budget Reconciliation Legislation: Number of Roll Call Votes During the “Vote-arama” (i.e., After Debate Time Has Expired) (Oct. 6, 2021).

<sup>939</sup> SHELDON WHITEHOUSE & MELANIE WACHTELL STINNETT, CAPTURED: THE CORPORATE INFILTRATION OF AMERICAN DEMOCRACY 50-51 (2017).

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[U]nder the Budget Act all of the 50 hours on the resolution having been used, there is no further time for debate. However, under the same act, any Senator who now wishes to do so may offer an amendment on which a vote would occur immediately. We have many differences on issues, but I think we can all agree on one thing, that this is a very poor way to legislate.

Amendments can now be offered in which no one knows what is in them, no one knows if they are germane, no one knows if they are subject to a point of order, no one knows if they have anything to do with the resolution. Some of them I believe will involve subject matter which has been the subject of previous amendments on the resolution. Whether or not we ought to change the rules is a subject for another day. We have to deal with the situation as it now exists. Therefore, the distinguished Republican leader, the managers, and I have discussed it, and we believe there is no alternative but simply to proceed to begin to take up the amendments and to act on them.<sup>940</sup>

The Parliamentarian explained that the Budget Act's use of the word "debate" instead of "consideration" allows this result, saying:

One could argue (as apparently I'm about to) that a limitation on consideration should be interpreted to prevent the offering of amendments that had not been pending, even in the absence of a[n] explicit bar on further amendments (as with cloture). Vote-a-ramas exist because our position has been that the exhaustion of the time for *debate* doesn't bar the *consideration* of debatable questions without debate. The exhaustion of time for consideration should end consideration, i.e. to offering of further motions and amendments. Cloture would prevent a vote-a-rama.<sup>941</sup>

***Motion To Proceed***—In *Riddick's Senate Procedure*, the Parliamentarian explained further the effects of the budget resolution being privileged:

A concurrent resolution on the budget pursuant to the Congressional Budget Act of 1974 is a privileged matter which need not lie over one legislative day for consideration, and which may be brought up by a nondebatable motion to proceed.<sup>942</sup>

The Parliamentarian has advised that if the Senate is under cloture, a motion to proceed to a budget resolution is not in order. And if the Senate

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<sup>940</sup> 139 CONG. REC. 6207 (Mar. 24, 1993) (statement of Sen. Mitchell).

<sup>941</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian re reminder and a question (Apr. 27, 2011, 8:12 PM).

<sup>942</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 600 (1992) (citing 127 CONG. REC. 9455 (May 12, 1981) (response of the Chair to motion by Majority Leader Baker)). On the effects of privilege, see *id.* at 1034–37 ("Privileged Business").

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has an order in effect to proceed to some other legislation without intervening action, a motion to proceed to a budget resolution is not in order.<sup>943</sup>

During the consideration of one budget resolution (for example, an S. Con. Res.), the Senate's adoption of a motion to proceed to a second budget resolution (for example, an H. Con. Res.), places the first budget resolution (here, the S. Con. Res.) on the Calendar.<sup>944</sup> In contrast, if the Senate agrees by unanimous consent to take up to the second resolution, the result is different, leaving the first budget resolution pending at the end of consideration of the second budget resolution.<sup>945</sup>

In November 2016, the Parliamentarian advised that an organizing resolution has no bearing on whether or not the majority can move a budget resolution (either at the committee level or on the floor).<sup>946</sup>

The Senate has voted down motions to proceed to budget resolutions.<sup>947</sup>

The Committee on the Budget may modify the budget resolution on the floor.<sup>948</sup> The Committee on the Budget may authorize a Senator to modify a Committee amendment to a budget resolution.<sup>949</sup> A committee need not have a formal meeting to authorize the offering of a committee amendment on its behalf; rather, a majority of the committee may so authorize by polling.<sup>950</sup>

*Manager of the Concurrent Resolution*—In *Riddick's Senate Procedure*, the Parliamentarian noted the Leaders' right to time as the ultimate managers:

#### **Leaders Control Time:**

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<sup>943</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re notes from meeting with Parls (Mar. 5, 2002, 3:19 PM).

<sup>944</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 600 (1992).

<sup>945</sup> Compare *id.* at 664–65 (displacement by motion) with *id.* at 669 (displacement by unanimous consent).

<sup>946</sup> Staff of S. Comm. on the Budget, Notes from Parls meeting on November 30, 2016 (Dec. 6, 2016).

<sup>947</sup> 168 CONG. REC. S3527 (daily ed. July 20, 2022); 168 CONG. REC. S2960 (daily ed. June 15, 2022); 158 CONG. REC. S3220–22 (daily ed. May 16, 2012); 157 CONG. REC. S3332–33 (daily ed. May 25, 2011).

<sup>948</sup> See 126 CONG. REC. S4516 (daily ed. May 5, 1980) (statement of Chair Hollings).

<sup>949</sup> 127 CONG. REC. S2697 (daily ed. Mar. 26, 1981) (statement of Majority Leader Baker).

<sup>950</sup> 128 CONG. REC. S9014–15 (daily ed. July 22, 1982) (inquiry by Sen. DeConcini regarding Dole amendment on behalf of the Finance Committee on the Tax Reconciliation Act of 1982).

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The Majority Leader is entitled to time in opposition to an amendment to a measure (such as those considered under the Congressional Budget Act of 1974), since the leader or his designee is the manager of all measures.<sup>951</sup>

***Motion To Recommit***—In *Riddick's Senate Procedure*, the Parliamentarian discussed motions to recommit<sup>952</sup>:

**Recommit:**

Under the Budget Act, a motion to recommit a budget resolution is not in order unless it contains instructions “to report back within a specified number of days, not to exceed three, not counting any day on which the Senate is not in session.”<sup>[953]</sup>

. . . .

When a measure considered under the Congressional Budget Act is recommitted, and that measure is again before the Senate, the time for debate on the measure is that which remained at the time of recommitment.<sup>[954]</sup>

The Parliamentarian has agreed (in June 2017) that “one limit . . . for motions to commit is that they can’t instruct a committee to do something outside its jurisdiction.”<sup>955</sup> In such a case, the Presiding Officer would rule the motion out of order and the Senator favoring the motion would have to appeal the ruling of the Chair, subject to a simple majority vote. The Parliamentarian noted that if the motion is to “report back forthwith,” then it would include specific legislative language, whereas a motion simply to “report back” is more conceptual.<sup>956</sup>

When asked in 2022, “What is the treatment [for purposes of budget point of order] of motions to recommit with instructions to report back

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<sup>951</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 611 (1992) (citing [131 CONG. REC. 11,476](#) (May 9, 1985)).

<sup>952</sup> *Id.* at 621–22 (footnotes renumbered and reformatted).

<sup>953</sup> See *Congressional Budget Act of 1974 § 305(b)(5)*, 2 U.S.C. § 636(b)(5), *supra* p. 257; [121 CONG. REC. 40,545–46](#) (Dec. 15, 1975).

<sup>954</sup> [129 CONG. REC. 12,099](#) (May 12, 1983).

<sup>955</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re motion to commit template (June 26, 2017, 1:22 PM). See also Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 23, 2017, at 3 (Mar. 31, 2017).

<sup>956</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 23, 2017, at 3 (Mar. 31, 2017).

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forthwith with an amendment?,"<sup>957</sup> the Parliamentarian replied: "We agree that such motions are treated like 'regular' floor amendments (for lack of a better term)."<sup>958</sup>

***Motions To Instruct***—When asked whether there is a limit on the amount of messaging or commentary that a motion to instruct may contain, the Parliamentarian wrote:

We have advised for years that certain language is not "appropriate" in motions to instruct. I don't have better language than that since there isn't anything in the Rules/law other than Rule XIX—but we don't want to devolve to a repeat of the incident from a decade ago where we had competing motions of horror at 2 in the morning that ended up with material stricken from the Record (Bush is a war criminal/Clinton is a womanizer). We advise that political statements and name-calling (Finance should hold hearings to right the wrongs of this oppressive regime/HELP should examine why this bill is such a piece of junk) should not be in the motion or in the purpose clause. Statements on the floor are for a more fulsome explanation of the reasons for an amendment.<sup>959</sup>

The Parliamentarian has written that where motions to instruct are "conceptual motions to instruct rather than 'forthwith with an amendment as follows' and the resultant text is not known/scorable," then the Parliamentarian would agree with a questioner that "I don't think such a motion would actually violate any budget point of order because the motion itself would not have the force or budgetary effect necessary to violate a budget point of order."<sup>960</sup>

The Parliamentarian has advised that motions to instruct "are amendable in 2 degrees."<sup>961</sup>

***And All Amendments Thereto and Debatable Motions and Appeals in Connection Therewith***—Section 209 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Clarification of Congressional Intent Regarding Time Limits for Conference Reports on

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<sup>957</sup> Memorandum from Budget Committee to the Parliamentarian re Reconciliation Floor Questions (Aug. 6, 2022).

<sup>958</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Budget memo re: reconciliation floor questions (Aug. 6, 2022, 6:43 PM).

<sup>959</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re draft motion to commit guidance (June 26, 2017, 5:08 PM).

<sup>960</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re motion to commit template (June 26, 2017, 1:22 PM).

<sup>961</sup> *Id.*

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Concurrent Resolutions on the Budget,” added the words “and all amendments thereto and debatable motions and appeals in connection therewith.”<sup>962</sup> The joint statement of managers accompanying the conference report on that bill explained:

#### 5. Time Limit for Conference Reports on Budget Resolutions

##### *Current Law*

Section 305(c)(2) of the 1974 Budget Act establishes time limits for debate on the conference reports on budget resolutions and reconciliation legislation. However, it is not clear from the language whether the time limit applies to appeals, debatable motions, and amendments in disagreement.

##### *Senate Amendment*

The Senate amendment (Section 232) amends Section 305(c)(2) to specifically include in the time limit “all amendments in disagreement, and all amendments thereto, and debatable motions and appeals in connection therewith.”

##### *Conference Agreement*

The House recedes and concurs in the Senate amendment. The conferees intend that all debate on the conference report should fall within the established time limits.<sup>963</sup>

***Amendments to a Budget Resolution***—In *Riddick’s Senate Procedure*, the Parliamentarian described budget resolution amendment procedures<sup>964</sup>:

#### **Amendments to Budget Resolution:**

. . . .

The Congressional Budget Act of 1974 provides for the consideration of budget resolutions and reconciliation bills under conditions modeled after a unanimous consent agreement “in the usual form.” In this regard, note the following precedents:

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<sup>962</sup> [Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987](#), Pub. L. No. 100-119, § 209, 101 Stat. 754, 787 (Sept. 29, 1987).

<sup>963</sup> [H.R. REP. NO. 100-313](#), at 64–65 (1987) (Conf. Rep.), *reprinted in* 1987 U.S.C.C.A.N. 739, 764–65.

<sup>964</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 590–02 (1992) (footnotes renumbered and reformatted).



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When proceeding with the consideration of an amendment to any budget resolution, debate is limited to two hours under the law, and an amendment to an amendment is not in order until the time on the first amendment has expired, except by unanimous consent.<sup>[965]</sup>

The Majority Leader is entitled to time in opposition to an amendment to a budget resolution, since the leader or his designee is the manager of all measures.<sup>[966]</sup>

The Presiding Officer has asked the manager of a concurrent resolution on the budget if he opposed an amendment, to ascertain whether the manager would control time in opposition to that amendment.<sup>[967]</sup>

When the Senate is considering a bill under the Congressional Budget Act, time in opposition to any amendment is under the control of the majority manager, but the minority manager may use the time he controls on the bill itself to debate the amendment.<sup>[968]</sup>

During the consideration of an amendment to a concurrent resolution on the budget under section 305(b) of the Congressional Budget Act of 1974, if nobody yields time on an amendment, it is charged equally to both sides on the amendment.<sup>[969]</sup>

During the consideration of an amendment to a concurrent resolution on the budget under section 305(b) of the Congressional Budget Act of 1974, an order stacking votes prior to a time certain to occur back to back at that time resulted in the remaining time on a matter being forfeited.<sup>[970]</sup>

The Majority Leader or Minority Leader or their designees may yield from their time for debate on a concurrent resolution on the budget to another Senator so that latter Senator may offer an amendment, even after the leaders have designated another Senator to manage time on the resolution.<sup>[971]</sup>

When a Senator who has control of time on an amendment to a concurrent resolution on the budget yields that time to two other Senators, they are thereby authorized to seek recognition to use that time as they see

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<sup>965</sup> 125 CONG. REC. 24,797, 24,803 (Sept. 17, 1979).

<sup>966</sup> See 131 CONG. REC. 11,476 (May 9, 1985).

<sup>967</sup> See *id.* at 10,033–34 (May 1, 1985).

<sup>968</sup> 128 CONG. REC. 17,523 (July 22, 1982).

<sup>969</sup> *Id.* at 10,892 (May 20, 1982).

<sup>970</sup> *Id.* at 10,654–55, 10,895.

<sup>971</sup> *Id.* at 11,032–33.

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fit, but they do not thereby gain the right of recognition over a member of the leadership.<sup>[972]</sup>

A unanimous consent agreement limiting time on an amendment to a concurrent resolution on the budget to “10 minutes equally divided” does not change the control of time on that amendment.<sup>[973]</sup>

When the Senate enters into an agreement on a specific amendment to a concurrent resolution on the budget which is silent on the question of time for amendments in the second degree, such second degree amendments are in order at the expiration of time on the first degree amendment, but not debatable, despite the general provision for debate on second degree amendments contained in the Budget Act.<sup>[974]</sup>

When the Senate is considering a matter such as a concurrent resolution on the budget under controlled debate time, a Senator who wishes to make a parliamentary inquiry must control time or have time yielded to him.<sup>[975]</sup>

Concurrent resolutions on the budget are not only open to amendments that are germane, but they are open to amendments to figures already agreed to “so as to make such concurrent resolution mathematically consistent, or so as to maintain such consistency.”<sup>[976]</sup> Amendments which are adopted to a concurrent resolution on the budget under the Budget Act of 1974, are subject to further amendment if such further amendment makes or maintains mathematical consistency in the resolution pursuant to section 305(b)(6) of that act.<sup>[977]</sup> Thus amendments remain in order to a budget resolution even though a complete substitute for the resolution had already been agreed to, if such amendment makes or maintains mathematical consistency in the resolution.<sup>[978]</sup>

### **Divisible:**

An amendment to a budget resolution that proposed to change twenty-three noncontiguous figures so as to increase defense spending for one year by a certain percentage and to increase that spending for other years by a different percentage, was divided to permit a vote first on those provisions affecting the first year, and then a vote on the remaining years.<sup>[979]</sup>

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<sup>972</sup> See 131 CONG. REC. 10,033–34 (May 1, 1985).

<sup>973</sup> *Id.* at 11,410 (May 9, 1985).

<sup>974</sup> 128 CONG. REC. 11,033 (May 20, 1982).

<sup>975</sup> *Id.*

<sup>976</sup> Congressional Budget Act of 1974 § 305(b)(6), 2 U.S.C. § 636(b)(6), *supra* p. 257.

<sup>977</sup> 128 CONG. REC. 11,037 (May 20, 1982).

<sup>978</sup> See 125 CONG. REC. 24,965–66 (Sept. 18, 1979).

<sup>979</sup> *Id.* at 24,965–66, 25,010–13.

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An amendment which is so tailored as to increase budget authority at one point in a bill while decreasing it at another, and which would be in order if it were considered en bloc, if divided, will be subject to points of order in regard to those divisions which increase budget authority.<sup>[980]</sup>

***Any . . . Debatable Motion*** – When a Senator makes a motion to waive under section 904(b) during the consideration of a reconciliation bill, debate is limited to one hour, as specified by section 305(b) and applied to reconciliation by section 310(e).<sup>981</sup> The motion is subject to a motion to table when that time has expired or been yielded back.<sup>982</sup> Any motion in the Senate must be submitted in writing upon the request of any Senator.<sup>983</sup>

A Senator must control time or have time yielded to him to make a parliamentary inquiry when the Senate is considering a matter under controlled debate time.<sup>984</sup>

***Controlled by the Minority Leader*** – Compare the similar provisions for control and division of time on motions to recommit in paragraph (5), below, which do not provide for time for the minority leader. And compare the similar provisions for control and division of time on appeals in section 904(d), below, which do not provide for time for the minority leader.

Despite the legislative language of this paragraph and paragraph (5), the Presiding Officer once responded to an inquiry that time for debate on a motion to recommit during consideration of a reconciliation bill was controlled by and evenly divided between the mover of the recommittal motion and the majority leader.<sup>985</sup> As section 310(e)(1) applies the provisions of section 305(b)(2), and, more particularly, section 305(b)(5), to reconciliation bills, section 305(b)(5) indicates that the Presiding Officer should have responded that time was to be equally divided between, and controlled by, the mover and the manager of the reconciliation bill.

Despite the legislative language of this paragraph and section 904(d), the Presiding Officer once responded to an inquiry that time for debate on an appeal from the ruling of the Chair during consideration of a reconciliation bill was controlled by and evenly divided between the

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<sup>980</sup> 127 CONG. REC. 10436–38 (May 20, 1981).

<sup>981</sup> 131 CONG. REC. S14,011 (daily ed. Oct. 24, 1985).

<sup>982</sup> *Id.*

<sup>983</sup> *Id.*

<sup>984</sup> *Id.*

<sup>985</sup> 128 CONG. REC. S8705 (daily ed. July 20, 1982) (inquiry by Majority Leader Baker during debate on the Reconciliation Tax Act of 1982).

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Senator who made the appeal and the majority leader.<sup>986</sup> As section 310(e)(1) applies the provisions of section 305(b)(2) to reconciliation bills, section 305(b)(2) indicates that the Presiding Officer should have responded that time was to be equally divided between, and controlled by, the Senator who made the appeal and the manager of the reconciliation bill, except that in the event that the manager favored the appeal, the minority leader or the minority leader's designee would control the time in opposition.

### **Germaneness**

***Points of Order***—In *Riddick's Senate Procedure*, the Parliamentarian reported:

The provisions of the Congressional Budget Act, which are in the form of a unanimous consent agreement in the usual form, are interpreted using the precedents which apply to such agreements. Therefore the language regarding nongermane amendments stating that they "shall not be received" permits points of order against such amendments only when the time on the amendment has expired, and does not authorize the Chair to rule on such amendments on his own initiative at any time.<sup>987</sup>

Section 904(c) provides that the Senate may waive or suspend section 305(b)(2) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn—that is, 60 Senators.<sup>988</sup>

***No Amendment that Is Not Germane***—In *Riddick's Senate Procedure*, the Parliamentarian explained how this prohibition works for budget resolutions<sup>989</sup>:

#### **Germane to Concurrent Resolution:**

Under section 305(b)(2): "No amendment that is not germane to the provisions of such concurrent resolutions shall be received." This has been interpreted in the same fashion that such prohibitions contained in unanimous consent agreements have been, and a point of order that an amendment is not germane to a concurrent resolution on the budget will

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<sup>986</sup> *Id.* S8702–03, S8705 (inquiry by the manager, Senator Packwood, during debate on the Reconciliation Tax Act of 1982).

<sup>987</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 619 (1992) (citing 127 CONG. REC. 6039 (Apr. 1, 1981)).

<sup>988</sup> See 132 CONG. REC. S12,986 (daily ed. Sept. 19, 1986) (vote of three-fifths of the Senators duly chosen and sworn is required to waive the germaneness requirement contained in Congressional Budget Act of 1974 § 305(b)(2)).

<sup>989</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 592–93 (1992) (footnotes renumbered and reformatted).

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bar neither the “receipt” of nor debate on the amendment, but such point of order will lie after time for debate on the amendment has concluded.<sup>[990]</sup> Of course if a point of order is sustained against such an amendment as being nongermane, the amendment falls.<sup>[991]</sup>

Similarly, in *Riddick’s Senate Procedure*, the Parliamentarian explained how this prohibition works for reconciliation bills<sup>992</sup>:

**Reconciliation Bills, Germaneness:**

An amendment which is germane to a reconciliation bill or any of the amendments thereto reported by the committee is germane.<sup>[993]</sup>

An amendment that would have limited a proposed increase in a tax contained in a reconciliation bill, but also proposed to increase another tax not contained in the bill was held out of order as nongermane.<sup>[994]</sup>

During the consideration of measures under the Budget Act (whose provisions are modeled after a unanimous consent agreement) amendments reported by or offered by authority of the committee of jurisdiction are germane *per se*, and such amendments form part of the basis for determining germaneness. Therefore, a floor amendment to a reconciliation bill which was ruled out of order as being nongermane was reoffered on behalf of the committee which had reported the measure and since no point of order would then lie against it, none was made.<sup>[995]</sup>

An amendment which is either germane to an amendment for which the germaneness requirement of the Congressional Budget Act of 1974 was waived or germane to the bill itself, would be considered germane.<sup>[996]</sup>

The Chair sustained points of order under section 305(b)(2) of the Budget Act against two amendments proposing alternative revenue provisions to those reported by the Finance Committee in a reconciliation bill, the Senate having voted down motions to waive that section of the Act in both cases, on the grounds that each amendment was nongermane.<sup>[997]</sup>

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<sup>990</sup> 127 CONG. REC. 6039 (Apr. 1, 1981).

<sup>991</sup> 124 CONG. REC. 28,021–23 (Sept. 6, 1978).

<sup>992</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK’S SENATE PROCEDURE* 626–27 (1992) (footnotes renumbered and reformatted).

<sup>993</sup> 128 CONG. REC. 16,997–99 (July 20, 1982).

<sup>994</sup> *Id.* at 17,514, 17,516–17 (July 22, 1982).

<sup>995</sup> *Id.* at 17,649.

<sup>996</sup> 132 CONG. REC. 24,843 (Sept. 19, 1986).

<sup>997</sup> 136 CONG. REC. S15,491–92, S15,522–24 (Oct. 17, 1990); *id.* at S15,740, S15,756 (Oct. 18, 1990).

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The Chair sustained a point of order under section 305(b)(2) of the Budget Act against an amendment to a reconciliation bill which proposed to prescribe standards for deposit insurance, on the grounds that the amendment was nongermane, after the Senate rejected a motion to waive that section of the Act.<sup>[998]</sup>

After the Senate defeated a motion to waive section 305(b)(2) of the Budget Act for the consideration of an amendment to a reconciliation bill to impose a surtax on individuals with taxable incomes over \$1 million, the Chair sustained a point of order that the amendment was nongermane, since there was nothing in the bill on the tax rate for individuals.<sup>[999]</sup> The Chair also sustained a point of order under section 305(b)(2) of the Act against an amendment to a reconciliation bill which proposed to reinstate the windfall profits tax, after the failure of a motion to waive, on the same grounds.<sup>[1000]</sup>

The Senate has voted 75 yeas, 25 nays, to waive the germaneness requirement in section 305(b)(2) of the Budget Act for the consideration of an amendment to a reconciliation bill, which proposed budget process and enforcement reforms.<sup>[1001]</sup>

Also in *Riddick's Senate Procedure*, the Parliamentarian spelled out general guidelines in interpreting germaneness:

Although the precedents of the Senate with respect to germaneness of amendments reflect various conclusions, it has generally been understood that germaneness is more restrictive than relevancy. However, in order to be germane, an amendment must at least be relevant. Therefore, while a simple restriction on the effect of a measure would generally be germane, a restriction subject to an irrelevant contingency would not be germane.

The Senate usually imposes a germaneness requirement when it decides to limit debate on a proposal. In this sense, the Senate enters into a contract whereby it promises to bring a measure to a vote in exchange for a promise that the measure to be voted on will consist of known and foreseeable issues. Since it is difficult to know in advance the limits what proposals might be relevant to a measure, the precedents interpreting germaneness have generally imposed a more restrictive standard than simple relevancy.

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<sup>998</sup> *Id.* at S15,727–31, S15,737 (Oct. 18, 1990).

<sup>999</sup> *Id.* at S15,785, S15,792, S15,806–07.

<sup>1000</sup> *Id.* at S15,810–12, S15,815.

<sup>1001</sup> *Id.* at S15,822–39.

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The following are among the questions that are considered in determining whether an amendment is germane: does it add any new subject matter? does it expand the powers, authorities, or constraints being proposed? does it amend existing law or another measure, as opposed to the measure before the Senate? does it involve another class of persons not otherwise covered by the measure? does it involve additional administrative entities? is it within the jurisdiction of the committee that reported the measure? and is it foreseeable?

Amendments fall into four classes for the purpose of determining germaneness. Amendments in the first two classes are considered germane per se. Class one consists of amendments that strike language without inserting other language. Class two consists of amendments that change numbers and dates. Class three consists of amendments that propose nonbinding language (such as sense of Senate or sense of Congress language). Under recent practice, if such nonbinding language is within the jurisdiction of the committee that reported the measure, the amendment is considered germane.

The fourth class consists of amendments that add language to a measure, but do not fall into either class two or three.

In determining whether an amendment is germane, the Presiding Officer first identifies in which of these four classes an amendment belongs. If an amendment falls within any of the first three classes, it will be considered germane. All other amendments are examined on a case by case basis to determine if they are germane. Such examination requires a detailed analysis of the amendment and the matter to be amended, and takes into account the principles and guidelines stated above.<sup>1002</sup>

In summary, an amendment is germane *only* if it:

- strikes a provision,
- changes a number or date,
- states only precatory language (such as findings, a sense of the Senate, or a sense of the Congress) within the jurisdiction of the Budget Committee (or in application to reconciliation, some reporting committee), or

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<sup>1002</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 854–55 (1992); see generally *id.* at. 854–62.

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- otherwise does not add any new subject matter or expand the existing subject matter.

The Presiding Officer uses precedents regarding germaneness under unanimous consent agreements to interpret this provision of the Congressional Budget Act, which uses the language used in unanimous consent agreements in the usual form.<sup>1003</sup>

Whereas once this process was more dependent on form, more recently, the Parliamentarian has advised that the substance of an amendment is always relevant for determining germaneness. The Parliamentarian has advised that one cannot determine germaneness from form alone.<sup>1004</sup>

The Chair will consider germane per se amendments reported by or offered by authority of the committee of jurisdiction, and such amendments may form part of the basis for determining germaneness.<sup>1005</sup> The Chair will consider germane an amendment that is germane to an amendment reported by a committee, even if the committee amendment itself contains significant matter within the jurisdiction of another committee in violation of the jurisdictional rule of rule XV, paragraph 5.<sup>1006</sup> It follows, then, that the Chair will consider per se germane an amendment reported by a committee even if the committee amendment contains significant matter within the jurisdiction of another committee in violation of the jurisdictional rule of rule XV, paragraph 5.<sup>1007</sup>

When asked whether it was still a valid precedent that a committee amendment on the floor is germane per se, the Parliamentarian replied that generally, this is still valid precedent. The harder question is what constitutes a committee amendment. A representation by the committee Chair would likely suffice, and it may be that any Senator can make the representation that the Senator is offering an amendment on behalf of the committee.<sup>1008</sup>

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<sup>1003</sup> 127 CONG. REC. S3148 (daily ed. Apr. 1, 1981).

<sup>1004</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on February 27, 2015, at 1 (Feb. 27, 2015).

<sup>1005</sup> Senate Precedent PRL19820722-005, 128 CONG. REC. S9014–15 (July 22, 1982) (inquiry by Sen. DeConcini regarding Dole amendment on behalf of the Finance Committee on the Tax Reconciliation Act of 1982).

<sup>1006</sup> Senate Precedent PRL19820720-002, 128 CONG. REC. S8702–04 (July 20, 1982) (debate on reconciliation bill).

<sup>1007</sup> See *id.*

<sup>1008</sup> Staff of S. Comm. on the Budget, Q&A with Parls on Reconciliation (Sept. 15, 2009).



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A Senator may offer again on behalf of the committee that had reported the measure an amendment that the Chair had ruled out of order as nongermane when offered by the Senator in the Senator's individual capacity.<sup>1009</sup>

The Chair will consider germane an amendment that is germane to an amendment for which the Senate has waived the germaneness requirement of the Congressional Budget Act.<sup>1010</sup>

A motion under section 904(b) to waive the germaneness requirement of the Congressional Budget Act without specifying the object of that motion, even though made in response to a point of order against an amendment, would waive that requirement without restriction.<sup>1011</sup>

Setting the time or sequence for a vote on an amendment does not implicitly waive the germaneness requirement.<sup>1012</sup>

The germaneness requirement does not apply to a motion to recommit a reconciliation bill with instructions to report back forthwith a specific amendment that would bring a committee into compliance with the reconciliation instructions in the budget resolution.<sup>1013</sup>

The Parliamentarian has advised that if the Senate takes up a House reconciliation bill and seeks to amend it with the Senate bill as a substitute – and both separately qualify as reconciliation bills – the Senate amendment will necessarily be germane to the House-passed reconciliation bill.<sup>1014</sup>

The Parliamentarian has advised that budget resolution provisions that address House procedures generally do not provide a basis for the germaneness of Senate amendments.<sup>1015</sup>

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<sup>1009</sup> See Senate Precedent PRL19820722-005, 128 CONG. REC. S9014–15 (July 22, 1982) (Dole amendment to the Tax Reconciliation Act of 1982).

<sup>1010</sup> Senate Precedent PRL19860919-004, 132 CONG. REC. S12,986 (Sept. 19, 1986); Senate Precedent PRL19851024-003, 131 CONG. REC. S14,015–16 (Oct. 24, 1985).

<sup>1011</sup> Senate Precedent PRL19851024-003, 131 CONG. REC. S14,015–16 (daily ed. Oct. 24, 1985).

<sup>1012</sup> See Senate Precedent PRL19830301-001, 129 CONG. REC. S1807 (daily ed. Mar. 1, 1983) (inquiries of Sens. Metzenbaum, Byrd, and Baker regarding cloture).

<sup>1013</sup> Senate Precedent PRL19810617-001 (June 17, 1981).

<sup>1014</sup> Staff of S. Comm. on the Budget, Q&A with Parls on Reconciliation (Sept. 15, 2009).

<sup>1015</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget (July 31, 2021, 9:45 AM).

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The Parliamentarian has on one occasion mused that as the budget resolution is a plan about everything, on some level, everything should be germane.<sup>1016</sup>

The Parliamentarian has asked that when running amendments by the Parliamentarian's office, it is helpful for each office only to use one person as a conduit. The Parliamentarian's office does not want the same amendment coming from six different people in the same office. It is also helpful to know the amendment number if it has already been filed.<sup>1017</sup>

In a discussion in relation to the Tax Cuts and Jobs Act of 2017, the Parliamentarian advised that when the Budget Committee reports the bill, germaneness will be evaluated based on the House bill and the Senate committee product as an amendment. The entirety of the Internal Revenue Code is probably not open for amendment. The existence of one nongermane provision makes an entire amendment nongermane. Therefore, every provision of a substitute amendment would have to be germane.<sup>1018</sup>

If Senate committees fail to report reconciliation recommendations, then amendments on all matters within reconciled committee's jurisdiction would be considered germane on the Senate floor.<sup>1019</sup> Thus, in March 2010, contemplating that the Senate would take up a House-passed reconciliation bill without any instructed Senate committee having reported, the Parliamentarian advised that the penalty for the failure of the Senate committees to report reconciliation recommendations is to lose germaneness protection on the floor.<sup>1020</sup> Similarly, in a discussion related to the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), the Parliamentarian advised that because the bill would be coming over from the House (and not from the Senate Budget Committee), all issues within the jurisdiction of the reconciled committees (HELP and Finance) would be germane, assuming they were appropriate for reconciliation.<sup>1021</sup> Again, in 2022, the

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<sup>1016</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 13, 2015.

<sup>1017</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on February 27, 2015, at 2 (Feb. 27, 2015).

<sup>1018</sup> Staff of S. Comm. on the Budget, Notes from meeting with Parls—November 6, 2017 (Budget, Finance, Leadership) (Nov. 13, 2017).

<sup>1019</sup> See E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re quick summary of advice from Parls (Mar. 11, 2010, 9:34 AM); Staff of S. Comm. on the Budget, Notes from Meeting with Parls on September 28, 2015, at 2.

<sup>1020</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re quick summary of advice from Parls (Mar. 11, 2010, 9:34 AM).

<sup>1021</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on September 28, 2015, at 2.

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Parliamentarian confirmed that if Senate committees do not report recommendations and the Senate Budget Committee does not report a reconciliation bill, any amendment within the jurisdiction of an instructed Senate committee will be considered germane.<sup>1022</sup>

*Amendments adding reconciliation instructions for a committee*—Where a budget resolution included reconciliation instructions to 12 Senate committees,<sup>1023</sup> the Parliamentarian’s office advised that “Since there are 12 instructed committees, it seems arguably germane to us to add another.”<sup>1024</sup>

But the Parliamentarian has advised that if the Budget Committee does not include reconciliation instructions in the Committee-reported budget resolution, an amendment to add reconciliation instructions will be nongermane. And including budget process language about vote-a-rama and triggers in a budget resolution would not make germane an amendment to add reconciliation instructions to a resolution that did not include reconciliation instructions.<sup>1025</sup>

*Amendments adding years*—The Parliamentarian has advised that if the Budget Committee reports a resolution with only 5 years, an amendment to expand it to 10 years would be germane unless it includes some other additional material in addition (for example, reconciliation instructions or reserve funds) that would make it nongermane.<sup>1026</sup>

*Amendments adding reserve funds*—The Parliamentarian will not judge an amendment to add a reserve fund nongermane just because it raises a hot-button issue.<sup>1027</sup> Thus, with regard to an amendment to add a reserve fund about “critical race theory,”<sup>1028</sup> the Parliamentarian wrote, “I understand your concern with the hot-button nature of the reserve fund, but I haven’t

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<sup>1022</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on the Budget & Staff of S. Majority Leader re Germaneness of Amendments to Reconciliation (July 14, 2022, 12:38 PM) (reporting conversation with S. Parliamentarian July 13, 2022).

<sup>1023</sup> [S. Con Res. 14](#), [117th Cong.](#) § 2001 (2021), [163 CONG. REC. S6120](#) (daily ed. Aug. 9, 2021).

<sup>1024</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader re FY22 Budget Res. Q—Shelby 3293 reconciling SASC (Aug. 10, 2021, 1:46 PM), regarding Shelby amendment no. 3293, [167 CONG. REC. S6337](#) (daily ed. Aug. 10, 2021).

<sup>1025</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re notes from meeting with Parls (Mar. 5, 2002, 3:19 PM).

<sup>1026</sup> *Id.*

<sup>1027</sup> See E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Comm. on Health, Educ., Lab. & Pensions re FY22 Budget Res. Q—Cotton 3074 (Aug. 10, 2021, 3:13 PM).

<sup>1028</sup> [167 CONG. REC. S6300](#) (daily ed. Aug. 10, 2021) (Cotton amendment no. 3074).

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seen many of these things that aren't about contentious issues. I think that's the whole point of this exercise."<sup>1029</sup>

Where a budget resolution laid before the Senate included a single broad Senate reserve fund related to "reconciliation legislation,"<sup>1030</sup> but neither the Judiciary Committee nor the Energy and Natural Resources Committee received reconciliation instructions,<sup>1031</sup> the Presiding Officer ruled nongermane amendments to add reserve funds relating to "improving health care, which may include the creation of criminal and civil penalties for providers who fail to exercise the same degree of care for babies who survive an abortion or attempted abortion as would be provided to another child born at the same gestational age,"<sup>1032</sup> immigration,<sup>1033</sup> and "expanding natural gas as a vital fuel source."<sup>1034</sup>

But where a budget resolution included a broad reserve fund related to "reconciliation legislation," another broad reserve fund without a subject matter limitation, and a third "for legislation that won't raise taxes on people making less than \$400,000,"<sup>1035</sup> the Parliamentarian advised that "it's really open season on germaneness for other reserve funds."<sup>1036</sup> When asked whether elimination of the broad reserve fund without a subject matter limitation would significantly increase the number of nongermane

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<sup>1029</sup> See E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Comm. on Health, Educ., Lab. & Pensions re FY22 Budget Res. Q—Cotton 3074 (Aug. 10, 2021, 3:13 PM). See also E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader re FY22 Budget Res. Q—Lankford #3442 (Aug. 10, 2021, 5:38 PM) ("Yes, this is another hot-button issue. But [I] believe there are enough options and nebulous terms ('participate in abortion'—what is that? Insurance? Providers? CHC funding?) that it could be broad enough for a reserve fund.").

<sup>1030</sup> See [S. Con. Res. 5, 117th Cong.](#) § 3001 (2021) (as submitted).

<sup>1031</sup> See *id.* § 2002.

<sup>1032</sup> [167 CONG. REC. S438–39](#) (daily ed. Feb. 4, 2021) (Sasse amendment no. 192 "To establish a deficit-neutral reserve fund relating to improving health care to prohibit a health care practitioner from failing to exercise the proper degree of care in the case of a child who survives an abortion or attempted abortion"). The Parliamentarian explained: "The Sasse amendment was not germane because your only reserve fund in February was for Recon[ciliation] and Judiciary wasn't instructed and his amendment was based on the creation of civil and criminal penalties." E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader re FY22 Budget Res. Q—Lankford #3442 (Aug. 10, 2021, 5:16 PM).

<sup>1033</sup> *Id.* at [S439–40](#) (Graham amendment no. 687 providing a reserve fund "relating to strengthening and protecting international agreements, joint declarations, or proclamations entered into by the United States and Mexico, which may include the Remain in Mexico program, which requires foreign nationals seeking assistance at the United States-Mexico border to wait in Mexico for the results"); *id.* at [S440](#) (Ernst amendment no. 132 "To establish a deficit-neutral reserve fund relating to prioritizing taking into custody aliens charged with a crime resulting in death or serious bodily injury").

<sup>1034</sup> *Id.* at [S458–59](#) (Sullivan amendment no. 461).

<sup>1035</sup> [S. Con. Res. 14, 117th Cong.](#) §§ 3001–3003 (2021), [163 CONG. REC. S6117](#) (daily ed. Aug. 9, 2021).

<sup>1036</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader (Aug. 8, 2021, 11:41 AM).

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amendments, the Parliamentarian advised, “I don’t think it cuts things down too much—you still have a very broad [reconciliation] instruction reserve fund and then a separate reserve fund for taxes – which it could be argued creates a disparate class.”<sup>1037</sup>

Thus, in connection with that budget resolution, the Parliamentarian’s office called amendments “still [arguably germane] given the breadth of the reserve funds in the underlying con[current] res[olution],”<sup>1038</sup> when describing amendments to add reserve funds “ensuring that no Federal funding goes to educational organizations teaching critical race theory”<sup>1039</sup> and “that would prohibit Federal workplace diversity training . . . from using critical race theory curricula.”<sup>1040</sup> The Parliamentarian’s office described as arguably germane<sup>1041</sup> amendments to add reserve funds relating to “protecting privately-held businesses, farms, and ranches,”<sup>1042</sup> “prohibiting the Internal Revenue Service from using funds to monitor inflows and outflows of deposits or withdrawals in financial accounts of American taxpayers,”<sup>1043</sup> and “prohibiting or limiting Federal funding for prekindergarten programs, elementary schools, and secondary schools that promote critical race theory.”<sup>1044</sup> The Parliamentarian’s office described as “ok”<sup>1045</sup> an amendment to add a reserve fund relating to “Federal greenhouse gas restrictions.”<sup>1046</sup> The Parliamentarian described as “ok”<sup>1047</sup> proposed language for a reserve fund relating to “ensuring that migrants apprehended along the border are not transported until receiving a negative COVID-19 test.”<sup>1048</sup> The Parliamentarian dismissed a germaneness challenge<sup>1049</sup> against an amendment to add a reserve fund related to

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<sup>1037</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader (Aug. 8, 2021, 12:27 PM).

<sup>1038</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—Marshall #2708 & Hawley #2735 (Aug. 10, 2021, 10:56 AM).

<sup>1039</sup> [167 CONG. REC. S6139](#) (daily ed. Aug. 9, 2021) (Marshall amendment no. 2708).

<sup>1040</sup> *Id.* at [S6143](#) (daily ed. Aug. 9, 2021) (Hawley amendment no. 2735).

<sup>1041</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—Thune 3106 & Crapo 3099 (Aug. 10, 2021, 12:17 PM).

<sup>1042</sup> [167 CONG. REC. S6304](#) (daily ed. Aug. 10, 2021) (Thune amendment no. 3106).

<sup>1043</sup> *Id.* at [S6303](#) (Crapo amendment no. 3099).

<sup>1044</sup> *Id.* at [S6300](#) (Cotton amendment no. 3074).

<sup>1045</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—RE: FY22 Budget Res. Q—Bar[r]asso 3055 (Aug. 10, 2021, 12:19 PM).

<sup>1046</sup> [167 CONG. REC. S6297](#) (daily ed. Aug. 10, 2021) (Barrasso amendment no. 3055).

<sup>1047</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader re FY22 Budget Res. Q—Marshall[I] side by side (Aug. 10, 2021, 4:41 PM).

<sup>1048</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Majority Leader re FY22 Budget Res. Q—Marshall[I] side by side (Aug. 10, 2021, 4:39 PM).

<sup>1049</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader re FY22 Budget Res. Q—Lankford #3442 (Aug. 10, 2021, 5:38 PM).

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“prohibiting funding for abortions,”<sup>1050</sup> and similarly dismissed a germaneness challenge<sup>1051</sup> against an amendment to add a reserve fund related to “prohibiting funding for abortions consistent with the Hyde amendment.”<sup>1052</sup> The Parliamentarian described as “ok”<sup>1053</sup> an amendment to add a reserve fund relating to “limiting or eliminating Federal payments . . . to local governments that defund the police.”<sup>1054</sup> The Parliamentarian described as “ok”<sup>1055</sup> amendments to add reserve funds relating to “innovative State plan options that shift fee-for-service financing models towards value-based care models, alternative payment models, or bundled care payment models”<sup>1056</sup> and relating to “preventing cuts to funding to States through changes in financing such as block grants and per capita caps.”<sup>1057</sup> The Parliamentarian’s office described as “ok” a draft amendment to add a reserve fund relating to “smart and effective border security measures.”<sup>1058</sup>

Where a budget resolution laid before the Senate would have created only two reserve funds, both related to health care,<sup>1059</sup> the Presiding Officer ruled nongermane amendments that would have added reserve funds “To strengthen Social Security and Medicare without raiding it to pay for new Government programs, like Obamacare, that have failed Americans by increasing premiums and reducing affordable health care options, to reform Medicaid without prioritizing able-bodied adults over the disabled, and to return regulation of insurance to State governments,”<sup>1060</sup> relating to

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<sup>1050</sup> 167 CONG. REC. S6359 (daily ed. Aug. 10, 2021) (Lankford amendment no. 3442).

<sup>1051</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on Health, Educ., Lab. & Pensions re FY22 Budget Res. Q—Lankford #3442 (Aug. 10, 2021, 9:12 PM).

<sup>1052</sup> 167 CONG. REC. S6412–13 (daily ed. Aug. 10, 2021) (Lankford amendment no. 3792).

<sup>1053</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader re FY22 Budget Res. Q—Tuberville 3113 (Aug. 10, 2021, 3:59 PM).

<sup>1054</sup> 167 CONG. REC. S6305–06 (daily ed. Aug. 10, 2021) (Tuberville amendment no. 3113).

<sup>1055</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—Finance SxS for Marshall 2689 (Aug. 10, 2021, 5:42 PM).

<sup>1056</sup> 167 CONG. REC. S6136–37 (daily ed. Aug. 9, 2021) (Marshall amendment no. 2689).

<sup>1057</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—Finance SxS for Marshall 2689 (Aug. 10, 2021, 5:42 PM) (ERN21614—Wyden draft reserve fund side-by-side to Marshall amendment no. 2689); E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re FY22 Budget Res. Q—Finance SxS for Marshall 2689 (Aug. 10, 2021, 4:09 PM) (same).

<sup>1058</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—DNRs Judiciary (Aug. 10, 2021, 4:25 PM).

<sup>1059</sup> S. CON. RES. 3, 115TH CONG. §§ 3001, 3002 (2017) (as placed on the calendar) (Deficit-neutral reserve fund for health care legislation; Reserve fund for health care legislation).

<sup>1060</sup> 163 CONG. REC. S187–91 (daily ed. Jan. 10, 2017) (Flake amendment no. 52).

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strengthening Social Security and repealing Obamacare,<sup>1061</sup> “relating to enhancing health care and housing for veterans and their dependents by repealing Obamacare, facilitating medical facility leases, and prohibiting the Secretary of Veterans Affairs from employing individuals who have been convicted of a felony and medical personnel who have ever had their medical licenses or credentials revoked or suspended,”<sup>1062</sup> “relating to reforming housing and Medicaid without prioritizing able-bodied adults over the disabled or raiding the Medicare Trust Funds to pay for new government programs,”<sup>1063</sup> “relating to permitting importation of prescription drugs only under certain circumstances,”<sup>1064</sup> and “relating to Social Security or women’s health.”<sup>1065</sup> The Parliamentarian advised that the addition of Social Security brought in nongermane matter, and the Parliamentarian’s office noted that housing is not health care.<sup>1066</sup>

*Form of a reserve fund*—In assessing the germaneness of amendments to add reserve funds to a budget resolution, the Parliamentarian has advised that where there are reserve funds in the underlying resolution and there is a basis for germaneness of a particular subject matter, the form of “a broad topic of [that subject matter,] ‘which may include’ a couple options for funding restrictions” is germane.<sup>1067</sup> More generally, the Parliamentarian has advised that reserve funds need to be broad and vague.<sup>1068</sup>

The Parliamentarian has advised that whether the Budget Committee writes the reserve funds so that the Chair releases the funds or the Committee does is of no parliamentary relevance—it’s up to the Committee.<sup>1069</sup>

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<sup>1061</sup> *Id.* at S251–53 (daily ed. Jan. 11, 2017) (Barrasso amendment no. 173); *id.* at S254–55 (Heller amendment no. 167); *id.* at S257–59 (Barrasso amendment no. 181); *id.* at 263–65 (Hatch amendment no. 180).

<sup>1062</sup> *Id.* at S254, S256 (Flake amendment no. 176).

<sup>1063</sup> *Id.* at S257–60 (Hatch amendment no. 179).

<sup>1064</sup> *Id.* at S260–61 (Alexander amendment no. 174).

<sup>1065</sup> *Id.* at S263–64 (Fischer amendment no. 184).

<sup>1066</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget (July 31, 2021, 9:45 AM).

<sup>1067</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—Inhofe 3331 (Aug. 11, 2021, 1:59 AM).

<sup>1068</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on February 27, 2015, at 2 (Feb. 27, 2015).

<sup>1069</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re notes from meeting with Parls (Mar. 5, 2002, 3:19 PM).



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In drafting reserve funds, the Parliamentarian has encouraged using language that gives the Budget Committee Chair discretion in the exercise of the fund.<sup>1070</sup>

Thus, the Parliamentarian wrote, “It’s a reserve fund—it’s not a bill or a mandate of any kind. It has options ‘prohibiting or limiting’ ‘promote or compel’ etc.”<sup>1071</sup> to describe an amendment to add a reserve fund “relating to providing quality education for the children of the United States, which may include prohibiting or limiting Federal funding for prekindergarten programs, elementary schools, and secondary schools that promote critical race theory or compel teachers or students to affirm critical race theory.”<sup>1072</sup>

The Parliamentarian wrote approvingly of the drafting of a reserve fund with “enough options and nebulous terms (‘participate in abortion’—what is that? Insurance? Providers? CHC funding?) that it could be broad enough for a reserve fund.”<sup>1073</sup> When the amendment was changed to add additional options (among other changes),<sup>1074</sup> the Parliamentarian again approved of its drafting, writing, “I don’t think it’s too explicit—it provides an **option** (‘which may include’) in the health care arena for prohibitions **or** **limitations** (which as I understand it is a new option) **consistent with** respect to 2 laws currently applied widely across Federal law.”<sup>1075</sup> Similarly,

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<sup>1070</sup> Meeting of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on Fin. (Aug. 10, 2021).

<sup>1071</sup> See E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Comm. on Health, Educ., Lab. & Pensions re FY22 Budget Res. Q—Cotton 3074 (Aug. 10, 2021, 3:13 PM).

<sup>1072</sup> 167 CONG. REC. S6300 (daily ed. Aug. 10, 2021) (Cotton amendment no. 3074).

<sup>1073</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader re FY22 Budget Res. Q—Lankford #3442 (Aug. 10, 2021, 5:38 PM), regarding Lankford amendment no. 3442, 167 CONG. REC. S6359 (daily ed. Aug. 10, 2021) (“relating to improving health programs, which may include prohibiting funding for abortions or limitations on Federal funding to State or local governments that discriminate against entities who refuse to participate in abortion”).

<sup>1074</sup> Lankford amendment no. 3792, 167 CONG. REC. S6412–13 (daily ed. Aug. 10, 2021) (“relating to improving health programs, which may include prohibiting funding for abortions consistent with the Hyde amendment or limitations on Federal funding to State or local governments that discriminate against entities who refuse to participate in abortion”).

<sup>1075</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on Health, Educ., Lab. & Pensions re FY22 Budget Res. Q—Lankford #3442 (Aug. 10, 2021, 9:12 PM).



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with regard to another amendment,<sup>1076</sup> the Parliamentarian wrote, “[W]e thought it was nebulous enough to be ok.”<sup>1077</sup>

The Parliamentarian described approvingly as “option-heavy—looks ok”<sup>1078</sup> proposed language for a reserve fund

relating to protecting migrants and communities, which may include ensuring that migrants apprehended along the border are not transported until receiving a negative COVID-19 test, unless transport is necessary for medical reasons, interagency transfers, or transfer to other federal agencies or recipients of federal funds for the purpose of COVID-19 testing.<sup>1079</sup>

The Parliamentarian’s office said, “These don’t seem like the most proscriptive to us—there are options,”<sup>1080</sup> in response to amendments to add reserve funds relating to “education, which may include ensuring that no Federal funding goes to educational organizations teaching critical race theory”<sup>1081</sup> and

legislation that would prohibit Federal workplace diversity training, including any workplace training designed or approved by the Director of the Office of Personnel Management, from using critical race theory curricula or curricula that otherwise undermines the merit-based system of Federal employment in the United States.”<sup>1082</sup>

The Parliamentarian’s office said, “they had a range of options so they weren’t overly prescriptive,”<sup>1083</sup> in response to amendments to add reserve funds relating to:

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<sup>1076</sup> [167 CONG. REC. S6305–06](#) (daily ed. Aug. 10, 2021) (Tuberville amendment no. 3113) (“relating to adjustments to Federal funds for local governments within the jurisdiction of the committees receiving reconciliation instructions under section 2001 of this resolution, which may include limiting or eliminating Federal payments, other than grants under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10151 et seq.) (commonly known as the ‘Byrne JAG grant program’) or section 1701 of title I of such Act (34 U.S.C. 10381) (commonly known as the ‘COPS grant program’), to local governments that defund the police”).

<sup>1077</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader re FY22 Budget Res. Q—Tuberville 3113 (Aug. 10, 2021, 3:59 PM).

<sup>1078</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader re FY22 Budget Res. Q—Marshall[I] side by side (Aug. 10, 2021, 4:41 PM).

<sup>1079</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Majority Leader re FY22 Budget Res. Q—Marshall[I] side by side (Aug. 10, 2021, 4:39 PM).

<sup>1080</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—Marshall #2708 & Hawley #2735 (Aug. 10, 2021, 10:56 AM).

<sup>1081</sup> [167 CONG. REC. S6139](#) (daily ed. Aug. 9, 2021) (Marshall amendment no. 2708).

<sup>1082</sup> *Id.* at [S6143](#) (Hawley amendment no. 2735).

<sup>1083</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—Thune 3106 & Crapo 3099 (Aug. 10, 2021, 12:17 PM).

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protecting privately-held businesses, farms, and ranches, which may include —

(1) preserving the tax principles in effect as of the date of the adoption of this resolution which are applicable to owning, operating, or transferring such businesses, farms, and ranches,

(2) preserving the full benefit of the step-up in basis for assets acquired from a decedent, or

(3) extending tax relief for such businesses, farms or ranches,<sup>1084</sup>

“strengthening Federal tax administration, which may include prohibiting the Internal Revenue Service from using funds to monitor inflows and outflows of deposits or withdrawals in financial accounts of American taxpayers, as well as other protections to ensure the privacy of taxpayer information,”<sup>1085</sup> and “providing quality education for the children of the United States, which may include prohibiting or limiting Federal funding for prekindergarten programs, elementary schools, and secondary schools that promote critical race theory or compel teachers or students to affirm critical race theory.”<sup>1086</sup>

The Parliamentarian’s office said, “This one also has a range of options, so we think it’s ok,”<sup>1087</sup> in response to an amendment to add a reserve fund relating to

Federal greenhouse gas restrictions, which may include limiting or prohibiting legislation or regulations to implement the Green New Deal, to ship United States companies and jobs overseas, to impose soaring electricity, gasoline, home heating oil, and other energy prices on working class families, or to make the United States increasingly dependent on foreign supply chains.<sup>1088</sup>

The Parliamentarian’s office said approvingly, “it has a range of options in the immigration space,”<sup>1089</sup> describing a draft amendment to add a reserve fund “relating to immigration enforcement, which may include

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<sup>1084</sup> [167 CONG. REC. S6304](#) (daily ed. Aug. 10, 2021) (Thune amendment no. 3106).

<sup>1085</sup> *Id.* at [S6303](#) (Crapo amendment no. 3099).

<sup>1086</sup> *Id.* at [S6300](#) (Cotton amendment no. 3074).

<sup>1087</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—RE: FY22 Budget Res. Q—Bar[r]asso 3055 (Aug. 10, 2021, 12:19 PM).

<sup>1088</sup> [167 CONG. REC. S6297](#) (daily ed. Aug. 10, 2021) (Barrasso amendment no. 3055).

<sup>1089</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—DNRFs Judiciary (Aug. 10, 2021, 4:25 PM).

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dramatically increasing funding for smart and effective border security measures, improving asylum processing, and reducing immigration court backlogs to address the challenging situation at the southern border.”<sup>1090</sup>

*Amendments creating points of order*—The Parliamentarian has advised that amendments to create points of order against subjects of general legislation are nongermane, as they are not within the Budget Committee’s jurisdiction; if anywhere, such matter belongs within the Rules and Administration Committee’s jurisdiction.<sup>1091</sup> Similarly, the Parliamentarian’s office has said of “points of order against general legislation—we do not think those are germane and they are corrosive.”<sup>1092</sup>

More generally, the Parliamentarian has advised that budget resolution amendments may not permissibly contain conditions outside the Budget Committee’s jurisdiction.<sup>1093</sup>

Thus, where a budget resolution laid before the Senate included a provision creating a point of order<sup>1094</sup> and another provision providing that a point of order “shall no longer apply,”<sup>1095</sup> the Presiding Officer ruled nongermane an amendment that would have added a point of order against legislation “that would provide funding to or subsidize the import of . . . goods . . . produced . . . in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China to be used for the production of electric vehicles.”<sup>1096</sup>

Where a budget resolution laid before the Senate included a provision extending a point of order<sup>1097</sup> and another provision repealing the application of a supermajority requirement to another point of order,<sup>1098</sup> the Presiding Officer ruled nongermane amendments that would have added points of order against legislation “that increases or eliminates the

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<sup>1090</sup> *Id.*

<sup>1091</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget (July 31, 2021, 9:45 AM); *see also* E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—amendments creating a point of order (Aug. 10, 2021, 11:08 AM).

<sup>1092</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—amendments creating a point of order (Aug. 10, 2021, 11:08 AM).

<sup>1093</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls (October 2, 2017) (Oct. 2, 2017).

<sup>1094</sup> [S. Con Res. 14, 117th Cong.](#) § 4002 (2021), [163 CONG. REC. S6122](#) (daily ed. Aug. 9, 2021) (Point of order against advance appropriations in the Senate).

<sup>1095</sup> [S. Con Res. 14, 117th Cong.](#) § 4001(a)(6) (2021), [163 CONG. REC. S6122](#) (daily ed. Aug. 9, 2021) (Emergency legislation).

<sup>1096</sup> [167 CONG. REC. S6236](#) (daily ed. Aug. 10, 2021) (Cruz amendment no. 3681).

<sup>1097</sup> [S. Con. Res. 5, 117th Cong.](#) § 4006 (2021) (as submitted) (“Limitation on advance appropriations”).

<sup>1098</sup> *Id.* § 4007 (“Repeal of supermajority enforcement requirement”).

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limitation on the State and local tax deduction,”<sup>1099</sup> against “legislation that would increase the number of justices on the Supreme Court of the United States,”<sup>1100</sup> against “legislation that would provide Economic Impact Payments to prisoners,”<sup>1101</sup> and against “legislation that increases employment-based visas until the United States’ labor market stabilizes and unemployment levels reach pre-pandemic levels.”<sup>1102</sup>

Similarly, where a budget resolution laid before the Senate would have created no new points of order,<sup>1103</sup> the Presiding Officer ruled nongermane amendments that would have added points of order against “legislation that would either strip Americans of health insurance coverage, make health care more expensive, or reduce the quality of health coverage,”<sup>1104</sup> “against legislation that would privatize Medicare or limit Federal funding for Medicaid,”<sup>1105</sup> “against legislation that would break Donald Trump’s promise not to cut Social Security, Medicare, or Medicaid,”<sup>1106</sup> “against legislation that would repeal health reforms that closed the prescription drug coverage gap under Medicare,”<sup>1107</sup> “against legislation that would reduce health insurance access and affordability for individuals based on their occupation,”<sup>1108</sup> “against legislation that would harm rural hospitals and health care providers,”<sup>1109</sup> “against legislation that makes young people sick again,”<sup>1110</sup> “against legislation that would weaken the ability of the Department of Veterans Affairs to directly furnish health care to veterans,”<sup>1111</sup> “against legislation that would make people with disabilities and chronic conditions sick again,”<sup>1112</sup> “against legislation that would eliminate or reduce Federal funding to States under the Medicaid

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<sup>1099</sup> 167 CONG. REC. S443 (daily ed. Feb. 4, 2021) (Grassley amendment no. 91).

<sup>1100</sup> *Id.* at S448–49 (Cotton amendment no. 66).

<sup>1101</sup> *Id.* at S449 (Cassidy amendment no. 483).

<sup>1102</sup> *Id.* at S451–52 (Cruz amendment no. 811).

<sup>1103</sup> S. CON. RES. 3, 115TH CONG. (2017) (as placed on the calendar).

<sup>1104</sup> 163 CONG. REC. S79–95 (daily ed. Jan. 5, 2017) (Kaine amendment no. 8 “To prohibit legislation that makes America sick again”). In raising the point of order, Budget Committee Chair Enzi noted, “This budget resolution is much more focused than a typical budget resolution.” *Id.*

<sup>1105</sup> *Id.* at S107 (daily ed. Jan. 5, 2017); *id.* at S133–35, S137–38 (daily ed. Jan. 9, 2017) (Hirono amendment no. 20).

<sup>1106</sup> *Id.* at S107 (daily ed. Jan. 5, 2017); *id.* at S184, S191 (daily ed. Jan. 10, 2017) (Sanders amendment no. 19).

<sup>1107</sup> *Id.* at S249–52 (daily ed. Jan. 11, 2017) (Bill Nelson amendment no. 13).

<sup>1108</sup> *Id.* at S250, S252 (King amendment no. 60).

<sup>1109</sup> *Id.* at S249, S254 (Manchin amendment no. 64). In raising the point of order, Budget Committee Chair Enzi said, “[T]his amendment is not germane to this budget resolution. This budget resolution is focused on defeating ObamaCare. So anything other than that is outside of the scope of the repeal resolution.” *Id.* at S254.

<sup>1110</sup> *Id.* at S250, S254–56 (Baldwin amendment no. 81).

<sup>1111</sup> *Id.* at S250, S254, S256–57 (Tester amendment no. 104).

<sup>1112</sup> *Id.* at S250, S256–57 (Casey amendment no. 61).

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expansion,”<sup>1113</sup> “against legislation that does not lower drug prices,”<sup>1114</sup> “against legislation that makes women sick again,”<sup>1115</sup> and “against legislation that would undermine access to comprehensive, affordable health coverage for America’s children.”<sup>1116</sup>

Where a budget resolution pending as a substitute amendment included provisions creating seven separate points of order,<sup>1117</sup> the Presiding Officer ruled nongermane amendments that would have added points of order against “tax cuts for the top 1 percent of Americans,”<sup>1118</sup> “against legislation that would raise taxes on middle class families by double-taxing income already taxed at the state or local level,”<sup>1119</sup> “against legislation that would increase taxes on taxpayers whose annual income is below \$250,000,”<sup>1120</sup> and “against legislation that includes deficit-financed tax cuts.”<sup>1121</sup>

Where a budget resolution laid before the Senate created four points of order,<sup>1122</sup> the Parliamentarian confirmed as nongermane<sup>1123</sup> an amendment creating a point of order against legislation “providing authority to the Secretary of Veterans Affairs to recover from a private health insurer of a veteran with a service-connected disability amounts paid by the Secretary for the furnishing of care or treatment for such disability.”<sup>1124</sup>

Where a budget resolution laid before the Senate created three points of order<sup>1125</sup> and the committee report language specifically restated the paygo

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<sup>1113</sup> *Id.* at S250, S257, S260 (Menendez amendment no. 83).

<sup>1114</sup> *Id.* at S262 (Wyden amendment no. 188).

<sup>1115</sup> *Id.* at S228, S249–51, S264 (Gillibrand amendment no. 82).

<sup>1116</sup> *Id.* at S253, S265 (Brown amendment no. 86).

<sup>1117</sup> 163 CONG. REC. S6427, S6475, S6481–83 (daily ed. Oct. 17, 2017) (Enzi amendment no. 1116 to H. Con. Res. 71, 115th Cong. § 4101 Point of order against advance appropriations in the Senate, § 4102 Point of order against certain changes in mandatory programs, § 4103 Point of order against provisions that constitute changes in mandatory programs affecting the Crime Victims Fund, § 4104 Point of order against designation of funds for overseas contingency operations, § 4105 Point of order against reconciliation amendments with unknown budgetary effects, § 4106 Pay-As-You-Go point of order in the Senate, § 4112 Emergency legislation).

<sup>1118</sup> *Id.* at S6518–25 (daily ed. Oct. 18, 2017) (Sanders amendment no. 1120).

<sup>1119</sup> *Id.* at S6603–04 (daily ed. Oct. 19, 2017) (Cantwell amendment no. 1141).

<sup>1120</sup> *Id.* at S6615–16, S6619–20 (Heitkamp amendment no. 1228).

<sup>1121</sup> *Id.* at S6621, S6622 (Cardin amendment no. 1375).

<sup>1122</sup> S. CON. RES. 13, 111th Cong. §§ 302–305 (2009) (as reported by S. Comm. on the Budget) (“Point of order against advance appropriations,” “Emergency legislation,” “Point of order against legislation increasing short-term deficit” & “Point of order against provisions of appropriations legislation that constitute changes in mandatory programs affecting the Crime Victims Fund”).

<sup>1123</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Burr 777 (Mar. 31, 2009, 2:56 PM).

<sup>1124</sup> S. Amend. No. 777, 111th Cong., 155 CONG. REC. S4097–98 (daily ed. Mar. 31, 2009).

<sup>1125</sup> S. CON. RES. 95, 108th Cong. §§ 401, 402, 403 (as reported by S. Comm. on the Budget, Mar. 5, 2004) (Restrictions on advance appropriations, Extension of emergency rule in the Senate, Discretionary spending limits in the Senate).

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rule from the previous year's budget resolution and stated that it would remain in effect,<sup>1126</sup> the Parliamentarian confirmed as germane<sup>1127</sup> an amendment creating a pay-go point of order,<sup>1128</sup> which the Senate then adopted by a 51-48 vote.<sup>1129</sup>

*Amendments adding precatory provisions*—Even where a budget resolution has no sense of Senate or sense of Congress provisions, the Parliamentarian has advised that amendments to add such provisions “are still in order if they are germane to the underlying text.”<sup>1130</sup> But where a budget resolution contained no sense of Senate or sense of Congress provisions,<sup>1131</sup> in connection with an amendment stating the sense of the Senate that “calls to defund the police are dangerous,”<sup>1132</sup> the Parliamentarian wrote, “we agree that it is certainly not obvious that [the amendment] is germane to anything.”<sup>1133</sup>

In *Riddick's Senate Procedure*, the Parliamentarian cited these germaneness precedents relating to impoundment<sup>1134</sup>:

An amendment relative to impoundment of appropriations was ruled germane to the Economic Stabilization Act of 1970, the Chair noting that it was offered to a provision of the bill relating to impoundment.<sup>[1135]</sup> Another amendment to the same bill that dealt with both impoundment and a budget limitation was ruled nongermane, since the issue of a budget limitation “deals with another subject matter, and it is not included in the committee bill.”<sup>[1136]</sup>

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<sup>1126</sup> Memorandum from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Parliamentarians' decision on Feingold paygo amendment to S. Con. Res. 95 (June 3, 2004).

<sup>1127</sup> *Id.*

<sup>1128</sup> S. Amend. No. 2748, 108th Cong., [150 CONG. REC. S2510](#) (daily ed. Mar. 10, 2004).

<sup>1129</sup> [150 CONG. REC. S2518](#) (daily ed. Mar. 10, 2004).

<sup>1130</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader (Aug. 8, 2021, 11:41 AM); see also Staff of S. Comm. on the Budget, Notes from Meeting with Parls on February 27, 2015, at 1 (Feb. 27, 2015) (the Parliamentarian noted that the Parliamentarian had allowed a sense of the Senate provision even when there were none in the base resolution).

<sup>1131</sup> [S. Con Res. 14, 117th Cong.](#) (2021), [163 CONG. REC. S6117–25](#) (daily ed. Aug. 9, 2021).

<sup>1132</sup> [167 CONG. REC. S6341](#) (daily ed. Aug. 10, 2021) (Thune amendment no. 3318).

<sup>1133</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re FY22 Budget Res. Q—Sense of Senate Amendments (Aug. 10, 2021, 4:34 PM).

<sup>1134</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 860 (1992) (footnotes renumbered and reformatted).

<sup>1135</sup> [119 CONG. REC. 8801](#) (Mar. 20, 1973).

<sup>1136</sup> *Id.* at 8826.

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## Amendments that Are Corrosive to Privilege

Related to but different from *germaneness* is the test of whether an amendment is *corrosive* to privilege. In 2008, the Parliamentarian discussed corrosiveness at length in response to an inquiry from Senator John Cornyn:

During my tenure in this office, my predecessors [and I] have on countless occasions been asked prior to the anticipated consideration of a privileged measure whether certain proposals would be appropriate for inclusion in that measure. In every instance when in our judgment we considered a proposal to be inappropriate for inclusion in a privileged measure, we have advised that the inclusion of that or any other such proposals would destroy the privilege of that measure. To use the language employed by Senator Conrad on March 12 and 13, 2008, and noted in your letter, the presence of such inappropriate proposal would be “fatal” to the privileged nature of the measure. As a result, a motion to proceed to such measure would be fully debatable, and should the Senate ultimately proceed to the consideration of the measure, it would be fully debatable and amendable without subject matter limitation. We have also been asked what would happen if during Senate floor consideration of a privileged measure the Senate adopted an amendment containing an inappropriate provision. Here we have relied on the statement by Majority Leader Howard Baker (of Tennessee) who said on June 22, 1981, that “So long as a preponderance of [the] subject matter [of a reconciliation bill] has a budgetary impact, a reconciliation bill could contain nonbudgetary amendments to substantive law, and still be protected under the Budget Act.” See June 22, 1981, 97-1, *Record*, pp. 13209-11, cited at *Riddick’s Senate Procedure*, p. 623, footnote 167 (1992). We have interpreted this statement to mean that if the preponderance of the subject matter of a privileged matter already being considered on the Senate floor under the debate and amendment limitations imposed as a consequence of that privilege ceased to consist of such privileged subject matter, the measure would at that moment lose its privilege and become fully debatable and amendable without subject matter limit. Each inappropriate provision would weigh on the preponderance scale against privilege, and would again in the language used by Senator Conrad and cited in your letter be “corrosive” of the privilege.

**Question # 1: What does the term “corrosive” mean in the context of considering amendments to the budget resolution? What does the term “fatal” mean in the same context?**

We employ two different standards in examining the contents of privileged measures. Before consideration of a privileged measure, we have advised that the inclusion of any inappropriate provision would be fatal, that the presence of any such provision would render the measure nonprivileged. If such measure were a bill, it would require a debatable



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motion to proceed to its consideration, and upon consideration would be fully debatable and fully amendable. If such a measure were a conference report, it would be fully debatable. During consideration of a privileged measure, any particular inappropriate provision would be corrosive of privileged status, that is the cumulative effect of Senate action in adding inappropriate provisions could tip the balance for preponderance and cause the measure to lose its privilege. The measure would then become fully debatable, and if a bill fully amendable as well.

Any particular amendment adopted to a budget resolution that is inappropriate for inclusion in a budget resolution would be corrosive of the privilege of such budget resolution because any such amendment would tend to change the preponderance of the substance of the budget resolution from appropriate (privileged) matter [to] inappropriate (nonprivileged) matter. If the preponderance of the subject matter of a budget resolution ceased to be appropriate for inclusion in a budget resolution, the debate and amendment limitations under the budget act would cease to apply. This could occur if the cumulative effect of Senate floor action resulted in a measure whose preponderant subject matter was no longer privileged.

Your amendment, No. 4242, proposed to create a point of order against the consideration of any bill, joint resolution, amendment, motion, or conference report that includes a Federal income tax rate increase. This is a matter inappropriate for inclusion in a budget resolution. It is outside the jurisdiction of the Senate Budget Committee. S.Res. 206, submitted by you on May 17, 2007, making the same proposal, was referred to the Committee on Rules and Administration. Had the Senate Budget Committee reported a concurrent resolution purporting to be a budget resolution containing this language, we would have advised that such concurrent resolution would not have been privileged for consideration or disposition. [Its] presence would have been fatal to the privileged status of such concurrent resolution. By contrast, had this amendment been adopted to the budget resolution we would not at that moment have advised the chair to declare that from that moment on the concurrent resolution would be fully debatable and amendable. But we would have taken note of the inclusion of this inappropriate material as being corrosive of privilege, as tending to tip the balance away from appropriate (privileged) material toward inappropriate (nonprivileged) material. We would then have been mindful of the potential adoption of other inappropriate material to determine if the budget resolution no longer contained material preponderantly appropriate to its privilege.

**Question # 2: What are the substantive differences, if any, between an amendment that, if adopted, is “corrosive” to a budget resolution and an amendment that, if adopted, is “fatal” to the privileged nature of the budget resolution?**



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The substantive difference between corrosive and fatal amendments is a matter of conjecture. We can envision an amendment of such enormous substantive effect that its adoption by itself would cause the preponderance of the substance no longer to be appropriate for inclusion in a privileged budget resolution, possibly an amendment to alter the Standing Rules of the Senate. We believe that the main difference between fatal and corrosive amendments is a question of what stage of the proceedings the Senate finds itself.

**Question # 3: How does an amendment that is “corrosive” to a budget resolution during Senate consideration become “fatal” to the privileged nature of a budget resolution if included in the conference agreement? Why would such an amendment not be considered “fatal” to the privileged nature of the budget resolution at the time the Senate adopts it?**

As noted above, we believe this to be largely a matter of timing. To consider an amendment fatal during the floor consideration of an amendment leaves its sponsor without recourse, as the measure becomes fully debatable. To consider such an amendment as corrosive at that point allows the Senate to continue consideration under debate and amendment limitations, but notifies its sponsor of the consequences should it be included during later stages of consideration of the measure.

**Question # [4]: Would any non-germane amendment be “corrosive” to a budget resolution, or does it have to have some other characteristic in order to be categorized as “corrosive”? Could a germane amendment be “corrosive”?**

The characteristic that makes an amendment “corrosive” is that its substance is inappropriate for inclusion in a budget resolution. An amendment containing a proposal appropriate for inclusion in a budget resolution but whose subject matter was not included in the budget resolution brought to the floor would be nongermane. However, its adoption would not be corrosive of the privilege of the budget resolution.

**Question # 5: S. Con. Res. 70, as reported by the Senate Budget Committee, included reserve funds that covered 37 separate subject areas. S. Con. Res. 70, as passed by the Senate, included reserve funds that covered 64 separate subject areas. If all 64 reserve fund subject areas are included in the conference report to the 2009 budget resolution, would they be “fatal” to the privileged nature of the budget resolution? If not, why not?**

Reserve funds are appropriate for inclusion in budget resolutions. They are authorized by section 301(b)(7) of the Congressional Budget Act. As

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you note, the budget resolution brought to the floor contained reserve funds covering 37 separate subject areas. This fact was sufficient to establish reserve funds as a separate “subject matter” contained in the measure, and to make floor amendments containing additional similar reserve funds germane to the budget resolution. I am not aware of any reason that the initial group of 37 reserve funds was in any way inappropriate for inclusion in the reported budget resolution, and I am likewise unaware of any reason why the conferees could not report all 64 reserve funds, or other additional similar reserve funds. I do note, however, that the fact that the Senate included a reserve fund on a particular subject area does not mean that the subject area *per se* has been sent to conference.<sup>1137</sup>

Thus, the Senate’s adoption of sufficiently corrosive amendments could cause a budget resolution to lose its privilege, but the adoption of some corrosive amendments does not necessarily cause a budget resolution to lose its privilege. For example, in 2009, the following exchange took place:

Mr. ENSIGN. . . .

. . . I rise to inquire if the resolution remains a privileged measure, notwithstanding the adoption of 10 corrosive points of order, 8 of which reach into the jurisdiction of the Finance Committee, 1 of which reaches into the Veterans’ Committee, and 1 into the Judiciary Committee.

In the case of the Durbin amendment, No. 974, the point of order specifies, with exacting detail, what level of taxpayer must receive a tax cut in order to allow death taxes to go forward.

Therefore, I put the question to the Chair: Does the pending budget resolution retain its privileged status despite these corrosive points of order having been adopted?

The VICE PRESIDENT. It does.

Mr. ENSIGN. Further parliamentary inquiry: Does that mean it would require 60 votes for passage?

The VICE PRESIDENT. It does not require 60 votes for passage.

Mr. ENSIGN. Further parliamentary inquiry: Is losing its privileged status at this point, does that mean it would be still fully debatable?

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<sup>1137</sup> Letter from Alan S. Frumin to John Cornyn (May 1, 2008).

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The VICE PRESIDENT. It has not lost its privileged status.

Mr. ENSIGN. So that would be the precedent for the future, 8 to 10 corrosive amendments does not lose its privileged status.

The VICE PRESIDENT. This particular budget resolution has not lost its privileged status.

Mr. ENSIGN. I thank the Chair.<sup>1138</sup>

Also in 2009, the Parliamentarian advised that a reconciliation bill risks losing its privileged status if the Senate adopts an amendment or multiple amendments that it is subsequently learned will bring the bill out of compliance with the budget resolution's instructions. Assuming that the bill is still on the floor and the Congressional Budget Office determines that on account of an adopted amendment, a committee is no longer in compliance with its instructions, then the Parliamentarian may advise the Chair that the bill is no longer entitled to privileged consideration. The Parliamentarian advised that context will matter. If the bill has significant non-budgetary provisions, and then no longer satisfies its deficit-reduction instructions, then the bill satisfies none of the purposes of reconciliation, and the Parliamentarian could be inclined to conclude, upon a parliamentary inquiry from the floor, that the bill was no longer privileged.<sup>1139</sup>

Many corrosive amendments are nongermane. Senators raising germaneness points of order against amendments have often also noted that those amendments were corrosive.<sup>1140</sup> But the Parliamentarian has advised that it is possible – though a “unicorn” – for an amendment to be

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<sup>1138</sup> [155 CONG. REC. S4292](#) (daily ed. Apr. 2, 2009).

<sup>1139</sup> Staff of S. Comm. on the Budget, Q&A with Parls on Reconciliation (Sept. 15, 2009).

<sup>1140</sup> See, e.g., [163 CONG. REC. S95](#) (daily ed. Jan. 5, 2017) (statement of Budget Committee Chair Enzi on Kaine amendment no. 8); [id. at S137](#) (daily ed. Jan. 9, 2017) (statement of Budget Committee Chair Enzi on Hirono amendment no. 20); (daily ed. Jan. 5, 2017); [id. at S191](#) (daily ed. Jan. 10, 2017) (statement of Budget Committee Chair Enzi on Sanders amendment no. 19); [id. at S251](#) (daily ed. Jan. 11, 2017) (statement of Budget Committee Chair Enzi on Bill Nelson amendment no. 13); [id. at S252](#) (statement of Budget Committee Chair Enzi on King amendment no. 60); [id. at S6525](#) (daily ed. Oct. 18, 2017) (statement of Budget Committee Chair Enzi on Sanders amendment no. 1120); [id. at S6604](#) (daily ed. Oct. 19, 2017) (statement of Budget Committee Chair Enzi on Cantwell amendment no. 1141); [id. at S6622](#) (statement of Budget Committee Chair Enzi on Cardin amendment no. 1375); [167 CONG. REC. S443](#) (daily ed. Feb. 4, 2021) (statement of Sen. Wyden on Grassley amendment no. 91); [id. at S449](#) (statement of Sen. Wyden on Cassidy amendment no. 483); [id. at S458](#) (statement of Budget Committee Chair Sanders on Sullivan amendment no. 461); [id. at S6236](#) (daily ed. Aug. 10, 2021) (statement of Sen. Wyden on Cruz amendment no. 3681).

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corrosive and germane. Corrosiveness and germaneness are separate analyses.<sup>1141</sup>

The Parliamentarian has advised that it is not in order for a budget resolution amendment to amend a statute (other than a rulemaking statute). Thus, the Parliamentarian advised: “The attached amendment to your concurrent resolution on the budget purports to amend the Internal Revenue Code, and as such is out of order per se if included in any concurrent resolution.”<sup>1142</sup>

An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered.<sup>1143</sup>

### **History of Germaneness**

In the 1980s, the test for germaneness flowed from a series of inquiries of the Presiding Officer clarifying the precedents on germaneness on April 22, 1982.<sup>1144</sup> These inquiries spelled out a formalistic, but more predictable, test. The first headnote of the Parliamentarian’s record of that precedent summarized:

The germaneness test is much more severe in the Senate than a simple subject matter test. It is basically a technical amendment test, and adding language to a bill which expands the powers available under that bill has been ruled nongermane. Amendments which restrict powers granted by a bill have been ruled germane. In addition, amendments which propose to strike language in a bill regardless of their effect upon the powers granted in a bill are per se germane.<sup>1145</sup>

The precedent arose in the Senate debate of the motion to proceed to S. 1680, the Criminal Code Reform Act of 1981. Senators McClure and Helms propounded a series of parliamentary inquiries of the Presiding Officer

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<sup>1141</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget (July 31, 2021, 9:45 AM).

<sup>1142</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian re question on scoring amendment—amendment is out of order per se as attempting to amend law (Mar. 26, 2009, 6:47 AM).

<sup>1143</sup> Senate Precedent PRL19860624-001 (June 24, 1986); 132 CONG. REC. S7973–74, S8169, S8207–09 (June 19, 23 & 24, 1986) (point of order by Sen. Packwood on amendment by Sen. Melcher that would reduce revenues in violation of section 303(a)).

<sup>1144</sup> See 128 CONG. REC. S3879–82 (1982).

<sup>1145</sup> Senate Precedent PRL19820422-001 (Apr. 22, 1982).

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(Senator Cochran).<sup>1146</sup> In a series of inquiries and responses, Senator McClure and the Presiding Officer made clear that an amendment may permissibly restrict the meaning of a section, but could not broaden its effect:

Mr. McCLURE. Mr. President, I have the following parliamentary inquiry: Is the amendment . . . nongermane because it introduces a new word which changes the meaning of the amended section, in that it replaces, “interferes with, hinders, delays, or prevents,” with “causes interference with, or hindrance, delay, or prevention of”

The PRESIDING OFFICER. Changing the meaning of the section is permissible if the change does not broaden the effect of the section.

Mr. McCLURE. It would not be germane because it adds new language, if that new language does not change the meaning—excuse me—if it does not add new material in spite of the fact that it may change the meaning.

The PRESIDING OFFICER. It is permissible within the germaneness standard to change the meaning so long as you do not broaden the meaning.

Mr. McCLURE. Mr. President, I understand the words: I am not sure I understand the implication. I can change it but not broaden it. That is one of my concerns.

The PRESIDING OFFICER. The meaning could be restricted by the change.

Mr. McCLURE. It could be restricted but not broadened?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. And the addition of the word “causes” in that particular place—does that restrict or does that expand?

The PRESIDING OFFICER. The original meaning included both a conduct and a result test. The new meaning only includes a result test.

Mr. McCLURE. Therefore, it is a restriction? Do I understand the Chair correctly?

The PRESIDING OFFICER. The Senator is correct.

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<sup>1146</sup> *Id.*

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Mr. McCLURE. The second inquiry: Is the amendment on page 20 . . . nongermane because it introduces new subject matter not pertaining to criminal law in that it adds a new section bringing the bill into conformity with the Budget Act?

The PRESIDING OFFICER. That amendment restricts the power which would be otherwise available; therefore, it would be germane.

Mr. McCLURE. Is the amendment on page 3, line 2, nongermane because it adds new crimes to the list of exemptions from the inchoate offenses?

The PRESIDING OFFICER. If the amendment added a new crime to a list of crimes for which penalties could be assessed, it would be nongermane. This amendment adds a restriction on the bill; therefore, it is germane.

Mr. McCLURE. That is true because, Mr. President, it adds to a list of exemptions; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. Is the amendment on page 12, line 4, nongermane because it adds a new section dealing with safety offenses to the bill?

The PRESIDING OFFICER. This indeed does add a new crime, and therefore would be considered nongermane.

Mr. McCLURE. Is the amendment on 21, line 1, nongermane because it references in a new section?

The PRESIDING OFFICER. This amendment expands the effect of the bill and therefore is nongermane.

Mr. McCLURE. Amendment No. 1287 . . . would prohibit funds from the victims compensation program being used to perform abortions. Would that amendment be nongermane?

The PRESIDING OFFICER. This amendment appears to be a restrictive amendment, and therefore it would be germane.<sup>1147</sup>

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<sup>1147</sup> 128 CONG. REC. 53879 (daily ed. Apr. 22, 1982). For additional authority for the proposition that an amendment that on its face restricts the effect of the bill or amendment is germane, see 128 CONG. REC. 32,504 (Dec. 19, 1982) (inquiry of Sen. Harry F. Byrd Jr.); 128 CONG. REC. S11,844 (1982) (inquiry of Sen. Robert C. Byrd regarding Weicker amendment).

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In another set of inquiries on April 22, 1982, Senator McClure and the Presiding Officer made clear that an amendment that would strike language is always germane:

Mr. McCLURE. . . .

Amendment No. 1285 would strike section 402. Since it would be an amendment to strike, it would not be subject to the germaneness test; is that correct?

The PRESIDING OFFICER. No amendment to strike, regardless of its effect, can be ruled nongermane.

Mr. McCLURE. Amendment No. 1288 would restore current law with respect to the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms and would affect the bill by removing several broad jurisdictional expansions, but it would add to the bill current law while restricting the bill with respect to the broadening of jurisdiction. Would that be nongermane?

The PRESIDING OFFICER. Amendment 1288, since it is fashioned as an amendment to strike, is per se germane.

Mr. McCLURE. Amendment No. 1290 would repeal the order of notice provisions which would allow businessmen to be ordered to notify customers to sue them. Would the amendment be in order?

The PRESIDING OFFICER. Since the amendment is an amendment to strike, it would be per se germane.<sup>1148</sup>

A third set of inquiries indicates that an amendment that changes a figure is germane:

Mr. McCLURE. Amendment No. 1289 would restore current law with respect to the general level of criminal fines and would remove the structure that has been created in the proposed legislation. Would that amendment be nongermane?

The PRESIDING OFFICER. The amendment appears to be an attempt to strike a figure and substitute in lieu thereof another figure and therefore would be germane.<sup>1149</sup>

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<sup>1148</sup> 128 CONG. REC. S3879-80 (daily ed. Apr. 22, 1982).

<sup>1149</sup> *Id.*

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In one inquiry, the continued utility of which is in question by virtue of the Parliamentarian's subsequent interpretation of the precedents, Senator McClure and the Presiding Officer spelled out that an amendment that would substitute new language that is not restrictive of the bill would not be germane even if it dealt with the same subject matter:

Mr. McCLURE. . . . Amendment 1295 would restore current law with respect to first degree murder. Would that amendment be germane?

The PRESIDING OFFICER. This is another amendment that is in fact two amendments. The first is an amendment to strike, and would be germane. The second expands the effect of the bill, and would not be germane.

Mr. McCLURE. I might pursue that one step further, in that the subject matter to be added with respect to line 4 of the amendment, being the numeral 1111, is language that deals with the same subject matter but in a manner different from that contained in the bill, in the first half of the amendment, which would be stricken.

The PRESIDING OFFICER. The germaneness test has never been interpreted as a subject matter test. It is basically a technical amendment test, and even expanding the bill dealing with the same subject matter has been ruled nongermane.

Mr. McCLURE. I will not debate the issue with respect to this particular amendment. I simply wish to point out that that which is in 1111 is the same subject matter—does not expand the bill. It is a substitution for the bill language with respect to the law relating to first degree murder. If we get to that point, I might wish to discuss that a little further, because I am not certain in this instance that if you look past the number to what is contained in page 522, line 2, it would be discerned that 1111 is the same subject matter and not a broadening of the subject matter of the bill.

I might renew that parliamentary inquiry when, as, and if we get to the point when that becomes pertinent.

The PRESIDING OFFICER. The Senator has not propounded an additional inquiry?

Mr. McCLURE. No; I have not.<sup>1150</sup>

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<sup>1150</sup> *Id.* at S3,880.



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Similarly, another precedent, of December 12, 1985, indicates that an amendment that adds nonrestrictive language is not germane, even if the amendment is relevant to the bill.<sup>1151</sup> In that precedent, the pending bill, S. 1396, provided for the settlement of claims relating to trust allotments of land granted to certain Native Americans and for judicial review of compensation findings by the Secretary of the Interior relating to those claims. A unanimous consent agreement required that amendments be germane and relevant. On a point of order by Senator Durenberger, the Presiding Officer ruled not germane a Melcher amendment that required the United States to provide legal assistance to allottees or heirs regarding the merits of their claims under the bill.<sup>1152</sup>

A ruling of December 3, 1985, provides another precedent for the proposition that an amendment that adds nonrestrictive language to a bill is not germane.<sup>1153</sup> The pending bill then (S. 1884, the farm credit system bill) governed by a unanimous consent agreement that required that amendments be germane, provided for three members of a board to be elected by farm credit banks and two members to be appointed by the Chair of another board.<sup>1154</sup> Senator Boren's amendment proposed to reduce from three to two those members to be elected by farm credit banks, and provided that one member be appointed by the Secretary of Agriculture.<sup>1155</sup> The Presiding Officer ruled as follows:

The PRESIDING OFFICER (Mr. Gorton of Washington). Germaneness of the amendment is required by the unanimous consent agreement. The amendment of the Senator from Oklahoma does add new language which does not restrict powers contained in the bill and it is, therefore, not germane. The point of order is sustained.<sup>1156</sup>

An amendment that would have limited a proposed increase in a tax contained in a bill but also proposed to increase another tax not contained in the bill was not germane.<sup>1157</sup>

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<sup>1151</sup> 131 CONG. REC. S17,507 (daily ed. Dec. 12, 1985).

<sup>1152</sup> *Id.*

<sup>1153</sup> 131 CONG. REC. S16,735 (daily ed. Dec. 3, 1985).

<sup>1154</sup> *Id.*

<sup>1155</sup> *Id.*

<sup>1156</sup> *Id.*

<sup>1157</sup> 128 CONG. REC. S8884, S8,887–88 (daily ed. July 22, 1982) (point of order by Sen. Dole to Thurmond amendment to the Tax Reconciliation Act of 1982).

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Once the Senate has stricken language, that language can no longer form the basis for germaneness.<sup>1158</sup> Senator McClure and the Presiding Officer set this precedent on the same April 22, 1982, set of inquiries noted above:

Mr. McCLURE. . . .

Amendment No. 1296: The amendment would strike section 1325.

Is that amendment germane?

The PRESIDING OFFICER. This amendment is two amendments.

The first is an amendment to strike, and would be germane. The second appears to expand the effect of the bill, and therefore would not be germane.

Mr. McCLURE. If, as a matter of fact, the language contained in “1503, 1505,” referred to in line 4 of the amendment, is more restrictive than the language being stricken in the first half of the amendment, would it then survive the germaneness test?

The PRESIDING OFFICER. Once language has been stricken, it no longer sets the parameters for germaneness.

Mr. McCLURE. Even though it is in the same amendment?

The PRESIDING OFFICER. The Chair has observed that this is not one amendment but two amendments.<sup>1159</sup>

The Presiding Officer will consider germane per se amendments reported by or offered by authority of the committee of jurisdiction, and such amendments may form part of the basis for determining germaneness.<sup>1160</sup> The Presiding Officer will consider germane an amendment that is germane to an amendment reported by a committee, even if the committee amendment itself contains significant matter within the jurisdiction of another committee in violation of the jurisdictional rule of rule XV, paragraph 5.<sup>1161</sup> It follows, then, that the Presiding Officer will consider per se germane an amendment reported by a committee even if the committee amendment contains significant matter within the

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<sup>1158</sup> 128 CONG. REC. S3880 (daily ed. Apr. 22, 1982).

<sup>1159</sup> *Id.*

<sup>1160</sup> 128 CONG. REC. S9014–15 (daily ed. July 22, 1982) (inquiry by Sen. DeConcini regarding Dole amendment on behalf of the Finance Committee on the Tax Reconciliation Act of 1982).

<sup>1161</sup> 128 CONG. REC. S8702–04 (daily ed. July 20, 1982) (debate on reconciliation bill).

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jurisdiction of another committee in violation of the jurisdictional rule of rule XV, paragraph 5.<sup>1162</sup>

A Senator may offer again on behalf of the committee that had reported the measure an amendment that the Presiding Officer had ruled out of order as nongermane when offered by the Senator in the Senator's individual capacity.<sup>1163</sup>

The Presiding Officer will consider germane an amendment that is germane to an amendment for which the Senate has waived the germaneness requirement of the Congressional Budget Act.<sup>1164</sup>

A motion under section 904(b) to waive the germaneness requirement of the Congressional Budget Act without specifying the object of that motion, even though made in response to a point of order against an amendment, would waive that requirement without restriction.<sup>1165</sup>

Setting the time or sequence for a vote on an amendment does not implicitly waive the germaneness requirement.<sup>1166</sup>

The germaneness requirement does not apply to a motion to recommit a reconciliation bill with instructions to report back forthwith a specific amendment that would bring a committee into compliance with the reconciliation instructions in the budget resolution.<sup>1167</sup>

During the consideration of a House-passed reconciliation bill, if Senate committees have not reported a Senate companion, then the basis for germaneness is the jurisdictions of all the committees instructed by the relevant budget resolution. Under such circumstances, an amendment implicating the jurisdiction of a committee that was not reconciled is nongermane.<sup>1168</sup>

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<sup>1162</sup> *See id.*

<sup>1163</sup> See 128 CONG. REC. S9014–15 (daily ed. July 22, 1982) (Dole amendment to the Tax Reconciliation Act of 1982).

<sup>1164</sup> 132 CONG. REC. S12,986 (daily ed. Sept. 19, 1986); 131 CONG. REC. S14,015–16 (daily ed. Oct. 24, 1985).

<sup>1165</sup> 131 CONG. REC. S14,015–16 (daily ed. Oct. 24, 1985).

<sup>1166</sup> See 129 CONG. REC. S1807 (daily ed. Mar. 1, 1983) (inquiries of Sens. Metzenbaum, Byrd, and Baker regarding cloture).

<sup>1167</sup> Senate Precedent PRL19810617-001 (June 17, 1981).

<sup>1168</sup> See 167 CONG. REC. S1239 (daily ed. Mar. 5, 2021) (Sanders point of order against a Tester amendment on approval of the Keystone XL pipeline, a matter implicating the jurisdiction of the Energy and Natural Resources Committee, which had not been reconciled by the relevant budget resolution, S. Con. Res. 5; motion to waive failed 51-48; point of order sustained; amendment fell).

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## Relevance

In contrast to the germaneness test, the test of relevance of amendments is broader than the germaneness test; it is a subject matter test, and amendments that deal with the subject matter of the bill are in order if they do not contain any significant matter not dealt with in the bill.<sup>1169</sup> In the precedent of November 23, 1985, the Majority Leader (Senator Dole of Kansas) attempted to obtain a unanimous consent agreement on S. 1884, a bill to amend the Farm Credit Act of 1974, which proposed that amendments be germane.<sup>1170</sup> The following colloquy took place:

Mr. BAUCUS. —I wonder if the majority leader would agree to change the consent agreement to allow the Senator from Montana to offer an amendment regardless of its germaneness.

Mr. DOLE. Madam President, I ask unanimous consent that substitute amendments be in order and limited to 20 minutes provided they are relevant to the subject matter.

Mr. BAUCUS. Reserving the right to object, Madam President, a parliamentary inquiry. I wonder what the difference between germaneness and relative to the subject matter would be. What is the difference between the two?

The PRESIDING OFFICER (Mrs. Kassebaum of Kansas). Relevance is broader than germaneness, it is a subject matter test.

Mr. BAUCUS. A further parliamentary inquiry. That means if the Senator from Montana has an amendment which has something to do with farm credit legislation, it would be in order under this agreement?

The PRESIDING OFFICER. As long as it deals with the subject of the farm credit bill before us.<sup>1171</sup>

Senator Tom Harkin then addressed additional questions to the Chair regarding the relevancy test:

Mr. HARKIN. As I understand the modification just mentioned by the distinguished majority leader, we could offer amendments that dealt with the subject matter. My concern is that I may have an amendment which goes broader than just the Farm Credit System. It will deal with farm credit

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<sup>1169</sup> 131 CONG. REC. S16,503 (daily ed. Nov. 23, 1985).

<sup>1170</sup> *Id.*

<sup>1171</sup> *Id.*

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but it may go beyond the bill itself, which talks basically or only about the Farm Credit System itself.

The PRESIDING OFFICER. It would not be relevant if it does contain any significant matter that is not dealt with in the farm credit legislation.

Mr. HARKIN. So, Madam President, if I had an amendment that dealt with farm credit that applied both to the Farm Credit System and to, let us say, private lenders or private banks, would that be in order under the modification mentioned by the majority leader?

The PRESIDING OFFICER. If private lenders and private banks are not dealt with in the original bill, it would not be in order.<sup>1172</sup>

*Extraneousness*—Also in contrast to the germaneness test, the test for extraneousness (in the context of reconciliation) depends on another set of criteria regarding, among other things, whether the provision in question is budgetary.<sup>1173</sup>

*Shall not be received*—The language that such amendments “shall not be received” merely permits a Senator to raise a point of order after time on the amendment has expired, and does not authorize the Presiding Officer to rule on the amendment at the Presiding Officer’s initiative.<sup>1174</sup>

On April 1, 1981, the following debate took place before time on the amendment had expired:

Mr. LONG. . . .

. . . Mr. President, I make the point of order that this amendment is not germane to the bill.

Mr. METZENBAUM. Mr. President, I believe the Senator’s point of order is premature.

The PRESIDING OFFICER. The Chair would inform the Senator from Louisiana that a point of order is not in order at this time.

Mr. LONG. Mr. President, the reorganization law says that an amendment that is not germane will not be received.

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<sup>1172</sup> *Id.*

<sup>1173</sup> See *infra* p. 619.

<sup>1174</sup> Senate Precedent PRL19810401-001, 127 CONG. REC. S3148 (daily ed. Apr. 1, 1981).

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Mr. METZENBAUM. But it also says it is not in order until time for debate on the amendment has expired.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

The point of order would be in order after the time for debate on the amendment has expired.

Mr. LONG. Mr. President, might I just discuss it? We have before us an amendment which, under the law, is an amendment that is not to be received. Therefore, I make the point of order that this amendment is out of order. It should not have been received and there is nothing to debate.

The PRESIDING OFFICER. The Chair is of the opinion that the point of order may or may not be correct. It looks as if it might be correct.

But the language “shall not be received” is standard language used by the Senate in unanimous-consent agreements which impose germaneness on amendments. Under the precedents of the Senate, it has been held uniformly that, under those circumstances, a point of order against an amendment on the ground that it is not germane may not be made until the time of the amendment has expired.<sup>1175</sup>

Contrast the rule under cloture, where the Presiding Officer will take the initiative to rule out of order nongermane amendments without waiting for a point of order from the floor.<sup>1176</sup>

There are further examples of the application of the point of order under section 305(b).<sup>1177</sup>

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<sup>1175</sup> *Id.* Along the same lines, precedent has established that Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. 130 CONG. REC. S7919 (daily ed. June 21, 1984).

<sup>1176</sup> See, e.g., Senate Precedent PRL19840913-001, 130 CONG. REC. S11,111–12 (daily ed. Sept. 13, 1984); Senate Precedent PRL19820920-002, 128 CONG. REC. S11,844 (daily ed. Sept. 20, 1982) (inquiry of Sen. Robert C. Byrd).

<sup>1177</sup> See, e.g., 133 CONG. REC. S17,652–53 (daily ed. Dec. 10, 1987) (Harkin motion to waive rejected 47–49 regarding his amendment no. 1257 to S. 1920, the Omnibus Budget Reconciliation Act of 1987); 133 CONG. REC. S17,600 (daily ed. Dec. 10, 1987) (Majority Leader Byrd’s motion to waive Congressional Budget Act of 1974 § 305(b) and other sections approved 81–13 regarding specified amendments and motion to recommit regarding S. 1920, the Omnibus Budget Reconciliation Act of 1987).

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## Mathematical Consistency

*To Make such Concurrent Resolution Mathematically Consistent*—In *Riddick's Senate Procedure*, the Parliamentarian explained the effect of this paragraph:

Flexibility is allowed during the amendment process to permit the consideration of certain amendments which might otherwise be out of order (as amending the measure in more than one place or amending language previously agreed to), as long as the amendment makes or maintains mathematical consistency in the measure.<sup>1178</sup>

Elsewhere in *Riddick's Senate Procedure*, the Parliamentarian described the application of this paragraph<sup>1179</sup>:

Concurrent resolutions . . . are open to amendments to figures already agreed to “so as to make such concurrent resolution mathematically consistent, or so as to maintain such consistency.”<sup>[1180]</sup> Amendments which are adopted to a concurrent resolution on the budget under the Budget Act of 1974, are subject to further amendment if such further amendment makes or maintains mathematical consistency in the resolution pursuant to section 305(b)(6) of that act.<sup>[1181]</sup> Thus amendments remain in order to a budget resolution even though a complete substitute for the resolution had already been agreed to, if such amendment makes or maintains mathematical consistency in the resolution.<sup>[1182]</sup>

Again in *Riddick's Senate Procedure*, the Parliamentarian described the effect of this paragraph:

Concurrent resolutions on the budget are open to amendments to figures already agreed to if the proposed changes would make the provisions of the concurrent resolution “mathematically consistent or maintain such consistency,” even though a complete substitute for the resolution had already been agreed to.<sup>1183</sup>

In a discussion related to the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), the Parliamentarian advised that it is out of order to touch the bill in two places

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<sup>1178</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 503 (1992).

<sup>1179</sup> *Id.* at 592 (footnotes renumbered and reformatted).

<sup>1180</sup> *Congressional Budget Act of 1974 § 305(b)(6)*, 2 U.S.C. § 636(b)(6), *supra* p. 257.

<sup>1181</sup> 128 CONG. REC. 11,037 (May 20, 1982).

<sup>1182</sup> *See* 125 CONG. REC. 24,965–66 (Sept. 18, 1979).

<sup>1183</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 600 (1992) (quoting *Congressional Budget Act of 1974 § 305(b)(6)*, 2 U.S.C. § 636(b)(6), *supra* p. 257; citing 125 CONG. REC. 24,965–66 (Sept. 18, 1979)).

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unless it is necessary to address mathematical inconsistency, but that is more an issue in budget resolutions than in reconciliation bills. Drafting a larger section of the bill – “taking a bigger bite out of the apple” – provides a way to get around this issue.<sup>1184</sup>

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<sup>1184</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on September 28, 2015, at 2.



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- 305(c)            (c) ACTION ON CONFERENCE REPORTS IN THE SENATE —
- 305(c)(1)            (1) A motion to proceed to the consideration of the conference report on any **concurrent resolution on the budget**<sup>1185</sup> (or a reconciliation bill or resolution) may be made even though a previous motion to the same effect has been disagreed to.
- 305(c)(2)            (2) During the consideration in the Senate of the conference report (or a message between Houses) on any **concurrent resolution on the budget**,<sup>1186</sup> and all amendments in disagreement, and all amendments thereto, and debatable motions and appeals in connection therewith, debate shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report<sup>1187</sup> (or a message between Houses) shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report (or a message between Houses).
- 305(c)(3)            (3) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to 1 hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to one-half hour, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be

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<sup>1185</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1186</sup> *Id.*

<sup>1187</sup> This includes compound motions under [Senate Rule XXVIII](#). Off. of the Sec’y of the Senate, [Senate Precedent PRL20150415-001](#), *infra* p. 311.

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equally divided between and controlled by the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

305(c)(4)

(4) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment that is not *germane*<sup>1188</sup> to the provisions of such amendments shall be received.

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*Conference Report*—Senate Rule XXVIII governs conference reports:

CONFERENCE COMMITTEES; REPORTS; OPEN MEETINGS

1. The presentation of reports of committees of conference shall always be in order when available on each Senator's desk, except when the Journal is being read or a question of order or a motion to adjourn is pending, or while the Senate is voting or ascertaining the presence of a quorum; and when received the question of proceeding to the consideration of the report, if raised, shall be immediately put, and shall be determined without debate.

2. (a) When a message from the House of Representatives is laid before the Senate, it shall be in order for a single, non-divisible motion to be made that includes —

(1) a motion to disagree to a House amendment or insist upon a Senate amendment;

(2) a motion to request a committee of conference with the House or to agree to a request by the House for a committee of conference; and

(3) a motion to authorize the Presiding Officer to appoint conferees (or a motion to appoint conferees).

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<sup>1188</sup> For a discussion of germaneness, see *supra* p. 268.

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(b) If a cloture motion is presented on a motion made pursuant to subparagraph (a), the motion shall be debatable for no more than 2 hours, equally divided in the usual form, after which the Presiding Officer, or the clerk at the direction of the Presiding Officer, shall lay the motion before the Senate. If cloture is then invoked on the motion, the question shall be on the motion, without further debate.

3. (a) Conferees shall not insert in their report matter not committed to them by either House, nor shall they strike from the bill matter agreed to by both Houses.

(b) If matter which was agreed to by both Houses is stricken from the bill a point of order may be made against the report, and if the point of order is sustained, the report is rejected or shall be recommitted to the committee of conference if the House of Representatives has not already acted thereon.

(c) If new matter is inserted in the report, a point of order may be made against the conference report and it shall be disposed of as provided under paragraph 5.

4. (a) In any case in which a disagreement to an amendment in the nature of a substitute has been referred to conferees —

(1) it shall be in order for the conferees to report a substitute on the same subject matter;

(2) the conferees may not include in the report matter not committed to them by either House; and

(3) the conferees may include in their report in any such case matter which is a germane modification of subjects in disagreement.

(b) In any case in which the conferees violate subparagraph (a), a point of order may be made against the conference report and it shall be disposed of as provided under paragraph 5.

5. (a) A Senator may raise a point of order that one or more provisions of a conference report violates paragraph 3 or paragraph 4, as the case may be. The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order.

(b) If the Presiding Officer sustains the point of order as to any of the provisions against which the Senator raised the point of order, then those provisions against which the Presiding Officer sustains the point of order shall be stricken. After all other points of order under this paragraph have been disposed of —

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(1) the Senate shall proceed to consider the question of whether the Senate should recede from its amendment to the House bill, or its disagreement to the amendment of the House, and concur with a further amendment, which further amendment shall consist of only that portion of the conference report that has not been stricken;

(2) the question in clause (1) shall be decided under the same debate limitation as the conference report; and

(3) no further amendment shall be in order.

6. (a) Any Senator may move to waive any or all points of order under paragraph 3 or 4 with respect to the pending conference report by an affirmative vote of three-fifths of the Members, duly chosen and sworn. All motions to waive under this paragraph shall be debatable collectively for not to exceed 1 hour equally divided between the Majority Leader and the Minority Leader or their designees. A motion to waive all points of order under this paragraph shall not be amendable.

(b) All appeals from rulings of the Chair under paragraph 5 shall be debatable collectively for not to exceed 1 hour, equally divided between the Majority and the Minority Leader or their designees. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair under paragraph 5.

7. Each report made by a committee of conference to the Senate shall be printed as a report of the Senate. As so printed, such report shall be accompanied by an explanatory statement prepared jointly by the conferees on the part of the House and the conferees on the part of the Senate. Such statement shall be sufficiently detailed and explicit to inform the Senate as to the effect which the amendments or propositions contained in such report will have upon the measure to which those amendments or propositions relate.

8. If time for debate in the consideration of any report of a committee of conference upon the floor of the Senate is limited, the time allotted for debate shall be equally divided between the majority party and the minority party.

9. Each conference committee between the Senate and the House of Representatives shall be open to the public except when managers of either the Senate or the House of Representatives in open session determine by a rollcall vote of a majority of those managers present, that all or part of the remainder of the meeting on the day of the vote shall be closed to the public.

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10. (a)(1) It shall not be in order to vote on the adoption of a report of a committee of conference unless such report has been available to Members and to the general public for at least 48 hours before such vote. If a point of order is sustained under this paragraph, then the conference report shall be set aside.

(2) For purposes of this paragraph, a report of a committee of conference is made available to the general public as of the time it is posted on a publicly accessible website controlled by a Member, committee, Library of Congress, or other office of Congress, or the Government Printing Office, as reported to the Presiding Officer by the Secretary of the Senate.

(b)(1) This paragraph may be waived in the Senate with respect to the pending conference report by an affirmative vote of three-fifths of the Members, duly chosen and sworn. A motion to waive this paragraph shall be debatable for not to exceed 1 hour equally divided between the Majority Leader and the Minority Leader or their designees.

(2) An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this paragraph. An appeal of the ruling of the Chair shall be debatable for not to exceed 1 hour equally divided between the Majority and the Minority Leader or their designees.

(c) This paragraph may be waived by joint agreement of the Majority Leader and the Minority Leader of the Senate, upon their certification that such waiver is necessary as a result of a significant disruption to Senate facilities or to the availability of the Internet.<sup>1189</sup>

When asked to confirm that “Where one House proposes a complete substitute to another House’s work product, the scope of conference is not bounded by individual dollar amounts in the two bills, but by a looser germaneness test,”<sup>1190</sup> the Parliamentarian agreed, noting that the scope of conference is everything in the House bill, everything in the Senate bill, and how those come to meet. The Parliamentarian noted that there is a common misunderstanding is that dollar values in conference agreements must fall somewhere between the lower and higher amounts in the House and Senate bills, but that is not true for germaneness or scope. The Parliamentarian

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<sup>1189</sup> Senate Rule XXVIII.

<sup>1190</sup> E-mail from Staff of S. Majority Leader to Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget re Materials for 7/30 meeting with Budget Committee re: budget resolution (July 30, 2021, 1:05 PM).

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concluded that there is quite a bit of latitude for the conferees.<sup>1191</sup> On another occasion, the Parliamentarian noted that Senators can do more in conference than they can on the floor.<sup>1192</sup>

In *Riddick's Senate Procedure*, the Parliamentarian discussed budget resolution conference reports<sup>1193</sup>:

Under the Budget Act and practices of the Senate, conference reports on budget resolutions and rescission measures were anticipated.<sup>[1194]</sup>

When a concurrent resolution on the budget is in conference, the consideration and adoption of a resolution to instruct the conferees is in order.<sup>[1195]</sup>

Under the Congressional Budget Act, the time for debate on a conference report is 10 hours, but the Chair has stated in response to an inquiry that this time may be reduced by a nondebatable motion.<sup>[1196]</sup>

The 10 hours of debate provided for by section 305(c)(2) of the Budget Act of 1974 on conference reports on concurrent resolutions on the budget are available even when the conferees have reported in total disagreement.<sup>[1197]</sup>

When conferees have before them a complete substitute, they may add matter to their report that is not entirely irrelevant to the subject matter contained in either the bill or the substitute.<sup>[1198]</sup>

The conferees on the concurrent resolution on the budget did not exceed their authority to include matters not entirely irrelevant to the subject matter contained in either version of that resolution, when they included a provision in their report directing the Committees on Finance and Ways and Means to report an increase in the public debt limit as part of their reconciliation instructions, since the resolution as it passed the Senate specified a figure for the public debt limit and also contained reconciliation instructions to the Finance Committee.<sup>[1199]</sup>

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<sup>1191</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget (July 31, 2021, 9:45 AM).

<sup>1192</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 13, 2015.

<sup>1193</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 601–02 (1992) (footnotes renumbered and reformatted).

<sup>1194</sup> 125 CONG. REC. 6386–87 (Mar. 27, 1979).

<sup>1195</sup> See 124 CONG. REC. 29,157 (Sept. 13, 1978).

<sup>1196</sup> See 128 CONG. REC. 22,398 (Aug. 19, 1982).

<sup>1197</sup> *Id.* at 14,689 (June 22, 1982).

<sup>1198</sup> *Id.* at 22,398–400 (Aug. 19, 1982).

<sup>1199</sup> 133 CONG. REC. 17,266–69 (June 24, 1987).

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The Parliamentarian's office has written, "Under the Congressional Budget Act of 1974, which limits debatable motions with respect to conference to one hour, the compound motion to go to conference under Rule XXVIII is debatable for up to one hour."<sup>1200</sup> Thus, the Parliamentarian's office reports:

On April 15, 2015, the Senate was considering the House message to accompany S. Con. Res. 11, the budget resolution for Fiscal Year 2016. Mr. Enzi (of Wyoming) made a single, non-divisible motion to insist upon the Senate amendment, agree to a request to go to conference from the House, and authorize the Chair to appoint conferees under Rule XXVIII, paragraph 2(a). Under section 305(c)(2) of the Congressional Budget Act of 1974, debate on any debatable motion or appeal related to the conference report (or a message between Houses) is limited to one hour, equally divided between, and controlled by, the mover and the manager of the conference report (or message between the Houses). The compound motion was agreed to by a vote of 54 yeas to 43 nays.<sup>1201</sup>

The Parliamentarian's office has written, "A conference report is privileged for consideration but not for disposition."<sup>1202</sup> Thus, the Parliamentarian's office reports:

On May 5, 2015, Mr. Enzi (of Wyoming) made a motion to proceed to the conference report to accompany S. Con. Res. 11, the budget resolution for fiscal year 2016. As the motion to proceed is privileged and non-debatable, the Presiding Officer immediately put the question, which was agreed to by a vote of 53 yeas to 44 nays. After the conference report was laid down, the Presiding Officer announced that there would be up to 10 hours of debate, equally divided, under section 305(c) of the Congressional Budget Act of 1974.<sup>1203</sup>

Formal conference committees, however, have fallen out of favor. The *National Journal* reports:

Formal conference committees are a rarity on Capitol Hill these days, and in recent years they have been reserved for defense-authorization bills and appropriations measures.

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<sup>1200</sup> Off. of the Sec'y of the Senate, [Senate Precedent PRL20150415-001](#).

<sup>1201</sup> *Id.* See also [161 CONG. REC. 4997](#) (Apr. 15, 2015).

<sup>1202</sup> Off. of the Sec'y of the Senate, [Senate Precedent PRL20150505-002](#).

<sup>1203</sup> *Id.* See also [161 CONG. REC. 6182](#) (May 5, 2015).

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Since 1995, lawmakers have steadily opted to take up a chamber’s version of a bill or conduct an informal conference, with leadership hashing out a final version rather than bringing in committee rank and file. In the 104th Congress, in 1995 and 1996, lawmakers produced 66 conference reports, according to records on *Congress.gov*. Numbers have steadily declined since, with 39 in the 108th Congress, 13 in the 111th, two in the 113th, and three in the last Congress, the 116th.<sup>1204</sup>

*Amendments in Disagreement*—*Riddick’s Senate Procedure* addresses amendments between Houses on budget resolutions and reconciliation bills<sup>1205</sup>:

**Amendments Between Houses:**

When the Senate is considering a motion to concur with an amendment in a House amendment to a Senate amendment relative to a reconciliation bill, time for debate is limited (to 30 minutes under section 305(c)(4) of the Congressional Budget Act of 1974) and when that time has expired no further debate is in order (unless a further amendment to the amendment contained in the motion is offered, or a preferential motion proposed).<sup>[1206]</sup> Under the Act as amended in 1990, time for debate on debatable motions relating to a message between the Houses on budget resolutions and reconciliation[] bills is now limited to one hour.<sup>[1207]</sup>

When the Senate is considering a motion to concur with an amendment in a House amendment to a Senate amendment relative to a reconciliation bill, time for debate is limited (to 30 minutes under section 305(c)(4) of the Congressional Budget Act of 1974) and must be used or yielded back before an amendment to the amendment is in order.<sup>[1208]</sup>

When the Senate is considering a motion to concur with an amendment in a House amendment to a Senate amendment to a reconciliation bill, the matter before the Senate is technically not a bill, but a message from the House, and since no bill *per se* is pending, there is no debate time available from the bill.<sup>[1209]</sup>

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<sup>1204</sup> Casey Wooten, Savannah Behrmann & Philip Athey, *On Tap After Recess: Congress Works To Finalize China-Competition Bill*, NAT’L J., Apr. 14, 2022.

<sup>1205</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK’S SENATE PROCEDURE* 589–90 (1992) (footnotes renumbered, reformatted, and updated).

<sup>1206</sup> 132 CONG. REC. 4899–900 (Mar. 14, 1986).

<sup>1207</sup> Congressional Budget Act of 1974 § 305(c)(2), 2 U.S.C. § 636(c)(2), *supra* p. 305.

<sup>1208</sup> 132 CONG. REC. 4887 (Mar. 14, 1986).

<sup>1209</sup> *Id.* at 4891.



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When the time on a budget resolution or reconciliation bill has expired, any motion relating thereto, such as a motion to instruct the conferees, is decided without debate.<sup>[1210]</sup>

If the concurrent resolution on the budget for a fiscal year has been adopted, a point of order will lie against an amendment of the House to an amendment of the Senate to an appropriations bill, if that amendment increases outlays at a time when the appropriate level of outlays for that fiscal year has been breached, and on one occasion it was held that the effect of sustaining such a point of order was that the amendment of the House was no longer before the Senate, but retained its status as a House message at the desk.<sup>[1211]</sup> However, under section 312(a) of the Budget Act as added in 1990, the sustaining of such a point of order against House language is now the equivalent of a decision by the Senate to disagree to the amendment of the House.<sup>[1212]</sup>

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<sup>1210</sup> [127 CONG. REC. 15,599–600](#) (July 14, 1981).

<sup>1211</sup> [132 CONG. REC. 4775–81](#) (Mar. 13, 1986).

<sup>1212</sup> Congressional Budget Act of 1974 § 312(a), as added by [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13207(b)(1), 104 Stat. 1388, 1388-618, is now [Congressional Budget Act of 1974 § 312\(e\)](#), 2 U.S.C. § 643(e), *supra* p. 614.

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305(d)            **(d) CONCURRENT RESOLUTION MUST BE CONSISTENT IN THE SENATE – It shall not be in order in the Senate to vote on the question of agreeing to –**

305(d)(1)            **(1) a concurrent resolution on the budget<sup>1213</sup> unless the figures then contained in such resolution are mathematically consistent;<sup>1214</sup> or**

305(d)(2)            **(2) a conference report on a concurrent resolution on the budget<sup>1215</sup> unless the figures contained in such resolution, as recommended in such conference report, are mathematically consistent.<sup>1216</sup>**

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<sup>1213</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1214</sup> For a discussion of mathematical consistency, see *supra* p. 303.

<sup>1215</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1216</sup> For a discussion of mathematical consistency, see *supra* p. 303.

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**The Dirksen Senate Office Building  
Home of the Senate Budget Committee**

Photo: The Architect of the Capitol

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# Budget Committee Jurisdiction

**L**ike the boundaries of the family farm, a committee's jurisdiction defines the enterprise. It's the territory that the group can work.

Unhappily for most committees, the fences that guard most committees' jurisdictions are not very strong. Because Senators generally have the right to offer nongermane amendments—amendments dealing with matters in any committee's jurisdiction—it is hard for most committees to guard their territory.

The Budget Committee is an exception. It has a strong fence. Budget Act section 306 provides a weapon that any Senator can use to hobble any legislation that encroaches on Budget Committee territory. Section 306 creates a point of order—one that requires 60 votes to waive—against any legislation “dealing with any matter which is within the jurisdiction of the Committee on the Budget,” unless it is “a bill or resolution which has been

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reported by the Committee” or “it is an amendment to such a bill or resolution.”<sup>1217</sup>

Three kinds of legislation make up that “jurisdiction of the Committee on the Budget”<sup>1218</sup>:

**(1) Budget Act Matters** – The Committee has jurisdiction over all Budget Act legislation—“all concurrent resolutions on the budget (as defined in section 3(a)(4) of the Congressional Budget Act of 1974) and all other matters required to be referred to that committee under titles III and IV of that Act, and messages, petitions, memorials, and other matters relating thereto.”<sup>1219</sup> Under this authority, the Presiding Officer regularly refers budget resolutions to the Committee.<sup>1220</sup> Legislation changing the content

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<sup>1217</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 306, 88 Stat. 297, 313, [2 U.S.C. § 637](#); see *infra* p. 353.

<sup>1218</sup> *Id.* Note that because the Senate and House Budget Committees have differing textual bases for their jurisdictions and different Parliamentarians, the jurisdiction of the Senate Budget Committee is not identical with that of the House Budget Committee.

<sup>1219</sup> [Senate Rule XXV ¶ 1\(e\)](#); [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 102, 88 Stat. 297, 300.

<sup>1220</sup> See, e.g., [Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2023 and setting forth the appropriate budgetary levels for fiscal years 2024 through 2032](#), S. Con. Res. 43, 117th Cong. (submitted and referred July 19, 2022); [Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2023 and setting forth the appropriate budgetary levels for fiscal years 2024 through 2032](#), S. Con. Res. 41, 117th Cong. (submitted and referred June 6, 2022); [Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2022 and setting forth the appropriate budgetary levels for fiscal years 2023 through 2031](#), S. Con. Res. 14, 117th Cong. (submitted and referred Aug. 9, 2021); [Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2022 and setting forth the appropriate budgetary levels for fiscal years 2023 through 2031](#), S. Con. Res. 13, 117th Cong. (submitted and referred Aug. 5, 2021); [Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2021 and setting forth the appropriate budgetary levels for fiscal years 2022 through 2030](#), S. Con. Res. 5, 117th Cong. (submitted and referred Feb. 2, 2021); [Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2020 and setting forth the appropriate budgetary levels for fiscal years 2021 through 2029](#), S. Con. Res. 11, 116th Cong. (submitted and referred Apr. 1, 2019); [Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2019 and setting forth the appropriate budgetary levels for fiscal years 2020 through 2028](#), S. Con. Res. 37, 115th Cong. (submitted and referred Apr. 18, 2018); [Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2019 and setting forth the appropriate budgetary levels for fiscal years 2020 through 2028](#), S. Con. Res. 36, 115th Cong. (submitted and referred Apr. 18, 2018); [Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2018 and setting forth the appropriate budgetary levels for fiscal years 2019 through 2027](#), S. Con. Res. 27, 115th Cong. (submitted and referred Oct. 17, 2017); [Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2017 and setting forth the appropriate budgetary levels for fiscal years 2018 through 2026](#), S. Con. Res. 3, 115th Cong. (submitted and referred Jan. 3, 2017); [Concurrent Resolution establishing the budget for the United States Government for fiscal year 2015 and setting forth appropriate budgetary levels for fiscal years 2016 through 2024](#), H. Con. Res. 96, 113th Cong. (received and referred Apr. 11, 2014); [Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2014 and setting forth the appropriate budgetary levels for fiscal years 2015 through 2023](#), S. Con. Res. 14, 113th Cong. (submitted and referred Apr. 22, 2013); [Concurrent Resolution setting forth the congressional budget for the United States Government](#)

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or consideration of budget resolutions<sup>1221</sup> should also be referred to the Committee under both this basis (as a “matter[] relating []to” budget resolutions) and the budget process basis below.

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for fiscal year 2013 and setting forth the appropriate budgetary levels for fiscal years 2014 through 2022, S. Con. Res. 52, 112th Cong. (submitted and referred July 19, 2012); Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2013 and setting forth the appropriate budgetary levels for fiscal years 2014 through 2022, S. Con. Res. 44, 112th Cong. (submitted and referred May 8, 2012); Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2013, revising the appropriate budgetary levels for fiscal year 2012, and setting forth the appropriate budgetary levels for fiscal years 2013 through 2022, S. Con. Res. 42, 112th Cong. (submitted and referred Apr. 26, 2012); Concurrent Resolution setting forth the President’s budget request for the United States Government for fiscal year 2013, and setting forth the appropriate budgetary levels for fiscal years 2014 through 2022, S. Con. Res. 41, 112th Cong. (submitted and referred Apr. 17, 2012); Concurrent Resolution establishing the budget for the United States Government for fiscal year 2013 and setting forth appropriate budgetary levels for fiscal years 2014 through 2022, H. Con. Res. 112, 112th Cong. (received and referred Apr. 16, 2012); Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2013, revising the appropriate budgetary levels for fiscal year 2012, and setting forth the appropriate budgetary levels for fiscal years 2013 through 2022, S. Con. Res. 40, 112th Cong. (submitted and referred Apr. 16, 2012); Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2013, revising the appropriate budgetary levels for fiscal year 2012, and setting forth the appropriate budgetary levels for fiscal years 2013 through 2022, S. Con. Res. 39, 112th Cong. (submitted and referred Mar. 29, 2012); Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2013, and setting forth the appropriate budgetary levels for fiscal years 2014 through 2022, S. Con. Res. 37, 112th Cong. (submitted and referred Mar. 29, 2012); Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2012 and setting forth the appropriate budgetary levels for fiscal years 2013 through 2021, S. Con. Res. 21, 112th Cong. (submitted and referred May 23, 2011); Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2012 and setting forth the appropriate budgetary levels for fiscal years 2013 through 2021, S. Con. Res. 20, 112th Cong. (submitted and referred May 19, 2011); Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2012 and setting forth the appropriate budgetary levels for fiscal years 2013 through 2021, S. Con. Res. 19, 112th Cong. (submitted and referred May 19, 2011); Concurrent Resolution setting forth the President’s budget request for the United States Government for fiscal year 2012, and setting forth the appropriate budgetary levels for fiscal years 2013 through 2021, S. Con. Res. 18, 112th Cong. (submitted and referred May 19, 2011); Concurrent Resolution establishing the budget for the United States Government for fiscal year 2012 and setting forth appropriate budgetary levels for fiscal years 2013 through 2021, H. Con. Res. 34, 112th Cong. (received and referred May 2, 2011); Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2011, revising the appropriate budgetary levels for fiscal year 2010, and setting forth the appropriate budgetary levels for fiscal years 2012 through 2015, S. Con. Res. 60, 111th Cong. (submitted and referred Apr. 26, 2010); Concurrent Resolution establishing the congressional budget for the United States Government for fiscal year 2003 and setting forth appropriate budgetary levels for each of fiscal years 2004 through 2007, H. Con. Res. 353, 107th Cong. (received and referred Mar. 21, 2002); Concurrent Resolution establishing the congressional budget for the United States Government for fiscal year 2002, revising the congressional budget for the United States Government for fiscal year 2001, and setting forth appropriate budgetary levels for each of fiscal years 2003 through 2011, H. Con. Res. 83, 107th Cong. (received and referred Mar. 28, 2001); Concurrent Resolution setting forth the congressional budget for the United States Government for fiscal year 2002, S. Con. Res. 20, 107th Cong. (submitted and referred Mar. 5, 2001); Concurrent Resolution establishing the congressional budget for the United States Government for fiscal year 2001, revising the congressional budget for the United States Government for fiscal year 2000, and setting forth appropriate budgetary levels for each of fiscal years 2002 through 2005, H. Con. Res. 290, 106th Cong. (received and referred Mar. 27, 2000).

<sup>1221</sup> See, e.g., A bill to create a point of order against legislation making nondefense discretionary appropriations that would increase the deficit during a period of high inflation, S. 4251, 117th Cong. (introduced and referred May 18, 2022); A bill to create a point of order against legislation making nondefense discretionary appropriations that would increase the deficit during a period of high inflation, S. 4250, 117th



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**(2) *Impoundment Legislation***—The Budget Committee shares jurisdiction with the Appropriations Committee and appropriate authorizing committees over rescissions and deferrals:

[B]ills, resolutions, and joint resolutions introduced with respect to rescissions and deferrals shall be referred to the Appropriations Committee, the Budget Committee, and pending implementation of section 410 of the Congressional Budget Impoundment Control Act and subject to section 401(d), to any other committee exercising jurisdiction over contract and borrowing authority programs as defined by section 401(c)(2)(A) and (B). The Budget Committee and such other committees shall report their views, if any, to the Appropriations Committee within 20 days following referral of such messages, bills, resolutions, or joint resolutions. The Budget Committee's consideration shall extend only to macroeconomic implications, impact on priorities and aggregate spending levels, and the legality of the President's use of the deferral and rescission mechanism under title X.<sup>1222</sup>

Under this authority, the Presiding Officer has referred impoundment legislation to the Appropriations and Budget committees.<sup>1223</sup>

**(3) *Budget Process Legislation***—The Budget Committee has jurisdiction over —

- (1) the functions, duties, and powers of the Budget Committee;
- (2) the functions, duties, and powers of the Congressional Budget Office;
- (3) the process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and

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Cong. (introduced and referred May 18, 2022); [A bill to create a point of order against legislation making nondefense discretionary appropriations that would increase the deficit during a period of high inflation](#), S. 4249, 117th Cong. (introduced and referred May 18, 2022); [Fight Inflation Through Balanced Budgets Act](#), S. 4020, 117th Cong. (introduced and referred Apr. 6, 2022) (requiring budget resolutions to show a balanced budget); [Accurate Accounting Act of 2016](#), S. 2513, 114th Cong. (introduced and referred Feb. 8, 2016) (to amend the Budget Act to include the outlays and revenues for Social Security in a budget resolution); [Resolution to limit consideration of amendments under a budget resolution](#), S. Res. 29, 111th Cong. (submitted and referred Feb. 5, 2009); [Resolution to limit consideration of amendments under a budget resolution](#), S. Res. 493, 110th Cong. (submitted and referred Apr. 1, 2008).

<sup>1222</sup> [132 CONG. REC. 7318–19](#) (Apr. 11, 1986).

<sup>1223</sup> See, e.g., [Spending Cuts to Expired and Unnecessary Programs Act](#), H.R. 3, 115th Cong. (received and referred June 11, 2018); [Spending Cuts to Expired and Unnecessary Programs Act](#), S. 2979, 115th Cong. (introduced and referred May 24, 2018); [Osprey Safety, Performance, and Reliability Evaluation Act of 2001](#), S. 272, 107th Cong. (introduced and referred Feb. 7, 2001) (to rescind fiscal year 2001 procurement funds for the V–22 Osprey aircraft).



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public debt—including subdivisions thereof—and including the establishment of mandatory ceilings on spending and appropriations, a floor on revenues, timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriation bills, and enforcement mechanisms for budgetary limits and timetables;

(4) the limiting of backdoor spending devices;

(5) the timetables for Presidential submission of appropriations and authorization requests;

(6) the definitions of what constitutes impoundment—such as “rescissions” and “deferrals”;

(7) the process and determination by which impoundments must be reported to and considered by Congress;

(8) the mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X—such as GAO review and lawsuits; and

(9) the provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act.<sup>1224</sup>

Under this authority, the Presiding Officer regularly refers budget process legislation to the Senate Budget Committee.<sup>1225</sup>

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<sup>1224</sup> S. Res. 445, 108th Cong. § 101(d) (2004) (adopted).

<sup>1225</sup> See, e.g., [Fairness for Crime Victims Act of 2022](#), S. 4115, 117th Cong. (introduced and referred Apr. 28, 2022); [Fight Inflation Through Balanced Budgets Act](#), S. 4020, 117th Cong. (introduced and referred Apr. 6, 2022) (requiring budget resolutions to show a balanced budget); [Fiscal State of the Nation Resolution](#), H. Con. Res. 44, 117th Cong. (received in Senate and referred Nov. 4, 2021) (providing for a joint hearing of the Comms. on the Budget to receive a presentation from the Comptroller General); [No Hearing, No Vote Act of 2021](#), S. 2823, 117th Cong. (introduced and referred Sept. 23, 2021) (to ensure that reconciliation bills are subject to a committee hearing); [Restraining Emergency War Spending Act](#), S. 2744, 117th Cong. (introduced and referred Sept. 14, 2021); [Fiscal Analysis by Income and Race Scoring Act](#) (FAIR Scoring Act), S. 2723, 117th Cong. (introduced and referred Sept. 13, 2021); [Intergenerational Financial Obligations Reform Act](#), S. 2548, 117th Cong. (introduced and referred July 29, 2021) (to provide for generational accounting analysis); [Fiscal State of the Nation Resolution](#), S. Con. Res. 11, 117th Cong. (submitted and referred July 29, 2021); [Make Rules Matter Act](#), S. 2469, 117th Cong. (introduced and referred July 26, 2021) (establishing thresholds for budget points of order); [Children’s Budget Act](#), S. 2127, 117th Cong. (introduced and referred June 17, 2021) (to require that Federal children’s programs be separately displayed in the President’s budget); [Focus on Children Act](#), S. 2133, 117th Cong. (introduced and referred June 17, 2021) (to amend the Budget Act to provide for studies and reports on the impact of legislation on spending on children); [A Bill to amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings](#), S. 1685, 117th Cong. (introduced and referred May 18, 2021); [A Bill to establish the Federal Rainy Day Fund to control emergency](#)

[spending](#), S. 1392, 117th Cong. (introduced and referred Apr. 27, 2021); [Maximizing America's Prosperity Act of 2021](#), S. 1253, 117th Cong. (introduced and referred Apr. 20, 2021) (to cap spending as a percentage of GDP); [Sustainable Budget Act of 2021](#), S. 1174, 117th Cong. (introduced and referred Apr. 15, 2021) (to establish a commission on fiscal responsibility); [CBO Show Your Work Act](#), S. 793, 117th Cong. (introduced and referred Mar. 17, 2021); [Railroad Employee Equity and Fairness Act](#) (REEF Act), S. 545, 117th Cong. (introduced and referred Mar. 2, 2021) (to exempt the Railroad Unemployment Insurance Account from sequestration); [Penny Plan to Enhance Infrastructure Act of 2021](#), S. 232, 117th Cong. (introduced and referred Feb. 4, 2021) (to establish a discretionary spending limit for infrastructure spending); [Fairness for Crime Victims Act of 2020](#), S. 4879, 116th Cong. (introduced and referred Oct. 26, 2020) (to curtail changes in mandatory programs affecting the Crime Victims Fund); [Railroad Employee Equity and Fairness Act](#) (REEF Act), S. 4860, 116th Cong. (introduced and referred Oct. 26, 2020); [Pandemic Pay-For Act of 2020](#), S. 4487, 116th Cong. (introduced and referred Aug. 6, 2020) (to extend limits on discretionary spending); [Fiscal State of the Nation Resolution](#), S. Con. Res. 35, 116th Cong. (submitted and referred Jan. 28, 2020); [Penny Plan to Enhance Infrastructure Act of 2019](#), S. 2792, 116th Cong. (introduced and referred Nov. 6, 2019); [Bipartisan Congressional Budget Reform Act](#), S. 2765, 116th Cong. (introduced and referred Oct. 31, 2019); [Full Utilization of the Harbor Maintenance Trust Fund Act](#), H.R. 2440, 116th Cong. (received in Senate and referred Oct. 29, 2019) (to adjust discretionary spending limits); [Infrastructure Spending Limit Act of 2019](#), S. 2576, 116th Cong. (introduced and referred Sept. 26, 2019); [America Grows Act of 2019](#), S. 2458, 116th Cong. (introduced and referred Sept. 10, 2019) (including cap adjustments); [Budgetary Accuracy in Scoring Interest Costs Act of 2019](#) (BASIC Act), S. 2435, 116th Cong. (introduced and referred Aug. 1, 2019) (to require CBO estimates to include debt servicing costs); [Make Rules Matter Act](#), S. Res. 287, 116th Cong. (submitted and referred July 29, 2019); [Maximizing America's Prosperity Act of 2019](#), S. 2245, 116th Cong. (introduced and referred July 24, 2019); [Dollar-for-Dollar Deficit Reduction Act](#), S. 2002, 116th Cong. (introduced and referred June 27, 2019) (to require that any debt limit increase be balanced by equal spending cuts); [Fix Funding First Act](#), S. 1807, 116th Cong. (introduced and referred June 12, 2019) (including joint, biennial budget resolution; no funding, no pay; and change in fiscal year); [Children's Budget Act](#), S. 1776, 116th Cong. (introduced and referred June 11, 2019); [Focus on Children Act](#), S. 1780, 116th Cong. (introduced and referred June 11, 2019); [Budgeting for Disasters Act](#), S. 1579, 116th Cong. (introduced and referred May 21, 2019); [A Bill to establish a scorekeeping rule to ensure that increases in guarantee fees of Fannie Mae and Freddie Mac shall not be used to offset provisions that increase the deficit](#), S. 1463, 116th Cong. (introduced and referred May 14, 2019); [A Bill to amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings](#), S. 1361, 116th Cong. (introduced and referred May 8, 2019); [American Cures Act](#), S. 1250, 116th Cong. (introduced and referred Apr. 30, 2019) (cap adjustment); [A Bill to clarify that funding for the standard setting body designated pursuant to section 19\(b\) of the Securities Act of 1933 is not subject to the sequester](#), S. 392, 116th Cong. (introduced and referred Feb. 7, 2019); [A Bill to clarify that funding for the Public Company Accounting Oversight Board is not subject to the sequester](#), S. 391, 116th Cong. (introduced and referred Feb. 7, 2019); [A Bill to clarify that funding for the Securities Investor Protection Corporation is not subject to the sequester](#), S. 390, 116th Cong. (introduced and referred Feb. 7, 2019); [CBO Show Your Work Act](#), S. 278, 116th Cong. (introduced and referred Jan. 30, 2019); [Biennial Budgeting and Appropriations Act](#), S. 284, 116th Cong. (introduced and referred Jan. 30, 2019); [Indian Programs Advance Appropriations Act](#), S. 229, 116th Cong. (introduced and referred Jan. 25, 2019); [Bipartisan Budget and Appropriations Reform Act of 2019](#), S. 63, 116th Cong. (introduced and referred Jan. 9, 2019); [Fairness for Crime Victims Act of 2018](#), S. 3746, 115th Cong. (introduced and referred Dec. 12, 2018); [Medicare and Medicaid Protection Act of 2018](#), S. 3330, 115th Cong. (introduced and referred Aug. 1, 2018) (point of order against privatizing Medicare, limiting Federal funding for Medicaid, or decreasing benefits in Medicare or Medicaid in reconciliation legislation); [Focus on Children Act](#), S. 3074, 115th Cong. (introduced and referred June 14, 2018); [Children's Budget Act](#), S. 3075, 115th Cong. (introduced and referred June 14, 2018); [A Bill to clarify that funding for the standard setting body designated pursuant to section 19\(b\) of the Securities Act of 1933 is not subject to the sequester](#), S. 2818, 115th Cong. (introduced and referred May 10, 2018); [A Bill to clarify that funding for the Public Company Accounting Oversight Board is not subject to the sequester](#), S. 2817, 115th Cong. (introduced and referred May 10, 2018); [A Bill to clarify that funding for the Securities Investor Protection Corporation is not subject to the sequester](#), S. 2816, 115th Cong. (introduced and referred May 10, 2018); [A Bill to exempt State and county payments under the Gulf of Mexico Energy Security Act of 2006 from sequestration](#), S. 2777, 115th Cong. (introduced and referred Apr. 26, 2018); [Intelligence Budget Transparency Act of 2018](#), S. 2631, 115th Cong. (introduced and referred Apr. 9, 2018) (to require that the President's budget submissions include the total dollar amount requested for intelligence-related activities); [Census Funding Cap Adjustment Act of 2018](#),

S. 2366, 115th Cong. (introduced and referred Feb. 5, 2018); [A Bill to amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings](#), S. 2164, 115th Cong. (introduced and referred Nov. 28, 2017); [Wildfire Disaster Funding Act](#), S. 1842, 115th Cong. (introduced and referred Sept. 19, 2017) (cap adjustments); [CBO Show Your Work Act](#), S. 1746, 115th Cong. (introduced and referred Aug. 3, 2017); [No Hearing, No Vote Act of 2017](#), S. 1376, 115th Cong. (introduced and referred June 15, 2017); [Budgetary Accuracy in Scoring Interest Costs Act of 2017](#) (BASIC Act), S. 932, 115th Cong. (introduced and referred Apr. 25, 2017); [Dollar-for-Dollar Deficit Reduction Act](#), S. 716, 115th Cong. (introduced and referred Mar. 23, 2017); [American Innovation Act](#), S. 641, 115th Cong. (introduced and referred Mar. 15, 2017) (cap adjustment); [American Cures Act](#), S. 640, 115th Cong. (introduced and referred Mar. 15, 2017); [Biennial Budgeting and Appropriations Act](#), S. 306, 115th Cong. (introduced and referred Feb. 6, 2017); [Pension and Budget Integrity Act of 2017](#), S. 270, 115th Cong. (introduced and referred Feb. 1, 2017) (to prohibit the use of premiums paid to the Pension Benefit Guaranty Corporation as an offset for other Federal spending); [Budgetary Accuracy in Scoring Interest Costs Act of 2016](#), S. 3539, 114th Cong. (introduced and referred Dec. 9, 2016); [Pension and Budget Integrity Act of 2016](#), S. 3240, 114th Cong. (introduced and referred July 14, 2016); [One Percent Spending Reduction Act of 2016](#), S. 3140, 114th Cong. (introduced and referred July 7, 2016) (outlay caps); [A Bill to amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings](#), S. 3126, 114th Cong. (introduced and referred July 6, 2016); [Accurate Accounting Act of 2016](#), S. 2513, 114th Cong. (introduced and referred Feb. 8, 2016) (to amend the Budget Act to include the outlays and revenues for Social Security in a budget resolution); [A Bill to exempt the Department of Defense and other national security agencies from sequestration](#), S. 2303, 114th Cong. (introduced and referred Nov. 18, 2015); [SCORE Act of 2015](#), S. 2294, 114th Cong. (introduced and referred Nov. 17, 2015) (to create a division within CBO for regulatory analysis of economically significant rules); [Long-Term Studies of Comprehensive Outcomes and Returns for the Economy Act](#) (Long-Term SCORE Act), S. 2260, 114th Cong. (introduced and referred Nov. 9, 2015); [An Act to amend section 1105\(a\) of title 31, United States Code, to require that annual budget submissions of the President to Congress provide an estimate of the cost per taxpayer of the deficit, and for other purposes](#), H.R. 1315, 114th Cong. (received and referred Oct. 21, 2015); [Fairness for Crime Victims Act of 2015](#), S. 1495, 114th Cong. (introduced and referred June 3, 2015); [A Bill to exempt the Indian Health Service, the Bureau of Indian Affairs, and certain other programs for Indians from sequestration](#), S. 1497, 114th Cong. (introduced and referred June 3, 2015); [Intelligence Budget Transparency Act of 2015](#), S. 1307, 114th Cong. (introduced and referred May 12, 2015); [The Honest Scoring Act of 2015](#), S. 749, 114th Cong. (introduced and referred Mar. 17, 2015) (to require dynamic scoring of major legislation); [Expedited Consideration of Cuts, Consolidations, and Savings Act of 2015](#), S. 759, 114th Cong. (introduced and referred Mar. 17, 2015) (procedures for the expedited consideration of recommendations in the Cuts, Consolidations, and Savings report by OMB); [A Bill to establish a scorekeeping rule to ensure that increases in guarantee fees of Fannie Mae and Freddie Mac shall not be used to offset provisions that increase the deficit](#), S. 752, 114th Cong. (introduced and referred Mar. 17, 2015); [A Bill to appropriately determine the budgetary effects of energy savings performance contracts and utility energy service contracts](#), S. 765, 114th Cong. (introduced and referred Mar. 17, 2015); [American Innovation Act](#), S. 747, 114th Cong. (introduced and referred Mar. 16, 2015); [A Bill to clarify that funding for the standard setting body designated pursuant to section 19\(b\) of the Securities Act of 1933 is not subject to the sequester](#), S. 550, 114th Cong. (introduced and referred Feb. 24, 2015); [A Bill to clarify that funding for the Securities Investor Protection Corporation is not subject to the sequester](#), S. 549, 114th Cong. (introduced and referred Feb. 24, 2015); [A Bill to clarify that funding for the Public Company Accounting Oversight Board is not subject to the sequester](#), S. 548, 114th Cong. (introduced and referred Feb. 24, 2015); [Sequestration Relief Act of 2015](#), S. 515, 114th Cong. (introduced and referred Feb. 12, 2015); [Balanced Budget Accountability Act](#), S. 493, 114th Cong. (introduced and referred Feb. 12, 2015) (to reduce a portion of the pay of Members of Congress for the failure to adopt a concurrent resolution on the budget which does not provide for a balanced budget); [Budget and Accounting Transparency Act of 2015](#), S. 399, 114th Cong. (introduced and referred Feb. 5, 2015) (fair value credit accounting); [Biennial Appropriations Act](#), S. 385, 114th Cong. (introduced and referred Feb. 5, 2015); [Baseline Reform Act of 2015](#), S. 382, 114th Cong. (introduced and referred Feb. 5, 2015) (to eliminate inflation increases for discretionary programs in the baseline); [Dollar-for-Dollar Deficit Reduction Act](#), S. 333, 114th Cong. (introduced and referred Feb. 2, 2015); [Accelerating Biomedical Research Act](#), S. 318, 114th Cong. (introduced and referred Jan. 29, 2015) (cap adjustment); [American Cures Act](#), S. 289, 114th Cong. (introduced and referred Jan. 28, 2015); [Wildfire Disaster Funding Act of 2015](#), S. 235, 114th Cong. (introduced and referred Jan. 22, 2015); [Accurate Budgeting Act](#), S. 200, 114th Cong. (introduced and referred Jan. 21, 2015) (to provide for macroeconomic analysis of major revenue legislation); [Biennial Budgeting and Appropriations Act](#), S. 150,

114th Cong. (introduced and referred Jan. 13, 2015); [Social Security Lock-Box Act of 2015](#), S. 20, 114th Cong. (introduced and referred Jan. 6, 2015) (point of order on budgets); [Carbon Pollution Transparency Act of 2014](#), S. 2905, 113th Cong. (introduced and referred Sept. 18, 2014) (to require CBO to calculate a carbon score for each bill); [Resolution expressing the sense of the Senate that performance-based contracts for energy savings are a budget-neutral means to support the Federal Government in reducing its energy consumption without increasing spending while simultaneously supporting](#), S. Res. 562, 113th Cong. (submitted and referred Sept. 18, 2014); [Accelerating Biomedical Research Act](#), S. 2658, 113th Cong. (introduced and referred July 24, 2014); [One Percent Spending Reduction Act of 2014](#), S. 2495, 113th Cong. (introduced and referred June 19, 2014); [Truth in Obamacare Accounting Act](#), S. 2446, 113th Cong. (introduced and referred June 5, 2014) (CBO reporting); [Budget and Accounting Transparency Act of 2014](#), S. 2420, 113th Cong. (introduced and referred June 3, 2014); [Accurate Budgeting Act](#), S. 2371, 113th Cong. (introduced and referred May 21, 2014); [Budget and Accounting Transparency Act of 2014](#), H.R. 1872, 113th Cong. (received and referred Apr. 8, 2014); [Pro-Growth Budgeting Act of 2014](#), H.R. 1874, 113th Cong. (received and referred Apr. 7, 2014); [Medicare Protection Act](#), S. 2087, 113th Cong. (introduced and referred Mar. 6, 2014) (to make extraneous in reconciliation any provision that reduces Medicare benefits); [Wildfire Disaster Funding Act of 2013](#), 113th Cong. (introduced and referred Dec. 19, 2013); [A Bill to mitigate the reduction in the readiness of our Armed Forces by reducing the defense sequestration cuts for fiscal years 2014 and 2015 but implementing the cuts, in their entirety, over the duration of sequestration](#), S. 1841, 113th Cong. (introduced and referred Dec. 17, 2013); [Jobs Score Act of 2013](#), S. 1835, 113th Cong. (introduced and referred Dec. 17, 2013); [A Bill to clarify that funding for the standard setting body designated pursuant to section 19\(b\) of the Securities Act of 1933, the Securities Investor Protection Corporation, and the Public Company Accounting Oversight Board is not subject to the sequester](#), S. 1780, 113th Cong. (introduced and referred Dec. 9, 2013); [Return Our State Shares Act](#), S. 1676, 113th Cong. (introduced and referred Nov. 7, 2013) (to exempt certain payments to States from sequestration); [A Bill to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to provide that military technicians \(dual status\) shall be included in military personnel accounts for purposes of any order issued under that Act](#), S. 1438, 113th Cong. (introduced and referred Aug. 1, 2013); [Strengthening Congressional Oversight of Regulatory actions for Efficiency](#), S. 1472, 113th Cong. (introduced and referred Aug. 1, 2013) (to create a division within CBO to perform regulatory analysis); [A Bill to amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings](#), S. 1422, 113th Cong. (introduced and referred Aug. 1, 2013); [One Percent Spending Reduction Act of 2013](#), S. 1436, 113th Cong. (introduced and referred Aug. 1, 2013); [FDA User Fee Protection Act](#), S. 1413, 113th Cong. (introduced and referred July 31, 2013) (to exempt from sequestration certain FDA fees); [Intergenerational Financial Obligations Reform Act \(INFORM Act\)](#), S. 1351, 113th Cong. (introduced and referred July 24, 2013); [A Bill to amend title 31, United States Code, to provide that the President's annual budget submission to Congress list the current fiscal year spending level for each proposed program and a separate amount for any proposed spending increases, and for other purposes](#), S. 1321, 113th Cong. (introduced and referred July 18, 2013); [A Bill to amend title 31, United States Code, to provide that the President's annual budget submission to Congress list the current fiscal year spending level for each proposed program and a separate amount for any proposed spending increases, and for other purposes](#), S. 1314, 113th Cong. (introduced and referred July 17, 2013); [A Bill to permit flexibility in the application of the budget sequester by Federal agencies](#), S. 1017, 113th Cong. (introduced and referred May 22, 2013); [Biennial Appropriations Act](#), S. 625, 113th Cong. (introduced and referred Mar. 20, 2013); [A Bill to amend section 1105\(a\) of title 31, United States Code, to require that annual budget submissions of the President to Congress provide an estimate of the cost per taxpayer of the deficit, and for other purposes](#), S. 581, 113th Cong. (introduced and referred Mar. 14, 2013); [One Percent Spending Reduction Act of 2013](#), S. 547, 113th Cong. (introduced and referred Mar. 13, 2013); [Biennial Budgeting and Appropriations Act](#), S. 554, 113th Cong. (introduced and referred Mar. 13, 2013); [An Act to amend section 1105\(a\) of title 31, United States Code, to require that annual budget submissions of the President to Congress provide an estimate of the cost per taxpayer of the deficit, and for other purposes](#), H.R. 668, 113th Cong. (received and referred Mar. 7, 2013); [A Bill to permit flexibility in the application of the budget sequester by Federal agencies](#), S. 465, 113th Cong. (introduced and referred Mar. 5, 2013); [Sequester for Congressional Pay and Accountability Act](#), S. 436, 113th Cong. (introduced and referred Mar. 4, 2013); [Decrease Spending Now Act](#), S. 379, 113th Cong. (introduced and referred Feb. 26, 2013) (directing OMB to rescind \$45 billion from unobligated balances of discretionary appropriations); [Never Forget 9/11 Heroes Act](#), S. 377, 113th Cong. (introduced and referred Feb. 25, 2013) (to exempt the 9/11 Health and Compensation Programs from PAYGO); [Budget Reform Act of 2013](#), S. 280, 113th Cong. (introduced and referred Feb. 12, 2013) (joint, biennial budget); [Require Presidential Leadership](#)



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and [No Deficit Act](#) (Require a PLAN Act), H.R. 444, 113th Cong. (received and referred Feb. 7, 2013) (to require the President to submit a supplemental budget that identifies a fiscal year in which balance is achieved); [Down Payment to Protect National Security Act of 2013](#), S. 263, 113th Cong. (introduced and referred Feb. 7, 2013) (to modify discretionary spending limits to take into account savings from the reduction in the number of Federal employees); [Baseline Reform Act of 2013](#), S. 185, 113th Cong. (introduced and referred Jan. 30, 2013); [Pro-Growth Budgeting Act of 2013](#), S. 184, 113th Cong. (introduced and referred Jan. 30, 2013); [Social Security Lock-Box Act of 2013](#), S. 110, 113th Cong. (introduced and referred Jan. 23, 2013); [Dollar-for-Dollar Deficit Reduction Act](#), S. 43, 113th Cong. (introduced and referred Jan. 22, 2013); [National Security and Job Protection Act](#), H.R. 6365, 112th Cong. (received and referred Sept. 13, 2012) (to replace the sequester under the Budget Control Act of 2011); [Cut, Cap, and Balance Act of 2012](#), S. 3482, 112th Cong. (introduced and referred Aug. 2, 2012); [Sequestration Transparency Act of 2012](#), S. 3228, 112th Cong. (introduced and referred May 23, 2012) (to require the President to provide a report detailing the sequester required by the Budget Control Act of 2011); [Protecting the Health Care of Veterans Act of 2012](#), S. 2128, 112th Cong. (introduced and referred Feb. 17, 2012) (to exempt veterans programs from sequestration); [Expedited Legislative Line-Item Veto and Rescissions Act of 2012](#), S. 2086, 112th Cong. (introduced and referred Feb. 9, 2012); [Budget and Accounting Transparency Act of 2012](#), H.R. 3581, 112th Cong. (received and referred Feb. 9, 2012); [Expedited Legislative Line-Item Veto and Rescissions Act of 2012](#), H.R. 3521, 112th Cong. (received and referred Feb. 9, 2012); [Pro-Growth Budgeting Act of 2012](#), H.R. 3582, 112th Cong. (received and referred Feb. 6, 2012); [Baseline Reform Act of 2012](#), H.R. 3578, 112th Cong. (received and referred Feb. 6, 2012); [Down Payment to Protect National Security Act of 2012](#), S. 2065, 112th Cong. (introduced and referred Feb. 2, 2012); [Pro-Growth Budgeting Act of 2011](#), S. 1996, 112th Cong. (introduced and referred Dec. 15, 2011); [Baseline Elimination Act of 2011](#), S. 1896, 112th Cong. (introduced and referred Nov. 17, 2011); [Budget Reform Act of 2011](#), S. 1679, 112th Cong. (introduced and referred Oct. 11, 2011); [A Bill to assure that Congress acts on the budget resolution](#), S. 1681, 112th Cong. (introduced and referred Oct. 11, 2011) (point of order against legislation before budget); [Honest Budget Act](#), S. 1651, 112th Cong. (introduced and referred Oct. 4, 2011) (prohibiting appropriations without a budget, emergency designations, changes in mandatory programs in appropriation bills, step increases for Federal employee compensation, advance appropriations, and timing shifts); [Safeguarding Disaster Funding Act of 2011](#), S. 1563, 112th Cong. (introduced and referred Sept. 15, 2011) (to require the President's budget to include a request for disaster funding); [Job Creation and Economic Growth Act](#), S. 1533, 112th Cong. (introduced and referred Sept. 8, 2011) (to require the Joint Select Committee on Deficit Reduction to propose legislation to restore full employment); [Job Creation and Economic Growth Act](#), S. 1532, 112th Cong. (introduced and referred Sept. 8, 2011); [Jobs Score Act of 2011](#), S. 1518, 112th Cong. (introduced and referred Sept. 7, 2011); [Children's Budget Act](#), S. 1396, 112th Cong. (introduced and referred July 21, 2011); [One Percent Spending Reduction Act of 2011](#), S. 1316, 112th Cong. (introduced and referred June 30, 2011); [Spending Cap Act of 2011](#), S. 1290, 112th Cong. (introduced and referred June 28, 2011); [Biennial Appropriations Act](#), S. 1274, 112th Cong. (introduced and referred June 23, 2011); [A Bill to provide for the inclusion of independent regulatory agencies in the application of the Unfunded Mandates Reform Act of 1995 \(2 U.S.C. 1501 et seq.\)](#), S. 817, 112th Cong. (introduced and referred Apr. 14, 2011); [Pay for War Resolution](#), S. Res. 133, 112th Cong. (submitted and referred Apr. 6, 2011); [Decrease Spending Now Act](#), S. 726, 112th Cong. (introduced and referred Apr. 5, 2011); [Deficit Reduction and Budget Reform Act of 2011](#), S. 439, 112th Cong. (introduced and referred Mar. 2, 2011) (joint, biennial budget, discretionary spending limits, legislative line-item veto, health care budgeting limits); [Honest Expenditure Limitation Program Act of 2011 \(HELP Act\)](#), S. 360, 112th Cong. (introduced and referred Feb. 16, 2011) (discretionary spending limits); [Resolution expressing the sense of the Senate that Congress should reduce spending by the amount resulting from the recently announced earmark moratorium](#), S. Res. 41, 112th Cong. (submitted and referred Feb. 3, 2011); [A Bill to require the Congressional Budget Office and the Joint Committee on Taxation to use dynamic economic modeling in addition to static economic modeling in the preparation of budgetary estimates of proposed changes in Federal revenue law](#), S. 255, 112th Cong. (introduced and referred Feb. 2, 2011); [Commitment to American Prosperity Act of 2011 \(CAP Act of 2011\)](#), S. 245, 112th Cong. (introduced and referred Feb. 1, 2011) (GDP outlay limit); [Biennial Budgeting and Appropriations Act](#), S. 211, 112th Cong. (introduced and referred Jan. 27, 2011); [Social Security Lock-Box Act of 2011](#), S. 123, 112th Cong. (introduced and referred Jan. 25, 2011); [Reduce Unnecessary Spending Act of 2011](#), S. 102, 112th Cong. (introduced and referred Jan. 25, 2011) (optional fast-track procedure for rescission requests); [Deficit Reduction and Budget Reform Act of 2010](#), S. 3779, 111th Cong. (introduced and referred Sept. 14, 2010); [Deficit Reduction and Budget Reform Act of 2010](#), S. 3652, 111th Cong. (introduced and referred July 27, 2010); [Reduce Unnecessary Spending Act of 2010](#), S. 3474, 111th Cong. (introduced and

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referred June 9, 2010); [Veto Wasteful Spending and Protect Taxpayers Act of 2010](#), S. 3423, 111th Cong. (introduced and referred May 25, 2010) (expedited consideration of proposals for cancellation of certain budget items); [Concurrent Resolution establishing an expedited procedure for consideration of a bill returning spending levels to 2007 levels](#), S. Con. Res. 57, 111th Cong. (submitted and referred Apr. 14, 2010); [Children's Budget Act](#), S. 3108, 111th Cong. (introduced and referred Mar. 11, 2010); [Economic Disaster Prevention Act of 2010](#), S. 3096, 111th Cong. (introduced and referred Mar. 10, 2010) (discretionary spending limits); [Honest Expenditure Limitation Program Act of 2010](#) (HELP Act), S. 3095, 111th Cong. (introduced and referred Mar. 9, 2010); [Fiscal Freeze Act of 2010](#), S. 3026, 111th Cong. (introduced and referred Feb. 23, 2010) (line-item veto, earmark prohibition, discretionary spending limits, joint budget resolution); [Commission for Fiscal Sustainability Act of 2010](#), S. 2965, 111th Cong. (introduced and referred Jan. 28, 2010); [Common Sense Budgeting Act](#), S. 2911, 111th Cong. (introduced and referred Dec. 18, 2009) (discretionary spending caps and strengthened Pay-As-You-Go procedures); [Bipartisan Task Force for Responsible Fiscal Action Act of 2009](#), S. 2853, 111th Cong. (introduced and referred Dec. 9, 2009); [Statutory Pay-As-You-Go Act of 2009](#), S. 1600, 111th Cong. (introduced and referred Aug. 6, 2009); [Deficit Reduction Act of 2009](#), S. 1613, 111th Cong. (introduced and referred Aug. 6, 2009) (discretionary spending and deficit limits); [Statutory Pay-As-You-Go Act of 2009](#), H.R. 2920, 111th Cong. (received and referred July 23, 2009); [Short Term Accelerated Retirement of Inefficient Vehicles Act of 2009](#), S. 1200, 111th Cong. (introduced and referred June 8, 2009) (expedited consideration of rescissions); [Securing America's Future Economy Commission Act](#) (SAFE Commission Act), S. 1056, 111th Cong. (introduced and referred May 14, 2009); [Budget Enforcement Legislative Tool Act of 2009](#), S. 907, 111th Cong. (introduced and referred Apr. 28, 2009) (expedited rescission); [Limitation on Government Spending Act of 2009](#), S. 897, 111th Cong. (introduced and referred Apr. 24, 2009) (to limit Federal spending to 20 percent of GDP); [Second Look at Wasteful Spending Act of 2009](#), S. 640, 111th Cong. (introduced and referred Mar. 19, 2009) (enhanced rescission); [Congressional Accountability and Line-Item Veto Act of 2009](#), S. 524, 111th Cong. (introduced and referred Mar. 4, 2009); [Resolution to limit consideration of amendments under a budget resolution](#), S. Res. 29, 111th Cong. (submitted and referred Feb. 5, 2009); [Biennial Budgeting and Appropriations Act](#), S. 169, 111th Cong. (introduced and referred Jan. 8, 2009); [Social Security Lock-Box Act of 2009](#), S. 86, 111th Cong. (introduced and referred Jan. 6, 2009); [A Bill to require the Congressional Budget Office and the Joint Committee on Taxation to use dynamic economic modeling in addition to static economic modeling in the preparation of budgetary estimates of proposed changes in Federal revenue law](#), S. 154, 111th Cong. (introduced and referred Jan. 6, 2009); [Children's Budget Act](#), S. 3277, 110th Cong. (introduced and referred July 16, 2008); [Budget Enforcement Legislative Tool Act of 2008](#), S. 3006, 110th Cong. (introduced and referred May 12, 2008); [Resolution to limit consideration of amendments under a budget resolution](#), S. Res. 493, 110th Cong. (submitted and referred Apr. 1, 2008); [Biennial Budgeting and Appropriations Act](#), S. 2627, 110th Cong. (introduced and referred Feb. 13, 2008); [Bipartisan Task Force for Responsible Fiscal Action Act of 2007](#), S. 2063, 110th Cong. (introduced and referred Sept. 18, 2007); [Stop Over Spending Act of 2007](#), S. 15, 110th Cong. (introduced and referred May 22, 2007) (enhanced rescission, discretionary spending limits, maximum deficit amount, biennial budget and appropriations, commissions); [Securing America's Future Economy Budget Process Reform Act](#) (SAFE Budget Process Reform Act), S. 1279, 110th Cong. (introduced and referred May 3, 2007) (discretionary spending caps, Pay-as-You-Go, biennial budgeting and appropriations, commission on Federal budget concepts, reserve fund for emergencies); [Congressional Accountability and Line-Item Veto Act of 2007](#), S. 1186, 110th Cong. (introduced and referred Apr. 23, 2007); [Securing America's Future Economy Commission Act](#) (SAFE Commission Act), S. 304, 110th Cong. (introduced and referred Jan. 16, 2007); [A Bill to require the Congressional Budget Office and the Joint Committee on Taxation to use dynamic economic modeling in addition to static economic modeling in the preparation of budgetary estimates of proposed changes in Federal revenue law](#), S. 91, 110th Cong. (introduced and referred Jan. 4, 2007); [Restoring Fiscal Discipline Act of 2007](#), S. 10, 110th Cong. (introduced and referred Jan. 4, 2007) (pay-as-you-go point of order, reconciliation for deficit reduction); [Fiscal Responsibility Act of 2006](#), S. 4062, 109th Cong. (introduced and referred Nov. 16, 2006) (non-defense discretionary spending point of order); [Budget Enforcement Legislative Tools Act of 2006](#), S. 4036, 109th Cong. (introduced and referred Sept. 29, 2006); [Stop Over Spending Act of 2006](#), S. 3521, 109th Cong. (introduced and referred June 15, 2006); [Securing America's Future Economy Commission Act](#) (SAFE Commission Act), S. 3491, 109th Cong. (introduced and referred June 12, 2006); [Legislative Line Item Veto Act of 2006](#), S. 2381, 109th Cong. (introduced and referred Mar. 7, 2006); [Expedited Budget Item Veto Review Act of 2006](#), S. 2372, 109th Cong. (introduced and referred Mar. 6, 2006); [Biennial Budgeting and Appropriations Act](#), S. 877, 109th Cong. (introduced and referred Apr. 21, 2005); [Truth in Budgeting and Social Security Protection Act of 2005](#), S. 568, 109th Cong. (introduced and referred Mar. 8, 2005) (discretionary

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Pursuant to this authority, the Presiding Office regularly refers to the Budget Committee legislation dealing with (among other things):

- sequestration,<sup>1226</sup>

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spending caps, pay-as-you-go, biennial budgeting and appropriations, commission on Federal budget concepts); [A Bill to require the Congressional Budget Office and the Joint Committee on Taxation to use dynamic economic modeling in addition to static economic modeling in the preparation of budgetary estimates of proposed changes in Federal revenue law](#), S. 287, 109th Cong. (introduced and referred Feb. 3, 2005); [Social Security Lock-Box Act of 2005](#), S. 292, 109th Cong. (introduced and referred Feb. 3, 2005); [Emergency Reserve Fund Act of 2005](#), S. 24, 109th Cong. (introduced and referred Jan. 24, 2005); [Fiscal Responsibility for a Sound Future Act](#), S. 19, 109th Cong. (introduced and referred Jan. 24, 2005) (discretionary spending caps, pay-as-you-go, reconciliation for deficit reduction).

<sup>1226</sup> See, e.g., [Railroad Employee Equity and Fairness Act](#) (REEF Act), S. 545, 117th Cong. (introduced and referred Mar. 2, 2021); [Railroad Employee Equity and Fairness Act](#) (REEF Act), S. 4860, 116th Cong. (introduced and referred Oct. 26, 2020); [A Bill to clarify that funding for the standard setting body designated pursuant to section 19\(b\) of the Securities Act of 1933 is not subject to the sequester](#), S. 392, 116th Cong. (introduced and referred Feb. 7, 2019); [A Bill to clarify that funding for the Public Company Accounting Oversight Board is not subject to the sequester](#), S. 391, 116th Cong. (introduced and referred Feb. 7, 2019); [A Bill to clarify that funding for the Securities Investor Protection Corporation is not subject to the sequester](#), S. 390, 116th Cong. (introduced and referred Feb. 7, 2019); [A Bill to clarify that funding for the standard setting body designated pursuant to section 19\(b\) of the Securities Act of 1933 is not subject to the sequester](#), S. 2818, 115th Cong. (introduced and referred May 10, 2018); [A Bill to clarify that funding for the Public Company Accounting Oversight Board is not subject to the sequester](#), S. 2817, 115th Cong. (introduced and referred May 10, 2018); [A Bill to clarify that funding for the Securities Investor Protection Corporation is not subject to the sequester](#), S. 2816, 115th Cong. (introduced and referred May 10, 2018); [A Bill to exempt State and county payments under the Gulf of Mexico Energy Security Act of 2006 from sequestration](#), S. 2777, 115th Cong. (introduced and referred Apr. 26, 2018); [A Bill to exempt the Department of Defense and other national security agencies from sequestration](#), S. 2303, 114th Cong. (introduced and referred Nov. 18, 2015); [A Bill to exempt the Indian Health Service, the Bureau of Indian Affairs, and certain other programs for Indians from sequestration](#), S. 1497, 114th Cong. (introduced and referred June 3, 2015); [A Bill to clarify that funding for the standard setting body designated pursuant to section 19\(b\) of the Securities Act of 1933 is not subject to the sequester](#), S. 550, 114th Cong. (introduced and referred Feb. 24, 2015); [A Bill to clarify that funding for the Securities Investor Protection Corporation is not subject to the sequester](#), S. 549, 114th Cong. (introduced and referred Feb. 24, 2015); [A Bill to clarify that funding for the Public Company Accounting Oversight Board is not subject to the sequester](#), S. 548, 114th Cong. (introduced and referred Feb. 24, 2015); [Sequestration Relief Act of 2015](#), S. 515, 114th Cong. (introduced and referred Feb. 12, 2015); [A Bill to mitigate the reduction in the readiness of our Armed Forces by reducing the defense sequestration cuts for fiscal years 2014 and 2015 but implementing the cuts, in their entirety, over the duration of sequestration](#), S. 1841, 113th Cong. (introduced and referred Dec. 17, 2013); [Jobs Score Act of 2013](#), S. 1835, 113th Cong. (introduced and referred Dec. 17, 2013); [A Bill to clarify that funding for the standard setting body designated pursuant to section 19\(b\) of the Securities Act of 1933, the Securities Investor Protection Corporation, and the Public Company Accounting Oversight Board is not subject to the sequester](#), S. 1780, 113th Cong. (introduced and referred Dec. 9, 2013); [Return Our State Shares Act](#), S. 1676, 113th Cong. (introduced and referred Nov. 7, 2013) (to exempt certain payments to States from sequestration); [A Bill to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to provide that military technicians \(dual status\) shall be included in military personnel accounts for purposes of any order issued under that Act](#), S. 1438, 113th Cong. (introduced and referred Aug. 1, 2013); [FDA User Fee Protection Act](#), S. 1413, 113th Cong. (introduced and referred July 31, 2013); [A Bill to permit flexibility in the application of the budget sequester by Federal agencies](#), S. 1017, 113th Cong. (introduced and referred May 22, 2013); [A Bill to permit flexibility in the application of the budget sequester by Federal agencies](#), S. 465, 113th Cong. (introduced and referred Mar. 5, 2013); [Sequester for Congressional Pay and Accountability Act](#), S. 436, 113th Cong. (introduced and referred Mar. 4, 2013); [National Security and Job Protection Act](#), H.R. 6365, 112th Cong. (received and referred Sept. 13, 2012); [Sequestration Transparency Act of 2012](#), S. 3228, 112th Cong. (introduced and referred May 23, 2012);

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- the President's budget,<sup>1227</sup>
  - biennial budgeting,<sup>1228</sup>
  - budget commissions,<sup>1229</sup>
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[Protecting the Health Care of Veterans Act of 2012](#), S. 2128, 112th Cong. (introduced and referred Feb. 17, 2012).

<sup>1227</sup> See, e.g., [Safeguarding Disaster Funding Act of 2011](#), S. 1563, 112th Cong. (introduced and referred Sept. 15, 2011); [Children's Budget Act](#), S. 2127, 117th Cong. (introduced and referred June 17, 2021); [Children's Budget Act](#), S. 1776, 116th Cong. (introduced and referred June 11, 2019); [Children's Budget Act](#), S. 3075, 115th Cong. (introduced and referred June 14, 2018); [Intelligence Budget Transparency Act of 2018](#), S. 2631, 115th Cong. (introduced and referred Apr. 9, 2018); [An Act to amend section 1105\(a\) of title 31, United States Code, to require that annual budget submissions of the President to Congress provide an estimate of the cost per taxpayer of the deficit, and for other purposes](#), H.R. 1315, 114th Cong. (received and referred Oct. 21, 2015); [Intelligence Budget Transparency Act of 2015](#), S. 1307, 114th Cong. (introduced and referred May 12, 2015); [A Bill to amend title 31, United States Code, to provide that the President's annual budget submission to Congress list the current fiscal year spending level for each proposed program and a separate amount for any proposed spending increases, and for other purposes](#), S. 1321, 113th Cong. (introduced and referred July 18, 2013); [A Bill to amend title 31, United States Code, to provide that the President's annual budget submission to Congress list the current fiscal year spending level for each proposed program and a separate amount for any proposed spending increases, and for other purposes](#), S. 1314, 113th Cong. (introduced and referred July 17, 2013); [A Bill to amend section 1105\(a\) of title 31, United States Code, to require that annual budget submissions of the President to Congress provide an estimate of the cost per taxpayer of the deficit, and for other purposes](#), S. 581, 113th Cong. (introduced and referred Mar. 14, 2013); [An Act to amend section 1105\(a\) of title 31, United States Code, to require that annual budget submissions of the President to Congress provide an estimate of the cost per taxpayer of the deficit, and for other purposes](#), H.R. 668, 113th Cong. (received and referred Mar. 7, 2013); [Require Presidential Leadership and No Deficit Act](#) (Require a PLAN Act), H.R. 444, 113th Cong. (received and referred Feb. 7, 2013); [Children's Budget Act](#), S. 1396, 112th Cong. (introduced and referred July 21, 2011); [Children's Budget Act](#), S. 3108, 111th Cong. (introduced and referred Mar. 11, 2010); [Children's Budget Act](#), S. 3277, 110th Cong. (introduced and referred July 16, 2008).

<sup>1228</sup> See, e.g., [Fix Funding First Act](#), S. 1807, 116th Cong. (introduced and referred June 12, 2019); [Biennial Budgeting and Appropriations Act](#), S. 284, 116th Cong. (introduced and referred Jan. 30, 2019); [Biennial Budgeting and Appropriations Act](#), S. 306, 115th Cong. (introduced and referred Feb. 6, 2017); [Biennial Appropriations Act](#), S. 385, 114th Cong. (introduced and referred Feb. 5, 2015); [Biennial Budgeting and Appropriations Act](#), S. 150, 114th Cong. (introduced and referred Jan. 13, 2015); [Biennial Appropriations Act](#), S. 625, 113th Cong. (introduced and referred Mar. 20, 2013); [Biennial Budgeting and Appropriations Act](#), S. 554, 113th Cong. (introduced and referred Mar. 13, 2013); [Budget Reform Act of 2013](#), S. 280, 113th Cong. (introduced and referred Feb. 12, 2013); [Biennial Appropriations Act](#), S. 1274, 112th Cong. (introduced and referred June 23, 2011); [Biennial Budgeting and Appropriations Act](#), S. 211, 112th Cong. (introduced and referred Jan. 27, 2011); [Biennial Budgeting and Appropriations Act](#), S. 169, 111th Cong. (introduced and referred Jan. 8, 2009); [Biennial Budgeting and Appropriations Act](#), S. 2627, 110th Cong. (introduced and referred Feb. 13, 2008); [Biennial Budgeting and Appropriations Act](#), S. 877, 109th Cong. (introduced and referred Apr. 21, 2005).

<sup>1229</sup> See, e.g., [Sustainable Budget Act of 2021](#), S. 1174, 117th Cong. (introduced and referred Apr. 15, 2021); [Commission for Fiscal Sustainability Act of 2010](#), S. 2965, 111th Cong. (introduced and referred Jan. 28, 2010); [Securing America's Future Economy Commission Act](#) (SAFE Commission Act), S. 1056, 111th Cong. (introduced and referred May 14, 2009); [Securing America's Future Economy Commission Act](#) (SAFE Commission Act), S. 304, 110th Cong. (introduced and referred Jan. 16, 2007); [Securing America's Future Economy Commission Act](#) (SAFE Commission Act), S. 3491, 109th Cong. (introduced and referred June 12, 2006).



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- line-item veto and enhanced rescission authority,<sup>1230</sup>
  - scorekeeping requirements,<sup>1231</sup> and
  - credit reform.<sup>1232</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 provides a process to suspend provisions of that Act and certain enforcement provisions of the Congressional Budget Act whenever the Congressional Budget Office reports low economic growth.<sup>1233</sup> [Section 258\(a\)\(3\) of the Balanced Budget and Emergency Deficit Control Act of 1985](#) provides for the referral to the Budget Committee of resolutions providing

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<sup>1230</sup> See, e.g., [Expedited Legislative Line-Item Veto and Rescissions Act of 2012](#), S. 2086, 112th Cong. (introduced and referred Feb. 9, 2012); [Expedited Legislative Line-Item Veto and Rescissions Act of 2012](#), H.R. 3521, 112th Cong. (received and referred Feb. 9, 2012); [Veto Wasteful Spending and Protect Taxpayers Act of 2010](#), S. 3423, 111th Cong. (introduced and referred May 25, 2010); [Short Term Accelerated Retirement of Inefficient Vehicles Act of 2009](#), S. 1200, 111th Cong. (introduced and referred June 8, 2009) (expedited consideration of rescissions); [Budget Enforcement Legislative Tool Act of 2009](#), S. 907, 111th Cong. (introduced and referred Apr. 28, 2009); [Congressional Accountability and Line-Item Veto Act of 2009](#), S. 524, 111th Cong. (introduced and referred Mar. 4, 2009); [Budget Enforcement Legislative Tool Act of 2008](#), S. 3006, 110th Cong. (introduced and referred May 12, 2008); [Congressional Accountability and Line-Item Veto Act of 2007](#), S. 1186, 110th Cong. (introduced and referred Apr. 23, 2007); [Budget Enforcement Legislative Tools Act of 2006](#), S. 4036, 109th Cong. (introduced and referred Sept. 29, 2006); [Legislative Line Item Veto Act of 2006](#), S. 2381, 109th Cong. (introduced and referred Mar. 7, 2006); [Expedited Budget Item Veto Review Act of 2006](#), S. 2372, 109th Cong. (introduced and referred Mar. 6, 2006).

<sup>1231</sup> See, e.g., [Fiscal Analysis by Income and Race Scoring Act](#) (FAIR Scoring Act), S. 2723, 117th Cong. (introduced and referred Sept. 13, 2021); [A Bill to amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings](#), S. 1685, 117th Cong. (introduced and referred May 18, 2021); [Budgetary Accuracy in Scoring Interest Costs Act of 2019](#) (BASIC Act), S. 2435, 116th Cong. (introduced and referred Aug. 1, 2019); [A Bill to amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings](#), S. 1361, 116th Cong. (introduced and referred May 8, 2019); [A Bill to amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings](#), S. 2164, 115th Cong. (introduced and referred Nov. 28, 2017); [Budgetary Accuracy in Scoring Interest Costs Act of 2017](#) (BASIC Act), S. 932, 115th Cong. (introduced and referred Apr. 25, 2017); [Budgetary Accuracy in Scoring Interest Costs Act of 2016](#), S. 3539, 114th Cong. (introduced and referred Dec. 9, 2016); [A Bill to amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings](#), S. 3126, 114th Cong. (introduced and referred July 6, 2016); [SCORE Act of 2015](#), S. 2294, 114th Cong. (introduced and referred Nov. 17, 2015); [Long-Term Studies of Comprehensive Outcomes and Returns for the Economy Act](#) (Long-Term SCORE Act), S. 2260, 114th Cong. (introduced and referred Nov. 9, 2015); [The Honest Scoring Act of 2015](#), S. 749, 114th Cong. (introduced and referred Mar. 17, 2015); [Carbon Pollution Transparency Act of 2014](#), S. 2905, 113th Cong. (introduced and referred Sept. 18, 2014); [A Bill to amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings](#), S. 1422, 113th Cong. (introduced and referred Aug. 1, 2013); [Jobs Score Act of 2011](#), S. 1518, 112th Cong. (introduced and referred Sept. 7, 2011).

<sup>1232</sup> See, e.g., [Budget and Accounting Transparency Act of 2015](#), S. 399, 114th Cong. (introduced and referred Feb. 5, 2015); [Budget and Accounting Transparency Act of 2014](#), S. 2420, 113th Cong. (introduced and referred June 3, 2014); [Budget and Accounting Transparency Act of 2014](#), H.R. 1872, 113th Cong. (received and referred Apr. 8, 2014); [Budget and Accounting Transparency Act of 2012](#), H.R. 3581, 112th Cong. (received and referred Feb. 9, 2012).

<sup>1233</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)](#), 2 U.S.C. § 907a(a), *infra* p. 1118, addresses “Procedures in Event of Low-Growth Report.”

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for such suspension,<sup>1234</sup> and pursuant to that section, the Presiding Officer has referred joint resolutions to the Committee.<sup>1235</sup>

The Presiding Officer has also referred trade implementation legislation to the Budget Committee (jointly with other committees) pursuant to the Trade Act of 1974, which provides for referral of such legislation to multiple committees.<sup>1236</sup>

Note, however, that in the Senate, the Presiding Officer refers legislation only to “the committee which has jurisdiction over the subject matter which predominates in such proposed legislation”<sup>1237</sup> (with the notable exception of tax legislation, which always goes to the Finance Committee<sup>1238</sup>). So the Presiding Officer has referred legislation that includes some budget process language to other committees,<sup>1239</sup> notably the Homeland Security and Governmental Affairs Committee.<sup>1240</sup> And the Homeland Security and

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<sup>1234</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)\(3\)](#), 2 U.S.C. § 907a(a)(3), *infra* p. 1119, addresses “Committee Action” regarding “Procedures in Event of Low-Growth Report.”

<sup>1235</sup> See [Joint Resolution suspending certain provisions of law pursuant to section 258\(a\)\(2\) of the Balanced Budget and Emergency Deficit Control Act of 1985](#), S.J. Res. 31, 107th Cong. (introduced and referred Feb. 7, 2002); [Joint Resolution suspending certain provisions of law pursuant to section 258\(a\)\(2\) of the Balanced Budget and Emergency Deficit Control Act of 1985](#), S.J. Res. 28, 107th Cong. (introduced and referred Nov. 2, 2001).

<sup>1236</sup> See, e.g., [United States-Mexico-Canada Agreement Implementation Act](#), H.R. 5430, 116th Cong. (received in Senate and referred Jan. 3, 2020).

<sup>1237</sup> [Senate Rule XVII](#), ¶ 1.

<sup>1238</sup> For examples of legislation with non-tax matter that “predominates” over tax matter but that nonetheless were referred to the Finance Committee, see [Tobacco Livelihood and Economic Assistance for Our Farmers Act of 2002](#), S. 2764, 107th Cong. (introduced and referred July 19, 2002); [Educating America’s Children for Tomorrow \(ED-ACT\)](#), 106th Cong. (introduced and referred Mar. 18, 1999); [Senate Campaign Cost Limitation and Public Financing Act](#), S. 645, 100th Cong., [133 CONG. REC. 4587, 4613–18](#) (introduced and referred Mar. 3, 1987). (Thanks to Staff of S. Comm. on Fin. for these examples.) But see, e.g., [No Trading with Invaders Act](#), S. 3725, 117th Cong. (introduced and referred to Comm. on Foreign Rels. Mar. 1, 2022) (providing for tariff increases).

<sup>1239</sup> See, e.g., [End the Threat of Default Act](#), S. 1785, 117th Cong. (introduced and referred to Finance Comm. May 20, 2021) (including amendment to the Budget Act re budget resolution contents).

<sup>1240</sup> See, e.g., [Zombie Programs Survival Guide Act](#), S. 3110, 117th Cong. (introduced and referred Oct. 28, 2021); [Protecting Our Democracy Act](#), S. 2921, 117th Cong. (introduced and referred Sept. 30, 2021) (including Title V—Reasserting Congressional Power of the Purse, Subtitle A—Strengthening Congressional Control and Review To Prevent Impoundment); [Prevent Government Shutdowns Act of 2021](#), S. 2727, 117th Cong. (introduced and referred Sept. 14, 2021); [A Bill to require agencies submit zero-based budgets](#), S. 2463, 117th Cong. (introduced and referred July 22, 2021); [Taxpayer Receipt Act](#), S. 1706, 117th Cong. (introduced and referred May 19, 2021); [Time to Rescue United States Trusts Act 2021 \(TRUST Act of 2021\)](#), S. 1295, 117th Cong. (introduced and referred Apr. 21, 2021); [No Budget, No Pay Act](#), S. 950, 117th Cong. (introduced and referred Mar. 24, 2021); [Billion Dollar Boondoggle Act of 2021](#), S. 636, 117th Cong. (introduced and referred Mar. 9, 2021); [Resolution requesting that the President transmit to the Senate not later than 14 days after the date of the adoption of this resolution documents in the possession of the President relating to the amount of funding previously enacted under certain public laws and currently unspent](#), S. Res. 88, 117th Cong. (introduced and referred Mar. 3, 2021); [Congressional Budget Justification Transparency Act of 2021](#), S. 272, 117th Cong. (introduced and referred Feb. 8, 2021); [Unfunded Mandates Accountability and Transparency](#)

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Governmental Affairs Committee—not the Budget Committee—also has jurisdiction over some activities of the Office of Management and Budget.<sup>1241</sup>

And as the Judiciary Committee has jurisdiction over “Constitutional amendments,”<sup>1242</sup> the Presiding Officer refers to the Judiciary Committee joint resolutions proposing a balanced budget amendment to the Constitution.<sup>1243</sup>

Since the adoption of the October 2004 resolution creating the Homeland Security Committee, the Budget and Homeland Security

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[Act](#), S. 170, 117th Cong. (introduced and referred Feb. 2, 2021); [Balanced Budget Accountability Act](#), S. 48, 117th Cong. (introduced and referred Jan. 26, 2021).

<sup>1241</sup> See, e.g., [Early Participation in Regulations Act of 2021](#), S. 2804, 117th Cong. (introduced and referred Sept. 22, 2021) (OMB’s Office of Information and Regulatory Affairs); [Metropolitan Statistical Area Stabilization Act](#), S. 1431, 117th Cong. (introduced and referred Apr. 28, 2021) (OMB’s Office of Information and Regulatory Affairs); [Promoting Rigorous and Innovative Cost Efficiencies for Federal Procurement and Acquisitions Act of 2021](#) (PRICE Act of 2021), S. 583, 117th Cong. (introduced and referred Mar. 3, 2021) (OMB’s Office of Federal Procurement Policy).

<sup>1242</sup> [Senate Rule XXV ¶ 1\(l\)\(4\)](#).

<sup>1243</sup> See, e.g., [Joint Resolution proposing an amendment to the Constitution of the United States which requires \(except during time of war and subject to suspension by Congress\) that the total amount of money expended by the United States during any fiscal year not exceed the amount of certain revenue received by the United States during such fiscal year and not exceed 20 percent of the gross domestic product of the United States during the previous calendar year](#), S.J. Res. 12, 117th Cong. (submitted and referred Mar. 18, 2021); [Joint Resolution proposing an amendment to the Constitution of the United States relative to balancing the budget](#), S.J. Res. 6, 117th Cong. (submitted and referred Feb. 3, 2021); [Joint Resolution proposing an amendment to the Constitution of the United States requiring that the Federal budget be balanced](#), S.J. Res. 5, 117th Cong. (submitted and referred Jan. 22, 2021); [Joint Resolution proposing an amendment to the Constitution of the United States to require \(except during time of war and subject to suspension by Congress\) that the total amount of money expended by the United States during any fiscal year not exceed the amount of certain revenue received by the United States during such fiscal year and not exceed 20 percent of the gross domestic product of the United States during the previous calendar year](#), S.J. Res. 19, 116th Cong. (submitted and referred May 2, 2019); [Joint Resolution proposing a balanced budget amendment to the Constitution of the United States](#), S.J. Res. 18, 116th Cong. (submitted and referred Apr. 4, 2019); [Joint Resolution proposing an amendment to the Constitution of the United States requiring that the Federal budget be balanced](#), S.J. Res. 5, 116th Cong. (submitted and referred Jan. 24, 2019); [Joint Resolution proposing an amendment to the Constitution of the United States relative to balancing the budget](#), S.J. Res. 3, 116th Cong. (submitted and referred Jan. 4, 2019).

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Committees have shared jurisdiction over the nominations of the OMB Director<sup>1244</sup> and Deputy Director for Budget.<sup>1245</sup> That resolution provides:

(e) OMB NOMINEES.—The Committee on the Budget and the Committee on Homeland Security and Governmental Affairs shall have joint jurisdiction over the nominations of persons nominated by the President to fill the positions of Director and Deputy Director for Budget within the Office of Management and Budget, and if one committee votes to order reported such a nomination, the other must report within 30 calendar days session, or be automatically discharged.<sup>1246</sup>

The Homeland Security Committee alone, however, considers the four other OMB positions subject to Senate Confirmation—the Deputy Director for Management,<sup>1247</sup> the Administrator of the Office of Information and Regulatory Affairs,<sup>1248</sup> the Controller,<sup>1249</sup> and the Administrator of the Office

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<sup>1244</sup> S. Res. 445, 108th Cong. § 101(e) (2004) (adopted); see also, e.g., [Nomination of Shalanda D. Young](#), PN1437, 117th Cong. (received and referred Dec. 2, 2021); [Nomination of Neera Tanden](#), PN78-19, 117th Cong. (received and referred Jan. 20, 2021); [Nomination of Russell Vought](#), PN1726, 116th Cong. (received and referred May 4, 2020); [Nomination of Mick Mulvaney](#), PN54, 115th Cong. (received and referred Jan. 30, 2017); [Nomination of Shaun L.S. Donovan](#), PN1737, 113th Cong. (received and referred June 2, 2014); [Nomination of Sylvia Mathews Burwell](#), PN188, 113th Cong. (received and referred Mar. 7, 2013); [Nomination of Jacob J. Lew](#), PN2089, 111th Cong. (received and referred Aug. 5, 2010); [Nomination of Peter R. Orszag](#), PN64-12, 111th Cong. (received Jan. 20, 2009); [Nomination of Jim Nussle](#), PN688, 110th Cong. (received and referred June 25, 2007); [Nomination of Robert J. Portman](#), PN1484, 109th Cong. (received and referred Apr. 27, 2006).

<sup>1245</sup> S. Res. 445, 108th Cong. § 101(e) (2004) (adopted); see also, e.g., [Nomination of Nani A. Colorette](#), PN1436, 117th Cong. (received and referred Dec. 2, 2021); [Nomination of Shalanda D. Young](#), PN79-13, 117th Cong. (received and referred Jan. 20, 2021); [Nomination of Derek Kan](#), PN1937, 116th Cong. (received and referred June 2, 2020); [Nomination of Russell Vought](#), PN367, 115th Cong. (received and referred May 2, 2017); [Nomination of Brian C. Deese](#), PN262, 113th Cong. (received and referred Apr. 8, 2013); [Nomination of Heather A. Higginbottom](#), PN154, 112th Cong. (received and referred Jan. 26, 2011); [Nomination of Robert L. Nabors II](#), PN65-12, 111th Cong. (received and referred Jan. 20, 2009); [Nomination of Stephen S. McMillin](#), PN1669, 109th Cong. (received and referred June 12, 2006).

<sup>1246</sup> S. Res. 445, 108th Cong. § 101(e) (2004) (adopted).

<sup>1247</sup> See, e.g., [Nomination of Jason Scott Miller](#), PN79-9, 117th Cong. (received and referred Jan. 20, 2021); [Nomination of Michael Rigas](#), PN2238, 116th Cong. (received and referred Sept. 16, 2020); [Nomination of Margaret Weichert](#), PN924, 115th Cong. (received and referred Sept. 5, 2017); [Nomination of Andrew Mayock](#), PN1009, 114th Cong. (received and referred Dec. 14, 2015); [Nomination of Beth F. Cobert](#), PN818, 113th Cong. (received and referred Sept. 11, 2013); [Nomination of Jeffrey D. Zients](#), PN418, 111th Cong. (received and referred May 12, 2009).

<sup>1248</sup> See, e.g., [Nomination of Paul J. Ray](#), PN1166, 116th Cong. (received and referred Oct. 15, 2019); [Nomination of Neomi Rao](#), PN478, 115th Cong. (received and referred May 18, 2017); [Nomination of Howard A. Shelanski](#), PN382, 113th Cong. (received and referred Apr. 25, 2013); [Nomination of Cass R. Sunstein](#), PN323, 111th Cong. (received and referred Apr. 20, 2009); [Nomination of Susan E. Dudley](#), PN577, 110th Cong. (received and referred May 16, 2007); [Nomination of Susan E. Dudley](#), PN94, 110th Cong. (received and referred Jan. 9, 2007); [Nomination of Susan E. Dudley](#), PN1875, 109th Cong. (received and referred Aug. 1, 2006).

<sup>1249</sup> See, e.g., [Nomination of Laurel A. Blatchford](#), PN 1603, 117th Cong. (received Jan. 4, 2022, with information requested by Committee); [Nomination of Laurel A. Blatchford](#), PN1298, 117th Cong. (received Oct. 27, 2021; referred Nov. 30, 2021); [Nomination of Frederick M. Nutt](#), PN920, 115th Cong. (received Sept. 5, 2017; referred Sept. 26, 2017); [Nomination of David Arthur Mader](#), PN1640, 113th Cong. (received May 5,

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of Federal Procurement Policy.<sup>1250</sup> Since June 2011, the Controller has been covered by the Resolution to provide for expedited Senate consideration of certain nominations subject to advice and consent.<sup>1251</sup>

### History of Budget Committee Jurisdiction

The Budget Act created the Senate Budget Committee and gave the Committee its initial grant of jurisdiction.<sup>1252</sup> Senate Rule XXV, paragraph (e), now reflects that original jurisdiction, providing:

(e)(1) Committee on the Budget, to which committee shall be referred all concurrent resolutions on the budget (as defined in section 3(a)(4) of the Congressional Budget Act of 1974) and all other matters required to be referred to that committee under titles III and IV of that Act, and messages, petitions, memorials, and other matters relating thereto.

(2) Such committee shall have the duty

(A) to report the matters required to be reported by it under titles III and IV of the Congressional Budget Act of 1974;

(B) to make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and to report the results of such studies to the Senate on a recurring basis;

(C) to request and evaluate continuing studies of tax expenditures, to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and to report the results of such studies to the Senate on a recurring basis; and

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2014, with information requested by Committee); [Nomination of Daniel I. Werfel](#), PN851, 111th Cong. (received and referred Aug. 3, 2009); [Nomination of Linda Morrison Combs](#), PN234, 109th Cong. (received and referred Feb. 28, 2005).

<sup>1250</sup> See, e.g., [Nomination of Biniam Gebre](#), PN1011, 117th Cong. (received and referred Aug. 9, 2021); [Nomination of Michael Eric Wooten](#), PN411, 116th Cong. (received and referred Feb. 25, 2019); [Nomination of Anne E. Rung](#), PN1856, 113th Cong. (received and referred July 14, 2014); [Nomination of Joseph G. Jordan](#), PN1353, 112th Cong. (received and referred Feb. 6, 2012); [Nomination of Daniel I. Gordon](#), PN1055, 111th Cong. (received and referred Oct. 5, 2009); [Nomination of Paul A. Denett](#), PN1451, 109th Cong. (received and referred Apr. 24, 2006).

<sup>1251</sup> [Resolution to provide for expedited Senate consideration of certain nominations subject to advice and consent](#), S. Res. 116, 112th Cong. (2011); see also, e.g., [Nomination of Laurel A. Blatchford](#), PN 1603, 117th Cong. (received and placed on Calendar Jan. 4, 2022), [S. Exec. Calendar 20](#) (Jan. 5, 2022); [Nomination of Laurel A. Blatchford](#), PN1298, 117th Cong. (received and placed on Calendar Oct. 27, 2021); [Nomination of Frederick M. Nutt](#), PN920, 115th Cong. (received and placed on Calendar Sept. 5, 2017); [Nomination of David Arthur Mader](#), PN1640, 113th Cong. (received and placed on Calendar May 5, 2014).

<sup>1252</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 102, 88 Stat. 297, 300–01, *supra* p. 74.

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(D) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties.<sup>1253</sup>

In *Riddick's Senate Procedure*, the Parliamentarian described how the Committee's jurisdiction grew from there:

The jurisdiction, defined in the rule above, was expanded as follows by two unanimous consent agreements:

(1) Under the January 30, 1975, agreement (as modified on April 11, 1986), impoundment legislation is referred concurrently to the Committee on Appropriations, the Committee on the Budget, and to the appropriate authorizing committee. The Budget Committee is to report its views, if any, to the Appropriations Committee within 20 days following the referral of such legislation. The report to the Senate is made by the Committee on Appropriations.

(2) The unanimous consent agreement of August 4, 1977, requires that all legislation affecting the congressional budget process be referred jointly to the Committees on Budget and Governmental Affairs.<sup>1254</sup>

Elsewhere in *Riddick's Senate Procedure*, the Parliamentarian again described the evolution of the Committee's jurisdiction from 1975 to 1986:

Since the enactment of this law, two unanimous consent agreements adopted by the Senate have expanded upon the budget process: Impoundment legislation, under the January 30, 1975, agreement as modified on April 11, 1986, is referred concurrently to the Appropriations Committee, to the Budget Committee, and to any other appropriate authorizing committee. The Budget Committees are to report their views, if any, to the Appropriations Committee within 20 days following the referral of such legislation. The unanimous consent agreement of August 4, 1977, requires all legislation affecting the congressional budget process to be referred jointly to the Committees on the Budget and Governmental Affairs.<sup>1255</sup>

The order on impoundment legislation of January 30, 1975, as modified on April 11, 1986, now provides:

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<sup>1253</sup> [Senate Rule XXV ¶ 1\(e\)](#).

<sup>1254</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 595 (1992).

<sup>1255</sup> [Id.](#) at 504.



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That bills, resolutions, and joint resolutions introduced with respect to rescissions and deferrals shall be referred to the Appropriations Committee, the Budget Committee, and pending implementation of section 410 of the Congressional Budget Impoundment Control Act and subject to section 401(d), to any other committee exercising jurisdiction over contract and borrowing authority programs as defined by section 401(c)(2)(A) and (B). The Budget Committee and such other committees shall report their views, if any, to the Appropriations Committee within 20 days following referral of such messages, bills, resolutions, or joint resolutions. The Budget Committee's consideration shall extend only to macroeconomic implications, impact on priorities and aggregate spending levels, and the legality of the President's use of the deferral and rescission mechanism under title X. The Appropriations and authorizing committees shall exercise their normal responsibilities over programs and priorities.<sup>1256</sup>

When the Senate adopted this order on April 11, 1986, Senator Warren Rudman explained that the Senate was changing it to comport with the Supreme Court's decision in *Immigration and Naturalization Service v. Chadha*,<sup>1257</sup> saying:

Senate Resolution 45 adopted under a unanimous-consent agreement on January 30, 1975, governs the referral of impoundment legislation in the Senate. Under this order, all special messages from the President pursuant to title X of the Congressional Budget and Impoundment Control Act and all bills and resolutions introduced with respect to such messages are referred concurrently to the Appropriations Committee, the Budget Committee, and to the appropriate authorizing committee. Section 1011 of the Impoundment Control Act provides that deferral disapprovals take the form of a simple resolution of one House. This is no longer a proper course of action, given the Supreme Court decision in *INS versus Chadha* that the one-House legislative veto is unconstitutional. Deferral disapprovals must now take the form of a bill or joint resolution.

Given this, I ask unanimous consent that the second paragraph of the standing order governing the referral of matters dealing with rescissions and deferrals be revised, as of January 21, 1986, to allow the re-referral of bills and joint resolutions disapproving deferrals to the same committees now having jurisdiction over title X impoundment resolutions.<sup>1258</sup>

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<sup>1256</sup> 132 CONG. REC. 7318–19 (Apr. 11, 1986).

<sup>1257</sup> *Immigration & Naturalization Serv. v. Chadha*, 462 U.S. 919 (1983).

<sup>1258</sup> 132 CONG. REC. 7318 (Apr. 11, 1986).

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The Senate adopted the order on the referral of budget process legislation of August 4, 1977 (which has since been superseded by [S. Res. 445, 108th Cong.](#) (2004)), by unanimous consent as follows:

JOINT REFERRAL OF LEGISLATION AFFECTING THE BUDGET  
PROCESS

Mr. MUSKIE. Mr. President, I send a unanimous-consent request to the desk.

Mr. President, I ask unanimous consent that legislation affecting the congressional budget process, as described below, be referred jointly to the Committees on the Budget and on Governmental Affairs. If one committee acts to report a jointly-referred measure, the other must act within 30 calendar days of continuous possession, or be automati[c]ally discharged.

Legislative proposals affecting the congressional budget process to which this order applies are:

First. The functions, duties, and powers of the Budget Committee-as described in title I of the act;

Second. The functions, duties, and powers of the Congressional Budget Office—as described in title II and IV of the act);

Third. The process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and public debt—including subdivisions thereof. That process includes the e[s]tablishment of: mandatory ceilings on spending and appropriations; a floor on revenues; timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriation bills; and enforcement mechanisms for the limits and timetables, all as described in titles III and IV of the act.

Fourth. The limiting of backdoor spending device[s]—as described in title IV of the act;

Fifth. The timetables for Presidential submission of appropriations and authorization requests—as described in title VI of the act;

Sixth. The definitions of what constitutes impoundment—such as “rescissions” and “deferrals,” as provided in the Impoundment Control Act, title X;

Seventh. The process and determination by which impoundments must be reported to and considered by Congress—as provided in the Impoundment Control Act, title X;



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Eighth. The mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X—such as GAO review and lawsuits; and

Ninth. The provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act—as set forth in title I thereof.

This consent agreement has been worked out carefully by Senator RIBICOFF, who is chairman of the Government Affairs Committee, by Senator PERCY, who is ranking Republican, by myself as chairman of the Committee on the Budget, and by Senator BELLMON as ranking member of the Budget Committee. The attempt is to divide between the two committees those legislative proposals which made an impact on the budget process without denigrating the Committee on Government Affairs general jurisdiction over such budgetary matters. It has been cleared by both committees. It has been examined by the majority leader. I ask for its approval.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, as chairman of the Senate Budget Committee, I express my appreciation to the distinguished majority leader for his cooperation in the formulation of this unanimous consent agreement with respect to joint referral to the Budget Committee and the Committee on Governmental Affairs of legislative matters affecting the congressional budget process. The distinguished chairman of the Governmental Affairs Committee, Senator RIBICOFF, and his ranking minority member, Senator PERCY, have worked closely with me and Senator BELLMON, the ranking minority member of the Budget Committee, to reach agreement on an appropriate referral of legislation that affects the congressional budget process.

Under these circumstances, we have agreed that legislative proposals to revise the congressional budget process could best be referred to our two committees jointly, with the proviso that if one committee orders the bill reported, the other must report within 30 calendar days of continuous session or be automatically discharged.

The subjects to which we wish joint referral to apply are:

First. The functions, duties, and powers of the Budget Committee—described in title I of the act.

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Second. The functions, duties, and powers of the Congressional Budget Office—as described in title II and IV of the act.

Third. The process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and public debt—including subdivisions thereof. That process includes the establishment of: mandatory ceilings on spending and appropriations; a floor on revenues; timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriation bills; and enforcement mechanisms for the limits and timetables. All as described in title III and IV of the act.

Fourth. The limiting of backdoor spending devices—as described in title IV of the act.

Fifth. The timetables for Presidential submission of appropriation and authorization requests—as described in title VI of the act.

Sixth. The definitions of what constitutes impoundment—such as “rescissions” and “deferral,” as provided in the Impoundment Control Act, title X.

Seventh. The process and determination by which impoundments must be reported to and considered by Congress—as provided in the Impoundment Control Act, title X.

Eighth. The mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X—such as GAO review and lawsuits, and

Ninth. The provisions which affect the content or the determination of amounts included in or excluded from the Congressional Budget or the calculation of such amounts, including the definition of terms provided by the Budget Act—as set forth in title I thereof.

We have consulted with the distinguished majority leader and minority leader on the appropriate form for the joint referral. At this time, I express my appreciation to the leadership on both sides of the aisle for their cooperation in this matter.

We have agreed that legislation affecting the congressional budget process as described above shall be referred jointly to the Committees on the Budget and Governmental Affairs, whereupon if one committee acts to report a measure, the other must act within 30 days of continuous session or be automatically discharged.

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Mr. President, I believe that this joint referral will expedite the handling of these legislative matters b[y] both the Budget Committee and the Governmental Affairs Committee.

Mr. ROBERT C. BYRD. Let me ask the chairman of the Budget Committee for clarification on this matter. Is it his understanding that the joint referral order covers all matters with respect to impoundment?

Mr. MUSKIE. The distinguished majority leader raises an important point. As a cosponsor and floor manager of the Budget and Impoundment Control Act of 1974, the Senator from West Virginia is keenly aware that Congress adopted title X of the act to establish a structure for decisionmaking on impoundment matters. The procedures are spelled out in the provisions of title X. It is revisions or amendments of title X to which this order is addressed.

Mr. ROBERT C. BYRD. Does the Senator understand this order to include legislative matters which address the constitutional dimensions of impoundments?

Mr. MUSKIE. I recognize that the distinguished Senator from West Virginia, as a member of the Judiciary Committee, has a continuing interest in the separation of powers doctrine. Let me assure the Senator that this order in no way detracts from the jurisdiction of the Judiciary Committee of constitutional matters which may arise with respect to the relationship between the role of the executive and the legislature on impoundment matters. This order simply seeks to recognize the joint interest of the Budget Committee and the Committee on Governmental Affairs in orderly development of any revisions to the congressional budget process.<sup>1259</sup>

Between August 1977 and October 2004, the Presiding Officer regularly referred budget process legislation “jointly pursuant to the order of August 4, 1977, to the Committees on the Budget and Governmental Affairs, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.”<sup>1260</sup>

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<sup>1259</sup> 123 CONG. REC. 26709–10 (Aug. 4, 1977).

<sup>1260</sup> See, e.g., [A Bill to amend the Congressional Budget and Impoundment Control Act of 1974 to limit the implementation, phase-in, or phaseout of revenue measures to 1 year](#), S. 2802, 108th Cong. (introduced and referred Sept. 14, 2004); [Family Budget Protection Act of 2004](#), S. 2752, 108th Cong. (introduced and referred July 22, 2004); [Honest Government Accounting Act of 2003](#), S. 1915, 108th Cong. (introduced and referred Nov. 21, 2003); [Truth in Budgeting and Social Security Protection Act of 2003](#), S. 689, 108th Cong. (introduced and referred Mar. 21, 2003); [A Bill to require the Congressional Budget Office and the Joint Committee on Taxation to use dynamic economic modeling in addition to static economic modeling in the preparation of budgetary estimates of proposed changes in Federal revenue law](#), S. 675, 108th Cong. (introduced and referred Mar. 20, 2003); [A Bill to extend certain budgetary enforcement to maintain fiscal accountability and responsibility](#), S. 90, 108th Cong. (introduced and referred Jan. 7, 2003); [Truth in Budgeting and Social Security Protection Act of 2002](#), S. 3131, 107th Cong. (introduced and referred Oct. 17, 2002); [A](#)

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Bill to provide budget discipline and enforcement for fiscal year 2003 and beyond, S. 2791, 107th Cong. (introduced and referred July 25, 2002); Budget Enforcement Act of 2002, S. 2465, 107th Cong. (introduced and referred May 7, 2002); A Bill to exclude the receipts and disbursements of the Abandoned Mine Reclamation Fund from the budget of the United States Government, and for other purposes, S. 1908, 107th Cong. (introduced and referred Feb. 4, 2002); A Bill to provide new discretionary spending limits for fiscal year 2002, and for other purposes, S. 1575, 107th Cong. (introduced and referred Oct. 25, 2001); Fiscal Integrity of Indian Settlements Protection Act of 2001, S. 1186, 107th Cong. (introduced and referred July 17, 2001); Concurrent Resolution to express the sense of Congress regarding the use of a legislative “trigger” or “safety” mechanism to link long-term Federal budget surplus reductions with actual budgetary outcomes, S. Con. Res. 21, 107th Cong. (submitted and referred Mar. 7, 2001); Social Security and Medicare Lock-Box Act of 2001, H.R. 2, 107th Cong. (referred Feb. 15, 2001); Social Security and Medicare Off-Budget Lockbox Act of 2001, S. 21, 107th Cong. (referred Jan. 30, 2001); Small Business Enhancement Act of 2001, S. 187, 107th Cong. (introduced and referred Jan. 25, 2001) (CBO analysis); A Bill to avoid a pay-go sequestration for fiscal year 2001, S. 3240, 106th Cong. (introduced and referred Oct. 25, 2000); Federal Courts Budget Protection Act, S. 1564, 106th Cong. (introduced and referred Aug. 5, 1999); American Social Security Protection and Debt Repayment Act, S. 2220, 106th Cong. (introduced and referred Mar. 8, 2000); Save Our Surplus for Debt Reduction Act of 2000, S. 2126, 106th Cong. (introduced and referred Mar. 1, 2000); A Bill to exclude the receipts and disbursements of the Abandoned Mine Reclamation Fund from the budget of the United States Government, and for other purposes, S. 2040, 106th Cong. (introduced and referred Feb. 8, 2000); Social Security and Medicare Surplus Protection Act of 2000, S. 2001, 106th Cong. (introduced and referred Jan. 24, 2000); Social Security and Medicare Safe Deposit Box Act of 1999, S. 1962, 106th Cong. (introduced and referred Nov. 18, 1999); Comprehensive Budget Process Reform Act of 1999, S. 1889, 106th Cong. (introduced and referred Nov. 9, 1999); Strengthen Social Security and Medicare Act of 1999, S. 1831, 106th Cong. (introduced and referred Oct. 29, 1999); Social Security Surplus Preservation and Debt Reduction Act, S. 1768, 106th Cong. (introduced and referred Oct. 21, 1999); Social Security Surplus Protection Act of 1999, S. 1693, 106th Cong. (introduced and referred Oct. 5, 1999); Federal Courts Budget Protection Act, S. 1564, 106th Cong. (introduced and referred Aug. 5, 1999); Federalism Accountability Act of 1999, S. 1214, 106th Cong. (introduced and referred June 10, 1999); A Bill to offset the spending contained in the fiscal year 1999 emergency supplemental appropriations bill in order to protect the surpluses of the social security trust funds, S. 1097, 106th Cong. (introduced and referred May 20, 1999); Social Security and Medicare Lock Box Act, S. 862, 106th Cong. (introduced and referred Apr. 22, 1999); Truth-in-Budgeting Act of 1999, S. 674, 106th Cong. (introduced and referred Mar. 19, 1999); A Bill to amend the Congressional Budget and Impoundment Control Act of 1974 to prohibit the consideration of retroactive tax increases, S. 665, 106th Cong. (introduced and referred Mar. 18, 1999); Social Security Fiscal Protection Act of 1999, S. 605, 106th Cong. (introduced and referred Mar. 15, 1999); A Bill to provide guidance for the designation of emergencies as a part of the budget process, S. 557, 106th Cong. (referred Mar. 11, 1999); American Debt Repayment Act, S. 552, 106th Cong. (introduced and referred Mar. 5, 1999); Protect Social Security Benefits Act of 1999, S. 502, 106th Cong. (introduced and referred Mar. 2, 1999); Surplus Protection Act of 1999, S. 483, 106th Cong. (introduced and referred Feb. 25, 1999); Mandates Information Act of 1999, S. 427, 106th Cong. (introduced and referred Feb. 12, 1999); Economic Growth and Government Efficiency Act of 1999, S. 410, 106th Cong. (introduced and referred Feb. 11, 1999); Taxpayer Protection Lock-box Act of 1999, S. 359, 106th Cong. (introduced and referred Feb. 3, 1999); Fiscal Discipline for a New Millennium Act of 1999, S. 358, 106th Cong. (introduced and referred Feb. 3, 1999); Separate Enrollment and Line Item Veto Act of 1999, S. 139, 106th Cong. (introduced and referred Jan. 19, 1999); The Separate Enrollment and Line Item Veto Act of 1999, S. 100, 106th Cong. (introduced and referred Jan. 19, 1999); Budget Enforcement Act of 1999, S. 93, 106th Cong. (introduced and referred Jan. 19, 1999); Biennial Budgeting and Appropriations Act, S. 92, 106th Cong. (introduced and referred Jan. 19, 1999); Social Security Trust Fund Protection Act of 1999, S. 27, 106th Cong. (introduced and referred Jan. 19, 1999); Resolution to express the sense of the Senate that the Federal investment in biomedical research should be increased by \$2,000,000,000 in fiscal year 2000, S. Res. 19, 106th Cong. (submitted and referred Jan. 19, 1999); Resolution to reform the Senate’s consideration of budget measures, S. Res. 6, 106th Cong. (submitted and referred Jan. 6, 1999); Resolution to establish procedures for the consideration of emergency legislation in the Senate, S. Res. 5, 106th Cong. (submitted and referred Jan. 6, 1999).

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In October 2004, the Senate gave the Senate Budget Committee sole jurisdiction over the Federal budget process when it adopted the resolution creating the Homeland Security and Governmental Affairs Committee.<sup>1261</sup> Following are excerpts from the Senate’s consideration of that resolution. The Budget Committee’s jurisdiction resulted from amendments offered by Majority Leader Mitch McConnell on behalf of Budget Committee Chair Don Nickles, Leader McConnell, and Budget Committee Ranking Democratic Member Kent Conrad:

AMENDMENT NO. 4027 TO AMENDMENT NO. 3981, AND AMENDMENT NO. 4041 TO AMENDMENT NO. 4027, EN BLOC

Mr. MCCONNELL. Mr. President, I call up amendment No. 4027 by Senator NICKLES and also a second-degree amendment by Senator NICKLES, No. 4041. As I indicated, Senator NICKLES will be here to debate that amendment later.

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL], for Mr. NICKLES, for himself, and Mr. CONRAD proposes an amendment numbered 4027.

The Senator from Kentucky [Mr. MCCONNELL], for Mr. NICKLES, for himself, and Mr. CONRAD proposes an amendment numbered 4041 to amendment No. 4027.

The amendments are as follows:

AMENDMENT NO. 4027

(Purpose: To vest sole jurisdiction over the Federal budget process in the Committee on the Budget)

At the end of Section 101, insert the following:

“(e) JURISDICTION OF BUDGET COMMITTEE.—Notwithstanding paragraph (b)(3) of this section, the Committee on the Budget shall have exclusive jurisdiction over measures affecting the congressional budget process, including:

(1) the functions, duties, and powers of the Budget Committee;

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<sup>1261</sup> S. Res. 445, 108th Cong. (2004) (adopted).

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(2) the functions, duties, and powers of the Congressional Budget Office;

(3) the process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits o[r] surpluses, and public debt—including subdivisions thereof—and including the establishment of mandatory ceilings on spending and appropriations, a floor on revenues, timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriation bills, and enforcement mechanisms for budgetary limits and timetables;

(4) the limiting of backdoor spending devices;

(5) the timetables for Presidential submission of appropriations and authorization requests;

(6) the definitions of what constitutes impoundment—such as “rescissions” and “deferrals”;

(7) the process and determination by which impoundments must be reported to and considered by Congress;

(8) the mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X—such as GAO review and lawsuits; and

(9) the provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act.”

AMENDMENT NO. 4041 TO AMENDMENT NO. 4027

(Purpose: To vest sole jurisdiction over the Federal budget process in the Committee on the Budget, and to give the Committee on the Budget joint jurisdiction with the Governmental Affairs Committee over the process of reviewing, holding hearings, and voting on persons, nominated by the President to fill the positions of Director and Deputy Director for Budget within the Office of Management and Budget)

Strike all after the first word, and insert the following:

JURISDICTION OF BUDGET COMMITTEE.—Notwithstanding paragraph (b)(3) of this section, and except as otherwise provided in the Congressional Budget Act of 1974, the Committee on the Budget shall have

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exclusive jurisdiction over measures affecting the congressional budget process, which are:

- (1) the functions, duties, and powers of the Budget Committee;
  - (2) the functions, duties, and powers of the Congressional Budget Office;
  - (3) the process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and public debt—including subdivisions thereof—and including the establishment of mandatory ceilings on spending and appropriations, a floor on revenues, timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriation bills, and enforcement mechanisms for budgetary limits and timetables; (4) the limiting of backdoor spending devices;
  - (5) the timetables for Presidential submission of appropriations and authorization requests;
  - (6) the definitions of what constitutes impoundment—such as “rescissions” and “deferrals”;
  - (7) the process and determination by which impoundments must be reported to and considered by Congress;
  - (8) the mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X—such as GAO review and lawsuits; and
  - (9) the provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act.
- (f) OMB Nominees.—The Committee on the Budget and the Governmental Affairs Committee shall have joint jurisdiction over the nominations of persons nominated by the President to fill the positions of Director and Deputy Director for Budget within the Office of Management and Budget, and if one committee votes to order reported such a nomination, the other must report within 30 calendar days session, or be automatically discharged.<sup>1262</sup>

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<sup>1262</sup> 150 CONG. REC. S10,900–91 (daily ed. Oct. 9, 2004).

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Senators George Voinovich, Harry Reid, Kent Conrad, and Don Nickles debated the amendments:

Mr. VOINOVICH. Madam President, later on today we will be discussing an amendment submitted by Senator NICKLES. The amendment's alleged purpose is to clarify the shared jurisdiction of the congressional budget process between Governmental Affairs and the budget situation that grew out of the Budget Committee and the modern budget process of 1974.

Senate committees rarely share jurisdiction, and joint referral of legislation is accomplished by unanimous consent. Today, anything that deals with the budget either coming out of the Governmental Affairs Committee or coming out of Budget has to be referred to the Governmental Affairs Committee and within 30 days some action has to be taken so there is a joint referral.

This amendment would eliminate that and say that all of the budgetary process is within the jurisdiction only of the Budget Committee and would also require that instead of the nominations for the Director of the Office of Management and Budget and the deputy director being the sole jurisdiction of the Governmental Affairs Committee, that would be a joint jurisdiction. In other words, the Presidential appointee to Director of Budget and Management, Deputy Director, and other people, would have to come to the Governmental Affairs Committee and also go to the Budget Committee for their approval.

I think one of the things we are trying to do here is to streamline that whole process, that we have too many people who are being, frankly, nominated, and too much advice and consent.

One of the things in an amendment to the Homeland Security Act that we were able to get done was the provision that says we are going to ask the administration to come back with recommendations on how they can reduce the number of people who are sent to the Senate for advice and consent to streamline the process.

This amendment would make this Presidential appointment process in regard to the Director of Budget and Management and the Deputy Director much more complicated than it is today. I would also argue—with due respect to the expertise that is on the Budget Committee—that this process has not been looked at since 1974.

As a member of the Governmental Affairs Committee and the oversight of Government management in the Federal workforce, I have been concerned that we have not looked at that process since 1974—that we have discussed the feasibility of going to a 2-year budget. There are



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many things, in my opinion, that this body should be doing, and if it were solely within the jurisdiction of the Budget Committee, it might not get done. The Governmental Affairs Committee looks at the big picture.

I would also argue that too often in the Office of Budget and Management, there is no “M” in OMB. I am pleased to say that this administration has undertaken some very aggressive management responsibilities. I, quite frankly, think they would not have undertaken those management responsibilities had it not been for the fact that they had to be confirmed by the Governmental Affairs Committee of the U.S. Senate.

I know the relationships that I have built personally with the Director of the Office of Budget and Management; Sean O’Keefe, who was the Deputy Director, and now Director Josh Bolten, have really accrued to the benefit of our country in terms of improving the management of Government.

So what I am trying to say is the budget process is important not only to the Budget Committee but the budget process is important to the entire country and to the operation of Government because it has such a large impact on the whole operation of Government.

I respect the chairman of the Budget Committee, but as one who has been concerned about modernizing our procedures, I believe this would not promote what is in the best interest of the Senate or, for that matter, our country.

I ask unanimous consent to have printed in the RECORD the human capital changes that have occurred since 1999 that have come out of the Governmental Affairs Committee.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATOR GEORGE V. VOINOVICH, OHIO — AN AGENDA TO REFORM THE  
FEDERAL WORKFORCE: ACCOMPLISHMENTS

Senator Voinovich has made identifying and developing solutions to the federal government’s strategic human capital challenges his highest priority for his Subcommittee on Oversight of Government Management. He has held 15 hearings on the subject, spoken at numerous public conferences, and was a key participant in the Harvard University John F. Kennedy School of Government Executive Sessions on the Future of the Public Service in 2001–2002. He has brought together the best minds in academia, government and the private sector to address these issues and developed a forward-looking legislative agenda. Taken together, the legislation he has sponsored and cosponsored represents the most

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significant governmentwide changes to the federal civil service system since passage of the Civil Service Reform Act of 1978.

Legislation sponsored by Senator Voinovich enacted into law:

Department of Defense Civilian Workforce Reshaping Authority as part of the FY 2001 Defense Authorization, became law on October 30, 2000.

Several major provisions of S. 2651, the Federal Workforce Improvement Act of 2002, were included in the Homeland Security Act of 2002, Public Law 107-296, November 25, 2002. Its most important provisions: agency chief human capital officers (at the 24 largest federal agencies); an interagency chief human capital officers council (codifying the Human Resources Management Council); an OPM-designed set of systems, including metrics, for assessing agency human capital management; inclusion of agency human capital strategic planning in annual performance plans and program performance reports required by GPRA; reform of the competitive service hiring process (use of a category ranking system instead of the Rule of Three); permanent extension, revision, and expansion of voluntary separation incentive pay and voluntary early retirement (“buyouts” and “early-outs”);

S. 926, the Federal Employee Student Loan Assistance Act, Public Law 108-123, November 11, 2003. The law raises to \$10,000 and \$60,000, respectively, the annual and aggregate limits of student loan repayment federal agencies may offer employees as incentives.

S. 1683, the Federal Law Enforcement Pay and Benefits Parity Act of 2003, Public Law 108-196, December 19, 2003. The law required OPM to conduct a study of federal law enforcement compensation and classification to inform reform efforts. It was submitted to Congress on July 16, 2004.

S. 610, NASA Workforce Flexibility Act of 2004, Public Law 108-201, February 24, 2004. The law provides new personnel flexibilities to the National Aeronautics and Space Administration to recruit and retain a technology savvy workforce for NASA’s high-tech mission.

H.R. 2751, GAO Human Capital Reform Act of 2004, Public Law 108-271, July 7, 2004. H.R. 2751 was the House companion to Senator Voinovich’s bill S. 1522, which passed the Senate on November 24, 2003. It provides several new personnel flexibilities to the now U.S. Government Accountability Office.

Legislation cosponsored by Senator Voinovich enacted into law:

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The Homeland Security Act of 2002, Public Law 107-296, November 25, 2002, allowed the new department to design a new personnel system for its 170,000 employees to meet its mission needs.

The National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, November 24, 2003, includes the National Security Personnel System (NSPS). Senator Voinovich had a role in drafting the Senate version of NSPS, S. 1166. NSPS will provide significant personnel flexibilities to the Department of Defense similar to those at the Department of Homeland Security. In addition, this Act contains a provision that alleviates pay compression in the Senior Executive Service. Senator Voinovich had introduced a separate bill, S. 768, to accomplish this.

Legislation sponsored by Senator Voinovich currently under Congressional consideration:

S. 129, Federal Workforce Flexibility Act of 2003, was passed by the Senate on April 8, 2004, and it contains additional governmentwide human capital reforms. The House Committee on Government Reform considered and reported S. 129 to the full House on June 24, 2004. Senator Voinovich understands that the bill should pass the House the week of October 4th and return to the Senate for final passage.

Mr. VOINOVICH. I would like to emphasize for my colleagues how important it is that this jurisdiction in terms of the Director of Budget and Management and the Deputy Director remains in the Governmental Affairs Committee.

I would like to make one other point; that point is, the jurisdiction of our committee has been stripped out for the last couple of days. So I just urge my colleagues—I am going to ask for a vote. I think it is important to the management of our country.

I appreciate the opportunity to speak and yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator's time has expired. The Senator from Nevada is recognized.

Mr. REID. Mr. President, for my friend to say the jurisdiction of the committee has been stripped out in the last few days, he should come in contact with reality. It simply is not true. How many times people come and say that does not make it true. The governmental affairs/homeland security committee is going to be one of most powerful committees in the Congress. Last year, as I understand, they had about 900 bills referred to them. This next year, it will probably be 3,000 bills referred to them. They have jurisdiction over wide-ranging matters. A few little things have been

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taken from Governmental Affairs, but they have been given a truckload of stuff.

I yield 5 minutes to the Senator from North Dakota.

Mr. CONRAD. Mr. President, first of all, I thank the Senator in Nevada for his comments. He is exactly right. For anybody to suggest Governmental Affairs has had their jurisdiction reduced here, I mean, come on. Governmental Affairs has had their jurisdiction dramatically increased.

Mr. NICKLES. Mr. President, the amendment I am offering today with my ranking member, Senator CONRAD, would consolidate jurisdiction for the congressional budget process within the Senate Committee on the Budget and establish shared jurisdiction with the new Committee on Homeland Security and Governmental Affairs over the nomination and confirmation of the Director of the Office of Management and Budget. The amendment would preserve the Government Affairs Committee's jurisdiction over management and accounting measures.

Under current Senate rules, jurisdiction over budget process matters is shared with the Committee on Governmental Affairs, a situation that grew out of the creation of the Budget Committee and the modern budget process in 1974.

This shared jurisdiction is unique in the Senate, where committees rarely share jurisdiction, and where joint referral of legislation is only accomplished by unanimous consent.

Since 1977, the Budget and Governmental Affairs Committees have received joint referral for legislation affecting the budget process pursuant to a unanimous-consent agreement. Under that UC, if one committee acts on a bill the other committee must act within 30 days or be automatically discharged. Our amendment would supercede this consent agreement.

We all know the Federal budget process is very complicated. The expertise on this subject clearly resides in the Budget Committee, and Senator CONRAD and I believe that is where these issues should be addressed.

Over the years, the Governmental Affairs Committee has done little work on the budget process. Although the current jurisdictional situation has not necessarily created significant problems, we believe it is simply unnecessary to have two committees involved in these issues.

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The Governmental Affairs Committee has a very broad and expansive jurisdiction which the resolution being considered would expand even further to matters of homeland security.

Senator CONRAD and I believe consolidating jurisdiction over budget process issues within the Budget Committee would eliminate confusion and guarantee that this work is performed by those with the expertise.

I encourage my colleagues to support our amendment.

Mr. CONRAD. Mr. President, I rise today to speak on behalf of the amendment from the chairman of the Budget Committee, Senator NICKLES.

Mr. President, the Senator from Ohio just got it wrong, what the amendment of the Senator who is the chairman of the Budget Committee does. We do not take the jurisdiction of Governmental Affairs on management issues at all, not at all. That is not what the amendment does.

What the amendment does do is end the duplication of the jurisdiction of the committees on budget process issues. I would submit to my colleagues, it does not make any sense any longer, after 30 years, for Governmental Affairs and Budget to have joint jurisdiction on budget process issues.

The reason they have that joint jurisdiction is because Governmental Affairs wrote the Budget Act. There was no Budget Committee, so at that time they had expertise that the Budget Committee simply did not have, so they were included on jurisdiction on budget process issues.

Well, 30 years have passed. The expertise on these issues is on the Budget Committee. It makes no sense in any management sense to have joint jurisdiction on budget process issues – not on the management issues. The management issues are retained by Governmental Affairs, as they should be. But budget process issues, as the chairman of the Budget Committee has suggested in his amendment, ought to be the jurisdiction of the Budget Committee.

Second, it makes no earthly sense for the nominee to be the Budget Director only to go before the Governmental Affairs Committee. That is what happens now. I think my colleagues would be stunned – I must say, I was very surprised, serving on the Budget Committee – that the Director of the Budget does not come before the Budget Committee. What sense does that make?

The amendment of the chairman of the Senate Budget Committee, Senator NICKLES of Oklahoma, does not expand the jurisdiction of the

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Senate Budget Committee. It simply eliminates the overlap in jurisdiction between the two committees on the narrow issue of budget process issues.

The expertise on budget process issues, on pay-go, on discretionary caps, on oversight of budget agreements, does not reside with the Committee on Governmental Affairs; it resides in the Budget Committee. We ought to clean up this overlap that has existed for 30 years that started for a good reason – because the Committee on Governmental Affairs wrote the Budget Act because there was no Budget Committee. But now there is a Budget Committee. It has been in existence 30 years. It ought to have jurisdiction over budget process issues. That just makes common sense.

Who could possibly defend the notion that a Budget Director should not come before the Budget Committee for confirmation? It makes no earthly sense.

The amendment of the Senator from Oklahoma is entirely reasonable. It is rational. It improves the operations of both committees. It does not take jurisdiction to the Budget Committee; it simply reduces the common jurisdiction that currently exists between Governmental Affairs and the Budget Committee on the narrow issue of budget process.

Mr. VOINOVICH. Will the Senator yield for a question?

Mr. CONRAD. I would be happy to yield after this statement.

And it gives to the Budget Committee the right to hear from the Office of Management and Budget, the man who is named or the woman who is named Budget Director in the confirmation process. That just makes common sense.

I would be happy to yield.

Mr. VOINOVICH. The question I would like to ask is, Has the procedure that we now have in terms of the appointment – and this has been for 30 years – diminished the effectiveness of the Budget Committee, because of the fact that they have not participated in the nomination of the Budget Director?

Mr. CONRAD. I believe the answer simply has to be yes. It makes no earthly sense for the person who is named to be the budget director of the United States not to come before the Budget Committee. What sense could that possibly make?

The PRESIDING OFFICER. The time of the Senator from North Dakota has expired.

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. . . .

Mr. VOINOVICH. Mr. President, I would just like to emphasize again that the current situation is one that is working. Unless one can show that it is not working in terms of the authority or the jurisdiction of the Governmental Affairs Committee, I would argue, why change it.

Secondly, this amendment would then subject the appointees of the Director of the Office of Management and Budget, the Deputy Director, and other people to jurisdictions in two committees, which would make the appointment process longer than it is today in an area that is particularly important to the President. What he wants to do immediately is to get his director of budget on board.

Secondly, I think we need to point out that the budget process is not just the jurisdiction of the Budget Committee. Under this amendment, if I want to put a bill in, for example, to reform the budget process to 2-year budgets, to require that the budget include a presentation on the accrued liabilities of the United States and, for that matter, go back and look at the Budget Act of 1974, which should be updated, that bill would have to go to the Budget Committee. If the members of that committee were unhappy with that, if they like the process of 1-year budgets because of the fact that they like to take a bite out of the apple each year, that bill would be dead.

Under the current situation, if someone has an idea of improving the budget process that impacts not only the budget but the entire operation of Government, they can bring it to the Governmental Affairs Committee. We could handle that legislation, and then that legislation would have to be referred to the Budget Committee for their consideration. The fact is, this is too large a responsibility just to put it within the jurisdiction of the Budget Committee. I argue that it makes a lot of sense to leave the situation as it is unless somebody can tell me that it is not working.

I will say one other thing: Our Government's biggest problem today is management. Having jurisdiction of the Office of Management and Budget in Governmental Affairs has given this Senator a lot of leverage to get this administration to do some things that are important for the country. I thank the Chair.

Mr. REID. Mr. President, I would like the record to reflect that when I spoke regarding Senator VOINOVICH earlier, I said there were approximately 900 bills referred to the Governmental Operations Committee. I misspoke. It is 300. I want the record to reflect the proper number.<sup>1263</sup>

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<sup>1263</sup> *Id.* at S10,906–09.

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The Senate adopted the Nickles amendment by a vote of 50 to 35.<sup>1264</sup> Subsequently, the Senate adopted the resolution as amended by a vote of 79 to 6.<sup>1265</sup>

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<sup>1264</sup> *Id.* at S10,909.

<sup>1265</sup> *Id.* at S10,925.



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## LEGISLATION DEALING WITH CONGRESSIONAL BUDGET MUST BE HANDLED BY BUDGET COMMITTEES

306(a) **SEC. 306.<sup>1266</sup> (a) IN THE SENATE.**—In the Senate, no bill, resolution, amendment, motion, or conference report, dealing with any matter which is within the jurisdiction of the Committee on the Budget shall be considered unless it is a bill or resolution which has been reported by the Committee on the Budget (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.

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*No . . . amendment . . . shall be considered unless it is a bill or resolution which has been reported by the Committee on the Budget*—An amendment may violate this subsection even if its language is identical to that of a bill that the Budget Committee has reported.<sup>1267</sup> When Budget Committee counsel asked:

A [Senate Budget Committee]-reported bill could be offered as an amendment to an unrelated bill subsequently before the Senate without risk of a 306 point of order against that amendment because the subject matter of the amendment was reported out of [the Senate Budget Committee]. This seems to follow from the inclusion of “amendment” in the list of matters against which the 306 point of order would apply.<sup>1268</sup>

The Parliamentarian’s office replied: “Does your hypo[thetical] . . . suggest that an Approp[riation]s bill could become the host measure for an amendment that had been a bill reported out by [Senate Budget Committee] and then “morphed” into an amendment? If so, the answer . . . is “no”.<sup>1269</sup>

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<sup>1266</sup> Congressional Budget Act of 1974 § 306 is codified as amended at [2 U.S.C. § 637](#). Congressional Budget Act of 1974 § 306 was formerly codified as 31 U.S.C. § 1327, prior to the 1982 general revision and enactment of Title 31, Money and Finance in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>1267</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re general questions on section 306 (Sept. 21, 2011, 6:42 PM).

<sup>1268</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re general questions on section 306 (Sept. 21, 2011, 5:37 PM).

<sup>1269</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re general questions on section 306 (Sept. 21, 2011, 6:29 PM).

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Counsel replied:

That's correct. I was thinking that, for example, SBC reports out S.100, which is on the calendar. S.A. 300 is the text of S. 100, and is subsequently offered on a bill before the Senate, an appropriations bill or anything else. You are saying that there is a 306 point of order against S.A. 300. That's a better answer from my perspective because it allows us to defend our jurisdiction a bit more. I was reading 306 literally—"No...amendment...shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget..."—to get to get to the somewhat odd result of a reported bill morphing into a protected amendment. But if you say it ain't so, I'm happy it ain't so.<sup>1270</sup>

The Parliamentarian's office replied: "Once again, fabulous drafting puts us all in a precarious position, but I think we stand by the answer."<sup>1271</sup>

*Dealing with any matter which is within the jurisdiction of the Committee on the Budget*—Riddick's *Senate Procedure* reports several instances of the application of section 306(a)<sup>1272</sup>:

Pursuant to the above section of the law, the Chair has ruled that no bill or resolution dealing with matters within the jurisdiction of the Budget Committee may be considered unless the Budget Committee has reported the same or the committee has been discharged therefrom.<sup>[1273]</sup>

A floor amendment (to a bill within the jurisdiction of the Finance Committee) that would affect the concurrent resolution on the budget by removing Social Security trust funds from the unified budget, was ruled out of order as containing matter within the jurisdiction of the Budget Committee.<sup>[1274]</sup>

An amendment offered from the floor to a measure not reported by the Budget Committee, which by proposing to amend the concurrent resolution on the budget for the upcoming fiscal year to reduce spending by 2 percent, involved matters within the jurisdiction of the Budget Committee, and fell on a point of order.<sup>[1275]</sup>

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<sup>1270</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re general questions on section 306 (Sept. 21, 2011, 6:40 PM).

<sup>1271</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re general questions on section 306 (Sept. 21, 2011, 6:42 PM).

<sup>1272</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 597–98 (1992) (footnotes renumbered and reformatted). See also *id.* at 618.

<sup>1273</sup> 125 CONG. REC. 35,243–53 (Dec. 10, 1979); *id.* at 34,662–65 (Dec. 5, 1979).

<sup>1274</sup> 129 CONG. REC. 6590 (Mar. 22, 1983).

<sup>1275</sup> 133 CONG. REC. 11,023–25 (July 31, 1987).

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An amendment to a tax bill which proposed that certain tax credits be accompanied by dollar for dollar spending reductions, was ruled out of order as violating section 306 of the Congressional Budget Act, and when a point of order was made against such an amendment, a motion then made to refer the bill to the Budget Committee was held not to be in order until the Chair had ruled on the point of order.<sup>[1276]</sup> After the foregoing ruling by the Chair, a motion to refer the bill to the Budget Committee with instructions to report back forthwith with the amendment at issue was made and tabled (no Senator challenging either the motion or amendment thereto under section 306).<sup>[1277]</sup>

A provision of a bill that requires that a report be made to Congress using specified actuarial methods does not affect the responsibility of the Budget Committee in scoring legislation providing spending authority, appropriations or authorizing legislation.<sup>[1278]</sup>

The Chair has sustained a point of order under section 306 of the Budget Act (after a motion to waive that section was defeated) against an amendment to a House amendment to a Senate amendment to an appropriations bill that would have added to the Budget Act a title labeled Legislative Line-Item Veto Rescission Authority, on the grounds that the amendment dealt with a matter within the jurisdiction of the Budget Committee but was offered to a measure that was not reported by that committee.<sup>[1279]</sup>

An amendment to an appropriations bill, reported by the Appropriations Committee to amend the Balanced Budget and Emergency Deficit Control Act of 1985 (known as the Gramm-Rudman-Hollings Act) relating to repayment of loans from the Federal Financing Bank to the Resolution Trust Corporation, was stricken on a point of order pursuant to section 306 of the Budget Act, since the amendment dealt with matters within the jurisdiction of the Budget Committee.<sup>[1280]</sup>

An amendment to the Budget Act which would have granted the President a legislative line-item veto, offered to a bill reported from the Commerce Committee fell on a point of order under section 306 of the Budget Act, since the subject matter of the amendment was in the jurisdiction of the Budget Committee.<sup>[1281]</sup>

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<sup>1276</sup> 122 CONG. REC. 19,093–98 (June 18, 1976).

<sup>1277</sup> *Id.* at 19,089–98.

<sup>1278</sup> See 131 CONG. REC. 13,549 (May 23, 1985).

<sup>1279</sup> 135 CONG. REC. S15,336, S15,356–58 (daily ed. Nov. 9, 1989).

<sup>1280</sup> 136 CONG. REC. S5383–405 (daily ed. May 1, 1990). See further discussion of this precedent below.

<sup>1281</sup> 136 CONG. REC. S7457–78 (daily ed. June 6, 1990). See further discussion of this precedent below.

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Elsewhere in *Riddick's Senate Procedure*, the Parliamentarian noted the application of this section to revenue bills and amendments:

**Revenue Bills and Amendments Under the Budget Act:**

. . . .

Bills, resolutions, and amendments on revenue will be ruled out of order, if a point of order is made and sustained, to the effect that such proposals do not comply with the requirements of the Budget Act. Such proposed legislative measures have been ruled out of order by the Chair because they failed to comply with sections 303, 306, and 311 of the Budget Act . . . .<sup>1282</sup>

Specifying that an activity will not affect the deficit is a matter within the jurisdiction of the Budget Committee.<sup>1283</sup> On May 1, 1990, during consideration of H.R. 4404 (Making dire emergency supplemental appropriations for disaster assistance, food stamps, unemployment compensation administration, and other urgent needs, and transfers, and reducing funds budgeted for military spending for the fiscal year ending September 30, 1990, and for other purposes), the Presiding Officer ruled that the following language contained matters within the jurisdiction of the Budget Committee, in violation of section 306:

Sec. 320. Section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended —

(1) in subparagraph (J), by striking “and” at the end thereof;

(2) in subparagraph (K), by striking the period at the end thereof and inserting a semicolon; and

(3) by adding after subparagraph (K) the following:

“(L) assuming, for purposes of this paragraph, paragraph(3)(A)(i), and the Congressional Budget Act of 1974, and notwithstanding sections 3(6) and 406(b) of that Act, that disbursements and receipts equaling the principal amounts of borrowings or repayments of principal of direct loans from the Federal Financing Bank to the Resolution Trust Corporation that are used for working capital requirements in liquidating

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<sup>1282</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 631 (1992) (footnotes renumbered and reformatted).

<sup>1283</sup> See, e.g., 136 CONG. REC. S5405 (daily ed. May 1, 1990).

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Federal deposit insurance claims or for any other working capital purpose (pursuant to title V of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989), shall not alter the deficit or produce any change in the budget baseline, and

“(M) assuming, for purposes of this paragraph, paragraph 3(A)(i), and the Congressional Budget Act of 1974, notwithstanding sections 3(6) and 406(b) of that Act, and excluding receipts and disbursements subject to sub-paragraph (L), the sum of the amount of any offsetting collections from the Resolution Funding Corporation for purchase of capital certificates and any other offsetting collections of the Resolution Trust Corporation in any fiscal year shall equal the amount of any Resolution Trust Corporation disbursements for that fiscal year, effective beginning with the fiscal year 1991 budget.”<sup>1284</sup>

Upon a point of order raised by Senator Fritz Hollings against the committee amendment under section 306, the amendment fell.<sup>1285</sup>

Any new mechanism to enhance the President’s power to rescind funds fall within the Budget Committee’s jurisdiction.<sup>1286</sup> On June 6, 1990, the Senate considered a McCain amendment<sup>1287</sup> to add a new title to the Impoundment Control Act of 1974 changing what would happen if Congress failed to act on a rescission.<sup>1288</sup> After the Senate rejected 43-50 Senator McCain’s motion to waive section 306 of the Congressional Budget Act, the Chair ruled: “The amendment by the Senator from Arizona modifies the President’s authority to rescind funds, which is a subject within the Budget Committee’s jurisdiction.”<sup>1289</sup>

Mandating the annual amounts of deficit and debt reduction affects the process by which Congress annually establishes the appropriate levels of

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<sup>1284</sup> H.R. 4404, 101st Cong. § 320, 136 CONG. REC. S4991, S4999 (daily ed. Apr. 25, 1990) (as reported to the Senate).

<sup>1285</sup> *Id.* at S5405 (daily ed. May 1, 1990). For the discussion of the point of order and the section, see *id.* at S5383–405.

<sup>1286</sup> See *id.* at S7457–78 (daily ed. June 6, 1990) (McCain amendment no. 1995 regarding enhancing the President’s rescission authority ruled within the Budget Committee’s jurisdiction); 135 CONG. REC. S15,336–58 (daily ed. Nov. 9, 1989) (Coats amendment no. 1092 regarding enhancing the President’s rescission authority ruled within the Budget Committee’s jurisdiction).

<sup>1287</sup> The text of the amendment was identical to S. 1553, 101st Cong., 135 CONG. REC. S10,293–96 (daily ed. Aug. 4, 1989).

<sup>1288</sup> See 136 CONG. REC. S7457 (daily ed. June 6, 1990) (statement of Sen. McCain).

<sup>1289</sup> 136 CONG. REC. S7478 (daily ed. June 6, 1990) (Sen. Wirth acting as Presiding Officer).

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budget authority, outlays, deficits, and public debt, and thus deals with matter within the jurisdiction of the Budget Committee.<sup>1290</sup>

The Parliamentarian's office has advised that emergency designations do not violate section 306, and language providing that an item is not an emergency would not violate section 306 either.<sup>1291</sup>

Similarly, the Statutory Pay-As-You-Go Act of 2010 provides that for the purposes of enforcing section 306, language designating the basis for budgetary determinations "that includes only the language specifically prescribed [in the Statutory Pay-As-You-Go Act], shall not be considered a matter within the jurisdiction of either the Senate or House Committees on the Budget."<sup>1292</sup>

Where an amendment proposed that "None of the funds made available by this Act may be disbursed or obligated unless the Congressional Budget Office certifies . . . that such funds would not result in an increase in any fiscal year to the baseline forecast for the Consumer Price Index,"<sup>1293</sup> the Parliamentarian concurred<sup>1294</sup> that the amendment would violate Congressional Budget Act section 306, as the Budget Committee has jurisdiction over the functions, duties, and powers of the Congressional Budget Office.<sup>1295</sup>

Where reconciliation bill language<sup>1296</sup> would have increased tax benefits by the amount that those benefits would be cut by subsequent sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) or the Statutory Pay-As-You-Go Act of 2010, the Parliamentarian's office observed that "the references to sequestration

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<sup>1290</sup> See 138 CONG. REC. S15,001–18 (daily ed. Sept. 25, 1992) (Smith amendment on a tax-form check-off to trigger deficit reductions or sequesters).

<sup>1291</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re 2 questions regarding Ensign amendment 3297 (Oct. 15, 2007, 6:44 PM) (reporting conversation with Off. of S. Parliamentarian); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re 2 questions regarding Ensign amendment 3297 (Oct. 16, 2007, 12:22 PM) (reporting conversation with Off. of S. Parliamentarian).

<sup>1292</sup> [Statutory Pay-As-You-Go Act of 2010 § 4\(a\)\(4\)](#), 2 U.S.C. § 933(a)(4), *infra* p. 1162.

<sup>1293</sup> [163 CONG. REC. S5742](#) (daily ed. Aug. 3, 2021) (Rick Scott amendment no. 2338).

<sup>1294</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian & Staff of S. Majority Leader (Aug. 4, 2021, 1:51 PM).

<sup>1295</sup> [S. Res. 445](#), [108th Cong. § 101\(d\)](#) (2004) (adopted).

<sup>1296</sup> [Build Back Better Act](#), H.R. 5376, 117th Cong. §§ 136104 & 136601 (2021) (as reported by the House Budget Committee).

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under BBEDCA in these sections raise the question of Budget committee jurisdiction in the 306 and fatality contexts.”<sup>1297</sup>

Where a proposed amendment created a new “point of order against budget resolutions that do not include a balanced budget,”<sup>1298</sup> Budget Counsel argued that

this amendment includes “matters relating [to]” “concurrent resolutions on the budget” within the meaning of Senate Rule XXV, ¶ 1(e)(1), and also involves “the process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses,” within the meaning of S. Res. 445, 108th Cong. § 101(d)(3) (2004) (adopted). Thus, while we acknowledge that jurisdictional matters are the Parliamentarian’s call, we believe that this amendment plainly falls within the jurisdiction of the Budget Committee. As the continuing resolution will not have been reported by or discharged from the Budget Committee, we thus believe that this amendment would violate Congressional Budget Act section 306, 2 U.S.C. § 637.<sup>1299</sup>

The Parliamentarian agreed.<sup>1300</sup>

When one is making arguments to the Parliamentarian about committee jurisdictions, the Parliamentarian values citations to past bill referrals, and the Parliamentarian has advised:

[W]hen citing referred measures for the purposes of bolstering a jurisdictional argument, please be mindful of measures that are sweeping and general that were referred to one committee but have smaller provisions (which are in line with the provisions you are seeking clarification on) in another committee’s jurisdiction. These are not necessarily helpful to the cause as they can be easily distinguished. Your best bets are smaller, more discreet measures.<sup>1301</sup>

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<sup>1297</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Response to Section 306 Challenge to Ways & Means Title (Nov. 18, 2021, 3:17 PM).

<sup>1298</sup> Amend. No. 4930, 117th Cong., [168 CONG. REC. S756](#) (daily ed. Feb. 16, 2022); S. Legis. Couns., HEN22148 1F2, To strike the Statutory PAYGO exemption and require balanced budgets in concurrent resolutions on the budget (Feb. 2022).

<sup>1299</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Braun CR Amendment (Feb. 16, 2022, 11:27 AM).

<sup>1300</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Braun CR Amendment (Feb. 16, 2022, 1:15 PM).

<sup>1301</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on the Judiciary re Memo re: immigration fees jurisdiction (Oct. 28, 2021, 7:19 PM).



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**Reconciliation bills**— The Parliamentarian has confirmed that a point of order could lie under section 306 against a reconciliation bill that included matter within the Budget Committee’s jurisdiction even though the Budget Committee had reported the reconciliation bill pursuant to Budget Act section 310(b)(2), as that section prohibits the Budget Committee from making substantive revisions to a reconciliation bill.<sup>1302</sup>

**Motion while point of order pending**— The Parliamentarian has written with regard to a point of order under this section: “If a point of order were made against the consideration of an amendment, a motion then made to refer the underlying bill to committee would not be in order until the Chair had ruled on that point of order.”<sup>1303</sup> In this connection, the Parliamentarian’s office recorded:

On June 18, 1976, the Senate was considering H.R. 10612, the Tax Reform Act of 1976, reported by the Senate Finance Committee. Mr. Roth (of Delaware) proposed unprinted amendment (Amdt. No. 61) to Amdt. No. 1887, which added a statement that Congress commits itself to making dollar-for-dollar reductions in spending for the revenue loss after June 30, 1977, from the tax credits authorized under section 42 of the underlying legislation. Mr. Muskie (of Maine) raised a point of order against the amendment on the grounds it dealt with matters in the jurisdiction of the Budget Committee—revenue and spending targets in the first and second concurrent resolution—and was proposed to a bill not reported from that committee in violation of §306 of the Budget Act. Mr. Roth inquired whether a motion to commit the bill to the Budget Committee with instructions would be in order after the ruling of the Chair on the point of order. The Presiding Officer advised that it would. Mr. Roth then made a motion to commit the bill which the Presiding Officer ruled out of order at that time, pending resolution of the point of order.

Mr. MUSKIE. Mr. President, I do raise the point of order under section 306 of the Budget Act with respect to the amendment of the Senator from Delaware.

Mr. ROTH. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

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<sup>1302</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 31, 2017, at 2 (Apr. 3, 2017); see also Staff of S. Comm. on the Budget, Notes from Meeting with Parls on June 15, 2015 (June 16, 2015).

<sup>1303</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 629 (1992) (citing [122 CONG. REC. 19,093–98](#) (June 18, 1976)); see also Off. of the Sec’y of the Senate, [Senate Precedent PRL19760618-001](#).



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Mr. ROTH. Mr. President, is it in order for me to make a motion to recommit the bill to the Committee on the Budget after the ruling?

The PRESIDING OFFICER. After the ruling on the point of order?

Mr. ROTH. Yes.

The PRESIDING OFFICER. It would be in order. The motion to refer is in order at any time up to the passage of the bill.

Mr. MUSKIE. Mr. President, I make the point of order.

The PRESIDING OFFICER. The point of order has been made by the Senator from Maine.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Mr. President, I move that H.R. 10612 be referred to the Committee on the Budget with instructions that such committee report the bill back forthwith with an amendment providing that any extension of the general tax credit provided in section 42 of the Internal Revenue Code of 1954 beyond June 30, 1977, be accompanied by a specific reduction in spending limits provided in the first concurrent budget resolution for the fiscal year 1977 equal to any loss in revenue resulting from such extension.

I ask for the yeas and nays.

The PRESIDING OFFICER. In response to the Senator's parliamentary inquiry a moment ago, the Chair advised that the motion to refer would be in order after the point of order has been acted upon. It is not in order at this point, until or subsequent to action on the point of order, under the precedents of the Senate.

Mr. ROTH. I will withhold that.

The PRESIDING OFFICER. The question now is on the point of order, which the Chair sustains under section 306 of the Budget and Impoundment Control Act, Public Law 93-344.

Mr. ROTH. Mr. President, I now move that H.R. 10612 be referred.

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The PRESIDING OFFICER. The Senator is in order to make that motion now.<sup>1304</sup>

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<sup>1304</sup> Off. of the Sec'y of the Senate, [Senate Precedent PRL19760618-001](#) (quoting [122 CONG. REC. 19,096–97](#) (June 18, 1976)).

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306(b)

**(b) IN THE HOUSE OF REPRESENTATIVES.—In the House of Representatives, no bill or joint resolution, or amendment thereto, or conference report thereon, dealing with any matter which is within the jurisdiction of the Committee on the Budget shall be considered unless it is a bill or joint resolution which has been reported by the Committee on the Budget (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or joint resolution.**

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*Dealing with any matter which is within the jurisdiction of the Committee on the Budget*—The Rules of the House of Representatives provide:

RULE X  
ORGANIZATION OF COMMITTEES

*Committees and their legislative jurisdictions*

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

....

**(d) Committee on the Budget.**

(1) Concurrent resolutions on the budget (as defined in section 3(4) of the Congressional Budget Act of 1974), other matters required to be referred to the committee under titles III and IV of that Act, and other measures setting forth appropriate levels of budget totals for the United States Government.

(2) Budget process generally.

(3) Establishment, extension, and enforcement of special controls over the Federal budget, including the budgetary treatment of off-budget Federal agencies and measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

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....

*Special oversight functions*

3....

(c) The Committee on the Budget shall study on a continuing basis the effect on budget outlays of relevant existing and proposed legislation and report the results of such studies to the House on a recurring basis.

....

*Additional functions of committees*

4....

(b) The Committee on the Budget shall—

(1) review on a continuing basis the conduct by the Congressional Budget Office of its functions and duties;

(2) hold hearings and receive testimony from Members, Senators, Delegates, the Resident Commissioner, and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as it considers desirable in developing concurrent resolutions on the budget for each fiscal year;

(3) make all reports required of it by the Congressional Budget Act of 1974;

(4) study on a continuing basis those provisions of law that exempt Federal agencies or any of their activities or outlays from inclusion in the Budget of the United States Government, and report to the House from time to time its recommendations for terminating or modifying such provisions;

(5) study on a continuing basis proposals designed to improve and facilitate the congressional budget process, and report to the House from time to time the results of such studies, together with its recommendations; and

(6) request and evaluate continuing studies of tax expenditures, devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and report the results of such studies to the House on a recurring basis.

....

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### *Budget Act responsibilities*

(f)(1) Each standing committee shall submit to the Committee on the Budget not later than six weeks after the submission of the budget by the President, or at such time as the Committee on the Budget may request –

(A) its views and estimates with respect to all matters to be set forth in the concurrent resolution on the budget for the ensuing fiscal year that are within its jurisdiction or functions; and

(B) an estimate of the total amounts of new budget authority, and budget outlays resulting therefrom, to be provided or authorized in all bills and resolutions within its jurisdiction that it intends to be effective during that fiscal year.

(2) The views and estimates submitted by the Committee on Ways and Means under subparagraph (1) shall include a specific recommendation, made after holding public hearings, as to the appropriate level of the public debt that should be set forth in the concurrent resolution on the budget.<sup>1305</sup>

The House Budget Committee has described its jurisdiction as follows:

#### COMMITTEE JURISDICTION AND OVERSIGHT

. . . The Budget Committee’s oversight responsibilities are determined by both the breadth of the federal budget and the relatively narrow focus of the Committee’s legislative jurisdiction.

Under clause 1(d)(1) of House Rule X, the primary responsibility of the Budget Committee is to develop a concurrent resolution on the budget for the fiscal year. This concurrent resolution sets spending and revenue levels in aggregate and across budget functions (a set of programs that serve a shared purpose or activity, such as agriculture, health, or national defense).

Although the subject matter of the budget is inherently broad, the Committee’s formal oversight responsibility focuses on laws governing the budget process and the agencies responsible for administering elements of those laws. Under clauses 1(d)(1)-(3) of House Rule X, the major laws falling within its oversight include the Budget and Accounting Act of 1921, the Congressional Budget Act

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<sup>1305</sup> [House Rule X](#).

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of 1974, the Balanced Budget and Emergency Deficit Control Act of 1985, the Budget Enforcement Act of 1990, the Statutory Pay-As-You-Go Act of 2010, the Budget Control Act of 2011, and the Bipartisan Budget Act of 2019. The two agencies with primary responsibility for administering elements of these laws and hence which fall under the Committee's jurisdiction are the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO).

In addition to these general oversight responsibilities, the Budget Committee has the special oversight responsibility under clauses 3(c) and 4(b) of House Rule X to study the effect on budget outlays of existing and proposed legislation and to request and evaluate continuing studies of tax expenditures.<sup>1306</sup>

*Deschler-Brown-Johnson-Sullivan Precedents* says with regard to Budget Act section 306:

A point of order against consideration of a bill under suspension of the rules (on the ground that section 306 of the Congressional Budget Act precludes consideration in the House of a bill dealing with subject matter within the jurisdiction of the Committee on the Budget unless reported by such committee), was overruled on the basis that the suspension procedure waives any procedural impediments to consideration, including rulemaking contained in statute.

....

Section 306 of the Congressional Budget Act prevents the consideration of measures that contain matter within the jurisdiction of the Committee on the Budget but that have not been reported by (or been discharged from) that committee. The Budget Enforcement Act of 1990 standardized this section in its application to any bill, resolution, or amendment, motion or conference report. The point of order is applicable in both the House and the Senate. Pursuant to section 904(c) of the Congressional Budget Act, a vote of three-fifths of Senators duly chosen and sworn is required to waive section 306 of the Budget Act.

The House has adopted special orders of business resolutions reported from the Committee on Rules that explicitly waive the requirement of section 306. Furthermore, a special order of business that makes in order

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<sup>1306</sup> Staff of the H. Comm. on the Budget, 117th Cong., Oversight Plan of the Committee on the Budget for the 117th Congress House of Representatives.

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the consideration of an unreported measure has the effect of discharging that measure from committee (regardless of whether or not the text of the special order uses the term “discharge”) and thus would meet the section 306 requirement that the measure be reported or discharged from committee. The Committee on Rules has also reported special orders of business that “self-execute” amendments to the original text that remove matters within the jurisdiction of the Committee on the Budget in order to avoid violating section 306.

Pursuant to the Statutory Pay-As-You-Go Act of 2010, a designation regarding the budgetary effects under Stat-Paygo is not considered a matter within the jurisdiction of the Committee on the Budget for the purpose of section 306 enforcement. This is to be contrasted with emergency designations made pursuant to section 251 of Gramm-Rudman-Hollings, which have been considered within the jurisdiction of the Committee on the Budget for that purpose. Similarly, concurrent resolutions on the budget have occasionally provided for special treatment of amounts designated as emergencies. Emergency designations contained in measures pursuant to such ad hoc provisions contained in concurrent resolutions on the budget have typically been viewed as falling within the jurisdiction of the Committee on the Budget.

. . . An amendment to a general appropriation bill designating an appropriation as “emergency spending” within the meaning of section 314 of the Congressional Budget Act was held to “deal with” matter within the jurisdiction of the Committee on the Budget on a measure that had not been reported by that committee, in violation of section 306 of the Congressional Budget Act, and ruled out of order.

....

. . . An amendment directing that certain lease-purchase agreements be “scored” for budget purposes on an annual basis was held to “deal with” matter within the jurisdiction of the Committee on the Budget on a bill not reported by that committee, in violation of section 306 of the Congressional Budget Act.

....

. . . While section 306 of the Congressional Budget Act prohibits consideration of a concurrent resolution on the budget within the jurisdiction of the Committee on the Budget unless it has been reported by or discharged from that committee, adoption by the House of a special order of business reported from the Committee on Rules making in order consideration of an unreported concurrent resolution on the budget has the

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inevitable effect, under the precedents, of “discharging” the Committee on the Budget consistent with the statute.<sup>1307</sup>

***Legislative History of Section 306*** – Section 306 appeared in the original Budget Act as follows:

LEGISLATION DEALING WITH CONGRESSIONAL BUDGET MUST BE  
HANDLED BY BUDGET COMMITTEES

SEC. 306. No bill or resolution, and no amendment to any bill or resolution, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.<sup>1308</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 reenacted section 306 without any change as part of a larger revision of Budget Act title III.<sup>1309</sup> The conference report to accompany the Balanced Budget and Emergency Deficit Control Act of 1985 stated, “Section 306 is identical to current law.”<sup>1310</sup>

A section of the Budget Enforcement Act of 1990 entitled “STANDARDIZATION OF LANGUAGE REGARDING POINTS OF ORDER” substituted the words “bill, resolution, amendment, motion, or conference report” for the words “bill or resolution, and no amendment to any bill or resolution,” so that section 306 then read:

LEGISLATION DEALING WITH CONGRESSIONAL BUDGET MUST BE  
HANDLED BY BUDGET COMMITTEES

SEC. 306. No ~~bill or resolution, and no amendment to any bill or resolution~~ *bill, resolution, amendment, motion, or conference report*, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of

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<sup>1307</sup> 18 LEWIS DESCHLER ET AL., [DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS](#) 98–99, 246–48, 250–51 (2013) (footnotes omitted).

<sup>1308</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 306, 88 Stat. 297, 313 (amended 1985, 1990 & 2013).

<sup>1309</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1050–51.

<sup>1310</sup> H.R. REP. NO. 99-433, at 107 (1985).



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that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.<sup>1311</sup>

The conference report to accompany the Budget Enforcement Act of 1990 explained, “The conference report standardizes the language of points of order.”<sup>1312</sup>

Finally, the Bipartisan Budget Act of 2013 designated the existing section 306 as subsection (a), inserted the new subsection heading “IN THE SENATE,” changed “no” to lower case, struck out “of either House,” “in that House,” and “of that House,” and added the new subsection (b) for the House, in which “joint resolution” was explicitly added, so that section 304 thereafter read:

LEGISLATION DEALING WITH THE CONGRESSIONAL BUDGET MUST BE  
HANDLED BY THE BUDGET COMMITTEES

SEC. 306. (a) *IN THE SENATE.* — *In the Senate, No no bill, resolution, amendment, motion, or conference report, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.*

(b) *IN THE HOUSE OF REPRESENTATIVES.* — *In the House of Representatives, no bill or joint resolution, or amendment thereto, or conference report thereon, dealing with any matter which is within the jurisdiction of the Committee on the Budget shall be considered unless it is a bill or joint resolution which has been reported by the Committee on the Budget (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or joint resolution.*<sup>1313</sup>

A subsequent House Budget Committee print explained, “The Bipartisan Budget Act of 2013 applied section 306 in the House to ‘joint resolutions’.”<sup>1314</sup> As interpreted in the Senate, joint resolutions had already been included within the more general term “resolution.” A

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<sup>1311</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13207(a)(1)(D), 104 Stat. 1388, 1388-617.

<sup>1312</sup> H.R. REP. NO. 101-964, at 1170 (1990).

<sup>1313</sup> [Bipartisan Budget Act of 2013](#), Pub. L. No. 113-67, § 122(7), 127 Stat. 1165, 1175 (Dec. 26, 2013) (current version at 2 U.S.C. § 637).

<sup>1314</sup> PAUL A. RESTUCCIA, STAFF OF H. COMM. ON THE BUDGET, 114TH CONG., [A COMPENDIUM OF LAWS AND RULES OF THE CONGRESSIONAL BUDGET PROCESS](#) 74 n.67 (Comm. Print 2015).

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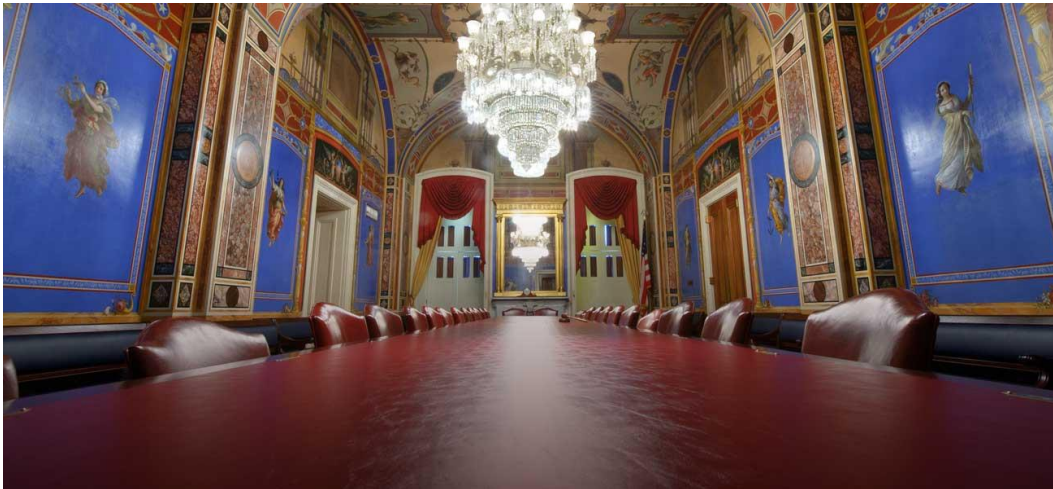
Parliamentarian's note in *Deschler-Brown-Johnson-Sullivan Precedents* explained:

Prior to the revisions occasioned by the Budget Enforcement Act of 1997, section 308 was applicable to any "bill or resolution," ostensibly covering simple resolutions of the House (such as special orders of business). For an example of proceedings involving a "self-executed" amendment via a special order of business prior to this revision, see § 7.2, *infra*. A similar issue has arisen with regard to section 306, which also uses the term "resolution." Beginning with the 107th Congress (and continuing in each subsequent Congress), the House has adopted as a separate order, contained in the opening-day resolution adopting the rules of the House, a provision interpreting the term "resolution" in section 306 to refer to a "joint resolution" only. See, *e.g.*, 147 CONG. REC. 26, 107th Cong., 1st Sess., Jan. 3, 2001 (H. Res. 5, sec. 3(b)(1)).<sup>1315</sup>

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<sup>1315</sup> 18 LEWIS DESCHLER ET AL., *DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS* 84, n 2 (2013).

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## **Senate Appropriations Committee Hearing Room**

Senate Appropriations Committee

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# Appropriations and Reports

Sections 307 and 309 address the appropriations schedule in the House of Representatives. Sandwiched in between, section 308 addresses reports generally for both the House and Senate.

*Appropriations*—The Congressional Research Service’s Jim Saturno and Megan Lynch provide an overview of the appropriation process:

Within the committee structure established by Congress, the task of developing appropriations legislation is delegated to the Appropriations Committees of the House and Senate. These committees, in turn, have created a system of subcommittees designed to facilitate their ability to carry out these tasks. The committees are organized in 12 parallel subcommittees, each of which is charged with developing, drafting, and managing the consideration of one regular appropriations act each fiscal year.

House and Senate rules restrict the content of appropriations bills so that they focus on questions related to funding. Unlike other legislation, appropriations acts are organized as a series of mostly unnumbered paragraphs that provide budget authority, which permits a federal agency

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to enter into financial agreements that will obligate the Treasury to make payments. In addition to appropriations bills, the subcommittees draft written reports that accompany them and provide agencies with more detailed information about congressional intent concerning how agencies should use appropriated funds.

Once appropriations bills are reported, they may be considered under the rules applicable to their respective chamber. In the House, the practice in recent years has been to consider appropriations bills under the terms of a special rule reported from the Rules Committee. In the Senate, appropriations bills enjoy no special privilege so that their consideration is in most respects subject to the same rules for consideration as other legislation.<sup>1316</sup>

As House rules allow the majority to control consideration of appropriation bills, the House has moved regular appropriation bills more regularly than the Senate.<sup>1317</sup> Budget Act sections 307 and 309 provide spurs to the appropriation process in the House.

**Reports**—Section 308 addresses committee reports, conference reports, budget scorekeeping reports, and Congressional Budget Office reports. And section 308 calls for inclusion of Congressional Budget Office work at each of these stages. The Congressional Budget Office has testified, “As directed by section 308 of the Congressional Budget Act of 1974, CBO provides detailed data and other information to the Appropriations Committees and to the Congress as a whole as they consider legislation.”<sup>1318</sup>

Section 308(a) mandates that committee reports and conference reports contain Congressional Budget Office costs estimates whenever possible. Committee reports are often some of the best legislative history. As Justice Sonia Sotomayor has written:

Committee reports . . . are a particularly reliable source to which we can look to ensure our fidelity to Congress’ intended meaning. See *Garcia v. United States*, 469 U. S. 70, 76 (1984) (“In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature’s intent lies in the Committee Reports on the bill, which ‘represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation’”

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<sup>1316</sup> JAMES V. SATURNO & MEGAN S. LYNCH, CONG. RSCH. SERV., [R47106, THE APPROPRIATIONS PROCESS: A BRIEF OVERVIEW](#) summary (2022).

<sup>1317</sup> See Cong. Rsch. Serv., [Appropriations Status Table](#) (fiscal years 1999–2013).

<sup>1318</sup> CONG. BUDGET OFF., [ANSWERS TO QUESTIONS FOR THE RECORD FOLLOWING A HEARING ON DISCRETIONARY APPROPRIATIONS UNDER THE BUDGET CONTROL ACT CONDUCTED BY THE SENATE COMMITTEE ON THE BUDGET](#) 5 (2019).

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(quoting *Zuber v. Allen*, 396 U. S. 168, 186 (1969))). Bills presented to Congress for consideration are generally accompanied by a committee report. Such reports are typically circulated at least two days before a bill is to be considered on the floor and provide Members of Congress and their staffs with information about “a bill’s context, purposes, policy implications, and details,” along with information on its supporters and opponents. R. Katzmman, *Judging Statutes* 20, and n. 62 (2014) (citing A. LaRue, *Senate Manual Containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate*, S. Doc. No. 107-1, p. 17 (2001)). These materials “have long been important means of informing the whole chamber about proposed legislation,” Katzmman, *Judging Statutes*, at 19, a point Members themselves have emphasized over the years. It is thus no surprise that legislative staffers view committee and conference reports as the most reliable type of legislative history. See Gluck & Bressman, *Statutory Interpretation From the Inside—An Empirical Study of Congressional Drafting, Delegation and the Canons: Part I*, 65 *Stan. L. Rev.* 901, 977 (2013).<sup>1319</sup>

Section 308(b) requires creation and dissemination of regular budget scorekeeping reports. When Senator Mike Enzi chaired the Budget Committee, he described the scorekeeping reports that he filed:

I want to take this opportunity to explain the report for those taxpayers who are concerned, as I am, about our country’s fiscal health and want to learn more.

I hope the people will look at the future months and each monthly report. A current-law budget allows the Senate to enforce the budget spending levels projected under current law. . . .

The scorekeeping report covers six primary areas. First, it shows whether authorizing committees are sticking to their allocation, which is just a fancy term for each committee’s spending allowance. We track that for the 1-year, 5-year, and 10-year periods for this report. . . .

Second, the report tracks whether the Appropriations Committee is adhering to the discretionary spending limits imposed by the most recent Bipartisan Budget Act. . . .

Third, the scorekeeping report tracks changes in mandatory programs. We call that CHIMPS, which is used by the Appropriations Committee. That is so we are not using the very important wording of “changes in mandatory programs,” actually making changes in mandatory programs

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<sup>1319</sup> *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767, 782 (2018) (Sotomayor, J., concurring) (footnote omitted).

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without people knowing. The Appropriations Committee uses those changes in mandatory programs to offset new discretionary spending each year. . . .

Fourth, the report tracks the amount of emergency and overseas contingency operations spending in appropriations bills. Emergency spending is not constrained by discretionary spending limits that I talked about . . . . Emergencies don't count against the budget, but they do go to increased debt. There is no requirement to adjust the budget to pay for emergencies.

Fifth, included in the report is information provided to me by the Congressional Budget Office that compares topline spending and revenue amounts, known as aggregates, to the current-law budget levels. . . .

Finally, the report includes the current balances of the Senate's pay-go scorecard. Pay-go stands for "pay as you go," a unique concept around here. In other words, was it paid for? If not, the report shows it on the scorecard. The Senate's pay-go scorecard, which is enforced with a 60-vote point of order, tracks the budgetary effects of legislation moving through Congress affecting mandatory spending and revenues. . . .

. . . .

We are long overdue for an honest conversation about the country's finances. I hope the Senate scorekeeping report can contribute in a small way to that conversation.<sup>1320</sup>

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<sup>1320</sup> 166 CONG. REC. S5879 (daily ed. Oct. 17, 2019).



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## HOUSE COMMITTEE ACTION ON ALL APPROPRIATION BILLS TO BE COMPLETED BY JUNE 10

307        SEC. 307.<sup>1321</sup> On or before June 10 of each year, the Committee on Appropriations of the House of Representatives shall report annual appropriation bills providing **new budget authority**<sup>1322</sup> under the jurisdiction of all of its subcommittees for the fiscal year which begins on October 1 of that year.

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*Legislative History* – Section 307 appeared in the original Budget Act as follows:

HOUSE COMMITTEE ACTION ON ALL APPROPRIATION BILLS TO BE  
COMPLETED BEFORE FIRST APPROPRIATION BILL IS REPORTED

SEC. 307. Prior to reporting the first regular appropriation bill for each fiscal year, the Committee on Appropriations of the House of Representatives shall, to the extent practicable, complete subcommittee markup and full committee action on all regular appropriation bills for that year and submit to the House a summary report comparing the committee's recommendations with the appropriate levels of budget outlays and new budget authority as set forth in the most recently agreed to concurrent resolution on the budget for that year.<sup>1323</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 rewrote section 307 as follows:

HOUSE COMMITTEE ACTION ON ALL APPROPRIATION BILLS TO BE  
COMPLETED ~~BEFORE FIRST APPROPRIATION BILL IS REPORTED~~  
BY JUNE 10

SEC. 307. ~~Prior to reporting the first regular appropriation bill for each fiscal year~~ On or before June 10 of each year, the Committee on

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<sup>1321</sup> Congressional Budget Act of 1974 § 307 is codified as amended at [2 U.S.C. § 638](#). Congressional Budget Act of 1974 § 307 was formerly codified as 31 U.S.C. § 1328 prior to the 1982 general revision and enactment of Title 31, Money and Finance in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, "Money and Finance,"](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>1322</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines "new budget authority."

<sup>1323</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 307, 88 Stat. 297, 313 (amended 1985).

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~~Appropriations of the House of Representatives shall, to the extent practicable, complete subcommittee markup and full committee action on all regular appropriation bills for that year report annual appropriation bills providing new budget authority under the jurisdiction of all of its subcommittees for the fiscal year which begins on October 1 of that year and submit to the House a summary report comparing the committee's recommendations with the appropriate levels of budget outlays and new budget authority as set forth in the most recently agreed to concurrent resolution on the budget for that year.~~<sup>1324</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained: "This section requires all annual appropriations bills for the coming fiscal year to be reported by the House Committee on Appropriations by June 10."<sup>1325</sup>

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<sup>1324</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1051.

<sup>1325</sup> [H.R. REP. NO. 99-433](#), at 107 (1985) (Conf. Rep.).

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## REPORTS, SUMMARIES, AND PROJECTIONS OF CONGRESSIONAL BUDGET ACTIONS

308(a) SEC. 308.<sup>1326</sup> (a) LEGISLATION PROVIDING **NEW BUDGET AUTHORITY**<sup>1327</sup> OR PROVIDING INCREASE OR DECREASE IN **REVENUES**<sup>1328</sup> OR **TAX EXPENDITURES**.<sup>1329</sup> —

308(a)(1) (1) Whenever a committee of either House reports to its House a bill or joint resolution, or committee amendment thereto, providing **new budget authority**<sup>1330</sup> (other than continuing appropriations) or providing an increase or decrease in **revenues**<sup>1331</sup> or **tax expenditures**<sup>1332</sup> for a fiscal year (or fiscal years), the report accompanying that bill or joint resolution shall contain a statement, or the committee shall make available such a statement in the case of an approved committee amendment which is not reported to its House, prepared after consultation with the Director of the Congressional Budget Office —

308(a)(1)(A) (A) comparing the levels in such measure to the appropriate allocations in the reports submitted under **section 302(b)**<sup>1333</sup> for the most recently agreed to **concurrent resolution on the budget**<sup>1334</sup> for such fiscal year (or fiscal years);

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<sup>1326</sup> Congressional Budget Act of 1974 § 308 is codified as amended at 2 U.S.C. § 639. Congressional Budget Act of 1974 § 308 was formerly codified as 31 U.S.C. § 1329, prior to the 1982 general revision and enactment of Title 31, Money and Finance in *An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”* Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>1327</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1328</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1329</sup> Congressional Budget Act of 1974 § 3(3), 2 U.S.C. § 622(3), *supra* p. 57, defines “tax expenditures.”

<sup>1330</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1331</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1332</sup> Congressional Budget Act of 1974 § 3(3), 2 U.S.C. § 622(3), *supra* p. 57, defines “tax expenditures.”

<sup>1333</sup> Congressional Budget Act of 1974 § 302(b), 2 U.S.C. § 633(b), *supra* p. 189, addresses “Suballocations by Appropriations Committees.”

<sup>1334</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

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- 308(a)(1)(B) (B) containing a projection by the Congressional Budget Office of how such measure will affect the levels of such **budget authority**,<sup>1335</sup> **budget outlays**,<sup>1336</sup> **revenues**,<sup>1337</sup> or **tax expenditures**<sup>1338</sup> under existing law for such fiscal year (or fiscal years) and each of the four ensuing fiscal years, if timely submitted before such report is filed; and
- 308(a)(1)(C) (C) containing an estimate by the Congressional Budget Office of the level of **new budget authority**<sup>1339</sup> for assistance to **State**<sup>1340</sup> and **local governments**<sup>1341</sup> provided by such measure, if timely submitted before such report is filed.
- 308(a)(2) (2) Whenever a conference report is filed in either House and such conference report or any amendment reported in disagreement or any amendment contained in the joint statement of managers to be proposed by the conferees in the case of technical disagreement on such bill or joint resolution provides **new budget authority**<sup>1342</sup> (other than continuing appropriations) or provides an increase or decrease in **revenues**<sup>1343</sup> for a fiscal year (or fiscal years), the statement of managers accompanying such conference report shall contain the information described in **paragraph (1)**,<sup>1344</sup> if available on a timely basis. If such information is not available

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<sup>1335</sup> Congressional Budget Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>1336</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

<sup>1337</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1338</sup> Congressional Budget Act of 1974 § 3(3), 2 U.S.C. § 622(3), *supra* p. 57, defines “tax expenditures.”

<sup>1339</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1340</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>1341</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>1342</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1343</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1344</sup> Congressional Budget Act of 1974 § 308(a)(1), 2 U.S.C. § 639(a)(1), *supra* p. 379.

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when the conference report is filed, the committee shall make such information available to Members as soon as practicable prior to the consideration of such conference report.

308(a)(3) (3) **CBO**<sup>1345</sup> PAYGO ESTIMATES. —

308(a)(3)(A) (A) The Chairs of the Committees on the Budget of the House and Senate, as applicable, shall request from the Director of the Congressional Budget Office an estimate of the **budgetary effects**<sup>1346</sup> of **PAYGO legislation**.<sup>1347</sup>

308(a)(3)(B) (B) Estimates shall be prepared using **baseline**<sup>1348</sup> estimates supplied by the Congressional Budget Office, consistent with **section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985**.<sup>1349</sup>

308(a)(3)(C) (C) The Director shall not count **timing shifts**,<sup>1350</sup> as that term is defined at **section 3(8) of the Statutory Pay-As-You-Go Act of 2010**,<sup>1351</sup> in estimates of the **budgetary effects**<sup>1352</sup> of **PAYGO legislation**.<sup>1353</sup>

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*Legislative History of section 308(a)(1)* – What is now section 308(a)(1) appeared in the original Budget Act as section 308(a), as follows:

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<sup>1345</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)**, 2 U.S.C. § 900(c)(16), *infra* p. 982, defines “CBO.”

<sup>1346</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *infra* p. 1151, defines “budgetary effects.”

<sup>1347</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *infra* p. 1154, defines “PAYGO legislation.”

<sup>1348</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5)**, 2 U.S.C. § 900(c)(5), *infra* p. 980, defines “baseline” by reference to **Balanced Budget and Emergency Deficit Control Act of 1985 § 257**, 2 U.S.C. § 907, *infra* p. 980.

<sup>1349</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 257**, 2 U.S.C. § 907, *infra* p. 1110, addresses “The Baseline.”

<sup>1350</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(8)**, 2 U.S.C. § 932(8), *infra* p. 1155, defines “timing shift.”

<sup>1351</sup> *Id.*

<sup>1352</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *infra* p. 1151, defines “budgetary effects.”

<sup>1353</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *infra* p. 1154, defines “PAYGO legislation.”

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REPORTS, SUMMARIES, AND PROJECTIONS  
OF CONGRESSIONAL BUDGET ACTIONS

SEC. 308. (a) REPORTS ON LEGISLATION PROVIDING NEW BUDGET AUTHORITY OR TAX EXPENDITURES.—Whenever a committee of either House reports a bill or resolution to its House providing new budget authority (other than continuing appropriations) or new or increased tax expenditures for a fiscal year, the report accompanying that bill or resolution shall contain a statement, prepared after consultation with the Director of the Congressional Budget Office, detailing—

(1) in the case of a bill or resolution providing new budget authority—

(A) how the new budget authority provided in that bill or resolution compares with the new budget authority set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year and the reports submitted under section 302;

(B) a projection for the period of 5 fiscal years beginning with such fiscal year of budget outlays, associated with the budget authority provided in that bill or resolution, in each fiscal year in such period: and

(C) the new budget authority, and budget outlays resulting therefrom, provided by that bill or resolution for financial assistance to State and local governments; and

(2) in the case of a bill or resolution providing new or increased tax expenditures—

(A) how the new or increased tax expenditures provided in that bill or resolution will affect the levels of tax expenditures under existing law as set forth in the report accompanying the first concurrent resolution on the budget for such fiscal year, or, if a report accompanying a subsequently agreed to concurrent resolution for such year sets forth such levels, then as set forth in that report; and

(B) a projection for the period of 5 fiscal years beginning with such fiscal year of the tax expenditures which will result from that bill or resolution in each fiscal year in such period.

No projection shall be required for a fiscal year under paragraph (1) (B) or (2)(B) if the committee determines that a projection for that fiscal year is

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impracticable and states in its report the reason for such impracticability.<sup>1354</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 added references to spending authority described in section 401(c)(2), credit authority, and revenues, and then combined the previously separate paragraphs for budget authority and tax expenditures as follows:

SEC. 308. (a) REPORTS ON LEGISLATION PROVIDING NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, OR NEW CREDIT AUTHORITY, OR PROVIDING AN INCREASE OR DECREASE IN REVENUES OR TAX EXPENDITURES. —

(1) Whenever a committee of either House reports *to its House* a bill or resolution ~~to its House~~, or committee amendment thereto, providing new budget authority (other than continuing appropriations), ~~or new spending authority described in section 401(c)(2), or new credit authority, or providing an increase or decrease in revenues or new or increased~~ tax expenditures for a fiscal year, the report accompanying that bill or resolution shall contain a statement, ~~or the committee shall make available such a statement in the case of an approved committee amendment which is not reported to its House,~~ prepared after consultation with the Director of the Congressional Budget Office, ~~detailing —~~

~~(1) in the case of a bill or resolution providing new budget authority —~~

~~(A) how the new budget authority provided in that bill or resolution compares comparing the levels in such measure with the new budget authority set forth in to the appropriate allocations in the reports submitted under section 302(b) for the most recently agreed to concurrent resolution on the budget for such fiscal year and the reports submitted under section 302;~~

~~(B) including an identification of any new spending authority described in section 401(c)(2) which is contained in such measure and a justification for the use of such financing method instead of annual appropriations;~~

~~(B) a projection for the period of 5 fiscal years beginning with such fiscal year of budget outlays, associated with the budget authority provided in that bill or resolution, in each fiscal year in such period;~~

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<sup>1354</sup> Congressional Budget Act of 1974, Pub. L. No. 93-344, § 308(a), 88 Stat. 297, 313–14 (amended 1985, 1990, 1997, 2010 & 2013).

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(C) containing a projection by the Congressional Budget Office of how such measure will affect the levels of such budget authority, budget outlays, spending authority, revenues, tax expenditures, direct loan obligations, or primary loan guarantee commitments under existing law for such fiscal year and each of the four ensuing fiscal years, if timely submitted before such report is filed; and

~~(G) (D) containing an estimate by the Congressional Budget Office of the level of the new budget authority, and budget outlays resulting therefrom, provided by that bill or resolution for financial assistance to State and local governments provided by such measure, if timely submitted before such report is filed; and~~

~~(2) in the case of a bill or resolution providing new or increased tax expenditures—~~

~~(A) how the new or increased tax expenditures provided in that bill or resolution will affect the levels of tax expenditures under existing law as set forth in the report accompanying the first concurrent resolution on the budget for such fiscal year, or, if a report accompanying a subsequently agreed to concurrent resolution for such year sets forth such levels, then as set forth in that report; and~~

~~(B) a projection for the period of 5 fiscal years beginning with such fiscal year of the tax expenditures which will result from that bill or resolution in each fiscal year in such period.~~

~~No projection shall be required for a fiscal year under paragraph (1) (B) or (2)(B) if the committee determines that a projection for that fiscal year is impracticable and states in its report the reason for such impracticability.~~<sup>1355</sup>

After the Balanced Budget and Emergency Deficit Control Act of 1985, section 308(a)(1) then read as follows:

REPORTS, SUMMARIES, AND PROJECTIONS OF CONGRESSIONAL BUDGET  
ACTIONS

SEC. 308. (a) REPORTS ON LEGISLATION PROVIDING NEW BUDGET  
AUTHORITY, NEW SPENDING AUTHORITY, OR NEW CREDIT AUTHORITY, OR

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<sup>1355</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1051 (amended 1987, 1990, 1997, 2010 & 2013), compared with [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 308(a), 88 Stat. 297, 313 (amended 1985, 1990, 1997, 2010 & 2013).



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PROVIDING AN INCREASE OR DECREASE IN REVENUES OR TAX EXPENDITURES. —

(1) Whenever a committee of either House reports to its House a bill or resolution, or committee amendment thereto, providing new budget authority (other than continuing appropriations), new spending authority described in section 401(c)(2), or new credit authority, or providing an increase or decrease in revenues or tax expenditures for a fiscal year, the report accompanying that bill or resolution shall contain a statement, or the committee shall make available such a statement in the case of an approved committee amendment which is not reported to its House, prepared after consultation with the Director of the Congressional Budget Office —

(A) comparing the levels in such measure to the appropriate allocations in the reports submitted under section 302(b) for the most recently agreed to concurrent resolution Ante, p. 1044, on the budget for such fiscal year;

(B) including an identification of any new spending authority described in section 401(c)(2) which is contained in such measure and a justification for the use of such financing method instead of annual appropriations;

(C) containing a projection by the Congressional Budget Office of how such measure will affect the levels of such budget authority, budget outlays, spending authority, revenues, tax expenditures, direct loan obligations, or primary loan guarantee commitments under existing law for such fiscal year and each of the four ensuing fiscal years, if timely submitted before such report is filed; and

(D) containing an estimate by the Congressional Budget State and local Office of the level of new budget authority for assistance to governments. State and local governments provided by such measure, if timely submitted before such report is filed.<sup>1356</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained:

*Section 308. Reports, Summaries, and Projections of Congressional Budget Action*

*(a) Reports on Legislation Providing New Budget Authority, New Spending Authority, or New Credit Authority, or Providing an Increase or Decrease in*

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<sup>1356</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1051 (amended 1987, 1990, 1997, 2010 & 2013).

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*Revenues or Tax Expenditures.* – This subsection provides that any report filed in either House on legislation providing new budget authority, new spending authority, new direct loan obligations, new primary loan guarantee commitments, or providing for an increase or decrease in revenues or tax expenditures shall include the following information prepared after consultation with the Director of the Congressional Budget Office: a comparison of the measure with the section 302(b) report submitted pursuant to the latest budget resolution; an identification and justification of any new spending authority (described in section 401(c)(2)), provided by the measure; a Congressional Budget Office five-year projection of how the measure will affect levels of budget authority, outlays, spending authority, revenues, tax expenditures, and credit authority available under existing law; and a Congressional Budget Office estimate of new budget authority provided for assistance to State and local governments. This subsection also requires, for the first time, that the same information as it pertains to conference reports or amendments in disagreement must be available to Members prior to consideration of such conference report or amendments in disagreement.

Section 308(a) as amended by the conference agreement expands the scope of those comparisons. In current law, only legislation providing budget authority and tax expenditures required this information. The conference agreement provides that reports on legislation providing new spending authority, new credit activity or changes in the levels of revenue would also be required to include information necessary for budget scorekeeping.<sup>1357</sup>

*Legislative History of section 308(a)(2)* – The Balanced Budget and Emergency Deficit Control Act of 1985 redesignated the former section 308(a) as 308(a)(1) and added this new paragraph on conference reports, so that section 308(a)(2) then read as follows:

(2) Whenever a conference report is filed in either House and such conference report or any amendment reported in disagreement or any amendment contained in the joint statement of managers to be proposed by the conferees in the case of technical disagreement on such bill or resolution provides new budget authority (other than continuing appropriations), new spending authority described in section 401(c)(2), or new credit authority, or provides an increase or decrease in revenues for a fiscal year, the statement of managers accompanying such conference report shall contain the information described in paragraph (1), if available on a timely basis. If such information is not available when the conference report is filed, the committee shall make such information available to

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<sup>1357</sup> H.R. REP. NO. 99-433, at 108 (1985) (Conf. Rep.).

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Members as soon as practicable prior to the consideration of such conference report.<sup>1358</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained: “This subsection also requires, for the first time, that the same information as it pertains to conference reports or amendments in disagreement must be available to Members prior to consideration of such conference report or amendments in disagreement.”<sup>1359</sup>

**CBO PAYGO ESTIMATES** – The Congressional Budget Office regularly issues such estimates.<sup>1360</sup>

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<sup>1358</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1051–52 (amended 1987, 1990, 1997, 2010 & 2013).

<sup>1359</sup> [H.R. REP. NO. 99-433](#), at 108 (1985) (Conf. Rep.).

<sup>1360</sup> *E.g.*, CONG. BUDGET OFF., [CBO’S ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF H.R. 8260, THE FASTER PAYMENTS TO VETERANS’ SURVIVORS ACT OF 2022, AS POSTED TO THE WEBSITE OF THE CLERK OF THE HOUSE ON SEPTEMBER 9, 2022 \(2022\)](#); CONG. BUDGET OFF., [CBO’S ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF H.R. 963, THE FAIR ACT OF 2022, AS POSTED ON THE WEBSITE OF THE CLERK OF THE HOUSE ON MARCH 14, 2022 \(2022\)](#).

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308(b)           **(b) UP-TO-DATE TABULATIONS OF CONGRESSIONAL  
BUDGET ACTION. —**

308(b)(1)           **(1) The Director of the Congressional Budget Office shall issue to the committees of the House of Representatives and the Senate [reports](#)<sup>1361</sup> on at least a monthly basis detailing and tabulating the progress of congressional action on bills and joint resolutions providing [new budget authority](#)<sup>1362</sup> or providing an increase or decrease in [revenues](#)<sup>1363</sup> or [tax expenditures](#)<sup>1364</sup> for each fiscal year covered by a [concurrent resolution on the budget](#).<sup>1365</sup> Such reports shall include but are not limited to an up-to-date tabulation comparing the appropriate aggregate and functional levels (including [outlays](#)<sup>1366</sup>) included in the most recently adopted [concurrent resolution on the budget](#)<sup>1367</sup> with the levels provided in bills and joint resolutions reported by committees or adopted by either House or by the Congress, and with the levels provided by law for the fiscal year preceding the first fiscal year covered by the appropriate concurrent resolution.**

308(b)(1)           **(2) The Committee on the Budget of each House shall make available to Members of its House summary [budget scorekeeping reports](#).<sup>1368</sup> Such reports —**

308(b)(1)(A)           **(A) shall be made available on at least a monthly basis, but in any case frequently enough to provide Members of each House an accurate representation**

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<sup>1361</sup> For examples of such reports, see *infra* p. 389.

<sup>1362</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1363</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1364</sup> [Congressional Budget Act of 1974 § 3\(3\)](#), 2 U.S.C. § 622(3), *supra* p. 57, defines “tax expenditures.”

<sup>1365</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1366</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>1367</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1368</sup> For examples of such reports, see *infra* p. 389.

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of the [current](#)<sup>1369</sup> status of congressional consideration of the budget;

308(b)(1)(B) (B) shall include, but are not limited to, summaries of tabulations provided under [subsection \(b\)\(1\)](#);<sup>1370</sup> and

308(b)(1)(C) (C) shall be based on information provided under [subsection \(b\)\(1\)](#)<sup>1371</sup> without substantive revision.

The chairman of the Committee on the Budget of the House of Representatives shall submit such reports to the Speaker.

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*The Director of the Congressional Budget Office Shall Issue . . . Reports* – <sup>1372</sup>

*The Committee on the Budget of Each House Shall Make Available . . . Budget Scorekeeping Reports*—The Budget Committee Chair regularly submits these budget scorekeeping reports for printing in the *Congressional Record*.<sup>1373</sup>

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<sup>1369</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(9\)](#), 2 U.S.C. § 900(c)(9), *infra* p. 981, defines “current.” [Federal Credit Reform Act of 1990 § 502\(10\)](#), 2 U.S.C. § 661a(10), *infra* p. 855, and [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *infra* p. 1150, adopt the Balanced Budget and Emergency Deficit Control Act definition.

<sup>1370</sup> [Congressional Budget Act of 1974 § 308\(b\)\(1\)](#), 2 U.S.C. § 639(b)(1), *supra* p. 388.

<sup>1371</sup> *Id.*

<sup>1372</sup> *E.g.*, [Letter from Phillip L. Swagel to Bernie Sanders](#), 168 CONG. REC. S2214–15 (daily ed. Apr. 28, 2022); [Letter from Phillip L. Swagel to Mike Enzi](#) (Nov. 12, 2020), 166 CONG. REC. S6671 (daily ed. Nov. 12, 2020); [Letter from Phillip L. Swagel to Mike Enzi](#) (Sept. 10, 2020), 166 CONG. REC. S5545 (daily ed. Sept. 10, 2020); [Letter from Phillip L. Swagel to Mike Enzi](#) (July 23, 2020) 166 CONG. REC. S4463 (daily ed. July 23, 2020); [Letter from Douglas W. Elmendorf to Kent Conrad](#) (Apr. 15, 2010), 156 CONG. REC. S2369 (daily ed. Apr. 15, 2010); [Letter from Douglas W. Elmendorf to Kent Conrad](#) (Aug. 4, 2009), 155 CONG. REC. S8852–53 (daily ed. Aug. 5, 2009); [Letter from Robert A. Sunshine to Kent Conrad](#) (Aug. 4, 2009), 155 CONG. REC. S8853 (daily ed. Aug. 5, 2009).

<sup>1373</sup> *E.g.*, 168 CONG. REC. S4847–50 (daily ed. Sept. 20, 2022) (statement of Sen. Sanders); *id.* at S2213–15 (daily ed. Apr. 28, 2022); 166 CONG. REC. S6669 (daily ed. Nov. 12, 2020) (statement of Sen. Enzi); *id.* at S5543 (daily ed. Sept. 10, 2020); *id.* at S4461 (daily ed. July 23, 2020); *id.* at S2726 (daily ed. June 4, 2020); *id.* at S1179 (daily ed. Feb. 27, 2020); *id.* at S236 (daily ed. Jan. 15, 2020); 165 CONG. REC. S6852 (daily ed. Dec. 4, 2019); *id.* at S5831 (daily ed. Oct. 16, 2019); *id.* at S5235 (daily ed. July 31, 2019); *id.* at S4558 (daily ed. June 26, 2019); *id.* at S3044 (daily ed. May 22, 2019); *id.* at S2376 (daily ed. Apr. 10, 2019); *id.* at S1535 (daily ed. Feb. 27, 2019); *id.* at S135 (daily ed. Jan. 10, 2019); 164 CONG. REC. S7037 (daily ed. Nov. 15, 2018); *id.* at S5059 (daily ed. July 18, 2018); *id.* at S3024 (daily ed. June 6, 2018); *id.* at S2113 (daily ed. Apr. 12, 2018); *id.* at S1280 (daily ed. Feb. 28, 2018); *id.* at S292 (daily ed. Jan. 18, 2018); 163 CONG. REC. S5048 (daily ed. Sept. 7, 2017);

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*id.* at S3955 (daily ed. July 12, 2017); *id.* at S3321 (daily ed. June 7, 2017); *id.* at S2601 (daily ed. Apr. 27, 2017); *id.* at S1536 (daily ed. Mar. 1, 2017); 162 CONG. REC. S6398 (daily ed. Nov. 16, 2016); *id.* at S5457 (daily ed. Sept. 8, 2016); *id.* at S3635 (daily ed. June 8, 2016); *id.* at S2700 (daily ed. May 11, 2016); *id.* at S1703 (daily ed. Apr. 6, 2016); *id.* at S986 (daily ed. Feb. 24, 2016); *id.* at S22 (daily ed. Jan. 11, 2016); 161 CONG. REC. S8299 (daily ed. Dec. 2, 2015); *id.* at S7537 (daily ed. Oct. 27, 2015); *id.* at S6597 (daily ed. Sept. 10, 2015); *id.* at S4943 (daily ed. July 9, 2015); 158 CONG. REC. S120 (daily ed. Jan. 26, 2012) (statement of Sen. Conrad); 156 CONG. REC. S7733 (daily ed. Sept. 29, 2010); *id.* at S4880 (daily ed. June 14, 2010); *id.* at S2369 (daily ed. Apr. 15, 2010); *id.* at S333 (daily ed. Jan. 28, 2010); 155 CONG. REC. S10,309 (daily ed. Oct. 8, 2009); *id.* at S8852 (daily ed. Aug. 5, 2009); *id.* at S7060 (daily ed. June 25, 2009); 154 CONG. REC. S10,633 (daily ed. Nov. 19, 2008); *id.* at S8472 (daily ed. Sept. 12, 2008); *id.* at S6551 (daily ed. July 10, 2008); *id.* at S275 (daily ed. Jan. 24, 2008); 153 CONG. REC. S12,765 (daily ed. Oct. 4, 2007); *id.* at S10,133 (daily ed. July 26, 2007); *id.* at S8683 (daily ed. June 28, 2007); 152 CONG. REC. S10,959 (daily ed. Nov. 15, 2006) (statement of Sen. Gregg); *id.* at S8952 (daily ed. Sept. 5, 2006); *id.* at S7328 (daily ed. July 11, 2006); *id.* at S4832 (daily ed. May 19, 2006); *id.* at S3205 (daily ed. Apr. 6, 2006); *id.* at S361 (daily ed. Jan. 31, 2006); 151 CONG. REC. S13,345 (daily ed. Nov. 18, 2005); *id.* at S11,291 (daily ed. Oct. 7, 2005); *id.* at S10,715 (daily ed. Sept. 29, 2005); *id.* at S10,422 (daily ed. Sept. 26, 2005); *id.* at S10,228 (daily ed. Sept. 20, 2005); *id.* at S9274 (daily ed. July 28, 2005); *id.* at S7804 (daily ed. June 30, 2005); *id.* at S6011 (daily ed. May 26, 2005); 150 CONG. REC. S11,364 (daily ed. Nov. 16, 2004) (statement of Sen. Nickles); *id.* at S9124 (daily ed. Sept. 13, 2004); *id.* at S7932 (daily ed. July 12, 2004); *id.* at S4152 (daily ed. Apr. 20, 2004); *id.* at S2990 (daily ed. Mar. 23, 2004); *id.* at S28 (daily ed. Jan. 20, 2004); 149 CONG. REC. S15,397 (daily ed. Nov. 21, 2003); *id.* at S14,449 (daily ed. Nov. 11, 2003); *id.* at S13,900 (daily ed. Nov. 4, 2003); *id.* at S12,528 (daily ed. Oct. 14, 2003); *id.* at S11,979 (daily ed. Sept. 25, 2003); *id.* at S10,255 (daily ed. July 30, 2003); *id.* at S7228 (daily ed. June 3, 2003); 148 CONG. REC. S8747 (daily ed. Sept. 18, 2002) (statement of Sen. Conrad); *id.* at S4955 (daily ed. June 4, 2002); 147 CONG. REC. S7800 (daily ed. July 17, 2001); *id.* at S3143 (daily ed. Mar. 29, 2001) (statement of Sen. Domenici); *id.* at S702 (daily ed. Jan. 30, 2001); 146 CONG. REC. S10,146 (daily ed. Oct. 10, 2000); *id.* at S7993 (daily ed. Sept. 5, 2000); *id.* S5548 (daily ed. June 21, 2000); *id.* at S1307 (daily ed. Mar. 8, 2000); *id.* at S221 (daily ed. Feb. 1, 2000); 145 CONG. REC. S11,560 (daily ed. Sept. 28, 1999); *id.* at S8796 (daily ed. July 19, 1999); *id.* at S7320 (daily ed. June 21, 1999); *id.* at S5479 (daily ed. May 18, 1999); 144 CONG. REC. S10,857 (daily ed. Sept. 23, 1998); *id.* at S9995 (daily ed. Sept. 8, 1998); *id.* at S9693 (daily ed. Aug. 31, 1998); *id.* at S11,371 (daily ed. Oct. 29, 1997); 143 CONG. REC. S10,304 (daily ed. Oct. 1, 1997); *id.* at S10,303 (daily ed. Oct. 1, 1997); *id.* at S9528 (daily ed. Sept. 17, 1997); *id.* at S8382 (daily ed. July 30, 1997); *id.* at S6286 (daily ed. June 24, 1997); *id.* at S4770 (daily ed. May 20, 1997); *id.* at S3231 (daily ed. Apr. 15, 1997); *id.* at S1932 (daily ed. Mar. 4, 1997); *id.* at S655 (daily ed. Jan. 22, 1997); 142 CONG. REC. S11,194 (daily ed. Sept. 24, 1996); *id.* at S9858 (daily ed. Sept. 4, 1996); *id.* at S9080 (daily ed. July 29, 1996); *id.* at S7418 (daily ed. July 8, 1996); *id.* at S5777 (daily ed. June 4, 1996); *id.* at S4632 (daily ed. May 2, 1996); *id.* at S3320 (daily ed. Apr. 15, 1996); *id.* at S2837 (daily ed. Mar. 25, 1996); *id.* at S1886 (daily ed. Mar. 12, 1996); *id.* at S1370 (daily ed. Feb. 27, 1996); *id.* at S321 (daily ed. Jan. 23, 1996); 141 CONG. REC. S19,011 (daily ed. Dec. 20, 1995); *id.* at S18,247 (daily ed. Dec. 7, 1995); *id.* at S17,355 (daily ed. Nov. 17, 1995); *id.* at S16,834 (daily ed. Nov. 8, 1995); *id.* at S15,699 (daily ed. Oct. 25, 1995); *id.* at S15,139 (daily ed. Oct. 12, 1995); *id.* at S13,476 (daily ed. Sept. 12, 1995); *id.* at S11,941 (daily ed. Aug. 8, 1995); *id.* at S10,575 (daily ed. July 24, 1995); *id.* at S9721 (daily ed. July 11, 1995); *id.* at S8715 (daily ed. June 20, 1995); *id.* at S8045 (daily ed. June 8, 1995); *id.* at S7134 (daily ed. May 22, 1995); *id.* at S6288 (daily ed. May 8, 1995); *id.* at S5612 (daily ed. Apr. 24, 1995); *id.* at S4740 (daily ed. Mar. 28, 1995); *id.* at S3850 (daily ed. Mar. 13, 1995); *id.* at S3224 (daily ed. Feb. 27, 1995); *id.* at S2646 (daily ed. Feb. 14, 1995); *id.* at S1735 (daily ed. Jan. 30, 1995); *id.* at S959 (daily ed. Jan. 17, 1995); *id.* at S28 (daily ed. Jan. 4, 1995); 140 CONG. REC. 30,261–62 (Dec. 1, 1994) (statement of Sen. Sasser); *id.* at S13,385 (daily ed. Sept. 27, 1994); *id.* at S12,989 (daily ed. Sept. 20, 1994); *id.* at S11,813 (daily ed. Aug. 16, 1994); *id.* at S10,962 (daily ed. Aug. 9, 1994); *id.* at S10,353 (daily ed. Aug. 2, 1994); *id.* at S9661 (daily ed. July 26, 1994); *id.* at S9270 (daily ed. July 20, 1994); *id.* at S8902 (daily ed. July 13, 1994); *id.* at S7670 (daily ed. June 27, 1994); *id.* at S7166 (daily ed. June 21, 1994); *id.* at S6643 (daily ed. June 9, 1994); *id.* at S6287 (daily ed. May 24, 1994); *id.* at S5931 (daily ed. May 18, 1994); *id.* at S5410 (daily ed. May 10, 1994); *id.* at S5122 (daily ed. May 4, 1994); *id.* at S4793 (daily ed. Apr. 26, 1994); *id.* at S4498 (daily ed. Apr. 20, 1994); *id.* at S4159 (daily ed. Apr. 12, 1994); *id.* at S3402 (daily ed. Mar. 22, 1994); *id.* at S3113 (daily ed. Mar. 17, 1994); *id.* at S2437 (daily ed. Mar. 8, 1994); *id.* at S2166 (daily ed. Mar. 1, 1994); *id.* at S1734 (daily ed. Feb. 23, 1994); *id.* at S278 (daily ed. Jan. 27, 1994); 139 CONG. REC. S12,573 (daily ed. Sept. 28, 1993); *id.* at S12,070 (daily ed. Sept. 21, 1993); *id.* at S11,677 (daily ed. Sept. 14, 1993); *id.* at S11,075 (daily ed. Sept. 8, 1993); *id.* at S10,223 (daily ed. Aug. 3, 1993); *id.* at S9693 (daily ed. July 28, 1993); *id.* at S9090 (daily ed. July 20, 1993); *id.* at S8728 (daily ed. July 14, 1993); *id.* at S8368 (daily ed. June 30, 1993); *id.*



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at S7657 (daily ed. June 23, 1993); *id.* at S7393 (daily ed. June 16, 1993); *id.* at S6969 (daily ed. June 8, 1993); *id.* at S6612 (daily ed. May 26, 1993); *id.* at S6153 (daily ed. May 19, 1993); *id.* at S5772 (daily ed. May 11, 1993); *id.* at S5672 (daily ed. May 6, 1993); *id.* at S4707 (daily ed. Apr. 20, 1993); *id.* at S4042 (daily ed. Mar. 30, 1993); *id.* at S3545 (daily ed. Mar. 23, 1993); 138 CONG. REC. S13,176 (daily ed. Sept. 10, 1992); *id.* at S11,140 (daily ed. July 31, 1992); *id.* at S9962 (daily ed. July 20, 1992); *id.* at S8407 (daily ed. June 17, 1992); *id.* at S7496 (daily ed. June 3, 1992); *id.* at S7075 (daily ed. May 20, 1992); *id.* at S6617 (daily ed. May 13, 1992); *id.* at S6238 (daily ed. May 6, 1992); *id.* at S5822 (daily ed. Apr. 29, 1992); *id.* at S5330 (daily ed. Apr. 9, 1992); *id.* at S4969 (daily ed. Apr. 7, 1992); *id.* at S4407 (daily ed. Mar. 26, 1992); *id.* at S3900 (daily ed. Mar. 18, 1992); *id.* at S3576 (daily ed. Mar. 12, 1992); *id.* at S2770 (daily ed. Mar. 3, 1992); *id.* at S2347 (daily ed. Feb. 26, 1992); *id.* at S2119 (daily ed. Feb. 21, 1992); *id.* at S933 (daily ed. Feb. 4, 1992); *id.* at S307 (daily ed. Jan. 23, 1992); 137 CONG. REC. S18,160 (daily ed. Nov. 26, 1991); *id.* at S14,095 (daily ed. Oct. 1, 1991); *id.* at S13,615 (daily ed. Sept. 24, 1991); *id.* at S13,193 (daily ed. Sept. 17, 1991); *id.* at S12,811 (daily ed. Sept. 11, 1991); *id.* at S11,386 (daily ed. July 30, 1991); *id.* at S10,804 (daily ed. July 24, 1991); *id.* at S10,303 (daily ed. July 17, 1991); *id.* at S9406 (daily ed. July 9, 1991); *id.* at S8513 (daily ed. June 24, 1991); *id.* at S8049 (daily ed. June 18, 1991); *id.* at S7703 (daily ed. June 12, 1991); *id.* at S7050 (daily ed. June 4, 1991); *id.* at S6255 (daily ed. May 21, 1991); *id.* at S5964 (daily ed. May 15, 1991); *id.* at S5809 (daily ed. May 14, 1991); *id.* at S5434 (daily ed. May 7, 1991); *id.* at S4913 (daily ed. Apr. 23, 1991); *id.* at S4509 (daily ed. Apr. 16, 1991); *id.* at S4139 (daily ed. Mar. 22, 1991); *id.* at S3118 (daily ed. Mar. 12, 1991); *id.* S2692–93 (daily ed. Mar. 5, 1991); *id.* at S2240 (daily ed. Feb. 21, 1991); 136 CONG. REC. S15,155 (daily ed. Oct. 12, 1990); *id.* at S13,887 (daily ed. Sept. 25, 1990); *id.* at S13,455 (daily ed. Sept. 19, 1990); *id.* at S13,386 (daily ed. Sept. 18, 1990); *id.* at S11,450 (daily ed. July 31, 1990); *id.* at S10,495 (daily ed. July 24, 1990); *id.* at S9880 (daily ed. July 17, 1990); *id.* at S9595 (daily ed. July 11, 1990); *id.* at S8765 (daily ed. June 26, 1990); *id.* at S8284 (daily ed. June 19, 1990); *id.* at S7835 (daily ed. June 12, 1990); *id.* at S7609 (daily ed. June 7, 1990); *id.* at S6859 (daily ed. May 23, 1990); *id.* at S6266–67 (daily ed. May 15, 1990); *id.* at S5927–28 (daily ed. May 9, 1990); *id.* at S5372 (daily ed. Apr. 30, 1990); *id.* at S4953 (daily ed. Apr. 24, 1990); *id.* at S3913 (daily ed. Apr. 3, 1990); *id.* at S3227 (daily ed. Mar. 26, 1990); *id.* at S2954–55 (daily ed. Mar. 21, 1990); *id.* at S2212 (daily ed. Mar. 6, 1990); *id.* at S1773–74 (daily ed. Feb. 27, 1990); *id.* at S1648–49 (daily ed. Feb. 26, 1990); *id.* at S1040 (daily ed. Feb. 7, 1990); *id.* at S924–26 (daily ed. Feb. 6, 1990); 135 CONG. REC. S16,426–27 (daily ed. Nov. 20, 1989); *id.* at S15,576–77 (daily ed. Nov. 14, 1989); *id.* at S15,201 (daily ed. Nov. 7, 1989); *id.* at S14,617 (daily ed. Nov. 2, 1989); *id.* at S14,616–17 (daily ed. Nov. 2, 1989); *id.* at S11,916–17 (daily ed. Sept. 26, 1989); *id.* at S11,915–16 (daily ed. Sept. 26, 1989); *id.* at S11,395–96 (daily ed. Sept. 19, 1989); *id.* at S11,394–95 (daily ed. Sept. 19, 1989); *id.* at S10,373 (daily ed. Aug. 4, 1989); *id.* at S9395–96 (daily ed. Aug. 1, 1989); *id.* at S8654–56 (daily ed. July 24, 1989); *id.* at S8074–75 (daily ed. July 17, 1989); *id.* at S7843–44 (daily ed. July 12, 1989); *id.* at S7004–05 (daily ed. June 20, 1989); *id.* at S6566 (daily ed. June 13, 1989); *id.* at S6346–47 (daily ed. June 7, 1989); *id.* at S6059 (daily ed. June 1, 1989); *id.* at S5432 (daily ed. May 16, 1989); *id.* at S5060–61 (daily ed. May 9, 1989); *id.* at S4648–49 (daily ed. May 2, 1989); *id.* at S4065 (daily ed. Apr. 17, 1989); *id.* at S3558–59 (daily ed. Apr. 10, 1989); *id.* at S3392 (daily ed. Apr. 5, 1989); *id.* at S2746 (daily ed. Mar. 15, 1989); *id.* at S2029 (daily ed. Mar. 2, 1989); *id.* at S1863 (daily ed. Feb. 28, 1989); *id.* at S1392 (daily ed. Feb. 8, 1989); *id.* at S1126 (daily ed. Feb. 2, 1989); 134 CONG. REC. S16,243 (daily ed. Oct. 14, 1988) (statement of Sen. Chiles); *id.* at S13,126 (daily ed. Sept. 22, 1988); *id.* at S11,499 (daily ed. Aug. 10, 1988); *id.* at S9750 (daily ed. July 25, 1988); *id.* at S8345 (daily ed. June 21, 1988); *id.* at S7310 (daily ed. June 7, 1988); *id.* at S4992 (daily ed. Apr. 27, 1988); *id.* at S4432 (daily ed. Apr. 20, 1988); *id.* at S4202 (daily ed. Apr. 18, 1988); *id.* at S2508 (daily ed. Mar. 17, 1988); *id.* at S1774 (daily ed. Mar. 2, 1988); 133 CONG. REC. S17,576 (daily ed. Dec. 9, 1987); *id.* at S16,315 (daily ed. Nov. 13, 1987); *id.* at S11,089 (daily ed. July 31, 1987); *id.* at S10,465 (daily ed. July 21, 1987); *id.* at S9911 (daily ed. July 14, 1987); *id.* at S9599 (daily ed. July 9, 1987); *id.* at S9058 (daily ed. June 30, 1987); *id.* at S8477 (daily ed. June 23, 1987); *id.* at S8183 (daily ed. June 16, 1987); *id.* at S8005 (daily ed. June 10, 1987); *id.* at S7382 (daily ed. May 29, 1987); *id.* at S6932 (daily ed. May 20, 1987); *id.* at S6407 (daily ed. May 13, 1987); *id.* at S6137 (daily ed. May 6, 1987); *id.* at S5661 (daily ed. Apr. 28, 1987); *id.* at S5442 (daily ed. Apr. 23, 1987); *id.* at S4766 (daily ed. Apr. 7, 1987); *id.* at S4317 (daily ed. Mar. 31, 1987); *id.* at S3282 (daily ed. Mar. 17, 1987); *id.* at S2951 (daily ed. Mar. 10, 1987); *id.* at S2736 (daily ed. Mar. 3, 1987); *id.* at S2631 (daily ed. Feb. 26, 1987); *id.* at S2361 (daily ed. Feb. 19, 1987); *id.* at S1496 (daily ed. Feb. 2, 1987); *id.* at S1203 (daily ed. Jan. 27, 1987); *id.* at S907 (daily ed. Jan. 20, 1987); 133 CONG. REC. S16,245 (daily ed. Oct. 14, 1986) (statement of Sen. Domenici); *id.* at S15,824 (daily ed. Oct. 9, 1986); *id.* at S15,443 (daily ed. Oct. 6, 1986); *id.* at S14,224 (daily ed. Sept. 29, 1986); *id.* at S13,624 (daily ed. Sept. 24, 1986); *id.* at S13,241 (daily ed. Sept. 22, 1986); *id.* at S12,585 (daily ed. Sept. 15, 1986); *id.* at S12,063 (daily ed. Sept. 8, 1986); *id.* at S11,274 (daily ed. Aug. 11, 1986); *id.* at S10,303 (daily ed. Aug. 4, 1986); *id.* at S9736 (daily ed. July 28, 1986); *id.* at S9403 (daily ed. July

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**Legislative History** – Section 308(b) appeared in the original Budget Act as follows:

(b) UP-TO-DATE TABULATION OF CONGRESSIONAL BUDGET ACTIONS. – The Director of the Congressional Budget Office shall issue periodic reports detailing and tabulating the progress of congressional action on bills and resolutions providing new budget authority and changing revenues and the public debt limit for a fiscal year. Such reports shall include, but are not limited to –

(1) an up-to-date tabulation comparing the new budget authority for such fiscal year in bills and resolutions on which Congress has completed action and estimated outlays, associated with such new budget authority, during such fiscal year to the new budget authority and estimated outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year and the reports submitted under section 302;

(2) an up-to-date status report on all bills and resolutions providing new budget authority and changing revenues and the public debt limit for such fiscal year in both Houses;

(3) an up-to-date comparison of the appropriate level of revenues contained in the most recently agreed to concurrent resolution on the budget for such fiscal year with the latest estimate of revenues for such year (including new revenues anticipated during such year under bills and resolutions on which the Congress has completed action); and

(4) an up-to-date comparison of the appropriate level of the public debt contained in the most recently agreed to concurrent resolution on

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21, 1986); *id.* at S9040 (daily ed. July 14, 1986); *id.* at S8194 (daily ed. June 23, 1986); *id.* at S7620 (daily ed. June 16, 1986); *id.* at S7126 (daily ed. June 9, 1986); *id.* at S6489 (daily ed. June 2, 1986); *id.* at S6140 (daily ed. May 19, 1986); *id.* at S5775 (daily ed. May 12, 1986); *id.* at S5308 (daily ed. May 5, 1986); *id.* at S4947 (daily ed. Apr. 28, 1986); *id.* at S4617 (daily ed. Apr. 21, 1986); *id.* at S4230 (daily ed. Apr. 14, 1986); *id.* at S3892 (daily ed. Apr. 8, 1986); *id.* at S3279 (daily ed. Mar. 24, 1986); *id.* at S2953 (daily ed. Mar. 18, 1986); *id.* at S2374 (daily ed. Mar. 10, 1986); *id.* at S1937 (daily ed. Mar. 3, 1986); *id.* at S1523 (daily ed. Feb. 24, 1986); *id.* at S1305 (daily ed. Feb. 18, 1986); *id.* at S871 (daily ed. Feb. 3, 1986); *id.* at S346 (daily ed. Jan. 27, 1986); *id.* at S128 (daily ed. Jan. 21, 1986); 131 CONG. REC. S18,374 (daily ed. Dec. 19, 1985); *id.* at S17,827 (daily ed. Dec. 17, 1985); *id.* at S17,700 (daily ed. Dec. 16, 1985); *id.* at S17,261 (daily ed. Dec. 9, 1985); *id.* at S16,668 (daily ed. Dec. 2, 1985); *id.* at S15,726 (daily ed. Nov. 18, 1985); *id.* at S15,255 (daily ed. Nov. 12, 1985); *id.* at S14,756 (daily ed. Nov. 4, 1985); *id.* at S14,257 (daily ed. Oct. 28, 1985); *id.* at S13,694 (daily ed. Oct. 21, 1985); *id.* at S13,290 (daily ed. Oct. 15, 1985); *id.* at S12,804 (daily ed. Oct. 7, 1985); *id.* at S12,322 (daily ed. Sept. 30, 1985); *id.* at S11,914 (daily ed. Sept. 23, 1985); *id.* at S11,547 (daily ed. Sept. 16, 1985); *id.* at S11,087 (daily ed. Sept. 9, 1985).



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the budget for such fiscal year with the latest estimate of the public debt during such fiscal year.<sup>1374</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 amended section 308(b) to read as follows:

(b) UP-TO-DATE TABULATIONS OF CONGRESSIONAL BUDGET ACTION. —

(1) The Director of the Congressional Budget Office shall issue to the committees of the House of Representatives and the Senate reports on at least a monthly basis detailing and tabulating the progress of congressional action on bills and resolutions providing new budget authority, new spending authority described in section 401(c)(2), or new credit authority, or providing an increase or decrease in revenues or tax expenditures for a fiscal year. Such reports shall include but are not limited to an up-to-date tabulation comparing the appropriate aggregate and functional levels (including outlays) included in the most recently adopted concurrent resolution on the budget with the levels provided in bills and resolutions reported by committees or adopted by either House or by the Congress, and with the levels provided by law for the fiscal year preceding such fiscal year.

(2) The Committee on the Budget of each House shall make available to Members of its House summary budget scorekeeping reports. Such reports —

(A) shall be made available on at least a monthly basis, but in any case frequently enough to provide Members of each House an accurate representation of the current status of congressional consideration of the budget;

(B) shall include, but are not limited to, summaries of tabulations provided under subsection (b)(1); and

(C) shall be based on information provided under subsection (b)(1) without substantive revision.

The chairman of the Committee on the Budget of the House of Representatives shall submit such reports to the Speaker.<sup>1375</sup>

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<sup>1374</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 308(b), 88 Stat. 297, 314 (amended 1985, 1990, 1997, 2010 & 2013).

<sup>1375</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1052 (amended 1987, 1990, 1997, 2010 & 2013).

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The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained:

*(b) Up-to-Date Tabulations of Congressional Budget Actions.*—This subsection requires the Congressional Budget Office to issue monthly budget status reports to the committees of the House and the Senate on measures providing new budget authority, new spending authority, new direct loan obligations, new primary loan guarantee commitments, and making changes in revenues or tax expenditures. The Budget Committees are required to make available to members of their respective Houses summary scorekeeping reports based on the CBO tabulations. The Budget Committee summary scorekeeping reports must be made available frequently enough (at least monthly) to provide an up-to-date, accurate representation of congressional budget action. In the House, the Budget Committee summary scorekeeping reports must be submitted to the Speaker.

This provision does not preclude the ability to the Budget Committees and others to request scorekeeping reports on a more frequent basis than once a month.<sup>1376</sup>

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<sup>1376</sup> H.R. REP. NO. 99-433, at 108 (1985) (Conf. Rep.).

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- 308(c)           **(c) FIVE-YEAR PROJECTION OF CONGRESSIONAL BUDGET ACTION.**— As soon as practicable after the beginning of each fiscal year, the Director of the Congressional Budget Office shall issue a report projecting for the period of 5 fiscal years beginning with such fiscal year —
- 308(c)(1)           **(1) total new budget authority<sup>1377</sup> and total budget outlays,<sup>1378</sup> for each fiscal year in such period;**
- 308(c)(2)           **(2) revenues<sup>1379</sup> to be received and the major sources thereof, and the surplus<sup>1380</sup> or deficit,<sup>1381</sup> if any, for each fiscal year in such period;**
- 308(c)(3)           **(3) tax expenditures<sup>1382</sup> for each fiscal year in such period; and**
- 308(c)(4)           **(4) entitlement authority<sup>1383</sup> for each fiscal year in such period.**
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*Legislative History* — Section 308(c) appeared in the original Budget Act as follows:

(c) FIVE-YEAR PROJECTION OF CONGRESSIONAL BUDGET ACTION. — As soon as practicable after the beginning of each fiscal year, the Director of the Congressional Budget Office shall issue a report projecting for the period of 5 fiscal years beginning with such fiscal year —

(1) total new budget authority and total budget outlays for each fiscal year in such period;

(2) revenues to be received and the major sources thereof, and the surplus or deficit, if any, for each fiscal year in such period; and

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<sup>1377</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1378</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

<sup>1379</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1380</sup> Congressional Budget Act of 1974 § 3(7), 2 U.S.C. § 622(7), *supra* p. 58, defines “surplus.”

<sup>1381</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>1382</sup> Congressional Budget Act of 1974 § 3(3), 2 U.S.C. § 622(3), *supra* p. 57, defines “tax expenditures.”

<sup>1383</sup> Congressional Budget Act of 1974 § 3(9), 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.”

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(3) tax expenditures for each fiscal year in such period.<sup>1384</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 amended section 308(c) to read as follows:

(c) FIVE-YEAR PROJECTION OF CONGRESSIONAL BUDGET ACTION. — As soon as practicable after the beginning of each fiscal year, the Director of the Congressional Budget Office shall issue a report projecting for the period of 5 fiscal years beginning with such fiscal year —

(1) total new budget authority and total budget outlays for each fiscal year in such period;

(2) revenues to be received and the major sources thereof, and the surplus or deficit, if any, for each fiscal year in such period;

(3) tax expenditures for each fiscal year in such period;

(4) entitlement authority for each fiscal year in such period; and

(5) credit authority for each fiscal year in such period.<sup>1385</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained:

(c) *Five-year Projection of Congressional Budget Action.* — This subsection requires the Congressional Budget Office to issue at the start of each fiscal year a report projecting for each of the next five years new budget authority, outlays, revenues and their major sources, the surplus or deficit, tax expenditures, entitlement authority and credit authority.

Nothing in this section is intended to alter the Congressional Budget Office's current practice of consulting with the Joint Committee on Taxation in the preparation of tax expenditure estimates.<sup>1386</sup>

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<sup>1384</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 308(c), 88 Stat. 297, 314 (amended 1985, 1990, 1997, 2010 & 2013).

<sup>1385</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1052 (amended 1987, 1990, 1997, 2010 & 2013).

<sup>1386</sup> [H.R. REP. NO. 99-433](#), at 108–09 (1985) (Conf. Rep.).

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308(d)            **(d) SCOREKEEPING GUIDELINES.**—Estimates under [this section](#)<sup>1387</sup> shall be provided in accordance with the scorekeeping guidelines determined under [section 252\(d\)\(5\) of the Balanced Budget and Emergency Deficit Control Act of 1985](#).<sup>1388</sup>

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### Scorekeeping Guidelines

The Congressional Budget Office has explained: “When providing budgetary information to the Congress and other audiences, the Congressional Budget Office adheres to laws and rules concerning the federal budget and to a set of principles that include 16 scorekeeping guidelines.”<sup>1389</sup>

The Congressional Budget Office recounts the development of the scorekeeping guidelines:

The first scorekeeping guidelines were published in the conference report for the Budget Enforcement Act of 1990, enacted as title XIII of the Omnibus Budget Reconciliation Act of 1990. See U.S. House of Representatives, *Omnibus Budget Reconciliation Act of 1990: Conference Report to Accompany H.R. 5835*, House Report 101-964 (October 27, 1990), pp. 1172–1175, <https://go.usa.gov/xpfn6>. The conference report for the Balanced Budget Act of 1997 included revised guidelines; see *Balanced Budget Act of 1997: Conference Report to Accompany H.R. 2015*, House Report 105-217 (July 30, 1997), pp. 1007–1012, <https://go.usa.gov/x7x2j>. The sources of the budgetary concepts that underlie the scorekeeping process include the Budget and Accounting Act of 1921, the *Report of the President’s Commission on Budget Concepts* (1967), and the Congressional Budget and Impoundment and Control Act of 1974. The guidelines and related guidance are published annually. See Office of Management and Budget, *Circular No. A-11: Preparation, Submission, and Execution of the Budget*, Appendix A (December 2020), <https://go.usa.gov/x7x2T>, and Appendix B: Budgetary Treatment of Lease-Purchases and Leases of Capital Assets, <https://go.usa.gov/x7adR>.<sup>1390</sup>

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<sup>1387</sup> [Congressional Budget Act of 1974 § 308](#), 2 U.S.C. § 639, *supra* p. 379, addresses “Reports, Summaries, and Projections of Congressional Budget Actions.”

<sup>1388</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252\(d\)\(5\)](#), 2 U.S.C. § 902(d)(5), *infra* p. 1047, addresses “Scorekeeping Guidelines.”

<sup>1389</sup> CONG. BUDGET OFF., [CBO EXPLAINS BUDGETARY SCOREKEEPING GUIDELINES 1](#) (2021).

<sup>1390</sup> *Id.* at 6 n.1.

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In the Office of Management and Budget's 2022 Circular A-11, the scorekeeping guidelines appeared as follows:

## **APPENDIX A – SCOREKEEPING GUIDELINES**

**Section 252(d)(5) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (BBEDCA, sometimes known as GRH in reference to its three Senate sponsors: Phil Gramm (R-TX), Warren Rudman (R-NH), and Ernest Hollings (D-SC)), requires the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO) to determine common budget scorekeeping guidelines in consultation with the Committees on the Budget of the House of Representatives and the Senate. The following guidelines were set forth in 1997 in the joint explanatory statement of the committee of conference accompanying House Report 105-217, the conference report for the Balanced Budget Act of 1997, with any subsequent revisions agreed upon by the scorekeepers.**

These budget scorekeeping guidelines are used by the House and Senate Budget Committees, the Congressional Budget Office, and the Office of Management and Budget (the "scorekeepers") in measuring compliance with the Congressional Budget Act of 1974 (CBA), as amended; the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended; and the Statutory Pay-As-You-Go Act of 2010. The purpose of the guidelines is to ensure that the scorekeepers measure the effects of legislation on the deficit consistent with established scorekeeping conventions and with the specific requirements in those Acts regarding discretionary spending, direct spending, and receipts. These rules are reviewed periodically by the scorekeepers and revised as necessary to adhere to the purpose. They cannot be changed unless all of the scorekeepers agree. New accounts or activities are classified only after consultation among the scorekeepers. Accounts and activities cannot be reclassified unless all of the scorekeepers agree.

### **1. Classification of appropriations**

A list of appropriations that are normally enacted in appropriations acts is included in the conference report of the Balanced Budget Act of 1997, House Report 105-217, pages 1014-1053. The list identifies appropriated entitlements and other mandatory spending in appropriations acts, and it identifies discretionary appropriations by category.

### **2. Outlays prior**

Outlays from prior-year appropriations will be classified consistent with the discretionary/mandatory classification of the account from which the outlays occur.

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### **3. Direct spending programs**

Revenues, entitlements and other mandatory programs (including offsetting receipts) will be scored at current law levels, as defined in section 257 of GRH, unless congressional action modifies the authorizing legislation. Substantive changes to or restrictions on entitlement law or other mandatory spending law in appropriations laws will be scored against the Appropriations Committee's section 302(b) allocations in the House and the Senate. For the purpose of CBA scoring, direct spending savings that are included in both an appropriations bill and a reconciliation bill will be scored to the reconciliation bill and not to the appropriations bill. For scoring under sections 251 or 252 of GRH, such provisions will be scored to the first bill enacted.

### **4. Transfer of budget authority from a mandatory account to a discretionary account**

The transfer of budget authority to a discretionary account will be scored as an increase in discretionary budget authority and outlays in the gaining account. The losing account will not show an offsetting reduction if the account is an entitlement or mandatory program.

### **5. Permissive transfer authority**

Permissive transfers will be assumed to occur (in full or in part) unless sufficient evidence exists to the contrary. Outlays from such transfers will be estimated based on the best information available, primarily historical experience and, where applicable, indications of Executive or congressional intent. This guideline will apply both to specific transfers (transfers where the gaining and losing accounts and the amounts subject to transfer can be ascertained) and general transfer authority.

### **6. Reappropriations**

Reappropriations of expiring balances of budget authority will be scored as new budget authority in the fiscal year in which the balances become newly available.

### **7. Advance appropriations**

Advance appropriations of budget authority will be scored as new budget authority in the fiscal year in which the funds become newly available for obligation, not when the appropriations are enacted.

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## **8. Rescissions and transfers of unobligated balances**

Rescissions of unobligated balances will be scored as reductions in current budget authority and outlays in the year the money is rescinded.

Transfers of unobligated balances will be scored as reductions in current budget authority and outlays in the account from which the funds are being transferred, and as increases in budget authority and outlays in the account to which these funds are being transferred.

In certain instances, these transactions will result in a net negative budget authority amount in the source accounts. For purposes of section 257 of GRH, such amounts of budget authority will be projected at zero. Outlay estimates for both the transferring and receiving accounts will be based on the spending patterns appropriate to the respective accounts.

## **9. Delay of obligations**

Appropriations acts specify a date when funds will become available for obligation. It is this date that determines the year for which new budget authority is scored. In the absence of such a date, the act is assumed to be effective upon enactment.

If a new appropriation provides that a portion of the budget authority shall not be available for obligation until a future fiscal year, that portion shall be treated as an advance appropriation of budget authority. If a law defers existing budget authority (or unobligated balances) from a year in which it was available for obligation to a year in which it was not available for obligation, that law shall be scored as a rescission in the current year and a reappropriation in the year in which obligational authority is extended.

## **10. Contingent legislation**

If the authority to obligate is contingent upon the enactment of a subsequent appropriation, new budget authority and outlays will be scored with the subsequent appropriation. If a discretionary appropriation is contingent on the enactment of a subsequent authorization, new budget authority and outlays will be scored with the appropriation. If a discretionary appropriation is contingent on the fulfillment of some action by the Executive branch or some other event normally estimated, new budget authority will be scored with the appropriation, and outlays will be estimated based on the best information about when (or if) the contingency will be met. If direct spending legislation is contingent on the fulfillment of some action by the Executive branch or some other event normally estimated, new budget authority and outlays will be scored based on the best information about when (or if) the contingency will be met. Non-



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lawmaking contingencies within the control of the Congress are not scoreable events.

## **11. Scoring purchases**

When a law provides the authority for an agency to enter into a contract for the purchase, lease-purchase, capital lease, or operating lease of an asset, budget authority and outlays will be scored as follows:

For lease-purchases and capital leases, budget authority will be scored against the legislation in the year in which the budget authority is first made available in the amount of the estimated net present value of the Government's total estimated legal obligations over the life of the contract, except for imputed interest costs calculated at Treasury rates for marketable debt instruments of similar maturity to the lease period and identifiable annual operating expenses that would be paid by the Government as owner (such as utilities, maintenance, and insurance). Property taxes will not be considered to be an operating cost. Imputed interest costs will be classified as mandatory and will not be scored against the legislation or for current level but will count for other purposes.

For operating leases, budget authority will be scored against the legislation in the year in which the budget authority is first made available in the amount necessary to cover the Government's legal obligations. The amount scored will include the estimated total payments expected to arise under the full term of a lease contract or, if the contract will include a cancellation clause, an amount sufficient to cover the lease payments for the first fiscal year during which the contract is in effect, plus an amount sufficient to cover the costs associated with cancellation of the contract. For funds that are self-insuring under existing authority, only budget authority to cover the annual lease payment is required to be scored.

Outlays for a lease-purchase in which the Federal government assumes substantial risk (for example, through an explicit Government guarantee of third party financing) will be spread across the period during which the contractor constructs, manufactures, or purchases the asset. Outlays for an operating lease, a capital lease, or a lease-purchase in which the private sector retains substantial risk will be spread across the lease period. In all cases, the total amount of outlays scored over time against legislation will equal the amount of budget authority scored against that legislation.

No special rules apply to scoring purchases of assets (whether the asset is existing or is to be manufactured or constructed). Budget authority is scored in the year in which the authority to purchase is first made available in the amount of the Government's estimated legal obligations. Outlays scored will equal the estimated disbursements by the Government based

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on the particular purchase arrangement, and over time will equal the amount of budget authority scored against that legislation.

Existing contracts will not be rescored.

To distinguish lease purchases and capital leases from operating leases, the following criteria will be used for defining an operating lease:

- Ownership of the asset remains with the lessor during the term of the lease and is not transferred to the Government at or shortly after the end of the lease period.
- The lease does not contain a bargain-price purchase option.
- The lease term does not exceed 75 percent of the estimated economic lifetime of the asset.
- The present value of the minimum lease payments over the life of the lease does not exceed 90 percent of the fair market value of the asset at the inception of the lease.
- The asset is a general purpose asset rather than being for a special purpose of the Government and is not built to unique specification for the Government as lessee.
- There is a private-sector market for the asset.

Risks of ownership of the asset should remain with the lessor.

Risk is defined in terms of how governmental in nature the project is. If a project is less governmental in nature, the private-sector risk is considered to be higher. To evaluate the level of private-sector risk associated with a lease-purchase, legislation and lease-purchase contracts will be considered against the following type of illustrative criteria, which indicate ways in which the project is less governmental:

- There should be no provision of Government financing and no explicit Government guarantee of third party financing.
- Risks of ownership of the asset should remain with the lessor unless the Government was at fault for such losses.
- The asset should be a general purpose asset rather than for a special purpose of the Government and should not be built to unique specification for the Government as lessee.
- There should be a private-sector market for the asset.

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- The project should not be constructed on Government land.

Language that attempts to waive the Anti-Deficiency Act, or to limit the amount or timing of obligations recorded, does not change the Government's obligations or obligational authority, and so will not affect the scoring of budget authority or outlays.

Unless language that authorizes a project clearly states that no obligations are allowed unless budget authority is provided specifically for that project in an appropriations bill in advance of the obligation, the legislation will be interpreted as providing obligation authority, in an amount to be estimated by the scorekeepers.

#### **12. Write-offs of uncashed checks, unredeemed food stamps, and similar instruments**

Exceptional write-offs of uncashed checks, unredeemed food stamps, and similar instruments (i.e., write-offs of cumulative balances that have built up over several years or have been on the books for several years) shall be scored as an adjustment to the means of financing the deficit rather than as an offset. An estimate of write-offs or similar adjustments that are part of a continuing routine process shall be netted against outlays in the year in which the write-off will occur. Such write-offs shall be recorded in the account in which the outlay was originally recorded.

#### **13. Reclassification after an agreement**

Except to the extent assumed in a budget agreement, a law that has the effect of altering the classification or scoring of spending and revenues (e.g., from discretionary to mandatory, special fund to revolving fund, on-budget to off-budget, revenue to offsetting receipt), will not be scored as reclassified for the purpose of enforcing a budget agreement.

#### **14. Scoring of receipt increases or direct spending reductions for additional administrative program management expenses**

No increase in receipts or decrease in direct spending will be scored as a result of provisions of a law that provides direct spending for administrative or program management activities.

#### **15. Asset sales**

If the net financial cost to the Government of an asset sale is zero or negative (a savings), the amount scored shall be the estimated change in receipts and mandatory outlays in each fiscal year on a cost basis. If the

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cost to the Government is positive (a loss), the proceeds from the sale shall not be scored for purposes of the CBA or GRH.

The net financial cost to the Federal government of an asset sale shall be the net present value of the cash flows from:

- (1) Estimated proceeds from the asset sale;
- (2) The net effect on Federal revenues, if any, based on special tax treatments specified in the legislation;
- (3) The loss of future offsetting receipts that would otherwise be collected under continued Government ownership (using baseline levels for the projection period and estimated levels thereafter); and
- (4) Changes in future spending, both discretionary and mandatory, from levels that would otherwise occur under continued Government ownership (using baseline levels for the projection period and at levels estimated to be necessary to operate and maintain the asset thereafter).

The discount rate used to estimate the net present value shall be the average interest rate on marketable Treasury securities of similar maturity to the expected remaining useful life of the asset for which the estimate is being made, plus 2 percentage points to reflect the economic effects of continued ownership by the Government.

## **16. Indefinite borrowing authority and limits on outstanding debt**

If legislation imposes or changes a limit on outstanding debt for an account financed by indefinite budget authority in the form of borrowing authority, the legislation will be scored as changing budget authority only if and to the extent the imposition of a limit or the change in the existing limit alters the estimated amount of obligations that will be incurred.<sup>1391</sup>

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<sup>1391</sup> OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, [CIRCULAR NO. A-11: PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET](#), Appendix A (2022).

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## HOUSE APPROVAL OF REGULAR APPROPRIATION BILLS

309        SEC. 309.<sup>1392</sup>—It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has approved annual appropriation bills providing **new budget authority**<sup>1393</sup> under the jurisdiction of all the subcommittees of the Committee on Appropriations for the fiscal year beginning on October 1 of such year. For purposes of **this section**,<sup>1394</sup> the chairman of the Committee on Appropriations of the House of Representatives shall periodically advise the Speaker as to changes in jurisdiction among its various subcommittees.

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*Legislative History* – Section 309 appeared in the original Budget Act as follows:

COMPLETION OF ACTION ON BILLS PROVIDING NEW BUDGET AUTHORITY AND  
CERTAIN NEW SPENDING AUTHORITY

SEC. 309. Except as otherwise provided pursuant to this title, not later than the seventh day after Labor Day of each year, the Congress shall complete action on all bills and resolutions –

(1) providing new budget authority for the fiscal year beginning on October 1 of such year, other than supplemental, deficiency, and continuing appropriation bills and resolutions, and other than the reconciliation bill for such year, if required to be reported under section 310(c); and

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<sup>1392</sup> Congressional Budget Act of 1974 § 309 is codified as amended at [2 U.S.C. § 640](#). Congressional Budget Act of 1974 § 309 was formerly codified as 31 U.S.C. § 1330 prior to the 1982 general revision and enactment of Title 31, Money and Finance in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 877 (1982).

<sup>1393</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1394</sup> [Congressional Budget Act of 1974 § 309](#), 2 U.S.C. § 640, addresses “House Approval of Regular Appropriation Bills.”

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- (2) providing new spending authority described in section 401 (c)  
(2) (C) which is to become effective during such fiscal year.

Paragraph (1) shall not apply to any bill or resolution if legislation authorizing the enactment of new budget authority to be provided in such bill or resolution has not been timely enacted.<sup>1395</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 rewrote section 309 throughout to read as it currently does.<sup>1396</sup> The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained: “This subsection prohibits the House f[ro]m considering a resolution providing for an Independence Day district work [period] until the House has approved all the annual appropriation bills for the coming fiscal year.”<sup>1397</sup>

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<sup>1395</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 309, 88 Stat. 297, 314 (amended 1985).

<sup>1396</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1052–53.

<sup>1397</sup> [H.R. REP. NO. 99-433](#), at 109 (1985) (Conf. Rep.).

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Image: Wikimedia



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# Reconciliation

The first thing to know about reconciliation is that it's not the way it sounds. As Thomas Mann, Molly Reynolds, and Norm Ornstein have written: "'Reconciliation' means 'restoration of harmony.' But as a term of art in budgeting, it has become an act of war."<sup>1398</sup>

"War" may be an overstatement. Reconciliation has become the practical alternative to bipartisan, least-common-denominator legislating. As Senators have more frequently filibustered to block even routine matters,<sup>1399</sup> reconciliation has emerged as one of the few places where a congressional majority can still legislate.

Reconciliation provides an opportunity to bundle together in one bill much of the Congress' fiscal plan. When deficit reduction is the goal, committees are more willingly to agree to take steps to reduce the deficit in areas within their jurisdiction if they know that other committees will also share the sacrifice.

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<sup>1398</sup> Thomas Mann, Molly Reynolds & Norman J. Ornstein, *Truth and Reconciliation*, NEW REPUBLIC, Apr. 20, 2009.

<sup>1399</sup> See U.S. Senate, *Cloture Motions*.

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As well, reconciliation allows the Congress to make changes in entitlement law by changing the underlying law. Without reconciliation, discretionary programs and the appropriations process bear a disproportionate burden of deficit reduction.

Congress has used reconciliation to enact most of the major economic legislation of the last quarter century. In that period, the reconciliation process allowed Congress to enact the Economic Growth and Tax Relief Reconciliation Act of 2001,<sup>1400</sup> the Jobs and Growth Tax Relief Reconciliation Act of 2003,<sup>1401</sup> the Health Care and Education Reconciliation Act of 2010,<sup>1402</sup> the Tax Cuts and Jobs Act of 2017,<sup>1403</sup> the American Rescue Plan Act of 2021,<sup>1404</sup> and the Inflation Reduction Act of 2022.<sup>1405</sup>

The use of the term “reconciliation” in the congressional budget process originates in the accounting sense of “to check (a financial account) against another for accuracy.”<sup>1406</sup> The Congressional Budget Act created the reconciliation process to reconcile laws with the new fiscal policies of Congress’ second budget resolution in a year.

Senator Lee Metcalf explained the origin of the term “reconciliation” as he discussed an amendment to the Budget Act that he proposed. Senator Metcalf said:

Another suggested approach . . . would require that all spending and revenue action for the fiscal year be reconciled with the budget totals. This reconciliation process would allow Congress to take a look at its action subsequent to the adoption of a recommended budget, and adjust its spending and revenues in response to what it then determines to be its priorities and economic needs. Reconciliation could take several forms: An omnibus appropriation bill; a bill rescinding or reserving already enacted spending measures; revenue legislation; or various combinations of all three. The reconciliation legislation could come in response to a second concurrent [budget] resolution—reaffirming or revising the first concurrent resolution, or it could in itself reflect these budgetary decisions through its readjustment of the spending and revenue commitment for the fiscal year.<sup>1407</sup>

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<sup>1400</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, 115 Stat. 38.

<sup>1401</sup> [Jobs and Growth Tax Relief Reconciliation Act of 2003](#), Pub. L. No. 108-27, 117 Stat. 752.

<sup>1402</sup> [Health Care and Education Reconciliation Act of 2010](#), Pub. L. No. 111-152, 124 Stat. 1029.

<sup>1403</sup> [Tax Cuts and Jobs Act of 2017](#), Pub. L. No. 115-97, 131 Stat. 2054.

<sup>1404</sup> [American Rescue Plan Act of 2021](#), Pub. L. No. 117-2, 135 Stat. 4.

<sup>1405</sup> [Inflation Reduction Act of 2022](#), Pub. L. No. 117-169.

<sup>1406</sup> *Reconcile*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2020).

<sup>1407</sup> 119 CONG. REC. 31,621 (Sept. 26, 1973).

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In *Riddick's Senate Procedure*, the Parliamentarian described the Congressional Budget Act's reconciliation process generally:

Under the Act, committees that receive reconciliation instructions in a budget resolution must submit their recommendations to the Budget Committee by a specified date. That committee must then report these recommendations to the Senate (without substantive change) in the form of a reconciliation bill. The bill is considered under a statutory limitation of debate, and therefore is not subject to extended debate. The Act requires that amendments be germane, and that they not jeopardize the cause of budgetary savings instructed by the budget resolution.<sup>1408</sup>

Budget Act section 310 sets out the reconciliation process in the context of Congress' annual cycle of concurrent resolutions on the budget.<sup>1409</sup> Budget process legislation also addresses reconciliation in several other places: Budget Act section 300 sets out the budget timetable, including that for reconciliation.<sup>1410</sup> Section 301(b)(2) empowers budget resolutions to include reconciliation instructions.<sup>1411</sup> Section 301(b)(3) allows budget resolutions to provide for delayed enrollment of other legislation pending completion of reconciliation.<sup>1412</sup> Section 305 provides floor procedures for reconciliation bills (by virtue of section 310(e)(1)<sup>1413</sup>), including a germaneness requirement.<sup>1414</sup> Section 313—the Byrd Rule—prohibits extraneous matter in reconciliation.<sup>1415</sup> Section 904(c) applies supermajority requirements to reconciliation points of order,<sup>1416</sup> and section 904(d) does the same for appeals.<sup>1417</sup> And Balanced Budget and Emergency Deficit Control Act section 258C provides a special reconciliation process to achieve savings in lieu of an impending sequester.<sup>1418</sup>

In *Riddick's Senate Procedure*, the Parliamentarian discussed reconciliation instructions<sup>1419</sup>:

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<sup>1408</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 504 (1992).

<sup>1409</sup> See *infra* p. 514.

<sup>1410</sup> See *supra* p. 113.

<sup>1411</sup> See *supra* p. 135.

<sup>1412</sup> See *supra* p. 135.

<sup>1413</sup> See *infra* p. 552.

<sup>1414</sup> See *supra* p. 250.

<sup>1415</sup> See *infra* p. 642.

<sup>1416</sup> See *infra* p. 888.

<sup>1417</sup> See *infra* p. 905.

<sup>1418</sup> See *infra* p. 1138.

<sup>1419</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 627–28 (1992) (footnotes renumbered and reformatted).

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### Reconciliation Instructions:

The Congressional Budget Act authorizes the Budget Committee to report reconciliation instructions to committees which specify the total amount by which budget authority, spending authority or revenue figures are to be changed, but does not authorize the Budget Committee to instruct a committee to increase revenues from certain types of programs.<sup>[1420]</sup>

Reconciliation instructions to a committee under the Congressional Budget Act of 1974 may not direct which laws or “line items” must change in order to achieve the purposes set forth in the instructions.<sup>[1421]</sup>

In response to a parliamentary inquiry, the Chair indicated that since the Senate had chosen to permit out year reconciliation instructions in a previous year, no point of order would lie against out year reconciliation instructions.<sup>[1422]</sup>

The remedy for noncompliance by a committee with its instructions to report savings to be placed in a reconciliation bill is a motion to recommit with instructions to report back forthwith with an amendment that achieves those savings.<sup>[1423]</sup>

Thus, reconciliation instructions may not specify that the reporting committee must achieve its savings from certain types of programs or raise its revenues in specific ways.<sup>1424</sup> In 1982, then-Finance Committee Chair Bob Dole had this exchange with the Presiding Officer:

Mr. DOLE. Mr. President, what is the effect of that part of the budget resolution that purports to reconcile the Finance and Ways and Means Committees as to user fees?

The PRESIDING OFFICER. The budget law in section 310 states that the total amount by which revenues are to be changed shall be in the reconciliation instruction. The only operative figures in this resolution are the totals.

Mr. DOLE. There is no requirement other than that?

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<sup>1420</sup> See 128 CONG. REC. 10,603 (May 19, 1982).

<sup>1421</sup> 131 CONG. REC. 11,435–39 (May 9, 1985).

<sup>1422</sup> See 127 CONG. REC. 5469 (Mar. 26, 1981).

<sup>1423</sup> See *Id.* at 12,692 (June 17, 1981).

<sup>1424</sup> Senate Precedent PRL19820519-002; 128 CONG. REC. 10,603 (May 19, 1982) (inquiries of Sen. Dole); Senate Precedent PRL19850509-007, 131 CONG. REC. 11,439 (May 9, 1985) (inquiry of Sen. Helms).

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The PRESIDING OFFICER. There is no requirement that the Finance Committee deal with user fees.

Mr. DOLE. I thank the Chair. This Senator believes that the Budget Act authorizes reconciliation on revenues, spending, and the public debt. It does not provide for reconciliation instructions on the specific ways to raise revenues and cut spending. The latter specificity is reserved for the authorizing committees. This Senator does not believe the Budget Act authorizes reconciliation on user fees.

My question is: Is that correct?

Mr. HEINZ. Would the Senator yield?

Mr. DOLE. I want the Chair to address that, Mr. President.

The PRESIDING OFFICER. As the Budget Act states, only totals of revenues are to be reconciled.

Mr. DOLE. I thank the Chair<sup>1425</sup>

Similarly, in 1985, Senator Jesse Helms had this exchange with the Presiding Officer:

Mr. HELMS . . . . I ask the Chair, inasmuch as the Senator from New Jersey did not provide a copy of the amendment beforehand, does his amendment designate a tax?

The PRESIDING OFFICER. The amendment contains reconciliation instructions both to the Committee on Ways and Means and the Committee on Finance to raise revenue specifically, but it does not and cannot say where.<sup>1426</sup>

The Parliamentarian has expressed a vision of the reconciliation process as one best employed to amend existing law, using as many existing structures as possible. The Parliamentarian has said that the reconciliation process is best when it tweaks and changes existing law.<sup>1427</sup>

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<sup>1425</sup> 128 CONG. REC. 10,603 (May 19, 1982).

<sup>1426</sup> 131 CONG. REC. 11,439 (May 9, 1985).

<sup>1427</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Comm. on Fin., Staff of S. Majority Leader & Staff of S. Comm. on the Budget (July 16, 2021, 10:30 AM).

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Congress has considered 29 reconciliation bills.<sup>1428</sup> Presidents vetoed five of those bills,<sup>1429</sup> one died in the Senate,<sup>1430</sup> and 23 became law.<sup>1431</sup>

Because of reconciliation's power as a legislative tool to get around the filibuster, Congress has tried to enact more and more measures though

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<sup>1428</sup> [Revenue Adjustment Act of 1975](#), H.R. 5559, 94th Cong. (vetoed); [Omnibus Reconciliation Act of 1980](#), Pub. L. No. 96-499, 94 Stat. 2599; [Omnibus Budget Reconciliation Act of 1981](#), Pub. L. No. 97-35, 95 Stat. 357; [Tax Equity and Fiscal Responsibility Act of 1982](#), Pub. L. No. 97-248, 96 Stat. 324; [Omnibus Budget Reconciliation Act of 1982](#), Pub. L. No. 97-253, 96 Stat. 763; [Omnibus Budget Reconciliation Act of 1983](#), Pub. L. No. 98-270, 98 Stat. 157 (1984); [Consolidated Omnibus Budget Reconciliation Act of 1985](#), Pub. L. No. 99-272, 100 Stat. 82 (1986); [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, 100 Stat. 1874; [Omnibus Budget Reconciliation Act of 1987](#), Pub. L. No. 100-203, 101 Stat. 1330; [Omnibus Budget Reconciliation Act of 1989](#), Pub. L. No. 101-239, 103 Stat. 2106; [Omnibus Budget Reconciliation Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388; [Omnibus Budget Reconciliation Act of 1993](#), Pub. L. No. 103-66, 107 Stat. 312; [Balanced Budget Act of 1995](#), H.R. 2491, 104th Cong. (vetoed); [Personal Responsibility and Work Opportunity Reconciliation Act of 1996](#), Pub. L. No. 104-193, 110 Stat. 2105; [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, 111 Stat. 251; [Taxpayer Relief Act of 1997](#), Pub. L. No. 105-34, 111 Stat. 788; [Taxpayer Refund and Relief Act of 1999](#), H.R. 2488, 106th Cong. (vetoed); [Marriage Tax Relief Reconciliation Act of 2000](#), H.R. 4810, 106th Cong. (vetoed); [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, 115 Stat. 38; [Jobs and Growth Tax Relief Reconciliation Act of 2003](#), Pub. L. No. 108-27, 117 Stat. 752; [Deficit Reduction Act of 2005](#), Pub. L. No. 109-171, 120 Stat. 4 (2006); [Tax Increase Prevention and Reconciliation Act of 2005](#), Pub. L. No. 109-222, 120 Stat. 345 (2006); [College Cost Reduction and Access Act of 2007](#), Pub. L. No. 110-84, 121 Stat. 784; [Health Care and Education Reconciliation Act of 2010](#), Pub. L. No. 111-152, 124 Stat. 1029; [Restoring Americans' Healthcare Freedom Reconciliation Act of 2015](#), H.R. 3762, 114th Cong. (2015) (vetoed); [American Health Care Act of 2017](#), H.R. 1628, 115th Cong. (passed House but did not pass Senate); [Tax Cuts and Jobs Act of 2017](#), Pub. L. No. 115-97, 131 Stat. 2054; [American Rescue Plan Act of 2021](#), Pub. L. No. 117-2, 135 Stat. 4; [Inflation Reduction Act of 2022](#), Pub. L. No. 117-169.

<sup>1429</sup> [Revenue Adjustment Act of 1975](#), H.R. 5559, 94th Cong. (vetoed); Pub. L. No. 103-66, 107 Stat. 312; [Balanced Budget Act of 1995](#), H.R. 2491, 104th Cong. (vetoed); [Taxpayer Refund and Relief Act of 1999](#), H.R. 2488, 106th Cong. (vetoed); [Marriage Tax Relief Reconciliation Act of 2000](#), H.R. 4810, 106th Cong. (vetoed); [Restoring Americans' Healthcare Freedom Reconciliation Act of 2015](#), H.R. 3762, 114th Cong. (2015) (vetoed).

<sup>1430</sup> [American Health Care Act of 2017](#), H.R. 1628, 115th Cong. (passed House but did not pass the Senate).

<sup>1431</sup> [Omnibus Reconciliation Act of 1980](#), Pub. L. No. 96-499, 94 Stat. 2599; [Omnibus Budget Reconciliation Act of 1981](#), Pub. L. No. 97-35, 95 Stat. 357; [Tax Equity and Fiscal Responsibility Act of 1982](#), Pub. L. No. 97-248, 96 Stat. 324; [Omnibus Budget Reconciliation Act of 1982](#), Pub. L. No. 97-253, 96 Stat. 763; [Omnibus Budget Reconciliation Act of 1983](#), Pub. L. No. 98-270, 98 Stat. 157 (1984); [Consolidated Omnibus Budget Reconciliation Act of 1985](#), Pub. L. No. 99-272, 100 Stat. 82 (1986); [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, 100 Stat. 1874; [Omnibus Budget Reconciliation Act of 1987](#), Pub. L. No. 100-203, 101 Stat. 1330; [Omnibus Budget Reconciliation Act of 1989](#), Pub. L. No. 101-239, 103 Stat. 2106; [Omnibus Budget Reconciliation Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388; [Omnibus Budget Reconciliation Act of 1993](#), Pub. L. No. 103-66, 107 Stat. 312; [Personal Responsibility and Work Opportunity Reconciliation Act of 1996](#), Pub. L. No. 104-193, 110 Stat. 2105; [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, 111 Stat. 251; [Taxpayer Relief Act of 1997](#), Pub. L. No. 105-34, 111 Stat. 788; [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, 115 Stat. 38; [Jobs and Growth Tax Relief Reconciliation Act of 2003](#), Pub. L. No. 108-27, 117 Stat. 752; [Deficit Reduction Act of 2005](#), Pub. L. No. 109-171, 120 Stat. 4 (2006); [Tax Increase Prevention and Reconciliation Act of 2005](#), Pub. L. No. 109-222, 120 Stat. 345 (2006); [College Cost Reduction and Access Act of 2007](#), Pub. L. No. 110-84, 121 Stat. 784; [Health Care and Education Reconciliation Act of 2010](#), Pub. L. No. 111-152, 124 Stat. 1029; [Tax Cuts and Jobs Act of 2017](#), Pub. L. No. 115-97, 131 Stat. 2054; [American Rescue Plan Act of 2021](#), Pub. L. No. 117-2, 135 Stat. 4; [Inflation Reduction Act of 2022](#), Pub. L. No. 117-169.

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reconciliation. This has led to increasingly Byzantine litigation under the Senate's Byrd Rule as the Senate's minority party has fought back.<sup>1432</sup>

### **Legislative History of Reconciliation**

The Budget Act's drafters intended reconciliation to be available as a broad measure to bring fiscal law into accord with the fiscal policy set in the anticipated second budget resolution in any year. The Senate Rules Committee's report on the Budget Act said:

*The Second Budget Resolution and the Reconciliation Bill.*—The Committee on Rules and Administration has substantially revised the procedure for bringing its actions on individual spending bills into conformity with the congressional budget. S. 1541 as referred to the Committee provided that after action was completed on all appropriation measures, Congress would be required to follow a prescribed enforcement procedure. The first step would be to determine whether the spending totals in the individual bills were within the limits set in the budget resolution some months earlier. If these totals did not exceed the budget limitations, Congress would enact a bill which would make effective the budget authority enacted in the appropriations.

However, if the amounts provided in appropriations exceeded the overall levels in the budget resolution, the required next step would be to consider the rescission of appropriations to bring them within the limits. Only if this step failed would Congress consider a second budget resolution revising the levels in the budget. Pursuant to this budget resolution, Congress would consider a ceiling enforcement measure, and if this did not bring the budget resolution and spending totals into conformity, pro rata reductions of controllable expenditures would be considered.

The Committee believes that this procedure might be overly rigid, would not assure that Congress take a "second look" at the budget situation at the start of the reconciliation process, and fails to consider adequately the potential for achieving reconciliation through adjustments in revenues and debt, as well as in budget authority. The requirement that Congress first consider budget cuts assumes that this always is the preferred course of budget control. Yet in the period between adoption of the first budget resolution and the reconciliation stage, many things may have changed, only a part of which is congressional action on

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<sup>1432</sup> See *infra* p. 619.

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appropriations and other spending bills. Many increases result from Presidentially proposed amendments or supplementals.<sup>1433</sup>

Opening Senate consideration of what would become the Congressional Budget Act, the sponsor and Manager of the bill, Senator Sam Ervin, explained the role of the reconciliation process to “make[] any necessary adjustments in revenues, expenditures, and debt to achieve the budget policy of Congress”<sup>1434</sup>:

After adoption of the first budget resolution, Congress would take up the individual appropriation bills in much the same manner that it now considers such bills. The timetable of the budget process is constructed so as to assure action on the budget resolution before the appropriations are considered. In this way, the Congress would know how the amounts in each appropriation relate to the budget totals and the allocations made in the budget resolution. If it so desired, Congress could enact appropriations providing more spending authority than anticipated in the budget resolution, but it would know the effects of its actions.

The Budget Committee would report a second budget resolution after action on all appropriations is completed. This second resolution would set binding totals for total expenditures and could not be exceeded by any subsequent supplemental appropriation. However, Congress would be able to adopt a new budget resolution any time during the fiscal year.

With adoption of the second budget resolution, Congress would be in a position to consider the final part of its budget process—a reconciliation bill that makes any necessary adjustments in revenues, expenditures, and debt to achieve the budget policy of Congress. Congress would have to adopt the budget resolution before adjournment, and hopefully before the start of the new fiscal year.<sup>1435</sup>

In his opening statement on the bill, Senator Robert C. Byrd, Chair of the Rules Committee subcommittee that considered the bill, described reconciliation as a process that could address revenues, changes in budget authority, and rescissions of appropriated spending:

A requirement was added to the bill that there be a second concurrent resolution reported by the Budget Committees before the August recess, to be acted on after the end of the Labor Day recess. This was designed to assure that account would be taken of the changes in the state of the

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<sup>1433</sup> S. REP. NO. 93-688, at 17–18 (1974).

<sup>1434</sup> 120 CONG. REC. 7141 (Mar. 19, 1974).

<sup>1435</sup> *Id.*



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economy, the latest estimates of revenues and expenditures, and the net result of congressional spending decisions in appropriations and other measures;

The enforcement bill called for in the Government Operations Committee bill was renamed a reconciliation bill and the date by which action is to be completed was shifted to September 25. This intended to assure that there would be an opportunity for the President to approve or disapprove the bill—or at least to advise the Congress of his intentions—before the close of the fiscal year, so that any changes which needed to take effect before October 1 could be accomplished;

The reconciliation bill is designed to permit changes in revenues as well as in budget authority;

...

A provision for inclusion of outlay ceilings in appropriations bills was removed in favor of reliance on rescission of budget authority by the Appropriations Committees in the reconciliation bill, including that for prior years. This, for the first time, will give the Congress an effective means of dealing with the carryover balances which are now estimated to exceed \$300 billion;<sup>1436</sup>

Senator Lee Metcalf, who sat on the Government Operations Committee, explained:

The Rules Committee substitute then provides for a second budget resolution to be adopted early in September. This would be a “second look” at the economy, at the Nation’s needs; and at what Congress had done with respect to spending and revenues since the first budget resolution. If the spending and revenue estimates were within the limits set out in the first budget resolution, and there was no need to raise the appropriate deficit or surplus figures, the second budget resolution could merely reaffirm the first budget, and the spending and revenue bills would be implemented as enacted.

Chances are that this would be unlikely, since political, economic, and social factors change rapidly and require budgetary adjustments. Thus, in revising the budget through the second resolution, Congress would have a range of options. It could direct the legislative committees to report legislation rescinding new or carryover budget authority to the new appropriate spending level. Or it could raise the appropriate spending level to the total of the spending bills previously enacted plus anticipated

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<sup>1436</sup> 120 CONG. REC. 7149 (Mar. 19, 1974).

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supplemental spending. Or it could direct the revenue committees to report legislation adjusting revenues or the public debt limit to conform to the new budget.

Or it could include varying combinations of these actions consistent with the second budget determination. Then the budget committees would assemble the various reported legislation into separate titles of a “reconciliation bill” and report it to their respective Houses for adoption, after which it would go to the President for signature.

Under these budgetary steps from the first budget resolution to the final reconciliation measure, Congress could, of course, fail to act. Indeed, Congress cannot impose upon itself rules to make it do things it does not want to do. If this happens, the situation becomes the same as it is today.<sup>1437</sup>

Senator Sam Nunn, who sat on the Government Operations Committee, explained:

After we have made our decisions and taken the actions which will distribute that Federal budget across the vast spectrum of Government activity, we will take a final look at the total effect of what we have done and at the likely shape of economic events to come. We will ask, “Does it appear that spending will be too high?” We will ask whether revenues will be lower than we had anticipated. We will ask whether there will be a deficit in the Federal budget in a year of exploding inflation. If imbalances like these appear likely, the second budget resolution of the year will provide the opportunity to make the necessary corrections, Congress may, through the vehicle of this second concurrent resolution, direct that spending be cut back. That is one option. Or we may direct that revenues be decreased. As the third option, we may ask that the debt limit be changed, or we may have a combination of any of these three.<sup>1438</sup>

Senators Harry Byrd, Charles Percy, and Sam Ervin engaged in a colloquy in which they contemplated reconciliation legislation that included rescissions of appropriated spending:

Mr. HARRY F. BYRD, JR. Then we get to June 1, and the figures indicated in the committee report show that if we adopt the figures as submitted by the Budget Committee, there will be a deficit of \$6 billion. Then we go into the appropriation process, and we get 14 different appropriation bills to the floor. When do we tally up the total of those 14

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<sup>1437</sup> 120 CONG. REC. 7152–53 (Mar. 19, 1974).

<sup>1438</sup> *Id.* at 7157.

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appropriation bills, and how do we reconcile that with the figure submitted on June 1?

Mr. PERCY. It would be just before the August recess, or August 7 when no August adjournment has been provided for. That would provide for completion of enactment into law of all bills and resolutions providing new budget authority.

Mr. HARRY F. BYRD, JR. Let us assume that instead of those 14 appropriation bill bills showing a deficit of \$6 billion, they add up to \$10 billion. What happens at that point?

Mr. PERCY. Then, it is inconsistent with the first concurrent resolution, and obviously something then has to give. That is why the Rules Committee provided for a mandatory second concurrent resolution; at that point Congress has to face up to several choices.

The Senator from Illinois [Senator Percy] would earnestly say – and he would be shocked if the Senator from Virginia [Senator Harry Byrd] would not join with him in saying – that at this stage we would decide either to raise taxes and lay it right out on the line that you have to pay for these programs, if that is what you want, or you have to go back and cut back certain programs you hoped to be able to enact but which will exceed the appropriate levels of spending which have been established.

Some Members of this body will say that all these programs are needed and that we cannot raise taxes; therefore, we have to increase the debt. But that then becomes a subject of a very heated debate, because it will run up against sharp philosophical differences. At that stage, the debate would be focused on whether the economy is in an inflationary or a deflationary period; whether there should be a stimulant to economic activity or a dampening of an already overheated economy. But at least we have an opportunity for that debate, and not until we pass the second concurrent resolution would we be able to determine what happens to those bills, if they do exceed the \$6 billion level that had been agreed to before.

Mr. HARRY F. BYRD, JR. For the purpose of understanding the legislation, let us assume that the 14 appropriation bills do exceed the first concurrent resolution. Do those bills automatically go into effect on October 1, or do they automatically not go into effect until the second concurrent resolution is adopted?

Mr. ERVIN. The answer to that question appears on page 100 of the Rules and Administration Committee report, under the heading “Budget Reconciliation Process.”

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Between June 1 and either the 5th day before an August adjournment, in case we have an adjournment, or by August 7, when there is no August adjournment, all the appropriation bills will be acted upon.

Then, 3 days before the beginning of the August adjournment, or by August 15 when there is no August adjournment, the Budget Committee will report its second concurrent resolution. What this does is set forth on page 100:

Final budget resolution to be reported by a date 3 days prior to beginning of August recess or by August 15 and adopted by a date 3 days after the end of such recess or 4 days after Labor Day. This resolution will reaffirm or revise any or all figures in the initial budget resolution and may specify the amounts, if any, by which new budget authority, revenues and the public debt limit are to be changed in order to achieve the appropriate surplus or deficit, as the case may be. The final budget resolution will, where changes are specified, direct the committee of jurisdiction to determine and recommend necessary legislative action to accomplish the changes. Rescissions of new budget authority on a pro rata basis may be directed where selected rescissions are infeasible.

In other words, that second concurrent resolution could say there has been too much appropriated, and it could direct the Committee on Appropriations in that case to reduce the appropriations by that amount. The second concurrent resolution will reconcile what has been done in the appropriation bills with what was done in the first concurrent resolution.

Mr. HARRY F. BYRD, JR. But there is no means of enforcing that.

Mr. ERVIN. The only means of enforcement would be that Congress must stay in session until it passes a second concurrent resolution, and an injunction is laid down for Congress to pass it before the beginning of the fiscal year on October 1. The purpose is to require Congress to take two close looks: first, at the time it adopts the first resolution; and second, after the appropriation bills are passed, at the time of the second resolution. It is contemplated the second resolution shall be adopted before the beginning of the fiscal year.

Mr. HARRY F. BYRD, JR. Is it contemplated appropriations do not become law until the second resolution is adopted?

Mr. ERVIN. They would take effect when enacted, subject to be rescinded in part by a reconciliation bill, the contents of which will be directed by the second concurrent resolution. In any event, spending could not take place until the beginning on the new fiscal year on October 1.

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Mr. HARRY F. BYRD, JR. But suppose the resolution has not been approved by October 1.

Mr. ERVIN. We would be left in the same unfortunate position we are found in now, with continuing resolutions; but I think that is not very likely, at least not as likely as under the present system, because we have it starting on October 1 instead of July 1.

Mr. HARRY F. BYRD, JR. I thank the Senator.

Mr. ERVIN. I think it is a very significant bill for this reason. It gives Congress a chance to know the status of things at all times, and it requires Congress to take close scrutiny of our expendable resources and also our contemplated expenditures as early as the first of June in the first resolution; then to look at it again to see what was done. If we exceeded the amounts set in the resolution we could accept what was done or revise it, the thought being to make certain as nearly as possible that expenditures in the next fiscal year will not exceed the resources available to pay for them. That is the overall objective at least.

Mr. HARRY F. BYRD, JR. That seems like a good goal.

Mr. ERVIN. I think it is a good bill.<sup>1439</sup>

Senator William Hathaway made a statement for himself and Senator Edmund Muskie, a Member of the Government Operations Committee who would soon become the first Budget Committee Chair:

Mr. HATHAWAY. Mr. President, I am making this statement on behalf of myself and my distinguished colleague from Maine (Mr. MUSKIE) who is necessarily absent on official Senate business and has prepared detailed opening remarks on this bill. My colleague (Mr. MUSKIE) chairs the Subcommittee on Intergovernmental Relations and has put a great deal of input into the bill presently before us.

. . . .

The second budget resolution must be enacted shortly after Labor Day. This resolution provides Congress with the opportunity to reassess its initial budget and priority decisions just before the beginning of the new fiscal year—taking into account the most current economic data and the intervening actions on individual spending measures. If the latest revenue estimates and the individual spending measures previously enacted differ

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<sup>1439</sup> 120 CONG. REC. 7163–64 (Mar. 19, 1974).

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from the appropriate levels established in that second budget resolution, the resolution will also direct committees of jurisdiction to recommend the legislative action necessary to reconcile those differences.

Congress will then complete its action on the budget by enacting the reconciliation bill mandated by the second concurrent resolution.

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Mr. President, I ask unanimous consent that a further, detailed explanation of the Congressional Budget Act of 1974 be printed in the RECORD at this point.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

EXPLANATION OF S. 1541, THE CONGRESSIONAL BUDGET ACT OF 1974

ESTABLISHMENT OF COMMITTEE ON THE BUDGET

....

In addition, the Budget Committee would be required to report to the Senate a second concurrent resolution not later than three days before the beginning of the August recess or not later than August 15 when Congress does not take an August recess. That second concurrent resolution would direct the steps Congress must take in a reconciliation bill to reconcile its individual budget actions with the budget policies established in that second concurrent resolution. In those cases in which the second concurrent resolution directs actions by more than one committee, the Budget Committee would be responsible for reporting out the reconciliation bill.

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APPROPRIATIONS PROCESS AND RECONCILIATION

The Bill sets aside a two-month period after the enactment of the first concurrent resolution for the Congress to act upon appropriations bills and other spending measures and tax expenditure measures be completed by August 7. However, no spending measure passed between June 7 and August 7 can go into effect until the beginning of the next fiscal year, October 1. The Bill provides that no spending measures be acted upon before June 1, the date of enactment of the first concurrent resolution. The only exceptions to that rule involve entitlements and trust funds, programs like veterans' benefits and social security benefits.

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Entitlements can be enacted before the first concurrent resolution is completed on the condition that each bill providing for entitlements is referred to the Appropriations Committee for a ten-day period before it is acted upon by the Congress. Entitlements acted upon before the completion of the first concurrent resolution, like those acted upon after the resolution, would not go into effect until the following October 1.

After action is completed on all individual spending measures, the bill sets forth a process to reassess the actions taken on those individual measures and the appropriate spending levels, revenue estimates and appropriate surplus or debt set out in the first budget resolution. This reconciliation process would work like this.

By a date three days prior to the beginning of the August recess, or by August 15 in years in which there is no August recess, the Budget Committee must report to the Senate a second concurrent resolution. That resolution must be adopted by a date three days after the end of the August recess or four days after Labor Day.

The second concurrent resolution will reaffirm or revise any or all figures in the initial concurrent resolution and may specify the amounts, if any, by which spending revenues, and the public debt limit are to be changed in order to achieve the appropriate surplus or deficit, as the case may be. This resolution will, where changes are specified, direct the Committees of jurisdiction to determine and recommend necessary legislative action to accomplish the changes. That second concurrent resolution may direct rescissions of new budget authority on a pro rata basis in cases where it is determined that selected rescissions are not feasible.

After the concurrent resolution is enacted, Congress must then work on a reconciliation bill. If the changes directed by the second concurrent resolution affect only one committee of the Senate, that committee would then promptly report a reconciliation bill to the Senate recommending specific changes in law to meet the directions set out in the second concurrent resolution.

If, however, more than one committee is affected by the directions set out in the second concurrent resolution, each committee affected shall promptly recommend changes in laws, in accordance with the direction in the second concurrent resolution, and transmit those recommendations to the Budget Committee. The Budget Committee will then report a reconciliation bill to the floor.

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Congress must complete action on the reconciliation bill by September 25. And the Bill prevents the Congress from adjourning until the reconciliation process is completed.<sup>1440</sup>

Senator Dee Huddleston, a Member of the Government Operations Committee and an original sponsor of the bill, explained:

After passage of the appropriations bills, the Budget Committee would review all the spending measures and report a second budget resolution which would reaffirm or revise the first resolution, and specify the amounts by which spending, revenues and the debt should be changed. After that, there would be a reconciliation bill containing provisions to implement the revisions. Congress could not adjourn until the reconciliation process was completed—certainly an incentive to act.<sup>1441</sup>

On the second day of Senate debate, Senator Muskie repeated what Senator Hathaway had said on his behalf:

The second budget resolution must be enacted shortly after Labor Day. This resolution provides Congress with the opportunity to reassess its initial budget and priority decisions just before the beginning of the new fiscal year—taking into account the most current economic data and the intervening actions on individual spending measures. If the latest revenue estimates and the individual spending measures previously enacted differ from the appropriate levels established in that second budget resolution, the resolution will also direct committees of jurisdiction to recommend the legislative action necessary to reconcile those differences.

Congress will then complete its action on the budget by enacting the reconciliation bill mandated by the second concurrent resolution.<sup>1442</sup>

On the third day of debate, Senator Nunn offered an amendment to delay the effective date of new spending legislation until after enactment of the reconciliation bill.<sup>1443</sup> Senator Nunn then had this exchange with Senator Ervin, in which the two Senators discussed the reconciliation bill as a means of rescinding appropriated spending:

Mr. NUNN. . . .

. . . .

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<sup>1440</sup> 120 CONG. REC. 7165–68 (Mar. 19, 1974).

<sup>1441</sup> *Id.* at 7171.

<sup>1442</sup> *Id.* at 7480 (Mar. 20, 1974).

<sup>1443</sup> *Id.* at 7624 (Mar. 21, 1974).



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Under the proposed version of S. 1541, all newly enacted budget authority becomes effective and available for obligation on October 1, the first day of the fiscal year. Substantial amounts of Federal funds will become committed beyond the possibility of rescission on that date. I think this is a very important point. No matter what we say in the bill, no matter what we say in any of the provisions of the bill, once October 1 rolls around and we do have the appropriation bills which are in effect, at that point it becomes very difficult—and in some cases, almost impossible—to really come up with the rescission bill or the reconciliation bill that is demanded by the second concurrent resolution.

A reconciliation bill containing rescission of any budget authority, therefore, must be enacted before October 1 if it is to be effective. After October 1, as a practical matter, it will be too late. Any Member or coalition thereof with any motive to avoid rescissions will have incentive to employ dilatory tactics to delay a reconciliation bill until after October 1, when all spending authority will have already become effective. Therefore, a small minority can easily, under some circumstances, accomplish this result.

Therefore, spending measures, in my opinion, should contain a clause delaying their effectiveness until enactment of a triggering bill which will be the final step in the budget process. Such a measure will insure that a majority of Congress must act on the entire spending profile at the end of the budget process and before any funds can be obligated beyond the possibility of rescission. This will prevent a small minority from locking in a spending pattern that a majority has decided it wants to change.

If the majority wishes to make no changes in the spending measures which have been enacted, it will simply enact a triggering bill effectuating all such spending and making no rescissions.

The House bill, H.R. 7130, the budget measure which has been passed by the House, contains provisions which have a similar effect. Although they are different provisions, they have a very similar effect to the triggering proposal I am making here.

There is some well-stated opposition to this particular provision, and I think the Rules Committee did a good job of laying out this opposition, although I take exception to each of the items they show as reasons for rejecting the triggering provision.

First, the opponents of the triggering bill argue its extreme sensitivity to Presidential veto, which would result, in their opinion, in throwing the entire budget process into chaos.

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Mr. President, I respond to that argument by saying that the triggering measure, whether a part of the reconciliation bill or a separate bill, will be the wrap-up of the budget process, if my amendment is agreed to, which has worked itself out over the preceding 9 months. A triggering device would reflect final, up-to-the minute adjustments in spending, revenues, and debt as appropriated just prior to the beginning of the budget year. It will be the embodiment of the responsible fiscal action by Congress and will result from painstaking effort and delicate compromise.

Veto of such a bill will likely be susceptible to being overridden by Congress; and, if not overridden, presumably adjustments could be made to satisfy the administration.

I think this is a very important point, because there are no provisions in this amendment or in any triggering device which inherently presents any problem that would not also be presented now under the provisions of S. 1541 by the veto of the President of the United States of the reconciliation bill, a danger which the present bill now has.

I submit that if we are really serious about the second concurrent resolution and if we are really serious about the reconciliation bill, which some of us hope will be coming if we have overspent, and if we have gone over the ceiling we originally imposed, based on what is in the best economic interests of this Nation if we are serious about that process, then I think we must concede that that reconciliation bill, if it is vetoed by the President, would be just as dangerous, would be just as disruptive, and would create just as much chaos as a triggering measure veto.

The second major argument that the opponents argue is that with the trigger neither Congress nor the President will know the exact amount of an appropriation with finality until well after its enactment and that this is too great a degree of ambiguity.

I say in response to that that the reconciliation bill creates exactly the same ambiguity, and is now a part of S. 1541. No greater degree of uncertainty would be added by a triggering device. Since the budget process is to be completed prior to the start of the fiscal year, with no spending until the fiscal year begins, this certainty as to the appropriation levels is not needed until the end of the process when adjustment can be made.

At the present time most of the appropriation bills are passed well after the fiscal year. I do not think that last year, in 1973, a single appropriation measure was passed prior to the beginning of the fiscal year. So we are dealing with a tremendous amount of uncertainty now.

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While I agree that this bill and the provisions of this bill greatly will change the present situation, we all hope, I must say, that the reconciliation bill will carry with it the same degree of certainty as this provision which I recommend.

Another argument, the opponents claim, is that the existence of a triggering bill would produce incentive to “pad” appropriations and requests in the expectation that there will later be cuts.

Such incentive, if indeed there is any, is an unavoidable aspect of any process which allows for rescission of appropriations. It is a product of the reconciliation bill and the possibility of later decisions to decrease amounts provided earlier. The incentive to “pad” would not stem from the introduction of a triggering step in the process.

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Mr. President, I urge the Senate not only to consider this amendment today, but also I hope the conference committee, in the event this fails today, would consider this in lieu of the House provision which requires all appropriation measures to remain at the desk. That is a very similar way of handling the dangers I pointed out, but it is not as good a way as the device the Committee on Government Operations had and which I submit as an amendment. So I hope this proposal is considered favorably today and that later the Budget Committee will give it favorable consideration because in my estimation when October 1 rolls by, if we have not passed the requisite reconciliation bill, it will be too late, and even though we have a provision saying Congress cannot adjourn until the reconciliation bill is passed, if it is carried by a second resolution, I submit after October 1 that will be no real disincentive because the bar on adjournment has been tried several other times and can be waived by simple majority. Then we have simple appropriation bills in effect, some of which can be constitutionally challenged. When October 1 comes around, much of the appropriation measure could not be rescinded even if a majority wanted to rescind.

Mr. ERVIN. Mr. President, if I considered only my views on this matter I would support the amendment of the distinguished Senator from Georgia. However, my long service in the Senate has taught me I have to be pragmatic, and I must support the measure that will be adopted by a majority in both houses, for otherwise we will have no legislation on this subject.

This amendment incorporates a provision that was in the bill when it came from the Committee on Government Operations, but it was eliminated by the Committee on Rules and Administration. The Committee on Rules and Administration was of the opinion, and strongly

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of the opinion, that this provision added another step in the appropriation process and made that process too rigid, and for that reason eliminated it.

I am constrained to the view that we should at this time follow the Committee on Rules and Administration and leave the provisions of this amendment out of the bill.

The Committee on Rules and Administration felt that the bill without this provision would operate effectively. I believe the better part of wisdom is to follow that view at this time and leave to the future the question of whether or not Congress will exercise enough self-discipline to make the bill, in its present form on this aspect, effective. If it should prove in the future that this conclusion is not sound, then Congress could add what I think is a wise provision to the bill at a subsequent time.<sup>1444</sup>

Senator Walter Mondale envisioned that the reconciliation bill would “incorporate[e] revenue changes or appropriations re[sci]ssions”<sup>1445</sup>:

Finally, it provides for a reconciliation bill, incorporating revenue changes or appropriations re[sci]ssions, to bring appropriations decisions into line with budget policies set in the second concurrent resolution. I believe that this process—while still complex—is far more flexible, workable, and representative than the original proposal.<sup>1446</sup>

On the fourth day of Senate debate, Senator Percy spoke of the reconciliation bill as a “a ceiling enforcement bill”<sup>1447</sup>:

With respect to the triggering mechanism, as the distinguished Senator from Delaware [Senator William Roth] knows, the Government Operations Committee provided for this in our measure. We felt that it was a desirable feature, and I must say that at this moment I am most influenced by the amount of give and take which we have experienced as we worked very closely indeed with the members of the Committee on Rules and Administration and the members of the staffs of not only that committee, but of all other committees that participated for a period of an exhaustive month in trying to reconcile our differences; and, though I generally do like to cling to our original ideas and find fault with anyone who would seek to persuade us otherwise, I did become almost persuaded that the provisions that we had made in the Government operations bill could be modified and were improved by the Committee on Rules and Administration in this regard.

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<sup>1444</sup> 120 CONG. REC. 7624–25 (Mar. 21, 1974).

<sup>1445</sup> *Id.* at 7647.

<sup>1446</sup> *Id.* at 7647.

<sup>1447</sup> *Id.* at 7909 (Mar. 22, 1974).

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The Committee eliminated from S. 1541 the provision that appropriation bills must contain a clause that the new budget authority would not become effective until Congress has enacted a ceiling enforcement bill shortly before the start of the fiscal year.

As the report clearly indicates, as S. 1541 was referred to the Committee on Rules and Administration, it provided that no appropriation could become available until it was “triggered” by a later enforcement bill. The result would have been to hold the various appropriation bills hostage to Presidential action on the enforcement measure.

If the President vetoed the enforcement bill, all appropriations for the new year would be held in limbo until Congress accommodated itself to the Presidential action. In effect, a year’s effort on appropriations would have hinged on a single set of determinations made in the crucial last days of the budget cycle. When Congress voted on an individual appropriation, it would not know how much money really would be available, nor would the President know this when the bill was sent to him. Everything would ride on the single enforcement measure and the likelihood of deadlock and confusion would be multiplied. Moreover, there would be an invitation to “pad” appropriations in the expectation that they would be cut in the later reconciliation, so that rather than producing fiscal discipline, the new process could weaken congressional responsibility.

The committee very wisely, however, indicated its recognition that as Congress gains experience with its new budget process, it may consider it desirable to supplement the procedures established in S. 1541 with additional enforcement methods. The substitute bill provides that the first budget resolution may require—for the fiscal year to which it applies—additional procedures such as an omnibus appropriation bill, a triggering clause in appropriation bills, or holding appropriation and spending bills at the enrolling desk until Congress has approved the second budget resolution and any required reconciliation measure. Thus, the substitute bill allows for the evolutionary development of the congressional budget process, rather than an all-at-once implementation.<sup>1448</sup>

Senator James Buckley complained that reconciliation came so late in the year:

Mr. President, I do not know that it is possible to set down a “perfect” time schedule for these decisions which must be met, but it does concern me that as the bill now stands, the hardest decisions—and those obviously with the deepest political implications—will be being made during the

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<sup>1448</sup> 120 CONG. REC. 7909 (Mar. 22, 1974).

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early fall of the year, the precise time when politicizing generally is at an unusually high pitch. How much better it would be if the decisions made in the first budget resolution could be final decisions – to be “reconciled” only in most extraordinary cases.<sup>1449</sup>

The joint statement of managers accompanying the conference report on the Budget Act explained the second budget resolution and reconciliation:

SECTION 310 (a) AND (b). SECOND REQUIRED CONCURRENT RESOLUTION

Both the House and Senate versions provided for adoption of a second concurrent resolution on the budget prior to the start of the new fiscal year.

The conference substitute provides for adoption of the second budget resolution no later than September 15. The second concurrent resolution shall affirm or revise the most recent resolution and may specify changes in budget authority (for the new fiscal year or carried over from prior years), entitlements, total revenues, or the public debt limit. The second concurrent resolution also shall direct the committees with such changes. While no date is fixed for the reporting of the resolution by the Budget Committees (the reporting date probably will vary from year to year depending on whether and when Congress takes a recess and on when action is completed on appropriation bills), this section authorizes the Budget Committees to make their reports when Congress is not in session. It is anticipated that the Budget Committees may report in some years during the August recess and that such reports shall be available to Members, so that Congress will be able to consider the concurrent resolution upon its return.

SECTION 310(c). RECONCILIATION PROCESS

Both the House and Senate versions provided for the reconciliation of spending, revenue, and debt legislation with the levels and instructions set forth in the second concurrent resolution. The conference in the second concurrent resolution. The conference substitute contains a similar reconciliation procedure.

When Congress has implemented the procedure authorized in section 301(b)(1) requiring that appropriation and entitlement bills not be enrolled until any necessary reconciliations have been made, it is anticipated that the reconciliation will be in the form of a resolution directing: the Clerk of the House and the Secretary of the Senate to make the necessary changes in the bills being held. When a reconciliation resolution is the appropriate

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<sup>1449</sup> 120 CONG. REC. 7934 (Mar. 22, 1974).

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measure, it may also be necessary to consider a reconciliation bill for changing matters previously enacted into law.

If the changes (in spending, entitlement, revenue, or debt legislation) specified by the second concurrent resolution are in the jurisdiction of only one committee in either House, each such committee shall promptly report a reconciliation bill or resolution to its House. If more than one committee in either House has been directed to make changes in matters within its jurisdiction, then either such committee shall submit its recommendations to the Budget Committee of its House. The Budget Committee then shall compile, without substantive change, all the recommendations it has received into a reconciliation bill or resolution. The reconciliation bill or resolution reported to the House or Senate shall fully carry out the directions specified in the second concurrent resolution.

SECTION 310 (d), (e), and (f). COMPLETION OF RECONCILIATION PROCESS.

The House bill provided for completion of any required reconciliation action prior to adjournment; the Senate amendment had a September 25 completion date. Both versions barred sine die adjournment until the reconciliation has been completed, and the Senate amendment also prohibited any recess for more than three days.

The conference substitute sets September 25 as the deadline for completion of the reconciliation process and it bars sine die adjournment until the second concurrent resolution and any required reconciliation measures have been adopted. Subsection (e) incorporates the procedure contained in the Senate amendment for the consideration of reconciliation measures in the Senate.<sup>1450</sup>

During Senate debate on the conference report, Senator Muskie described the reconciliation process:

The second budget resolution must be enacted by September 15. This resolution would provide Congress with the opportunity to reassess its initial budget and priority decisions just before the beginning of the new fiscal year—taking into account the most current economic data and the intervening actions of individual spending measures. If the latest revenue estimates and the individual spending measures previously enacted differ from the appropriate levels established in that second budget resolution, the resolution will also direct committees of jurisdiction to recommend the legislative action necessary to reconcile those differences.

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<sup>1450</sup> H.R. REP. NO. 93-1101, at 63–64 (1974) (Conf. Rep.).

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Congress will then complete its action on the budget by September 25 by enacting the reconciliation bill mandated by the second concurrent resolution.<sup>1451</sup>

Senator Muskie then used sweeping language to describe the “comprehensive” scope of reconciliation:

Fifth, the conference report insures, as did the senate bill, that all spending measures be sent to the President as they are completed, though they would not become effective until October 1 or later. This insurance is necessary to prevent the President from undercutting the congressional budget process by vetoes of spending bills just before the beginning of the fiscal year. And the conference report provides, as did the Senate bill, that the scope of the reconciliation process be broad enough to generate a comprehensive review of the congressional budget actions each September.<sup>1452</sup>

### **The First Reconciliation Bill?**

Some dispute whether the first bill called a reconciliation bill was in fact a reconciliation bill. On December 15, 1975, when the Senate considered H.R. 5559, a bill to make changes in certain income tax provisions of the Internal Revenue Code of 1954, Finance Committee Chair Russell Long had the following exchange with the Presiding Officer:

Mr. LONG. Mr. President, the second budget resolution approved by both Houses of Congress directs the Committee on Finance to submit to the Senate a bill decreasing Federal revenues by approximately \$6.4 billion. This is part of what is known in the Congressional Budget Act as the “reconciliation process.” The bill now before the Senate, H.R. 5559 as reported by the Committee on Finance, is the reconciliation bill in response to the second budget resolution.

The PRESIDING OFFICER. The Chair states that there will be 20 hours for debate on the bill. Two hours on each amendment in the first degree, 1 hour on each amendment in the second degree, debatable motions and appeals, and so forth. Amendments are required to be germane except for the waiver as part of the previous order.<sup>1453</sup>

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<sup>1451</sup> 120 CONG. REC. 20,468 (June 21, 1974).

<sup>1452</sup> *Id.* at 20,469.

<sup>1453</sup> 121 CONG. REC. 40,540 (Dec. 15, 1975).



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Budget Committee Chair Muskie said, “H.R. 5559 constitutes the first so-called reconciliation bill required to be reported in the Senate under the Budget Act.”<sup>1454</sup>

But Senator Vance Hartke questioned whether the bill was in fact a reconciliation bill, saying:

The chairman of the Finance Committee can make a statement, but that does not make it the situation. The Committee on Finance has not acted upon this being a reconciliation bill. There is no record of its being a reconciliation bill; there is no mention of it in the report as being a reconciliation bill. Therefore, I think a point of order would not be well taken in regard to any amendment, because it is not a reconciliation bill. This is a tax reduction bill.

I can see where the Senator may assume, but it is an assumption which is not based on a fact.<sup>1455</sup>

Senator Muskie replied:

If the Senator wants to challenge that point as to whether this is, indeed, a reconciliation bill within the meaning of the Budget Act, that is his prerogative. I do not challenge that. But do not put me in the role of the other man in the ring, may I say to the Senator. I understand this to meet the requirements of a reconciliation bill.

We have studied it carefully. We discussed it with the Parliamentarian, and I say so to the Senate as a whole. My judgment is not infallible. If the Senator wants to challenge it, to raise a point of order in order that he may offer, I take it, an amendment to this bill contrary to the provisions of the Budget Act, then that is his prerogative, and the Senator has displayed an ability to use his prerogatives on the Senate floor, and I do not challenge his right to do so.

But when you bring an apple to the floor and it looks like an apple and the chairman of the Finance Committee says it is an apple, and under the description of the Budget Act it meets all of the elements of an apple, then I am tempted to call it an apple. But if the Senator chooses to call it an orange, that is his prerogative.<sup>1456</sup>

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<sup>1454</sup> *Id.* at 40,544.

<sup>1455</sup> *Id.*

<sup>1456</sup> *Id.* at 40,545.

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The Parliamentarian recorded the bill's consideration in *Riddick's Senate Procedure* as follows:

On December 15, 1975, the Senate began consideration of H.R. 5559, which as passed by the House was not a reconciliation bill, and which contained only one substantive provision (to exclude from income certain earnings derived from payments by common carriers for use of railroad rolling stock owned by foreign corporations). After the Senate began its consideration, and the chairman of the Finance Committee asserted that the bill as reported with a substitute was intended to carry out the reconciliation instructions contained in the most recently adopted concurrent resolution on the budget, the Chair stated that there would be 20 hours debate on the bill, 2 hours on first degree amendments, 1 hour on second degree amendments and motions, and that amendments (except those specified in an earlier unanimous consent agreement) would have to be germane. These were the conditions specified in the Budget Act for the consideration of reconciliation bills.<sup>1457</sup>

The dispute over whether the Senate actually considered a reconciliation bill that day in December 1975 colored the debate over the transformation of reconciliation 21 years later in 1996, as will be seen shortly.<sup>1458</sup>

### **The Birth of Reconciliation as a Broad Legislative Tool**

As late as 1979, House and Senate Budget Committee Members disagreed about whether reconciliation could change existing entitlement law.<sup>1459</sup> Some Senators thought that it could; some Representatives thought that it could not.<sup>1460</sup> Senate Budget Counsel summarized the House Conferees' position:

Under this interpretation of the reconciliation process, the Appropriations Committees could be instructed to make reductions in new budget authority which must be provided for entitlements funded in annual appropriations. However, such reductions would have no effect on the substantive legislation which created the entitlement.<sup>1461</sup>

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<sup>1457</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 622–23, 627–28 (1992) (citing *Congressional Budget Act of 1974* §§ 305(b)(2) & 310(e)(1), 2 U.S.C. §§ 636(b)(2) & 641(e)(1), *supra* pp. 255 & 552; 121 CONG. REC. 40,540 (Dec. 15, 1975)).

<sup>1458</sup> *See infra* p. 435.

<sup>1459</sup> Memorandum from Liz Tankersley to Karen Williams re Scope of Reconciliation (Sept. 25, 1979).

<sup>1460</sup> *See id.*

<sup>1461</sup> *See id.*

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In 1980, under Senate Budget Committee Chair Fritz Hollings' leadership, the Senate prevailed in this dispute, and Congress enacted a reconciliation bill with 11 titles making changes in several entitlement and revenue laws.<sup>1462</sup> And then in 1981, Senate Budget Committee Chair Pete Domenici, working with Office of Management and Budget Director David Stockman, employed the model that Senator Hollings had created to push through a sweeping 27-title bill enacting President Ronald Reagan's economic agenda.<sup>1463</sup> Congress had established reconciliation as a powerful tool to bring about broad policy change spanning multiple committees in a single legislative vehicle.

Between 1980 and 1995, Congress used reconciliation to reduce the deficit.<sup>1464</sup> Several times—in 1987, 1989, and 1990—Congress used reconciliation to enact bipartisan agreements negotiated in a divided Government.<sup>1465</sup> Between 1986 and 1995, the Parliamentarian, Alan Frumin, read the Budget Act to allow Congress to use reconciliation only for deficit reduction.

### **Reconciliation for Deficit-Increasing Legislation**

The nature of reconciliation changed in 1996, after Majority Leader Bob Dole reinstalled Bob Dove as Parliamentarian. The Presiding Officer, on the advice of the Parliamentarian, then ruled that the Senate could use reconciliation to enact deficit-increasing legislation. The Democratic Leader, Senator Tom Daschle, challenged this ruling. Following are excerpts from the debate on that precedent, during consideration of the budget resolution for fiscal year 1997.

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<sup>1462</sup> See [Omnibus Reconciliation Act of 1980](#), Pub. L. No. 96-499, 94 Stat. 2599.

<sup>1463</sup> See [Omnibus Budget Reconciliation Act of 1981](#), Pub. L. No. 97-35, 95 Stat. 357.

<sup>1464</sup> See [Omnibus Reconciliation Act of 1980](#), Pub. L. No. 96-499, 94 Stat. 2599; [Omnibus Budget Reconciliation Act of 1981](#), Pub. L. No. 97-35, 95 Stat. 357; [Tax Equity and Fiscal Responsibility Act of 1982](#), Pub. L. No. 97-248, 96 Stat. 324; [Omnibus Budget Reconciliation Act of 1982](#), Pub. L. No. 97-253, 96 Stat. 763; [Omnibus Budget Reconciliation Act of 1983](#), Pub. L. No. 98-270, 98 Stat. 157 (1984); [Consolidated Omnibus Budget Reconciliation Act of 1985](#), Pub. L. No. 99-272, 100 Stat. 82 (1986); [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, 100 Stat. 1874; [Omnibus Budget Reconciliation Act of 1987](#), Pub. L. No. 100-203, 101 Stat. 1330; [Omnibus Budget Reconciliation Act of 1989](#), Pub. L. No. 101-239, 103 Stat. 2106; [Omnibus Budget Reconciliation Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388; [Omnibus Budget Reconciliation Act of 1993](#), Pub. L. No. 103-66, 107 Stat. 312.

<sup>1465</sup> See [Omnibus Budget Reconciliation Act of 1987](#), Pub. L. No. 100-203, 101 Stat. 1330; [Omnibus Budget Reconciliation Act of 1989](#), Pub. L. No. 101-239, 103 Stat. 2106; [Omnibus Budget Reconciliation Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388.

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POINT OF ORDER

Mr. DASCHLE. . . .

. . . I want to call attention to a concern I have raised a number of times already relating to the circumstances in which we find ourselves on this particular resolution. I have viewed the procedures employed by the majority all through the 104th Congress with increasing concern. Our side, the Democratic caucus, has been systematically deprived of the opportunity to offer legitimate amendments. It has been an recurring practice on the Senate floor over the last several months for the majority to offer a bill, to fill the so-called parliamentary tree, preclude Democrats from offering amendments, and then file cloture so we are left with no other recourse but to vote against cloture and to continue to bottle up the legislation. It's either that or accept entire bills as forced upon us by the majority without seeking to exercise our fundamental rights as Senators to debate and amend. Given those terms, we've had no choice but to vote against cloture. We have voiced our concern over and over, and will continue to do so, about this fundamental abuse of Senate rules. Democrats never employed such extreme tactics when we were in the majority. I hope we will not get in the habit of doing so in the future. I think it is wrong. I think it undermines the good-faith effort Republicans and Democrats need to demonstrate in moving legislation through this body.

Certainly, it's legitimate to oppose legislation. We can have extended debate. But to preclude the minority from offering even a single amendment is unprecedented, and, again, simply wrong.

We are moving now from that practice to another one that, in my view, is even more threatening to the Senate as an institution. This resolution will do something that we have not done now in more than 20 years. In fact, I would say in all of the modern day period of the budget process, we have never done this. Only once, right as we were beginning to employ the reconciliation process and before that process was well understood, did we ever do what the Republicans are attempting to do in this budget resolution.

In fact, I think it's arguable that the one precedent adduced for the practice I'm about to describe is not a precedent at all—but rather a rudimentary misuse of the term “reconciliation” that should be dismissed as an example of anything.

This is the first budget resolution that will instruct a committee to produce a reconciliation measure that actually increases the deficit. The 1974 precedent we will hear about was based on no reconciliation instruction. And this year's unprecedented abuse therefore calls into question what reconciliation is about in the first place.

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We all know what reconciliation was designed to be and what it has been. We all know that we pass budget resolutions with reconciliation instructions in order to ensure that the authorizing committees hit deficit reduction targets. Some way of enforcing deficit reduction on committees is the sole reason for being of the highly privileged vehicle we call reconciliation. We deprive Senators of their normal rights to debate and amend only because we seek to ensure that the committees follow through in the crucial business of exercising fiscal responsibility.

That is the reconciliation process. Its objective is to continue to reduce the deficit, and it does so by compelling committees to live up to the expectations of the budget resolution. But what are we doing this year? As I say, except for the rare and understandable circumstances in 1974, this body is doing something we have never done before. We will be passing a reconciliation bill in three parts, one part of which will actually increase the deficit dramatically – dramatically.

I must tell you, what goes around comes around. I cannot see any reason why Democrats—once back in the majority—cannot conveniently begin to use reconciliation packages for all kinds of legislative agendas. I do not see why we may not ultimately authorize through a budget resolution a reconciliation package for each month. Let us just put all the legislation we want to do in each reconciliation package. We will then preclude the possibility of any more extended debates, preclude the possibility of an open and free discussion, preclude the possibility of amendments in some cases. We will change the very character of this institution in a very permanent way.

I am not sure that is what the majority wants. In fact, I'm confident most on the other side of the aisle do not want that. I know if they were in the minority—they would certainly not want it. And I know that most of my friends on the other side do not expect to be in the majority forever.

I would say that all of us, regardless of whether we are in the majority or minority, want to protect the institution of the Senate and its rules. That ought to be one of our foremost goals. If we are going to bend and change the rules so dramatically to serve the political needs of the moment, we are not living up to our responsibilities to the institution of the Senate. We are not living up to what our predecessors understood to be the practice of this body. And we are not living up to the obligation we have to our constituents to preserve the legislative freedoms and protections embodied in the Senate's rules and traditions.

So, it is with great concern that I call attention to what I consider to be a very, very dangerous set of legislative circumstances mandated by this budget resolution. I think it is a fundamental abuse of the budget process.

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It is such an abuse that it calls into question whether the document before us actually constitutes a budget resolution.

I would argue it does not. I argue that, because it creates a budget reconciliation bill devoted solely to worsening the deficit, it should no longer deserve the limitations on debate of a budget resolution. Therefore, I raise a point of order that, for these reasons, the pending resolution is not a budget resolution.

The PRESIDING OFFICER. Does the Senator wish to be heard on the point of order before the Chair rules?

Mr. DOMENICI. Mr. President, I think in deference to the minority leader I should be heard. I obviously did not bring this resolution to the floor without consulting with the Parliamentarian. So I think I know the answer to the Senator's question. But I do not think that we should let the Chair rule and then only have time if the Senator appeals to discuss our side, although if the Senator appeals we will also take some additional time.

Mr. President, could I yield myself 15 minutes off the resolution or do I have some additional time because of the nature of the situation?

The PRESIDING OFFICER. The time is controlled by the wording of the Budget Act, and the Senator has 1 hour and 56 minutes.

Mr. DOMENICI. I yield myself up to 15 minutes. I hope I will not use that much.

Might I say to the distinguished minority leader that I do not think there are very many Senators—maybe I would yield to Senator BYRD—who have more concern about protecting and preserving this institution than the Senator from New Mexico. I truly think the Senate is a very special place, and it has a lot of attributes that make it that way. I personally will resist any efforts, now or in the future, to move this body away from its historic tradition of being very free and open on debate and having one very big characteristic, and that is that most things can be filibustered—open debate.

However, I submit that there is a Budget Act that was adopted almost unanimously by the Senate that for very special events changed both of those rules. The rule that an amendment, that a bill or measure can be freely amended was altered; for as long as we have that Budget Act in place, that will not be the rule on a reconciliation bill.

Second, the very nature of the budget resolution denies filibuster. In the very statute that creates it, that other characteristic about the Senate—

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open debate for as long as you want—is negated. That is not a unilateral decision by this Senator or Senator EXON or the minority leader. That decision was made when the Budget Act was passed, for there are time restraints on every aspect of a budget including 50 on the resolution, 20 when it comes back from conference. Reconciliation bills have a time limit on them.

Additionally there is a very strict definition of germaneness with reference to offering amendments to reconciliation bills.

Now, before I explain that we are not breaking precedent and cite for the Senate a number of occasions when we have heretofore done exactly what the Senator is complaining about, before we do that I would suggest that the concern that whether we have one reconciliation bill, two or three, that we are going to be able to do all the legislation of the Senate in derogation of the quality of the Senate with reference to open debate and the freedom of amendment, standing in the way of that is the Byrd rule.

We do not change the Byrd rule in this budget resolution. There again, it establishes that if you intended to use a reconciliation instruction in that bill to just change the substantive law because you had not been able to pass it somewhere else, it will get knocked out by the Byrd rule.

So the first thing I was worried about is if we do this in this sequence—and I will explain to the Senate why we did it this way—do we in any way open in any additional way these reconciliation bills to be used by Senators to amendment processes, to amend laws that are unrelated and in no way, in no way germane to reducing the deficit. The answer I got unequivocally is that we had not changed that. So that is point No. 1.

Second, there is nothing in the Budget Act—section 310 and any other sections—that precludes us doing more than one reconciliation bill. Section 310(a) provides that a budget resolution may specify the total amount by which, among other things, revenues are to be changed. Section 310 dictates neither the magnitude nor the direction of the change. Reconciliation is a neutral budgetary tool. It is not required to produce deficit reduction.

As a matter of fact, Mr. President, on that point alone, must each part of a reconciliation bill or each of the three reduce the deficit, I would call to the Senate’s attention that in 1975 a reconciliation instruction and a bill passed here under the leadership of the Senator from Louisiana, Russell Long, chairman of the Finance Committee—in 1975. It actually was used to reduce taxes, thus increasing the deficit—for that very purpose. Clearly, clearly, I find nothing in this law that says each reconciliation bill must reduce the deficit.

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Now, let me tell you that the budget resolution for 1994, your budget resolution for the year 1994 had two reconciliation instructions. One was for everything that you do normally, and the other was to change the debt limit of the United States by a reconciliation bill—two different instructions, two different bills. Now, if you can do two because it fits the necessities that one side of the aisle has, this should not mean that you cannot do three if it fits the other side.

Now, in our budget resolution, we did this in three steps. This process would provide more extensive consideration on the Senate floor of our legislative proposals for balancing the budget in 2002, for if on each of the three components there are 20 hours of debate, it seems to this Senator that for those who want more time to debate, and certainly for those who would say this process we have adopted is closing debate, the exact opposite is true. There is more time for debate on each of them because rather than 20 hours for a big, giant bill, there will be three times that for each will be subject to that many hours of debate.

By separating these proposals to balance the budget into what we might consider manageable issues, we permit Senators to address their concerns contained in each of the bills. Rather than as many Senators complain about the very large bill that has taxes in it, has all kinds of entitlements from all different sides in an all-or-nothing proposition, we permit them to have part of it, not all of it, in one, part in another, and then, of course, taxes or tax reductions at the end.

The first bill reconciles savings equivalent to the assumptions contained in a resolution for welfare reform and Medicaid, and the committees must report on that.

If the first bill is enacted, then the second bill would reconcile all committees regarding direct savings. The committees would report, by July 12, two totally distinct events with total debate on each of them under the Budget Act. If both the first and the second bills are enacted—if they are—then a final bill reconciles the Finance Committee regarding revenue reductions.

I will read some history of past comments on reconciliation. Mr. President, a member of the President's own administration has in the past advocated consideration of separate packages. In 1982, during the debate on the rule to take up one of four reconciliation bills in the House of Representatives that year, then-Member of Congress Leon Panetta said, regarding the vote on the rule:

This is, I think, one of the most important votes they will cast this session. It will set the stage for whether we can deal with reconciliation on an orderly basis, allowing packages, allowing



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committees to come to the floor, and allowing Members to vote up or down on those issues, or whether we are going to capitulate to some kind of chaos, the same kind of irresponsibility that we were put through last year when we had an up-or-down vote on a last-minute 800-page amendment.

All circumstances are not alike. One might argue that Leon Panetta was arguing about a completely different situation. But, Mr. President, I think what he said is right. It does not mean you have to have more than one reconciliation bill, one movement or effort, and bringing the laws together and changing them so as to achieve the goal of the budget resolution. That is what a bill is that is called reconciliation.

So, Mr. President, I am firmly convinced that we are doing the right thing. I believe when this budget resolution is passed, very shortly thereafter there will be a very healthy debate on a portion of the reconciliation package that we passed heretofore.

I call to the Senate's attention that in House Concurrent Resolution 64, fiscal year 1994, the House Agricultural Committee was reconciled for outlay increases for fiscal years 1994 through 1998. That was an increased reconciliation for food stamps.

In addition, in our budget resolution last year, House Concurrent Resolution 67, the Finance Committee was reconciled for a revenue reduction. In 1975, I repeat, during the first use of reconciliation pursuant to what was then H. Con. Res. 466, both the Ways and Means Committee and the Finance Committee were reconciled for revenue reductions.

Mr. President, it may be that we will, as the majority, be in the same position someday, in the minority, with this Budget Act still intact and the new majority may indeed want to offer one resolution with everything in it. We are not going to be able, based on today, to say they cannot do that. If they choose to go back to one huge reconciliation bill, all or nothing, they can. If they choose, Mr. President and fellow Senators, to go to two, the ruling of the Chair today will probably say that there will be two. If they choose to do three, and the last one is a tax reduction package, then I assume we will be in a position where we can make some noise about it on the floor, but we are not going to get a parliamentary ruling that it is improper.

Mr. President, I repeat, I believe the complexity of welfare reform and Medicaid are sufficient to be in one bill. I believe the complexity and the policy changes for those two proposals are sufficient to be in one bill.

I submit that all the other entitlement programs are sufficient to be in another bill. I submit that the Republicans are committed, the President is

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committed, and indeed the bipartisan package is committed to some tax reductions. There is argument about which ones. But I submit that can be done under precedent as far back as 1975, to have a tax reduction reconciliation bill.

So, Mr. President, I am sorry I talked so long, but I worked on this for a long time. As a matter of fact, I take a bit of pride in it. I thought this was a far better way to handle the business of a major change in the law of our land and tax cuts than we tried last year.

I truly think it is fair to the Senate and it is fair to the public for they will better understand what we are doing. Since that is the case, I recommended it to both the House and the Senate. That is why we are here today. I yield the floor.

The PRESIDING OFFICER. A point of order is debated under the discretion of the Chair.

Would the Senator from South Dakota desire a few minutes?

Mr. DASCHLE. Mr. President, as I understand the parliamentary situation, the Chair could rule and then the debate is anticipated to be at least 1 hour on the appeal of the ruling of the Chair; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DASCHLE. I prefer to have the ruling of the Chair. I anticipate the ruling, and then I will appeal the ruling.

The PRESIDING OFFICER. All right. The Chair will rule that the resolution is appropriate and the point of order is not sustained.

Mr. DASCHLE. Mr. President, I now appeal the ruling of the Chair.

The PRESIDING OFFICER. There will be 1 hour equally divided between the Senator from New Mexico and the Senator from South Dakota.

Mr. DASCHLE. Mr. President, I have no desire to use that kind of time. I know there are a number of Senators who wish to offer amendments. But in the interest of parliamentary procedure, let me take a little bit of time, and then we will present a series of parliamentary inquiries that may help set the record in this instance.

Mr. DOMENICI. I ask the Senator, could I ask a question?

Mr. DASCHLE. I would be happy to let the Senator.

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Mr. DOMENICI. Does the Senator intend to vote on this separately today or within the series of votes on the amendments?

Mr. DASCHLE. I think we can do it in the series of votes just to expedite things.

Mr. DOMENICI. I thank the Senator.

Mr. DASCHLE. Mr. President, the Senator from New Mexico, the distinguished chairman of the Budget Committee, notes that we have seen an occasion such as this arise. I alluded to that circumstance in 1974. That was 20 years ago. In the world of the Budget Act, that 20-year period is a lifetime. Congress, and in particular the Senate, have dramatically changed the budget process since then.

In the 1980's, the Senate adopted, as the Senator from New Mexico noted, the Byrd rule to restrain and limit reconciliation. Since the early 1980's, a long history of using the reconciliation process to reduce the deficit has evolved.

The chairman of the Budget Committee noted that the Byrd rule requires that there be a sufficient offset or deficit-reduction—and no worsening of the deficit in the outyears—to a reconciliation package for it to be in order. But his reconciliation instructions in this resolution trigger a tax provision that does absolutely no deficit reduction, and certainly worsens the deficit beyond the window of the resolution itself.

Mr. President, that being the case, only two outcomes are possible. First, there would be no tax reduction after the 6th year; that is, that tax reduction anticipated in this reconciliation package would no longer apply in year 7 because, if it did, there would be a deficit created, and then obviously the Byrd rule would apply. Or, second, there is some sort of offset which is not delineated here. If that is the case, I'd like to hear what that undisclosed offset is.

This difficulty is the inevitable result of using reconciliation improperly for deficit creation rather than deficit reduction. The fact that the Byrd rule creates clear problems for this approach only confirms that this resolution's reconciliation instruction is totally inappropriate.

The 1970's precedent did not involve a budget process resolution instructing the committee to produce a reconciliation bill that worsens the deficit. Senator Long, who was chairman of the Finance Committee at the time, simply came down to the floor and claimed that the tax cut bill then under consideration was a reconciliation bill. Again, there had been no instruction to the Finance Committee. There was no previous

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understanding that the Senate was operating under reconciliation procedures.

It is true that at that point everybody stood and saluted. But that does not change the fact that the chairman's tax cut bill should not have been considered a reconciliation bill in 1974, as the budget resolution had not directed the creation of a reconciliation bill itself.

So, in sum, the 1974 precedent was wrongly decided. I hope that we will not build upon that error now in 1996. The Byrd rule and other subsequent amendments to the Budget Act clearly imply the deficit reducing nature of the reconciliation process.

I will quote the language of 313-B, section 1, subsection (b):

Any provision producing an increase in outlays or decrease in revenues shall be considered extraneous if the net effect of provisions reported by the committee reporting the title containing the provision is that the committee fails to achieve its reconciliation instruction.

This is a portion of the Byrd rule, and in expressly singling out increased spending and tax cuts as potentially inappropriate in a committee's work product, the language clearly implies that the true reconciliation effort should be to reduce spending or increase taxes. In other words, the proper reconciliation function is deficit reduction.

Mr. President, the bottom line here is that if a reconciliation bill produces only an increase in outlays or a decrease in revenues it is subject to the Byrd rule and therefore extraneous. Given those conditions, the third portion of this resolution's reconciliation grouping certainly violates the Byrd rule on the face of it.

Mr. President, I know the Senator from New Mexico indicated it was for managerial facilitation that he has presented this bifurcated approach to the reconciliation package. I must say, I think "managerial" can explain just about anything. Obviously, managers want all kinds of devices to move their agenda along.

In any case, managerial comfort is no justification for a practice that clearly violates many decades of Senate procedure. And as I've said, this practice is unprecedented. It is dangerous. It is extraordinarily harmful to the institution itself.

Mr. President, I make a parliamentary inquiry.

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The PRESIDING OFFICER. The Senator will state the parliamentary inquiry.

Mr. DASCHLE. This resolution directs the creation of three reconciliation bills, as I noted. It provides that the third reconciliation bill shall occur only if the first two have been enacted.

Is it the opinion of the Chair that this resolution would continue to be a budget resolution if it directed the creation of that third reconciliation bill—the one that solely worsens the deficit—even under circumstances when the Congress had failed to enact the prior two reconciliation bills?

I would be happy to repeat the inquiry if that needs to be done.

The PRESIDING OFFICER. The Chair would respond that it appears to be a hypothetical question, and I am not sure it would help to repeat it, but you might try.

Mr. DASCHLE. Let me rephrase it, because I think it is a very important question and I do not think it is hypothetical at all. In fact, it deals directly with the circumstances at hand.

Is it the opinion of the Chair that this resolution would continue to be a budget resolution if it directed the creation of only that third reconciliation bill—the one that solely worsens the deficit—even under circumstances when the Congress had failed to enact the prior two reconciliation bills?

The PRESIDING OFFICER. If the Senator's question is, can the budget resolution direct the creation of a reconciliation bill which lowers revenues, the answer is yes.

Mr. DASCHLE. A second parliamentary inquiry. Is it the opinion of the Chair that this resolution would continue to be a budget resolution if it directed the creation of only that third reconciliation bill—the one that solely worsens the deficit—and did not direct the enactment of the two prior reconciliation bills?

The PRESIDING OFFICER. The answer is yes.

Mr. DASCHLE. Mr. President, third inquiry. The pending resolution instructs the Finance and Ways and Means Committees to produce a bill that cuts taxes. There are no other instructions to those committees with regard to that reconciliation bill. Is it the opinion of the Chair that it would be in order for a budget resolution to instruct the creation of a reconciliation bill that increased outlays and gave no other instructions to those committees with regard to that reconciliation bill?

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The PRESIDING OFFICER. Yes.

Mr. DASCHLE. Mr. President, the Byrd rule forbids legislation that will increase the deficit in years beyond those covered in the budget resolution. If this third reconciliation bill does not find a way to end or offset its tax cuts in the years beyond 2002, would the bill violate the Byrd rule?

The PRESIDING OFFICER. Yes, it would.

Mr. DASCHLE. Is it not true, unless the budget resolution assumes that the tax cuts will sunset in 2002, or be offset by tax increases thereafter, the resolution calls for a reconciliation bill that would violate the Byrd rule?

The PRESIDING OFFICER. The resolution cannot make assumptions beyond the years which are instructed.

Mr. DASCHLE. That is not the question, Mr. President.

What I am asking is that under the Byrd rule there must be a determination that the deficit is not increased by actions taken in the reconciliation instructions in the outyears, in the years beyond the window.

The PRESIDING OFFICER. The Byrd rule does not apply to reconciliation instructions. It applies to a reconciliation bill.

Mr. DASCHLE. That is my point, Mr. President. This resolution assumes that a reconciliation bill will be triggered that will violate the Byrd rule unless it is terminated at the end of 2002 or else subsequently offset.

The assumption of the resolution is that tax cuts will sunset in the year 2002 or be offset by tax increases thereafter in order for it not to be in violation of the Byrd rule, is that not correct?

The PRESIDING OFFICER. The budget resolution makes no assumptions.

Mr. DASCHLE. Mr. President, let me ask you this: Would the reconciliation bill be in order if the budget resolution did not address the issue of deficit reduction beyond that 6-year timeframe?

The PRESIDING OFFICER. I read to you under extraneous provisions (e):

A provision shall be considered to be extraneous if it increases or would increase net outlays or if it decreases or would decrease

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revenues during a fiscal year after the fiscal years covered by such a reconciliation bill or reconciliation resolution.

This only applies to reconciliation bills.

Mr. DASCHLE. Let me then phrase my question another way, because I think we can now clarify this.

The reconciliation bill triggered by this resolution would not be in order, in other words, if it failed either to offset the tax cuts or to sunset them after fiscal year 2002, is that not correct?

The PRESIDING OFFICER. That is correct.

Mr. DASCHLE. Mr. President, let me just note parenthetically, if that is correct, that the majority party is the same party that has criticized the President's budget because the President sunsets his tax cuts. But now the majority comes before us with a reconciliation instruction that requires either that their tax cuts be abruptly sunsetted in the year 2002 or that taxes be increased dramatically after that point to pay for the continuing tax cuts.

Is it the opinion of the Chair that it is in order for a budget resolution to call for the creation of 10 different reconciliation bills in one fiscal year?

The PRESIDING OFFICER. There is no number limiting the number of reconciliation bills.

Mr. DASCHLE. Mr. President, this is, in my view, a ludicrous abuse of power. If this ruling is upheld we will be giving more and more power to the Budget Committee, power cloaked in the fast-track protection of the budget process itself. We will be granting immense power to the majority. If this precedent is pushed to its logical conclusion, I suspect there will come a day when all legislation will be done through reconciliation.

A decade ago the Senate wisely amended the reconciliation process by adding the Byrd rule to ensure that reconciliation bills would be narrowly drawn and limited to their deficit reduction purpose.

This ruling poses a serious threat to the Budget Committee as we will become more and more like the House Rules Committee and the Senate more and more like the House of Representatives.

For those of us who want deficit reduction, the majority seeks a very dangerous precedent today. For those of you who believe in the history of the Senate and unlimited debate and the right of Senators to offer amendments, the majority seeks to set very dangerous precedents today.

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I urge my colleagues to vote to overturn the ruling of the Chair. If we do not, the Senate will surely become a different place and a much diminished institution.

Mr. President, I note the distinguished Senator from South Carolina, the former chairman of the Budget Committee, seeks recognition to address this issue. And I am sure my colleague, the current ranking member of Budget committee, does so as well.

I yield the floor for that purpose.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I do not intend to stay and debate the issue very long. Perhaps Senator GORTON can stay in my stead.

But let me just suggest that in the view of this Senator the Budget Act offers a great deal of latitude to the U.S. Senate and to the Budget Committee. It can be controlled by the U.S. Senate, if the U.S. Senate chooses to do so. As a matter of fact, even on the Senator's point of order, if the Senate chooses to sustain his appeal, or to grant his appeal, the Senate will have decided that it does not in this reconciliation bill intend us to have three reconciliation bills. I believe that is a matter for the Senate.

But to argue that in this instance when you are contemplating a very large reconciliation bill with all kinds of things in it, one shot, one debate, one vote and that we cannot find a judicious way to do better than that by having more than one reconciliation bill, more than one opportunity to vote on this, seems to me to fly in the face of permitting the Senate to do its business in the best way that it can under very strict rules of the Budget Committee. And I, frankly, believe that this is a better way to handle a huge and varied number of bills—to have more than one debate. And, frankly, we are committed to a balanced budget and to the balanced budget continuing on beyond [ ] 2002. We do not intend to have tax cuts to take us out of balance in 8 years. That would be matched up against entitlement savings that go on. It will be matched up against caps on discretionary programs that go on.

So the issue of us being forced to sunset, and in some way that is under the technical ruling today, in some way that puts us in the same boat with the President who has submitted a budget that is not in balance under the same rules that the Senate applies, and then to say they are the same, to me just flies absolutely in the face of every kind of factual assessment you want to make about the two budgets.



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I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I appeal the ruling of the Chair, and ask for the yeas and nays.

The PRESIDING OFFICER. The Senator has already appealed. There is 1 hour to be equally divided.

Mr. DASCHLE. Is it not appropriate to ask for the yeas and nays at this time?

The PRESIDING OFFICER. It is appropriate to ask for them.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I am about to yield whatever is yielded from our time to my distinguished friend from South Carolina.

I think this debate has been absolutely fascinating because from the very beginning of the budget debate this year I was struck by what I had never seen before; and, that is three reconciliation bills. I simply say that the excellent debate that has taken place highlights the fact, and proves beyond any doubt what I have always suspected—that the majority in this case on the Budget Committee are trying to use this new reconciliation process to protect a tax cut from full debate and amendment, something they obviously could not get that done under the usual rules of the Senate. The budget reconciliation keeps those of us who are opposed to that kind of a proposition from using the traditional filibuster techniques. We should have a debate. We should have all of the rules in place when we talk about cutting or raising taxes.

I happen to feel that the move by the majority in this instance is an undisputed abuse of power and if it is allowed to occur, will it cause them great heartbreak in the future.

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Certainly the Senator from South Carolina I believe has been on the Budget Committee since its inception, and I think there are few, if any in the body, who have a better understanding of what the intent of that legislation is.

I am pleased to yield to him whatever time he needs.

The PRESIDING OFFICER. The Senator from South Carolina

Mr. HOLLINGS. I thank my distinguished friend, the Senator from Nebraska.

Mr. President, I come to the floor of the Senate and I cannot keep up with everything going on. I hear different things—such as a “Reconciliation Act of 1975” — which are totally false.

I also heard someone refer to Senator Long as having been chairman of the Budget Committee—also totally false.

When I hear these things I remember very, very clearly the history of reconciliation. I can tell you in the late 1970’s we used to kid about reconciliation over on the House side; they said they could not even pronounce it. And if you go to the RECORD you will find that back in 1975, the Revenue Adjustment Act to which they are now referring was not a Reconciliation Act.

The assistant legislative clerk read as follows:

A bill (H.R. 5559) to make changes in certain income tax provisions of the Internal Revenue Code of 1954, and for other purposes.

That was not reconciliation. I know Senator Long could use language loosely from time to time. But that was not a reconciliation bill. We did not start reconciliation until December 1980. I was chairman of the Budget Committee, and the distinguished Senator from New Mexico was on the Budget Committee at that time. And I am sure the CONGRESSIONAL RECORD will reflect the fact that the first reconciliation bill in the history of the Government of the United States of America was in December 1980, and has nothing to do with the precedent noted by the Parliamentarian in 1975. Back then we only had 1-year budgets.

Now let me speak to the history of reconciliation. We started out discussing the matter with our colleagues on the House side. The distinguished Member from the State of Washington, Congressman Adams was the chairman at that time. And we talked back and forth. But after President Carter was defeated on a Tuesday in November, I went over

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that Friday to the White House, after we received new budget numbers from the Congressional Budget Office. The Congressional Budget Office projection of revenues and outlays showed that the deficit was going up to about \$43 billion. I said, "Mr. President, no Democrat is going to ever get elected if we don't cut the deficit. It is going to be the largest deficit in the history of the Government." He said, "What are you going to do?" I said, "Well, there is a fancy word, Mr. President, reconciliation. I think I can get Chairman Giaimo to go along." I had talked to Bob ahead of time. I told the president, "What it means is cut; to go back and cut those things that were already allocated." Now, back then the fiscal year was from July to July. We were already in December and we needed to try to reduce. That is the history of reconciliation – to reduce deficits.

This idea of coming in here and saying that the word is "change", and it does not specify up or down is totally out of the ballpark. It is in reference to the budget process. If we can find Mr. Giaimo from Connecticut we could bring him back here and some of the others – Brock Adams; Jimmy Jones who is now the Ambassador down in Mexico, they would tell you that reconciliation is a procedure to reduce the deficit.

The whole context given here this afternoon is that of minority-majority, majority-minority, and all of that. I understand that. The distinguished minority leader is right on target. But the greatest concern is that we may break all discipline from the majority or the minority in the United States Congress itself if we go this route. We have to overrule this nonsense. This ruling of the Chair is totally spurious with no basis whatsoever in fact.

The truth of the matter is that the bill considered in 1975 was not a reconciliation bill, it was a tax revenue act. If you look at the bill you'll see that it was not reconciliation. And while we are clearing things up, someone just a little while ago said Senator Long was chairman of the Budget Committee. Not only was he not chairman, he never served on the Budget Committee. He served as the distinguished chairman of Finance. We had our differences with Finance all along, the difference between Senator Muskie and Senator Long. I was there when those particular debates were going on.

I would plead to my colleagues very genuinely, to not violate the Byrd rule, which was to keep us sort of in harness and not just willy-nilly put anything on a reconciliation bill.

Let us not get around the debate with spurious arguments or about Senator Long as chairman of the Budget Committee that he never served on, or reconciliation that never occurred in 1975.

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Now, Mr. President, these are the hard facts. If someone would get out the Congressional RECORD and look back, they will see that the first reconciliation bill was passed by the Congress in 1980. I have got the picture. I have got the frame. I am sure Giaimo has the similar frame. The first reconciliation act in the history of this U.S. Government was in December, 1980. It was signed by President Carter, and was 5 years subsequent to the authority they are using now to get around what is going on.

The problem here is the Presidential politics. It has gotten to be a cancer on this entire body. The plan is: we will make them vote on welfare; then we will make them vote on these other things; and then, finally in September, says that resolution, just before the election, we will bring up tax cuts, because the polls say everybody is against taxes. So we will just put them to the task.

What we have now is Presidential politics, and they ought to be ashamed of themselves. Their authority is absolutely fallacious.

I happened to be chairman of the Budget Committee at the time, and I told the President: if you can get Herke Harris and Jim McIntyre to leave us alone . . . because they were over on the Hill that fall trying to reelect President Carter, putting up money hither and thither. And I even went at that time to our liberal spending friends. I went to Senator Warren Magnuson of Washington, Senator Frank Church of Idaho, Senator George McGovern of South Dakota, Senator John Culver of Iowa, Senator Birch Bayh of Indiana, Senator Gaylord Nelson of Wisconsin, who used to sit right here, and I said: You have got to give us one vote. We have got to cut this thing back; otherwise, we are going to leave the biggest deficit in the history of the Government.

The whole idea of the reconciliation—and I am giving you firsthand history; it is honest as the day is long—was to, by gosh, cut back on the deficit. It was not this nebulous argument that as long as it is a change then we can make it go up. I never heard of such a thing. We would have been run out of the Senate in those days. We had some discipline, some understanding of responsibility, some action of responsibility. It is totally irresponsible to come now and start ruling that you can put up a reconciliation bill since it is a change. Every bill is a change. So any bill can be called reconciliation. You can go up and you can go down and you can limit the debate. You can, as they call it, fill up the tree, so there are no amendments and there is a time limit and the majority retires from the floor and goes out to watch TV or something because they have the votes locked and fixed. It is really a shame. It is an embarrassment to this particular Senator who served as the chairman of the Budget Committee, and I can tell you the whole precedent given by the Parliamentarian is totally out of the whole cloth.

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Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I have been fascinated in listening to the remarks, that are so much on point, by the Senator from South Carolina. I was there in 1980. I remember being called down to the White House on an emergency basis with the Senator as chairman of the committee. Chairman Giaimo was there, and I listened with keen interest to the keen recollection of the facts, with the names and the dates and the places by my talented colleague from South Carolina.

Mr. President, I am very much afraid that we are proceeding here in a fashion that the majority thinks is good politics. It is going to have dire, dire consequences in the future if we continue to proceed and fail to overrule the Chair. In all reality we know our appeal will fail because the Republican majority of 53 has the votes to roll us on this side at every occasion.

I would tell the Senate that other people who have had experience as Parliamentarians do not agree with the ruling of the Chair in this instance. But we should all realize and recognize — and the people in the gallery or the people watching on television maybe have some kind of questions — that the Parliamentarian, of course, is appointed by the party in the majority, and when we were in the majority we had our Parliamentarian. Now that the Republicans are in the majority, they are entitled to and have their Parliamentarian.

We like to keep the Parliamentarians as nonpartisan as possible, but I must admit that over the years I have been here I have seen our Parliamentarian rule in our favor, and while I cannot prove it, I happen to feel that today's Parliamentarian rules in favor of the people that appointed him. So the Parliamentarian is not like a Supreme Court Judge that has lifetime tenure which enables him or her to make determinations based solely upon history and fact. I would be the last, Mr. President, to indicate that politics could possibly be involved in the matter before us today — but sometimes it just might be.

I yield the floor.

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Mr. EXON. How much time does the Senator from North Dakota wish?

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I yield the Senator whatever time he needs off the resolution.

Mr. DORGAN. Mr. President, let me just take 30 seconds. I do not think the majority party will want to establish this as a precedent. They would be here in full force, very angry with this, were it being done to them, were we to create multiple reconciliation bills in this manner.

But the main point I want to make is, we are told that this third reconciliation bill would violate the Byrd rule unless the tax reductions are sunsetted, or unless some other expenditure reductions occur or some other tax increases occur, in order to pay for the tax cuts in the out years. When that point was affirmed, that it would violate the Byrd rule unless that occurred, the chairman of the Budget Committee said that there would be caps on entitlements and other expenditure cuts in the out years. They would have to be done in this third reconciliation bill.

I ask, does anybody have information about what we are talking about? These would be cuts beyond what comes in the current budget recommendations of the Senate, so what kind of caps on entitlements or future cuts in the entitlement programs is the majority party proposing in order not to violate the Byrd rule? I ask the question only because the chairman of the Budget Committee made this point a few moments ago. If that is the intent, and if the information exists to tell us and the American people what that intent is in more specific detail, I think now would be the time for the majority to give us those details.

Mr. EXON. Before the Senator from North Dakota leaves, may I ask a question of the Senator from North Dakota? We heard a great deal and we have had a lot of criticism from that side of the aisle on the President's budget with the idea that it has a trigger in the last year or two that is not factual, not upfront, and not leveling with the American people. In view of the fact that that charge had been made, whether it is true or not, and I think it is not, could the same thing not be said with regard to the action taken by the majority in this case by having a trigger that would benefit them? That seems to be all right — —

Mr. DORGAN. In response to the Senator, that is exactly the case that exists here. Either these tax reductions in the third reconciliation bill will be sunsetted, or there will be additional tax increases beyond the final year, or there will be additional cuts. It sounds like a trigger to me.

I am told now by the chairman of the Budget Committee they are talking about caps on entitlements in addition to what we see in the budget. My question is, what would those be? Will they tell us and the American people what they are talking about, so we understand before we proceed down this road?

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Mr. EXON. I thank my friend. We reserve the remainder of our time.

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Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

#### POINT OF ORDER

Mr. HOLLINGS. Mr. President, I yield just 1 minute.

I ask unanimous consent to have printed in the RECORD a page from the "Major Congressional Action" of the Congressional Quarterly Almanac of 1980.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### \$8.2 BILLION RECONCILIATION BILL CLEARED

For the first time in the six-year history of the congressional budget process, lawmakers in 1980 approved "reconciliation" legislation designed to trim the fiscal 1981 budget deficit by more than \$8.2 billion.

The bill (HR 7765—PL 96-499) cut back programs already on the books to achieve outlay savings of \$4.6 billion in the year that began Oct. 1, 1980. It included revenue-raising provisions expected to yield \$3.6 billion during the year.

Congress completed action on the reconciliation bill Dec. 3 when the Senate adopted the conference report on the measure (H Rept 96-1479) by an 83-4 vote. The House had approved the conference report earlier that day 334-45. (Senate vote 487, p. 70-S; House vote 581, p. 168-H)

Although some members castigated the bill as a "backdoor" method for creating new federal programs and expanding old ones, most participants in debate on the measure hailed it as a clear signal that Congress intended to get control of federal spending.

As Rep. Delbert L. Latta, R-Ohio, ranking minority member of the House Budget Committee, told House members: "[I]f any of my colleagues are thinking about voting against this reconciliation, just keep this in mind, that if you vote against it, you are saying you vote for \$8.2 billion more deficit for fiscal 1981."

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The final vote on reconciliation was the culmination of a six-month odyssey that started when Congress included in its first 1981 budget resolution (H Con Res 307) a provision requiring that authorizing committees come up with \$6.4 billion in spending cuts in existing programs and \$4.2 billion in new revenues. (Budget resolution, p. 108)

The Senate approved its version (S 2885), S 2939) of the reconciliation legislation in action June 30 and July 23, and the House passed its bill Sept. 4. The largest conference in the history of Congress, including more than 100 conferees, convened Sept. 18.

The conference itself took two months. Although many discrepancies were resolved quickly, the knottiest issues—involving cost-of-living increases for military and federal retirees, changes in Medicare and Medicaid, child nutrition programs, mortgage subsidy bonds and the crude oil windfall profits tax—delayed a final compromise until late November.

The ultimate conference agreement fell short of the \$10.6 billion in savings targeted by the first budget resolution. It provided cuts of \$4.631 billion in outlays (\$3.092 billion in budget authority) and \$3.645 billion in new revenues, for a total package of \$8.276 billion in savings. The bill projected total savings for fiscal 1981–85 at \$50.38 billion in outlays and \$29.2 billion in additional revenues.

#### PROVISIONS

As cleared by Congress, H.R. 7765 provided for the following spending reductions and revenue increases:

#### SPENDING REDUCTIONS

Education and Labor, \$840 million in budget authority and \$826 million in outlays. Savings were achieved by lowering federal child nutrition subsidies and reducing participation by higher-income students in meals programs; facilitating collection of and increasing the interest rates for student loans; and limiting cost-of-living adjustments for Federal Employees Compensation Act benefits for job-related accidents to an annual basis.

Conferees also, however, extended the authorizations for several child nutrition programs—extensions that were not part of either the House or Senate reconciliation bills. (Story, p. 453)



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Post Office and Civil Service, \$429 million in budget authority and \$463 million in outlays. Savings were achieved by cutting the authorization for public service appropriations to the Postal Service and repealing “look back” cost-of-living (COLA) benefits provisions for retiring federal employees, which allowed them to receive the benefit of the previous COLA. Conferees did not change the current twice-a-year COLA benefits for military and federal retirees, which would have saved more than \$700 million; the Senate had agreed to this modification. Conferees also prohibited the Postal Service from doing away with six-day mail deliveries.

Highway, Rail and Airport Programs, \$375 million in budget authority and \$917 million in outlays. Savings were achieved by limiting obligational authority for highways, reducing the authorization of the National Highway Traffic Safety Administration, restricting railroad rehabilitation, limiting funds for airport development, planning and noise control grants.

Veterans’ Programs, although the reconciliation bill itself did not make any cuts in veterans’ programs, the conference report cited savings of \$487 million in budget authority and \$493 million in outlays from veterans’ legislation already enacted. These savings came from limiting burial allowances and terminating certain flight and correspondence training.

Small Business, \$800 million in budget authority and \$600 million in outlays. The savings reflected revisions in disaster loan programs included on the Small Business Development Act of 1980 (PL 96-302). (Story, p. 546)

Health, \$12 million in budget authority and \$915 million in outlays. Savings were to come, in part, from deferring until September 1981 the periodic interim payments to hospitals and revising Medicare reimbursements so they were based on fees charged when the service was performed rather than when the claim was processed.

Although the health conferees agreed to more than 80 new provisions in Medicare and Medicaid programs, many of the changes resulted in adding costs rather than savings. The new health benefits programs included expansion of coverage for home health services, benefits for care in outpatient rehabilitation facilities and increases in payments for outpatient physical therapy. (Story, p. 459)

Unemployment Compensation, \$32 million in budget authority and \$147 million in outlays. Savings were achieved by ending the

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federal reimbursement to states for compensation paid to former Comprehensive Employment and Training Act (CETA) workers; eliminating the federal payment for the first week of extended benefits in states that did not require recipients to wait a week before obtaining benefits; and denying extended benefits to those who did not meet certain work-related requirements.

Mr. HOLLINGS. Mr. President, I read the first three paragraphs:

For the first time in the six-year history of the congressional budget process, lawmakers in 1980 approved "reconciliation" legislation designed to trim the fiscal 1981 budget deficit by more than \$8.2 million.

The bill . . . cut back programs already on the books to achieve outlay savings of \$4.6 billion in the year that began Oct. 1, 1980. It included revenue-raising provisions expected to yield \$3.6 billion during the year.

Congress completed action on the reconciliation bill Dec. 3 when the Senate adopted the conference report on the measure . . . by an 83-4 vote. The House had approved the conference report earlier that day 334-45. . .

And on. The rest of it, of course, is printed in the RECORD.

The facts themselves support the position taken here. The authority for this absurd ruling is totally out of context from the idea of the budget process and restrictions thereof. It was in response to the concurrent resolution instructions to the Finance Committee. It was not a reconciliation bill. The title of the bill itself said:

The assistant legislative clerk read as follows: "A bill (H.R. 5559) to make changes in certain income tax provisions of the Internal Revenue Code of 1954, and for other purposes."

It was a separate bill. It was not reconciliation, because we tried to get reconciliation earlier, and we finally got it 5 years after the Budget Act had been passed. There it is. The Congressional Quarterly, totally impartial, said the first reconciliation act. I will get the other Congressional RECORDS. So the very authority for this ruling is totally unfounded. We ought to overrule this ruling, so to speak, so we can maintain the integrity of the budget process and the integrity of the Senate itself.

I thank the distinguished ranking member.

Mr. EXON addressed the Chair.

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The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, time and time again, we are proving the point that the theory behind the ruling of the Chair, as we understand it, which is totally faulty, has been destroyed – that theory has been destroyed completely – by the fact that we have proven beyond any doubt that the 1975 act, or whenever it was, that evidently the Parliamentarian is using as a basis for his theory is wrong.

Mr. HOLLINGS. Wrong as it can be.

Mr. EXON. Senator Long was on another course altogether. He was cutting taxes. He was not using the reconciliation process, as we know and understand it, as part of the budget bill.

The fact that words were used somewhere along the line is totally wrong when a Parliamentarian so rules because it is a faulty ruling, and I think most lawyers who look at it objectively will so agree.

I retain the remainder of our time, and I yield the floor.

Mr. BOND. Mr. President, I ask the Senator from Texas, is he prepared to go forward?

Mr. GRAMM. I am, Mr. President.

Mr. BOND. Mr. President, I yield the distinguished Senator from Texas 8 minutes on the argument on the appeal of the ruling on the point of order.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, there is one thing you have to hand our Democratic colleagues, they are absolutely consistent on tax policy. They are always consistent, and they are consistently wrong. They have three rules on taxes, and they never, ever violate them:

Rule No. 1 is that tax increases are always fair, they are always the right thing to do, and they are always supported.

Rule No. 2 is that tax cuts are always unfair, they are always for the rich, just as only rich people are ever taxed by tax increases, and they are totally consistent in applying these two rules.

If there were a rule No. 3, it would be “see rules 1 and 2 above.”

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What Senator DASCHLE is trying to do is stop us from voting on a tax cut, period. I remind my colleagues that this fund that we are setting up, this so-called reserve fund, provides a tax cut to working families, basically a \$500 tax credit per child to working families who now have the highest tax burden in American history.

When I was a boy 8 years old in 1950, the average family in America with two children was sending \$1 out of every \$50 it earned to Washington, DC. Today, the average family with two children is sending \$1 out of every \$4 it earns to Washington, DC, and what we are trying to do is to reduce the tax burden on working families, especially working families with children.

Under our budget, we cannot give a tax cut larger than the spending cuts that we have written in the budget or we are violating our own budget and we are subject to a point of order. So we are not debating deficits here, we are basically debating whether or not we be allowed to cut spending and cut taxes on working families.

The Democrats always take the view that tax increases are good and they are always on the rich. In 1993, when they imposed, without a single Republican vote, the largest tax increase in American history, their argument was, this is a tax on rich people. Nobody making less than \$115,000 a year is going to pay this tax. Well, it turned out it had a gasoline tax in it. They tried to have a Btu tax equivalent to a gasoline tax of 7 cents a gallon. What they were able to pass was a 4.3-cents a gallon tax on gasoline. It did not go to build highways. It went to general fund of the Government to spend. They taxed working people who have to drive their cars and their trucks to work to give money to people who do not work.

Secondly, they taxed Social Security benefits. The President proposed taxing anybody who was rich, by his definition, who made \$25,000 a year.

When people raised questions about it, he said: "Well, you know, many of these people own their own homes, and if they had to rent the home you could count that as income, if they own their refrigerator and they rented that, if they got an insurance policy or a little savings account." So shamed were Democrats in Congress that they did raise the level at which you started taxing their Social Security benefits to \$34,000 a year.

By their definition, those are rich people. They were going to tax John Q. Astor, we were told. As it turned out, 80 percent of those taxes on this top 1 percent of income earners turned out to be Joe Brown and Son hardware store.

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But the one thing you have to admire the Democrats about, they are absolutely consistent. And that is, they always raise taxes. They always raise taxes. And they always say that only rich people pay taxes.

They are also consistent in that they never support cutting taxes. What we are trying to do in this bill is to give a \$500 tax credit for working families. That tax credit phases out as all deductions do, at high-income levels.

The plain truth is, most American families never become truly economically successful until they are older and therefore almost by definition their children have grown up, gotten married, graduated from college. Mr. President, 75 percent of the tax cut we are talking about goes to families that make \$75,000 or less. But following their basic rule that every tax increase is fair and every tax cut is unfair, they are against it.

I just want to remind my colleagues before they vote on this, that under the Clinton budget, if it were implemented, we would have the highest tax burden in American history at the Federal level, 19.3 cents out of every \$1 earned by every American on average will come to the Federal Government to be spent.

What that means for working Americans is that for the first time in history, over 30 cents, in fact 30.4 cents, out of every \$1 earned by every American family on average is not going to be spent by the people who earned it: it is going to be spent by their Government at the State, local, or Federal level.

Our colleagues who object to cutting taxes for working families say, this is only fair. What they really believe but they do not want to tell us is, they believe Government can do a better job of spending money than working families can. They believe that a two-wage earner family where both the husband and the wife are out working hard, they are making about \$50,000 a year, or \$60,000 a year, when they combine their two incomes—we are trying to let them keep \$1,000 more a year to invest in their own family and their own future. The Democrats are trying to use a parliamentary maneuver to prevent us from voting on that because they want to spend that money. They do not want working families to be able to spend it.

This fits their principle. In the mid-1980's people discovered that in foreign policy the Democrats always blamed America first. What we are discovering in the 1990's is in domestic policy, they always tax America first. According to them, every tax is fair, every tax cut is unfair, every tax increase is paid for by rich people. Even if they are Social Security recipients making \$25,000 a year, counting half of their Social Security,

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even if they are driving a pickup truck to work, Democrats think they are rich when it comes to raising their taxes.

But when working families who are struggling every single day to make ends meet—and they are watching the Government squander their money—when we try to let them keep \$1,000 more a year to invest in their own children and their own families, somehow that is unfair, somehow suddenly they are rich.

In truth, for the Democrats, anybody that works for a living is rich. Well, I think working families can do a better job. That is why I think it is absolutely imperative that we defeat this parliamentary maneuver and that we have an opportunity to vote on cutting taxes for working families. I think they deserve the tax cut. I intend to vote for it. I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I yield myself such time as I may require off the resolution. I ask the Senator from Texas if he will spend a minute with me.

Mr. GRAMM. Sure.

Mr. BOND. Talking about the taxation philosophy. I wonder if he has taken a look at the amendments presented on this budget resolution.

Does the Senator see a theme in the amendments that have been presented in this budget resolution?

Mr. GRAMM. Well, I have not looked at the numbers. I would like to be educated on it. But as I look at them, we have a minimum of six amendments where the Democrats want to raise taxes and spend the money. And the number I looked at is that the tax increase was very substantial, over \$180 billion total.

Mr. BOND. I say to my good friend from Texas, I show to my other friends, just some rough calculations we have done. So far, we have six tax increases that are proposed in amendments on this budget resolution. The Senator from West Virginia, Senator ROCKEFELLER, \$50 billion; Senator BOXER, \$18 billion; Senator WYDEN, \$1 billion; Senator KERRY, \$48 billion; Senator KERRY, \$6 billion; Senator BYRD, \$65 billion. As we calculate that, that comes up to about \$188 billion.

Mr. GRAMM. What would they do with that money?

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Mr. BOND. As I understand it, I say to the Senator, that would not go for tax relief. That would go for increased spending.

Now we are getting up—the record was set, I believe, in 1993, where we had a \$240 billion tax increase. We still have a few hours left on this resolution, and all we need is about, as I calculate it, about \$52 billion more in tax increases, and we could go over that \$240 billion.

Does the Senator think maybe there is an effort to break that record?

Mr. GRAMM. I would say, if the Senator would yield, it is their record. It was the 1993 tax increase. And let me predict, not having seen what taxes those are, I bet you all those taxes are supposedly on rich people, people that drive automobiles and trucks and people that work for a living, which by definition are rich people. In fact, anybody that is taxed is rich and anybody whose taxes you cut are rich.

Mr. BOND. I see our distinguished chairman of the Budget Committee here, whose good office is responsible for helping frame this overall budget debate. I am happy to yield to him if he has some comments on this at this time.

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Mr. DOMENICI. . . .

Mr. President, I want to use about 2 minutes here to just make an observation and make an inquiry of the Chair.

First, I do not ask the Chair or the Parliamentarian for any information on this, but it is obvious that the Byrd rule by definition does not apply to provisions of a budget resolution. It applies to the legislative language in the reconciliation bills.

Having said that, I have a parliamentary inquiry. It is brief. If a reconciliation bill reduced revenues in the outyears beyond the period of the reconciliation bill, but as a whole did not increase the deficit by virtue of offsetting spending reductions or revenue increases, would the revenue reductions violate the Byrd rule?

The PRESIDING OFFICER. No, they would not.

Mr. DOMENICI. I thank the Chair.

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POINT OF ORDER

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Mr. EXON. Mr. President, I am about to yield whatever time he might need to the Senator from South Carolina.

I wish briefly to respond. How interesting it is that the debate has shifted from the very legitimate discussion that we were having here with regard to the faulty ruling of the Chair to a charge that Democrats are trying to block consideration of income tax reductions. Nothing could be further from the truth.

Just repeating irresponsible charges over and over again without providing any backup proof is nonsense. That has been an old debating technique for a long, long time. When the facts are not on your side, talk nonsense.

Mr. President, I want to get back, and I am sure my friend from South Carolina wants to get back, to the underlying problem that we have here that is far more than just one single independent ruling of the Chair. It is going to have far-reaching adverse effects on the U.S. Senate for as long as we can imagine into the future.

Instead of addressing that, the Republicans come forth with charts. They say we are trying to stop the tax cut. We are not trying to stop the tax cut. All we want is the tax cut to be brought up in the usual fashion, to be debated in the usual fashion under the usual procedures. We are trying to expose this glaring trick that the Republicans are trying, by separating their reconstruction instructions into three separate bills. The last one with regard to tax cuts would come in September of this year, a couple months before the election. Of course, I would be the last to accuse the Republicans of playing politics with this —let me be the first.

We have just seen some charts presented here. They have done this before. They set up a straw man on fake straw and then they tear it down. They just had a list of Senators up there. They totaled up what those Senators had proposed and how much it would cost. No one has advocated raising taxes by the amount asserted from the Senator from Missouri. It is simply not the case that one can add up all of the offsets for amendments that fail. If the Senate chooses not to use an offset in one amendment, it is perfectly legitimate to try and use the same offset in a second amendment. When we do that, the Republicans set up a straw man—false numbers, false charges, false assumptions. Once again, setting up a straw man may fool the people of the United States temporarily, but not for long.

I want to correct just one more thing. I want to correct the record on the statistics used by the Senator from Texas. The share of the economy that goes to revenues to fund the Government is not at record levels. Let me repeat that: The Senator from Texas said that the share of the economy that



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goes to revenues to fund the Government is not at record levels. It was higher in 1969. It was higher in 1970. It was higher in 1982. Sure, sure, we would all like to have lower taxes. The question is, what should come first? What should come first, Mr. President? Balancing the budget of the United States or enacting tax cuts that we all would likely vote for once we get a balanced budget?

I yield 5 minutes to the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, you can find the first two pages of the budget resolution conference report for fiscal year 1976 referred to as the authority for the Parliamentarian's rule about reconciliation back in 1975. I ask unanimous consent to have it printed in the RECORD. The report dated April 21, 1975 was submitted by Mr. Muskie, from the committee of conference. It is only a few pages, but I think it ought to be included.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECOND CONCURRENT RESOLUTION ON THE BUDGET, FISCAL  
YEAR 1976

Mr. Muskie, from the committee on conference, submitted the following conference report to accompany H. Con. Res. 466:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the concurrent resolution

H. Con. Res. 466) revising the congressional budget for the United States Government for the fiscal year 1976, and directing certain reconciliation action, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

*That the Congress hereby determines and declares, pursuant to section 310(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on July 1, 1975 –*

*(1) The appropriate level of total budget outlays is \$374,900,000,000;*

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(2) *The appropriate level of total new budget authority is \$408,000,000,000;*

(3) *The amount of the deficit in the budget which is appropriate in the light of economic conditions and all other relevant factors is \$74,100,000,000;*

(4) *The recommended level of Federal revenues is \$300,800,000,000, and the House Committee on Ways and Means and the Senate Committee on Finance shall submit to their respective Houses legislation to decrease Federal revenues by approximately \$6,400,000,000; and*

(5) *The appropriate level of the public debt is \$622,600,000,000.*

SEC. 2. *The Congress hereby determines and declares, in the manner provided in section 301(a) of the Congressional Budget Act of 1974, that for the transition quarter beginning on July 1, 1976 –*

(1) *The appropriate level of total budget outlays is \$101,700,000,000;*

(2) *The appropriate level of total budget authority is \$91,100,000,000;*

(3) *The amount of the deficit in the budget which is appropriate in the light of economic conditions and all other relevant factors is \$15,700,000,000;*

(4) *The recommended level Federal revenues is \$86,000,000,000; and*

(5) *The appropriate level of the public debt is \$641,000,000,000. And the Senate agree to the same.*

Mr. HOLLINGS. Mr. President, a careful reading of this particular budget resolution finds no reconciliation instructions. How can you have reconciliation without reconciliation instructions?

I referred in my original comments to the fact that our distinguished colleague, the chairman of the Finance Committee at the time, Senator Long, wanted it to appear as reconciliation because he was trying to limit debate and limit amendments. He was probably the cleverest of all Parliamentarians around here. He always stood in the well there: "Yes, yes, Senator, I will take your amendment." He just took all these amendments, went over there, and you would never see them again. I remember it well.

But there was, as the record will show, no reconciliation—he called it and they gave him limited time, but it was not reconciliation. As chairman of the Finance Committee, he was complying with a particular bill. Just like now, under this concurrent resolution that we direct the Commerce Committee or the Armed Services Committee or any other committee, and

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they comply. They come up with their particular bill. That is not reconciliation.

As further authority, Mr. President, I refer to the statement made at that particular time by myself on December 3, 1980. I quote:

Every Senator who signed the conference agreement, and every Senator who votes to adopt it, has earned a share of the credit for this first historic exercise of the reconciliation power.

That was the first time we were able to pass a reconciliation bill, December 1980—there was not any kind of authority for reconciliation back in 1975.

Let me quote Mr. Henry Bellmon, ranking member at that particular time on the Republican side:

Mr. President, this truly is a historic occasion. Today we complete for the first time an important part of the Budget Act called reconciliation.

Mr. President, you cannot be more clear than that. They are using 1975, the actions taken by the chairman of the Finance Committee and a spurious ruling at that particular because there was no such thing as reconciliation instructions. Senator Long put in, as I said, and I read the particular title, a tax bill. It is a separate bill. It is not reconciliation. It is "a bill (H.R. 5559) to make changes in certain income tax provisions of the Internal Revenue Code of 1954." That is not a reconciliation bill.

Now, Mr. President, I am continually hearing from my distinguished colleague from Texas, and they run him out every now and then with the little charts, about the biggest tax increase. It is all Presidential politics—the biggest tax increase, the biggest tax increase.

Mr. President, I ask unanimous consent again that we include in the RECORD from the Washington Post an article by Judy Mann back in 1995, January 1. I ask unanimous consent the article be printed in its entirety in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post]  
FIDDLING WITH THE NUMBERS  
(By Judy Mann)

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Gov. Christine Todd Whitman, the Republican meteor from New Jersey, had the unusual honor for a first-term governor of being asked to deliver her party's response to President Clinton's State of the Union message last week.

And she delivered a whopper of what can most kindly be called a glaring inaccuracy.

Sandwiched into her Republican sales pitch was the kind of line that does serious political damage: Clinton, she intoned, "imposed the biggest tax increase in American history."

And millions of Americans sat in front of their television sets, perhaps believing that Clinton and the Democrat-controlled Congress had done a real number on them.

The trouble is that this poster lady for tax cuts was not letting any facts get in her way. But don't hold your breath waiting for the talk show hosts to set the record straight.

The biggest tax increase in history did not occur in the Omnibus Budget Reconciliation Act of 1993. The biggest tax increase in post-World War II history occurred in 1982 under President Ronald Reagan.

Here is how the two compare, according to Bill Gale, a specialist on tax policy and senior fellow at the Brookings Institution. The 1993 act raised taxes for the next five years by a gross total of \$268 billion, but with the expansion of the earned income tax credit to more working poor families, the net increase comes to \$240.4 billion in 1993. The Tax Equity and Fiscal Responsibility Act of 1982, by comparison, increased taxes by a net of \$217.5 billion over five years. Nominally, then, it is true that the 1993 tax bill was the biggest in history.

But things don't work nominally. "A dollar now is worth less than a dollar was back then, so that a tax increase of, say \$10 billion in 1982 would be a tax increase of \$15 billion now," says Gale. In fact, if you adjust for the 48 percent change in price level, the 1982 tax increase becomes a \$325.6 billion increase in 1993 dollars. And that makes it the biggest tax increase in history by \$85 billion.

Moreover, says Gale, the population of the country increased, so that, on a per person basis, the 1993 tax increase is lower than the one in 1982, and the gross domestic product increased over the decade, which means that personal income rose. "Once you adjust

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for price translation, it's not the biggest, and when you account for population and GDP, it gets even smaller."

He raises another point that makes this whole business of tax policy just a bit more complex than the heroic tax slashers would have us believe. "The question is whether [the 1993 tax increase] was a good idea or a bad idea, not whether it was the biggest tax increase. Suppose it was the biggest? I find it frustrating that the level of the debate about stuff like this as carried on by politicians is generally so low."

So was it a good idea? "We needed to reduce the deficit," he says, "we still need to reduce the deficit. The bond market responded positively. Interest rates fell. There may be a longer term benefit in that it shows Congress and the president are capable of cutting the deficit even without a balanced budget amendment."

Other long-term benefits, he says, are that "more capital is freed up for private investment, and ultimately that can result in more productive and highly paid workers."

How bad was the hit for those few who did have to pay more taxes? One tax attorney says that his increased taxes were more than offset by savings he was able to generate by refinancing the mortgage on his house at the lower interest rates we've had as a result. The 1993 tax increase did include a 4.3-cent-a-gallon rise in gasoline tax, which hits the middle class. But most of us did not have to endure an income tax increase. In 1992, the top tax rate was 31 percent of the taxable income over \$51,900 for single taxpayers and \$86,500 for married couples filing jointly. Two new tax brackets were added in 1993: 36 percent for singles with taxable incomes over \$115,000 and married couples with incomes over \$140,000; and 39.6 percent for singles and married couples with taxable incomes over \$250,000.

Not exactly your working poor or even your average family.

The rising GOP stars are finding out that when they say or do something stupid or mendacious, folks notice. The jury ought to be out on Whitman's performance as governor until we see the effects of supply side economics on New Jersey. But in her first nationally televised performance as a spokeswoman for her party, she should have known better than to give the country only half the story. In the process, she left a lot to be desired in one quality Americans are looking for in politicians: honesty.

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I read here: The biggest tax increase in history did not occur in the Omnibus Budget Reconciliation Act of 1993. The biggest tax increase in post-World War II history occurred in 1982 under President Ronald Reagan.

So I hope they would at least respect the truth every now and again and quit referring to the 1993 reconciliation bill as the “biggest tax increase.” I happened to have voted for it. It is working. It has the deficit cut in half. In fact, the deficit dropped another \$30 billion since last week.

Finally, Mr. President, under this limited time on April 24, 1991, we put in a bill — “we” being Senator MOYNIHAN of New York, Senator KASTEN of Wisconsin, and the Senator from South Carolina — we put in that bill to cut \$190 billion in tax cuts for working Americans. The distinguished Senator from Texas voted against it. We said, let us put Social Security on a pay-as-you-go basis. It amounted to \$190 billion in tax cuts on working Americans.

You can keep running him out with his charts, but I am going to run out with his record. He had a chance to vote for it, and he voted against it.

So spare us this particular off-Broadway act that we have to watch every other day or so — the biggest tax increase, and working Americans, around the kitchen table, and who is in the wagon and who is pulling it. We are in the wagon. The Congress is in the wagon. The people outside are the ones pulling it. The President is the one that has been cutting the deficit. And thank heavens for President Clinton, the only one in town since President Johnson that has cut the deficit.

I yield the floor.

Mr. EXON. Mr. President, just to add another fact to the statement made by the distinguished Senator from South Carolina, that largest tax cut in history that he indicated came in 1982, I believe. Is that what he said?

Mr. HOLLINGS. That is correct, tax increase.

Mr. EXON. I thought it might be interesting to note that the chairman of the Finance Committee at the time of the real largest tax increase in history, chairman of the committee of jurisdiction, the Finance Committee at that time, was Kansas Senator ROBERT DOLE.

I yield 5 minutes to the Senator from North Dakota.

Mr. CONRAD. I thank the ranking member, the Senator from Nebraska.

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I must say that I was surprised to see the Senator from Texas out once again railing against the Democrats in the last package that we passed, saying that it was just a tax package. It is very interesting.

The Senator from Texas is not talking much these days about deficits. He is not talking about that much anymore. He is not talking much about debt anymore because we are 6 months away from an election. The Republicans are down by double digits in the polls. And so out comes the tax bogeyman. Let us haul that one out because that one seems to work pretty well. Let us run out the tax bogeyman. Let us run him around the track a few times.

Mr. President, let us read the RECORD. First of all, the biggest tax increase occurred on their watch. They controlled the White House. They controlled the U.S. Senate. They passed the biggest tax increase. Why did they do it? Because the deficits were skyrocketing. They were out of control. So they took action.

In 1993, the Democrats, when it was on our watch—we controlled the White House, we controlled the Senate, and we controlled the House—we took action. We can be proud of the action we took because we reduced these deficits. We have reduced them sharply. Let us just look at the record.

Mr. President, this compares the records of President Clinton, President Bush, and President Reagan. This is what has happened to the deficits under these three Presidents. These are the deficits in billions of dollars starting in 1980.

Ronald Reagan was elected. The deficit was about \$70 billion a year. Ronald Reagan took office. By the way, it was not just Republican control of the White House; the Republicans controlled this body as well. They controlled the U.S. Senate, and they had effective control of the U.S. House of Representatives. Because everyone remembers what budgets passed in 1981, in 1982, in 1983, it was boll weevil Democrats joining with the Republican minority in the House, joining with the Senate majority, the Republican majority in the Senate, and a Republican President.

What happened? Here is the record on deficits. The deficits exploded. They exploded under this theory of supply-side economics. They exploded under this notion that you can just cut taxes and not cut spending, and that somehow it is all going to add up. The deficits went to over \$200 billion a year.

Then, we see that we had the beginning of the Bush administration, and again deficits took off. This time they reached \$290 billion a year. That is what the deficit was when Bill Clinton came into office. Bill Clinton inherited a \$290 billion budget deficit.

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Look at the performance based on a plan that we passed in 1993 without a single Republican vote. Not one. Not one. The deficit has gone down each and every year.

This morning we were told the deficit for this year will probably come in at less than \$130 billion, a dramatic reduction in the budget deficit, in part because of economic recovery and in part because of the plan that we passed in 1993. We had the courage to stand up and do what needed to be done.

Mr. President, more needs to be done. It is not going to happen with this kind of running out and saying, well, we can just cut all the revenue of the Federal Government and somehow it will all add up. We tried that before. It failed, and it failed miserably. Debt, deficits and decline, that is the direction our friends on the other side, at least some of them, seem to be willing to take us.

Mr. President, we should never ever go back to that policy of debt, deficits and decline. That way lies ruination.

I thank the Chair and yield the floor.

Mr. EXON. May I ask a question of the Senator from North Dakota.

I appreciated the Senator's factual remarks, and just to back up what the Senator has said, that is just not a Democratic Senator saying that. That is not just a Democratic Senator saying that based on the facts. The same thing was said by the Office of Management and Budget director under President Reagan. His name was David Stockman, and he admitted publicly—and I believe wrote in a book—that it was a sham all the way through. In fact, he used the words that all of this period the Senator has just alluded to was "fiscal carnage." And he admitted that it was a Republican fiscal carnage. I just wanted to emphasize that. I am just wondering if the Senator had remembered that fact.

Mr. CONRAD. I actually read David Stockman's book, and he makes very clear that this was a policy they hoped somehow would all add up, and it did not. It was a miserable failure that dug a very deep hole for this country.

Mr. President, the facts are very clear. This is the record. Nobody can dispute these numbers. This is what happened.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. CONRAD. I thank the Chair.



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Mr. HOLLINGS. Mr. President, let me get right to the point of the statement I made back in 1980 when I was chairman of the Budget Committee and Mr. Giaimo of Connecticut, was chairman on the House side. Before I could get these records I put in a call to him. He is down in Florida just below Palm Beach. He verified my memory. Lots of times my memory is pretty good way back, and very precise, and then I cannot remember where I parked the car, so I always like to double check when I just speak from memory. He verified that Mr. Bellmon was the ranking member on the Senate side, and he and all the records show that the bill was not a reconciliation bill. There were not any reconciliation instructions in the fiscal '76 concurrent resolution on the budget, and the tax bill offered by Senator Long of Louisiana as the chairman of the Finance Committee was not a part of reconciliation.

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Mr. HOLLINGS. Mr. President, referring again to the RECORD made back in 1975. The Parliamentarian points out the fact that Senator Muskie called it the reconciliation bill in that 1975 discourse. The truth of the matter is Senator Hartke raised that point.

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Mr. HOLLINGS. I just reviewed the particular statement by Senator Muskie back in 1975. As I alluded in my original remarks, Senator Hartke of Indiana said, "Where do you get that this is a reconciliation bill? There is no reference." Senator Muskie said, "That is what Senator Long called it." He said, "Just by calling it that, does it make it a reconciliation bill?"

I was going to read the exact quote, but I think the full RECORD should be included here at this point with respect to that special act in 1975. It is used as the authority that was a reconciliation bill. It responded to the second concurrent resolution.

You read that RECORD. Mr. Muskie came on the floor at that particular time. He was catching up with what Chairman Long of Finance was doing and was trying to justify it. But the truth of the matter is, the RECORD will clearly show that the tax bill was only in response to the second concurrent budget resolution and not any reconciliation instructions. That was brought out by Senator Hartke. The exact discourse will be included in the RECORD. I had it here.

Mr. President, I ask unanimous consent that it be printed in the RECORD.

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There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Congressional Record, Dec. 15, 1975]

Mr. MUSKIE. Mr. President, I think this might be a good point, with somewhat of a lag in floor discussion, to discuss the pending legislation, as chairman of the Budget Committee. I shall speak briefly of the relationship of the tax reductions contained in H.R. 5559 and the requirements of the congressional budget process.

The second concurrent budget resolution for fiscal year 1976, which is now binding upon Congress, provides for extension of the temporary antirecession tax cuts of 1975 at a level which will maintain current tax withholding rates until the end of June 1976. The resolution mandated the Finance and Ways and Means Committees to report such legislation—specifically, legislation which would decrease fiscal year 1976 revenues by approximately \$6.4 billion less than what they would be under existing law. H.R. 5559 meets this standard.

Extension through June 30, 1976, of the temporary lower withholding rates established last spring will allow adequate time for Congress carefully to develop budget targets for fiscal year 1977 including an overall spending ceiling and revenue floor. These targets will be established in the first concurrent resolution to be adopted by Congress next May. This schedule will allow Congress to establish reasoned and accurate fiscal year 1977 spending and revenue decisions at the first available opportunity under the new congressional budget discipline. If Congress determines at that time to further extend or alter the original 1975 tax reductions, legislation to implement that decision can be enacted before the June 30, 1976, expiration date.

I would also like to take this opportunity to praise the Finance Committee, and particularly its chairman, the distinguished Senator from Louisiana, Senator LONG, for so closely integrating the vital work of the Finance Committee into the framework of the new congressional budget process. Decisions affecting Government revenue levels are vital both to eliminating future budget deficits and to maintaining the momentum toward economic recovery. Thus, the close coordination of the tax writing committees with the budget process is essential if the process is to be successful.

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The fact that H.R. 5559, as reported by the Finance Committee, meets the reconciliation instruction in the second concurrent budget resolution is proof of the commitment of the Finance Committee to the successful working of the new budget process.

Since H.R. 5559 constitutes the first so-called reconciliation bill required to be reported in the Senate under the Budget Act, I would also like to explain very briefly how reconciliation bills fit into the overall budget process.

In recent months, I periodically informed the Senate as to the consistency of various bills with the budget targets established by the first concurrent resolution last spring. Subsequently, the second concurrent budget resolution has just been adopted which establishes binding overall revenue, spending, and debt figures for fiscal year 1976.

The Budget Act provides a special procedure to insure rapid enactment of legislation to bring current congressional legislative programs into line with the figures established in the second concurrent resolution. This legislation—which can affect spending authority, budget authority, revenues, or the public debt limit—is known as a reconciliation bill. After enactment of the reconciliation legislation, the focus of the budget process will shift to insuring that subsequent legislation does not breach the second resolution figures.

The Budget Act provides that legislation subsequent to a reconciliation bill will be subject to a point of order if it causes either expenditures to exceed the relevant spending ceilings or revenues to fall below the revenue floor established in the second concurrent resolution.

With respect to reconciliation bills affecting either spending or revenues, the Budget Act requires they fully carry out the reconciliation instructions given in the second concurrent resolution. The act further provides that no amendment not germane to the provisions of that reconciliation bill is in order.

Therefore, in the case of the present second resolution requirement that fiscal year 1976 revenues be reduced by approximately \$6.4 billion, amendments to the reconciliation bill which would further reduce revenues more than \$6.4 billion or raise revenues above the \$300.8 billion set as the appropriate revenue floor for fiscal year 1976 would be out of order.

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The Budget Committee looks forward to working with the Finance Committee in enforcing the revenue floor and spending ceilings after this legislation is adopted.

May I make the point that this is the point at which we move beyond persuasion, which has worked very effectively and to my satisfaction, up to this point, to the discipline of a point of order.

Mr. HARTKE. Mr. President, will the Senator yield?

Mr. MUSKIE. Yes, I yield to my good friend.

Mr. HARTKE. How does this bill, which is the pending business, become a reconciliation bill without being designated a reconciliation bill?

Mr. MUSKIE. I think that when we see an apple that looks like an apple, we call it an apple.

Mr. HARTKE. How can we say this bill is the specific reconciliation bill?

Mr. MUSKIE. If it is not that, then it is out of order, as to cutting revenues.

In the first place, I understand the manager of the bill has described it as a reconciliation bill. But beyond that, the only revenue cut that is permitted under the second concurrent resolution is a cut of \$6.4 billion. If this bill is not the instrument for achieving that cut, the assumption would have to be, I guess, that a bill is coming along that would. In that case, this bill, being extraneous to that, could be held to be out of order. But I think that is a semantic discussion. We do not mandate the words. All we do is mandate the action.

When I say "we," I am talking about Congress as a whole.

Mr. HARTKE. In other words, the chairman of the Committee on the Budget has made an assumption that this is a reconciliation bill.

Mr. MUSKIE. No, may I say, the chairman of the Committee on Finance has told me it is a reconciliation bill.

Mr. HARTKE. The chairman of the Finance Committee can make a statement, but that does not make it the situation. The Committee on Finance has not acted upon this being a

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reconciliation bill. There is no record of its being a reconciliation bill; there is no mention of it in the report as being a reconciliation bill. Therefore, I think a point of order would not be well taken in regard to any amendment, because it is not a reconciliation bill. This is a tax reduction bill.

I can see where the Senator may assume, but it is an assumption which is not based on a fact.

Mr. MUSKIE. May I make my point as simply as possible? The second resolution does not permit tax reductions beyond \$6.4 billion. If the Senator chooses to say that the proposed tax reduction does not come in a legislative vehicle that could properly be described as a reconciliation bill, still, in my judgment, he cannot escape the point that if it is not that, it is, nevertheless, out of order if it exceeds \$6.4 billion.

I really do not know why the Senator is chasing his own tail.

Mr. HARTKE. I am not chasing my tail. I will point out, very simply, that in my judgment, this is a case where two Senators have gotten together and agreed that this is reconciliation bill and there is nothing in the record to show that it is a reconciliation bill.

Mr. MUSKIE. May I say to the Senator, I have never discussed this with Senator LONG. If the Senator says I have gotten together with him, the only way in which we have gotten together is that the second concurrent resolution mandates a tax reduction of \$6.4 billion and the chairman of the Committee on Finance has reported a bill which reduces revenues approximately \$6.4 billion. In that open and nonconspiratorial way have the Committee on Finance and the Committee on the Budget "gotten together," in the words of the Senator.

Mr. HARTKE. Let us avoid any conspiracy, but the fact is that I think there are not very many, if any, Senators on this floor that had the idea that this bill would not be subject to amendment, other than the fact that there was a unanimous-consent agreement, which is an entirely different proposition. The germaneness rule only comes into effect if this is a reconciliation bill.

Mr. MUSKIE. Why does the Senator not test the point? He is not going to persuade me of it.

Mr. HOLLINGS. I yield the floor.

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Mr. HOLLINGS. Mr. President, once again, regarding the record and this ruling, I turn to the CONGRESSIONAL RECORD, the House of Representatives, H11693, December 3, 1980. I quote Mr. Panetta:

It obviously is the first time that the reconciliation process itself has been implemented under the Budget Act.

Further:

No other chairman in the history of the Budget Committee has been able to say that reconciliation has been implemented and put into place. They have passed budget resolutions. We have passed continuing resolutions of one kind or another, but this is the first time that a chairman of the Budget Committee has implemented the reconciliation process.

I yield the floor.

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Mr. DOMENICI. Mr. President, I have a conference report from 1975, a budget resolution, just as a matter of information with reference to various items that have been discussed today of a parliamentary nature. I ask unanimous consent that the conference report be printed in the RECORD.

There being objection, the material was ordered to be printed in the RECORD, as follows:

SECOND CONCURRENT RESOLUTION ON THE BUDGET FISCAL YEAR  
1976

Mr. MUSKIE, from the committee of conference, submitted the following conference report to accompany H. Con. Res. 466:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the concurrent resolution (H. Con. Res. 466) revising the congressional budget for the United States Government for the fiscal year 1976, and directing certain reconciliation action, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

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*That the Congress hereby determines and declares, pursuant to section 310(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on July 1, 1975 –*

*(1) The appropriate level of total budget outlays is \$374,900,000,000;*

*(2) The appropriate level of total new budget authority is \$408,000,000,000;*

*(3) The amount of the deficit in the budget which is appropriate in the light of economic conditions and all other relevant factors is \$74,100,000,000;*

*(4) The recommended level of Federal revenues is \$300,800,000,000, and the House Committee on Ways and Means and the Senate Committee on Finance shall submit to their respective Houses legislation to decrease Federal revenues by approximately \$6,400,000,000; and*

*(5) The appropriate level of the public debt is \$622,600,000,000.*

*SEC. 2. The Congress hereby determines and declares, in the manner provided in section 301(a) of the Congressional Budget Act of 1974, that for the transition quarter beginning on July 1, 1976 –*

*[ . . . ]*

#### JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the concurrent resolution (H. Con. Res. 466) revising the congressional budget for the United States Government for the fiscal year 1976, and directing certain reconciliation action, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

#### *Second Concurrent Resolution on the Budget*

#### Outlays

The House resolution provided for total outlays in the amount of \$373.891 billion. The Senate amendment provided for total outlays in the amount of \$375.6 [billion].

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The conference report provides for total outlays in the amount of \$374.9 billion. Estimates of outlays by functional category of the budget is set forth below.

#### Budget Authority

The House resolution provided for total new budget authority in the amount of \$408.004 billion. The Senate amendment provided for total new budget authority in the amount of \$406.2 [billion].

The conference report provides for total new budget authority in the amount of \$408.0 billion. Estimates of new budget authority by functional category of the budget is set forth below.

#### Deficit

The house resolution provided for a budget deficit in the amount of \$72.091 billion. The Senate amendment provided for a deficit in the amount of \$74.8 [billion]. The conference report provides for a deficit of \$74.1 billion.

#### Revenues

The House resolution provided for Federal revenues in the amount of \$301.8 billion; and to achieve that level, it directed the House Ways and Means and Senate Finance Committees to reduce revenues by \$5.4 billion. The Senate amendment provided for revenues in the amount of \$300.8 billion; and to achieve that level it directed the Ways and Means and Finance Committees to reduce revenues by \$6.4 billion.

The conference report provides for revenues in the amount of \$300.8 billion; and directs the Ways and means and Finance Committees to reduce revenues by \$6.4 billion. The \$6.4 billion reduction of revenues is necessary to maintain the personal income tax withholding rate and extend the temporary corporate tax reductions in the 1975 Tax Reduction Act.

The managers accept the Senate position that it is unrealistic to expect this required reduction in revenues to be partially offset by \$1.0 billion to be received through tax reform during the remainder of Fiscal year 1976, as contemplated in the house resolution.

Mr. DOMENICI. Mr. President, I want to say to the Senators—Senator EXON just reminded me—that there will be no votes tonight. We had not planned on any votes during the day, and nothing has changed. So when



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we finish here in about 20 minutes we will be finished, and we will start at 9 o'clock in the morning.<sup>1466</sup>

After conclusion of debate on the resolution, during the vote-a-rama, the Senate rejected Leader Daschle's appeal. Before doing so, the Senate heard the following closing arguments:

APPEAL OF THE RULING OF THE CHAIR

The PRESIDING OFFICER.

The Senate Democratic leader has appealed the decision of the Chair. The question before the Senate is, Shall the decision of the Chair stand as the judgment of the Senate?

There is 1 minute of debate equally divided.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, this resolution abuses reconciliation—extending use in an entirely inappropriate way. In sanctioning that abuse, the Chair has made a faulty judgment that could have a vast impact on the Senate.

The Chair has ruled that reconciliation can be used solely to increase spending, solely to cut taxes, solely to increase the deficit.

That is an absolutely unacceptable distortion of the reconciliation process; expanded use threatens all Senators' rights to debate and amend.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President and fellow Senators, I think the Chair's ruling should be sustained. Senator DASCHLE's point of order was based on his view that the budget resolution cannot contain separate reconciliation instructions, that there can be just one. The Parliamentarian ruled that you could have multiple reconciliation bills directed by a budget resolution. I think the Parliamentarian is right and we should support him. Therefore, I urge that you vote "no" on this appeal—vote "aye" on this appeal. Excuse me.<sup>1467</sup>

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<sup>1466</sup> 142 CONG. REC. S5415–38 (daily ed. May 21, 1996).

<sup>1467</sup> *Id.* at S5516 (daily ed. May 23, 1996).

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The Senate then voted 53 to 47 to uphold the ruling of the Chair and reject the appeal.<sup>1468</sup> As Leader Daschle restated the ruling, “[R]econciliation can be used solely to increase spending, solely to cut taxes, solely to increase the deficit.”<sup>1469</sup> This ruling opened reconciliation to become the sweeping vehicle for economic policy that it has become.

Since this ruling, Congress has used the reconciliation process to pass seven tax cut bills and one spending stimulus package – the Taxpayer Relief Act of 1997,<sup>1470</sup> the Taxpayer Refund and Relief Act of 1999 (vetoed),<sup>1471</sup> the Marriage Tax Relief Reconciliation Act of 2000 (vetoed),<sup>1472</sup> the Economic Growth and Tax Relief Reconciliation Act of 2001,<sup>1473</sup> the Jobs and Growth Tax Relief Reconciliation Act of 2003,<sup>1474</sup> the Tax Increase Prevention and Reconciliation Act of 2005,<sup>1475</sup> the Tax Cuts and Jobs Act of 2017,<sup>1476</sup> and the American Rescue Plan Act of 2021<sup>1477</sup> – each to increase the deficit.

The precedents of May 1996 expanding reconciliation were subsequently limited in two ways. First, from 2007 to 2015, the Senate chose not to allow itself to use reconciliation to increase the deficit by adopting what has been called “the Conrad Rule.”<sup>1478</sup> But as Congress adopted the Conrad Rule using a budget resolution, it just as easily set the Conrad Rule aside using a subsequent budget resolution.<sup>1479</sup> The Conrad Rule was thus less the creation of a new rule as an exercise of self-restraint.

The 1996 precedent remains as Leader Daschle restated it: “[R]econciliation can be used solely to increase spending, solely to cut taxes, solely to increase the deficit.”<sup>1480</sup> Thus, since May 1996, reconciliation has come regularly to include, in a subsequent Parliamentarian’s words, “money for things.”<sup>1481</sup> As the Parliamentarian stated in 2022, reconciliation

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<sup>1468</sup> *Id.*

<sup>1469</sup> *Id.*

<sup>1470</sup> Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788.

<sup>1471</sup> Taxpayer Refund and Relief Act of 1999, H.R. 2488, 106th Cong. (vetoed).

<sup>1472</sup> Marriage Tax Relief Reconciliation Act of 2000, H.R. 4810, 106th Cong. (vetoed).

<sup>1473</sup> Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38.

<sup>1474</sup> Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27, 117 Stat. 752.

<sup>1475</sup> Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, 120 Stat. 345 (2006).

<sup>1476</sup> Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

<sup>1477</sup> American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4.

<sup>1478</sup> See S. Con. Res. 21, 110th Cong. § 202, 121 Stat. 2590, 2602 (2007) (the rule itself); Comm. for a Responsible Fed. Budget, *Reconciliation 101*, Aug. 13, 2021 (referring to the rule as the “Conrad rule”); Kent Conrad, *Congress Should Reinstate the “Conrad Rule” To Prevent Abuse of Budget Reconciliation*, THE HILL, July 22, 2021, 08:00 AM.

<sup>1479</sup> See S. Con. Res. 11, 114th Cong. § 3204 (2015) (adopted) (repealing the rule).

<sup>1480</sup> 142 CONG. REC. S5516 (daily ed. May 23, 1996).

<sup>1481</sup> See, e.g., E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Agriculture title for privilege/fatality review (Nov. 16, 2021, 8:10 PM).

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does not have to generate savings; Congress can spend money in reconciliation so long as the legislation is within its budget instructions; and reconciliation can merely shift the budgetary landscape.<sup>1482</sup>

The 1996 precedent expanding reconciliation was subsequently limited in a second way. In the late 1990s or early 2000s, the Parliamentarian reversed his previous guidance that (in the words of the Presiding Officer) “There is no number limiting the number of reconciliation bills.”<sup>1483</sup> By 2001, the Parliamentarian advised that any one budget resolution could generate no more than three reconciliation bills—one for spending, one for taxes, and one for the debt limit<sup>1484</sup>—leading Majority Leader Trent Lott to fire the Parliamentarian.<sup>1485</sup>

But the Parliamentarian’s rule limiting the number of reconciliation bills per budget resolution persisted. Recently, the Parliamentarian has described this rule as “guidance proscribing more than one reconciliation bill of each category under 310 (or a combination bill) per instruction-per resolution from the Parliamentarian in the late 90s/early 2000s (commonly referred to as a ‘3 bites at the apple’ test).”<sup>1486</sup>

### The Doctrine of Privilege

Over the years, the Parliamentarian has advised that to maintain its privileged status and 20-hour limit on debate, reconciliation legislation needs to avoid a growing list of procedural and substantive fouls. The question presented is: when a bill purporting to be a reconciliation bill comes before the Senate, will the Parliamentarian recognize it as a reconciliation bill? On this question, successive Parliamentarians have erected an increasingly exacting procedural doctrine of determining privilege.

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<sup>1482</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Comm. on Fin. & Staff of S. Comm. on the Budget (July 22, 2022, 11:00 AM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Prescription Drugs Byrd Bath part two 7-22-22 (July 22, 2022, 1:01 PM).

<sup>1483</sup> 142 CONG. REC. S5418 (daily ed. May 21, 1996).

<sup>1484</sup> See, e.g., CONG. RSCH. SERV., RL33030, THE BUDGET RECONCILIATION PROCESS: HOUSE AND SENATE PROCEDURES 17 (2005); RICHARD KOGAN & DAVID REICH, CENTER ON BUDGET AND POLICY PRIORITIES, INTRODUCTION TO BUDGET “RECONCILIATION” 3 (2021); Richard A. Arenberg, *Would a New Senate Majority Abuse the Budget Reconciliation Process?* (2014); Emily Pierce, *Frumin Caught in Middle of Tax Battle*, ROLL CALL, Mar. 4, 2003.

<sup>1485</sup> David E. Rosenbaum, *Rules Keeper Is Dismissed by Senate, Official Says*, N.Y. TIMES, May 8, 2001, at A20; Alexander Bolton, *Cruz: Let’s Overrule Senate Officer To Expand ObamaCare Bill*, THE HILL, Mar. 9, 2017, 4:58 PM.

<sup>1486</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Staff of S. Republican Leader re 304 (May 28, 2021, 1:13 PM).

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To ward off these perceived infractions from a reconciliation bill, the Parliamentarian has threatened the penalty of advising the Presiding Officer that the bill would become fully debatable. In almost all circumstances, this would amount to a death sentence for the bill. Such a consequence can often seem out of proportion with the gravity of the infraction alleged. A single provision can threaten the privilege of the entire bill.<sup>1487</sup>

Beginning in 1984, the Parliamentarian advised that for the Senate's Presiding Officer to accord a House-passed bill reconciliation status in the Senate, the House must have followed the process set out in the Budget Act for the creation of a reconciliation bill.<sup>1488</sup> Beginning in 2000, the Parliamentarian advised that including material—even a single provision—outside the jurisdiction of any instructed Senate committee and changes to a fast-track procedures were both threats to a reconciliation bill's privilege.<sup>1489</sup> In 2003, the Parliamentarian advised that a second reconciliation bill would be deprived of privilege if one budget resolution's set of instructions had already been used.<sup>1490</sup> And the Parliamentarian has also advised that reconciliation bills that generate outlays where only revenues were instructed (as with the Earned Income Tax Credit or a health care tax credit) would also be deprived of privilege.<sup>1491</sup>

Prudent drafters of reconciliation instructions can avoid risks of jurisdictional foot faults by including in a budget resolution reconciliation instructions (even of merely nominal amounts) to as broad a list of committees as might be implicated by the policy that the budget resolution assumes. For example, if the policies contemplated might affect matters outside of the United States, drafters should contemplate instructing the Foreign Relations Committee. If the policies might have effects on all Government departments, drafters should contemplate instructing the Armed Services Committee so as to avoid inadvertently threatening privilege by implicating the Defense Department. If the policies might affect Native Americans, drafters should contemplate instructing the Indian

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<sup>1487</sup> See E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>1488</sup> Letter from Alan S. Frumin to William H. Frist (May 14, 2004).

<sup>1489</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM).

<sup>1490</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>1491</sup> *Id.*

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Affairs Committee. If the policies might affect environmentally-related matters, drafters should contemplate instructing the Agriculture, Nutrition and Forestry Committee and the Energy and Natural Resources Committee in addition to the Environment and Public Works Committees. As a working hypothesis, drafters might do well to start with the broadest possible list of committees—for example, all those authorizing committees with allocations of budget authority under section 302(a)<sup>1492</sup>—and eliminating only those whose jurisdiction could not possibly be implicated. A countervailing consideration, however, is that a broader set of instructed committees broadens the scope of amendments that Senators can offer on the Senate floor.

In reviewing House-passed language for threats to privilege, the Parliamentarian has expressed concern about “broad cites (chapters, subtitles, etc[.])”<sup>1493</sup> as possibly implicating the jurisdictions of committees that had not received reconciliation instructions. For example, the Parliamentarian expressed concern that “money for the Secretary ‘under chapter 261 of title 49’ seems very broad,” asking, “Are you clear on the contours of that?”<sup>1494</sup>

The Parliamentarian has expressed concern about initiatives that are not defined or have no statutory citation, as “we can’t know [their] jurisdictional footprint.”<sup>1495</sup>

While Senate staff review a House-passed bill for privilege concerns, the Speaker will often hold the bill in the House awaiting the Parliamentarian’s decisions. In 2017, when asked:

Assuming the bill remains for now at the desk in the House, what is the ability of the House to subsequently modify the House-passed bill to cure

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<sup>1492</sup> That is, the Agriculture, Nutrition, and Forestry; Armed Services; Banking, Housing, and Urban Affairs; Commerce, Science, and Transportation; Energy and Natural Resources; Environment and Public Works; Finance; Foreign Relations; Health, Education, Labor, and Pensions; Homeland Security and Governmental Affairs; Indian Affairs; Intelligence; Judiciary; Rules and Administration; Small Business; and Veterans’ Affairs Committees. See [167 CONG. REC. S6667-68](#) (daily ed. Sept. 23, 2021) (making allocations under [S. CON. RES. 14, 117th Cong.](#) (2021) (adopted)).

<sup>1493</sup> See, e.g., E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget re Agriculture title for privilege/fatality review (Nov. 16, 2021, 8:10 PM).

<sup>1494</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re T&I title for privilege/fatality review (Nov. 3, 2021, 1:53 PM).

<sup>1495</sup> See E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Oversight and Reform (COR) title for privilege/fatality review (Nov. 3, 2021, 1:56 PM).

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matters of privilege that arise during Senate arguments regarding privilege?,<sup>1496</sup>

the Parliamentarian replied: “If they haven’t sent it yet, they can modify it . . . This is what happened in 2015.”<sup>1497</sup>

Even though Parliamentarians have cataloged these threats to privilege, the Parliamentarian has also written: “So long as a preponderance of its subject matter has a budgetary impact, a reconciliation bill could contain non-budgetary amendments to substantive law, and still be protected under the Budget Act.”<sup>1498</sup>

In 2001, when asked what would happen if a budget resolution included a provision providing that the Byrd Rule would not apply to a tax cut reconciliation bill (so that Congress could enact permanent tax cuts), the Parliamentarian responded that including such a provision would deprive the budget resolution of privilege.<sup>1499</sup>

In 2004, in response to an inquiry from Majority Leader Bill Frist, the Parliamentarian wrote:

I am responding to your letter of May 11, 2004, in which you raised two procedural issues. . . . The second issue is whether a measure generated by the so-called Gephardt Rule in the House would meet the definition of a reconciliation bill in the Senate.

. . . .

With respect to your second question, I affirm the position of the Parliamentarian’s Office that a measure passed in the House under the Gephardt Rule should not be treated as a reconciliation bill in the Senate.

Since 1984, it has been the position of the Senate Parliamentarian’s Office that a measure from the House would not be accorded reconciliation status in the Senate if it did not follow the process set out in the Congressional Budget Act for the creation of a reconciliation bill. On several occasions we have been asked specifically whether a so-called

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<sup>1496</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re meeting this week (May 15, 2017, 11:41 AM).

<sup>1497</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re meeting this week (May 15, 2017, 5:54 PM).

<sup>1498</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK’S SENATE PROCEDURE* 623, 628 (1992) (citing [127 CONG. REC. 13209–11](#) (June 22, 1981)).

<sup>1499</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re notes from meeting with Parls (Mar. 5, 2002, 3:19 PM).

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Gephardt Rule debt limit measure would be accorded reconciliation status in the Senate. We have consistently advised that it would not. Such a measure is not created by or considered under the provisions of the Congressional Budget Act, but is generated automatically by a Standing Rule of the House upon the adoption of a Budget Resolution. Moreover, such a measure is not voted on separately by the House, as contemplated by section 310 of the Congressional Budget Act.

Unlike the vast majority of other measures considered in the Senate, reconciliation bills are considered under expedited procedures, through which the traditional rights of Senators to full debate and unlimited amendments are unavailable. Consequently, the determination that a measure is a reconciliation bill has the most profound implication for the rights of individual Senators, and for the Senate as an institution. Therefore, this office has always proceeded with great caution in advising that a particular measure was entitled to reconciliation status, and has consistently advised against according such status to measures that are merely labeled or deemed “reconciliation” when such measures do not meet the statutory requirements to be so considered. To expand fast tracked treatment in the suggested manner would contradict and call into question a consistent line of interpretation strictly construing the reach of Budget Act expedited procedures in the Senate.<sup>1500</sup>

In 2009, Senate Budget counsel summarized advice received in a meeting with the Parliamentarian:

\* The Parls will look behind the veil of House procedure to protect Senate prerogatives. Specifically, they will look to determine whether statutory procedures for reconciliation bills have been followed. A bill that is considered under the regular order by the House may also be considered under reconciliation procedures if that bill is submitted to and reported out by the [House Budget Committee].

\* The House bill will not get reconciliation protection in the Senate if (1) the bill contains recommendations outside the instructions (e.g., outlay reductions where the instruction is only for revenues); (2) the bill fails to achieve the amount of savings instructed; or (3) the bill contains matters outside the jurisdiction of the instructed committees. (*But see* Sec. 313(b)(3) allowing certain provisions outside the jurisdiction of instructed committees if they if the provision “sets forth the procedure to carry out or implement the substantive provisions that were reported”—query

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<sup>1500</sup> Letter from Alan S. Frumin to William H. Frist (May 14, 2004). For an explanation of the Gephardt Rule, see, e.g., BILL HENIFF JR., CONG. RSCH. SERV., [RL31913, DEBT LIMIT LEGISLATION: THE HOUSE “GEPHARDT RULE”](#) (2019).

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whether a jurisdictional provision that would satisfy this exception and be permissible in the Senate would jeopardize the privilege of the House-bill).

\* Concerning the jurisdictional point, there is some question whether the House would have an opportunity “cure” its jurisdictional incursion by reporting a subsequent reconciliation bill without the offending provision. The overarching concern is whether the House is attempting to abuse the reconciliation process by repeatedly reporting reconciliation bills with offending provisions. That said, it may be possible for the House to report a second reconciliation bill to cure a jurisdiction issue if the issue is minor and/or inadvertent. This remains an open question.

\* It is appropriate for the House Rules Committee to offer amendments to the [House Budget Committee]-reported reconciliation bill which cure both jurisdictional and extraneous matters. The Parls do not care if the reconciliation bill was reported originally also as a bill under the regular order.

\* With respect to extraneous matters, there is an expectation that the House-reported bill will be scrubbed of extraneous matters, but the inclusion of some extraneous matters will not jeopardize the privilege. They will still be subject to Byrd Rule strikes.<sup>1501</sup>

When asked, also in 2009, whether it was still valid advice that a preponderance of a reconciliation bill must have budget effects to be privileged, the Parliamentarian advised that this advice by a former Parliamentarian must be viewed in the context of the Byrd Rule. In this context, the Parliamentarian advised that there is no specific test for preponderance. And there is no specific test for determining what has a budget effect, or what is otherwise permissible as a “necessary term and condition” under the Byrd Rule. Provisions need to be argued on a case-by-case basis.<sup>1502</sup>

In March 2010, contemplating that the Senate would take up a House-passed reconciliation bill without any instructed Senate committee having reported, the Parliamentarian advised that for the House bill to have privileged status when it came to the Senate, the House bill “will need to vindicate” the Senate committees.<sup>1503</sup> Thus, where the budget resolution

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<sup>1501</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Parls on House reconciliation procedures (July 14, 2009, 12:26 PM) (reporting a meeting with the Parliamentarian that morning).

<sup>1502</sup> Staff of S. Comm. on the Budget, Q&A with Parls on Reconciliation (Sept. 15, 2009).

<sup>1503</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re quick summary of advice from Parls (Mar. 11, 2010, 9:34 AM).



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instructed the HELP and Finance Committees each to achieve \$1 billion in savings, the Senate Budget Committee Chair would have to determine that the House bill achieved at least \$1 billion in savings in the jurisdictions of each of those Committees for the House-passed bill to be considered a reconciliation bill. (In practice, the two Budget Committees, working with the Congressional Budget Office, assemble a crosswalk of provisions between House and Senate Committees to assess where to attribute savings and spending.) The House bill also had to have been reported out of the House Budget Committee and not contain anything outside the jurisdiction of the reconciled committees.<sup>1504</sup>

In February 2015, the Parliamentarian advised that the Parliamentarian looks not only at the substance of a reconciliation bill, but also at some of the procedure behind the bill. This is particularly relevant for House-passed bills. The House cannot just label any bill as a “reconciliation” bill and thus cause it to move through a fast-track process in the Senate.<sup>1505</sup>

In September 2015, the Parliamentarian cited jurisdiction and meeting Senate instructions as both factors in determining whether the bill receives privileged protection.<sup>1506</sup>

In October 2015, the Parliamentarian explained that the Parliamentarian’s use of the word “inappropriate” to describe a provision would not necessarily mean that the bill would lose privilege.<sup>1507</sup>

In November 2015, the Parliamentarian wrote:

As you know, the reconciliation process is an expedited procedure the benefits of which, pursuant to law and precedent, are conferred on language that adheres to appropriate procedure and content. The guidance of our office has been that in all but the most obvious and offensive cases the process should move forward with the Senate permitted to work its will while also having the responsibility of remediating language that is violative of the Byrd Rule. We have previously advised that a House bill which was a product of the extra-procedural Gephardt Rule did not qualify for reconciliation. Likewise, in 2000, we advised that HR 4810 was not a privileged measure based on content—in that case material outside the instructed category in the Senate. Earlier this year we advised that the

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<sup>1504</sup> *Id.*

<sup>1505</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on February 27, 2015, at 1 (Feb. 27, 2015).

<sup>1506</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on September 28, 2015, at 1.

<sup>1507</sup> Staff of S. Comm. on the Budget, Reconciliation Meeting #1 with Parliamentarians (Oct. 15, 2015).

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repeal of [the Independent Payment Advisory Board], which contained material outside the jurisdiction of the instructed Senate committees as well as fast-track procedure that we believed to be inappropriate for inclusion in a reconciliation bill, would cause a measure containing such language to lose privilege. Though every reconciliation bill is different and its contents and accompanying scores analyzed de novo, these principles apply generally.

After many discussions and much deliberation with each of the interested parties over the past month for which we thank you all greatly, we have reached conclusions about the House reconciliation bill. We believe this bill remains privileged, though it contains provisions that are “Byrdable” and those provisions will need to be addressed immediately upon proceeding to the bill to forestall a point of order being lodged against provisions in the measure.<sup>1508</sup>

When asked in March 2017 whether a House reconciliation bill should qualify for privilege in the Senate when the Ways and Means Committee failed to meet its instruction, the Parliamentarian advised that the only thing that matters is whether the bill complies with the *Senate* instructions. The Parliamentarian noted that the Parliamentarian’s office has years of correspondence on this.<sup>1509</sup>

When asked in March 2017 whether a House reconciliation bill needs to be arranged by Senate Committee jurisdiction when it is received by the Senate, the Parliamentarian advised that the Senate majority can do a substitute amendment to rearrange the bill into the appropriate Senate titles, and the bill from the House does not have to be organized by Senate committee jurisdiction to be granted privilege.<sup>1510</sup>

In 2017, when asked:

Privileged status of a Senate-initiated reconciliation bill that includes changes in revenues: We’d like to clarify this point that we briefly

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<sup>1508</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM). For an explanation of the Gephardt Rule, see, e.g., BILL HENIFF JR., CONG. RSCH. SERV., [RL31913, DEBT LIMIT LEGISLATION: THE HOUSE “GEPHARDT RULE”](#) (2019). For explanations of the Independent Payment Advisory Board, see, e.g., JIM HAHN, CHRISTOPHER M. DAVIS & EDWARD C. LIU, CONG. RSCH. SERV., [R44075, THE INDEPENDENT PAYMENT ADVISORY BOARD \(IPAB\): FREQUENTLY ASKED QUESTIONS](#) (2017); JIM HAHN & CHRISTOPHER M. DAVIS, CONG. RSCH. SERV., [R41511, THE INDEPENDENT PAYMENT ADVISORY BOARD](#) (2013).

<sup>1509</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 23, 2017, at 1 (Mar. 31, 2017).

<sup>1510</sup> *Id.*

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discussed at the end of our meeting last Friday and confirm our understanding of your statement, which we took to mean that an S-numbered bill that includes changes in revenues cannot enjoy the privileges of reconciliation, regardless of whether the House has passed a separate bill with revenue changes.,<sup>1511</sup>

the Parliamentarian replied:

I was not saying that the Senate couldn't be instructed to make changes in revenues or that such a bill would be out of order with respect to reconciliation generally but that we have an issue with the Senate originating a revenue measure because of the blue slip/constitution matters. And so what is the point—I suppose you could do 2 bills—the Senate goes first and then waits for the House product and starts over? But why would we do that[?]<sup>1512</sup>

In a meeting shortly thereafter, the Parliamentarian affirmed that the Senate could absolutely have an instruction related to changes in revenue and that bringing a revenue reconciliation bill to the floor as an S-numbered bill did not affect privilege. But the Parliamentarian did question what the point would be, given that revenue bills ultimately have to originate in the House.<sup>1513</sup>

In 2017, when the budget resolution included reconciliation instructions to only the HELP and Finance Committees, when the Parliamentarian was asked, “Confirming that *any* inclusion of matter in the House bill that falls outside of the jurisdiction of either the HELP or Finance committees is fatal to privilege? How bright is this line in terms of privilege?,”<sup>1514</sup> the Parliamentarian replied:

We have talked about this at length and it is not possible to opine as to the line/limit but it is impossible to suggest that there are no downstream effects to each item of legislation and that those effects have implications for committees not instructed and we are not looking to go there. There must be a rule of reason.<sup>1515</sup>

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<sup>1511</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re meeting (Mar. 29, 2017, 2:03 PM).

<sup>1512</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re meeting (Mar. 29, 2017, 2:12 PM).

<sup>1513</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 31, 2017, at 2 (Apr. 3, 2017).

<sup>1514</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re meeting this week (May 15, 2017, 11:41 AM).

<sup>1515</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re meeting this week (May 15, 2017, 5:54 PM).

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When asked:

Is there a point where an accumulation of Byrd Rule violations within a bill could reach a high enough level to threaten privilege (i.e., go beyond where you would view the appropriate remedy to be a number of individual Byrd rule strikes but instead threaten the privilege of the entire vehicle). Is this scenario ever possible?<sup>1516</sup>

the Parliamentarian replied: “Pretty sure we’ve talked about this many times before and said that it is possible even if we have never reached that point.”<sup>1517</sup>

In 2020, the Parliamentarian agreed with the general proposition that “in order to receive privilege in the Senate, the House reconciliation bill must comply with the reconciliation instructions to Senate Committees.”<sup>1518</sup>

Where a budget resolution gives a Senate Committee a reconciliation instruction “to increase the deficit by not more than” an amount, the Parliamentarian has advised that a bill that increases the deficit by less than that specified amount “would seem to be compliant.”<sup>1519</sup>

Where a House-passed reconciliation bill does not comply with a Senate Committee reconciliation instruction, the Parliamentarian has advised: “Our past advice on numerical lack of compliance has been that a curative amendment must be offered immediately to retain privilege.”<sup>1520</sup>

When asked, “what is the difference between a jurisdictional issue where the remedy is loss of privilege vs. a point of order under the Byrd Rule (Sec. 313(b)(1)(C))?”,<sup>1521</sup> the Parliamentarian replied:

Timing. A 313(b)(1)([C]) point of order lies against a measure on the floor brought up under privilege. It’s curative. By contrast, jurisdictional foot

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<sup>1516</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re meeting this week (May 15, 2017, 11:41 AM).

<sup>1517</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re meeting this week (May 15, 2017, 5:54 PM).

<sup>1518</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>1519</sup> *Id.*

<sup>1520</sup> *Id.*

<sup>1521</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on the Budget re reconciliation issues (Nov. 12, 2020, 5:11 PM).

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faults are fatal (say that 3 times fast) in House bills. Jurisdiction in the [reconciliation] context is not like jurisdiction in the bill referral context – it’s not a preponderance test. It’s a provision by provision test . . . .<sup>1522</sup>

When asked, “What is the remedy if a House reconciliation bill arrives in the Senate that includes material outside the jurisdiction of any reconciled Senate Committee?,”<sup>1523</sup> the Parliamentarian replied, “It’s Fatal—the House has to make changes to get it to be privileged over here.”<sup>1524</sup> When asked, “Would privilege not be granted in the Senate?,”<sup>1525</sup> the Parliamentarian replied, “No.”<sup>1526</sup> The Parliamentarian explained: “One provision, clearly shown to be outside the limits of our jurisdictional instruction can be fatal to privilege.”<sup>1527</sup>

When asked:

If a House reconciliation bill arrives in the Senate with material in a title of the bill that is outside the jurisdiction of the committee with jurisdiction over that title, but *that material is in the jurisdiction of another reconciled committee*, does that have any ramifications for privilege (assuming it doesn’t result in any other issues, like committee compliance issues)? If not, would the material just be subject to a Byrd Rule point of order?<sup>1528</sup>

the Parliamentarian replied, “It’s not a jurisdictional issue [imperiling privilege] as long as the committee is instructed but as we do title-by-title

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<sup>1522</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>1523</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on the Budget re reconciliation issues (Nov. 12, 2020, 5:11 PM).

<sup>1524</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>1525</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on the Budget re reconciliation issues (Nov. 12, 2020, 5:11 PM).

<sup>1526</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>1527</sup> *Id.*

<sup>1528</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on the Budget re reconciliation issues (Nov. 12, 2020, 5:11 PM).

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enforcement for all other things in a multijurisdictional bill, it is problematic from that standpoint [under section 313(b)(1)(C)].”<sup>1529</sup>

In 2020, the Parliamentarian surveyed fouls that could cause a House-passed reconciliation bill to lose privilege:

We have looked through our files and found a number of things that our office has advised are fatal to the privilege of a House bill coming over under [reconciliation] procedures. Here are some of them:

Gephardt rule produced bills (numerous); bills that were subject to a House rule that allowed for discharge and pass without an actual vote of the House (2004); bills that have outlays where only revenues were instructed (EITC and (ironically) a health care tax credit); a second bill after one set of instructions has been used (2003; 2004); jurisdictional fouls—April 2001 (Bob [Dove]’s advice), 2009 (Alan [Frumin’s advice]) and 2010 (Alan) and 2015 (me).<sup>1530</sup>

When the House of Representatives passed a budget resolution<sup>1531</sup> pursuant to a self-executing rule,<sup>1532</sup> the resulting reconciliation bill retained its privilege.<sup>1533</sup>

In 2008, the Parliamentarian described the consequences of loss of privilege:

During my tenure in this office, my predecessors [and I] have on countless occasions been asked prior to the anticipated consideration of a privileged measure whether certain proposals would be appropriate for inclusion in that measure. In every instance when in our judgment we considered a proposal to be inappropriate for inclusion in a privileged measure, we have advised that the inclusion of that or any other such proposals would destroy the privilege of that measure. To use the language employed by Senator Conrad on March 12 and 13, 2008, and noted in your letter, the presence of such inappropriate proposal would be “fatal” to the privileged nature of the measure. As a result, a motion to proceed to such measure would be fully debatable, and should the Senate ultimately proceed to the consideration of the measure, it would be fully debatable and amendable without subject matter limitation. We have also been asked

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<sup>1529</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>1530</sup> *Id.*

<sup>1531</sup> [S. Con. Res. 14, 117th Cong.](#) (2021) (adopted).

<sup>1532</sup> [H. Res. 601, 117th Cong.](#) § 4 (2021) (adopted).

<sup>1533</sup> See [Inflation Reduction Act of 2022](#), Pub. L. No. 117-169.

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what would happen if during Senate floor consideration of a privileged measure the Senate adopted an amendment containing an inappropriate provision. Here we have relied on the statement by Majority Leader Howard Baker (of Tennessee) who said on June 22, 1981, that “So long as a preponderance of [the] subject matter [of a reconciliation bill] has a budgetary impact, a reconciliation bill could contain nonbudgetary amendments to substantive law, and still be protected under the Budget Act.” See June 22, 1981, 97-1, *Record*, pp. 13209-11, cited at *Riddick’s Senate Procedure*, p. 623, footnote 167 (1992). We have interpreted this statement to mean that if the preponderance of the subject matter of a privileged matter already being considered on the Senate floor under the debate and amendment limitations imposed as a consequence of that privilege ceased to consist of such privileged subject matter, the measure would at that moment lose its privilege and become fully debatable and amendable without subject matter limit. Each inappropriate provision would weigh on the preponderance scale against privilege, and would again in the language used by Senator Conrad and cited in your letter be “corrosive” of the privilege.<sup>1534</sup>

*The American Rescue Plan Act of 2021* – In a privilege review of the American Rescue Plan Act of 2021, the Parliamentarian raised concerns “as jurisdictionally fatal” about a paragraph<sup>1535</sup> with “sweeping Environmental changes based on Exec[utive] Orders, etc[.] that are hugely broad,”<sup>1536</sup> but found that “new text resolves the issue.”<sup>1537</sup>

Also during a privilege review of the American Rescue Plan Act of 2021, the Parliamentarian raised concerns “as jurisdictionally fatal” about a term in a paragraph,<sup>1538</sup> saying “there is a good argument here that the new definition of ‘COVID-19’ products is overbroad, sweeping in things otherwise exempted from [Consumer Product Safety Commission]’s

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<sup>1534</sup> Letter from Alan S. Frumin to John Cornyn (May 1, 2008).

<sup>1535</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. § 3301(a)(1) (as reported by H. Comm. on the Budget, Feb. 24, 2021) (Funding for Pollution and Disparate Impacts of the COVID–19 Pandemic).

<sup>1536</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader & Off. of S. Parliamentarian re Good morning (Feb. 21, 2021, 9:41 AM).

<sup>1537</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Good morning (Feb. 24, 2021, 1:34 PM) (referring to text in [H.R. REP. NO. 117-8](#), at 28 (2021)).

<sup>1538</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. § 3311(c)(5) (as reported by H. Comm. on the Budget, Feb. 24, 2021) (Funding for Consumer Product Safety Fund To Protect Consumers from Potentially Dangerous Products Related to COVID–19).

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jurisdiction under 15 USC 2051n,”<sup>1539</sup> but said of revised language,<sup>1540</sup> “we think this addresses the issue.”<sup>1541</sup>

Also during a privilege review of the American Rescue Plan Act of 2021, for which the Armed Services Committee had no reconciliation instructions, the Parliamentarian raised concerns “as jurisdictionally fatal” about a definition in a subparagraph,<sup>1542</sup> saying “there is a good argument here that the definition of ‘agency’ captures many employees who are subject to personnel treatment outside of title 5 in their own agency (specifically title 10),”<sup>1543</sup> but said of revised language,<sup>1544</sup> “[I]t seems the definition in 5 USC 6301 excludes the teachers at DOD – are we reading that correctly? Assuming we are right on the definition, the fatality issue seems resolved.”<sup>1545</sup>

Also during a privilege review of the American Rescue Plan Act of 2021, the Parliamentarian raised concerns “as jurisdictionally fatal” that two sections<sup>1546</sup> implicated the jurisdiction of the Judiciary Committee,<sup>1547</sup> which had no reconciliation instructions, and the Parliamentarian concluded that “these issues are resolved”<sup>1548</sup> when an amendment struck these sections.<sup>1549</sup>

Also during a privilege review of the American Rescue Plan Act of 2021, the Parliamentarian raised concerns that a subparagraph<sup>1550</sup> implicated the jurisdiction of the Judiciary Committee (which had no reconciliation

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<sup>1539</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader & Off. of S. Parliamentarian re Good morning (Feb. 21, 2021, 9:41 AM).

<sup>1540</sup> [H.R. REP. NO. 117-8](#), at 28 (2021).

<sup>1541</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Good morning (Feb. 24, 2021, 1:34 PM).

<sup>1542</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. § 5111(d)(1)(A) (as reported by H. Comm. on the Budget, Feb. 24, 2021) (Emergency Federal Employee Leave Fund).

<sup>1543</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader & Off. of S. Parliamentarian re Good morning (Feb. 21, 2021, 9:41 AM).

<sup>1544</sup> [H.R. REP. NO. 117-8](#), at 34 (2021).

<sup>1545</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Good morning (Feb. 24, 2021, 1:34 PM).

<sup>1546</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. §§ 3035 & 3037 (as reported by H. Comm. on the Budget, Feb. 24, 2021) (Funding for COVID–19 Testing, Contact Tracing, and Mitigation Activities in Congregate Settings & Funding for Children Under the Care of the Department of Health and Human Services).

<sup>1547</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader & Off. of S. Parliamentarian re Good morning (Feb. 21, 2021, 9:41 AM).

<sup>1548</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Good morning (Feb. 24, 2021, 1:34 PM).

<sup>1549</sup> [H.R. REP. NO. 117-8](#), at 24 (2021).

<sup>1550</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. § 7007(a)(2)(A) (as reported by H. Comm. on the Budget, Feb. 24, 2021) (Relief for Airports).



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instruction) by virtue of “a criminal penalty that is waived.”<sup>1551</sup> The Parliamentarian agreed that a proposal to strike the language “resolves the challenge.”<sup>1552</sup>

Also during a privilege review of the American Rescue Plan Act of 2021, for which the Armed Services Committee had no reconciliation instruction, the Parliamentarian raised concerns with two Veterans’ Affairs Committee sections<sup>1553</sup> because they “implicate [Indian Health Service] (nonfatal) & [Department of Defense] (fatal) in the copay/reimbursement arena.”<sup>1554</sup> When the Veterans’ Affairs Committee proposed (without conceding that there was a violation) to except “health care furnished pursuant to section 1703(c)(2)–c(4) of title 38, United States Code,”<sup>1555</sup> the Parliamentarian thanked the Committee “for addressing this issue.”<sup>1556</sup>

Also during a privilege review of the American Rescue Plan Act of 2021, for which the Armed Services Committee had no reconciliation instruction, the Parliamentarian raised concerns with a section funding the National Institute of Standards and Technology<sup>1557</sup> because “there are 14 Manufacturing USA Institutes and [the Department of Defense] runs 8 of them.”<sup>1558</sup>

During a privilege review of the American Rescue Plan Act of 2021, Republicans challenged a section providing Eligibility for Workers’ Compensation Benefits for Federal Employees Diagnosed with COVID–

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<sup>1551</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget, Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on Fin. re Remainder of today (Feb. 25, 2021, 3:54 PM).

<sup>1552</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on Com., Sci. & Transp. re Commerce challenges (Feb. 25, 2021, 6:39 PM).

<sup>1553</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. §§ 8002 & 8007 (as reported by H. Comm. on the Budget, Feb. 24, 2021) (Funding Availability for Medical Care and Health Needs & Prohibition on Copayments and Cost Sharing for Veterans During Emergency Relating to COVID-19).

<sup>1554</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget, Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on Fin. re Remainder of today (Feb. 25, 2021, 3:54 PM).

<sup>1555</sup> E-mail from Staff of S. Majority Leader to Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on Veterans’ Affs. re SVAC fatal issue—Sec. 8007 (Feb. 26, 2021, 8:35 AM).

<sup>1556</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on Veterans’ Affs. re SVAC fatal issue—Sec. 8007 (Feb. 26, 2021, 6:08 PM).

<sup>1557</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. § 12001, [H.R. REP. NO. 117-8](#), at 82 (as amended by House, Feb. 26, 2021).

<sup>1558</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget, Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on Fin. re Remainder of today (Feb. 25, 2021, 3:54 PM).

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19,<sup>1559</sup> arguing: “Section 2103 would require Legislative Branch agencies (e.g.,] Senate Sergeant at Arms, Architect of the Capitol, United States Capitol Police) to take on additional duties, incur additional costs, and hire additional staff. The Rules Committee was not given reconciliation instructions.”<sup>1560</sup> The Parliamentarian asked:

It was my understanding from our discussion that FECA [Federal Employees’ Compensation Act] process was the same for everyone/it covered everyone equally regardless of employing agency and that in some specific cases (VA?) an agency’s organic statute made it clear that FECA benefits/processes weren’t changed by virtue of employment in a particular agency. My further understanding was that no duties are lost/enhanced/imposed by the change in presumption of causation. I may be wrong or have misunderstood that.<sup>1561</sup>

***The Build Back Better Act***—In a privilege review of the Build Back Better Act, for which the Armed Services Committee had no reconciliation instructions, the Parliamentarian raised concerns with a “section [that] provides for money for projects carried out on ‘federal government installations’ and we want to check on whether military bases are covered here.”<sup>1562</sup>

Where reconciliation bill language<sup>1563</sup> would have increased tax benefits by the amount that those benefits would be cut by subsequent sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) or the Statutory Pay-As-You-Go Act of 2010, the Parliamentarian’s office observed that “the references to sequestration under BBEDCA in these sections raise the question of Budget committee jurisdiction in the 306 and fatality contexts.”<sup>1564</sup>

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<sup>1559</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. § 2103 (as reported by H. Comm. on the Budget, Feb. 24, 2021).

<sup>1560</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on Homeland Sec. & Gov’t Affs. re Sec. 4005—privilege challenge (Feb. 28, 2021, 5:54 PM) (reporting Republican arguments).

<sup>1561</sup> *Id.*

<sup>1562</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re T&I title for privilege/fatality review (Nov. 3, 2021, 1:53 PM).

<sup>1563</sup> [Build Back Better Act](#), H.R. 5376, 117th Cong. §§ 136104, 136601 (2021) (as reported by the H. Comm. on the Budget, with modifications, Nov. 3, 2021).

<sup>1564</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Response to Section 306 Challenge to Ways & Means Title (Nov. 18, 2021, 3:17 PM). The second H. Managers’ Amend. struck the language to address the Parliamentarian’s concerns. [Amendment to Rules Committee Print 117-18 Offered by Mr. Yarmuth of Kentucky](#) (considered as adopted in rule agreed to on Nov. 18, 2021).

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When the Foreign Relation Committee received no reconciliation instruction, the Parliamentarian raised privilege concerns with House-reported language funding “the Office of the Chief Scientist, to carry out advanced research and development relating to climate through the Agriculture Advanced Research and Development Authority under section 1473H of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3319k),”<sup>1565</sup> writing that the “duties for the office of the Chief Scientist include ‘collaborating with [ . . . ] international agencies’ – could this \$\$ be used for that?”<sup>1566</sup>

When the Foreign Relation Committee received no reconciliation instruction, the Parliamentarian raised privilege concerns with House-reported language “to support expanded global and domestic vaccine production capacity and capabilities,”<sup>1567</sup> saying: “We understand that that HHS is already doing things in this sphere, but this is new language. Moreover, this is not preponderance. We believe you could just take out ‘global and domestic’ and avoid this problem i[f] the partnerships already exist.”<sup>1568</sup>

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<sup>1565</sup> [Build Back Better Act](#), H.R. 5376, 117th Cong. § 13001(a)(3) (2021) (as reported by the H. Comm. on the Budget).

<sup>1566</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Agriculture title for privilege/fatality review (Nov. 16, 2021, 8:10 PM) (quoting [7 U.S.C. § 3319k\(b\)\(4\)\(C\)](#)). Staff of the S. Comm. on Agric., Nutrition & Forestry replied “the funding for this provision is limited to the parameters of the research and development program and cannot be used for extraneous duties of the office, such as ‘collaborating with [ . . . ] international agencies.’” E-mail from Staff of S. Majority Leader to Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget re Agriculture title for privilege/fatality review (Nov. 17, 2021, 4:32 PM). The Parliamentarian’s office replied, “We accept that you all know the contours of your statutes.” E-mail from Staff of S. Majority Leader to Staff of S. Comm. on the Budget & Staff of S. Majority Leader re Parl Feedback on Privilege Scrub Responses (Nov. 18, 2021, 11:37 AM). The second House Managers’ Amendment nonetheless narrowed the statutory reference to address the Parliamentarian’s concerns. [Amendment to Rules Committee Print 117-18 Offered by Mr. Yarmuth of Kentucky](#) (considered as adopted in rule agreed to on Nov. 18, 2021).

<sup>1567</sup> [Build Back Better Act](#), H.R. 5376, 117th Cong. § 31022(b)(2) (2021) (as reported by the H. Comm. on the Budget).

<sup>1568</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on the Budget & Staff of S. Majority Leader re Parl Feedback on Privilege Scrub Responses (Nov. 18, 2021, 11:37 AM).

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## Review by the Parliamentarian

The Parliamentarian and Senate staff in both Caucuses engage in an exhaustive review—a “privilege scrub”—of a reconciliation bill for threats to privilege. Both the minority party and the Parliamentarian may raise challenges to privilege. The Parliamentarian has insisted on having time to review the entire bill prior to the Majority Leader’s moving to proceed to the bill, which allows both the Parliamentarian and the Leader some assurance that the bill to which the Leader hopes to move will in fact be considered a reconciliation bill with a nondebatable motion to proceed and a 20-hour limit on debate. This often happens before the House sends the Senate its bill, and often before the House passes the measure. When the Parliamentarian identifies a privilege issue, the House needs to revise its text to retain the bill’s privilege in the Senate.

At the same time and after, the Parliamentarian also engages in extensive analysis of the reconciliation measure’s compliance with the Byrd Rule. As with the privilege scrub, this “Byrd Bath” process has also evolved. Recently, the Byrd Bath process has included the following stages: (1) “listening tour” meetings with the Parliamentarian, where drafting committee staff outline their proposals broadly and flag potential Byrd Rule problems to gather initial feedback; (2) additional one-party-only Byrd Bath meetings, where one side’s Budget Committee and committee of jurisdiction staff present arguments to the Parliamentarian; (3) adversarial, “bipartisan” Byrd Baths with the Parliamentarian, where both sides of the Budget Committee and committee of jurisdiction staff present their arguments and rebuttals in each other’s presence; and (4) the Parliamentarian’s issuing advice, usually by e-mail.

The Parliamentarian insists on reviewing final Senate text and Congressional Budget Office or Joint Committee on Taxation scores for provisions and titles before providing any final advice.

The Parliamentarian has said that the Parliamentarian is not in charge of whom each side invites to such meetings, but the Parliamentarian has drawn the line at no press, no White House staff, no House staff, and no outside groups.<sup>1569</sup> Sometimes, Senators have sought to participate in these meetings.<sup>1570</sup>

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<sup>1569</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 23, 2017, at 1 (Mar. 31, 2017).

<sup>1570</sup> See Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 23, 2017, at 1 (Mar. 31, 2017) (discussing Sen. Lee’s interest); E-mail from S. Parliamentarian to Staff of S. Comm. on Fin., Off. of

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The Parliamentarian has advised that reaching a decision on a significant matter “would have to be a joint discussion with” representatives of both parties.<sup>1571</sup> And with regard to reconciliation, the Parliamentarian has written that “we cannot ‘confirm’ the appropriateness of something in reconciliation that has not been vetted by other interested parties.”<sup>1572</sup> This is in keeping with the Parliamentarian’s longstanding general rule that “all answers to any questions involving judgment calls involving cases of first impression . . . ARE PRELIMINARY ONLY AND SUBJECT TO CHANGE AFTER ALL INTERESTED PARTIES HAVE HAD THE OPPORTUNITY TO BE HEARD.”<sup>1573</sup>

The Parliamentarian has expressed a strong preference for “in-person meeting” to conduct these reviews<sup>1574</sup> in what the Parliamentarian has called “a more open setting.”<sup>1575</sup>

In June 2015, contemplating the reconciliation review process for the fiscal year 2016 health care reconciliation bill that President Obama would later veto,<sup>1576</sup> the Parliamentarian asked that authorizers be prepared to be in the office going through the bill line by line. The Parliamentarian expressed a preference to have authorizers meet with the Parliamentarian’s office well before a committee markup. The Parliamentarian wanted people in the Parliamentarian’s office who could explain things well. The

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S. Parliamentarian & Staff of S. Comm. on the Budget re Two Byrd Memos (Dec. 18, 2017, 11:40 AM) (reporting Sen. Cruz’s interest); Meeting of Off. of S. Parliamentarian, Staff of S. Comm. on Env’t & Pub. Works, Staff of S. Majority Leader & Staff of S. Comm. on the Budget (Dec. 8, 2021, 5:30 PM) (reporting Sen. Toomey’s interaction with the Parliamentarian); *see also* Philip Klein, [Mike Lee: Senate Parliamentarian Told Me It’s Possible To Push Harder on Repealing Obamacare Regulations](#), WASH. EXAMINER, Mar. 22, 2017, 5:18 PM (reporting Sen. Lee’s meeting with the Parliamentarian).

<sup>1571</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Fin. re 304/reconciliation (Sept. 28, 2021, 4:28 PM).

<sup>1572</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on Fin. re NIIT memo and request for meeting (Oct. 26, 2021, 4:18 PM); *see also* E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re baby Byrd Bath (June 3, 2017, 5:33 PM) (“We are at an impasse on the 1402(d) language. We’d like to have a bipartisan discussion about it.”).

<sup>1573</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Request to review health care reserve fund language (Mar. 22, 2009, 4:14 PM) (emphasis in the original).

<sup>1574</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Logistics next week (Feb. 12, 2021, 7:38 PM); *see also* E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Wednesday (Feb. 23, 2021, 12:15 PM) (“I think phones are going to be difficult with bipartisan meetings”).

<sup>1575</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Wednesday (Feb. 23, 2021, 12:15 PM).

<sup>1576</sup> [Restoring Americans’ Healthcare Freedom Reconciliation Act of 2015](#), H.R. 3762, 114th Cong. (2015) (vetoed).

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Parliamentarian expressed a desire to make the process work and that ultimately both sides needed to be at the table.<sup>1577</sup>

In September 2015, the Parliamentarian outlined the reconciliation review process in preparation for the fiscal year 2016 health care reconciliation bill that President Obama would later veto.<sup>1578</sup> The Parliamentarian wanted to “scrub” the reconciliation bill before the Senate went to it. The Parliamentarian preferred to get started earlier rather than later on that task. The Parliamentarian’s office would meet with each respective side to hear their arguments for why certain things should or should not be in the bill. The Parliamentarian was open to doing portions of the bill separately and seemed to want to do HELP and Finance sections separately. The Parliamentarian would then facilitate one large “disharmonic convergence” where both sides were in the room going line by line through the bill. Ideally, the Parliamentarian wanted minority Budget Committee staff in as soon as possible with whatever authorizers or policy folks Budget Committee staff thought were most beneficial.<sup>1579</sup>

In October 2015, the Parliamentarian ran through an overview of the process that the Parliamentarian’s office would use that year—the Parliamentarian’s office would meet with the majority and minority separately, and then there would be one bipartisan meeting to focus on outstanding issues. These meetings would be largely listening sessions, and the Parliamentarian’s office would follow up with questions if needed.<sup>1580</sup>

In December 2016, the Parliamentarian outlined the reconciliation review process at that time:

As we prepare for the consideration of various budget related legislation, I want to take a minute to refresh recollections (no doubt fond) of the processes involved in getting through budget resolutions and reconciliation.

Our role is to advise as to what is appropriate in terms of material and process as regards many aspects of “Budget.” To do that properly, we need to hear from interested parties. This is particularly true when we are contemplating new procedure, ideas, language, etc., but it is always necessary. We would like to receive memos from you (formal memos are

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<sup>1577</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on June 15, 2015 (June 16, 2015).

<sup>1578</sup> [Restoring Americans’ Healthcare Freedom Reconciliation Act of 2015](#), H.R. 3762, 114th Cong. (2015) (vetoed).

<sup>1579</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on September 28, 2015, at 1.

<sup>1580</sup> Staff of S. Comm. on the Budget, Reconciliation Meeting #1 with Parliamentarians (Oct. 15, 2015).

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not required—email with bullet points or some other format are fine) outlining your position on matters that you wish to pursue or contest. In those memos, please state your position, give your reasons, cite sources, and if you have precedent from previous budget resolutions or reconciliation measures, please analogize or distinguish the current case with/from those.

The important thing is that we know your thinking and have a chance to consider it and that you put your thoughts in writing (we keep these things forever ☺). If we have follow-up questions, we will ask. If you have follow-up questions, I have no doubt you will ask. If you wish to meet with us about something, please let us know—we will schedule it.

Please consider designating a point person (or an email group) through whom your materials and communications with us are funneled. And please make sure you use our group email.

A few words about Byrd Bath: if we are doing a reconciliation bill, there will be a Byrd Bath. That is a process that occurs only after individual meetings with parties and only when my office has all the material it needs (text that all parties have seen, memos with arguments, background materials if necessary) and is ready to vet the language with competing interests in a joint meeting. When we reach that point, we will let everyone know and we will find a time agreeable to all and my office will make arrangements for appropriate space to have the meeting (or meetings if needed).<sup>1581</sup>

As early as 2015, the Parliamentarian has asked for explanations of all cross references in proposed legislative language.<sup>1582</sup> Such cross references can expose the language to privilege and jurisdictional attacks.

In preparation for the review for the American Rescue Plan Act of 2021, the Parliamentarian asked for packets of materials that follow the order of legislative text:

We need redlines for things that change. Also—it's one thing to have organic discussion that is ranging—that's often very helpful and often we initiate—it's quite another to have memos that skip entire sections of planned discussion. I think we had some of that last week. Lastly, we would really like to have packets that have memo/argument and text and

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<sup>1581</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader & Staff of S. Comm. on the Budget re Upcoming Budget Processes (Dec. 7, 2016, 11:10 AM).

<sup>1582</sup> Staff of S. Comm. on the Budget, Reconciliation Meeting #1 with Parliamentarians, at 2 (Oct. 15, 2015).

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score. If we have already received the text in a big lump of E&C it's extremely difficult to keep that straight (due to the committees not lining up from House to Senate). So—if committees can cut include their text each time (whether that is pasted into the memo like HSGAC did) or as an attachment of only the relevant portions instead of the whole bill, that would be helpful.<sup>1583</sup>

The staff of the Parliamentarian's office then "read and discuss the attachments" within the Parliamentarian's office.<sup>1584</sup>

Dissatisfied with how rapidly the Byrd Bath went for the American Rescue Plan Act of 2021, in June 2021, the Parliamentarian added on a layer of "listening tour" meetings in anticipation of the Build Back Better Act. Based on conversations with the Parliamentarian, the Majority Leader's staff described the process as follows:

[T]he Parl[iamentarian]s requested these meetings with each Committee at the beginning of the process. In case it is helpful context, these initial meetings—and the memos that we submit to the Parls in advance of them—are different from the meetings with the Parls that took place during the American Rescue Plan Act.

The Parls have described these new initial meetings as a "listening tour," in which each Committee gives the Parls an overview of the policies within its jurisdiction that may be included in the reconciliation bill and educates them about the relevant current law—prior to the Dem[ocrats]-only walk through of leg[islative] text and Byrd bathing that will take place later in the process. The initial meetings also provide an opportunity for us to flag any potential issues for the Parls and get their feedback/guidance early in the process. We will still have the Dem-only walk throughs of leg[islative] text and Byrd bathing later in the process—so there will be more opportunity to go through leg[islative] text in detail with the Parls then. Also, we will not be bound or limited by what is included in these memos when it comes to the reconciliation bill; we are simply providing our best sense—at this early stage of the process—of the policies that may be included.

To that end, for the memos due on Friday, it would be most helpful to provide an overview of policies that may be included in the reconciliation bill, including (1) a summary of the relevant current law; (2) a description of the policy changes being considered (including why those changes fall

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<sup>1583</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Good morning (Feb. 22, 2021, 10:57 AM).

<sup>1584</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Logistics next week (Feb. 12, 2021, 7:38 PM).



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in the Committee’s jurisdiction); and (3), to the extent possible, any draft leg[islative] text and/or CBO feedback available at this point. However, we know that draft leg[islative] text and CBO feedback may not be available for some policies at this stage of the process—and that is completely fine. We have flagged for the Parls that some policies are further along than others and that some policies may only be described in narrative form in the memos (i.e., without any accompanying leg[islative] text or CBO feedback).<sup>1585</sup>

The Parliamentarian reserves the right to revise opinions expressed during these listening tours in the light of argument by the minority. For example, in one instance, the Parliamentarian wrote:

I need to point out (though it seems obvious to me and thanks for quoting it) that your memo here contains these words from me which indicate that while I think your argument and claim on jurisdiction has much merit, there may be colorable claims to the contrary and that is the purpose of a Byrd bath. I cannot count how many times we say that this is all subject to argument by others who may bring something to the table that we are not aware of.<sup>1586</sup>

The procedure in these reviews differs from other forms of litigation. The Parliamentarian’s advice to staff is generally confidential. Thus, each side first engages in confidential ex parte communications with the Parliamentarian, in what some call “softening the beaches.” These communications often involve memoranda in the nature of court briefs.

In these reviews, the Parliamentarian reviews legislative proposals and text and questions committee staff about them. The Parliamentarian has said, “It is essential that we know how a provision works and whom it effects currently when assessing Byrd rule compliance, particularly under [Budget Act section] 313(b)(1)(D).”<sup>1587</sup>

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<sup>1585</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Agric., Nutrition & Forestry; Staff of S. Comm. on Indian Affs.; Staff of S. Comm. on Banking, Hous. & Urb. Affs.; Staff of S. Comm. on Env’t & Pub. Works; Staff of S. Majority Leader & Staff of S. Comm. on the Budget re Next week’s meetings with the Parls (June 1, 2021, 7:16 PM).

<sup>1586</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on Homeland Sec. & Gov’t Affs. re Sec. 4005—privilege challenge (Feb. 28, 2021, 3:34 PM).

<sup>1587</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re HR1 Guidance—conference report (Dec. 19, 2017, 3:07 PM).

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The Parliamentarian has emphasized the deliberative nature of these reviews, saying: “It is our policy to be deliberative and inclusive, particularly on issues of such consequence.”<sup>1588</sup>

In 2017, when asked, “Do you want/expect a Byrd Bath of the full House-passed product given there will be a Senate complete substitute?”<sup>1589</sup> the Parliamentarian replied: “Is that not what we did last time? We have no way of knowing what course of action this will take and we Byrd Bath everything—or we try very hard to—don’t we? Is there an example of there not being a Byrd Bath on a reconciliation bill?”<sup>1590</sup>

When asked by minority staff, “We’d like to understand your preferred timeline and process for making arguments as to the privilege of the House-passed vehicle (presumably following release of CBO estimate)”<sup>1591</sup> the Parliamentarian replied: “ASAP, if that has any force or effect, though I understand the joy people take in lying in wait.”<sup>1592</sup> Ultimately, the Parliamentarian can force the minority to meet the Parliamentarian’s schedule. Setting the pace for consideration of the Restoring Americans’ Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), the Parliamentarian scheduled Democratic-only and bipartisan Byrd Baths on the same day, the first day after the Thanksgiving recess, writing, “No options there—sorry.”<sup>1593</sup> But when in preparation for the Build Back Better Act, the Majority Leader’s staff pushed the Parliamentarian to schedule adversarial Byrd Baths for a few more committees, the Parliamentarian pushed back.<sup>1594</sup>

In October 2015, the Parliamentarian reported to minority staff that the Parliamentarian’s office had been trying to let the majority know that the Parliamentarian’s office needed more time before the bill would come up

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<sup>1588</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on Fin. re reconciliation memo (Feb. 19, 2016, 3:12 PM).

<sup>1589</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re meeting this week (May 15, 2017, 11:41 AM).

<sup>1590</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re meeting this week (May 15, 2017, 5:54 PM).

<sup>1591</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re meeting this week (May 15, 2017, 11:41 AM).

<sup>1592</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re meeting this week (May 15, 2017, 5:54 PM).

<sup>1593</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Democratic Leader & Off. of S. Parliamentarian re D’s only meeting/Byrd bath (Nov. 23, 2015, 6:14 PM).

<sup>1594</sup> E-mail from Staff of S. Majority Leader to Staff of S. Majority Leader, Staff of S. Comm. on the Budget & other Democratic staff re BBB Update (Dec. 18, 2021, 11:37 AM).

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on the floor, but maintained that they could only push so long.<sup>1595</sup> Similarly, when asked in 2017 whether the minority would get to see the substitute before Majority Leader brought it up on the floor, the Parliamentarian replied that the Parliamentarian would ask the majority to share text in advance, but the Parliamentarian had only so much control over that.<sup>1596</sup>

When asked in May 2017, “Given it is a House bill, what will you require Senate Republicans provide you to prove that the House product vindicates the Senate Committees?”<sup>1597</sup> the Parliamentarian replied: “A score.”<sup>1598</sup>

When asked in March 2017 whether the Parliamentarian would require a score before the Majority Leader could move to proceed to a reconciliation bill with privilege protections, the Parliamentarian replied, “We are not going to the bill unless there is a CBO score that shows compliance with Senate committees.” The Parliamentarian noted, however, that the score could come from different CBO documents, if needed, and that the Parliamentarian has accepted letters from CBO explaining modeling in the past. The Parliamentarian expressed an intention to get as granular as possible with scores, but anticipated that it would be an issue. The Parliamentarian noted that in 2015 there was a scoring lag that helped shape the content and timing of the ultimate substitute.<sup>1599</sup>

When asked by Democratic staff, “What if we have a disagreement with Republicans over the allocation of items between HELP and Finance jurisdictions? Presumably, as with all matters of jurisdiction, where there is disagreement this will be ultimately decided by your office, correct?,”<sup>1600</sup> the Parliamentarian replied: “I assume so, yes.”<sup>1601</sup>

When one is making arguments to the Parliamentarian about committee jurisdictions, the Parliamentarian values citations to past bill referrals, and the Parliamentarian has advised:

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<sup>1595</sup> Staff of S. Comm. on the Budget, Reconciliation Meeting #1 with Parliamentarians (Oct. 15, 2015).

<sup>1596</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 23, 2017, at 1 (Mar. 31, 2017).

<sup>1597</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re meeting this week (May 15, 2017, 11:41 AM).

<sup>1598</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re meeting this week (May 15, 2017, 5:54 PM).

<sup>1599</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 23, 2017, at 2 (Mar. 31, 2017).

<sup>1600</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re meeting this week (May 15, 2017, 11:41 AM).

<sup>1601</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re meeting this week (May 15, 2017, 5:54 PM).

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[W]hen citing referred measures for the purposes of bolstering a jurisdictional argument, please be mindful of measures that are sweeping and general that were referred to one committee but have smaller provisions (which are in line with the provisions you are seeking clarification on) in another committee's jurisdiction. These are not necessarily helpful to the cause as they can be easily distinguished. Your best bets are smaller, more discreet measures.<sup>1602</sup>

The procedure in the bipartisan Byrd Bath once again differs from other forms of litigation. Because the Parliamentarian's advice to staff is generally confidential, the Parliamentarian does not share the particulars of the minority's challenges to reconciliation text with the majority. And thus the majority often has had only the vaguest notion of the minority's arguments. Nonetheless, previously, the Parliamentarian generally asked the majority staff to go first with an overview of the provision in question, and then the minority to come forward with specific issues and challenges.<sup>1603</sup>

This order of presentation led on more than one occasion to majority staff addressing the wrong challenge in their initial presentation. Seeing this, the Parliamentarian began to require the minority to present lists of challenges before the adversarial bipartisan Byrd Baths.<sup>1604</sup> On at least one occasion, the minority has changed its challenge during the litigation from what it submitted in advance.<sup>1605</sup> But the process of requiring a bill of particulars before oral argument has improved the deliberations.

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<sup>1602</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on the Judiciary re Memo re: immigration fees jurisdiction (Oct. 28, 2021, 7:19 PM).

<sup>1603</sup> See, e.g., Telephone call among Off. of S. Parliamentarian, Staff of S. Comm. on Veterans' Affs., Staff of S. Majority Leader, Staff of S. Republican Leader & Staff of S. Comm. on the Budget (Dec. 20, 2021, 12:15 PM); Telephone call among Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Com., Sci. & Transp. & Staff of S. Comm. on the Budget (Dec. 20, 2021, 11:00 AM).

<sup>1604</sup> See, e.g., E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Agric., Nutrition & Forestry, Staff of S. Comm. on the Budget & Staff of S. Majority Leader re Potential Byrd baths later today (Aug. 2, 2022, 3:32 PM) (conveying Republican challenges); E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Env't & Pub. Works, Staff of S. Comm. on the Budget & Staff of S. Majority Leader re EPW Byrd bath w/ Rs tomorrow morning (Aug. 2, 2022, 10:03 PM) (conveying Republican challenges); Memorandum from EPW Committee Republican Staff & Budget Committee Republican Staff to Senate Parliamentarians re List of EPW Committee Byrd Challenges (Aug. 2, 2022); E-mail from Staff of S. Majority Leader to Staff of S. Comm. on the Budget & Staff of S. Majority Leader re ENR Byrd bath tomorrow morning (Aug. 3, 2022, 9:30 PM) (conveying Republican challenges); E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Comm. on the Budget & Staff of S. Majority Leader re R Byrd challenges to Finance title (Aug. 4, 2022, 9:43 PM); Staff of S. Comm. on Fin., Title I—Committee on Finance: Subtitle D—Energy Security; E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Comm. on the Budget, Staff of S. Majority Leader & Staff of S. Comm. on Health, Educ., Lab. & Pensions re R Byrd challenges to Finance title—prescription drugs (Aug. 4, 2022, 9:50 PM).

<sup>1605</sup> See, e.g., Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on the Budget (Aug. 5, 2022, 10:30 AM); E-mail from

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The order of oral presentation has varied, but during bipartisan Byrd Baths for the Inflation Reduction Act of 2022, the minority generally presented challenges first, and then the majority responded to those challenges. Of course, the Parliamentarian can choose to change this procedure as the Parliamentarian wishes.

When the minority challenges multiple provisions, the Parliamentarian may hear oral arguments with regard to some and seek resolution by e-mail with regard to others. In one e-mail listing multiple challenges, the Parliamentarian advised:

The planned parenthood/small business piece will need to be litigated. We will work to arrange that once our morning meetings are over.

Most other pieces can probably be done by email. I will check with [the Minority Leader's staff] to see if anyone else needs a meeting on their issue. And if there are things on this list that your committees can take another hard look at and drop because they aren't necessary to make the programs function/don't score/are wish list items, that would be helpful to moving the ball forward.<sup>1606</sup>

Similarly, to facilitate a quicker process, the Parliamentarian has asked the majority to scrub its own language before presenting it to the minority.

During bipartisan Byrd Baths, the Parliamentarian will often ask questions of both sides. And then the two sides go back and forth until the Parliamentarian feels that the Parliamentarian has enough information.<sup>1607</sup>

The Parliamentarian's practice has been that once "meetings and these matters were subject to bi-partisan vetting," the Parliamentarian will send "advice to both parties."<sup>1608</sup>

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Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Finance Part 1: IRS Bipart Byrd Bath 8-5-22 (Aug. 5, 2022, 11:07 AM).

<sup>1606</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Byrd Challenges (Mar. 3, 2021, 7:22 AM).

<sup>1607</sup> See, e.g., Telephone call among Off. of S. Parliamentarian, Staff of S. Comm. on Veterans' Affs., Staff of S. Majority Leader, Staff of S. Republican Leader & Staff of S. Comm. on the Budget (Dec. 20, 2021, 12:15 PM); Telephone call among Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Com., Sci. & Transp. & Staff of S. Comm. on the Budget (Dec. 20, 2021, 11:00 AM).

<sup>1608</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Byrd Bath Follow-Up (July 21, 2017, 1:32 PM).

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The Parliamentarian has acknowledged that all litigants seek “some wins.”<sup>1609</sup> Observers have noted that the Parliamentarian often packages the announcement of the Parliamentarian’s decisions so as to give wins to each side.

The Parliamentarian has noted that Senators retain the right to raise challenges until the Senate passes the reconciliation bill.<sup>1610</sup> When asked:

Regarding the resolution of fatal issues that R[epublican]s flagged, . . . having not done this before: I’m confused as to what point we no longer have to present R[epublican]s our text for feedback. There is a juncture where we aren’t reliant upon their response and you all make a decision, correct? I’m fine sending them our new language if that’s needed, but just want to know when the ride ends.,<sup>1611</sup>

the Parliamentarian responded:

Sadly, the ride only ends when the bill is finished. People don’t have to share text or share arguments – they could spring it all on you once on the floor. You might remember 4 years ago when your arguments and our advice on some text came after the House had passed their bill – but as they hadn’t sent it over to us yet, they were able to vote again and fix the fatalities.<sup>1612</sup>

The expansion of these reviews delayed Senate action. For the Build Back Better Act, “listening tour” meetings of Democratic staff with the Parliamentarian began June 14, 2021, and continued for 4 months through to September 13.<sup>1613</sup> One observer called it a “slow process” in which the Build Back Better Act became “bogged down.”<sup>1614</sup> Delaying legislation reduces the probability of enactment. Observers have noted that media coverage of the contentious legislative process can sour Americans to

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<sup>1609</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget re undecided provisions (July 20, 2017, 1:52 PM).

<sup>1610</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Wednesday (Feb. 23, 2021, 3:27 PM).

<sup>1611</sup> E-mail from Staff of S. Majority Leader to Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Wednesday (Feb. 23, 2021, 3:22 PM).

<sup>1612</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Wednesday (Feb. 23, 2021, 3:27 PM).

<sup>1613</sup> See *infra* p. 1271.

<sup>1614</sup> Erin Bacon, *Senators Consider Votes on Election Bills Before Reconciliation*, CQ MORNING BRIEFING (Dec. 16, 2021).

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legislative products.<sup>1615</sup> With regard to delays in moving the Build Back Better Act, one observer wrote:

Let's put this as bluntly as possible — time hasn't been very kind to this proposed legislation. Sure, individual elements of the package remain immensely popular. But the longer the BBB sits out there, the more Republicans get to try to define the proposal negatively for voters. And more rifts inside Democratic ranks burst out into the open. At some point, the negotiating has to stop.<sup>1616</sup>

A listing of communications with the Parliamentarian in connection with the Build Back Better Act and Inflation Reduction Act of 2022 appears as an appendix to this volume.<sup>1617</sup>

For the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), the review followed this timeline:<sup>1618</sup>

- Tuesday, Sept. 29, 2015 — House Ways and Means Committee marks up reconciliation.
- Wednesday, Sept. 30, 2015 — House Education and the Workforce and Energy and Commerce Committees mark up reconciliation.
- Wednesday, Oct. 14, 2015 — Senate Democrats submit initial Byrd memos to Parliamentarian based on House-reported language.
- Friday, Oct. 16, 2015 — House Budget Committee reports reconciliation bill.<sup>1619</sup>
- Monday, Oct. 19, 2015 — Senate Democrats submit Byrd memo to Parliamentarian.
- Tuesday, Oct. 20, 2015 — Senate Democrats meet with the Parliamentarian on Byrd memo submitted the prior day.
- Friday, Oct. 23, 2015 — House passes Affordable Care Act repeal reconciliation.<sup>1620</sup>

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<sup>1615</sup> See, e.g., John Hudak, Elaine Kamarck & Selene Swanson, *Did Legislative Sausage-Making Hurt President Biden?* BROOKINGS (Dec. 13, 2021).

<sup>1616</sup> John Bresnahan, Anna Palmer & Jake Sherman, *The Top*, PUNCHBOWL NEWS AM, Dec. 10, 2021.

<sup>1617</sup> See *infra* p. 1271.

<sup>1618</sup> This timeline relies on the work of Mike Jones of the Budget Committee. See E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Comm. on Fin., Staff of S. Comm. on the Budget & Staff of S. Majority Leader re Sleeping on Rights during Byrd Bath (Dec. 15, 2021, 1:51 PM). This timeline and the following one do not capture the dates of Republican-only meetings on the same bill.

<sup>1619</sup> See H. COMM. ON THE BUDGET, 114TH CONG., *RESTORING AMERICANS' HEALTHCARE FREEDOM RECONCILIATION ACT OF 2015*, H.R. REP. NO. 114-293 (2015).

<sup>1620</sup> 161 CONG. REC. H7164 (daily ed. Oct. 23, 2015).

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- Tuesday, Nov. 17, 2015—Senate Republicans share Senate curative amendment text and CBO score.
  - Monday, Nov. 23, 2015—Senate Republicans confirm Nov. 17, 2015, text will be the basis for the bipartisan Byrd Bath.
  - Thursday, Nov. 26, 2015—Thanksgiving.
  - Monday, Nov. 30, 2015—Bipartisan Byrd bath.
  - Tuesday, Dec. 1, 2015—The Senate proceeds to the reconciliation bill and Leader McConnell offers his substitute amendment.<sup>1621</sup>

For the Tax Cuts and Jobs Act of 2017, the review followed this timeline:<sup>1622</sup>

- Friday, Nov. 10, 2017—The Senate Finance Committee process began with the release of the Chairman’s Mark. Note that the Finance Committee does not mark up legislative text, so the Chairman’s Mark, and all other subsequently markup materials, were narrative descriptions of the provisions, rather than legislative text.
- Monday, Nov. 13, to Thursday, Nov. 16, 2017—The Finance Committee marked up. The Committee made many changes, including two modifications by Finance Chair Orrin Hatch that included repealing the individual mandate and other significant changes.
- Nov. 16, 2017—The House passed its version of the bill,<sup>1623</sup> which had significant differences, on the same day the Finance Committee voted to report.
- Sunday, Nov. 19, 2017—The majority Republicans shared with the minority most of the legislative text derived from the Committee markup.
- Monday, Nov. 20, 2017—The minority received the full version. This was the first time that the minority had seen text, and the text differed in significant ways from what had been considered in the markup. Democrats sent a memo to the Republicans pointing out 21 significant discrepancies, and the Republicans eventually implicitly acknowledged several of them, changing the text. Also on Monday, Nov. 20, Democratic staff began submitting memoranda to the Parliamentarian.

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<sup>1621</sup> *Id.* at S8233 (daily ed. Dec. 1, 2015).

<sup>1622</sup> This timeline draws on E-mail from Staff of S. Comm. on Fin. to Staff of S. Majority Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on the Budget re Timing—Advance text for Rs (Dec. 8, 2021, 4:02 PM).

<sup>1623</sup> 163 CONG. REC. H9414 (daily ed. Nov. 16, 2017).



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- Tuesday, Nov. 21, 2017 – Democratic staff had a Democrat-only Byrd Bath, and continued to submit Byrd Rule memos for the rest of that week (the week of Thanksgiving).
  - Thursday, Nov. 23, 2017 – Thanksgiving.
  - Monday, Nov. 27, 2017 – Leader McConnell released his substitute amendment, which was a modified version of the Finance Committee text previously released by Finance Committee Chair Hatch. That same day, Monday, Nov. 27, the bipartisan Byrd Bath began and continued Tuesday, Wednesday, and Thursday Nov. 28 through 30.
  - Wednesday, Nov. 29, 2017 – The Senate adopted the motion to proceed,<sup>1624</sup> and Leader McConnell offered his amendment<sup>1625</sup> that had been released on Monday, Nov. 27. Starting from this point, floor debate and bipartisan Byrd Baths happened simultaneously, with Parliamentary decisions coming intermittently.
  - Friday, Dec. 1, 2017, at 7:45 PM – Leader McConnell offered the Managers’ amendment,<sup>1626</sup> which reflected changes resulting from the Byrd Bath as well as other significant changes. The Senate adopted that amendment, and the bill as amended passed,<sup>1627</sup> at about 2:00 AM that night (Saturday morning).

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<sup>1624</sup> *Id.* at S7393 (daily ed. Nov. 29, 2017).

<sup>1625</sup> *Id.* at S7402.

<sup>1626</sup> *Id.* at S7700 (daily ed. Dec. 1, 2017).

<sup>1627</sup> *Id.* at S7712.

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## RECONCILIATION

310(a) SEC. 310.<sup>1628</sup> (a) INCLUSION OF RECONCILIATION DIRECTIVES IN CONCURRENT RESOLUTIONS ON THE BUDGET.<sup>1629</sup> — A concurrent resolution on the budget<sup>1630</sup> for any fiscal year,<sup>1631</sup> to the extent necessary to effectuate the provisions and requirements of such resolution, shall —

310(a)(1) (1) specify the total amount by which —

310(a)(1)(A) (A) new budget authority<sup>1632</sup> for such fiscal year;

310(a)(1)(B) (B) budget authority<sup>1633</sup> initially provided for prior fiscal years;

310(a)(1)(C) (C) new entitlement authority<sup>1634</sup> which is to become effective during such fiscal year; and

310(a)(1)(D) (D) credit authority<sup>1635</sup> for such fiscal year,

contained in laws, bills, and resolutions within the jurisdiction of a committee, is to be changed and direct that committee to determine and recommend changes to accomplish a change of such total amount;

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<sup>1628</sup> Congressional Budget Act of 1974 § 310 is codified as amended at 2 U.S.C. § 641. Congressional Budget Act of 1974 § 310 was formerly codified as 31 U.S.C. § 1331, prior to the 1982 general revision and enactment of Title 31, Money and Finance in *An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”* Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>1629</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1630</sup> *Id.*

<sup>1631</sup> No limitations apply to how many years reconciliation instructions may cover. *See infra* p. 515. But reconciliation instructions do not remain viable after the fiscal year that they address. *See infra* p. 516.

<sup>1632</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1633</sup> Congressional Budget Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>1634</sup> Congressional Budget Act of 1974 § 3(9), 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.”

<sup>1635</sup> Congressional Budget Act of 1974 § 3(10), 2 U.S.C. § 622(10), *supra* p. 60, defines “credit authority.”

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- 310(a)(2) (2) specify the total amount by which **revenues**<sup>1636</sup> are to be changed and direct that the committees having jurisdiction<sup>1637</sup> to determine and recommend changes in the **revenue**<sup>1638</sup> laws, bills, and resolutions to accomplish a change of such total amount;
- 310(a)(3) (3) specify the amounts by which the statutory limit on the public debt is to be changed and direct the committee having jurisdiction<sup>1639</sup> to recommend such change; or
- 310(a)(4) (4) specify and direct any combination of the matters described in **paragraphs (1)**,<sup>1640</sup> **(2)**,<sup>1641</sup> and **(3)**<sup>1642</sup> (including a direction to achieve **deficit**<sup>1643</sup> reduction).
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### For Any Fiscal Year

No limitations apply to how many years reconciliation instructions may cover.<sup>1644</sup> On March 26, 1981, during consideration of S. Con. Res. 9, the Third Concurrent Resolution on the Budget for Fiscal Year 1981, Senator Mark Hatfield posed a series of parliamentary inquiries of the Chair (Senator Hubert Humphrey of New Hampshire):

Mr. HATFIELD. Mr. President, if this present Budget Committee had desired to apply program reductions beyond the year 1983, and set target figures on those subsequent fiscal years—and let me cite a hypothetical situation, that they would want to set, say, program reductions, target figures, for 1984, 1985, 1986, 1987, 1988, 1989, 1990, up to the year 2000,

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<sup>1636</sup> U.S. GOV'T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1637</sup> The Committee on Finance has jurisdiction over “Revenue measures generally, except as provided in the Congressional Budget Act of 1974,” and “Revenue measures relating to the insular possessions.” *Senate Rule XXV ¶ 1(i)(8)–(9)*.

<sup>1638</sup> U.S. GOV'T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1639</sup> The Committee on Finance has jurisdiction over “Bonded debt of the United States, except as provided in the Congressional Budget Act of 1974.” *Senate Rule XXV ¶ 1(i)(1)*.

<sup>1640</sup> *Congressional Budget Act of 1974 § 310(a)(1)*, 2 U.S.C. § 641(a)(1), *supra* p. 514, addresses spending.

<sup>1641</sup> *Congressional Budget Act of 1974 § 310(a)(2)*, 2 U.S.C. § 641(a)(2), *supra* p. 515, addresses revenues.

<sup>1642</sup> *Congressional Budget Act of 1974 § 310(a)(3)*, 2 U.S.C. § 641(a)(3), *supra* p. 515, addresses the statutory limit on the public debt.

<sup>1643</sup> *Congressional Budget Act of 1974 § 3(6)*, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>1644</sup> 127 CONG. REC. S2754 (daily ed. Mar. 26, 1981).

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would that have been within the power of the Budget Committee as interpreted by the Chair under the Budget Act?

The PRESIDING OFFICER. The issue is out-year reconciliations and on that issue the Budget Act itself is silent. The Senate chose to permit out-year budget reconciliation in a previous year. Therefore, the Chair would not be advised that a point of order would lie against out-year reconciliation instructions.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Chair had not quite finished—no matter what the year was. The Senator from Oregon has the floor.

Mr. HATFIELD. Do I understand that the Chair—I would be glad to yield to the minority leader, but I have to get this clear in my mind. I think I am in frequency with the Chair, I am not sure, but do I understand the Chair states there are no out-year limitations that would apply to a resolution of this kind, which is a subsequent resolution to the first concurrent resolution?

The PRESIDING OFFICER. Not in the Budget Act.<sup>1645</sup>

### **Expiration of Reconciliation Instructions**

The Parliamentarian has noted that points of order and reserve funds created by budget resolutions survive from one Congress to another.<sup>1646</sup> In contrast, reconciliation instructions do not remain viable after the fiscal year that they address. The Parliamentarian advised (in September 2017):

We do not believe that reconciliation instructions can be acted upon beyond the fiscal year (or years) for which they were adopted. Although the [Congressional Budget Act] has been amended with respect to this issue (removing a deadline from [section] 310 but leaving a June 15th deadline in [section] 300, which makes things confusing) it is a corollary of the arguments made earlier this year—and upon which we based our decision—that it was permissible to adopt a budget resolution in the new Congress because the effects would still be felt for the remaining 9 months of the fiscal year. That would not be the case with reconciliation instructions after September 30th. While this office has generally favored reading the [Congressional Budget Act] to advance a budget process over the frustration thereof by the imposition of a strict timetable, the

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<sup>1645</sup> *Id.*

<sup>1646</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on February 10, 2016.

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institutional concern of extending the life of a fast-track procedure—especially one so truncated—where its fiscal parameters have changed outweighs that general philosophy.

If we found that the reconciliation instructions did not expire at the end of the fiscal year but at the end of the Congress as some suggest, then the Senate could find itself considering a reconciliation bill 2 years after adoption of the instructions, when 2 years of the covered fiscal years had expired, and under potentially very different fiscal circumstances than under consideration at the time of adoption of the resolution. That does not appear to us to be the best outcome or what was intended by the [Congressional Budget Act], which requires an annual review and change in the fiscal course through the adoption of a budget resolution and authoring of reconciliation instructions.<sup>1647</sup>

Adoption of a subsequent year's budget resolution extinguishes a prior year's reconciliation instructions. In May of 2017, Budget Committee Chair Mike Enzi said, "We can do everything right up to the finalization of the conference (on a fiscal 2018 budget resolution) without wiping out the right for reconciliation" under a Fiscal Year 2017 budget resolution.<sup>1648</sup> In reaction to this statement, the Parliamentarian advised (in April 2021):

While I do not find that we have ever officially opined about the adoption of a budget resolution extinguishing the reconciliation instructions from a previous budget resolution, it appears that both sides have stated to us . . . , and on at least two occasions they have agreed, that this is the case.<sup>1649</sup>

In November 2016, the Parliamentarian recalled that in 2006 and 2010, both sides argued that a subsequently passed budget resolution containing reconciliation instructions overrode any prior instructions.<sup>1650</sup> In March 2017, Democratic staff argued that reconciliation instructions should cease to have force and effect once a subsequent year's budget resolution conference report was adopted. At that meeting, the Parliamentarian expressed the view that the Parliamentarian would not weigh in on the expiration of reconciliation instructions until absolutely necessary.<sup>1651</sup>

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<sup>1647</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Reconciliation Instructions (Sept. 1, 2017, 12:52 PM).

<sup>1648</sup> Paul M. Krawzak, *Enzi Charging Ahead with Budget that Balances in 10 Years*, CQ ROLL CALL, May 10, 2017. Budget Committee staff posted this story on [the Budget Committee's website](#).

<sup>1649</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget (Apr. 19, 2021, 2:19 PM).

<sup>1650</sup> Staff of S. Comm. on the Budget, Notes from Parls meeting on November 30, 2016 (Dec. 6, 2016).

<sup>1651</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 31, 2017, at 1–2 (Apr. 3, 2017).

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When asked whether House action on a deeming resolution for fiscal year 2023 would extinguish reconciliation instructions for fiscal year 2022, the Parliamentarian advised:

Generally speaking, we are not inclined to regard a simple House Resolution such as this—which does not get considered in both Houses, does not amend the current, controlling budget resolution and does not go through the processes in the [Congressional Budget Act] that would be required to produce a concurrent resolution on the budget (or an amendment thereto)—to impact Senate process, levels or the viability of existing reconciliation instructions. This operates more like a UC for House purposes than as any of the “deemers” we have had agreed to by both Houses.<sup>1652</sup>

When asked to confirm that the Senate’s voting on the motion to proceed to a budget resolution would not extinguish the prior fiscal year’s reconciliation instructions, the Parliamentarian replied, “I cannot conceive of a credible argument that a failed vote on a motion to proceed to a budget resolution has any impact on the process.”<sup>1653</sup>

And the Parliamentarian responded approvingly to the proposition: “As budget resolution reconciliation instructions do not and cannot address particular programs, it follows that action on particular programs outside of reconciliation does not and cannot extinguish those reconciliation instructions.”<sup>1654</sup>

While Senator Robert C. Byrd was Chair of the Appropriations Committee from 1988 to 2008, the Parliamentarian would strictly scrutinize appropriations included in reconciliation legislation.<sup>1655</sup> Reconciliation legislation from 2005 to 2010, however, included many mandatory appropriation spending provisions.<sup>1656</sup>

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<sup>1652</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Follow up re: House deeming resolution (Mar. 23, 2022, 10:47 AM).

<sup>1653</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Reconciliation and Senator Paul’s Budget Resolution (June 14, 2022, 6:21 PM).

<sup>1654</sup> See E-mail from Staff of S. Majority Leader to Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget re Reconciliation-related question (May 18, 2022, 5:13 PM) (asking whether the Parliamentarian agreed with the quoted proposition); E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Reconciliation-related question (May 18, 2022, 6:22 PM) (responding “I think the advice from 2015 is on point here” (citing E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM))).

<sup>1655</sup> See WILLIAM G. DAUSTER, *BUDGET PROCESS LAW ANNOTATED: 1993 EDITION* 212 (Comm. Print 1993).

<sup>1656</sup> See *Deficit Reduction Act of 2005*, Pub. L. No. 109-171, §§ 3004–3011 authorized payments from the Digital Television Transition and Public Safety Fund, in which proceeds from certain spectrum auctions were

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deposited, for numerous programs and activities, including a digital-to-analog converter box program, administrative expenses, public safety interoperable communications, NYC 9/11 digital transition, low-power television and translator digital-to-analog conversion, low-power television and translator upgrade program, national alert and tsunami warning program, to implement the ENHANCE 911 Act of 2004, the essential air service program, development of a strategic plan regarding physician investment in specialty hospitals, and Medicare demonstration projects to permit gainsharing arrangements; § 5008(d), for post-acute care payment reform demonstration program, \$6 million (transferred from the Federal Hospital Insurance Trust Fund); § 5104(c), to the Medicare Payment Advisory Commission, for “a report to Congress on mechanisms that could be used to replace the sustainable growth rate system,” \$550,000; § 5201(d), to the Medicare Payment Advisory Commission, for a report on value based purchasing, \$550,000; § 5204, for Medicare integrity program funding, additional \$100 million for FY2006; § 5302(b)(1)(E), for site development grants and technical assistance program, \$7.5 million for FY2006; § 5302(c)(7), for cost outlier protection for rural PACE pilot sites, \$10 million for FY2006; § 6001(e), for survey of retail prices for certain outpatient drugs and certain reporting requirements, \$5 million for each of FY2006-FY2010; § 6021(c)(2), for annual reports to Congress on the long-term care insurance partnerships, \$1 million for each of FY2006-FY2010; § 6021(d)(3), for national clearinghouse for long-term care information, \$3 million for each of FY2006-FY2010; § 6034(a), for Medicaid Integrity Program, \$5 million for FY2006, \$50 million for each of FY2007-FY2008, and \$75 million for each FY thereafter; § 6034(c), for increased funding for Medicaid fraud and abuse control activities, \$25 million for each of FY2006-FY2010; § 6034(d), for expansion of the Medicare-Medicaid data match program, additional amounts, \$12 million for FY2006, \$24 million for FY2007, \$36 million for FY2008, \$48 million for FY2009, \$60 million for FY2010 and each FY thereafter; § 6043(b), for grant funds for establishment of alternate non-emergency services providers, payments not to exceed \$50 million for 2006-2009 period; § 6063(f), for demonstration projects regarding home and community-based alternatives to psychiatric residential treatment facilities for children, \$218 million for FY2007-FY2011; § 6064, for development and support of family-to-family health information centers, \$3 million for FY2007, \$4 million for FY2008, and \$5 million for FY2009; § 6071(h), for “money follows the person rebalancing demonstration” for long-term care services under Medicaid, total of \$1.75 billion over FY2007-FY2011 period; § 6081(a), for Medicaid transformation grants, payments not to exceed \$75 million for each of FY2007-FY2008; § 6082, to Comptroller General for a report to Congress evaluating new Medicaid demonstration program involving health opportunity accounts, \$550,000 for FY2007-FY2011 period; § 6084, for extension of transitional medical assistance and abstinence education program, such sums through first quarter of FY2007; § 6086, for quality of care measures for home and community-based services under State Medicaid programs, \$1 million for FY2006-FY2010; § 6101, for additional allotments to eliminate SCHIP funding shortfalls, \$283 million for FY2006; § 6201(e), for additional federal payments under hurricane-related multi-state section 1115 demonstrations (Katrina relief), \$2 billion; § 6202, for state high risk health insurance pools, \$90 million for FY2006; § 6203, for implementation of titles V and VI of the act, \$60 million for FY2006 (half from the Medicare trust funds and half from general fund); § 7101(a), extension of TANF and related programs through end of FY2010, such sums; § 7101(c), extension of the national random sample study of child welfare through end of FY2010, such sums; § 7103(a), for healthy marriage promotion and responsible fatherhood grants, \$150 million for each of FY2006-FY2010; § 7401(a)(4), for court improvement grants related to child welfare, \$20 million for each of FY2006-FY2010; § 8003, for academic competitiveness grants, total of \$4.53 billion over FY2006-FY2010 period; § 8015, for administrative expenses of the direct student loan programs, not to exceed \$820 million in FY2006; and continuing mandatory funds for account maintenance fees (payable to guaranty agencies), not to exceed the basis of 0.10 percent of the original principal amount of outstanding loans for each of FY2007-FY2011; § 9001, for LIHEAP, \$1 billion for FY2007;

[College Cost Reduction and Access Act of 2007](#), Pub. L. No 110-84, § 101, to cover the costs of eliminating the tuition sensitivity provision of Pell Grants program for academic year 2007-2008, \$11 million for FY2008; § 102, for Pell Grants funding increase, several billion dollars for each of fiscal years 2008-2017; § 103, for Upward Bound program, \$57 million for each of FY2008-FY2011; § 104, for TEACH grants program, such sums beginning on July 1, 2008; § 801, for College Access Challenge grant program, \$66 million for each of FY2008 and FY2009; § 802, for historically black colleges and universities and other minority-serving institutions, \$255 million for each of FY2008 and FY2009;

[Health Care and Education Reconciliation Act of 2010](#), Pub. L. No. 111-152, § 1005, for ACA implementation, \$1 billion; § 1204(a), for territories to set up ACA exchanges, \$1 billion for period of FY2014-FY2019; § 1303(a), for additional funding to the Health Care Fraud and Abuse Control Account within the Federal Hospital Insurance Trust Fund, total of \$250 million over period of FY2011-FY2016; § 1303(b), for



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Republican staff argued that the American Rescue Plan Act of 2021 constituted an institutional shift for a reconciliation bill to include as much mandatory spending as the bill did.<sup>1657</sup> Democratic staff argued that the inclusion of mandatory appropriations in the House reconciliation measure was consistent with the language of the Budget Act, CBO scoring of such spending by authorizers as direct spending, and extensive precedent in prior reconciliation laws. The Parliamentarian advised: “Mandatory Approp[riation]s: Appropriate for reconciliation based on interpretation/application of the [Congressional Budget Act] by the Senate in past practice and supporting score by CBO.”<sup>1658</sup> The limit to such spending is that the authorizing committees bear the burden to prove jurisdiction over the agencies and programs that they seek to fund in each case.<sup>1659</sup>

*Is To Be Changed*—The form of reconciliation instructions has varied over time. The fiscal year 1982 budget resolution instructed that each named committee “shall report changes in laws within the jurisdiction of that committee which provide spending authority as defined in section 401(c)(2)(C) of Public Law 93-344 [the Congressional Budget Act], sufficient to reduce budget authority by \$\_\_\_ and outlays by \$\_\_\_.”<sup>1660</sup> The fiscal year 1994 budget resolution instructed that each named committee “shall report changes in laws within its jurisdiction to reduce the deficit \$\_\_\_.”<sup>1661</sup> The fiscal year 2002 budget resolution instructed each tax-writing committee to report “changes in laws within its jurisdiction sufficient to reduce revenues by not more than \$\_\_\_.”<sup>1662</sup>

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Medicaid Integrity Program, increased existing annual mandatory spending for FY2010 and each fiscal year thereafter, by “the percentage increase in the consumer price index for all urban consumers (all items; United States city average) over the previous year”; § 1501, for Community College and Career Training Grant Program, \$500 million for each of FY2011-FY2014 (note that this program previously was funded through annual appropriations acts. i.e., with discretionary spending); § 2101, for Pell Grants, such sums for FY2010 and each fiscal year thereafter (replacing specific amounts for each year of FY2010-FY2017), and \$13.5 billion for FY2011; § 2212(b)(1)(C), for administrative costs of servicing contracts with eligible not-for-profit servicers (related to federal direct loan program), such sums for FY2010-FY2019; § 2212(b)(1)(D), for technical assistance to institutions of higher education, \$50 million for FY2010, and for payments to loan servicers for retaining jobs, \$25 million for each of FY2010 and FY2011 (both related to federal direct loan program); § 2303, for Community Health Centers, increases funding in each of five years to a program that receives a combination of discretionary and mandatory funding.

<sup>1657</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader (Feb. 21, 2021, 9:41 AM); E-mail from S. Parliamentarian to Staff of S. Majority Leader (Feb. 23, 2021, 8:11 AM).

<sup>1658</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader (Feb. 25, 2021).

<sup>1659</sup> Meeting of Democratic Budget, HELP, Finance, and Leadership staff with the Parliamentarian (Jan. 27, 2021).

<sup>1660</sup> H. Con. Res. 115, 97th Cong., §§ 310–303, 95 Stat. 1743, 1751–58 (1981).

<sup>1661</sup> H. Con. Res. 64, 103d Cong., § 7, 107 Stat. 2508, 2525–28 (1993).

<sup>1662</sup> H. Con. Res. 83, 107th Cong., §§ 103–104, 115 Stat. 2486, 2502 (2001).



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When asked about “a reconciliation instruction to increase the deficit by *not less than* a certain amount,”<sup>1663</sup> the Parliamentarian replied:

We do have concerns—is this a new construct, do you know? It seems like everything is in order. [H]ow does this score? How do amendments score? I guess it doesn’t matter unless they are saving too much money? Would that be the argument? Why would this be ok as it is not discipline at all?<sup>1664</sup>

**Debt Limit**—Seven congressionally adopted budget resolutions have contained reconciliation directives on the debt limit.<sup>1665</sup> Five congressionally passed reconciliation bills have included debt limit increases.<sup>1666</sup> Four of these bills followed the general form of amending title 31 of the U.S. Code generally employed between 1982 and 2011.<sup>1667</sup>

The form of the increase in the Omnibus Budget Reconciliation Act of 1986 included both time and an amount: “During the period beginning on the date of the enactment of this Act and ending on May 15, 1987, the public

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<sup>1663</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on the Budget re reconciliation issues (Nov. 12, 2020, 5:11 PM).

<sup>1664</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>1665</sup> [H. Con. Res. 93, 100th Cong.](#) § 4(g)(3), 101 Stat. 1986, 1997 (1987); [H. Con. Res. 310, 101st Cong.](#) §§ 4(b)(6)(D), 4(c)(6)(D), 104 Stat. 5163, 5178–79 (1990); [H. Con. Res. 64, 103d Cong.](#) §§ 7(a), 7(b)(7)(C), 7(c)(13), 107 Stat. 2508, 2524–25, 2528 (1993); [H. Con. Res. 67, 104th Cong.](#) §§ 105(a)(1)(G)(ii), 105(a)(2)(A)(xii)(III), 109 Stat. 996, 1015, 1017 (1995); [H. Con. Res. 84, 105th Cong.](#) §§ 104(a)(5)(B), 105(d)(8)(C), 111 Stat. 2710, 2724, 2727 (1997); [H. Con. Res. 290, 106th Cong.](#) §§ 103(b), 204(h), 114 Stat. 3139, 3149, 3152 (2000); [H. Con. Res. 95, 109th Cong.](#) §§ 201(c), 202(c), 119 Stat. 3633, 3644–45 (2005).

<sup>1666</sup> [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, § 8201, 100 Stat. 1874, 1968; [Omnibus Budget Reconciliation Act of 1990](#), Pub. L. No. 101-508, § 11901, 104 Stat. 1388, 1388-560; [Omnibus Budget Reconciliation Act of 1993](#), Pub. L. No. 103-66, § 13411, 107 Stat. 312, 565; [Balanced Budget Act of 1995](#), H.R. 2491, 104th Cong. § 11901 (vetoed); [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 5701, 111 Stat. 251, 648; *see generally* MEGAN S. LYNCH & JAMES V. SATURNO, CONG. RSCH. SERV., [IN11681, THE BUDGET RECONCILIATION PROCESS AND THE STATUTORY LIMIT ON THE DEBT](#) (2021).

<sup>1667</sup> [Omnibus Budget Reconciliation Act of 1990](#), Pub. L. No. 101-508, § 11901, 104 Stat. 1388, 1388-560 (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar limitation contained in such subsection and inserting ‘\$4,145,000,000,000.’”); [Omnibus Budget Reconciliation Act of 1993](#), Pub. L. No. 103-66, § 13411, 107 Stat. 312, 565 (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof ‘\$4,900,000,000,000.’”); [Balanced Budget Act of 1995](#), H.R. 2491, 104th Cong. § 11901 (vetoed) (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar amount contained in the first sentence and inserting ‘\$5,500,000,000,000’ and by striking the second sentence (if any).”); [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 5701, 111 Stat. 251, 648 (“Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar amount contained therein and inserting ‘\$5,950,000,000,000.’”).

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debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased by \$189,000,000,000.”<sup>1668</sup>

Before 2013, the minority caucus did not filibuster debt limit extensions.<sup>1669</sup> Starting in 2013, cloture has been required seven of the eight times that the debt limit has been increased. Reconciliation has thus become a more attractive option in years when one party controls both the House and the Senate. In 2021, the Senate Minority Leader insisted that the majority raise the debt limit through reconciliation.

The budget resolution for fiscal year 2016 made it out of order to raise the debt limit in any reconciliation bill pursuant to that resolution.<sup>1670</sup>

A 2015 House Budget Committee print reported:

The Senate Parliamentarian has advised that concurrent resolutions on the budget may include directives to change the level of the public debt at any stage of the legislative process: Hence they may be included in a conference report even if the House-passed or Senate-passed concurrent resolutions do not have such directives in their text.<sup>1671</sup>

In September of 2021, the Parliamentarian explicitly reserved decision on whether a reconciliation bill could *suspend* the debt limit, writing to Democratic staff: “I believe the only question not addressed here is the ‘suspension’ issue. That would have to be a joint discussion with the [Republicans].”<sup>1672</sup>

In that e-mail, the Parliamentarian advised that a revised budget resolution may include reconciliation instructions to change the debt limit, saying:

[W]e would advise that a 304 resolution could consist of a revision to S. Con. Res. 14 that adds only reconciliation instructions for the adjustment of the statutory limit on the public debt. . . . As there is currently no instruction for reconciling the debt limit, the adoption of a narrowly drafted concurrent resolution which does not directly amend the existing instructions in S. Con. Res. 14 would not impact the current process

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<sup>1668</sup> [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, § 8201, 100 Stat. 1874, 1968.

<sup>1669</sup> [Tweet](#), Mark Goldwein (Sept. 27, 2021, 5:57 PM).

<sup>1670</sup> [S. Con. Res. 11, 114th Cong.](#) § 2001(b) (2015) (adopted).

<sup>1671</sup> PAUL A. RESTUCCIA, STAFF OF H. COMM. ON THE BUDGET, 114TH CONG., [A COMPENDIUM OF LAWS AND RULES OF THE CONGRESSIONAL BUDGET PROCESS](#) 78 n.72 (Comm. Print 2015).

<sup>1672</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Fin. re 304/reconciliation (Sept. 28, 2021, 4:28 PM).

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underway in the House and Senate in furtherance of the existing deficit instruction.<sup>1673</sup>

Megan Lynch and Jim Saturno of the Congressional Research Service have captured the uncertainty of the law, writing:

Although the Budget Act generally allows an increase in the debt limit to be included in budget reconciliation legislation, there have been no rulings made on points of order raised in the House or Senate with respect to language in budget reconciliation legislation concerning the debt limit. Therefore, there are no precedents in either chamber related to interpreting the applicability of any prohibitions in budgetary rules specifically concerning the debt limit and reconciliation. Consequently, any limits on the policy options or legislative language that may be used to implement Section 310(a)(3) are unclear. The sole definitive source for interpreting House and Senate rules is the Office of the Parliamentarian for each respective chamber.

For example, questions have arisen as to whether legislation suspending the debt limit would be appropriate for inclusion in reconciliation. When addressing the statutory debt limit in recent decades, Congress has either increased the debt limit to a fixed dollar amount or suspended the debt limit for a specified period of time. In more recent years, it has been the practice of Congress to suspend the debt limit rather than increase it to a specific level. Since early 2013, eight bills have suspended the statutory debt limit, and none has been enacted to increase the debt limit.

Because the language of Section 310(a)(3) specifies only that reconciliation directives may direct changing the “amount” of the debt limit, it could be argued that it would not be permitted either to include a reconciliation directive in a budget resolution that specified a suspension of the debt limit or for subsequent reconciliation legislation to provide for a suspension. On the other hand, it might be allowed because suspending the debt limit and raising the debt limit might be considered equivalent as policy options. A lack of precedents on this matter, however, means that it is not clear whether reconciliation directives can specify that the debt limit be suspended rather than increased, and it is not clear whether a suspension of the debt limit would be permitted in a budget reconciliation bill.<sup>1674</sup>

The budget resolution for fiscal year 2001 provided:

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<sup>1673</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Fin. re 304/reconciliation (Sept. 28, 2021, 4:28 PM).

<sup>1674</sup> MEGAN S. LYNCH & JAMES V. SATURNO, CONG. RSCH. SERV., [IN11681, THE BUDGET RECONCILIATION PROCESS AND THE STATUTORY LIMIT ON THE DEBT](#) 2–3 (2021).

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(b) SUBMISSIONS REGARDING DEBT HELD BY THE PUBLIC—The House Committee on Ways and Means shall report to the House a reconciliation bill —

(1) not later than July 14, 2000, that consists of changes in laws within its jurisdiction sufficient to reduce the debt held by the public by \$7,500,000,000 for fiscal year 2001; and

(2) not later than September 13, 2000, that consists of changes in laws within its jurisdiction sufficient to reduce the debt held by the public by not more than \$19,100,000,000 for fiscal year 2001.<sup>1675</sup>

And that budget resolution further provided:

(h) ADDITIONAL INSTRUCTION. — The chairman of the Committee on the Budget in the Senate may instruct the Senate Committee on Finance to report legislation to reduce debt held by the public in an amount consistent with section 103.<sup>1676</sup>

*Legislative History* — The Balanced Budget and Emergency Deficit Control Act of 1985 rewrote sections 310(a) and 310(b) to address the subjects that they now address. Those subsections originally addressed reconciliation in the context of a second budget resolution. The predecessor to sections 310(a) and 310(b) appeared in the original Budget Act as follows:

SECOND REQUIRED CONCURRENT RESOLUTION AND RECONCILIATION  
PROCESS

SEC. 310. (a) REPORTING OF CONCURRENT RESOLUTION.—The Committee on the Budget of each House shall report to its House a concurrent resolution on the budget which reaffirms or revises the concurrent resolution on the budget most recently agreed to with respect to the fiscal year beginning on October 1 of such year. Any such concurrent resolution on the budget shall also, to the extent necessary —

(1) specify the total amount by which —

(A) new budget authority for such fiscal year;

(B) budget authority initially provided for prior fiscal years; and

(C) new spending authority described in section 401 (c) (2) (C) which is to become effective during such fiscal year,

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<sup>1675</sup> H. Con. Res. 290, 106th Cong. § 103(b), 114 Stat. 3139, 3149 (2000).

<sup>1676</sup> H. Con. Res. 290, 106th Cong. § 204(h), 114 Stat. 3139, 3152 (2000).

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contained in laws, bills, and resolutions within the jurisdiction of a committee, is to be changed and direct that committee to determine and recommend changes to accomplish a change of such total amount;

(2) specify the total amount by which revenues are to be changed and direct that the committees having jurisdiction to determine and recommend changes in the revenue laws, bills, and resolutions to accomplish a change of such total amount;

(3) specify the amount by which the statutory limit on the public debt is to be changed and direct the committees having jurisdiction to recommend such change; or

(4) specify and direct any combination of the matters described in paragraphs (1), (2), and (3).

Any such concurrent resolution may be reported, and the report accompanying it may be filed, in either House notwithstanding that that House is not in session on the day on which such concurrent resolution is reported.

(b) COMPLETION OF ACTION ON CONCURRENT RESOLUTION. — Not later than September 15 of each year, the Congress shall complete action on the concurrent resolution on the budget referred to in subsection (a).<sup>1677</sup>

The joint statement of managers accompanying the conference report on the Budget Act explained:

SECTION 310 (a) AND (b). SECOND REQUIRED CONCURRENT RESOLUTION

Both the House and Senate versions provided for adoption of a second concurrent resolution on the budget prior to the start of the new fiscal year.

The conference substitute provides for adoption of the second budget resolution no later than September 15. The second concurrent resolution shall affirm or revise the most recent resolution and may specify changes in budget authority (for the new fiscal year or carried over from prior years), entitlements, total revenues, or the public debt limit. The second concurrent resolution also shall direct the committees with such changes. While no date is fixed for the reporting of the resolution by the Budget Committees (the reporting date probably will vary from year to year depending on whether and when Congress takes a recess and on when

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<sup>1677</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 310(a)–(b), 88 Stat. 297, 315 (amended 1985 & 1990).

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action is completed on appropriation bills), this section authorizes the Budget Committees to make their reports when Congress is not in session. It is anticipated that the Budget Committees may report in some years during the August recess and that such reports shall be available to Members, so that Congress will be able to consider the concurrent resolution upon its return.<sup>1678</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 rewrote section 310(a) to address reconciliation exclusively, so that section 310(a) then read as follows:

#### RECONCILIATION

SEC. 310. (a) INCLUSION OF RECONCILIATION DIRECTIVES IN CONCURRENT RESOLUTIONS ON THE BUDGET. — A concurrent resolution on the budget for any fiscal year, to the extent necessary to effectuate the provisions and requirements of such resolution, shall —

(1) specify the total amount by which —

(A) new budget authority for such fiscal year;

(B) budget authority initially provided for prior fiscal years;

(C) new entitlement authority which is to become effective during such fiscal year; and

(D) credit authority for such fiscal year,

contained in laws, bills, and resolutions within the jurisdiction of a committee, is to be changed and direct that committee to determine and recommend changes to accomplish a change of such total amount;

(2) specify the total amount by which revenues are to be changed and direct that the committees having jurisdiction to determine and recommend changes in the revenue laws, bills, and resolutions to accomplish a change of such total amount;

(3) specify the amounts by which the statutory limit on the public debt is to be changed and direct the committee having jurisdiction to recommend such change; or

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<sup>1678</sup> H.R. REP. NO. 93-1101, at 63 (1974) (Conf. Rep.).

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(4) specify and direct any combination of the matters described in paragraphs (1), (2), and (3).<sup>1679</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained:

*Section 310. Reconciliation*

*(a) Inclusion on Reconciliation Directives in Concurrent Resolutions on the Budget.*—This subsection requires a budget resolution, to the extent necessary to effectuate the resolution, to direct committees to recommend legislation that achieves specified changes in the amounts of new budget authority, prior-year budget authority, new entitlement authority, credit authority, revenues, or the public debt limit level contained in laws within its jurisdiction.<sup>1680</sup>

The Budget Enforcement Act of 1990 amended section 310(a) as follows:

(d) RECONCILIATION INSTRUCTIONS.—Section 310(a)(4) of the Congressional Budget Act of 1974 is amended by inserting after “(3)” the following: “(including a direction to achieve deficit reduction)”.<sup>1681</sup>

The joint statement of managers accompanying the conference report on the Budget Enforcement Act of 1990 merely summarized, saying “The conference agreement includes a number of budget process changes.”<sup>1682</sup>

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<sup>1679</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1053.

<sup>1680</sup> [H.R. REP. NO. 99-433](#), at 109 (1985) (Conf. Rep.).

<sup>1681</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13112(a)(8), 104 Stat. 1388, 1388-608.

<sup>1682</sup> [H.R. REP. NO. 101-964](#), at 1169 (1990) (Conf. Rep.).

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- 310(b)           **(b) LEGISLATIVE PROCEDURE — If a concurrent resolution containing directives to one or more committees to determine and recommend changes in laws,<sup>1683</sup> bills, or resolutions is agreed to in accordance with subsection (a),<sup>1684</sup> and —**
- 310(b)(1)           **(1) only one committee of the House or the Senate is directed to determine and recommend changes, that committee shall promptly make such determination and recommendations and report to its House reconciliation legislation containing such recommendations; or**
- 310(b)(2)           **(2) more than one committee of the House or the Senate is directed to determine and recommend changes, each such committee so directed shall promptly make such determination and recommendations<sup>1685</sup> and submit such recommendations to the Committee on the Budget of its House, which, upon receiving all such recommendations, shall report to its House reconciliation legislation carrying out all such recommendations without any substantive revision.<sup>1686</sup>**
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<sup>1683</sup> Noting that reconciliation instructions generally call for “changes in laws” the Parliamentarian has expressed concerns with reconciliation language that changes bills not yet signed into law. E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Follow up on today’s discussion on recon amending law (Aug. 18, 2021, 1:53 PM). In this connection, the Parliamentarian has quoted with approval a former Parliamentarian saying, “The only thing you can do is amend law, we understand that creates scoring and drafting problems.” E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on the Budget re Follow up on today’s discussion on recon amending law (Aug. 18, 2021, 1:41 PM) (quoting notes from Meeting of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of the S. Majority Leader (Mar. 8, 2010)).

<sup>1684</sup> [Congressional Budget Act of 1974 § 310\(a\)](#), 2 U.S.C. § 641(a), *supra* p. 514, addresses “Inclusion of Reconciliation Directives in Concurrent Resolutions on the Budget.”

<sup>1685</sup> The Parliamentarian has advised that nothing in the Budget Act requires committee notices to state that the mark up is of recommendations made pursuant to reconciliation instructions—though it cannot hurt. Staff of S. Comm. on the Budget, Q&A with Parls on Reconciliation (Sept. 15, 2009).

<sup>1686</sup> In a discussion in relation to the Tax Cuts and Jobs Act of 2017, the Parliamentarian advised that the content of the bill becomes frozen once it comes out of each committee; for example, once the Finance Committee sends recommendations to the Budget Committee, no changes can be made before it is brought up on the floor. Staff of S. Comm. on the Budget, Notes from meeting with Parls—November 6, 2017 (Budget, Finance, Leadership) (Nov. 13, 2017).



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For purposes of [this subsection](#),<sup>1687</sup> a reconciliation resolution is a concurrent resolution directing the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be, to make specified changes in bills and resolutions which have not been enrolled.<sup>1688</sup>

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*The Committee on the Budget . . . shall report*—When asked what the effect would be if a majority in the Budget Committee did not vote for the reconciliation bill, the Parliamentarian replied that the Committee’s failure to report a reconciliation measure would likely mean that there would not be a Senate-reported reconciliation measure. The Senate could still proceed to a House-passed reconciliation bill (assuming that the House bill meets all statutory requirements and is not overloaded with extraneous provisions that would be Byrd-able in the Senate). Once the House bill arrived in the Senate, any Senator could cause it to be placed on the calendar using rule XIV.<sup>1689</sup>

Similarly, when asked if the Budget Committee held its markup of other committees’ reconciliation recommendations and there was not a majority voting to report out the reconciliation bill, the Parliamentarian advised: “If that’s the case, there is no reporting out. The House bill is still available and germaneness is waived for Senate amendments.”<sup>1690</sup>

*Upon receiving all such recommendations*—This language imposes upon the Budget Committee the duty to report promptly when it receives “all such recommendations.” Thus, the Budget Committee may include in reconciliation legislation material reported to it after the deadline in the budget resolution’s reconciliation instructions, so long as the Budget

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<sup>1687</sup> [Congressional Budget Act of 1974 § 310\(b\)](#), 2 U.S.C. § 641(b), *supra* p. 528, addresses “Legislative procedure” with regard to reconciliation.

<sup>1688</sup> Budget process laws define terms in many places. See [Congressional Budget Act of 1974 §§ 3, 310\(b\), 421](#), 2 U.S.C. §§ 622, 641(b), 658, *supra* pp. 55, 529, *infra* p. 803; [Impoundment Control Act of 1974 § 1011](#), 2 U.S.C. § 682, *infra* p. 923; [Balanced Budget and Emergency Deficit Control Act of 1985 §§ 250\(c\), 251\(b\)\(2\)\(B\)\(ii\), 256\(g\)\(2\)](#), 2 U.S.C. §§ 900(c), 901(b)(2)(B)(ii), 906(g)(2), *infra* pp. 977, 997, 1097; [Federal Credit Reform Act of 1990 § 502](#), 2 U.S.C. § 661a, *infra* p. 850; [Statutory Pay-As-You-Go Act of 2010 § 3](#), 2 U.S.C. § 932, *infra* p. 1150; [S. Con. Res. 70, 110th Cong. § 314\(b\)](#), 122 Stat. 5143, 5179 (2008), *infra* p. 1221; [H. Con. Res. 71, 115th Cong. § 4106\(a\)\(3\)](#) (2017) (adopted), *infra* p. 1246; [S. Con. Res. 14, 117th Cong. §§ 4001\(a\)\(4\), 4001\(a\)\(5\), 4002\(a\)\(2\), 4003\(a\)\(2\)](#) (2021) (adopted), *infra* pp. 1258, 1259, 1262, 1267. For a glossary collecting these definitions in budget process law, see *infra* p. 1542.

<sup>1689</sup> Staff of S. Comm. on the Budget, Q&A with Parls on Reconciliation (Sept. 15, 2009).

<sup>1690</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re procedural question (Nov. 22, 2017, 10:57 AM).

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Committee has not yet reported by the time the tardy committee reports.<sup>1691</sup>  
The Chair of the Budget Committee has put it this way:

#### RECONCILIATION QUESTIONS

Mr. SASSER. Mr. President. The distinguished Republican leader gave notice yesterday of his intent to propound four parliamentary inquiries of the Chair regarding the reconciliation process pursuant to the Congressional Budget Act of 1974. I rise today to address these inquiries from the perspective of the Committee on the Budget.

First, the Republican leader asks: "Can the Senate Budget Committee incorporate into the reconciliation bill, pursuant to the congressional budget resolution, material which was reported after August 4, 1989?"

Mr. President, from the perspective of the Committee on the Budget, the answer is "Yes." Let me quote from the controlling statute, section 310(b) of the Congressional Budget Act: "the Committee on the Budget, . . . upon receiving all such recommendations, shall report to its House reconciliation legislation."

Two things are worth noting about this statutory requirement. First, it is mandatory. The statute says the Budget Committee "shall" report. Second, it only comes into effect upon the happening of a contingency: "[U]pon receiving all such recommendations." The mandatory requirement for the Budget Committee to report only ripens when all instructed committees have reported.

Now what happens if the deadline for reporting reconciliation arrives and all committees have not reported? In this situation, we have to fall back on the Standing Rules of the Senate. Rule 25(e)(2) gives the Committee on the Budget jurisdiction over "matters required to be reported by it under titles III and IV of the Congressional Budget Act of 1974." Now the reconciliation legislation is a matter . . . under title III." It is a creature of section 310 of the Budget Act.

Under this rule, in the absence of specific constraints, the Budget Committee has jurisdiction over the reconciliation bill just as other committees have jurisdiction over other bills within their jurisdiction. Thus, after the deadline has passed, the Budget Committee may report out the reconciliation bill absent the contributions of the tardy committees, or the Budget Committee may wait for all committees to report. Only when all committees report, does the Budget Committee's obligation ripen.

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<sup>1691</sup> See 135 CONG. REC. S12,589 (daily ed. Oct. 4, 1989) (statement of Budget Committee Chair Sasser).

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What becomes of the bill that includes a title that is reported late? This lateness is a factor that the Chair must take into account in determining whether the bill as a whole constitutes a reconciliation bill deserving of the procedural protections set forth in the statute. It is a factor, but I should think a rather minor factor when weighed along with whether the other requirements are met, that is whether the committees instructed have achieved deficit reduction of the right amount, whether they have done so in their jurisdiction, and whether provisions are otherwise extraneous or non-germane.

Should a title reported late be subject to any extraordinary remedies? We submit, no. The remedy for failure to comply with the amount of reconciliation instructions is that any Senator may rise and offer a motion to recommit with instructions to report back forthwith an amendment that would bring the title into complete compliance.

But could that remedy apply here? It would make no sense. There is no possible amendment that could make the committee's title comply with the deadline for reporting recommendations.

There is no way it could be sent back and the clock turned back to make it comply with the time requirement.

Now, should the tardy committee be otherwise punished? The Committee on the Budget would respond no. There is sufficient sanction in the threat that the Budget Committee might report the reconciliation bill and the Senate might consider it without that committee's title. In essence, the committee that reports in a tardy fashion, gambles on the patience of the Budget Committee and on the patience of the Senate leadership.<sup>1692</sup>

When asked in 2009 how far beyond the budget resolution's reconciliation recommendation reporting date committees may report their reconciliation recommendations to the Budget Committee without risking loss of privilege, the Parliamentarian advised that the date was not firm. One factor to consider would be whether too much time has passed for a committee to be able to meet its instruction.<sup>1693</sup>

In a discussion in relation to the Tax Cuts and Jobs Act of 2017, the Parliamentarian confirmed that the Budget Committee can wait to report out a bill until it has all the recommendations or it can report out just the committee's recommendations that it had received. If the Budget Committee-reported bill did not contain all reconciled committees'

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<sup>1692</sup> *Id.* The Republican Leader never propounded the inquiries that he said he would.

<sup>1693</sup> Staff of S. Comm. on the Budget, Q&A with Parls on Reconciliation (Sept. 15, 2009).

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recommendations, then a motion to commit with anything in the missing committee's jurisdiction would be in order on the floor.<sup>1694</sup>

Congress has expressed the sense of the Congress that the reporting date for a reconciliation bill should be changed:

SEC. 115. (a) It is the sense of Congress that the date by which committees should report their reconciliation language to their respective Budget Committees should be October 12.

(b) The Budget Committees should report the reconciliation bills no later than close of business October 13.

(c) It is the sense of the Senate that the Senate should begin consideration of the reconciliation bill on the first day of session following its report by the Budget Committee.<sup>1695</sup>

**Legislative History** – Section 310(b) appeared in the original Budget Act as section 310(c), which read as follows:

(c) RECONCILIATION PROCESS. – If a concurrent resolution is agreed to in accordance with subsection (a) containing directions to one or more committees to determine and recommend changes in laws, bills, or resolutions, and –

(1) only one committee of the House or the Senate is directed to determine and recommend changes, that committee shall promptly make such determination and recommendations and report to its House a reconciliation bill or reconciliation resolution, or both, containing such recommendations; or

(2) more than one committee of the House or the Senate is directed to determine and recommend changes, each such committee so directed shall promptly make such determination and recommendations, whether such changes are to be contained in a reconciliation bill or reconciliation resolution, and submit such recommendations to the Committee on the Budget of its House, which upon receiving all such recommendations, shall report to its House a reconciliation bill or reconciliation resolution, or both, carrying out all such recommendations without any substantive revision.

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<sup>1694</sup> Staff of S. Comm. on the Budget, Notes from meeting with Parls—November 6, 2017 (Budget, Finance, Leadership) (Nov. 13, 2017).

<sup>1695</sup> [Joint Resolution Making Further Continuing Appropriations for the Fiscal Year 1991, and for Other Purposes](#), Pub. L. 101–412, § 115, 104 Stat. 894, 897 (1990).

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For purposes of this subsection, a reconciliation resolution is a concurrent resolution directing the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be, to make specified changes in bills and resolutions which have not been enrolled.<sup>1696</sup>

The joint statement of managers accompanying the conference report on the Budget Act explained:

#### SECTION 310(c). RECONCILIATION PROCESS

Both the House and Senate versions provided for the reconciliation of spending, revenue, and debt legislation with the levels and instructions set forth in the second concurrent resolution. The conference in the second concurrent resolution. The conference substitute contains a similar reconciliation procedure.

When Congress has implemented the procedure authorized in section 301(b)(1) requiring that appropriation and entitlement bills not be enrolled until any necessary reconciliations have been made, it is anticipated that the reconciliation will be in the form of a resolution directing: the Clerk of the House and the Secretary of the Senate to make the necessary changes in the bills being held. When a reconciliation resolution is the appropriate measure, it may also be necessary to consider a reconciliation bill for changing matters previously enacted into law.

If the changes (in spending, entitlement, revenue, or debt legislation) specified by the second concurrent resolution are in the jurisdiction of only one committee in either House, each such committee shall promptly report a reconciliation bill or resolution to its House. If more than one committee in either House has been directed to make changes in matters within its jurisdiction, then either such committee shall submit its recommendations to the Budget Committee of its House. The Budget Committee then shall compile, without substantive change, all the recommendations it has received into a reconciliation bill or resolution. The reconciliation bill or resolution reported to the House or Senate shall fully carry out the directions specified in the second concurrent resolution.<sup>1697</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 rewrote sections 310(a) and (b) and moved section 310(c) to section 310(b), changing its heading, and changing references to “a reconciliation bill or reconciliation resolution, or both,” to “reconciliation legislation,” so that section 310(b) then read, when compared to the old section 310(c):

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<sup>1696</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 310(c), 88 Stat. 297, 315–16 (amended 1985).

<sup>1697</sup> H.R. REP. NO. 93-1101, at 63–64 (1974) (Conf. Rep.).

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~~(c) RECONCILIATION PROCESS~~ (b) *LEGISLATIVE PROCEDURE*.—If a concurrent resolution is agreed to in accordance with subsection (a) containing directives to one or more committees to determine and recommend changes in laws, bills, or resolutions *is agreed to in accordance with subsection (a)*, and —

(1) only one committee of the House or the Senate is directed to determine and recommend changes, that committee shall promptly make such determination and recommendations and report to its House ~~a reconciliation bill or reconciliation resolution, or both,~~ *reconciliation legislation* containing such recommendations; or

(2) more than one committee of the House or the Senate is directed to determine and recommend changes, each such committee so directed shall promptly make such determination and recommendations, ~~whether such changes are to be contained in a reconciliation bill or reconciliation resolution,~~ and submit such recommendations to the Committee on the Budget of its House, which, upon receiving all such recommendations, shall report to its House ~~a reconciliation bill or reconciliation resolution, or both,~~ *reconciliation legislation* carrying out all such recommendations without any substantive revision.

For purposes of this subsection, a reconciliation resolution is a concurrent resolution directing the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be, to make specified changes in bills and resolutions which have not been enrolled.<sup>1698</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained:

(b) *Legislative Procedure*.—In either House, if the changes specified by the budget resolution are within the jurisdiction of only one committee, that committee shall promptly report a reconciliation bill or resolution to its House. If more than one committee in either House has been directed to make changes in matters within its jurisdiction, then all such committees shall submit their recommendations to the Budget Committee of their House. The Budget Committee shall then report the reconciliation legislation,

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<sup>1698</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1047, compared with [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 310(c), 88 Stat. 297, 315–16 (amended 1985).

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without substantive change. This subsection is substantially the same as current law.<sup>1699</sup>

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<sup>1699</sup> [H.R. REP. NO. 99-433](#), at 109 (1985) (Conf. Rep.).

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- 310(c) (c) COMPLIANCE WITH RECONCILIATION DIRECTIONS —
- 310(c)(1) (1) Any committee of the House of Representatives or the Senate that is directed, pursuant to a **concurrent resolution on the budget**,<sup>1700</sup> to determine and recommend changes of the type described in **paragraphs (1)**<sup>1701</sup> and **(2)**<sup>1702</sup> of subsection (a) with respect to laws within its jurisdiction, shall be deemed to have complied with such directions —
- 310(c)(1)(A) (A) if —
- 310(c)(1)(A)(i) (i) the amount of the changes of the type described in **paragraph (1)**<sup>1703</sup> of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under that paragraph by more than —
- 310(c)(1)(A)(i)(I) (I) in the Senate, 20 percent of the total of the amounts of the changes such committee was directed to make under **paragraphs (1)**<sup>1704</sup> and **(2)**<sup>1705</sup> of such subsection; or
- 310(c)(1)(A)(i)(II) (II) in the House of Representatives, 20 percent of the sum of the absolute value of the changes the committee was directed to make under **paragraph (1)**<sup>1706</sup> and the absolute value of the changes the committee was directed to make under **paragraph (2)**;<sup>1707</sup> and
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<sup>1700</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1701</sup> Congressional Budget Act of 1974 § 310(a)(1), 2 U.S.C. § 641(a)(1), *supra* p. 514, addresses spending.

<sup>1702</sup> Congressional Budget Act of 1974 § 310(a)(2), 2 U.S.C. § 641(a)(2), *supra* p. 515, addresses revenues.

<sup>1703</sup> Congressional Budget Act of 1974 § 310(a)(1), 2 U.S.C. § 641(a)(1), *supra* p. 514, addresses spending.

<sup>1704</sup> Congressional Budget Act of 1974 § 310(a)(1), 2 U.S.C. § 641(a)(1), *supra* p. 514, addresses spending.

<sup>1705</sup> Congressional Budget Act of 1974 § 310(a)(2), 2 U.S.C. § 641(a)(2), *supra* p. 515, addresses revenues.

<sup>1706</sup> Congressional Budget Act of 1974 § 310(a)(1), 2 U.S.C. § 641(a)(1), *supra* p. 514, addresses spending.

<sup>1707</sup> Congressional Budget Act of 1974 § 310(a)(2), 2 U.S.C. § 641(a)(2), *supra* p. 515, addresses revenues.



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- 310(c)(1)(A)(ii) (ii) the amount of the changes of the type described in [paragraph \(2\)](#)<sup>1708</sup> of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under that paragraph by more than —
- 310(c)(1)(A)(ii)(I) (I) in the Senate, 20 percent of the total of the amounts of the changes such committee was directed to make under [paragraphs \(1\)](#)<sup>1709</sup> and [\(2\)](#)<sup>1710</sup> of such subsection; or
- 310(c)(1)(A)(ii)(II) (II) in the House of Representatives, 20 percent of the sum of the absolute value of the changes the committee was directed to make under [paragraph \(1\)](#)<sup>1711</sup> and the absolute value of the changes the committee was directed to make under [paragraph \(2\)](#);<sup>1712</sup> and
- 310(c)(1)(B) (B) if the total amount of the changes recommended by such committee is not less than the total of the amounts of the changes such committee was directed to make under [paragraphs \(1\)](#)<sup>1713</sup> and [\(2\)](#)<sup>1714</sup> of such subsection.
- 310(c)(2)(A) (2)(A) Upon the reporting to the Committee on the Budget of the Senate of a recommendation that shall be deemed to have complied with such directions solely by virtue of [this subsection](#),<sup>1715</sup> the chairman of that committee may file with the Senate appropriately revised allocations under [section](#)
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<sup>1708</sup> Congressional Budget Act of 1974 § 310(a)(2), 2 U.S.C. § 641(a)(2), *supra* p. 515, addresses revenues.

<sup>1709</sup> Congressional Budget Act of 1974 § 310(a)(1), 2 U.S.C. § 641(a)(1), *supra* p. 514, addresses spending.

<sup>1710</sup> Congressional Budget Act of 1974 § 310(a)(2), 2 U.S.C. § 641(a)(2), *supra* p. 515, addresses revenues.

<sup>1711</sup> Congressional Budget Act of 1974 § 310(a)(1), 2 U.S.C. § 641(a)(1), *supra* p. 514, addresses spending.

<sup>1712</sup> Congressional Budget Act of 1974 § 310(a)(2), 2 U.S.C. § 641(a)(2), *supra* p. 515, addresses revenues.

<sup>1713</sup> Congressional Budget Act of 1974 § 310(a)(1), 2 U.S.C. § 641(a)(1), *supra* p. 514, addresses spending.

<sup>1714</sup> Congressional Budget Act of 1974 § 310(a)(2), 2 U.S.C. § 641(a)(2), *supra* p. 515, addresses revenues.

<sup>1715</sup> Congressional Budget Act of 1974 § 310(c), 2 U.S.C. § 641(c), *supra* p. 536, addresses “Compliance with Reconciliation Directions.”

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**302(a)**<sup>1716</sup> and revised functional levels and aggregates to carry out **this subsection**.<sup>1717</sup>

310(c)(2)(B) (B) Upon the submission to the Senate of a conference report recommending a reconciliation bill or resolution in which a committee shall be deemed to have complied with such directions solely by virtue of **this subsection**,<sup>1718</sup> the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under **section 302(a)**<sup>1719</sup> and revised functional levels and aggregates to carry out **this subsection**.<sup>1720</sup>

310(c)(2)(C) (C) Allocations, functional levels, and aggregates revised pursuant to **this paragraph**<sup>1721</sup> shall be considered to be allocations, functional levels, and aggregates contained in the **concurrent resolution on the budget**<sup>1722</sup> pursuant to **section 301**.<sup>1723</sup>

310(c)(2)(D) (D) Upon the filing of revised allocations pursuant to **this paragraph**,<sup>1724</sup> the reporting committee shall report revised allocations pursuant to **section 302(b)**<sup>1725</sup> to carry out **this subsection**.<sup>1726</sup>

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<sup>1716</sup> Congressional Budget Act of 1974 § 302(a), 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>1717</sup> Congressional Budget Act of 1974 § 310(c), 2 U.S.C. § 641(c), *supra* p. 536, addresses “Compliance with Reconciliation Directions.”

<sup>1718</sup> *Id.*

<sup>1719</sup> Congressional Budget Act of 1974 § 302(a), 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>1720</sup> Congressional Budget Act of 1974 § 310(c), 2 U.S.C. § 641(c), *supra* p. 536, addresses “Compliance with Reconciliation Directions.”

<sup>1721</sup> Congressional Budget Act of 1974 § 310(c)(2), 2 U.S.C. § 641(c)(2), *supra* p. 537.

<sup>1722</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1723</sup> Congressional Budget Act of 1974 § 301, 2 U.S.C. § 632, *supra* p. 132, addresses “Annual Adoption of Concurrent Resolution on the Budget.”

<sup>1724</sup> Congressional Budget Act of 1974 § 310(c)(2), 2 U.S.C. § 641(c)(2), *supra* p. 537.

<sup>1725</sup> Congressional Budget Act of 1974 § 302(b), 2 U.S.C. § 633(b), *supra* p. 189, addresses “Suballocations by Appropriations Committees.”

<sup>1726</sup> Congressional Budget Act of 1974 § 310(c), 2 U.S.C. § 641(c), *supra* p. 536, addresses “Compliance with Reconciliation Directions.”

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*Changes of the type described in paragraphs (1) and (2) of subsection (a)*—Section 310(a)(1) deals with spending, and section 310(a)(2) deals with revenues. Because section 310(c)(1) thus allows some shifting between spending and revenues, some call section 310(c)(1) the “fungibility rule.”<sup>1727</sup> Megan Lynch and Jim Saturno of the Congressional Research Service explain:

Section 310(c)(1) of the Budget Act, referred to as the “fungibility rule,” allows a committee with both spending and revenue directives to substitute changes in one for the other, up to 20% of each directive, as long as the total amount of changes reported is equal to the total amount of changes instructed.<sup>1728</sup>

**Legislative History**—The Balanced Budget and Emergency Deficit Control Act of 1985 added what is now section 310(c), so that it then read as follows:

(c) COMPLIANCE WITH RECONCILIATION DIRECTIONS.—Any committee of the House of Representatives or the Senate that is directed, pursuant to a concurrent resolution on the budget, to determine and recommend changes of the type described in paragraphs (1) and (2) of subsection (a) with respect to laws within its jurisdiction, shall be deemed to have complied with such directions—

(1) if—

(A) the amount of the changes of the type described in paragraph (1) of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under such paragraph by more than 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection, and

(B) the amount of the changes of the type described in paragraph (2) of such subsection recommended by such committee do not exceed or fall below the amount of the changes such

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<sup>1727</sup> *E.g.*, MEGAN S. LYNCH & JAMES V. SATURNO, CONG. RSCH. SERV., [R44058, THE BUDGET RECONCILIATION PROCESS: STAGES OF CONSIDERATION 5](#) (2021); PAUL A. RESTUCCIA, STAFF OF H. COMM. ON THE BUDGET, 114TH CONG., [A COMPENDIUM OF LAWS AND RULES OF THE CONGRESSIONAL BUDGET PROCESS](#) 79 n.73 (Comm. Print 2015); STAFF OF S. COMM. ON FINANCE, 103D CONG., [PROGRAM DESCRIPTIONS AND GENERAL BUDGET INFORMATION FOR FISCAL YEAR 1995](#), at 140–41 (Comm. Print 1994).

<sup>1728</sup> MEGAN S. LYNCH & JAMES V. SATURNO, CONG. RSCH. SERV., [R44058, THE BUDGET RECONCILIATION PROCESS: STAGES OF CONSIDERATION 5](#) (2021).

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committee was directed by such concurrent resolution to recommend under that paragraph by more than 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection; and

(2) if the total amount of the changes recommended by such committee is not less than the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection.<sup>1729</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained:

*(c) Compliance with Reconciliation Directions.*—This subsection allows a committee which receives a reconciliation directive consisting of spending re[d]uctions and revenue increases to substitute up to 20% of its total amount of savings in spending reductions for revenue increases, and vice versa.<sup>1730</sup>

The Budget Enforcement Act of 1990 amended section 310(c) as follows:

(c) ADJUSTMENT IN THE SENATE OF ALLOCATIONS AND AGGREGATES TO REFLECT CHANGES PURSUANT TO SECTION 310(c).—Section 310(c) of the Congressional Budget Act of 1974 is amended by —

(1) inserting “(1)” before “Any committee”;

(2) redesignating subparagraphs (A) and (B) of paragraph (1) as clauses (i) and (ii), respectively;

(3) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(4) inserting at the end the following new paragraph:

“(2)(A) Upon the reporting to the Committee on the Budget of the Senate of a recommendation that shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of that committee may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

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<sup>1729</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1054.

<sup>1730</sup> [H.R. REP. NO. 99-433](#), at 109 (1985) (Conf. Rep.).

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“(B) Upon the submission to the Senate of a conference report recommending a reconciliation bill or resolution in which a committee shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

“(C) Allocations, functional levels, and aggregates revised pursuant to this paragraph shall be considered to be allocations, functional levels, and aggregates contained in the concurrent resolution on the budget pursuant to section 301.

“(D) Upon the filing of revised allocations pursuant to this paragraph, the reporting committee shall report revised allocations pursuant to section 302(b) to carry out this subsection.”<sup>1731</sup>

The joint statement of managers accompanying the conference report on the Budget Enforcement Act of 1990 merely summarized, saying “The conference agreement includes a number of budget process changes.”<sup>1732</sup>

The Balanced Budget Act of 1997 amended section 310(c) as follows:

**SEC. 10111. AMENDMENTS TO SECTION 310.**

Section 310(c)(1)(A) of the Congressional Budget Act of 1974 is amended —

(1) by striking “20 percent” the first place it appears and all that follows thereafter through “, and” and inserting the following:

“(I) in the Senate, 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection; or

“(II) in the House of Representatives, 20 percent of the sum of the absolute value of the changes the committee was directed to make under paragraph (1) and the absolute value of the

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<sup>1731</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13207(c), 104 Stat. 1388, 1388-618 to 1388-619.

<sup>1732</sup> [H.R. REP. NO. 101-964](#), at 1169 (1990) (Conf. Rep.)

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changes the committee was directed to make under paragraph (2); and"; and

(2) by striking "20 percent" the second place it appears and all that follows thereafter through "; and" and inserting the following:

"(I) in the Senate, 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection; or

"(II) in the House of Representatives, 20 percent of the sum of the absolute value of the changes the committee was directed to make under paragraph (1) and the absolute value of the changes the committee was directed to make under paragraph (2); and".<sup>1733</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget Act of 1997 explained:

*12. Amendments to section 310 of the Congressional Budget Act*

HOUSE BILL (SECTION 11110)

The House bill provides that reconciliation instructions may direct committees to achieve specified changes in direct spending. Under current law, the instructions are to be expressed as a change in new entitlement authority and new budget authority. This section essentially codifies the recent practice of reconciling committees to report legislation providing the necessary change in direct spending. Under current law, reconciliation instructions may be for new budget authority, outlays and new entitlement authority. Direct spending is defined under section 250(c)(8) of GRH.

It also codifies the interpretation of the House that the fungibility rule in section 310 of the Budget Act applies to legislation regardless of whether it increases or decreases revenues or spending. In order to preserve the original intent of section 310 to provide committees maximum flexibility in meeting their reconciliation targets, committees are allowed to substitute changes in revenue for changes in spending, or vice versa, by up to 20 percent of the sum of the reconciled changes in spending and revenue as long as the result does not increase the deficit relative to the reconciliation instructions.

Under one interpretation, the existing fungibility rule could not be invoked when a committee reduces revenues because the revenue change

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<sup>1733</sup> [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10111, 111 Stat. 251, 685–86.

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may cancel out reductions in spending. Accordingly, the rule now explicitly provides that the substitution factor is 20 percent of the sum of the absolute value of the reconciled change in revenue and the absolute value of the reconciled change in spending.

#### SENATE AMENDMENT (SECTION 787)

The Senate amendment amends section 310(e)(2) of the Congressional Budget Act to provide 30 hours of Senate consideration of a Reconciliation Bill. The amendment requires consent to yield back time on the bill or to limit debate. It also provides 30 minutes of debate per first degree amendment, and 20 minutes of debate per second degree amendment until the 15th hour of debate after which all amendments are limited to 30 minutes of debate. And, it prohibits submitting first degree amendments after the 15th hour of consideration, and prohibits submitting second degree amendments after the 20th hour.

#### CONFERENCE AGREEMENT (SECTION 10111)

The Conference agreement reflects the House bill with a modification. The conference agreement only amends section 310 to modify subsection 310(c)(1)(A) regarding the application of the fungibility rule in the House. While no language regarding Senate floor procedure is included, the conference agreement calls for a Senate bipartisan task force to study and report on budget resolution and reconciliation floor procedures.<sup>1734</sup>

The Bipartisan Budget Act of 2013 amended section 310(c)(1) by adding dashes in two places, as follows:

#### **SEC. 122. TECHNICAL CORRECTIONS TO THE CONGRESSIONAL BUDGET ACT OF 1974.**

The Congressional Budget Act of 1974 is amended as follows:

...

(9) In section 310(c)(1)(A)(i) and (ii), strike “under that paragraph by more than” and insert “under that paragraph by more than —”.<sup>1735</sup>

Congress enacted the Bipartisan Budget Act of 2013 without a conference committee or report.

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<sup>1734</sup> [H.R. REP. NO. 105-217](#), at 991 (1997) (Conf. Rep.).

<sup>1735</sup> [Bipartisan Budget Act of 2013](#), Pub. L. No. 113-67, § 122(9), 127 Stat. 1165, 1175.



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310(d)                    **(d) LIMITATION ON AMENDMENTS TO RECONCILIATION  
BILLS AND RESOLUTIONS. —**

310(d)(1)                **(1) It shall not be in order in the House of  
Representatives to consider any amendment to a  
reconciliation bill or [reconciliation resolution](#)<sup>1736</sup> if  
such amendment would have the effect of increasing  
any specific [budget outlays](#)<sup>1737</sup> above the level of such  
[outlays](#)<sup>1738</sup> provided in the bill or resolution (for the  
fiscal years covered by the reconciliation instructions  
set forth in the most recently agreed to [concurrent  
resolution on the budget](#)<sup>1739</sup>), or would have the effect  
of reducing any specific Federal [revenues](#)<sup>1740</sup> below the  
level of such [revenues](#)<sup>1741</sup> provided in the bill or  
resolution (for such fiscal years), unless such  
amendment makes at least an equivalent reduction in  
other specific [budget outlays](#),<sup>1742</sup> an equivalent increase  
in other specific Federal [revenues](#),<sup>1743</sup> or an equivalent  
combination thereof (for such fiscal years), except that  
a motion to strike a provision providing [new budget  
authority](#)<sup>1744</sup> or new [entitlement authority](#)<sup>1745</sup> may be in  
order.**

310(d)(2)                **(2) It shall not be in order in the Senate to consider  
any amendment to a reconciliation bill or [reconciliation  
resolution](#)<sup>1746</sup> if such amendment would have the effect**

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<sup>1736</sup> [Congressional Budget Act of 1974 § 310\(b\)](#), 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.”

<sup>1737</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

<sup>1738</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>1739</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1740</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1741</sup> *Id.*

<sup>1742</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

<sup>1743</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1744</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1745</sup> [Congressional Budget Act of 1974 § 3\(9\)](#), 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.”

<sup>1746</sup> [Congressional Budget Act of 1974 § 310\(b\)](#), 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.”



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of decreasing any specific **budget outlay**<sup>1747</sup> reductions below the level of such **outlay**<sup>1748</sup> reductions provided (for the fiscal years covered) in the reconciliation instructions which relate to such bill or resolution set forth in a resolution providing for reconciliation, or would have the effect of reducing Federal **revenue**<sup>1749</sup> increases below the level of such **revenue**<sup>1750</sup> increases provided (for such fiscal years) in such instructions relating to such bill or resolution, unless such amendment makes a reduction in other specific **budget outlays**,<sup>1751</sup> an increase in other specific Federal **revenues**,<sup>1752</sup> or a combination thereof (for such fiscal years) at least equivalent<sup>1753</sup> to any increase in **outlays**<sup>1754</sup> or decrease in **revenues**<sup>1755</sup> provided by such amendment, except that a motion to strike a provision shall always be in order.

310(d)(3)                    **(3) Paragraphs (1)**<sup>1756</sup> **and (2)**<sup>1757</sup> shall not apply if a **declaration of war by the Congress**<sup>1758</sup> is in effect.

310(d)(4)                    **(4) For purposes of this section**,<sup>1759</sup> the levels of **budget outlays**<sup>1760</sup> and Federal **revenues**<sup>1761</sup> for a fiscal

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<sup>1747</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

<sup>1748</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>1749</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1750</sup> *Id.*

<sup>1751</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

<sup>1752</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1753</sup> The Congressional Budget Act makes no exception for very small amounts; even a “negligible” violation can subject legislation to a point of order under the Budget Act. Senate Precedent PRL19761001-001, 122 CONG. REC. 34,550–51 (Oct. 1, 1976) (point of order by Sen. Haskell under Congressional Budget Act of 1974 § 311(a)).

<sup>1754</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>1755</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1756</sup> Congressional Budget Act of 1974 § 310(d)(1), 2 U.S.C. § 641(d)(1), *supra* p. 544, addresses “Limitation on Amendments to Reconciliation Bills and Resolutions” in the House.

<sup>1757</sup> Congressional Budget Act of 1974 § 310(d)(2), 2 U.S.C. § 641(d)(2), *supra* p. 544, addresses “Limitation on Amendments to Reconciliation Bills and Resolutions” in the Senate.

<sup>1758</sup> U.S. CONST. art. I, § 8, cl. 11, provides: “Congress shall have power to . . . declare War.”

<sup>1759</sup> Congressional Budget Act of 1974 § 310, 2 U.S.C. § 641, *supra* p. 514, addresses “Reconciliation.”

<sup>1760</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

<sup>1761</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

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year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or of the Senate, as the case may be.

310(d)(5) (5) The Committee on Rules of the House of Representatives may make in order amendments to achieve changes specified by reconciliation directives contained in a [concurrent resolution on the budget](#)<sup>1762</sup> if a committee or committees of the House fail to submit recommended changes to its Committee on the Budget pursuant to its instruction.

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*It shall not be in order*—In *Riddick's Senate Procedure*, the Parliamentarian discussed precedents under this point of order<sup>1763</sup>:

The Chair sustained a point of order under section 310(d)(2) against an amendment to a reconciliation bill that would have excluded charitable contributions from the overall limitation on itemized deductions (after a motion to waive that section was defeated), since the amendment would have caused a loss of revenues over 5 years of \$2.5 billion and would have resulted in the savings attributed to the Finance Committee to be insufficient to meet its reconciliation instructions.<sup>[1764]</sup> Later that day, the Chair sustained a point of order under the same section against an amendment that would have reduced the savings attributable to two committees by an amount less than the surplus of aggregate savings then contained in the reconciliation bill, since the amendment would have reduced savings attributed to the Agriculture Committee below the level it was instructed to achieve without making offsetting savings in other provisions.<sup>[1765]</sup>

*Below the level of such outlay reductions provided (for the fiscal years covered) in the reconciliation instructions*—Where a budget resolution gives a Senate Committee a reconciliation instruction “to increase the deficit by not more than” an amount, the Parliamentarian has advised that a bill

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<sup>1762</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1763</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 623–24 (1992) (footnotes renumbered and reformatted).

<sup>1764</sup> 136 CONG. REC. S15,798–804, S15,807 (daily ed. Oct. 18, 1990).

<sup>1765</sup> *Id.* at S15,813–16.

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that increases the deficit by less than that specified amount “would seem to be compliant.”<sup>1766</sup>

Where a House-passed reconciliation bill does not comply with a Senate Committee reconciliation instruction, the Parliamentarian has advised: “Our past advice on numerical lack of compliance has been that a curative amendment must be offered immediately to retain privilege.”<sup>1767</sup>

The Parliamentarian’s office advised in October 2005 that individual committee titles are not the basis for determining whether amendments comply with reconciliation instructions under section 310(d). From the fact that section 310(d) allows a Senator to pay for a spending amendment with revenues, one can deduce that section 310(d) concerns itself with only *whether* an amendment is paid for, not *how* it is paid for.<sup>1768</sup> Thus, Budget Committee staff have interpreted the point of order under section 310(d)(2) effectively to enforce the *aggregate* of reconciliation instructions for a reconciliation bill.<sup>1769</sup>

In a discussion with the Parliamentarian (in September 2015) related to the Restoring Americans’ Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), however, it was unclear whether savings from Finance could be used to pay for a HELP Committee program.<sup>1770</sup> The Parliamentarian has suggested (in October 2015) that if an amendment has a foot in two titles, then it is appropriate that the relevant portion be measured against each title, and that the amendment will not be “netted” out and then assigned to one title.<sup>1771</sup>

Some have suggested that the point of order under section 310(d)(2) applies only when dealing with instructions to reduce the deficit (including to reduce spending or increase revenues).<sup>1772</sup>

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<sup>1766</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>1767</sup> *Id.*

<sup>1768</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re recon instruction (Oct. 31, 2005, 9:47 AM) (reporting a conversation with Off. of S. Parliamentarian); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re There is a precedent (Oct. 31, 2005, 10:16 AM) (reporting a conversation with Off. of S. Parliamentarian).

<sup>1769</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re 310(d) puzzle (Oct. 6, 2021, 6:00 PM).

<sup>1770</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on September 28, 2015, at 2.

<sup>1771</sup> Staff of S. Comm. on the Budget, Reconciliation Meeting #1 with Parliamentarians, at 2 (Oct. 15, 2015).

<sup>1772</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re 310(d) puzzle (July 15, 2022, 6:04 PM).

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*A motion to strike a provision shall always be in order—* Notwithstanding the sweeping language of this clause, Congressional Budget Act points of order (other than those under section 310(d)) are available even against amendments to strike.

Thus, during consideration of the Inflation Reduction Act of 2022, the Presiding Officer sustained a point of order raised by Budget Committee Chair Bernie Sanders under section 4106 of the concurrent resolution on the budget for fiscal year 2018, the Senate pay-as-you-go point of order, against an amendment by Senator Maggie Hassan to strike a provision to reinstate Superfund taxes.<sup>1773</sup>

In December 2017, the Presiding Officer sustained a point of order against an amendment to strike the title of the Tax Cuts and Jobs Act requiring oil development in the Arctic National Wildlife Refuge because “[t]he pending amendment . . . would cause the underlying legislation to exceed the Energy and Natural Resources Committee’s section 302(a) allocation of new budget authority or outlays.”<sup>1774</sup>

And in July 2000, the Chair sustained a point of order “that the Roth amendment . . . to strike would worsen the Nation’s fiscal position in years beyond those reconciled in the budget resolution and, thus, violates section 313(b)(1)(e) of the Congressional Budget Act of 1974.”<sup>1775</sup>

When asked in 2022, whether an amendment to strike can be subject to budget points of order, the Parliamentarian replied:

Yes. We have precedent for this, as you note, and communication from various Parliamentarians advising that amendments to strike can run afoul of budget discipline despite the broad statement in 310(d)(2). . . . [I]t seems to me that an amendment to strike a provision that doesn’t score won’t score either. 310(d)(2) and 313(b) provisions do not work perfectly together but applying discipline in such a manner that 313(b)(1)(A) offending text could not be stricken by amendment but by [point of order] only would be

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<sup>1773</sup> 168 CONG. REC. S4171 (daily ed. Aug. 6, 2022).

<sup>1774</sup> 163 CONG. REC. S7707–11 (daily ed. Dec. 1, 2017) (statement raising the point of order by Sen. Murkowski).

<sup>1775</sup> 146 CONG. REC. S7045 (daily ed. July 17, 2000) (statement raising a point of order by Sen. Moynihan). For the text of the amendment, see *id.* at S6804.

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a very odd result and we have declined to go down that road. It's an issue I discussed with my predecessor at least once and we agreed on that.<sup>1776</sup>

In March 2017, the Parliamentarian advised that Byrd Rule points of order, and other budget points of order, are in order against a motion to strike (notwithstanding the language at the end of section 310(d)(2)).<sup>1777</sup> In 2017, Budget Committee staff recalled this advice to be consistent with what the Parliamentarian advised in 2015.<sup>1778</sup>

In November 2015, the Parliamentarian advised:

Following up on our discussion from earlier today about motions to strike and points of order: the most recent guidance we gave was that the point of order lies against the amendment not against the bill should the amendment be agreed to (earlier guidance to the contrary given years ago notwithstanding).<sup>1779</sup>

The Parliamentarian's office said in May 2007 that the Parliamentarian's office has advised that amendments to strike savings – from a reconciliation bill or from any other bill – can be subject to a point of order under Congressional Budget Act section 302(f). The Parliamentarian's office reported that it gave this advice in 2000 in the context of an amendment to strike savings from an appropriations bill, which if adopted would have put a subcommittee over its 302(b) allocation. The reasoning is as follows: Once the Senate adopts an amendment, Senators can no longer raise Budget Act points of order against the amendment's effects in the bill. So the only opportunity for raising the point of order is when the amendment to strike is pending. The same reasoning would apply in the context of reconciliation. The Parliamentarian's office said that it views the proviso that “a motion to strike a provision shall always be in order” as applying to only Congressional Budget Act section 310(d), the point of order against amendments that would bring a committee out of compliance with its instructions. So an amendment to strike savings from a reconciliation bill

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<sup>1776</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Budget memo re: reconciliation floor questions (Aug. 6, 2022, 6:43 PM).

<sup>1777</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 23, 2017, at 2 (Mar. 31, 2017); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Q on Motions to Strike (June 22, 2017, 12:56 PM) (reporting notes from a Mar. 2017 meeting with the Parliamentarian); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Q on Motions to Strike (June 22, 2017, 12:52 PM) (reporting notes from a Mar. 2017 meeting with the Parliamentarian).

<sup>1778</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Q on Motions to Strike (June 22, 2017, 12:52 PM) (reporting notes from a Mar. 2017 meeting with the Parliamentarian).

<sup>1779</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Off. of S. Parliamentarian re motions to strike/reconcilia[ti]on/310 (Nov. 30, 2015, 2:48 PM).

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will not violate section 310(d), and will not be deemed nongermane, but may violate the Byrd Rule, committee allocations, or other points of order.<sup>1780</sup>

*Riddick's Senate Procedure* recorded a House precedent regarding an amendment to strike:

In the House, an amendment which provided additional budget authority and caused additional budget outlays in excess of limitations contained in the concurrent resolution on the budget for a fiscal year was subject to a point of order under section 311 of the Congressional Budget Act, and this included an amendment which proposed to strike language in a bill, the adoption of which would have had this effect.<sup>1781</sup>

The Parliamentarian's office has, however, given conflicting advice about whether an amendment is in order under this clause even if it would otherwise violate another Congressional Budget Act provision. During consideration of the American Rescue Plan Act of 2021, when staff challenged Hagerty amendment number 909<sup>1782</sup> under the Byrd Rule, section 313(b)(1)(A), the Parliamentarian's office responded that as a motion to strike, the amendment was in order.<sup>1783</sup> This advice was consistent with advice given many years ago.<sup>1784</sup>

***Remedy for Noncompliance***—In *Riddick's Senate Procedure*, the Parliamentarian advised:

The remedy for non-compliance by a committee with its instructions to report savings to be placed in a reconciliation bill is a motion to recommit with instructions to report back forthwith with an amendment that achieves those savings.<sup>1785</sup>

When asked about a scenario where a budget resolution contains a reconciliation instruction to one Senate and one House committee for the

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<sup>1780</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re points of order against amendments to strike savings from reconciliation (May 22, 2007, 11:25 AM) (reporting a conversation with Off. of S. Parliamentarian).

<sup>1781</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 593 (citing 127 CONG. REC. 9315 (May 12, 1981)).

<sup>1782</sup> 167 CONG. REC. S1194 (daily ed. Mar. 4, 2021).

<sup>1783</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re ARP Amendments (Mar. 5, 2021, 5:19 PM).

<sup>1784</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Q on Motions to Strike (June 22, 2017, 12:52 PM) (reporting notes from a Mar. 2017 meeting with the Parliamentarian).

<sup>1785</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 623, 628 (1992) (citing 127 CONG. REC. 12,692 (June 17, 1981)).

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same purpose, and the Senate committee fails to act on its reconciliation instruction but the House passes a valid reconciliation bill and sends it to the Senate, the Parliamentarian expressed a “bias to making the process go forward.” The Parliamentarian affirmed that if there is a reconciliation bill being considered, there can be a motion to recommit to bring the committee into compliance. But without a reconciliation bill, it is more difficult to get a committee to comply.<sup>1786</sup>

**Legislative History** – The Balanced Budget and Emergency Deficit Control Act of 1985 added what is now section 310(d), and it continues to read as it did since then.<sup>1787</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained:

*(d) Limitation on Amendments to Reconciliation Bills and Resolutions.* – (1) In the House of Representatives this subsection creates a new point of order in the House against an amendment to a reconciliation bill or resolution if that amendment’s net impact is to increase spending or to decrease revenues. A motion to strike provisions containing new budget authority or new entitlement authority may be allowed.

(2) In the Senate this paragraph provides a point of order against amendments to a reconciliation bill which would cause the bill to reduce the deficit less than was required by the instructions in the most recently agreed to resolution containing reconciliat[ion] instructions, unless that amendment is internally deficit neutral.

This subsection also states the existing authority of the House Committee on Rules to make in order amendments to reconciliation bills achieving deficit reduction for committees failing to respond to reconciliation instructions.<sup>1788</sup>

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<sup>1786</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Parls on committees and reconciliation (Feb. 3, 2010, 3:17 PM).

<sup>1787</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1054–55.

<sup>1788</sup> [H.R. REP. NO. 99-433](#), at 109 (1985) (Conf. Rep.).

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310(e) (e) PROCEDURE IN THE SENATE —

310(e)(1) (1) Except as provided in paragraph (2),<sup>1789</sup> the provisions of section 305<sup>1790</sup> for the consideration in the Senate of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration in the Senate of reconciliation bills reported under subsection (b)<sup>1791</sup> and conference reports thereon.

310(e)(2) (2) Debate in the Senate on any reconciliation bill reported under subsection (b),<sup>1792</sup> and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours.

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*Debatable motions*—When a reconciliation bill responded to budget resolution instructions to only the Finance and HELP Committees and the Parliamentarian was asked if a Senator made a motion to commit to a committee other than Finance or HELP, the Parliamentarian advised: “I tend to think such a motion (if conceptual) is out of order and that an appeal is possible but not a waiver. If the motion were textual (forthwith/binding) there could be a Byrd Rule point of order against it and a 60 vote waiver.”<sup>1793</sup>

*Legislative History*—Section 310(e) appeared in the original Budget Act as follows:

(e) PROCEDURE IN THE SENATE. —

(1) Except as provided in paragraph (2), the provisions of section 305 for the consideration in the Senate of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration in the Senate of reconciliation bills and reconciliation

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<sup>1789</sup> Congressional Budget Act of 1974 § 310(e)(2), 2 U.S.C. § 641(e)(2), *infra* p. 552.

<sup>1790</sup> Congressional Budget Act of 1974 § 305, 2 U.S.C. § 636, *supra* p. 250, addresses “Provisions Relating to Consideration of Concurrent Resolutions on the Budget.”

<sup>1791</sup> Congressional Budget Act of 1974 § 310(b), 2 U.S.C. § 641(b), *supra* p. 528, addresses “Legislative procedure” with regard to reconciliation.

<sup>1792</sup> *Id.*

<sup>1793</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re draft motion to commit guidance (June 26, 2017, 9:45 PM).



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resolutions reported under subsection (c) and conference reports thereon.

(2) Debate in the Senate on any reconciliation bill or resolution reported under subsection (c), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours.<sup>1794</sup>

The joint statement of managers accompanying the conference report on the Budget Act explained: “Subsection (e) incorporates the procedure contained in the Senate amendment for the consideration of reconciliation measures in the Senate.”<sup>1795</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 rewrote sections 310(a) and (b) and moved section 310(c) to section 310(b), so when that Act restated section 310(e), it changed the reference to subsection “(c)” in paragraph (2) to subsection “(b).” The law then read as it does now.<sup>1796</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 stated: “(e) *Procedure in the Senate.* – This subsection is identical to current law.”<sup>1797</sup>

During consideration of the Balanced Budget Act of 1997, the Senate sought to amend section 310, but the conference committee rejected the Senate’s changes. The joint statement of managers accompanying the conference report on the Balanced Budget Act of 1997 explained:

*12. Amendments to section 310 of the Congressional Budget Act*

....

SENATE AMENDMENT (SECTION 787)

The Senate amendment amends section 310(e)(2) of the Congressional Budget Act to provide 30 hours of Senate consideration of a Reconciliation Bill. The amendment requires consent to yield back time on the bill or to limit debate. It also provides 30 minutes of debate per first degree amendment, and 20 minutes of debate per second degree amendment until

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<sup>1794</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 310(e), 88 Stat. 297, 316 (amended 1985).

<sup>1795</sup> H.R. REP. NO. 93-1101, at 64 (1974) (Conf. Rep.).

<sup>1796</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1055.

<sup>1797</sup> [H.R. REP. NO. 99-433](#), at 109 (1985) (Conf. Rep.).

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the 15th hour of debate after which all amendments are limited to 30 minutes of debate. And, it prohibits submitting first degree amendments after the 15th hour of consideration, and prohibits submitting second degree amendments after the 20th hour.

#### CONFERENCE AGREEMENT (SECTION 10111)

The Conference agreement reflects the House bill with a modification. The conference agreement only amends section 310 to modify subsection 310(c)(1)(A) regarding the application of the fungibility rule in the House. While no language regarding Senate floor procedure is included, the conference agreement calls for a Senate bipartisan task force to study and report on budget resolution and reconciliation floor procedures.<sup>1798</sup>

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<sup>1798</sup> [H.R. REP. NO. 105-217](#), at 991 (1997) (Conf. Rep.).

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310(f)            **(f) COMPLETION OF RECONCILIATION PROCESS – It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has completed action on the reconciliation legislation for the fiscal year beginning on October 1 of the calendar year to which the adjournment resolution pertains, if reconciliation legislation is required to be reported by the [concurrent resolution on the budget](#)<sup>1799</sup> for such fiscal year.**

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*Legislative History* – Section 310(f) appeared in the original Budget Act as follows:

(f) CONGRESS MAY NOT ADJOURN UNTIL ACTION IS COMPLETED. – It shall not be in order in either the House of Representatives or the Senate to consider any resolution providing for the adjournment sine die of either House unless action has been completed on the concurrent resolution on the budget required to be reported under subsection (a) for the fiscal year beginning on October 1 of such year, and, if a reconciliation bill or resolution, or both, is required to be reported under subsection (c) for such fiscal year, unless the Congress has completed action on that bill or resolution, or both.<sup>1800</sup>

The original section 310(f) helped enforce the original section 310(d), which provided:

(d) COMPLETION OF RECONCILIATION PROCESS. – Congress shall complete action on any reconciliation bill or reconciliation resolution reported under subsection (c) not later than September 25 of each year.<sup>1801</sup>

The joint statement of managers accompanying the conference report on the Budget Act explained:

SECTION 310 (d), (e), and (f). COMPLETION OF RECONCILIATION PROCESS.

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<sup>1799</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1800</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 310(f), 88 Stat. 297, 316 (amended 1985 & 1990).

<sup>1801</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 310(d), 88 Stat. 297, 316 (amended 1985 & 1990).

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The House bill provided for completion of any required reconciliation action prior to adjournment; the Senate amendment had a September 25 completion date. Both versions barred sine die adjournment until the reconciliation has been completed, and the Senate amendment also prohibited any recess for more than three days.

The conference substitute sets September 25 as the deadline for completion of the reconciliation process and it bars sine die adjournment until the second concurrent resolution and any required reconciliation measures have been adopted. . . .<sup>1802</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 rewrote section 310(f) to read as follows:

(f) COMPLETION OF RECONCILIATION PROCESS. —

(1) IN GENERAL. — Congress shall complete action on any Congress. reconciliation bill or reconciliation resolution reported under subsection (b) not later than June 15 of each year.

(2) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES. — It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has completed action on the reconciliation legislation for the fiscal year beginning on October 1 of the calendar year to which the adjournment resolution pertains, if reconciliation legislation is required to be reported by the concurrent resolution on the budget for such fiscal year.<sup>1803</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained:

*(f) Completion of Reconciliation Process in the House of Representatives and in the Senate.* — This subsection establishes June 15 as the completion date for reconciliation and prohibits the House from considering a resolution providing for the Independence Day district work period until the House has completed action on reconciliation legislation for the coming fiscal year.<sup>1804</sup>

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<sup>1802</sup> H.R. REP. NO. 93-1101, at 64 (1974) (Conf. Rep.).

<sup>1803</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1055.

<sup>1804</sup> [H.R. REP. NO. 99-433](#), at 110 (1985) (Conf. Rep.).

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The Budget Enforcement Act of 1990 eliminated the July 15 deadline, amending section 310(f) as follows:

**SEC. 13210. SUPERSEDED DEADLINES AND CONFORMING CHANGES.**

The Congressional Budget Act of 1974 is amended —

...

(2) in section 310(f), by striking paragraph (1) and by striking “(2) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES. —”.<sup>1805</sup>

The joint statement of managers accompanying the conference report on the Budget Enforcement Act of 1990 merely summarized, saying “The conference agreement includes a number of budget process changes.”<sup>1806</sup>

In *Riddick’s Senate Procedure*, the Parliamentarian summarized the history of these reconciliation deadlines<sup>1807</sup>:

Section 310(d) of the Budget Act was enacted in 1974 required completion of the reconciliation process by September 25 preceding the upcoming fiscal year.<sup>[1808]</sup> Furthermore, under section 310(f) of the original Act, both Houses of Congress were prohibited from adjourning *sine die* if Congress had not completed action on a reconciliation bill or resolution, if such were required by the relevant concurrent resolution on the budget.<sup>[1809]</sup> This provision was amended in 1985 to require completion of the reconciliation process by June 15 of each year, and to remove the Senate from the application of the prohibition against adjourning before completion of the reconciliation process.<sup>[1810]</sup> These deadlines were often

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<sup>1805</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13210, 104 Stat. 1388, 1388-620.

<sup>1806</sup> [H.R. REP. NO. 101-964](#), at 1169 (1990) (Conf. Rep.)

<sup>1807</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 622 (1992) (footnotes renumbered and reformatted).

<sup>1808</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 310(d), 88 Stat. 297, 316 (amended 1985 & 1990).

<sup>1809</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 310(f), 88 Stat. 297, 316 (amended 1985 & 1990).

<sup>1810</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 310(f), as amended by [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1055.

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missed.<sup>[1811]</sup> The Budget Enforcement Act of 1990 removed the June 15 deadline for completion of the reconciliation process.<sup>[1812]</sup>

In September of 2017, the Parliamentarian remarked that “the [Congressional Budget Act] has been amended with respect to this issue (removing a deadline from [section] 310 but leaving a June 15th deadline in [section] 300, which makes things confusing.”<sup>1813</sup>

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<sup>1811</sup> See, for example, the following reconciliation bill that was passed after the September 25 deadline in the original Budget Act: [Omnibus Reconciliation Act of 1980](#), Pub. L. No. 96-499, 94 Stat. 2599 (Dec. 3, 1980); see also, the following reconciliation bills that were passed after the deadline was changed to June 15 (pursuant to [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1055): [Consolidated Omnibus Budget Reconciliation Act of 1985](#), Pub. L. No. 99-272, 100 Stat. 82 (Mar. 20, 1986); [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, 100 Stat. 1874 (Oct. 17, 1986); [Omnibus Budget Reconciliation Act of 1987](#), Pub. L. No. 100-203, 101 Stat. 1330 (Dec. 22, 1987); [Omnibus Budget Reconciliation Act of 1989](#), Pub. L. No. 101-239, 103 Stat. 2106 (Nov. 22, 1989); and [Omnibus Budget Reconciliation Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388 (Oct. 27, 1990).

<sup>1812</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 310(f), as amended by [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13210, 104 Stat. 1388, 1388-620.

<sup>1813</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Reconciliation Instructions (Sept. 1, 2017, 12:52 PM).

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310(g) (g) LIMITATION ON CHANGES TO [SOCIAL SECURITY ACT](#).<sup>1814</sup>—Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any reconciliation bill or [reconciliation resolution](#)<sup>1815</sup> reported pursuant to a [concurrent resolution on the budget](#)<sup>1816</sup> agreed to under [section 301](#)<sup>1817</sup> or [304](#),<sup>1818</sup> or a joint resolution pursuant to [section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985](#),<sup>1819</sup> or any amendment thereto or conference report thereon, that contains recommendations with respect to the old-age, survivors, and disability insurance program established under [title II of the Social Security Act](#).<sup>1820</sup>

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*Title II of the Social Security Act*—The Social Security Act<sup>1821</sup> created a number of programs, including what is now known as the Old-Age, Survivors, and Disability Insurance Program (OASDI) in title II.<sup>1822</sup>

Budget Act section 313(b)(1)(F) provides that under the Byrd Rule, “a provision shall be considered extraneous if it violates section 310(g).” Thus, at the option of the Senator raising the point of order, a Senator can raise a point of order against either a provision in a reconciliation bill or the entire reconciliation bill, if that provision “contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act.”

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<sup>1814</sup> [Social Security Act of 1935](#), Pub. L. No. 74-271, 49 Stat. 620 (current version at 42 U.S.C. §§ 301–1397mm).

<sup>1815</sup> [Congressional Budget Act of 1974 § 310\(b\)](#), 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.”

<sup>1816</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1817</sup> [Congressional Budget Act of 1974 § 301](#), 2 U.S.C. § 632, *supra* p. 132, addresses “Annual Adoption of Concurrent Resolution on the Budget.”

<sup>1818</sup> [Congressional Budget Act of 1974 § 304](#), 2 U.S.C. § 635, *supra* p. 244, addresses “Permissible Revisions of Concurrent Resolutions on the Budget.”

<sup>1819</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258C](#), 2 U.S.C. § 907d, *infra* p. 1138, addresses “Special Reconciliation Process.”

<sup>1820</sup> [Social Security Act tit. II](#), 42 U.S.C. §§ 401–434, addresses “Federal Old-Age, Survivors, and Disability Insurance Benefits.”

<sup>1821</sup> [Social Security Act of 1935](#), Pub. L. No. 74-271, 49 Stat. 620 (current version at 42 U.S.C. §§ 301–1397mm).

<sup>1822</sup> [Social Security Act of 1935](#), Pub. L. No. 74-271, §§ 201–210, 49 Stat. 620, 622–25 (current version at 42 U.S.C. §§ 401–434).

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The Parliamentarian rejected an argument that the Health Care and Education Reconciliation Act of 2010 violated Budget Act sections 310(g) and 313(b)(1)(F) because of indirect effects on the Social Security Trust Fund from the taxation of health insurance benefits.<sup>1823</sup>

The Senate had previously considered reconciliation legislation that had indirect effects on the Social Security Trust Funds. In the Taxpayer Relief Act of 1997,<sup>1824</sup> the Senate extended the exclusion from income of employer-provided education benefits, and the Senate further extended these benefits in the Economic Growth and Tax Relief Reconciliation Act of 2001.<sup>1825</sup> No Senator raised a point of order under Budget Act section 310(g) or 313(b)(1)(F) against those provisions.

During consideration of the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), the Parliamentarian advised that a provision of a draft McConnell amendment entitled "Protecting Americans by Repeal of Authority to Use Social Security Numbers" <sup>1826</sup> would violate sections 310(g) and 313(b)(1)(F).<sup>1827</sup>

Budget Counsel prepared the following summary of 310(g) and 313(b)(1)(F) enforcement during the era of Senator Mike Enzi's chairmanship. In some respects, this enforcement differed from that under Budget Committee Chairs Kent Conrad and Patty Murray.

#### **Reconciliation Bills**

**310(g)**—Point of order against reconciliation bills that contain "recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act."

**313(b)(1)(F)** (*Byrd rule*)—A provision is extraneous if it violates section 310(g). Note: if the point of order is sustained under 313 the remedy would be to strike the offending provision; as compared to a point of order sustained under 310(g), which would result in the entire bill losing privileged status.

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<sup>1823</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian (Mar. 18, 2010, 10:25 AM).

<sup>1824</sup> Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788.

<sup>1825</sup> Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38.

<sup>1826</sup> S. Legis. Couns., MCG15942, McConnell amendment, § 202(d)(2) (Dec. 2015). The paragraph read: "(2) PROTECTING AMERICANS BY REPEAL OF AUTHORITY TO USE SOCIAL SECURITY NUMBERS. —Clause (x) of section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) is amended by adding at the end the following new sentence: 'The preceding sentence shall not apply after December 31, 2017.'." *Id.*

<sup>1827</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re reconciliation/substitute/Byrd rule (Dec. 14, 2015, 12:28 PM).



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## Precedent

- 2015—The majority’s “final substitute” amendment contained a provision titled “Protecting Americans By Repeal of Authority to Use Social Security Numbers.” The provision amended Clause (x) of section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)). The minority successfully argued that this provision violated 310(g) because the confidentiality of, and limited authority to use, social security numbers are critical elements of the OASDI program under Title II.
- 2010—Health Care and Education Reconciliation Act (HCERA)—This issue was litigated in HCERA through the Cadillac tax provision. CBO estimated that delaying the Cadillac tax lowered social security trust fund revenues and increased outlays. The majority successfully argued that these indirect effects on the trust fund stemmed from potential changes in taxable compensation and did not violate 310(g).
- 1995—310(g) has only been raised one other time and was not well-taken by the Chair. At issue in that case was whether or not using theoretical savings from the difference in the Social Security COLA assumed in CBO’s baseline versus the lower COLA actually instituted that year violated 310(g).<sup>1828</sup>

In a confused and arguably mistaken set of rulings during consideration of the Balanced Budget Reconciliation Act of 1995,<sup>1829</sup> the Presiding Officer failed to sustain a point of order under Budget Act section 310(g) against a provision that would have reduced the cost-of-living adjustment for Social Security benefits without directly mentioning those benefits.<sup>1830</sup> On October 27, 1995, the following exchange took place:

Mr. [Bob] GRAHAM. Mr. President, I am directing my attention to section 7482 of the legislation, which begins on page 45 and states:

Cost-of-Living Adjustments During Fiscal Year 1996.

Notwithstanding any other provision of law, in the case of any program within the jurisdiction of the Committee on Finance of the

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<sup>1828</sup> Staff of S. Comm. on the Budget, Social Security Budget Points of Order, *in* E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Off-Budget Effects in America Competes (Mar. 8, 2022, 7:22 PM).

<sup>1829</sup> Balanced Budget Reconciliation Act of 1995, S. 1357, 104th Cong. (1995) (companion measure H.R. 2491 vetoed by President Clinton).

<sup>1830</sup> 141 CONG. REC. S16,048–49 (daily ed. Oct. 27, 1995).

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United States Senate which is adjusted for any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) for the United States city average of all items, any such adjustment which takes effect during fiscal year 1996 shall be equal to 2.6 percent.

It is to that section, Mr. President, that I direct the point of order. I raise the point of order under section 310(d) of the Congressional Budget Act of 1974 against the pending amendment because it counts \$12 billion in cuts to Social Security which is off budget to offset spending in the amendment.

The PRESIDING OFFICER. Does the Senator from New Mexico wish to be heard on this point of order?

Mr. DOMENICI. I want to say the dollar numbers being referred to are actual. That is all I want to say.

Mr. GRAHAM. Mr. President, could I respond to the—do you wish further debate on the point of order?

The PRESIDING OFFICER. It is not debatable. I note the Senator from New Mexico wishes not to make a statement. The scoring of this bill under the Budget Act is under the control of the chairman of the Budget Committee, and the precedents of the Senate do not go beyond that. The point of order is not well taken.

Mr. HARKIN addressed the Chair.

Mr. DOMENICI. I ask for the yeas and nays.

Mr. HARKIN. I raise a point of order under section 310(g) of the Budget Act because the pending amendment achieves its savings by changing the cost-of-living provisions of section 215 of the Social Security Act, and changing title II of that act violates section 310(g) of the Congressional Budget Act.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. CPI was not changed as referred in that act.

The PRESIDING OFFICER. The Chair is informed that the provisions in the act cited are not applicable to this instance and that the point of order is not well taken.

Mr. HARKIN. Mr. President, parliamentary inquiry.

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The PRESIDING OFFICER. State the inquiry.

Mr. HARKIN. Section 7482 on page 45 of the pending amendment, line 22, states: "Notwithstanding any other provision of law . . ." Parliamentary inquiry. Is this not referencing title II of Social Security?

The PRESIDING OFFICER. The Chair is informed that that would not be interpreted as referencing anything. That is to indicate that without regard to any other provision of law, this provision of this bill would become law.

Mr. HARKIN. Further parliamentary inquiry.

Is the Chair then ruling that by that very sentence, "Notwithstanding any other provision of law," that that would, in fact, cover title II of Social Security since it is law? And that, "Notwithstanding any other provision of law," therefore, that overcomes title II of Social Security?

The PRESIDING OFFICER. The Chair would state that that interpretation—I must yield to the Senator's inquiry. The Senator is asking this Chair to act as a court and make a determination of law and the conflicts of law, and that is not within the proper prerogative of this Chair.

Mr. HARKIN. Further parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. Yes.

Mr. HARKIN. Is the Chair ruling, as pertains to the ruling on Senator GRAHAM's point of order, is the Chair ruling that the Social Security Act, title II, may be changed within the reconciliation process by drafting a provision to read, "notwithstanding any other provision of law"?

The PRESIDING OFFICER. The Chair's ruling with regard to the point of order of the Senator from Florida was on the basis of the issues he stated. The Chair is not ruling—the Chair is not ruling—as the Senator indicated, that there is any indication here before the Chair of a provision to change the Social Security Act.

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Mr. HARKIN. If that is the ruling of the Chair, the Social Security law must be naked to attack under reconciliation. Would not section 310(g) of the Budget Act be now rendered meaningless by the precedent the Chair is now setting?

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The PRESIDING OFFICER. The Chair has no intention of rendering meaningless any provision of the Budget Act. We are attempting to comply with the Budget Act. The Chair is informing that the chairman of the Budget Committee has the authority, as did the previous chairman, to make the determination that has been made with regard to this aspect of this bill.<sup>1831</sup>

The Parliamentarian concluded (in 2015) that amending title II of the Social Security Act would be inappropriate in reconciliation.<sup>1832</sup>

The Parliamentarian has said that when legislative language says “shall apply as if” or similar language and then refers to Social Security, the Parliamentarian would prefer that staff just rewrite the procedure to which such language applies rather than incorporate it by reference.<sup>1833</sup>

Finance Committee Counsel Mike Evans has observed:

The question under section 310(g) is whether a provision “contains recommendations with respect to the OASDI program under Title II of the Social Security Act.” In this context, “recommendations” means changes in law. The question of whether a provision makes changes in law with respect to the Title II program is significantly narrower than whether a provision has an effect on Social Security revenues or outlays.

Our understanding is that this was confirmed during the 2010 ACA debate. The bill that passed the Senate under regular order included the “Cadillac Tax,” an excise tax on high-cost health insurance plans. The provision was estimated to cause change in the mix of compensation that employers provided to employees, with less compensation being paid in the form of non-taxable health care insurance and more in the form of taxable wages; this, in turn, would increase the amount of wages subject to the Social Security payroll tax and, further, it also would increase the amount of Social Security benefits that would be paid (i.e., generally, if someone pays higher Social Security payroll taxes, they become entitled to higher Social Security benefits later on). HCERA delayed the imposition of the tax, with the result that the increase in Social Security taxes and the corresponding increase in benefits each would fall by about 20%. Republicans argued that this HCERA delay, which reduced both taxes and benefits, constituted a “recommendation with respect to” the Title II Social Security program. It was reported that the Parliamentarian disagreed,

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<sup>1831</sup> *Id.*

<sup>1832</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Comm. on the Budget & Staff of Sen. Wyden (June 7, 2021).

<sup>1833</sup> *Id.*

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apparently sending an email indicating that his guidance would be that such a 310(g) point of order not be sustained.

This interpretation makes perfect sense. The Social Security program is ubiquitous. It's affected by many programmatic changes that do not make legislative changes to the program's level of taxes or benefits or to the operation of the program. Indeed, many reconciliation bill provisions have affected Social Security benefits and taxes, and these have not been challenged. For example—

- The ARP had off-budget effects of \$7.7 billion, from cash flows in the SS and Postal Service trust funds (CBO, March 10, 2021).
- The 2017 tax bill had off-budget effects of \$26.9 billion, from changes in Social Security revenues (CBO, Dec. 15, 2017).
- The 2017 ACA repeal bill would have had off-budget effects of \$14.3 billion, including from changes in payroll taxes and a \$2 billion reduction in Social Security benefits (CBO, May 24, 2017).
- The 2015 ACA repeal bill would have had off-budget effects of \$53 billion, primarily from changes in Social Security taxes and benefits (CBO, Oct. 20, 2015).
- HCERA had off-budget effects of \$23.4 billion, primarily from changes in Social Security revenues and benefits (CBO, March 20, 2010).

In contrast, recent successful challenges under 310(g) have involved provisions that directly affected taxes, benefits, or the operation of the program. For example—

- In the ARP, provisions of the House bill that would have reduced OASDI payroll taxes were deleted, in anticipation of a 310(g) challenge.
- In the 2017 tax bill, provisions were deleted that would have changed the classification of workers as employees for payroll taxes, in anticipation of a 310(g) challenge.
- In the 2017 ACA repeal bill, early versions of the bill would have directed SSA to provide SSN-based information to Treasury and HHS; this provision was modified in response to an anticipated 301(g) challenge.

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- In the 2015 ACA repeal bill, a successful challenge was made to a provision directly amending SSA section 205, regarding the treatment of SSNs.<sup>1834</sup>

**Legislative History**—The Balanced Budget and Emergency Deficit Control Act of 1985 added section 310(g), so that it then read as follows:

(g) LIMITATION ON CHANGES TO THE SOCIAL SECURITY ACT.—Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any reconciliation bill or reconciliation resolution reported pursuant to a concurrent resolution on the budget agreed to under section 301 or 304, or a resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto or conference report thereon, that contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act.<sup>1835</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained:

(g) *Limitations on changes to the Social Security Act.*—this subsection provides a point of order against the consideration of a reconciliation bill, amendment thereto, or conference report thereon which contains changes in Social Security benefits.<sup>1836</sup>

The Budget Enforcement Act of 1990 amended section 310(g) as follows:

(9) SECTION 310(g).—Section 310(g) of such Act is amended by striking “resolution pursuant” and inserting “joint resolution pursuant” and by striking “254(b)” and inserting “258C”.<sup>1837</sup>

The joint statement of managers accompanying the conference report on the Budget Enforcement Act of 1990 explained that bill’s treatment of Social Security:

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<sup>1834</sup> E-mail from Staff of S. Comm. on Fin. to Staff of S. Comm. on the Budget (May 9, 2021, 7:52 AM).

<sup>1835</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1047.

<sup>1836</sup> [H.R. REP. NO. 99-433](#), at 110 (1985) (Conf. Rep.).

<sup>1837</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13112(a)(9), 104 Stat. 1388, 1388-608.

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## VI. TREATMENT OF SOCIAL SECURITY

### *Current law*

Under current law, the Social Security trust funds are off-budget but are included in deficit estimates and calculations made for purposes of the sequestration process. However, Social Security benefit payments are exempt from any sequestration order.

Section 310(g) of the Congressional Budget Act of 1974 prohibits the consideration of reconciliation legislation “that contains recommendations” with respect to Social Security. (A motion to waive this point of order requires 60 votes in the Senate and a simple majority in the House.)

### *House bill*

The House bill reaffirms the off-budget status of Social Security and removes the trust funds—excluding interest receipts—from the deficit estimates and calculations made in the sequestration process. The House bill retains the current law exemption of Social Security benefit payments from any sequestration order.

The House bill creates a “fire wall” point of order (as free-standing legislation) to prohibit the consideration of legislation that would change the actuarial balance of the Social Security trust funds over a 5-year or 75-year period. In the case of legislation decreasing Social Security revenues, the prohibition would not apply if the legislation also included an equivalent increase in Medicare taxes for the period covered by the legislation.

### *Senate amendment*

The Senate amendment also reaffirms the off-budget status of Social Security and removes the trust funds from the deficit estimates and calculations made in the sequestration process. However, unlike the House bill, the Senate amendment removes the gross trust fund transactions—including interest receipts—from the sequestration deficit calculations. The Senate amendment also retains the current law exemption of Social Security benefit payments from any sequestration order.

The Senate amendment also creates a procedural fire wall to protect Social Security financing, but does so by expanding certain budget enforcement provisions of the Congressional Budget Act of 1974. The Senate amendment expands the prohibition in Section 310(g) of the Budget Act to specifically protect Social Security financing, prohibits the consideration of a reported budget resolution calling for a reduction in

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Social Security surplus, and includes Social Security in the enforcement procedures under Sections 302 and 311 of the Budget Act. The Senate amendment also requires the Secretary of Health and Human Services to provide an actuarial analysis of any legislation affecting Social Security, and generally prohibits the consideration of legislation lacking such an analysis.

For more on the budgetary treatment of Social Security under current law and historically, see SENATE COMM. ON THE BUDGET, SOCIAL SECURITY PRESERVATION ACT, S. REP. NO. 101-426. 110th Cong. 2d Sess. (1990).

*Conference agreement*

The conference agreement incorporates the Senate position on the budgetary treatment of the Social Security trust funds, reaffirming their off-budget status and removing all their transactions from the deficit estimates and calculations made in the sequestration process.

Further, the conference agreement provides that the “fire wall” procedure proposed by the House shall apply only to the House and that the “fire wall” procedures proposed by the Senate shall apply only to the Senate.<sup>1838</sup>

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<sup>1838</sup> H.R. REP. NO. 101-964, at 1160–61 (1990) (Conf. Rep.)



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**TOTAL**

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# Budgetary Limits

While Budget Act section 302 enforces the budget resolution's spending levels through committee allocations, section 311 enforces the budget resolution's aggregate amounts—its spending and revenue totals. Notably, a point of order under section 311 enforces the budget resolution's total revenue amount as a floor on the revenues that the Government should collect.

The Congressional Research Service's Jim Saturno explains:

The budget resolution provides a guideline for the overall level of revenues but not for their composition. Legislation controlling revenues is reported by the committees of jurisdiction (the House Ways and Means Committee and the Senate Finance Committee). The revenue level agreed to in the budget resolution acts as a minimum, limiting consideration of revenue legislation that would decrease revenue below that level.<sup>1839</sup>

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<sup>1839</sup> JAMES V. SATURNO, CONG. RSCH. SERV., [R46468, A BRIEF OVERVIEW OF THE CONGRESSIONAL BUDGET PROCESS](#) 5 (2020).

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The Budget Act enforces these aggregates through a point of order under section 311(a). In *Riddick's Senate Procedure*, the Parliamentarian described the point of order generally:

Compliance with congressional budgetary discipline is enforced through several points of order at various stages of the budget cycle. . . . Also, any bill, resolution or amendment that if enacted would cause the total levels of outlays or budget authority to be exceeded, or would cause the appropriate level of revenues to be less than that set out in the latest budget resolution, would be subject to a point of order.<sup>1840</sup>

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<sup>1840</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 503 (1992).

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**BUDGET-RELATED LEGISLATION  
MUST BE WITHIN  
APPROPRIATE LEVELS**

311(a)            **SEC. 311.**<sup>1841</sup>    (a)    ENFORCEMENT   OF   BUDGET  
AGGREGATES. —

311(a)(1)            (1) IN THE HOUSE OF REPRESENTATIVES.<sup>1842</sup> — Except  
as provided by **subsection (c)**,<sup>1843</sup> after the Congress has  
completed action on a **concurrent resolution on the  
budget**<sup>1844</sup> for a fiscal year, it shall not be in order in the  
House of Representatives to consider any bill, joint  
resolution, amendment, motion, or conference report  
providing **new budget authority**<sup>1845</sup> or reducing  
**revenues**,<sup>1846</sup> if —

311(a)(1)(A)            (A) the enactment of that bill or resolution as  
reported;

311(a)(1)(B)            (B) the adoption and enactment of that  
amendment; or

311(a)(1)(C)            (C) the enactment of that bill or resolution in the  
form recommended in that conference report;

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<sup>1841</sup> Congressional Budget Act of 1974 § 311 is codified as amended at [2 U.S.C. § 642](#). Congressional Budget Act of 1974 § 311 was formerly codified as 31 U.S.C. § 1332, prior to the 1982 general revision and enactment of Title 31, Money and Finance in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>1842</sup> [Congressional Budget Act of 1974 § 302\(g\)\(1\)\(B\)](#), 2 U.S.C. § 633(g)(1)(B), *supra* p. 212, provides a pay-as-you-go exception in the House of Representatives.

<sup>1843</sup> [Congressional Budget Act of 1974 § 311\(c\)](#), 2 U.S.C. § 642(c), *infra* p. 599, addresses “Exception in the House of Representatives.”

<sup>1844</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1845</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1846</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

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would cause the level of total **new budget authority**<sup>1847</sup> or total **outlays**<sup>1848</sup> set forth in the applicable **concurrent resolution on the budget**<sup>1849</sup> for the first fiscal year to be exceeded, or would cause **revenues**<sup>1850</sup> to be less than the level of total **revenues**<sup>1851</sup> set forth in that concurrent resolution for the first fiscal year or for the total of that first fiscal year and the ensuing fiscal years for which allocations are provided under **section 302(a)**,<sup>1852</sup> except when a **declaration of war by the Congress**<sup>1853</sup> is in effect.

311(a)(2) (2) IN THE SENATE. — After a **concurrent resolution on the budget**<sup>1854</sup> is agreed to, it shall not be in order<sup>1855</sup> in the Senate to consider any bill, joint resolution, amendment, motion, or **conference report**<sup>1856</sup> that —

311(a)(2)(A) (A) would cause the level of total **new budget authority**<sup>1857</sup> or total **outlays**<sup>1858</sup> set forth for the first fiscal year in the applicable resolution to be exceeded,<sup>1859</sup> or

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<sup>1847</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1848</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>1849</sup> **Congressional Budget Act of 1974 § 3(4)**, 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1850</sup> U.S. GOV’T ACCOUNTABILITY OFF., **A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS** 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1851</sup> *Id.*

<sup>1852</sup> **Congressional Budget Act of 1974 § 302(a)**, 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>1853</sup> U.S. CONST. art. I, § 8, cl. 11, provides: “Congress shall have power to . . . declare War.”

<sup>1854</sup> **Congressional Budget Act of 1974 § 3(4)**, 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1855</sup> For discussion of this point of order, see *infra* p. 575.

<sup>1856</sup> For discussion of application of this point of order to conference reports, see *infra* p. 582.

<sup>1857</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1858</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>1859</sup> The Congressional Budget Act makes no exception for very small amounts; even a “negligible” violation can subject legislation to a point of order under the Budget Act. Senate Precedent PRL19761001-001, **122 CONG. REC. 34,550–51** (Oct. 1, 1976) (point of order by Sen. Haskell under Congressional Budget Act of 1974 § 311(a)).

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311(a)(2)(B) (B) would cause **revenues**<sup>1860</sup> to be less than the level of total **revenues**<sup>1861</sup> set forth for that first fiscal year or for the total of that first fiscal year and the ensuing fiscal years in the applicable resolution for which allocations are provided under **section 302(a)**.<sup>1862</sup>

311(a)(3) (3) ENFORCEMENT OF SOCIAL SECURITY LEVELS IN THE SENATE.—After a **concurrent resolution on the budget**<sup>1863</sup> is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause a decrease in social security **surpluses**<sup>1864</sup> or an increase in social security **deficits**<sup>1865</sup> relative to the levels set forth in the applicable resolution for the first fiscal year or for the total of that fiscal year and the ensuing fiscal years for which allocations are provided under **section 302(a)**.<sup>1866</sup>

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*It shall not be in order*—In *Riddick’s Senate Procedure*, the Parliamentarian discussed precedents under section 311(a)<sup>1867</sup>:

In the House, an amendment which provided additional budget authority and caused additional budget outlays in excess of limitations contained in the concurrent resolution on the budget for a fiscal year was subject to a point of order under section 311 of the Congressional Budget Act, and this included an amendment which proposed to strike language in a bill, the adoption of which would have had this effect.<sup>[1868]</sup>

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<sup>1860</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1861</sup> *Id.*

<sup>1862</sup> *Congressional Budget Act of 1974 § 302(a)*, 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>1863</sup> *Congressional Budget Act of 1974 § 3(4)*, 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1864</sup> *Congressional Budget Act of 1974 § 3(7)*, 2 U.S.C. § 622(7), *supra* p. 58, defines “surplus.”

<sup>1865</sup> *Congressional Budget Act of 1974 § 3(6)*, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>1866</sup> *Congressional Budget Act of 1974 § 302(a)*, 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>1867</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK’S SENATE PROCEDURE* 593–94, 612–14, 621 (footnotes renumbered and reformatted); *see also id.* at 620–22.

<sup>1868</sup> 127 CONG. REC. 9315 (May 12, 1981).

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. . . .

An amendment which is so tailored as to increase budget authority at one point in a bill while decreasing it at another, and which would be in order if it were considered en bloc, if divided, will be subject to points of order in regard to those divisions which increase budget authority.<sup>[1869]</sup>

. . . .

Amendments adopted during the consideration of a bill may bring the bill into compliance with section 311 of the Congressional Budget Act of 1974 if those amendments decrease the level of new budget authority or outlays in the bill.<sup>[1870]</sup>

. . . .

If the concurrent resolution on the budget for a fiscal year has been adopted, a point of order will lie against an amendment of the House to an amendment of the Senate to an appropriations bill, if that amendment increases outlays at a time when the appropriate level of outlays for that fiscal year has been breached . . . .<sup>[1871]</sup>

. . . .

An amendment which would have required that revenue sharing payments to the States occur by the fifth day after the beginning of each quarter instead of by the fifth day after the end of the quarter was ruled out of order under section 311 of the Budget Act of 1974, since the amendment would have increased outlays for the current fiscal year at a time when the ceiling for such outlays set out in the concurrent resolution on the budget for that fiscal year had been reached.<sup>[1872]</sup>

. . . .

The Chair has sustained a point of order under section 311(a) of the Budget Act against an amendment that would have required certain off-budget borrowing by the Treasury authorized by the pending bill to be placed on budget (after a motion to waive that section of the Act failed), because that adoption of the amendment would have caused the ceiling of outlays for that fiscal year to be exceeded.<sup>[1873]</sup>

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<sup>1869</sup> *Id.* at 10,436–38 (May 20, 1981).

<sup>1870</sup> 133 CONG. REC. 56855 (daily ed. May 20, 1987).

<sup>1871</sup> 132 CONG. REC. 4775–81 (Mar. 13, 1986).

<sup>1872</sup> 129 CONG. REC. 6753 (Mar. 22, 1983).

<sup>1873</sup> 135 CONG. REC. S4115, S4121-25 (daily ed. Apr. 18, 1989).



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The Chair has sustained a point of order under sections 302(f) and 311(a) of the Budget Act against an amendment to provide funds for anti-drug programs, since the amendment would have caused breaches in the outlay allocations of several subcommittees, as well as a breach in the overall outlay ceiling for that year. An appeal from the ruling of the Chair was tabled.<sup>[1874]</sup> Later that same day, the Senate tabled a motion made by a Senator to waive all the provisions of the Budget Act for the consideration of his amendment that would have increased certain taxes, and used the resulting revenues to fund anti-drug programs. A point of order was then made and sustained under sections 302(f) and 311(a) of the Budget Act, since the increased outlays would have exceeded the allocation of such outlays to the relevant subcommittee of the Appropriations Committee, and would have breached the aggregate outlay ceiling as well.<sup>[1875]</sup>

....

An amendment in violation of section 311 of the Budget Act is subject to a point of order, even though the bill is being considered under cloture.<sup>[1876]</sup>

....

A point of order will lie against a motion to recommit a bill to a committee with instructions that the bill be reported back forthwith with specified amendments, if the effect of the motion is to produce a violation of section 311(a) of the Budget Act of 1974 (in this case to cause revenues to fall below the floor specified in the concurrent resolution on the budget for the relevant fiscal year). If such point of order were raised, a motion to waive the Budget Act could be made, and that motion would be debatable.<sup>[1877]</sup>

Elsewhere in *Riddick's Senate Procedure*, the Parliamentarian discussed precedents under this section affecting revenue bills and amendments<sup>1878</sup>:

#### **Revenue Bills and Amendments Under the Budget Act:**

....

Bills, resolutions, and amendments on revenue will be ruled out of order, if a point of order is made and sustained, to the effect that such

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<sup>1874</sup> 135 CONG. REC. S5927, S5930-32 (June 1, 1989).

<sup>1875</sup> *Id.* at S5946, S5958.

<sup>1876</sup> 124 CONG. REC. 34,786-92 (Oct. 9, 1978).

<sup>1877</sup> 129 CONG. REC. 9151 (Apr. 20, 1983).

<sup>1878</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 631-35 (1992) (footnotes renumbered and reformatted).

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proposals do not comply with the requirements of the Budget Act. Such proposed legislative measures have been ruled out of order by the Chair because they failed to comply with sections 303, 306, and 311 of the Budget Act, as follows:

. . . .

Under section 311, an amendment which would cause revenues to be less than the appropriate level set out in the budget resolution is subject to a point of order.<sup>[1879]</sup>

Amendments which would reduce revenue offered after the adoption of the concurrent resolution on the budget at a time when the revenue estimate is not as high as the level set out in the concurrent resolution are not in order.<sup>[1880]</sup> After the adoption of the budget resolution for fiscal year 1979, an amendment which would have reduced revenues for that fiscal year below the revenue floor of the budget resolution was ruled out of order on a point of order under section 311 of the Budget Act, because legislation enacted in prior years or passed during that session of Congress and sent to the President for signature, as well as the pending substitute as amended to that date, had left no room above the revenue floor.<sup>[1881]</sup> Later that same day, an amendment that would have stricken provisions of a committee substitute which proposed to repeal sections of the Internal Revenue Code (permitting the deduction from federal taxes of certain state gasoline taxes), was ruled out of order since the effect of the amendment was to lose the proposed increase in revenues.<sup>[1882]</sup>

Under section 311(a) the consideration of any amendment reducing revenues even negligibly is subject to a point of order if estimated revenues for the fiscal year in question are below the appropriate level set out in the budget resolution for that year.<sup>[1883]</sup>

The Senate has by a three-fifths majority waived section 311 of the Congressional Budget Act for the consideration of a committee amendment to a supplemental appropriations bill which would limit the use of funds in the instant or any other act for the purpose of implementing a certain Internal Revenue Service regulation with a resulting loss of revenues in a fiscal year at a time when revenues for that fiscal year were below the level set out in the applicable budget resolution for that year.<sup>[1884]</sup>

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<sup>1879</sup> 124 CONG. REC. 34,772–75 (Oct. 9, 1978).

<sup>1880</sup> 122 CONG. REC. 34,554–55 (Oct. 1, 1976).

<sup>1881</sup> 124 CONG. REC. 34,772–75 (Oct. 9, 1978).

<sup>1882</sup> *Id.* at 34,786–92.

<sup>1883</sup> 122 CONG. REC. 34,554–57 (Oct. 1, 1976).

<sup>1884</sup> 132 CONG. REC. 12,731 (June 5, 1986).

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....

When Congress has adopted the concurrent resolution on the budget for a fiscal year required by the Congressional Budget Act of 1974, it is not in order to consider an amendment that would result in a loss of revenue for that fiscal year if revenues for that year are at or below the appropriate level set out in that resolution. However, a bill that was revenue neutral as reported will not be subject to a point of order under section 311 of the Congressional Budget Act of 1974 as reducing revenues below the level set forth in the concurrent resolution on the budget adopted by Congress for that fiscal year, because of the adoption of an amendment which would reduce revenues.<sup>[1885]</sup>

....

After the adoption of the concurrent resolution on the budget for a fiscal year, a point of order would lie against a conference report which resulted in a loss of revenues for a fiscal year if the level of revenues for that fiscal year was at or below the level set out in the most recently agreed to concurrent resolution on the budget for that fiscal year.<sup>[1886]</sup>

A conference report which would result in a loss in revenues for a fiscal year for which the concurrent resolution on the budget had been adopted, is subject to a point of order under section 311 of the Congressional Budget Act of 1974, when revenues for that fiscal year are below the level for such revenues contained in that budget resolution. A conference report which would result in a change in revenues for a fiscal year is subject to a point of order under section 303(a) of the Congressional Budget Act of 1974, if the concurrent resolution for that fiscal year had not been adopted by Congress.<sup>[1887]</sup>

An amendment which would have delayed the scheduled implementation of the withholding of taxes on interest and dividend income was ruled out of order under section 311 of the Budget Act of 1974, since the effect of the amendment would have been to reduce revenues for a fiscal year for which the concurrent resolution on the budget had been adopted at a time when revenues for that year were at or below the floor set by that resolution.<sup>[1888]</sup>

An amendment which would repeal a provision of the Internal Revenue Code not currently producing revenues (and which therefore

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<sup>1885</sup> 131 CONG. REC. 17,301–02, 17,307 (June 26, 1985).

<sup>1886</sup> *Id.* at 25,358 (Oct. 1, 1985).

<sup>1887</sup> *Id.* at 12,354 (May 16, 1985).

<sup>1888</sup> 129 CONG. REC. 6573 (Mar. 22, 1983).

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appeared not to result in actual revenue losses at the time of its proposal) would violate section 311 of the Congressional Budget Act if the effect of that amendment was to cause anticipated revenues to fall below the level set out in the budget resolutions for years for which the required concurrent resolution on the Budget had been adopted.<sup>[1889]</sup>

. . . .

After the concurrent resolution on the budget has been adopted for a fiscal year, an amendment to strike from a bill a provision which raises revenues to offset the revenue loss under other provisions of the bill, the effect of which would be to reduce revenues below the appropriate level of total revenues set forth in the budget resolution, is subject to a point of order under the Congressional Budget Act of 1974.<sup>[1890]</sup>

The Chair sustained a point of order made under section 311(a) of Budget Act, after a motion to waive that section had failed to obtain the 60 votes necessary for adoption (56 yeas, 42 nays), against an amendment which proposed to delay for one year the effective date of a section of the Internal Revenue Code, which was producing revenues in the current fiscal year, since this would have caused revenues to fall further below the revenue floor for that fiscal year.<sup>[1891]</sup>

The Chair sustained a point of order under section 311(a) of the Budget Act (after a motion to waive that section was defeated), against an amendment to delay for one year the implementation of medicare catastrophic coverage, because the adoption of that amendment would have increased the amount by which revenues were below the level specified in the budget resolution for that fiscal year.<sup>[1892]</sup>

The Senate has waived the provisions of titles III and IV of the Budget Act, after a point of order was made under section 311(a) of the Act against the consideration of a bill (that had been introduced and placed on the Calendar without being referred to a committee) which would have caused a further breach in the revenue floor for that fiscal year.<sup>[1893]</sup>

A point of order will lie against a motion to recommit a bill to a committee with instructions that the bill be reported back forthwith with specified amendments, if the effect of the motion is to produce a violation of section 311(a) of the Budget Act of 1974 (in this case to cause revenues to fall below the floor specified in the concurrent resolution on the budget

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<sup>1889</sup> 132 CONG. REC. 18,477 (July 31, 1986).

<sup>1890</sup> 134 CONG. REC. 22,829 (Sept. 8, 1988).

<sup>1891</sup> 135 CONG. REC. 6123–28 (Apr. 12, 1989).

<sup>1892</sup> *Id.* at 16,621–22, 16,626–36 (July 27, 1989).

<sup>1893</sup> *Id.* at 23,751, 23,759 (Oct. 6, 1989).

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for the relevant fiscal year). If such point of order were raised, a motion to waive the Budget Act could be made, and that motion would be debatable.<sup>[1894]</sup>

The Parliamentarian's office has also noted as a precedent an instance of a point of order under this subsection, writing: "The Senate rejected a motion to waive all applicable budget discipline for the purposes of a motion to concur with an amendment in a House amendment to a Senate amendment to a House bill, and then by unanimous consent, the motion to concur with an amendment was withdrawn."<sup>1895</sup> The Parliamentarian's office recorded:

On June 16, 2010, the Senate was considering the House message to accompany H.R. 4213, Unemployment Compensation Extension Act, 2010, to which the House concurred in the Senate amendment with an amendment. Mr. Baucus (of Montana) moved to concur in the House amendment with Amdt. No. 4301. Mr. Gregg (of New Hampshire) raised a point of order under section 311(a)(2) of the Congressional Budget Act for exceeding aggregate spending levels. Mr. Baucus moved to waive all applicable budget discipline, and the motion was rejected by the Senate by a vote of 45 yeas to 52 nays. Under a previous order obtained on June 15, since the motion to waive failed, the motion to concur with an amendment was withdrawn.

Mr. GREGG. . . . So I raise a point of order that the pending amendment offered by the Senator from Montana would cause the aggregate level of budget authority and outlays for fiscal year 2010, as set out in the most recently agreed to concurrent resolution on the budget, S. Con. Res. 13, to be exceeded. Therefore, I raise a point of order under section 311(a)(2) of the Congressional Budget Act of 1974.

The ACTING PRESIDENT PRO TEMPORE [Mr. Udall of New Mexico].  
The Senator from Montana.

Mr. BAUCUS. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974 and section 4(g)(3) of the Statutory Pay-As-You-Go Act of 2010, I move to waive all applicable sections of those acts and applicable budget resolutions for purposes of the pending amendment, and I ask for the yeas and nays.

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<sup>1894</sup> 129 CONG. REC. 9151 (Apr. 20, 1983).

<sup>1895</sup> Off. of the Sec'y of the Senate, [Senate Precedent PRL20100616-001](#).

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The ACTING PRESIDENT PRO TEMPORE. Is there a sufficient second? There appears to be a sufficient second. The question is on agreeing to the motion. The clerk will call the roll.

\* \* \*

The PRESIDING OFFICER [Mr. Burris of Illinois]. On this vote, the yeas are 45, the nays are 52. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Under the previous order, the motion to concur with amendment No. 4301 to the House amendment to the Senate amendment to H.R. 4213 is withdrawn.<sup>1896</sup>

During consideration of the American Health Care Act of 2017, the Presiding Officer sustained a point of order under this subparagraph<sup>1897</sup> against Majority Leader McConnell’s amendment<sup>1898</sup> that included, among other things, “hundreds of billions” in tax cuts.<sup>1899</sup>

*Conference report*—In *Riddick’s Senate Procedure*, the Parliamentarian described how this point of order applies to conference reports<sup>1900</sup>:

A conference report which would cause the appropriate level of total budget outlays set forth in the concurrent resolution on the budget for a fiscal year to be exceeded is subject to a point of order under section 311(a) of the Congressional Budget Act of 1974.<sup>[1901]</sup>

After the adoption of the concurrent resolution on the budget for a fiscal year, a point of order would lie against a conference report which resulted in a loss of revenues for that fiscal year if the level of revenues for that fiscal year was below the level set out in the most recently agreed to concurrent resolution on the budget for that fiscal year.<sup>[1902]</sup>

A conference report which would result in a loss in revenues for a fiscal year for which the concurrent resolution on the budget had been adopted, is subject to a point of order under section 311 of the Congressional Budget

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<sup>1896</sup> *Id.* (quoting 156 CONG. REC. 10,781–82 (June 16, 2010)).

<sup>1897</sup> 163 CONG. REC. S4183 (daily ed. July 25, 2017) (point of order by Sen. Murray against McConnell amendment no. 270).

<sup>1898</sup> McConnell amendment no. 270. *Id.* at S4200–18.

<sup>1899</sup> *Id.* at S4179, S4181 (statements of Sens. Markey & Merkley).

<sup>1900</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, RIDDICK’S SENATE PROCEDURE 603 (1992) (footnotes renumbered and reformatted).

<sup>1901</sup> 133 CONG. REC. 32,022 (Nov. 17, 1987).

<sup>1902</sup> 131 CONG. REC. 25,358 (Oct. 1, 1985).

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Act of 1974, when revenues for that fiscal year are below the level for such revenues contained in that budget resolution.<sup>1903</sup>

*Enforcement of Social Security levels in the Senate*—The Budget Committee Deputy Staff Director has explained how the Committee has enforced this paragraph:

For purposes of 311(a)(3), we don't enforce secondary effects. . . . [W]e only apply the point of order to the direct effect of changes to Social Security. My expectation is that this practice is to avoid a situation where the indirect effects of a measure trigger a point of order in some cases but not in other cases. Under Chairman Enzi, the [Republicans] took a different approach and only applied the exception for indirect effects related changes to Chapter 1 of the [Internal Revenue Code]. That is, in some cases, a bill that would result in lower [Social Security] Trust Fund balances because of indirect effects would be subject to a point of order and in other cases, such a bill would not.<sup>1904</sup>

Budget Counsel prepared the following summary of 311(a)(3) enforcement during the era of Senator Mike Enzi's chairmanship. This enforcement differed from that under Budget Committee Chairs Kent Conrad and Patty Murray.

**Social Security Aggregate Levels**

**311(a)(3)**—Point of order against any bill, joint resolution, amendment, motion or conference report that would cause a decrease in social security surpluses or an increase in social security deficits (i.e. reduces revenue to, or increases outlays from, the social security trust fund) relative to levels in the current budget resolution for the current year, the five-year window, and the ten-year window. **311(b)(2) Exception**—For purposes of (a)(3), changes to chapter 1 of the IRC are not treated as affecting social security revenues or outlays. **Exception to exception (313(a)(3) retriggered)**—The provision changes the income tax treatment of social security benefits.

- Chapter 1 of the IRC is titled "Normal Taxes and Surtaxes" and encompasses IRC Sections 1–1400U3. Therefore, if the legislative text under consideration changes a code section within this number range it should fit the chapter 1 exception.

311(a)(3) should only apply when there are direct changes to the Social Security Act, not when secondary effects create outlay or revenue changes.

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<sup>1903</sup> See 131 CONG. REC. 12,354 (May 16, 1985).

<sup>1904</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Off-Budget Effects in America Competes (Mar. 8, 2022, 7:22 PM).

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(See email from John [Richter] to Mike [Jones] on January 30, 2015 at 10:54am). The chapter 1 exception is sometimes discussed in terms of “first order” and “second order” effects. In an email discussing the EXPIRE Act in May 2014, the extension of transit benefits created revenue losses for the Social Security trust fund. However, this revenue loss was created by a “second order” effect relating to the decrease in the amount of payroll taxes collected from wage compensation and 311(a)(3) did not apply. (See email from Robert [Etter] to Tori [Gorman] on May 15, 2014, at 11:19am). Note: the transit benefit is contained in IRC Sec. 132 and fit the chapter 1 exception.

### **More examples**

- Consolidated Appropriations Act of 2016 – (H.R. 2029, signed into law on December 18, 2015) – This bill contained a provision delaying the implementation of the Cadillac tax (IRC chapter 43) for two years and a tax extender related to the “treatment of certain persons as employers with respect to motion picture projects” (IRC chapter 25). The majority indicated that these two provisions violated 311(a)(3) and did not fall under the Chapter 1 exception. (See email from Tori to Robert on December 17, 2015, at 4:03pm) (Note: We did not follow up regarding this issue, but the Cadillac tax was litigated under 310(g) in HCERA.)
- Bipartisan Budget Act of 2015 – (H.R. 1314, signed into law on November 2, 2015) – This bill reallocated payroll tax from the OASI trust fund to the DI trust fund. A 311(a)(3) point of order lied against this provision because the reallocation resulted in less total interest earned by both trust funds. (Note: there were two approaches CBO could have used in regards to scoring this provision; the alternative approach would not have resulted in a point of order).
- Surface Transportation and Veterans Health Care Choice Improvement Act (H.R. 3236, signed into law on July 31, 2015) – This bill did not violate 311(a)(3) even though it had off-budget effects from changes related to eligibility for health savings accounts (HSA). The HSA provision amended IRC Section 223(c)(1), and thus fit the chapter 1 exception. (See email from Tori [Gorman] to Robert [Etter] on July 30, 2015 at 11:02am).
- H.R. 240 (House-passed DHS appropriations bill that contained an immigration rider) – The bill implicated 311(a)(3) because it had off-budget effects related to the prohibition of funds being used to implement the Deferred Action for Childhood Arrivals (DACA) program. Sec. 580 contained language that said, “No funds, resources . . . may be used . . . for any alien requesting consideration of deferred action for childhood arrivals . . .” The bill did not make



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changes to the IRC. In their unofficial opinion, the majority believed that 311(a)(3) applied. (See email from Tori [Gorman] to Robert [Etter] on February 2, 2015 at 5:18pm). (Note the final bill did not contain this immigration rider).

- CURES (PL 114-255, signed into law on December 13, 2016) – The majority called the 311(a)(3) point of order on this bill. We don't totally agree, but did not weigh in strongly in the end. Sec. 18001 generated off-budget effects. While Sec 18001(a)(2) and Sec. 18001(a)(3) amended chapter 1 of the IRC, these sections are not what generated the off-budget effects of the bill, and therefore the provision did not fall into the exception. The off-budget effects came from changes in the amount of income and FICA-excluded benefits employers provide, due to their ability to provide small business HRAs. (See email from JCT to Marissa Barrera on December 5, 2016, at 4:51pm).<sup>1905</sup>

***Legislative History*** – Section 311(a) appeared in the original Budget Act as follows:

NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY AND REVENUE  
LEGISLATION MUST BE WITHIN APPROPRIATE LEVELS

SEC. 311. (a) LEGISLATION SUBJECT TO POINT OF ORDER. – After the Congress has completed action on the concurrent resolution on the budget required to be reported under section 310(a) for a fiscal year, and, if a reconciliation bill or resolution, or both, for such fiscal year are required to be reported under section 310(c), after that bill has been enacted into law or that resolution has been agreed to, it shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or amendment providing additional new budget authority for such fiscal year, providing new spending authority described in section 401(c)(2)(C) to become effective during such fiscal year, or reducing revenues for such fiscal year, or any conference report on any such bill or resolution, if –

- (1) the enactment of such bill or resolution as reported;
- (2) the adoption and enactment of such amendment; or
- (3) the enactment of such bill or resolution in the form recommended in such conference report;

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<sup>1905</sup> Staff of S. Comm. on the Budget, Social Security Budget Points of Order, in E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Off-Budget Effects in America Competes (Mar. 8, 2022, 7:22 PM).

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would cause the appropriate level of total new budget authority or total budget outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of revenues set forth in such concurrent resolution.<sup>1906</sup>

The joint statement of managers accompanying the conference report on the Budget Act explained:

SECTION 311. LIMITATION ON BUDGET AUTHORITY, ENTITLEMENT, AND  
REVENUE LEGISLATION

The Senate amendment provided that after adoption of all regular appropriations and a required reconciliation bill, Congress could not consider budget authority legislation in excess of the appropriate levels in the most recent concurrent resolution.

The conference substitute provides that after adoption of the second concurrent resolution and completion of the reconciliation process, it shall not be in order to consider any new budget authority or entitlement measure that would cause the appropriate level of total budget authority or outlays in the most recent concurrent resolution to be exceeded. Nor would it be in order to consider a measure that would reduce total revenues below the appropriate levels in the budget resolution. The managers anticipate that there will be instances in which Congress may deem it appropriate to revise its earlier spending or revenue determinations. But such revisions should be made in the context of the congressional budget process and with full awareness of their relationship to the levels set forth in the latest budget resolution.

Although there is no specific mention on the consideration of tax expenditure measures, the managers note that after completion of the reconciliation process, Congress may not consider tax expenditures legislation that would have the effect of reducing total revenues below the appropriate level of the most recent concurrent resolution.<sup>1907</sup>

The Balanced Budget and Emergency Deficit Control Act of 1985 amended section 311(a) to read as follows:

NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, AND REVENUE  
LEGISLATION MUST BE WITHIN APPROPRIATE LEVELS

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<sup>1906</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 311(a), 88 Stat. 297, 316 (amended 1985, 1987, 1990 & 1997).

<sup>1907</sup> H.R. REP. NO. 93-1101, at 64 (1974) (Conf. Rep.).

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SEC. 311. (a) LEGISLATION SUBJECT TO POINT OF ORDER.—Except as provided by subsection (b), after the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or amendment providing new budget authority for such fiscal year, providing new entitlement authority effective during such fiscal year, or reducing revenues for such fiscal year, or any conference report on any such bill or resolution, if —

(1) the enactment of such bill or resolution as reported;

(2) the adoption and enactment of such amendment; or

(3) the enactment of such bill or resolution in the form recommended in such conference report;

would cause the appropriate level of total new budget authority or total budget outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues set forth in such concurrent resolution or, in the Senate, would otherwise result in a deficit for such fiscal year that exceeds the maximum deficit amount specified for such fiscal year in section 3(7) (except to the extent that paragraph (1) of section 301(i) or section 304(b), as the case may be, does not apply by reason of paragraph (2) of such subsection).<sup>1908</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Act of 1985 explained:

*Section 311. New Budget Authority, New Spending Authority, and Revenue Legislation Must Be Within Appropriate Levels*

*(a) Legislation Subject to Point of Order.*— This subsection prohibits consideration in the House or the Senate of legislation providing budget authority or entitlement authority, or reducing revenues for the fiscal year to which the most recently agreed to budget resolution applies if enactment of such legislation would cause the totals for such authorities, or for revenues, or the total for budget outlays set forth in such budget resolution to be breached. A point of order also lies in the Senate against legislation that would cause the maximum deficit amount to be exceeded.

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<sup>1908</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1055–56.

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Section 311(a) applies immediately upon adoption of the budget resolution.<sup>1909</sup>

The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 amended section 311(a) as follows:

(e) SECTION 311(a) POINT OF ORDER IN THE SENATE. —

(1) Section 311(a) of the Congressional Budget Act of 1974 is amended by striking out all after “in the Senate,” and by inserting in lieu thereof the following:

“would otherwise result in a deficit for such fiscal year that —

“(A) for fiscal year 1989 or any subsequent fiscal year, exceeds the maximum deficit amount specified for such fiscal year in section 3(7); and

“(B) for fiscal year 1988 or 1989, exceeds the amount of the estimated deficit for such fiscal year based on laws and regulations in effect on January 1 of the calendar year in which such fiscal year begins as measured using the budget baseline specified in section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 minus \$23,000,000,000 for fiscal year 1988 or \$36,000,000,000 for fiscal year 1989;

except to the extent that paragraph (1) of section 301(i) or section 304(b), as the case may be, does not apply by reason of paragraph (2) of such subsection.”<sup>1910</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 explained:

Section 311(a) of the 1974 Budget Act is amended to provide that in the Senate legislation will not be subject to a point of order for causing a violation of the maximum deficit amount if the legislation would not cause the amount of deficit reduction to be less than \$23 billion for FY 1988 or \$36 billion for FY 1989. Sections 302 and 311 will continue to prohibit consideration of legislation which would cause a breach of the appropriate

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<sup>1909</sup> H.R. REP. NO. 99-433, at 110 (1985) (Conf. Rep.).

<sup>1910</sup> Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 106(e), 101 Stat. 754, 781.

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levels of budget authority, outlays, or revenues provided in the applicable budget resolution. Determinations of the amount of deficit reduction, for purposes of these sections, would be based on estimates provided by the House and Senate Budget Committees.<sup>1911</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 also reported:

- Enforcement of Spending and Deficit Levels in Budget Resolutions

*Current Law*

The budget resolution adopted each year by Congress sets aggregate spending and revenue levels for the next three fiscal years. Congress enforces the spending and revenue aggregates in the budget resolution largely through points of order established in Title III of the 1974 Budget Act.

Under Section 311(a) of the Act, spending or revenue legislation may not be considered in the House or Senate if it would cause the aggregate levels in the budget resolution to be breached, or, in the Senate only, if it would cause the maximum deficit amount for the fiscal year to be exceeded. However, Section 311(b) provides an exception, in the House only, to this point of order—the “Fazio exception”—which permits the House to consider spending legislation that violates aggregate spending levels in the budget resolution so long as the new discretionary budget authority or entitlement authority provided in the measure is within the appropriate committee’s allocation of spending under the budget resolution.

*Senate Amendment*

The Senate amendment (Section 222) repeals Section 311(b) of the Act, the Fazio exception, and amends Section 311(a) to establish in the House the point of order against legislation that would cause the maximum deficit amount for the fiscal year to be exceeded.

*Conference Agreement*

The Senate recedes from its amendment.<sup>1912</sup>

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<sup>1911</sup> H.R. REP. NO. 100-313, at 45 (1987) (Conf. Rep.).

<sup>1912</sup> H.R. REP. NO. 100-313, at 63 (1987) (Conf. Rep.).

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The Budget Enforcement Act of 1990 amended section 311(a) in a number of instances, including:

(10) SECTION 311(a).—Section 311(a) of such Act is amended by striking “or, in the Senate” and all that follows thereafter through “paragraph (2) of such subsection” and inserting “except in the case that a declaration of war by the Congress is in effect”.<sup>1913</sup>

And the Budget Enforcement Act of 1990 further amended section 311(a) as follows:

**SEC. 13207. STANDARDIZATION OF LANGUAGE REGARDING POINTS OF ORDER.**

(a) IN GENERAL.—The Congressional Budget Act of 1974 is amended—

(1) ...

...

(E) in section 311(a), by—

(i) striking “bill, resolution, or amendment” and inserting “bill, joint resolution, amendment, motion, or conference report”; and

(ii) striking “or any conference report on any such bill or resolution”;<sup>1914</sup>

And the Budget Enforcement Act of 1990 further amended section 311(a) as follows:

(d) POINT OF ORDER UNDER SECTION 311.—(1) Subsection (a) of section 311(a) of the Congressional Budget Act of 1974 is redesignated as subsection (a)(1) and paragraphs (1), (2), and (3) are redesignated as subparagraphs (A), (B), and (C).

(2) Section 311(a) of such Act is amended by inserting at the end the following new paragraph:

“(2)(A) After the Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the

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<sup>1913</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13112(a)(10), 104 Stat. 1388, 1388-608.

<sup>1914</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13207(a), 104 Stat. 1388, 1388-617.

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Senate to consider any bill, resolution, amendment, motion, or conference report that would cause the appropriate level of total new budget authority or total budget outlays or social security outlays set forth for the first fiscal year in the most recently agreed to concurrent resolution on the budget covering such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues (or social security revenues to be less than the appropriate level of social security revenues) set forth for the first fiscal year covered by the resolution and for the period including the first fiscal year plus the following 4 fiscal years in such concurrent resolution.

“(B) In applying this paragraph –

“(i)(I) estimated social security outlays shall be deemed to be reduced by the excess of estimated social security revenues (including those provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) over the appropriate level of Social Security revenues specified in the most recently agreed to concurrent resolution on the budget;

“(II) estimated social security revenues shall be deemed to be increased to the extent that estimated social security outlays are less (taking into account the effect of the bill, resolution, amendment, or conference report to which this subsection is being applied) than the appropriate level of social security outlays in the most recently agreed to concurrent resolution on the budget; and

“(ii)(I) estimated Social Security outlays shall be deemed to be increased by the shortfall of estimated social security revenues (including Social Security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) below the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget; and

“(II) estimated social security revenues shall be deemed to be reduced by the excess of estimated social security outlays (including social security outlays provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) above the appropriate level of social security outlays specified in the most recently adopted concurrent resolution on the budget; and

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“(iii) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits. The chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to section 302(b).”<sup>1915</sup>

The Budget Enforcement Act of 1990 also included this related provision in a section entitled “Temporary Amendments to the Congressional Budget Act of 1974”<sup>1916</sup> that was to “apply to fiscal years 1991 to 1995”<sup>1917</sup>:

**“SEC. 605. APPLICATION OF SECTION 311; POINT OF ORDER.**

“(a) APPLICATION OF SECTION 311(a).—(1) In the House of Representatives, in the application of section 311(a)(1) to any bill, resolution, amendment, or conference report, reference in section 311 to the appropriate level of total budget authority or total budget outlays or appropriate level of total revenues set forth in the most recently agreed to concurrent resolution on the budget for a fiscal year shall be deemed to be a reference to the appropriate level for that fiscal year and to the total of the appropriate level for that year and the 4 succeeding years.

“(2) In the Senate, in the application of section 311(a)(2) to any bill, resolution, motion, or conference report, reference in section 311 to the appropriate level of total revenues set forth in the most recently agreed to concurrent resolution on the budget for a fiscal year shall be deemed to be a reference to the appropriate level for that fiscal year and to the total of the appropriate levels for that year and the 4 succeeding years.

“(b) MAXIMUM DEFICIT AMOUNT POINT OF ORDER IN THE SENATE.— After Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that would result in a deficit for

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<sup>1915</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13303(d), 104 Stat. 1388, 1388-626 to 1388-627.

<sup>1916</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13111, 104 Stat. 1388, 1388-602.

<sup>1917</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13111, 104 Stat. 1388, 1388-607 (new § 607).



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the first fiscal year covered by that resolution that exceeds the maximum deficit amount specified for such fiscal year in section 601(a).<sup>1918</sup>

The joint statement of managers accompanying the conference report on the Budget Enforcement Act of 1990 explained generally:

IX. ADDITIONAL CHANGES TO THE CONGRESSIONAL BUDGET AND  
IMPOUNDMENT CONTROL ACT OF 1974

*Current law*

The Congressional Budget and Impoundment Control Act of 1974, as amended, provides for the adoption each year of a concurrent resolution on the budget setting forth spending, deficit, and revenue levels. The budget resolution is enforced principally through points of order against legislation violating budget resolution spending, revenue, and deficit levels, and through reconciliation instructions to congressional committees. Budget resolutions include budget levels for three fiscal years, but only the first year levels are binding (i.e., enforceable by points of order).

The budget resolution may not provide for a deficit in excess of the Gramm-Rudman-Hollings deficit target for the fiscal year. There are no other restrictions on congressional discretion in setting budget resolution levels under current law.

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*House bill*

The House bill amends the Concessional Budget Act to establish procedures for enforcing the discretionary spending limits established for fiscal years 1991–1995 through action each year on the budget resolution. Through fiscal year 1995, budget resolutions are required to cover five fiscal years.

The House bill also establishes a procedure for automatic reconciliation instructions to the tax committees should legislation be enacted reducing revenues without an offset.

The House provisions are enacted as temporary amendments to the 1974 Budget Act, generally expiring at the end of fiscal year 1995.

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<sup>1918</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13111, 104 Stat. 1388, 1388-606.

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*Senate amendment*

The Senate amendment also expands 1974 Budget Act enforcement procedures to ensure compliance with the discretionary spending limits and pay-as-you-go requirements to assure that the 5-year, \$500 billion deficit reduction plan is implemented and maintained. In addition, the Senate amendment establishes new timetables for congressional and executive budget actions, strengthens and permanently codifies the Byrd Rule on extraneous matter, and makes other conforming changes in the 1974 Budget Act.

The Senate amendment makes permanent changes in the 1974 Budget Act.

*Conference agreement*

The conference agreement includes a number of budget process changes. It makes temporary changes in the Congressional Budget Act to create 5-year budget resolutions that would be enforced by points of order against exceeding committee allocations for both the first year and the total of the 5 fiscal years covered by the budget resolution. Section 601(b) of the conference agreement also creates temporary points of order in the Senate against violating the discretionary spending limits.

. . . . The conference agreement standardizes the language of points of order . . . .<sup>1919</sup>

The Balanced Budget Act of 1997 amended section 311(a) to read as it does now:

BUDGET-RELATED LEGISLATION MUST BE WITHIN APPROPRIATE  
LEVELS

SEC. 311. (a) ENFORCEMENT OF BUDGET AGGREGATES. —

(1) IN THE HOUSE OF REPRESENTATIVES. — Except as provided by subsection (c), after the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in the House of Representatives to consider any bill, joint resolution, amendment, motion, or conference report providing new budget authority or reducing revenues, if —

(A) the enactment of that bill or resolution as reported;

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<sup>1919</sup> H.R. REP. NO. 101-964, at 1169–70 (1990) (Conf. Rep.)

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(B) the adoption and enactment of that amendment; or

(C) the enactment of that bill or resolution in the form recommended in that conference report;

would cause the level of total new budget authority or total outlays set forth in the applicable concurrent resolution on the budget for the first fiscal year to be exceeded, or would cause revenues to be less than the level of total revenues set forth in that concurrent resolution for the first fiscal year or for the total of that first fiscal year and the ensuing fiscal years for which allocations are provided under section 302(a), except when a declaration of war by the Congress is in effect.

(2) IN THE SENATE. — After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that —

(A) would cause the level of total new budget authority or total outlays set forth for the first fiscal year in the applicable resolution to be exceeded; or

(B) would cause revenues to be less than the level of total revenues set forth for that first fiscal year or for the total of that first fiscal year and the ensuing fiscal years in the applicable resolution for which allocations are provided under section 302(a).

(3) ENFORCEMENT OF SOCIAL SECURITY LEVELS IN THE SENATE. — After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause a decrease in social security surpluses or an increase in social security deficits relative to the levels set forth in the applicable resolution for the first fiscal year or for the total of that fiscal year and the ensuing fiscal years for which allocations are provided under section 302(a).<sup>1920</sup>

The Balanced Budget Act of 1997 also included this related provision, called the Fazio Exception:

(d) PAY-AS-YOU-GO EXCEPTION IN THE HOUSE. — Section 302(g) of the Congressional Budget Act of 1974 is amended to read as follows:

“(g) PAY-AS-YOU-GO EXCEPTION IN THE HOUSE. —

“(1) IN GENERAL. — (A). . . .

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<sup>1920</sup> [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10112, 111 Stat. 251, 686–87.

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“ . . . .

“(B) Section 311(a), as that section applies to revenues, shall not apply to any bill, joint resolution, amendment thereto, or conference report thereon if, for each fiscal year covered by the most recently agreed to concurrent resolution on the budget –

“(i) the enactment of that bill or resolution as reported;

“(ii) the adoption and enactment of that amendment; or

“(iii) the enactment of that bill or resolution in the form recommended in that conference report,

would not increase the deficit, and, if the sum of any outlay reductions provided in legislation already enacted during the current session (when added to outlay reductions, if any, in excess of any revenue reduction provided by the legislation proposed for consideration) is at least as great as the sum of the amount, if any, by which the aggregate level of Federal outlays should be reduced as required by that concurrent resolution and the amount, if any, by which outlays are to be reduced pursuant to pay-as-you-go procedures under section 301(b)(8), if included in that concurrent resolution.<sup>1921</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget Act of 1997 explained:

*13. Amendments to section 311 of the Congressional Budget Act*

HOUSE BILL (SECTION 11111)

This section modifies section 311, which enforces the budget resolution by prohibiting the consideration of legislation that exceeds its aggregate spending levels or reduces revenues below its revenue floor.

It eliminates references in section 311 to new entitlement authority. It clarifies that the exception under 303 for legislation providing new budget authority applies only to advanced discretionary budget authority – not mandatory spending.

This section also preserves the so-called Fazio exception in the House that allows appropriation measures to exceed the aggregate ceiling on new

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<sup>1921</sup> [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10106(d), 111 Stat. 251, 683.

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budget authority or outlays if they do not exceed the Appropriations Committee's applicable allocation.

Finally, this section eliminates a redundant point of order in the Senate and clarifies the Social Security "firewall" point of order, making its application more clear.

SENATE AMENDMENT (SECTION 1609)

The Senate amendment is identical to the House bill.

CONFERENCE AGREEMENT (SECTION 10112)

The Conference agreement reflects the House bill with modifications. The Conference agreement provides that the spending and revenue levels are enforced for the first year covered by the budget resolution. The Conference agreement also provides that the revenue level is also enforced for the same multiyear period covered by the allocations provided in a conference report accompanying a budget resolution, which is at least 5 years.<sup>1922</sup>

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<sup>1922</sup> [H.R. REP. NO. 105-217](#), at 991 (1997) (Conf. Rep.).

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311(b) (b) SOCIAL SECURITY LEVELS. —

311(b)(1) (1) IN GENERAL.—For purposes of subsection (a)(3),<sup>1923</sup> social security **surpluses**<sup>1924</sup> equal the excess of social security **revenues**<sup>1925</sup> over social security **outlays**<sup>1926</sup> in a fiscal year or years with such an excess and social security **deficits**<sup>1927</sup> equal the excess of social security **outlays**<sup>1928</sup> over social security **revenues**<sup>1929</sup> in a fiscal year or years with such an excess.

311(b)(2) (2) TAX TREATMENT.—For purposes of subsection (a)(3),<sup>1930</sup> no provision of any legislation involving a change in **chapter 1 of the Internal Revenue Code of 1986**<sup>1931</sup> shall be treated as affecting the amount of social security **revenues**<sup>1932</sup> or **outlays**<sup>1933</sup> unless that provision changes the income tax treatment of social security benefits.

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<sup>1923</sup> Congressional Budget Act of 1974 § 311(a)(3), 2 U.S.C. § 642(a)(3), *supra* p. 575, addresses “Enforcement of social security levels in the Senate.”

<sup>1924</sup> Congressional Budget Act of 1974 § 3(7), 2 U.S.C. § 622(7), *supra* p. 58, defines “surplus.”

<sup>1925</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1926</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>1927</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>1928</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>1929</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1930</sup> Congressional Budget Act of 1974 § 311(a)(3), 2 U.S.C. § 642(a)(3), *supra* p. 575, addresses “Enforcement of social security levels in the Senate.”

<sup>1931</sup> The Budget Act here refers to subtitle A, chapter 1, *Internal Revenue Code of 1986 §§ 1–1400Z-2*, 26 U.S.C. §§ 1–1400Z-2, which address “Normal Taxes and Surtaxes.”

<sup>1932</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1933</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

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311(c) (c) EXCEPTION IN THE HOUSE OF REPRESENTATIVES.—  
**Subsection (a)(1)**<sup>1934</sup> shall not apply in the House of  
Representatives to any bill, joint resolution, or  
amendment that provides **new budget authority**<sup>1935</sup> for a  
fiscal year or to any conference report on any such bill or  
resolution, if —

311(c)(1) (1) the enactment of that bill or resolution as  
reported;

311(c)(2) (2) the adoption and enactment of that amendment;  
or

311(c)(3) (3) the enactment of that bill or resolution in the  
form recommended in that conference report;

would not cause the appropriate allocation of **new budget  
authority**<sup>1936</sup> made pursuant to **section 302(a)**<sup>1937</sup> for that  
fiscal year to be exceeded.

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The joint statement of managers accompanying the conference report on  
the Balanced Budget and Emergency Deficit Control Reaffirmation Act of  
1987 reported:

1. Enforcement of Spending and Deficit Levels in Budget  
Resolutions

*Current Law*

The budget resolution adopted each year by Congress sets aggregate  
spending and revenue levels for the next three fiscal years. Congress  
enforces the spending and revenue aggregates in the budget resolution  
largely through points of order established in Title III of the 1974 Budget  
Act.

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<sup>1934</sup> **Congressional Budget Act of 1974 § 311(a)(1)**, 2 U.S.C. § 642(a)(1), *supra* p. 573, addresses  
“Enforcement of Budget Aggregates” “In the House of Representatives.”

<sup>1935</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget  
authority.”

<sup>1936</sup> *Id.*

<sup>1937</sup> **Congressional Budget Act of 1974 § 302(a)**, 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee  
Spending Allocations.”

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Under Section 311(a) of the Act, spending or revenue legislation may not be considered in the House or Senate if it would cause the aggregate levels in the budget resolution to be breached, or, in the Senate only, if it would cause the maximum deficit amount for the fiscal year to be exceeded. However, Section 311(b) provides an exception, in the House only, to this point of order—the “Fazio exception”—which permits the House to consider spending legislation that violates aggregate spending levels in the budget resolution so long as the new discretionary budget authority or entitlement authority provided in the measure is within the appropriate committee’s allocation of spending under the budget resolution.

*Senate Amendment*

The Senate amendment (Section 222) repeals Section 311(b) of the Act, the Fazio exception, and amends Section 311(a) to establish in the House the point of order against legislation that would cause the maximum deficit amount for the fiscal year to be exceeded.

*Conference Agreement*

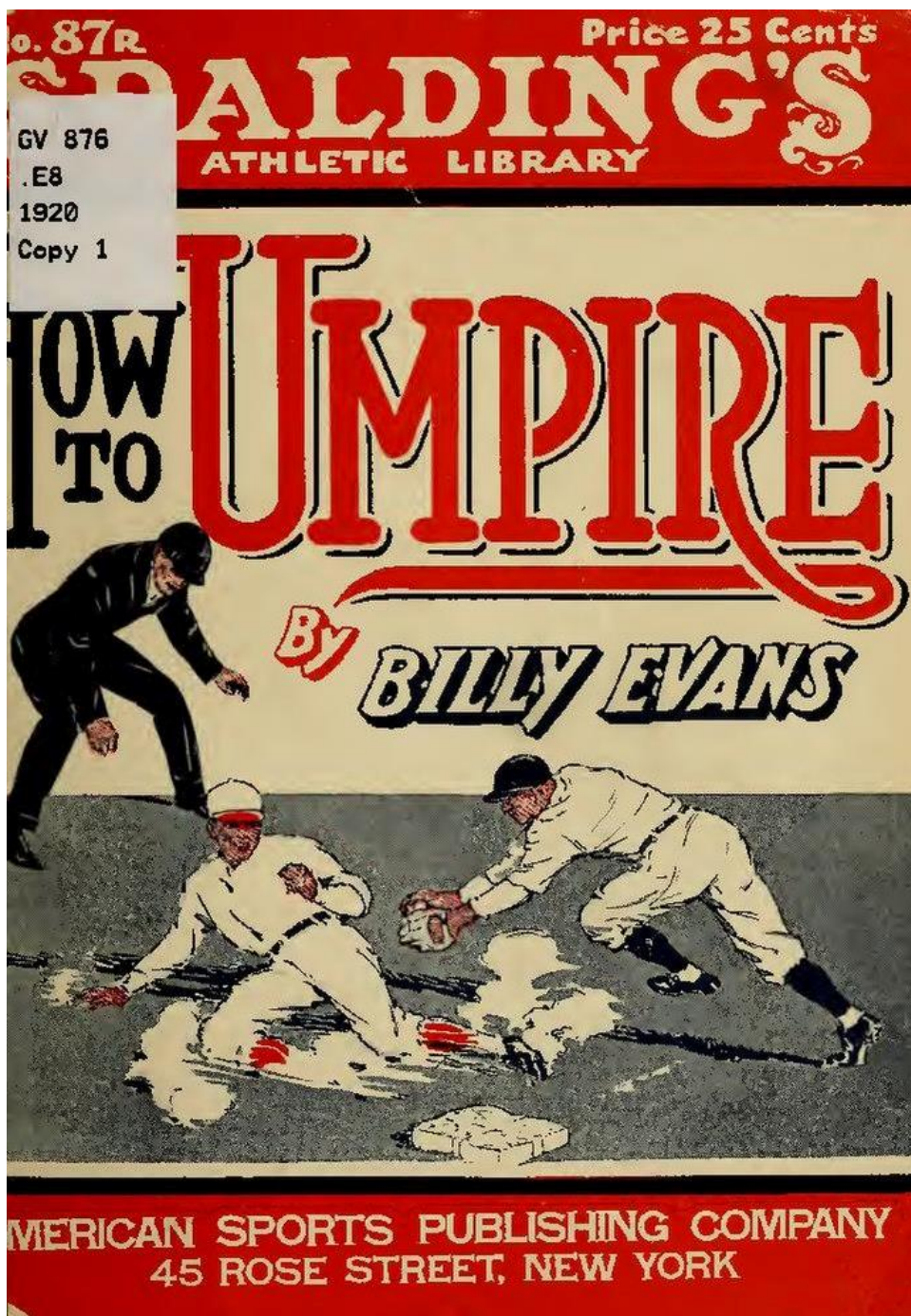
The Senate recedes from its amendment.<sup>1938</sup>

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<sup>1938</sup> [H.R. REP. NO. 100-313](#), at 63 (1987) (Conf. Rep.).



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## How To Umpire

1920

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# Who Makes the Call?

**T**he Budget Committee and the Parliamentarian divide responsibility for determinations under the Budget Act. The Budget Committee, through its Chair, makes the call on questions of numbers. The Parliamentarian makes the call on questions of law.

This division of labor parallels that of a jury and a judge. The Budget Committee Chair, like a jury, makes findings of fact. The Parliamentarian, like a judge, makes determinations of law.

Thus, for example, whether a piece of legislation causes the allocations under section 302 or the aggregates under section 311 to be exceeded is a question for the Budget Committee. Whether a piece of legislation falls within the jurisdiction of the Budget Committee—and thus might violate section 306—is a question for the Parliamentarian.

Budget Committee Chairs generally convey to the Parliamentarian the estimates made by the Congressional Budget Office or the Joint Committee on Taxation, but they do not have to do so. The Presiding Officer needs to

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be able to turn to a Senator in the Chamber to advise the Chair. The Budget Committee Chair plays that role.

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## DETERMINATIONS AND POINTS OF ORDER

312(a) SEC. 312.<sup>1939</sup> (a) BUDGET COMMITTEE DETERMINATIONS.—For purposes of [this title](#)<sup>1940</sup> and [title IV](#),<sup>1941</sup> the levels of [new budget authority](#),<sup>1942</sup> [outlays](#),<sup>1943</sup> [direct spending](#),<sup>1944</sup> [new entitlement authority](#),<sup>1945</sup> and [revenues](#)<sup>1946</sup> for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as applicable.

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*Determined on the basis of estimates made by the Committee on the Budget*—Paraphrasing a predecessor of this subsection that applied to section 311, in *Riddick’s Senate Procedure*, the Parliamentarian reported: “The Budget Committee has authority under section 311(c) of the Congressional Budget Act of 1974 to estimate levels of new budget authority, budget outlays, entitlement authority, and revenues for questions that arise under that section.”<sup>1947</sup> In support of that statement in *Riddick’s Senate Procedure*, the Parliamentarian cited the following exchange:

Mr. METZENBAUM. May I make a parliamentary inquiry of the Chair?

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

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<sup>1939</sup> Congressional Budget Act of 1974 § 312 is codified as amended at [2 U.S.C. § 643](#).

<sup>1940</sup> [Congressional Budget Act of 1974 tit. III, §§ 300–315](#), 2 U.S.C. §§ 631–645a, pp. 113–782, addresses “Congressional Budget Process.”

<sup>1941</sup> [Congressional Budget Act of 1974 tit. IV, §§ 401–428](#), 2 U.S.C. §§ 651–658g, *infra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>1942</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>1943</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>1944</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *infra* p. 980, defines “direct spending.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *infra* p. 1150, and [S. Con. Res. 14, 117th Cong. § 4001\(a\)\(4\)](#) (2021) (adopted), *infra* p. 1258, adopt the Balanced Budget and Emergency Deficit Control Act definition.

<sup>1945</sup> [Congressional Budget Act of 1974 § 3\(9\)](#), 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.”

<sup>1946</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1947</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 597 (1992) (citing [133 CONG. REC. 13,700–01](#) [S7157–58] (May 27, 1987)).

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Mr. METZENBAUM. Does the Chair feel that, in the way the amendment is drafted, it indeed would be subject to a point of order?

The PRESIDING OFFICER. The Chair would have to have the point of order made to be able to rule on the point of order.

Mr. METZENBAUM. Is the Chair not in a position to advise a Member as to whether, as drafted, it would be subject to a point of order?

The PRESIDING OFFICER. The Chair states to the Senator from Ohio that in making that ruling the Chair will be relying on the assertions of Budget Office to the Budget Committee, as to whether the amendment meets the Budget Committee's authorization level, and further states that we will be relying on the Budget Committee to determine whether the Senator's amendment would result in an increase in outlays.

Mr. METZENBAUM. The Senator from Ohio appreciates the advice of the Chair but must point out to the Chair that I do not believe that is the responsibility of the Chair to turn to the Budget Committee for a determination or response on a parliamentary inquiry. If the legislation on its face is budgetarily neutral, as this legislation is, then it seems to me that the Chair has no alternative but to rule that it is in order and not subject to a point of order and that the Chair is not in a position to turn to some committee of the Senate and ask them for an interpretation as to what is or is not in order. Is the Chair about to advise me to something in the statute that so provides?

The PRESIDING OFFICER. The Chair would respond further to the Senator from Ohio by reading to the Senator section 311(c) of the Budget Act itself, which states:

Determination of budget levels. For purposes of this section, the levels of new budget authority, budget outlays, new entitlement authority, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or of the Senate, as the case may be.

Mr. METZENBAUM. Well, I can understand that. But I still do not believe that where the legislation on its face says that it shall be neutral and says that you pick up the same amount of money-I have difficulty, but I am not going to press the point further. I am prepared to offer the amendment and set it aside until we see what the CBO says or, if necessary, to take it to a vote later today.

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Mr. CHILES. If the Senator will yield, I suggest that would be the proper thing. Let us see if we can get a ruling as to whether it is neutral or not.

Mr. METZENBAUM. I ask unanimous consent that the amendment be temporarily set aside and retain its place in order.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator's amendment is temporarily set aside.<sup>1948</sup>

In 1987, then Budget Committee Ranking Minority Member Pete Domenici noted the role of the Budget Committee Chair (then Senator Lawton Chiles):

Mr. DOMENICI. Mr. President, first of all, let me say that the Senator [Senator Chiles] is moving to waive because he believes that, if the Parliamentarian were asked, the Parliamentarian would say that this bill is subject to a point of order. Let me make sure the Senate knows why I know that. Because the Parliamentarian, on this issue, will do what the chairman of the Budget Committee suggests, because that is the precedent, and the distinguished chairman has told me that it is his view that the bill is subject to a point of order. So let us establish that that is how it would happen.

But, strangely enough, I want the RECORD to reflect that if I were chairman, as I was last year, the result would be the opposite on this issue. It would not be subject to a point of order.

Now, I do not want anyone to think that I was right and Senator CHILES is wrong. I just would like you to know why we have an issue here, and it may come back in the next 4 or 5 months to haunt us. Therefore, I am going to support the waiver . . . .<sup>1949</sup>

During consideration of the Balanced Budget Reconciliation Act of 1995,<sup>1950</sup> the Presiding Officer, relying on the arguably inaccurate determination of the Budget Committee Chair, failed to sustain a point of order under Budget Act section 310(d) against an amendment that apparently relied for some of its savings on reduction of off-budget Social Security outlays.<sup>1951</sup> The Presiding Officer apparently and arguably mistakenly also relied on the Budget Committee Chair for a determination

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<sup>1948</sup> 133 CONG. REC. 13,701 (May 27, 1987). Note that Senator Chiles then chaired the Budget Committee.

<sup>1949</sup> *Id.* at 2298 (Jan. 29, 1987).

<sup>1950</sup> Balanced Budget Reconciliation Act of 1995, S. 1357, 104th Cong. (1995) (companion measure H.R. 2491 vetoed by President Clinton).

<sup>1951</sup> 141 CONG. REC. S16,048–49 (daily ed. Oct. 27, 1995).

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of whether the amendment “contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act”<sup>1952</sup> within the meaning of Budget Act section 310(g).<sup>1953</sup> On October 27, 1995, the following exchange took place:

Mr. [Bob] GRAHAM. Mr. President, I am directing my attention to section 7482 of the legislation, which begins on page 45 and states:

Cost-of-Living Adjustments During Fiscal Year 1996.

Notwithstanding any other provision of law, in the case of any program within the jurisdiction of the Committee on Finance of the United States Senate which is adjusted for any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) for the United States city average of all items, any such adjustment which takes effect during fiscal year 1996 shall be equal to 2.6 percent.

It is to that section, Mr. President, that I direct the point of order. I raise the point of order under section 310(d) of the Congressional Budget Act of 1974 against the pending amendment because it counts \$12 billion in cuts to Social Security which is off budget to offset spending in the amendment.

The PRESIDING OFFICER. Does the Senator from New Mexico wish to be heard on this point of order?

Mr. DOMENICI. I want to say the dollar numbers being referred to are actual. That is all I want to say.

Mr. GRAHAM. Mr. President, could I respond to the—do you wish further debate on the point of order?

The PRESIDING OFFICER. It is not debatable. I note the Senator from New Mexico wishes not to make a statement. The scoring of this bill under the Budget Act is under the control of the chairman of the Budget Committee, and the precedents of the Senate do not go beyond that. The point of order is not well taken.

Mr. HARKIN addressed the Chair.

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<sup>1952</sup> Congressional Budget Act of 1974 § 310(g), 2 U.S.C. § 641(g), *supra* p. 559, addresses “Limitation on Changes to Social Security Act.”

<sup>1953</sup> 141 CONG. REC. S16,048–49 (daily ed. Oct. 27, 1995).



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Mr. HARKIN. I raise a point of order under section 310(g) of the Budget Act because the pending amendment achieves its savings by changing the cost-of-living provisions of section 215 of the Social Security Act, and changing title II of that act violates section 310(g) of the Congressional Budget Act.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. CPI was not changed as referred in that act.

The PRESIDING OFFICER. The Chair is informed that the provisions in the act cited are not applicable to this instance and that the point of order is not well taken.

Mr. HARKIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. State the inquiry.

Mr. HARKIN. Section 7482 on page 45 of the pending amendment, line 22, states: "Notwithstanding any other provision of law . . ." Parliamentary inquiry. Is this not referencing title II of Social Security?

The PRESIDING OFFICER. The Chair is informed that that would not be interpreted as referencing anything. That is to indicate that without regard to any other provision of law, this provision of this bill would become law.

Mr. HARKIN. Further parliamentary inquiry.

Is the Chair then ruling that by that very sentence, "Notwithstanding any other provision of law," that that would, in fact, cover title II of Social Security since it is law? And that, "Notwithstanding any other provision of law," therefore, that overcomes title II of Social Security?

The PRESIDING OFFICER. The Chair would state that that interpretation—I must yield to the Senator's inquiry. The Senator is asking this Chair to act as a court and make a determination of law and the conflicts of law, and that is not within the proper prerogative of this Chair.

Mr. HARKIN. Further parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. Yes.

Mr. HARKIN. Is the Chair ruling, as pertains to the ruling on Senator GRAHAM's point of order, is the Chair ruling that the Social Security Act,

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title II, may be changed within the reconciliation process by drafting a provision to read, “notwithstanding any other provision of law”?

The PRESIDING OFFICER. The Chair’s ruling with regard to the point of order of the Senator from Florida was on the basis of the issues he stated. The Chair is not ruling – the Chair is not ruling – as the Senator indicated, that there is any indication here before the Chair of a provision to change the Social Security Act.

....

Mr. HARKIN. If that is the ruling of the Chair, the Social Security law must be naked to attack under reconciliation. Would not section 310(g) of the Budget Act be now rendered meaningless by the precedent the Chair is now setting?

The PRESIDING OFFICER. The Chair has no intention of rendering meaningless any provision of the Budget Act. We are attempting to comply with the Budget Act. The Chair is informing that the chairman of the Budget Committee has the authority, as did the previous chairman, to make the determination that has been made with regard to this aspect of this bill.<sup>1954</sup>

The Parliamentarian has noted that the Parliamentarian’s office struggles with the tension built into the Budget Act between sections 312 and 301, and with how much latitude there should be and what the guardrails should be. The Parliamentarian has noted that the same statute that includes section 312 also created the Congressional Budget Office and the baseline.<sup>1955</sup>

When asked in October 2015, the Parliamentarian agreed that it was inappropriate to use dynamic scoring for a reconciliation bill, but the Parliamentarian did not know what the Parliamentarian would do if the majority decided to use it.<sup>1956</sup>

The Congressional Budget Office will on occasion note that the Budget Committee has requested a particular scorekeeping. For example, in Fiscal Year 2010 Current Level Reports, the CBO Director made statements similar to:

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<sup>1954</sup> *Id.*

<sup>1955</sup> Staff of S. Comm. on the Budget, Notes from meeting with Parls—Thursday, September 14, 2017 (Sept. 18, 2017).

<sup>1956</sup> Staff of S. Comm. on the Budget, Reconciliation Meeting #1 with Parliamentarians (Oct. 15, 2015).

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S. Con. Res. 13, the Concurrent Resolution on the Budget for Fiscal Year 2010, includes \$ . . . billion in budget authority and \$ . . . billion in outlays as a disaster allowance to recognize the potential cost of disasters; those funds will never be allocated to a committee. At the direction of the Senate Committee on the Budget, the budget resolution totals have been revised to exclude those amounts for purposes of enforcing current level.<sup>1957</sup>

Similarly, in Fiscal Year 2019 Current Level Reports, the CBO Director made statements similar to:

Division I of P.L. 115-254 provided \$1.68 billion in supplemental appropriations for fiscal year 2019, and designated those amounts as being for emergency requirements pursuant to section 251 of the Deficit Control Act. In general, the budgetary effects of authorizing legislation are recorded as direct spending or revenue. However, consistent with the language in Division I, and at the direction of the Senate Committee on the Budget, those budgetary effects are classified as discretionary spending.<sup>1958</sup>

Also in Fiscal Year 2019 Current Level Reports, the CBO Director made statements similar to:

The Continuing Appropriations Act, 2019 (P.L. 116-5), as amended, extended several immigration programs through February 15, 2019, that would otherwise have expired at the end of fiscal year 2018. The estimated budgetary effects of those previously enacted extensions are charged to the Committee on Appropriations, and are included in the budgetary effects of P.L. 116-6 shown in the “Appropriation Legislation” portion of this report. In addition, division H of P.L. 116-6 further extended those same programs through the end of fiscal year 2019. Consistent with the language in title III of division H of P.L. 116-6, and at the direction of the Senate Committee on the Budget, the budgetary effects of extending those immigration programs for the remainder of the fiscal year are charged to the relevant authorizing committees, and are shown in the “Authorizing Legislation” portion of this report.<sup>1959</sup>

In its October 2020 cost estimate of the McConnell substitute amendment to the Delivering Immediate Relief to America’s Families,

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<sup>1957</sup> [Letter from Douglas W. Elmendorf to Kent Conrad](#) (Apr. 15, 2010), 156 CONG. REC. S2369 (daily ed. Apr. 15, 2010); [Letter from Douglas W. Elmendorf to Kent Conrad](#) (Aug. 4, 2009), 155 CONG. REC. S8852–53 (daily ed. Aug. 5, 2009); [Letter from Robert A. Sunshine to Kent Conrad](#) (Aug. 4, 2009), 155 CONG. REC. S8853 (daily ed. Aug. 5, 2009).

<sup>1958</sup> [Letter from Phillip L. Swagel to Mike Enzi](#) (July 31, 2019), 165 CONG. REC. S5237 (daily ed. July 31, 2019); [Letter from Keith Hall to Mike Enzi](#) (Nov. 15, 2018), 164 CONG. REC. S7041 (daily ed. Nov. 15, 2018) (twice).

<sup>1959</sup> [Letter from Phillip L. Swagel to Mike Enzi](#) (July 31, 2019), 165 CONG. REC. S5238 (daily ed. July 31, 2019).

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Schools and Small Businesses Act,<sup>1960</sup> the Congressional Budget Office included the statement: “at the direction of the Senate Committee on the Budget, division B is considered appropriation legislation rather than authorizing legislation.”<sup>1961</sup>

During consideration of the America COMPETES Act of 2022,<sup>1962</sup> the Congressional Budget Office included in its cost estimate an acknowledgement with regard to a particular scorekeeping treatment: “At the direction of the House Committee on the Budget, this estimate incorporates that treatment.”<sup>1963</sup>

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<sup>1960</sup> [S. Amend. No. 2652, 116th Cong.](#), 166 CONG. REC. S5448 (daily ed. Sept. 8, 2020).

<sup>1961</sup> Cong. Budget Off., [Estimate for Senate Amendment 2652 to S. 178, the Delivering Immediate Relief to America’s Families, Schools and Small Businesses Act](#), note to table 4 (Oct. 21, 2020).

<sup>1962</sup> [America COMPETES Act of 2022](#), H.R. 4521, 117th Cong. (as passed by House Feb. 4, 2022).

<sup>1963</sup> Cong. Budget Off., [Estimated Budgetary Effects of H.R. 4521, the America COMPETES Act of 2022, as Passed by the House of Representatives on February 4, 2022](#), at 2, n.d (Mar. 4, 2022).

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312(b) (b)<sup>1964</sup> DISCRETIONARY SPENDING POINT OF ORDER IN THE SENATE.—

312(b)(1) (1) IN GENERAL.—Except as otherwise provided in [this subsection](#),<sup>1965</sup> it shall not be in order in the Senate to consider any bill or resolution (or amendment, motion, or conference report on that bill or resolution) that would exceed any of the [discretionary spending limits](#)<sup>1966</sup> in [section 251\(c\) of the Balanced Budget and Emergency Deficit Control Act of 1985](#).<sup>1967</sup>

312(b)(2) (2) EXCEPTIONS.—[This subsection](#)<sup>1968</sup> shall not apply if a [declaration of war by the Congress](#)<sup>1969</sup> is in effect or if a joint resolution pursuant to [section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985](#)<sup>1970</sup> has been enacted.<sup>1971</sup>

312(c) (c)<sup>1972</sup> MAXIMUM [DEFICIT](#)<sup>1973</sup> AMOUNT POINT OF ORDER IN THE SENATE.—It shall not be in order in the Senate to consider any [concurrent resolution on the budget](#)<sup>1974</sup> for a fiscal year, or to consider any amendment to that concurrent resolution, or to consider a conference report on that concurrent resolution, if —

312(c)(1) (1) the level of total [outlays](#)<sup>1975</sup> for the first fiscal year set forth in that concurrent resolution or conference report exceeds; or

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<sup>1964</sup> [Congressional Budget Act of 1974 § 312\(b\)](#), 2 U.S.C. § 643(b), has no force or effect, as there are no longer any applicable discretionary spending limits.

<sup>1965</sup> [Congressional Budget Act of 1974 § 312\(b\)](#), 2 U.S.C. § 643(b), addresses “Discretionary Spending Point of Order in the Senate.”

<sup>1966</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *infra* p. 977 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *infra* p. 986), defines “discretionary spending limit.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *infra* p. 1150, adopts the [Balanced Budget and Emergency Deficit Control Act](#) definition.

<sup>1967</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251\(c\)](#), 2 U.S.C. § 901(c), *infra* p. 1005, addresses “Discretionary Spending Limit,” but the law sets no such limits beyond fiscal year 2021.

<sup>1968</sup> [Congressional Budget Act of 1974 § 312\(b\)](#), 2 U.S.C. § 643(b), addresses “Discretionary Spending Point of Order in the Senate.”

<sup>1969</sup> U.S. CONST. art. I, § 8, cl. 11, provides: “Congress shall have power to . . . declare War.”

<sup>1970</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258](#), 2 U.S.C. § 907a, *infra* p. 1118, addresses “Suspension in Event of War or Low Growth.”

<sup>1971</sup> [Budget Control Act of 2011](#), Pub. L. No. 112-25, § 104(b), 125 Stat. 240, 246, renders inoperative this clause regarding a joint resolution pursuant to [Balanced Budget and Emergency Deficit Control Act of 1985 § 258](#) by negating the Congressional Budget Office’s authority under [Balanced Budget and Emergency Deficit Control Act](#) section 254(i) to issue low-growth reports, providing: “Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the [Balanced Budget and Emergency Deficit Control Act of 1985](#) shall not apply to the Congressional Budget Office.”

<sup>1972</sup> [Congressional Budget Act of 1974 § 312\(c\)](#), 2 U.S.C. § 643(c), has no force or effect, as there are no longer any applicable maximum deficit amounts.

<sup>1973</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>1974</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>1975</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

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312(c)(2) (2) the adoption of that amendment would result in a level of total **outlays**<sup>1976</sup> for that fiscal year that exceeds;

the recommended level of Federal **revenues**<sup>1977</sup> for that fiscal year, by an amount that is greater than the maximum **deficit**<sup>1978</sup> amount, if any, specified in the **Balanced Budget and Emergency Deficit Control Act of 1985**<sup>1979</sup> for that fiscal year.

312(d) (d) TIMING OF POINTS OF ORDER IN THE SENATE.—A point of order under **this Act**<sup>1980</sup> may not be raised against a bill, resolution, amendment, motion, or conference report while an amendment or motion, the adoption of which would remedy the violation of **this Act**,<sup>1981</sup> is pending before the Senate.

312(e) (e) POINTS OF ORDER IN THE SENATE AGAINST AMENDMENTS BETWEEN HOUSES.—Each provision of **this Act**<sup>1982</sup> that establishes a point of order against an amendment also establishes a point of order in the Senate against an amendment between the Houses. If a point of order under **this Act**<sup>1983</sup> is raised in the Senate against an amendment between the Houses and the point of order is sustained, the effect shall be the same as if the Senate had disagreed to the amendment.

312(f) (f) EFFECT OF POINT OF ORDER IN THE SENATE.—In the Senate, if a point of order under **this Act**<sup>1984</sup> against a bill or resolution is sustained, the Presiding Officer shall then recommit the bill or resolution to the committee of appropriate jurisdiction for further consideration.

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<sup>1976</sup> *Id.*

<sup>1977</sup> U.S. GOV'T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>1978</sup> *Congressional Budget Act of 1974* § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>1979</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* § 253, 2 U.S.C. § 903, *infra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the *Budget Enforcement Act of 1990*, Pub. L. No. 101-508, 104 Stat. 1388.

<sup>1980</sup> *Congressional Budget and Impoundment Control Act of 1974*, 2 U.S.C. §§ 601–688, pp. 49–969.

<sup>1981</sup> *Id.*

<sup>1982</sup> *Id.*

<sup>1983</sup> *Id.*

<sup>1984</sup> *Id.*

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***Timing of Points of Order in the Senate***—A Senator may not raise a point of order against a provision of a committee-reported bill while an amendment to that bill is pending.<sup>1985</sup> Before a Senator makes such a point of order, the Senator may ask unanimous consent that the Senate temporarily lay aside all pending amendments.<sup>1986</sup>

***Points of Order Against Amendments Between Houses***—In *Riddick's Senate Procedure*, the Parliamentarian recorded how the predecessor to this subsection departed from at least one precedent<sup>1987</sup>:

**House Language:**

If the concurrent resolution on the budget for a fiscal year has been adopted, a point of order will lie against an amendment of the House to an amendment of the Senate to an appropriations bill, if that amendment increases outlays at a time when the appropriate level of outlays for that fiscal year has been breached, and on one occasion it was held that the effect of sustaining such a point of order was that the amendment of the House was no longer before the Senate, but retained its status as a House message at the desk.<sup>[1988]</sup> Under section 312(a) of the Budget Act as added in 1990, the sustaining of such point of order is now the equivalent of a decision by the Senate to disagree to the amendment of the House.<sup>[1989]</sup>

***Effect of Point of Order in the Senate***—The Parliamentarian's office has noted as a precedent an instance under this subsection, writing:

After the Senate failed to adopt a motion to waive provisions of a budget resolution in the face of a point of order, the Chair ordered a bill recommitted pursuant to §312 of the Congressional Budget Act of 1974, notwithstanding that a motion to reconsider the vote on the motion to waive had been entered.<sup>1990</sup>

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<sup>1985</sup> 142 CONG. REC. S6295 (daily ed. June 25, 1997) (Senator Rockefeller attempted to raise a point of order against section 5001 of the committee-reported bill on Medicare balance billing while his amendment 478 was pending).

<sup>1986</sup> See 143 CONG. REC. S6092–93 (daily ed. June 23, 1997) (statement of Sen. Durbin on his point of order against § 5611 of the committee-reported bill raising the age of Medicare eligibility).

<sup>1987</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 610–11 (1992) (footnotes renumbered and reformatted); see also *id.* at 612, 620–21.

<sup>1988</sup> 132 CONG. REC. 4775–81 (Mar. 13, 1986).

<sup>1989</sup> Congressional Budget Act of 1974 § 312(a), as added by *Budget Enforcement Act of 1990*, Pub. L. No. 101-508, § 13207(b)(1), 104 Stat. 1388, 1388-618, is now *Congressional Budget Act of 1974 § 312(e)*, 2 U.S.C. § 643(e), *supra* p. 614.

<sup>1990</sup> Off. of the Sec'y of the Senate, *Senate Precedent* PRL20060214-003.

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The Parliamentarian's office further recorded:

On February 14, 2006, the Senate was considering S. 852, the Fairness in Asbestos Injury Resolution Act of 2005. On February 9, Mr. Ensign (of Nevada) raised a point of order that the bill violated §407 of H. Con. Res. 95, the Budget resolution FY2006, and Mr. Specter (of Pennsylvania) moved to "waive the point of order." On February 14, the Senate failed to adopt the motion to waive by a vote of 58 yeas to 41 nays. The Majority Leader (Mr. Frist of Tennessee) had changed his vote to "nay" and entered a motion to reconsider the vote on the motion to waive. The Chair sustained the point of order, which by operation of §312(f) of the Budget Act, recommitted the bill to the Judiciary Committee.

The PRESIDING OFFICER. On this vote, the yeas are 58, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader is recognized.

Mr. FRIST. Mr. President, I enter a motion to reconsider the last vote.

The PRESIDING OFFICER. The motion to reconsider is entered.

Mr. FRIST. Mr. President, I switched my vote from a "yes" to a "no" vote. Without my switching the vote, it would have been 59 to 40. We have one absentee tonight, and that may well have determined which way this particular vote had gone. Thus, I switched my vote from a yea to a nay, thus the vote was 58 to 41. That allows us to, at some point in the future, have the option to reconsider the motion. We will make a decision on that at some point in the future.

The PRESIDING OFFICER. The point of order against the bill is sustained. Pursuant to section 312(f) of the Budget Act, the bill is recommitted to the Judiciary Committee.<sup>1991</sup>

In *Riddick's Senate Procedure*, the Parliamentarian recorded how the predecessor to this subsection departed from at least one precedent<sup>1992</sup>:

The Chair has sustained a point of order under section 311(a) of the Budget Act against a bill which would have reduced revenues for the fiscal year in progress by \$3.9 billion, thereby causing the maximum deficit amount for that year to be exceeded. The bill, which had not been reported

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<sup>1991</sup> *Id.* (quoting 152 CONG. REC. 1610 [S1169] (Feb. 14, 2006)).

<sup>1992</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 611 (1992) (footnotes renumbered, reformatted, and updated); see also *id.* at 620.



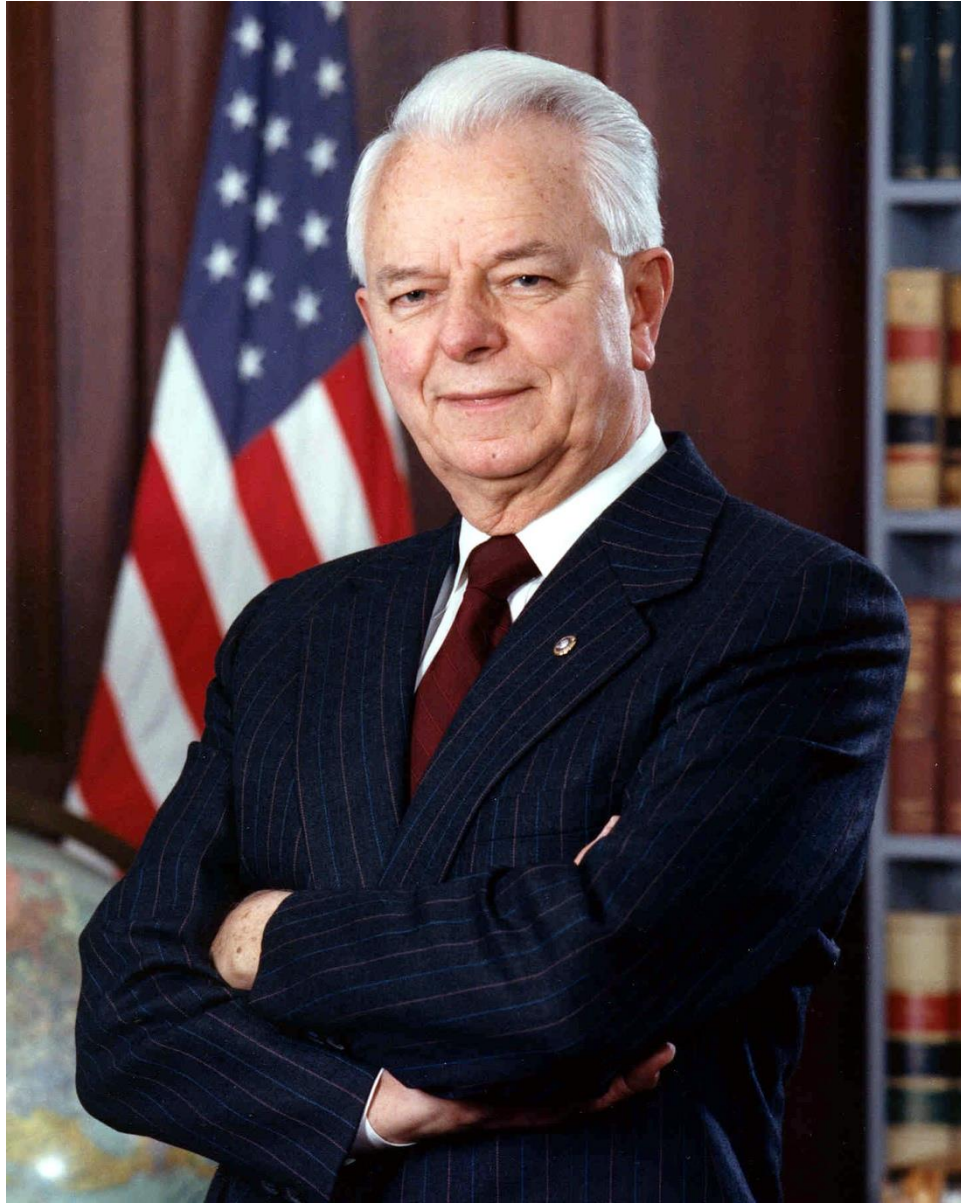
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by a committee but which had been introduced and placed directly on the calendar, was returned to the Calendar when the point of order was sustained.<sup>[1993]</sup> However, under section 312(b) of the Budget Act as added in 1990, the sustaining of a point of order against a bill under the Budget Act now requires that the bill be sent to the committee of appropriate jurisdiction for further consideration.<sup>[1994]</sup>

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<sup>1993</sup> [136 CONG. REC. 28,184–90](#) (Oct. 10, 1990).

<sup>1994</sup> Congressional Budget Act of 1974 § 312(b), as added by [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13207(b)(1), 104 Stat. 1388, 1388-618, is now [Congressional Budget Act of 1974 § 312\(f\)](#), 2 U.S.C. § 643(f), *supra* p. 614.



**Robert C. Byrd**

2003 official photo

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# The Byrd Rule

Robert C. Byrd, who passed away in 2010, continues to cast a long shadow over the congressional budget process, importantly through the Budget Act provision that bears his name—the Byrd Rule—Budget Act section 313. The Byrd Rule creates a point of order against including “extraneous” matter in reconciliation legislation.

Reconciliation is one of the few exceptions to the general rule in the Senate of unlimited debate. And it is difficult to amend a reconciliation bill. In the 1980s, the Senate—and Senator Byrd in particular—became circumspect about what the Senate allows itself to consider under these kinds of restrictions on debate and amendment. The tension between the usefulness of reconciliation to the budget process and the strict procedures governing it led to efforts to prohibit what has come to be known as “extraneous” matter.

In *Riddick’s Senate Procedure*, the Parliamentarian summarized the evolution of the Byrd Rule through 1992:

Beginning in the early 1980’s the reconciliation process began to play an increasingly important role in the legislative schedule of the Congress. Since reconciliation bills are not subject to unlimited debate, they became

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attractive vehicles for the inclusion by certain committees of provisions of particular interest to the majority of that committee, despite the fact that those provisions were unrelated to the instructions to those committees. Before 1986, there was no point of order against language contained in a bill (as opposed to language offered as an amendment). Therefore this matter unrelated to the reconciliation instructions was not subject to any point of order. Growing concern over the inclusion by committees of this extraneous matter prompted the Senate during the 99th Congress to adopt a rule (originally set to expire on January 2, 1988, extended until September 30, 1992, and now a permanent part of the Budget Act) to curb this abusive practice. The rule, referred to as the “Byrd Rule,” was enacted as Title XX of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), and was amended by section 7006 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), and section 205 of The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Pub. L. 100-119). The rule was further modified, made permanent, and codified as section 313 of the Budget Act by the Budget Enforcement Act of 1990 (title XIII of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508).

The rule as amended authorizes a point of order against any part of a title or provision of a reconciliation bill that contains material extraneous to the instructions to a given committee, and further prohibits the consideration of such material in amendments from the floor. The rule enumerates as “extraneous” provisions with no budgetary effect, provisions that lose revenues or increase spending if reported by a committee whose recommendations as a whole fail to achieve the requisite savings, provisions within the jurisdiction of another committee, provisions whose budgetary savings are merely incidental to the nonbudgetary aspects of the provision, and provisions that lose revenues or increase spending in a future year in excess of other savings in that future year. A vote of three-fifths of the Senators duly chosen and sworn is required to waive the rule or to overturn a ruling of the Chair interpreting it. As amended in 1990, the rule authorizes one point of order to be made against several provisions of a bill, amendment, resolution, motion or conference report.<sup>1995</sup>

Also in *Riddick’s Senate Procedure*, the Parliamentarian reported<sup>1996</sup>:

### **Reconciliation Bills, Extraneous Matters:**

Reconciliation bills have at times contained matters extraneous to the instructions to the various committees whose recommendations in response to those instructions comprise a reconciliation bill. In two cases,

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<sup>1995</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK’S SENATE PROCEDURE* 504–05 (1992).

<sup>1996</sup> *Id.* at 624–25 (footnotes renumbered and reformatted).

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a joint leadership amendment was adopted to strike material identified to be extraneous.<sup>[1997]</sup> Until 1985, the only recourse of a Senator who opposed the inclusion of such extraneous matter was a motion to strike, since no point of order authorized by the rules or precedents of the Senate was available to strike a provision from a measure.

On October 24, 1985, by a vote of 96-0, the Senate adopted an amendment offered by Mr. Robert C. Byrd, of West Virginia, authorizing points of order against any part of a reconciliation bill not within the jurisdiction of the committee reporting it, or extraneous to the instructions given to that committee.<sup>[1998]</sup> The provisions of this amendment as ultimately enacted became known as the “Byrd Rule.”<sup>[1999]</sup> The Senate adopted two resolutions applying portions of this rule to conference reports and amendments between the Houses on reconciliation bills.<sup>[2000]</sup>

Also in *Riddick’s Senate Procedure*, the Parliamentarian briefly described the rule as it was interpreted in 1992: “Additional restrictions are imposed on amendments to reconciliation bills to aid the goal of budgetary savings and to prevent the inclusion of extraneous provisions.”<sup>2001</sup>

A former Parliamentarian observed that “the parliamentarian wields considerable authority to strip anything from the bill that he or she deems to be extraneous.”<sup>2002</sup> Similarly, a former Parliamentarian said: “The ‘incidental’ test is a very difficult test because it is very subjective.” The former Parliamentarian went on: “You are trying to judge peoples’ motives.”<sup>2003</sup>

Some observers have struggled with the Parliamentarian’s exercise of judgment in this context. The director of one advocacy group said, “Reconciliation is a subjective, capricious process disguised as an objective

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<sup>1997</sup> See [127 CONG. REC. 13,209–11](#) (June 22, 1981); see also [135 CONG. REC. 24,585–92](#) (Oct. 13, 1989).

<sup>1998</sup> Senate amend. no. 878, 99th Cong., [131 CONG. REC. 29,033](#) (Oct. 24, 1985), adopted to Consolidated Omnibus Budget Reconciliation Act of 1985, S. 1730, 99th Cong., [131 CONG. REC. 28,968–74](#) (Oct. 24, 1985).

<sup>1999</sup> The Senate incorporated the provisions of S. 1730, 99th Cong., into H.R. 3128, 99th Cong., and this measure was enacted as the [Consolidated Omnibus Budget Reconciliation Act of 1985](#), Pub. L. No. 99-272, 100 Stat. 82 (1986), with a modified version of the provisions of Senator Byrd’s amendment included as section 20001. This section was amended by the [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, § 7006, 100 Stat. 1874, 1949–50, and further amended by the [Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987](#), Pub. L. No. 100-119, § 205, 101 Stat. 754, 784–85. This section was further amended and codified as [Congressional Budget Act of 1974 § 313](#), 2 U.S.C. § 644, *infra* p. 642, by [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13214, 104 Stat. 1388, 1388-621 to 1388-623.

<sup>2000</sup> S. Res. 286, 99th Cong., [131 CONG. REC. 38,559–60](#) (Dec. 19, 1985) (adopted), *amended by* S. Res. 509, 99th Cong., [132 CONG. REC. 32,372–73](#) (Oct. 16, 1986) (adopted).

<sup>2001</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 503 (1992).

<sup>2002</sup> Jeffrey Young, [Healthcare Reform and Reconciliation a Bad Mix, Ex-Parliamentarian Says](#), THE HILL, Feb. 16, 2010, 9:10 PM.

<sup>2003</sup> *Id.*

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policy making mechanism.”<sup>2004</sup> And a former Deputy Staff Director for Majority Leader Harry Reid has concluded that “the standard that determines which bills receive majority votes is effectively arbitrary.”<sup>2005</sup>

As the Byrd Rule is a Senate creation that sometimes dramatically affects House work products, it has caused some Representatives to rankle at its application. For example, a reporter recounted Representative Peter DeFazio’s lament:

A common DeFazio refrain is to complain that the Senate parliamentarian “has to have a seance with a guy who has been dead for 11 years” in order to figure out whether to allow a provision in the bill. When he’s feeling more charitable, he simply refers to the Byrd rule as “the dead guy rule.”<sup>2006</sup>

Thus, many observers find it difficult to divine the standard that the Parliamentarian applies to make determinations under the Byrd Rule, and in particular, the “merely incidental” test. Some have likened it to Justice Potter Stewart’s standard “I know it when I see it.”<sup>2007</sup> This chapter attempts to explain that decision making process.

### Origins of the Byrd Rule

As early as June 22, 1981, the bipartisan leadership offered an amendment to strike extraneous matter from a reconciliation bill. On that day, during consideration of S. 1377, the Omnibus Reconciliation Act of 1981, Majority Leader Baker offered the amendment for himself and Democratic Leader Robert C. Byrd, Budget Committee Chair Pete Domenici, and the Ranking Minority Member of that committee, Senator Fritz Hollings. The debate that day included the following:

Mr. BAKER. . . .

Aside from its salutary impact on the budget, reconciliation also has implications for the Senate as an institution. So long as a preponderance of its subject matter has a budgetary impact, a reconciliation bill could contain nonbudgetary amendments to substantive law, and still be protected under the Budget Act. That notwithstanding, I believe that including such extraneous provisions in a reconciliation bill would be harmful to the

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<sup>2004</sup> Theodor Meyer, *The Arcane Legislative Maneuver “Sucking up All the Oxygen in D.C.”*, POLITICO, Apr. 27, 2021 (quoting Aaron Belkin, director of the judicial advocacy group Take Back the Court).

<sup>2005</sup> Adam Jentleson, *When Will Biden Join the Fight for Voting Rights?* N.Y. TIMES, Aug. 29, 2021.

<sup>2006</sup> Jessica Wehrman, *DeFazio Looks To Try Again on His Progressive Transportation Agenda*, ROLL CALL, Aug. 20, 2021, 2:30 PM.

<sup>2007</sup> *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

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character of the U.S. Senate. It would cause such material to be considered under time and germaneness provisions that impede the full exercise of minority rights. It would evade the letter and spirit of rule XXII [regarding precedence of motions, including the procedures for cloture]. It would create an unacceptable degree of tension between the Budget Act and the remainder of Senate procedures and practice. Reconciliation was never meant to be a vehicle for an omnibus authorization bill. To permit it to be treated as such is to break faith with the Senate's historical uniqueness as a forum for the exercise of minority and individual rights. For principally these reasons, I have labored with distinguished minority leader, with the chairmen and ranking minority member of the Budget Committee, and with other committee chairmen to develop a bipartisan leadership amendment. This amendment will strike from the bill subject matter which all these parties can agree is extraneous to the reconciliation instructions set forth last month in House Concurrent Resolution 115. What will remain in the bill is directly responsive to these instructions, has a budgetary savings impact, and plainly belongs in a reconciliation measure.

....

Mr. ROBERT C. BYRD. Mr. President, if the reconciliation bill is adopted in its present form, it will do violence to the budget reform process. The reconciliation measure contains many items which are unrelated to budget savings. This development must be viewed in the most critical light, to preserve the principle of free and unfettered debate that is the hallmark of the U.S. Senate.

....

The ironclad parliamentary procedures governing the debate of the reconciliation measure should by no means be used to shield controversial or extraneous legislation from free debate. However, language is included in the reconciliation measure that would enact routine authorizations that have no budget impact whatsoever. In other cases, legislation is included that makes drastic alterations in current policy, yet, has no budgetary impact.

....

The reconciliation bill, if it includes such extraneous matters, would diminish the value of rule XXII. The Senate is unique in the way that it protects a minority, even a minority of one, with regard to debate and amendment. The procedures that drive the reconciliation bill set limits on the normally unfettered process of debate and amendment, because policy matters that do not have clear and direct budgetary consequences are supposed to remain outside its scope.



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. . . .

The amendment offered by the majority leader and me omits several non-budget related authorizations which should also be stricken from this bill. The fact that they were not included in this amendment should not be construed as accepting their inclusion in the bill.

. . . .

We have gone as far as we can go in this amendment, but we have not gone as far as we should go.<sup>2008</sup>

That day, the Senate agreed to the amendment by a voice vote.<sup>2009</sup>

### **Adoption of the Byrd Rule**

On October 24, 1985, the Senate debated and adopted the Byrd Rule as an amendment to the Consolidated Omnibus Budget Reconciliation Act of 1985. Excerpts from the debate that day follow:

Mr. BYRD. Mr. President, I send to the desk an amendment sponsored by myself, Mr. DOLE, Mr. CHILES, Mr. STEVENS, and Mr. DOMENICI.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from West Virginia [Mr. Byrd], for himself, Mr. Dole, Mr. Chiles, Mr. Stevens, and Mr. Domenici, proposes an amendment numbered 878:

At the appropriate place add the following:

When the Senate is considering a reconciliation bill upon a point of order being made and sustained by any Senator, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which super majority shall be

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<sup>2008</sup> Senate Precedent PRL19810622-001, [127 CONG. REC. 13,209–11](#) (June 22, 1981).

<sup>2009</sup> See *id.* at [13,212](#).



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required to successfully appeal the ruling of the Chair on these matters.

Mr. BYRD. Mr. President, the amendment speaks for itself. I would just say that we are in the process now of seeing, if we have not seen earlier, the Pandora's box which has been opened to the abuse of the reconciliation process. That process was never meant to be used as it is being used. There are 122 items in the reconciliation bill that are extraneous. Henceforth, if the majority on a committee should wish to include in reconciliation recommendations to the Budget Committee any measure, no matter how controversial, it can be brought to the Senate under an ironclad built-in time agreement that limits debate, plus time on amendments and motions, to no more than 20 hours.

It was never foreseen that the [Congressional Budget] Act would be used in that way.

So if the budget reform process is going to be preserved, and more importantly if we are going to preserve the deliberative process in this U.S. Senate—which is the outstanding, unique element with respect to the U.S. Senate, action must be taken now to stop this abuse of the budget process.

....

Mr. President, the Senate is a deliberative body, and the reconciliation process is not a deliberative process. It [is] not a deliberative process. Such an extraordinary process, if abused, could destroy the Senate's deliberative nature. Senate committees are creatures of the Senate, and, as such, should not be in the position of dictating to the Senate as is being done here. By including mater[i]al not in their jurisdiction or matter which they choose not to report as separate legislation to avail themselves of the nondeliberative reconciliation process, Senate committees violate the compact which created both them and the reconciliation process.

....

The Senate must protect itself from this attack by its own committees, and, if necessary, the reconciliation bill will be amended to the extent necessary to achieve a preponderance of nonreconciliation matters and thus return this bill to a nonprivileged status.

Under the [Congressional Budget] Act, other committees are mandated to make recommendations to the Budget Committee—those committees make their recommendations to the Budget Committee, and the Budget Committee cannot add to or subtract from those instructions. It cannot amend the instructions. It cannot take from those instructions. It cannot add its own. It merely is to perform an administrative function—and that

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is, to put all such recommendations into a single package which, when sent to the floor and taken up, is covered by an overall 20-hour time limit.

Normal cloture is but an infinite speck on the horizon as compared to this kind of cloture. Under normal cloture, we have 100 hours. Each Senator has 1 hour, theoretically. But under the restrictions of the Budget Act, 20 hours is all there is on a reconciliation bill.

We saw a moment ago how much time can be taken by one amendment. First there is the waiver. That is an hour. Then there is the amendment. That is 2 hours. Then there is an amendment to the amendment. That is another hour.

So, when all is boiled down, we have not only an abuse of the budget process by way of which other committees recommend to the Budget Committee any controversial bill they want—repeal of the Hobbs Act, acid rain, you name it—but also, when reconciliation comes to the floor, one or two Senators can offer an amendment, and consume at least 4 hours out of the 20 hours, if they want to take all the time that is available with regard to the waiver, the amendment, the amendment to the amendment, quorum calls, and so on.

So, Mr. President, I have offered this amendment, which is being cosponsored by the other Senators whose names have been stated, in order to correct this abuse in the future.

This provides that if a point of order is raised and upheld against extraneous matter in the reconciliation bill or matter that has been recommended by a committee wh[i]ch does not have jurisdiction over the subject matter, then all such matter that is in the bill will fall and is not subject to being offered as a further amendment thereto.

....

Mr. DOMENICI. . . .

As I read the amendment, I say to the distinguished minority leader, the second part of this amendment—"No motion to waive germaneness on reconciliation bills shall be agreed to unless,"—I understand that this applies to an amendment offered on the floor by a Senator. Is the Senator from New Mexico correct?

Mr. BYRD. The Senator is correct and I was incorrect.

....

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Mr. DOMENICI. Mr. President, I wish to ask one further question of the principal sponsor and drafter of the amendment, the distinguished minority leader. I wonder if he intended to include in the second part of the amendment, "no motion to waive germaneness." I wonder if he wanted that to be just germaneness, whereas before, when we were speaking of striking what a committee sent us, the Senator used two descriptions: He used germaneness and he used extraneous. It appears to me he might want, in the second part, "no motion to waive germaneness or extraneousness," and then provide for the supermajority. Otherwise, you make extraneous material subject to a point of order, but the point of order could be waived by a simple majority.

Mr. BYRD. Mr. President, the distinguished Senator from New Mexico makes an excellent point. I agree with him and think it should be so strengthened and I modify my amendment so to accomplish that purpose.

....

The PRESIDING OFFICER. The minority leader has a right to modify his amendment. If he will send it to the desk, the amendment will be so modified.

The amendment, No. 878, as modified, reads as follows:

At the appropriate place add the following:

When the Senate is considering a reconciliation bill, upon a point of order being made by any Senator and sustained, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which supermajority shall be required to successfully appeal the ruling of the Chair on these matters which include the points of order on extraneous matters and matter not properly reported from a committee.

....

Mr. JOHNSTON. . . .

My question is, Can you appeal the ruling of the Chair, make a point of order, that a matter is not extraneous, or is germane, have the Chair rule against you and then reverse that on a simple majority vote, and overruling the ruling of the Chair? Or do you mean for that also to be three-fifths?

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Mr. BYRD. Would the Senator ask that question again?

Mr. JOHNSTON. The Parliamentarian strikes from the bill a matter which is extraneous or which is nongermane. I am interested in the matter, and I make a point of order that the matter is not extraneous or is germane to the bill. The Parliamentarian, the Chair, rules against me. I appeal the ruling of the Chair. Can we thereby overturn the Chair by simple minority vote?

Mr. BYRD. No.

Mr. JOHNSTON. Can you challenge the ruling of the Chair at all? If so, how?

Mr. BYRD. The Senator can appeal the ruling of the Chair.

Mr. JOHNSTON. Appeal the ruling of the Chair, but what vote would that require?

Mr. BYRD. Three-fifths.

Mr. JOHNSTON. I think in view of the earlier answer that this motion to waive germaneness applies only to amendments offered on the floor—it would apply to both—and committee action?

Mr. BYRD. Yes.

Mr. JOHNSTON. The automatic ruling out as well as an amendment offered on the floor?

Mr. BYRD. That is correct.

Mr. DOMENICI. I think the distinguished sponsor had answered previously that the supermajority requirement for a waiver applied only to committee reported language, but when we exchanged views here, he clearly indicated that it applies to waivers of the germaneness requirement or the extraneous language point of order or appeals to rulings of the Chair.

Mr. JOHNSTON. I wonder if this language is specific enough to apply to an appeal from the ruling of the Chair. It speaks in terms of a motion to waive germaneness of reconciliation. I think it might be rewritten a bit to make that clear.

Mr. BYRD. Mr. President, that is the intent of the sponsor. If I need to modify it to make it clear, I will do so.

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. . . .

Mr. McCLURE. I think the Senator from Louisiana has raised perhaps a good point because we have interchangeably talked here of the opportunity of a Member who does not like a ruling of the Chair being able to appeal the ruling of the Chair, and we have not clearly distinguished that from the opportunity to make a motion to suspend pursuant to the Budget Act. Maybe the answer to that question is to make certain that either an appeal from the ruling of the Chair or a motion with respect to germaneness should have to have a three-fifths vote.

I think that would make it clear because in our practice here earlier today it was not an appeal from the ruling of the Chair. As a matter of fact, it was not even a ruling of the Chair. But I think the Senator is very clear in his explanation that it is intended to cover both. Perhaps we ought to make a further statement in the amendment to make certain that it states that.

. . . .

Mr. DOMENICI. Mr. President, I want to compliment the distinguished minority leader for the amendment. I think we have a suggestion for a further modification. We will talk with the Senator from Louisiana. We are working on it. I think there are a couple of words we ought to add.

. . . .

Mr. DOMENICI. Mr. President, as I was saying, I commend the distinguished minority leader. Frankly, as the chairman of the Budget Committee, I am aware of how beneficial reconciliation can be to deficit reduction. But I am also totally aware of what can happen when we choose to use this kind of process to basically get around the Rules of the Senate as to limiting debate. Clearly, unlimited debate is a prerogative of the Senate that is greatly modified under this process.

I have grown to understand that this institution, while it has a lot of shortcomings, has some qualities that are rather exceptional. One of those is the fact it is an extremely free institution, that we are free to offer amendments, that we are free to take as much time as this U.S. Senate will let us to debate, and have those issues thoroughly understood both here and across this country.

I do not like to see committees put amendments on reconciliation that they have not been able to pass for years, or in the process of doing reconciliation just add untold numbers of amendments in order to be immune from unlimited debate.

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....

Mr. EVANS. Mr. President, I commend the majority and minority leaders, and the chairman and ranking member of the Budget Committee for what they are attempting to do. I think it represents a major step forward in correcting an evil we fell into today which is being well recognized....

.... As I understand the language, and the minority leader . . . can correct me if I am in error, do I understand correctly that the proposal made, if it had been in the law prior to today, would have meant that the textile bill as proposed would have been ruled out of order from this proposal?

Mr. BYRD. If a point of order were made against that bill with respect to germaneness and if the point of order were upheld, then it would take a three-fifths vote to overrule the Chair, under my amendment.

....

Mr. EVANS. I thank the minority leader.

Let me add briefly that this is a splendid move forward. If there had been any real progress made today, perhaps this is the best progress we have made for the long-term future of the Senate.

....

Mr. BYRD....

The amendment (No. 878), as further modified, is as follows:

At the appropriate place add the following:

“When the Senate is considering a reconciliation bill, upon a point of order being made by any Senator, and sustained, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. This provision may be waived by three-fifths of the Senators duly chosen and sworn. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which super majority shall be required to successfully appeal the ruling of the Chair on these matters which include the points of order on extraneous matters and matter not properly reported by a committee.”

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Mr. DOLE. Mr. President, I want to thank my colleague. I think the debate we have had on this amendment has been very helpful. As I look at the votes today, if it had been in effect now, this amendment would not be pending and that would be an improvement on the reconciliation bill. It was never intended as the answer for every amendment whether it is the Hobbs Act, abortion, prayer in school, or anything else. Ordinarily, you just wait for the reconciliation bill to come up every year and put anything on reconciliation. Obviously, that was not the purpose of the Budget Act.<sup>2010</sup>

The Senate went on to adopt the Byrd amendment by a unanimous vote of 96-0.<sup>2011</sup>

### **A Stringent Application**

On October 13, 1989, the Senate exercised a stringent application of the Byrd Rule. Majority Leader George Mitchell, on behalf of himself and Senators Bob Dole, Jim Sasser, Pete Domenici, Robert Byrd, Lloyd Bentsen, and Bob Packwood, offered a leadership amendment to strike extraneous provisions from the reconciliation bill (S. 1750). The amendment went further than the text of the Byrd Rule in its definition of extraneousness. The debate proceeded as follows:

Mr. MITCHELL. Mr. President, the purpose and effect of this amendment may be summed up in a single sentence. The purpose of the reconciliation process is to reduce the deficit. I repeat, the purpose of the reconciliation process is to reduce the deficit.

The amendment is lengthy, consisting of many pages, words, and numbers, but it has that fundamental objective. As I said when I addressed the Senate a week ago Thursday, the reconciliation process has in recent years gone awry. The special procedures included in the Budget Act as a way of facilitating deficit reduction items became a magnet to other legislation which is unrelated to the objective of reducing the deficit.

. . . .

But it is time now to restore the reconciliation process to its original objective. That is what this amendment does. It asks sacrifice of every Senator. It asks discipline of every Senator. It asks that the regular legislative process be restored to the dignity it once had.

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<sup>2010</sup> 131 CONG. REC. 28,968–73 (Oct. 24, 1985).

<sup>2011</sup> *Id.* at 28,974.

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....

Mr. DOLE. . . .

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The bottom line, as I see it, is discipline. Do we have the will to be responsible, to really reduce the Federal deficit or do we undercut the process by piling on important programs, taxes, and other legislative goodies that cost the taxpayers millions in the name of deficit reduction? Many of these provisions have never even had a hearing, never had a hearing, and not one witness from anyplace came in to testify for or against most of the provisions.

....

So [the Caucus] in [e]ffect directed the leader to have the staff put together something that went beyond the Byrd rule; something that extended—I guess you would call it an extension of the Byrd rule. . . .

....

I believe the proposal such as the rural health care package and others are meritorious in their own right and can withstand the test of the normal legislative process, and they should. Reducing the deficit is a priority; the deficit keeps climbing, and we have not had much success in getting it down. I am not certain everybody in America understands all the inside baseball that goes on around here, whether they understand reconciliation and conference committees and motions to strike, but I do believe the American people recognize responsibility when they see it, and tonight they are seeing responsibility in action.

That is the whole purpose of this amendment. The authors will oppose any effort to add back individual provisions, and I certainly urge our colleagues to support those efforts. That does not mean that a provision that some Senator might have—and I will speak to this side of the aisle—will not be picked up in another revenue bill or in a separate piece of legislation. We are not here to pass judgment on what Senators may have in mind as far as legislation is concerned. On this package, it is going to be a reconciliation bill in the finest sense of the word.

....

Mr. SASSER. Mr. President, with this amendment we are firing a shot, I believe, for fiscal responsibility, a shot that I think will be heard throughout the corridors of this Congress. . . . With this amendment, we



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are putting a deficit reduction bill back in the category of being a deficit reduction bill. It is an amendment that sets this body's priorities straight.

What we are seeking to do is to remove from this reconciliation vehicle, all extraneous matter, everything that does not either reduce Federal spending or raise Federal revenues will be stricken. That is the purpose of a reconciliation bill. Extraneous matters have been accumulating on these reconciliation bills now for a number of years, to the point that they are on the verge of sinking the reconciliation bill, and in so doing, defeating the budget process.

At some point in the not too distant future, if we continue down the path that we have been going, the Parliamentarian, on a point of order, will be forced to rule that a so-called reconcil[i]ation bill is not a reconcil[i]ation bill at all, that it is simply a vehicle for so much extraneous matter that deficit reduction has become a subordinate and wholly incident[a]l purpose for which a so-called reconciliation bill will be offered in the future. I do not say that to impugn the worth of many extraneous matters on this reconciliation bill.

....

Mr. DOMENICI. . . .

....

There are a few things about the U.S. Senate that people understand to be very, very significant. One is that you have the right, a rather broad right, the most significant right, among all the parliamentary bodies in the world to amend freely on the floor. The other is the right to debate and to filibuster.

When the Budget Act was drafted, the reconciliation procedure was crafted very carefully. It was intended to be used rather carefully because, in essence, Mr. President, it vitiated those two significant characteristics of this place that many have grown to respect and admire. Some think it is a marvelous institution of democracy, and if you lose those two qualities, you just about turn this U.S. Senate into the U.S. House of Representatives or other parliamentary body.

....

... If the House Rules Committee clears a bill, it makes no difference to them whether it is on reconciliation or freestanding. They set the rules for debate in that institution then and there. We do not have that. The only Rules Committee we have is the floor of the U.S. Senate and a relatively new one called reconciliation.

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Today we have met the enemy. As Pogo says "We met the enemy and he is us." We are going to use the process available under the Budget Act to strip from this bill not only those matters which the Parliamentarian would call extraneous but also those which were never intended because they are not pure deficit reduction matters. Thus, they are broader than the Byrd rule, irrelevant and extraneous, and we are going to strike them.

....

Mr. GORTON. . . .

First, we are doing what we ought to do. As the distinguished majority leader said earlier during the course of this debate, the purpose of a reconciliation bill is to reduce the budget deficit. . . .

Second, and equally important, by this course of action this evening we are not doing what we ought not to do. The distinguished minority leader pointed out that many of the extraneous elements in this resolution before this amendment include good legislation. From a brief review of that legislation, I know this Senator agrees with well over half of those pieces of substantive legislation. But all of them, whether this Senator agrees with them or not, share one feature in common: They have not been debated on the floor of the Senate and cannot be effectively debated as a part of a reconciliation bill. They cannot effectively be amended as a part of a reconciliation bill.

Thus, their inclusion, whether they are good, bad, or indifferent, would utterly destroy the very purpose of the Senate of the United States, as so eloquently described by the President pro tempore last Sunday. It is absolutely essential that, even with this legislation, we have the right to debate and the right to amend.

....

Mr. RUDMAN. . . .

I would say it was informally advanced beyond the Byrd rule by what we have now adopted. I guess I would call it an informal Dole-Mitchell-Sasser-Domenici-Packwood-Bentsen amendment which simply said: If it does not raise revenue or save money, we do not want it in here.

I wish the distinguished President pro tempore might offer that as a formal amendment. It would save us a lot of grief in the coming years. Mr. President, there ought to be a lesson in what happened here today and yesterday and last week. . . .

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....

The net result of that, Mr. President, is what the distinguished President pro tempore said on Sunday about this body, which has the ability to debate and amend and consider legislation. I will tell my colleagues, if there is a great disappointment to this Senator in my 8 years here, it is that some of the most important issues we can discuss we never have the chance to debate and amend on this floor because we are totally immersed in this budget process from January to December; maybe this year shorter.

....

Mr. BYRD. Mr. President, John Stuart Mill said, "On all great subjects, much remains to be said." This is a great subject, the reconciliation bill, and much remains to be said. . . .

I have seen the Senate many times when it gave me reason to be concerned about its future. I have also seen it on some occasions when it gave me reason to be proud. . . .

Tonight I think that we should pause to reflect upon this institution to which Gladstone, that great English statesman who lived during the long reign of Queen Victoria and who was Prime Minister of England four times, referred when he spoke of the U.S. Senate as "that remarkable body, the most remarkable of all the inventions of modern politics." That is what this institution is. . . .

....

The U.S. Senate is the centerpiece of the great compromise. It is the masterpiece of the men who wrote the Constitution. . . . They were wise men, and they saw the need for a system of checks and balances, and the Senate was the balance wheel of that system. The Senate was given extraordinary powers . . . . But the basic cement that was the very foundation of this balance wheel were two in number, the right to debate and the right to amend. The other body may amend, but the other body may also issue a rule which, if agreed to, will confine amendments to one in number or two in number or three or none and direct that a certain Member will be the only Member who will offer that one amendment or those two amendments.

The House has the previous question, but not the Senate. The Senate allows unrestricted debate. We now and then restrict ourselves through the cloture motion, which first was created in 1917. But the right to debate and to amend is why we should be proud of this institution, why we should revere it.

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The Constitution, in section 7 of article I, says that measures that raise revenues shall begin in the House of Representatives, but it also says that the Senate may propose or concur with amendments as on other bills. So there is a constitutional right reposed in the Senate to amend eve[n] revenue bills.

The Senate and the House have their tensions between them, as do the executive and the legislative, all these with the built-in tensions that the forefathers took great care to fashion in order to make this a system of checks and balances.

But in the reconciliation bill, we were about to inflict our own mortal wound, as Brutus did with the same dagger that he had plunged into Caesar's blood, bringing a bill of such magnitude here which contained scores of measures, on any one of which the Senate should have had the opportunity to debate at full length and to amend. What hidden pieces of legislation might come to the floor in a package of this size? What hidden legislation we might vote upon and come to regret at a later time?

This is an institution for the protection of minorities, an institution in which the minority can put a bridle on the majority for at least a while until the country can be awakened to the mistakes that might otherwise be visited upon the people. We should not view this Senate lightly, and never should be party to weakening this institution, with which we have been blessed.

Yes, there were limitations on debate in 1919 in the League of Nations debate, and in 1926 in the World Court debate, limitations through the cloture rule, but their price was substantial concessions by the majority.

The Senate is . . . the only forum in which minorities are protected against the sudden waves of passion that might sweep over the Nation.

A reconciliation bill is a super gag rule, the foremost ever created by this institution. Normal cloture is but an infinite speck on the distant horizon when compared with a reconciliation bill. Cloture may be invoked on any measure, motion, or matter. Sixteen Senators sign a cloture petition; parts of 3 days transpire before cloture is invoked; and when it is invoked, it is invoked on only one matter or one measure or one motion. Then there are 30 hours of debate. The provision is within that rule that that time may be extended by a three-fifths majority vote to whatever—40 hours, 50, 75 or 100 hours. But not so with reconciliation. Reconciliation comes to the floor. There is no opportunity to debate a motion to proceed, whereas, under cloture, an attack can be made by the minority even on the motion to proceed. The minority ought to be zealous in protecting that right; the minority may be on this side of the aisle tomorrow, as it was yesterday.

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Under reconciliation there is no motion provided to extend that time beyond 20 hours, but there is a motion that is nondebatable and can be invoked by only a majority of Members to reduce the time, and it can be reduced to 10 hours or to 5 hours or to 2 hours or to 1 hour without debate. Only a majority vote is needed to reduce it to no time:

Mr. President, I move that the time remaining on reconciliation be reduced to no time. What can you do about it? Weep. Reconciliation is one real beartrap.

And so it has been with sorrow that some of us have seen what has been happening on reconciliation. It is a process which has gotten out of hand and, if continued, it will undermine the deliberative nature of the institution.

It is a process by which committees of the Senate may dictate to the Senate. You take what we give you. There is not a thing you can do about it. Oh, yes, you can strike. But you take what we give you.

And within those committees that determination is made by a majority. There is a 17-member committee, and 9 members of the committee can determine that.

Send that to the Budget Committee, and the Budget Committee has no alternative but to send it to the Senate, and here we are faced with a super, super, colossally super, gag rule.

So we ought to take the utmost care in handling this legislative weapon.

Mr. President, I have had my faith renewed in this institution in these recent hours. . . .

. . . .

Yes, there were important measures wrapped into this reconciliation bill. But I hope that this is the beginning of the end of the abuse of the reconciliation process. I hope that it will be a lesson learned by all of us that we might in the future take heed, and remember not to put that measure that is so dear to our hearts into the reconciliation package. . . .

Mr. President, I close by saying, as I began, that human ingenuity can always find a way to circumvent a process. And reconciliation is a process. It has been abused terribly. But I have regained my faith. We are told in the Scriptures:

Remove not the ancient landmark, which thy fathers have set.

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The Constitution is the old landmark which they have set. And if we do not rise to the call of the moment and take a stand, take a strong stand against our own personal interests or against party interests, and stand for the Constitution, then how might we face our children and gran[d]children when they ask of us as Caesar did to the centurion,

How do we fare today?

And the centurion replied,

You will be victorious. As for myself, whether I live or die, tonight I shall have earned the praise of Caesar.

I not only compliment, but I also thank Members who have risen in this moment to do the responsible thing. We are going to look back on this day. So when you go with pride to meet the other body in conference, go with strong hearts, with confidence, and a determination that you are going to uphold the principles that our forefathers, men of this institution, stood for. Yours is an equal body – the Senate.

When Aaron Burr walked out of the Old Senate Chamber on March 4, 1805 after [he] had sat in the Chair, and presided over the impeachment trial of Supreme Court Justice Samuel Chase – Burr had killed Alexander Hamilton in a duel at Weehawken, NJ. He sat in that chair as though nothing had ever happened. Warrants had been issued in the State of New Jersey and New York for his arrest. But he presided over that trial with a degree of fairness that was commended by friend and foe alike.

As Burr bade goodbye to the Senate over which he has presided for 4 years, this is what he said. And I close with his words because I think they may well have been written for a moment like this. He said:

This House is a sanctuary; a citadel of law, of order, and of liberty, and it is here –

It is here –

in this exalted refuge – here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God averts, its expiring agonies will be witnessed on this floor.<sup>2012</sup>

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<sup>2012</sup> 135 CONG. REC. S13,349–56 (daily ed. Oct. 13, 1989).

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The Senate went on to adopt the leadership amendment by a voice vote.<sup>2013</sup>

### **Preemptive Editing of the Conference Report**

In 1993, at the direction of the Majority Leader, the Parliamentarian and Budget Committee staff examined all proposed language of the conference agreement on the Omnibus Budget Reconciliation Act of 1993,<sup>2014</sup> causing the removal of any language that might violate the Rule. The Budget Committee Chair explained the process:

Mr. President, first, with regard to the Byrd rule, we worked very hard and very faithfully over a period of well over a week in going over this bill to try to clarify and remove items that might be subject to the Byrd rule.

As the distinguished ranking member indicated, I think over 150 items were removed from the reconciliation instrument here, because it was felt that they would be subject to the Byrd rule. And we furnished our friends on the other side of the aisle, the distinguished staff colleagues on the Senate Budget Committee, copies of the draft language so that we would each know where we were, and there would be no surprises as we worked together to try to expunge the Byrd rule problems from the reconciliation conference report.

Our efforts here were not totally altruistic, because we knew that if there were items left in here that were subject to a valid challenge under the Byrd rule, that would simply, for all practical purposes, kill this reconciliation conference report; that we simply could not reconstitute a conference, come up with another conference report, and we could not send it back to the House of Representatives. So we were very careful and as true as we could be to the letter of the Byrd rule and to the intent of it.

I want to express my profound gratitude and appreciation to the Senate Parliamentarian, Mr. Alan Frumin and his staff, Kevin Kayes, Jim Weber, and Beth Smerko who worked long and hard with us day and night—I might say, Saturday and Sunday included—to try to expunge what could have conceivably been called Byrd rule problems here.

So I hope there is no suggestion here that there was not a conscientious effort to try to adhere as rigidly as possible to the Byrd rule, or adhere to it as rigidly as required by the rules of the Senate to the Byrd rule, because we worked very, very hard to do that.

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<sup>2013</sup> See *id.* at S13,557.

<sup>2014</sup> [Omnibus Budget Reconciliation Act of 1993](#), Pub. L. No. 103-66, 107 Stat. 312 (1993).

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I might say some of our House colleagues could not understand, and I do not blame them because there were a number of things that were pulled out of this budget reconciliation that had been voted on and passed by large majorities in both houses. But simply because they violated the Byrd rule, we had to go to the chairmen of the appropriate House committees and tell them they had to come out. They simply did not understand it. I think it made them perhaps have a little less high esteem for some of us here in the Senate, and we had to go to them and request they do it. In the final analysis, their leadership had to demand that some of these provisions subject to the Byrd rule come out.

So I think we have all worked very hard and in good faith on both sides of the aisle really to try to be true to the Byrd rule.<sup>2015</sup>

In the wake of that experience, the Chair of the House Budget Committee criticized the Rule, arguing that it impedes legislation necessary to reduce the deficit. Chair Sabo introduced legislation to repeal the Rule's application to the House.<sup>2016</sup>

### **Omnibus Point of Order Followed by Editing in Conference**

During consideration of the 1995 reconciliation bill, Senator Jim Exon raised an omnibus point of order during floor consideration of the bill.

In reaction to the raising of that point of order, Republican conferees on the reconciliation bill set about purging Byrd Rule violations, much as the Democrats had done in 1993.<sup>2017</sup> That process spawned the terminology described in the "Reliable Source" column in the *Washington Post* as follows:

Byrds of a Feather . . .

Today, class, as the House and Senate struggle to reconcile their budgets, let's learn about the Byrd Rule.

Zany Republican House Budget Committee staffers—anticipating that Senate Dems will skirt the rule that bars anything but taxing, spending and savings measures from reconciliation bills—have penned a cheeky

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<sup>2015</sup> 139 CONG. REC. 19,767 [S10,662] (Aug. 6, 1993). For press accounts of the process, see Mary Jacoby, *Senate Parliamentarian Purges Budget Bill of Measures that Could Violate Byrd Rule*, ROLL CALL, Aug. 5, 1993, at 9; Richard E. Cohen, *Running Up Against the "Byrd Rule,"* 25 NAT'L J. 2151 (1993).

<sup>2016</sup> See [A Bill to amend the Congressional Budget Act of 1974 to make section 313 \(relating to extraneous matter in reconciliation legislation and popularly known as the Byrd rule\) applicable to the Senate only](#), H.R. 4780, 103d Cong. (1994); Mary Jacoby, *Sabo Bill Would Kill Byrd Rule for Good*, ROLL CALL, July 25, 1994, at 12.

<sup>2017</sup> See, e.g., Christopher Georges, *Byrd Procedural Rule Is Threatening to Derail Substantial Portions of the Republican Agenda*, WALL ST. J., Nov. 8, 1995, at A22.



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glossary to boost morale and keep Dems on the defensive about a law written, named after and adroitly used by Sen. Robert Byrd (D-W.Va.) when Dems ruled the Capitol Hill roost.

Clearly the last thing the GOP wants during debate on the 2,000-page budget reconciliation bill (which may not pass till Christmas) is a Dem drive to save the Commerce Department or slow welfare overhaul. Thus the phrases: Big Byrd (an obvious rule violation), Byrd Brain (an expert in all rule nuances), Dodo Byrd (a gross rule misinterpretation) and Byrd Droppings (deleted bill provisions resulting from a violation).

Actually, GOP senators already seem to know their stuff. Pete Domenici (R-N.M.) recently voiced “the greatest respect and some degree of sorrow” in nailing Byrd himself for breaking the rule. Byrd proposed an amendment to extend reconciliation debate from 20 hours to 50, a no-no because it dealt with procedure, not money.<sup>2018</sup>

The Congressional Research Service’s Bill Heniff Jr. and Bob Keith have written an excellent history and discussion of the Byrd Rule.<sup>2019</sup>

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<sup>2018</sup> Ann Gerhart & Annie Groer, *Byrds of a Feather*, WASH. POST, Nov. 8, 1995, at B3.

<sup>2019</sup> BILL HENIFF JR. & ROBERT KEITH, CONG. RSCH. SERV., [RL30862, THE BUDGET RECONCILIATION PROCESS: THE SENATE’S “BYRD RULE”](#) (2021).

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## EXTRANEOUS MATTER IN RECONCILIATION LEGISLATION<sup>2020</sup>

313(a) SEC. 313.<sup>2021</sup> (a) IN GENERAL.<sup>2022</sup>—When the Senate is considering a reconciliation bill or a [reconciliation resolution](#)<sup>2023</sup> pursuant to [section 310](#)<sup>2024</sup> (whether that bill or resolution originated in the Senate or the House)<sup>2025</sup> or [section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985](#),<sup>2026</sup> upon a point of order being made by any Senator against material extraneous to the instructions to a committee which is contained in any title or provision of the bill or resolution or offered as an amendment to the bill or resolution, and the point of order is sustained by the Chair, any part of said title or provision that contains material extraneous to the instructions to said Committee as defined in [subsection \(b\)](#)<sup>2027</sup> shall be deemed stricken from the bill and may not be offered as an amendment from the floor.

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*Whether that bill or resolution originated in the Senate or the House*—Budget Enforcement Act of 1990 section 13214(a)(1)(B) inserted the parenthetical “(whether that bill or resolution originated in the Senate or the House).”

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<sup>2020</sup> Budget Enforcement Act of 1990 § 13214(b)(2)(A) added this heading here.

<sup>2021</sup> Congressional Budget Act of 1974 § 313 is codified as amended at [2 U.S.C. § 644](#). This section is often called “the Byrd Rule,” after its principal sponsor, Senator Robert C. Byrd of West Virginia. [Budget Enforcement Act of 1990 § 13214\(b\)\(1\)](#) transferred this material here from [Consolidated Omnibus Budget Reconciliation Act of 1985](#), Pub. L. No. 99-272, § 20001, 100 Stat. 82, 390–91 (1986), as amended by the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 7006, 100 Stat. 1874, 1949–1950 (1986), and as amended by [Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987](#), Pub. L. No. 100-119, § 205, 101 Stat. 754, 784–85 (1987). For a discussion of the section, see BILL HENIFF JR. & ROBERT KEITH, CONG. RSCH. SERV., [RL30862, THE BUDGET RECONCILIATION PROCESS: THE SENATE’S “BYRD RULE”](#) (2021).

<sup>2022</sup> Budget Enforcement Act of 1990 § 13214(a)(1)(A) inserted the heading “IN GENERAL.—” here.

<sup>2023</sup> [Congressional Budget Act of 1974 § 310\(b\)](#), 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.”

<sup>2024</sup> [Congressional Budget Act of 1974 § 310](#), 2 U.S.C. § 641, *supra* p. 514, addresses “Reconciliation.”

<sup>2025</sup> *Id.*

<sup>2026</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#) § 258C, 2 U.S.C. § 907d, *infra* p. 1138, addresses “Special Reconciliation Process,” as a substitute for sequestration. Budget Enforcement Act of 1990 § 13214(a)(1)(B) inserted the reference “or section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985.”

<sup>2027</sup> [Congressional Budget Act of 1974 § 313\(b\)](#), 2 U.S.C. § 644(b), *infra* p. 651, addresses “Extraneous Provisions.”

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The Budget Enforcement Act language codifies the understanding of the law held by the Budget Committee Chair (that this rule applies to reconciliation bills or reconciliation resolutions passed by the House when the Senate considers them) as expressed in the debate of October 4, 1989:

#### RECONCILIATION QUESTIONS

Mr. SASSER. Mr. President. The distinguished Republican leader gave notice yesterday of his intent to propound four parliamentary inquiries of the Chair regarding the reconciliation process pursuant to the Congressional Budget Act of 1974. I rise today to address these inquiries from the perspective of the Committee on the Budget.

....

Mr. President, the distinguished Republican Leader asked a second question, and it was this:

“Can the Byrd rule, the extraneous rule, be used to attack the House language on capital gains?” That was the question.

We in the Committee on the Budget would submit that the answer to that is yes. The Byrd rule, by its term[s], applies to a “reconciliation bill.” If the Senate were to take up the House-reported reconciliation bill, it would be considering a “reconciliation bill” pursuant to the Byrd rule.

The procedures regarding reconciliation would apply, including that debate would be limited to 20 hours, that no amendment that is not germane would be received, and that the bill would be out of order if it proposed changes in Social Security.

Likewise, the Byrd rule on what is extraneous would apply. Otherwise, the Senate would be forced to take up a measure to which the Senate’s own rules would not apply. Clearly, a gigantic loophole would be created and the result would be unacceptable, in that the Senate’s own rules could not be used to determine its actions.

Mr. President, what is the effect of a Byrd rule point of order against a provision in the House bill? The text of Senate Resolution 509 from the second session of the 99th Congress, I think, provides some guidance. The effect would be just the same as if the Senate had adopted an amendment striking the offending provision. This is, after all, the effect of the Byrd rule on provisions of Senate reported reconciliation bills.<sup>2028</sup>

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<sup>2028</sup> 135 CONG. REC. S12,589 (daily ed. Oct. 4, 1989) (statement of Budget Committee Chair Sasser).

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(The Republican Leader never formally raised the parliamentary inquiries that he said he would.) The Budget Enforcement Act of 1990 incorporated the Senate Resolution to which the Chair referred as subsection (d) of this section.

In March 2010, contemplating that the Senate would take up a House-passed reconciliation bill without any instructed Senate committee having reported, the Parliamentarian advised that all prongs of the Byrd Rule would apply to the House bill, including subsection (b)(1)(B) (deficit-increasing provisions) and (b)(1)(E) (out-year compliance by committee). With respect to deficit-increasing provisions, the point of order would be available against the House-passed bill, but because the House bill would need to bring the HELP and Finance Committees into compliance at the outset in order to have privileged status on the Senate floor, the committees would have met their savings targets and a point of order against a deficit-increasing provision would not be well taken (unless the committees would somehow later be brought out of compliance). With respect to out-year deficit neutrality, the Parliamentarian would require changes in the jurisdiction of each instructed committee to meet the Byrd Rule out-year test.<sup>2029</sup>

*Point of order*—Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement.<sup>2030</sup>

A Senator may not raise a point of order against a provision of a committee-reported bill while an amendment to that bill is pending.<sup>2031</sup> Before a Senator makes such a point of order, the Senator may ask unanimous consent that the Senate temporarily lay aside all pending amendments.<sup>2032</sup>

*Offered as an amendment to the bill or resolution*—The Parliamentarian has advised (in August of 2005) that by virtue of the specific language of this subsection, a Senator may raise a point of order against a provision of

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<sup>2029</sup> E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re quick summary of advice from Parls (Mar. 11, 2010, 9:34 AM).

<sup>2030</sup> 130 CONG. REC. S7919 (daily ed. June 21, 1984).

<sup>2031</sup> 142 CONG. REC. S6295 (daily ed. June 25, 1997) (Senator Rockefeller attempted to raise a point of order against section 5001 of the committee-reported bill on Medicare balance billing while his amendment 478 was pending).

<sup>2032</sup> See 143 CONG. REC. S6092–93 (daily ed. June 23, 1997) (statement of Sen. Durbin on his point of order against § 5611 of the committee-reported bill raising the age of Medicare eligibility).

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an amendment and need not raise a point of order against the entire amendment.

Similarly, when asked when Byrd Rule points of order are raised against amendments, whether the entire amendment falls or only the offending provision, the Parliamentarian has written:

Given that Byrd rule discipline is provision-by-provision it makes sense that only discrete provisions of an amendment are subject to the [point of order]. I think it also can depend on how the [point of order] is stated by the person raising the challenge and that may also be dependent on the fact that scores factor into the analysis, so if CBO or JCT has provided a score for an amendment in full rather than at a granular level, we could be constrained by that advice.<sup>2033</sup>

There are precedents for both provisions of amendments and entire amendments falling due to a Byrd Rule challenge. Sometimes only a provision has been stricken, especially in a substitute amendment.<sup>2034</sup> More frequently, it appears the entire amendment fell.<sup>2035</sup>

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<sup>2033</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Budget memo re: reconciliation floor questions (Aug. 6, 2022, 6:43 PM).

<sup>2034</sup> See, e.g., [161 CONG. REC. S8354](#) (daily ed. Dec. 3, 2015) (point of order against S. Amend. No. 2916, § 105(b), 114th Cong., [161 CONG. REC. S8354](#) (daily ed. Dec. 3, 2015) (McConnell substitute; the point of order was sustained, and section 105(b) was stricken).

<sup>2035</sup> See, e.g., 133 CONG. REC. S17,600 (daily ed. Dec. 10, 1987) (Byrd motion to waive for Byrd-Dole, Kassebaum, and Gramm amendments approved 81-13; no point of order raised); 136 CONG. REC. S15,731-38 (daily ed. Oct. 18, 1990), FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 625 (1992) (Sasser point of order under subsection (b)(1)(A) against a Graham amendment to develop a risk-based deposit insurance system; Graham motion to waive rejected on a voice vote; point of order sustained; amendment fell); [136 CONG. REC. 30,668-70, 30,676](#) (Oct. 18, 1990), FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 626 (1992) (Bentsen point of order under subsection (b)(1)(A) against a Symms amendment to require deposit of increase in motor fuel taxes in the Highway Trust Fund; Symms motion to waive rejected by a 48-52 vote; point of order sustained; amendment fell); 139 CONG. REC. S7898-901, S7920 (daily ed. June 24, 1993) (Sasser point of order under subsection (b)(1)(A) against a Domenici-Nunn amendment regarding caps on domestic, international, and defense discretionary spending; motion to waive rejected by a 53-45 vote; point of order sustained; amendment fell); *id.* at S7901-04, S7920-21 (daily ed. June 24, 1993) (Sasser point of order under subsection (b)(1)(A) against a Bradley amendment proposing a legislative line-item veto using separate enrollment of appropriations and tax expenditure sections; motion to waive rejected by a 53-45 vote; point of order sustained; amendment fell); *id.* at S7919, S7924 (daily ed. June 24, 1993) (Sasser point of order under subsection (b)(1)(A) against a Gramm amendment regarding restoration of fixed deficit targets; Gramm motion to waive rejected by a 43-55 vote; point of order sustained; amendment fell); 141 CONG. REC. S15,831 (daily ed. Oct. 26, 1995) (Domenici point of order against Dorgan a amendment ending deferral for U.S. shareholders on income of controlled foreign corporations attributable to imported property; Exon motion to waive rejected 47-52; point of order sustained; amendment fell); *id.* at S16,016 (daily ed. Oct. 27, 1995) (Exon point of order under subsection (b)(1)(A) against Specter a amendment expressing the sense of the Senate regarding a flat tax; Specter motion to waive rejected 17-82; point of order sustained; amendment fell); *id.* at S16,025 (daily ed. Oct. 27, 1995) (Domenici point of order under subsection (b)(1)(A) against a Bumpers amendment prohibiting counting the proceeds of asset sales; Exon motion to waive rejected 49-50; point of order sustained; amendment fell); *id.* at S16,026 (daily ed. Oct. 27, 1995) (Domenici point of order under subsection (b)(1)(A) against a Byrd-Dorgan amendment to increase the time limit on debate in Senate on reconciliation legislation; Exon motion to waive rejected 47-52; point of order sustained; amendment fell);

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142 CONG. REC. S8332–33 (daily ed. July 19, 1996) (Dodd point of order under subsection (b)(1)(A) against a Frist amendment expressing the sense of Congress that the President should ensure approval of state welfare reform waiver requests; Frist motion to waive rejected 55-43; point of order sustained; amendment fell); 143 CONG. REC. S6298 (daily ed. June 25, 1997) (Domenici point of order under subsection (b)(1)(A) against a Levin amendment allowing vocational educational training to be counted as a work activity under the Temporary Assistance for Needy Families program; Levin motion to waive rejected 55-45; point of order sustained; amendment fell); *id.* at S6307–08 (daily ed. June 25, 1997) (Domenici point of order under subsection (b)(1)(E) against a Lautenberg for Kennedy amendment reducing fees on student loan programs; Dodd motion to waive rejected 43-57; point of order sustained; amendment fell); *id.* at S6316–17 (daily ed. June 25, 1997) (Domenici point of order implicitly under subsection (b)(1)(A) against a Lautenberg for Kennedy amendment to immediately transfer to Medicare part B certain home health benefits; Kennedy motion to waive rejected 38-62; point of order sustained; amendment fell); *id.* at S6673–74 (daily ed. June 27, 1997) (Lautenberg point of order under subsection (b)(1)(A) against a Gramm amendment to create balanced budget enforcement procedures; Gramm motion to waive rejected 37-63; point of order sustained; amendment fell); *id.* at S6674–75 (daily ed. June 27, 1997) (Domenici point of order implicitly under subsection (b)(1)(A) against a Bumpers amendment to prohibit scoring, for budget purposes, revenues from sale of certain federal lands; Bumpers motion to waive rejected 48-52; point of order sustained; amendment fell); *id.* at S6675–76 (daily ed. June 27, 1997) (Lautenberg point of order under subsection (b)(1)(A) against a Craig amendment to change the pay-go procedures by establishing a 60-vote point of order against using tax increases to pay for new mandatory spending increases; Craig motion to waive rejected 42-58; point of order sustained; amendment fell); *id.* at S6677 (daily ed. June 27, 1997) (Lautenberg point of order under subsection (b)(1)(A) against a Brownback amendment to create balanced budget enforcement procedures; Brownback motion to waive rejected 57-43; point of order sustained; amendment fell); *id.* at S6678 (daily ed. June 27, 1997) (Lautenberg point of order under subsection (b)(1)(A) against a Frist amendment to create balanced budget enforcement procedures; Frist motion to waive rejected 59-41; point of order sustained; amendment fell); *id.* at S6679–80 (daily ed. June 27, 1997) (Lautenberg point of order under subsection (b)(1)(A) against a Abraham amendment to ensure that future revenue windfalls to the Federal treasury are reserved for tax or deficit reduction; Abraham motion to waive rejected 53-47; point of order sustained; amendment fell); 145 CONG. REC. S9887, S9889 (daily ed. July 30, 1999) (Domenici point of order under subsection (b)(1)(A) against a Bingaman amendment to express the sense of the Senate on investment in education; Bingaman motion to waive rejected 48-52; point of order sustained; amendment fell); *id.* at S9891 (daily ed. July 30, 1999) (Baucus point of order under subsection (b)(1)(A) against a Frist amendment to express the sense of the Senate regarding the Medicare Reserve Fund; Frist motion to waive rejected 54-46; point of order sustained; amendment fell); 146 CONG. REC. S6804 (daily ed. July 14, 2000), *id.* at S7045 (daily ed. July 17, 2000) (Moynihan point of order under subsection (b)(1)(E) against Roth amendment to strike the sunset provision in the committee-reported bill; Roth motion to waive rejected 48-47; point of order sustained; amendment fell); *id.* (Roth point of order implicitly under subsection (b)(1)(E) against a Roth amendment to strike the sunset provision in the Democratic substitute; covered by same Roth motion to waive as previous point of order; point of order sustained; amendment fell); 149 CONG. REC. S6431 (daily ed. May 15, 2003) (Baucus point of order implicitly under subsection (b)(1)(E) against a Sessions amendment applying sunset provision to revenue increase provisions; Sessions motion to waive rejected 51-49; point of order sustained; amendment fell); 151 CONG. REC. S13,123 (daily ed. Nov. 17, 2005) (Durbin point of order under subsection (b)(1)(A) against a Grassley amendment to express the sense of the Senate regarding extending 2003 tax cuts and other tax policy; Grassley motion to waive rejected 53-45; amendment fell); 156 CONG. REC. S1996 (daily ed. Mar. 24, 2010) (Baucus point of order under subsection (b)(1)(C) against a Grassley-Roberts amendment to ensure that the President, Cabinet, White House staff and Congressional staff would buy health insurance through health insurance exchanges to a bill enacting the Affordable Care Act; Grassley motion to waive failed 43-56; point of order sustained; amendment fell); *id.* at S1997 (Baucus point of order under subsection (b)(1)(C) against a LeMieux amendment to ensure that Members of Congress would be covered by Medicaid to a bill enacting the Affordable Care Act; LeMieux motion to waive failed 40-59; point of order sustained; amendment fell); *id.* at S2004–05 (Baucus point of order under subsection (b)(1)(D) against a Roberts amendment on the Independent Payment Advisory Board, thus implicating fast-track procedures, to a bill enacting the Affordable Care Act; Roberts motion to waive failed 42-54; point of order sustained; amendment fell); *id.* at S2008 (Baucus point of order under subsection (b)(1)(C) against a Grassley amendment to extend unemployment insurance, COBRA coverage, the SGR Medicare physicians payment fix, Federal poverty guidelines, national flood insurance, satellite television, and compensation for highway programs to a bill enacting the Affordable

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Care Act; Grassley motion to waive failed 40-56; point of order sustained; amendment fell); [id. at S2010](#) (Baucus point of order under subsection (b)(1)(C) against a Hutchison amendment to, in Sen. Hutchison's words, "make relief from the marriage penalty and the sales tax deduction permanent," offset by, in the amendment's words, "rescission of certain stimulus funds," to a bill enacting the Affordable Care Act; Hutchison motion to waive failed 40-55; point of order sustained; amendment fell); [id. at S2070](#) (daily ed. Mar. 25, 2010) (Baucus point of order under subsection (b)(1)(C) against an Ensign amendment, in Sen. Baucus's words, "related to medical malpractice and tort reform" to a bill enacting the Affordable Care Act; Ensign motion to waive failed 40-55; point of order sustained; amendment fell); [id. at S2071](#) (Baucus point of order under subsection (b)(1)(C) against a Coburn amendment to restore the ability to buy guns of veterans, in the words of the amendment, "deemed mentally incompetent," to a bill enacting the Affordable Care Act; Coburn motion to waive failed 45-53; point of order sustained; amendment fell); [id. at S2075](#) (Baucus point of order under subsection (b)(1)(C) against a Vitter amendment to suspend the proposed health care law for, in the words of the amendment, "any fiscal year OMB determines that the deficit targets set forth in the CBO report of March 20, 2010 will not be met," to a bill enacting the Affordable Care Act; Vitter motion to waive failed 39-56; point of order sustained; amendment fell); [id. at S2077](#) (Baucus point of order under subsection (b)(1)(C) against a Murkowski amendment to index thresholds for Hospital Insurance tax, offset by, in the amendment's words, "rescission of certain stimulus funds," to a bill enacting the Affordable Care Act; Murkowski motion to waive failed 42-57; point of order sustained; amendment fell); [161 CONG. REC. S8346](#) (daily ed. Dec. 3, 2015) (Reid point of order apparently under subsection (b)(1)(C) against a Cornyn amendment to protect due process rights of people seeking to buy guns to a bill to repeal provisions of the Affordable Care Act; Cornyn motion to waive failed 55-44; point of order sustained; amendment fell); [id. at S8347](#) (Enzi point of order under subsection (b)(1)(C) against a Feinstein amendment on gun sales to suspected terrorists to a bill to repeal provisions of the Affordable Care Act; Feinstein motion to waive failed 45-54; point of order sustained; amendment fell); [id. at S8347-48](#) (Durbin point of order under subsection (b)(1)(C) against a Grassley amendment on gun background checks to a bill to repeal provisions of the Affordable Care Act; Grassley motion to waive failed 53-46; point of order sustained; amendment fell); [id. at S8348](#) (Grassley point of order under subsection (b)(1)(C) against a Manchin-Toomey amendment on gun background checks to a bill to repeal provisions of the Affordable Care Act; Manchin motion to waive failed 48-50; point of order sustained; amendment fell); [163 CONG. REC. S4262-63](#) (daily ed. July 26, 2017) (Sanders point of order under subsection (b)(1)(A) against Enzi for Heller amendment to the American Health Care Act of 2017 "[t]o express the sense of the Senate that Medicaid expansion is a priority and that Obamacare must be improved"; Heller motion to waive rejected 10-90; point of order sustained; amendment fell); [167 CONG. REC. S1230](#) (daily ed. Mar. 5, 2021) (Lindsey Graham point of order under subsection (b)(1)(D) against a Sanders amendment that would have raised the minimum wage; motion to waive rejected; point of order sustained; amendment fell); [id. at S1233, S1347-54](#) (Sanders point of order raised by Budget Committee Chair Bernie under subsection (b)(1)(D) against a Collins substitute amendment that would have, among other things, applied Hyde Amendment restrictions barring the use of federal funds to pay for abortion; motion to waive rejected; point of order sustained; amendment fell); [id. at S1247, S1295-300](#) (Murray point of order under subsection (b)(1)(D) against a Lankford amendment that would have applied Hyde Amendment restrictions to the bill; motion to waive rejected; point of order sustained; amendment fell); [id. at S1250-51, S1398-99](#) (Murray point of order under subsection (b)(1)(D) against a Tuberville amendment to prohibit certain funds made available under the American Rescue Plan Act of 2021 to go to States, local educational agencies, and institutions of higher education that permit transgender students to participate in athletic programs designated for women or girls; motion to waive rejected; point of order sustained; amendment fell); [168 CONG. REC. S4170](#) (daily ed. Aug. 6, 2022) (Lindsey Graham point of order under subsection (b)(1)(C) against a Sanders amendment to cap costs for covered prescription drugs under Medicare Parts B and D in part by reference to the amount paid by the Secretary of Veterans Affairs; motion to waive rejected; point of order sustained; amendment fell); [id. at S4179-80](#) (Durbin point of order under subsection (b)(1)(A) against a Tester amendment to establish a procedure for terminating a determination by the Surgeon General to suspend certain entries and imports; motion to waive rejected; point of order sustained; amendment fell); [id. at S4182-83, S4331-34](#) (Carper point of order under section (b)(1)(D) against a Capito amendment to expedite permits for infrastructure and energy projects; motion to waive rejected; point of order sustained; amendment fell); [id. at S4190-91](#) (Lindsey Graham point of order under subsection (b)(1)(C) against a Warnock amendment to make health care coverage available to low-income adults in states that have not expanded Medicaid; motion to waive rejected; point of order sustained; amendment fell).



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An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered.

From 1990 through 2021, Senators raised 44 points of order under the Byrd Rule against amendments. The Presiding Officer sustained all 44.<sup>2036</sup>

*Any part*—During the debate on the amendment that would later become section 313, Senator Johnston asked the principal sponsor, Senator Byrd, what “part” meant:

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

Mr. BYRD. I yield.

Mr. JOHNSTON. I say I support very strongly what the Senator is trying to do, but for purpose of setting the legislative record, I would like to get an understanding what happens in some instances.

First of all, according to the amendment when a matter is not within the jurisdiction of the committee or is extraneous to the instructions, that matter shall be deemed stricken from the bill. Now the question is: Where you have a whole provision, some of which is germane and some of which is not, does the Parliamentarian go through that and excise those sentences or clauses or subsections which are nongermane or extraneous and leave the rest, or does he excise the entire section as to which there is offending language?

Mr. BYRD. I am not sure I can answer that question with respect to what the Parliamentarian will do.

It might depend upon whether or not the language is divisible. I do not know. Perhaps the distinguished Senator would want to address his question to the Chair on this particular question.

Mr. JOHNSTON. When it says, “Any part of a bill not in the jurisdiction of the committee,” I am just wondering what the intent of the authors is with respect to “any part of a bill.” Does it mean the entire portion of the bill reported by a committee, or just as the offending extraneous or nongermane language?

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<sup>2036</sup> BILL HENIFF JR. & ROBERT KEITH, CONG. RSCH. SERV., [RL30862, THE BUDGET RECONCILIATION PROCESS: THE SENATE’S “BYRD RULE” 9–11 \(2021\)](#).



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Mr. BYRD. If it is any part of the bill that is not within the jurisdiction of the reporting committee, it would fall. If it is not within the jurisdiction of the —

Mr. JOHNSTON. When you say “part,” if you have, let us say, a 30-page section of legislation as to which there is one subsection that is not germane, would you simply knock out the subsection or would you take the whole 30-page section?

Mr. BYRD. I think the Senator may be confusing—let me say this: the Senator is talking about germaneness?

Mr. JOHNSTON. The Senator is correct.

Mr. BYRD. And also talking about legislation that has been reported by a committee which does not have jurisdiction over the subject matter. So there are two different things. The language, I think, would explain the answer. Any part of the bill not in the jurisdiction of the reporting committee, whether it is germane or not, any part that is not within the jurisdiction of the reporting committee, would fall.

Mr. JOHNSTON. For example, we usually put a severability clause in legislation which means that if any section of the bill is declared unconstitutional by the Court, then the rest of the bill does not fall. I am asking, I guess, whether you intend for there to be, in effect, a severability clause here, or whether the whole section as to which there is any offending language falls.

Mr. BYRD. I say any part of the bill that is not within the jurisdiction of the reporting committee would fall.

Mr. JOHNSTON. You can take out that part and in effect rewrite the bill by striking sentences, clauses, subsections.

Mr. BYRD. That are not within the jurisdiction of the reporting committee.<sup>2037</sup>

The Parliamentarian has advised that the Parliamentarian will follow the “Achilles’ heel” principle—if a portion of a section is fatal and cannot be severed, then the whole section is subject to the Byrd Rule and will fall. Switching metaphors, the Parliamentarian has advised that just because language is “Frankensteined”—sewn into other language—does not

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<sup>2037</sup> 131 CONG. REC. S14,034 (daily ed. Oct. 24, 1985).

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protect that language from scrutiny. The Parliamentarian has said that “clever drafting does not mean that rights aren’t preserved.”<sup>2038</sup>

**Subsection (b)**—Section 13214(b)(4)(B) of the Budget Enforcement Act of 1990 changed this reference from (d) to (b) to conform with the redesignation of subsection (d) as subsection (b) made by section 13214(b)(2)(C) of the Budget Enforcement Act.

Section 13214(b)(2)(B) of the Budget Enforcement Act of 1990 repealed what used to be the last sentence of subsection (a), which read as follows:

An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section, as well as to waive or suspend the provisions of this subsection.

Budget Act section 904(d) supersedes this sentence by listing sections 313 and 904(d) among those sections for which 60 Senators must vote affirmatively to sustain an appeal.

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<sup>2038</sup> Staff of S. Comm. on the Budget, Reconciliation Meeting #1 with Parliamentarians (Oct. 15, 2015).

*Extraneous Provisions.*—During the debate on the amendment that would later become section 313, Senator Johnston asked the principal sponsor, Senator Byrd, what “extraneous” meant:

Mr. JOHNSTON. My final question has to do with the meaning of the word “extraneous” and what your intention is as to how that is interpreted. Frequently, in fact, usually directions are given by the Budget Committee in the very broadest of terms, and the authorizing committees report legislation which is detailed and which, in one sense, might contain matter that is extraneous. It might be germane to the instructions, but extraneous in the sense that it is not specifically called for within the four corners of the instructions from the Budget Committee to the authorizing committee. Could the Senator tell me what he means by “extraneous” in this context of that question?

....

Mr. JOHNSTON. If I may repeat it. The question is as to the meaning of the word “extraneous,” as used in this amendment. . . .

... But the question is: What is the meaning of the word “extraneous”? Do you mean that it must be contained within the four corners of the instructions from the Budget Committee, or may the Budget Committee supplement those instructions by filling out the spirit of the instructions within the jurisdiction of that committee and all within the germaneness rule, if the Senator understands the question?

Mr. BYRD. The word “extraneous” here would be interpreted in the future just as it is presently being interpreted. And I understand that, at the present time, “extraneous,” in the context, is determined by whether or not the language contributes to reducing the deficit and balancing the budget; otherwise, it is extraneous. So the same interpretation that is now given to the word “extraneous” would continue to be given.

Mr. JOHNSTON. So, for example, a committee would be able to go beyond the instructions and save more money?

Mr. BYRD. Well, if such language does not serve to balance the budget or to reduce the deficit, the language would be extraneous—then it would

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<sup>2039</sup> Budget Enforcement Act of 1990 § 13214(a)(2) inserted the heading “EXTRANEOUS PROVISIONS—” here.

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be up to the Chair to determine whether or not the point of order is well taken.

. . . .

Mr. DOMENICI. Mr. President, will the distinguished minority leader [Senator Byrd] permit me to respond to what “extraneousness” means thus far in its evolution in the Senate? Let me suggest that, going back to 1981, we have evolved these four definitions, and I believe they are used by minority and majority members of the committee now. I would just read them quickly:

One, provisions that have no direct effect on spending and which are not essential to achieving the savings.

Two, provisions which increase spending and are not so closely related to saving provisions that they cannot be separated.

Three, provisions which extend authorizations without saving money, and which are not so closely related to saving provisions that they cannot be separated.

Four, provisions which invade another committee’s jurisdiction, whether or not they save money.

And I am not saying that is all inclusive, but, up to this point, that is what we have been using. . . .<sup>2040</sup>

*Evidence of Extraneousness*—Evidence that a provision is or is not extraneous should include (in order of persuasiveness):

- A decision of the Senate sustaining or overturning the ruling of the Chair on a similar provision
- An opinion of the Presiding Officer expressed about a similar provision
- Advice of the Parliamentarian on similar provisions
- Inclusion or exclusion of similar provisions on a list pursuant to section 313(c)
- Inclusion of a similar provision in a previous reconciliation bill

Acknowledging the value of precedent, the Parliamentarian has written that “an obvious corollary of a finding that [a] proposal is appropriate for

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<sup>2040</sup> 131 CONG. REC. S14,034–35 (daily ed. Oct. 24, 1985).

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inclusion in reconciliation would be that it could be repealed by simple majority vote in a subsequent reconciliation measure.”<sup>2041</sup>

In explaining the Parliamentarian’s reasoning, the Parliamentarian will sometimes cite past reconciliation bills, noting, for example, that a type of provision is “a common theme of reconciliation measures”<sup>2042</sup> or that a provision is “something that reconciliation bills do with great frequency”<sup>2043</sup> or that “we have done similar things in reconciliation.”<sup>2044</sup> Similarly, the Parliamentarian’s office has asked how a provision was different from other eligibility criteria enacted through reconciliation.<sup>2045</sup>

The Parliamentarian has, however, written dismissively of the last two forms of evidence, writing in one case:

Both 529’s and 530’s [tax-favored savings accounts] have been amended in reconciliation, with 530’s having been created in reconciliation, though there is no evidence that any of these provisions were challenged or on any Byrd list. It is important to note that the precedential value of these occurrences is reduced where there were no rulings or challenges made or advice given. With respect to Byrd lists, 313(c) specifically states that Byrd lists are not dispositive on the issue of extraneousness.<sup>2046</sup>

As well, the Parliamentarian has dismissed evidence from reconciliation provisions that were not the subject of partisan disputes, noting, “There is also evidence that the provisions had broad bipartisan support which made inclusion in reconciliation less fraught,”<sup>2047</sup> and “The DRA of 2005 . . . was, again, the product of a bipartisan agreement,”<sup>2048</sup> and “[T]he provisions had

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<sup>2041</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on the Judiciary & Off. of S. Parliamentarian re LPR Guidance (Sept. 19, 2021, 6:28 PM).

<sup>2042</sup> *Id.*

<sup>2043</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM).

<sup>2044</sup> Staff of S. Comm. on the Budget, Notes from Dem only meeting with Parls—Friday, June 30, 2017, at 5 (July 10, 2017); *see also id.* at 6.

<sup>2045</sup> *Id.* at 5.

<sup>2046</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re HR1 Guidance—conference report (Dec. 19, 2017, 3:07 PM).

<sup>2047</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on the Judiciary & Off. of S. Parliamentarian re LPR Guidance (Sept. 19, 2021, 6:28 PM).

<sup>2048</sup> *Id.*

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broad support in the Senate,”<sup>2049</sup> and “There are innumerable provisions in reconciliation bills that are popular and receive no initial scrutiny.”<sup>2050</sup>

Similarly, the Parliamentarian has rejected citation to provisions for which staff cannot produce a record of litigation, writing: “[T]he provisions . . . were not reviewed with the Parliamentarian at the time or anyone in the office. Neither the Parliamentarian nor any of the staff of the office . . . have any notes pertaining to the merits of the proposal.”<sup>2051</sup>

The Parliamentarian has distinguished evidence in enacted reconciliation bills from what the Parliamentarian has called “an actual Senate Precedent,” writing in one instance: “None of these provisions was the basis of an actual Senate precedent under [section] 313(b)(1)(D) – the merely incidental clause. There was no such point of order raised and no ruling by the Chair – so the value is limited . . . .”<sup>2052</sup>

**Legislative History**—Section 13214(b)(2)(C) of the Budget Enforcement Act of 1990 redesignated as subsection (b) what used to be subsection (d). Section 13214(b)(2)(B) of the Budget Enforcement Act repealed what used to be subsection (b), which read as follows:

(b) No motion to waive or suspend the requirement of section 305(b)(2) of the Congressional Budget Act of 1974, as it relates to germaneness with respect to a reconciliation bill or resolution, shall be agreed to unless supported by an affirmative vote of three-fifths of the Members, duly chosen and sworn, which super-majority shall be required to successfully appeal the ruling of the Chair on a point of order raised under that section, as well as to waive or suspend the provisions of this subsection.

Section 904(c) supersedes this old subsection (b) by listing sections 313 and 904(c) among those sections requiring 60 Senators to waive. For an early example of a motion to waive this section, see 132 CONG. REC. S13,047 (daily ed. Sept. 19, 1986).

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<sup>2049</sup> *Id.*

<sup>2050</sup> *Id.*

<sup>2051</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on the Judiciary & Off. of S. Parliamentarian re LPR Guidance (Sept. 19, 2021, 6:28 PM).

<sup>2052</sup> *Id.*

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313(b)(1)(A) (1)(A) Except as provided in [paragraph \(2\)](#),<sup>2053</sup> a provision of a reconciliation bill or [reconciliation resolution](#)<sup>2054</sup> considered pursuant to [section 310](#)<sup>2055</sup> shall be considered extraneous if such provision does not produce a change in [outlays](#)<sup>2056</sup> or [revenues](#),<sup>2057</sup> including changes in [outlays](#)<sup>2058</sup> and [revenues](#)<sup>2059</sup> brought about by changes in the terms and conditions under which [outlays](#)<sup>2060</sup> are made or [revenues](#)<sup>2061</sup> are required to be collected (but a provision in which [outlay](#)<sup>2062</sup> decreases or [revenue](#)<sup>2063</sup> increases exactly offset [outlay](#)<sup>2064</sup> increases or [revenue](#)<sup>2065</sup> decreases shall not be considered extraneous by virtue of [this subparagraph](#)<sup>2066</sup>);

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### No Change in Outlays or Revenues

This subparagraph of the Byrd Rule enforces the threshold test of whether a provision is budgetary—whether it increases or decreases spending or revenue—or else if it is a necessary term and condition of a budgetary provision. Nonbinding sense-of-the-Senate and sense-of-the-Congress language has no budgetary effect and therefore is out of order

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<sup>2053</sup> [Congressional Budget Act of 1974 § 313\(b\)\(2\)](#), 2 U.S.C. § 644(b)(2), *infra* p. 743, provides exceptions to paragraph (1)(A) upon the certification of the Chair and Ranking Minority Member of the Budget Committee and the Committee that reported the provision.

<sup>2054</sup> [Congressional Budget Act of 1974 § 310\(b\)](#), 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.”

<sup>2055</sup> [Congressional Budget Act of 1974 § 310](#), 2 U.S.C. § 641, *supra* p. 514, addresses “Reconciliation.”

<sup>2056</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2057</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2058</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2059</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2060</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2061</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2062</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2063</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2064</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2065</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2066</sup> [Congressional Budget Act of 1974 § 313\(b\)\(1\)\(A\)](#), 2 U.S.C. § 644(b)(1)(A).

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under this subparagraph.<sup>2067</sup> Similarly, the Parliamentarian has advised (in summer of 1993) that congressional findings violate this subparagraph.<sup>2068</sup>

Tables of contents and short titles would appear to fall under the same logic. In the summer of 1993, the Parliamentarian advised that the Parliamentarian did not view such provisions as violations, apparently under the theory that the Rule does not cover trifling matters.<sup>2069</sup> But when quoted this advice in 2022, the Parliamentarian remarked that we had nonetheless gotten to the point where the Rule does cover such matters.<sup>2070</sup>

Thus, in the Byrd Bath for the Inflation Reduction Act of 2022, Republicans challenged<sup>2071</sup> a conforming clerical amendment<sup>2072</sup> to the table of contents of the Energy Policy Act of 2005. Energy Committee counsel argued that the drafters of the Byrd Rule did not intend that the Rule should knock out tables of contents.<sup>2073</sup> But the Parliamentarian sustained the Republican challenge.<sup>2074</sup>

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<sup>2067</sup> See 141 CONG. REC. S16,016 (daily ed. Oct. 27, 1995) (Exon point of order against Specter amendment expressing the sense of the Senate regarding a flat tax; Specter motion to waive rejected 17-82; point of order sustained; amendment fell); 142 CONG. REC. S8332–33 (daily ed. July 19, 1996) (Dodd point of order against Frist amendment expressing the sense of Congress that the President should ensure approval of state welfare reform waiver requests; Frist motion to waive rejected 55-43; point of order sustained; amendment fell); 145 CONG. REC. S9887, S9889 (daily ed. July 30, 1999) (Domenici point of order against Bingaman amendment to express the sense of the Senate on investment in education; Bingaman motion to waive rejected 48-52; point of order sustained; amendment fell); *id.* at S9891 (daily ed. July 30, 1999) (Baucus point of order against Frist amendment to express the sense of the Senate regarding the Medicare Reserve Fund; Frist motion to waive rejected 54-46; point of order sustained; amendment fell); 151 CONG. REC. S13,123 (daily ed. Nov. 17, 2005) (Durbin point of order against Grassley amendment to express the sense of the Senate regarding extending 2003 tax cuts and other tax policy; Grassley motion to waive rejected 53-45; amendment fell); 163 CONG. REC. S4262–63 (daily ed. July 26, 2017) (Sanders point of order against Enzi for Heller amendment to the American Health Care Act of 2017 “[t]o express the sense of the Senate that Medicaid expansion is a priority and that Obamacare must be improved”; Heller motion to waive rejected 10-90; amendment fell); E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Heller #288 (July 26, 2017, 4:55 PM) (confirming a violation of 313(b)(1)(A), replying, “Yes—it’s an SOS.”).

<sup>2068</sup> WILLIAM G. DAUSTER, [BUDGET PROCESS LAW ANNOTATED: 1993 EDITION](#) 206 n.575 (Comm. Print 1993).

<sup>2069</sup> *Id.*

<sup>2070</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Energy & Nat. Res. & Staff of S. Comm. on the Budget (Aug. 4, 2022, 10:00 AM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re ENR Bipart Byrd Bath 8-4-22 (Aug. 4, 2022, 11:30 AM).

<sup>2071</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on the Budget & Staff of S. Majority Leader re ENR Byrd bath tomorrow morning (Aug. 3, 2022, 9:30 PM) (conveying Republican challenges).

<sup>2072</sup> S. Amend. No. 5194 § 50144(e), 168 CONG. REC. S3922, S3981 (daily ed. Aug. 3, 2022) (S. Legis. Couns., ERN22335 9K1).

<sup>2073</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Energy & Nat. Res. & Staff of S. Comm. on the Budget (Aug. 4, 2022, 10:00 AM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re ENR Bipart Byrd Bath 8-4-22 (Aug. 4, 2022, 11:30 AM).

<sup>2074</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Energy & Nat. Res., Staff of S. Majority Leader & Staff of S. Comm. on the Budget re ENR Parl Guidance (Aug. 5, 2022, 5:47 PM).



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In 2015, during consideration of the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), the Parliamentarian advised that the bill's short title and table of contents were subject to removal under this subparagraph.<sup>2075</sup> And during consideration of the Tax Cuts and Jobs Act of 2017, the Parliamentarian confirmed that short titles are subject to removal under this subparagraph because they do not score and are not necessary terms or conditions,<sup>2076</sup> and the Presiding Officer sustained a point of order raised by Senator Ron Wyden under this subparagraph against a provision to create the proposed law's short title.<sup>2077</sup> Similarly, during consideration of the Inflation Reduction Act of 2022, the Presiding Officer sustained a point of order raised by Budget Committee Ranking Republican Member Lindsey Graham under section 313(b)(1)(A) against that bill's short title.<sup>2078</sup>

But the Parliamentarian has rejected a challenge that section headings are nonbudgetary. In the Byrd Bath for the Inflation Reduction Act of 2022, Republicans challenged four headings and subheadings in the bill's section Providing for Lower Prices for Certain High-Priced Single Source Drugs,<sup>2079</sup> challenging:

Various Headings and Subheadings: (A) Challenge

- Heading for Part 1 ("Lowering Prices through Drug Price Negotiation")
- Heading for Sec. 129001 ("Providing for Lower Prices for Certain High-Priced Single-Source Drugs")
- Heading for Sec. 129001(a) ("Program to Lower Prices for Certain High-Priced Single-Source Drugs")
- Heading for New Part E of Title XI of the Social Security Act ("Price Negotiation Program to Lower Prices for Certain High-Priced Single-Source Drugs"<sup>2080</sup>

Democratic staff argued that there should be a limit to the application of this Byrd Rule subparagraph and that sustaining such a challenge would

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<sup>2075</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM) (referring to [H.R. 3762, 114th Cong. § 1](#) (2015) (as reported by the H. Comm. on the Budget, Oct. 16, 2015; subsequently amended)).

<sup>2076</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Comm. on Fin. & Staff of S. Democratic Leader re short title (Dec. 18, 2017, 12:02 PM).

<sup>2077</sup> [163 CONG. REC. S8101, S8141](#) (daily ed. Dec. 19, 2017).

<sup>2078</sup> [168 CONG. REC. S4197](#) (daily ed. Aug. 6, 2022).

<sup>2079</sup> [Inflation Reduction Act of 2022](#), Pub. L. No. 117-169, § 11001.

<sup>2080</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Comm. on the Budget, Staff of S. Majority Leader & Staff of S. Comm. on Health, Educ., Lab. & Pensions re R Byrd challenges to Finance title—prescription drugs (Aug. 4, 2022, 9:50 PM).

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cause reconciliation bills to have no section headings at all.<sup>2081</sup> The Parliamentarian rejected the Republican challenge.<sup>2082</sup>

The Parliamentarian scrutinizes modifiers like “predominantly” as potentially precatory and not budgetary.<sup>2083</sup> But not every adjective violates this Byrd Rule subsection. In the Byrd Bath for the Inflation Reduction Act of 2022, Republicans challenged the use of the adjective “fair” in the bill’s Prescription Drug Pricing Reform subtitle,<sup>2084</sup> challenging: “Use of the term ‘Fair’ to describe prices set through the program (i.e. ‘maximum fair price’) and eligible individuals (i.e. ‘maximum fair price eligible individuals’), as used 83 times in the legislation: (A) Challenge.”<sup>2085</sup> Republican staff argued that the descriptor has no budget effect and is not a necessary term or condition, and that points of order have routinely been sustained for similar concepts, including with the short title of the Tax Cuts and Jobs Act of 2017.<sup>2086</sup> Democratic staff replied that this logic would apply equally to all adjectives and such a decision would turn the Parliamentarian’s office into the “adjective police.”<sup>2087</sup> The Parliamentarian rejected the Republican challenge.<sup>2088</sup>

Under this subsection, the Parliamentarian strictly scrutinizes provisions that authorize appropriations or change the terms under which appropriations are authorized.<sup>2089</sup>

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<sup>2081</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Comm. on Fin. & Staff of S. Comm. on the Budget (July 22, 2022, 11:00 AM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Prescription Drugs Byrd Bath part two 7-22-22 (July 22, 2022, 1:01 PM).

<sup>2082</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Health, Educ., Lab. & Pensions re Finance Parl Guidance—Drugs (Aug. 6, 2022, 3:36 AM).

<sup>2083</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Comm. on Agric., Nutrition & Forestry & Staff of S. Comm. on the Budget (June 21, 2022, 12:30 PM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Paris ANF (D-only) meeting, 6-21-22 (June 21, 2022, 2:27 PM).

<sup>2084</sup> [Inflation Reduction Act of 2022](#), Pub. L. No. 117-169, §§ 11001–11406.

<sup>2085</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Comm. on the Budget, Staff of S. Majority Leader & Staff of S. Comm. on Health, Educ., Lab. & Pensions re R Byrd challenges to Finance title—prescription drugs (Aug. 4, 2022, 9:50 PM).

<sup>2086</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Comm. on Fin. & Staff of S. Comm. on the Budget (July 22, 2022, 11:00 AM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Prescription Drugs Byrd Bath part two 7-22-22 (July 22, 2022, 1:01 PM).

<sup>2087</sup> *Id.*

<sup>2088</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Health, Educ., Lab. & Pensions re Finance Parl Guidance—Drugs (Aug. 6, 2022, 3:36 AM).

<sup>2089</sup> WILLIAM G. DAUSTER, [BUDGET PROCESS LAW ANNOTATED: 1993 EDITION](#) 206 n.575 (Comm. Print 1993).

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The Parliamentarian has advised that a provision that restates something already in law violates this subparagraph, writing of one provision, “Byrdable as it is already in law and thus is moot.”<sup>2090</sup>

As well, the Parliamentarian strictly scrutinizes reporting requirements, unless those requirements are necessary to achieve a change in outlays or revenues. Thus, the Chair sustained a Conrad point of order under this subparagraph against provisions in the conference report for the Deficit Reduction Act of 2005 calling for reports by the Secretary of Health and Human Services and MEDPAC on a value-based purchasing program.<sup>2091</sup>

Similarly, during consideration of the Restoring Americans’ Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), the Parliamentarian wrote:

This provision which requires employers to notify employees of the cost of “Cadillac” insurance plans does not have a quantifiable budgetary effect and has not been shown to be a necessary term or condition of 4980I which is repealed in section 304(a) and to which this requirement applies. The reporting itself does not serve as a trigger or benchmark for other benefits or tax treatment and CBO scores its budgetary effect as negligible.<sup>2092</sup>

The Parliamentarian advised that the provision was subject to removal pursuant to section 313(b)(1)(A).<sup>2093</sup>

Similarly, in June 2017, the Parliamentarian agreed that language requiring reports is extraneous if the reports are not tied to a formula or how money is spent.<sup>2094</sup>

And similarly, the Senate amendment to the Tax Cuts and Jobs Act of 2017 contained a provision entitled “Report to Congress”<sup>2095</sup> creating an

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<sup>2090</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM) (referring to [H.R. 3762, 114th Cong.](#) § 101 (2015) (as reported by the H. Comm. on the Budget, Oct. 16, 2015; subsequently amended)).

<sup>2091</sup> 151 CONG. REC. S14,204–05 (daily ed. Dec. 21, 2005) (Gregg motion to waive failed 52-48).

<sup>2092</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM) (referring to [H.R. 3762, 114th Cong.](#) § 304(b) (2015) (as reported by the H. Comm. on the Budget, Oct. 16, 2015; subsequently amended)).

<sup>2093</sup> *Id.*

<sup>2094</sup> Staff of S. Comm. on the Budget, Notes from Dem only meeting with Parls—Friday, June 30, 2017, at 6 (July 10, 2017).

<sup>2095</sup> S. Amend. No. 1618, 115th Cong. § 13823(c), [163 CONG. REC. S7448](#) (daily ed. Nov. 29, 2017).

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“opportunity zone reporting requirement”<sup>2096</sup> that the Parliamentarian advised violated section 313(b)(1)(A).<sup>2097</sup>

Transfers to a trust fund have been found to violate subsection (b)(1)(A). During consideration of the Restoring Americans’ Healthcare Freedom Reconciliation Act of 2015, the Parliamentarian advised that a section of a McConnell amendment<sup>2098</sup> that directed the Treasury Secretary to transfer to the Hospital Insurance Trust Fund funds that represented an amount of on-budget savings during fiscal years 2016 through 2025 was extraneous under section 313(b)(1)(A) because it would have no budgetary effect.<sup>2099</sup> Similarly, in 1990, the Presiding Officer ruled that an amendment to require the deposit of increased motor fuel taxes in the Highway Trust Fund was extraneous because it would “have no budgetary effect.”<sup>2100</sup> Similarly, as the Senate prepared to consider the American Rescue Plan Act of 2021, the Parliamentarian advised that a clause that appropriated funds out of the Harbor Maintenance Trust Fund violated Budget Act section 313(b)(1)(A).<sup>2101</sup> But a section of the Omnibus Reconciliation Act of 1993,<sup>2102</sup> a bill that was closely scrutinized for Byrd Rule compliance,<sup>2103</sup> transferred from the general fund to the Hospital Insurance Trust Fund an amount equivalent to the amount raised by certain increased taxes.

Provisions that have budgetary effects that the Congressional Budget Office cannot estimate do not necessarily violate the subsection.<sup>2104</sup> Thus, during consideration of the Omnibus Budget Reconciliation Act of 1993,<sup>2105</sup> Senator Danforth raised a point of order that provisions of the bill regarding Medicaid pediatric immunization violated this subparagraph:

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<sup>2096</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2097</sup> *Id.*

<sup>2098</sup> McConnell amendment no. 2916, 114th Cong. § 223, [161 CONG. REC. S8420, S8422](#) (daily ed. Dec. 3, 2015).

<sup>2099</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re reconciliation/substitute/Byrd rule (Dec. 14, 2015, 12:28 PM).

<sup>2100</sup> See, e.g., [136 CONG. REC. 30,668–70, 30,676](#) (Oct. 18, 1990); FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 626 (1992). The Chair found that “the amendment of the Senator from Idaho will have no budgetary effect.” [136 CONG. REC. 30,676](#) (Oct. 18, 1990). The Parliamentarian described the precedent as demonstrating: “The Chair sustained a point of order against an amendment to require the deposit of increased motor fuel taxes in the Highway Trust Fund under subparagraph (d)(I)(A) of the Byrd Rule, since the amendment had no budgetary effect.” FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 626 (1992).

<sup>2101</sup> See E-mail from S. Parliamentarian to Staff of S. Majority Leader & Staff of S. Republican Leader (Mar. 1, 2021, 7:20 PM).

<sup>2102</sup> [Omnibus Budget Reconciliation Act of 1993](#), Pub. L. No. 103-66, § 13125, 107 Stat. 312, 475–77.

<sup>2103</sup> See [139 CONG. REC. 19,766–67](#) (Aug. 6, 1993) (statements of Senators Domenici & Sasser).

<sup>2104</sup> See *id.* at S10,659–62 (daily ed. Aug. 6, 1993) (Chair sustained on appeal by a 43-57 vote).

<sup>2105</sup> [Omnibus Budget Reconciliation Act of 1993](#), Pub. L. No. 103-66, 107 Stat. 312 (1993).

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Mr. DANFORTH. Mr. President, I am concerned about the state of the Byrd rule, which is a rule that I think is extremely important in the Senate, and concerned that budgetary effects which are incapable of estimation have been used to justify what I would think to be extraneous provisions in this bill, I would like now to make two inquiries of the Chair. First, is a provision of the budget reconciliation bill extraneous under section 313(b)(1)(A) of the Budget Act, the Byrd rule, if it produces no changes in outlays or revenues that can be estimated?

The PRESIDING OFFICER. Such a provision would not necessarily be out of order.

Mr. DANFORTH. Would not necessarily be out of order.

....

Mr. DANFORTH. Mr. President, I now wish to raise a point of order, and do raise a point of order under sections 313(b)(1)(A) and 313(b)(1)(D) of the Budget Act, known as the Byrd rule; that title XIX, section 1928(d)(4)(B) in the conference agreement, section 13631(b) is extraneous to the reconciliation bill because it produces no change in the outlays or revenues or produces changes in outlays or revenues which are merely incidental to the nonbudgetary components of the provision.

The PRESIDING OFFICER. The point of order is not well taken.<sup>2106</sup>

The Parliamentarian has said that there is precedent from 2010 that a provision would not violate this subparagraph if it did not change the overall amount of money but just changed the flow of money within accounts.<sup>2107</sup>

In *Riddick's Senate Procedure*, the Parliamentarian discussed precedents under this subparagraph set during consideration of the Omnibus Budget Reconciliation Act of 1990<sup>2108</sup>:

A point of order was sustained against an amendment offered from the floor to a reconciliation bill to provide for risk assessment for deposit insurance, on the grounds that it violated subparagraph (d)(1)(A) of the

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<sup>2106</sup> 139 CONG. REC. S10,659 (daily ed. Aug. 6, 1993). The Senate went on to sustain the Chair on appeal by a vote of 43-57. See *id.* at S10,662.

<sup>2107</sup> Staff of S. Comm. on the Budget, Notes from Dem only meeting with Parls—Friday, June 30, 2017, at 6 (July 10, 2017).

<sup>2108</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 625–26 (1992) (footnotes renumbered and reformatted).

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Byrd Rule in that it did not produce a change in either outlays or revenues, after a motion to waive that rule was defeated on a voice vote.<sup>[2109]</sup>

. . . .

The Chair sustained a point of order under subparagraph (d)(1)(A) of the Byrd Rule against sixteen contiguous sections of a reconciliation bill affecting the management [o]f the Tongass National Forest in Alaska, on the grounds that these provisions had no budgetary impact.<sup>[2110]</sup>

The Chair sustained a point of order against an amendment to require the deposit of increased motor fuel taxes in the Highway Trust Fund under subparagraph (d)(1)(A) of the Byrd Rule, since the amendment had no budgetary effect.<sup>[2111]</sup>

In response to a point of order, the Senate by a vote of 69 yeas, [31] nays, waived subparagraph (d)(1)(A) of the Byrd Rule for the consideration of aviation policy legislation having no budgetary effect, contained in a reconciliation bill.<sup>[2112]</sup>

An amendment that has no budgetary effect violates this subparagraph.<sup>2113</sup>

During consideration of the American Health Care Act of 2017, the Parliamentarian advised that several provisions of the June 26, 2017, Senate Republican discussion draft of the Better Care Reconciliation Act<sup>2114</sup> would violate section 313(b)(1)(A), writing:

313(b)(1)(A) – Byrdable – No change in outlays or revenues and not shown to be a necessary term/condition of any other program/text

- Sec. 102(d)(1) – Restrictions for the Premium Tax Credit/Modification of Definition of Qualified Health Plan

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<sup>2109</sup> 136 CONG. REC. 30,589–96 (Oct. 18, 1990).

<sup>2110</sup> *Id.* at 30,641–42.

<sup>2111</sup> *Id.* at 30,668–71, 30,676.

<sup>2112</sup> *Id.* at 30,682.

<sup>2113</sup> See 139 CONG. REC. S7920 (daily ed. June 24, 1993) (Sasser point of order against Domenici-Nunn amendment regarding caps on domestic, international, and defense discretionary spending; motion to waive rejected by a 53-45 vote; point of order sustained; amendment fell); *id.* at S7921 (daily ed. June 24, 1993) (Sasser point of order against Bradley amendment proposing a legislative line-item veto using separate enrollment of appropriations and tax expenditure sections; motion to waive rejected by a 53-45 vote; point of order sustained; amendment fell).

<sup>2114</sup> S. Legis. Couns., LYN17343, [Better Care Reconciliation Act of 2017, Amendment in the Nature of a Substitute to H.R. 1628](#), 115th Cong. §§ 102(d)(1), 126(b), 133, 136, 137, 208 (June 26, 2017).

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- Sec. 126(b) – Sunset of Essential Health Benefits Requirement
  - Sec. 133 – 1903(h)(5) – Reporting of CMS-64 data (T-MSIS) – though not challenged in this meeting, as currently drafted the audits and other reports associated with this section could also be problematic as they do not appear to be tied to consequences/changes in funding/penalties, etc. ((h)(1) does have a penalty).
  - Sec. 136 – Grandfathering Certain Medicaid Waivers/HCBS Waivers
  - Sec. 137 – Coordination with States
  - Sec. 208 – Funding for Cost Sharing Payments.<sup>2115</sup>

Also during consideration of the American Health Care Act of 2017, the Parliamentarian advised that a provision of a Senate Republican discussion draft of the Better Care Reconciliation Act that provided “(D) EXPEDITED PROCESS.—The Secretary shall establish an expedited application and approval process that may be used if the Secretary determines that such expedited process is necessary to respond to an urgent or emergency situation with respect to health insurance coverage within a State,”<sup>2116</sup> would violate either section 313(b)(1)(A) or (D), writing: “Sec. 207 – Waivers for State Innovation— . . . the urgent/emergency provision on page 141 does not appear to be a necessary term and condition of the remainder and would be subject to a point of order under 313(b)(1)(A) or (D).”<sup>2117</sup>

During consideration of the Senate amendment to the Tax Cuts and Jobs Act of 2017, the Parliamentarian advised<sup>2118</sup> that several provisions violated section 313(b)(1)(A) –

- a provision entitled “Return Preparation Programs for Low-Income Taxpayers”<sup>2119</sup> addressing “Volunteer Income Tax Assistance,”<sup>2120</sup>
- a provision entitled “Free File Program,”<sup>2121</sup>

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<sup>2115</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Byrd Bath Follow-Up (July 21, 2017, 1:32 PM).

<sup>2116</sup> S. Legis. Couns., [LYN17343, Better Care Reconciliation Act of 2017, Amendment in the Nature of a Substitute to H.R. 1628, 115th Cong.](#) § 207 (June 26, 2017).

<sup>2117</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Byrd Bath Follow-Up (July 21, 2017, 1:32 PM).

<sup>2118</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2119</sup> S. Amend. No. 1618, 115th Cong. § 11076, [163 CONG. REC. S7425](#) (daily ed. Nov. 29, 2017).

<sup>2120</sup> *Id.*

<sup>2121</sup> S. Amend. No. 1618, 115th Cong. § 11077, [163 CONG. REC. S7425–26](#) (daily ed. Nov. 29, 2017).



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- a provision entitled “Special Rules for Mutual Ditch, Reservoir, or Irrigation Company Stock,”<sup>2122</sup>
  - a provision<sup>2123</sup> providing for “public disclosure regarding [an] orphan drug credit,”<sup>2124</sup>
  - a provision entitled “Rule of Construction”<sup>2125</sup> addressing “state beverage alcohol regulation,”<sup>2126</sup> and
  - a provision entitled “Simplification of Rules Regarding Records, Statements, and Returns”<sup>2127</sup> addressing “beer inventory simplification.”<sup>2128</sup>

***American Rescue Plan Act of 2021*** – As the Senate prepared to consider the House Budget Committee-reported version of the American Rescue Plan Act of 2021 (H.R. 1319, 117th Cong. (as reported Feb. 24, 2021); H.R. REP. No. 117-7 (2021)), the Parliamentarian advised that the following language appeared to violate of subsection (b)(1)(A):

(d) The total amount provided by this section shall be allocated to eligible recipients in the States and Territories according to the total level of economic injury of such States and Territories as a result of coronavirus beginning on March 1, 2020, as measured by the change in economic activity, demonstrated by current Federal economic data sources such as unemployment claims and gross domestic product, before and after such date.<sup>2129</sup>

Also as the Senate prepared to consider that bill, the Parliamentarian advised that the highlighted clause in the following language violated subsection (b)(1)(A): “Sec. 6002. In addition to amounts otherwise available, there is appropriated for fiscal year 2021, *out of amounts not otherwise appropriated from the Harbor Maintenance Trust Fund pursuant to section 210 of*

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<sup>2122</sup> S. Amend. No. 1618, 115th Cong. § 13303(b)(5), [163 CONG. REC. S7435](#) (daily ed. Nov. 29, 2017).

<sup>2123</sup> S. Amend. No. 1618, 115th Cong. § 13401(b), [163 CONG. REC. S7437–38](#) (daily ed. Nov. 29, 2017).

<sup>2124</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2125</sup> S. Amend. No. 1618, 115th Cong. § 13801, [163 CONG. REC. S7447](#) (daily ed. Nov. 29, 2017).

<sup>2126</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2127</sup> S. Amend. No. 1618, 115th Cong. § 13804, [163 CONG. REC. S7448](#) (daily ed. Nov. 29, 2017).

<sup>2128</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2129</sup> See E-mail from S. Parliamentarian to Staff of S. Majority Leader & Staff of S. Republican Leader (Mar. 1, 2021, 7:20 PM).



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*the Water Resources Development Act of 1986 (33 U.S.C. 2238)."*<sup>2130</sup> When the Small Business Committee proposed alternative language,<sup>2131</sup> the Parliamentarian said, "We think this looks like a good fix."<sup>2132</sup>

As the Senate prepared to consider the House-passed American Rescue Plan Act,<sup>2133</sup> Republicans challenged (in the Parliamentarian's words) "big chunks of the bill."<sup>2134</sup> With regard to a paragraph that called for the Secretary of Agriculture to monitor susceptible animals for incidence of COVID "consistent with guidance provided by the World Organisation for Animal Health,"<sup>2135</sup> the Parliamentarian described Republican challenges under sections 313(B)(1)(A) and (D) as "plausible."<sup>2136</sup> The law as enacted deleted the reference.<sup>2137</sup>

In a draft Senate amendment<sup>2138</sup> to the American Rescue Plan Act shared with the Parliamentarian and Republican staff,<sup>2139</sup> Republicans challenged under section 313(b)(1)(A) several paragraphs of a section on "Housing Assistance and Supportive Services Programs for Native Americans," including one providing, "Amounts made available under this paragraph which are not accepted, are voluntarily returned, or otherwise recaptured for any reason shall be used to fund grants under paragraph (2),"<sup>2140</sup> and another providing, "Indian tribes may use up to 100 percent of any grant from amounts made available under this paragraph for public services activities to prevent, prepare for, and respond to coronavirus."<sup>2141</sup> The Parliamentarian advised that "some of these are plausible arguments

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<sup>2130</sup> *See id.*

<sup>2131</sup> E-mail from Staff of S. Majority Leader to Off. of S. Parliamentarian, Staff of S. Comm. on Small Bus. & Entrepreneurship & Staff of S. Comm. on the Budget re Byrd challenge—Sec. 6002 (Mar. 2, 2021, 10:32 AM).

<sup>2132</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on Small Bus. & Entrepreneurship & Staff of S. Comm. on the Budget re Byrd challenge—Sec. 6002 (Mar. 2, 2021, 12:54 PM).

<sup>2133</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. (as placed on Senate calendar, Mar. 2, 2021).

<sup>2134</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader & Off. of S. Parliamentarian re Byrd Challenges (Mar. 2, 2021, 10:23 PM).

<sup>2135</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. § 1001(c)(2) (as placed on Senate calendar, Mar. 2, 2021).

<sup>2136</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Byrd Challenges (Mar 3, 2021, 11:31 AM).

<sup>2137</sup> *See* [American Rescue Plan Act of 2021](#), Pub. L. No. 117-2, § 1001(c), 135 Stat. 4, 10.

<sup>2138</sup> S. Legis. Couns., KIN21145 Y97 (Feb. 27, 2021) (draft Senate amendment).

<sup>2139</sup> E-mail from Staff of S. Majority Leader to Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Senate reconciliation amendment (Feb. 27, 2021, 3:16 PM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget & Staff of S. Majority Leader re Senate reconciliation amendment (Feb. 27, 2021, 2:32 PM).

<sup>2140</sup> S. Legis. Couns., KIN21145 Y97, § 11003(a)(1)(F) (Feb. 27, 2021).

<sup>2141</sup> *Id.* § 11003(a)(2)(D).

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(recapture/100% use allowance).”<sup>2142</sup> The law as enacted nonetheless included similar language.<sup>2143</sup> The Parliamentarian considered “plausible”<sup>2144</sup> a challenge under section 313(b)(1)(A) to language that awards could be made “without competition.”<sup>2145</sup> The law as enacted deleted these words.<sup>2146</sup>

As the Senate prepared to consider amendments to the American Rescue Plan Act, the Parliamentarian examined an early draft<sup>2147</sup> of what would later become a section of the law on “Local Assistance and Tribal Consistency Fund.”<sup>2148</sup> With regard to language “for making payments under this section to eligible counties and eligible Tribal governments to provide durable and consistent fiscal assistance to eligible counties and eligible Tribal governments,”<sup>2149</sup> the Parliamentarian described the words “durable and consistent fiscal assistance”<sup>2150</sup> as “nebulous terms.”<sup>2151</sup> With regard to language providing that “the Secretary shall . . . pay . . . an amount . . . consistent with historic payments from the Federal Government to the eligible counties or payments stabilizing the local economies of the counties affected by significant Federal policy changes,”<sup>2152</sup> the Parliamentarian advised: “This is not a cognizable thing, can’t be necessary if it doesn’t have meaning and I think it’s fair to say that some ‘historic’ payments are arbitrary/unfair etc., just ask DC about recent COVID funds. This should be changed.”<sup>2153</sup> With respect to a grant of authority, “The Inspector General of the Department of the Treasury shall conduct monitoring and oversight of the receipt, disbursement, and use of funds made available under this section,”<sup>2154</sup> the Parliamentarian advised: “These are unnecessary and won’t score.”<sup>2155</sup>

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<sup>2142</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Byrd Challenges (Mar 3, 2021, 11:31 AM).

<sup>2143</sup> See [American Rescue Plan Act of 2021](#), Pub. L. No. 117-2, § 11003(a)(1)(F), (2)(D), 135 Stat. 4, 243.

<sup>2144</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Byrd Challenges (Mar 3, 2021, 11:31 AM).

<sup>2145</sup> S. Legis. Couns., KIN21145 Y97, § 11003(a)(3) (Feb. 27, 2021).

<sup>2146</sup> See [American Rescue Plan Act of 2021](#), Pub. L. No. 117-2, § 11003(a)(3), 135 Stat. 4, 243.

<sup>2147</sup> S. Legis. Couns., Draft Copy of ERN21187 (Feb. 27, 2021, 2:05 PM).

<sup>2148</sup> [American Rescue Plan Act of 2021](#), Pub. L. No. 117-2, § 605, 135 Stat. 4, 234–36.

<sup>2149</sup> S. Legis. Couns., Draft Copy of ERN21187, at 1 (Feb. 27, 2021, 2:05 PM).

<sup>2150</sup> *Id.*

<sup>2151</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Byrd Challenges (Mar 3, 2021, 11:31 AM).

<sup>2152</sup> S. Legis. Couns., Draft Copy of ERN21187, at 1 (Feb. 27, 2021, 2:05 PM).

<sup>2153</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Byrd Challenges (Mar 3, 2021, 11:31 AM).

<sup>2154</sup> S. Legis. Couns., Draft Copy of ERN21187, at 2 (Feb. 27, 2021, 2:05 PM).

<sup>2155</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Byrd Challenges (Mar 3, 2021, 11:31 AM).

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During consideration of the Inflation Reduction Act of 2022, the Presiding Officer sustained a point of order under section 313(b)(1)(A) against an amendment by Senator Jon Tester to establish a procedure for terminating a determination by the Surgeon General to suspend certain entries and imports from designated places (sometimes called “title 42”), because the amendment would not have produced a change in outlays or revenues.<sup>2156</sup>

Also during consideration of the Inflation Reduction Act of 2022, the Presiding Officer sustained a point of order raised by Budget Committee Ranking Republican Member Lindsey Graham under section 313(b)(1)(A)<sup>2157</sup> against a provision stating legislative intent:

(b) NO TAX INCREASES ON CERTAIN TAXPAYERS.—Nothing in this section is intended to increase taxes on any taxpayer or small business with a taxable income below \$400,000. Further, nothing in this section is intended to increase taxes on any taxpayer not in the top 1 percent.<sup>2158</sup>

And also during consideration of the Inflation Reduction Act of 2022, the Presiding Officer sustained a point of order raised by Budget Committee Ranking Republican Member Lindsey Graham under section 313(b)(1)(A)<sup>2159</sup> against a provision addressing “Tax Treatment of Certain Assistance to Farmers.”<sup>2160</sup> Democratic staff had argued:

[A]n exclusion from income obviously has a revenue effect, although that may not be included in a formal score because of CBO baseline conventions. To address this, we asked CBO to explain the effect of the provision, and the response is as follows:

“In the absence of the language modifying the taxability CBO would expect to adjust the baseline upon enactment of the legislation to account for the higher receipts due to the new benefits.” (Email from John McClelland to Sarah Schafer, 8/7/22, 2:51 AM).

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<sup>2156</sup> 168 CONG. REC. S4179–80 (daily ed. Aug. 6, 2022).

<sup>2157</sup> *Id.* at S4197.

<sup>2158</sup> S. Amend. No. 5194 as modified § 10301(b), 168 CONG. REC. S4070, S4074–75 (daily ed. Aug. 6, 2022); S. Legis. Couns., ERN22410 5DM, Inflation Reduction Act of 2022 § 10301(b) (Aug. 6, 2022).

<sup>2159</sup> 168 CONG. REC. S4197 (daily ed. Aug. 6, 2022).

<sup>2160</sup> S. Amend. No. 5194 as modified § 13903, 168 CONG. REC. S4070, S4122–23 (daily ed. Aug. 6, 2022); S. Legis. Couns., ERN22410 5DM, Inflation Reduction Act of 2022 § 13903 (Aug. 6, 2022).

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In our view, this constitutes sufficient confirmation of budgetary impact to rebut a subparagraph (A) challenge.<sup>2161</sup>

Republicans replied, “No revenue effect means exactly what it says. Notably this is a different phrase from other estimates where JCT says ‘negligible revenue effect,’ which means there is at least a minimal amount of revenue impact. However, here, ‘no’ means zero.”<sup>2162</sup> The Parliamentarian concluded: “The provision doesn’t score. It’s a (b)(1)(A).”<sup>2163</sup>

**Outlays**—To “produce a change in outlays” within the meaning of this subparagraph, a provision must cause a different level of outlays to result without further legislative action. Thus, a cut in the level of appropriations authorized would not “produce a change in outlays” in this context, as later appropriations action would be necessary to achieve the reduction in outlays.

**Terms and conditions**—Within the meaning of this subparagraph, the words “including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected” modify the words “a change in outlays or revenues.” Thus, the reader should understand this subparagraph to state that “a provision of a reconciliation bill . . . shall be considered extraneous if such provision does not produce [either: (1)] a change in outlays or revenues [or (2) a] change[] in the terms and conditions under which outlays are made or revenues are required to be collected.”

The Parliamentarian has written that to qualify for this exception, a provision must be “shown to be a necessary term/condition of any other program/text.”<sup>2164</sup> In this connection, the Parliamentarian finds fault with provisions that “aren’t necessary to make the programs function/don’t score/are wish list items.”<sup>2165</sup>

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<sup>2161</sup> E-mail from Staff of S. Majority Leader to Staff of S. Republican Leader, Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Finance Minority Challenge on New Tax Treatment to Farmer (Aug. 7, 2022, 3:24 AM).

<sup>2162</sup> E-mail from Staff of S. Republican Leader to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Republican Leader & Staff of S. Comm. on the Budget re Finance Minority Challenge on New Tax Treatment to Farmer (Aug. 7, 2022, 4:13 AM).

<sup>2163</sup> E-mail from S. Parliamentarian to Staff of S. Republican Leader, Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Finance Minority Challenge on New Tax Treatment to Farmer (Aug. 7, 2022, 5:28 AM).

<sup>2164</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Byrd Bath Follow-Up (July 21, 2017, 1:32 PM).

<sup>2165</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Byrd Challenges (Mar. 3, 2021, 7:22 AM).

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Examples of terms and conditions include mechanisms to enforce changes in outlays or revenues and procedures for collecting outlays or revenues. The drafter cannot use this “terms and conditions” language as an artifice to attach extraneous language unrelated to the language that produces a change in outlays or revenues. The language setting forth the terms and conditions must deal with the same issue as does the language that produces the change in outlays or revenues and must have a logical link to that language. The Parliamentarian analyzes language with a view to whether inclusion of the language would be an abuse of the fast-track procedures under reconciliation. The Parliamentarian asks why language asserted to be a term or condition is integral to the change in outlays or revenues, why it is essential or necessary to achieving the change in outlays or revenues.

In 2020, in the context of “authorizing committees directly fund[ing] programs traditionally funded through the appropriations process,”<sup>2166</sup> the Parliamentarian wrote, “Detail can always be a problem (necessary terms and conditions are not *carte blanche*).”<sup>2167</sup> Similarly, in the context of “creating new programs in reconciliation,”<sup>2168</sup> the Parliamentarian wrote:

Again, necessary terms and conditions are not a Black Amex card. As an example, when one of the early ANWR iterations was brought here for review, we advised that a road across the tundra could be seen as necessary to building a drilling platform, but forbidding union labor was not. The more involved your program is, the more stuff it needs to work, the more extra stuff there is that can get cut out. One man’s necessary is another man’s bauble.<sup>2169</sup>

Definitions may serve as terms and conditions for changing outlays or revenues. The Parliamentarian has remarked “that chang[ing] the definitions of eligibility for a range of federal benefits” is “a common theme

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<sup>2166</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on the Budget re reconciliation issues (Nov. 12, 2020, 5:11 PM).

<sup>2167</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>2168</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on the Budget re reconciliation issues (Nov. 12, 2020, 5:11 PM).

<sup>2169</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

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of reconciliation measures.”<sup>2170</sup> The Parliamentarian has noted, “Very generally speaking, formulas and definitions can be adjusted in reconciliation if they have budgetary effect.”<sup>2171</sup> The Parliamentarian has observed:

As to the definition, we find that this section is a permissible regulation of the expenditure of government funds by defining a class of recipients (or defining a class of ineligible recipients) something that reconciliation bills do with great frequency and often in great detail.<sup>2172</sup>

And the Parliamentarian has said that it is appropriate to use definitions and qualifications to determine what entities are entitled to receive or not receive Federal funds (citing student loan parameters in prior reconciliation bills).<sup>2173</sup>

The Parliamentarian has acknowledged that defining payments in reconciliation bills has often required a substantial amount of detail. In November 2015, the Parliamentarian wrote:

Here is a sample of sections that, in my view, contain a high level of detail to qualify for federal programs/benefits. It is by no means exhaustive. Thanks.

[Omnibus Budget Reconciliation Act of 1987] PL100-203: community nursing/ambulatory care with definition of eligible organization

[Omnibus Budget Reconciliation Act of 1990] PL101-508: sec. 4202 dialysis treatment demonstration project with carryover

[Omnibus Budget Reconciliation Act of 1993] PL103-66: sec. 1392—Empowerment Zones; sec. 13622—social security liens/transfer of assets

[Personal Responsibility and Work Opportunity Reconciliation Act of 1996] PL104-193: the whole thing: welfare eligibility/disability review/aliens/work requirement/food stamps/housing assistance

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<sup>2170</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on the Judiciary & Off. of S. Parliamentarian re LPR Guidance (Sept. 19, 2021, 6:28 PM).

<sup>2171</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM).

<sup>2172</sup> *Id.*

<sup>2173</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on September 28, 2015, at 2.

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[Balanced Budget Act of 1997] PL105-33: sec. 1001—food stamps; [M]edicare+Choice establishment of whole program—many requirements

[Deficit Reduction Act of 2005] PL109-171: set top box; deposit insurance fund; sec. 5302—PACE program; sec. 6034—Medicaid integrity program; sec. 6071—Medicaid MFP; sec. 8003 Academic criteria for loans; sec. 8011 school/lender

[College Cost Reduction and Access Act of 2007] PL110-84: sec. 104—teach grants; sec. 304—eligible not for profit; sec. 802—minority serving institution<sup>2174</sup>

Language withstands challenge under subsection (b)(1)(A) if it allocates grant money for various activities in various amounts, and an amendment withstands challenge if it alters such allocations that the underlying legislation makes.<sup>2175</sup>

During consideration of the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), the Parliamentarian advised that provisions in a section<sup>2176</sup> repealing the Affordable Care Act's Prevention and Public Health Fund did not violate section 313(b)(1)(A), writing, "Sec. 201—permissible (the non-scoring aspects of this section were found to be necessary terms and conditions of the larger provision being repealed)/budgetary."<sup>2177</sup>

In response to challenges that Sullivan amendments 1021 and 1025<sup>2178</sup> violated subsection (b)(1)(A), the Parliamentarian's office advised:

For both of these Sullivan amendments, they are no different than the vast majority of the language of the substitute in that they allocate a pot of grant money for various activities in various amounts. If the substitute can do that, so can these amendments. These are just altering the allocations the substitute makes.<sup>2179</sup>

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<sup>2174</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget re Reconciliation Bills with Detailed qualifiers (Nov 1, 2015, 5:36 PM).

<sup>2175</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re ARP Amendments (Mar. 5, 2021, 5:19 PM).

<sup>2176</sup> [H.R. 3762, 114th Cong.](#) § 201 (2015) (as reported by the H. Comm. on the Budget, Oct. 16, 2015; subsequently amended).

<sup>2177</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM).

<sup>2178</sup> [167 CONG. REC. S1294](#) (daily ed. Mar. 5, 2021).

<sup>2179</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re ARP Amendments (Mar. 5, 2021, 5:19 PM).

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*a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases*—Section 13214(a)(3) of the Budget Enforcement Act of 1990 inserted in this subparagraph the parenthetical “(but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph).”

There are numerous examples of the application of this subparagraph on the Senate floor.<sup>2180</sup>

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<sup>2180</sup> See 136 CONG. REC. S15,731–38 (daily ed. Oct. 18, 1990); FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 625 (1992) (Sasser point of order against Graham amendment no. 3025 to develop a risk-based deposit insurance system; Graham motion to waive rejected on a voice vote; point of order sustained); 136 CONG. REC. S15,782 (daily ed. Oct. 18, 1990); FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 626 (1992) (Stevens point of order against sections 4003–4016 of the Energy Committee-reported title, regarding management of the Tongass National Forest in Alaska; sustained without vote); 136 CONG. REC. S15,808–10, S15,815 (daily ed. Oct. 18, 1990); FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 626 (1992) (Bentsen point of order against Symms amendment to require deposit of increase in motor fuel taxes in the Highway Trust Fund; Symms motion to waive rejected by a 48-52 vote; point of order sustained); 136 CONG. REC. S15,821 (daily ed. Oct. 18, 1990); FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 626 (1992) (D’Amato point of order against subtitle B of title III of the committee-reported bill to establish a national aviation noise policy; Ford motion to waive succeeded by a 69-31 vote); 139 CONG. REC. S7906–07, S7922 (daily ed. June 24, 1993) (point of order against section 1105(c) of committee-reported language regarding bovine growth hormone; motion to waive rejected by a 38-60 vote; point of order sustained); *id.* at S7926, S7928 (daily ed. June 24, 1993) (Packwood point of order against scattered committee-reported language regarding childhood immunizations and tax-return-preparer standards; sustained without vote as to most provisions challenged); *id.* at S7898–901, S7920 (daily ed. June 24, 1993) (Sasser point of order against Domenici-Nunn amendment regarding caps on domestic, international, and defense discretionary spending; motion to waive rejected by a 53-45 vote; point of order sustained); *id.* at S7901–04, S7920–21 (daily ed. June 24, 1993) (Sasser point of order against Bradley amendment proposing a legislative line-item veto using separate enrollment of appropriations and tax expenditure sections; motion to waive rejected by a 53-45 vote; point of order sustained); *id.* at S7919, S7924 (daily ed. June 24, 1993) (Sasser point of order against Gramm amendment regarding restoration of fixed deficit targets; Gramm motion to waive rejected by a 43-55 vote; point of order sustained); 141 CONG. REC. S15,999 (daily ed. Oct. 27, 1995) (Kennedy point of order against section 7171 of the committee-reported bill raising the age of Medicare eligibility; no motion to waive; point of order sustained); *id.* at S16,020–21 (daily ed. Oct. 27, 1995) (Chafee point of order against section 7191(a) of the committee-reported bill barring Federal funding of abortions under Medicaid; Nickles motion to waive rejected 55-45; point of order sustained); *id.* at S16,025 (daily ed. Oct. 27, 1995) (Domenici point of order against Bumpers amendment prohibiting counting the proceeds of asset sales; Exon motion to waive rejected 49-50; point of order sustained); *id.* at S16,026 (daily ed. Oct. 27, 1995) (Domenici point of order against Byrd-Dorgan amendment to increase the time limit on debate in Senate on reconciliation legislation; Exon motion to waive rejected 47-52; point of order sustained); *id.* at S16,026, S16,049–53 (daily ed. Oct. 27, 1995) (Exon point of order under subsection (b)(1)(A) and other subparagraphs against 49 provisions; Domenici motion to waive for some of the provisions rejected 53-46; point of order sustained against 46 provisions, which were stricken; not sustained against 3 provisions, which remained in bill); *id.* at S17,315–27 (daily ed. Nov. 17, 1995) (Exon point of order under subsections (b)(1)(A) and (b)(1)(D) against sections 8001 and 13301 of the bill as proposed by the conference report on application of antitrust rule to provider-sponsored organizations (Medicare Plus) and exemption of physician office laboratories; Abraham motion to waive rejected 54-45; point of order sustained); 142 CONG. REC. at S8423–24 (daily ed. July 22, 1996), *id.* at S8506–09 (daily ed. July 23, 1996) (Exon point of order under subsections (b)(1)(A), (b)(1)(C), and (b)(1)(D) raised July 22 against 25 provisions; Domenici motion to waive on 3 provisions for which the point of order applied under subsection (b)(1)(A)—on a family cap for welfare benefits rejected 42-57, on allowing delivery



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of social services through religious charities approved 67-32, on abstinence education programs rejected 52-46; point of order sustained July 23 against 23 provisions, which were stricken from the bill, not sustained against 1 provision, which remained in the bill, and waived for 1 provision, which remained in the bill); 143 CONG. REC. S6092-93 (daily ed. June 23, 1997), *id.* at S6113-32 (daily ed. June 24, 1997) (Durbin point of order July 23 against § 5611 of the committee-reported bill raising the age of Medicare eligibility; Roth motion to waive approved 62-38 July 24); *id.* at S6298 (daily ed. June 25, 1997) (Domenici point of order against Levin amendment allowing vocational educational training to be counted as a work activity under the Temporary Assistance for Needy Families program; Levin motion to waive rejected 55-45; point of order sustained); *id.* at S6295, S6303-04 (daily ed. June 25, 1997) (Rockefeller point of order against section 5001 of the committee-reported bill on Medicare balance billing; Domenici motion to waive approved 62-37); *id.* at S6316-17 (daily ed. June 25, 1997) (Domenici point of order implicitly under subsection (b)(1)(A) against Lautenberg for Kennedy amendment to immediately transfer to Medicare part B certain home health benefits; Kennedy motion to waive rejected 38-62; point of order sustained); *id.* at S6316, S6318 (daily ed. June 25, 1997) (Murray point of order against § 1949(a)(2) of the committee-reported bill barring the use of Federal funding for abortions under Medicaid; point of order withdrawn); *id.* at S6336 (daily ed. June 25, 1997), *id.* at S6393, S6446-48 (daily ed. June 26, 1997) (Brownback point of order June 25 against section 602 of the committee-reported bill on incentives conditioned on District of Columbia government reform; Roth motion to waive withdrawn June 26; point of order sustained); *id.* at S6673-74 (daily ed. June 27, 1997) (Lautenberg point of order against Gramm amendment to create balanced budget enforcement procedures; Gramm motion to waive rejected 37-63; point of order sustained); *id.* at S6674-75 (daily ed. June 27, 1997) (Domenici point of order implicitly under subsection (b)(1)(A) against Bumpers amendment to prohibit scoring, for budget purposes, revenues from sale of certain federal lands; Bumpers motion to waive rejected 48-52; point of order sustained); *id.* at S6675-76 (daily ed. June 27, 1997) (Lautenberg point of order against Craig amendment to change the pay-go procedures by establishing a 60-vote point of order against using tax increases to pay for new mandatory spending increases; Craig motion to waive rejected 42-58; point of order sustained); *id.* at S6677 (daily ed. June 27, 1997) (Lautenberg point of order against Brownback amendment to create balanced budget enforcement procedures; Brownback motion to waive rejected 57-43; point of order sustained); *id.* at S6678 (daily ed. June 27, 1997) (Lautenberg point of order against Frist amendment to create balanced budget enforcement procedures; Frist motion to waive rejected 59-41; point of order sustained); *id.* at S6679-80 (daily ed. June 27, 1997) (Lautenberg point of order against Abraham amendment to ensure that future revenue windfalls to the Federal treasury are reserved for tax or deficit reduction; Abraham motion to waive rejected 53-47; point of order sustained); *id.* at S6691-93 (daily ed. June 27, 1997) (McCain point of order against section 702(d) of the committee-reported bill on intercity passenger rail funding; Roth motion to waive approved 77-21); *id.* at S8449-51 (daily ed. July 31, 1997) (Durbin point of order against section 1604(f)(3) of the conference committee-reported bill crediting a new cigarette tax against the global settlement; Roth motion to waive approved 78-22); 156 CONG. REC. S2086 (daily ed. Mar. 25, 2010) (Gregg points of order against two provisions of the Health Care and Education Affordability Reconciliation Act, one regarding "limitation on decreases" to Pell Grants, and the other striking a paragraph in the underlying Pell Grant law; no motion to waive; point of order sustained).

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313(b)(1)(B) (B) any provision producing an increase in **outlays**<sup>2181</sup> or decrease in **revenues**<sup>2182</sup> shall be considered extraneous if the net effect of provisions reported by the committee reporting the title containing the provision is that the committee fails to achieve<sup>2183</sup> its reconciliation instructions;

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### The Committee Fails To Achieve Its Reconciliation Instructions

Where a budget resolution gives a Senate Committee a reconciliation instruction “to increase the deficit by not more than” an amount, the Parliamentarian has advised that a bill that increases the deficit by less than that specified amount “would seem to be compliant.”<sup>2184</sup>

The Parliamentarian has advised that in such a case where a budget resolution gives a Senate Committee a reconciliation instruction “to increase the deficit by not more than” an amount, a reconciliation bill will not be penalized for not achieving as much spending as the budget resolution instructed, because the instruction provides an outer limit. The Parliamentarian has noted that people have asked about this because the Budget Act was not originally written for the purpose of increasing the deficit, so the Parliamentarian must view the text of subsection (b)(1)(B) in the inverse.<sup>2185</sup>

Where a House-passed reconciliation bill does not comply with a Senate Committee reconciliation instruction, the Parliamentarian has advised: “Our past advice on numerical lack of compliance has been that a curative amendment must be offered immediately to retain privilege.”<sup>2186</sup>

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<sup>2181</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2182</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2183</sup> The Congressional Budget Act makes no exception for very small amounts; even a “negligible” violation can subject legislation to a point of order under the Budget Act. Senate Precedent PRL19761001-001, [122 CONG. REC. 34,550–51](#) (Oct. 1, 1976) (point of order by Sen. Haskell under Congressional Budget Act of 1974 § 311(a)).

<sup>2184</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>2185</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget (July 31, 2021, 9:45 AM).

<sup>2186</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

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In *Riddick's Senate Procedure*, the Parliamentarian discussed a precedent under this subparagraph:

A section of a reconciliation bill reported by the Budget Committee was stricken on a point of order that it was extraneous, because such provision would result in increased outlays thus causing the committee having jurisdiction over its subject matter to fall from compliance with its reconciliation instruction.<sup>2187</sup>

There is another example of the application of this subparagraph.<sup>2188</sup>

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<sup>2187</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 625 (1992) (citing [132 CONG. REC. 24,907](#) (Sept. 19, 1986)) (Gramm point of order against committee-reported provision on energy conservation that would have caused outlays to increase; Metzenbaum motion to waive rejected 32-61).

<sup>2188</sup> 142 CONG. REC. S8081 (daily ed. July 18, 1996) (Lott point of order against committee-reported provision on Medicaid supplemental umbrella fund that would have increased outlays; no motion to waive; provision stricken).

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313(b)(1)(C)

**(C) a provision that is not in the jurisdiction of the committee with jurisdiction over said title or provision shall be considered extraneous;**

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### **Jurisdiction**

Subsection (b)(3), below, provides exceptions to this paragraph.

For Senate committee jurisdictions generally, see Senate Standing Rule XXV.

When one is making arguments to the Parliamentarian about committee jurisdictions, the Parliamentarian values citations to past bill referrals, and the Parliamentarian has advised:

[W]hen citing referred measures for the purposes of bolstering a jurisdictional argument, please be mindful of measures that are sweeping and general that were referred to one committee but have smaller provisions (which are in line with the provisions you are seeking clarification on) in another committee's jurisdiction. These are not necessarily helpful to the cause as they can be easily distinguished. Your best bets are smaller, more discreet measures.<sup>2189</sup>

When asked, "what is the difference between a jurisdictional issue where the remedy is loss of privilege vs. a point of order under the Byrd Rule (Sec. 313(b)(1)(C))?,"<sup>2190</sup> the Parliamentarian replied:

Timing. A 313(b)(1)([C]) point of order lies against a measure on the floor brought up under privilege. It's curative. By contrast, jurisdictional foot faults are fatal (say that 3 times fast) in House bills. Jurisdiction in the [reconciliation] context is not like jurisdiction in the bill referral context—it's not a preponderance test. It's a provision by provision test . . . .<sup>2191</sup>

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<sup>2189</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on the Judiciary re Memo re: immigration fees jurisdiction (Oct. 28, 2021, 7:19 PM).

<sup>2190</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on the Budget re reconciliation issues (Nov. 12, 2020, 5:11 PM).

<sup>2191</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

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When asked, “What is the remedy if a House reconciliation bill arrives in the Senate that includes material outside the jurisdiction of any reconciled Senate Committee?”<sup>2192</sup> the Parliamentarian replied, “It’s Fatal—the House has to make changes to get it to be privileged over here.”<sup>2193</sup> When asked, “Would privilege not be granted in the Senate?”<sup>2194</sup> the Parliamentarian replied, “No.”<sup>2195</sup> The Parliamentarian explained: “One provision, clearly shown to be outside the limits of our jurisdictional instruction can be fatal to privilege.”

When asked:

If a House reconciliation bill arrives in the Senate with material in a title of the bill that is outside the jurisdiction of the committee with jurisdiction over that title, but *that material is in the jurisdiction of another reconciled committee*, does that have any ramifications for privilege (assuming it doesn’t result in any other issues, like committee compliance issues)? If not, would the material just be subject to a Byrd Rule point of order?<sup>2196</sup>

the Parliamentarian replied, “It’s not a jurisdictional issue [imperiling privilege] as long as the committee is instructed but as we do title-by-title enforcement for all other things in a multijurisdictional bill, it is problematic from that standpoint [under section 313(b)(1)(C)].”<sup>2197</sup>

In *Riddick’s Senate Procedure*, the Parliamentarian reported a precedent under this subparagraph<sup>2198</sup>:

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<sup>2192</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on the Budget re reconciliation issues (Nov. 12, 2020, 5:11 PM).

<sup>2193</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>2194</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on the Budget re reconciliation issues (Nov. 12, 2020, 5:11 PM).

<sup>2195</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>2196</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on the Budget re reconciliation issues (Nov. 12, 2020, 5:11 PM).

<sup>2197</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re reconciliation issues (Nov. 16, 2020, 2:49 PM).

<sup>2198</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK’S SENATE PROCEDURE* 625 (1992) (footnotes renumbered and reformatted).

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A subsection of a reconciliation bill was stricken as extraneous on a point of order under subparagraph (d)(1)(C) of the Byrd Rule,<sup>[2199]</sup> on the grounds that the provision in question (a reapportioning of highway funds between states) was not within the jurisdiction of the Finance Committee, which had included it in response to its reconciliation instruction.<sup>[2200]</sup>

During preparation for the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), the Parliamentarian advised that a reconciliation bill could not repeal the Affordable Care Act in one line. On its face, a one-line repeal of the Affordable Care Act would contain matter outside the jurisdiction of the committee drafting it and thus violate the Byrd Rule.<sup>2201</sup>

During consideration of the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), the Parliamentarian advised that an amendment regarding the carrying and transporting of firearms<sup>2202</sup> violated section 313(b)(1)(C), saying, "It's all in violation."<sup>2203</sup>

Section 131 of the American Health Care Act of 2017 (which failed to pass the Senate), related to cost sharing reductions, would have repealed section 1402(e) of the Patient Protection and Affordable Care Act, "Rules for Individuals Not Lawfully Present," which provided that cost sharing reductions were not available to individuals who were not lawfully present in the United States and directed Treasury and HHS to establish a system implementing the prohibition. Democratic staff raised a challenge under Byrd Rule subparagraph (C), arguing that this provision contained matter within the jurisdiction of the Homeland Security and Governmental Affairs Committee, because the process needed to verify citizenship or immigration status necessarily "knocked on the door" of the Department of Homeland Security, a requirement made explicit under a separate section of the ACA, section 1411, which requires the HHS Secretary to consult with the DHS Secretary in implementing the verification process. Consequently,

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<sup>2199</sup> [Consolidated Omnibus Budget Reconciliation Act of 1985](#), Pub. L. No. 99-272, § 20001(d)(1)(C), 100 Stat. 82, 390–91 (1986), as amended by [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, § 7006, 100 Stat. 1874, 1949–50. This provision was codified as [Congressional Budget Act of 1974 § 313\(b\)\(1\)\(C\)](#), 2 U.S.C. § 644(b)(1)(C), *supra* p. 676, by [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13214, 104 Stat. 1388, 1388-621 to 1388-623.

<sup>2200</sup> [136 CONG. REC. 30,281–84](#) (Oct. 17, 1990).

<sup>2201</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on February 27, 2015, at 1 (Feb. 27, 2015).

<sup>2202</sup> S. Amend. No. 2915, 114th Cong., [161 CONG. REC. S8415–20](#) (daily ed. Dec. 3, 2015).

<sup>2203</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Comm. on the Budget re Paul #2915 point of order (Dec. 3, 2015, 6:28 PM).

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Democratic staff argued that the process for verifying status effectively had to be administered in significant part by the Department of Homeland Security, even though 1402(e) did not expressly say so. The Parliamentarian advised against this challenge, saying:

With respect to the other issues: repeal of 1402(e) of PPACA, and the rule making authority given to HHS and Treasury – while we understand and appreciate your discussion points and concerns, we do not believe the sections violate the Byrd Rule in terms of jurisdiction. With specific regard to the reg authority, we are not inclined to infer language where none exists and while we understand that without a working rule for identity verification the law may be unworkable, that issue does not run afoul of Byrd.<sup>2204</sup>

The Tax Cuts and Jobs Act of 2017 contained provisions related to drilling in the Arctic National Wildlife Refuge (ANWR) that were challenged under this subparagraph of the Byrd Rule. In that context, a provision stated: “MANAGEMENT.—Except as otherwise provided in this section, the Secretary [of the Interior] shall manage the oil and gas program on the Coastal Plain in accordance with the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 et seq.) (including regulations).”<sup>2205</sup> With regard to that provision, the Parliamentarian advised: “this provision sets up a clear conflict of law with [the National Environmental Policy Act], which is the jurisdiction of the [Environment and Public Works] committee. It is Byrdable under 313(b)(1)(C).”<sup>2206</sup>

In connection with the bill’s ANWR provisions, the Parliamentarian advised:

It must be noted that the ANWR matter is incredibly complex and rife with overlapping and conflicting jurisdictional issues. This is not the kind of policy or change in law that lends itself to the reconciliation process and were we considering this matter de novo it is hard to imagine finding ourselves here. Clearly, however, this office has given advice as far back as 1995 that permitted previous bills to meet a basic threshold under [Congressional Budget Act sections] 310/313 and pass muster. The version before us now is nowhere near as long or detailed as previous iterations and it does not contain the specific waivers of environmental law (save the

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<sup>2204</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Comm. on Fin. & Staff of S. Democratic Leader re Materials for Dem-only meeting on jurisdictional issues (June 2, 2017, 2:22 PM).

<sup>2205</sup> S. Amend. No. 1618, 115th Cong. § 20001(b)(3), [163 CONG. REC. S7467](#) (daily ed. Nov. 29, 2017).

<sup>2206</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

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provision below) that other bills contained. It should be noted that for various reasons, points of order were not raised in 1995 or 2005, though they may well have been and in some cases would likely have been sustained. Thus the actual line of precedent we have with respect to ANWR is broad and we believe that given the precedents, this narrowed version is much more in line with the goal of Byrd Rule discipline.<sup>2207</sup>

Shortly thereafter, the Parliamentarian further advised in connection with the bill's ANWR provisions:

[T]his issue is embedded with jurisdictional conflict/overlap. The 2 provisions that we discussed on ANWR today were amended to reflect advice under 313. The definition in 1003 was amended to bring it into alignment with other sections of the bill and with the 1995 and 2005 precedents. The management provision was amended to provide some structure to the lease sale process, but to eliminate the clear conflict with law/regs/matters in EPW's jurisdiction. While conflicts may arise, and matters may end up in court, such is not necessarily the case.

For those reasons, we think the changes made are appropriate to the measure and do not run afoul of the Byrd Rule.<sup>2208</sup>

Under Budget Act section 313(b)(1)(C), the Parliamentarian strictly scrutinizes statutory references to broad executive orders.<sup>2209</sup>

When asked during preparation of the Build Back Better Act to clarify that the Finance Committee could appropriately within its jurisdiction create a Family Leave regime through the Social Security Act in reconciliation, the Parliamentarian responded:

We have reviewed the argument and the text and believe that Finance makes a plausible argument, particularly in light of other programs that have been added to [the Social Security Act] (even in recon[ciliation] — such as the State Stability Fund in 2017). The text needs further attention, however. For example, there is still a provision for consultation with the Secretary of Labor.<sup>2210</sup>

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<sup>2207</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2208</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on Energy & Nat. Res., Off. of S. Parliamentarian, Staff of S. Comm. on Env't & Pub. Works & Staff of S. Comm. on the Budget re Correction (Nov. 30, 2017, 3:47 PM).

<sup>2209</sup> See E-mail from S. Parliamentarian to Staff of S. Majority Leader (Feb. 21, 2021, 9:41 AM).

<sup>2210</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian re Family Leave memo (Aug. 2, 2021, 5:04 PM).



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This Byrd Rule subparagraph has prompted the Parliamentarian to discourage the inclusion in reconciliation legislation of programs that blend subject matters from different committees' jurisdictions.<sup>2211</sup> In response to a proposal from the Environment and Public Works and Indian Affairs Committees<sup>2212</sup> to amend the Tribal Transportation Program<sup>2213</sup> in the reconciliation submissions of the Environment and Public Works Committee, the Parliamentarian wrote:

This is a bit of a sticky wicket and we can see merit in each committee's claim. However, the bills that EPW cites in support of their argument are all very large, broad measures and do not address a discrete program such as that in [23 U.S.C. §] 202. Additionally, our referrals, including some that are cited here, reflect the thinking of our office over many years that legislative schemes that treat Native Peoples and their lands, etc., in a manner that is different from the way other populations or states are treated with respect to the same or similar programs (encumbrances, burdens, more qualifications, different formulas, etc.) are rightly in the jurisdiction of SCIA. That appears to be the case with 202 which has labor restrictions, funding restrictions, set-asides, etc. And, that has been the theme of the discussion we have had with SCIA in other contexts. The bottom line is that blended programs such as this do not lend themselves well to the reconciliation process and Byrd Rule analysis.<sup>2214</sup>

That the Senate has an Indian Affairs Committee causes the Parliamentarian to give particular scrutiny to provisions that affect Native Americans. The Parliamentarian has indicated that the Indian Affairs Committee's jurisdiction is implicated when provisions "provide a personalized claim for Indians" or "Indians are . . . getting a particularized benefit."<sup>2215</sup> The Indian Affairs Committee has described this advice as creating a two-part test for evaluating the Indian Affairs Committee's jurisdiction: "(1) Does the provision provide a particularized benefit for

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<sup>2211</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re EPW-SCIA memo re: Tribal Transportation Program funding (Oct. 21, 2021, 11:07 AM).

<sup>2212</sup> Memorandum from Democratic Staff of the Senate Committee on Environment and Public Works and Democratic Staff of the Senate Committee on Indian Affairs to Senate Parliamentarians re Jurisdiction over Amendments to Section 202 of Title 23 (Sept. 24, 2021).

<sup>2213</sup> [23 U.S.C. § 202](#).

<sup>2214</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re EPW-SCIA memo re: Tribal Transportation Program funding (Oct. 21, 2021, 11:07 AM).

<sup>2215</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Comm. on Fin. & Off. of S. Parliamentarian re 1402 (June 6, 2017, 5:15 PM).

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Indians; and (2) Does that particularized benefit flow through a scheme unique to Indians?”<sup>2216</sup>

Democratic staff argued that a section of the American Health Care Act of 2017<sup>2217</sup> that repealed section 1402 of the Patient Protection and Affordable Care Act<sup>2218</sup>—subsection (d) of which provided “Special Rules for Indians”<sup>2219</sup>—implicated the jurisdiction of the Indian Affairs Committee (which had not received an instruction). After hearing Democratic arguments, the Parliamentarian wrote:

We believe that you have made a colorable claim that the repeal of section 1402(d) in section 131 of the House bill runs afoul of the jurisdictional instructions of the budget resolution. We may need to have further discussions with you and the Majority on this matter and we will reach out to you to schedule that meeting if/when it becomes necessary.

With respect to the other issues: repeal of 1402(e) of PPACA, and the rule making authority given to HHS and Treasury—while we understand and appreciate your discussion points and concerns, we do not believe the sections violate the Byrd Rule in terms of jurisdiction. With specific regard to the reg authority, we are not inclined to infer language where none exists and while we understand that without a working rule for identity verification the law may be unworkable, that issue does not run afoul of Byrd.<sup>2220</sup>

After hearing oral arguments from both Republicans and Democrats, the Parliamentarian wrote:

As we understand it, section 1402 is a legislative structure that provides a cost sharing system to ensure that various populations (largely poor) are able to have health insurance. It provides a set of criteria for eligibility for the cost sharing system. This scheme, like other such healthcare structures in which Indians participate, like Medicare and CHIP—does not provide a personalized claim for Indians, it merely sets up a structure through which HHS subsidizes insurer-provided cost reductions they provide to the insured, of which the Indian population that fits the definitions set forth in

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<sup>2216</sup> Memorandum from Senate Committee on Indian Affairs Democratic Staff to the Senate Parliamentarian re SCIA Provisions in H.R. 5376 (2021).

<sup>2217</sup> [American Health Care Act of 2017](#), H.R. 1628, 115th Cong. § 131 (as engrossed in the House).

<sup>2218</sup> Patient Protection and Affordable Care Act § 1402, [42 U.S.C. § 18071](#).

<sup>2219</sup> Patient Protection and Affordable Care Act § 1402(d), [42 U.S.C. § 18071\(d\)](#).

<sup>2220</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Comm. on Fin. & Staff of S. Democratic Leader re Materials for Dem-only meeting on jurisdictional issues (June 2, 2017, 2:21 PM).

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1402(d) is a subset. The Indians are not getting a particularized benefit, rather the Secretary is responsible for a particularized payment.

While there is no perfect or easy solution to the issues raised by the repeal of 1402, we think the best answer is that this formulaic application of a payment to insurers by the Secretary of HHS is properly within the jurisdiction of the HELP Committee.<sup>2221</sup>

In a follow-up e-mail making clear that the Parliamentarian had not signed off on the provision in its entirety, the Parliamentarian wrote: “To clarify – this issue is limited to the fact that 1402(d) is not in Indian Affairs jurisdiction. I was overbroad in my email but the conclusion that there is not a jurisdictional violation with respect to the instructed committees holds.”<sup>2222</sup>

Thereafter, when Democratic staff argued that a provision amending section 1402 should continue to be within the jurisdiction of the Finance Committee and not the HELP Committee, the Parliamentarian wrote:

The determination of jurisdiction of 1402 is a complicated issue that has been made more so by the context in which it originated and in which the section has been amended and argued over in the years since it became law. 1402 has been labeled at various times a “coverage” provision and a “tax credit.” The HELP and Finance Committees (acting in bipartisan fashion) have each argued that it is in their respective jurisdictions as a regulation of the private health care market or as one piece of a tax subsidy scheme. Legislation impacting 1402 has been referred to Finance, but each measure so referred also specifically amended the [Internal Revenue Code] and thus cannot be used for precedential purposes on this issue. Over the last several years, our office has referred regulations stemming from [the Patient Protection and Affordable Care Act] impacting 1402 to Finance and HELP but most recently and more numerous to HELP. We did so following competing and cogent arguments presented by the HELP and Finance Committees on the issues addressed by such regulations in which 1402 was specifically claimed by HELP, but as with the legislative proposals that impact it, a range of issues was presented with the regulations so it was not possible to view 1402 in isolation.

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<sup>2221</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Comm. on Fin. & Off. of S. Parliamentarian re 1402 (June 6, 2017, 5:15 PM).

<sup>2222</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of S. Comm. on Fin. & Off. of S. Parliamentarian re 1402 (June 6, 2017, 6:42 PM).

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Such arguments have been renewed in the context of reconciliation. We find that each has merit. Were 1402 to come to us as an introduced measure for referral, however, given that it amends the [Public Health Service Act] and grants significant authorities solely to the Secretary of HHS and that the subject is payment and support to health insurers in the private market, we would refer it to HELP. And, while we understand that 1402 works in concert with 1401, 1401 amends the [Internal Revenue Code] and 1402 does not. Thus it is not inappropriate, despite past reconciliation constructs placing this section in a Finance title, to find it now in a HELP (E&C) title.<sup>2223</sup>

When Budget Committee staff argued that “1402 does not amend the [Public Health Service Act]” and “These [Cost Sharing Reduction] payments to insurers are made, and always have been made, by the Treasury Department, not by HHS,”<sup>2224</sup> the Parliamentarian replied:

Obviously, you are correct about the [Public Health Service Act]. But as you also know, 1402 is codified in title 42 of the US Code and not in the [Internal Revenue Code] in title 26 and not as a health program under the Social Security Act in Chapter 7 of title 42, over which Finance has line-item jurisdiction. Thus, as we look to our precedents and the Standing Rules of the Senate for jurisdictional purposes, we believe amendments to 42 USC 18071 are within HELP’s jurisdiction.

With respect to the 1402(d) matter, 42 USC 18024(c) (PL 111-148 sec. 1304(c)) defines “Secretary” as follows:

SECRETARY.—In this title (*title 1 of [the Patient Protection and Affordable Care Act]*), the term “Secretary” means the *Secretary of Health and Human Services*. (*emphasis added*).

The language mandating payment in 1402(d)(3) is as follows:

(3) PAYMENT.—The *Secretary* shall pay to the issuer of a qualified health plan the amount necessary to reflect the increase in actuarial value of the plan required by reason of this subsection. (*emphasis added*).

Again, we believe the language here is part of a larger mechanism for cost-sharing payments for private health insurance paid to private health

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<sup>2223</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Jurisdiction (June 22, 2017, 6:05 PM).

<sup>2224</sup> E-mail from Staff of S. Comm. on the Budget to S. Parliamentarian, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re two items (June 23, 2017, 6:09 PM).

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insurance companies under the authority of the Secretary of HHS which falls under the jurisdiction of the HELP committee.<sup>2225</sup>

During consideration of the Tax Cuts and Jobs Act of 2017, the Parliamentarian advised that provisions entitled “Permissive Amendments to Trust Agreements Establishing Settlement Trusts . . . In General,”<sup>2226</sup> “Registration Statement,”<sup>2227</sup> and “Statutory Construction”<sup>2228</sup> addressing “Alaska Native Corporations: [the Alaska Native Claims Settlement Act of 1971] and state law override”<sup>2229</sup> violated section 313(b)(1)(C).<sup>2230</sup>

Where reconciliation bill language<sup>2231</sup> would have increased tax benefits by the amount that those benefits would be cut by subsequent sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) or the Statutory Pay-As-You-Go Act of 2010, the Parliamentarian’s office observed that “the references to sequestration under BBEDCA in these sections raise the question of Budget committee jurisdiction.”<sup>2232</sup>

The Parliamentarian raised concerns about implications for the Foreign Relations Committee’s jurisdiction with House-reported language from the Energy and Commerce Committee “to support expanded global and domestic vaccine production capacity and capabilities,”<sup>2233</sup> saying: “We understand that that HHS is already doing things in this sphere, but this is new language. Moreover, this is not preponderance. We believe you could just take out ‘global and domestic’ and avoid this problem i[f] the partnerships already exist.”<sup>2234</sup>

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<sup>2225</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re two items (June 24, 2017, 9:41 PM).

<sup>2226</sup> S. Amend. No. 1618, 115th Cong. § 13821(b)(3)(A), [163 CONG. REC. S7451](#) (daily ed. Nov. 29, 2017).

<sup>2227</sup> S. Amend. No. 1618, 115th Cong. § 13821(b)(3)(C), [163 CONG. REC. S7451](#) (daily ed. Nov. 29, 2017).

<sup>2228</sup> S. Amend. No. 1618, 115th Cong. § 13821(d), [163 CONG. REC. S7451](#) (daily ed. Nov. 29, 2017).

<sup>2229</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2230</sup> *Id.*

<sup>2231</sup> [Build Back Better Act](#), H.R. 5376, 117th Cong. §§ 136104 & 136601 (2021) (as reported by the H. Comm. on the Budget).

<sup>2232</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Response to Section 306 Challenge to Ways & Means Title (Nov. 18, 2021, 3:17 PM).

<sup>2233</sup> [Build Back Better Act](#), H.R. 5376, 117th Cong. § 31022(b)(2) (2021) (as reported by the H. Comm. on the Budget).

<sup>2234</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on the Budget & Staff of S. Majority Leader re Parl Feedback on Privilege Scrub Responses (Nov. 18, 2021, 11:37 AM).

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When a reconciliation bill responded to budget resolution instructions to only the Finance and HELP Committees, the Parliamentarian was asked if a Senator could make a motion to commit to a committee other than Finance or HELP. The Parliamentarian advised: “If the motion were textual (forthwith/binding) there could be a Byrd Rule point of order against it and a 60 vote waiver.”<sup>2235</sup>

When asked under what circumstances an amendment would violate Byrd Rule section 313(b)(1)(C), the Parliamentarian wrote:

We have always used Rule XXV to inform this analysis, though unlike referral, preponderance is not the standard here. Byrd discipline is provision-by-provision and provisions can be rather small. So an amendment or its component parts can be “Byrded” depending on the text/structure.<sup>2236</sup>

The Parliamentarian rejected the argument that an amendment that implicates two or more committees that *were* reconciled would not, for that reason alone, be subject to a point of order under section 313(b)(1)(C).

Thus, during consideration of the Inflation Reduction Act of 2022, the Presiding Officer sustained a point of order raised by Budget Committee Ranking Republican Member Lindsey Graham under section 313(b)(1)(C)<sup>2237</sup> against an amendment by Senator Bernie Sanders to cap costs for covered prescription drugs under Medicare Parts B and D in part by reference to the amount paid by the Secretary of Veterans Affairs,<sup>2238</sup> as that amendment implicated the jurisdictions of both the Finance and Veterans Affairs Committees.

And also during consideration of the Inflation Reduction Act of 2022, the Presiding Officer sustained a point of order raised by Budget Committee Ranking Republican Member Lindsey Graham under section 313(b)(1)(C)<sup>2239</sup> against an amendment by Senator Raphael Warnock to make health care coverage available to low-income adults in states that have not expanded Medicaid.<sup>2240</sup> Before raising the point of order, Senator Graham said: “The pending amendment No. 5262 offered by Senator

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<sup>2235</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re draft motion to commit guidance (June 26, 2017, 9:45 PM).

<sup>2236</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Budget memo re: reconciliation floor questions (Aug. 6, 2022, 6:43 PM).

<sup>2237</sup> 168 CONG. REC. S4170 (daily ed. Aug. 6, 2022).

<sup>2238</sup> *Id.* at S4145.

<sup>2239</sup> *Id.* at S4190–91.

<sup>2240</sup> *Id.* at S4250–52.

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Warnock contains matters outside the jurisdiction of the Finance Committee.”<sup>2241</sup>

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<sup>2241</sup> *Id.* at S4191.

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There are many examples of the application of this subparagraph on the Senate floor<sup>2242</sup> and in advice from the Parliamentarian.<sup>2243</sup>

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<sup>2242</sup> See 132 CONG. REC. S13,047 (daily ed. Sept. 19, 1986) (Thurmond point of order against two provisions regarding program fraud civil remedies; Cohen motion to waive succeeded by a 79-15 vote); 136 CONG. REC. S15,462-75 (daily ed. Oct. 17, 1990); FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 625 (1992) (Baucus point of order against Finance Committee-reported provisions apportioning highway funds among the states that fell within the jurisdiction of the Environment and Public Works Committee; sustained without vote); 142 CONG. REC. S8423-24 (daily ed. July 22, 1996), *id.* at S8506-09 (daily ed. July 23, 1996) (Exon point of order under subsections (b)(1)(A), (b)(1)(C), and (b)(1)(D) raised July 22 against 25 provisions; Domenici motion to waive on 3 provisions for which the point of order applied under subsection (b)(1)(A)—on a family cap for welfare benefits rejected 42-57, on allowing delivery of social services through religious charities approved 67-32, on abstinence education programs rejected 52-46; point of order sustained July 23 against 23 provisions, which were stricken from the bill, not sustained against 1 provision, which remained in the bill, and waived for 1 provision, which remained in the bill); 143 CONG. REC. S6320 (daily ed. June 25, 1997) (Daschle point of order apparently under subsection (b)(1)(C) against § 5713 (“No Waiver Required for Provider Selectivity”), § 5833 (“Clarifying Provision Relating to Base Periods”), and § 5987 (repealing various provisions of education laws) of the Finance Committee-reported bill; no motion to waive; point of order sustained); 156 CONG. REC. S1996 (daily ed. Mar. 24, 2010) (Baucus point of order under subsection (b)(1)(C) against a Grassley-Roberts amendment to ensure that the President, Cabinet, White House staff and Congressional staff would buy health insurance through health insurance exchanges to a bill enacting the Affordable Care Act; Grassley motion to waive failed 43-56; point of order sustained; amendment fell); *id.* at S1997 (Baucus point of order under subsection (b)(1)(C) against a LeMieux amendment to ensure that Members of Congress would be covered by Medicaid to a bill enacting the Affordable Care Act; LeMieux motion to waive failed 40-59; point of order sustained; amendment fell); *id.* at S2008 (Baucus point of order under subsection (b)(1)(C) against a Grassley amendment to extend unemployment insurance, COBRA coverage, the SGR Medicare physicians payment fix, Federal poverty guidelines, national flood insurance, satellite television, and compensation for highway programs to a bill enacting the Affordable Care Act; Grassley motion to waive failed 40-56; point of order sustained; amendment fell); *id.* at S2010 (Baucus point of order under subsection (b)(1)(C) against a Hutchison amendment to, in Sen. Hutchison’s words, “make relief from the marriage penalty and the sales tax deduction permanent” to a bill enacting the Affordable Care Act; Hutchison motion to waive failed 40-55; point of order sustained; amendment fell); *id.* at S2070 (daily ed. Mar. 25, 2010) (Baucus point of order under subsection (b)(1)(C) against an Ensign amendment, in Sen. Baucus’s words, “related to medical malpractice and tort reform” to a bill enacting the Affordable Care Act; Ensign motion to waive failed 40-55; point of order sustained; amendment fell); *id.* at S2071 (Baucus point of order under subsection (b)(1)(C) against a Coburn amendment to restore the ability to buy guns of veterans, in the words of the amendment, “deemed mentally incompetent,” to a bill enacting the Affordable Care Act; Coburn motion to waive failed 45-53; point of order sustained; amendment fell); *id.* at S2075 (Baucus point of order under subsection (b)(1)(C) against a Vitter amendment to suspend the proposed health care law for, in the words of the amendment, “any fiscal year OMB determines that the deficit targets set forth in the CBO report of March 20, 2010 will not be met,” to a bill enacting the Affordable Care Act; Vitter motion to waive failed 39-56; point of order sustained; amendment fell); *id.* at S2077 (Baucus point of order under subsection (b)(1)(C) against a Murkowski amendment to index thresholds for Hospital Insurance tax, offset by, in the amendment’s words, “rescission of certain stimulus funds,” to a bill enacting the Affordable Care Act; Murkowski motion to waive failed 42-57; point of order sustained; amendment fell); 161 CONG. REC. S8346 (daily ed. Dec. 3, 2015) (Reid point of order apparently under subsection (b)(1)(C) against a Cornyn amendment to protect due process rights of people seeking to buy guns to a bill to repeal provisions of the Affordable Care Act; Cornyn motion to waive failed 55-44; point of order sustained; amendment fell); *id.* at S8347 (Enzi point of order under subsection (b)(1)(C) against a Feinstein amendment on gun sales to suspected terrorists to a bill to repeal provisions of the Affordable Care Act; Feinstein motion to waive failed 45-54; point of order sustained; amendment fell); *id.* at S8347-48 (Durbin point of order under subsection (b)(1)(C) against a Grassley amendment on gun background checks to a bill to repeal provisions of the Affordable Care Act; Grassley motion to waive failed 53-46; point of order sustained; amendment fell); *id.* at S8348 (Grassley point of order under subsection (b)(1)(C) against a Manchin-Toomey amendment on gun background checks to a bill to repeal provisions of the Affordable Care Act; Manchin motion to waive failed 48-50; point of order sustained; amendment fell).



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<sup>2243</sup> During drafting of the American Rescue Plan Act of 2021, the Parliamentarian advised that sweeping environmental changes proposed by the Environment and Public Works Committee based on extremely broad executive orders would violate subsection (b)(1)(C). E-mail from S. Parliamentarian to Staff of S. Majority Leader (Feb. 21, 2021, 9:41 AM).

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313(b)(1)(D)

**(D) a provision shall be considered extraneous if it produces changes in outlays<sup>2244</sup> or revenues<sup>2245</sup> which are merely incidental to the non-budgetary components of the provision;**

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### Merely Incidental

This subparagraph contributes much of the ambiguity created by the Byrd Rule. Its language calls for the exercise of judgment. To make this judgment, the Parliamentarian conducts a balancing analysis. The Parliamentarian has summarized the test: “The question before us is whether a series of proposed amendments . . . is a policy change that substantially outweighs the budgetary impact of that change.”<sup>2246</sup>

The drafters of this subparagraph wished to prohibit provisions in which policy changes plainly overwhelmed deficit changes. For example, a nationwide abortion prohibition might marginally reduce Government spending, but would constitute a much more significant policy change than budgetary action.<sup>2247</sup> Thus, during consideration of the American Rescue Plan Act of 2021, the Presiding Officer sustained a point of order raised by Budget Committee Chair Bernie Sanders under this subparagraph against a Collins substitute amendment that would have, among other things, applied Hyde Amendment restrictions barring the use of Federal funds to pay for abortion.<sup>2248</sup> Similarly, the Presiding Officer sustained a point of order raised by HELP Committee Chair Patty Murray under this subparagraph against a Lankford amendment that would have applied Hyde Amendment restrictions to the bill.<sup>2249</sup>

Similarly, the Senate amendment to the Tax Cuts and Jobs Act of 2017 contained a provision entitled “Unborn Children Allowed as 529 Account Beneficiaries.”<sup>2250</sup> The Parliamentarian advised that this provision violated section 313(b)(1)(D), writing:

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<sup>2244</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2245</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2246</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on the Judiciary & Off. of S. Parliamentarian re LPR Guidance (Sept. 19, 2021, 6:28 PM).

<sup>2247</sup> WILLIAM G. DAUSTER, [BUDGET PROCESS LAW ANNOTATED: 1993 EDITION](#) 208 n.580 (Comm. Print 1993).

<sup>2248</sup> [167 CONG. REC. S1233, S1347–54](#) (daily ed. Mar. 5, 2021).

<sup>2249</sup> *Id.* at [S1247, S1295–300](#).

<sup>2250</sup> S. Amend. No. 1618, 115th Cong. § 11028, [163 CONG. REC. S7421](#) (daily ed. Nov. 29, 2017).

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(529/Unborn Child)—313(b)(1)(D)—functionally redundant provision; doesn’t make it possible to contribute to a 529 any earlier because anyone can start a 529 any time, years before a baby is born and transfer the benefit. It has the legal effect of establishing fetal personhood or individuality, which though it is limited to the tax code, is still significant policy change.<sup>2251</sup>

Similarly, the Presiding Officer sustained a Murray point of order under this subparagraph against a Tuberville amendment to prohibit certain funds made available under the American Rescue Plan Act of 2021 to go to States, local educational agencies, and institutions of higher education that permit transgender students to participate in athletic programs designated for women or girls.<sup>2252</sup>

But the Parliamentarian has advised that a provision of the Better Care Reconciliation Act of 2017<sup>2253</sup> would not violate section 313 by placing an unrelated provision into an existing statutory scheme that included an abortion restriction, writing:

This provision has a large score and . . . provides a temporary stabilization fund for states that will lose money under BCRA reforms. It takes advantage of abortion-related restrictive language that was written in [the Children’s Health Insurance Program (CHIP)] (which itself was written in a reconciliation bill) but exempts most of the other rigors and requirements of CHIP. It is clever drafting and it gives us a great deal of concern for the use of this section of law for other purposes simply to take advantage of an abortion-related restriction on federal dollars. But we are wary of a decision that could be considered to render CHIP unamendable.<sup>2254</sup>

The Parliamentarian acknowledged in this context that the question was whether “you can run anything in the world through CHIP.”<sup>2255</sup>

Finance Committee counsel Mike Evans has observed that the Parliamentarian appears to strictly scrutinize hot-button political issues

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<sup>2251</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2252</sup> 168 CONG. REC. S1250–51 (daily ed. Mar. 5, 2021).

<sup>2253</sup> S. Legis. Couns., LYN17343, [Better Care Reconciliation Act of 2017, Amendment in the Nature of a Substitute to H.R. 1628, 115th Cong.](#) § 106 (June 26, 2017).

<sup>2254</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Byrd Bath Follow-Up (July 21, 2017, 1:32 PM).

<sup>2255</sup> Staff of S. Comm. on the Budget, Notes from Dem only meeting with Parls—Friday, June 30, 2017 (July 10, 2017).

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under this subparagraph. The application of this subparagraph, however, has ranged wider than such plain cases.

The Parliamentarian has advised that phraseology and terminology with regard to hot-button issues are always issues in reconciliation. The Parliamentarian is wary of attempts to wedge terms into the code and get them more widely adopted in a number of contexts. The Parliamentarian analyzes these terms as increasing the amount of policy change in the “merely incidental” balancing analysis.<sup>2256</sup>

The Parliamentarian advised in summer of 1993 that the Parliamentarian’s office begins its analysis by scrutinizing a provision for any “non-budgetary components.” This analysis is linked to that under subsection (b)(1)(A), above. If a component produces no change in outlays or revenues or the terms and conditions by which the Government obtains outlays or revenues, then the component is non-budgetary. In other words, if a component would violate subsection (b)(1)(A) if it stood alone as a provision, then it contributes to a violation of subsection (b)(1)(D) when viewed in conjunction with other components. Once the Parliamentarian has identified a nonbudgetary component, the Parliamentarian then weighs that component or that and other non-budgetary components against the budgetary components, asking whether the latter are “merely incidental” to the former.

The Parliamentarian’s analysis does not end with a simple components test. Budgetary effect, without more, does not insulate a provision from violating the subsection. Provisions that reduce the deficit may nonetheless violate the subparagraph. For example, the Presiding Officer sustained a point of order under this subparagraph against provisions that would have imposed criminal penalties (thus raising revenues) under the Occupational Health and Safety Act.<sup>2257</sup>

Provisions that increase the deficit do not necessarily violate the subparagraph. Thus, after careful review, the Parliamentarian advised (in summer 1993) that the provisions of the Omnibus Budget Reconciliation Act of 1993,<sup>2258</sup> regarding the earned income tax credit,<sup>2259</sup> empowerment

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<sup>2256</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Comm. on Env’t & Pub. Works & Staff of S. Comm. on the Budget (June 21, 2022, 1:10 PM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Parls EPW (D-only) meeting, 6-21-22 (June 21, 2022, 2:29 PM).

<sup>2257</sup> See 136 CONG. REC. S15,771 (daily ed. Oct. 18, 1990); FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 625 (1992).

<sup>2258</sup> [Omnibus Budget Reconciliation Act of 1993](#), Pub. L. No. 103-66, 107 Stat. 312 (1993).

<sup>2259</sup> [Id.](#) § 13131.

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zones,<sup>2260</sup> and food stamps,<sup>2261</sup> each of which substantially increase the deficit, did not violate this subsection. Thus, a Senator can find it easy to defend as budgetary a provision that does nothing but spend a great deal of money. On the other hand, a provision that actually reduces the deficit but does so through the device of an extensive policy change will receive strict scrutiny. The language of the subparagraph dictates this result, however, as it does not address itself to how the provision affects the budget, merely to its so doing.

Provisions that have budgetary effects that the Congressional Budget Office cannot estimate do not necessarily violate the subsection.<sup>2262</sup> Thus, during consideration of the Omnibus Budget Reconciliation Act of 1993,<sup>2263</sup> Senator John Danforth raised a point of order that provisions of the bill regarding Medicaid pediatric immunization violated this subparagraph:

Mr. DANFORTH. Mr. President, I am concerned about the state of the Byrd rule, which is a rule that I think is extremely important in the Senate, and concerned that budgetary effects which are incapable of estimation have been used to justify what I would think to be extraneous provisions in this bill, I would like now to make two inquiries of the Chair.

. . . .

The second question is: If the impact on outlays or revenues cannot be estimated, are they merely incidental to a nonbudgetary component under section 313(b)(1)(D) of the Byrd rule?

The PRESIDING OFFICER. Once again, that would not necessarily be the case.

Mr. DANFORTH. Mr. President, I now wish to raise a point of order, and do raise a point of order under sections 313(b)(1)(A) and 313(b)(1)(D) of the Budget Act, known as the Byrd rule; that title XIX, section 1928(d)(4)(B) in the conference agreement, section 13631(b) is extraneous to the reconciliation bill because it produces no change in the outlays or revenues or produces changes in outlays or revenues which are merely incidental to the nonbudgetary components of the provision.

The PRESIDING OFFICER. The point of order is not well taken.

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<sup>2260</sup> *Id.* §§ 13301–13303.

<sup>2261</sup> *Id.* §§ 13901–13971.

<sup>2262</sup> See 139 CONG. REC. S10,659–62 (daily ed. Aug. 6, 1993) (Chair sustained on appeal by a 43-57 vote).

<sup>2263</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993).

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Mr. DANFORTH. Mr. President, I appeal the ruling of the Chair.

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Mr. DANFORTH. Mr. President, as I stated earlier, my concern is about the efficacy of the Byrd rule which I think is very important in keeping extraneous matters from reconciliation bills. . . .

The Congressional Budget Office was asked by me for the budgetary effects of this particular provision which has to do with the so-called State option provision of the immunization portion of the bill. The relevant part of the answer of Mr. Reischauer was as follows:

The paragraph referenced in your letter would allow States to purchase additional quantities of vaccines at the CDC price and would, therefore, affect the prices the Federal Government would pay. While the paragraph cited was a consideration in developing our estimate of section 13631, we do not have the ability to estimate its budgetary effects separately.

So, in other words, the quantity of vaccine purchased would affect price, but CBO is unable to make that estimation.

What has happened in this particular provision of the bill is that there is a major substantive change in the law, a major substantive provision appears in the bill and CBO is unable to estimate what the consequences of that provision would be. It is the position of this Senator that if CBO cannot make that estimate, then clearly at the very least the revenue consequences or the budgetary consequences are merely incidental and that that provision should not be allowed to stand.

....

So my point is very simply this, Mr. President. If CBO is unable to estimate the amount, then the budgetary consequences are so minimal and so tangential to the bill that they do not justify substantive changes in the law. And therefore, if the Byrd rule has any real meaning, if it is truly a rule, then these provisions should be stricken.

....

. . . . I would simply point out that when the Byrd rule was adopted in the debate, Senator BYRD said, and this is a quote, "Because policy matters that do not have clear and direct budgetary consequences are supposed to remain outside its scope."

....

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Mr. RIEGLE. . . .

. . . .

But in the final paragraph of that letter, the director of the Congressional Budget Office, Dr. Reischauer says: "The paragraph referenced in your letter would allow States to purchase additional quantities of vaccines at the CDC price" and here is the critical language "and would therefore affect the prices the Federal Government would pay."

That is the whole issue here. States come in and combine their purchasing with the Secretary in terms of the national purchasing effort of vaccines. That will have an effect on the price, and therefore the total cost of this effort.

So the Budget Office has clearly established the relationship that makes it proper within this bill and means that, of course, it does conform to the Byrd rule.

. . . .

Mr. DANFORTH. . . . What the letter does say is that the quantity of vaccine that is purchased has some effect on the price. But it says that the CBO cannot estimate what the effect is. That is exactly the nature of the question, two questions that I put to the Chair.

If budgetary impacts cannot be estimated, if no number can be put on them, then it is the position of this Senator that they are so ethereal, so lacking in form as not to constitute the kind of clear and direct budgetary consequences that Senator BYRD spoke of in the debate when the Byrd rule was first created.

. . . .

Mr. RIEGLE. . . .

. . . .

In fact, the CBO letter, to my reading, sustains the argument that I am making, that there is a relationship between quantity of vaccines being negotiated for and purchased and therefore the price and therefore the cost. Depending upon where that works out, it has a direct budgetary impact. That is the clear message of the letter from the Director of the Congressional Budget Office.

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It obviously means that this does meet the Byrd rule. It is germane in every sense, and proper. That is what the Parliamentarian has ruled.<sup>2264</sup>

In connection with subparagraph (D), the Parliamentarian casts a particularly suspicious eye on language that overturns court decisions. The Parliamentarian appears to view such language as attempting to do something that the drafters of section 313 did not contemplate Congress should be able to do in the fast-track reconciliation process. But the Presiding Officer did not sustain a Conrad point of order under this subparagraph against a provision that Senator Conrad argued would “overturn a Ninth Circuit Court case that allowed grandparents with limited incomes to receive foster care payments when parenting vulnerable children.”<sup>2265</sup>

That a provision affects policy is not dispositive. The Parliamentarian has observed (in September 2015 and subsequently) that everything that Congress does is policy. The Parliamentarian did not appear to support the proposition that a provision motivated mainly by policy is unreachable through reconciliation. In this context, the Parliamentarian cited set top boxes and the Arctic National Wildlife Refuge as examples of policies that were provisions in reconciliation bills. The Parliamentarian observed that reconciliation “is overwrought with policy.”<sup>2266</sup>

Two factors that weigh in favor of a provision against a challenge under section 313(b)(1)(D) are that a provision’s effect is temporary and that it extends existing policy.<sup>2267</sup> For example, during consideration of the Tax Cuts and Jobs Act of 2017, the Parliamentarian found that a provision entitled “Extended Rollover Period for Plan Loan Offset Amounts”<sup>2268</sup> did not violate section 313(b)(1)(D), saying, “this is a brief extension of an existing policy – small score/small policy.”<sup>2269</sup>

Similarly, when Senator James Lankford proposed an amendment to provide funding for implementation of a Trump administration border

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<sup>2264</sup> 139 CONG. REC. S10,659–61 (daily ed. Aug. 6, 1993). The Senate went on to sustain the Chair on appeal by a vote of 43-57. *See id.* at S10,662. Note that, under Budget Act section 312(a), the Budget Committee, not the Congressional Budget Office, provides the estimates for purposes of this title of the Budget Act.

<sup>2265</sup> 151 CONG. REC. S14,203–05 (daily ed. Dec. 21, 2005) (statement of Sen. Conrad; no motion to waive).

<sup>2266</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on September 28, 2015, at 1.

<sup>2267</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 29, 2017, 10:03 AM).

<sup>2268</sup> S. Amend. No. 1618, 115th Cong. § 13614, 163 CONG. REC. S7446 (daily ed. Nov. 29, 2017).

<sup>2269</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 29, 2017, 10:03 AM).



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expulsion policy called “title 42,”<sup>2270</sup> Budget Committee counsel argued that the amendment violated section 313(b)(1)(D).<sup>2271</sup> The Parliamentarian’s office asked, “How would you distinguish this from the suspension of the Rebate rule?”<sup>2272</sup>—thereby focusing on the temporary nature and current policy of the amendment. Republicans argued: “The Lankford amendment would direct appropriations to the CDC for an existing authority. The Title 42 authority is temporary and currently in effect.”<sup>2273</sup> The Parliamentarian concluded: “We don’t believe that a 313(b)(1)(D) point of order lies against the amendment.”<sup>2274</sup>

### The Doctrine of Targeting

In the wake of Republican efforts to defund Planned Parenthood in reconciliation legislation,<sup>2275</sup> the Parliamentarian erected a procedural doctrine in which the Parliamentarian will regard provisions that unduly target a narrow group to violate the “merely incidental” test.

In November 2015, the Parliamentarian at first advised that a section of the Restoring Americans’ Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama) entitled “Federal Payment to States”<sup>2276</sup>

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<sup>2270</sup> S. Amend. No. 5384, [168 CONG. REC. S4178](#) (daily ed. Aug. 6, 2022). In this context, “title 42” refers to [42 U.S.C. § 265](#), regarding “Suspension of Entries and Imports from Designated Places To Prevent Spread of Communicable Diseases.”

<sup>2271</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Comm. on the Budget, Staff of S. Majority Leader & Staff of S. Comm. on the Judiciary re Lankford 5384 (Aug. 6, 2022, 11:29 PM).

<sup>2272</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Judiciary re Lankford 5384 (Aug. 7, 2022, 1:05 AM) (referring to [Inflation Reduction Act of 2022](#), Pub. L. No. 117-169, § 11301, regarding “Extension of Moratorium on Implementation of Rule Relating to Eliminating the Anti-Kickback Statute Safe Harbor Protection for Prescription Drug Rebates”).

<sup>2273</sup> E-mail from Staff of S. Republican Leader to Staff of S. Republican Leader, Staff of S. Comm. on the Budget, Staff of Sen. Lankford, Staff of S. Comm. on Homeland Sec. & Gov’t Affs., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Asst. Republican Leader re Defensive Byrd Argument—Title 42 (Aug. 7, 2022 1:13 AM) (making the argument); E-mail from Staff of S. Republican Leader to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Republican Leader & Staff of S. Comm. on the Budget re Defensive Byrd Argument—Title 42 (Aug. 7, 2022, 1:15 AM) (conveying that argument to the Parliamentarian).

<sup>2274</sup> E-mail from S. Parliamentarian to Staff of S. Republican Leader, Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Defensive Byrd Argument—Title 42 (Aug. 7, 2022, 1:39 AM).

<sup>2275</sup> See, e.g., Ailsa Chang, [Senate Passes Bill To Defund Planned Parenthood, Repeal Health Law](#), NPR, Dec. 3, 2015, 10:47 AM.

<sup>2276</sup> [H.R. 3762](#), [114th Cong. § 202](#) (2015) (as reported by the H. Comm. on the Budget, Oct. 16, 2015; subsequently amended)).

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that would have defunded Planned Parenthood was “permissible/budgetary.”<sup>2277</sup>

In a meeting to prepare for that bill, the Parliamentarian noted that the draft text did not specifically mention Planned Parenthood. The Parliamentarian said that it is appropriate to use definitions and qualifications to determine what entities are entitled to receive or not receive Federal funds (comparing student loan parameters in prior reconciliation bills). The Parliamentarian noted that Planned Parenthood is more than 4000 organizations and urged Democratic counsel to look at the definition used in the bill to see if it included any other organization besides Planned Parenthood.<sup>2278</sup>

In November 2015, the Parliamentarian wrote of that provision:

This section suffers from what the Supreme Court would call “inartful drafting.” It contains a confusing and much debated restriction on federal funding to a described entity (either as a limit on funds under enumerated sections only or as a broader limitation on all federal funds) and it should be clarified by a Senate amendment. While either reading of the language is legitimate (we discussed this issue with Senate Legislative Counsel), the CBO score put this provision entirely in Medicaid’s functional category. The effects on discretionary funding, which is not scored by CBO, are unclear. As to the definition, we find that this section is a permissible regulation of the expenditure of government funds by defining a class of recipients (or defining a class of ineligible recipients) something that reconciliation bills do with great frequency and often in great detail, particularly with respect to the Medicaid program.<sup>2279</sup>

But during consideration of the American Health Care Act of 2017, the Parliamentarian advised that a provision to defund Planned Parenthood would violate the Byrd Rule.<sup>2280</sup> The Parliamentarian advised that the following provisions, including a reprise of that section on “Federal

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<sup>2277</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM).

<sup>2278</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on September 28, 2015, at 1–2.

<sup>2279</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM) (quoting *King v. Burwell*, 576 U.S. 473, 475 (2015)).

<sup>2280</sup> See, e.g., Jennifer Haberkorn & Seung Min Kim, *Parliamentarian Rules Against Key Provisions in Obamacare Repeal Bill*, POLITICO, July 21, 2017, 6:14 PM; updated July 22, 2017, 10:32 AM.

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Payments to States,” in a Senate Republican discussion draft of the Better Care Reconciliation Act<sup>2281</sup> would violate section 313(b)(1)(D), writing:

313(b)(1)(D) – Byrdable – changes in outlays or revenues merely incidental to non-budgetary components

....

- Sec. 124 – Federal Payments to States – this provision has been shown to affect only one provider in contravention of what was believed when it was included in the 2015 bill; the policy of singling out one person/company/organization for a benefit or penalty outweighs the small budgetary change that it makes.
- Sec. 133 – 1903(c)(4) – Decrease in Target Expenditures for Required Expenditures by Certain Political Subdivisions – this provision has been shown to affect only one state and the manner in which that state meets its payment obligation using its own dollars; it is not a provision that prevents that state or others from “double dipping” and capturing more federal dollars than it would otherwise be entitled to receive or from blending federal dollars from other programs.<sup>2282</sup>

A provision in the Senate amendment to the Tax Cuts and Jobs Act of 2017 was entitled “Repeal of Exclusion Applicable to Certain Passenger Aircraft Operated by a Foreign Corporation.”<sup>2283</sup> The Parliamentarian found that this provision violated section 313(b)(1)(D), writing that the provision was “targeted to impact 3 airlines only, very policy heavy.”<sup>2284</sup>

Also during consideration of the Tax Cuts and Jobs Act, the Parliamentarian found that a provision entitled “Relief for Mississippi River Delta Flood Disaster Area”<sup>2285</sup> violated section 313(b)(1)(D) because “this covers only 3 of the many states hit by 2 storms and only 3 of the 26 states covered by presidentially declared disasters this year.”<sup>2286</sup>

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<sup>2281</sup> S. Legis. Couns., [LYN17343, Better Care Reconciliation Act of 2017, Amendment in the Nature of a Substitute to H.R. 1628, 115th Cong.](#) §§ 124 & 133 (June 26, 2017).

<sup>2282</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Byrd Bath Follow-Up (July 21, 2017, 1:32 PM).

<sup>2283</sup> S. Amend. No. 1618, 115th Cong. § 14505, [163 CONG. REC. S7466](#) (daily ed. Nov. 29, 2017).

<sup>2284</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2285</sup> S. Amend. No. 1618, 115th Cong. § 11029, [163 CONG. REC. S7431–22](#) (daily ed. Nov. 29, 2017).

<sup>2286</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 29, 2017, 10:03 AM).

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Also during consideration of the Tax Cuts and Jobs Act, the Parliamentarian found that a provision entitled “Repeal of Tax-Exempt Status for Professional Sports Leagues”<sup>2287</sup> violated section 313(b)(1)(D), saying, “with respect to the NFL only—could be rewritten to account for the antitrust exemption for the NFL only as a 501(c)(6) found in [15] USC 1291—NFL could opt back in.”<sup>2288</sup>

But during consideration of the conference report to accompany the Tax Cuts and Jobs Act, the Parliamentarian found that a provision entitled “Certain Contributions by Governmental Entities Not Treated as Contributions to Capital”<sup>2289</sup> did not violate section 313(b)(1)(D) by inappropriately targeting state and local governments, writing:

[Section] 13312: This provision changes the law with respect to the consideration of capital contributions to corporations as revenue for tax purposes. It removes the exemption for governments and civic organizations and does the same for water and sewage disposal utilities. The argument has been made that the provision unfairly singles out government entities and civic organizations who contribute to corporations as inducement for the corporation to locate in a state or municipality while leaving the contributions by corporations as non-taxable. While the new language clearly does that, the current law language stricken by the amendment also included exceptions for water and sewer utilities, approximately 12% of which are privately owned nationwide and which account for approximately 70% of servicers in some states. So the notion that there is a target on state and local governments is not fully borne out. No point of order.<sup>2290</sup>

When Republicans challenged a section of the American Rescue Plan Act of 2021,<sup>2291</sup> the Parliamentarian advised:

We have been told that the [Federal Transit Administration] confirms that the only qualifying/approved project under this [Expedited Project Delivery] grants program for expedited project delivery is a leg of the [Bay Area Rapid Transit] system. We have previously counseled against targeting one entity for a benefit. Perhaps it can be shown that other

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<sup>2287</sup> S. Amend. No. 1618, 115th Cong. § 13704, [163 CONG. REC. S7446](#) (daily ed. Nov. 29, 2017).

<sup>2288</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 29, 2017, 10:03 AM).

<sup>2289</sup> H.R. 1, 115th Cong. § 13312 (2017), [H.R. REP. NO. 115-466](#), at 81–82 (2017) (Conf. Rep.).

<sup>2290</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re HR1 Guidance—conference report (Dec. 19, 2017, 3:07 PM).

<sup>2291</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. § 7006 (as reported by H. Comm. on the Budget, Feb. 24, 2021) (Federal Transit Administration Grants).

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projects have more recently qualified or some other facts/information that we have not taken into account.<sup>2292</sup>

As the Senate prepared to consider amendments to the American Rescue Plan Act, the Parliamentarian examined an early draft<sup>2293</sup> of what would later become a section of the law on “Local Assistance and Tribal Consistency Fund.”<sup>2294</sup> With regard to language conferring eligibility on “the State of Alaska, on behalf of any unincorporated communities in the State,”<sup>2295</sup> the Parliamentarian advised:

This seems like an odd carve-out for Alaska that will definitely be challenged using the disaster precedent from 2017. Lots of States have unincorporated areas. Why does Alaska get special treatment?”<sup>2296</sup>

The Parliamentarian did not question similar provisions in the same paragraph for the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands.<sup>2297</sup>

During consideration of the Inflation Reduction Act of 2022, with regard to an amendment offered by Senator Shelley Capito to expedite permits for infrastructure and energy projects,<sup>2298</sup> the Parliamentarian’s office noted, “it seems possible that there is a targeting issue since it deals with a single named pipeline along with a very low score, so we think the amendment is subject to a (b)(1)(D).”<sup>2299</sup> The Presiding Officer then sustained a point of order raised by Environment and Public Works Committee Chair Tom Carper under section 313(b)(1)(D).<sup>2300</sup>

During consideration of the Inflation Reduction Act of 2022, Senator John Barrasso proposed an amendment to require additional onshore oil and gas lease sales in seven states.<sup>2301</sup> Budget counsel argued that the

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<sup>2292</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on Banking, Hous. & Urb. Affs. re Byrd follow-up Sec. 7006–FTA Grants (Mar. 2, 2021, 1:04 PM).

<sup>2293</sup> S. Legis. Couns., Draft Copy of ERN21187 (Feb. 27, 2021, 2:05 PM).

<sup>2294</sup> [American Rescue Plan Act of 2021](#), Pub. L. No. 117-2, 605, 135 Stat. 4, 234–36.

<sup>2295</sup> S. Legis. Couns., Draft Copy of ERN21187, at 2 (Feb. 27, 2021, 2:05 PM).

<sup>2296</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Byrd Challenges (Mar 3, 2021, 11:31 AM).

<sup>2297</sup> *Id.*

<sup>2298</sup> S. Amend. No. 5383, [168 CONG. REC S4331–34](#) (daily ed. Aug. 6, 2022).

<sup>2299</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on Env’t & Pub. Works re Capito #5383 (Aug. 7, 2022, 3:41 AM).

<sup>2300</sup> [168 CONG. REC. S4182–83](#) (daily ed. Aug. 6, 2022).

<sup>2301</sup> S. Amend. No. 5409, [168 CONG. REC S4172](#) (daily ed. Aug. 6, 2022).

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“amendment violates Congressional Budget Act section (b)(1)(D) because it targets few (7) states – Colorado, New Mexico, Nevada, North Dakota, Montana, Utah, and Wyoming – within a class of 45 similarly situated states to which the Bureau of Land Management (BLM) may offer oil and gas lease parcels.”<sup>2302</sup> The Parliamentarian’s office replied: “Could you give us a bit more info on the class of ‘similarly situated states’?”<sup>2303</sup> The Senate began voting on the amendment before the Parliamentarian’s office reached a decision on the targeting issue.<sup>2304</sup>

### **Precedents Regarding “Merely Incidental”**

In *Riddick’s Senate Procedure*, the Parliamentarian reported a precedent under this Byrd Rule subparagraph set during consideration of the Omnibus Budget Reconciliation Act of 1990:

The Chair considered en bloc (no objection being heard) a point of order made under subparagraph (d)(1)(D) of the Byrd Rule, against provisions of a reconciliation bill which would have imposed criminal penalties for violations of certain rules under the Occupational Health and Safety Act. The point of order was made against subsections (a) and (b) of section 10201 of the bill, but specifically excluded paragraph ten of subsection (a), (and was therefore two points of order). The Chair sustained the points of order on the grounds that these proposals would have a budgetary impact merely incidental to their nonbudgetary impact.<sup>2305</sup>

The Presiding Officer sustained a point of order under this subparagraph against a provision proposed in the conference report for the Deficit Reduction Act of 2005 about which the Ranking Democratic Senator on the Finance Committee argued:

Section 6043 makes far-reaching policy changes never debated in the Senate that have no place in a budget reconciliation bill. Although the provision makes major changes to Medicaid, the Emergency Medical Treatment and Labor Act, EMTALA, and even State medical malpractice

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<sup>2302</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Comm. on the Budget, Staff of S. Majority Leader & Staff of S. Comm. on Fin. re Barrasso #5409 (Aug. 7, 2022, 12:30 AM).

<sup>2303</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on Fin. re Barrasso #5409 (Aug. 7, 2022, 12:40 AM).

<sup>2304</sup> See E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on Fin. re Barrasso #5409 (Aug. 7, 2022, 12:55 AM).

<sup>2305</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK’S SENATE PROCEDURE* 625 (1992) (citing 136 CONG. REC. 30,630 (Oct. 18, 1990)).



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liability policy, it only generates net savings of \$11 million over 5 years, one-tenth of a percent of the original budget target.<sup>2306</sup>

The Presiding Officer sustained a point of order under this subparagraph against an amendment on the Independent Payment Advisory Board to a bill enacting the Affordable Care Act.<sup>2307</sup> The Ranking Democratic Senator on the Finance Committee explained that “the Parliamentarian tells us it is not permissible to amend programs subject to fast-track rules such as this commission in a reconciliation bill.”<sup>2308</sup>

The Presiding Officer did not sustain a point of order raised under this subparagraph against a provision regarding requirements for the domestic content of cigarettes that the Congressional Budget Office estimated would reduce outlays (when taken together with other provisions in the same section) by \$29 million over 5 years.<sup>2309</sup>

The Presiding Officer sustained a point of order raised under this subparagraph against a provision that the maker of the point of order characterized as “a \$2 billion blank check for one State” and that Senator said: “would require the Secretary of Health and Human Services to approve the privatization of all Federal and State health and human services benefit programs in the State of Texas.”<sup>2310</sup>

### **Restoring Americans’ Healthcare Freedom Reconciliation Act of 2015**

During consideration of the Restoring Americans’ Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), regarding a provision to repeal the Affordable Care Act’s mandate for individuals to buy health insurance, the Parliamentarian advised:

Section 5000A(a) of the [Internal Revenue Code] is the individual mandate which requires every American citizen to have insurance coverage (currently about 270,000,000 people and a number that will only grow). This provision of law constitutes a massive, national policy change the primary purpose of which is not budgetary. This provision, as was

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<sup>2306</sup> *Id.* at S14,204 (statement of Sen. Baucus). 151 CONG. REC. S14,203–05 (daily ed. Dec. 21, 2005) (statement of Sen. Baucus; Gregg motion to waive failed 52-48).

<sup>2307</sup> 156 CONG. REC. S2004–05 (daily ed. Mar. 24, 2010).

<sup>2308</sup> *Id.* at S2005 (statement of Sen. Baucus).

<sup>2309</sup> See 139 CONG. REC. 19,780–83 (Aug. 6, 1993) (Brown point of order; Chair’s ruling sustained on appeal in a 43-57 vote, three-fifths of the Senators not having voted in the affirmative).

<sup>2310</sup> 143 CONG. REC. S6177–80 (daily ed. June 24, 1997), *id.* at S6291, S6308 (daily ed. June 25, 1997) (Conrad point of order made June 24 against § 5822 of the committee-reported bill; Roth motion to waive withdrawn; point of order sustained June 25; provision stricken).

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successfully argued in 2009, was designed to change behavior by requiring Americans to join an insurance pool (presumably to lower premiums) and to effectuate universal health care coverage. The condition of the federal budget was not the target of this legislation. And while the dollars associated with repeal are large (a net savings of approximately 147 billion dollars over 10 years if combined with the employer mandate repeal), they are dwarfed by the scope and impact of this mandate on the 270 million Americans who are covered by it. In addition, it was argued in 2009 that this provision could not be appropriately written in a reconciliation measure. We agreed with that argument in 2009 and a necessary corollary of that conclusion is that the individual mandate cannot be repealed in a reconciliation measure. Thus we believe that section 301 is subject to the Byrd Rule's 313(b)(1)(D) point of order as its budgetary impact is merely incidental to the policy which underpins it. That does not mean, however, that the remainder of 5000A is immune from amendment. Very generally speaking, formulas and definitions can be adjusted in reconciliation if they have budgetary effect and that may well be the case here. Indeed, the formulas in 5000A were amended in [the Health Care and Education Reconciliation Act of 2010]. Thus we do not believe the entirety of the section is subject to points of order under the Byrd Rule though it contains a flaw that causes a point of order to lie against the provision.<sup>2311</sup>

Similarly, regarding another provision to repeal the Affordable Care Act's mandate for employers to provide health insurance, the Parliamentarian wrote:

For reasons similar to those set forth above, this provision is subject to a point of order under section 313(b)(1)(D) as the policy that underlies the law is so profound and impactful that it dwarfs the budgetary consequences associated with its implementation or repeal. 60 million employees are impacted by this mandate as are 2 million employers. As with the individual mandate, however, this provision contains an extensive formula which is likely subject to amendment as it was in [the Health Care and Education Reconciliation Act of 2010].<sup>2312</sup>

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<sup>2311</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM) (referring to [H.R. 3762](#), [114th Cong.](#) § 301 (2015) (as reported by the H. Comm. on the Budget, Oct. 16, 2015; subsequently amended)).

<sup>2312</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM) (referring to [H.R. 3762](#), [114th Cong.](#) § 302 (2015) (as reported by the H. Comm. on the Budget, Oct. 16, 2015; subsequently amended)).



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But less than a month later, regarding a revised provision of similar effect that dialed the penalty for violating the mandate down to zero, the Parliamentarian wrote:

Reconciliation is used to adjust the levers on the budgetary aspects of broad policy structures. It has been used to—among other things—repeal scores of tax credits, address the so-called “marriage penalty” and provide a waiver of a tax penalty for small businesses failing to pay taxes through electronic transfer (sec. 931 of [the Taxpayer Relief Act of 1997,] PL105-34). Each of these things has policy implications, some broader than others. And each is budgetary.

After considering the arguments presented, we have concluded that the penalties associated with the Individual and Employer Mandates can be adjusted, as they previously were in [the Health Care and Education Reconciliation Act of 2010], and that such an adjustment may be to zero. The penalties are inherently budgetary (98.6 billion dollars in revenue in the budget window). Their adjustment to zero results in deficit reduction of 130.2 billion dollars in the budget window when combined with outlay reductions for the same. The zeroing out of the penalty does have a policy impact—that is undeniable—but the mandates remain, the incentives for purchasing and maintaining health insurance remain, the insurance reforms remain.<sup>2313</sup>

Also during consideration of the Restoring Americans’ Healthcare Freedom Reconciliation Act, the Parliamentarian advised that sections on funding for community health centers,<sup>2314</sup> repealing the Affordable Care Act’s medical device excise tax,<sup>2315</sup> and repealing the Affordable Care Act’s “Cadillac tax” on high-cost health insurance plans<sup>2316</sup> were “permissible/budgetary.”<sup>2317</sup>

Also during consideration of the Restoring Americans’ Healthcare Freedom Reconciliation Act, the Presiding Officer sustained a point of order raised by Senator Patty Murray under section 313(b)(1)(D) against a subsection of a substitute amendment that would have repealed the risk corridor

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<sup>2313</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re Penalties in Reconciliation (Dec. 1, 2015, 11:54 AM).

<sup>2314</sup> [H.R. 3762, 114th Cong.](#) § 203 (2015) (as reported by the H. Comm. on the Budget, Oct. 16, 2015; subsequently amended).

<sup>2315</sup> *Id.* § 303.

<sup>2316</sup> *Id.* § 304(a).

<sup>2317</sup> E-mail from S. Parliamentarian to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Democratic Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Fin. & Staff of S. Comm. on Health, Educ., Lab. & Pensions re HR3762 (Nov. 10, 2015, 3:18 PM).

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program,<sup>2318</sup> which Senator Murray described as “a vital program to make sure premiums are affordable and stable for our working families.”<sup>2319</sup> Senator Rubio argued that the provision “saved the American taxpayers \$2.5 billion” in a single year.<sup>2320</sup> Republican staff conceded to the Parliamentarian that the subparagraph violated section 313(b)(1)(D).<sup>2321</sup>

Also during consideration of the Restoring Americans’ Healthcare Freedom Reconciliation Act, the Parliamentarian advised that a subsection of a substitute amendment that would have prevented the Secretary from carrying out the transitional reinsurance program for the individual market<sup>2322</sup> violated section 313(b)(1)(D), writing:

We believe that the policy in this subsection outweighs the budgetary impact of the provision. This provision minimizes volatility in the market, makes premiums predictable and levels the playing field for the insured by providing a disincentive for insurance companies to pick from the “healthy” basket. The government, through the Public Health Service Act, acts as a conduit for the redistribution of monies from insurance companies and there is scant evidence that the purpose of this provision was to enhance Federal coffers or deplete them. The budgetary impact is de minimis. The policy impact is large, the budgetary impact is not.

We believe this provision is subject to 313(b)(1)(D).<sup>2323</sup>

Also during consideration of the Restoring Americans’ Healthcare Freedom Reconciliation Act, the Parliamentarian advised that provisions of a draft McConnell amendment ending the Affordable Care Act’s health care

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<sup>2318</sup> S. Amend. No. 2916, 114th Cong. § 105(b), [161 CONG. REC. S8420](#) (daily ed. Dec. 3, 2015).

<sup>2319</sup> [161 CONG. REC. S8354](#) (daily ed. Dec. 3, 2015) (statement of Sen. Murray).

<sup>2320</sup> *Id.* (statement of Sen. Rubio).

<sup>2321</sup> E-mail from S. Parliamentarian to Staff of S. Republican Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of Sen. Hatch, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Off. of S. Parliamentarian re 1/3 R’s (Dec 3, 2015, 5:35 PM).

<sup>2322</sup> S. Amend. No. 2916, 114th Cong. § 105(a) (2015), [161 CONG. REC. S8420](#) (daily ed. Dec. 3, 2015).

<sup>2323</sup> E-mail from S. Parliamentarian to Staff of S. Republican Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on Health, Educ., Lab. & Pensions, Staff of Sen. Hatch, Staff of S. Democratic Leader, Staff of S. Comm. on Fin. & Off. of S. Parliamentarian re 1/3 R’s (Dec 3, 2015, 5:35 PM).

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exchanges, reinsurance program, and risk corridors<sup>2324</sup> would violate section 313(b)(1)(D).<sup>2325</sup>

### American Health Care Act of 2017

In March 2017, Senator Ted Cruz argued that repealing the insurance mandate, allowing people to buy plans across state lines, and medical malpractice tort reform each should be allowable in a reconciliation bill, saying, “Every one of these reforms has an enormous budgetary impact. An impact of billions of dollars if not hundreds of billions of dollars.”<sup>2326</sup>

During consideration of the American Health Care Act of 2017, the Parliamentarian advised that the following provisions of a Senate Republican discussion draft of the Better Care Reconciliation Act<sup>2327</sup> would violate section 313(b)(1)(D), writing:

313(b)(1)(D) – Byrdable – changes in outlays or revenues merely incidental to non-budgetary components

- Sec. 103(b) – Modifications to Small Business Tax Credit/Disallowance of Small Employer Health Insurance Expense Credit for Plan which Includes Coverage for Abortion – this provision has a minimal score for one year only and would require several states to rewrite laws with respect to the requirements for provision of health care plans in their states; it has larger policy impacts than the de minimis dollars involved.
- Sec. 124 – Federal Payments to States – this provision has been shown to affect only one provider in contravention of what was believed when it was included in the 2015 bill; the policy of singling out one

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<sup>2324</sup> S. Legis. Couns., MCG15942, McConnell amendment, §§ 103, 105(a)–(b) (Dec. 2015). The provisions read: “**SEC. 103. FEDERAL EXCHANGE.** Section 1321(c) of the Patient Protection and Affordable Care Act (42 U.S.C. 18041(c)) is amended by adding at the end the following: ‘(3) **AUTHORITY.**—The authority of the Secretary to operate an Exchange under paragraph (1) shall terminate on January 1, 2018.’” and “**SEC. 105. REINSURANCE, RISK CORRIDOR, AND RISK ADJUSTMENT PROGRAMS.** (a) **TRANSITIONAL REINSURANCE PROGRAM FOR INDIVIDUAL MARKET.**—Section 1341 of the Patient Protection and Affordable Care Act (42 U.S.C. 18061) is amended by adding at the end the following: ‘(e) **NO FORCE AND EFFECT.**—Effective January 1, 2016, the Secretary shall not collect fees and shall not make payments under this section.’. (b) **RISK CORRIDORS FOR PLANS IN INDIVIDUAL AND SMALL GROUP MARKETS.**—Section 1342 of the Patient Protection and Affordable Care Act (42 U.S.C. 18062) is amended by adding at the end the following: ‘(d) **NO FORCE AND EFFECT.**—Effective January 1, 2016, this section shall have no force or effect.’” *Id.*

<sup>2325</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re reconciliation/substitute/Byrd rule (Dec. 14, 2015, 12:28 PM).

<sup>2326</sup> Alexander Bolton, *Cruz: Let’s Overrule Senate Officer To Expand ObamaCare Bill*, THE HILL, Mar. 9, 2017, 4:58 PM.

<sup>2327</sup> S. Legis. Couns., LYN17343, *Better Care Reconciliation Act of 2017, Amendment in the Nature of a Substitute to H.R. 1628, 115th Cong.* §§ 103(b), 124, 133, 134, 205, 206 (June 26, 2017).

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person/company/organization for a benefit or penalty outweighs the small budgetary change that it makes.

- Sec. 133–1903(c)(4)–Decrease in Target Expenditures for Required Expenditures by Certain Political Subdivisions—this provision has been shown to affect only one state and the manner in which that state meets its payment obligation using its own dollars; it is not a provision that prevents that state or others from “double dipping” and capturing more federal dollars than it would otherwise be entitled to receive or from blending federal dollars from other programs.
- Sec. 134–1903B(c)(2)(D)–Rollover Funds—this provision contains waivers that allow Medicaid dollars to be spent for things unrelated to health care, including the construction of bridges, stadiums, etc. That change in law outweighs the budgetary impact of the provision.
- Sec. 205–Medical Loss Ratio—this provision affects a huge swath of the insurance market and provides rebates from insurers to private individuals for overcharges of administrative fees. This is a consumer protection regulation and the budgetary effects of its repeal are attenuated. This is contrasted with the rebates for Medicare Advantage which were paid to the Federal government.
- Sec. 206–Stabilizing the Individual Insurance Markets—this provision has no real-time, realized federal penalty. A tax credit for a defined status is never available if a person is not in that status. The regulation imposing a delay/denial of coverage for 6 months of individuals in the private health insurance market only causes a break in the use of a tax credit due to that same regulation. The policy implications of making people wait 6 months to get insurance for which they are otherwise eligible is a large policy shift that outweighs the relatively small savings caused by the waiting period.<sup>2328</sup>

Also during consideration of the American Health Care Act, the Parliamentarian advised that several provisions of the June 26, 2017, Senate Republican discussion draft of the Better Care Reconciliation Act<sup>2329</sup> would not violate section 313, writing:

Not Subject to Byrd Rule point of order

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<sup>2328</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Byrd Bath Follow-Up (July 21, 2017, 1:32 PM).

<sup>2329</sup> S. Legis. Couns., [LYN17343, Better Care Reconciliation Act of 2017, Amendment in the Nature of a Substitute to H.R. 1628, 115th Cong.](#) §§ 106, 129, 131, 133 (§§ 1903(c)(5) & 1903(h)(1)), 209 (June 26, 2017).

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- Sec. 106—State Stability and Innovation Program—This provision has a large score and . . . provides a temporary stabilization fund for states that will lose money under [Better Care Reconciliation Act] reforms. It takes advantage of abortion-related restrictive language that was written in [the Children’s Health Insurance Program] CHIP (which itself was written in a reconciliation bill) but exempts most of the other rigors and requirements of CHIP. It is clever drafting and it gives us a great deal of concern for the use of this section of law for other purposes simply to take advantage of an abortion-related restriction on federal dollars. But we are wary of a decision that could be considered to render CHIP unamendable.
  - Sec. 129—Providing Safety Net Funding for Non-Expansion states—this is a direct spending formula for money for non-expansion states. The provision and its formula are similar to the [Medicaid Disproportionate Share Hospital] DSH formula which we signed off on in 2010 HCERA and the arguments presented here mirror those made in 2010 with respect to the formula netting to zero but the allotments shifting among recipients of the defined class.
  - Sec. 131—Optional Work Requirement for Non-Disabled, Nonelderly, Nonpregnant Individuals—this is a change in eligibility for Medicaid. While we understand that it is a change that is not tied to immutable personal characteristics, changes in eligibility based on income or financial resources (which fluctuate) are not so tied and we find this requirement to be similar in nature to those aspects of eligibility.
  - Sec. 133—1903(c)(5)—Adjustments to State Expenditure Targets to Promote Program Equity Across States—similar to section 129, this is a formula that moves federal money between recipients as part of the cap system
  - Sec. 133—1903(h)(1)—Reporting of CMS-64 data—there is a fine associated with this reporting requirement
  - Sec. 209—Repeal of Cost-Sharing Subsidy Program—CBO scores this provision as an entitlement. While there is a legal dispute on-going about the severability of the various aspects of this section, CBO scores this section as a saver.<sup>2330</sup>

Also during consideration of the American Health Care Act, the Parliamentarian advised that a provision of a Senate Republican discussion draft of the Better Care Reconciliation Act that provided “(D) EXPEDITED

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<sup>2330</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Byrd Bath Follow-Up (July 21, 2017, 1:32 PM).

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PROCESS.—The Secretary shall establish an expedited application and approval process that may be used if the Secretary determines that such expedited process is necessary to respond to an urgent or emergency situation with respect to health insurance coverage within a State,”<sup>2331</sup> would violate either section 313(b)(1)(A) or (D), writing: “Sec. 207 – Waivers for State Innovation— . . . the urgent/emergency provision on page 141 does not appear to be a necessary term and condition of the remainder and would be subject to a point of order under 313(b)(1)(A) or (D).”<sup>2332</sup> The Parliamentarian commented that some interactions with state governments in this section were “troubling” and that the issue was “sticky.”<sup>2333</sup> The Parliamentarian said that one question was whether the section just changed the criteria for the program or reached too far down into state operations.<sup>2334</sup>

In July 2017, after Republicans released their Better Care Reconciliation Act on June 26, 2017, and Democratic staff challenged several provisions of that Act, the Senate Budget Committee Democratic staff reported that the Parliamentarian made several determinations that provisions of the draft bill violated the Byrd Rule:

Notably, the parliamentarian has advised that abortion restrictions on the premium tax credit and the small business tax credit, and the language defunding Planned Parenthood, violate the Byrd Rule. Further, the “Buffalo Bailout” which was used to secure votes in the House has also been found to violate the Byrd Rule—threatening other state-specific buy-offs.

Provisions Subject to a 60-vote Byrd Rule Point of Order

- Defunding Planned Parenthood: This section prohibits Planned Parenthood from receiving Medicaid funds for one year. (Sec. 124)
- Abortion Restrictions for Tax Credits: Two separate provisions contain Hyde Amendment language to prevent premium tax credits and small business tax credits from being used to purchase health insurance that covers abortion. (Sec. 102(d)(1) and Sec. 103(b))

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<sup>2331</sup> S. Legis. Couns., [LYN17343, Better Care Reconciliation Act of 2017, Amendment in the Nature of a Substitute to H.R. 1628, 115th Cong.](#) § 207 (June 26, 2017).

<sup>2332</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Byrd Bath Follow-Up (July 21, 2017, 1:32 PM).

<sup>2333</sup> Staff of S. Comm. on the Budget, Notes from Dem only meeting with Parls—Friday, June 30, 2017 (July 10, 2017).

<sup>2334</sup> *Id.*

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- **Sunset of Essential Health Benefits Requirement for Medicaid:** This provision states that, beginning in 2020, states no longer have to cover essential health benefits in their Medicaid alternative benefit plans. (Sec. 126(b))
  - **Funding for Cost-Sharing Subsidies:** This section replicates current law by providing funding for the subsidies through 2019. (Sec. 208)
  - **Stabilizing the Individual Insurance Markets (“Six Month Lock Out”):** This section imposes a six-month waiting period for individuals attempting to enroll in coverage in the individual market who cannot demonstrate that they have maintained continuous coverage. (Sec. 206)
  - **Medical Loss Ratio:** This section allows states to determine how much insurers are allowed to spend on administration, marketing, and profits versus health care. (Sec. 205)
  - **Availability of Rollover Funds:** This provision allows states that spend less than their targeted block grant amount to rollover funds to the following year and to use funds for non-health purposes, specifically repealing the provision of the Social Security Act that prohibits states from using Medicaid funds to build roads, bridges, and stadiums. (Sec. 134 – 1903B(c)(2)(D)) (Note: this provision has been removed from the most recent draft).
  - **Decrease in Target Expenditures for Required Expenditures by Certain Political Subdivisions (“Buffalo Bailout”):** This provision limits the ability of New York State to require counties other than New York City to contribute funding to the state’s Medicaid program. (Sec. 133 – 1903(c)(4))
  - **Grandfathering Certain Medicaid Waivers; Prioritization of HCBS Waivers:** This section says that the Secretary will encourage states to adopt Medicaid Home and Community Based Services (HCBS) waivers but does not set forth any actual details for this plan. (Sec. 136)
  - **Reporting of CMS-64 Data (T-MSIS):** This provision requires the Secretary of HHS to submit a report on Congress recommending whether expenditure data from the Transformed Medicaid Statistical Information System (T-MSIS) is preferable to data from state CMS-64 reports for making certain Medicaid decisions. (Sec. 133 – 1903(h)(5))
  - **Coordination with States:** This section requires the Secretary to consult with states before finalizing Medicaid rules. (Sec. 137)

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### Provisions Not Subject to a 60-vote Byrd Rule Point of Order

- Medicaid Work Requirements: This provision allows states the option to impose work requirements on Medicaid enrollees who are nondisabled, nonelderly, and nonpregnant. Pregnant women are exempt from any work requirements for 60 days after giving birth. (Sec. 131)
- Providing Safety Net Funding for Non-Expansion States – This section provides \$10 billion for non-expansion states. (Sec. 129)
- State Stability and Innovation Fund: This section includes abortion restrictions on funding for the State Stability and Innovation Fund by tacking the Fund onto the CHIP program. (Sec. 106)
- Equity Adjustment: This provision provides for adjusting the per capita cap targets of low and high-spending states to promote equity. (Sec. 133 – 1903(c)(5))
- Repeal of Cost-Sharing Subsidy Program: This section permanently repeals cost-sharing subsidies beginning in 2020. (Sec. 209)
- Reporting of CMS-64 Data: This provision requires states to include information on per capita cap enrollment and expenditures, psychiatric hospital expenditures, and children with complex medical conditions in their Medicaid expenditure reports. (Sec. 133 – 1903(h)(1))

### Still Under Review

- Waivers for State Innovation (Essential Health Benefits): This section amends Sec. 1332 of the ACA to allow states to waive age rating, essential health benefits, and pre-existing condition requirements so long as their proposal does not increase the federal deficit. (Sec. 207)
- Small Business Health Plans: This section would allow small businesses to establish “association health plans” that could be sold across state lines. For regulatory purposes, these plans would be treated as part of the large group market and thus would be exempt from many ACA requirements such as covering essential health benefits. (Sec. 139)
- Change in Permissible Age Variation in Health Insurance Premium Rates (“Age Tax”): This section allows insurers to charge older Americans at least five times more than what they charge younger individuals. (Sec. 204)



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- Flexible Block Grant Option for States: This section allows states the option to receive a lump sum Medicaid “block grant” instead of the per capita cap payments. (Sec. 134)<sup>2335</sup>

Also during consideration of the American Health Care Act, the Parliamentarian advised that a provision of a Senate Republican discussion draft of the Better Care Reconciliation Act entitled “Flexible Block Grant Option for States”<sup>2336</sup> would not violate section 313, writing:

No Point of Order Under 313:

- Sec. 134 – Flexible Block Grant Option for States – This a block-granted, optional, alternative to traditional Medicaid using Medicaid mechanisms and dollars. It has different a definition for medical assistance that is not Medicaid. But we have amended, repealed and written entitlement programs in reconciliation.<sup>2337</sup>

Also during consideration of the American Health Care Act, the Parliamentarian advised that a provision of a Senate Republican discussion draft of the Better Care Reconciliation Act entitled “Small Business Health Plans”<sup>2338</sup> would violate section 313(b)(1)(D), writing:

Subject to 313(b)(1)(D):

- Sec. 139 – Small Business Health Plans – This section would add an entirely new category of health plans to the group market allowing them to avoid the regulations they are currently subject to under [the Patient Protection and Affordable Care Act] and under some state laws/regulations. The regulatory impact is large. The savings is relatively small—1 billion over 10—and comes indirectly from anticipated lower premiums resulting in more taxable income.<sup>2339</sup>

Also during consideration of the American Health Care Act, the Parliamentarian advised that a provision of a Senate Republican discussion draft of the Better Care Reconciliation Act entitled “Change in Permissible

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<sup>2335</sup> Minority Staff of the S. Comm. on the Budget, *Background on the Byrd Rule Decisions from the Senate Budget Committee Minority Staff* (2017).

<sup>2336</sup> S. Legis. Couns., [ERN17500, Better Care Reconciliation Act of 2017, Amendment in the Nature of a Substitute to H.R. 1628, 115th Cong.](#) § 133 (July 20, 2017).

<sup>2337</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re more sections (July 25, 2017, 1:04 PM).

<sup>2338</sup> S. Legis. Couns., [ERN17500, Better Care Reconciliation Act of 2017, Amendment in the Nature of a Substitute to H.R. 1628, 115th Cong.](#) § 139 (July 20, 2017).

<sup>2339</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re more sections (July 25, 2017, 1:04 PM).

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Age Variation in Health Insurance Premium Rates”<sup>2340</sup> would violate section 313(b)(1)(D), writing:

Subject to 313(b)(1)(D):

....

- Sec. 204 – Change in Permissible Age Variation in Health Insurance Premium Rates – This section would change, in some cases without limit, a basic rating factor for health insurance premium setting in the individual and small group markets. While it is a factor in calculating a tax credit, that credit is adjusted for age elsewhere in the bill for persons receiving the tax credit (approximately 9 million). This change, however, would affect all persons in those markets, not just those who get a tax credit (approximately 25 million do not). Thus, more than twice the number of people getting the tax credit, which, again, can be and is adjusted separately, will be impacted by the premium changes that will result due to this amendment to the [Public Health Service Act].<sup>2341</sup>

Also during consideration of the American Health Care Act, the Parliamentarian advised that a provision of the Senate Republican discussion draft of the Better Care Reconciliation Act entitled “Waivers for State Innovation”<sup>2342</sup> would violate section 313(b)(1)(D) in part and withstand challenge in part, writing:

This section has a minimal net score ([extract\_itex]14 billion over 10 [years]), though it moves money from other accounts to the States ([extract\_itex]60 billion over 10). But it has a large regulatory aspect and impact.

Subject to 313(b)(1)(D)

While it does not change the PPACA [Patient Protection and Affordable Care Act] requirements that can already be waived under [section] 1332, [section] 207 repeals the “guardrails” against which the Secretary must weigh a state proposal and such a repeal will dramatically alter the nature of any allowable waiver as those guardrails include the coverage provisions of [section] 1302(b) of PPACA, and comps for out of pocket costs, affordability, and number of people covered. CBO says that this section will result in a “broader set of changes” than would already be

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<sup>2340</sup> S. Legis. Couns., [ERN17500, Better Care Reconciliation Act of 2017, Amendment in the Nature of a Substitute to H.R. 1628, 115th Cong.](#) § 204 (July 20, 2017).

<sup>2341</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re more sections (July 25, 2017, 1:04 PM).

<sup>2342</sup> S. Legis. Couns., [ERN17500, Better Care Reconciliation Act of 2017, Amendment in the Nature of a Substitute to H.R. 1628, 115th Cong.](#) § 207 (July 20, 2017).

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available under the waiver of PPACA. In addition, [section] 207 provides an option for a state to avoid the requirement of passing a law at the state level to authorize the seeking of a waiver and instead provides administrative sign off. This change is not budgetary. We have already noted that the “expedited process” in the bill is Byrdable.

Not subject to 313(b)(1)(D)

[Section] 207 provides money for states to apply for the waivers and there is no point of order against that. It also provides that the stability fund may be used in furtherance of this process. We find no point of order lies here. In addition, we find that changing “may” to “shall” with respect to the Secretary’s discretion to approve the application would not be a violation of the Byrd rule within the current waiver structure of [section] 1332.<sup>2343</sup>

### **Tax Cuts and Jobs Act of 2017**

The Tax Cuts and Jobs Act of 2017 contained provisions related to drilling in the Arctic National Wildlife Refuge (ANWR) that were challenged under this subparagraph of the Byrd Rule.<sup>2344</sup> The Parliamentarian advised:

It must be noted that the ANWR matter is incredibly complex and rife with overlapping and conflicting jurisdictional issues. This is not the kind of policy or change in law that lends itself to the reconciliation process and were we considering this matter de novo it is hard to imagine finding ourselves here. Clearly, however, this office has given advice as far back as 1995 that permitted previous bills to meet a basic threshold under [Congressional Budget Act sections] 310/313 and pass muster. The version before us now is nowhere near as long or detailed as previous iterations and it does not contain the specific waivers of environmental law (save the provision below) that other bills contained. It should be noted that for various reasons, points of order were not raised in 1995 or 2005, though they may well have been and in some cases would likely have been sustained. Thus the actual line of precedent we have with respect to ANWR is broad and we believe that given the precedents, this narrowed version is much more in line with the goal of Byrd Rule discipline.<sup>2345</sup>

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<sup>2343</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Staff of S. Comm. on Health, Educ., Lab. & Pensions & Off. of S. Parliamentarian re 1332 (July 26, 2017, 9:35 PM) (quoting Cong. Budget Off., [Cost Estimate: H.R. 1628: Better Care Reconciliation Act of 2017: An Amendment in the Nature of a Substitute \[LYN17343\] as Posted on the Website of the Senate Committee on the Budget on June 26, 2017](#), at 20 (June 26, 2017)).

<sup>2344</sup> See S. Amend. No. 1618, 115th Cong. §§ 20001–20003, [163 CONG. REC. S7467–68](#) (daily ed. Nov. 29, 2017).

<sup>2345</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

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In this context, with regard to a provision in the Senate amendment to that bill that stated, “Section 1003 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3143) is repealed,”<sup>2346</sup> the Parliamentarian found, “this provision is broader than the rest of the bill which limits activities to the coastal plain. Prior ANWR reconciliation bills did not have this provision. Its effects are thus merely incidental to the purpose and score and it is Byrdable under 313(b)(1)(D).”<sup>2347</sup>

Shortly thereafter, the Parliamentarian further advised in connection with the bill’s ANWR provisions:

[T]his issue is embedded with jurisdictional conflict/overlap. The 2 provisions that we discussed on ANWR today were amended to reflect advice under 313. The definition in 1003 was amended to bring it into alignment with other sections of the bill and with the 1995 and 2005 precedents. The management provision was amended to provide some structure to the lease sale process, but to eliminate the clear conflict with law/regs/matters in EPW’s jurisdiction. While conflicts may arise, and matters may end up in court, such is not necessarily the case.

For those reasons, we think the changes made are appropriate to the measure and do not run afoul of the Byrd Rule.<sup>2348</sup>

The Tax Cuts and Jobs Act contained a provision entitled “Suspension of Deduction for State and Local, Etc. Taxes,”<sup>2349</sup> which Democratic staff argued made a fundamental change to our Federal system and removed one of the oldest deductions in the tax code. The Parliamentarian advised that this provision did not violate section 313(b)(1)(D), writing: “No [point of order]—this provision does not dictate the manner in which states tax their residents; it deals with the federal treatment of those taxes.”<sup>2350</sup>

A provision in the Senate amendment to that bill was entitled, “Individuals Held Harmless on Improper Levy on Retirement Plans.”<sup>2351</sup>

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<sup>2346</sup> S. Amend. No. 1618, 115th Cong. § 20001(b)(1), [163 CONG. REC. S7467](#) (daily ed. Nov. 29, 2017).

<sup>2347</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2348</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on Energy & Nat. Res., Off. of S. Parliamentarian, Staff of S. Comm. on Env’t & Pub. Works & Staff of S. Comm. on the Budget re Correction (Nov. 30, 2017, 3:47 PM).

<sup>2349</sup> S. Amend. No. 1618, 115th Cong. § 11042, [163 CONG. REC. S7423](#) (daily ed. Nov. 29, 2017).

<sup>2350</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2351</sup> S. Amend. No. 1618, 115th Cong. § 11072, [163 CONG. REC. S7424](#) (daily ed. Nov. 29, 2017).

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The Parliamentarian found that this provision violated section 313(b)(1)(D), writing:

[T]his provision has a negligible revenue effect and only occurs when the IRS makes a mistake and returns money which is then put into the same retirement account. The error rate being low and the money restored, it is largely a policy rather than revenue issue as the taxpayer is simply (though fairly) made whole.<sup>2352</sup>

The Tax Cuts and Jobs Act contained a subtitle on “International Tax Provisions,”<sup>2353</sup> which Democratic staff argued affected trillions of dollars in international investment, vastly outweighing the provision’s budgetary effects. The Parliamentarian nonetheless advised that this provision did not violate section 313(b)(1)(D), writing:

No [point of order]—there is a range of changes to the international tax provisions here—some appear to be formulaic, some a blend of policy and revenue trending toward territorial, some with safeguards that reflect the worldwide system. We don’t find these to constitute a construct that is inappropriate in reconciliation.<sup>2354</sup>

Another provision in the Senate amendment to that bill was entitled “Denial of Deduction for Certain Fines, Penalties, and Other Amounts.”<sup>2355</sup> The Parliamentarian found that this provision did not violate the Byrd Rule, writing, “No [point of order]—this expands the definition of those fines and penalties that cannot be deducted.”<sup>2356</sup>

Another provision in the Senate amendment to that bill was entitled “Repeal of Substantiation Exception in Case of Contributions Reported by Donee”<sup>2357</sup> and described as “charitable donation substantiation.”<sup>2358</sup> The Parliamentarian found that this provision did not violate the Byrd Rule, writing, “No [point of order]—authority exists to write this reg[ulation].”<sup>2359</sup>

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<sup>2352</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2353</sup> S. Amend. No. 1618, 115th Cong. subtitle D, [163 CONG. REC. S7453–66](#) (daily ed. Nov. 29, 2017).

<sup>2354</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2355</sup> S. Amend. No. 1618, 115th Cong. § 13306, [163 CONG. REC. S7436–37](#) (daily ed. Nov. 29, 2017).

<sup>2356</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2357</sup> S. Amend. No. 1618, 115th Cong. § 13708, [163 CONG. REC. S7436–37](#) (daily ed. Nov. 29, 2017).

<sup>2358</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2359</sup> *Id.*

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Another provision in the Senate amendment to that bill was entitled “Dividends Paid Deduction”<sup>2360</sup> and described as “zero percent reporting requirement.”<sup>2361</sup> The Parliamentarian found that this provision violated section 313(b)(1)(D), writing that the provision was “negligible for the reporting requirement itself.”<sup>2362</sup>

Also during consideration of the Tax Cuts and Jobs Act, the Parliamentarian found that a provision entitled “Modification of Taxes on Excess Benefit Transactions”<sup>2363</sup> violated section 313(b)(1)(D), saying, “the new legal standards/presumptions in this go way beyond the penalty aspect of an excise tax.”<sup>2364</sup>

In the context of discussing violations of Congressional Budget Act section 313(b)(1)(D) in the Tax Cuts and Jobs Act, the Ranking Democratic Member of the Finance Committee, Senator Ron Wyden, reported that on December 15, 2017, he and the Ranking Democratic Member of the Budget Committee, Senator Bernie Sanders, “were able to remove a particularly offensive provision that would have turned some churches in America into partisan, political organizations. Specifically, there was an effort here to overturn what is called the Johnson amendment, named after Lyndon Johnson, that barred churches from endorsing partisan political activity with political candidates.”<sup>2365</sup> In this context, the Parliamentarian explained:

[W]e do not believe that this amendment is appropriate in a fast-track reconciliation measure.

We believe that the policy implications of this change are significant and outweigh the budgetary impact as scored by [the Joint Committee on Taxation]. We also believe that the budgetary analysis from JCT underscores the fundamental shift that will be caused by this change between the C3 and C4 organizations [under section 501(c) of the Internal Revenue Code, which governs tax exemptions for organizations]. This amendment creates a new definition in 501 of “political speech” which seeks to clarify the language already in law. However, the term “political speech” is not in 501, so rather than clarifying the law this amendment adds

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<sup>2360</sup> S. Amend. No. 1618, 115th Cong. § 13011, [163 CONG. REC. S7428–29](#) (daily ed. Nov. 29, 2017).

<sup>2361</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 28, 2017, 7:32 PM).

<sup>2362</sup> *Id.*

<sup>2363</sup> S. Amend. No. 1618, 115th Cong. § 13705, [163 CONG. REC. S7446–47](#) (daily ed. Nov. 29, 2017).

<sup>2364</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Guidance to date (Nov. 29, 2017, 10:03 AM).

<sup>2365</sup> [163 CONG. REC. S8101](#) (daily ed. Dec. 19, 2017) (statement of Sen. Wyden).



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other terms that are likely as ambiguous as those already in law and which are the source of confusion and controversy. Current law provides organizations the opportunity to choose among various 501(c) classifications depending upon the types of activities in which they wish to engage. Changing the way in which C3's operate is a consequential policy change that causes a 313(b)(1)(D) point of order to lie.<sup>2366</sup>

Also during consideration of the Tax Cuts and Jobs Act, the Presiding Officer sustained a point of order under this subparagraph against “a provision allowing for the use of 529 savings accounts for home schooling expenses . . . and part of the criteria used to determine whether the endowments of private universities are subject to the legislation’s new excise tax.”<sup>2367</sup> In this connection, one of the points of order challenged the term “tuition-paying.”<sup>2368</sup> In this connection, the Parliamentarian wrote:

[Section] 11032: This provision changes 529's to make them function more like 530's. Both 529's and 530's have been amended in reconciliation, with 530's having been created in reconciliation, though there is no evidence that any of these provisions were challenged or on any Byrd list. It is important to note that the precedential value of these occurrences is reduced where there were no rulings or challenges made or advice given. With respect to Byrd lists, 313(c) specifically states that Byrd lists are not dispositive on the issue of extraneousness. The dollar limits and the expansion of savings accounts for elementary and secondary education are similar to current law, are widely available and have been amended without fanfare previously. However, the language here with respect to homeschools constitutes a significant policy change. It would have the federal benefit follow the state law where it exists to define “private school” as including a “homeschool” — a definition that is only applicable in a small number of states (14). In 36 states there is no definition whatsoever and it is unclear how the new law would be interpreted in those 36 states. Proponents argue that this is how Coverdell functions, but Coverdell is distinguishable because it uses the term “private school” and it is only through that state law definition that homeschools become eligible. More importantly, this bill would also include “homeschool” in the federal law, a term which is undefined and which has no contours or program integrity provisions. Coverdell accounts do not do that. As referenced above, it is only in states in which state law defines them as private that homeschools are eligible for favorable tax treatment. This strikes us a large policy change that is a small part of this section and for

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<sup>2366</sup> E-mail from S. Parliamentarian to Staff of Sen. Lankford, Staff of S. Comm. on Fin. & Off. of S. Parliamentarian re Johnson Amendment (Dec. 14, 2017, 7:30 PM).

<sup>2367</sup> 163 CONG. REC. S8101, S8141 (daily ed. Dec. 19, 2017) (statement of Sen. Wyden, who raised the point of order).

<sup>2368</sup> *Id.*

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which the score is likely to be quite small given the modest score that accompanies the entirety of the provision and which also includes elementary or secondary public, private or religious schools. For these reasons, we find that the language of subsection (B) (page 75, line 17 through page 76, line 9) is Byrdable under [section] 313(b)(1)(D).

[Section] 13701: This provision taxes the endowments of colleges if they meet a certain set of criteria with respect to a number of factors including ratio of endowment, full-time students in the US, whether they are private schools, etc. Most of these factors are defined in the provision or elsewhere in the law. The factor of “tuition-paying” is not defined anywhere in the text or cited in the Code and has been the source of some contention. Documents provided to explain the application of this term lump “tuition” and “fees” together, further complicating the analysis of which institutions would be impacted by this change. We find that since this term is not defined and it is not clear what the impact is in concrete or budgetary terms, that the term should be removed from the 2 places where it appears ((b)(1)(A) & (B)). Byrdable under [section] 313(b)(1)(D).<sup>2369</sup>

### **American Rescue Plan Act of 2021**

As the Senate prepared to consider the House-passed American Rescue Plan Act of 2021,<sup>2370</sup> Republicans challenged (in the Parliamentarian’s words) “big chunks of the bill.”<sup>2371</sup> With regard to a paragraph that called for the Secretary of Agriculture to monitor susceptible animals for incidence of COVID “consistent with guidance provided by the World Organisation for Animal Health,”<sup>2372</sup> the Parliamentarian described Republican challenges under sections 313(B)(1)(A) and (D) as “plausible.”<sup>2373</sup> The law as enacted deleted the reference.<sup>2374</sup>

During Senate consideration of the American Rescue Plan Act, the Presiding Officer sustained a Graham point of order under this subparagraph against a Sanders amendment that would have raised the minimum wage.<sup>2375</sup> In arguments before the Parliamentarian in February

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<sup>2369</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re HR1 Guidance—conference report (Dec. 19, 2017, 3:07 PM).

<sup>2370</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. (as placed on Senate calendar, Mar. 2, 2021).

<sup>2371</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader & Off. of S. Parliamentarian re Byrd Challenges (Mar. 2, 2021, 10:23 PM).

<sup>2372</sup> [American Rescue Plan Act of 2021](#), H.R. 1319, 117th Cong. § 1001(c)(2) (as placed on Senate calendar, Mar. 2, 2021).

<sup>2373</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Byrd Challenges (Mar. 3, 2021, 11:31 AM).

<sup>2374</sup> See [American Rescue Plan Act of 2021](#), Pub. L. No. 117-2, § 1001(c), 135 Stat. 4, 10.

<sup>2375</sup> [167 CONG. REC. S1230](#) (daily ed. Mar. 5, 2021).



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2021 regarding the House Budget Committee-reported language, Democrats argued that raising the minimum wage should have been permissible in reconciliation.<sup>2376</sup> The Parliamentarian advised simply: “Minimum Wage: Subject to 313(b)(1)(D) as the changes in outlays/revenues are merely incidental to the non-budgetary components of the provision.”<sup>2377</sup> During debate on the American Rescue Plan Act, Budget Committee Chair Sanders said:

Because of an unfortunate and, in my view, misguided decision by the Parliamentarian, this reconciliation bill does not include an increase in the minimum wage to \$15 an hour. In my view, it should have, and I think the Parliamentarian was dead wrong.<sup>2378</sup>

### Immigration

During drafting of the Build Back Better Act, the Parliamentarian advised that proposed amendments to the Immigration and Nationality Act that would remove barriers to lawful permanent resident status for certain populations like DREAMers, Temporary Protected Status or Deferred Enforcement Departure holders, farmworkers, or essential workers violated this subparagraph.<sup>2379</sup> Explaining that advice, the Parliamentarian wrote:

The question before us is whether a series of proposed amendments to the Immigration and Nationality Act (INA) that remove existing barriers to adjustment of status to that of lawful permanent resident (LPR) for a variety of existing and newly created classes of immigrants and non-immigrants, including many not legally present in the United States, is a policy change that substantially outweighs the budgetary impact of that change. We believe it is, and we find that the material from previous reconciliation bills cited as support for the current proposal is distinguishable or not controlling on this issue.

In summary, CBO estimates that 8 million people will adjust to LPR status under this proposal and that such adjustment will increase the deficit by 140B over 10 years as a result of the social safety net/benefits programs to which LPR’s would be entitled. Although the proposed change does not

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<sup>2376</sup> For an example of arguments, see Bill Dauster, [Congress Should Use the Budget To Raise the Minimum Wage](#), ROLL CALL, Jan. 22, 2021, 5:00 AM.

<sup>2377</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader (Feb. 25, 2021).

<sup>2378</sup> 167 CONG. REC. S1221 (daily ed. Mar. 5, 2021).

<sup>2379</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on the Judiciary & Off. of S. Parliamentarian re LPR Guidance (Sept. 19, 2021, 6:28 PM).

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grant LPR status, CBO's score is **not** based on the likely number of applications for status—it is based on the “number of people who would **receive** LPR status” [*emphasis added*]. While a portion of that 8 million has one form or another of temporary legal status under statute or Presidential order, the vast majority (nearly 7 million by CBO's estimate) are unlawfully present and generally ineligible for adjustment of status under current law (as are some of the temporary status holders). The current proposal would waive the relevant sections of the INA, and create a new class of alien who is eligible for adjustment of status, including a wholly new category of persons called “essential critical infrastructure workers” (derived from a 16 page list that covers 18 major categories and over 220 sub-categories of employment). The provision also includes conditions of ineligibility for these applicants along with waivers of many of those disqualifiers at the discretion of DHS. It is by any standard a broad, new immigration policy.

In support of their argument, proponents cite provisions from several previous reconciliation bills—OBRA 1990, PRWORA 1996, BBA 1997 and the DRA from 2005. None of these provisions was the basis of an actual Senate precedent under [section] 313(b)(1)(D)—the merely incidental clause. There was no such point of order raised and no ruling by the Chair—so the value is limited (4 sections of the qualified alien title of PRWORA were subject to Byrd points of order—3 on committee jurisdiction, as Judiciary was not instructed, and 1 for having no score). There is also evidence that the provisions had broad bipartisan support which made inclusion in reconciliation less fraught.

Each provision can be distinguished from the current proposal. The OBRA and PRWORA provisions cited were not amendments to the INA. OBRA 1990 contained an amendment to the Social Security Act (not the INA) decriminalizing the use of social security numbers by LPR's who had obtained their legal status specifically through a direct Act of Congress ([the Immigration Reform and Control Act of 1986]/Simpson-Mazzoli)—they were already in status. PWRORA's provisions were reported by the Ways and Means and Finance Committees—there was no Judiciary title. It contained a series of free-standing provisions (later codified in title 8) that changed the definitions of eligibility for a range of federal benefits—a common theme of reconciliation measures. Among the people disqualified or restricted from the various benefits were many classes of immigrants (documented and undocumented), whose prior access to federal benefit programs had been patchy. But there were also classes of U.S. citizens who were disqualified from receipt of federal benefits, including felons, parole violators, people who were in arrears in child support payments and under certain circumstances, people who were not working. BBA 1997 further amended PRWORA's eligibility standards with respect to SSI benefits and Food Stamps. PRWORA's restrictions had by that time been codified in title 8, but again, this was not about immigration status, it was about access to benefits. Those changes to eligibility for various benefits, which did not

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change the status or ability to adjust status of any immigrant or non-immigrant, are a far cry from amending the INA to remove legal bars to adjustment for many millions of people.

The DRA of 2005, which did contain amendments to the INA, was, again, the product of a bipartisan agreement. The provisions cited are distinguishable as they applied to persons who were already admissible and not barred under law from applying for status, which is not the case here. Additionally, the provisions had broad support in the Senate and while most INA amendments were not on the committee's "Byrd list" they also were not reviewed with the Parliamentarian at the time or anyone in the office. Neither the Parliamentarian nor any of the staff of the office in 2005 have any notes pertaining to the merits of the proposal (there is one email relating to a possible "no score" finding from CBO of hypothetical text), despite the fact that this bill, and the Judiciary committee proposal on splitting the 9th circuit were the subject of many meetings. The provisions did not survive the process of conference or amendments between the Houses and their value is, for all those reasons, minimal. There are innumerable provisions in reconciliation bills that are popular and receive no initial scrutiny. Most are small changes in law and policy, and some—like CHIP—are massive policy changes—and we are still litigating them though the ink has long since dried.

The reasons that people risk their lives to come to this country—to escape religious and political persecution, famine, war, unspeakable violence and lack of opportunity in their home countries—cannot be measured in federal dollars. The same is true of the value of having the security of LPR status in this country. LPR status comes with a wide range of benefits far beyond the social safety net programs (Medicare, Medicaid, SNAP, CHIP, SSI, etc.) that generate the CBO score. Broadly speaking, as most of the beneficiaries of this policy change are not in status, there will be other, life-changing federal, state and societal benefits to having LPR status, for example: the ability to work anywhere in almost any job, the ability to obtain a driver's license in any state, in-state tuition in any state, the ability to sponsor family members under the INA, the ability to make campaign contributions, the freedom from the specter of deportation to the very country from which they fled. Many undocumented persons live and work in the shadows of our society out of fear of deportation. They are exploited by employers, face extra hurdles in the banking and housing sectors and are often afraid to report that they are victims of crime or seek medical care for fear of exposing themselves to authorities. LPR status would give these persons freedom to work, freedom to travel, freedom to live openly in our society in any state in the nation, and to reunite with their families and it would make them eligible, in time, to apply for citizenship—things for which there is no federal fiscal equivalent. Changing the law to clear the way to LPR status is tremendous and enduring policy change that dwarfs its budgetary impact.

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Finally, it is important to note that an obvious corollary of a finding that this proposal is appropriate for inclusion in reconciliation would be that it could be repealed by simple majority vote in a subsequent reconciliation measure. Perhaps more critically, permitting this provision in reconciliation would set a precedent that could be used to argue that rescinding any immigration status from anyone – not just those who obtain LPR status by virtue of this provision – would be permissible because the policy of stripping status from any immigrant does not vastly outweigh whatever budgetary impact there might be. That would be a stunning development but a logical outgrowth of permitting this proposed change in reconciliation and is further evidence that the policy changes of this proposal far outweigh the budgetary impact scored to it and it is not appropriate for inclusion in reconciliation.<sup>2380</sup>

When Democrats proposed alternatively simply to change the registry date in section 249 of the Immigration and Nationality Act,<sup>2381</sup> the Parliamentarian responded:

Thank you for the meeting today on the issue of the Registry proposal. As we discussed in the meeting, while this proposal does have differences from the earlier proposal, there are still a number of similarities that I believe make those differences minor where the policy v. budgetary effect is concerned. I will bullet those below. In addition, it seems that I was not entirely clear in my earlier guidance about the nature of previous bipartisan proposals in reconciliation. I intended to convey that those proposals were never vetted with us because they had bipartisan support (perhaps enough to overcome any points of order) not that they were somehow qualified for reconciliation based on their bipartisan nature. Apologies for any confusion this might have caused.

- This registry proposal is also one in which those persons who are not currently eligible to adjust status under the law (a substantial proportion of the targeted population) would become eligible, which is a weighty policy change and our analysis of this issue is thus largely the same as the LPR proposal.
- While this registry proposal is not a wholly new immigration policy, it is still distinguishable from the PRWORA text in that it is an adjustment

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<sup>2380</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on the Budget, Staff of S. Comm. on the Judiciary & Off. of S. Parliamentarian re LPR Guidance (Sept. 19, 2021, 6:28 PM). For arguments that immigration reforms should have been permissible in reconciliation, see, e.g., Marshall Fitz, *Immigration Reform Is a Perfect Fit for Budget Reconciliation*, THE HILL, Aug. 20, 2021, 1:47 PM.

<sup>2381</sup> 8 U.S.C. § 1259.

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in status through an amendment to the INA and not free standing or to the various government benefit programs.

- The number of beneficiaries and score of this amendment to the INA are largely the same as those of the earlier proposal which does not dramatically shift the balance of policy vs. score[.]
- The change in status to LPR remains a life-long change in circumstances the value of which vastly outweighs its budgetary impact[.]

One thing we did not discuss in the meeting is the point I made at the end of the guidance on your previous proposal and that is that in addition to this proposal being completely reversible in future reconciliation measures, it lays the groundwork for similar amendments to the INA that would strip status from people, which, as I said then, shows why this is not an appropriate provision for reconciliation.<sup>2382</sup>

Judiciary Committee Chair Dick Durbin responded in a Senate floor statement:

[Y]esterday afternoon, the Senate Parliamentarian ruled that long overdue immigration reform could not be included in the budget reconciliation process. I respect the Parliamentarian very much, but I respectfully disagree. The pathway to citizenship has a substantial and direct budgetary impact, which makes it appropriate to be included in a reconciliation bill.

The last measure which we put before the Parliamentarian literally was a date change. That was the sum and substance of the amendment—a date change that had a budgetary impact in it. We were not creating new categories of immigration. We were not creating any new laws other than the date change.<sup>2383</sup>

When Democrats then proposed allowing certain noncitizens to apply for parole (permitting them temporary protection from deportation and work authorization), the Parliamentarian's office once again rejected the proposal as a violation of section 313(b)(1)(D), saying:

The proposed parole policy is not much different in its effect than the previous proposals we have considered. The proposal, which would

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<sup>2382</sup> E-mail from S. Parliamentarian to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on the Judiciary re Memo re: updating registry date in reconciliation (Sept. 29, 2021, 12:57 PM).

<sup>2383</sup> [167 CONG. REC. S6807](#) (daily ed. Sept. 30, 2021).

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increase the deficit by \$131 billion over 10 years, creates a class of eligible people (those who have been in the country for 10 years or more) who will qualify for a grant of parole in place status. This new class would make eligible for parole 6.5 million people—nearly the same number of people as the previous two plans. CBO estimates that 3 million people would adjust to LPR status—2 million of whom would be otherwise ineligible under current law. In order to effectuate the policy, the parole proposal changes the contours of the current parole in place program, making it a mandatory award of status for qualifying applicants rather than the current discretionary use of the Secretary’s authority and assessment, which the [U.S. Citizenship and Immigration Services] website states that the Secretary grants “only sparingly.” The grant of parole will be accompanied by mandatory issuances of work authorization, travel documents, a deeming of qualification for REAL ID and automatic renewal of [parole in place]. These are substantial policy changes with lasting effects just like those we previously considered and outweigh the budgetary impact and would subject to the proposal to a 313(b)(1)(D) point of order.<sup>2384</sup>

Reacting to the guidance, Majority Leader Schumer, Chair Durbin, and four other Senators issued a joint statement saying, “We strongly disagree with the Senate parliamentarian’s interpretation of our immigration proposal, and we will pursue every means to achieve a path to citizenship in the Build Back Better Act.”<sup>2385</sup>

But not all immigration-related provisions violate section 313(b)(1)(D). Three Republican amendments to the Inflation Reduction Act of 2022 show that some immigration-related matters can withstand scrutiny. Senator James Lankford proposed an amendment to provide funding for implementation of a Trump administration border expulsion policy called “title 42.”<sup>2386</sup> Budget Committee counsel argued that the amendment violated section 313(b)(1)(D) because “CBO estimates that ‘Lankford 5384 would not affect the budget in 2022 and would have no net effect on budget authority or direct spending over the 5 and 10 year periods,’” and the amendment sought to mandate that a controversial policy that was the

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<sup>2384</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on the Judiciary, Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re Parole guidance (Dec. 16, 2021, 5:18 PM).

<sup>2385</sup> [Joint Statement by Senators Schumer, Durbin, Menendez, Cortez Masto, Luján, Padilla on Parliamentarian’s Opinion on Immigration Provisions in the Build Back Better Act](#) (Dec. 16, 2021).

<sup>2386</sup> S. Amend. No. 5384, 168 CONG. REC. S4178 (daily ed. Aug. 6, 2022). In this context, “title 42” refers to 42 U.S.C. § 265, regarding “Suspension of Entries and Imports from Designated Places To Prevent Spread of Communicable Diseases.”

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subject of ongoing litigation remain in effect.<sup>2387</sup> The Parliamentarian's office replied, "How would you distinguish this from the suspension of the Rebate rule?,"<sup>2388</sup> and asked Democratic staff to send their arguments to Republican staff so that they might respond.<sup>2389</sup> Republicans then argued:

The Lankford amendment would direct appropriations to the CDC for an existing authority.

The Title 42 authority is temporary and currently in effect.

The Lankford amendment does nothing other than fund the continued application of this existing order in the CDC over a period of time that is broadly coterminous with the public health emergency that has warranted its adoption. CBO guidance was that \$1,000,000 to CDC for this purpose could not be spent over 60 days beyond the PHE, but instead would need 120 days, which shows the budgetary nexus to the amount appropriated. It's budgetary in its effects and therefore appropriate for reconciliation.<sup>2390</sup>

The Parliamentarian concluded: "We don't believe that a 313(b)(1)(D) point of order lies against the amendment."<sup>2391</sup>

Also during consideration of the Inflation Reduction Act, Senator Dan Sullivan proposed an amendment to fund building a border wall.<sup>2392</sup> Budget Committee counsel argued that the amendment's budgetary effect was merely incidental to the hot-button policy that the amendment sought to advance, that the amendment would override court rulings, and that the

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<sup>2387</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Comm. on the Budget, Staff of S. Majority Leader & Staff of S. Comm. on the Judiciary re Lankford 5384 (Aug. 6, 2022, 11:29 PM).

<sup>2388</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Judiciary re Lankford 5384 (Aug. 7, 2022, 1:05 AM) (referring to [Inflation Reduction Act of 2022](#), Pub. L. No. 117-169, § 11301, regarding "Extension of Moratorium on Implementation of Rule Relating to Eliminating the Anti-Kickback Statute Safe Harbor Protection for Prescription Drug Rebates").

<sup>2389</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Judiciary re Lankford 5384 (Aug. 7, 2022, 1:12 AM).

<sup>2390</sup> E-mail from Staff of S. Republican Leader to Staff of S. Republican Leader, Staff of S. Comm. on the Budget, Staff of Sen. Lankford, Staff of S. Comm. on Homeland Sec. & Gov't Affs., Staff of S. Comm. on Health, Educ., Lab. & Pensions & Staff of S. Asst. Republican Leader re Defensive Byrd Argument—Title 42 (Aug. 7, 2022 1:13 AM) (making the argument); E-mail from Staff of S. Republican Leader to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Republican Leader & Staff of S. Comm. on the Budget re Defensive Byrd Argument—Title 42 (Aug. 7, 2022, 1:15 AM) (conveying that argument to the Parliamentarian).

<sup>2391</sup> E-mail from S. Parliamentarian to Staff of S. Republican Leader, Staff of S. Majority Leader, Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Republican Leader & Staff of S. Comm. on the Budget re Defensive Byrd Argument—Title 42 (Aug. 7, 2022, 1:39 AM).

<sup>2392</sup> S. Amend. No. 5435, [168 CONG. REC. S4197](#) (daily ed. Aug. 6, 2022).



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amendment attempted to reverse Biden administration policy.<sup>2393</sup> The Parliamentarian's office advised: "We do not think this section violates 313(b)(1)(D). It's money for things in the agency's jurisdiction—and those things have been appropriated previously, for example in the Consolidated Appropriations Act in the 116th using very similar language, including 'pedestrian fencing.'"<sup>2394</sup>

Also during consideration of the Inflation Reduction Act, Senator Rob Portman proposed an amendment to shift funds to acquire particular Customs and Border Protection technologies.<sup>2395</sup> Budget Committee counsel argued that the amendment violated section 313(b)(1)(D) because the amendment would shift outlays without a significant budgetary effect, while requiring deployment of new technology and standards that the agency could not implement.<sup>2396</sup> The Parliamentarian replied: "I am sorry to say that we don't agree on this. We think this program resembles many of the others already in the sub[stitute]."<sup>2397</sup> Budget counsel replied, "I can't agree that other programs in the substitute are un-implementable as this amendment's program is."<sup>2398</sup> The Parliamentarian appeared to dismiss arguments that the policy was unworkable, saying, "I recall a lot of conversations about 'unworkable' provisions, waivers, exceptions, etc."<sup>2399</sup>

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<sup>2393</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Comm. on the Budget, Staff of S. Majority Leader & Staff of S. Comm. on Homeland Sec. & Gov't Affs. re Sullivan 5435 (Aug. 7, 2022, 11:46 AM).

<sup>2394</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Republican Leader, Staff of S. Majority Leader, Staff of S. Comm. on Homeland Sec. & Gov't Affs., Staff of S. Comm. on the Budget, Staff of S. Comm. on the Judiciary, Staff of Sen. Sullivan & Off. of S. Parliamentarian re Minority Response to Sullivan 5435 Challenge (Aug. 7, 2022, 12:57 PM).

<sup>2395</sup> [S. Amend. No. 5224](#), 168 CONG. REC. S4198, S4245 (daily ed. Aug. 6, 2022).

<sup>2396</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Comm. on Homeland Sec. & Gov't Affs., Staff of S. Comm. on the Budget & Staff of S. Majority Leader re Portman #5224 (Aug. 7, 2022, 10:12 AM); E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Comm. on Homeland Sec. & Gov't Affs., Staff of S. Comm. on the Budget & Staff of S. Majority Leader re Portman #5224 (Aug. 7, 2022, 11:06 AM).

<sup>2397</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Comm. on Homeland Sec. & Gov't Affs. & Staff of S. Majority Leader re Portman #5224 (Aug. 7, 2022, 11:26 AM).

<sup>2398</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian, Staff of S. Comm. on Homeland Sec. & Gov't Affs., Staff of S. Comm. on the Budget & Staff of S. Majority Leader re Portman #5224 (Aug. 7, 2022, 11:35 AM).

<sup>2399</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Comm. on Homeland Sec. & Gov't Affs. & Staff of S. Majority Leader re Portman #5224 (Aug. 7, 2022, 11:42 AM).



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## Inflation Reduction Act of 2022

The Inflation Reduction Act of 2022 created a system where the Secretary of Health and Human Services can negotiate with pharmaceutical drug manufacturers over the price that Medicare pays for drugs, enforced by an excise tax on manufacturers that refuse to negotiate.<sup>2400</sup> Republicans challenged the system, charging that “sweeping policy changes outweigh merely incidental budgetary effects.”<sup>2401</sup> Republicans argued that the proposal creates an escalating penalty mechanism reaching outside Medicare to compel compliance with a mandate.<sup>2402</sup> Democrats modified the proposal to clarify that manufacturers can avoid the excise tax and other penalties.<sup>2403</sup> The Parliamentarian then rejected the Republican challenge, noting “the new redline/excise tax off ramps.”<sup>2404</sup>

In the Inflation Reduction Act of 2022, Democrats sought to reduce the growth in Medicare spending for outpatient prescription drugs by requiring rebates for prescription drugs covered under Medicare Parts B and D when manufacturers increase prices above a benchmark growth rate. Democrats sought to include units sold outside of Medicare in the calculation of these rebates.<sup>2405</sup> Republicans challenged “Extension of inflation caps in Sections 129101 and Section 129102 outside of Medicare: (D) Challenge (sweeping policy changes outweigh merely incidental budgetary effects).”<sup>2406</sup> Republicans argued that the proposal aimed to widely cap drug prices, extending a Federal mandate and penalties beyond

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<sup>2400</sup> See [Inflation Reduction Act of 2022](#), Pub. L. No. 117-169, §§ 11001–11004.

<sup>2401</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Comm. on the Budget & Staff of S. Comm. on Health, Educ., Lab. & Pensions re R Byrd challenges to Finance title—prescription drugs (Aug. 4, 2022, 9:50 PM).

<sup>2402</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on the Budget (Aug. 5, 2022, 2:00 PM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Finance Part 3: Rx Bipart Byrd Bath 8-5-22 (Aug. 5, 2022, 4:09 PM).

<sup>2403</sup> See E-mail from Staff of S. Majority Leader to Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Fin. re Memo and revised leg[islative] text for prescription drugs (July 28, 2022, 7:28 PM).

<sup>2404</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Health, Educ., Lab. & Pensions re Finance Parl Guidance—Drugs (Aug. 6, 2022, 3:36 AM).

<sup>2405</sup> See S. Legis. Couns., [KEL22401 13H, Subtitle I—Prescription Drug Pricing Reform §§ 129101 & 129102 \(2022\)](#); S. Legis. Couns., [ERN22335 9K1, Inflation Reduction Act of 2022 §§ 11101 & 11102 \(July 27, 2022\)](#); S. Legis. Couns., [ERN22410 5DM, Amendment in the Nature of a Substitute §§ 11101 & 11102 \(Aug. 6, 2022\)](#) (subsequently designated [S. Amend. No. 5194](#)).

<sup>2406</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Comm. on the Budget, Staff of S. Majority Leader & Staff of S. Comm. on Health, Educ., Lab. & Pensions re R Byrd challenges to Finance title—prescription drugs (Aug. 4, 2022, 9:50 PM).

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the government sector to the commercial market.<sup>2407</sup> In a one-word decision, the Parliamentarian sustained the Republican challenge.<sup>2408</sup> Democrats modified the proposal to remove non-Medicare drug sales from the inflation rebate system.<sup>2409</sup>

The Inflation Reduction Act created energy tax credits with a two-tiered incentive structure, with a base credit and a bonus credit, and to receive the full credit, taxpayers must pay prevailing wages and use registered apprentices.<sup>2410</sup> Republicans challenged the system under section 313(b)(1)(D),<sup>2411</sup> arguing that the provisions apply labor requirements to promote collective bargaining and modify the employer-employee relationship.<sup>2412</sup> The Parliamentarian rejected the Republican challenge.<sup>2413</sup>

In the Inflation Reduction Act, Democrats sought to grant the Treasury Secretary certain flexibilities in hiring.<sup>2414</sup> Republicans challenged the grants of authority under section 313(b)(1)(D), arguing that giving 10 years of carte blanche hiring flexibility would be a policy decision that outweighed the temporary shifting of outlays that the authority would cause.<sup>2415</sup> In a one-word decision, the Parliamentarian sustained the Republican challenge.<sup>2416</sup>

During consideration of the Inflation Reduction Act, the Presiding Officer sustained a point of order raised by Budget Committee Ranking

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<sup>2407</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on the Budget (Aug. 5, 2022, 2:00 PM); E-mail from S. Comm. on the Budget to S. Comm. on the Budget re Finance Part 3: Rx Bipart Byrd Bath 8-5-22 (Aug. 5, 2022, 4:09 PM).

<sup>2408</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Majority Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Health, Educ., Lab. & Pensions re Finance Parl Guidance—Drugs (Aug. 6, 2022, 3:36 AM).

<sup>2409</sup> S. Amend. No. 5194 as modified §§ 11101 & 11102, [168 CONG. REC S4070, S4083–86](#) (daily ed. Aug. 6, 2022).

<sup>2410</sup> See [Inflation Reduction Act of 2022](#), Pub. L. No. 117-169, §§ 13101(f), 13102(k), 13104(d), 13105(a).

<sup>2411</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Comm. on the Budget & Staff of S. Majority Leader re R Byrd challenges to Finance title (Aug. 4, 2022, 9:43 PM); Republican Staff of S. Comm. on Fin., Title I—Committee on Finance: Subtitle D—Energy Security.

<sup>2412</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on the Budget (Aug. 5, 2022); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Finance Part 2: Energy Bipart Byrd Bath 8-5-22 (Aug. 5, 2022, 12:34 PM).

<sup>2413</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Majority Leader & Staff of S. Comm. on the Budget re Finance Parl Guidance—Energy Tax Provisions (Aug. 6, 2022, 1:04 AM).

<sup>2414</sup> See S. Legis. Couns., ERN22335 9K1, Inflation Reduction Act of 2022 § 10301(b) (July 27, 2022).

<sup>2415</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Fin. & Staff of S. Comm. on the Budget (Aug. 5, 2022, 10:30 AM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Finance Part 1: IRS Bipart Byrd Bath 8-5-22 (Aug. 5, 2022, 11:07 AM).

<sup>2416</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Fin., Staff of S. Majority Leader & Staff of S. Comm. on the Budget re Finance Parl Guidance—IRS Operations (Aug. 6, 2022, 12:36 AM).

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Republican Member Lindsey Graham under section 313(b)(1)(D)<sup>2417</sup> against a subsection that provided:

(g) OTHER ACTIVITIES.—In addition to amounts otherwise available, there is appropriated to the Administrator of the Environmental Protection Agency for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, \$45,000,000, to remain available until September 30, 2031, to carry out, with respect to greenhouse gases, sections 111, 115, 165, 177, 202, 211, 213, and 231 of the Clean Air Act (42 U.S.C. 7411, 7415, 7475, 7507, 7521, 7545, 7547, and 7571).<sup>2418</sup>

Republicans argued that this provision amounted to a wholesale declaration by Congress that the Environmental Protection Agency could regulate greenhouse gases under each Clean Air Act section cited, where some of these sections had never been used to do so.<sup>2419</sup> The Parliamentarian sustained the Republican challenge, writing: “sustained as to the definition of [greenhouse gases] and overbroad application of sections of the [Clean Air Act]—can be corrected.”<sup>2420</sup> In an attempt to correct the provision, Democratic staff asked the Parliamentarian: “Our curative remedy was to remove section 612 of the [Clean Air Act] from the list of authorities and fix the [greenhouse gas] definition. Are those two actions sufficient?”<sup>2421</sup> After additional argument,<sup>2422</sup> the Parliamentarian

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<sup>2417</sup> 168 CONG. REC. S4197 (daily ed. Aug. 6, 2022).

<sup>2418</sup> S. Amend. No. 5194 as modified § 60105(g), 168 CONG. REC. S4070, S4137 (daily ed. Aug. 6, 2022); S. Legis. Couns., ERN22410 5DM, Inflation Reduction Act of 2022 § 60105(g) (Aug. 6, 2022).

<sup>2419</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Env’t & Pub. Works & Staff of S. Comm. on the Budget (Aug. 3, 2022, 10:30 AM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re EPW Bipart Byrd Bath 8-3-22 (Aug. 3, 2022, 12:25 PM).

<sup>2420</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Env’t & Pub. Works, Staff of S. Majority Leader & Staff of S. Comm. on the Budget re EPW Parl Guidance (Aug. 6, 2022, 12:23 AM).

<sup>2421</sup> E-mail from Staff of S. Comm. on Env’t & Pub. Works to Staff of S. Majority Leader, Staff of S. Comm. on Env’t & Pub. Works & Staff of S. Comm. on the Budget re EPW Parl Guidance (Aug. 6, 2022, 1:15 AM); E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Env’t & Pub. Works, Staff of S. Majority Leader & Staff of S. Comm. on the Budget re EPW Parl Guidance (Aug. 6, 2022, 1:44 AM) (reporting communication to the Parliamentarian).

<sup>2422</sup> E-mail from Staff of S. Comm. on Env’t & Pub. Works to Off. of S. Parliamentarian, Staff of S. Republican Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Env’t & Pub. Works re Minority EPW challenges to ERN22410 (Aug. 6, 2022, 11:59 PM); E-mail from Staff of S. Republican Leader to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Republican Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Env’t & Pub. Works re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 1:11 AM); E-mail from Staff of S. Majority Leader to Staff of S. Republican Leader, Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on Env’t & Pub. Works re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 1:56 AM); E-mail from Staff of S. Majority Leader to Staff of S. Republican Leader, Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on Env’t & Pub. Works re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 2:52 AM); E-mail from Staff of S. Republican Leader to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Republican Leader, Staff of S. Comm. on Env’t & Pub. Works & Staff of S. Comm. on the Budget re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 4:44 AM); E-mail from Staff of S. Comm. on Env’t & Pub. Works

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concluded: “Even with the amended [greenhouse gas] definition, this subsection is still overbroad and is subject to (b)(1)(D).”<sup>2423</sup>

In drafts of the Inflation Reduction Act, Democrats defined greenhouse gases by reference to a section in the Clean Air Act.<sup>2424</sup> Republicans challenged the application of this definition under section 313(b)(1)(D),<sup>2425</sup> arguing that provisions citing greenhouse gases would codify and extend the application of a definition of greenhouse gases that until that point applied only in specified instances.<sup>2426</sup> The Parliamentarian sustained this Republican challenge in connection with several sections, writing, “sustained—[greenhouse gases] definition—can be corrected.”<sup>2427</sup> Democrats then substituted a definition of greenhouse gases that simply lists six specific pollutants.<sup>2428</sup> After additional argument,<sup>2429</sup> the

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to Staff of S. Republican Leader & Staff of S. Comm. on Env’t & Pub. Works re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 4:39 AM); E-mail from Staff of S. Comm. on Env’t & Pub. Works to Staff of S. Republican Leader, Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on Env’t & Pub. Works & Staff of S. Comm. on the Budget re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 5:06 AM).

<sup>2423</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on Env’t & Pub. Works, Staff of S. Republican Leader, Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 5:25 AM).

<sup>2424</sup> See, e.g., [S. Amend. No. 5194](#) §§ 60101 (enacting Clean Air Act § 132(d)(4)(b)), 60102 (enacting Clean Air Act § 133(d)(2)), 60103 (enacting Clean Air Act § 134(c)(2)), 60105(i), 60106(a), 60107 (enacting Clean Air Act § 135(c)), 60112(c)(1), 60113 (enacting Clean Air Act § 136(k)), 60114 (enacting Clean Air Act § 137(d)(2)), 60116(b)(1), 60201 (enacting Clean Air Act § 138(b)(2)(A)), [168 CONG. REC. S3922, S3985–90](#) (daily ed. Aug. 3, 2022) (S. Legis. Couns., ERN22335 9K1), each of which referred to “section 211(o)(1)(G) of the Clean Air Act (42 U.S.C. 7545(o)(1)(G)) (as in effect on the date of enactment of this Act).”

<sup>2425</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Env’t & Pub. Works, Staff of S. Comm. on the Budget & Staff of S. Majority Leader re EPW Byrd bath w/ Rs tomorrow morning (Aug. 2, 2022, 10:03 PM) (conveying Republican challenges); Memorandum from EPW Committee Republican Staff & Budget Committee Republican Staff to Senate Parliamentarians re List of EPW Committee Byrd Challenges (Aug. 2, 2022).

<sup>2426</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader, Staff of S. Republican Leader, Staff of S. Comm. on Env’t & Pub. Works & Staff of S. Comm. on the Budget (Aug. 3, 2022, 10:30 AM); E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re EPW Bipart Byrd Bath 8-3-22 (Aug. 3, 2022, 12:25 PM).

<sup>2427</sup> E-mail from Staff of S. Majority Leader to Staff of S. Comm. on Env’t & Pub. Works, Staff of S. Majority Leader & Staff of S. Comm. on the Budget re EPW Parl Guidance (Aug. 6, 2022, 12:23 AM).

<sup>2428</sup> See [Inflation Reduction Act of 2022](#), Pub. L. No. 117-169, §§ 60101 (enacting Clean Air Act § 132(d)(4)), 60102 (enacting Clean Air Act § 133(d)(2)), 60103 (enacting Clean Air Act § 134(c)(2)), 60105(h), 60106(c), 60107 (enacting Clean Air Act § 135(c)), 60112(c)(1), 60113 (enacting Clean Air Act § 136(i)), 60114 (enacting Clean Air Act § 137(d)(2)), 60116(b), 60201 (enacting Clean Air Act § 138(d)), which each state: “‘greenhouse gas’ means the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.”; see generally Lisa Friedman, [Climate Law Empowers E.P.A., Blunting Justices’ Restrictions](#), N.Y. TIMES, Aug. 23, 2022, at A1.

<sup>2429</sup> E-mail from Staff of S. Comm. on Env’t & Pub. Works to Off. of S. Parliamentarian, Staff of S. Republican Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Env’t & Pub. Works re Minority EPW challenges to ERN22410 (Aug. 6, 2022, 11:59 PM); E-mail from Staff of S. Republican Leader to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Republican Leader, Staff of S. Comm. on the Budget & Staff of S. Comm. on Env’t & Pub. Works re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 1:11 AM); E-mail from Staff of S. Majority Leader to Staff of S. Republican Leader, Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget & Staff of S. Comm. on Env’t & Pub. Works re Minority EPW

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Parliamentarian concluded that no points of order remained (beyond that against the overbroad provision discussed immediately above), saying with regard to one provision: “With amended [greenhouse gases] definition, no point of order lies.”<sup>2430</sup>

During consideration of the Inflation Reduction Act, the Presiding Officer sustained a point of order raised by Budget Committee Ranking Republican Member Lindsey Graham under section 313(b)(1)(D)<sup>2431</sup> against the Health, Education, Labor, and Pensions Committee’s title of the substitute amendment to impose a \$35 cap on consumers’ payments for insulin.<sup>2432</sup>

During consideration of the Inflation Reduction Act, the Presiding Officer sustained a point of order raised by Environment and Public Works Committee Chair Tom Carper under section 313(b)(1)(D)<sup>2433</sup> against an amendment offered by Senator Shelley Capito to expedite permits for infrastructure and energy projects.<sup>2434</sup> The Parliamentarian’s office noted “there is a ‘notwithstanding any other provision of law’, and it seems possible that there is a targeting issue since it deals with a single named pipeline along with a very low score, so we think the amendment is subject to a (b)(1)(D).”<sup>2435</sup> Before raising the point of order, Senator Carper argued: “This amendment would modify the regulatory authorities of the Environmental Protection Agency and multiple other Agencies. It would undermine protection of our water quality, weaken air quality protections,

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challenges to ERN22410 (Aug. 7, 2022, 1:56 AM); E-mail from Staff of S. Majority Leader to Staff of S. Republican Leader, Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on the Budget, Staff of S. Comm. on Env’t & Pub. Works & Staff of S. Comm. on the Budget re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 2:52 AM); E-mail from Staff of S. Republican Leader to Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Republican Leader, Staff of S. Comm. on Env’t & Pub. Works & Staff of S. Comm. on the Budget re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 4:44 AM); E-mail from Staff of S. Comm. on Env’t & Pub. Works to Staff of S. Republican Leader & Staff of S. Comm. on Env’t & Pub. Works re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 4:39 AM); E-mail from Staff of S. Comm. on Env’t & Pub. Works to Staff of S. Republican Leader, Staff of S. Majority Leader, Off. of S. Parliamentarian, Staff of S. Comm. on Env’t & Pub. Works & Staff of S. Comm. on the Budget re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 5:06 AM).

<sup>2430</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on Env’t & Pub. Works, Staff of S. Republican Leader, Staff of S. Majority Leader, Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Minority EPW challenges to ERN22410 (Aug. 7, 2022, 5:25 AM).

<sup>2431</sup> [168 CONG. REC. S4193–94](#) (daily ed. Aug. 6, 2022).

<sup>2432</sup> S. Amend. No. 5194 as modified tit. IX, [168 CONG. REC. S4070, S4143–44](#) (daily ed. Aug. 6, 2022); S. Legis. Couns., ERN22410 5DM, Inflation Reduction Act of 2022 tit. IX (Aug. 6, 2022).

<sup>2433</sup> [168 CONG. REC. S4182–83](#) (daily ed. Aug. 6, 2022).

<sup>2434</sup> S. Amend. No. 5383, [168 CONG. REC. S4331–34](#) (daily ed. Aug. 6, 2022).

<sup>2435</sup> E-mail from Off. of S. Parliamentarian to Staff of S. Comm. on the Budget, Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on Env’t & Pub. Works re Capito #5383 (Aug. 7, 2022, 3:41 AM).

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harm wildlife, and would have significant impacts on vulnerable communities.”<sup>2436</sup>

There are other examples of the application of this subparagraph on the Senate floor.<sup>2437</sup>

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<sup>2436</sup> 168 CONG. REC. S4182 (daily ed. Aug. 6, 2022).

<sup>2437</sup> See 141 CONG. REC. S17,315–27 (daily ed. Nov. 17, 1995) (Exon point of order under subsections (b)(1)(A) and (b)(1)(D) against sections 8001 and 13301 of the bill as proposed by the conference report on application of antitrust rule to provider-sponsored organizations (Medicare Plus) and exemption of physician office laboratories; Abraham motion to waive rejected 54-45; point of order sustained); 142 CONG. REC. S8423–24 (daily ed. July 22, 1996), *id.* at S8506–09 (daily ed. July 23, 1996) (Exon point of order under subsections (b)(1)(A), (b)(1)(C), and (b)(1)(D) raised July 22 against 25 provisions; Domenici motion to waive on 3 provisions for which the point of order applied under subsection (b)(1)(A)—on a family cap for welfare benefits rejected 42-57, on allowing delivery of social services through religious charities approved 67-32, on abstinence education programs rejected 52-46; point of order sustained July 23 against 23 provisions, which were stricken from the bill, not sustained against 1 provision, which remained in the bill, and waived for 1 provision, which remained in the bill).



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313(b)(1)(E) (E)<sup>2438</sup> a provision shall be considered to be extraneous if it increases, or would increase, net outlays,<sup>2439</sup> or if it decreases, or would decrease, revenues<sup>2440</sup> during a fiscal year after the fiscal years covered by such reconciliation bill or reconciliation resolution,<sup>2441</sup> and such increases or decreases are greater than<sup>2442</sup> outlay<sup>2443</sup> reductions or revenue<sup>2444</sup> increases resulting from other provisions in such title in such year; and

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### Out-Years

*A fiscal year*—Interpreting this term, the Parliamentarian observed (in December 2017):

313(b)(1)(E) does not say “each fiscal year” it says “a fiscal year” so there isn’t a requirement to show each year, there is only a requirement to show that effect if “a fiscal year” has a revenue loss. Moreover, it is my understanding from [the Joint Committee on Taxation] that they have never provided an annualized level of analysis for out-years. Here, JCT is saying there is not [such a loss] using their conventional method of analysis, and not, as we have discussed at length this week, some new construct.<sup>2445</sup>

*Title*—This basis of extraneousness depends on the balance of the title in which the drafters locate a provision. Consequently, attentive drafters can avoid this violation by combining or rearranging the contents of titles so as to ensure that no title worsens the deficit in any out-year.

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<sup>2438</sup> Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 205(b), 101 Stat. 754, 784–85 (1987), added subparagraph (E).

<sup>2439</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2440</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2441</sup> Congressional Budget Act of 1974 § 310(b), 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.”

<sup>2442</sup> The Congressional Budget Act makes no exception for very small amounts; even a “negligible” violation can subject legislation to a point of order under the Budget Act. Senate Precedent PRL19761001-001, 122 CONG. REC. 34,550–51 (Oct. 1, 1976) (point of order by Sen. Haskell under Congressional Budget Act of 1974 § 311(a)).

<sup>2443</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2444</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2445</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on Fin., Off. of S. Parliamentarian & Staff of S. Comm. on the Budget re Score (Dec. 2, 2017, 12:38 AM).

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When asked to confirm that “Congressional Budget Act section 313(b)(1)(E) is enforced by ‘title,’ and for the purposes of this section’s application to a conference report, we can merge committee work products in titles in a conference report,”<sup>2446</sup> the Parliamentarian noted that there has been a blending of committee jurisdictions in the past into titles in conference reports arranged by subject; House and Senate Committee jurisdictions do not match up; and the House does not have the Byrd Rule.<sup>2447</sup>

Even though points of order under this subparagraph depend on the title of the bill, a Senator can successfully raise this point of order against an amendment that would cause the relevant title to worsen the deficit in the out-years.<sup>2448</sup>

As a consequence of this subparagraph, reconciliation tax bills have made tax cuts sunset in the last year covered by the reconciliation instructions. Democratic Leader Daschle identified this consequence in an exchange with the Presiding Officer on May 22, 1996. The budget resolution for fiscal year 1997 included instructions for a third reconciliation bill that would reduce revenues. During the consideration of that resolution, Leader Daschle and the Presiding Officer interpreted this subparagraph as follows:

Mr. DASCHLE. Mr. President, the Byrd rule forbids legislation that will increase the deficit in years beyond those covered in the budget resolution. If this third reconciliation bill does not find a way to end or offset its tax cuts in the years beyond 2002, would the bill violate the Byrd rule?

The PRESIDING OFFICER. Yes, it would.

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<sup>2446</sup> E-mail from Staff of S. Majority Leader to Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget re Materials for 7/30 meeting with Budget Committee re: budget resolution (July 30, 2021, 1:05 PM).

<sup>2447</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget (July 31, 2021, 9:45 AM).

<sup>2448</sup> See, e.g., 143 CONG. REC. S6307–08 (daily ed. June 25, 1997) (Domenici point of order against Lautenberg for Kennedy amendment reducing fees on student loan programs; Dodd motion to waive rejected 43-57; point of order sustained; amendment fell); 146 CONG. REC. S6804 (daily ed. July 14, 2000), *id.* at S7045 (daily ed. July 17, 2000) (Moynihan point of order against Roth amendment to strike the sunset provision in the committee-reported bill; Roth motion to waive rejected 48-47; point of order sustained; amendment fell); *id.* (Roth point of order implicitly under subsection (b)(1)(E) against Roth amendment to strike the sunset provision in the Democratic substitute; covered by same Roth motion to waive as previous point of order; point of order sustained; amendment fell); 149 CONG. REC. S6431 (daily ed. May 15, 2003) (Baucus point of order implicitly under subsection (b)(1)(E) against Sessions amendment applying sunset provision to revenue increase provisions; Sessions motion to waive rejected 51-49; point of order sustained; amendment fell).



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Mr. DASCHLE. Is it not true, unless the budget resolution assumes that the tax cuts will sunset in 2002, or be offset by tax increases thereafter, the resolution calls for a reconciliation bill that would violate the Byrd rule?

The PRESIDING OFFICER. The resolution cannot make assumptions beyond the years which are instructed.

Mr. DASCHLE. That is not the question, Mr. President. What I am asking is that under the Byrd rule there must be a determination that the deficit is not increased by actions taken in the reconciliation instructions in the out-years, in the years beyond the window.

The PRESIDING OFFICER. The Byrd rule does not apply to reconciliation instructions. It applies to a reconciliation bill.

Mr. DASCHLE. That is my point, Mr. President. This resolution assumes that a reconciliation bill will be triggered that will violate the Byrd rule unless it is terminated at the end of 2002 or else subsequently offset.

The assumption of the resolution is that tax cuts will sunset in the year 2002 or be offset by tax increases thereafter in order for it not to be in violation of the Byrd rule, is that not correct?

The PRESIDING OFFICER. The budget resolution makes no assumptions.

Mr. DASCHLE. Mr. President, let me ask you this: Would the reconciliation bill be in order if the budget resolution did not address the issue of deficit reduction beyond that 6-year timeframe?

The PRESIDING OFFICER. I read to you under extraneous provisions [section 313(b)(1)](E):

A provision shall be considered to be extraneous if it increases or would increase net outlays or if it decreases or would decrease revenues during a fiscal year after the fiscal years covered by such a reconciliation bill or reconciliation resolution.

This only applies to reconciliation bills.

Mr. DASCHLE. Let me then phrase my question another way, because I think we can now clarify this.

The reconciliation bill triggered by this resolution would not be in order, in other words, if it failed either to offset the tax cuts or to sunset them after fiscal year 2002, is that not correct?

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The PRESIDING OFFICER. That is correct.

Mr. DASCHLE. Mr. President, let me just note parenthetically, if that is correct, that the majority party is the same party that has criticized the President's budget because the President sunsets his tax cuts. But now the majority comes before us with a reconciliation instruction that requires either that their tax cuts be abruptly sunsetted in the year 2002 or that taxes be increased dramatically after that point to pay for the continuing tax cuts.<sup>2449</sup>

There are several examples of the application of this subparagraph.<sup>2450</sup>

In a discussion in relation to the Tax Cuts and Jobs Act of 2017, the Parliamentarian advised that a committee can have more than one division in its title, but it is only the title that controls whether this point of order will lie.<sup>2451</sup>

*Legislative History*—Section 205(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added subparagraph (E).<sup>2452</sup> The joint statement of managers in the conference report on that bill stated with regard to subparagraph (E):

## 6. Extraneous Provisions in Reconciliation Legislation

### *Current Law*

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<sup>2449</sup> 142 CONG. REC. S5418 (daily ed. May 21, 1996).

<sup>2450</sup> See 143 CONG. REC. S6307–08 (daily ed. June 25, 1997) (Domenici point of order against Lautenberg for Kennedy amendment reducing fees on student loan programs; Dodd motion to waive rejected 43-57; point of order sustained); 145 CONG. REC. S9478–84 (daily ed. July 28, 1999) (Lott point of order against section 1502 of the committee-reported bill on general extension of revenue-reduction provisions; Roth motion to waive rejected 51-48; point of order sustained; section stricken); 146 CONG. REC. S6784 (daily ed. July 14, 2000), *id.* at S7043 (daily ed. July 17, 2000) (Roth point of order July 14 under section 313 and apparently subsection (b)(1)(E) against section 4 of the conference committee-reported bill on the earned income tax credit; Roth motion to waive approved by unanimous consent July 17); *id.* at S6804 (daily ed. July 14, 2000), *id.* at S7045 (daily ed. July 17, 2000) (Moynihan point of order against Roth amendment to strike the sunset provision in the committee-reported bill; Roth motion to waive rejected 48-47; point of order sustained); *id.* (Roth point of order implicitly under subsection (b)(1)(E) against Roth amendment to strike the sunset provision in the Democratic substitute; covered by same Roth motion to waive as previous point of order; point of order sustained); 149 CONG. REC. S6431 (daily ed. May 15, 2003) (Baucus point of order implicitly under subsection (b)(1)(E) against Sessions amendment applying sunset provision to revenue increase provisions; Sessions motion to waive rejected 51-49; point of order sustained).

<sup>2451</sup> Staff of S. Comm. on the Budget, Notes from meeting with Parls—November 6, 2017 (Budget, Finance, Leadership) (Nov. 13, 2017).

<sup>2452</sup> [Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987](#), Pub. L. No. 100-119, § 205(b), 101 Stat. 754, 784–85.

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Title XX of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), as amended by Section 7006 of the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509), established a temporary rule in the Senate—referred to as the “Byrd Rule”—to exclude extraneous matter from reconciliation legislation. The rule specifies the types of provisions considered to be extraneous, provides for a point of order against the inclusion of extraneous matter in reconciliation measures, and requires a three-fifths vote of the Senate to waive or appeal the point of order. The rule expires on January 2, 1988.

#### *Senate Amendment*

The Senate amendment (Section 228) amends the Byrd Rule (which applies only in the Senate) to include in the definition of extraneous matter provisions which increase net outlays or decrease revenues during a fiscal year beyond those fiscal years covered by the reconciliation measure and which result in a net increase in the deficit for that fiscal year. The Senate amendment also extends the expiration date of the Byrd Rule to September 30, 1992.

#### *Conference Agreement*

The House recedes and concurs in the Senate amendment. This rule applies only in the Senate.

It is the intent of the conferees that expiration after the reconciliation period of a revenue increase or extension provided for in a reconciliation bill would not, of itself, be considered a revenue decrease for purposes of this provision. It could, however, contribute to a finding that a spending increase or a positive revenue decrease in that legislation violated this rule.<sup>2453</sup>

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<sup>2453</sup> H.R. REP. NO. 100-313, at 65 (1987) (Conf. Rep.), reprinted in 1987 U.S.C.C.A.N. 739, 765.

### Social Security

As a result of this subparagraph, a Senator may raise a point of order under this section that would result in excising only the offending *provision*, whereas raising the point of order under Congressional Budget Act section 310(g) itself against a provision in the bill would result in killing the *entire bill*.

During the Byrd Bath for the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (later vetoed by President Obama), the Parliamentarian advised that a provision of a draft amendment by Majority Leader Mitch McConnell entitled "Protecting Americans by Repeal of Authority to Use Social Security Numbers"<sup>2455</sup> would violate sections 310(g) and 313(b)(1)(F).<sup>2456</sup>

The Parliamentarian's office advised (in August of 2005) that extending the payroll taxes (FICA contributions) that fund Social Security coverage would violate both section 310(g) and this subparagraph of the Byrd Rule. Extending the payroll taxes that fund the Hospital Insurance coverage only, and not Social Security, could be done without violating section 310(g) or 313(b)(1)(F).

The Parliamentarian rejected an argument that the Health Care and Education Reconciliation Act of 2010 violated Budget Act sections 310(g) and 313(b)(1)(F) because of indirect effects on the Social Security Trust Fund from the taxation of health insurance benefits.<sup>2457</sup>

The Senate had previously considered reconciliation legislation that had indirect effects on the Social Security Trust Funds. In the Taxpayer Relief

<sup>2454</sup> [Congressional Budget Act of 1974 § 310\(g\)](#), 2 U.S.C. § 641(g), *supra* p. 559, addresses "Limitation on Changes to Social Security Act."

<sup>2455</sup> S. Legis. Couns., MCG15942, McConnell amendment, § 202(d)(2) (Dec. 2015). The paragraph read: "(2) PROTECTING AMERICANS BY REPEAL OF AUTHORITY TO USE SOCIAL SECURITY NUMBERS.—Clause (x) of section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) is amended by adding at the end the following new sentence: 'The preceding sentence shall not apply after December 31, 2017.'." *Id.*

<sup>2456</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re reconciliation/substitute/Byrd rule (Dec. 14, 2015, 12:28 PM).

<sup>2457</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian (Mar. 18, 2010, 10:25 AM).

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Act of 1997,<sup>2458</sup> the Senate extended the exclusion from income of employer-provided education benefits, and the Senate further extended these benefits in the Economic Growth and Tax Relief Reconciliation Act of 2001.<sup>2459</sup> No Senator raised a point of order under Budget Act section 310(g) or 313(b)(1)(F) against those provisions.

In a discussion in relation to the Tax Cuts and Jobs Act of 2017, the Parliamentarian advised that the Parliamentarian evaluates indirect effects on a case-by-case basis. If the Parliamentarian finds that language has an indirect effect, then it will not violate section 310(g).<sup>2460</sup>

Budget Counsel prepared the following summary of 310(g) and 313(b)(1)(F) enforcement during the era of Senator Mike Enzi's chairmanship. In some respects, this enforcement differed from that under Budget Committee Chairs Kent Conrad and Patty Murray.

#### **Reconciliation Bills**

**310(g)**—Point of order against reconciliation bills that contain “recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act.”

**313(b)(1)(F)** (*Byrd rule*)—A provision is extraneous if it violates section 310(g). Note: if the point of order is sustained under 313 the remedy would be to strike the offending provision; as compared to a point of order sustained under 310(g), which would result in the entire bill losing privileged status.

#### **Precedent**

- 2015—The majority's “final substitute” amendment contained a provision titled “Protecting Americans By Repeal of Authority to Use Social Security Numbers.” The provision amended Clause (x) of section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)). The minority successfully argued that this provision violated 310(g) because the confidentiality of, and limited authority to use, social security numbers are critical elements of the OASDI program under Title II.
- 2010—Health Care and Education Reconciliation Act (HCERA)—This issue was litigated in HCERA through the Cadillac tax

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<sup>2458</sup> [Taxpayer Relief Act of 1997](#), Pub. L. No. 105-34, 111 Stat. 788.

<sup>2459</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, 115 Stat. 38.

<sup>2460</sup> Staff of S. Comm. on the Budget, Notes from meeting with Parls—November 6, 2017 (Budget, Finance, Leadership) (Nov. 13, 2017).

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provision. CBO estimated that delaying the Cadillac tax lowered social security trust fund revenues and increased outlays. The majority successfully argued that these indirect effects on the trust fund stemmed from potential changes in taxable compensation and did not violate 310(g).

- 1995 – 310(g) has only been raised one other time and was not well-taken by the Chair. At issue in that case was whether or not using theoretical savings from the difference in the Social Security COLA assumed in CBO’s baseline versus the lower COLA actually instituted that year violated 310(g).<sup>2461</sup>

***Legislative History*** – Section 13214(a)(6) of the Budget Enforcement Act of 1990 added subparagraph (F).

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<sup>2461</sup> Staff of S. Comm. on the Budget, Social Security Budget Points of Order, *in* E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Off-Budget Effects in America Competes (Mar. 8, 2022, 7:22 PM).

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- 313(b)(2) (2) A Senate-originated<sup>2462</sup> provision shall not be considered extraneous under [paragraph \(1\)\(A\)](#)<sup>2463</sup> if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that:
- 313(b)(2)(A) (A) the provision mitigates direct effects clearly attributable to a provision changing [outlays](#)<sup>2464</sup> or [revenues](#)<sup>2465</sup> and both provisions together produce a net reduction in the [deficit](#);<sup>2466</sup>
- 313(b)(2)(B) (B) the provision will result in a substantial reduction in [outlays](#)<sup>2467</sup> or a substantial increase in [revenues](#)<sup>2468</sup> during fiscal years after the fiscal years covered by the reconciliation bill or [reconciliation resolution](#);<sup>2469</sup>
- 313(b)(2)(C) (C) a reduction of [outlays](#)<sup>2470</sup> or an increase in [revenues](#)<sup>2471</sup> is likely to occur as a result of the provision, in the event of new [regulations](#)<sup>2472</sup> authorized by the provision or likely to be proposed, court rulings on pending litigation, or relationships between economic indices and stipulated statutory triggers pertaining to the
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<sup>2462</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13214(a)(7), 104 Stat. 1388-573, 1388-621, added the words “Senate-originated” here. For House-originated provisions, this paragraph did not clearly indicate which Chair held responsibility. This change makes clear that the exception does not apply for House-originated provisions.

<sup>2463</sup> [Congressional Budget Act of 1974 § 313\(b\)\(1\)\(A\)](#), 2 U.S.C. § 644(b)(1)(A), *supra* p. 655, addresses provisions without deficit effect.

<sup>2464</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2465</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2466</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>2467</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2468</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2469</sup> [Congressional Budget Act of 1974 § 310\(b\)](#), 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.”

<sup>2470</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2471</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2472</sup> [Congressional Budget Act of 1974 § 421\(10\)](#), 2 U.S.C. § 658(10), *infra* p. 812, defines “regulation” by adopting the definition of [5 U.S.C. § 601\(2\)](#), *infra* p. 814.

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provision, other than the [regulations](#),<sup>2473</sup> court rulings or relationships [currently](#)<sup>2474</sup> projected by the Congressional Budget Office for scorekeeping purposes; or<sup>2475</sup>

313(b)(2)(D) (D) such provision will be likely to produce a significant reduction in [outlays](#)<sup>2476</sup> or increase in [revenues](#)<sup>2477</sup> but, due to insufficient data, such reduction or increase cannot be reliably estimated.

313(b)(3) (3) A provision reported by a committee shall not be considered extraneous under [paragraph \(1\)\(C\)](#)<sup>2478</sup> if

313(b)(3)(A) (A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or

313(b)(3)(B) (B) the provision states an exception to, or a special application of, the general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.

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<sup>2473</sup> [Congressional Budget Act of 1974 § 421\(10\)](#), 2 U.S.C. § 658(10), *supra* p. 812, defines “regulation” by adopting the definition of [5 U.S.C. § 601\(2\)](#), *infra* p. 814.

<sup>2474</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(9\)](#), 2 U.S.C. § 900(c)(9), *infra* p. 981, defines “current.” [Federal Credit Reform Act of 1990 § 502\(10\)](#), 2 U.S.C. § 661a(10), *infra* p. 855, and [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *infra* p. 1150, adopt the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2475</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13214(b)(4)(C), 104 Stat. 1388-573, 1388-622 to 1388-623, added the conjunction “or” here. This is how this section had been understood prior to the enactment of the Budget Enforcement Act.

<sup>2476</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2477</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2478</sup> [Congressional Budget Act of 1974 § 313\(b\)\(1\)\(C\)](#), 2 U.S.C. § 644(b)(1)(C), *supra* p. 676, addresses provisions in another committee’s jurisdiction.



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313(c) (c)<sup>2479</sup> **EXTRANEOUS MATERIALS**—Upon the reporting or discharge of a reconciliation bill or resolution pursuant to [section 310](#)<sup>2480</sup> in the Senate, and again upon the submission of a conference report on such a reconciliation bill or resolution, the Committee on the Budget of the Senate shall submit for the record a list of material considered to be extraneous under [subsections \(b\)\(1\)\(A\)](#),<sup>2481</sup> [\(b\)\(1\)\(B\)](#),<sup>2482</sup> and [\(b\)\(1\)\(E\)](#)<sup>2483</sup> of this section to the instructions of a committee as provided in [this section](#).<sup>2484</sup> The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of the Senate.

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*A list of material considered to be extraneous*—Both the Chair and the Ranking Minority Member of the Budget Committee have submitted such lists.<sup>2485</sup>

*The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of the Senate.*—

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<sup>2479</sup> There once were two subsections (c), here and what is now subsection (d), *infra* p. 743. The Budget Enforcement Act of 1990 added both at the end of what used to be the Byrd Rule. Budget Enforcement Act § 13214(a)(8) added this subsection and Budget Enforcement Act § 13214(b)(2)(C) redesignated it as subsection (c). Budget Enforcement Act § 13214(b)(2)(B) repealed what used to be subsection (c), which read: “(c) This section shall become effective on the date of enactment of this title and shall remain in effect until September 30, 1992.” By virtue of this repeal of the expiration provision, the Byrd Rule is permanent law.

<sup>2480</sup> [Congressional Budget Act of 1974 § 310](#), 2 U.S.C. § 641, *supra* p. 514, addresses “Reconciliation.”

<sup>2481</sup> [Congressional Budget Act of 1974 § 313\(b\)\(1\)\(A\)](#), 2 U.S.C. § 644(b)(1)(A), *supra* p. 655, addresses provisions without deficit effect.

<sup>2482</sup> [Congressional Budget Act of 1974 § 313\(b\)\(1\)\(B\)](#), 2 U.S.C. § 644(b)(1)(B), *supra* p. 674, addresses provisions that worsen the deficit where the title fails to comply with instructions.

<sup>2483</sup> [Congressional Budget Act of 1974 § 313\(b\)\(1\)\(E\)](#), 2 U.S.C. § 644(b)(1)(E), *supra* p. 735, addresses provisions that worsen the deficit in years after those reconciled.

<sup>2484</sup> [Congressional Budget Act of 1974 § 313](#), 2 U.S.C. § 644, *supra* p. 642, addresses “Extraneous Matter in Reconciliation Legislation.”

<sup>2485</sup> See, e.g., 161 CONG. REC. S8251 (daily ed. Dec. 2, 2015) (statement of Sen. Enzi); 156 CONG. REC. S1867 (daily ed. Mar. 23, 2010) (statement of Sen. Conrad); 153 CONG. REC. S11,207 (daily ed. Sept. 6, 2007) (statement of Sen. Conrad); 152 CONG. REC. S4443 (daily ed. May 11, 2006) (statement of Sen. Gregg); 151 CONG. REC. S14,025–26 (daily ed. Dec. 19, 2005) (statement of Sen. Gregg); *id.* at S13,140–41 (daily ed. Nov. 17, 2005) (statement of Sen. Gregg); *id.* at S12,522 (daily ed. Nov. 8, 2005) (statement of Sen. Gregg); *id.* at S24,579–81 (Nov. 2, 2005) (statement of Sen. Conrad); *id.* at S12,342–44 (daily ed. Nov. 3, 2005) (statement of Sen. Gregg); 149 CONG. REC. S6969 (daily ed. May 22, 2003) (statement of Sen. Nickles); *id.* at S6470 (daily ed. May 15, 2003) (statement of Sen. Nickles); 147 CONG. REC. S5774 (daily ed. May 26, 2001) (statement of Sen. Domenici); *id.* at S5102 (daily ed. May 17, 2001) (statement of Sen. Domenici); 146 CONG. REC. S7106 (daily ed. July 18, 2000) (statement of Sen. Domenici); 145 CONG. REC. S10,374 (daily ed. Aug. 5, 1999) (statement of Sen. Domenici); *id.* at S9929 (daily ed. July 30, 1999) (statement of Sen. Domenici); 139 CONG. REC. S15,832–40 (daily ed. Oct. 26, 1995) (statements of Sens. Domenici & Exon).

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This proviso states a self-evident fact: Such lists are judgments of the Budget Committee, not the Presiding Officer. But the inclusion of a provision on the Budget Committee's list should be dispositive for decisions for which the Budget Committee determines the score, as with violations of subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E). And the absence of a provision from the minority's list is good evidence that the minority did not consider the provision to be subject to challenge. Even so, the Parliamentarian has viewed these lists as a lesser form of evidence, inferior to the Parliamentarian's own decisions. Thus, citing this proviso, the Parliamentarian has written dismissively of these lists, saying:

Both 529's and 530's [forms of tax-favored savings accounts] have been amended in reconciliation, with 530's having been created in reconciliation, though there is no evidence that any of these provisions were challenged or on any Byrd list. It is important to note that the precedential value of these occurrences is reduced where there were no rulings or challenges made or advice given. With respect to Byrd lists, 313(c) specifically states that Byrd lists are not dispositive on the issue of extraneousness.<sup>2486</sup>

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<sup>2486</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re HR1 Guidance—conference report (Dec. 19, 2017, 3:07 PM).

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313(d)            (d)<sup>2487</sup> CONFERENCE REPORTS—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a reconciliation bill or **reconciliation resolution**<sup>2488</sup> pursuant to **section 310**,<sup>2489</sup> upon—

313(d)(1)            (1) a point of order being made by any Senator against extraneous material meeting the definition of

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<sup>2487</sup> **Balanced Budget Act of 1997**, Pub. L. No. 105-33, § 10113(b)(1)(A), 111 Stat. 251, 688, struck “(c) When” and inserted “(d) CONFERENCE REPORTS—When” here. Formerly section 313 had two subsections (c), here and *supra* p. 745. The **Budget Enforcement Act of 1990** added both at the end of what used to be the Byrd Rule. Budget Enforcement Act of 1990 § 13214(b)(3) transferred this subsection from S. Res. 286, 99th Cong., **131 CONG. REC. 38,559–60** (Dec. 19, 1985) (adopted), as amended by S. Res. 509, 99th Cong., **132 CONG. REC. 32,372–73** (Oct. 16, 1986) (adopted). For the history of these Senate Resolutions, see *infra* p. 751. Budget Enforcement Act § 13214(b)(2)(B) repealed what used to be subsection (c), which read: “(c) This section shall become effective on the date of enactment of this title and shall remain in effect until September 30, 1992.” The Byrd Rule is thus permanent law.

<sup>2488</sup> **Congressional Budget Act of 1974 § 310(b)**, 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.”

<sup>2489</sup> **Congressional Budget Act of 1974 § 310**, 2 U.S.C. § 641, *supra* p. 514, addresses “Reconciliation.”

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subsections (b)(1)(A),<sup>2490</sup> (b)(1)(B),<sup>2491</sup> (b)(1)(D),<sup>2492</sup>  
(b)(1)(E),<sup>2493</sup> or (b)(1)(F),<sup>2494</sup> and

313(d)(2) (2) such point of order being sustained,<sup>2495</sup>

such material contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed, without intervening action or motion, to consider

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<sup>2490</sup> Congressional Budget Act of 1974 § 313(b)(1)(A), 2 U.S.C. § 644(b)(1)(A), *supra* p. 655, addresses provisions without deficit effect. For examples of the application of this subsection to conference reports, see 141 CONG. REC. S17,315–27 (daily ed. Nov. 17, 1995) (Exon point of order under subsections (b)(1)(A) and (b)(1)(D) against sections 8001 and 13301 of the bill as proposed by the conference report on application of antitrust rule to provider-sponsored organizations (Medicare Plus) and exemption of physician office laboratories; Abraham motion to waive rejected 54-45; point of order sustained); 143 CONG. REC. S8449–51 (daily ed. July 31, 1997) (Durbin point of order against section 1604(f)(3) of the conference committee-reported bill crediting a new cigarette tax against the global settlement; Roth motion to waive approved 78-22); 163 CONG. REC. S8101, S8141 (daily ed. Dec. 19, 2017) (Wyden point of order against section 11000(a) of the conference committee-reported bill creating the proposed law’s short title; Enzi motion to waive rejected 51-48; point of order sustained).

<sup>2491</sup> Congressional Budget Act of 1974 § 313(b)(1)(B), 2 U.S.C. § 644(b)(1)(B), *supra* p. 674, addresses provisions that worsen the deficit where the title fails to comply with instructions. Budget Enforcement Act of 1990 § 13214(b)(4)(E) added this reference to subsection (b)(1)(B). See *infra* p. 749 for a discussion of the applicability of subsection (b)(1)(B) to conference reports.

<sup>2492</sup> Congressional Budget Act of 1974 § 313(b)(1)(D), 2 U.S.C. § 644(b)(1)(D), *supra* p. 690, addresses provisions with deficit effects “which are merely incidental to the non-budgetary components of the provision.” For examples of the application of this subsection to conference reports, see 141 CONG. REC. S17,315–27 (daily ed. Nov. 17, 1995) (Exon point of order under subsections (b)(1)(A) and (b)(1)(D) against sections 8001 and 13301 of the bill as proposed by the conference report on application of antitrust rule to provider-sponsored organizations (Medicare Plus) and exemption of physician office laboratories; Abraham motion to waive rejected 54-45; point of order sustained); 163 CONG. REC. S8101, S8141 (daily ed. Dec. 19, 2017) (Wyden point of order against, in Senator Wyden’s words, “a provision allowing for the use of 529 savings accounts for home schooling expenses . . . and part of the criteria used to determine whether the endowments of private universities are subject to the legislation’s new excise tax”; Enzi motion to waive rejected 51-48; point of order sustained).

<sup>2493</sup> Congressional Budget Act of 1974 § 313(b)(1)(E), 2 U.S.C. § 644(b)(1)(E), *supra* p. 735, addresses provisions that worsen the deficit in years after those reconciled. Budget Enforcement Act of 1990 § 13214(b)(4)(E) added this reference.

<sup>2494</sup> Congressional Budget Act of 1974 § 313(b)(1)(F), 2 U.S.C. § 644(b)(1)(F), *supra* p. 740, addresses provisions that deal with Social Security. Budget Enforcement Act of 1990 § 13214(b)(4)(E) added this reference.

<sup>2495</sup> For examples of the application of this section to conference reports, see 141 CONG. REC. S17,315–27 (daily ed. Nov. 17, 1995) (Exon point of order under subsections (b)(1)(A) and (b)(1)(D) against sections 8001 and 13301 of the bill as proposed by the conference report on application of antitrust rule to provider-sponsored organizations (Medicare Plus) and exemption of physician office laboratories; Abraham motion to waive rejected 54-45; point of order sustained); 143 CONG. REC. S8449–51 (daily ed. July 31, 1997) (Durbin point of order against section 1604(f)(3) of the conference committee-reported bill crediting a new cigarette tax against the global settlement; Roth motion to waive approved 78-22); 151 CONG. REC. S14,203–05 (daily ed. Dec. 21, 2005) (Conrad point of order under subsection (b)(1)(A) against provisions in the conference report for the Deficit Reduction Act of 2005 calling for reports by the Secretary of Health and Human Services and MEDPAC on a value-based purchasing program and under subsection (b)(1)(D) against a section that, in Sen. Conrad’s words, “allows hospitals to deny treatment to low-income individuals who are unable to pay”; Gregg motion to waive failed 52-48).

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the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable for two hours. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of [this subsection](#)<sup>2496</sup>), no further amendment shall be in order.

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**(b)(1)(B)**—Subsection (b)(1)(B) concerns provisions that worsen the deficit where the title fails to comply with instructions.<sup>2497</sup> The Parliamentarian advised in July 1993 that it was impossible to apply subsection (b)(1)(B) to conference reports, as the bill recommended by a conference committee could well meld the work of several committees.<sup>2498</sup> But in December 2005, the Parliamentarian agreed that subsection (b)(1)(B) applies against a provision of a reconciliation conference report that increases outlays in a title in which a committee failed to meet its instructions.<sup>2499</sup> When asked “what the remedy is if the conference report comes back below instructed levels,”<sup>2500</sup> the Parliamentarian replied:

At a minimum, if the conference report comes in below the instructed level of savings that means that at least one of the instructed committees has failed to meet its savings instructions, and any provision in that committee’s material that increases outlays is Byrdable because it violates section 313(b)(1)(B) of the budget act. If the point of order is made and sustained, the report falls and section 313(d) kicks in, and we have 2 hours of debate on agreeing to send to the House the language of the report minus whatever was Byrded out.<sup>2501</sup>

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<sup>2496</sup> [Congressional Budget Act of 1974 § 310\(d\)](#), 2 U.S.C. § 641(d), *supra* p. 544, addresses “Limitation on Amendments to Reconciliation Bills and Resolutions.”

<sup>2497</sup> [Congressional Budget Act of 1974 § 313\(b\)\(1\)\(B\)](#), 2 U.S.C. § 644(b)(1)(B), *supra* p. 674.

<sup>2498</sup> See WILLIAM G. DAUSTER, [BUDGET PROCESS LAW ANNOTATED: 1993 EDITION](#) 217 n.600 (Comm. Print 1993).

<sup>2499</sup> See E-mail from Staff of S. Comm. on the Budget to Staff of S. Comm. on the Budget re Ag and the Byrd Rule (Dec. 19, 2005, 8:17 PM).

<sup>2500</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian **Error! Bookmark not defined.** re remedy if conference report fails to meet instructions? (Dec. 8, 2005, 9:30 AM).

<sup>2501</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re remedy if conference report fails to meet instructions? (Dec. 8, 2005, 10:50 AM).

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When Budget Committee counsel followed up to ask, “what if there are no increases in outlays in that committee’s title? What if there is no [committee] title at all?,”<sup>2502</sup> the Parliamentarian replied: “Good question. I don’t know off the top of my head if there are any consequences that would apply to the consideration of the conference report itself. It doesn’t make sense to bar the consideration of a reconciliation bill solely on the basis that it doesn’t meet the anticipated savings.”<sup>2503</sup>

More recently, the Parliamentarian has affirmed that, at a minimum, if a conference report as a whole recommends deficit reduction below the total instructed level of deficit reduction, that means that at least one of the instructed committees failed to meet the deficit reduction instructions, and any provision in that material that worsens the deficit would violate subsection (b)(1)(B).<sup>2504</sup> It might be unclear in such a circumstance how the Congressional Budget Office, the Budget Committee, or the Parliamentarian would attribute provisions recommended by the conference committee to respective Senate committees. It appears that where a conference report failed to meet its aggregate instructions, the Parliamentarian would hear a challenge and require the question of whether and how subsection (b)(1)(B) applied to be litigated.<sup>2505</sup>

**(b)(1)(C)**—Note that section 313(d)(1) does not list subsection (b)(1)(C). A House Budget Committee print reported:

Of the six definitions of “extraneous” provisions, five are listed here. Subparagraph (C) in subsection (b) is not included: That subparagraph states a “provision that is not in the jurisdiction of the Committee with jurisdiction over said title or provision shall be considered extraneous”. As of 2015, the Senate Parliamentarian has advised that any provision in a reconciliation bill not within the jurisdiction of a Senate Committee given reconciliation directives, may cause a measure to not qualify for reconciliation privilege.<sup>2506</sup>

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<sup>2502</sup> E-mail from Staff of S. Comm. on the Budget to Off. of S. Parliamentarian re remedy if conference report fails to meet instructions? (Dec. 8, 2005, 11:00 AM).

<sup>2503</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re remedy if conference report fails to meet instructions? (Dec. 8, 2005, 11:36 AM).

<sup>2504</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget (July 31, 2021, 9:45 AM). In this meeting, the Parliamentarian cited an E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget (2005).

<sup>2505</sup> See E-mail from Staff of S. Majority Leader to Staff of S. Comm. on the Budget & Staff of S. Majority Leader re House versus Senate question (Aug. 4, 2021, 7:00 PM) (reporting a conversation that afternoon with the Parliamentarian).

<sup>2506</sup> PAUL A. RESTUCCIA, STAFF OF H. COMM. ON THE BUDGET, 114TH CONG., [A COMPENDIUM OF LAWS AND RULES OF THE CONGRESSIONAL BUDGET PROCESS](#) 88 n.82 (Comm. Print 2015).

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Discussing this in 2021, the Parliamentarian affirmed this footnote in the House Budget Committee print. The Parliamentarian also reported that the Parliamentarian's office has advised that if a conference report contains matter outside the jurisdictions of the instructed committees, then that matter would, at a minimum, certainly be outside the scope of the conference (in violation of Senate Rule XXVIII, paragraph 3).<sup>2507</sup>

***Legislative History***—Section 13214(b)(3) of the Budget Enforcement Act of 1990 transferred this subsection (c) from Senate Resolution 286 (99th Congress, 1st Session), as amended by Senate Resolution 509 (99th Congress, 2d Session).

On December 19, 1985, Senator Simpson, on behalf of Senators Armstrong, Roth, and Domenici, introduced a Senate Resolution 286 to apply the Byrd Rule to conference reports. As agreed to that day, that resolution read as follows:

S. RES. 286

RESOLVED, That when the Senate is considering a conference report or House amendment with respect to a reconciliation bill or reconciliation resolution pursuant to section 310 of the Budget Act, upon a point of order being made by any Senator against extraneous material meeting the definition of subsections (d)(1)(A) and (d)(1)(D) of section 1201 of the Consolidated Omnibus Budget Reconciliation Act of 1985, and such point of order is sustained, any part of such report or amendment containing such material shall be deemed stricken, but it shall be in order to continue consideration of the remainder under the Rules and practices of the Senate and applicable law. An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this resolution, as well as to waive or suspend the provisions of this resolution.

The provisions of this resolution shall remain in effect until the date of termination of section 1201 of the Consolidated Omnibus Budget Reconciliation Act of 1985.<sup>2508</sup>

Senator Roth described the resolution:

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<sup>2507</sup> Meeting of Off. of S. Parliamentarian, Staff of S. Majority Leader & Staff of S. Comm. on the Budget (July 31, 2021, 9:45 AM).

<sup>2508</sup> 131 CONG. REC. S18,255 (daily ed. Dec. 19, 1985).

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Mr. ROTH. Mr. President, the purpose of this resolution is to remedy a possible unintended result of the Byrd amendment to the reconciliation bill, section [20001] of the Consolidated Omnibus Budget Reconciliation Act of 1985.

That provision imposes a discipline upon this body which is not imposed on the other body. Basically, it requires that Senators not place extraneous provisions in reconciliation bills and resolutions.

However, if Members of the other body are free to load up their bills and resolutions with extraneous provisions, I fear that our body will be at a disadvantage within respect to the other body. Since we cannot tell the other body how to conduct its business, the solution is to create a new Senate procedure for handling extraneous material originating in the other body and coming to us as part of a House amendment or a conference report. The situation is analogous to that in the other body when we send provisions to them which would violate their rule on germaneness if offered there rather than here.

The other body's response to that situation has been to adopt clauses 4 and 5 of rule XXVIII of the House rules. The remedy proposed here is similar. It would permit a point of order to be raised against the extraneous material in House amendments or conference reports. With respect to a House amendment, if such point of order is sustained, the effect will be like that of a successful motion to strike out the offending language, and the Senate will be able to consider and act upon the remainder, if any, of the amendment.

With respect to a conference report, if such point of order is sustained, the effect will be like that under rule XXVIII of the House rules; the Senate will be able, for example, to request further conference or to insist on its disagreement or to recede and concur in the House amendment with an amendment incorporating the remainder of the text of the conference report or any other permissible variation which does not revive the provision deemed stricken by the successful point of order.

It should be noted that points of order may be made only with respect to two of the four categories of extraneous material in [the Byrd Rule]. This is because the two categories omitted are not applicable to matters to be transacted between the Houses. Moreover, it is intended that the remaining two categories be applied without reference to any instructions that may have been given to committees. Thus points of order may be raised against a provision which does not produce a change in outlays or revenues or which produces a change which is merely incidental to the nonbudgetary components of the provision.



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I believe that this resolution is a necessary step to protect the prerogatives of this body. With this protection, the Byrd amendment will be able to achieve a necessary reform without disadvantaging this body.<sup>2509</sup>

Clauses 4 and 5 of House Rule XXVIII (to which Senator Roth referred) provided:

4. (a) With respect to any report of a committee of conference called up before the House containing any matter which would be in violation of the provisions of clause 7 of Rule XVI if such matter had been offered as an amendment in the House, and which—

(1) is contained in any Senate amendment to that measure (including a Senate amendment in the nature of a substitute for the text of that measure as passed by the House) accepted by the House conferees or agreed to by the conference committee with modification; or

(2) is contained in any substitute agreed to by the conference committee; it shall be in order, at any time after the reading of the report has been completed or dispensed with and before the reading of the statement, or immediately upon consideration of a conference report if clause 2(c) of this rule applies, to make a point of order that such nongermane matter, as described above, which shall be specified in the point of order, is contained in the report.

For the purposes of this clause, matter which—

(A) is contained in any substitute agreed to by the conference committee;

(B) is not proposed by the House to be included in the measure concerned as passed by the House; and

(C) would be in violation of clause 7 of Rule XVI if such matter had been offered in the House as an amendment to the provisions of that measure as so proposed in the form passed by the House;

shall be considered in violation of such clause 7.

(b) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order

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<sup>2509</sup> 131 CONG. REC. S18,255 (daily ed. Dec. 19, 1985). The Senate then agreed to the resolution by a voice vote. *See id.*

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to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(c) Notwithstanding the final disposition of any point of order made under paragraph (a), or of any motion to reject made pursuant to a point of order under paragraph (b), of this clause, it shall be in order to make further points of order on the ground stated in such paragraph (a), and motions to reject pursuant thereto under such paragraph (b), with respect to other nongermane matter in the report of the committee of conference not covered by any previous point of order which has been sustained.

(d) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the conference report shall be considered as rejected and the question then pending before the House shall be—

(1) whether to recede and concur in the Senate amendment with an amendment which shall consist of that portion of the conference report not rejected; or

(2) if the last sentence of paragraph (a) of this clause applies, whether to insist further on the House amendment.

If all such motions to reject are defeated, then, after the allocation of time for debate on the conference report as provided in clause 2(a) of this Rule, it shall be in order to move the previous question on the adoption of the conference report.

5. (a)(1) With respect to any amendment (including an amendment in the nature of a substitute) which—

(A) is proposed by the Senate to any measure and thereafter—

(i) is reported in disagreement between the two Houses by a committee of conference; or

(ii) is before the House, the stage of disagreement having been reached; and

(B) contains any matter which would be in violation of the provisions of clause 7 of Rule XVI if such matter had been offered as an amendment in the House;

it shall be in order, immediately after a motion is offered that the House recede from its disagreement to such amendment proposed by the Senate and concur therein and before debate is commenced on such motion, to make a point of order that such nongermane matter, as described above,

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which shall be specified in the point of order, is contained in such amendment proposed by the Senate.

(2) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(3) Notwithstanding the final disposition of any point of order made under subparagraph (1), or of any motion to reject made pursuant to a point of order under subparagraph (2), of this paragraph, it shall be in order to make further points of order on the ground stated in such subparagraph (1), and motions to reject pursuant thereto under such subparagraph (2), with respect to other nongermane matter in the amendment proposed by the Senate not covered by any previous point of order which has been sustained.

(4) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the motion to recede and concur shall be considered as rejected, and further motions —

(A) to recede and concur in the Senate amendment with an amendment, where appropriate (but the offering of which is not in order unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration);

(B) to insist upon disagreement to the Senate amendment and request a further conference with the Senate; and

(C) to insist upon disagreement to the Senate amendment;

shall remain of high privilege for consideration by the House. If all such motions to reject are defeated, then, after the allocation of time for debate on the motion to recede and concur as provided in clause 2(b) of this Rule, it shall be in order to move the previous question on such motion.

(b)(1) With respect to any such amendment proposed by the Senate as described in paragraph (a) of this clause, it shall not be in order to offer any motion that the House recede from its disagreement to such Senate amendment and concur therein with an amendment, unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration.

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(2) Immediately after any such motion is offered and is in order and before debate is commenced on such motion, it shall be in order to make a point of order that nongermane matter, as described in subparagraph (1) of paragraph (a) of this clause, which shall be specified in the point of order, is contained in the language of the Senate amendment, as proposed by to be amended by such motion, copies of which are then available on the floor.

(3) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(4) Notwithstanding the final disposition of any point of order under subparagraph (2), or of any motion to reject made pursuant to a point of order under subparagraph (3), of this paragraph, it shall be in order to make further points of order on the ground stated in subparagraph (1) of paragraph (a) of this clause, and motions to reject pursuant thereto under subparagraph (3) of this paragraph, with respect to other nongermane matter in the language of the Senate amendment, as proposed to be amended by the motion described in subparagraph (1) of this paragraph, not covered by any previous point of order which has been sustained.

(5) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this paragraph, the motion to recede and concur in the Senate amendment shall be considered as rejected, and further motions —

(A) to recede and concur in the Senate amendment with an amendment, where appropriate (but the offering of which is not in order unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration);

(B) to insist upon disagreement to the Senate amendment and request a further conference with the Senate; and

(C) to insist upon disagreement to the Senate amendment;

shall remain of high privilege for consideration by the House. If all such motions to reject are defeated, then, after the allocation of time for debate on the motion to recede and concur in the Senate amendment with an amendment as provided in clause 2(b) of this Rule, it shall be in order to move the previous question on such motion.

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(c) If, on a division of a motion that the House recede and concur, with or without amendment, from its disagreement to any such Senate amendment as described in paragraph (a)(1) of this clause, the House agrees to recede, then, before debate is commenced on concurring in such Senate amendment, or on concurring therein with an amendment, it shall be in order to make and dispose of points of order and motions to reject with respect to such Senate amendment in accordance with applicable provisions of this clause and to effect final determination of these matters in accordance with such provisions.<sup>2510</sup>

On October 16, 1986, Senator Simpson introduced another Senate Resolution, on behalf of Senators Roth, Domenici, and Chiles, modifying the earlier resolution. That resolution<sup>2511</sup> read much as does subsection (d) now.

Again, Senator Roth explained the resolution:

Mr. ROTH. Mr. President, on December 19, 1985, the Senate adopted Senate Resolution 286, which I authored. The purpose of Senate Resolution 286 was to extend the prohibition against extraneous matter in reconciliation bills and resolutions, popularly known as the Byrd rule after its distinguished author, to House language coming over to us either in a conference report or as a House amendment. But for Senate Resolution 286, the Senate would have been in a position of imposing a much needed discipline on itself while facing the prospect that the House could load down reconciliation bills and resolutions with all kinds of extraneous matter.

When the Senate considered Senate Resolution 286, I noted its similarity to rule XXVIII of the House rules by which the House seeks to protect itself against Senate provisions that would violate House rules on germaneness if offered there.

Under Senate Resolution 286, when the point of order against extraneous matter is made and sustained, the offending language is deemed stricken and the Senate is permitted to consider the remainder “under the rules and practices of the Senate and applicable law.”

In contrast, in the analogous situation under rule XXVIII of the House rules, after the offending language is deemed stricken, the opportunity to debate and to make further amendments is restricted under the rule and the practices of the House. In practical terms this means that one making a

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<sup>2510</sup> HOUSE RULE XXVIII(4)–(5) (1988).

<sup>2511</sup> S. Res. 509, 99th Cong., [132 CONG. REC. 32,372–73](#) (Oct. 16, 1986) (adopted).

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point of order does not have to overcome the burden that his or her success might unravel all the negotiations that led up to the conference report or amendment in question.

Therefore, on reflection, it is my considered opinion that Senate Resolution 286 needs to be amended so that successful points of order intended to surgically remove offending language, do not provide the occasion for unraveling the remaining language of conference reports which Senate conferees have worked out in conference.

The amendment to Senate Resolution 286 would preserve the original purpose of that resolution but would further refine the implementation, in the case of conference reports or House amendments, by limiting debate and, in the case of conference reports, by precluding amendments.

Conference reports as such are not subject to amendment. It would be highly inappropriate, therefore, to allow such language to become amendable once extraneous matter is removed by a successful point of order. Unfortunately, that result would occur without the adoption of the pending resolution because a conference report falls as a matter of parliamentary law when a successful point of order is made against it. And when the conference report falls, the last amendment or amendments are before this body subject to further debate and further action.

But this result is contrary to the special purpose of Senate Resolution 286. Such a result would make it more difficult to police our policy against extraneous matter. For if a Senator desiring to make a point of order against extraneous matter realizes that his success could cause the entire conference agreement to become amendable, then he would be inclined to go forward guided more by his position on the substance of the conference agreement than by his desire to enforce Senate policy on extraneous matter. That would be unfortunate.

The pending resolution would change that result. It would allow a successful point of order to excise the offending language in a conference report and would, in effect, treat the remaining language in the same way we treat conference reports, that is, as not subject to amendment.

House amendments, like conference reports, would be subject to the provision limiting debate. However, House amendments would be subject to further amendment since, unlike a conference report, they have not been agreed to by the Senate.

The resolution also treats the situation where the House has sent us an amendment containing extraneous matter and the Senate is considering a Senate amendment to the House amendment containing such extraneous matter. This kind of Senate amendment is included within the phrase

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“amendment between the Houses” in the pending resolution. This kind of Senate amendment to a House amendment would be subject to the same procedure as would the House amendment.

It should also be noted that more than one point of order may be made against a conference report or amendment between the Houses. In the case of Senate consideration of conference reports, it should be noted that a second point of order would be made against the resulting Senate amendment created by operation of this resolution upon a successful point of order being made. It cannot be made against the conference report because it is no longer before the body. That is why the phrase “Senate amendment derived from such conference report by operation of this resolution” is included in the resolution; such amendments are basically treated under the procedure for conference reports. This means they are not amendable.

In my opinion, the procedural refinements contained in the pending resolution are necessary to implement the original purpose of Senate Resolution 286 and should be adopted.<sup>2512</sup>

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<sup>2512</sup> 132 CONG. REC. S16,415 (daily ed. Oct. 16, 1986). The Senate then agreed to that resolution by a voice vote. *See id.*

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313(e)        (e) **GENERAL POINT OF ORDER.**—Notwithstanding any other law or rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a bill, resolution, amendment, motion, or conference report violate [this section](#).<sup>2513</sup> The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some of the provisions (including provisions of an amendment, motion, or conference report) against which the Senator raised the point of order, then only those provisions (including provisions of an amendment, motion, or conference report) against which the Presiding Officer sustains the point of order shall be deemed stricken pursuant to [this section](#).<sup>2514</sup> Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

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*General Point of Order*—There have been several examples of such general points of order.<sup>2515</sup>

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<sup>2513</sup> [Congressional Budget Act of 1974 § 313](#), 2 U.S.C. § 644, *supra* p. 642, addresses “Extraneous Matter in Reconciliation Legislation.”

<sup>2514</sup> [Congressional Budget Act of 1974 § 313](#), 2 U.S.C. § 644, *supra* p. 642, addresses “Extraneous Matter in Reconciliation Legislation.”

<sup>2515</sup> *E.g.*, 139 CONG. REC. S7926, S7928 (daily ed. June 24, 1993) (Packwood point of order under subsection (b)(1)(A) against scattered committee-reported language regarding childhood immunizations and tax-return-preparer standards; sustained without vote as to most provisions challenged); 141 CONG. REC. S16,026, S16,049–53 (daily ed. Oct. 27, 1995) (Exon point of order under subsection (b)(1)(A) and other subparagraphs against 49 provisions; Domenici motion to waive for some of the provisions rejected 53–46; point of order sustained against 46 provisions, which were stricken; not sustained against 3 provisions, which remained in bill); *id.* at S17,315–27 (daily ed. Nov. 17, 1995) (Exon point of order under subsections (b)(1)(A) and (b)(1)(D) against sections 8001 and 13301 of the bill as proposed by the conference report on application of antitrust rule to provider-sponsored organizations (Medicare Plus) and exemption of physician office laboratories; Abraham motion to waive rejected 54–45; point of order sustained); 142 CONG. REC. S8423–24 (daily ed. July 22, 1996), *id.* at S8506–09 (daily ed. July 23, 1996) (Exon point of order under subsections (b)(1)(A), (b)(1)(C), and (b)(1)(D) raised July 22 against 25 provisions; Domenici motion to waive on 3



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Even before enactment of subsection (e), the Senate frequently addressed extraneous matter in reconciliation bills in an omnibus fashion, usually by unanimous consent.<sup>2516</sup>

After disposition of any such general motion to waive, further motions to waive the Rule with regard to particular provisions are still in order.<sup>2517</sup> On October 27, 1995, after the Senate rejected a Domenici general motion to waive the Rule for several provisions against which Senator Exon had raised a general point of order, the following exchange took place:

The PRESIDING OFFICER. Will the Senator withhold for the Chair to state one problem?

Mr. DOLE. The Chair is not going to rule.

The PRESIDING OFFICER. No, but I wish to state that the Chair has been informed that each of these extraneous provisions is subject to a motion to waive. It would be incumbent on the Chair somehow to get an agreement with the Senate how to handle this. We have never handled such a massive list of extraneous provisions before.

....

Mr. DOLE. Mr. President, I think rather than take further time of the Senate tonight, we can knock all the other provisions out in conference with the Byrd rule, the very selective list sent up by the Democrats. We can take care of the other provisions in a conference. They are also subject to the Byrd rule. So, I think rather than do that here this evening, we will take care of those in conference. Let the Chair rule, en bloc.

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provisions for which the point of order applied under subsection (b)(1)(A)—on a family cap for welfare benefits rejected 42-57, on allowing delivery of social services through religious charities approved 67-32, on abstinence education programs rejected 52-46; point of order sustained July 23 against 23 provisions, which were stricken from the bill, not sustained against 1 provision, which remained in the bill, and waived for 1 provision, which remained in the bill); 143 CONG. REC. S6320 (daily ed. June 25, 1997) (Daschle point of order apparently under subsection (b)(1)(C) against § 5713 (“No Waiver Required for Provider Selectivity”), § 5833 (“Clarifying Provision Relating to Base Periods”), and § 5987 (repealing various provisions of education laws) of the Finance Committee-reported bill; no motion to waive; point of order sustained).

<sup>2516</sup> See, e.g., Senate Precedent PRL19810622-001; 127 CONG. REC. 13,209–11 (June 22, 1981); FLOYD M. RIDDICK & ALAN S. FRUMIN, RIDDICK’S SENATE PROCEDURE 624 (1992) (omnibus leadership amendment); 135 CONG. REC. S13,349–57 (daily ed. Oct. 13, 1989); FLOYD M. RIDDICK & ALAN S. FRUMIN, RIDDICK’S SENATE PROCEDURE 624 (1992) (same); 136 CONG. REC. S15,771 (daily ed. Oct. 18, 1990); FLOYD M. RIDDICK & ALAN S. FRUMIN, RIDDICK’S SENATE PROCEDURE 625 (1992) (two Metzenbaum points of order considered en bloc, without objection). For debate on omnibus leadership amendments, see *supra* p. 622.

<sup>2517</sup> See 141 CONG. REC. S16,051–53 (daily ed. Oct. 27, 1995) (Exon point of order against 49 provisions; Domenici motion to waive for some of the provisions rejected 53-46).

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The PRESIDING OFFICER. The Chair is prepared to rule pursuant to the general order provisions that were added to the Byrd rule in 1990. And the Chair, on the advice of the Parliamentarian, does rule that of the 49 items listed on extraneous provisions, 46 are well taken, 3 are not.<sup>2518</sup>

In March 2017, the Parliamentarian reaffirmed that a Senator can raise a single point of order against multiple Byrd Rule violations, and another Senator can choose either a global waiver or individual waivers.<sup>2519</sup>

**Legislative History** – The Budget Enforcement Act of 1990 added this subsection and redesignated it as subsection (d).<sup>2520</sup> The Balanced Budget Act of 1997 redesignated this subsection from subsection (d) to subsection (e).<sup>2521</sup> The Budget Enforcement Act also redesignated what used to be subsection (d) as subsection (b).<sup>2522</sup>

The Balanced Budget Act of 1997 also struck what used to be subsection (e).<sup>2523</sup> Prior to enactment of the Balanced Budget Act of 1997, subsection (e) read: “(e) DETERMINATION OF LEVELS.—For purposes of this section, the levels of new budget authority, budget outlays, new entitlement authority, and revenue for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.” Since enactment of the Balanced Budget Act of 1997,<sup>2524</sup> Congressional Budget Act section 312(a) addresses determinations by the Budget Committees.<sup>2525</sup>

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<sup>2518</sup> *Id.*

<sup>2519</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on March 23, 2017, at 2 (Mar. 31, 2017).

<sup>2520</sup> [Budget Enforcement Act of 1990](#) §§ 13214(a)(8) & 13214(b)(2)(C).

<sup>2521</sup> [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10113(b)(1)(B), 111 Stat. 251, 688.

<sup>2522</sup> [Budget Enforcement Act of 1990](#) § 13214(b)(2)(C).

<sup>2523</sup> [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10113(b)(1)(B), 111 Stat. 251, 688.

<sup>2524</sup> [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10113(a), 111 Stat. 251, 687–88.

<sup>2525</sup> [Congressional Budget Act of 1974 § 312\(a\)](#), 2 U.S.C. § 643(a), *supra* p. 605, addresses “Budget Committee Determinations.”

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# Fiscal Procedures

**B**udget Act sections 314 through 406 set forth a variety of miscellaneous fiscal procedures. Section 314 addresses adjustments. Section 315 addresses the effect of adoption of a special order of business in the House of Representatives. Section 401 addresses budget-related legislation not subject to appropriations. Section 402 addresses analysis by Congressional Budget Office. Section 403 addresses the jurisdiction of the Appropriations Committees. Section 404 addresses a study by the Government Accountability Office of forms of Federal financial commitment not reviewed annually by Congress. Section 405 addresses off-budget agencies, programs, and activities. And section 406 addresses a Member user group.

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## ADJUSTMENTS

- 314(a) **SEC. 314.**<sup>2526</sup> **(a) ADJUSTMENTS.**— After the reporting of a bill or joint resolution or the offering of an amendment thereto or the submission of a conference report thereon, the chairman of the Committee on the Budget of the House of Representatives or the Senate may make appropriate budgetary adjustments of **new budget authority**<sup>2527</sup> and the **outlays**<sup>2528</sup> flowing therefrom in the same amount as required by **section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985**.<sup>2529</sup>
- 314(b) **(b) APPLICATION OF ADJUSTMENTS.**— The adjustments made pursuant to **subsection (a)**<sup>2530</sup> for legislation shall—
- 314(b)(1) **(1)** apply while that legislation is under consideration;
- 314(b)(2) **(2)** take effect upon the enactment of that legislation; and
- 314(b)(3) **(3)** be published in the Congressional Record as soon as practicable.
- 314(c) **(c) REPORTING REVISED SUBALLOCATIONS.**— Following any adjustment made under **subsection (a)**,<sup>2531</sup> the Committees on Appropriations of the Senate and the House of Representatives may report appropriately revised suballocations under **section 302(b)**<sup>2532</sup> to carry out **this section**.<sup>2533</sup>

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<sup>2526</sup> Congressional Budget Act of 1974 § 314 is codified as amended at 2 U.S.C. § 645.

<sup>2527</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>2528</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2529</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b), 2 U.S.C. § 901(b), *infra* p. 992, addresses “Adjustments to Discretionary Spending Limits.”

<sup>2530</sup> Congressional Budget Act of 1974 § 314(a), 2 U.S.C. § 645(a), *supra* p. 766, addresses “Adjustments.”

<sup>2531</sup> *Id.*

<sup>2532</sup> Congressional Budget Act of 1974 § 302(b), 2 U.S.C. § 633(b), *supra* p. 189, addresses “Suballocations by Appropriations Committees.”

<sup>2533</sup> Congressional Budget Act of 1974 § 314, 2 U.S.C. § 645, *supra* p. 766, addresses “Adjustments.”

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- 314(d) (d) EMERGENCIES IN THE HOUSE OF REPRESENTATIVES. —
- 314(d)(1) (1) In the House of Representatives, if a reported bill or joint resolution, or amendment thereto or conference report thereon, contains a provision providing **new budget authority**<sup>2534</sup> and **outlays**<sup>2535</sup> or reducing **revenue**,<sup>2536</sup> and a designation of such provision as an **emergency**<sup>2537</sup> requirement pursuant to [section]<sup>2538</sup> **251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985**,<sup>2539</sup> the chair of the Committee on the Budget of the House of Representatives shall not count the **budgetary effects**<sup>2540</sup> of such provision for purposes of **title III**<sup>2541</sup> and **title IV**<sup>2542</sup> of the Congressional Budget Act of 1974 and the Rules of the House of Representatives.
- 314(d)(2)(A) (2)(A) In the House of Representatives, a proposal to strike a designation under **paragraph (1)**<sup>2543</sup> shall be excluded from an evaluation of **budgetary effects**<sup>2544</sup> for

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<sup>2534</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>2535</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2536</sup> U.S. GOV’T ACCOUNTABILITY OFF., **A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS** 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2537</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *infra* p. 983, defines “emergency.” **Congressional Budget Act of 1974 § 3(11)**, 2 U.S.C. § 622(11), *supra* p. 60, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2538</sup> Congressional Budget Act of 1974 § 314 omits this word here. The House Office of the Law Revision Counsel, which maintains the U.S. Code, suggests, “Probably should be preceded by the word ‘section’.” **2 U.S.C. § 645 note**.

<sup>2539</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(A)**, 2 U.S.C. § 901(b)(2)(A), *infra* p. 994, addresses “Emergency Appropriations; Overseas Contingency Operations/Global War on Terrorism.”

<sup>2540</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *infra* p. 1151, defines “budgetary effects.”

<sup>2541</sup> **Congressional Budget Act of 1974 tit. III, §§ 300–315**, 2 U.S.C. §§ 631–645a, pp. 113–782, addresses “Congressional Budget Process.”

<sup>2542</sup> **Congressional Budget Act of 1974 tit. IV, §§ 401–428**, 2 U.S.C. §§ 651–658g, *infra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>2543</sup> **Congressional Budget Act of 1974 § 314(d)(1)**, 2 U.S.C. § 645(d)(1), *supra* p. 767.

<sup>2544</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *infra* p. 1151, defines “budgetary effects.”

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purposes of [this title](#)<sup>2545</sup> and [title IV](#)<sup>2546</sup> and the Rules of the House of Representatives.

314(d)(2)(B) (B) An amendment offered under [subparagraph \(A\)](#)<sup>2547</sup> that also proposes to reduce each amount appropriated or otherwise made available by the pending measure that is not required to be appropriated or otherwise made available shall be in order at any point in the reading of the pending measure.

314(e) (e)<sup>2548</sup> SENATE POINT OF ORDER AGAINST AN [EMERGENCY](#)<sup>2549</sup> DESIGNATION.—

314(e)(1) (1) IN GENERAL.—When the Senate is considering a bill, resolution, amendment, motion, amendment between the Houses, or conference report, if a point of order is made by a Senator against an [emergency](#)<sup>2550</sup> designation in that measure, that provision making such a designation shall be stricken from the measure and may not be offered as an amendment from the floor.

314(e)(2) (2) SUPERMAJORITY WAIVER AND APPEALS.—

314(e)(2)(A) (A) WAIVER.—[Paragraph \(1\)](#)<sup>2551</sup> may be waived or suspended in the Senate only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.

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<sup>2545</sup> [Congressional Budget Act of 1974 tit. III, §§ 300–315](#), 2 U.S.C. §§ 631–645a, pp. 113–782, addresses “Congressional Budget Process.”

<sup>2546</sup> [Congressional Budget Act of 1974 tit. IV, §§ 401–428](#), 2 U.S.C. §§ 651–658g, *infra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>2547</sup> [Congressional Budget Act of 1974 § 314\(d\)\(2\)\(A\)](#), 2 U.S.C. § 645(d)(2)(A), *supra* p. 767, addresses amendments to strike emergency designations.

<sup>2548</sup> [Congressional Budget Act of 1974 § 314\(e\)](#), 2 U.S.C. § 645(e), is no longer applicable, as there are no longer any discretionary spending limits. [Congressional Budget Act of 1974 § 314\(e\)\(3\)](#), 2 U.S.C. § 645(e)(3), *infra* p. 769, limits this subsection’s application to emergency designations regarding discretionary spending limits.

<sup>2549</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *infra* p. 983, defines “emergency.” [Congressional Budget Act of 1974 § 3\(11\)](#), 2 U.S.C. § 622(11), *supra* p. 60, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2550</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *infra* p. 983, defines “emergency.” [Congressional Budget Act of 1974 § 3\(11\)](#), 2 U.S.C. § 622(11), *supra* p. 60, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2551</sup> [Congressional Budget Act of 1974 § 314\(e\)\(1\)](#), 2 U.S.C. § 645(e)(1), *supra* p. 768, addresses “Senate Point of Order Against an Emergency Designation” “In general.”



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- 314(e)(2)(B) (B) APPEALS. — Appeals in the Senate from the decisions of the Chair relating to any provision of [this subsection](#)<sup>2552</sup> shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the bill or joint resolution, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under [this subsection](#).<sup>2553</sup>
- 314(e)(3) (3) DEFINITION OF AN [EMERGENCY](#)<sup>2554</sup> DESIGNATION. — For purposes of [paragraph \(1\)](#),<sup>2555</sup> a provision shall be considered an [emergency](#)<sup>2556</sup> designation if it designates any item pursuant to [section 251\(b\)\(2\)\(A\)\(i\) of the Balanced Budget and Emergency Deficit Control Act of 1985](#).<sup>2557</sup>
- 314(e)(4) (4) FORM OF THE POINT OF ORDER. — A point of order under [paragraph \(1\)](#)<sup>2558</sup> may be raised by a Senator as provided in [section 313\(e\) of the Congressional Budget Act of 1974](#).<sup>2559</sup>
- 314(e)(5) (5) CONFERENCE REPORTS. — When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a bill, upon a point of order being made by any Senator pursuant to [this section](#),<sup>2560</sup> and such point of order being sustained, such material contained in such conference report shall be deemed stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be,

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<sup>2552</sup> [Congressional Budget Act of 1974 § 314\(e\)](#), 2 U.S.C. § 645(e), *supra* p. 768, addresses “Senate Point of Order Against an Emergency Designation.”

<sup>2553</sup> *Id.*

<sup>2554</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *infra* p. 983, defines “emergency.” [Congressional Budget Act of 1974 § 3\(11\)](#), 2 U.S.C. § 622(11), *supra* p. 60, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2555</sup> [Congressional Budget Act of 1974 § 314\(e\)\(1\)](#), 2 U.S.C. § 645(e)(1), *supra* p. 768, addresses “Senate Point of Order Against an Emergency Designation” “In general.”

<sup>2556</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *infra* p. 983, defines “emergency.” [Congressional Budget Act of 1974 § 3\(11\)](#), 2 U.S.C. § 622(11), *supra* p. 60, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2557</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251\(b\)\(2\)\(A\)\(i\)](#), 2 U.S.C. § 901(b)(2)(A)(i), *infra* p. 994.

<sup>2558</sup> [Congressional Budget Act of 1974 § 314\(e\)\(1\)](#), 2 U.S.C. § 645(e)(1), *supra* p. 768, addresses “Senate Point of Order Against an Emergency Designation” “In general.”

<sup>2559</sup> [Congressional Budget Act of 1974 § 313\(e\)](#), 2 U.S.C. § 644(e), *supra* p. 760, addresses “General Point of Order.”

<sup>2560</sup> [Congressional Budget Act of 1974 § 314](#), 2 U.S.C. § 645, *supra* p. 766, addresses “Adjustments,” and includes points of order against emergency designations and exceeding discretionary spending limits.

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not so stricken. Any such motion in the Senate shall be debatable. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of [this subsection](#)<sup>2561</sup>), no further amendment shall be in order.

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*Adjustments*—The budget resolution for fiscal year 2022 and the House deeming resolution for fiscal year 2023 also address adjustments.<sup>2562</sup>

Conveying the President’s fiscal year 2023 budget request to Congress, the Director of the Office of Management and Budget wrote:

*Adjustments to Base Discretionary Funding Levels*

The 2023 Budget does not propose new caps on discretionary funding. However, the 2023 Budget does support retaining several of the adjustments used while caps were in place and retained in the Concurrent Resolution on the Budget for Fiscal Year 2022 (S. Con. Res. 14) during the 2022 appropriations process. The Budget continues to provide funds for anomalous or above-base activities such as program integrity, disaster relief, and wildfire suppression outside of the base allocation for certain accounts.<sup>2563</sup>

*Emergencies*—The budget resolution for fiscal year 2022 also addresses emergencies.<sup>2564</sup>

A House Budget Committee print provides:

Provisions designated as an emergency in legislation considered by Congress and in enacted law as interpreted by the Office of Management and Budget are treated differently. In Congress, under the terms of section 314 of the Budget Act, the amounts carrying the designation (pursuant to section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985) are not counted for purposes of enforcement. Under BBEDCA though, the amounts designated under that section, adjustments are made to the statutory spending caps (which are found in section 251(c) of that

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<sup>2561</sup> [Congressional Budget Act of 1974 § 314\(e\)](#), 2 U.S.C. § 645(e), *supra* p. 768, addresses “Senate Point of Order Against an Emergency Designation.”

<sup>2562</sup> [S. Con. Res. 14, 117th Cong. §§ 4004, 4005](#) (2021) (adopted); [H. Res. 1151, 117th Cong. § 1](#) (2022) (adopted).

<sup>2563</sup> Letter from Shalanda D. Young to Bernie Sanders (Mar. 28, 2022) (conveying “Significant Presentation and Technical Changes in the Budget of the United States Government Fiscal Year 2023”).

<sup>2564</sup> [S. Con. Res. 14, 117th Cong. § 4001](#) (2021) (adopted); [H. Res. 1151, 117th Cong. § 1\(e\)](#) (2022) (adopted).

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Act). For other provisions designated under that section of BBEDCA, adjustments are made, emergencies are unique in that they are not counted.<sup>2565</sup>

Budget Act section 314(e) is no longer applicable, as there are no longer any discretionary spending limits. Budget Act section 314(e)(3) limits this subsection's application to emergency designations regarding discretionary spending limits.<sup>2566</sup>

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<sup>2565</sup> PAUL A. RESTUCCIA, STAFF OF H. COMM. ON THE BUDGET, 114TH CONG., [A COMPENDIUM OF LAWS AND RULES OF THE CONGRESSIONAL BUDGET PROCESS](#) 40 n.12 (Comm. Print 2015).

<sup>2566</sup> [Congressional Budget Act of 1974 § 314\(e\)\(3\)](#), 2 U.S.C. § 645(e)(3), *supra* p. 769.

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- 314(f) (f)<sup>2567</sup> ENFORCEMENT OF DISCRETIONARY SPENDING CAPS.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause the [discretionary spending limits](#)<sup>2568</sup> as set forth in [section 251 of the Balanced Budget and Emergency Deficit Control Act](#)<sup>2569</sup> to be exceeded.
- 314(g) (g) ADJUSTMENT FOR REEMPLOYMENT SERVICES AND ELIGIBILITY ASSESSMENTS.—
- 314(g)(1) (1) IN GENERAL.—
- 314(g)(1)(A) (A) ADJUSTMENTS.—If the Committee on Appropriations of either House reports an appropriation measure for any of fiscal years 2022 through 2027 that provides [budget authority](#)<sup>2570</sup> for grants under [section 506 of title 42](#),<sup>2571</sup> or if a conference committee submits a conference report thereon, the chairman of the Committee on the Budget of the House of Representatives or the Senate shall make the adjustments referred to in [subparagraph \(B\)](#)<sup>2572</sup> to reflect the additional [new budget authority](#)<sup>2573</sup> provided for such grants in that measure or conference report and the [outlays](#)<sup>2574</sup> resulting therefrom, consistent with [subparagraph \(D\)](#).<sup>2575</sup>
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<sup>2567</sup> [Congressional Budget Act of 1974 § 314\(f\)](#), 2 U.S.C. § 645(f), no longer has any force or effect, as there are no longer any applicable discretionary spending caps.

<sup>2568</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *infra* p. 977 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *infra* p. 986), defines “discretionary spending limit.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *infra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2569</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *infra* p. 986, addresses “Enforcing Discretionary Spending Limits,” but the law sets no such limits beyond fiscal year 2021.

<sup>2570</sup> [Congressional Budget Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>2571</sup> [42 U.S.C. § 506](#), *infra* p. 775, addresses “Grants to States for Reemployment Services and Eligibility Assessments.”

<sup>2572</sup> [Congressional Budget Act of 1974 § 314\(g\)\(1\)\(B\)](#), 2 U.S.C. § 645(g)(1)(B), *infra* p. 773, addresses “Types of adjustments.”

<sup>2573</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>2574</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2575</sup> [Congressional Budget Act of 1974 § 314\(g\)\(1\)\(D\)](#), 2 U.S.C. § 645(g)(1)(D), *infra* p. 774, addresses “Limitation.”

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- 314(g)(1)(B) (B) TYPES OF ADJUSTMENTS.—The adjustments referred to in [this subparagraph](#)<sup>2576</sup> consist of adjustments to—
- 314(g)(1)(B)(i) (i) the [discretionary spending limits](#)<sup>2577</sup> for that fiscal year as set forth in the most recently adopted [concurrent resolution on the budget](#);<sup>2578</sup>
- 314(g)(1)(B)(ii) (ii) the allocations to the Committees on Appropriations of the Senate and the House of Representatives for that fiscal year under [section 302\(a\)](#);<sup>2579</sup> and
- 314(g)(1)(B)(iii) (iii) the appropriate budget aggregates for that fiscal year in the most recently adopted [concurrent resolution on the budget](#).<sup>2580</sup>
- 314(g)(1)(C) (C) ENFORCEMENT.—The adjusted [discretionary spending limits](#),<sup>2581</sup> allocations, and aggregates under [this paragraph](#)<sup>2582</sup> shall be considered the appropriate limits, allocations, and aggregates for purposes of congressional enforcement of [this](#)

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<sup>2576</sup> [Congressional Budget Act of 1974 § 314\(g\)\(1\)\(B\)](#), 2 U.S.C. § 645(g)(1)(B), addresses “Types of adjustments.”

<sup>2577</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *infra* p. 977 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *infra* p. 986), defines “discretionary spending limit.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *infra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2578</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>2579</sup> [Congressional Budget Act of 1974 § 302\(a\)](#), 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>2580</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>2581</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *infra* p. 977 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *infra* p. 986), defines “discretionary spending limit.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *infra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2582</sup> [Congressional Budget Act of 1974 § 314\(g\)\(1\)](#), 2 U.S.C. § 645(g)(1), *supra* p. 772, addresses “Adjustment for Reemployment Services and Eligibility Assessments” “In general.”

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**Act<sup>2583</sup> and concurrent budget resolutions<sup>2584</sup> under this Act.<sup>2585</sup>**

314(g)(1)(D) **(D) LIMITATION.—No adjustment may be made under this subsection<sup>2586</sup> in excess of—**

314(g)(1)(D)(i) **(i) for fiscal year 2022, \$133,000,000;**

314(g)(1)(D)(ii) **(ii) for fiscal year 2023, \$258,000,000;**

314(g)(1)(D)(iii) **(iii) for fiscal year 2024, \$433,000,000;**

314(g)(1)(D)(iv) **(iv) for fiscal year 2025, \$533,000,000;**

314(g)(1)(D)(v) **(v) for fiscal year 2026, \$608,000,000; and**

314(g)(1)(D)(vi) **(vi) for fiscal year 2027, \$633,000,000.**

314(g)(1)(E) **(E) DEFINITION.—As used in this subsection,<sup>2587</sup> the term “additional new budget authority”<sup>2588</sup> means the amount provided for a fiscal year, in excess of \$117,000,000, in an appropriation measure or conference report (as the case may be) and specified to pay for grants to States<sup>2589</sup> under section 506 of title 42.<sup>2590</sup>**

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<sup>2583</sup> Congressional Budget and Impoundment Control Act of 1974, 2 U.S.C. §§ 601–688, pp. 49–969.

<sup>2584</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>2585</sup> Congressional Budget and Impoundment Control Act of 1974, 2 U.S.C. §§ 601–688, pp. 49–969.

<sup>2586</sup> Congressional Budget Act of 1974 § 314(g), 2 U.S.C. § 645(g), *supra* p. 772, addresses “Adjustment for Reemployment Services and Eligibility Assessments.”

<sup>2587</sup> *Id.*

<sup>2588</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>2589</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2590</sup> 42 U.S.C. § 506, *infra* p. 775, addresses “Grants to States for Reemployment Services and Eligibility Assessments.”

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314(g)(2)

(2) REPORT ON 302(b)<sup>2591</sup> LEVEL.—Following any adjustment made under paragraph (1),<sup>2592</sup> the Committees on Appropriations of the Senate and the House of Representatives may report appropriately revised suballocations pursuant to section 302(b)<sup>2593</sup> to carry out this subsection.<sup>2594</sup>

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*Grants under section 506 of title 42*—Section 506 provides:

**§ 506. Grants to States for reemployment services and eligibility assessments**

**(a) In general**

The Secretary of Labor (in this section referred to as the “Secretary”) shall award grants under this section for a fiscal year to eligible States to conduct a program of reemployment services and eligibility assessments for individuals referred to reemployment services as described in section 503(j) of this title for weeks in such fiscal year for which such individuals receive unemployment compensation.

**(b) Purposes**

The purposes of this section are to accomplish the following goals:

(1) To improve employment outcomes of individuals that receive unemployment compensation and to reduce the average duration of receipt of such compensation through employment.

(2) To strengthen program integrity and reduce improper payments of unemployment compensation by States through the detection and prevention of such payments to individuals who are not eligible for such compensation.

(3) To promote alignment with the broader vision of the Workforce Innovation and Opportunity Act (29 U.S.C. 3101 et seq.)

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<sup>2591</sup> Congressional Budget Act of 1974 § 302(b), 2 U.S.C. § 633(b), *supra* p. 189, addresses “Suballocations by Appropriations Committees.”

<sup>2592</sup> Congressional Budget Act of 1974 § 314(g)(1), 2 U.S.C. § 645(g)(1), *supra* p. 772, addresses “Adjustment for Reemployment Services and Eligibility Assessments” “In general.”

<sup>2593</sup> Congressional Budget Act of 1974 § 302(b), 2 U.S.C. § 633(b), *supra* p. 189, addresses “Suballocations by Appropriations Committees.”

<sup>2594</sup> Congressional Budget Act of 1974 § 314(g), 2 U.S.C. § 645(g), *supra* p. 772, addresses “Adjustment for Reemployment Services and Eligibility Assessments.”

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of increased program integration and service delivery for job seekers, including claimants for unemployment compensation.

(4) To establish reemployment services and eligibility assessments as an entry point for individuals receiving unemployment compensation into other workforce system partner programs.

**(c) Evidence-based standards**

**(1) In general**

In carrying out a State program of reemployment services and eligibility assessments using grant funds awarded to the State under this section, a State shall use such funds only for interventions demonstrated to reduce the number of weeks for which program participants receive unemployment compensation by improving employment outcomes for program participants.

**(2) Expanding evidence-based interventions**

In addition to the requirement imposed by paragraph (1), a State shall—

(A) for fiscal years 2023 and 2024, use no less than 25 percent of the grant funds awarded to the State under this section for interventions with a high or moderate causal evidence rating that show a demonstrated capacity to improve employment and earnings outcomes for program participants;

(B) for fiscal years 2025 and 2026, use no less than 40 percent of such grant funds for interventions described in subparagraph (A); and

(C) for fiscal years beginning after fiscal year 2026, use no less than 50 percent of such grant funds for interventions described in subparagraph (A).

**(d) Evaluations**

**(1) Required evaluations**

Any intervention without a high or moderate causal evidence rating used by a State in carrying out a State program of reemployment services and eligibility assessments under this section shall be under evaluation at the time of use.



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## **(2) Funding limitation**

A State shall use not more than 10 percent of grant funds awarded to the State under this section to conduct or cause to be conducted evaluations of interventions used in carrying out a program under this section (including evaluations conducted pursuant to paragraph (1)).

### **(e) State plan**

#### **(1) In general**

As a condition of eligibility to receive a grant under this section for a fiscal year, a State shall submit to the Secretary, at such time and in such manner as the Secretary may require, a State plan that outlines how the State intends to conduct a program of reemployment services and eligibility assessments under this section, including –

(A) assurances that, and a description of how, the program will provide –

(i) proper notification to participating individuals of the program’s eligibility conditions, requirements, and benefits, including the issuance of warnings and simple, clear notifications to ensure that participating individuals are fully aware of the consequences of failing to adhere to such requirements, including policies related to non-attendance or non-fulfillment of work search requirements; and

(ii) reasonable scheduling accommodations to maximize participation for eligible individuals;

(B) assurances that, and a description of how, the program will conform with the purposes outlined in subsection (b) and satisfy the requirement to use evidence-based standards under subsection (c), including –

(i) a description of the evidence-based interventions the State plans to use to speed reemployment;

(ii) an explanation of how such interventions are appropriate to the population served; and

(iii) if applicable, a description of the evaluation structure the State plans to use for interventions without at least a moderate or high causal evidence rating, which may

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include national evaluations conducted by the Department of Labor or by other entities; and

(C) a description of any reemployment activities and evaluations conducted in the prior fiscal year, and any data collected on —

(i) characteristics of program participants;

(ii) the number of weeks for which program participants receive unemployment compensation; and

(iii) employment and other outcomes for program participants consistent with State performance accountability measures provided by the State unemployment compensation program and in section 116(b) of the Workforce Innovation and Opportunity Act (29 U.S.C. 3141(b)).

## **(2) Approval**

The Secretary shall approve any State plan, that is timely submitted to the Secretary, in such manner as the Secretary may require, that satisfies the conditions described in paragraph (1).

## **(3) Disapproval and revision**

If the Secretary determines that a State plan submitted pursuant to this subsection fails to satisfy the conditions described in paragraph (1), the Secretary shall —

(A) disapprove such plan;

(B) provide to the State, not later than 30 days after the date of receipt of the State plan, a written notice of such disapproval that includes a description of any portion of the plan that was not approved and the reason for the disapproval of each such portion; and

(C) provide the State with an opportunity to correct any such failure and submit a revised State plan.

## **(f) Allocation of funds**

### **(1) Base funding**

#### **(A) In general**

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For each fiscal year after fiscal year 2020, the Secretary shall allocate a percentage equal to the base funding percentage for such fiscal year of the funds made available for grants under this section among the States awarded such a grant for such fiscal year using a formula prescribed by the Secretary based on the rate of insured unemployment (as defined in section 203(e)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note)) in the State for a period to be determined by the Secretary. In developing such formula with respect to a State, the Secretary shall consider the importance of avoiding sharp reductions in grant funding to a State over time.

**(B) Base funding percentage**

For purposes of subparagraph (A), the term “base funding percentage” means —

(i) for fiscal years 2021 through 2026, 89 percent; and

(ii) for fiscal years after 2026, 84 percent.

**(2) Reservation for outcome payments**

**(A) In general**

Of the amounts made available for grants under this section for each fiscal year after 2020, the Secretary shall reserve a percentage equal to the outcome reservation percentage for such fiscal year for outcome payments to increase the amount otherwise awarded to a State under paragraph (1). Such outcome payments shall be paid to States conducting reemployment services and eligibility assessments under this section that, during the previous fiscal year, met or exceeded the outcome goals provided in subsection (b)(1) related to reducing the average duration of receipt of unemployment compensation by improving employment outcomes.

**(B) Outcome reservation percentage**

For purposes of subparagraph (A), the term “outcome reservation percentage” means —

(i) for fiscal years 2021 through 2026, 10 percent; and

(ii) for fiscal years after 2026, 15 percent.

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### **(3) Reservation for research and technical assistance**

Of the amounts made available for grants under this section for each fiscal year after 2020, the Secretary may reserve not more than 1 percent to conduct research and provide technical assistance to States.

### **(4) Consultation and public comment**

Not later than September 30, 2019, the Secretary shall –

(A) consult with the States and seek public comment in developing the allocation formula under paragraph (1) and the criteria for carrying out the reservations under paragraph (2); and

(B) make publicly available the allocation formula and criteria developed pursuant to subclause (A).

### **(g) Notification to Congress**

Not later than 90 days prior to making any changes to the allocation formula or the criteria developed pursuant to subsection (f)(5)(A), the Secretary shall submit to Congress, including to the Committee on Ways and Means and the Committee on Appropriations of the House of Representatives and the Committee on Finance and the Committee on Appropriations of the Senate, a notification of any such change.

### **(h) Supplement not supplant**

Funds made available to carry out this section shall be used to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would be expended to provide reemployment services and eligibility assessments to individuals receiving unemployment compensation, and in no case to supplant such Federal, State, or local public funds.

### **(i) Definitions**

In this section:

#### **(1) Causal evidence rating**

The terms “high causal evidence rating” and “moderate causal evidence rating” shall have the meaning given such terms by the Secretary of Labor.

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**(2) Eligible state**

The term “eligible State” means a State that has in effect a State plan approved by the Secretary in accordance with subsection (e).

**(3) Intervention**

The term “intervention” means a service delivery strategy for the provision of State reemployment services and eligibility assessment activities under this section.

**(4) State**

The term “State” has the meaning given the term in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

**(5) Unemployment compensation**

The term unemployment compensation means “regular compensation”, “extended compensation”, and “additional compensation” (as such terms are defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note)).<sup>2595</sup>

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<sup>2595</sup> 42 U.S.C. § 506.

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## EFFECT OF ADOPTION OF SPECIAL ORDER OF BUSINESS IN THE HOUSE OF REPRESENTATIVES

315        **Sec. 315.**<sup>2596</sup> — For purposes of a reported bill or joint resolution considered in the House of Representatives pursuant to a special order of business, the term “as reported” in [this title](#)<sup>2597</sup> or [title IV](#)<sup>2598</sup> shall be considered to refer to the text made in order as an original bill or joint resolution for the purpose of amendment or to the text on which the previous question is ordered directly to passage, as the case may be. In the case of a reported bill or joint resolution considered pursuant to a special order of business, a point of order under [section 303](#)<sup>2599</sup> shall be determined on the basis of the text made in order as an original bill or joint resolution for the purpose of amendment or to the text on which the previous question is ordered directly to passage, as the case may be.

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<sup>2596</sup> Congressional Budget Act of 1974 § 315 is codified as amended at [2 U.S.C. § 645a](#).

<sup>2597</sup> [Congressional Budget Act of 1974 tit. III, §§ 300–315](#), 2 U.S.C. §§ 631–645a, pp. 113–782, addresses “Congressional Budget Process.”

<sup>2598</sup> [Congressional Budget Act of 1974 tit. IV, §§ 401–428](#), 2 U.S.C. §§ 651–658g, *infra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>2599</sup> [Congressional Budget Act of 1974 § 303](#), 2 U.S.C. § 634, *supra* p. 219, addresses “Concurrent Resolution on the Budget Must Be Adopted Before Budget-Related Legislation Is Considered.”

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TITLE IV  
ADDITIONAL  
PROVISIONS TO IMPROVE FISCAL  
PROCEDURES

PART A  
GENERAL PROVISIONS

BUDGET-RELATED LEGISLATION NOT SUBJECT TO  
**APPROPRIATIONS**<sup>2600</sup>

401(a)            **SEC. 401.**<sup>2601</sup> (a) **CONTROLS ON CERTAIN BUDGET-RELATED LEGISLATION NOT SUBJECT TO APPROPRIATIONS.**— **It shall not be in order**<sup>2602</sup> in either the House of Representatives or the Senate to consider any bill or joint resolution (in the House of Representatives only, as reported), amendment, motion, or conference report that provides<sup>2603</sup> —

401(a)(1)            (1) new authority to enter into contracts<sup>2604</sup> under which the United States is obligated to make **outlays**;<sup>2605</sup>

401(a)(2)            (2) new authority to incur indebtedness (other than indebtedness incurred under **chapter 31 of title 31 of**

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<sup>2600</sup> Cf. *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(7), 2 U.S.C. § 900(c)(7), *infra* p. 980, which defines “discretionary appropriations.” *Statutory Pay-As-You-Go Act of 2010* § 3(2), 2 U.S.C. § 932(2), *infra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2601</sup> Congressional Budget Act of 1974 § 401 is codified as amended at 2 U.S.C. § 651. Congressional Budget Act of 1974 § 401 was formerly codified as 31 U.S.C. § 1351 prior to the 1982 general revision and enactment of Title 31, Money and Finance in *An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”* Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>2602</sup> For discussion of this point of order, see *infra* p. 787.

<sup>2603</sup> The Congressional Budget Act makes no exception for very small amounts; even a “negligible” violation can subject legislation to a point of order under the Budget Act. Senate Precedent PRL19761001-001, 122 CONG. REC. 34,550–51 (Oct. 1, 1976) (point of order by Sen. Haskell under Congressional Budget Act of 1974 § 311(a)).

<sup>2604</sup> Cf. *Congressional Budget Act of 1974* § 3(2)(A)(iii), 2 U.S.C. § 622(2)(A)(iii), *supra* p. 56, which defines “contract authority.”

<sup>2605</sup> *Congressional Budget Act of 1974* § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

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the United States Code<sup>2606</sup>) for the repayment of which the United States is liable; or

401(a)(3) (3) new credit authority;<sup>2607</sup>

unless that bill, joint resolution, amendment, motion, or conference report also provides that the new authority is to be effective for any fiscal year only to the extent or in the amounts provided in advance in appropriation Acts.<sup>2608</sup>

401(b) (b) LEGISLATION PROVIDING NEW ENTITLEMENT AUTHORITY.<sup>2609</sup> —

401(b)(1) (1) POINT OF ORDER.—It shall not be in order in either the House of Representatives or the Senate to consider any bill or joint resolution (in the House of Representatives only, as reported), amendment, motion, or conference report that provides new entitlement authority<sup>2610</sup> that is to become effective during the current fiscal year.<sup>2611</sup>

401(b)(2) (2) If any committee of the House of Representatives or the Senate reports any bill or resolution which provides new entitlement authority<sup>2612</sup> which is to become effective during a fiscal year and the amount of

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<sup>2606</sup> 31 U.S.C. ch. 31 addresses “Public Debt.” See, e.g., 31 U.S.C. § 3101, *supra* p. 137, which addresses the “Public Debt Limit.”

<sup>2607</sup> Congressional Budget Act of 1974 § 3(10), 2 U.S.C. § 622(10), *supra* p. 60, defines “credit authority.”

<sup>2608</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>2609</sup> Congressional Budget Act of 1974 § 3(9), 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.”

<sup>2610</sup> *Id.* The Congressional Budget Act makes no exception for very small amounts; even a “negligible” violation can subject legislation to a point of order under the Budget Act. Senate Precedent PRL19761001-001, 122 CONG. REC. 34,550–51 (Oct. 1, 1976) (point of order by Sen. Haskell under Congressional Budget Act of 1974 § 311(a)).

<sup>2611</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13), 2 U.S.C. § 900(c)(13), *infra* p. 982, defines “current year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *infra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2612</sup> Congressional Budget Act of 1974 § 3(9), 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.”



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**new budget authority**<sup>2613</sup> which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of **new budget authority**<sup>2614</sup> reported under **section 302(a)**<sup>2615</sup> in connection with the most recently agreed to **concurrent resolution on the budget**<sup>2616</sup> for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations of the Senate or may then be referred to the Committee on Appropriations of the House, as the case may be, with instructions to report it, with the committee's recommendations, within 15 calendar days (not counting any day on which that House is not in session) beginning with the day following the day on which it is so referred. If the Committee on Appropriations of either House fails to report a bill or resolution referred to it under **this paragraph**<sup>2617</sup> within such 15-day period, the committee shall automatically be discharged from further consideration of such bill or resolution and such bill or resolution shall be placed on the appropriate calendar.

401(b)(3)            (3) The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under **paragraph (2)**<sup>2618</sup> with an amendment which limits the total amount of new spending authority provided in such bill or resolution.

401(c)            (c) EXCEPTIONS.—

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<sup>2613</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>2614</sup> *Id.*

<sup>2615</sup> **Congressional Budget Act of 1974 § 302(a)**, 2 U.S.C. § 633(a), *supra* p. 185, addresses “Committee Spending Allocations.”

<sup>2616</sup> **Congressional Budget Act of 1974 § 3(4)**, 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>2617</sup> **Congressional Budget Act of 1974 § 401(b)(2)**, 2 U.S.C. § 651(b)(2), *supra* p. 784.

<sup>2618</sup> *Id.*

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- 401(c)(1) (1) Subsections (a)<sup>2619</sup> and (b)<sup>2620</sup> shall not apply to new authority described in those subsections if outlays<sup>2621</sup> from that new authority will flow –
- 401(c)(1)(A) (A) from a trust fund established by the Social Security Act<sup>2622</sup> (as in effect on July 12, 1974); or
- 401(c)(1)(B) (B) from any other trust fund, 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays<sup>2623</sup> are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1986.<sup>2624</sup>
- 401(c)(2) (2) Subsections (a)<sup>2625</sup> and (b)<sup>2626</sup> shall not apply to new authority described in those subsections to the extent that –
- 401(c)(2)(A) (A) the outlays<sup>2627</sup> resulting therefrom are made by an organization which is
- 401(c)(2)(A)(i) (i) a mixed-ownership Government corporation (as defined in section 201 of the Government Corporation Control Act<sup>2628</sup>), or

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<sup>2619</sup> Congressional Budget Act of 1974 § 401(a), 2 U.S.C. § 651(a), *supra* p. 783, addresses “Controls on Certain Budget-Related Legislation Not Subject to Appropriations.”

<sup>2620</sup> Congressional Budget Act of 1974 § 401(b), 2 U.S.C. § 651(b), *supra* p. 784, addresses “Legislation Providing New Entitlement Authority.”

<sup>2621</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2622</sup> Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620 (current version at 42 U.S.C. §§ 301–1397mm).

<sup>2623</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2624</sup> Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834.

<sup>2625</sup> Congressional Budget Act of 1974 § 401(a), 2 U.S.C. § 651(a), *supra* p. 783, addresses “Controls on Certain Budget-Related Legislation Not Subject to Appropriations.”

<sup>2626</sup> Congressional Budget Act of 1974 § 401(b), 2 U.S.C. § 651(b), *supra* p. 784, addresses “Legislation Providing New Entitlement Authority.”

<sup>2627</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2628</sup> Government Corporation Control Act § 201, 31 U.S.C. § 9101(2), *infra* p. 787.

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- 401(c)(2)(A)(ii) (ii) a wholly owned Government corporation (as defined in [section 101 of such Act](#)<sup>2629</sup>) which is specifically exempted by law from compliance with any or all of [the provisions of that Act](#),<sup>2630</sup> as of the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985;<sup>2631</sup> or
- 401(c)(2)(B) (B) the [outlays](#)<sup>2632</sup> resulting therefrom consist exclusively of the proceeds of gifts or bequests made to the United States for a specific purpose.
- 401(c)(3) (3) In the House of Representatives, [subsections \(a\)](#)<sup>2633</sup> and [\(b\)](#)<sup>2634</sup> shall not apply to new authority described in [those subsections](#)<sup>2635</sup> to the extent that a provision in a bill or joint resolution, or an amendment thereto or a conference report thereon, establishes prospectively for a Federal office or position a specified or minimum level of compensation to be funded by annual [discretionary appropriations](#).<sup>2636</sup>
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*It shall not be in order*—In *Riddick’s Senate Procedure*, the Parliamentarian discussed precedents under this section<sup>2637</sup>:

**Contract and Borrowing Authority:**

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<sup>2629</sup> [Government Corporation Control Act § 101](#), 31 U.S.C. § 9101(3), *infra* p. 790.

<sup>2630</sup> [Government Corporation Control Act](#), 31 U.S.C. §§ 9101–9110.

<sup>2631</sup> Dec. 12, 1985. See [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, 99 Stat. 1038.

<sup>2632</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2633</sup> [Congressional Budget Act of 1974 § 401\(a\)](#), 2 U.S.C. § 651(a), *supra* p. 783, addresses “Controls on Certain Budget-Related Legislation Not Subject to Appropriations.”

<sup>2634</sup> [Congressional Budget Act of 1974 § 401\(b\)](#), 2 U.S.C. § 651(b), *supra* p. 784, addresses “Legislation Providing New Entitlement Authority.”

<sup>2635</sup> [Congressional Budget Act of 1974 § 401\(a\)–\(b\)](#), 2 U.S.C. § 651(a)–(b), *supra* p. 783, addresses “Controls on Certain Budget-Related Legislation Not Subject to Appropriations” and “Legislation Providing New Entitlement Authority.”

<sup>2636</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(7\)](#), 2 U.S.C. § 900(c)(7), *infra* p. 980, defines “discretionary appropriations.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *infra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2637</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 603–04, 608–10 (1992) (footnotes renumbered, reformatted, and updated); see also *id.* at 628–29.

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Proposed legislation to provide new spending authority, as described in section 401(c)(2) (A) or (B) (contract or borrowing authority respectively) is not in order, unless the bill, resolution, or amendment provides that the authority is to be effective for any fiscal year, only to such extent, or in such amounts as provided in appropriation acts.<sup>[2638]</sup>

Under section 401(a) of the Congressional Budget Act, contract authority must be budgeted and appropriated for, and provisions of any bills not satisfying the requirements of section 401 of the Act are out of order and subject to a point of order. Provisions of a bill authorizing the Secretary of the Treasury to enter into a contract under which the United States is obligated to make outlays, when the new spending authority is not provided for in advance by appropriations Acts, create contract authority in violation of section 401(a) of the Budget Act, and would be subject to a point of order, and that the point of order could be made at any time before the bill is passed.<sup>[2639]</sup>

....

#### **Direct Spending Authority:**

The adoption of an amendment which would provide that specified sections of a bill “shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts” would correct Budget Act problems which would otherwise lie against a bill for providing direct spending authority as described in section 401(c)(2) of the Congressional Budget Act of 1974.<sup>[2640]</sup>

#### **Entitlements:**

Section 40[1](c)(2)(C) of the Budget Act as referenced by section 3(9) of that Act, defines an entitlement as a type of spending authority “to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law.”<sup>[2641]</sup> An amendment that provides for benefits to qualifying individuals, but which stipulates that “no payments shall be made except subject to

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<sup>2638</sup> 121 CONG. REC. 34,725, 34,732–33 (Nov. 3, 1975).

<sup>2639</sup> See 124 CONG. REC. 23,229–34 (July 28, 1978).

<sup>2640</sup> 132 CONG. REC. 19,808 (Aug. 7, 1986).

<sup>2641</sup> Congressional Budget Act of 1974 § 3(9), 2 U.S.C. § 622(9), *supra* p. 59. The reference to entitlement authority previously in Congressional Budget Act of 1974, Pub. L. No. 93-344, § 401(c)(2)(C), 88 Stat. 297, 318, is now incorporated directly into Congressional Budget Act of 1974 § 401(b), 2 U.S.C. § 651(b), *supra* p. 784.

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appropriations,” does not create an entitlement as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974.<sup>[2642]</sup>

Entitlements begin in the year in which payments are to be made, not when the benefits are earned.<sup>[2643]</sup>

....

It is not in order to consider a proposed entitlement if that proposed legislation “is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.”<sup>[2644]</sup> Thus an amendment which creates a new entitlement which would begin before the start of the fiscal year which begins in the calendar year in which the measure at issue was reported violates section 401(b)(1) of the Budget Act.<sup>[2645]</sup>

Under section 401(b)(2) of the Congressional Budget Act, a bill or resolution which as reported by any of the Senate committees contains new spending authority which creates an entitlement which would result in the appropriate allocation of new budget authority under section 302(b) to be exceeded must be referred to the Committee on Appropriations before it is eligible for consideration.<sup>[2646]</sup> The Chair has stated that for a reference to be made to the Appropriations Committee under section 401(b)(2), it would take a point of order to enforce the law; “The law is not self-enforcing.”<sup>[2647]</sup>

Under Section 401(b)(2) of the Budget Act, a bill containing refundable tax credits which would have caused the appropriate allocation of new budget authority under section 302(b) of the budget act to be exceeded will be referred to the Senate Appropriations Committee to consider those refundable tax credits upon a point of order to that effect being made.<sup>[2648]</sup> A bill as reported which did not cause allocations of new budget authority under section 302(b) to be exceeded would not have to be referred to the Committee on Appropriations under section 401(b)(2), since section

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<sup>2642</sup> 130 CONG. REC. 16,101–02, 16,104 (June 13, 1984).

<sup>2643</sup> *Id.*

<sup>2644</sup> Congressional Budget Act of 1974, Pub. L. No. 93-344, § 401(b)(1), 88 Stat. 297, 317 (as enacted); see also 123 CONG. REC. 21,797–99, 21,773 (June 30, 1977). (Whereas Congressional Budget Act of 1974, Pub. L. No. 93-344, § 401(b)(1), 88 Stat. 297, 317 (as enacted), previously read as quoted to say, “is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported,” Congressional Budget Act of 1974 § 401(b)(1), 2 U.S.C. § 651(b)(1), *supra* p. 784, now says “is to become effective during the current fiscal year,” which in this context means the same thing.)

<sup>2645</sup> 124 CONG. REC. 26,106–08 (Aug. 15, 1978).

<sup>2646</sup> Congressional Budget Act of 1974 § 401(b)(2), 2 U.S.C. § 651(b)(2), *supra* p. 784.

<sup>2647</sup> 123 CONG. REC. 35,764, 35,769–70 (Oct. 28, 1977).

<sup>2648</sup> See *id.* at 35,764–71.

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401(b)(2) does not apply to amendments offered on the floor and adopted, but only “reported bills or resolutions.”<sup>[2649]</sup>

On September 30, 1976, when the Senate had under consideration a bill to amend the Central Intelligence Agency Retirement Act, the Presiding Officer in response to an inquiry informed the Senate that this particular entitlement did not need a waiver.<sup>[2650]</sup>

The Senate has waived section 401 of the Congressional Budget Act for the consideration of an amendment to be effective on the last day of the current fiscal year, which would provide an entitlement to trade adjustment assistance for certain workers.<sup>[2651]</sup>

***A mixed-ownership Government corporation (as defined in section 201 of the Government Corporation Control Act)***—Section 201 provides:

(2) “mixed-ownership Government corporation” means —

(A) the Central Bank for Cooperatives.

(B) the Federal Deposit Insurance Corporation.

(C) the Federal Home Loan Banks.

(D) the Federal Intermediate Credit Banks.

(E) the Federal Land Banks.

(F) the National Credit Union Administration Central Liquidity Facility.

(G) the Regional Banks for Cooperatives.

(H) the Financing Corporation.

(I) the Resolution Trust Corporation.

(J) the Resolution Funding Corporation.<sup>2652</sup>

***a wholly owned Government corporation (as defined in section 101 of such Act)***—Section 101 provides:

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<sup>2649</sup> 123 CONG. REC. 35,509–10 (Oct. 27, 1977).

<sup>2650</sup> 122 CONG. REC. 33,824 (Sept. 30, 1976).

<sup>2651</sup> 132 CONG. REC. 12,862 (June 6, 1986).

<sup>2652</sup> Government Corporation Control Act § 201, 31 U.S.C. § 9101(2).

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(3) “wholly owned Government corporation” means —

- (A) the Commodity Credit Corporation.
- (B) the Community Development Financial Institutions Fund.
- (C) the Export-Import Bank of the United States.
- (D) the Federal Crop Insurance Corporation.
- (E) Federal Prison Industries, Incorporated.
- (F) the Corporation for National and Community Service.
- (G) the Government National Mortgage Association.
- (H) the United States International Development Finance Corporation.
- (I) the Pennsylvania Avenue Development Corporation.
- (J) the Pension Benefit Guaranty Corporation.
- (K) the Great Lakes St. Lawrence Seaway Development Corporation.
- (L) the Secretary of Housing and Urban Development when carrying out duties and powers related to the Federal Housing Administration Fund.
- (M) the Tennessee Valley Authority.
- (N) the Panama Canal Commission.
- (O) the Millennium Challenge Corporation.
- (P) the International Clean Energy Foundation.<sup>2653</sup>

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<sup>2653</sup> [Government Corporation Control Act § 101](#), 31 U.S.C. § 9101(3).

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## ANALYSIS BY CONGRESSIONAL BUDGET OFFICE

402            **SEC. 402.**<sup>2654</sup> The Director of the Congressional Budget Office shall, to the extent practicable, prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee —

402(1)            (1) an estimate of the costs which would be incurred in carrying out such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis for each such estimate;

402(2)            (2) a comparison of the estimates of costs described in [paragraph \(1\)](#)<sup>2655</sup> with any available estimates of costs made by such committee or by any Federal [agency](#);<sup>2656</sup> and

402(3)            (3) a description of each method for establishing a Federal financial commitment contained in such bill or resolution.

The estimates, comparison, and description so submitted shall be included in the report accompanying such bill or resolution if timely submitted to such committee before such report is filed.

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<sup>2654</sup> Congressional Budget Act of 1974 § 402 is codified as amended at [2 U.S.C. § 653](#). Section 402 was formerly codified as 31 U.S.C. § 1353, prior to the 1982 general revision and enactment of Title 31, Money and Finance in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>2655</sup> [Congressional Budget Act of 1974 § 402\(1\)](#), 2 U.S.C. § 653(1), *supra* p. 792.

<sup>2656</sup> [Congressional Budget Act of 1974 § 421\(1\)](#), 2 U.S.C. § 658(1), *infra* p. 803, defines “agency,” adopting, in part, the definition of [5 U.S.C. § 551\(1\)](#), *infra* p. 813.



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## JURISDICTION OF APPROPRIATIONS COMMITTEES

403(a) SEC. 403. (a) AMENDMENT OF HOUSE RULES.—**Clause 2 of rule XI of the Rules of the House of Representatives**<sup>2657</sup> is amended by redesignating paragraph (b) as paragraph (e) and by inserting after paragraph (a) the following new paragraphs:

XI(b) “(b) Rescission of appropriations contained in **appropriation Acts**<sup>2658</sup> (referred to in **section 105 of title 1, United States Code**<sup>2659</sup>).

XI(c) “(c) The amount of new spending authority described in **section 401(c)(2) (A)**<sup>2660</sup> and **(B)**<sup>2661</sup> of the Congressional Budget Act of 1974 which is to be effective for a fiscal year.

XI(d) “(d) New spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under **section 401(b) (2) of that Act**<sup>2662</sup> (but subject to the provisions of **section 401(b) (3) of that Act**<sup>2663</sup>).”

403(b) (b) AMENDMENT OF SENATE RULES.—**Subparagraph (c) of paragraph 1 of rule XXV of the Standing Rules of the Senate**<sup>2664</sup> is amended to read as follows:

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<sup>2657</sup> House Rule XI addresses “Procedures of Committees and Unfinished Business.”

<sup>2658</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>2659</sup> 1 U.S.C. § 105 says: “The style and title of all Acts making appropriations for the support of Government shall be as follows: ‘An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year).’” 1 U.S.C. § 105.

<sup>2660</sup> Congressional Budget Act of 1974 § 401(c)(2)(A), 2 U.S.C. § 651(c)(2)(A), *supra* p. 786.

<sup>2661</sup> Congressional Budget Act of 1974 § 401(c)(2)(B), 2 U.S.C. § 651(c)(2)(B), *supra* p. 787.

<sup>2662</sup> Congressional Budget Act of 1974 § 401(b)(2), 2 U.S.C. § 651(b)(2), *supra* p. 784.

<sup>2663</sup> Congressional Budget Act of 1974 § 401(b)(3), 2 U.S.C. § 651(b)(3), *supra* p. 785.

<sup>2664</sup> Senate Rule XXV addresses “Standing Committees.” For the current version of the rule’s language that addresses the Appropriations Committee, see *infra* p. 795.

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- XXV(1)(c)           “(c) Committee on Appropriations, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:
- XXV(1)(c)(1)           “1. Except as provided in subparagraph (r), appropriation of the [revenue](#)<sup>2665</sup> for the support of the Government.
- XXV(1)(c)(2)           “2. Rescission of appropriations contained in [appropriation Acts](#)<sup>2666</sup> (referred to in [section 105 of title 1, United States Code](#)<sup>2667</sup>).
- XXV(1)(c)(3)           “3. The amount of new spending authority described in [section 401\(c\) \(2\) \(A\)](#)<sup>2668</sup> and [\(B\)](#)<sup>2669</sup> of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under [section 401\(b\) \(2\) of that Act](#)<sup>2670</sup> (but subject to the provisions of [section 401\(b\)\(3\) of that Act](#)<sup>2671</sup>).
- XXV(1)(c)(4)           “4. New advance spending authority described in [section 401\(c\)\(2\) \(C\)](#) of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under [section 401\(b\) \(2\) of that Act](#)<sup>2672</sup> (but subject to the provisions of [section 401\(b\) \(3\) of that Act](#)<sup>2673</sup>).”
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<sup>2665</sup> U.S. GOV'T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2666</sup> [Congressional Budget Act of 1974 § 3\(5\)](#), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of [1 U.S.C. § 105](#).

<sup>2667</sup> [1 U.S.C. § 105](#) says: “The style and title of all Acts making appropriations for the support of Government shall be as follows: ‘An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year).’” [1 U.S.C. § 105](#).

<sup>2668</sup> [Congressional Budget Act of 1974 § 401\(c\)\(2\)\(A\)](#), 2 U.S.C. § 651(c)(2)(A), *supra* p. 786.

<sup>2669</sup> [Congressional Budget Act of 1974 § 401\(c\)\(2\)\(B\)](#), 2 U.S.C. § 651(c)(2)(B), *supra* p. 787.

<sup>2670</sup> [Congressional Budget Act of 1974 § 401\(b\)\(2\)](#), 2 U.S.C. § 651(b)(2), *supra* p. 784.

<sup>2671</sup> [Congressional Budget Act of 1974 § 401\(b\)\(3\)](#), 2 U.S.C. § 651(b)(3), *supra* p. 785.

<sup>2672</sup> [Congressional Budget Act of 1974 § 401\(b\)\(2\)](#), 2 U.S.C. § 651(b)(2), *supra* p. 784.

<sup>2673</sup> [Congressional Budget Act of 1974 § 401\(b\)\(3\)](#), 2 U.S.C. § 651(b)(3), *supra* p. 785.

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*Committee on Appropriations*—The current version of the language of Senate Rule XXV that addresses the Appropriations Committee provides:

**STANDING COMMITTEES**

1. The following standing committees shall be appointed at the commencement of each Congress, and shall continue and have the power to act until their successors are appointed, with leave to report by bill or otherwise on matters within their respective jurisdictions:

. . . .

(b) Committee on Appropriations, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

1. Appropriation of the revenue for the support of the Government, except as provided in subparagraph (e).
2. Rescission of appropriations contained in appropriation Acts (referred to in section 105 of title 1, United States Code).
3. The amount of new spending authority described in section 401(c)(2) (A) and (B) of the Congressional Budget Act of 1974 which is to be effective for a fiscal year.
4. New spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under section 401(b)(2) of that Act (but subject to the provisions of section 401(b)(3) of that Act).<sup>2674</sup>

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<sup>2674</sup> Senate Rule XXV.

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**STUDY BY GOVERNMENT ACCOUNTABILITY OFFICE  
OF FORMS OF FEDERAL FINANCIAL COMMITMENT  
NOT REVIEWED ANNUALLY BY CONGRESS**

404           **SEC. 404.**<sup>2675</sup> The Government Accountability Office shall study those provisions of law which provide mandatory spending and report<sup>2676</sup> to the Congress its recommendations for the appropriate form of financing for activities or programs financed by such provisions not later than eighteen months after December 12, 1985. Such report shall be revised from time to time.

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<sup>2675</sup> Congressional Budget Act of 1974 § 404 is codified as amended at 2 U.S.C. § 654.

<sup>2676</sup> See U.S. GEN. ACCT. OFF., [GAO/AFMD-87-44](#), BUDGET ISSUES: THE USE OF SPENDING AUTHORITY AND PERMANENT APPROPRIATIONS IS WIDESPREAD (1987); U.S. GEN. ACCT. OFF., [GAO/AFMD-87-44A](#), BUDGET ISSUES: INVENTORY OF ACCOUNTS WITH SPENDING AUTHORITY AND PERMANENT APPROPRIATIONS, 1987 (1987); U.S. GEN. ACCT. OFF., [GAO/AIMD-96-79](#), BUDGET ISSUES: INVENTORY OF ACCOUNTS WITH SPENDING AUTHORITY AND PERMANENT APPROPRIATIONS, 1996 (1996); ROBERT P. MURPHY, GEN. COUNS., U.S. GEN. ACCT. OFF., [B-266063](#), BUDGET ISSUES: INVENTORY OF ACCOUNTS WITH SPENDING AUTHORITY AND PERMANENT APPROPRIATIONS (1998); U.S. GOV'T ACCOUNTABILITY OFF., [GAO-19-36](#), FEDERAL BUDGET: GOVERNMENT-WIDE INVENTORY OF ACCOUNTS WITH SPENDING AUTHORITY AND PERMANENT APPROPRIATIONS, FISCAL YEARS 1995 TO 2015 (2018).

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## OFF-BUDGET AGENCIES, PROGRAMS, AND ACTIVITIES

- 405(a) SEC. 405.<sup>2677</sup> (a) Notwithstanding any other provision of law, **budget authority**,<sup>2678</sup> **credit authority**,<sup>2679</sup> and estimates of **outlays**<sup>2680</sup> and receipts for activities of the Federal budget which are off-budget immediately prior to December 12, 1985, not including activities of **the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds**,<sup>2681</sup> shall be included in a budget submitted pursuant to **section 1105 of title 31**<sup>2682</sup> and in a **concurrent resolution on the budget**<sup>2683</sup> reported pursuant to **section 301**<sup>2684</sup> or **section 304**<sup>2685</sup> of **this Act**<sup>2686</sup> and shall be considered, for purposes of **this Act**,<sup>2687</sup> **budget authority**,<sup>2688</sup> **outlays**,<sup>2689</sup> and spending authority in accordance with definitions set forth in **this Act**.<sup>2690</sup>
- 405(b) (b) All receipts and disbursements of the Federal Financing Bank with respect to any obligations which are issued, sold, or guaranteed by a Federal **agency**<sup>2691</sup> shall be treated as a means of financing such **agency**<sup>2692</sup> for

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<sup>2677</sup> Congressional Budget Act of 1974 § 405 is codified as amended at 2 U.S.C. § 655.

<sup>2678</sup> Congressional Budget Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>2679</sup> Congressional Budget Act of 1974 § 3(10), 2 U.S.C. § 622(10), *supra* p. 60, defines “credit authority.”

<sup>2680</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2681</sup> Social Security Act of 1935 §§ 201–210, 42 U.S.C. §§ 401–434, address the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds.

<sup>2682</sup> 31 U.S.C. § 1105, *supra* p. 156, addresses “Budget Contents and Submission to Congress.”

<sup>2683</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>2684</sup> Congressional Budget Act of 1974 § 301, 2 U.S.C. § 632, *supra* p. 132, addresses “Annual Adoption of Concurrent Resolution on the Budget.”

<sup>2685</sup> Congressional Budget Act of 1974 § 304, 2 U.S.C. § 635, *supra* p. 244, addresses “Permissible Revisions of Concurrent Resolutions on the Budget.”

<sup>2686</sup> Congressional Budget and Impoundment Control Act of 1974, 2 U.S.C. §§ 601–688, pp. 49–969.

<sup>2687</sup> *Id.*

<sup>2688</sup> Congressional Budget Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>2689</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>2690</sup> Congressional Budget and Impoundment Control Act of 1974, 2 U.S.C. §§ 601–688, pp. 49–969.

<sup>2691</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *infra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *infra* p. 813.

<sup>2692</sup> *Id.*

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purposes of [section 1105 of title 31](#),<sup>2693</sup> United States Code,  
and for purposes of [this Act](#).<sup>2694</sup>

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<sup>2693</sup> [31 U.S.C. § 1105](#), *supra* p. 156, addresses “Budget Contents and Submission to Congress.”

<sup>2694</sup> [Congressional Budget and Impoundment Control Act of 1974](#), 2 U.S.C. §§ 601–688, pp. 49–969.

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## MEMBER USER GROUP

406

**SEC. 406.<sup>2695</sup> The Speaker of the House of Representatives, after consulting with the Minority Leader of the House, may appoint a Member User Group for the purpose of reviewing budgetary scorekeeping rules and practices of the House and advising the Speaker from time to time on the effect and impact of such rules and practices.**

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<sup>2695</sup> Congressional Budget Act of 1974 § 406 is codified as amended at [2 U.S.C. § 656](#).





**World War I  
United States Army  
Recruitment Poster**

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# Federal Mandates

**I**n our Federal system, some tension exists between the Federal Government and private sector, and between the Federal Government and other levels of government.

The Congressional Research Service's Natalie Keegan and Richard Beth explain the origin of the idea of unfunded Federal mandates.

The concept of unfunded mandates rose to national prominence during the 1970s and 1980s primarily through the response of state and local government officials to changes in the nature of federal intergovernmental grant-in-aid programs and to regulations affecting state and local governments. Before then, the federal government had traditionally relied on the provision of voluntary grant-in-aid funding to encourage state and local governments to perform particular activities or provide particular services that were deemed to be in the national interest. These arrangements were viewed as reflecting, at least in part, the constitutional protections afforded state and local governments as separate, sovereign entities. During the 1970s and 1980s, however, state and local government advocates argued that a "dramatic shift" occurred in the way the federal government dealt with states and localities. Instead of relying on the technique of subsidization to achieve its goals, the federal government was increasingly relying on "new, more intrusive, and more compulsory"

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programs and regulations that required compliance under the threat of civil or criminal penalties, imposed federal fiscal sanctions for failure to comply with the programs' requirements, or preempted state and local government authority to act in the area. These new, more intrusive and compulsory programs and regulations came to be referred to as "unfunded mandates" on states and localities.

State and local government advocates viewed these unfunded federal intergovernmental mandates as inconsistent with the traditional view of American federalism, which was based on cooperation, not compulsion. They argued that a federal statute was needed to forestall federal legislation and regulations that imposed obligations on state and local governments that resulted in higher costs and inefficiencies. [Enactment of the Unfunded Mandates Reform Act of 1995 (UMRA)] in 1995 culminated years of effort by state and local government officials to control, if not eliminate, the imposition of unfunded federal mandates.

Advocates of regulatory reform adapted the concept of unfunded mandates to their view that federal regulations often impose financial burdens on private enterprise. Critics of government regulation of business argued that these regulations impose unfunded mandates on the private sector, just as federal programs and regulations impose fiscal obligations on state and local governments. As a result, various business organizations subject to increased federal regulation came to support state and local government efforts to enact federal legislation to control unfunded federal intergovernmental mandates. Private-sector advocates argued that they, too, should be provided relief from what they viewed as burdensome federal regulations that hinder economic growth. Subsequently, proposals to control unfunded mandates that were developed in the early 1990s contained provisions addressing not only federal intergovernmental mandates, but federal private-sector mandates as well.

During floor debate on legislation that became UMRA, sponsors of the measure emphasized its role in bringing "our system of federalism back into balance, by serving as a check against the easy imposition of unfunded mandates." Opponents argued that federal mandates may be necessary to achieve national objectives in areas where voluntary action by state and local governments or business failed to achieve desired results.<sup>2696</sup>

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<sup>2696</sup> NATALIE KEEGAN & RICHARD S. BETH, CONG. RSCH. SERV., [R40957, UNFUNDED MANDATES REFORM ACT: HISTORY, IMPACT, AND ISSUES](#) 1–2 (2021) (footnotes omitted).

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## PART B FEDERAL MANDATES

### 421 SEC. 421.<sup>2697</sup> DEFINITIONS<sup>2698</sup>

For purposes of [this part](#)<sup>2699</sup>:

421(1) (1) AGENCY.—The term “agency” has the same meaning as defined in [section 551\(1\) of title 5](#),<sup>2700</sup> but does not include independent regulatory agencies.

421(2) (2) AMOUNT.—The term “amount”, with respect to an authorization of appropriations for Federal financial assistance, means the amount of [budget authority](#)<sup>2701</sup> for any Federal grant assistance program or any Federal program providing [loan guarantees](#)<sup>2702</sup> or [direct loans](#).<sup>2703</sup>

421(3) (3) DIRECT COSTS.—The term “direct costs” —

421(3)(A)(i) (A)(i) in the case of a [Federal intergovernmental mandate](#),<sup>2704</sup> means the aggregate estimated

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<sup>2697</sup> Congressional Budget Act of 1974 § 421 is codified as amended at [2 U.S.C. § 658](#).

<sup>2698</sup> Budget process laws define terms in many places. See [Congressional Budget Act of 1974 §§ 3, 310\(b\), 421](#), 2 U.S.C. §§ 622, 641(b), 658, *supra* pp. 55, 529, 803; [Impoundment Control Act of 1974 § 1011](#), 2 U.S.C. § 682, *infra* p. 923; [Balanced Budget and Emergency Deficit Control Act of 1985 §§ 250\(c\), 251\(b\)\(2\)\(B\)\(iii\), 256\(g\)\(2\)](#), 2 U.S.C. §§ 900(c), 901(b)(2)(B)(ii), 906(g)(2), *infra* pp. 977, 997, 1097; [Federal Credit Reform Act of 1990 § 502](#), 2 U.S.C. § 661a, *infra* p. 850; [Statutory Pay-As-You-Go Act of 2010 § 3](#), 2 U.S.C. § 932, *infra* p. 1150; [S. Con. Res. 70, 110th Cong. § 314\(b\)](#), 122 Stat. 5143, 5179 (2008), *infra* p. 1221; [H. Con. Res 71, 115th Cong. § 4106\(a\)\(3\)](#) (2017) (adopted), *infra* p. 1246; [S. Con. Res. 14, 117th Cong. §§ 4001\(a\)\(4\), 4001\(a\)\(5\), 4002\(a\)\(2\), 4003\(a\)\(2\)](#) (2021) (adopted), *infra* pp. 1258, 1259, 1262, 1267. For a glossary collecting these definitions in budget process law, see *infra* p. 1542.

<sup>2699</sup> [Congressional Budget Act of 1974 tit. IV, part B, §§ 421–428](#), 2 U.S.C. §§ 658–658g, *infra* pp. 803–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>2700</sup> [5 U.S.C. § 551\(1\)](#), *infra* p. 813.

<sup>2701</sup> [Congressional Budget Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>2702</sup> [Federal Credit Reform Act of 1990 § 502\(3\)](#), 2 U.S.C. § 661a(3), *infra* p. 850, defines “loan guarantee.”

<sup>2703</sup> [Federal Credit Reform Act of 1990 § 502\(1\)](#), 2 U.S.C. § 661a(1), *infra* p. 850, defines “direct loan.”

<sup>2704</sup> [Congressional Budget Act of 1974 § 421\(5\)](#), 2 U.S.C. § 658(5), *infra* p. 808, defines “Federal intergovernmental mandate.”

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amounts that all **State**,<sup>2705</sup> **local**,<sup>2706</sup> and **tribal governments**<sup>2707</sup> would be required to spend or would be prohibited from raising in **revenues**<sup>2708</sup> in order to comply with the **Federal intergovernmental mandate**;<sup>2709</sup> or

421(3)(A)(ii) (ii) in the case of a provision referred to in **paragraph (5)(A)(ii)**,<sup>2710</sup> means the **amount**<sup>2711</sup> of Federal financial assistance eliminated or reduced;

421(3)(B) (B) in the case of a **Federal private sector mandate**,<sup>2712</sup> means the aggregate estimated amounts that the **private sector**<sup>2713</sup> will be required to spend in order to comply with the **Federal private sector mandate**;<sup>2714</sup>

421(3)(C) (C) shall be determined on the assumption that —

421(3)(C)(i) (i) **State**,<sup>2715</sup> **local**,<sup>2716</sup> and **tribal governments**,<sup>2717</sup> and the **private sector**<sup>2718</sup> will

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<sup>2705</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2706</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2707</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2708</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>2709</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *infra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2710</sup> Congressional Budget Act of 1974 § 421(5)(A)(ii), 2 U.S.C. § 658(5)(A)(ii), *infra* p. 808, addresses provisions that “would reduce or eliminate . . . Federal financial assistance.”

<sup>2711</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>2712</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *infra* p. 811, defines “Federal private sector mandate.”

<sup>2713</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *infra* p. 812, defines “private sector.”

<sup>2714</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *infra* p. 811, defines “Federal private sector mandate.”

<sup>2715</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2716</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2717</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2718</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *infra* p. 812, defines “private sector.”

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take all reasonable steps necessary to mitigate the costs resulting from the **Federal mandate**,<sup>2719</sup> and will comply with applicable standards of practice and conduct established by recognized professional or trade associations; and

421(3)(C)(ii) (ii) reasonable steps to mitigate the costs shall not include increases in **State**,<sup>2720</sup> **local**,<sup>2721</sup> or **tribal**<sup>2722</sup> taxes or fees; and

421(3)(D) (D) shall not include —

421(3)(D)(i) (i) estimated amounts that the **State**,<sup>2723</sup> **local**,<sup>2724</sup> and **tribal governments**<sup>2725</sup> (in the case of a **Federal intergovernmental mandate**<sup>2726</sup>) or the **private sector**<sup>2727</sup> (in the case of a **Federal private sector mandate**<sup>2728</sup>) would spend —

421(3)(D)(i)(I) (I) to comply with or carry out all applicable Federal, **State**,<sup>2729</sup> **local**,<sup>2730</sup> and

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<sup>2719</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *infra* p. 811, defines “Federal mandate.”

<sup>2720</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2721</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2722</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2723</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2724</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2725</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2726</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *infra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2727</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *infra* p. 812, defines “private sector.”

<sup>2728</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *infra* p. 811, defines “Federal private sector mandate.”

<sup>2729</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2730</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

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tribal<sup>2731</sup> laws and regulations<sup>2732</sup> in effect at the time of the adoption of the Federal mandate<sup>2733</sup> for the same activity as is affected by that Federal mandate;<sup>2734</sup> or

421(3)(D)(i)(II) (II) to comply with or carry out State,<sup>2735</sup> local,<sup>2736</sup> and tribal governmental<sup>2737</sup> programs, or private-sector<sup>2738</sup> business or other activities in effect at the time of the adoption of the Federal mandate<sup>2739</sup> for the same activity as is affected by that mandate; or

421(3)(D)(ii) (ii) expenditures to the extent that such expenditures will be offset by any direct savings<sup>2740</sup> to the State,<sup>2741</sup> local,<sup>2742</sup> and tribal governments,<sup>2743</sup> or by the private sector,<sup>2744</sup> as a result of —

421(3)(D)(ii)(I) (I) compliance with the Federal mandate;<sup>2745</sup> or

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<sup>2731</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2732</sup> Congressional Budget Act of 1974 § 421(10), 2 U.S.C. § 658(10), *infra* p. 812, defines “regulation” by adopting the definition of 5 U.S.C. § 601(2), *infra* p. 814.

<sup>2733</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *infra* p. 811, defines “Federal mandate.”

<sup>2734</sup> *Id.*

<sup>2735</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2736</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2737</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2738</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *infra* p. 812, defines “private sector.”

<sup>2739</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *infra* p. 811, defines “Federal mandate.”

<sup>2740</sup> Congressional Budget Act of 1974 § 421(4), 2 U.S.C. § 658(4), *infra* p. 807, defines “direct savings.”

<sup>2741</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2742</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2743</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2744</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *infra* p. 812, defines “private sector.”

<sup>2745</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *infra* p. 811, defines “Federal mandate.”

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421(3)(D)(ii)(II)

(II) other changes in Federal law or **regulation**<sup>2746</sup> that are enacted or adopted in the same bill or joint resolution or proposed or final Federal **regulation**<sup>2747</sup> and that govern the same activity as is affected by the **Federal mandate**.<sup>2748</sup>

421(4)

(4) DIRECT SAVINGS.—The term “direct savings”, when used with respect to the result of compliance with the **Federal mandate**<sup>2749</sup> —

421(4)(A)

(A) in the case of a **Federal intergovernmental mandate**,<sup>2750</sup> means the aggregate estimated reduction in costs to any **State**,<sup>2751</sup> **local**,<sup>2752</sup> or **tribal government**<sup>2753</sup> as a result of compliance with the **Federal intergovernmental mandate**;<sup>2754</sup> and

421(4)(B)

(B) in the case of a **Federal private sector mandate**,<sup>2755</sup> means the aggregate estimated reduction in costs to the **private sector**<sup>2756</sup> as a result of compliance with the **Federal private sector mandate**.<sup>2757</sup>

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<sup>2746</sup> Congressional Budget Act of 1974 § 421(10), 2 U.S.C. § 658(10), *infra* p. 812, defines “regulation” by adopting the definition of 5 U.S.C. § 601(2), *infra* p. 814.

<sup>2747</sup> Congressional Budget Act of 1974 § 421(10), 2 U.S.C. § 658(10), *infra* p. 812, defines “regulation” by adopting the definition of 5 U.S.C. § 601(2), *infra* p. 814.

<sup>2748</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *infra* p. 811, defines “Federal mandate.”  
<sup>2749</sup> *Id.*

<sup>2750</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *infra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2751</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2752</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2753</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2754</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *infra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2755</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *infra* p. 811, defines “Federal private sector mandate.”

<sup>2756</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *infra* p. 812, defines “private sector.”

<sup>2757</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *infra* p. 811, defines “Federal private sector mandate.”



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421(5) **(5) FEDERAL INTERGOVERNMENTAL MANDATE.—**The term “Federal intergovernmental mandate” means —

421(5)(A) **(A) any provision in legislation, statute, or regulation<sup>2758</sup> that —**

421(5)(A)(i) **(i) would impose an enforceable duty upon State,<sup>2759</sup> local,<sup>2760</sup> or tribal governments,<sup>2761</sup> except —**

421(5)(A)(i)(I) **(I) a condition of Federal assistance; or**

421(5)(A)(i)(II) **(II) a duty arising from participation in a voluntary Federal program, except as provided in subparagraph (B);<sup>2762</sup> or**

421(5)(A)(ii) **(ii) would reduce or eliminate the amount<sup>2763</sup> of authorization of appropriations for —**

421(5)(A)(ii)(I) **(I) Federal financial assistance that would be provided to State,<sup>2764</sup> local,<sup>2765</sup> or tribal governments<sup>2766</sup> for the purpose of complying with any such previously imposed duty unless such duty is reduced or eliminated by a corresponding amount;<sup>2767</sup> or**

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<sup>2758</sup> Congressional Budget Act of 1974 § 421(10), 2 U.S.C. § 658(10), *infra* p. 812, defines “regulation” by adopting the definition of 5 U.S.C. § 601(2), *infra* p. 814.

<sup>2759</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2760</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2761</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2762</sup> Congressional Budget Act of 1974 § 421(5)(B), 2 U.S.C. § 658(5)(B), *infra* p. 810.

<sup>2763</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>2764</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2765</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2766</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2767</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.



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421(5)(A)(ii)(II)

(II) the control of borders by the Federal Government; or reimbursement to [State](#),<sup>2768</sup> [local](#),<sup>2769</sup> or [tribal governments](#)<sup>2770</sup> for the net cost associated with illegal, deportable, and excludable aliens, including court-mandated expenses related to [emergency](#)<sup>2771</sup> health care, education or criminal justice; when such a reduction or elimination would result in increased net costs to [State](#),<sup>2772</sup> [local](#),<sup>2773</sup> or [tribal governments](#)<sup>2774</sup> in providing education or [emergency](#)<sup>2775</sup> health care to, or incarceration of, illegal aliens; except that [this subclause](#)<sup>2776</sup> shall not be in effect with respect to a [State](#),<sup>2777</sup> [local](#),<sup>2778</sup> or [tribal government](#),<sup>2779</sup> to the extent that such government has not fully cooperated in the efforts of the Federal Government to locate, apprehend, and deport illegal aliens;

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<sup>2768</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2769</sup> [Congressional Budget Act of 1974 § 421\(8\)](#), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2770</sup> [Congressional Budget Act of 1974 § 421\(13\)](#), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2771</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *infra* p. 983, defines “emergency.” [Congressional Budget Act of 1974 § 3\(11\)](#), 2 U.S.C. § 622(11), *supra* p. 60, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2772</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2773</sup> [Congressional Budget Act of 1974 § 421\(8\)](#), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2774</sup> [Congressional Budget Act of 1974 § 421\(13\)](#), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2775</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *infra* p. 983, defines “emergency.” [Congressional Budget Act of 1974 § 3\(11\)](#), 2 U.S.C. § 622(11), *supra* p. 60, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2776</sup> [Congressional Budget Act of 1974 § 421\(5\)\(A\)\(ii\)\(II\)](#), 2 U.S.C. § 658(5)(A)(ii)(II), *supra* p. 809.

<sup>2777</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2778</sup> [Congressional Budget Act of 1974 § 421\(8\)](#), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2779</sup> [Congressional Budget Act of 1974 § 421\(13\)](#), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

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- 421(5)(B) (B) any provision in legislation, statute, or regulation<sup>2780</sup> that relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State,<sup>2781</sup> local,<sup>2782</sup> and tribal governments<sup>2783</sup> under entitlement authority,<sup>2784</sup> if the provision –
- 421(5)(B)(i)(I) (i)(I) would increase the stringency of conditions of assistance to State,<sup>2785</sup> local,<sup>2786</sup> or tribal governments<sup>2787</sup> under the program; or
- 421(5)(B)(i)(II) (II) would place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding to State,<sup>2788</sup> local,<sup>2789</sup> or tribal governments<sup>2790</sup> under the program; and
- 421(5)(B)(ii) (ii) the State,<sup>2791</sup> local,<sup>2792</sup> or tribal governments<sup>2793</sup> that participate in the Federal
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<sup>2780</sup> Congressional Budget Act of 1974 § 421(10), 2 U.S.C. § 658(10), *infra* p. 812, defines “regulation” by adopting the definition of 5 U.S.C. § 601(2), *infra* p. 814.

<sup>2781</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2782</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2783</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2784</sup> Congressional Budget Act of 1974 § 3(9), 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.”

<sup>2785</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2786</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2787</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2788</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2789</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2790</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2791</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2792</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *infra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2793</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

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program lack authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or [regulation](#).<sup>2794</sup>

421(6) (6) FEDERAL MANDATE.—The term “Federal mandate” means a [Federal intergovernmental mandate](#)<sup>2795</sup> or a [Federal private sector mandate](#),<sup>2796</sup> as defined in [paragraphs \(5\)](#)<sup>2797</sup> and [\(7\)](#).<sup>2798</sup>

421(7) (7) FEDERAL PRIVATE SECTOR MANDATE.—The term “Federal private sector mandate” means any provision in legislation, statute, or [regulation](#)<sup>2799</sup> that—

421(7)(A) (A) would impose an enforceable duty upon the [private sector](#)<sup>2800</sup> except—

421(7)(A)(i) (i) a condition of Federal assistance; or

421(7)(A)(ii) (ii) a duty arising from participation in a voluntary Federal program; or

421(7)(B) (B) would reduce or eliminate the [amount](#)<sup>2801</sup> of authorization of appropriations for Federal financial assistance that will be provided to the

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<sup>2794</sup> Congressional Budget Act of 1974 § 421(10), 2 U.S.C. § 658(10), *infra* p. 812, defines “regulation” by adopting the definition of 5 U.S.C. § 601(2), *infra* p. 814.

<sup>2795</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2796</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *infra* p. 811, defines “Federal private sector mandate.”

<sup>2797</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *supra* p. 808, addresses “Federal intergovernmental mandate.”

<sup>2798</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *infra* p. 811, addresses “Federal private sector mandate.”

<sup>2799</sup> Congressional Budget Act of 1974 § 421(10), 2 U.S.C. § 658(10), *infra* p. 812, defines “regulation” by adopting the definition of 5 U.S.C. § 601(2), *infra* p. 814.

<sup>2800</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *infra* p. 812, defines “private sector.”

<sup>2801</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

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**private sector**<sup>2802</sup> for the purposes of ensuring compliance with such duty.

- 421(8) (8) LOCAL GOVERNMENT.—The term “local government” has the same meaning as defined in **section 6501(6) of title 31**.<sup>2803</sup>
- 421(9) (9) PRIVATE SECTOR.—The term “private sector” means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include **State**,<sup>2804</sup> **local**,<sup>2805</sup> or **tribal governments**.<sup>2806</sup>
- 421(10) (10) REGULATION; RULE.—The term “regulation” or “rule” (except with respect to a rule of either House of the Congress) has the meaning of “rule” as defined in **section 601(2) of title 5**.<sup>2807</sup>
- 421(11) (11) SMALL GOVERNMENT.—The term “small government” means any small governmental jurisdictions defined in **section 601(5) of title 5**<sup>2808</sup> and any **tribal government**.<sup>2809</sup>
- 421(12) (12) STATE.—The term “State” has the same meaning as defined in **section 6501(9) of title 31**.<sup>2810</sup>
- 421(13) (13) TRIBAL GOVERNMENT.—The term “tribal government” means any Indian tribe, band, nation, or other organized group or community, including any

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<sup>2802</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *infra* p. 812, defines “private sector.”

<sup>2803</sup> 31 U.S.C. § 6501(6), *infra* p. 814, defines “local government.”

<sup>2804</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *infra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *infra* p. 814.

<sup>2805</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *infra* p. 814.

<sup>2806</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2807</sup> 5 U.S.C. § 601(2), *infra* p. 814, defines “rule.”

<sup>2808</sup> 5 U.S.C. § 601(5), *infra* p. 814, defines “small governmental jurisdiction.”

<sup>2809</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *infra* p. 812, defines “tribal government.”

<sup>2810</sup> 31 U.S.C. § 6501(9), *infra* p. 814, defines “State.”

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**Alaska Native village or regional or village corporation as defined in or established pursuant to the [Alaska Native Claims Settlement Act \(85 Stat. 688; 43 U.S.C. 1601 et seq.\)](#)<sup>2811</sup> which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.**

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*“Agency” has the same meaning as defined in section 551(1) of title 5 –*  
Section 551(1) provides:

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include –

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title –

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; subchapter II of chapter 471 of title 49; or sections 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix;<sup>2812</sup>

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<sup>2811</sup> [Alaska Native Claims Settlement Act](#), 43 U.S.C. §§ 1601–1629h.

<sup>2812</sup> [5 U.S.C. § 551\(1\)](#).

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*“Local government” has the same meaning as defined in section 6501(6) of title 31* – Section 6501(6) provides: “‘local government’ means a unit of general local government, a school district, or other special district established under State law.”<sup>2813</sup>

*“regulation” or “rule” . . . has the meaning of “rule” as defined in section 601(2) of title 5* – Section 601(2) provides:

(2) the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term “rule” does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;<sup>2814</sup>

*“Small government” means any small governmental jurisdictions defined in section 601(5) of title 5* – Section 601(5) provides:

(5) the term “small governmental jurisdiction” means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;<sup>2815</sup>

*“State” has the same meaning as defined in section 6501(9) of title 31* – Section 6501(9) provides: “‘State’ means a State of the United States, the District of Columbia, a territory or possession of the United States, and an agency, instrumentality, or fiscal agent of a State but does not mean a local government of a State.”

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<sup>2813</sup> 31 U.S.C. § 6501(6).

<sup>2814</sup> 5 U.S.C. § 601(2).

<sup>2815</sup> 5 U.S.C. § 601(5).

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**SEC. 422.<sup>2816</sup> EXCLUSIONS**

**This part<sup>2817</sup> shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress that —**

- 422(1)                   **(1) enforces constitutional rights of individuals;**
  - 422(2)                   **(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;**
  - 422(3)                   **(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government;**
  - 422(4)                   **(4) provides for emergency<sup>2818</sup> assistance or relief at the request of any State,<sup>2819</sup> local,<sup>2820</sup> or tribal government<sup>2821</sup> or any official of a State,<sup>2822</sup> local,<sup>2823</sup> or tribal government;<sup>2824</sup>**
  - 422(5)                   **(5) is necessary for the national security or the ratification or implementation of international treaty obligations;**
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<sup>2816</sup> Congressional Budget Act of 1974 § 422 is codified as amended at [2 U.S.C. § 658a](#).

<sup>2817</sup> [Congressional Budget Act of 1974 tit. IV, part B, §§ 421–428](#), 2 U.S.C. §§ 658–658g, *infra* pp. 803–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>2818</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *infra* p. 983, defines “emergency.” [Congressional Budget Act of 1974 § 3\(11\)](#), 2 U.S.C. § 622(11), *supra* p. 60, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2819</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of [31 U.S.C. § 6501\(9\)](#), *supra* p. 814.

<sup>2820</sup> [Congressional Budget Act of 1974 § 421\(8\)](#), 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of [31 U.S.C. § 6501\(6\)](#), *supra* p. 814.

<sup>2821</sup> [Congressional Budget Act of 1974 § 421\(13\)](#), 2 U.S.C. § 658(13), *supra* p. 812, defines “tribal government.”

<sup>2822</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of [31 U.S.C. § 6501\(9\)](#), *supra* p. 814.

<sup>2823</sup> [Congressional Budget Act of 1974 § 421\(8\)](#), 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of [31 U.S.C. § 6501\(6\)](#), *supra* p. 814.

<sup>2824</sup> [Congressional Budget Act of 1974 § 421\(13\)](#), 2 U.S.C. § 658(13), *supra* p. 812, defines “tribal government.”



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422(6) (6) the President designates as **emergency**<sup>2825</sup> legislation and that the Congress so designates in statute; or

422(7) (7) relates to the old-age, survivors, and disability insurance program under **title II of the Social Security Act**<sup>2826</sup> (including taxes imposed by **sections 3101(a)**<sup>2827</sup> and **3111(a)**<sup>2828</sup> of title 26 (relating to old-age, survivors, and disability insurance)).

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*Taxes imposed by sections 3101(a) and 3111(a) of title 26*—Section 3101(a) provides:

**(a) Old-age, survivors, and disability insurance**

In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to 6.2 percent of the wages (as defined in section 3121(a)) received by the individual with respect to employment (as defined in section 3121(b)).<sup>2829</sup>

Section 3111(a) provides:

**(a) Old-age, survivors, and disability insurance**

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 6.2 percent of the wages (as defined in section 3121(a)) paid by the employer with respect to employment (as defined in section 3121(b)).<sup>2830</sup>

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<sup>2825</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *infra* p. 983, defines “emergency.” **Congressional Budget Act of 1974 § 3(11)**, 2 U.S.C. § 622(11), *supra* p. 60, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2826</sup> **Social Security Act tit. II**, 42 U.S.C. §§ 401–434, addresses “Federal Old-Age, Survivors, and Disability Insurance Benefits.”

<sup>2827</sup> **26 U.S.C. § 3101(a)**, *infra* p. 816, addresses “Old-Age, Survivors, and Disability Insurance” taxes with regard to employees.

<sup>2828</sup> **26 U.S.C. § 3111(a)**, *infra* p. 816, addresses “Old-Age, Survivors, and Disability Insurance” taxes with regard to employers.

<sup>2829</sup> **26 U.S.C. § 3101(a)**.

<sup>2830</sup> **26 U.S.C. § 3111(a)**.



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423        **SEC. 423.<sup>2831</sup> DUTIES OF CONGRESSIONAL COMMITTEES**

423(a)        **(a) IN GENERAL.—**When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character that includes any **Federal mandate**,<sup>2832</sup> the report of the committee accompanying the bill or joint resolution shall contain the information required by **subsections (c)**<sup>2833</sup> and **(d)**.<sup>2834</sup>

423(b)        **(b) SUBMISSION OF BILLS TO DIRECTOR.—**When a committee of authorization of the Senate or the House of Representatives orders reported a bill or joint resolution of a public character, the committee shall promptly provide the bill or joint resolution to the Director of the Congressional Budget Office and shall identify to the Director any **Federal mandates**<sup>2835</sup> contained in the bill or resolution.

423(c)        **(c) REPORTS ON FEDERAL MANDATES.**<sup>2836</sup>—Each report described under **subsection (a)**<sup>2837</sup> shall contain—

423(c)(1)        **(1) an identification and description of any Federal mandates**<sup>2838</sup> in the bill or joint resolution, including the **direct costs**<sup>2839</sup> to **State**,<sup>2840</sup> **local**,<sup>2841</sup> and **tribal**

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<sup>2831</sup> Congressional Budget Act of 1974 § 423 is codified as amended at [2 U.S.C. § 658b](#).

<sup>2832</sup> [Congressional Budget Act of 1974 § 421\(6\)](#), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>2833</sup> [Congressional Budget Act of 1974 § 423\(c\)](#), 2 U.S.C. § 658b(c), *infra* p. 817, addresses “Reports on Federal Mandates.”

<sup>2834</sup> [Congressional Budget Act of 1974 § 423\(d\)](#), 2 U.S.C. § 658b(d), *infra* p. 819, addresses “Intergovernmental Mandates.”

<sup>2835</sup> [Congressional Budget Act of 1974 § 421\(6\)](#), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>2836</sup> *Id.*

<sup>2837</sup> [Congressional Budget Act of 1974 § 423\(a\)](#), 2 U.S.C. § 658b(a), *supra* p. 817, addresses “Duties of Congressional Committees” “In general.”

<sup>2838</sup> [Congressional Budget Act of 1974 § 421\(6\)](#), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>2839</sup> [Congressional Budget Act of 1974 § 421\(3\)](#), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2840</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of [31 U.S.C. § 6501\(9\)](#), *supra* p. 814.

<sup>2841</sup> [Congressional Budget Act of 1974 § 421\(8\)](#), 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of [31 U.S.C. § 6501\(6\)](#), *supra* p. 814.

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**governments,**<sup>2842</sup> and to the **private sector,**<sup>2843</sup> required to comply with the **Federal mandates;**<sup>2844</sup>

423(c)(2) (2) a qualitative, and if practicable, a quantitative assessment of costs and benefits anticipated from the **Federal mandates**<sup>2845</sup> (including the effects on health and safety and the protection of the natural environment); and

423(c)(3) (3) a statement of the degree to which a **Federal mandate**<sup>2846</sup> affects both the public and **private sectors**<sup>2847</sup> and the extent to which Federal payment of public sector costs or the modification or termination of the **Federal mandate**<sup>2848</sup> as provided under **section 425(a)(2)**<sup>2849</sup> would affect the competitive balance between **State,**<sup>2850</sup> **local,**<sup>2851</sup> or **tribal governments**<sup>2852</sup> and the **private sector**<sup>2853</sup> including a description of the actions, if any, taken by the committee to avoid any adverse impact on the **private sector**<sup>2854</sup> or the competitive balance between the public sector and the **private sector.**<sup>2855</sup>

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<sup>2842</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *supra* p. 812, defines “tribal government.”

<sup>2843</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *supra* p. 812, defines “private sector.”

<sup>2844</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>2845</sup> *Id.*

<sup>2846</sup> *Id.*

<sup>2847</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *supra* p. 812, defines “private sector.”

<sup>2848</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>2849</sup> Congressional Budget Act of 1974 § 425(a)(2), 2 U.S.C. § 658d(a)(2), *infra* p. 828, addresses legislation “that would increase the direct costs of Federal intergovernmental mandates.”

<sup>2850</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>2851</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *supra* p. 814.

<sup>2852</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *supra* p. 812, defines “tribal government.”

<sup>2853</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *supra* p. 812, defines “private sector.”

<sup>2854</sup> *Id.*

<sup>2855</sup> *Id.*

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- 423(d)            **(d) INTERGOVERNMENTAL MANDATES.—**If any of the **Federal mandates**<sup>2856</sup> in the bill or joint resolution are **Federal intergovernmental mandates**,<sup>2857</sup> the report required under **subsection (a)**<sup>2858</sup> shall also contain —
- 423(d)(1)(A)            **(1)(A)** a statement of the **amount**,<sup>2859</sup> if any, of increase or decrease in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable for activities of **State**,<sup>2860</sup> **local**,<sup>2861</sup> or **tribal governments**<sup>2862</sup> subject to the **Federal intergovernmental mandates**;<sup>2863</sup>
- 423(d)(1)(B)            **(B)** a statement of whether the committee intends that the **Federal intergovernmental mandates**<sup>2864</sup> be partly or entirely unfunded, and if so, the reasons for that intention; and
- 423(d)(1)(C)            **(C)** if funded in whole or in part, a statement of whether and how the committee has created a mechanism to allocate the funding in a manner that is reasonably consistent with the expected **direct costs**<sup>2865</sup>

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<sup>2856</sup> **Congressional Budget Act of 1974 § 421(6)**, 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>2857</sup> **Congressional Budget Act of 1974 § 421(5)**, 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2858</sup> **Congressional Budget Act of 1974 § 423(a)**, 2 U.S.C. § 658b(a), *supra* p. 817, addresses “Duties of Congressional Committees” “In general.”

<sup>2859</sup> **Congressional Budget Act of 1974 § 421(2)**, 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>2860</sup> **Congressional Budget Act of 1974 § 421(12)**, 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>2861</sup> **Congressional Budget Act of 1974 § 421(8)**, 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *supra* p. 814.

<sup>2862</sup> **Congressional Budget Act of 1974 § 421(13)**, 2 U.S.C. § 658(13), *supra* p. 812, defines “tribal government.”

<sup>2863</sup> **Congressional Budget Act of 1974 § 421(5)**, 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2864</sup> *Id.*

<sup>2865</sup> **Congressional Budget Act of 1974 § 421(3)**, 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

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among and between the respective levels of **State**,<sup>2866</sup>  
**local**,<sup>2867</sup> and **tribal governments**,<sup>2868</sup>

423(d)(2) (2) any existing sources of Federal assistance in addition to those identified in **paragraph (1)**<sup>2869</sup> that may assist **State**,<sup>2870</sup> **local**,<sup>2871</sup> and **tribal governments**<sup>2872</sup> in meeting the **direct costs**<sup>2873</sup> of the **Federal intergovernmental mandates**;<sup>2874</sup> and

423(d)(3) (3) if the bill or joint resolution would make the reduction specified in **section 421(5)(B)(i)(II)**,<sup>2875</sup> a statement of how the committee specifically intends the **States**<sup>2876</sup> to implement the reduction and to what extent the legislation provides additional flexibility, if any, to offset the reduction.

423(e) (e) PREEMPTION CLARIFICATION AND INFORMATION.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character, the committee report accompanying the bill or joint resolution shall contain, if relevant to the bill or joint resolution, an explicit statement on the extent to which the bill or joint resolution is intended to preempt any

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<sup>2866</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>2867</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *supra* p. 814.

<sup>2868</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *supra* p. 812, defines “tribal government.”

<sup>2869</sup> Congressional Budget Act of 1974 § 423(d)(1), 2 U.S.C. § 658b(d)(1), *supra* p. 819.

<sup>2870</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>2871</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *supra* p. 814.

<sup>2872</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *supra* p. 812, defines “tribal government.”

<sup>2873</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2874</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2875</sup> Congressional Budget Act of 1974 § 421(5)(B)(i)(II), 2 U.S.C. § 658(5)(B)(i)(II), *supra* p. 810, addresses provisions that would “decrease . . . the Federal Government’s responsibility to provide funding.”

<sup>2876</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

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**State**,<sup>2877</sup> **local**,<sup>2878</sup> or **tribal**<sup>2879</sup> law, and, if so, an explanation of the effect of such preemption.

423(f) **(f) PUBLICATION OF STATEMENT FROM DIRECTOR. —**

423(f)(1) **(1) IN GENERAL. —**Upon receiving a statement from the Director under **section 424**,<sup>2880</sup> a committee of the Senate or the House of Representatives shall publish the statement in the committee report accompanying the bill or joint resolution to which the statement relates if the statement is available at the time the report is printed.

423(f)(2) **(2) OTHER PUBLICATION OF STATEMENT OF DIRECTOR. —**If the statement is not published in the report, or if the bill or joint resolution to which the statement relates is expected to be considered by the Senate or the House of Representatives before the report is published, the committee shall cause the statement, or a summary thereof, to be published in the Congressional Record in advance of floor consideration of the bill or joint resolution.

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<sup>2877</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>2878</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *supra* p. 814.

<sup>2879</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *supra* p. 812, defines “tribal government.”

<sup>2880</sup> Congressional Budget Act of 1974 § 424, 2 U.S.C. § 658c, *infra* p. 822, addresses “Duties of Director; Statements on Bills and Joint Resolutions Other than Appropriations Bills and Joint Resolutions.”

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424        **SEC. 424.**<sup>2881</sup> **DUTIES OF DIRECTOR; STATEMENTS**  
**ON BILLS AND JOINT RESOLUTIONS OTHER**  
**THAN [APPROPRIATIONS BILLS](#)**<sup>2882</sup> **AND JOINT**  
**RESOLUTIONS.**

424(a)        **(a) [FEDERAL INTERGOVERNMENTAL MANDATES](#)**<sup>2883</sup> **IN**  
**REPORTED BILLS AND [JOINT]**<sup>2884</sup> **RESOLUTIONS.—**For each  
bill or joint resolution of a public character reported by  
any committee of authorization of the Senate or the House  
of Representatives, the Director of the Congressional  
Budget Office shall prepare and submit to the committee  
a statement as follows:

424(a)(1)        **(1) CONTENTS.—**If the Director estimates that the  
**[direct cost](#)**<sup>2885</sup> **of all [Federal intergovernmental](#)**  
**[mandates](#)**<sup>2886</sup> **in the bill or joint resolution will equal or**  
**exceed \$50,000,000 (adjusted annually for inflation) in**  
**the fiscal year in which any [Federal intergovernmental](#)**  
**[mandate](#)**<sup>2887</sup> **in the bill or joint resolution (or in any**  
**necessary implementing [regulation](#)**<sup>2888</sup> **) would first be**  
**effective or in any of the 4 fiscal years following such**  
**fiscal year, the Director shall so state, specify the**  
**estimate, and briefly explain the basis of the estimate.**

424(a)(2)        **(2) ESTIMATES.—**Estimates required under  
**[paragraph \(1\)](#)**<sup>2889</sup> **shall include estimates (and brief**  
**explanations of the basis of the estimates) of —**

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<sup>2881</sup> Congressional Budget Act of 1974 § 424 is codified as amended at [2 U.S.C. § 658c](#).

<sup>2882</sup> [Congressional Budget Act of 1974 § 3\(5\)](#), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of [1 U.S.C. § 105](#).

<sup>2883</sup> [Congressional Budget Act of 1974 § 421\(5\)](#), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2884</sup> This subsection refers to only *joint* resolutions, and thus this subsection heading probably should have added the word “Joint” here to parallel the treatment in subsection (b), *infra* p. 825.

<sup>2885</sup> [Congressional Budget Act of 1974 § 421\(3\)](#), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2886</sup> [Congressional Budget Act of 1974 § 421\(5\)](#), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2887</sup> *Id.*

<sup>2888</sup> [Congressional Budget Act of 1974 § 421\(10\)](#), 2 U.S.C. § 658(10), *supra* p. 812, defines “regulation” by adopting the definition of [5 U.S.C. § 601\(2\)](#), *supra* p. 814.

<sup>2889</sup> [Congressional Budget Act of 1974 § 424\(a\)\(1\)](#), 2 U.S.C. § 658c(a)(1), *supra* p. 822, addresses “Contents” of the CBO Director’s statements.



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- 424(a)(2)(A) (A) the total **amount**<sup>2890</sup> of **direct cost**<sup>2891</sup> of complying with the **Federal intergovernmental mandates**<sup>2892</sup> in the bill or joint resolution;
- 424(a)(2)(B) (B) if the bill or resolution contains an authorization of appropriations under **section 425(a)(2)(B)**,<sup>2893</sup> the **amount**<sup>2894</sup> of **new budget authority**<sup>2895</sup> for each fiscal year for a period not to exceed 10 years beyond the effective date necessary for the **direct cost**<sup>2896</sup> of the **intergovernmental mandate**;<sup>2897</sup> and
- 424(a)(2)(C) (C) the **amount**,<sup>2898</sup> if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by **State**,<sup>2899</sup> **local**,<sup>2900</sup> or **tribal governments**<sup>2901</sup> for activities subject to the **Federal intergovernmental mandates**.<sup>2902</sup>
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<sup>2890</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>2891</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2892</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2893</sup> Congressional Budget Act of 1974 § 425(a)(2)(B), 2 U.S.C. § 658d(a)(2)(B), *infra* p. 829, addresses legislation that “includes an authorization for appropriations in an amount equal to or exceeding the direct costs of such mandate.”

<sup>2894</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>2895</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>2896</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2897</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2898</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>2899</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>2900</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *supra* p. 814.

<sup>2901</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *supra* p. 812, defines “tribal government.”

<sup>2902</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

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- 424(a)(3) **(3) ADDITIONAL FLEXIBILITY INFORMATION.—**The Director shall include in the statement submitted under [this subsection](#),<sup>2903</sup> in the case of legislation that makes changes as described in [section 421\(5\)\(B\)\(i\)\(II\)](#)<sup>2904</sup> —
- 424(a)(3)(A) **(A)** if no additional flexibility is provided in the legislation, a description of whether and how the [States](#)<sup>2905</sup> can offset the reduction under existing law; or
- 424(a)(3)(B) **(B)** if additional flexibility is provided in the legislation, whether the resulting savings would offset the reductions in that program assuming the [States](#)<sup>2906</sup> fully implement that additional flexibility.
- 424(a)(4) **(4) ESTIMATE NOT FEASIBLE.—**If the Director determines that it is not feasible to make a reasonable estimate that would be required under [paragraphs \(1\)](#)<sup>2907</sup> and [\(2\)](#),<sup>2908</sup> the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement. If such determination is made by the Director, a point of order under [this part](#)<sup>2909</sup> shall lie only under [section 425\(a\)\(1\)](#)<sup>2910</sup> and as if the requirement of [section 425\(a\)\(1\)](#)<sup>2911</sup> had not been met.

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<sup>2903</sup> [Congressional Budget Act of 1974 § 424\(a\)](#), 2 U.S.C. § 658c(a), *supra* p. 822, addresses “Federal Intergovernmental Mandates in Reported Bills and [Joint] Resolutions.”

<sup>2904</sup> [Congressional Budget Act of 1974 § 421\(5\)\(B\)\(i\)\(II\)](#), 2 U.S.C. § 658(5)(B)(i)(II), *supra* p. 810, addresses provisions that would “decrease . . . the Federal Government’s responsibility to provide funding.”

<sup>2905</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of [31 U.S.C. § 6501\(9\)](#), *supra* p. 814.

<sup>2906</sup> *Id.*

<sup>2907</sup> [Congressional Budget Act of 1974 § 424\(a\)\(1\)](#), 2 U.S.C. § 658c(a)(1), *supra* p. 822, addresses “Contents” of the CBO Director’s statements.

<sup>2908</sup> [Congressional Budget Act of 1974 § 424\(a\)\(2\)](#), 2 U.S.C. § 658c(a)(2), *supra* p. 822, addresses “Estimates.”

<sup>2909</sup> [Congressional Budget Act of 1974 tit. IV, part B, §§ 421–428](#), 2 U.S.C. §§ 658–658g, *infra* pp. 803–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>2910</sup> [Congressional Budget Act of 1974 § 425\(a\)\(1\)](#), 2 U.S.C. § 658d(a)(1), *infra* p. 828

<sup>2911</sup> *Id.*



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424(b)           **(b) FEDERAL PRIVATE SECTOR MANDATES**<sup>2912</sup> IN REPORTED BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

424(b)(1)           **(1) CONTENTS.**—If the Director estimates that the **direct cost**<sup>2913</sup> of all **Federal private sector mandates**<sup>2914</sup> in the bill or joint resolution will equal or exceed \$100,000,000 (adjusted annually for inflation) in the fiscal year in which any **Federal private sector mandate**<sup>2915</sup> in the bill or joint resolution (or in any necessary implementing **regulation**<sup>2916</sup>) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

424(b)(2)           **(2) ESTIMATES.**—Estimates required under **paragraph (1)**<sup>2917</sup> shall include estimates (and a brief explanation of the basis of the estimates) of —

424(b)(2)(A)           **(A)** the total amount of **direct costs**<sup>2918</sup> of complying with the **Federal private sector mandates**<sup>2919</sup> in the bill or joint resolution; and

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<sup>2912</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *supra* p. 811, defines “Federal private sector mandate.”

<sup>2913</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2914</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *supra* p. 811, defines “Federal private sector mandate.”

<sup>2915</sup> *Id.*

<sup>2916</sup> Congressional Budget Act of 1974 § 421(10), 2 U.S.C. § 658(10), *supra* p. 812, defines “regulation” by adopting the definition of 5 U.S.C. § 601(2), *supra* p. 814.

<sup>2917</sup> Congressional Budget Act of 1974 § 424(b)(1), 2 U.S.C. § 658c(b)(1), *supra* p. 825, addresses “Contents” of the CBO Director’s statements.

<sup>2918</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2919</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *supra* p. 811, defines “Federal private sector mandate.”

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- 424(b)(2)(B) (B) the **amount**,<sup>2920</sup> if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution usable by the **private sector**<sup>2921</sup> for the activities subject to the **Federal private sector mandates**.<sup>2922</sup>
- 424(b)(3) (3) ESTIMATE NOT FEASIBLE.—If the Director determines that it is not feasible to make a reasonable estimate that would be required under **paragraphs (1)**<sup>2923</sup> and **(2)**,<sup>2924</sup> the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement.
- 424(c) (c) LEGISLATION FALLING BELOW **DIRECT COSTS**<sup>2925</sup> THRESHOLDS.—If the Director estimates that the **direct costs**<sup>2926</sup> of a **Federal mandate**<sup>2927</sup> will not equal or exceed the thresholds specified in **subsections (a)**<sup>2928</sup> and **(b)**,<sup>2929</sup> the Director shall so state and shall briefly explain the basis of the estimate.
- 424(d) (d) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.—If a bill or joint resolution is passed in an amended form (including if passed by one
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<sup>2920</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>2921</sup> Congressional Budget Act of 1974 § 421(9), 2 U.S.C. § 658(9), *supra* p. 812, defines “private sector.”

<sup>2922</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *supra* p. 811, defines “Federal private sector mandate.”

<sup>2923</sup> Congressional Budget Act of 1974 § 424(b)(1), 2 U.S.C. § 658c(b)(1), *supra* p. 825, addresses “Contents” of the CBO Director’s statements.

<sup>2924</sup> Congressional Budget Act of 1974 § 424(b)(2), 2 U.S.C. § 658c(b)(2), *supra* p. 825, addresses “Estimates.”

<sup>2925</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2926</sup> *Id.*

<sup>2927</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>2928</sup> Congressional Budget Act of 1974 § 424(a), 2 U.S.C. § 658c(a), *supra* p. 822, addresses “Federal Intergovernmental Mandates in Reported Bills and Resolutions.”

<sup>2929</sup> Congressional Budget Act of 1974 § 424(b), 2 U.S.C. § 658c(b), *supra* p. 825, addresses “Federal Private Sector Mandates in Reported Bills and Joint Resolutions.”

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House as an amendment in the nature of a substitute for the text of a bill or joint resolution from the other House) or is reported by a committee of conference in amended form, and the amended form contains a **Federal mandate**<sup>2930</sup> not previously considered by either House or which contains an increase in the **direct cost**<sup>2931</sup> of a previously considered **Federal mandate**,<sup>2932</sup> then the committee of conference shall ensure, to the greatest extent practicable, that the Director shall prepare a statement as provided in **this subsection**<sup>2933</sup> or a supplemental statement for the bill or joint resolution in that amended form.

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**\$50,000,000 (adjusted annually for inflation)**—The Congressional Budget Office has advised that the \$100 million and \$50 million thresholds for private sector and intergovernmental mandates, respectively, when adjusted for inflation, are as follows (as of May 2022)<sup>2934</sup>:

Year	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
private sector	184	190	196	200	204	208	214	218	224	230
inter-governmental	92	95	98	100	102	104	107	109	112	115

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<sup>2930</sup> [Congressional Budget Act of 1974 § 421\(6\)](#), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>2931</sup> [Congressional Budget Act of 1974 § 421\(3\)](#), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2932</sup> [Congressional Budget Act of 1974 § 421\(6\)](#), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>2933</sup> [Congressional Budget Act of 1974 § 424\(d\)](#), 2 U.S.C. § 658c(d), *supra* p. 826, addresses “Amended Bills and Joint Resolutions; Conference Reports.”

<sup>2934</sup> E-mail from Cong. Budget Off. to Staff of S. Comm. on the Budget & Cong. Budget Off. re UMRA Annual Thresholds for Mandates 2022-2032 (May 25, 2022, 2:38 PM).

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425        **SEC. 425.<sup>2935</sup> LEGISLATION SUBJECT TO POINT OF ORDER.**

425(a)        **(a) IN GENERAL.**—It shall not be in order in the Senate or the House of Representatives to consider—

425(a)(1)        **(1)** any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the **direct costs<sup>2936</sup>** of **Federal mandates<sup>2937</sup>** in accordance with **section 423(f)<sup>2938</sup>** before such consideration, except **this paragraph<sup>2939</sup>** shall not apply to any supplemental statement prepared by the Director under **section 424(d);<sup>2940</sup>** and

425(a)(2)        **(2)** any bill, joint resolution, amendment, motion, or conference report that would increase the **direct costs<sup>2941</sup>** of **Federal intergovernmental mandates<sup>2942</sup>** by an amount that causes the thresholds specified in **section 424(a)(1)<sup>2943</sup>** to be exceeded, unless—

425(a)(2)(A)        **(A)** the bill, joint resolution, amendment, motion, or conference report provides **new budget authority<sup>2944</sup>** or new **entitlement authority<sup>2945</sup>** in the

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<sup>2935</sup> Congressional Budget Act of 1974 § 425 is codified as amended at [2 U.S.C. § 658d](#).

<sup>2936</sup> [Congressional Budget Act of 1974 § 421\(3\)](#), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2937</sup> [Congressional Budget Act of 1974 § 421\(6\)](#), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>2938</sup> [Congressional Budget Act of 1974 § 423\(f\)](#), 2 U.S.C. § 658b(f), *supra* p. 821, addresses “Publication of Statement from Director.”

<sup>2939</sup> [Congressional Budget Act of 1974 § 425\(a\)\(1\)](#), 2 U.S.C. § 658d(a)(1), *supra* p. 828

<sup>2940</sup> [Congressional Budget Act of 1974 § 424\(d\)](#), 2 U.S.C. § 658c(d), *supra* p. 826, addresses “Amended Bills and Joint Resolutions; Conference Reports.”

<sup>2941</sup> [Congressional Budget Act of 1974 § 421\(3\)](#), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2942</sup> [Congressional Budget Act of 1974 § 421\(5\)](#), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2943</sup> [Congressional Budget Act of 1974 § 424\(a\)\(1\)](#), 2 U.S.C. § 658c(a)(1), *supra* p. 822, addresses “Contents” of the CBO Director’s statements.

<sup>2944</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>2945</sup> [Congressional Budget Act of 1974 § 3\(9\)](#), 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.”

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House of Representatives or **direct spending**<sup>2946</sup> authority in the Senate for each fiscal year for such mandates included in the bill, joint resolution, amendment, motion, or conference report in an **amount**<sup>2947</sup> equal to or exceeding the **direct costs**<sup>2948</sup> of such mandate; or

425(a)(2)(B) (B) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an **amount**<sup>2949</sup> equal to or exceeding the **direct costs**<sup>2950</sup> of such mandate, and—

425(a)(2)(B)(i) (i) identifies a specific dollar **amount**<sup>2951</sup> of the **direct costs**<sup>2952</sup> of such mandate for each year up to 10 years during which such mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under **subsection (e)**<sup>2953</sup> for each fiscal year;

425(a)(2)(B)(ii) (ii) identifies any appropriation bill that is expected to provide for Federal funding of the **direct cost**<sup>2954</sup> referred to under **clause (i)**<sup>2955</sup> and

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<sup>2946</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *infra* p. 980, defines “direct spending.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *infra* p. 1150, and **S. Con. Res. 14, 117th Cong. § 4001(a)(4)** (2021) (adopted), *infra* p. 1258, adopt the Balanced Budget and Emergency Deficit Control Act definition.

<sup>2947</sup> **Congressional Budget Act of 1974 § 421(2)**, 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>2948</sup> **Congressional Budget Act of 1974 § 421(3)**, 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2949</sup> **Congressional Budget Act of 1974 § 421(2)**, 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>2950</sup> **Congressional Budget Act of 1974 § 421(3)**, 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2951</sup> **Congressional Budget Act of 1974 § 421(2)**, 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>2952</sup> **Congressional Budget Act of 1974 § 421(3)**, 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2953</sup> **Congressional Budget Act of 1974 § 425(e)**, 2 U.S.C. § 658d(e), *infra* p. 834, addresses “Determinations of Federal Mandate Levels.”

<sup>2954</sup> **Congressional Budget Act of 1974 § 421(3)**, 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2955</sup> **Congressional Budget Act of 1974 § 425(a)(2)(B)(i)**, 2 U.S.C. § 658d(a)(2)(B)(i), *infra* p. 829.

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425(a)(2)(B)(iii)(I)

(iii)(I) provides that for any fiscal year the responsible Federal **agency**<sup>2956</sup> shall determine whether there are insufficient appropriations for that fiscal year to provide for the **direct costs**<sup>2957</sup> under **clause (i)**<sup>2958</sup> of such mandate, and shall (no later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either –

425(a)(2)(B)(iii)(I)(aa)

(aa) a statement that the **agency**<sup>2959</sup> has determined, based on a re-estimate of the **direct costs**<sup>2960</sup> of such mandate, after consultation with **State**,<sup>2961</sup> **local**,<sup>2962</sup> and **tribal governments**,<sup>2963</sup> that the amount<sup>2964</sup> appropriated is sufficient to pay for the **direct costs**<sup>2965</sup> of such mandate; or

425(a)(2)(B)(iii)(I)(bb)

(bb) legislative recommendations for either implementing a less costly mandate or making such mandate ineffective for the fiscal year;

425(a)(2)(B)(iii)(II)

(II) provides for expedited procedures for the consideration of the statement or legislative recommendations referred to in **subclause (I)**<sup>2966</sup> by Congress no later than 30 days after the

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<sup>2956</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>2957</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2958</sup> Congressional Budget Act of 1974 § 425(a)(2)(B)(i), 2 U.S.C. § 658d(a)(2)(B)(i), *infra* p. 829.

<sup>2959</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>2960</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2961</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>2962</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *supra* p. 814.

<sup>2963</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *supra* p. 812, defines “tribal government.”

<sup>2964</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>2965</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2966</sup> Congressional Budget Act of 1974 § 425(a)(2)(B)(iii)(I), 2 U.S.C. § 658d(a)(2)(B)(iii)(I), *supra* p. 830.

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statement or recommendations are submitted to Congress; and

425(a)(2)(B)(iii)(III) (III) provides that such mandate shall –

425(a)(2)(B)(iii)(III)(aa) (aa) in the case of a statement referred to in **subclause (I)(aa)**,<sup>2967</sup> cease to be effective 60 days after the statement is submitted unless Congress has approved the **agency’s**<sup>2968</sup> determination by joint resolution during the 60-day period;

425(a)(2)(B)(iii)(III)(bb) (bb) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal **agency**<sup>2969</sup> are submitted to Congress under **subclause (I)(bb)**<sup>2970</sup> unless Congress provides otherwise by law; or

425(a)(2)(B)(iii)(III)(cc) (cc) in the case that such mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

425(b) (b) **RULE OF CONSTRUCTION.**—The provisions of **subsection (a)(2)(B)(iii)**<sup>2971</sup> shall not be construed to prohibit or otherwise restrict a **State**,<sup>2972</sup> **local**,<sup>2973</sup> or **tribal government**<sup>2974</sup> from voluntarily electing to remain subject

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<sup>2967</sup> Congressional Budget Act of 1974 § 425(a)(2)(B)(iii)(I)(aa), 2 U.S.C. § 658d(a)(2)(B)(iii)(I)(aa), *supra* p. 830.

<sup>2968</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>2969</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>2970</sup> Congressional Budget Act of 1974 § 425(a)(2)(B)(iii)(I)(bb), 2 U.S.C. § 658d(a)(2)(B)(iii)(I)(bb), *supra* p. 830830.

<sup>2971</sup> Congressional Budget Act of 1974 § 425(a)(2)(B)(iii), 2 U.S.C. § 658d(a)(2)(B)(iii), *supra* p. 830.

<sup>2972</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>2973</sup> Congressional Budget Act of 1974 § 421(8), 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of 31 U.S.C. § 6501(6), *supra* p. 814.

<sup>2974</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *supra* p. 812, defines “tribal government.”



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to the original **Federal intergovernmental mandate**,<sup>2975</sup> complying with the programmatic or financial responsibilities of the original **Federal intergovernmental mandate**<sup>2976</sup> and providing the funding necessary consistent with the costs of Federal **agency**<sup>2977</sup> assistance, monitoring, and enforcement.

425(c) (c) COMMITTEE ON APPROPRIATIONS. —

425(c)(1) (1) APPLICATION.—The provisions of **subsection (a)**<sup>2978</sup> —

425(c)(1)(A) (A) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; except

425(c)(1)(B) (B) shall apply to —

425(c)(1)(B)(i) (i) any legislative provision increasing **direct costs**<sup>2979</sup> of a **Federal intergovernmental mandate**<sup>2980</sup> contained in any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

425(c)(1)(B)(ii) (ii) any legislative provision increasing **direct costs**<sup>2981</sup> of a **Federal intergovernmental mandate**<sup>2982</sup> contained in any amendment offered to a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

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<sup>2975</sup> **Congressional Budget Act of 1974 § 421(5)**, 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2976</sup> *Id.*

<sup>2977</sup> **Congressional Budget Act of 1974 § 421(1)**, 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>2978</sup> **Congressional Budget Act of 1974 § 425(a)**, 2 U.S.C. § 658d(a), *supra* p. 828, addresses “Legislation Subject to Point of Order” “In general.”

<sup>2979</sup> **Congressional Budget Act of 1974 § 421(3)**, 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2980</sup> **Congressional Budget Act of 1974 § 421(5)**, 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2981</sup> **Congressional Budget Act of 1974 § 421(3)**, 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2982</sup> **Congressional Budget Act of 1974 § 421(5)**, 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”



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425(c)(1)(B)(iii) (iii) any legislative provision increasing **direct costs**<sup>2983</sup> of a **Federal intergovernmental mandate**<sup>2984</sup> in a conference report accompanying a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives; and

425(c)(1)(B)(iv) (iv) any legislative provision increasing **direct costs**<sup>2985</sup> of a **Federal intergovernmental mandate**<sup>2986</sup> contained in any amendments in disagreement between the two Houses to any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives.

425(c)(2) (2) CERTAIN PROVISIONS STRICKEN IN SENATE.—Upon a point of order being made by any Senator against any provision listed in **paragraph (1)(B)**,<sup>2987</sup> and the point of order being sustained by the Chair, such specific provision shall be deemed stricken from the bill, resolution, amendment, amendment in disagreement, or conference report and may not be offered as an amendment from the floor.

425(d) (d) DETERMINATIONS OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of **this section**,<sup>2988</sup> in the Senate, the presiding officer of the Senate shall consult with the Committee on Governmental Affairs, to the extent practicable, on questions concerning the

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<sup>2983</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2984</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2985</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>2986</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>2987</sup> Congressional Budget Act of 1974 § 425(c)(1)(B), 2 U.S.C. § 658d(c)(1)(B), *supra* p. 832.

<sup>2988</sup> Congressional Budget Act of 1974 § 425, 2 U.S.C. § 658d, *supra* p. 828, addresses “Legislation Subject to Point of Order.”

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applicability of [this part](#)<sup>2989</sup> to a pending bill, joint resolution, amendment, motion, or conference report.

425(e)            (e) DETERMINATIONS OF [FEDERAL MANDATE](#)<sup>2990</sup>  
LEVELS. — For purposes of [this section](#),<sup>2991</sup> in the Senate, the  
levels of [Federal mandates](#)<sup>2992</sup> for a fiscal year shall be  
determined based on the estimates made by the  
Committee on the Budget.

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<sup>2989</sup> [Congressional Budget Act of 1974 tit. IV, part B, §§ 421–428](#), 2 U.S.C. §§ 658–658g, *infra* pp. 803–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>2990</sup> [Congressional Budget Act of 1974 § 421\(6\)](#), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>2991</sup> [Congressional Budget Act of 1974 § 425](#), 2 U.S.C. § 658d, *supra* p. 828, addresses “Legislation Subject to Point of Order.”

<sup>2992</sup> [Congressional Budget Act of 1974 § 421\(6\)](#), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

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426        **SEC. 426.<sup>2993</sup> PROVISIONS RELATING TO HOUSE  
OF REPRESENTATIVES**

426(a)        **(a) ENFORCEMENT IN THE HOUSE OF  
REPRESENTATIVES.—It shall not be in order in the House  
of Representatives to consider a rule or order that waives  
the application of [section 425](#).<sup>2994</sup>**

426(b)        **(b) DISPOSITION OF POINTS OF ORDER.—**

426(b)(1)        **(1) APPLICATION TO HOUSE OF REPRESENTATIVES.—  
[This subsection](#)<sup>2995</sup> shall apply only to the House of  
Representatives.**

426(b)(2)        **(2) THRESHOLD BURDEN.—In order to be cognizable  
by the Chair, a point of order under [section 425](#)<sup>2996</sup> or  
[subsection \(a\) of this section](#)<sup>2997</sup> must specify the  
precise language on which it is premised.**

426(b)(3)        **(3) QUESTION OF CONSIDERATION.—As disposition  
of points of order under [section 425](#)<sup>2998</sup> or [subsection \(a\)  
of this section](#),<sup>2999</sup> the Chair shall put the question of  
consideration with respect to the proposition that is the  
subject of the points of order.**

426(b)(4)        **(4) DEBATE AND INTERVENING MOTIONS.—A  
question of consideration under [this section](#)<sup>3000</sup> shall be  
debatable for 10 minutes by each Member initiating a**

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<sup>2993</sup> Congressional Budget Act of 1974 § 426 is codified as amended at [2 U.S.C. § 658e](#).

<sup>2994</sup> [Congressional Budget Act of 1974 § 425](#), 2 U.S.C. § 658d, *supra* p. 828, addresses “Legislation Subject to Point of Order.”

<sup>2995</sup> [Congressional Budget Act of 1974 § 426\(b\)](#), 2 U.S.C. § 658e(b), *supra* p. 835, addresses “Disposition of Points of Order.”

<sup>2996</sup> [Congressional Budget Act of 1974 § 425](#), 2 U.S.C. § 658d, *supra* p. 828, addresses “Legislation Subject to Point of Order.”

<sup>2997</sup> [Congressional Budget Act of 1974 § 426\(a\)](#), 2 U.S.C. § 658e(a), *supra* p. 835, addresses “Enforcement in the House of Representatives.”

<sup>2998</sup> [Congressional Budget Act of 1974 § 425](#), 2 U.S.C. § 658d, *supra* p. 828, addresses “Legislation Subject to Point of Order.”

<sup>2999</sup> [Congressional Budget Act of 1974 § 426\(a\)](#), 2 U.S.C. § 658e(a), *supra* p. 835, addresses “Enforcement in the House of Representatives.”

<sup>3000</sup> [Congressional Budget Act of 1974 § 426](#), 2 U.S.C. § 658e, *supra* p. 835, addresses “Provisions Relating to House of Representatives.”

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point of order and for 10 minutes by an opponent on each point of order, but shall otherwise be decided without intervening motion except one that the House adjourn or that the Committee of the Whole rise, as the case may be.

426(b)(5)

(5) EFFECT ON AMENDMENT IN ORDER AS ORIGINAL TEXT.—The disposition of the question of consideration under [this subsection](#)<sup>3001</sup> with respect to a bill or joint resolution shall be considered also to determine the question of consideration under [this subsection](#)<sup>3002</sup> with respect to an amendment made in order as original text.

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<sup>3001</sup> [Congressional Budget Act of 1974 § 426\(b\)](#), 2 U.S.C. § 658e(b), *supra* p. 835, addresses “Disposition of Points of Order.”

<sup>3002</sup> [Id.](#)

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**SEC. 427.<sup>3003</sup> REQUESTS TO CONGRESSIONAL  
BUDGET OFFICE FROM SENATORS.**

At the written request of a Senator, the Director shall, to the extent practicable, prepare an estimate of the **direct costs<sup>3004</sup>** of a **Federal intergovernmental mandate<sup>3005</sup>** contained in an amendment of such Senator.

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<sup>3003</sup> Congressional Budget Act of 1974 § 427 is codified as amended at [2 U.S.C. § 658f](#).

<sup>3004</sup> [Congressional Budget Act of 1974 § 421\(3\)](#), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>3005</sup> [Congressional Budget Act of 1974 § 421\(5\)](#), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

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**SEC. 428.<sup>3006</sup> CLARIFICATION OF APPLICATION.**

428(a) **(a) IN GENERAL.** — **This part<sup>3007</sup>** applies to any bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out any statute, or that otherwise amends any statute, only if enactment of the bill, joint resolution, amendment, motion, or conference report —

428(a)(1) **(1)** would result in a net reduction in or elimination of authorization of appropriations for Federal financial assistance that would be provided to **State,<sup>3008</sup> local,<sup>3009</sup> or tribal governments<sup>3010</sup>** for use for the purpose of complying with any **Federal intergovernmental mandate,<sup>3011</sup>** or to the **private sector<sup>3012</sup>** for use to comply with any **Federal private sector mandate,<sup>3013</sup>** and would not eliminate or reduce duties established by the **Federal mandate<sup>3014</sup>** by a corresponding **amount,<sup>3015</sup>** or

428(a)(2) **(2)** would result in a net increase in the aggregate amount of **direct costs<sup>3016</sup>** of **Federal intergovernmental**

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<sup>3006</sup> Congressional Budget Act of 1974 § 428 is codified as amended at [2 U.S.C. § 658g](#).

<sup>3007</sup> [Congressional Budget Act of 1974 tit. IV, part B, §§ 421–428](#), 2 U.S.C. §§ 658–658g, *infra* pp. 803–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>3008</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of [31 U.S.C. § 6501\(9\)](#), *supra* p. 814.

<sup>3009</sup> [Congressional Budget Act of 1974 § 421\(8\)](#), 2 U.S.C. § 658(8), *supra* p. 812, defines “local government” by adopting the definition of [31 U.S.C. § 6501\(6\)](#), *supra* p. 814.

<sup>3010</sup> [Congressional Budget Act of 1974 § 421\(13\)](#), 2 U.S.C. § 658(13), *supra* p. 812, defines “tribal government.”

<sup>3011</sup> [Congressional Budget Act of 1974 § 421\(5\)](#), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>3012</sup> [Congressional Budget Act of 1974 § 421\(9\)](#), 2 U.S.C. § 658(9), *supra* p. 812, defines “private sector.”

<sup>3013</sup> [Congressional Budget Act of 1974 § 421\(7\)](#), 2 U.S.C. § 658(7), *supra* p. 811, defines “Federal private sector mandate.”

<sup>3014</sup> [Congressional Budget Act of 1974 § 421\(6\)](#), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>3015</sup> [Congressional Budget Act of 1974 § 421\(2\)](#), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>3016</sup> [Congressional Budget Act of 1974 § 421\(3\)](#), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

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**mandates<sup>3017</sup> or Federal private sector mandates<sup>3018</sup> other than as described in paragraph (1).<sup>3019</sup>**

428(b) **(b) DIRECT COSTS.<sup>3020</sup> —**

428(b)(1) **(1) IN GENERAL.**—For purposes of **this part<sup>3021</sup>** the **direct cost<sup>3022</sup> of the Federal mandates<sup>3023</sup>** in a bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out a statute, or that otherwise amends any statute, means the net increase, resulting from enactment of the bill, joint resolution, amendment, motion, or conference report, in the **amount<sup>3024</sup>** described under **paragraph (2)(A)<sup>3025</sup>** over the **amount<sup>3026</sup>** described under **paragraph (2)(B).<sup>3027</sup>**

428(b)(2) **(2) AMOUNTS.<sup>3028</sup> —The amounts<sup>3029</sup> referred to under paragraph (1)<sup>3030</sup> are —**

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<sup>3017</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *supra* p. 808, defines “Federal intergovernmental mandate.”

<sup>3018</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *supra* p. 811, defines “Federal private sector mandate.”

<sup>3019</sup> Congressional Budget Act of 1974 § 428(a)(1), 2 U.S.C. § 658g(a)(1), *supra* p. 838.

<sup>3020</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>3021</sup> Congressional Budget Act of 1974 tit. IV, part B, §§ 421–428, 2 U.S.C. §§ 658–658g, *infra* pp. 803–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>3022</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>3023</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>3024</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>3025</sup> Congressional Budget Act of 1974 § 428(b)(2)(A), 2 U.S.C. § 658g(b)(2)(a), *infra* p. 840.

<sup>3026</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>3027</sup> Congressional Budget Act of 1974 § 428(b)(2)(B), 2 U.S.C. § 658g(b)(2)(B), *infra* p. 840.

<sup>3028</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>3029</sup> *Id.*

<sup>3030</sup> Congressional Budget Act of 1974 § 428(b)(1), 2 U.S.C. § 658g(b)(1), *supra* p. 839, addresses “Direct Costs” “In general.”

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- 428(b)(2)(A) (A) the aggregate **amount**<sup>3031</sup> of **direct costs**<sup>3032</sup> of **Federal mandates**<sup>3033</sup> that would result under the statute if the bill, joint resolution, amendment, motion, or conference report is enacted; and
- 428(b)(2)(B) (B) the aggregate **amount**<sup>3034</sup> of **direct costs**<sup>3035</sup> of **Federal mandates**<sup>3036</sup> that would result under the statute if the bill, joint resolution, amendment, motion, or conference report were not enacted.
- 428(b)(3) (3) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—For purposes of **this section**,<sup>3037</sup> in the case of legislation to extend authorization of appropriations, the authorization level that would be provided by the extension shall be compared to the authorization level for the last year in which authorization of appropriations is already provided.
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<sup>3031</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>3032</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>3033</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>3034</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *supra* p. 803, defines “amount” for the purposes of title IV, part B, regarding Federal Mandates.

<sup>3035</sup> Congressional Budget Act of 1974 § 421(3), 2 U.S.C. § 658(3), *supra* p. 803, defines “direct costs.”

<sup>3036</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *supra* p. 811, defines “Federal mandate.”

<sup>3037</sup> Congressional Budget Act of 1974 § 428, 2 U.S.C. § 658g, *supra* p. 838, addresses “Clarification of Application.”



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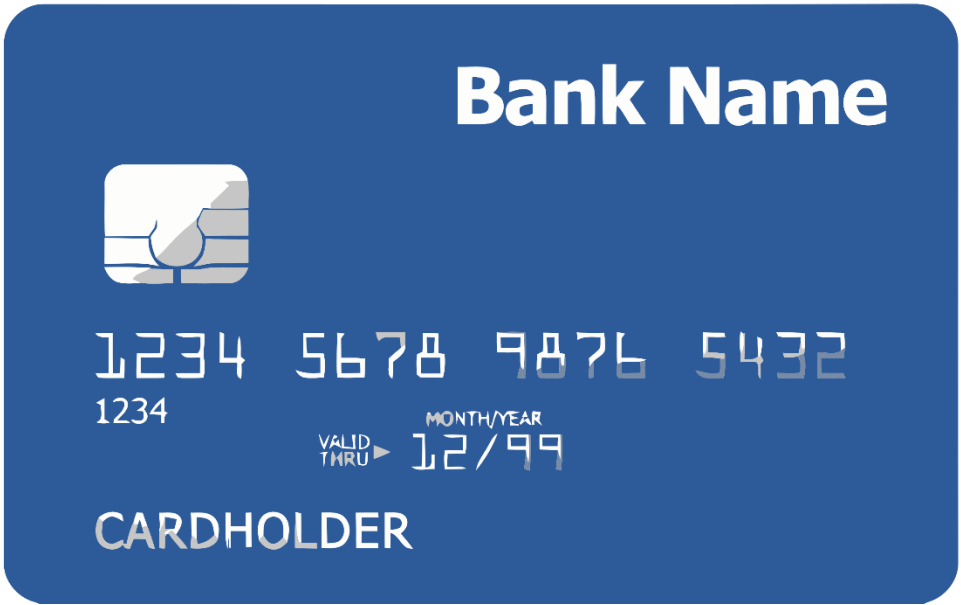


Image: Wikimedia

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# Credit Reform

The Federal budget covers all Federal spending. The Federal budget generally records spending, even for capital investments, on a cash basis. The Office of Management and Budget explains:

The budget includes all types of spending, including both current operating expenditures and capital investment, and to the extent possible, both are measured on the basis of full cost. Questions are often raised about the measure of capital investment. The present budget provides policymakers the necessary information regarding investment spending. It records investment on a cash basis, and it requires the Congress to provide budget authority before an agency can obligate the Government to make a cash outlay.<sup>3038</sup>

Credit reform provides a major exception to the general rule of cash accounting. In the Federal Credit Reform Act of 1990,<sup>3039</sup> Congress changed the budgetary treatment of Federal loans and loan guarantees to more

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<sup>3038</sup> OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, [ANALYTICAL PERSPECTIVES: BUDGET OF THE U.S. GOVERNMENT: FISCAL YEAR 2023](#), at 100 (2022).

<sup>3039</sup> [Federal Credit Reform Act of 1990](#), 2 U.S.C. §§ 661–661f, *infra* pp. 848–874. The Federal Credit Reform Act is now title V of the Congressional Budget Act.

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accurately capture their costs. The Office of Management and Budget explains:

Some Government programs provide assistance through direct loans or loan guarantees. A *direct loan* is a disbursement of funds by the Government to a non-Federal borrower under a contract that requires repayment of such funds with or without interest and includes economically equivalent transactions, such as the sale of Federal assets on credit terms. A *loan guarantee* is any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender. The Federal Credit Reform Act of 1990, as amended (FCRA), prescribes the budgetary treatment for Federal credit programs. Under this treatment, the budget records obligations and outlays up front, for the net cost to the Government (subsidy cost), rather than recording the cash flows year by year over the term of the loan. FCRA treatment allows the comparison of direct loans and loan guarantees to each other, and to other methods of delivering assistance, such as grants.

The cost of direct loans and loan guarantees, sometimes called the “subsidy cost,” is estimated as the present value of expected payments to and from the public over the term of the loan, discounted using appropriate Treasury interest rates. Similar to most other kinds of programs, agencies can make loans or guarantee loans only if the Congress has appropriated funds sufficient to cover the subsidy costs, or provided a limitation in an appropriations act on the amount of direct loans or loan guarantees that can be made.

The budget records the subsidy cost to the Government arising from direct loans and loan guarantees—the budget authority and outlays—in *credit program accounts*. When a Federal agency disburses a direct loan or when a non-Federal lender disburses a loan guaranteed by a Federal agency, the program account disburses or outlays an amount equal to the estimated present value cost, or subsidy, to a non-budgetary credit *financing account*. The financing accounts record the actual transactions with the public.<sup>3040</sup>

In a report issued shortly before Congress enacted the 1990 law, the Congressional Budget Office explained the motivation for credit reform:

Under existing practice [before credit reform], the budget reports net outlays—that is, cash payments minus receipts—for each credit account for

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<sup>3040</sup> OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, [ANALYTICAL PERSPECTIVES: BUDGET OF THE U.S. GOVERNMENT: FISCAL YEAR 2023](#), at 105–06 (2022) (footnote omitted).

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a fiscal year. This budgetary treatment, however, does not reflect the long-term costs to taxpayers from federal credit transactions. Current year payments differ from multi-year costs because credit creates an obligation to pay later: for federal loans, the borrower promises to repay the government; for federally guaranteed private loans, government—on behalf of taxpayers—promises to pay if the borrower defaults.

. . . .

If adopted, credit reform would make it possible to compare accurately the cost of cash and credit programs without changing any credit programs or the benefits that are provided. Credit reform would also facilitate cost comparisons of high-cost and low-cost federal loans and guarantees. Credit reform would succeed in recognizing subsidy costs when these costs can still be controlled through the appropriation process. The CBO report details a method for measuring the subsidy costs of credit.<sup>3041</sup>

Shortly after Congress enacted the 1990 law, the Congressional Budget Office explained the key differences:

The heart of the new credit accounting lies in identifying the subsidy costs inherent in nearly all federal credit programs and separating these from the nonsubsidized cash flows. Under the current system [before credit reform], which applies only through fiscal year 1991, outlays measure federal credit on a cash basis; that is, outlays for direct loans and for loan guarantees that have defaulted are recorded in the budget net of collections. Programs with large volumes of credit activity, therefore, can be reported as having small net outlays. Under credit reform beginning in fiscal year 1992, the budget will reflect the budget authority and outlays needed to cover the subsidy costs of loans and guarantees at the time they are extended to borrowers. The subsidy, as defined in the FCRA, is the “estimated long-term cost to the government of a direct loan or loan guarantee calculated on a net present value basis, excluding administrative costs.”<sup>3042</sup>

More recently, some questioned how credit reform measures subsidy costs. In 2015, Raj Gnanarajah of the Congressional Research Service reported:

In recent years, Congress has debated the best way to measure subsidy costs. The debate has revolved around whether the subsidy costs should

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<sup>3041</sup> CONG. BUDGET OFF., [CREDIT REFORM: COMPARABLE BUDGET COSTS FOR CASH AND CREDIT](#) vi (1989). For an earlier CBO analysis, see CONG. BUDGET OFF., [LOAN GUARANTEES: CURRENT CONCERNS AND ALTERNATIVES FOR CONTROL](#) (1979).

<sup>3042</sup> CONG. BUDGET OFF., [AN EXPLANATION OF THE BUDGETARY CHANGES UNDER CREDIT REFORM](#) 3 (1991) (quoting [Federal Credit Reform Act of 1990 § 502\(5\)\(A\)](#), 2 U.S.C. § 661a(5)(A), *infra* p. 851, which defines “cost”).

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be measured as prescribed by FCRA or by what is referred to as the *fair-value method*. Subsidy costs estimates under FCRA adjust the cash outflows and inflows for the various risks a loan portfolio might face. These cash flows are also discounted using Treasury interest rates for estimating subsidy costs.

One method of estimating the fair-value costs of the credit programs is to use private-market interest rates. Generally, private-sector firms would charge a borrower with a government loan guarantee lower interest rates than they would charge a borrower without the government guarantee. Switching to fair value, therefore, is expected to increase the subsidy costs estimates of credit programs. For example, the Congressional Budget Office (CBO) projects that changing the method of calculating subsidy costs estimates to the fair-value method would increase the 10-year budget cost estimates of student loans by \$223 billion, single-family mortgage insurance by \$93 billion, and the Export-Import Bank by \$16 billion. Many of the credit programs that are estimated to make a profit under FCRA have a subsidy cost (incur loss) under fair value.

Proponents of fair-value cost estimates argue the government's cost of credit programs should reflect market risks. Those risks are currently excluded from FCRA cost estimates. In their view, the risk posed by the borrowers should be considered as a cost to the taxpayers because taxpayers are ultimately responsible for paying the debt of the U.S. government. Supporters of using the FCRA method argue that it is appropriate for the government to discount at the rate at which it borrows and that market risk is not the same as budgetary costs. In their view, including market risks to estimate credit subsidies includes amounts that the government will never incur. Further, adopting fair value for budget estimates does not necessarily imply that there would be a need to raise taxes or to borrow additional funds because such costs affect only the budget projections not the actual amount of cash flows.<sup>3043</sup>

The Government Accountability Office concluded that the Federal Credit Reform Act's method of estimating credit subsidy costs is more appropriate for budget estimates than a fair value approach, stating:

The additional market risk recognized under the fair value approach does not reflect additional cash costs beyond those already recognized by FCRA. The introduction of market risk into subsidy costs under the fair value approach would (1) be inconsistent with long-standing federal budgeting practices primarily based on cash outlays; (2) be inconsistent

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<sup>3043</sup> RAJ GNANARAJAH, CONG. RSCH. SERV., [R44193, FEDERAL CREDIT PROGRAMS: COMPARING FAIR VALUE AND THE FEDERAL CREDIT REFORM ACT \(FCRA\)](#), summary (2015). See also MICHAEL FALKENHEIM & WENDY KISKA, CONG. BUDGET OFF., [HOW CBO ESTIMATES THE MARKET RISK OF FEDERAL CREDIT PROGRAMS](#) (2022).

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with the budgetary treatment of similarly risky programs; (3) introduce transparency and verification issues with respect to inclusion of a noncash cost in budget totals; and (4) involve significant implementation issues, such as the need for additional agency resources. Consequently, GAO does not support the use of the fair value approach to estimate subsidy costs for the budget and believes the current FCRA methodology is more appropriate for this purpose as it represents the best estimate of the direct cost to the government and is consistent with current budgetary practices.<sup>3044</sup>

In 2022, the House-passed America COMPETES Act sought to apply credit reform principles to purchases of equities by the Development Finance Corporation.<sup>3045</sup> Budget Committee staff of both Houses and both parties opposed that proposal.<sup>3046</sup>

Section 185 of the Office of Management and Budget's Circular A-11 addresses Federal Credit.<sup>3047</sup>

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<sup>3044</sup> U.S. GOV'T ACCOUNTABILITY OFF., [GAO-16-41, CREDIT REFORM: CURRENT METHOD TO ESTIMATE CREDIT SUBSIDY COSTS IS MORE APPROPRIATE FOR BUDGET ESTIMATES THAN A FAIR VALUE APPROACH](#), What GAO Found (2016); *see generally* David Kamin, *Risky Returns: Accounting for Risk in the Federal Budget*, 88 IND. L.J. 723 (2013).

<sup>3045</sup> [America COMPETES Act of 2022](#), H.R. 4521, 117th Cong. § 30215 (as passed by House Feb. 4, 2022).

<sup>3046</sup> E-mail from Staff of S. Comm. on the Budget (for bipartisan Staff of S. Comm. on the Budget & Staff of H. Comm. on the Budget) to Staff of S. Majority Leader & Staff of S. Comm. on the Budget re Bicameral, bipartisan Budget Committee opposition to "COMPETES" provision applying credit scoring to DFC equity investments (May 4, 2022, 12:54 PM).

<sup>3047</sup> OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, [CIRCULAR NO. A-11: PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET § 185](#) (2022).

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## TITLE V CREDIT REFORM

### SHORT TITLE

500            SEC. 500.—**This title**<sup>3048</sup> may be cited as the “Federal  
Credit Reform Act of 1990”.

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<sup>3048</sup> [Congressional Budget Act of 1974 tit. V, §§ 500–507](#), 2 U.S.C. §§ 661–661f, pp. 848–874, addresses “Credit Reform.”



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## PURPOSES

- 501            SEC. 501.<sup>3049</sup> — The purposes of **this title**<sup>3050</sup> are to —
- 501(1)            (1) measure more accurately the **costs**<sup>3051</sup> of Federal credit programs;
- 501(2)            (2) place the **cost**<sup>3052</sup> of credit programs on a budgetary basis equivalent to other Federal spending;
- 501(3)            (3) encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries; and
- 501(4)            (4) improve the allocation of resources among credit programs and between credit and other spending programs.
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<sup>3049</sup> Federal Credit Reform Act of 1990 § 501 is codified as amended at [2 U.S.C. § 661](#).

<sup>3050</sup> [Congressional Budget Act of 1974 tit. V, §§ 500–507](#), 2 U.S.C. §§ 661–661f, pp. 848–874, addresses “Credit Reform.”

<sup>3051</sup> [Federal Credit Reform Act of 1990 § 502\(5\)\(A\)](#), 2 U.S.C. § 661a(5)(A), *infra* p. 851, defines “cost.”

<sup>3052</sup> *Id.*

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## DEFINITIONS<sup>3053</sup>

502 SEC. 502.<sup>3054</sup> — For purposes of [this title](#)<sup>3055</sup> —

502(1) (1) The term “direct loan” means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a [G]overnment<sup>3056</sup> asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

502(2) (2) The term “[direct loan obligation](#)” means a binding agreement by a Federal [agency](#)<sup>3057</sup> to make a [direct loan](#)<sup>3058</sup> when specified conditions are fulfilled by the borrower.

502(3) (3) The term “loan guarantee” means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits,

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<sup>3053</sup> Budget process laws define terms in many places. See [Congressional Budget Act of 1974 § 3, 310\(b\), 421](#), 2 U.S.C. §§ 622, 641(b), 658, *supra* pp. 55, 529, 803; [Impoundment Control Act of 1974 § 1011](#), 2 U.S.C. § 682, *infra* p. 923; [Balanced Budget and Emergency Deficit Control Act of 1985 §§ 250\(c\), 251\(b\)\(2\)\(B\)\(iii\), 256\(g\)\(2\)](#), 2 U.S.C. §§ 900(c), 901(b)(2)(B)(ii), 906(g)(2), *infra* pp. 977, 997, 1097; [Federal Credit Reform Act of 1990 § 502](#), 2 U.S.C. § 661a, *supra* p. 850; [Statutory Pay-As-You-Go Act of 2010 § 3](#), 2 U.S.C. § 932, *infra* p. 1150; [S. Con. Res. 70, 110th Cong. § 314\(b\)](#), 122 Stat. 5143, 5179 (2008), *infra* p. 1221; [H. Con. Res 71, 115th Cong. § 4106\(a\)\(3\)](#) (2017) (adopted), *infra* p. 1246; [S. Con. Res. 14, 117th Cong. §§ 4001\(a\)\(4\), 4001\(a\)\(5\), 4002\(a\)\(2\), 4003\(a\)\(2\)](#) (2021) (adopted), *infra* pp. 1258, 1259, 1262, 1267. For a glossary collecting these definitions in budget process law, see *infra* p. 1542.

<sup>3054</sup> Federal Credit Reform Act of 1990 § 502 is codified as amended at [2 U.S.C. § 661a](#).

<sup>3055</sup> [Congressional Budget Act of 1974 tit. V, §§ 500–507](#), 2 U.S.C. §§ 661–661f, pp. 848–874, addresses “Credit Reform.”

<sup>3056</sup> The House Office of the Law Revision Counsel, which maintains the U.S. Code, notes that this reference “[p]robably should be capitalized,” as it refers to the United States Government. [2 U.S.C. § 661a note](#).

<sup>3057</sup> [Congressional Budget Act of 1974 § 421\(1\)](#), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of [5 U.S.C. § 551\(1\)](#), *supra* p. 813.

<sup>3058</sup> [Federal Credit Reform Act of 1990 § 502\(1\)](#), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

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shares, or other withdrawable accounts in financial institutions.

502(4) (4) The term “loan guarantee commitment” means a binding agreement by a Federal [agency](#)<sup>3059</sup> to make a [loan guarantee](#)<sup>3060</sup> when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

502(5)(A) (5)(A) The term “cost” means the estimated long-term cost to the Government of a [direct loan](#)<sup>3061</sup> or [loan guarantee](#)<sup>3062</sup> or [modification](#)<sup>3063</sup> thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or [outlays](#).<sup>3064</sup>

502(5)(B) (B) The [cost](#)<sup>3065</sup> of a [direct loan](#)<sup>3066</sup> shall be the net present value, at the time when the [direct loan](#)<sup>3067</sup> is disbursed, of the following estimated cash flows:

502(5)(B)(i) (i) loan disbursements;

502(5)(B)(ii) (ii) repayments of principal; and

502(5)(B)(iii) (iii) payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries;

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<sup>3059</sup> [Congressional Budget Act of 1974 § 421\(1\)](#), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of [5 U.S.C. § 551\(1\)](#), *supra* p. 813.

<sup>3060</sup> [Federal Credit Reform Act of 1990 § 502\(3\)](#), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3061</sup> [Federal Credit Reform Act of 1990 § 502\(5\)\(B\)](#), 2 U.S.C. § 661a(5)(B), *infra* p. 851, defines “cost of a direct loan.”

<sup>3062</sup> [Federal Credit Reform Act of 1990 § 502\(5\)\(C\)](#), 2 U.S.C. § 661a(5)(C), *infra* p. 852, defines “cost of a loan guarantee.”

<sup>3063</sup> [Federal Credit Reform Act of 1990 § 502\(5\)\(D\)](#), 2 U.S.C. § 661a(5)(D), *infra* p. 852, defines “cost of a modification.”

<sup>3064</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>3065</sup> [Federal Credit Reform Act of 1990 § 502\(5\)\(A\)](#), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3066</sup> [Federal Credit Reform Act of 1990 § 502\(1\)](#), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3067</sup> *Id.*

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including the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.

502(5)(C) (C) The **cost**<sup>3068</sup> of a **loan guarantee**<sup>3069</sup> shall be the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:

502(5)(C)(i) (i) payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments; and

502(5)(C)(ii) (ii) payments to the Government including origination and other fees, penalties and recoveries;

including the effects of changes in loan terms resulting from the exercise by the guaranteed lender of an option included in the **loan guarantee**<sup>3070</sup> contract, or by the borrower of an option included in the guaranteed loan contract.

502(5)(D) (D) The **cost**<sup>3071</sup> of a **modification**<sup>3072</sup> is the difference between the **current**<sup>3073</sup> estimate of the net present value of the remaining cash flows under the terms of a **direct loan**<sup>3074</sup> or **loan guarantee**<sup>3075</sup> contract, and the **current**<sup>3076</sup> estimate of the net present value of the remaining cash flows under the terms of the contract, as modified.

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<sup>3068</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3069</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3070</sup> *Id.*

<sup>3071</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3072</sup> Federal Credit Reform Act of 1990 § 502(9), 2 U.S.C. § 661a(9), *infra* p. 854, defines “modification.”

<sup>3073</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(9), 2 U.S.C. § 900(c)(9), *infra* p. 981, defines “current.” Federal Credit Reform Act of 1990 § 502(10), 2 U.S.C. § 661a(10), *infra* p. 855, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>3074</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3075</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3076</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(9), 2 U.S.C. § 900(c)(9), *infra* p. 981, defines “current.” Federal Credit Reform Act of 1990 § 502(10), 2 U.S.C. § 661a(10), *infra* p. 855, adopts the Balanced Budget and Emergency Deficit Control Act definition.

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- 502(5)(E) (E) In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the cash flows of the **direct loan**<sup>3077</sup> or **loan guarantee**<sup>3078</sup> for which the estimate is being made.
- 502(5)(F) (F) When funds are obligated for a **direct loan**<sup>3079</sup> or **loan guarantee**,<sup>3080</sup> the estimated **cost**<sup>3081</sup> shall be based on the **current**<sup>3082</sup> assumptions, adjusted to incorporate the terms of the loan contract, for the fiscal year in which the funds are obligated.
- 502(6) (6) The term “credit program **account**”<sup>3083</sup> means the budget **account**<sup>3084</sup> into which an appropriation to cover the **cost of a direct loan**<sup>3085</sup> or **loan guarantee**<sup>3086</sup> program is made and from which such **cost**<sup>3087</sup> is disbursed to the **financing account**.<sup>3088</sup>
- 502(7) (7) The term “financing account” means the non-budget **account**<sup>3089</sup> or **accounts**<sup>3090</sup> associated with each

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<sup>3077</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3078</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3079</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3080</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3081</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3082</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(9), 2 U.S.C. § 900(c)(9), *infra* p. 981, defines “current.” Federal Credit Reform Act of 1990 § 502(10), 2 U.S.C. § 661a(10), *infra* p. 855, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>3083</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

<sup>3084</sup> *Id.*

<sup>3085</sup> Federal Credit Reform Act of 1990 § 502(5)(B), 2 U.S.C. § 661a(5)(B), *supra* p. 851, defines “cost of a direct loan.”

<sup>3086</sup> Federal Credit Reform Act of 1990 § 502(5)(C), 2 U.S.C. § 661a(5)(C), *supra* p. 852, defines “cost of a loan guarantee.”

<sup>3087</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3088</sup> Federal Credit Reform Act of 1990 § 502(7), 2 U.S.C. § 661a(7), *infra* p. 853, defines “financing account.”

<sup>3089</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

<sup>3090</sup> *Id.*

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**credit program account**<sup>3091</sup> which holds balances, receives the **cost**<sup>3092</sup> payment from the **credit program account**,<sup>3093</sup> and also includes all other cash flows to and from the Government resulting from **direct loan obligations**<sup>3094</sup> or **loan guarantee commitments**<sup>3095</sup> made on or after October 1, 1991.

502(8)            (8) The term “liquidating account” means the budget **account**<sup>3096</sup> that includes all cash flows to and from the Government resulting from **direct loan obligations**<sup>3097</sup> or **loan guarantee commitments**<sup>3098</sup> made prior to October 1, 1991. These **accounts**<sup>3099</sup> shall be shown in the budget on a cash basis.

502(9)            (9) The term “modification” means any Government action that alters the estimated **cost**<sup>3100</sup> of an outstanding **direct loan**<sup>3101</sup> (or **direct loan obligation**<sup>3102</sup>) or an outstanding **loan guarantee**<sup>3103</sup> (or **loan guarantee**

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<sup>3091</sup> Federal Credit Reform Act of 1990 § 502(6), 2 U.S.C. § 661a(6), *supra* p. 853, defines “credit program account.”

<sup>3092</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3093</sup> Federal Credit Reform Act of 1990 § 502(6), 2 U.S.C. § 661a(6), *supra* p. 853, defines “credit program account.”

<sup>3094</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3095</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3096</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

<sup>3097</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3098</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3099</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

<sup>3100</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3101</sup> Federal Credit Reform Act of 1990 § 502(5)(B), 2 U.S.C. § 661a(5)(B), *supra* p. 851, defines “cost of a direct loan.”

<sup>3102</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3103</sup> Federal Credit Reform Act of 1990 § 502(5)(C), 2 U.S.C. § 661a(5)(C), *supra* p. 852, defines “cost of a loan guarantee.”

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**commitment<sup>3104</sup>) from the current<sup>3105</sup> estimate of cash flows. This includes the sale of loan assets, with or without recourse, and the purchase of guaranteed loans. This also includes any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated cost of outstanding direct loans<sup>3106</sup> (or direct loan obligations<sup>3107</sup>) or loan guarantees<sup>3108</sup> (or loan guarantee commitments<sup>3109</sup>) such as a change in collection procedures.**

502(10)           **(10) The term “current” has the same meaning as in section 250(c)(9) of the Balanced Budget and Emergency Deficit Control Act of 1985.<sup>3110</sup>**

502(11)           **(11) The term “Director” means the Director of the Office of Management and Budget.**

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<sup>3104</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3105</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(9), 2 U.S.C. § 900(c)(9), *infra* p. 981, defines “current.” Federal Credit Reform Act of 1990 § 502(10), 2 U.S.C. § 661a(10), *infra* p. 855, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>3106</sup> Federal Credit Reform Act of 1990 § 502(5)(B), 2 U.S.C. § 661a(5)(B), *supra* p. 851, defines “cost of a direct loan.”

<sup>3107</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3108</sup> Federal Credit Reform Act of 1990 § 502(5)(C), 2 U.S.C. § 661a(5)(C), *supra* p. 852, defines “cost of a loan guarantee.”

<sup>3109</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3110</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(9), 2 U.S.C. § 900(c)(9), *infra* p. 981, defines “current.”



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## OMB<sup>3111</sup> AND CBO<sup>3112</sup> ANALYSIS, COORDINATION, AND REVIEW

503 SEC. 503.<sup>3113</sup> —

503(a) (a) IN GENERAL.—For the executive branch, the **Director**<sup>3114</sup> shall be responsible for coordinating the estimates<sup>3115</sup> required by **this title**.<sup>3116</sup> The **Director**<sup>3117</sup> shall consult with the agencies that administer **direct loan**<sup>3118</sup> or **loan guarantee**<sup>3119</sup> programs.

503(b) (b) DELEGATION.—The **Director**<sup>3120</sup> may delegate to agencies authority to make estimates of **costs**.<sup>3121</sup> The delegation of authority shall be based upon written guidelines, **regulations**,<sup>3122</sup> or criteria consistent with the definitions in **this title**.<sup>3123</sup>

503(c) (c) COORDINATION WITH CONGRESSIONAL BUDGET OFFICE.—In developing estimation guidelines, **regulations**,<sup>3124</sup> or criteria to be used by Federal

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<sup>3111</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *infra* p. 982, defines “OMB.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *infra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>3112</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(16\)](#), 2 U.S.C. § 900(c)(16), *infra* p. 982, defines “CBO.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *infra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>3113</sup> Federal Credit Reform Act of 1990 § 503 is codified as amended at [2 U.S.C. § 661b](#).

<sup>3114</sup> [Federal Credit Reform Act of 1990 § 502\(11\)](#), 2 U.S.C. § 661a(11), *supra* p. 855, defines “Director.”

<sup>3115</sup> For discussion of how estimates are made, see OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, [CIRCULAR NO. A–11: PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET § 185](#) (2022).

<sup>3116</sup> [Congressional Budget Act of 1974 tit. V, §§ 500–507](#), 2 U.S.C. §§ 661–661f, pp. 848–874, addresses “Credit Reform.”

<sup>3117</sup> [Federal Credit Reform Act of 1990 § 502\(11\)](#), 2 U.S.C. § 661a(11), *supra* p. 855, defines “Director.”

<sup>3118</sup> [Federal Credit Reform Act of 1990 § 502\(1\)](#), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3119</sup> [Federal Credit Reform Act of 1990 § 502\(3\)](#), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3120</sup> [Federal Credit Reform Act of 1990 § 502\(11\)](#), 2 U.S.C. § 661a(11), *supra* p. 855, defines “Director.”

<sup>3121</sup> [Federal Credit Reform Act of 1990 § 502\(5\)\(A\)](#), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3122</sup> [Congressional Budget Act of 1974 § 421\(10\)](#), 2 U.S.C. § 658(10), *supra* p. 812, defines “regulation” by adopting the definition of [5 U.S.C. § 601\(2\)](#), *supra* p. 814.

<sup>3123</sup> [Congressional Budget Act of 1974 tit. V, §§ 500–507](#), 2 U.S.C. §§ 661–661f, pp. 848–874, addresses “Credit Reform.”

<sup>3124</sup> [Congressional Budget Act of 1974 § 421\(10\)](#), 2 U.S.C. § 658(10), *supra* p. 812, defines “regulation” by adopting the definition of [5 U.S.C. § 601\(2\)](#), *supra* p. 814.



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agencies, the **Director**<sup>3125</sup> shall consult with the Director of the Congressional Budget Office.

503(d) (d) IMPROVING **COST**<sup>3126</sup> ESTIMATES.—The **Director**<sup>3127</sup> and the Director of the Congressional Budget Office shall coordinate the development of more accurate data on historical performance of **direct loan**<sup>3128</sup> and **loan guarantee**<sup>3129</sup> programs. They shall annually review the performance of outstanding **direct loans**<sup>3130</sup> and **loan guarantees**<sup>3131</sup> to improve estimates of **costs**.<sup>3132</sup> The Office of Management and Budget and the Congressional Budget Office shall have access to all **agency**<sup>3133</sup> data that may facilitate the development and improvement of estimates of **costs**.<sup>3134</sup>

503(e) (e) HISTORICAL CREDIT PROGRAM **COSTS**.<sup>3135</sup>—The **Director**<sup>3136</sup> shall review, to the extent possible, historical data and develop the best possible estimates of adjustments that would convert aggregate historical budget data to credit reform accounting.

503(f) (f) ADMINISTRATIVE **COSTS**.<sup>3137</sup>—The **Director**<sup>3138</sup> and the Director of the Congressional Budget Office shall each analyze and report to Congress<sup>3139</sup> on differences in long-term administrative **costs**<sup>3140</sup> for

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<sup>3125</sup> Federal Credit Reform Act of 1990 § 502(11), 2 U.S.C. § 661a(11), *supra* p. 855, defines “Director.”

<sup>3126</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3127</sup> Federal Credit Reform Act of 1990 § 502(11), 2 U.S.C. § 661a(11), *supra* p. 855, defines “Director.”

<sup>3128</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3129</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3130</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3131</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3132</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3133</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>3134</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3135</sup> *Id.*

<sup>3136</sup> Federal Credit Reform Act of 1990 § 502(11), 2 U.S.C. § 661a(11), *supra* p. 855, defines “Director.”

<sup>3137</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3138</sup> Federal Credit Reform Act of 1990 § 502(11), 2 U.S.C. § 661a(11), *supra* p. 855, defines “Director.”

<sup>3139</sup> See CONG. BUDGET OFF., *BUDGETING FOR ADMINISTRATIVE COSTS UNDER CREDIT REFORM* (1992).

<sup>3140</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

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credit programs versus grant programs by January 31, 1992. Their reports shall recommend to Congress any changes, if necessary, in the treatment of administrative costs<sup>3141</sup> under credit reform accounting.

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<sup>3141</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

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## BUDGETARY TREATMENT

504            SEC. 504.<sup>3142</sup> —

504(a)            (a) **PRESIDENT’S BUDGET.**—Beginning with fiscal year 1992, the President’s budget shall reflect the **costs of direct loan**<sup>3143</sup> and **loan guarantee**<sup>3144</sup> programs. The budget shall also include the planned level of new **direct loan obligations**<sup>3145</sup> or **loan guarantee commitments**<sup>3146</sup> associated with each appropriations request.

504(b)            (b) **APPROPRIATIONS REQUIRED.**—Notwithstanding any other provision of law, new **direct loan obligations**<sup>3147</sup> may be incurred and new **loan guarantee commitments**<sup>3148</sup> may be made for fiscal year 1992 and thereafter only to the extent that —

504(b)(1)            (1) **new budget authority**<sup>3149</sup> to cover their **costs**<sup>3150</sup> is provided in advance in an **appropriations Act**;<sup>3151</sup>

504(b)(2)            (2) a limitation on the use of funds otherwise available for the **cost of a direct loan**<sup>3152</sup> or **loan**

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<sup>3142</sup> Federal Credit Reform Act of 1990 § 504 is codified as amended at 2 U.S.C. § 661c.

<sup>3143</sup> Federal Credit Reform Act of 1990 § 502(5)(B), 2 U.S.C. § 661a(5)(B), *supra* p. 851, defines “cost of a direct loan.”

<sup>3144</sup> Federal Credit Reform Act of 1990 § 502(5)(C), 2 U.S.C. § 661a(5)(C), *supra* p. 852, defines “cost of a loan guarantee.”

<sup>3145</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3146</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3147</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3148</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3149</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>3150</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3151</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>3152</sup> Federal Credit Reform Act of 1990 § 502(5)(B), 2 U.S.C. § 661a(5)(B), *supra* p. 851, defines “cost of a direct loan.”

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**guarantee<sup>3153</sup> program has been provided in advance in an appropriations Act;<sup>3154</sup> or**

504(b)(3) **(3) authority is otherwise provided in appropriation Acts.<sup>3155</sup>**

504(c) **(c) EXEMPTION FOR MANDATORY PROGRAMS.— Subsections (b)<sup>3156</sup> and (e)<sup>3157</sup> shall not apply to a direct loan<sup>3158</sup> or loan guarantee<sup>3159</sup> program that—**

504(c)(1) **(1) constitutes an entitlement<sup>3160</sup> (such as the guaranteed student loan program or the veterans' home loan guaranty program); or**

504(c)(2) **(2) all existing credit programs of the Commodity Credit Corporation on November 5, 1990.**

504(d) **(d) BUDGET ACCOUNTING.—**

504(d)(1) **(1) The authority to incur new direct loan obligations,<sup>3161</sup> make new loan guarantee commitments,<sup>3162</sup> or modify outstanding direct loans<sup>3163</sup> (or direct loan obligations<sup>3164</sup>) or loan**

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<sup>3153</sup> Federal Credit Reform Act of 1990 § 502(5)(C), 2 U.S.C. § 661a(5)(C), *supra* p. 852, defines “cost of a loan guarantee.”

<sup>3154</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>3155</sup> *Id.*

<sup>3156</sup> Federal Credit Reform Act of 1990 § 504(b), 2 U.S.C. § 661c(b), *supra* p. 859, addresses “Appropriations Required.”

<sup>3157</sup> Federal Credit Reform Act of 1990 § 504(e), 2 U.S.C. § 661c(e), *infra* p. 862, addresses “Modifications.”

<sup>3158</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3159</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3160</sup> *Cf.* Congressional Budget Act of 1974 § 3(9), 2 U.S.C. § 622(9), *supra* p. 59, which defines “entitlement authority.”

<sup>3161</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3162</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3163</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3164</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

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guarantees<sup>3165</sup> (or loan guarantee commitments<sup>3166</sup>) shall constitute new budget authority<sup>3167</sup> in an amount<sup>3168</sup> equal to the cost of the direct loan<sup>3169</sup> or loan guarantee<sup>3170</sup> in the fiscal year in which definite authority becomes available or indefinite authority is used. Such budget authority<sup>3171</sup> shall constitute an obligation of the credit program account<sup>3172</sup> to pay to the financing account.<sup>3173</sup>

504(d)(2)

(2) The outlays<sup>3174</sup> resulting from new budget authority<sup>3175</sup> for the cost of direct loans<sup>3176</sup> or loan guarantees<sup>3177</sup> described in paragraph (1)<sup>3178</sup> shall be paid from the credit program account<sup>3179</sup> into the financing account<sup>3180</sup> and recorded in the fiscal year in which the direct loan<sup>3181</sup> or the guaranteed loan is disbursed or its costs<sup>3182</sup> altered.

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<sup>3165</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3166</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3167</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>3168</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *infra* p. 803, defines “amount.”

<sup>3169</sup> Federal Credit Reform Act of 1990 § 502(5)(B), 2 U.S.C. § 661a(5)(B), *supra* p. 851, defines “cost of a direct loan.”

<sup>3170</sup> Federal Credit Reform Act of 1990 § 502(5)(C), 2 U.S.C. § 661a(5)(C), *supra* p. 852, defines “cost of a loan guarantee.”

<sup>3171</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines such “new budget authority.”

<sup>3172</sup> Federal Credit Reform Act of 1990 § 502(6), 2 U.S.C. § 661a(6), *supra* p. 853, defines “credit program account.”

<sup>3173</sup> Federal Credit Reform Act of 1990 § 502(7), 2 U.S.C. § 661a(7), *supra* p. 853, defines “financing account.”

<sup>3174</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>3175</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>3176</sup> Federal Credit Reform Act of 1990 § 502(5)(B), 2 U.S.C. § 661a(5)(B), *supra* p. 851, defines “cost of a direct loan.”

<sup>3177</sup> Federal Credit Reform Act of 1990 § 502(5)(C), 2 U.S.C. § 661a(5)(C), *supra* p. 852, defines “cost of a loan guarantee.”

<sup>3178</sup> Federal Credit Reform Act of 1990 § 504(d)(1), 2 U.S.C. § 661c(d)(1), *supra* p. 860.

<sup>3179</sup> Federal Credit Reform Act of 1990 § 502(6), 2 U.S.C. § 661a(6), *supra* p. 853, defines “credit program account.”

<sup>3180</sup> Federal Credit Reform Act of 1990 § 502(7), 2 U.S.C. § 661a(7), *supra* p. 853, defines “financing account.”

<sup>3181</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3182</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

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- 504(d)(3) (3) All collections and payments of the **financing accounts**<sup>3183</sup> shall be a means of financing.
- 504(e) (e) **MODIFICATIONS.**<sup>3184</sup>—An outstanding **direct loan**<sup>3185</sup> (or **direct loan obligation**<sup>3186</sup>) or **loan guarantee**<sup>3187</sup> (or **loan guarantee commitment**<sup>3188</sup>) shall not be modified in a manner that increases its **costs**<sup>3189</sup> unless **budget authority**<sup>3190</sup> for the additional cost has been provided in advance in an **appropriations Act**.<sup>3191</sup>
- 504(f) (f) **REESTIMATES.**—When the estimated **cost for a group of direct loans**<sup>3192</sup> or **loan guarantees**<sup>3193</sup> for a given credit program made in a single fiscal year is reestimated in a subsequent year, the difference between the reestimated **cost**<sup>3194</sup> and the previous **cost**<sup>3195</sup> estimate shall be displayed as a distinct and separately identified subaccount in the **credit program account**<sup>3196</sup> as a change in program **costs**<sup>3197</sup> and a change in net interest. There is hereby provided permanent indefinite authority for these reestimates.

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<sup>3183</sup> Federal Credit Reform Act of 1990 § 502(7), 2 U.S.C. § 661a(7), *supra* p. 853, defines “financing account.”

<sup>3184</sup> Federal Credit Reform Act of 1990 § 502(9), 2 U.S.C. § 661a(9), *supra* p. 854, defines “modification.”

<sup>3185</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3186</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3187</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3188</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3189</sup> Federal Credit Reform Act of 1990 § 502(5)(D), 2 U.S.C. § 661a(5)(D), *supra* p. 852, defines “cost of a modification.”

<sup>3190</sup> Congressional Budget Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3191</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>3192</sup> Federal Credit Reform Act of 1990 § 502(5)(B), 2 U.S.C. § 661a(5)(B), *supra* p. 851, defines “cost of a direct loan.”

<sup>3193</sup> Federal Credit Reform Act of 1990 § 502(5)(C), 2 U.S.C. § 661a(5)(C), *supra* p. 852, defines “cost of a loan guarantee.”

<sup>3194</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3195</sup> *Id.*

<sup>3196</sup> Federal Credit Reform Act of 1990 § 502(6), 2 U.S.C. § 661a(6), *supra* p. 853, defines “credit program account.”

<sup>3197</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

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504(g)

**(g) ADMINISTRATIVE EXPENSES.**— All funding for an agency’s<sup>3198</sup> administration of a **direct loan**<sup>3199</sup> or **loan guarantee**<sup>3200</sup> program shall be displayed as distinct and separately identified subaccounts within the same budget **account**<sup>3201</sup> as the program’s **cost**.<sup>3202</sup>

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<sup>3198</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>3199</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3200</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3201</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

<sup>3202</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”



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## AUTHORIZATIONS

505 SEC. 505.<sup>3203</sup> —

505(a) (a) AUTHORIZATION OF APPROPRIATIONS FOR COSTS.<sup>3204</sup> — There are authorized to be appropriated to each Federal agency<sup>3205</sup> authorized to make direct loan obligations<sup>3206</sup> or loan guarantee commitments,<sup>3207</sup> such sums as may be necessary to pay the cost<sup>3208</sup> associated with such direct loan obligations<sup>3209</sup> or loan guarantee commitments.<sup>3210</sup>

505(b) (b) AUTHORIZATION FOR FINANCING ACCOUNTS.<sup>3211</sup> — In order to implement the accounting required by this title,<sup>3212</sup> the President is authorized to establish such non-budgetary accounts<sup>3213</sup> as may be appropriate.

505(c) (c) TREASURY TRANSACTIONS WITH FINANCING ACCOUNTS.<sup>3214</sup> — The Secretary of the Treasury shall borrow from, receive from, lend to, or pay to the financing accounts<sup>3215</sup> such amounts<sup>3216</sup> as may be appropriate. The Secretary of the Treasury may

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<sup>3203</sup> Federal Credit Reform Act of 1990 § 505 is codified as amended at 2 U.S.C. § 661d.

<sup>3204</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3205</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>3206</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3207</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3208</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3209</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3210</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3211</sup> Federal Credit Reform Act of 1990 § 502(7), 2 U.S.C. § 661a(7), *supra* p. 853, defines “financing account.”

<sup>3212</sup> Congressional Budget Act of 1974 tit. V, §§ 500–507, 2 U.S.C. §§ 661–661f, *supra* pp. 848–874, addresses “Credit Reform.”

<sup>3213</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

<sup>3214</sup> Federal Credit Reform Act of 1990 § 502(7), 2 U.S.C. § 661a(7), *supra* p. 853, defines “financing account.”

<sup>3215</sup> *Id.*

<sup>3216</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *infra* p. 803, defines “amount.”



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prescribe forms and denominations, maturities, and terms and conditions for the transactions described above, except that the rate of interest charged by the Secretary on lending to **financing accounts**<sup>3217</sup> (including **amounts**<sup>3218</sup> treated as lending to **financing accounts**<sup>3219</sup> by the Federal Financing Bank (hereinafter in **this subsection**<sup>3220</sup> referred to as the “Bank”) pursuant to **section 405(b)**<sup>3221</sup>) and the rate of interest paid to **financing accounts**<sup>3222</sup> on uninvested balances in **financing accounts**<sup>3223</sup> shall be the same as the rate determined pursuant to **section 502(5)(E)**.<sup>3224</sup> For guaranteed loans financed by the **Bank**<sup>3225</sup> and treated as **direct loans**<sup>3226</sup> by a Federal **agency**<sup>3227</sup> pursuant to **section 405(b)**,<sup>3228</sup> any fee or interest surcharge (the amount by which the interest rate charged exceeds the rate determined pursuant to **section 502(5)(E)**<sup>3229</sup>) that the **Bank**<sup>3230</sup> charges to a private borrower pursuant to **section 6(c) of the Federal Financing Bank Act of 1973**<sup>3231</sup> shall be considered a cash flow to the Government for the purposes of determining the **cost**

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<sup>3217</sup> Federal Credit Reform Act of 1990 § 502(7), 2 U.S.C. § 661a(7), *supra* p. 853, defines “financing account.”

<sup>3218</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *infra* p. 803, defines “amount.”

<sup>3219</sup> Federal Credit Reform Act of 1990 § 502(7), 2 U.S.C. § 661a(7), *supra* p. 853, defines “financing account.”

<sup>3220</sup> Federal Credit Reform Act of 1990 § 505(c), 2 U.S.C. § 661d(c), *supra* p. 864, addresses “Treasury Transactions with Financing Accounts.”

<sup>3221</sup> Congressional Budget Act of 1974 § 405(b), 2 U.S.C. § 655(b), *supra* p. 797.

<sup>3222</sup> Federal Credit Reform Act of 1990 § 502(7), 2 U.S.C. § 661a(7), *supra* p. 853, defines “financing account.”

<sup>3223</sup> *Id.*

<sup>3224</sup> Federal Credit Reform Act of 1990 § 502(5)(E), 2 U.S.C. § 661a(5)(E), *supra* p. 853, addresses “estimating net present values.”

<sup>3225</sup> Federal Credit Reform Act of 1990 § 505(c), 2 U.S.C. § 661d(c), *supra* p. 865, defines “Bank” to mean the Federal Financing Bank.

<sup>3226</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3227</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>3228</sup> Congressional Budget Act of 1974 § 405(b), 2 U.S.C. § 655(b), *supra* p. 797.

<sup>3229</sup> Federal Credit Reform Act of 1990 § 502(5)(E), 2 U.S.C. § 661a(5)(E), *supra* p. 853, addresses “estimating net present values.”

<sup>3230</sup> Federal Credit Reform Act of 1990 § 505(c), 2 U.S.C. § 661d(c), *supra* p. 865, defines “Bank” to mean the Federal Financing Bank.

<sup>3231</sup> Federal Financing Bank Act of 1973 § 6(c), 12 U.S.C. § 2285(c), provides: “(c) **Fees** The Bank is authorized to charge fees for its commitments and other services adequate to cover all expenses and to provide for the accumulation of reasonable contingency reserves.”

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of the direct loan<sup>3232</sup> pursuant to section 502(5).<sup>3233</sup> All such amounts<sup>3234</sup> shall be credited to the appropriate financing account.<sup>3235</sup> The Bank<sup>3236</sup> is authorized to require reimbursement from a Federal agency<sup>3237</sup> to cover the administrative expenses of the Bank<sup>3238</sup> that are attributable to the direct loans<sup>3239</sup> financed for that agency.<sup>3240</sup> All such payments by an agency<sup>3241</sup> shall be considered administrative expenses subject to section 504(g) of this title.<sup>3242</sup> This subsection<sup>3243</sup> shall apply to transactions related to direct loan obligations<sup>3244</sup> or loan guarantee commitments<sup>3245</sup> made on or after October 1, 1991. The authorities described above shall not be construed to supersede or override the authority of the head of a Federal agency<sup>3246</sup> to administer and operate a direct loan<sup>3247</sup> or loan guarantee<sup>3248</sup> program. All of the transactions provided in this subsection<sup>3249</sup> shall be

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<sup>3232</sup> Federal Credit Reform Act of 1990 § 502(5)(B), 2 U.S.C. § 661a(5)(B), *supra* p. 851, defines “cost of a direct loan.”

<sup>3233</sup> Federal Credit Reform Act of 1990 § 502(5), 2 U.S.C. § 661a(5), *supra* p. 851, defines “cost.”

<sup>3234</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *infra* p. 803, defines “amount.”

<sup>3235</sup> Federal Credit Reform Act of 1990 § 502(7), 2 U.S.C. § 661a(7), *supra* p. 853, defines “financing account.”

<sup>3236</sup> Federal Credit Reform Act of 1990 § 505(c), 2 U.S.C. § 661d(c), *supra* p. 865, defines “Bank” to mean the Federal Financing Bank.

<sup>3237</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>3238</sup> Federal Credit Reform Act of 1990 § 505(c), 2 U.S.C. § 661d(c), *supra* p. 865, defines “Bank” to mean the Federal Financing Bank.

<sup>3239</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3240</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>3241</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>3242</sup> Federal Credit Reform Act of 1990 § 504(g), 2 U.S.C. § 661c(g), *supra* p. 863, addresses “Administrative Expenses.”

<sup>3243</sup> Federal Credit Reform Act of 1990 § 505(c), 2 U.S.C. § 661d(c), *supra* p. 864, addresses “Treasury Transactions with Financing Accounts.”

<sup>3244</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3245</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3246</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>3247</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3248</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3249</sup> Federal Credit Reform Act of 1990 § 505(c), 2 U.S.C. § 661d(c), *supra* p. 864, addresses “Treasury Transactions with Financing Accounts.”

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subject to the provisions of [subchapter II of chapter 15 of title 31, United States Code](#).<sup>3250</sup> Cash balances of the [financing accounts](#)<sup>3251</sup> in excess of [current](#)<sup>3252</sup> requirements shall be maintained in a form of uninvested funds and the Secretary of the Treasury shall pay interest on these funds.

505(d) (d) AUTHORIZATION FOR [LIQUIDATING ACCOUNTS](#).<sup>3253</sup> —

505(d)(1) (1) [Amounts](#)<sup>3254</sup> in [liquidating accounts](#)<sup>3255</sup> shall be available only for payments resulting from [direct loan obligations](#)<sup>3256</sup> or [loan guarantee commitments](#)<sup>3257</sup> made prior to October 1, 1991, for —

505(d)(1)(A) (A) interest payments and principal repayments to the Treasury or the Federal Financing Bank for [amounts](#)<sup>3258</sup> borrowed;

505(d)(1)(B) (B) disbursements of loans;

505(d)(1)(C) (C) default and other guarantee claim payments;

505(d)(1)(D) (D) interest supplement payments;

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<sup>3250</sup> [31 U.S.C. subtit. II, ch. 15, subch. II, §§ 1511–1519](#), addresses “Apportionment.”

<sup>3251</sup> [Federal Credit Reform Act of 1990 § 502\(7\)](#), 2 U.S.C. § 661a(7), *supra* p. 853, defines “financing account.”

<sup>3252</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(9\)](#), 2 U.S.C. § 900(c)(9), *infra* p. 981, defines “current.” [Federal Credit Reform Act of 1990 § 502\(10\)](#), 2 U.S.C. § 661a(10), *supra* p. 855, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>3253</sup> [Federal Credit Reform Act of 1990 § 502\(8\)](#), 2 U.S.C. § 661a(8), *supra* p. 854, defines “liquidating account.”

<sup>3254</sup> [Congressional Budget Act of 1974 § 421\(2\)](#), 2 U.S.C. § 658(2), *infra* p. 803, defines “amount.”

<sup>3255</sup> [Federal Credit Reform Act of 1990 § 502\(8\)](#), 2 U.S.C. § 661a(8), *supra* p. 854, defines “liquidating account.”

<sup>3256</sup> [Federal Credit Reform Act of 1990 § 502\(2\)](#), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3257</sup> [Federal Credit Reform Act of 1990 § 502\(4\)](#), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3258</sup> [Congressional Budget Act of 1974 § 421\(2\)](#), 2 U.S.C. § 658(2), *infra* p. 803, defines “amount.”

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- 505(d)(1)(E) (E) payments for the **costs**<sup>3259</sup> of foreclosing, managing, and selling collateral that are capitalized or routinely deducted from the proceeds of sales;
- 505(d)(1)(F) (F) payments to **financing accounts**<sup>3260</sup> when required for **modifications**;<sup>3261</sup>
- 505(d)(1)(G) (G) administrative expenses, if –
- 505(d)(1)(G)(i) (i) **amounts**<sup>3262</sup> credited to the **liquidating account**<sup>3263</sup> would have been available for administrative expenses under a provision of law in effect prior to October 1, 1991; and
- 505(d)(1)(G)(ii) (ii) no **direct loan obligation**<sup>3264</sup> or **loan guarantee commitment**<sup>3265</sup> has been made, or any **modification**<sup>3266</sup> of a **direct loan**<sup>3267</sup> or **loan guarantee**<sup>3268</sup> has been made, since September 30, 1991; or
- 505(d)(1)(H) (H) such other payments as are necessary for the liquidation of such **direct loan obligations**<sup>3269</sup> and **loan guarantee commitments**.<sup>3270</sup>
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<sup>3259</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3260</sup> Federal Credit Reform Act of 1990 § 502(7), 2 U.S.C. § 661a(7), *supra* p. 853, defines “financing account.”

<sup>3261</sup> Federal Credit Reform Act of 1990 § 502(9), 2 U.S.C. § 661a(9), *supra* p. 854, defines “modification.”

<sup>3262</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *infra* p. 803, defines “amount.”

<sup>3263</sup> Federal Credit Reform Act of 1990 § 502(8), 2 U.S.C. § 661a(8), *supra* p. 854, defines “liquidating account.”

<sup>3264</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3265</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

<sup>3266</sup> Federal Credit Reform Act of 1990 § 502(9), 2 U.S.C. § 661a(9), *supra* p. 854, defines “modification.”

<sup>3267</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3268</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3269</sup> Federal Credit Reform Act of 1990 § 502(2), 2 U.S.C. § 661a(2), *supra* p. 850, defines “direct loan obligation.”

<sup>3270</sup> Federal Credit Reform Act of 1990 § 502(4), 2 U.S.C. § 661a(4), *supra* p. 851, defines “loan guarantee commitment.”

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- 505(d)(2)                    (2) **Amounts**<sup>3271</sup> credited to **liquidating accounts**<sup>3272</sup> in any year shall be available only for payments required in that year. Any unobligated balances in **liquidating accounts**<sup>3273</sup> at the end of a fiscal year shall be transferred to miscellaneous receipts as soon as practicable after the end of the fiscal year.
- 505(d)(3)                    (3) If funds in **liquidating accounts**<sup>3274</sup> are insufficient to satisfy obligations and commitments of such accounts, there is hereby provided permanent, indefinite authority to make any payments required to be made on such obligations and commitments.
- 505(e)                      (e) **AUTHORIZATION OF APPROPRIATIONS FOR IMPLEMENTATION EXPENSES.**—There are authorized to be appropriated to existing **account**<sup>3275</sup> such sums as may be necessary for salaries and expenses to carry out the responsibilities under **this title**.<sup>3276</sup>
- 505(f)                      (f) **REINSURANCE.**—Nothing in **this title**<sup>3277</sup> shall be construed as authorizing or requiring the purchase of insurance or reinsurance on a **direct loan**<sup>3278</sup> or **loan guarantee**<sup>3279</sup> from private insurers. If any such reinsurance for a **direct loan**<sup>3280</sup> or **loan guarantee**<sup>3281</sup> is authorized, the **cost**<sup>3282</sup> of such insurance and any
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<sup>3271</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *infra* p. 803, defines “amount.”

<sup>3272</sup> Federal Credit Reform Act of 1990 § 502(8), 2 U.S.C. § 661a(8), *supra* p. 854, defines “liquidating account.”

<sup>3273</sup> *Id.*

<sup>3274</sup> *Id.*

<sup>3275</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

<sup>3276</sup> Congressional Budget Act of 1974 tit. V, §§ 500–507, 2 U.S.C. §§ 661–661f, *supra* pp. 848–874, addresses “Credit Reform.”

<sup>3277</sup> *Id.*

<sup>3278</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3279</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3280</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3281</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3282</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

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recoveries to the Government shall be included in the calculation of the **cost**.<sup>3283</sup>

505(g)

(g) ELIGIBILITY AND ASSISTANCE.—Nothing in **this title**<sup>3284</sup> shall be construed to change the authority or the responsibility of a Federal **agency**<sup>3285</sup> to determine the terms and conditions of eligibility for, or the **amount**<sup>3286</sup> of assistance provided by a **direct loan**<sup>3287</sup> or a **loan guarantee**.<sup>3288</sup>

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<sup>3283</sup> Federal Credit Reform Act of 1990 § 502(5)(A), 2 U.S.C. § 661a(5)(A), *supra* p. 851, defines “cost.”

<sup>3284</sup> Congressional Budget Act of 1974 tit. V, §§ 500–507, 2 U.S.C. §§ 661–661f, pp. 848–874, addresses “Credit Reform.”

<sup>3285</sup> Congressional Budget Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>3286</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *infra* p. 803, defines “amount.”

<sup>3287</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3288</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”



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TREATMENT OF **DEPOSIT INSURANCE**<sup>3289</sup>  
AND **AGENCIES**<sup>3290</sup>  
AND OTHER INSURANCE PROGRAMS

506            **SEC. 506.**<sup>3291</sup> —

506(a)            (a) **IN GENERAL.** — **This title**<sup>3292</sup> shall not apply to the credit or insurance activities of the Federal Deposit Insurance Corporation, National Credit Union Administration, Resolution Trust Corporation, Pension Benefit Guaranty Corporation, National Flood Insurance, National Insurance Development Fund, Crop Insurance, or Tennessee Valley Authority.

506(b)            (b) **STUDY.** — The **Director**<sup>3293</sup> and the Director of the Congressional Budget Office shall each study whether the accounting for Federal **deposit insurance**<sup>3294</sup> programs should be on a cash basis on the same basis as **loan guarantees**,<sup>3295</sup> or on a different basis. Each **Director** shall report findings and recommendations to the President and the Congress on or before May 31, 1991.<sup>3296</sup>

506(c)            (c) **ACCESS TO DATA.** — For the purposes of **subsection (b)**,<sup>3297</sup> the Office of Management and Budget and the Congressional Budget Office shall have

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<sup>3289</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(18)**, 2 U.S.C. § 900(c)(18), *infra* p. 983, defines “deposit insurance.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *infra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>3290</sup> **Congressional Budget Act of 1974 § 421(1)**, 2 U.S.C. § 658(1), *supra* p. 803 (adopting, in part, the definition of **5 U.S.C. § 551(1)**), defines “agency.”

<sup>3291</sup> Federal Credit Reform Act of 1990 § 506 is codified as amended at **2 U.S.C. § 661e**.

<sup>3292</sup> **Congressional Budget Act of 1974 tit. V, §§ 500–507**, 2 U.S.C. §§ 661–661f, *supra* pp. 848–874, addresses “Credit Reform.”

<sup>3293</sup> **Federal Credit Reform Act of 1990 § 502(11)**, 2 U.S.C. § 661a(11), *supra* p. 855, defines “Director.”

<sup>3294</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(18)**, 2 U.S.C. § 900(c)(18), *infra* p. 983, defines “deposit insurance.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *infra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>3295</sup> **Federal Credit Reform Act of 1990 § 502(3)**, 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3296</sup> *See* CONG. BUDGET OFF., **BUDGETARY TREATMENT OF DEPOSIT INSURANCE: A FRAMEWORK FOR REFORM** (1991); *see also* CONG. BUDGET OFF., **MEASURING THE COSTS OF FEDERAL INSURANCE PROGRAMS: CASH OR ACCRUAL?** (2018).

<sup>3297</sup> **Federal Credit Reform Act of 1990 § 506(b)**, 2 U.S.C. § 661e(b), *supra* p. 871, addresses “Study.”

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access to all [agency](#)<sup>3298</sup> data that may facilitate these studies.

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<sup>3298</sup> [Congressional Budget Act of 1974 § 421\(1\)](#), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of [5 U.S.C. § 551\(1\)](#), *supra* p. 813.



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## EFFECT ON OTHER LAWS

507 SEC. 507.<sup>3299</sup> —

507(a) (a) EFFECT ON OTHER LAWS.—**This title**<sup>3300</sup> shall supersede, modify, or repeal any provision of law enacted prior to November 5, 1990, to the extent such provision is inconsistent with **this title**.<sup>3301</sup> Nothing in **this title**<sup>3302</sup> shall be construed to establish a credit limitation on any Federal loan or **loan guarantee**<sup>3303</sup> program.

507(b) (b) CREDITING OF COLLECTIONS.—Collections resulting from **direct loans**<sup>3304</sup> obligated or **loan guarantees**<sup>3305</sup> committed prior to October 1, 1991, shall be credited to the **liquidating accounts**<sup>3306</sup> of Federal agencies. **Amounts**<sup>3307</sup> so credited shall be available, to the same extent that they were available prior to November 5, 1990, to liquidate obligations arising from such **direct loans**<sup>3308</sup> obligated or **loan guarantees**<sup>3309</sup> committed prior to October 1, 1991, including repayment of any obligations held by the Secretary of the Treasury or the Federal Financing Bank. The unobligated balances of **such accounts**<sup>3310</sup> that are in

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<sup>3299</sup> Federal Credit Reform Act of 1990 § 507 is codified as amended at 2 U.S.C. § 661f.

<sup>3300</sup> Congressional Budget Act of 1974 tit. V, §§ 500–507, 2 U.S.C. §§ 661–661f, pp. 848–874, addresses “Credit Reform.”

<sup>3301</sup> *Id.*

<sup>3302</sup> *Id.*

<sup>3303</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3304</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3305</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3306</sup> Federal Credit Reform Act of 1990 § 502(8), 2 U.S.C. § 661a(8), *supra* p. 854, defines “liquidating account.”

<sup>3307</sup> Congressional Budget Act of 1974 § 421(2), 2 U.S.C. § 658(2), *infra* p. 803, defines “amount.”

<sup>3308</sup> Federal Credit Reform Act of 1990 § 502(1), 2 U.S.C. § 661a(1), *supra* p. 850, defines “direct loan.”

<sup>3309</sup> Federal Credit Reform Act of 1990 § 502(3), 2 U.S.C. § 661a(3), *supra* p. 850, defines “loan guarantee.”

<sup>3310</sup> That is, the liquidating accounts, defined in Federal Credit Reform Act of 1990 § 502(8), 2 U.S.C. § 661a(8).

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excess of **current**<sup>3311</sup> needs shall be transferred to the general fund of the Treasury. Such transfers shall be made from time to time but, at least once each year.

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<sup>3311</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(9)*, 2 U.S.C. § 900(c)(9), *infra* p. 981, defines “current.” *Federal Credit Reform Act of 1990 § 502(10)*, 2 U.S.C. § 661a(10), *supra* p. 855, adopts the *Balanced Budget and Emergency Deficit Control Act* definition.

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Photo: Wikimedia

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# Budget Process Study

The Budget Act directs the Budget Committees to study how to improve the budget process. The Budget Committees have conducted numerous hearings to consider budget process reform. That study and evaluation continues.

The Congressional Research Service's Megan Lynch reports:

An array of budget process reform proposals are put forth each year seeking to refine or modify the existing constitutional requirements, laws, and rules that make up the federal budget process. Some proposals may be designed to alter the budget process, for example attempting to improve transparency or oversight, perhaps by requiring additional information when weighing the merits of a measure. Other proposals may seek to alter the budget process in an effort to produce specific budgetary outcomes, for example by creating enforceable limits on spending or revenue levels.<sup>3312</sup>

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<sup>3312</sup> MEGAN SUZANNE LYNCH, CONG. RSCH. SERV., [R42383, BUDGET PROCESS REFORM: PROPOSALS AND LEGISLATIVE ACTIONS IN 2012](#), at 1 (2012).

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## CONTINUING STUDY OF ADDITIONAL BUDGET REFORM PROPOSALS

- 703(a)        SEC. 703.<sup>3313</sup> (a) The Committees on the Budget of the House of Representatives and the Senate shall study on a continuing basis proposals designed to improve and facilitate methods of congressional budgetmaking. The proposals to be studied shall include, but are not limited to, proposals for —
- 703(a)(1)        (1) improving the information base required for determining the effectiveness of new programs by such means as pilot testing, survey research, and other experimental and analytical techniques;
- 703(a)(2)        (2) improving analytical and systematic evaluation of the effectiveness of existing programs;
- 703(a)(3)        (3) establishing maximum and minimum time limitations for program authorization; and
- 703(a)(4)        (4) developing techniques of human resource accounting and other means of providing noneconomic as well as economic evaluation measures.
- 703(b)        (b) The Committee on the Budget of each House shall, from time to time, report to its House the results of the study carried on by it under [subsection \(a\)](#),<sup>3314</sup> together with its recommendations.
- 703(c)        (c) Nothing in [this section](#)<sup>3315</sup> shall preclude studies to improve the budgetary process by any other committee of the House of Representatives or the Senate or any joint committee of the Congress.
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<sup>3313</sup> Congressional Budget Act of 1974 § 703 is codified as amended at [2 U.S.C. § 623](#).

<sup>3314</sup> [Congressional Budget Act of 1974 § 703\(a\)](#), 2 U.S.C. § 623(a), *supra* p. 878.

<sup>3315</sup> [Congressional Budget Act of 1974 § 703](#), 2 U.S.C. § 623, *supra* p. 878, addresses “Continuing Study of Additional Budget Reform Proposals.”

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Photo: Wikimedia



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# Waiver and Appeal

**T**he strongest tree must bend in the wind. Recognizing the need for flexibility, the drafters of the Budget Act wrote in measures to waive procedural impediments when necessary.

The Balanced Budget and Emergency Deficit Control Act of 1985 (better known for its system of sequestration<sup>3316</sup>) upped the ante by raising the threshold required for waiving many points of order from a majority to three-fifths of all Senators “duly chosen and sworn” or 60 Senators (unless a Senate seat is vacant). Since then, Budget Act points of order have added to the ease with which Senators can interpose supermajority requirements. A point of order requiring 60 votes to waive is in effect an instant filibuster.

The Congressional Research Service’s Jim Saturno explains the system of waivers:

The Congressional Budget Act sets forth certain procedures, under Section 904, for waiving points of order under the act. These waiver procedures apply in the Senate only. Under these procedures, a Senator may make a motion to waive the application of a point of order either preemptively

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<sup>3316</sup> See *infra* p. 973.

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before it can be raised, or after it is raised, but before the presiding officer rules on its merits.

In the Senate, most points of order under the Budget Act may be waived by a vote of at least three-fifths of all Senators duly chosen and sworn (60 votes if there are no vacancies) . . . . The three-fifths waiver requirement was first established for some points of order under the Balanced Budget and Emergency Deficit Control Act of 1985. Beginning with the Balanced Budget Act of 1997, this super-majority threshold was applied to several additional points of order on a temporary basis. These points of order are identified in Section 904(c)(2), and the three-fifths requirement is currently scheduled to expire September 30, 2025. The three-fifths threshold has also been required for the Senate to waive the application of many of the related points of order established in budget resolutions and other measures, such as the Statutory Pay-As-You-Go Act of 2010. As with other provisions of Senate rules, Budget Act points of order also may be waived by unanimous consent.

In the House, Budget Act points of order are typically waived by the adoption of special rules, although other means (such as unanimous consent or suspension of the rules) may also be used. A waiver may be used to protect a bill, specified provision(s) in a bill, or an amendment from a point of order that could be raised against it. Waivers may be granted for one or more amendments even if they are not granted for the underlying bill. The House may waive the application of one or more specific points of order, or they may include a “blanket waiver,” that is, a waiver that would protect a bill, provision, or amendment from any point of order.<sup>3317</sup>

If the Senate does not waive a point of order and the Presiding Officer rules, a Senator may still appeal the ruling of the Chair. In *Riddick’s Senate Procedure*, the Parliamentarian discussed appeals generally:

Any ruling by the Chair in response to a point of order made by a Senator is subject to an appeal. If no appeal is taken, the ruling of the Chair stands as the judgment of the Senate and becomes a precedent for the guidance of the Senate in the future.

Any Senator, may take an appeal from a ruling of the Chair, and when this occurs the question is stated, “Shall the decision of the Chair stand as the judgment of the Senate?” Unless the Chair is supported by a majority vote of the Senate, the decision of the Chair is overruled. This decision of the Senate becomes a precedent for the Senate to follow in its future

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<sup>3317</sup> JAMES V. SATURNO, CONG. RSCH. SERV., [97-865, POINTS OF ORDER IN THE CONGRESSIONAL BUDGET PROCESS](#) (2015).

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procedure until altered or reversed by a subsequent decision of the Chair or by a vote of the Senate.<sup>3318</sup>

Thus, while waivers affect only the matter pending before the Senate, appeals set precedents that can apply to other matters thereafter. Overturning the ruling of the Chair is thus a weightier thing than waiving a point of order.

But as an appeal might open a means around a 60-vote waiver requirement, the budget law requires the same supermajority to appeal a ruling of the Chair in relation to any point of order for which the law requires a 60-vote waiver.

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<sup>3318</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 145 (1992).

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## EXERCISE OF CONGRESSIONAL RULEMAKING POWERS

904(a) **SEC. 904.**<sup>3319</sup> (a) The provisions of this title<sup>3320</sup> and of **titles I,**<sup>3321</sup> **III,**<sup>3322</sup> **IV,**<sup>3323</sup> and **V**<sup>3324</sup> and the provisions of sections **701,**<sup>3325</sup> **703,**<sup>3326</sup> and **1017**<sup>3327</sup> are enacted by the Congress —

904(a)(1) (1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

904(a)(2) (2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

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*Exercise of the Rulemaking Power*—The Constitution provides “Each House may determine the Rules of its Proceedings.”<sup>3328</sup>

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<sup>3319</sup> Congressional Budget Act of 1974 § 904 is codified as amended at [2 U.S.C. § 621 note](#).

<sup>3320</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, tit. IX, §§ 901–906, 88 Stat. 297, 330–32 (amended) (codified in part at [2 U.S.C. § 621 note](#)), addresses “Miscellaneous Provisions; Effective Dates.”

<sup>3321</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, tit. I, §§ 101–102, 88 Stat. 297, 299–302, *supra* pp. 69–78, addresses “Establishment of House and Senate Budget Committees.”

<sup>3322</sup> [Congressional Budget Act of 1974 tit. III, §§ 300–315](#), 2 U.S.C. §§ 631–645a, *supra* pp. 113–782, addresses “Congressional Budget Process.”

<sup>3323</sup> [Congressional Budget Act of 1974 tit. IV, §§ 401–428](#), 2 U.S.C. §§ 651–658g, *supra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>3324</sup> [Congressional Budget Act of 1974 tit. V, §§ 500–507](#), 2 U.S.C. §§ 661–661f, *supra* pp. 848–874, addresses “Credit Reform.”

<sup>3325</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 701, 88 Stat. 297, 325, addresses “Review and Evaluation by Standing Committees.”

<sup>3326</sup> [Congressional Budget Act of 1974 § 703](#), 2 U.S.C. § 623, *supra* p. 878, addresses “Continuing Study of Additional Budget Reform Proposals.”

<sup>3327</sup> [Impoundment Control Act of 1974 § 1017](#), 2 U.S.C. § 688, *infra* p. 962, addresses “Procedure in House of Representatives and Senate.”

<sup>3328</sup> [U.S. CONST.](#) art. I, § 5, cl. 2, *supra* p. 24.

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Commenting on this section, the *House Rules and Manual* explains:

Pursuant to this section, and under its authority contained in clause 5 of rule XIII (former clause 4(b) of rule XI) to report on rules and the order of business, the Committee on Rules may report as privileged a resolution recommending the temporary waiver of the provisions of section 401 of the Congressional Budget Act during the consideration of designated legislation in the House (Speaker Albert, Mar. 20, 1975, p. 7676). A point of order against consideration of a resolution reported from the Committee on Rules providing for consideration of a concurrent resolution on the budget does not lie based upon alleged violation of a statute that merely reaffirms the congressional commitment towards achieving balanced Federal budgets (P.L. 96–389), because the statute does not constitute a rule of the House and because section 904 of the Budget Act acknowledges the constitutional authority of either House to change its rules at any time (June 10, 1982, pp. 13352, 13353). A unanimous-consent agreement that only permits a (nonprivileged) bill to be considered in the House before availability requirements of the report thereon have been met, but that does not specifically waive points of order against consideration, does not preclude a point of order against consideration of the bill when called up based upon an alleged violation of the Budget Act (Feb. 4, 1982, p. 845).<sup>3329</sup>

A House Budget Committee print explained:

[T]he concurrent resolution on the budget is considered a rulemaking document tantamount to the rules of the House of Representatives, and supersedes them when they are in conflict. Budget resolutions include this language: “The House adopts the provisions of this title . . . as an exercise of the rulemaking power of the House of Representatives and as such they shall be considered as part of the rules of the House of Representatives, and these rules shall supersede other rules only to the extent that they are inconsistent with other such rules”.<sup>3330</sup>

The budget resolutions for fiscal years 2008 and 2016 extended the date in Budget Act section 904(e), demonstrating that a budget resolution can in effect amend the Budget Act.<sup>3331</sup> The budget resolution for fiscal year 2008 provided: “Notwithstanding any provision of the Congressional Budget Act of 1974, subsections (c)(2) and (d)(3) of section 904 of the Congressional Budget Act of 1974 shall remain in effect for purposes of Senate enforcement

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<sup>3329</sup> JASON A. SMITH, [CONSTITUTION, JEFFERSON’S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, ONE HUNDRED SEVENTEENTH CONGRESS](#) 1155 (2021).

<sup>3330</sup> PAUL A. RESTUCCIA, STAFF OF H. COMM. ON THE BUDGET, 114TH CONG., [A COMPENDIUM OF LAWS AND RULES OF THE CONGRESSIONAL BUDGET PROCESS](#) 58 n.35 (Comm. Print 2015).

<sup>3331</sup> [S. Con. Res. 21, 110th Cong.](#) § 205, 121 Stat. 2590, 2605 (2007); [S. Con. Res. 11, 114th Cong.](#) § 3201 (2015) (adopted).

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through September 30, 2017 . . . .”<sup>3332</sup> Similarly, the budget resolution for fiscal year 2016 provided: “Notwithstanding any provision of the Congressional Budget Act of 1974 (2 U.S.C. 621 et seq.), subsections (c)(2) and (d)(3) of section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) shall remain in effect for purposes of Senate enforcement through September 30, 2025.”<sup>3333</sup>

Similarly, the budget resolution for fiscal year 2008 negated a section of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006,<sup>3334</sup> that set forth discretionary caps for Fiscal Year 2007, stating: “Section 7035 of Public Law 109-234 shall no longer apply in the Senate.”<sup>3335</sup>

In *Riddick’s Senate Procedure*, under the heading “Rulemaking Power,” the Parliamentarian noted: “The Congress has, on several occasions, missed deadlines set out in the Budget Act for the adoption of either budget resolutions or reconciliation bills.”<sup>3336</sup> Thus Congress can exercise its rulemaking power through inaction as well as action.

**Legislative History** – Section 904(a) appeared in the original Budget Act as follows:

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<sup>3332</sup> [S. Con. Res. 21, 110th Cong.](#) § 205, 121 Stat. 2590, 2605 (2007).

<sup>3333</sup> [S. Con. Res. 11, 114th Cong.](#) § 3201 (2015) (adopted).

<sup>3334</sup> [Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006](#), Pub. L. No. 109-234, 120 Stat. 418, 489–90 (2006).

<sup>3335</sup> [S. Con. Res. 21, 110th Cong.](#) § 208, 121 Stat. 2590, 2610 (2007).

<sup>3336</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 635–36 (1992) (citing, for example, the following budget resolutions adopted when the deadline was May 15: [S. Con. Res. 19, 95th Cong.](#), 91 Stat. 1670 (May 17, 1977); [S. Con. Res. 80, 95th Cong.](#), 92 Stat. 3870 (May 17, 1978); [H. Con. Res. 107, 96th Cong.](#), 93 Stat. 1413 (May 24, 1979); [H. Con. Res. 307, 96th Cong.](#), 94 Stat. 3655 (June 12, 1980); [H. Con. Res. 115, 97th Cong.](#), 95 Stat. 1743 (May 21, 1981); [S. Con. Res. 92, 97th Cong.](#), 96 Stat. 2647 (June 23, 1982); [H. Con. Res. 91, 98th Cong.](#), 97 Stat. 1501 (June 23, 1983); [H. Con. Res. 280, 98th Cong.](#), 98 Stat. 3484 (Oct. 1, 1984); and [S. Con. Res. 32, 99th Cong.](#), 99 Stat. 1941 (Aug. 1, 1985); and the following adopted when the deadline was advanced to April 15 (pursuant to [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, 99 Stat. 1037): [[S. Con. Res. 120, 99th Cong.](#), 100 Stat. 4354 (June 27, 1986)]; [H. Con. Res. 93, 100th Cong.](#), 101 Stat. 1986 (June 25, 1987); [H. Con. Res. 268, 100th Cong.](#), 102 Stat. 4875 (June 6, 1988); [H. Con. Res. 106, 101st Cong.](#), 103 Stat. 2540 (May 18, 1989); and [H. Con. Res. 310, 101st Cong.](#), 104 Stat. 5163 (Oct. 9, 1990); and the following reconciliation bill that was passed after the September 25 deadline in the original Budget Act: [Omnibus Reconciliation Act of 1980](#), Pub. L. No. 96-499, 94 Stat. 2599 (Dec. 3, 1980); and the following reconciliation bills that were passed after the new deadline of June 15 (pursuant to [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 201(b), 99 Stat. 1038, 1055): [Consolidated Omnibus Budget Reconciliation Act of 1985](#), Pub. L. No. 99-272, 100 Stat. 82 (Mar. 20, 1986); [Omnibus Budget Reconciliation Act of 1986](#), Pub. L. No. 99-509, 100 Stat. 1874 (Oct. 17, 1986); [Omnibus Budget Reconciliation Act of 1987](#), Pub. L. No. 100-203, 101 Stat. 1330 (Dec. 22, 1987); [Omnibus Budget Reconciliation Act of 1989](#), Pub. L. No. 101-239, 103 Stat. 2106 (Nov. 22, 1989); and [Omnibus Budget Reconciliation Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388 (Oct. 27, 1990)).

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#### EXERCISE OF RULEMAKING POWERS

SEC. 904. (a) The provisions of this title (except section 905) and of titles I, III, and IV and the provisions of sections 606, 701, 703, and 1017 are enacted by the Congress —

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.<sup>3337</sup>

The Budget Enforcement Act of 1990 added titles V and VI (except section 601(a)) to the list of matters designated as exercises of rulemaking authority, so that section 904(a) then read:

#### EXERCISE OF RULEMAKING POWERS

SEC. 904. (a) The provisions of this title (except section 905) and of titles I, III, ~~and~~ IV, V, *and VI (except section 601(a))* and the provisions of sections ~~606~~, 701, 703, and 1017 are enacted by the Congress —

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate . . . .<sup>3338</sup>

In 1996, the Line Item Veto Act added sections 1025 and 1027 to the list of matters designated as exercises of rulemaking authority, but then that Act also sunsetted those changes on January 1, 2005, so that the Line Item Veto Act left no enduring change to section 904(a).<sup>3339</sup>

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<sup>3337</sup> [Congressional Budget Act of 1974](#), Pub. L. No. 93-344, § 304, 88 Stat. 297, 331 (amended 1990, 1996 & 1997).

<sup>3338</sup> See [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, § 13112(a)(11), 104 Stat. 1388, 1388-608.

<sup>3339</sup> See [Line Item Veto Act](#), Pub. L. 104-130, §§ 4(c), 5, 110 Stat. 1200, 1212 (1996) (sunsetting).

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904(b) (b) Any provision of [title III](#)<sup>3340</sup> or [IV](#)<sup>3341</sup> may be waived or suspended in the Senate by a majority vote of the Members voting, a quorum being present, or by the unanimous consent of the Senate.

904(c) (c) WAIVERS.—

904(c)(1) (1) PERMANENT.—[Sections 305\(b\)\(2\)](#),<sup>3342</sup> [305\(c\)\(4\)](#),<sup>3343</sup> [306](#),<sup>3344</sup> [310\(d\)\(2\)](#),<sup>3345</sup> [313](#),<sup>3346</sup> [904\(c\)](#),<sup>3347</sup> and [904\(d\)](#)<sup>3348</sup> of [this Act](#)<sup>3349</sup> may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

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<sup>3340</sup> [Congressional Budget Act of 1974 tit. III, §§ 300–315](#), 2 U.S.C. §§ 631–645a, *supra* pp. 113–782, addresses “Congressional Budget Process.”

<sup>3341</sup> [Congressional Budget Act of 1974 tit. IV, §§ 401–428](#), 2 U.S.C. §§ 651–658g, *supra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>3342</sup> [Congressional Budget Act of 1974 § 305\(b\)\(2\)](#), 2 U.S.C. § 636(b)(2), *supra* p. 255, addresses germaneness of amendments (among other things).

<sup>3343</sup> [Congressional Budget Act of 1974 § 305\(c\)\(4\)](#), 2 U.S.C. § 636(c)(4), *supra* p. 306, addresses germaneness of amendments (among other things).

<sup>3344</sup> [Congressional Budget Act of 1974 § 306](#), 2 U.S.C. § 637, *supra* p. 353, addresses “Legislation Dealing with Congressional Budget Must Be Handled by Budget Committees.”

<sup>3345</sup> [Congressional Budget Act of 1974 § 310\(d\)\(2\)](#), 2 U.S.C. § 641(d)(2), *supra* p. 544, addresses “Limitation on Amendments to Reconciliation Bills and Resolutions” in the Senate.

<sup>3346</sup> [Congressional Budget Act of 1974 § 313](#), 2 U.S.C. § 644, *supra* p. 642, addresses “Extraneous Matter in Reconciliation Legislation.”

<sup>3347</sup> [Congressional Budget Act of 1974 § 904\(c\)](#), 2 U.S.C. § 621 note, *supra* p. 888, addresses “Waivers.”

<sup>3348</sup> [Congressional Budget Act of 1974 § 904\(d\)](#), 2 U.S.C. § 621 note, *infra* p. 905, addresses “Appeals.”

<sup>3349</sup> [Congressional Budget and Impoundment Control Act of 1974](#), 2 U.S.C. §§ 601–688, pp. 49–969.



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904(c)(2)                    **(2) TEMPORARY.**<sup>3350</sup> — **Sections 301(i),**<sup>3351</sup> **302(c),**<sup>3352</sup> **302(f),**<sup>3353</sup> **310(g),**<sup>3354</sup> **311(a),**<sup>3355</sup> **312(b),**<sup>3356</sup> **312(c),**<sup>3357</sup> **314(e),**<sup>3358</sup> **and 314(f)**<sup>3359</sup> **of this Act**<sup>3360</sup> **and sections 258(a)(4)(C),**<sup>3361</sup> **258A(b)(3)(C)(i),**<sup>3362</sup> **258B(f)(1),**<sup>3363</sup> **258B(h)(1),**<sup>3364</sup> **258B(h)(3),**<sup>3365</sup> **258C(a)(5),**<sup>3366</sup> **and 258C(b)(1)**<sup>3367</sup> **of the Balanced Budget and Emergency Deficit Control Act of 1985**<sup>3368</sup> **may be waived or**

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<sup>3350</sup> The budget resolutions for fiscal years 2008 and 2016 extended the applicability of subsection (c)(2), now through fiscal year 2025. *S. Con. Res. 21, 110th Cong.* § 205, 121 Stat. 2590, 2605 (2007); *S. Con. Res. 11, 114th Cong.* § 3201 (2015) (adopted). The budget resolution for fiscal year 2008 provided: “Notwithstanding any provision of the Congressional Budget Act of 1974, subsections (c)(2) and (d)(3) of section 904 of the Congressional Budget Act of 1974 shall remain in effect for purposes of Senate enforcement through September 30, 2017 . . . .” *S. Con. Res. 21, 110th Cong.* § 205, 121 Stat. 2590, 2605 (2007). Similarly, the budget resolution for fiscal year 2016 provided: “Notwithstanding any provision of the Congressional Budget Act of 1974 (2 U.S.C. 621 et seq.), subsections (c)(2) and (d)(3) of section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) shall remain in effect for purposes of Senate enforcement through September 30, 2025.” *S. Con. Res. 11, 114th Cong.* § 3201 (2015) (adopted).

<sup>3351</sup> *Congressional Budget Act of 1974 § 301(i)*, 2 U.S.C. § 632(i), *supra* p. 177, addresses “Social Security Point of Order” in the context of budget resolutions.

<sup>3352</sup> *Congressional Budget Act of 1974 § 302(c)*, 2 U.S.C. § 633(c), *supra* p. 192, addresses “Point of Order” against spending before allocation.

<sup>3353</sup> *Congressional Budget Act of 1974 § 302(f)*, 2 U.S.C. § 633(f), *supra* p. 202, addresses “Legislation Subject to Point of Order.”

<sup>3354</sup> *Congressional Budget Act of 1974 § 310(g)*, 2 U.S.C. § 641(g), *supra* p. 559, addresses “Limitation on Changes to Social Security Act.”

<sup>3355</sup> *Congressional Budget Act of 1974 § 311(a)*, 2 U.S.C. § 642(a), *supra* p. 573, addresses “Enforcement of Budget Aggregates.”

<sup>3356</sup> *Congressional Budget Act of 1974 § 312(b)*, 2 U.S.C. § 643(b), *supra* p. 613, addresses “Discretionary Spending Point of Order in the Senate.”

<sup>3357</sup> *Congressional Budget Act of 1974 § 312(c)*, 2 U.S.C. § 643(c), *supra* p. 613, addresses “Maximum Deficit Amount Point of Order in the Senate.”

<sup>3358</sup> *Congressional Budget Act of 1974 § 314(e)*, 2 U.S.C. § 645(e), *supra* p. 768, addresses “Senate Point of Order Against an Emergency Designation.”

<sup>3359</sup> *Congressional Budget Act of 1974 § 314(f)*, 2 U.S.C. § 645(f), *supra* p. 772, addresses “Enforcement of Discretionary Spending Caps.”

<sup>3360</sup> *Congressional Budget and Impoundment Control Act of 1974*, 2 U.S.C. §§ 601–688, pp. 49–969.

<sup>3361</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 258(a)(4)(C)*, 2 U.S.C. § 907a(a)(4)(C), *infra* p. 1121, prohibits amendment of joint resolutions of suspension in event of low growth.

<sup>3362</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 258A(b)(3)(C)(i)*, 2 U.S.C. § 907b(b)(3)(C)(i), *infra* p. 1126, addresses germaneness of amendments (among other things).

<sup>3363</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 258B(f)(1)*, 2 U.S.C. § 907c(f)(1), *infra* p. 1132, addresses germaneness or relevance of amendments (among other things).

<sup>3364</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 258B(h)(1)*, 2 U.S.C. § 907c(h)(1), *infra* p. 1133, addresses germaneness or relevance of amendments (among other things).

<sup>3365</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 258B(h)(3)*, 2 U.S.C. § 907c(h)(3), *infra* p. 1134, addresses the deficit effect of amendments (among other things).

<sup>3366</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(5)*, 2 U.S.C. § 907d(a)(5), *infra* p. 1140, addresses “Point of order” regarding maximum deficit amounts.

<sup>3367</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(b)(1)*, 2 U.S.C. § 907d(b)(1), *infra* p. 1142, addresses “Procedures” “In general.”

<sup>3368</sup> *Balanced Budget and Emergency Deficit Control Act of 1985*, 2 U.S.C. §§ 900–922, *infra* pp. 976–1143.

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**suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.**

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### Waiver

In *Riddick's Senate Procedure*, the Parliamentarian described the waiver process:

The provisions of titles III and IV of the Budget Act may be waived by motion. In some cases a super majority vote of three-fifths of the Senators duly chosen and sworn has been required for the adoption of such a waiver, or to overturn a ruling of the Chair.<sup>3369</sup>

In *Riddick's Senate Procedure*, the Parliamentarian discussed debate under this section<sup>3370</sup>:

A motion to waive a section of the Budget Act, pursuant to section 904(b) of that Act, was held by the Chair to be debatable.<sup>[3371]</sup>

A point of order that a bill violates the Congressional Budget Act of 1974 is not debatable, but a motion to waive that Act or specific sections thereof for the consideration of a bill is a debatable proposition.<sup>[3372]</sup>

After debate has concluded on an amendment which was considered under a time agreement which was silent on the question of debatable motions, a motion to waive certain provisions of the Budget Act made in response to a point of order, is not debatable.<sup>[3373]</sup>

In *Riddick's Senate Procedure*, the Parliamentarian noted, "Motions to waive titles III and IV may be tabled."<sup>3374</sup> And a Senator may move to table a pending appeal from the ruling of the Chair.<sup>3375</sup>

Motions to waive are amendable. The Parliamentarian has written: "Motions to waive budget act/budget resolution discipline are amendable in 2 degrees, so a Senator could attempt to isolate some variation of

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<sup>3369</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 504 (1992).

<sup>3370</sup> *Id.* at 606 (footnotes renumbered and reformatting).

<sup>3371</sup> See 122 CONG. REC. 19,087–88 (June 18, 1976).

<sup>3372</sup> See 133 CONG. REC. 11,653–55 (May 7, 1987).

<sup>3373</sup> 127 CONG. REC. 10,436–38 (May 20, 1981).

<sup>3374</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 636 (1992) (citing 125 CONG. REC. 34,662–65 (Dec. 5, 1979); 125 CONG. REC. 35,243–53 (Dec. 10, 1979)).

<sup>3375</sup> See, e.g., 129 CONG. REC. 6629 (Mar. 22, 1983) (Hatfield motion to table the Heinz appeal).

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violations and provisions subject to such violations to be the object of the waiver.”<sup>3376</sup>

Thus, in 1983, the Senate considered an amendment to broaden a pending motion to waive by adding at the end of the motion to waive: “Further under section 904(b) I move to waive the relevant sections contained in titles 3 or 4 of the Budget Act for this amendment on this bill or any other bill considered by the Senate in this session of Congress.”<sup>3377</sup> The Senate tabled that amendment to the pending motion to waive.<sup>3378</sup>

Again, in 1987, after Budget Committee Chair Lawton Chiles moved to waive the Budget Act for his amendment, Senator Pete Domenici offered an amendment to the Chiles motion to waive, saying:

Mr. President, I offer an amendment to the Chiles motion. I move that the appropriate provisions of the Budget Act as referred to by the chairman be waived as to the pending Chiles amendment and as to the to-be-offered Domenici amendment and that the motion apply to both amendments.<sup>3379</sup>

Senator Chiles argued that the Domenici amendment was out of order under a previous order that precluded amendments to amendments, but the Presiding Officer responded that “the unanimous-consent agreement precluded amendments to amendments” and “did not preclude an amendment to a motion.”<sup>3380</sup> The Senate tabled the amendment to the motion to waive.<sup>3381</sup>

The Parliamentarian’s office has noted as a precedent:

When a point of order has been made against a bill under the provisions of a budget resolution, and a motion to waive that provision is pending, an amendment to the bill is not in order absent unanimous consent.

A motion to waive the Congressional Budget Act is amendable.<sup>3382</sup>

In this connection, the Parliamentarian’s office recorded:

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<sup>3376</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re waiver of points of order question (June 28, 2010, 6:04 PM).

<sup>3377</sup> See S. Amend. No. 1181, 98th Cong., [129 CONG. REC. 9156](#) (Apr. 20, 1983) (Melcher amendment). (Thanks to Zachary Green for pointing out this instance.)

<sup>3378</sup> [129 CONG. REC. 9156](#) (Apr. 20, 1983) (Dole motion to table).

<sup>3379</sup> [103 CONG. REC. 20,966](#) (June 23, 1987).

<sup>3380</sup> *Id.*

<sup>3381</sup> *Id.* at 20,967.

<sup>3382</sup> Off. of the Sec’y of the Senate, [Senate Precedent PRL19931026-001](#).

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On October 26, [1993], the Senate was considering H.R. 3167, An Act to extend the emergency unemployment compensation program, to establish a system of worker profiling, and for other purposes. Mr. Nickles (of Oklahoma) raised a point of order against the bill under section 12(c) of H. Con. Res. 64, a concurrent resolution setting forth the congressional budget for the United States Government for fiscal years 1994–1998. Mr. Moynihan (of New York) moved to waive the Congressional Budget Act and section 12(c) of H. Con. Res. 64. Under a previous order, debate on the motion to waive was limited to one hour, equally divided in the usual form. Following expiration of that time, the Senate rejected the motion to waive by a vote of 59 yeas to 38 nays. Then, in response to a series of parliamentary inquiries, the Presiding Officer advised that because debate time had expired on the motion to waive, the motion to reconsider the motion to waive would also not be debatable; that when a motion to waive is pending, an amendment to the bill would not be in order without unanimous consent; and that a motion to waive the Congressional Budget Act is amendable.

Mr. NICKLES. Mr. President, according to the Congressional Budget Office score, H.R. 3167 increases the deficit by \$1.04 billion in fiscal year 1994.

Therefore, pursuant to section 12(c) of House Concurrent Resolution 64, the first concurrent budget resolution for fiscal year 1994, I raise a point of order that H.R. 3167 would increase the deficit in fiscal year 1994 beyond the level provided for in that resolution.

The PRESIDING OFFICER [Mr. Breaux of Louisiana]. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I move to waive the Congressional Budget Act of 1974 and section 12 of the budget resolution, House Concurrent Resolution 64, for the pending bill, H.R. 3167, in the form received by the Senate, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MOYNIHAN. I thank the Chair.

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The PRESIDING OFFICER. Under the previous order, debate on this motion to waive the Budget Act is limited to 1 hour, which will be equally divided and controlled in the usual form.

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I hope my colleagues will pay attention to this debate and realize that we are debating not just a point of order, but we are debating several important budget issues.

The point of order I just made was created by the concurrent resolution on the budget that passed earlier this year. Maybe a lot of our colleagues are not aware of this point of order, but this is part of the Senate budget resolution that passed earlier this year enforcing pay-as-you-go budgeting. I will read from the resolution. It says:

Any time after the enactment of the reconciliation bill, pursuant to section 7 of this resolution, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would increase the deficit in this resolution for any fiscal year through fiscal year 1998.

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The PRESIDING OFFICER [Mr. Dorgan of North Dakota]. The business before the Senate is the question on the motion to waive the Budget Act made by the Senator from New York. The yeas and nays have been previously ordered. A three-fifths vote is required. The clerk will call the roll.

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The PRESIDING OFFICER [Mrs. Boxer of California]. On this question, the yeas are 59, the nays are 38. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. NICKLES. Madam President, I move to reconsider the vote.

Mr. FORD. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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Mr. MITCHELL. Mr. President, as Senator Moynihan said, there are disagreements. We do not accept the characterizations that the bill would add \$1 billion to the debt. That is the kind of thing we now have to try to resolve in a way both sides can agree on, if that is possible.

Both the Senator from Oklahoma and the Senator from New York have represented to myself and the minority leader that they are prepared to make a good faith effort to do that; that they need about a day to go over it to run some numbers with the help of the committee staff, and others.

Accordingly, I now ask unanimous consent that the pending matter be set aside until 3 p.m. tomorrow.

The PRESIDING OFFICER. Is there objection?

Mr. BUMPERS. Reserving the right to object, and I will not object, Mr. President. I would like to ask the majority leader, what is the status of the bill right now if it is not set aside?

Mr. MITCHELL. The status of the bill is that a motion to reconsider the vote has been made.

I will make a parliamentary inquiry of the Chair as to whether or not that is, in fact, a nondebatable motion which, upon returning to the bill, the Senate would immediately vote on?

The PRESIDING OFFICER. The Senator is correct. It is a nondebatable motion.

Mr. BUMPERS. And if the motion to reconsider failed, the bill is dead?

Mr. MITCHELL. Since 59 Senators voted to waive the Budget Act, and it takes only 51 to gain reconsideration, the likely outcome is that the motion to reconsider would prevail and we would then have another vote on the motion to waive the Budget Act with respect to the point of order.

I ask the Chair whether that is a correct interpretation?

The PRESIDING OFFICER. The majority leader is correct.

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Mr. MITCHELL. Therefore, we would be right back in an hour or so where we were on this vote.

Now, it is possible that we might get 60 or 61. It is also possible we might get 56 or 57. A very clear majority of the Senate favors proceeding with the bill, but under the rules 60 votes are necessary to obtain a point of order, as was the case on the previous point of order. The vote on the previous point of order I think was 50 to 44. But that did not prevail because the 60 votes were needed.

Mr. BUMPERS. Further inquiry, Mr. President, of the majority leader. Assuming we do get 51 votes to reconsider, at that point is the only permissible business of the Senate then a renewal of the motion of the Senator from New York to waive the Budget Act?

Mr. MITCHELL. I direct that question to the Chair. I believe that would be the pending business—in the absence of unanimous consent to set that aside, that would be the case, but I inquire of the Chair.

I will restate the question. The Senator has asked, if the motion to reconsider is approved by a majority of the Senate, at that point is the pending matter the motion to waive the Budget Act, or could other business such as another amendment be offered at that point?

The PRESIDING OFFICER. The pending question at that point would be the motion to waive the Budget Act.

Mr. MITCHELL. And so it would then take consent for the Senator, or any other Senator, to offer an amendment.

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Mr. BUMPERS. One further inquiry, Mr. President. The motion to waive, is that an amendable motion?

Mr. MITCHELL. I believe it is not, but I direct my inquiry to the Chair.

The PRESIDING OFFICER. Motions to waive are amendable.

I believe the Senator asked about debatable.

Mr. BUMPERS. Did I say debatable?

Mr. MOYNIHAN. No, amendable.

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The PRESIDING OFFICER. Motions to waive are amendable.

Mr. BUMPERS. I thank the majority leader.

Mr. President, I have no objection.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the Majority Leader? If not, that will be the order of the Senate. The pending motion is set aside until 3 p.m. tomorrow.<sup>3383</sup>

Motions to waive are sometimes divisible. The Parliamentarian has written: "I'm not conceding that any particular motion to waive is divisible. It would depend on how such a motion were drafted."<sup>3384</sup>

Once a motion to waive has failed, the Presiding Officer will rule, and entering a motion to reconsider the failed motion to waive does not postpone the ruling. Thus the Parliamentarian's office has noted as a precedent: "The Presiding Officer sustained a point of order that had been raised against an amendment to a budget resolution, notwithstanding that a Senator had entered a motion to reconsider the vote by which the motion to waive the Congressional Budget Act failed."<sup>3385</sup> The Parliamentarian's office recorded:

On May 23, 1996, the Senate was considering S.Con.Res. 57, an original concurre[nt] resolution setting forth the congressional budget for the United States Government for fiscal years 1997, 1998, 1999, 2000, 2001 and 2002, to which was pending Amdt. No. 4015, proposed by Mr. Murkowski (of Alaska). Mr. Exon (of Nebraska) raised a point of order that the amendment was not germane in violation of §305(b)(2) of the Congressional Budget Act. Mr. Domenici (of New Mexico) moved to waive that section of the Congressional Budget Act for consideration of the amendment, which failed by a vote of 57 yeas to 41 nays. After switching his vote so as to have voted with the prevailing side, Mr. Domenici entered a motion to reconsider the vote by which the motion to waive failed. Notwithstanding the entering of the motion, the Presiding Officer sustained the point of order against the amendment.

Mr. EXON. Mr. President, the Murkowski amendment would create a new point of order that would deprive the minority of its

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<sup>3383</sup> *Id.* (quoting 139 CONG. REC. 26,146–54 (Oct. 26, 1993)).

<sup>3384</sup> E-mail from S. Parliamentarian to Staff of S. Comm. on the Budget & Off. of S. Parliamentarian re waiver of points of order question (June 28, 2010, 6:29 PM).

<sup>3385</sup> Off. of the Sec'y of the Senate, [Senate Precedent PRL19960523-002](#).



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right to amend with the sense-of-the-Senate language. Under the amendment, the majority could report out any sense-of-the-Senate language it wanted, but no Senator could offer a sense-of-the-Senate amendment to change that language or add to it.

Mr. President, I yield back the balance of my time. I raise a point of order that the pending amendment is not germane and it violates section 305(b) of the Congressional Budget Act.

Mr. DOMENICI. Mr. President, I move to waive section 305(b) of the Budget Act for the consideration of the Murkowski amendment 4015.

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The PRESIDING OFFICER [Mr. Coverdell of Georgia]. Are there any Senators still wishing to vote?

Mr. DOMENICI. Mr. President, I change my vote from “aye” to “no.”

The PRESIDING OFFICER. On this vote, the ayes are 57, the nays are 41. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion is rejected.

Mr. EXON. Mr. President, I move to reconsider the vote.

Mr. DOMENICI. Mr. President, I enter a motion to reconsider the vote by which the motion to waive the budget act for the consideration of the Murkowski amendment was defeated.

The PRESIDING OFFICER. The motion is entered for future consideration. However, the motion having failed to be approved at this time, the Chair will rule on the motion—on the point of order. The rights of Senators are reserved to move in the future to proceed to the motion to reconsider.

The Chair will rule at this time that the amendment is not germane. The point of order is sustained. The amendment falls at this time.<sup>3386</sup>

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<sup>3386</sup> *Id.* (quoting 142 CONG. REC. 12,350–51 (May 23, 1996)).

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The Parliamentarian's office has noted as a precedent: "A motion to waive a point of order raised under the Congressional Budget Act need not be submitted in writing."<sup>3387</sup> The Parliamentarian's office recorded:

On February 12, 2004, the Senate was considering S. 1072, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, to which was pending a substitute amendment, Amdt. No. 2285, offered by Mr. Inhofe (of Oklahoma). Cloture had been invoked on the substitute amendment by a vote of 86 yeas to 11 nays. Mr. McCain (of Arizona) raised a point of order that the substitute amendment increased spending in the transportation bill in excess of the allocations under the budget resolution to the Finance, Banking, and Commerce Committees, in violation of §302 of the Congressional Budget Act (CBA). Mr. Bond (of Missouri) moved to waive all points of order under the CBA for consideration of the substitute—as currently constituted—and the underlying bill, as amended with the substitute. In response to an inquiry from Mr. McCain, the Presiding Officer responded that the motion to waive was not required to be in writing. Mr. McCain asked that it be sent to the desk, to which request Mr. Bond complied.

Mr. McCain.

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Therefore, I raise the point of order against the substitute amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER [Mr. Brownback of Kansas]. The Senator from Missouri.

Mr. BOND. Pursuant to section 904, I move to waive all Budget Act points of order for consideration of the pending substitute in its current status and the underlying bill as amended by the substitute.

The PRESIDING OFFICER. The motion to waive is debatable.

Mr. McCain. Parliamentary inquiry: Doesn't it have to be sent to the desk?

The PRESIDING OFFICER. No, the motion does not have to be in writing.

Mr. McCain. I ask for it to be sent to the desk.<sup>3388</sup>

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<sup>3387</sup> Off. of the Sec'y of the Senate, [Senate Precedent PRL20040212-004](#).

<sup>3388</sup> *Id.* (quoting [150 CONG. REC. S1206-07](#) (daily ed. Feb. 12, 2004)).

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The Parliamentarian's office has noted an instance of another waiver as a precedent, writing, "The Senate waived the relevant provisions of the Congressional Budget Act for consideration of a conference report, rendering moot a § 311(b) point of order under S. Con. Res. 70 of the 110th Congress that the conference report increased long-term deficits."<sup>3389</sup> Thus, the Parliamentarian's office reports:

On July 15, 2010, the Senate was considering the conference report to accompany H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act. Mr. Gregg (of New Hampshire) raised a point of order that the conference report would cause an increase in long-term deficits, in violation of §311(b) of S. Con. Res. 70 (110th). Mr. Dodd (of Connecticut) moved to waive all applicable budget points of order for consideration of the conference report, which was agreed to by a vote of 60 yeas to 39 nays.<sup>3390</sup>

In *Riddick's Senate Procedure*, the Parliamentarian further discussed precedents under this subsection<sup>3391</sup>:

#### **Waive Budget Act by Resolution and Motion:**

A motion to waive any of the provisions of titles III or IV of the Congressional Budget Act of 1974 (in this instance section 311) may be made after a point of order under that section has been made, is debatable, stays a ruling on the point of order, and if agreed to the point of order is not ruled upon but the amendment is disposed of on its merits.<sup>[3392]</sup>

A motion to waive any provision of titles III or IV of the Congressional Budget Act may be made under section 904(b) of that act, and is privileged and debatable.<sup>[3393]</sup> A motion to waive or suspend a provision of the Budget Act, as provided for under section 904(b) is a debatable motion.<sup>[3394]</sup> A motion to waive a provision of the Congressional Budget Act of 1974 under section 904(b) of that Act for the consideration of a conference report is debatable without a general statutory time limitation.<sup>[3395]</sup> However, after debate has concluded on an amendment which was considered under a time agreement which was silent on the question of debatable motions, a

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<sup>3389</sup> Off. of the Sec'y of the Senate, [Senate Precedent PRL20100715-001](#).

<sup>3390</sup> *Id.* See also [156 CONG. REC. 13145, 13200](#) (July 15, 2010).

<sup>3391</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 637–42 (1992) (footnotes renumbered and reformatted).

<sup>3392</sup> [132 CONG. REC. 12,731](#) (June 5, 1986).

<sup>3393</sup> [128 CONG. REC. 28,803](#) (Dec. 6, 1982).

<sup>3394</sup> [124 CONG. REC. 9383–403](#) (Apr. 10, 1978); [122 CONG. REC. 19,087–88](#) (June 18, 1976).

<sup>3395</sup> [132 CONG. REC. 32,375–76](#) (Oct. 16, 1986).

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motion to waive certain provisions of the Budget Act made in response to a point of order, is not debatable.<sup>[3396]</sup>

A motion to waive a provision of the Congressional Budget Act of 1974 for the consideration of an amendment may not be made while time remains on that amendment.<sup>[3397]</sup> However, once a point of order has been ruled on by the Chair, it is too late to move to waive the provision of the Budget Act upon which the point of order was based.<sup>[3398]</sup>

A Senator who was recognized by the Chair in his own right does not lose the floor upon making a parliamentary inquiry, so another Senator may not move to waive a provision of the Congressional Budget Act of 1974 upon hearing the answer to the inquiry if the first Senator wishes to hold the floor.<sup>[3399]</sup>

A motion to waive provisions of the Congressional Budget Act of 1974 pursuant to section 904(b) of that Act may be modified by its sponsor as a matter of right, if no Senate action has occurred thereon.<sup>[3400]</sup> Such motion could only be modified by its sponsor, and only by unanimous consent if the yeas and nays had been ordered on it.<sup>[3401]</sup>

A motion made under section 904(b) of the Budget Act is amendable.<sup>[3402]</sup>

A motion under section 904(b) of the Congressional Budget Act of 1974 made in response to a point of order against an amendment, which was drafted to waive the germaneness requirement of the Budget Act without specifying the object of that motion, would waive that requirement without restriction. If a motion to waive the germaneness provision of the Congressional Budget Act of 1974 for the consideration of “the pending amendment” were agreed to, it would be in order thereafter to consider an amendment to that amendment that was germane either to it or the bill,<sup>[3403]</sup> since an amendment which is either germane to an amendment for which the germaneness requirement of the Congressional Budget Act of 1974 was waived or germane to the bill itself, would be considered germane.<sup>[3404]</sup>

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<sup>3396</sup> 127 CONG. REC. 10,436–38 (May 20, 1981).

<sup>3397</sup> 133 CONG. REC. S17,598 (daily ed. Dec. 10, 1987); 132 CONG. REC. 24,850 (Sept. 19, 1986).

<sup>3398</sup> 128 CONG. REC. 17,514, 17,516–17 (July 22, 1982); 132 CONG. REC. 24,907 (Sept. 19, 1986).

<sup>3399</sup> 132 CONG. REC. 18,518 (July 31, 1986).

<sup>3400</sup> 132 CONG. REC. 556 (Jan. 27, 1986).

<sup>3401</sup> 131 CONG. REC. 28,951 (Oct. 24, 1985).

<sup>3402</sup> *Id.*

<sup>3403</sup> *Id.*

<sup>3404</sup> 132 CONG. REC. 24,843 (Sept. 19, 1986).

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The Chair has stated in response to a parliamentary inquiry that a motion to waive a section of the Budget Act for the consideration of a measure would apply to the bill “as it is now before the Senate.” In response to a further inquiry, the Chair indicated that if new budget or spending authority were proposed in an amendment, an additional waiver would be necessary.<sup>[3405]</sup>

A single waiver resolution can waive more than one section of the Congressional Budget Act.<sup>[3406]</sup>

A motion under section 904(b) of the Congressional Budget Act of 1974 may waive provisions of that Act for a bill and “any amendments thereto,”<sup>[3407]</sup> or for a bill and “any relevant amendments thereto.”<sup>[3408]</sup>

A motion under section 904(b) of the Congressional Budget Act of 1974 may be phrased to waive “the relevant portions” of titles III and IV of that Act, and need not refer to a specific section.<sup>[3409]</sup> A motion to waive provisions of the Budget Act of 1974 made under section 904(b) of that Act is subject to amendment to extend the effect of the waiver to “any other bill considered by the Senate” in that session of Congress.<sup>[3410]</sup> A motion made under section 904(b) of the Budget Act of 1974 may waive more than one provision of that act and may be directed at several matters.<sup>[3411]</sup> A motion to waive provisions of the Budget Act for consideration of a bill may be general or identify specific sections to be waived.<sup>[3412]</sup> A motion to waive under this section has been subject to an amendment to make the motion applicable to the pending amendment as well as an amendment to be offered.<sup>[3413]</sup>

A single motion has been made to waive various provisions of title III of the Congressional Budget Act of 1974 and a provision of law which provided for a point of order against inclusion of extraneous matter in reconciliation bills (the “Byrd Rule”) for the consideration of three separate amendments to a reconciliation bill.<sup>[3414]</sup>

Although motions to waive generally require a majority vote for their adoption, a motion to waive section 302(f) of the Congressional Budget Act of 1974, as amended, requires a vote of three-fifths of the Senators duly

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<sup>3405</sup> See 122 CONG. REC. 9385 (Apr. 5, 1976).

<sup>3406</sup> 128 CONG. REC. 29,905 (Dec. 10, 1982); 127 CONG. REC. 10,993 (June 1, 1981).

<sup>3407</sup> 130 CONG. REC. 17,754 (June 21, 1984).

<sup>3408</sup> 133 CONG. REC. S8043 (daily ed. June 11, 1987).

<sup>3409</sup> 130 CONG. REC. 16,096 (June 13, 1984).

<sup>3410</sup> 129 CONG. REC. 9155–56 (Apr. 20, 1983).

<sup>3411</sup> *Id.* at 9151.

<sup>3412</sup> 133 CONG. REC. S6188 (daily ed. May 7, 1987).

<sup>3413</sup> 133 CONG. REC. S10,578 (daily ed. July 23, 1987).

<sup>3414</sup> 133 CONG. REC. S17,598–600 (daily ed. Dec. 10, 1987).

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chosen and sworn.<sup>[3415]</sup> A vote of three-fifths of the Senators duly chosen and sworn is also required to waive the germaneness requirement contained in section 305(b)(2) of the act, as amended.<sup>[3416]</sup> In addition, a vote of three-fifths of the Senators duly chosen and sworn is required to adopt a motion to waive various sections of the Budget Act when some sections require a majority vote and other sections require three-fifths for their respective waivers.<sup>[3417]</sup>

When a motion is made under section 904(b) of the Budget Act to waive provisions of titles III and IV of that Act in response to a point of order, the withdrawal of the point of order renders the motion to waive moot.<sup>[3418]</sup>

It is permissible to move pursuant to section 904(b) of the Congressional Budget Act of 1974 to waive the requirement of germaneness of amendments offered to reconciliation bills. During the consideration of a reconciliation bill, a motion to waive provisions of the Budget Act offered in response to a point of order is debatable for 1 hour under the Act.<sup>[3419]</sup> A motion under section 904(b) of the Congressional Budget Act of 1974 when made during the consideration of a reconciliation bill, is debatable for 1 hour as specified by sections 310(e) and 305(b) of that Act, and is subject to a motion to table when that time has expired or been yielded back.<sup>[3420]</sup>

A point of order will lie against a motion to recommit a bill to a committee with instructions that the bill be reported back forthwith with specified amendments, if the effect of the motion is to produce a violation of section 311(a) of the Budget Act of 1974 (in this case to cause revenues to fall below the floor specified in the second concurrent resolution on the budget for the relevant fiscal year). If such point of order were raised, a motion to waive the Budget Act could be made, and that motion would be debatable.<sup>[3421]</sup>

Note the following instances where attempts were made to waive certain sections of the Budget Act:

Any bill or amendment which violates section 303(a) of the Budget Act is subject to a point of order, but can be considered by the Senate if waiver resolutions have been submitted and agreed to.<sup>[3422]</sup> When a Senator calls

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<sup>3415</sup> 132 CONG. REC. 26,938–39 (Sept. 29, 1986).

<sup>3416</sup> 132 CONG. REC. 24,843 (Sept. 19, 1986).

<sup>3417</sup> 133 CONG. REC. S7236–42 (daily ed. May 28, 1987).

<sup>3418</sup> 127 CONG. REC. 10,436–38 (May 20, 1981).

<sup>3419</sup> 126 CONG. REC. 19,192 (July 23, 1980).

<sup>3420</sup> 131 CONG. REC. 28,946 (Oct. 24, 1985).

<sup>3421</sup> 129 CONG. REC. 9151 (Apr. 20, 1983).

<sup>3422</sup> 123 CONG. REC. 36,773–97 (Nov. 3, 1977).

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up an amendment which meets the definition of an entitlement under section 401(c)(2)(C) of the Budget Act, and it violates section 303(a) of the act, he may move under section 904(b) of the Act that the provisions of section 303(a) be waived in order that his amendment might be considered.<sup>[3423]</sup> On one occasion, waiver resolutions submitted by individual Senators (not reported by other committees for reference to the Budget Committee), were referred to the Budget Committee, and after being reported were adopted by the Senate to waive section 303(a) of the Act to permit the consideration of specified amendments to one or more of several specified bills.<sup>[3424]</sup>

Under section 904(b) of the Budget Act, section 306 of the Act is subject to a motion to waive, but such a motion to waive may be tabled, and if it is tabled the Chair must then rule on a point of order made against an amendment on the grounds that it contained subject matter within the jurisdiction of the Budget Committee.<sup>[3425]</sup>

Section 311 of the Budget Act as originally enacted was waived by a majority vote in order to consider a Food Stamp Supplemental Appropriations Act, the waiver being necessary because the bill would have caused a breach in the outlay ceiling for the current fiscal year.<sup>[3426]</sup> After the act was amended to require a supermajority to waive section 311, the Senate by a three-fifths majority waived that section for the consideration of a committee amendment to a supplemental appropriations bill which would have limited the use of funds in the instant bill or any other act for the purpose of implementing a certain Internal Revenue Service regulation with a resulting loss of revenues in a fiscal year at a time when revenues for that fiscal year were below the level set out in the applicable budget resolution for that year.<sup>[3427]</sup>

The Senate has waived section 401(b) of the Congressional Budget Act for the consideration of an amendment to be effective on the last day of the current fiscal year, which would provide an entitlement to trade adjustment assistance for certain workers.<sup>[3428]</sup>

The Chair sustained a point of order made under section 311(a) of Budget Act, after a motion to waive that section had failed to obtain the 60 votes necessary for adoption (56 yeas, 42 nays), against an amendment which proposed to delay for one year the effective date of a section of the Internal Revenue Code, which was producing revenues in the current fiscal

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<sup>3423</sup> 124 CONG. REC. 26,109–12 (Aug. 15, 1978).

<sup>3424</sup> 123 CONG. REC. 36,795–97 (Nov. 3, 1977).

<sup>3425</sup> 125 CONG. REC. 35,243–53 (Dec. 10, 1979); 125 CONG. REC. 34,662–65 (Dec. 5, 1979).

<sup>3426</sup> 126 CONG. REC. 11,226–32 (May 14, 1980).

<sup>3427</sup> 132 CONG. REC. 12,731 (June 5, 1986).

<sup>3428</sup> 132 CONG. REC. 12,862 (June 6, 1986).

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year, since this would have caused revenues to fall further below the revenue floor for that fiscal year.<sup>[3429]</sup>

The Senate has adopted a motion to waive titles III and IV of the Budget Act for the consideration of a bill.<sup>[3430]</sup> The Senate has adopted a motion to waive section 303(a) of the Budget Act for the consideration of a committee amendment which created an entitlement to begin in a fiscal year before the concurrent resolution on the budget for that fiscal year had been agreed to.<sup>[3431]</sup>

The Senate has waived the provisions of titles III and IV of the Budget Act, after a point of order was made under section 311(a) of the Act against the consideration of a bill (that had been introduced and placed on the Calendar without being referred to a committee) which would have caused a further breach in the revenue floor for that fiscal year.<sup>[3432]</sup>

The Senate adopted a motion to waive the relevant sections of the Budget Act, in response to a point of order made against a bill granting a pay increase to Members of the House of Representatives and Federal judges.<sup>[3433]</sup>

The Senate agreed to a motion to waive section 311(a) of the Budget Act for the consideration of an amendment that repealed a provision of law imposing an obligation ceiling on certain State Department operating accounts, that had the effect of breaching the maximum deficit amount for that fiscal year.<sup>[3434]</sup>

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<sup>3429</sup> 135 CONG. REC. S3714–19 (daily ed. Apr. 12, 1989).

<sup>3430</sup> *Id.* at S4134–35 (daily ed. Apr. 18, 1989).

<sup>3431</sup> *Id.* at S12,217, S12,224–25 (daily ed. Sept. 29, 1989).

<sup>3432</sup> *Id.* at S12,828, S12,836 (daily ed. Oct. 6, 1989).

<sup>3433</sup> *Id.* at S15,984–86 (daily ed. Nov. 17, 1989).

<sup>3434</sup> 136 CONG. REC. S5107–15 (daily ed. Apr. 26, 1990).



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904(d) (d) APPEALS. —

904(d)(1) (1) PROCEDURE. — Appeals in the Senate from the decisions of the Chair relating to any provision of [title III](#)<sup>3435</sup> or [IV](#)<sup>3436</sup> or [section 1017](#)<sup>3437</sup> shall, except as otherwise provided therein, be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, concurrent resolution, reconciliation bill, or [rescission bill](#),<sup>3438</sup> as the case may be.

904(d)(2) (2) PERMANENT. — An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under [sections 305\(b\)\(2\)](#),<sup>3439</sup> [305\(c\)\(4\)](#),<sup>3440</sup> [306](#),<sup>3441</sup> [310\(d\)\(2\)](#),<sup>3442</sup> [313](#),<sup>3443</sup> [904\(c\)](#),<sup>3444</sup> and [904\(d\)](#)<sup>3445</sup> of [this Act](#).<sup>3446</sup>

904(d)(3) (3) TEMPORARY.<sup>3447</sup> — An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be

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<sup>3435</sup> [Congressional Budget Act of 1974 tit. III, §§ 300–315](#), 2 U.S.C. §§ 631–645a, *supra* pp. 113–782, addresses “Congressional Budget Process.”

<sup>3436</sup> [Congressional Budget Act of 1974 tit. IV, §§ 401–428](#), 2 U.S.C. §§ 651–658g, *supra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>3437</sup> [Impoundment Control Act of 1974 § 1017](#), 2 U.S.C. § 688, *infra* p. 962, addresses “Procedure in House of Representatives and Senate.”

<sup>3438</sup> [Impoundment Control Act of 1974 § 1011\(3\)](#), 2 U.S.C. § 682(3), *infra* p. 924, defines “rescission bill.”

<sup>3439</sup> [Congressional Budget Act of 1974 § 305\(b\)\(2\)](#), 2 U.S.C. § 636(b)(2), *supra* p. 255, addresses germaneness of amendments (among other things).

<sup>3440</sup> [Congressional Budget Act of 1974 § 305\(c\)\(4\)](#), 2 U.S.C. § 636(c)(4), *supra* p. 306, addresses germaneness of amendments (among other things).

<sup>3441</sup> [Congressional Budget Act of 1974 § 306](#), 2 U.S.C. § 637, *supra* p. 353, addresses “Legislation Dealing with Congressional Budget Must Be Handled by Budget Committees.”

<sup>3442</sup> [Congressional Budget Act of 1974 § 310\(d\)\(2\)](#), 2 U.S.C. § 641(d)(2), *supra* p. 544, addresses “Limitation on Amendments to Reconciliation Bills and Resolutions” in the Senate.

<sup>3443</sup> [Congressional Budget Act of 1974 § 313](#), 2 U.S.C. § 644, *supra* p. 642, addresses “Extraneous Matter in Reconciliation Legislation.”

<sup>3444</sup> [Congressional Budget Act of 1974 § 904\(c\)](#), 2 U.S.C. § 621 note, *supra* p. 888, addresses “Waivers.”

<sup>3445</sup> [Congressional Budget Act of 1974 § 904\(d\)](#), 2 U.S.C. § 621 note, *supra* p. 905, addresses “Appeals.”

<sup>3446</sup> [Congressional Budget and Impoundment Control Act of 1974](#), 2 U.S.C. §§ 601–688, pp. 49–969.

<sup>3447</sup> The budget resolutions for fiscal years 2008 and 2016 extended the applicability of subsection (d)(3), now through fiscal year 2025. [S. Con. Res. 21, 110th Cong.](#) § 205, 121 Stat. 2590, 2605 (2007); [S. Con. Res. 11, 114th Cong.](#) § 3201 (2015) (adopted). The budget resolution for fiscal year 2008 provided: “Notwithstanding any provision of the Congressional Budget Act of 1974, subsections (c)(2) and (d)(3) of section 904 of the Congressional Budget Act of 1974 shall remain in effect for purposes of Senate enforcement through September 30, 2017 . . . .” [S. Con. Res. 21, 110th Cong.](#) § 205, 121 Stat. 2590, 2605 (2007). Similarly, the budget resolution for fiscal year 2016 provided: “Notwithstanding any provision of the Congressional Budget

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required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under [sections 301\(i\)](#),<sup>3448</sup> [302\(c\)](#),<sup>3449</sup> [302\(f\)](#),<sup>3450</sup> [310\(g\)](#),<sup>3451</sup> [311\(a\)](#),<sup>3452</sup> [312\(b\)](#),<sup>3453</sup> [312\(c\)](#),<sup>3454</sup> [314\(e\)](#),<sup>3455</sup> and [314\(f\)](#)<sup>3456</sup> of this Act<sup>3457</sup> and [sections 258\(a\)\(4\)\(C\)](#),<sup>3458</sup> [258A\(b\)\(3\)\(C\)\(i\)](#),<sup>3459</sup> [258B\(f\)\(1\)](#),<sup>3460</sup> [258B\(h\)\(1\)](#),<sup>3461</sup> [258B\(h\)\(3\)](#),<sup>3462</sup> [258C\(a\)\(5\)](#),<sup>3463</sup> and [258C\(b\)\(1\)](#)<sup>3464</sup> of the [Balanced Budget and Emergency Deficit Control Act of 1985](#).<sup>3465</sup>

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Act of 1974 (2 U.S.C. 621 et seq.), subsections (c)(2) and (d)(3) of section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) shall remain in effect for purposes of Senate enforcement through September 30, 2025.” [S. Con. Res. 11, 114th Cong.](#) § 3201 (2015) (adopted).

<sup>3448</sup> [Congressional Budget Act of 1974 § 301\(i\)](#), 2 U.S.C. § 632(i), *supra* p. 177, addresses “Social Security Point of Order” in the context of budget resolutions.

<sup>3449</sup> [Congressional Budget Act of 1974 § 302\(c\)](#), 2 U.S.C. § 633(c), *supra* p. 192, addresses “Point of Order” against spending before allocation.

<sup>3450</sup> [Congressional Budget Act of 1974 § 302\(f\)](#), 2 U.S.C. § 633(f), *supra* p. 202, addresses “Legislation Subject to Point of Order.”

<sup>3451</sup> [Congressional Budget Act of 1974 § 310\(g\)](#), 2 U.S.C. § 641(g), *supra* p. 559, addresses “Limitation on Changes to Social Security Act.”

<sup>3452</sup> [Congressional Budget Act of 1974 § 311\(a\)](#), 2 U.S.C. § 642(a), *supra* p. 573, addresses “Enforcement of Budget Aggregates.”

<sup>3453</sup> [Congressional Budget Act of 1974 § 312\(b\)](#), 2 U.S.C. § 643(b), *supra* p. 613, addresses “Discretionary Spending Point of Order in the Senate.”

<sup>3454</sup> [Congressional Budget Act of 1974 § 312\(c\)](#), 2 U.S.C. § 643(c), *supra* p. 613, addresses “Maximum Deficit Amount Point of Order in the Senate.”

<sup>3455</sup> [Congressional Budget Act of 1974 § 314\(e\)](#), 2 U.S.C. § 645(e), *supra* p. 768, addresses “Senate Point of Order Against an Emergency Designation.”

<sup>3456</sup> [Congressional Budget Act of 1974 § 314\(f\)](#), 2 U.S.C. § 645(f), *supra* p. 772, addresses “Enforcement of Discretionary Spending Caps.”

<sup>3457</sup> [Congressional Budget and Impoundment Control Act of 1974](#), 2 U.S.C. §§ 601–688, pp. 49–969.

<sup>3458</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)\(4\)\(C\)](#), 2 U.S.C. § 907a(a)(4)(C), *infra* p. 1121, prohibits amendment of joint resolutions of suspension in event of low growth.

<sup>3459</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258A\(b\)\(3\)\(C\)\(i\)](#), 2 U.S.C. § 907b(b)(3)(C)(i), *infra* p. 1126, addresses germaneness of amendments (among other things).

<sup>3460</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(f\)\(1\)](#), 2 U.S.C. § 907c(f)(1), *infra* p. 1132, addresses germaneness or relevance of amendments (among other things).

<sup>3461</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(h\)\(1\)](#), 2 U.S.C. § 907c(h)(1), *infra* p. 1133, addresses germaneness or relevance of amendments (among other things).

<sup>3462</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(h\)\(3\)](#), 2 U.S.C. § 907c(h)(3), *infra* p. 1134, addresses the deficit effect of amendments (among other things).

<sup>3463</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258C\(a\)\(5\)](#), 2 U.S.C. § 907d(a)(5), *infra* p. 1140, addresses “Point of order” regarding maximum deficit amounts.

<sup>3464</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258C\(b\)\(1\)](#), 2 U.S.C. § 907d(b)(1), *infra* p. 1142, addresses “Procedures” “In general.”

<sup>3465</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), 2 U.S.C. §§ 900–922, *infra* pp. 976–1143.

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## Appeals<sup>3466</sup>

In *Riddick's Senate Procedure*, the Parliamentarian described the Budget Act appeal process<sup>3467</sup>:

### Appeals From the Decision of the Chair:

Debate on appeals with respect to the consideration of budget resolutions and reconciliation bills and amendments and motions relating thereto is limited to one hour,<sup>[3468]</sup> and the same limitation on debate also applies during the consideration of rescission bills.<sup>[3469]</sup>

On June 21, 1976, when a point of order was made against an amendment as being contrary to the provisions of the Budget Act, the Chair sustained the point of order from which an appeal was taken, and the Chair informed the Senate pursuant to a parliamentary inquiry that an appeal from the ruling of the Chair was debatable.<sup>[3470]</sup>

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<sup>3466</sup> See, e.g., 129 CONG. REC. 6629 (Mar. 22, 1983) (appeal of Sen. Heinz).

<sup>3467</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 593 (1992) (footnotes renumbered and reformatted).

<sup>3468</sup> Congressional Budget Act of 1974 §§ 305(b)(2) & 310(e)(1), 2 U.S.C. §§ 636(b)(2) & 641(e)(1), *supra* pp. 255 & 552.

<sup>3469</sup> Congressional Budget Act of 1974 § 904(d), 2 U.S.C. § 621 note (note on "Exercise of Congressional Rulemaking Power").

<sup>3470</sup> Congressional Budget Act of 1974 §§ 305(b)(2) & 310(e)(1), 2 U.S.C. §§ 636(b)(2) & 641(e)(1), *supra* pp. 255 & 552; 122 CONG. REC. 19,401–03 (June 21, 1976).

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904(e)            **(e) EXPIRATION OF CERTAIN SUPERMAJORITY VOTING REQUIREMENTS.—Subsections (c)(2)<sup>3471</sup> and (d)(3)<sup>3472</sup> shall expire on September 30, 2002.**

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### Expiration

The budget resolutions for fiscal years 2008 and 2016 extended the date in subsection (e), now through fiscal year 2025.<sup>3473</sup> The budget resolution for fiscal year 2008 provided: “Notwithstanding any provision of the Congressional Budget Act of 1974, subsections (c)(2) and (d)(3) of section 904 of the Congressional Budget Act of 1974 shall remain in effect for purposes of Senate enforcement through September 30, 2017 . . . .”<sup>3474</sup> Similarly, the budget resolution for fiscal year 2016 provided: “Notwithstanding any provision of the Congressional Budget Act of 1974 (2 U.S.C. 621 et seq.), subsections (c)(2) and (d)(3) of section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) shall remain in effect for purposes of Senate enforcement through September 30, 2025.”<sup>3475</sup>

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<sup>3471</sup> [Congressional Budget Act of 1974 § 904\(c\)\(2\)](#), 2 U.S.C. § 621 note, *supra* p. 889, addresses “Temporary” supermajority waivers.

<sup>3472</sup> [Congressional Budget Act of 1974 § 904\(d\)\(3\)](#), 2 U.S.C. § 621 note, *supra* p. 905, addresses “Temporary” supermajority appeals.

<sup>3473</sup> [S. Con. Res. 21, 110th Cong.](#) § 205, 121 Stat. 2590, 2605 (2007); [S. Con. Res. 11, 114th Cong.](#) § 3201 (2015) (adopted).

<sup>3474</sup> [S. Con. Res. 21, 110th Cong.](#) § 205, 121 Stat. 2590, 2605 (2007).

<sup>3475</sup> [S. Con. Res. 11, 114th Cong.](#) § 3201 (2015) (adopted).

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## **IMPOUNDMENT CONTROL ACT**



**President Richard Nixon**

National Archives

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# Impoundment

In commenting on the Constitution’s mandate that the President “take Care that the Laws be faithfully executed,”<sup>3476</sup> the Congressional Research Service’s annotation of the Constitution discusses the history of impoundment<sup>3477</sup>:

In his Third Annual Message to Congress, President Jefferson established the first faint outline of what years later became a major controversy. Reporting that \$50,000 in funds which Congress had appropriated for fifteen gunboats on the Mississippi remained unexpended, the President stated that a “favorable and peaceful turn of affairs on the Mississippi rendered an immediate execution of the law unnecessary. . . .” But he was not refusing to expend the money, only delaying action to obtain improved gunboats; a year later, he told Congress that the money was being spent and gunboats were being obtained.<sup>[3478]</sup> A few other instances of deferrals or refusals to spend occurred in the Nineteenth and early Twentieth Centuries, but it was only with the

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<sup>3476</sup> U.S. CONST. art. II, § 3.

<sup>3477</sup> CONG. RSCH. SERV., [THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION](#) 615–19 (Michael J. Garcia, Caitlain Devereaux Lewis, Andrew Nolan, Meghan Totten & Ashley Tyson eds, 2017) (footnotes renumbered and reformatted); see also CONG. RSCH. SERV., [CONSTITUTION ANNOTATED](#).

<sup>3478</sup> 1 [MESSAGES AND PAPERS OF THE PRESIDENTS](#) 348, 360 (James D. Richardson ed., 1897).



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Administration of President Franklin Roosevelt that a President refused to spend moneys for the purposes appropriated. Succeeding Presidents expanded upon these precedents, and in the Nixon Administration a well-formulated plan of impoundments was executed in order to reduce public spending and to negate programs established by congressional legislation.<sup>[3479]</sup>

Impoundment<sup>[3480]</sup> was defended by Administration spokesmen as being a power derived from the President's executive powers and particularly from his obligation to see to the faithful execution of the laws, i.e., his discretion in the manner of execution. The President, the argument went, is responsible for deciding when two conflicting goals of Congress can be harmonized and when one must give way, when, for example, congressional desire to spend certain moneys must yield to congressional wishes to see price and wage stability. In some respects, impoundment was said or implied to flow from certain inherent executive powers that repose in any President. Finally, statutory support was sought; certain laws were said to confer discretion to withhold spending, and it was argued that congressional spending programs are discretionary rather than mandatory.<sup>[3481]</sup>

On the other hand, it was argued that Congress's powers under Article I, § 8, were fully adequate to support its decision to authorize certain programs, to determine the amount of funds to be spent on them, and to mandate the Executive to execute the laws. Permitting the President to impound appropriated funds allowed him the power of item veto, which he does not have, and denied Congress the opportunity to override his veto of bills enacted by Congress. In particular, the power of Congress to compel the President to spend appropriated moneys was said to derive from Congress's power "to make all Laws which shall be necessary and proper for carrying into Execution" the enumerated powers of Congress

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<sup>3479</sup> See generally *Executive Impoundment of Appropriated Funds: Hearings Before the Subcomm. on Separation of Powers of the S. Comm. on the Judiciary*, 92d Cong. (1971); *Impoundment of Appropriated Funds by the President: Joint Hearings Before the Ad Hoc Subcomm. on Impoundment of Funds of the S. Comm. of Gov't Operations & the Subcomm. on Separation of Powers of the S. Comm. on the Judiciary*, 93d Cong. (1973); Ralph S. Abascal & John R. Kramer, *Presidential Impoundment Part I: Historical Genesis and Constitutional Framework*, 62 GEO. L.J. 1549 (1974); Abascal & Kramer, *Presidential Impoundment Part II: Judicial and Legislative Response*, 63 GEO. L.J. 149 (1974); LOUIS FISHER, *PRESIDENTIAL SPENDING POWER* (1975).

<sup>3480</sup> CRS's footnote says:

There is no satisfactory definition of impoundment. Legislation enacted by Congress uses the phrase deferral of budget authority which is defined to include: (A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or (B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law. 2 U.S.C. § 682(1).

<sup>3481</sup> *Impoundment of Appropriated Funds by the President: Joint Hearings Before the Ad Hoc Subcomm. on Impoundment of Funds of the S. Comm. of Gov't Operations & the Subcomm. on Separation of Powers of the S. Comm. on the Judiciary*, 93d Cong. 358 (1973) (statement of Deputy Att'y Gen. Sneed).



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and “all other Powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof.”<sup>[3482]</sup>

The President’s decision to impound large amounts of appropriated funds led to two approaches to curtail the power. First, many persons and organizations, with a reasonable expectation of receipt of the impounded funds upon their release, brought large numbers of suits; with a few exceptions, these suits resulted in decisions denying the President either constitutional or statutory power to decline to spend or obligate funds, and the Supreme Court, presented with only statutory arguments by the Administration, held that no discretion existed under the particular statute to withhold allotments of funds to the states.<sup>[3483]</sup> Second, Congress in the course of revising its own manner of appropriating funds in accordance with budgetary responsibility provided for mandatory reporting of impoundments to Congress, for congressional disapproval of impoundments, and for court actions by the Comptroller General to compel spending or obligation of funds.<sup>[3484]</sup>

Generally speaking, the law recognized two types of impoundments: “routine” or “programmatic” reservations of budget authority to provide for the inevitable contingencies that arise in administering congressionally-funded programs and “policy” decisions that are ordinarily intended to advance the broader fiscal or other policy objectives of the executive branch contrary to congressional wishes in appropriating funds in the first place.

Routine reservations were to come under the terms of a revised Anti-Deficiency Act.<sup>[3485]</sup> Prior to its amendment, this law had permitted the President to “apportion” funds “to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements, greater efficiency of operations, or other developments subsequent to the date on which such appropriation was made available.” President Nixon had relied on this “other developments” language as

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<sup>3482</sup> *Id.* at 1–6 (statement of Sen. Ervin). CRS’s note says, “Of course, it was long ago established that Congress could direct the expenditure of at least some moneys from the Treasury, even over the opposition of the President. [Kendall v. United States ex rel. Stokes](#), 37 U.S. (12 Pet.) 524 (1838).”

<sup>3483</sup> [Train v. City of New York](#), 420 U.S. 35 (1975); [Train v. Campaign Clean Water](#), 420 U.S. 136 (1975). See also [State Highway Comm’n of Missouri v. Volpe](#), 479 F.2d 1099 (8th Cir. 1973); [Pennsylvania v. Lynn](#), 501 F.2d 848 (D.C. Cir. 1974) (finding statutory discretion not to spend).

<sup>3484</sup> Impoundment Control Act of 1974, 2 U.S.C. §§ 681–88.

<sup>3485</sup> CRS’s note says:

Originally passed as the Act of Feb. 27, 1906, ch. 510, § 3, 34 Stat. 27, 48. The provisions as described in the text were added in the General Appropriations Act of 1951, ch. 896, § 1211(c)(2), 64 Stat. 595, 765. The amendments made by the Impoundment Control Act, were § 1002, 88 Stat. 332, 31 U.S.C. §§ 1341, 1512. On the Anti-Deficiency Act generally, see [Kate] Stith, [Congress’s Power of the Purse](#), 97 YALE L.J. 1343, 1370–1377 (1988).

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authorization to impound, for what in essence were policy reasons.<sup>[3486]</sup> Congress deleted the controverted clause and retained the other language to authorize reservations to maintain funds for contingencies and to effect savings made possible in carrying out the program; it added a clause permitting reserves as specifically provided by law.<sup>[3487]</sup>

“Policy” impoundments were to be reported to Congress by the President as permanent rescissions and, perhaps, as temporary deferrals.<sup>[3488]</sup> Rescissions are merely recommendations or proposals of the President and must be authorized by a bill or joint resolution, or, after 45 days from the presidential message, the funds must be made available for obligation.<sup>[3489]</sup> Temporary deferrals of budget authority for less than a full fiscal year, as provided in the 1974 law, were to be effective unless either the House of Representatives or the Senate passed a resolution of disapproval.<sup>[3490]</sup> With the decision in *INS v. Chadha*,<sup>[3491]</sup> voiding as unconstitutional the one-House legislative veto, it was evident that the veto provision in the deferral section of the Impoundment Control Act was no longer viable. An Administration effort to utilize the section, minus the veto device, was thwarted by court action, in which, applying established severability analysis, the court held that Congress would not have enacted the deferral provision in the absence of power to police its exercise through the veto.<sup>[3492]</sup> Thus, the entire deferral section was inoperative. Congress, in 1987, enacted a more restricted authority, limited to deferrals only for those purposes set out in the Anti-Deficiency Act.<sup>[3493]</sup>

With passage of the Act, the constitutional issues faded into the background; Presidents regularly reported rescission proposals, and Congress responded by enacting its own rescissions, usually topping the Presidents’. The entire field was, of course, confounded by the application of the other part of the 1974 law, the Budget Act, which restructured how budgets were received and acted on in Congress, and by the Balanced

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<sup>3486</sup> LOUIS FISHER, PRESIDENTIAL SPENDING POWER 154–57 (1975).

<sup>3487</sup> 31 U.S.C. § 1512(c)(1) (present version). CRS’s note says: “Congressional intent was to prohibit the use of apportionment as an instrument of policymaking. 120 CONG. REC. 7658 (1974) (Senator Muskie); *id.* at 20472–20473 (Senators Ervin and McClellan).”

<sup>3488</sup> Impoundment Control Act of 1974 §§ 1011(1), 1012, 1013, 2 U.S.C. §§ 682(1), 683, 684.

<sup>3489</sup> 2 U.S.C. § 683.

<sup>3490</sup> Impoundment Control Act of 1974 § 1013, 88 Stat. 297, 334. CRS’s note says:

Because the Act was a compromise between the House of Representatives and the Senate, numerous questions were left unresolved; one important one was whether the President could use the deferral avenue as a means of effectuating policy impoundments or whether rescission proposals were the sole means. The subsequent events described in the text mooted that argument.

<sup>3491</sup> *Immigration & Naturalization Serv. v. Chadha*, 462 U.S. 919 (1983).

<sup>3492</sup> *City of New Haven v. United States*, 809 F.2d 900 (D.C. Cir. 1987).

<sup>3493</sup> Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 206(a), 101 Stat. 754, 785, 2 U.S.C. § 684.

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Budget and Emergency Deficit Control Act of 1985.<sup>[3494]</sup> This latter law was designed as a deficit-reduction forcing mechanism, so that unless President and Congress cooperate each year to reduce the deficit by prescribed amounts, a “sequestration” order would reduce funds down to a mandated figure.<sup>[3495]</sup> Dissatisfaction with the amount of deficit reduction continues to stimulate discussion of other means, such as “expedited” rescission and the line-item veto, many of which may raise some constitutional issues.

In *Riddick’s Senate Procedure*, the Parliamentarian summarized the Impoundment Control Act:

Title X of the Act also sets out a procedure for the control of impoundments. Pursuant to the Act, the President must notify Congress whenever he proposes a rescission or deferral of funds. If Congress does not pass a rescission bill within 45 days of continuous session, the President must release all funds proposed for rescission. The President may defer funding within a particular fiscal year, subject to the enactment of a measure disapproving the deferral.<sup>3496</sup>

During Senate consideration of what would become the Congressional Budget and Impoundment Control Act, the Chair of the committee of jurisdiction, the Government Operations Committee, Senator Sam Ervin, had this colloquy with Senator Warren Magnuson, who 3 years later would chair the Appropriations Committee:

Mr. MAGNUSON. Mr. President, I wish to express my support for the efforts of the senior Senator from North Carolina [Senator Ervin] in his efforts to draft legislation designed to reaffirm congressional intent in the whole area that has come to be known as “impoundments.”

I understand that title X of the Budget Reform Act of 1974 is intended to reaffirm and reassert the congressional intent that the President shall be prohibited from impoundments or any such activities involving the refusal to obligate to the full extent, or any action with similar effect, the appropriations provided by the Congress. This is my understanding of title X. Does the Senator believe and intend that title X should resolve this impoundment problem?

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<sup>3494</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, 99 Stat. 1038, with the relevant portions to this discussion at [2 U.S.C. §§ 901–907d](#).

<sup>3495</sup> See Kate Stith, [Rewriting the Fiscal Constitution: The Case of Gramm-Rudman-Hollings](#), 76 CAL. L. REV. 593 (1988).

<sup>3496</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 504 (1992).

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Mr. ERVIN. The Senator from Washington [Senator Magnuson] is correct in his statement that title X is intended to reach the problem of impoundment, reserves, and apportionments in all its forms.

The purpose of title X is to define, clarify, and thereby limit the authority under which the President and any other officer or employee of the executive branch may take any action which places appropriated funds in reserve, or has that effect for any period of time.

I would like to emphasize the intent of the committee that the word "reserve" is to be interpreted in its broadest sense. As the Senator from Washington knows, the President and his officers have become increasingly resourceful at making new interpretations of the intent of the Antideficiency Act as well as the appropriations acts insofar as they concern administration arguments which would allow the President to legally impound funds. Fortunately, the Federal courts have recognized consistently that Congress has intended that appropriations be obligated and expended and have not allowed semantic arguments of the executive branch to frustrate such congressional intent.

In this respect, the committee intends the provisions of title X to reach all the past and future mechanisms which this President or any other Executive has devised or will devise.

We intend the language in title X to mean any action by the executive branch which would have the effect of establishing a reserve, or otherwise delaying or making unavailable for obligation or expenditure appropriations made by the Congress in a manner inconsistent with achieving the full scope, intent, and objectives of Congress in enacting that appropriation.

Mr. MAGNUSON. I fully agree and support the statement of the Senator from North Carolina, and I wish to insure that the record clearly reflects that the interpretation and purpose of the committee is the same as the entire Senate, if and when title X becomes the law of the land.

I am particularly concerned that the President or any other member of the executive branch not be allowed to adopt a narrow interpretation of the word "reserves" as it appears in title X. Is it the intent of the committee that "reserves" be interpreted to mean any action which has the effect of establishing a budgetary reserve? This would include, for example, the delaying of the obligation of appropriated funds by the impoundment of positions, which is a new variation of the impoundment theme now being proposed and contemplated in the executive branch.

One way this works is to fire or transfer the staff so as to so disorganize the grant-processing organization of a department or agency as to make it

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impossible to award the grants and obligate the funds before the close of the fiscal year. The net effect is the same impoundment.

Another variation of impoundment that is being proposed by some executive agencies is called forward funding or multiple-year grant periods. One way this works is for an agency to obligate the funds in a way that spreads the expenditure over a period of years instead of the usual practice of awarding funding for 12-month grants. The net effect is that the level of funding is lowered – another devious method of impoundment.

So, I ask the distinguished Senator, is it the intent of the committee that “reserves” be interpreted to mean any action which has the same effect as establishing a budgetary reserve?

Mr. ERVIN. Yes. The phrase “In apportioning any appropriation, reserves” clearly encompasses any effort or action by the executive branch which has the effect of delaying the appropriation, obligation, or expenditure of funds, or which has the effect of reducing the program level below the level contemplated by the Congress in the enactment of an appropriations bill or budget authority. Any such delay in expenditure of appropriations is, in effect, the creation of a “reserve” within the meaning of title X of the bill.

As the Senator knows, the administration proposed rescission of \$328.8 million in funds in the fiscal 1974 budget that had been appropriated by Congress for the Department of Health, Education, and Welfare and the Department of Labor. The administration apportioned the funds to the agencies, with instructions not to obligate or spend the money until Congress acted on the rescission proposals.

Since the funds were apportioned, and thus not in a “budgetary reserve,” the Office of Management and Budget did not include those funds in its report on “impoundments.” But the proposed rescissions were functionally identical to the withholding of funds so reported, thus delaying by many months the implementation of prog[r]ams enacted and funded by Congress. The committee does not countenance such practices. The apportionment, obligation, contracting, or personnel practices of the executive branch cannot be used as a method of withholding funds. All such actions are properly characterized as having the effect of establishment of a “reserve” and fall within the mandate and directives of title X.

Mr. MAGNUSON. I thank the Senator from North Carolina for his comments. It is reassuring to know that the clear congressional intent in the word “reserve” as used in title X is to include any action by any executive branch officer which has the same effect as the establishment of a budgetary reserve of appropriated funds.

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Is it correct to say that under title X, the executive branch may not take any action to delay or withhold appropriations or budget authority, whatever the method or semantic description of the method?

Mr. ERVIN. That is correct.<sup>3497</sup>

During Senate debate on the conference report for the Act, Senator Ervin explained the impoundment provisions of the conference report:

The impoundment of appropriated funds by the President—a highly controversial issue that has plagued the Congress for many years—is dealt with by way of an effective compromise.

I have worked on this issue for the past several years, and, I am extremely pleased that the major concerns of each House have been taken care of in title X of the act, which I believe will provide a sound and workable solution to the problem.

The impoundment title is based on the assumption that the President has no power under the Constitution to impound lawfully appropriated funds in the absence of a delegation of such authority by the Congress. However, it recognizes that there are times when the proper exercise of the executive function might make the deferral or rescission of budget authority the best public policy. In order to meet these situations, the title deals with three types of executive actions and places restrictions on each of them.

First, it retains the Senate's modification to the Antideficiency Act which provides for routine reservations of budget authority "solely to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements or greater efficiency of operations." The so-called other developments clause of the Antideficiency Act—which has been used by the Executive to justify many impoundments—is deleted, and reservations are restricted to those made under the provisions of that act or other laws.

Second, it requires the President to request the rescission of all or part of an appropriation which he determines is unnecessary to carry out the full objectives and scope of a program or which should not be obligated for fiscal policy or other reasons, including the termination of programs. In other words, both Houses of Congress must pass a rescission bill in order for the President to terminate or cancel a program or to delay the obligation

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<sup>3497</sup> 120 CONG. REC. 7913 (Mar. 22, 1974).

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of 1-year appropriations to the end of the fiscal year in which they are available.

Third, it delegates to the President a limited authority to defer the obligation of budget authority for a period not to exceed the expiration of the fiscal year in which they are deferred. Deferrals by the President include any delay or withholding of budget authority, whether by establishing reserves or otherwise. The President must notify Congress that he proposes to defer budget authority, and the deferral will be subject to the disapproval of either House of Congress by adoption of an "impoundment resolution." If either House passes a resolution of disapproval at any time, the President is thereby required to make the budget authority available for obligation.

Proposed rescissions and deferrals will be submitted to Congress by special message which will be published as a House or Senate document and in the Federal Register. They will be delivered to the Comptroller General and be referred to the appropriate committees. Both rescission bills and impoundment resolutions disapproving proposed deferrals will be referred to the appropriate committees, with provision for their discharge by petition after 25 days.

The Comptroller General will be granted authority to sue in the Federal District Court for the District of Columbia to enforce the provisions of the title, using attorneys of his own choosing, 25 days after he gives notice to Congress. This authority is not intended to infringe upon the right of any other party to initiate litigation. The Comptroller General also will be charged with the responsibility of monitoring the Executive and reporting to Congress on any deferrals, reservations, or impoundments which are not reported by a special message.

A disclaimer section directs that nothing in the impoundment title should be construed as ratifying or approving any past or present impoundment, affecting the claims or defenses of any party to litigation concerning any impoundment, or asserting or conceding the constitutional powers or limitations of either the Congress or the President. The disclaimer also disavows any intention by Congress to supersede any law which requires the mandatory obligation of budget authority, since several such statutes have been enacted in response to the wholesale impoundment of funds appropriated for specific programs.

The President is required to notify Congress by the 10th of each month the amount of budget authority which is being reserved or deferred, including the amounts which he has proposed to be rescinded or deferred. These monthly reports will take the place of the present quarterly reports required by the Federal Impoundment and Information Act of 1972, as amended, which will be repealed.

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The delegation to the President of authority to “defer” the obligation of budget authority for definite and limited periods of time is not the same as a wholesale license to “impound” as that term is commonly understood today. This is an important distinction because no authority is granted to terminate or cancel a program, whether by direct or indirect action, or by inaction, nor is the authority to defer granted for indefinite periods of time.

Mr. President, I firmly believe that the impoundment control and congressional budget procedures provided in this act are workable. They constitute the first major reform of the method of authorizing and appropriating funds in more than half a century, and they are necessarily complex. However, men of reason and good faith can make them work efficiently so that Congress can gain effective control over the financial resources of the Federal Government.

This act will not guarantee fiscal responsibility on the part of Congress and the Executive, but it will make that goal attainable by those who serve here in the future so that history will record this act as the most lasting achievement of the 93d Congress.<sup>3498</sup>

The Government Accountability Office has issued many decisions related to the Impoundment Control Act.<sup>3499</sup>

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<sup>3498</sup> 120 CONG. REC. 20,464–65 (June 21, 1974).

<sup>3499</sup> See U.S. Gov’t Accountability Off., *Appropriations Law*.



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# TITLE X IMPOUNDMENT CONTROL

## PART A GENERAL PROVISIONS

### DISCLAIMER

1001            **SEC. 1001.**<sup>3500</sup> Nothing contained in **this Act**,<sup>3501</sup> or in any amendments made by **this Act**,<sup>3502</sup> shall be construed as —

1001(1)            **(1) asserting or conceding the constitutional powers or limitations of either the Congress or the President;**

1001(2)            **(2) ratifying or approving any impoundment heretofore or hereafter executed or approved by the President or any other Federal officer or employee, except insofar as pursuant to statutory authorization then in effect;**

1001(3)            **(3) affecting in any way the claims or defenses of any party to litigation concerning any impoundment; or**

1001(4)            **(4) superseding any provision of law which requires the obligation of **budget authority**<sup>3503</sup> or the making of **outlays**<sup>3504</sup> thereunder.**

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<sup>3500</sup> Impoundment Control Act of 1974 § 1001 is codified at 2 U.S.C. § 681. Impoundment Control Act of 1974 § 1001 was formerly codified as 31 U.S.C. § 1400 prior to the 1982 general revision and enactment of Title 31, Money and Finance in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982). Impoundment Control Act of 1974 § 1001 appeared in the original Impoundment Control Act just as it does today. See [Congressional Budget and Impoundment Control Act of 1974](#), Pub. L. No. 93-344, § 1001, 88 Stat. 297, 332.

<sup>3501</sup> [Congressional Budget and Impoundment Control Act of 1974](#), 2 U.S.C. §§ 601–688, pp. 49–969.

<sup>3502</sup> *Id.*

<sup>3503</sup> [Congressional Budget and Impoundment Control Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3504</sup> [Congressional Budget and Impoundment Control Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

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During Senate debate on the conference report for the Act, Senator Sam Ervin, the bill's sponsor and Manager, explained this section:

A disclaimer section directs that nothing in the impoundment title should be construed as ratifying or approving any past or present impoundment, affecting the claims or defenses of any party to litigation concerning any impoundment, or asserting or conceding the constitutional powers or limitations of either the Congress or the President. The disclaimer also disavows any intention by Congress to supersede any law which requires the mandatory obligation of budget authority, since several such statutes have been enacted in response to the wholesale impoundment of funds appropriated for specific programs.<sup>3505</sup>

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<sup>3505</sup> [120 CONG. REC. 20,465](#) (June 21, 1974).

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## PART B

### CONGRESSIONAL CONSIDERATION OF PROPOSED RESCISSIONS, RESERVATIONS, AND DEFERRALS OF BUDGET AUTHORITY

#### DEFINITIONS<sup>3506</sup>

1011            SEC. 1011.<sup>3507</sup> For purposes of **this part**<sup>3508</sup> —

1011(1)            (1) “deferral of **budget authority**”<sup>3509</sup> includes —

1011(1)(A)            (A) withholding or delaying the obligation or expenditure of **budget authority**<sup>3510</sup> (whether by establishing reserves or otherwise) provided for projects or activities; or

1011(1)(B)            (B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of **budget authority**,<sup>3511</sup> including authority to obligate by contract in advance of appropriations as specifically authorized by law;

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<sup>3506</sup> Budget process laws define terms in many places. See [Congressional Budget Act of 1974 §§ 3, 310\(b\), 421](#), 2 U.S.C. §§ 622, 641(b), 658, *supra* pp. 55, 529, 803; [Impoundment Control Act of 1974 § 1011](#), 2 U.S.C. § 682, *supra* p. 923; [Balanced Budget and Emergency Deficit Control Act of 1985 §§ 250\(c\), 251\(b\)\(2\)\(B\)\(ii\), 256\(g\)\(2\)](#), 2 U.S.C. §§ 900(c), 901(b)(2)(B)(ii), 906(g)(2), *infra* pp. 977, 997, 1097; [Federal Credit Reform Act of 1990 § 502](#), 2 U.S.C. § 661a, *supra* p. 850; [Statutory Pay-As-You-Go Act of 2010 § 3](#), 2 U.S.C. § 932, *infra* p. 1150; [S. Con. Res. 70, 110th Cong. § 314\(b\)](#), 122 Stat. 5143, 5179 (2008), *infra* p. 1221; [H. Con. Res 71, 115th Cong. § 4106\(a\)\(3\)](#) (2017) (adopted), *infra* p. 1246; [S. Con. Res. 14, 117th Cong. §§ 4001\(a\)\(4\), 4001\(a\)\(5\), 4002\(a\)\(2\), 4003\(a\)\(2\)](#) (2021) (adopted), *infra* pp. 1258, 1259, 1262, 1267. For a glossary collecting these definitions in budget process law, see *infra* p. 1542.

<sup>3507</sup> [Impoundment Control Act of 1974 § 1011](#) is codified as amended at [2 U.S.C. § 682](#). [Impoundment Control Act of 1974 § 1011](#) was formerly codified as 31 U.S.C. § 1401 prior to the 1982 general revision and enactment of Title 31, Money and Finance in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>3508</sup> [Impoundment Control Act of 1974 part B, §§ 1011–1017](#), 2 U.S.C. §§ 682–688, pp. 923–969, addresses “Congressional Consideration of Proposed Rescissions, Reservations, and Deferrals of Budget Authority.”

<sup>3509</sup> [Congressional Budget and Impoundment Control Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3510</sup> *Id.*

<sup>3511</sup> *Id.*

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- 1011(2) (2) “Comptroller General” means the Comptroller General of the United States;
- 1011(3) (3) “rescission bill” means a bill or joint resolution which only rescinds, in whole or in part, [budget authority](#)<sup>3512</sup> proposed to be rescinded in a special message transmitted by the President under [section 1012](#),<sup>3513</sup> and upon which the Congress completes action before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President’s message is received by the Congress;
- 1011(4) (4) “impoundment resolution” means a resolution of the House of Representatives or the Senate which only expresses its disapproval of a proposed [deferral of budget authority](#)<sup>3514</sup> set forth in a special message transmitted by the President under [section 1013](#);<sup>3515</sup> and
- 1011(5) (5) continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 45-day period referred to in [paragraph \(3\)](#)<sup>3516</sup> of this section and in [section 1012](#),<sup>3517</sup> and the 25-day periods referred to in [sections 1016](#)<sup>3518</sup> and [1017\(b\)\(1\)](#).<sup>3519</sup> If a special message is transmitted

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<sup>3512</sup> [Congressional Budget and Impoundment Control Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3513</sup> [Impoundment Control Act of 1974 § 1012](#), 2 U.S.C. § 683, *infra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3514</sup> [Impoundment Control Act of 1974 § 1011\(1\)](#), 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3515</sup> [Impoundment Control Act of 1974 § 1013](#), 2 U.S.C. § 684, *infra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3516</sup> [Impoundment Control Act of 1974 § 1011\(3\)](#), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3517</sup> [Impoundment Control Act of 1974 § 1012](#), 2 U.S.C. § 683, *infra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3518</sup> [Impoundment Control Act of 1974 § 1016](#), 2 U.S.C. § 687, *infra* p. 960, addresses “Suits by Comptroller General.”

<sup>3519</sup> [Impoundment Control Act of 1974 § 1017\(b\)\(1\)](#), 2 U.S.C. § 688(b)(1), *infra* p. 962.

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under [section 1012](#)<sup>3520</sup> during any Congress and the last session of such Congress adjourns sine die before the expiration of 45 calendar days of continuous session (or a special message is so transmitted after the last session of the Congress adjourns sine die), the message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the 45-day period referred to in [paragraph \(3\)](#)<sup>3521</sup> of this section and in [section 1012](#)<sup>3522</sup> (with respect to such message) shall commence on the day after such first day.

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*Rescission bill which only rescinds, in whole or in part* – The Parliamentarian has advised that it is a very open question what “only” means in section 1011(3) (and by extension, what would be considered germane<sup>3523</sup> or not). The Parliamentarian has raised a variety of possibilities, including:

- Can Senators add rescissions from other messages?
- If only some rescissions from a Presidential message are included, can Senators add the rescissions that were omitted?
- Can Senators change the rescission numbers?
- Does the phrase “in whole or in part” refer to the rescission accounts or the rescission amounts?<sup>3524</sup>

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<sup>3520</sup> [Impoundment Control Act of 1974 § 1012](#), 2 U.S.C. § 683, *infra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3521</sup> [Impoundment Control Act of 1974 § 1011\(3\)](#), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3522</sup> [Impoundment Control Act of 1974 § 1012](#), 2 U.S.C. § 683, *infra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3523</sup> For a discussion of germaneness, see *infra* p. 968.

<sup>3524</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on April 16, 2018 (Apr. 18, 2018).

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## RESCISSION<sup>3525</sup> OF BUDGET AUTHORITY<sup>3526</sup>

- 1012(a)      **SEC. 1012.**<sup>3527</sup> (a) TRANSMITTAL OF SPECIAL MESSAGE. — Whenever the President determines that all or part of any **budget authority**<sup>3528</sup> will not be required to carry out the full objectives or scope of programs for which it is provided or that such **budget authority**<sup>3529</sup> should be rescinded for fiscal policy or other reasons (including the termination of authorized projects or activities for which **budget authority**<sup>3530</sup> has been provided), or whenever all or part of **budget authority**<sup>3531</sup> provided for only one fiscal year is to be reserved from obligation for such fiscal year, the President shall transmit to both Houses of Congress a special message specifying —
- 1012(a)(1)      (1) the amount of **budget authority**<sup>3532</sup> which he proposes to be rescinded or which is to be so reserved;
- 1012(a)(2)      (2) any **account**,<sup>3533</sup> department, or establishment of the Government to which such **budget authority**<sup>3534</sup> is available for obligation, and the specific project or governmental functions involved;
- 1012(a)(3)      (3) the reasons why the **budget authority**<sup>3535</sup> should be rescinded or is to be so reserved;

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<sup>3525</sup> For a discussion of rescissions generally, see *infra* p. 927.

<sup>3526</sup> [Congressional Budget and Impoundment Control Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3527</sup> Impoundment Control Act of 1974 § 1012 is codified as amended at [2 U.S.C. § 683](#). Impoundment Control Act of 1974 § 1012 was formerly codified as 31 U.S.C. § 1402 prior to the 1982 general revision and enactment of Title 31, Money and Finance in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>3528</sup> [Congressional Budget and Impoundment Control Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3529</sup> *Id.*

<sup>3530</sup> *Id.*

<sup>3531</sup> *Id.*

<sup>3532</sup> *Id.*

<sup>3533</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

<sup>3534</sup> [Congressional Budget and Impoundment Control Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3535</sup> *Id.*

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- 1012(a)(4)           **(4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or of the reservation; and**
- 1012(a)(5)           **(5) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or the reservation and the decision to effect the proposed rescission or the reservation, and to the maximum extent practicable, the estimated effect of the proposed rescission or the reservation upon the objects, purposes, and programs for which the [budget authority](#)<sup>3536</sup> is provided.**
- 1012(b)           **(b) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION.—Any amount of [budget authority](#)<sup>3537</sup> proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a [rescission bill](#)<sup>3538</sup> rescinding all or part of the amount proposed to be rescinded or that is to be reserved. Funds made available for obligation under this procedure may not be proposed for rescission again.**
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*Rescission*—In *Riddick's Senate Procedure*, the Parliamentarian discussed rescissions<sup>3539</sup>:

**Rescissions:**

. . . .

The provisions of the Congressional Budget Act of 1974 supplement rather than supplant Senate procedure, and therefore they are not the exclusive means to achieve the purposes for which they were enacted. Thus

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<sup>3536</sup> [Congressional Budget and Impoundment Control Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3537</sup> *Id.*

<sup>3538</sup> [Impoundment Control Act of 1974 § 1011\(3\)](#), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3539</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 629–30 (1992) (footnotes renumbered and reformatted).

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in response to a parliamentary inquiry involving the right of the Senate to act on proposed legislation on rescissions when the time for the consideration of a rescission bill specified in the Act had expired, the Chair informed the Senate “that it is conceded that the timeframe provided for in the Congressional Budget and Impoundment Control Act of 1974 has elapsed, and in fact had elapsed before this body considered the bill. Notwithstanding this, it is the Chair’s view that Congress nevertheless has the power to act on a rescission bill irrespective of the Act, as the Act itself states in section 1001:

‘Nothing contained in this Act, or in any amendment made by this Act, shall be construed as —

(1) asserting or conceding the constitutional powers or limitations of either the Congress or the President; . . .’

“Therefore, it is the Chair’s view that this is simply a regular bill and conference report thereon and it is proper for the Senate to act on them, but that the provisions of the act relative to rescission bills and conference reports thereon do not obtain.”<sup>[3540]</sup> Thus rescission bills can either be defined under the Congressional Budget Act, in which case they are considered under the special procedures, or under Rule XXV, as amended, in which case they are treated as any other bill.<sup>[3541]</sup>

During the consideration of a bill on military construction appropriations for 1977, the Chair had an occasion, an amendment having been called up to the bill, to state to the Senate that rescissions offered in the form of an amendment from the floor are legislation on an appropriation bill. The Chair further asserted that the Appropriations Committee could have put it in a rescinding provision, but an amendment offered from the floor to do that would be held to be legislation on an appropriation bill.

For that reason, he said, the point of order was sustained.

The Chair further stated that under the Budget and Impoundment Act, the Appropriations Committee is given the jurisdiction over rescissions, but this jurisdiction does not waive Rule XVI, paragraph 4, which precludes legislation on appropriation bills.<sup>[3542]</sup>

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<sup>3540</sup> 121 CONG. REC. 8672 (Mar. 26, 1975).

<sup>3541</sup> *Id.*

<sup>3542</sup> 122 CONG. REC. 20,815, 20,824–25 (June 26, 1976).



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An amendment to restore the funding of medical schools involving appropriations enacted into law a previous year in a rescission bill does not give rise to a point of order under the Congressional Budget Act.<sup>[3543]</sup>

However, an amendment which would have stricken a proposed rescission was held (in the House) to provide additional budget authority and to cause additional budget outlays in excess of limitations contained in the concurrent resolution on the budget for a fiscal year and was therefore subject to a point of order under section 311 of the Congressional Budget Act.<sup>[3544]</sup>

***No Withholding of Funds Through Their Date of Expiration***—In 2018, the General Counsel of the Government Accountability Office issued an opinion stating:

Under limited circumstances, the [Impoundment Control Act (ICA)] allows the President to withhold amounts from obligation for up to 45 calendar days of continuous congressional session. *See* ICA, § 1012(b); 2 U.S.C. § 683(b). At issue here is whether the Act allows such a withholding of a fixed-period appropriation scheduled to expire within the prescribed 45-day period to continue through the date on which the funds would expire.

. . . [W]e conclude that the ICA does not permit the withholding of funds through their date of expiration. The statutory text and legislative history of the ICA, Supreme Court case law, and the overarching constitutional framework of the legislative and executive powers provide no basis to interpret the ICA as a mechanism by which the President may unilaterally abridge the enacted period of availability of a fixed-period appropriation. The Constitution vests in Congress the power of the purse, and Congress did not cede this important power through the ICA. Instead, the terms of the ICA are strictly limited. The ICA permits only the temporary withholding of budget authority and provides that unless Congress rescinds the amounts at issue, they must be made available for obligation.<sup>3545</sup>

***Legislative History***—Section 1012 appeared in the original Budget Act just as it does today, except without the final sentence of subsection (b).<sup>3546</sup>

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<sup>3543</sup> 125 CONG. REC. 4987 (Mar. 14, 1979).

<sup>3544</sup> 127 CONG. REC. 9315 (May 12, 1981).

<sup>3545</sup> THOMAS H. ARMSTRONG, GEN. COUNS., U.S. GOV'T ACCOUNTABILITY OFF., [B-330330, IMPOUNDMENT CONTROL ACT—WITHHOLDING OF FUNDS THROUGH THEIR DATE OF EXPIRATION](#) (2018).

<sup>3546</sup> [Congressional Budget and Impoundment Control Act of 1974](#), Pub. L. No. 93-344, § 1012, 88 Stat. 297, 333–34 (amended 1987).

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The joint statement of managers accompanying the conference report on the Budget Act explained:

If the President determines that all or part of any budget authority will not be required to carry out the full objective or scope of programs, or that such budget authority should be rescinded for fiscal policy or other reasons, including the termination of authorized projects, or whenever all or part of budget authority provided for only one fiscal year (one-year money) is to be reserved from obligation for such fiscal year, he shall transmit a special message requesting a *rescission* of the budget authority. The message shall include the amount of budget authority involved; the appropriation account or agency affected; the reasons for rescission or placing the budget authority in reserve; the fiscal, economic, and budgetary effects; and all facts, circumstances, considerations, and effects of the proposed rescission or reservation. Unless both Houses of Congress complete action on a rescission bill within 45 days, the budget authority shall be made available for obligation.<sup>3547</sup>

The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 amended section 1012 as follows:

**SEC. 207. CLARIFICATION OF CONGRESSIONAL INTENT REGARDING RESCISSION AUTHORITY.**

Section 1012(b) of the Impoundment Control Act of 1974 is amended by adding at the end thereof the following: “Funds made available for obligation under this procedure may not be proposed for rescission again.”.<sup>3548</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 explained:

**10. Clarification of Congressional Intent Regarding Rescission Authority**

*Current Law*

Section 1012(b) of the 1974 Impoundment Control Act empowers the President to withhold spending appropriated funds during a period of 45 days of continuous session while Congress considers a rescission proposal. Under General Accounting Office interpretations which allow preparation time for the submittal message, and because certain days *jure* not counted

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<sup>3547</sup> H.R. REP. NO. 93-1101, at 76 (1974) (Conf. Rep.).

<sup>3548</sup> [Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987](#), Pub. L. No. 100-119, § 207, 101 Stat. 754, 786.

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as days of continuous session, rescission proposals sometimes result in appropriated funds being withheld for up to 75 or more calendar days. Seriatim proposals covering the same subject matter have the effect of extending indefinitely the period of unavailability.

#### *Senate Amendment*

The Senate amendment (Section 230) adds language to Section 1012(b) to prohibit the Executive practice of submitting seriatim rescission messages covering similar matter when Congress fails to act on such proposals within the statutory 45-day period. The Senate amendment limits the Executive to one rescission proposal in any year regarding substantially the same budget authority.

#### *Conference Agreement*

The conference agreement amends Section 1012(b) of the Impoundment Control Act of 1974 to prohibit proposals to rescind budget authority which were the object of a previous rescission proposal not accepted by Congress. The conferees intend that the President be allowed to propose one rescission for any given activity. If the rescission proposal for that activity is not agreed to by Congress, no further rescission proposal for that activity would be allowed during the availability of that appropriation.

The conference agreement is not meant to diminish the restriction on the Executive from the Senate amendment. The conferees intend that the conference agreement will cover cases in which the Executive seeks to rescind substantially the same budget authority, not just exactly the same budget authority.

The conferees intend that authority granted to the President under this Act regarding the sequestration process shall in no way augment the authority available to him, and the requirements imposed on him, under existing law regarding the deferral or rescission of funds.<sup>3549</sup>

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<sup>3549</sup> H.R. REP. NO. 100-313, at 67–68 (1987) (Conf. Rep.).

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## PROPOSED DEFERRALS OF BUDGET AUTHORITY<sup>3550</sup>

- 1013(a) SEC. 1013.<sup>3551</sup> (a) TRANSMITTAL OF SPECIAL MESSAGE.— Whenever the President, the Director of the Office of Management and Budget, the head of any department or **agency**<sup>3552</sup> of the United States, or any officer or employee of the United States proposes to **defer any budget authority**<sup>3553</sup> provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying—
- 1013(a)(1) (1) the amount of the **budget authority**<sup>3554</sup> proposed to be **deferred**;<sup>3555</sup>
- 1013(a)(2) (2) any **account**,<sup>3556</sup> department, or establishment of the Government to which such **budget authority**<sup>3557</sup> is available for obligation, and the specific projects or governmental functions involved;
- 1013(a)(3) (3) the period of time during which the **budget authority**<sup>3558</sup> is proposed to be **deferred**;<sup>3559</sup>

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<sup>3550</sup> Impoundment Control Act of 1974 § 1011(1), 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3551</sup> Impoundment Control Act of 1974 § 1013 is codified as amended at 2 U.S.C. § 684. Impoundment Control Act of 1974 § 1013 was formerly codified as 31 U.S.C. § 1403 prior to the 1982 general revision and enactment of Title 31, Money and Finance in *An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”* Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>3552</sup> Congressional Budget and Impoundment Control Act of 1974 § 421(1), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>3553</sup> Impoundment Control Act of 1974 § 1011(1), 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3554</sup> Congressional Budget and Impoundment Control Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3555</sup> Impoundment Control Act of 1974 § 1011(1), 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3556</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

<sup>3557</sup> Congressional Budget and Impoundment Control Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3558</sup> *Id.*

<sup>3559</sup> Impoundment Control Act of 1974 § 1011(1), 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

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- 1013(a)(4) (4) the reasons for the proposed **deferral**,<sup>3560</sup> including any legal authority invoked to justify the proposed **deferral**,<sup>3561</sup>
- 1013(a)(5) (5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed **deferral**,<sup>3562</sup> and
- 1013(a)(6) (6) all facts, circumstances, and considerations relating to or bearing upon the proposed **deferral**,<sup>3563</sup> and the decision to effect the proposed **deferral**,<sup>3564</sup> including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority, including specific elements of legal authority, invoked to justify such proposed **deferral**,<sup>3565</sup> and to the maximum extent practicable, the estimated effect of the proposed **deferral**<sup>3566</sup> upon the objects, purposes, and programs for which the **budget authority**<sup>3567</sup> is provided.

A special message may include one or more proposed **deferrals of budget authority**.<sup>3568</sup> A **deferral**<sup>3569</sup> may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the **deferral**<sup>3570</sup> is transmitted to the House and the Senate.

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<sup>3560</sup> **Impoundment Control Act of 1974 § 1011(1)**, 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3561</sup> *Id.*

<sup>3562</sup> *Id.*

<sup>3563</sup> *Id.*

<sup>3564</sup> *Id.*

<sup>3565</sup> *Id.*

<sup>3566</sup> *Id.*

<sup>3567</sup> **Congressional Budget and Impoundment Control Act of 1974 § 3(2)(A)**, 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3568</sup> **Impoundment Control Act of 1974 § 1011(1)**, 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3569</sup> *Id.*

<sup>3570</sup> *Id.*

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1013(b)           **(b) CONSISTENCY WITH LEGISLATIVE POLICY.—**  
**Deferrals**<sup>3571</sup> shall be permissible only —

1013(b)(1)           **(1) to provide for contingencies;**

1013(b)(2)           **(2) to achieve savings made possible by or through  
changes in requirements or greater efficiency of  
operations; or**

1013(b)(3)           **(3) as specifically provided by law.**

**No officer or employee of the United States may defer any  
budget authority**<sup>3572</sup> for any other purpose.

1013(c)           **(c) EXCEPTION.—The provisions of this section**<sup>3573</sup> **do  
not apply to any budget authority**<sup>3574</sup> **proposed to be  
rescinded or that is to be reserved as set forth in a special  
message required to be transmitted under section 1012.**<sup>3575</sup>

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*Deferrals*—In *Riddick's Senate Procedure*, the Parliamentarian discussed deferrals:

**Deferral of Budget Authority:**

Deferrals and rescissions of budget authority are governed by the Impoundment Control Act of 1974 (which is title X of the Congressional Budget and Impoundment Control Act of 1974).

Deferrals of budget authority may occur whenever “the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States proposes to defer any budget authority provided for a specific purpose or project” and the President notifies Congress of such

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<sup>3571</sup> *Impoundment Control Act of 1974 § 1011(1)*, 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3572</sup> *Id.*

<sup>3573</sup> *Impoundment Control Act of 1974 § 1013*, 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3574</sup> *Congressional Budget and Impoundment Control Act of 1974 § 3(2)(A)*, 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3575</sup> *Impoundment Control Act of 1974 § 1012*, 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

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deferral.<sup>[3576]</sup> However, such deferrals “shall be permissible only to provide for contingencies; to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or as specifically provided by law \* \* \* and, no officer or employee of the United States may defer any budget authority for any other purpose.”<sup>[3577]</sup> A deferral may not extend beyond the fiscal year in which it is proposed, and Congress notified.<sup>[3578]</sup>

Under the Impoundment Control Act as originally enacted in 1974, any deferral of budget authority was subject to disapproval by the adoption of an impoundment resolution by either House of Congress, in which case the amount of budget authority proposed to be deferred would be made available for expenditure.<sup>[3579]</sup> However, disapprovals of executive proposals by one House of Congress were ruled unconstitutional by the Supreme Court in 1983,<sup>[3580]</sup> and the provision of the Impoundment Control Act of 1974 which required that amounts deferred be made available for obligation if either House adopted an impoundment resolution<sup>[3581]</sup> was then ruled unconstitutional in 1987 by the Court of Appeals.<sup>[3582]</sup> This section was subsequently amended later that year to conform to these court rulings. The amendment deleted the requirement to make available budget authority proposed to be deferred if either House adopted an impoundment resolution, and inserted the provision noted above permitting deferrals only under certain circumstances.<sup>[3583]</sup> The language of the original Impoundment and Control Act which provided expedited consideration of such impoundment resolutions<sup>[3584]</sup> was not changed to conform to the court rulings, since such language could provide expedited consideration of a joint resolution of the two Houses, which would be constitutionally sufficient to disapprove a proposed deferral of budget authority.<sup>3585</sup>

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<sup>3576</sup> [Congressional Budget and Impoundment Control Act of 1974 § 1013\(a\)](#), 2 U.S.C. § 684(a).

<sup>3577</sup> [Congressional Budget and Impoundment Control Act of 1974 § 1013\(b\)](#), 2 U.S.C. § 684(b) (as amended by [Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987](#), Pub. L. No. 100-119, § 206, 101 Stat. 754, 785–86).

<sup>3578</sup> [Congressional Budget and Impoundment Control Act of 1974 § 1013\(a\)](#), 2 U.S.C. § 684(a).

<sup>3579</sup> [Congressional Budget and Impoundment Control Act of 1974](#), Pub. L. No. 93-344, § 1013(b), 88 Stat. 297, 334 (as enacted), *invalidated by* [City of New Haven v. United States](#), 809 F.2d 900 (D.C. Cir. 1987).

<sup>3580</sup> [Immigration & Naturalization Serv. v. Chadha](#), 462 U.S. 919 (1983).

<sup>3581</sup> [Congressional Budget and Impoundment Control Act of 1974](#), Pub. L. No. 93-344, § 1013(b), 88 Stat. 297, 334 (as enacted), *invalidated by* [City of New Haven v. United States](#), 809 F.2d 900 (D.C. Cir. 1987).

<sup>3582</sup> [City of New Haven v. United States](#), 809 F.2d 900 (D.C. Cir. 1987).

<sup>3583</sup> [Congressional Budget and Impoundment Control Act of 1974 § 1013\(b\)](#), 2 U.S.C. § 684(b) (as amended by [Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987](#), Pub. L. No. 100-119, § 206, 101 Stat. 754, 785–86).

<sup>3584</sup> [Congressional Budget and Impoundment Control Act of 1974 § 1017](#), 2 U.S.C. § 688, *infra* p. 962.

<sup>3585</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK’S SENATE PROCEDURE](#) 606–08 (1992) (footnotes renumbered and reformatted).

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*Legislative History* – Section 1013 appeared in the original Budget Act as follows:

DISAPPROVAL OF PROPOSED DEFERRALS OF BUDGET AUTHORITY

SEC. 1013. (a) TRANSMITTAL OF SPECIAL MESSAGE.—Whenever the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States proposes to defer any budget authority provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying—

- (1) the amount of the budget authority proposed to be deferred;
- (2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental functions involved;
- (3) the period of time during which the budget authority is proposed to be deferred;
- (4) the reasons for the proposed deferral, including any legal authority invoked by him to justify the proposed deferral;
- (5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and
- (6) all facts, circumstances, and considerations relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral, including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority and specific elements of legal authority invoked by him to justify such proposed deferral, and to the maximum extent practicable, the estimated effect of the proposed deferral upon the objects, purposes, and programs for which the budget authority is provided.

A special message may include one or more proposed deferrals of budget authority. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate.

(b) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION. — Any amount of budget authority proposed to be deferred, as set forth in a special message transmitted under subsection (a), shall be made available for obligation if either House of Congress passes an impoundment resolution disapproving such proposed deferral.



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(c) EXCEPTION.—The provisions of this section do not apply to any budget authority proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 1012.<sup>3586</sup>

The joint statement of managers accompanying the conference report on the Budget Act explained:

A second type of special message concerns *deferrals*. This category includes any withholding or delaying the availability for obligation of budget authority (whether by establishing reserves or otherwise), or any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law. Such action or inaction may occur at the level of the Office of Management and Budget, such as through the apportionment process, or at the departmental and agency level. The special message from the President shall contain basically the same types of information included in a rescission special message. However, the procedure for congressional action is different in that the President will be required to make the budget authority available for obligation if either House of Congress passes an “impoundment resolution” disapproving such proposed deferral at any time after receipt of the special message. The authority to propose deferral is limited to the fiscal year in which the special message making the proposal is submitted to the House and Senate.<sup>3587</sup>

In *Immigration & Naturalization Service v. Chadha*,<sup>3588</sup> the Supreme Court held legislative vetoes unconstitutional. Applying *Chadha*, the Court of Appeals for the District of Columbia Circuit struck down section 1013 in *City of New Haven v. United States*.<sup>3589</sup> In *City of New Haven*, the Court of Appeals said:

### **City of New Haven v. United States**

Before EDWARDS and BORK, Circuit Judges, and SWYGERT, Senior Circuit Judge, United States Court of Appeals for the Seventh Circuit.

Opinion for the Court filed by Circuit Judge HARRY T. EDWARDS.

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<sup>3586</sup> [Congressional Budget and Impoundment Control Act of 1974](#), Pub. L. No. 93-344, § 1012, 88 Stat. 297, 333–34 (amended 1987).

<sup>3587</sup> H.R. REP. NO. 93-1101, at 76–77 (1974) (Conf. Rep.).

<sup>3588</sup> [Immigration & Naturalization Serv. v. Chadha](#), 462 U.S. 919 (1983).

<sup>3589</sup> [City of New Haven v. United States](#), 809 F.2d 900 (D.C. Cir. 1987).

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In this case, we are called upon to decide the extent of the President's statutory authority to delay (or "defer") the expenditure of funds appropriated by Congress. Under section 1013 of the Impoundment Control Act of 1974 ("ICA" or the "Act"), the President must indicate his intention to defer a congressional appropriation by sending a "special message" to Congress. In that message, the President is required to justify the deferral and specify its amount, its intended length and its probable fiscal consequences. Under the Act, if either House of Congress passes an "impoundment resolution" disapproving the "proposed" deferral, the President is required to make the funds available for obligation. If neither House acts, the deferral takes effect automatically, although it may not last beyond the end of the fiscal year.<sup>[3590]</sup>

The majority of proposed deferrals are routine "programmatic" deferrals, by which the Executive Branch attempts to meet the inevitable contingencies that arise in administering congressionally-funded agencies and programs. Occasionally, however, the President will seek to implement "policy" deferrals, which are intended to advance the broader fiscal policy objectives of the Administration. The critical distinction between "programmatic" and "policy" deferrals is that the former are ordinarily intended to *advance* congressional budgetary policies by ensuring that congressional programs are administered efficiently, while the latter are ordinarily intended to *negate* the will of Congress by substituting the fiscal policies of the Executive Branch for those established by the enactment of budget legislation.<sup>[3591]</sup>

In the instant case, the President invoked section 1013 as authority for implementing four separate policy deferrals. In particular, the President deferred the expenditure of funds earmarked for four housing assistance programs to be administered by the Department of Housing and Urban Development ("HUD"). The appellees—various cities, mayors, community groups, members of Congress, associations of mayors and municipalities and disappointed expectant recipients of benefits under the four programs—brought these consolidated actions challenging the authority of the President to implement policy deferrals pursuant to section 1013.<sup>3592</sup> That challenge was based on the inclusion in the statute of

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<sup>3590</sup> The court's note 1 said: "While the statute by its terms only permits the President to 'propose[]' the deferral of funds, the effect of the statute is to permit the President to implement a deferral of up to one year until such time as Congress acts to disapprove the deferral."

<sup>3591</sup> The court's note 2 said:

As a hypothetical example, one might consider a congressional appropriation of \$10,000,000 to construct a new highway between Washington, D.C. and New York. If inclement weather threatened completion of the construction project, the President might seek to defer the expenditure of the appropriated funds for "programmatic" reasons. However, if the President believed that the project was inflationary, he might attempt to delay the expenditure of the funds for "policy" reasons.

<sup>3592</sup> The court's note 3 said:

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a legislative veto provision of the type held unconstitutional by the Supreme Court in *Immigration and Naturalization Service v. Chadha*. According to the appellees, the unconstitutional legislative veto provision contained in section 1013 rendered the entire section invalid, leaving the President without statutory authority on which to base the deferrals in question. The appellees requested a declaratory judgment that section 1013 was void in its entirety and an injunction obligating the nominal defendants (the United States, the Secretary of HUD and the Director of the Office of Management and Budget) to release the funds appropriated by Congress for the four HUD programs.

After carefully analyzing the intent of Congress in enacting section 1013, the District Court held that the section's unconstitutional legislative veto provision was inseverable from the remainder of the section. *City of New Haven v. United States*, 634 F. Supp. 1449 (D.D.C. 1986). Accordingly, it declared section 1013 void in its entirety and ordered the defendants-appellants to make the deferred funds available for obligation. *Id.* at 1460. Shortly thereafter, however, the President signed into law legislation overturning the challenged deferrals. Pursuant to this legislation, the funds deferred by the President have been made available for obligation.

For much the same reasons offered by the District Court in its thorough and able opinion, we hold that the unconstitutional legislative veto provision in section 1013 is inseverable from the remainder of that section. We therefore affirm the District Court's declaratory judgment striking down section 1013 in its entirety. . . .

#### I. BACKGROUND

In November of 1985, President Reagan signed HUD's fiscal year 1986 appropriations bill. Included in that bill were appropriations for four programs administered by HUD: the Community Development Block Grant Program, under which HUD makes grants to state and local governments for community development projects; the Section 8 Housing Assistance Payments Program, under which HUD provides subsidies (through public housing agencies) to low-income families to enable them to obtain low-cost housing; the Section 312 program, under which HUD lends money (typically to cities or local public agencies) to be used to rehabilitate residential property in low-income neighborhoods; and the

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As will be seen shortly, the President need not rely on section 1013 as authority for making routine programmatic deferrals without prior congressional approval. Although the President must report programmatic deferrals to Congress under the procedures outlined in section 1013, the President has separate statutory authority under the Anti-Deficiency Act to implement such deferrals. *See* note 18 *infra*. Thus, while the appellees seek to void section 1013 in its entirety, they in effect challenge only the authority of the President to implement *policy* deferrals without prior congressional approval.

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Section 202 program, under which HUD lends money to rehabilitate low-cost rental units for the handicapped and the elderly. In February of 1986, the President sent impoundment notices to Congress pursuant to section 1013 announcing his intention to defer the expenditure of funds for these four programs. One of the reasons provided by the President for the deferrals was to bring 1986 spending levels into line with the Administration's 1987 proposed budget. *See* 51 Fed. Reg. 5953–58 (1986). Previously, the President had failed in his efforts to convince Congress to drastically reduce these expenditures in its 1986 budget. Thus, it is not disputed that the deferrals were made for “policy” reasons.

Because the President relied solely on section 1013 as authority for the deferrals, the District Court was faced squarely with the question whether the unconstitutional legislative veto provision in section 1013 is severable from the remainder of that section. This question, the District Court recognized, was purely one of congressional intent. Specifically, the court was required to consider what Congress *would have done* had it known at the time it passed section 1013 that the legislative veto provision was unconstitutional. Would Congress nonetheless have conferred deferral authority on the President, even though it could not exercise control over that authority by means of a legislative veto? Or would Congress have refused to confer deferral authority on the President, preferring “no statute[] at all”<sup>3593</sup> to a statute that permitted the President to defer funds without the check of a legislative veto?

After thoroughly examining the statutory language, the legislative history and the historical political context surrounding passage of the Act, the District Court had little difficulty concluding that Congress would have preferred no statute at all to a statute that conferred unchecked deferral authority on the President. Beginning with the title of the statute itself, and continuing with an analysis of the statute's legislative history, the court found that the “*raison d’etre*” of the entire legislative effort was to wrest control over the budgetary process from what Congress perceived as a usurping Executive:

Control—how to regain and retain it—was studied and debated at length, on the floor and in committee, over a period of years by a Congress virtually united in its quest for a way to reassert its fiscal prerogative. A clearer case of congressional intent—obsession would be more accurate—is hard to imagine.

634 F. Supp. at 1454.

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<sup>3593</sup> The court's note 10 cited *Alaska Airlines, Inc. v. Donovan*, 766 F.2d 1550, 1560 (D.C. Cir. 1985) (quoting *Gulf Oil Corp. v. Dyke*, 734 F.2d 797, 804 (Temp. Emer. Ct. App.), *cert. denied*, 469 U.S. 852 (1984)), *cert. granted*, \_\_\_ U.S. \_\_\_ (1986).

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In the course of its analysis, the District Court cited numerous statements by individual legislators illustrating Congress' anger at frequent presidential impoundments and its preoccupation with limiting the President's authority to override duly enacted budget legislation. *Id.* at 1455–58. The court also noted that these same sentiments were expressed in the Conference Committee Report. *Id.* at 1455 (citing S. CONF. REP. NO. 924, 93d Cong., 2d Sess. 49, 76–78, *reprinted in* 1974 U.S. CODE CONG. & ADMIN NEWS 3462, 3591, 3616–18). In contrast, the trial court was unable to find a single legislative expression of support for the proposition “that the President be allowed to defer budget authority without the check afforded by at least a one-House veto.” *Id.* at 1457 n.9 (emphasis in opinion). This overwhelming evidence of congressional intent, the court concluded, conclusively demonstrated that Congress—had it known that it could not disapprove unwanted impoundments by means of a legislative veto—would never have enacted a statute that *conceded* impoundment authority to the President. Indeed, it could be said with “conviction” that Congress

would have preferred no statute to one without the one-House veto provision, for with no statute at all, the President would be remitted to such pre-ICA authority as he might have had for particular deferrals which, in Congress' view (and that of most of the courts having passed upon it) was not much.

*Id.* at 1459.

Having found that the legislative veto provision in section 1013 was inseverable from the remainder of the section, and that the President had therefore relied on an invalid statute in making the policy deferrals in question, the court imposed two remedies. First, it ordered the appellants to make the improperly deferred funds available for obligation. Second, it declared section 1013 void in its entirety. Subsequent to this decision, however, Congress duplicated the District Court's injunctive relief by enacting legislation (signed by the President) disapproving the deferrals and ordering that the funds be made available for obligation. It is in this posture that we review the appellants' appeal from the District Court's Memorandum and Order.

## II. ANALYSIS

### A. Mootness

The threshold question presented by this appeal is whether the appellees' challenge to the President's exercise of deferral authority under section 1013 was mooted by the recent legislation overturning the HUD deferrals. . . .

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In the instant case, the appellees' original complaints similarly challenged both the particular deferrals implemented by the President and the facial validity of the statute under which the President acted. And, as in *Better Government*, the Executive Branch has not disavowed reliance on the challenged statute. Indeed, the appellants frankly concede in their reply brief that they foresee continued reliance by the Executive Branch on the Act as authority for implementing policy deferrals, and that the appellees are likely to be affected by such deferrals in the future. Thus, although the appellees' claim for injunctive relief is clearly moot, we must still decide whether the appellees are entitled to declaratory relief on their claim that section 1013 of the Act is facially invalid. It is to this issue that we now turn.

*B. Severability of the Unconstitutional Legislative Veto Provision in Section 1013*

The appellants concede, as they must, that the legislative veto provision in section 1013 is unconstitutional under the Supreme Court's decision in *Immigration and Naturalization Service v. Chadha*. The sole question for decision is whether that unconstitutional provision is severable from the remainder of section 1013, which ostensibly authorizes the President to defer congressional appropriations for a period not exceeding one fiscal year.

Recently, in *Alaska Airlines, Inc. v. Donovan*, this circuit had occasion to consider the test for determining when an invalid statutory provision will be found severable from the otherwise valid portions of the statute. In that case, we read the Supreme Court's decision in *Chadha* as establishing a presumption in favor of severability if what remained after severance of the unconstitutional provision would be "fully operable as law."<sup>3594</sup> That presumption could be overcome, however, by strong evidence indicating that Congress would not have enacted the statute had it known it could not include the unconstitutional provision. In this respect, we recognized that the question of severability was ultimately one of congressional intent. While a court was to presume severability, and attempt to "save as much of the statute as [it could]," the ultimate inquiry was whether "Congress would have preferred [the] statute[], after severance of the legislative veto provision[], to no statute[] at all."<sup>3595</sup>

In the instant case, we assume without deciding that section 1013 is "operable" in the absence of its legislative veto provision. However, even assuming the statute is operable, on the record in this case we must affirm

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<sup>3594</sup> The court cited *Alaska Airlines*, at 1560.

<sup>3595</sup> The court cited *Alaska Airlines*, at 1560 (quoting *Gulf Oil Corp. v. Dyke*, 734 F.2d 797, 804 (Temp. Emer. Ct. App.), cert. denied, 469 U.S. 852 (1984)).

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the District Court’s judgment on congressional intent, *i.e.*, that Congress would not have enacted section 1013 had it known that the legislative veto provision was unconstitutional. Indeed, to the extent that section 1013 is “operable” absent the legislative veto provision, it operates in a manner wholly inconsistent with the intent of Congress in enacting deferral legislation. We therefore hold that the unconstitutional legislative veto provision in section 1013 is inseverable from that portion of the statute conferring deferral authority on the President.

### 1. Congressional Intent

We assume for purposes of our severability analysis that section 1013 is in a purely technical sense “operable” even without a legislative veto provision. As noted earlier, however, the ultimate inquiry in a severability case is not whether the statute may somehow continue to function after excision of the invalid portion, but rather whether it continues to function *in a manner consistent with congressional intent*. Phrased differently, the question is whether Congress would have intended the statute to operate even in the absence of the invalid provision, or whether it would have preferred no statute at all. In the instant case, the conclusion is inescapable that Congress would have preferred no statute at all to a statute that conferred unchecked deferral authority on the President.

As the District Court observed and catalogued, the ICA was passed at a time when Congress was united in its furor over presidential impoundments and intent on reasserting its control over the budgetary process. Although the Senate and House initially differed over the precise means for reasserting congressional prerogatives,<sup>3596</sup> the legislation that eventually emerged from Congress contained several strong measures expressly designed to limit the President’s ability to impound funds appropriated by Congress. For permanent impoundments (or “rescissions”), Congress adopted the Senate approach, which required prior legislative approval of proposed impoundments. *See* 2 U.S.C. § 683 (1982). For temporary impoundments (or “deferrals”), Congress adopted the House approach, which allowed impoundments to become effective without prior approval *if* neither House of Congress passed a resolution disapproving the impoundment. *See* 2 U.S.C. § 684 (1982). Importantly, Congress also amended the Anti-Deficiency Act to preclude the President

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<sup>3596</sup> The court’s note 17 observed:

The bill originally passed by the Senate would have required advance approval by Congress through concurrent resolution if the impoundment was to last beyond 60 days. S. 373, 93d Cong., 1st Sess., 119 CONG. REC. 15,255–56 (1973). The bill passed by the House would have allowed impoundments to go into effect automatically if neither House of Congress vetoed the impoundment. H.R. 7130, 93d Cong., 1st Sess., 119 CONG. REC. 39,721–22 (1973).

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from relying on that Act as authority for implementing policy impoundments.<sup>3597</sup>

It is abundantly clear from both the statute and its legislative history that the overriding purpose of the deferral provision was to permit either House of Congress to veto any deferral proposed by the President—particularly policy deferrals. The title of the statute itself—“*Disapproval of proposed deferrals of budget authority*”—makes it plain that Congress was preoccupied with assuring for itself a ready means of disapproving proposed deferrals. The House Report accompanying H.R. 7130—from which the deferral provision was drawn—expressly states that the “basic purpose” of the bill was to provide each House an opportunity to veto an impoundment. H.R. REP. NO. 658, 93d Cong., 1st Sess. 43, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 3462, 3488. The Conference Committee Report also emphasizes that the bill was designed to provide Congress with an effective system of impoundment control. S. CONF. REP. NO. 924, 93d Cong., 2d Sess. 49, 76–78, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 3462, 3591, 3616–18.

When the numerous statements of individual legislators urging the passage of legislation to control presidential impoundments are also considered, the evidence is incontrovertible that the “basic purpose” of section 1013 was to provide each House of Congress with a veto power over deferrals. Yet, the appellants would have us hold that Congress, had it foreseen *Chadha*, would nevertheless have gone ahead and enacted section 1013 *without* a legislative veto provision. As difficult (and precarious) as it may be at times to reconstruct what a particular Congress might have done had it been apprised of a particular set of facts, we refuse to entertain this remarkable proposition. As the District Court aptly noted, the “*raison d’être*” of the entire legislative effort was to assert *control* over presidential impoundments. 634 F. Supp. at 1454. It is simply untenable to suggest that a Congress precluded from achieving this goal would have turned around and ceded to the President the very power it was determined to curtail.

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<sup>3597</sup> The court’s note 18 said:

Before it was amended, the Anti-Deficiency Act authorized the President to “apportion[]” funds where justified by “other developments subsequent to the date on which such appropriation was made available.” 31 U.S.C. § 665(c)(2) (1970). This open-ended language was amended to limit apportionments to three specified situations: “to provide for contingencies,” “to achieve savings made possible by or through changes in requirements or greater efficiency of operations” or “as specifically provided by law.” 31 U.S.C. § 1512(c)(1) (1982). The purpose of the amendment was to preclude the President from invoking the Act as authority for implementing “policy” impoundments, while preserving the President’s authority to implement routine “programmatically” impoundments. *See, e.g.*, 120 CONG. REC. 7658 (1974) (statement of Sen. Muskie). President Nixon had attempted to use the Act as an instrument for shaping fiscal policy. *See generally* Nixon, *Addressing the Resurgence of Presidential Budgetmaking Initiative: A Proposal to Reform the Impoundment Control Act of 1974*, 63 TEX. L. REV. 693, 699–700 (1984).



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In this respect, this case is the complete converse of *Alaska Airlines, Inc. v. Donovan*, where we held that an unconstitutional legislative veto provision contained in section 43(f) of the Airline Deregulation Act of 1978 was severable from that portion of the statute authorizing the Secretary of Labor to issue regulations necessary to administer an employee protection program. Here, rather than adding the legislative veto provision as somewhat of an afterthought, as in *Alaska Airlines*, Congress focused almost exclusively on the means for asserting control over presidential impoundments.<sup>3598</sup> The conclusion is thus inescapable that Congress would not have enacted section 1013 had it known that it could not exercise control over deferrals by means of a legislative veto.

The appellants argue vigorously that the opposite conclusion is compelled by the distinction drawn in the Act between rescissions and deferrals. As noted earlier, the original bill passed by the House would have permitted both rescissions and deferrals to go into effect automatically, subject of course to a legislative veto. The House Report explained that the Committee favored a legislative veto mechanism because

[i]n the normal process of apportionment, the executive branch necessarily withholds funds on hundreds of occasions during the course of a fiscal year. If Congress adopts a procedure requiring it to approve every necessary impoundment, its legislative process would be disrupted by the flood of approvals that would be required for the normal and orderly operation of the government. The negative mechanism provided in H.R. 7130 will permit Congress to focus on critical and important matters, and save it from submersion in a sea of trivial ones.

H.R. REP. NO. 658, 93d Cong., 1st Sess. 41, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 3462, 3486–87. In the final analysis, however, the House approach prevailed only for deferrals; for rescissions, Congress adopted the Senate approach, which required prior congressional approval before a rescission could go into effect. According to the appellants, this

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<sup>3598</sup> The court's note 19 said:

It is true, as appellants assert, that the congressional debates also touched on the need for more effective notice to Congress of the President's intention to impound funds. *See, e.g.*, 120 CONG. REC. 20,481–82 (colloquy between Sen. Humphrey and Sen. Ervin). However, the District Court was correct in observing that the central issue debated at great length by Congress was "whether the President should be able to impound at all, or should be permitted to impound, but with various congressional circumscriptions of his power to do so." 634 F. Supp. at 1457–58. Our examination of the Act's legislative history also confirms the District Court's conclusion that Congress was not "very much concerned with, let alone determined to achieve, further detail about future Presidential impoundments *absent a mechanism for exercising control over them.*" *Id.* (emphasis added).

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distinction is critical, for it demonstrates that Congress' intent in enacting section 1013 was to render deferrals "presumptively valid." Brief of Defendants-Appellants at 31-33. Because Congress did not want to trouble itself by approving deferrals in advance, they argue, Congress would have authorized the President to implement deferrals even had it known that it could not maintain oversight over those deferrals by means of a legislative veto.

This argument completely misreads the above-quoted passage and is completely at odds with Congress' expressed intention to *control* rather than *authorize* presidential deferrals. First, the quoted passage plainly speaks to "trivial," everyday *programmatic* deferrals. It is these "trivial" impoundments relating to the "normal and orderly operation of the government" that Congress expected to present little controversy. Congress most certainly did not mean to suggest that impoundments designed to negate congressional budgetary policies would be "presumptively valid." It is precisely this sort of impoundment that Congress was determined to forestall.

Second, the quoted passage proves only that Congress preferred a system in which it need not enact legislation approving deferrals *because it could easily disapprove them* by the relatively simple expedient of the one-House veto. Nowhere in the legislative history is there the slightest suggestion that the President be given statutory authority to defer funds without the possible check of at least a one-House veto. Indeed, the House Report completely refutes the notion that Congress would have granted the President statutory authority to implement deferrals, thereby forcing itself to reenact an appropriations bill each time it disapproved of a deferral:

[The one-House veto] is suggested on the ground that the impoundment situation established by the bill involves a presumption *against* the President's refusing to carry out the terms of an already considered and enacted statute. To make Congress go through a procedure involving agreement between the two Houses on an already settled matter would be to require both, in effect, to reconfirm what they have already decided.

H.R. REP. NO. 658, 93d Cong., 1st Sess. 42, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 3462, 3487 (emphasis added). Yet, a finding of severability would create a presumption in favor of deferrals and require Congress to legislate a second time in order to effectuate its budgetary policies. We cannot conceive of a result more contrary to congressional intent.

The appellants further argue that Congress' more permissive treatment of deferrals suggests that the congressional furor over "impoundments"

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was principally a dissatisfaction with rescissions. Brief of Defendants-Appellants at 37–39. Again, this contention has absolutely no basis in the legislative history. Although Congress certainly distinguished between rescissions and deferrals, it spoke in general terms of the need to control “impoundments,” which it defined as “withholding or *delaying* the expenditure or obligation of budget authority . . . and the termination of authorized projects or activities for which appropriations have been made.” H.R. REP. NO. 658, 93d Cong., 1st Sess. 52, *reprinted in* U.S. CODE CONG. & ADMIN. NEWS 3462, 3497 (emphasis added).<sup>3599</sup> The appellants can point to nothing in the legislative history to suggest that members of Congress were disturbed with rescissions but tolerant of deferrals. Indeed, to the extent that Congress expressed any tolerance of deferrals at all, it was referring to routine programmatic deferrals, not policy deferrals. *Id.* at 42, 1974 U.S. CODE CONG. & ADMIN. NEWS at 3488 (“[T]he Committee recognizes that a brief delay in expending or obligating funds may sometimes be legitimately necessary for purely administrative reasons.”).<sup>3600</sup>

We cannot emphasize enough in this context the critical distinction between programmatic and policy deferrals. As the appellants concede, *see* Brief of Defendants-Appellants at 33, our holding in this case will not impair the President’s ability to implement routine programmatic deferrals. When Congress amended the Anti-Deficiency Act in the ICA, it did not disturb the President’s authority to “impound” funds for purely administrative purposes. *See* note 18 *supra*. Thus, the President may still invoke the Anti-Deficiency Act as authority for implementing programmatic deferrals. By amending the Anti-Deficiency Act, however, Congress intended to foreclose the President from relying on that Act as separate statutory authority for *policy* deferrals. Congress intended to permit policy deferrals only under section 1013, and only if it could ensure itself a ready means of overturning policy deferrals with which it disagreed. Had Congress known it could not employ such a mechanism, it most assuredly would not have nullified its own amendment to the Anti-Deficiency Act by creating new statutory authority for policy deferrals.

Finally, the appellants contend that if we invalidate section 1013 in its entirety, we must also strike down the ICA’s other “deferral-related provision” — *i.e.*, Congress’ amendment to the Anti-Deficiency Act. Brief of Defendants-Appellants at 57. We find this argument to be wholly specious.

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<sup>3599</sup> The court’s note 20 said: “*Cf.* 120 CONG. REC. 19,674 (1974) (statement of Rep. Bolling) (analysis has shown that deferrals constitute the ‘lion’s share’ of impoundment actions).”

<sup>3600</sup> The court’s note 21 said: “*Cf. id.* (suggesting that Congress will employ legislative veto only when it perceives that the President is attempting to alter Congress’ budgetary policies, not when the proposed deferrals ‘are for routine financial purposes and involve neither questions of policy nor attempts to negate the will of Congress’).”

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As noted earlier, a court's duty in a severability case is to preserve as much of the statute as it can consistent with congressional intent. We are unable to preserve section 1013 absent its legislative veto provision because to do so would produce a result wholly contrary to that intended by Congress. The amendment to the Anti-Deficiency Act, in contrast, is fully consistent with the expressed intent of Congress to control presidential impoundments. Thus, there is absolutely no basis for overturning Congress' amendment to the Anti-Deficiency Act.

### III. CONCLUSION

Section 1013 was designed specifically to provide Congress with a means for controlling presidential deferrals. As a consequence of the Supreme Court's decision in *Chadha*, however, that section has been transformed into a license to impound funds for policy reasons. This result is completely contrary to the will of Congress, which in amending the Anti-Deficiency Act sought to *remove* any colorable statutory basis for unchecked policy deferrals. We cannot imagine that Congress would have acted in complete contravention of its intended purposes by enacting section 1013 without a legislative veto provision. Accordingly, we hold that the unconstitutional legislative veto provision contained in section 1013 is inseverable from the remainder of the section, and we affirm the judgment of the District Court invalidating section 1013 in its entirety.<sup>3601</sup>

In response to *City of New Haven v. United States*, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 amended section 1013 by substituting substantially similar provisions in subsections (a) and (c) and rewriting subsection (b), as follows:

#### SEC. 206. CODIFICATION OF LAW REGARDING DEFERRAL AUTHORITY.

(a) PROPOSED DEFERRALS OF BUDGET AUTHORITY.—Section 1013 of the Impoundment Control Act of 1974 is amended to read as follows:

##### “PROPOSED DEFERRALS OF BUDGET AUTHORITY

“SEC. 1013. (a) TRANSMITTAL OF SPECIAL MESSAGE.—Whenever the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States proposes to defer any budget authority provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying —

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<sup>3601</sup> *City of New Haven v. United States*, 809 F.2d 900, 901–09 (D.C. Cir. 1987) (some citations omitted, remaining footnotes renumbered and reformatted).

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“(1) the amount of the budget authority proposed to be deferred;

“(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental functions involved;

“(3) the period of time during which the budget authority is proposed to be deferred;

“(4) the reasons for the proposed deferral, including any legal authority invoked to justify the proposed deferral;

“(5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and

“(6) all facts, circumstances, and considerations relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral, including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority, including specific elements of legal authority, invoked to justify such proposed deferral, and to the maximum extent practicable, the estimated effect of the proposed deferral upon the objects, purposes, and programs for which the budget authority is provided.

A special message may include one or more proposed deferrals of budget authority. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate.

“(b) CONSISTENCY WITH LEGISLATIVE POLICY.—Deferrals shall be permissible only —

“(1) to provide for contingencies;

“(2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or

“(3) as specifically provided by law.

No officer or employee of the United States may defer any budget authority for any other purpose.

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“(c) EXCEPTION. — The provisions of this section do not apply to any budget authority proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 1012.”<sup>3602</sup>

The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 explained:

#### 9. Codification of Law Regarding Deferral Authority

##### *Current Law*

The Supreme Court in *Immigration and Naturalization v. Chadha*, 462 U.S. 919 (1983), held legislative vetoes unconstitutional. Applying *Chadha*, the Court of Appeals in *City of New Haven v. United States*, 809 F. 2d 900 (D.C. Cir. 1987), struck down Section 1013 of the 1974 Impoundment Control Act, dealing with deferrals, thereby denying the President his sole statutory authority to make deferrals for policy reasons. The Court noted its view that the Executive’s power to defer was now limited to so-call programmatic deferrals under the Antideficiency Act, which it characterized as dealing with “routine” and “trivial” matters “relating to the normal and orderly operation of the Government that Congress expected to present little controversy.” The reporting requirements of Section 1013 have continued in force by virtue of other statutory reference to that section.

Section 1015 of the 1974 Impoundment Control Act directs the Comptroller General to report to Congress when he determines that the President has failed to transmit a special message with respect to a deferral or rescission, or has incorrectly classified an action in such message. Section 1016 of the Act empowers the Comptroller General to bring a civil action to require that unlawfully impounded budget authority be made available for obligation. The Comptroller General has expressed the view that he lacks authority to take any action to compel the release of impounded funds since such authority was linked to the invalidated Section 1013.

##### *Senate Amendment*

The Senate amendment (Section 229) enacts a new Section 1013 that codifies the *New Haven* decision and General Accounting Office administrative interpretations by prohibiting policy deferrals and providing that deferrals will be permissible only: (1) for contingencies, (2)

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<sup>3602</sup> [Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987](#), Pub. L. No. 100-119, § 207, 101 Stat. 754, 786.

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for efficiency, or (3) as specifically provided for by law. Programmatic deferrals must be reported to the Congress and be accompanied by a detailed description and justification of the proposal. Deferrals may not be proposed for any period extending beyond the end of the fiscal year in which the proposal is reported.

The Senate amendment also reaffirms the Comptroller General's authority under Sections 1015 and 1016 of the Act to initiate suits to compel the release of impounded funds and his duty to safeguard Congress' institutional interest in the spending process.

*Conference Agreement*

The House recedes and concurs in the Senate amendment.<sup>3603</sup>

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<sup>3603</sup> [H.R. REP. NO. 100-313](#), at 66–67 (1987) (Conf. Rep.).

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## TRANSMISSION OF MESSAGES; PUBLICATION

- 1014(a) **SEC. 1014.**<sup>3604</sup> (a) **DELIVERY TO HOUSE AND SENATE.**— Each special message transmitted under [section 1012](#)<sup>3605</sup> or [1013](#)<sup>3606</sup> shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each special message so transmitted shall be referred to the appropriate committee of the House of Representatives and the Senate. Each such message shall be printed as a document of each House.
- 1014(b) (b) **DELIVERY TO COMPTROLLER GENERAL.**<sup>3607</sup>— A copy of each special message transmitted under [section 1012](#)<sup>3608</sup> or [1013](#)<sup>3609</sup> shall be transmitted to the [Comptroller General](#)<sup>3610</sup> on the same day it is transmitted to the House of Representatives and the Senate. In order to assist the Congress in the exercise of its functions under [section 1012](#)<sup>3611</sup> or [1013](#),<sup>3612</sup> the [Comptroller General](#)<sup>3613</sup> shall review each such message and inform the House of

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<sup>3604</sup> Impoundment Control Act of 1974 § 1014 is codified as amended at 2 U.S.C. § [2 U.S.C. § 685](#). Impoundment Control Act of 1974 § 1014 was formerly codified as 31 U.S.C. § 1404 prior to the 1982 general revision and enactment of Title 31, Money and Finance in [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”](#) Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982).

<sup>3605</sup> [Impoundment Control Act of 1974 § 1012](#), 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3606</sup> [Impoundment Control Act of 1974 § 1013](#), 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3607</sup> [Impoundment Control Act of 1974 § 1011\(2\)](#), 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

<sup>3608</sup> [Impoundment Control Act of 1974 § 1012](#), 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3609</sup> [Impoundment Control Act of 1974 § 1013](#), 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3610</sup> [Impoundment Control Act of 1974 § 1011\(2\)](#), 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

<sup>3611</sup> [Impoundment Control Act of 1974 § 1012](#), 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3612</sup> [Impoundment Control Act of 1974 § 1013](#), 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3613</sup> [Impoundment Control Act of 1974 § 1011\(2\)](#), 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”



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Representatives and the Senate as promptly as practicable with respect to —

- 1014(b)(1) (1) in the case of a special message transmitted under [section 1012](#),<sup>3614</sup> the facts surrounding the proposed rescission or the reservation of [budget authority](#)<sup>3615</sup> (including the probable effects thereof); and
- 1014(b)(2) (2) in the case of a special message transmitted under [section 1013](#),<sup>3616</sup>
- 1014(b)(2)(A) (A) the facts surrounding each proposed [deferral of budget authority](#)<sup>3617</sup> (including the probable effects thereof) and
- 1014(b)(2)(B) (B) whether or not (or to what extent), in his judgment, such proposed [deferral](#)<sup>3618</sup> is in accordance with existing statutory authority.
- 1014(c) (c) TRANSMISSION OF SUPPLEMENTARY MESSAGES.— If any information contained in a special message transmitted under [section 1012](#)<sup>3619</sup> or [1013](#)<sup>3620</sup> is subsequently revised, the President shall transmit to both Houses of Congress and the [Comptroller General](#)<sup>3621</sup> a supplementary message stating and explaining such revision. Any such supplementary message shall be delivered, referred, and printed as provided in [subsection](#)

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<sup>3614</sup> [Impoundment Control Act of 1974 § 1012](#), 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3615</sup> [Congressional Budget and Impoundment Control Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3616</sup> [Impoundment Control Act of 1974 § 1013](#), 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3617</sup> [Impoundment Control Act of 1974 § 1011\(1\)](#), 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3618</sup> *Id.*

<sup>3619</sup> [Impoundment Control Act of 1974 § 1012](#), 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3620</sup> [Impoundment Control Act of 1974 § 1013](#), 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3621</sup> [Impoundment Control Act of 1974 § 1011\(2\)](#), 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

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(a).<sup>3622</sup> The **Comptroller General**<sup>3623</sup> shall promptly notify the House of Representatives and the Senate of any changes in the information submitted by him under **subsection (b)**<sup>3624</sup> which may be necessitated by such revision.

1014(d) (d) **PRINTING IN FEDERAL REGISTER.**—Any special message transmitted under **section 1012**<sup>3625</sup> or **1013**,<sup>3626</sup> and any supplementary message transmitted under **subsection (c)**,<sup>3627</sup> shall be printed in the first issue of the Federal Register published after such transmittal.

1014(e) (e) **CUMULATIVE REPORTS OF PROPOSED RESCISSIONS, RESERVATIONS, AND DEFERRALS OF BUDGET AUTHORITY.**<sup>3628</sup> —

1014(e)(1) (1) The President shall submit a report to the House of Representatives and the Senate, not later than the 10th day of each month during a fiscal year, listing all **budget authority**<sup>3629</sup> for that fiscal year with respect to which, as of the first day of such month —

1014(e)(1)(A) (A) he has transmitted a special message under **section 1012**<sup>3630</sup> with respect to a proposed rescission or a reservation; and

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<sup>3622</sup> **Impoundment Control Act of 1974 § 1014(a)**, 2 U.S.C. § 685(a), *supra* p. 952, addresses “Delivery to House and Senate.”

<sup>3623</sup> **Impoundment Control Act of 1974 § 1011(2)**, 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

<sup>3624</sup> **Impoundment Control Act of 1974 § 1014(b)**, 2 U.S.C. § 685(b), *supra* p. 952, addresses “Delivery to Comptroller General.”

<sup>3625</sup> **Impoundment Control Act of 1974 § 1012**, 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3626</sup> **Impoundment Control Act of 1974 § 1013**, 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3627</sup> **Impoundment Control Act of 1974 § 1014(c)**, 2 U.S.C. § 685(c), *supra* p. 953, addresses “Transmission of Supplementary Messages.”

<sup>3628</sup> **Impoundment Control Act of 1974 § 1011(1)**, 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3629</sup> **Congressional Budget and Impoundment Control Act of 1974 § 3(2)(A)**, 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3630</sup> **Impoundment Control Act of 1974 § 1012**, 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

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1014(e)(1)(B) (B) he has transmitted a special message under [section 1013](#)<sup>3631</sup> proposing a deferral.

Such report shall also contain, with respect to each such proposed rescission or [deferral](#),<sup>3632</sup> or each such reservation, the information required to be submitted in the special message with respect thereto under [section 1012](#)<sup>3633</sup> or [1013](#).<sup>3634</sup>

1014(e)(2) (2) Each report submitted under [paragraph \(1\)](#)<sup>3635</sup> shall be printed in the first issue of the Federal Register published after its submission.

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*Each special message so transmitted shall be referred to the appropriate committee*—Such special messages are generally referred to the Appropriations Committee<sup>3636</sup> and sometimes to other committees as well.<sup>3637</sup>

*Each such message shall be printed as a document*—The House regularly prints such documents.<sup>3638</sup>

*A copy of each special message transmitted under section 1012 or 1013 shall be transmitted to the Comptroller General*—President Ford issued an Executive order delegating this duty to the Director of the Office of Management and Budget:

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<sup>3631</sup> [Impoundment Control Act of 1974 § 1013](#), 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3632</sup> [Impoundment Control Act of 1974 § 1011\(1\)](#), 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3633</sup> [Impoundment Control Act of 1974 § 1012](#), 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3634</sup> [Impoundment Control Act of 1974 § 1013](#), 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3635</sup> [Impoundment Control Act of 1974 § 1014\(e\)\(1\)](#), 2 U.S.C. § 685(e)(1), *supra* p. 954.

<sup>3636</sup> *See, e.g.*, [167 CONG. REC. H256](#) (daily ed. Feb. 1, 2021) (EC 10); *id. at* [S212](#) (EC 159); *id. at* [H198](#) (daily ed. Jan. 15, 2021) (EC 4); [164 CONG. REC. H4761](#) (daily ed. June 5, 2018); *id. at* [H3832](#) (daily ed. May 8, 2018); [146 CONG. REC. H280](#) (Feb. 10, 2000).

<sup>3637</sup> *See, e.g.*, [167 CONG. REC. S212](#) (daily ed. Feb. 1, 2021) (EC 159).

<sup>3638</sup> *See, e.g.*, H.R. Doc. No. 117-7 (2021); H.R. Doc. No. 115-117 (2018); H.R. Doc. No. 106-194.

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EXECUTIVE ORDER 11845

**Delegating Certain Reporting Functions to the Director of the Office of Management and Budget**

By virtue of the authority vested in me by the Impoundment Control Act of 1974 (Public Law 93-344; 88 Stat. 332, (2 U.S.C. 681 et seq.), hereinafter referred to as the Act), and section 301 of title 3 of the United States Code, the Director of the Office of Management and Budget is hereby designated and empowered to exercise, as of October 1, 1974 without ratification or other action of the President (1) the functions required by sections 1014(b) and 1014(d) of the Act of transmitting to the Comptroller General of the United States and to the Office of the Federal Register copies of special messages transmitted pursuant to section 1012 or 1013 (2 U.S.C. 683 and 684) of the Act; and (2) the function conferred upon the President by section 1014(e) of the Act (2 U.S.C. 685(e)) of submitting to the Congress cumulative reports of proposed rescissions, reservations, and deferrals of budget authority.<sup>3639</sup>

President Reagan issued an Executive order making technical amendments to this order, as follows:

**Sec. 25.** Executive Order No. 11845 is amended as follows:

(a) By inserting, after the words “88 Stat. 332,” the words “(2 U.S.C. 681 et seq.),”;

(b) By inserting, after the words “section 1012 or 1013”, the words “(2 U.S.C. 683 and 684)”;

(c) By inserting, after the words “section 1014(e) of the Act”, the words “(2 U.S.C. 685(e))”.<sup>3640</sup>

*If any information contained in a special message transmitted under section 1012 or 1013 is subsequently revised*—Such messages reporting revisions have been printed as House documents.<sup>3641</sup>

*Cumulative Reports of Proposed Rescissions, Reservations, and Deferrals of Budget Authority*—Such cumulative reports have been printed as House documents.<sup>3642</sup>

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<sup>3639</sup> Exec. Order No. 11,845, 40 Fed. Reg. 13,299 (Mar. 24, 1975) (amended 1987).

<sup>3640</sup> Exec. Order No. 12,608, 52 Fed. Reg. 34,617 (Sept. 9, 1987).

<sup>3641</sup> See, e.g., H.R. Doc. No. 117-12 (2021); H.R. Doc. No. 115-130 (2018).

<sup>3642</sup> See, e.g., H.R. Doc. No. 115-153 (2018); H.R. Doc. No. 115-148 (2018); H.R. Doc. No. 115-134 (2018), H.R. Doc 100-49 (1987).

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*Legislative History* – Section 1014 appeared in the original Budget Act as it does now.<sup>3643</sup>

The joint statement of managers accompanying the conference report on the Budget Act explained:

Each special message – whether for rescission or for deferral – shall be referred to the appropriate committee of the House of Representatives and the Senate and printed as a document of each House and in the Federal Register. A copy of each special message shall also be transmitted to the Comptroller General . . . .<sup>3644</sup>

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<sup>3643</sup> [Congressional Budget and Impoundment Control Act of 1974](#), Pub. L. No. 93-344, § 1014, 88 Stat. 297, 335–36.

<sup>3644</sup> H.R. REP. NO. 93-1101, at 77 (1974) (Conf. Rep.).

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## REPORTS BY **COMPTROLLER GENERAL**<sup>3645</sup>

1015(a) **SEC. 1015.**<sup>3646</sup> (a) **FAILURE TO TRANSMIT SPECIAL MESSAGE.**—If the **Comptroller General**<sup>3647</sup> finds that the President, the Director of the Office of Management and Budget, the head of any department or **agency**<sup>3648</sup> of the United States, or any other officer or employee of the United States—

1015(a)(1) (1) is to establish a reserve or proposes to **defer budget authority**<sup>3649</sup> with respect to which the President is required to transmit a special message under **section 1012**<sup>3650</sup> or **1013**;<sup>3651</sup> or

1015(a)(2) (2) has ordered, permitted, or approved the establishment of such a reserve or a **deferral of budget authority**;<sup>3652</sup>

and that the President has failed to transmit a special message with respect to such reserve or **deferral**,<sup>3653</sup> the **Comptroller General**<sup>3654</sup> shall make a report on such reserve or **deferral**<sup>3655</sup> and any available information concerning it to both Houses of Congress. The provisions

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<sup>3645</sup> **Impoundment Control Act of 1974 § 1011(2)**, 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

<sup>3646</sup> **Impoundment Control Act of 1974 § 1015** is codified as amended at **2 U.S.C. § 686**.

<sup>3647</sup> **Impoundment Control Act of 1974 § 1011(2)**, 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

<sup>3648</sup> **Congressional Budget and Impoundment Control Act of 1974 § 421(1)**, 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of **5 U.S.C. § 551(1)**, *supra* p. 813.

<sup>3649</sup> **Impoundment Control Act of 1974 § 1011(1)**, 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3650</sup> **Impoundment Control Act of 1974 § 1012**, 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3651</sup> **Impoundment Control Act of 1974 § 1013**, 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3652</sup> **Impoundment Control Act of 1974 § 1011(1)**, 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3653</sup> *Id.*

<sup>3654</sup> **Impoundment Control Act of 1974 § 1011(2)**, 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

<sup>3655</sup> **Impoundment Control Act of 1974 § 1011(1)**, 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

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of **this part**<sup>3656</sup> shall apply with respect to such reserve or **deferral**<sup>3657</sup> in the same manner and with the same effect as if such report of the **Comptroller General**<sup>3658</sup> were a special message transmitted by the President under **section 1012**<sup>3659</sup> or **1013**,<sup>3660</sup> and, for purposes of **this part**,<sup>3661</sup> such report shall be considered a special message transmitted under **section 1012**<sup>3662</sup> or **1013**.<sup>3663</sup>

- 1015(b)      **(b) INCORRECT CLASSIFICATION OF SPECIAL MESSAGE. —**  
If the President has transmitted a special message to both Houses of Congress in accordance with **section 1012**<sup>3664</sup> or **1013**,<sup>3665</sup> and the **Comptroller General**<sup>3666</sup> believes that the President so transmitted the special message in accordance with one of those sections when the special message should have been transmitted in accordance with the other of those sections, the **Comptroller General**<sup>3667</sup> shall make a report to both Houses of the Congress setting forth his reasons.
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<sup>3656</sup> **Impoundment Control Act of 1974 part B, §§ 1011–1017**, 2 U.S.C. §§ 682–688, pp. 923–969, addresses “Congressional Consideration of Proposed Rescissions, Reservations, and Deferrals of Budget Authority.”

<sup>3657</sup> **Impoundment Control Act of 1974 § 1011(1)**, 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3658</sup> **Impoundment Control Act of 1974 § 1011(2)**, 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

<sup>3659</sup> **Impoundment Control Act of 1974 § 1012**, 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3660</sup> **Impoundment Control Act of 1974 § 1013**, 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3661</sup> **Impoundment Control Act of 1974 part B, §§ 1011–1017**, 2 U.S.C. §§ 682–688, pp. 923–969, addresses “Congressional Consideration of Proposed Rescissions, Reservations, and Deferrals of Budget Authority.”

<sup>3662</sup> **Impoundment Control Act of 1974 § 1012**, 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3663</sup> **Impoundment Control Act of 1974 § 1013**, 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3664</sup> **Impoundment Control Act of 1974 § 1012**, 2 U.S.C. § 683, *supra* p. 926, addresses “Rescission of Budget Authority.”

<sup>3665</sup> **Impoundment Control Act of 1974 § 1013**, 2 U.S.C. § 684, *supra* p. 932, addresses “Proposed Deferrals of Budget Authority.”

<sup>3666</sup> **Impoundment Control Act of 1974 § 1011(2)**, 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

<sup>3667</sup> *Id.*



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## SUITS BY COMPTROLLER GENERAL<sup>3668</sup>

1016        SEC. 1016.<sup>3669</sup> If, under **this title**,<sup>3670</sup> **budget authority**<sup>3671</sup> is required to be made available for obligation and such **budget authority**<sup>3672</sup> is not made available for obligation, the **Comptroller General**<sup>3673</sup> is hereby expressly empowered, through attorneys of his own selection, to bring a civil action in the United States District Court for the District of Columbia to require such **budget authority**<sup>3674</sup> to be made available for obligation, and such court is hereby expressly empowered to enter in such civil action, against any department, **agency**,<sup>3675</sup> officer, or employee of the United States, any decree, judgment, or order which may be necessary or appropriate to make such **budget authority**<sup>3676</sup> available for obligation. No civil action shall be brought by the **Comptroller General**<sup>3677</sup> under **this section**<sup>3678</sup> until the expiration of 25 calendar days of continuous session of the Congress following the date on which an explanatory statement by the **Comptroller General**<sup>3679</sup> of the circumstances giving rise to the action contemplated has been filed with the Speaker of the House of Representatives and the President of the Senate.

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<sup>3668</sup> [Impoundment Control Act of 1974 § 1011\(2\)](#), 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

<sup>3669</sup> [Impoundment Control Act of 1974 § 1016](#) is codified as amended at [2 U.S.C. § 687](#).

<sup>3670</sup> [Congressional Budget and Impoundment Control Act of 1974 Title X](#), 2 U.S.C. §§ 682–688, *supra* p. 921, the [Impoundment Control Act of 1974](#).

<sup>3671</sup> [Congressional Budget and Impoundment Control Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3672</sup> *Id.*

<sup>3673</sup> [Impoundment Control and Impoundment Control Act of 1974 § 1011\(2\)](#), 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

<sup>3674</sup> [Congressional Budget and Impoundment Control Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3675</sup> [Congressional Budget and Impoundment Control Act of 1974 § 421\(1\)](#), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of [5 U.S.C. § 551\(1\)](#), *supra* p. 813.

<sup>3676</sup> [Congressional Budget and Impoundment Control Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3677</sup> [Impoundment Control Act of 1974 § 1011\(2\)](#), 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

<sup>3678</sup> [Impoundment Control Act of 1974 § 1016](#), 2 U.S.C. § 687, *infra* p. 960, addresses “Suits by Comptroller General.”

<sup>3679</sup> [Impoundment Control Act of 1974 § 1011\(2\)](#), 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”



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During Senate debate on the conference report for the Act, Senator Sam Ervin, the sponsor and Manager of the bill, explained this section:

The Comptroller General will be granted authority to sue in the Federal District Court for the District of Columbia to enforce the provisions of the title, using attorneys of his own choosing, 25 days after he gives notice to Congress. This authority is not intended to infringe upon the right of any other party to initiate litigation. The Comptroller General also will be charged with the responsibility of monitoring the Executive and reporting to Congress on any deferrals, reservations, or impoundments which are not reported by a special message.<sup>3680</sup>

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<sup>3680</sup> [120 CONG. REC. 20,465](#) (June 21, 1974).

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## PROCEDURE IN HOUSE OF REPRESENTATIVES AND SENATE

1017(a)        SEC. 1017.<sup>3681</sup> (a) REFERRAL.—Any **rescission bill**<sup>3682</sup> introduced with respect to a special message or **impoundment resolution**<sup>3683</sup> introduced with respect to a proposed **deferral of budget authority**<sup>3684</sup> shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be.

1017(b)        (b) DISCHARGE OF COMMITTEE.—

1017(b)(1)        (1) If the committee to which a **rescission bill**<sup>3685</sup> or **impoundment resolution**<sup>3686</sup> has been referred has not reported it at the end of 25 calendar days of continuous session of the Congress after its introduction, it is in order to move either to discharge the committee from further consideration of the bill or resolution or to discharge the committee from further consideration of any other **rescission bill**<sup>3687</sup> with respect to the same special message or **impoundment resolution**<sup>3688</sup> with respect to the same proposed **deferral**,<sup>3689</sup> as the case may be, which has been referred to the committee.

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<sup>3681</sup> Impoundment Control Act of 1974 § 1017 is codified as amended at 2 U.S.C. § 688. Impoundment Control Act of 1974 § 1017 was formerly codified as 31 U.S.C. § 1407 prior to the 1982 general revision and enactment of Title 31, Money and Finance in *An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance,”* Pub. L. No. 97-258, § 1, 96 Stat. 938 (1982). Impoundment Control Act of 1974 § 1017 appeared in the original Impoundment Control Act of 1974 as it does today. See *Congressional Budget and Impoundment Control Act of 1974*, Pub. L. No. 93-344, § 1017, 88 Stat. 297, 337–39.

<sup>3682</sup> Impoundment Control Act of 1974 § 1011(3), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3683</sup> Impoundment Control Act of 1974 § 1011(4), 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

<sup>3684</sup> Impoundment Control Act of 1974 § 1011(1), 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3685</sup> Impoundment Control Act of 1974 § 1011(3), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3686</sup> Impoundment Control Act of 1974 § 1011(4), 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

<sup>3687</sup> Impoundment Control Act of 1974 § 1011(3), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3688</sup> Impoundment Control Act of 1974 § 1011(4), 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

<sup>3689</sup> Impoundment Control Act of 1974 § 1011(1), 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

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1017(b)(2) (2) A motion to discharge may be made only by an individual favoring the bill or resolution, may be made only if supported by one-fifth of the Members of the House involved (a quorum being present), and is highly privileged in the House and privileged in the Senate (except that it may not be made after the committee has reported a bill or resolution with respect to the same special message or the same proposed **deferral**,<sup>3690</sup> as the case may be); and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the bill or resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

1017(c) (c) FLOOR CONSIDERATION IN THE HOUSE. —

1017(c)(1) (1) When the committee of the House of Representatives has reported, or has been discharged from further consideration of, a **rescission bill**<sup>3691</sup> or **impoundment resolution**,<sup>3692</sup> it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the bill or resolution. The motion shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

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<sup>3690</sup> **Impoundment Control Act of 1974 § 1011(1)**, 2 U.S.C. § 682(1), *supra* p. 923, defines “deferral of budget authority.”

<sup>3691</sup> **Impoundment Control Act of 1974 § 1011(3)**, 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3692</sup> **Impoundment Control Act of 1974 § 1011(4)**, 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

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- 1017(c)(2) (2) Debate on a **rescission bill**<sup>3693</sup> or **impoundment resolution**<sup>3694</sup> shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. In the case of an **impoundment resolution**,<sup>3695</sup> no amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a **rescission bill**<sup>3696</sup> or **impoundment resolution**<sup>3697</sup> is agreed to or disagreed to.
- 1017(c)(3) (3) Motions to postpone, made with respect to the consideration of a **rescission bill**<sup>3698</sup> or **impoundment resolution**,<sup>3699</sup> and motions to proceed to the consideration of other business, shall be decided without debate.
- 1017(c)(4) (4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any **rescission bill**<sup>3700</sup> or **impoundment resolution**<sup>3701</sup> shall be decided without debate.
- 1017(c)(5) (5) Except to the extent specifically provided in **the preceding provisions of this subsection**,<sup>3702</sup> consideration of any **rescission bill**<sup>3703</sup> or **impoundment**

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<sup>3693</sup> Impoundment Control Act of 1974 § 1011(3), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3694</sup> Impoundment Control Act of 1974 § 1011(4), 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

<sup>3695</sup> *Id.*

<sup>3696</sup> Impoundment Control Act of 1974 § 1011(3), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3697</sup> Impoundment Control Act of 1974 § 1011(4), 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

<sup>3698</sup> Impoundment Control Act of 1974 § 1011(3), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3699</sup> Impoundment Control Act of 1974 § 1011(4), 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

<sup>3700</sup> Impoundment Control Act of 1974 § 1011(3), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3701</sup> Impoundment Control Act of 1974 § 1011(4), 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

<sup>3702</sup> Impoundment Control Act of 1974 § 1017(c)(1)–(4), 2 U.S.C. § 688(c)(1)–(4), *supra* p. 963, addresses “Floor Consideration in the House.”

<sup>3703</sup> Impoundment Control Act of 1974 § 1011(3), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

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**resolution**<sup>3704</sup> and amendments thereto (or any conference report thereon) shall be governed by **the Rules of the House of Representatives** applicable to other bills and resolutions, amendments, and conference reports in similar circumstances.

1017(d) **(d) FLOOR CONSIDERATION IN THE SENATE. —**

1017(d)(1) **(1) Debate in the Senate on any **rescission bill**<sup>3705</sup> or **impoundment resolution**,<sup>3706</sup> and all amendments thereto (in the case of a **rescission bill**<sup>3707</sup>) and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.**

1017(d)(2) **(2) Debate in the Senate on any amendment to a **rescission bill**<sup>3708</sup> shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the bill. Debate on any amendment to an amendment, to such a bill, and debate on any debatable motion or appeal in connection with such a bill or an **impoundment resolution**<sup>3709</sup> shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. No amendment that is not **germane**<sup>3710</sup> to the provisions**

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<sup>3704</sup> **Impoundment Control Act of 1974 § 1011(4)**, 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

<sup>3705</sup> **Impoundment Control Act of 1974 § 1011(3)**, 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3706</sup> **Impoundment Control Act of 1974 § 1011(4)**, 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

<sup>3707</sup> **Impoundment Control Act of 1974 § 1011(3)**, 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3708</sup> *Id.*

<sup>3709</sup> **Impoundment Control Act of 1974 § 1011(4)**, 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

<sup>3710</sup> For a discussion of germaneness, see *supra* p. 268.

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of a **rescission bill**<sup>3711</sup> shall be received. Such leaders, or either of them, may, from the time under their control on the passage of a **rescission bill**<sup>3712</sup> or **impoundment resolution**,<sup>3713</sup> allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

1017(d)(3) (3) A motion to further limit debate is not debatable. In the case of a **rescission bill**,<sup>3714</sup> a motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution. In the case of an **impoundment resolution**,<sup>3715</sup> no amendment or motion to recommit is in order.

1017(d)(4) (4) The conference report on any **rescission bill**<sup>3716</sup> shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such a conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

1017(d)(5) (5) During the consideration in the Senate of the conference report on any **rescission bill**,<sup>3717</sup> debate shall be limited to 2 hours to be equally divided between, and controlled by, the majority leader and minority

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<sup>3711</sup> Impoundment Control Act of 1974 § 1011(3), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3712</sup> *Id.*

<sup>3713</sup> Impoundment Control Act of 1974 § 1011(4), 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

<sup>3714</sup> Impoundment Control Act of 1974 § 1011(3), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3715</sup> Impoundment Control Act of 1974 § 1011(4), 2 U.S.C. § 682(4), *supra* p. 924, defines “impoundment resolution.”

<sup>3716</sup> Impoundment Control Act of 1974 § 1011(3), 2 U.S.C. § 682(3), *supra* p. 924, defines “rescission bill.”

<sup>3717</sup> *Id.*

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leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report.

1017(d)(6) (6) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to one hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

1017(d)(7) (7) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment that is not *germane*<sup>3718</sup> to the provisions of such amendments shall be received.

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The Parliamentarian has advised that section 1017 implies a simple majority motion to proceed and a potential vote-a-rama.<sup>3719</sup>

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<sup>3718</sup> For discussions of germaneness, see *supra* p. 268 and *infra* p. 968.

<sup>3719</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on April 16, 2018 (Apr. 18, 2018).



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In April 2018, the Parliamentarian advised that the 1992 consideration of a reconciliation bill<sup>3720</sup> instructs that when several Presidential rescission proposals come to the Senate in separate messages on the same calendar day, then the Senate can group those several rescissions together in one rescission bill.<sup>3721</sup>

*Discharge*—The Parliamentarian has advised that, given that the Senate operates with a presumed quorum, it would not be unreasonable to read section 1017(b)(2) to call for 20 signatures to satisfy the discharge requirements, so that a motion to discharge and 20 Senators’ signatures would get a rescission bill on the calendar, making a motion to proceed in order thereafter.<sup>3722</sup>

*No amendment that is not germane*—The Parliamentarian has confirmed that section 1017(d)(7) creates a point of order against nongermane amendments, but has noted that the Impoundment Control Act does not provide an explicit waiver process for the point of order. Any Senator could appeal a ruling of the Chair that an amendment was not germane. As a result, a simple majority of the Senate could attach a nongermane amendment by overturning a ruling of the Chair that an amendment was not germane. The Parliamentarian has advised that the President’s message provides the outer limit of germaneness. The word “only” in section 1011(3) has implications for germaneness, but the Parliamentarian’s office has not settled on how to interpret the limitation.<sup>3723</sup>

*Privilege, Corrosiveness, and Inappropriate Material*—The Parliamentarian has advised that section 1017 implies no “corrosiveness” concept, and the Parliamentarian does not want to read one into section 1017 along the lines of the Parliamentarian’s letter of 2008. The Parliamentarian’s office has, however, entertained using the concepts of germaneness or the definition of a “rescission bill” as limits on the privilege of rescission bills.<sup>3724</sup>

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<sup>3720</sup> [A bill to rescind certain budget authority proposed to be rescinded in special messages transmitted to the Congress by the President on March 20, 1992, in accordance with Title X of the Congressional Budget and Impoundment Control Act of 1974, as amended](#), S. 2403, 102d Cong. (as reported, Apr. 30, 1992).

<sup>3721</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on April 16, 2018 (Apr. 18, 2018).

<sup>3722</sup> *Id.*

<sup>3723</sup> *Id.*

<sup>3724</sup> *Id.* Contrast the treatment in Letter from Alan S. Frumin to John Cornyn (May 1, 2008), discussed *supra* p. 287.



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*Referral*—The Parliamentarian has confirmed that both Budget and Appropriations Committees receive the messages and the bills. If the message also includes borrowing authority, then it will also go to the authorizing committee. The Budget Committee is supposed to provide its views to the Appropriations Committee, which reports the bill out. In 1992, the Budget Committee sent its views *after* the Appropriations Committee had reported the bill.<sup>3725</sup>

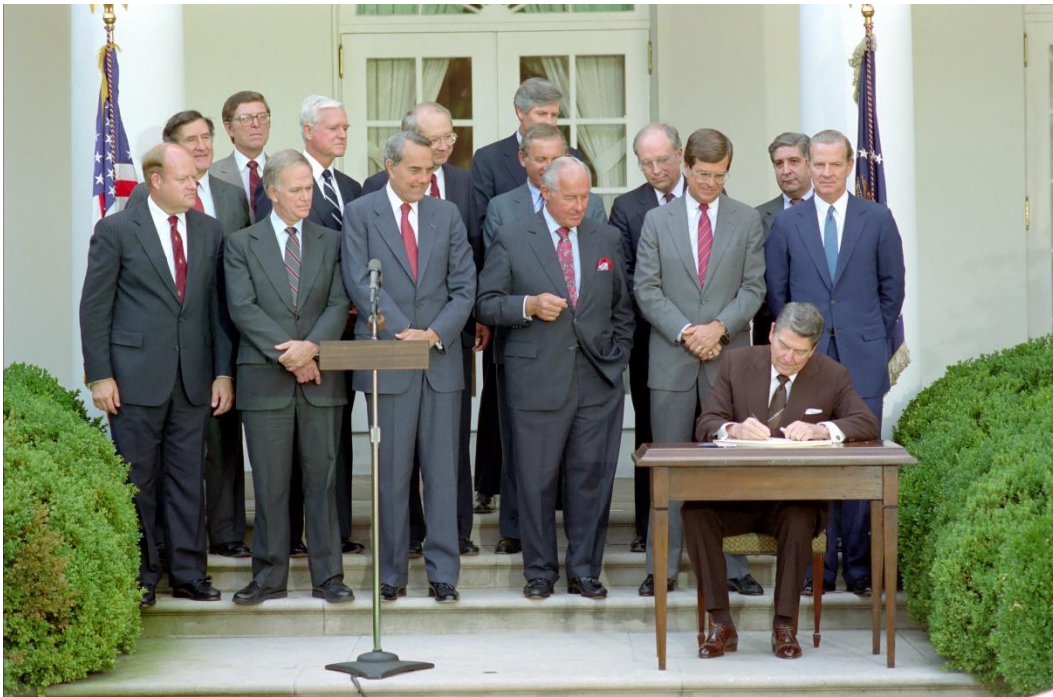
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<sup>3725</sup> Staff of S. Comm. on the Budget, Notes from Meeting with Parls on April 16, 2018 (Apr. 18, 2018).

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**BALANCED BUDGET AND  
EMERGENCY DEFICIT CONTROL  
ACT**



## **President Reagan Signing The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987**

Seated: President Ronald Reagan

First row behind: James Miller, Bob Packwood, Bob Dole, Bob Michel, Trent Lott & James Baker

Second row: John Chafee, Fritz Hollings, Phil Gramm, Warren Rudman, Dick Cheney & Mickey Edwards

Third row behind: Pete Domenici & Connie Mack

Photo: National Archives

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# Sequestration

In the 1980s, Congress became concerned with Federal budget deficits. Senators Phil Gramm, Warren Rudman, and Fritz Hollings came together to create a new mechanism to eliminate those deficits, called sequestration.

In *Riddick's Senate Procedure*, the Parliamentarian described the evolution of the sequestration process through 1992:

Both the 99th and 100th Congresses enacted significant formal changes in the budget process. In the 99th Congress, the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99-177), commonly referred to as the Gramm-Rudman-Hollings Act streamlined and tightened the Congressional Budget Act, established deficit targets for 6 fiscal years (fiscal years 1986-1991), and created emergency procedures for deficit reduction, referred to as sequestration.

Under the 1985 Gramm-Rudman-Hollings Act, sequestration occurred when the Directors of the Office of Management and Budget and the Congressional Budget Office projected a deficit for a fiscal year that exceeded a maximum deficit amount set out in the Budget Act. The projected deficit was based on economic assumptions and the anticipated effects of legislation enacted up to the point the projection was made. If the

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projected deficit exceeded the maximum deficit amount by a certain specified margin, the President was required to issue an order cancelling an amount of spending sufficient to reach the maximum deficit amount. Half of the amount to be cancelled was to come from defense accounts, and half from non-defense accounts, with a uniform percentage reduction to occur in each account within these two major categories of accounts. Certain specified accounts were exempt from sequestration.

In September 1987, as part of a measure increasing the public debt limit, Congress enacted the Balanced Budget and Emergency Deficit Control Reaffirmation Act (Pub. L. 100-119). The 1987 Reaffirmation Act restored the so-called automatic trigger for sequestration (which had been invalidated by a ruling of the Supreme Court), by assigning to the Director of the Office of Management and Budget (OMB) responsibility for issuing the triggering reports to the President that led to a sequestration order. The Act also revised the deficit targets in the 1985 Balanced Budget Act, extended the goal of budgetary balance by 2 years to fiscal year 1993, and made certain additional changes in the sequestration and budget processes. The Reaffirmation Act gave the President flexibility with respect to the savings to be achieved from certain defense accounts. Under the revised process, the President could choose to exempt some or all military personnel accounts from sequestration as long as he notified Congress in a timely manner. Further, he could propose changes that lessened or eliminated completely the reductions for some defense programs, projects, and activities (PPAs), as long as greater reductions were made in other defense PPAs so that the total amount of required outlay savings for defense were met. In the latter case, Congress could affirm the proposed changes through the enactment of a joint resolution.

As noted above, the budget process was altered again in 1990 with the enactment of the Budget Enforcement Act of 1990 (title XIII of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508). This Act revised and extended the existing process of sequestration through 1996. It also created a five year period of discipline by authorizing budget resolutions to cover five years, and by providing points of order against proposals that exceeded committee allocations both in the first year covered by a budget resolution, as well as the total of the five years. For fiscal years 1991 through 1996, the Act established limits of discretionary spending by category.

For fiscal years 1991 through 1993, separate limits were placed on discretionary spending in the following three categories: defense, international, and domestic. For fiscal years 1994 and 1995, a limit was placed on all discretionary spending. Should any of these limits be exceeded, sequestration was authorized within the relevant category. Sequestration would be ordered within 15 calendar days after the end of a session of Congress ("end of session sequestration"), 15 calendar days after

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a breach occurred in a category for a fiscal year in progress (but before July 1 of that fiscal year), or if a breach occurred within a category after July 1 of a fiscal year in progress, the limit for that category would be adjusted downward by a comparable amount for the next fiscal year.

For these five fiscal years, legislation affecting revenues and entitlements was placed on a pay-as-you-go basis. To the extent that such legislation increases the deficit, non-exempt direct spending programs were made subject to sequestration annually to offset the deficit increase.<sup>3726</sup>

Also in *Riddick's Senate Procedure*, the Parliamentarian wrote: "For a discussion of how sequestration would affect certain full-year appropriations, see the colloquy which occurred between the ranking minority members of the Committees on Appropriations and Budget."<sup>3727</sup>

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<sup>3726</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE* 505–06 (1992).

<sup>3727</sup> *Id.* at 636 (citing 133 CONG. REC. 24,990–91 (Sept. 23, 1987)).

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**BALANCED BUDGET AND  
EMERGENCY<sup>3728</sup> DEFICIT<sup>3729</sup> CONTROL  
ACT OF 1985**

**PART C—EMERGENCY<sup>3730</sup> POWERS TO ELIMINATE  
DEFICITS<sup>3731</sup> IN EXCESS OF MAXIMUM DEFICIT<sup>3732</sup>  
AMOUNT**

250        **SEC.    250.<sup>3733</sup>        STATEMENT    OF    BUDGET  
ENFORCEMENT THROUGH SEQUESTRATION;<sup>3734</sup>  
DEFINITIONS**

250(a)        **(a) [Omitted]**

250(b)        **(b) GENERAL STATEMENT OF BUDGET ENFORCEMENT  
THROUGH SEQUESTRATION.<sup>3735</sup> — This part<sup>3736</sup> provides for  
budget enforcement as called for in House Concurrent  
Resolution 84 (105th Congress, 1st session).<sup>3737</sup>**

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<sup>3728</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)*, 2 U.S.C. § 900(c)(20), *infra* p. 983, defines “emergency.”

<sup>3729</sup> *Congressional Budget Act of 1974 § 3(6)*, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *infra* p. 977, adopts the Congressional Budget Act definition.

<sup>3730</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)*, 2 U.S.C. § 900(c)(20), *infra* p. 983, defines “emergency.”

<sup>3731</sup> *Congressional Budget Act of 1974 § 3(6)*, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *infra* p. 977, adopts the Congressional Budget Act definition.

<sup>3732</sup> *Congressional Budget Act of 1974 § 3(6)*, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *infra* p. 977, adopts the Congressional Budget Act definition.

<sup>3733</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250* is codified as amended at **2 U.S.C. § 900**.

<sup>3734</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *infra* p. 977, defines “sequestration.”

<sup>3735</sup> *Id.*

<sup>3736</sup> *Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C*, 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>3737</sup> *H. Con. Res. 84, 105th Cong.*, 111 Stat. 2710 (1997).



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- 250(c) (c) DEFINITIONS.<sup>3738</sup> — As used in [this part](#)<sup>3739</sup>:
- 250(c)(1) (1) The terms “[budget authority](#)”,<sup>3740</sup> “[new budget authority](#)”,<sup>3741</sup> “[outlays](#)”,<sup>3742</sup> and “[deficit](#)”<sup>3743</sup> have the meanings given to such terms in [section 3 of the Congressional Budget and Impoundment Control Act of 1974](#)<sup>3744</sup> and “[discretionary spending limit](#)” shall mean the amounts specified in [section 251](#).<sup>3745</sup>
- 250(c)(2) (2) The terms “[sequester](#)” and “[sequestration](#)” refer to or mean the cancellation of [budgetary resources](#)<sup>3746</sup> provided by [discretionary appropriations](#)<sup>3747</sup> or [direct spending](#)<sup>3748</sup> law.
- 250(c)(3) (3) The term “[breach](#)” means, for any fiscal year, the amount (if any) by which [new budget authority](#)<sup>3749</sup> or
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<sup>3738</sup> Budget process laws define terms in many places. See [Congressional Budget Act of 1974 §§ 3, 310\(b\), 421](#), 2 U.S.C. §§ 622, 641(b), 658, *supra* pp. 55, 529, 803; [Impoundment Control Act of 1974 § 1011](#), 2 U.S.C. § 682, *supra* p. 923; [Balanced Budget and Emergency Deficit Control Act of 1985 §§ 250\(c\), 251\(b\)\(2\)\(B\)\(iii\), 256\(g\)\(2\)](#), 2 U.S.C. §§ 900(c), 901(b)(2)(B)(iii), 906(g)(2), *supra* p. 977, *infra* pp. 997, 1097; [Federal Credit Reform Act of 1990 § 502](#), 2 U.S.C. § 661a, *supra* p. 850; [Statutory Pay-As-You-Go Act of 2010 § 3](#), 2 U.S.C. § 932, *infra* p. 1150; [S. Con. Res. 70, 110th Cong. § 314\(b\)](#), 122 Stat. 5143, 5179 (2008), *infra* p. 1221; [H. Con. Res 71, 115th Cong. § 4106\(a\)\(3\)](#) (2017) (adopted), *infra* p. 1246; [S. Con. Res. 14, 117th Cong. §§ 4001\(a\)\(4\), 4001\(a\)\(5\), 4002\(a\)\(2\), 4003\(a\)\(2\)](#) (2021) (adopted), *infra* pp. 1258, 1259, 1262, 1267. For a glossary collecting these definitions in budget process law, see *infra* p. 1542.

<sup>3739</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>3740</sup> [Congressional Budget Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>3741</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>3742</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>3743</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.”

<sup>3744</sup> [Congressional Budget Act of 1974 § 3](#), 2 U.S.C. § 622, *supra* p. 55, addresses “Definitions.”

<sup>3745</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *infra* p. 986, addresses “Enforcing Discretionary Spending Limits,” but the law sets no such limits beyond fiscal year 2021.

<sup>3746</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(6\)](#), 2 U.S.C. § 900(c)(6), *infra* p. 980, defines “budgetary resources.”

<sup>3747</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(7\)](#), 2 U.S.C. § 900(c)(7), *infra* p. 980, defines “discretionary appropriations.”

<sup>3748</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *infra* p. 980, defines “direct spending.”

<sup>3749</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

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outlays<sup>3750</sup> for that year (within a category<sup>3751</sup> of discretionary appropriations<sup>3752</sup>) is above that category's<sup>3753</sup> discretionary spending limit<sup>3754</sup> for new budget authority<sup>3755</sup> or outlays<sup>3756</sup> for that year, as the case may be.

250(c)(4)(A) (4)(A) The term “nonsecurity category” means all discretionary appropriations<sup>3757</sup> not included in the security category<sup>3758</sup> defined in subparagraph (B).<sup>3759</sup>

250(c)(4)(B) (B) The term “security category” includes discretionary appropriations<sup>3760</sup> associated with agency<sup>3761</sup> budgets for the Department of Defense, the Department of Homeland Security, the Department of Veterans Affairs, the National Nuclear Security Administration, the intelligence community management account<sup>3762</sup> (95-0401-0-1-054), and all

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<sup>3750</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3751</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F)*, 2 U.S.C. § 900(c)(4)(F), *infra* p. 979, defines “category.”

<sup>3752</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(7)*, 2 U.S.C. § 900(c)(7), *infra* p. 980, defines “discretionary appropriations.”

<sup>3753</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F)*, 2 U.S.C. § 900(c)(4)(F), *infra* p. 979, defines “category.”

<sup>3754</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing *Balanced Budget and Emergency Deficit Control Act of 1985 § 251*, 2 U.S.C. § 901, *infra* p. 986), defines “discretionary spending limit.”

<sup>3755</sup> *Congressional Budget Act of 1974 § 3(2)(C)*, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3756</sup> *Congressional Budget Act of 1974 § 3(1)*, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3757</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(7)*, 2 U.S.C. § 900(c)(7), *infra* p. 980, defines “discretionary appropriations.”

<sup>3758</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(B)*, 2 U.S.C. § 900(c)(4)(B), *infra* p. 978, defines “security category.”

<sup>3759</sup> *Id.*

<sup>3760</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(7)*, 2 U.S.C. § 900(c)(7), *infra* p. 980, defines “discretionary appropriations.”

<sup>3761</sup> *Congressional Budget Act of 1974 § 421(1)*, 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>3762</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

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budget **accounts**<sup>3763</sup> in budget function 150 (international affairs).

250(c)(4)(C) (C) The term “discretionary category” includes all **discretionary appropriations**.<sup>3764</sup>

250(c)(4)(D) (D) The term “revised security category” means **discretionary appropriations**<sup>3765</sup> in budget function 050.

250(c)(4)(E) (E) The term “revised nonsecurity category” means **discretionary appropriations**<sup>3766</sup> other than in budget function 050.

250(c)(4)(F) (F) The term “category” means the subsets of **discretionary appropriations**<sup>3767</sup> in **section 251(c)**.<sup>3768</sup> **Discretionary appropriations**<sup>3769</sup> in each of the categories shall be those designated in the joint explanatory statement accompanying **the conference report on the Balanced Budget Act of 1997**.<sup>3770</sup> New **accounts**<sup>3771</sup> or activities shall be categorized only after consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate and that consultation shall, to the extent practicable, include written communication to such committees that affords such committees the opportunity to comment before official action is taken with respect to new **accounts**<sup>3772</sup> or activities.

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<sup>3763</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

<sup>3764</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(7)**, 2 U.S.C. § 900(c)(7), *infra* p. 980, defines “discretionary appropriations.”

<sup>3765</sup> *Id.*

<sup>3766</sup> *Id.*

<sup>3767</sup> *Id.*

<sup>3768</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(c)**, 2 U.S.C. § 901(c), *infra* p. 1005, addresses “Discretionary Spending Limit.”

<sup>3769</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(7)**, 2 U.S.C. § 900(c)(7), *infra* p. 980, defines “discretionary appropriations.”

<sup>3770</sup> **BALANCED BUDGET ACT OF 1997**, H.R. REP. NO. 105-217, at 1019–53 (1997) (Conf. Rep.).

<sup>3771</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *infra* p. 981, defines “account.”

<sup>3772</sup> *Id.*

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- 250(c)(5) (5) The term “baseline” means the projection (described in [section 257](#)<sup>3773</sup>) of [current-year](#)<sup>3774</sup> levels of [new budget authority](#),<sup>3775</sup> [outlays](#),<sup>3776</sup> receipts, and the [surplus](#)<sup>3777</sup> or [deficit](#)<sup>3778</sup> into the [budget year](#)<sup>3779</sup> and the [outyears](#).<sup>3780</sup>
- 250(c)(6) (6) The term “budgetary resources” means [new budget authority](#),<sup>3781</sup> [unobligated balances](#), [direct spending](#)<sup>3782</sup> authority, and obligation limitations.
- 250(c)(7) (7) The term “discretionary appropriations” means [budgetary resources](#)<sup>3783</sup> (except to fund [direct-spending](#)<sup>3784</sup> programs) provided in [appropriation Acts](#).<sup>3785</sup>
- 250(c)(8) (8) The term “direct spending” means –
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<sup>3773</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 257](#), 2 U.S.C. § 907, *infra* p. 1110, addresses “The Baseline.”

<sup>3774</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(13\)](#), 2 U.S.C. § 900(c)(13), *infra* p. 982, defines “current year.”

<sup>3775</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3776</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3777</sup> [Congressional Budget Act of 1974 § 3\(7\)](#), 2 U.S.C. § 622(7), *supra* p. 58, defines “surplus.”

<sup>3778</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3779</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *infra* p. 982, defines “budget year.”

<sup>3780</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(14\)](#), 2 U.S.C. § 900(c)(14), *infra* p. 982, defines “outyear.”

<sup>3781</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3782</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *infra* p. 980, defines “direct spending.”

<sup>3783</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(6\)](#), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>3784</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *infra* p. 980, defines “direct spending.”

<sup>3785</sup> [Congressional Budget Act of 1974 § 3\(5\)](#), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

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- 250(c)(8)(A) (A) **budget authority**<sup>3786</sup> provided by law other than **appropriation Acts**;<sup>3787</sup>
- 250(c)(8)(B) (B) **entitlement authority**;<sup>3788</sup> and
- 250(c)(8)(C) (C) the Supplemental Nutrition Assistance Program.<sup>3789</sup>
- 250(c)(9) (9) The term “current” means, with respect to **OMB**<sup>3790</sup> estimates included with a budget submission under **section 1105(a) of title 31**,<sup>3791</sup> United States Code, the estimates consistent with the economic and technical assumptions underlying that budget and with respect to estimates made after that budget submission that are not included with it, estimates consistent with the economic and technical assumptions underlying the most recently submitted President’s budget.
- 250(c)(10) (10) The term “real economic growth”, with respect to any fiscal year, means the growth in the gross national product during such fiscal year, adjusted for inflation, consistent with Department of Commerce definitions.
- 250(c)(11) (11) The term “account” means an item for which appropriations are made in any **appropriation Act**<sup>3792</sup>
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<sup>3786</sup> **Congressional Budget Act of 1974 § 3(2)(A)**, 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3787</sup> **Congressional Budget Act of 1974 § 3(5)**, 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of **1 U.S.C. § 105**.

<sup>3788</sup> **Congressional Budget Act of 1974 § 3(9)**, 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(17)**, 2 U.S.C. § 900(c)(17), *infra* p. 982, expands upon that definition for purposes of the the Balanced Budget and Emergency Deficit Control Act.

<sup>3789</sup> **Food, Conservation, and Energy Act of 2008**, Pub. L. No. 110-246, § 4001, 122 Stat. 1651, 1853 (2008) (the 2008 Farm Bill) renamed the Food Stamp Program as the Supplemental Nutrition Assistance Program (SNAP).

<sup>3790</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *infra* p. 982, defines “OMB.”

<sup>3791</sup> **31 U.S.C. § 1105**, *supra* p. 156, addresses “Budget Contents and Submission to Congress.”

<sup>3792</sup> **Congressional Budget Act of 1974 § 3(5)**, 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of **1 U.S.C. § 105**.

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and, for items not provided for in [appropriation Acts](#),<sup>3793</sup> such term means an item for which there is a designated budget account identification code number in the President's budget.

250(c)(12) (12) The term "budget year" means, with respect to a session of Congress, the fiscal year of the Government that starts on October 1 of the calendar year in which that session begins.

250(c)(13) (13) The term "current year" means, with respect to a [budget year](#),<sup>3794</sup> the fiscal year that immediately precedes that [budget year](#).<sup>3795</sup>

250(c)(14) (14) The term "outyear" means a fiscal year one or more years after the [budget year](#).<sup>3796</sup>

250(c)(15) (15) The term "OMB" means the Director of the Office of Management and Budget.

250(c)(16) (16) The term "CBO" means the Director of the Congressional Budget Office.

250(c)(17) (17) As used in [this part](#),<sup>3797</sup> all references to [entitlement authority](#)<sup>3798</sup> shall include the list of mandatory appropriations included in the joint explanatory statement of managers accompanying the [conference report on the Balanced Budget Act of 1997](#).<sup>3799</sup>

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<sup>3793</sup> [Congressional Budget Act of 1974 § 3\(5\)](#), 2 U.S.C. § 622(5), *supra* p. 58, defines "appropriation Act" by adopting the definition of [1 U.S.C. § 105](#).

<sup>3794</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines "budget year."

<sup>3795</sup> *Id.*

<sup>3796</sup> *Id.*

<sup>3797</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses "Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount."

<sup>3798</sup> [Congressional Budget Act of 1974 § 3\(9\)](#), 2 U.S.C. § 622(9), *supra* p. 59, defines "entitlement authority." This paragraph expands upon that definition for purposes of the the Balanced Budget and Emergency Deficit Control Act.

<sup>3799</sup> [BALANCED BUDGET ACT OF 1997](#), H.R. REP. NO. 105-217, at 1014–19 (1997) (Conf. Rep.).



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- 250(c)(18)            (18) The term “deposit insurance” refers to the expenses of the Federal deposit insurance agencies, and other Federal agencies supervising insured depository institutions, resulting from full funding of, and continuation of, the deposit insurance guarantee commitment in effect under **current**<sup>3800</sup> estimates.
- 250(c)(19)            (19) The term “asset sale” means the sale to the public of any asset (except for those assets covered by **title V of the Congressional Budget Act of 1974**<sup>3801</sup>), whether physical or financial, owned in whole or in part by the United States.
- 250(c)(20)            (20) The term “emergency” means a situation that —
- 250(c)(20)(A)            (A) requires **new budget authority**<sup>3802</sup> and **outlays**<sup>3803</sup> (or **new budget authority**<sup>3804</sup> and the **outlays**<sup>3805</sup> flowing therefrom) for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security; and
- 250(c)(20)(B)            (B) is **unanticipated**.<sup>3806</sup>
- 250(c)(21)            (21) The term “unanticipated” means that the underlying situation is —
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<sup>3800</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(9)**, 2 U.S.C. § 900(c)(9), *supra* p. 981, defines “current.”

<sup>3801</sup> **Congressional Budget Act of 1974 tit. V, §§ 500–507**, 2 U.S.C. §§ 661–661f, *supra* pp. 848–874, addresses “Credit Reform.”

<sup>3802</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3803</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3804</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3805</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3806</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(21)**, 2 U.S.C. § 900(c)(21), *infra* p. 983, defines “unanticipated.”

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250(c)(21)(A)	<b>(A) sudden, which means quickly coming into being or not building up over time;</b>
250(c)(21)(B)	<b>(B) urgent, which means a pressing and compelling need requiring immediate action;</b>
250(c)(21)(C)	<b>(C) unforeseen, which means not predicted or anticipated as an emerging need; and</b>
250(c)(21)(D)	<b>(D) temporary, which means not of a permanent duration.</b>

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*Emergency*—Designation of a provision—usually spending—as “emergency” has several consequences. Under Congressional Budget Act [section 314\(d\)](#), in the House of Representatives, a provision designated as an emergency does not count for Budget Act purposes.<sup>3807</sup> Congressional Budget Act [section 314\(e\)](#) creates a Senate point of order against an emergency designation.<sup>3808</sup> Balanced Budget and Emergency Deficit Control Act [section 251\(b\)\(2\)\(A\)](#) provides for adjustments so that emergency appropriations do not count for discretionary spending limit purposes.<sup>3809</sup> Balanced Budget and Emergency Deficit Control Act [section 252\(e\)](#) similarly removes emergency direct spending and revenue provisions from pay-as-you-go enforcement.<sup>3810</sup> Statutory Pay-As-You-Go Act of 2010 [section 4\(g\)](#) excludes emergencies from counting under that act.<sup>3811</sup> And [section 4001](#) the fiscal year 2022 budget resolution exempts emergencies from congressional enforcement.<sup>3812</sup>

The criteria that Balanced Budget and Emergency Deficit Control Act [section 250\(c\)\(20\)](#) uses to define “emergency” trace back to a 1991 Office of Management and Budget report.<sup>3813</sup> Compare these criteria to those in [section 4001\(a\)\(5\)](#) of the fiscal year 2022 budget resolution.<sup>3814</sup>

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<sup>3807</sup> Congressional Budget Act of 1974 § 314(d), 2 U.S.C. § 645(d), *infra* p. 767.

<sup>3808</sup> Congressional Budget Act of 1974 § 314(e), 2 U.S.C. § 645(e), *infra* p. 768.

<sup>3809</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(A), 2 U.S.C. § 901(b)(2)(A), *infra* p. 994.

<sup>3810</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 252(e), 2 U.S.C. § 902(e), *infra* p. 1047.

<sup>3811</sup> Statutory Pay-As-You-Go Act of 2010 § 4(g), 2 U.S.C. § 933(g), *infra* p. 1173.

<sup>3812</sup> S. Con. Res. 14, 117th Cong. § 4001 (2021) (adopted), *infra* p. 1256.

<sup>3813</sup> Off. of Mgmt. & Budget, Exec. Off. of the President, *Report on the Costs of Domestic and International Emergencies and on the Threats Posed by the Kuwaiti Oil Fires* ii (June 27, 1991); see generally William G. Dauster, *Budget Emergencies*, 18 J. OF LEGIS. 249–315 (1992).

<sup>3814</sup> S. Con. Res. 14, 117th Cong. § 4001(a)(5) (2021) (adopted), *infra* p. 1259.



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*Consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate*—For example, conveying the President’s fiscal year 2023 budget request to Congress, the Director of the Office of Management and Budget reported:

*Functional Classification*

This year, OMB’s annual consultations with the Congress regarding reclassification of accounts or activities as to their function or subfunction resulted in the reclassification of one account: the Department of Veterans Affairs Asset Infrastructure Review Commission account, first proposed in the 2022 Budget, is reclassified in the 2023 Budget from subfunction 551, “Health care services” to subfunction 705, “Other veterans benefits and services.”<sup>3815</sup>

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<sup>3815</sup> Letter from Shalanda D. Young to Bernie Sanders (Mar. 28, 2022) (conveying “Significant Presentation and Technical Changes in the Budget of the United States Government Fiscal Year 2023”).

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251        **SEC. 251.**<sup>3816</sup>    **ENFORCING    DISCRETIONARY**  
                                 **SPENDING LIMITS**<sup>3817</sup>

251(a)            **(a) ENFORCEMENT. —**

251(a)(1)            **(1) SEQUESTRATION.**<sup>3818</sup> — Within 15 calendar days after Congress adjourns to end a session there shall be a **sequestration**<sup>3819</sup> to eliminate a **budget-year**<sup>3820</sup> **breach**,<sup>3821</sup> if any, within any **category**.<sup>3822</sup>

251(a)(2)            **(2) ELIMINATING A BREACH.**<sup>3823</sup> — Each non-exempt<sup>3824</sup> **account**<sup>3825</sup> within a **category**<sup>3826</sup> shall be reduced by a dollar amount calculated by multiplying the enacted level of **sequesterable**<sup>3827</sup> **budgetary resources**<sup>3828</sup> in that **account**<sup>3829</sup> at that time by the uniform percentage

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<sup>3816</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251 is codified as amended at [2 U.S.C. § 901](#).

<sup>3817</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901), defines “discretionary spending limit.”

<sup>3818</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>3819</sup> *Id.*

<sup>3820</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>3821</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(3\)](#), 2 U.S.C. § 900(c)(3), *supra* p. 977, defines “breach.”

<sup>3822</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(4\)\(F\)](#), 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

<sup>3823</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(3\)](#), 2 U.S.C. § 900(c)(3), *supra* p. 977, defines “breach.”

<sup>3824</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>3825</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>3826</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(4\)\(F\)](#), 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

<sup>3827</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>3828</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(6\)](#), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>3829</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

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necessary to eliminate a **breach**<sup>3830</sup> within that **category**.<sup>3831</sup>

251(a)(3)

**(3) MILITARY PERSONNEL.**—If the President uses the authority to **exempt**<sup>3832</sup> any personnel **account**<sup>3833</sup> from **sequestration**<sup>3834</sup> under **section 255(f)**,<sup>3835</sup> each **account**<sup>3836</sup> within subfunctional category 051 (other than those military personnel **accounts**<sup>3837</sup> for which the authority provided under **section 255(f)**<sup>3838</sup> has been exercised) shall be further reduced by a dollar amount calculated by multiplying the enacted level of non-**exempt**<sup>3839</sup> **budgetary resources**<sup>3840</sup> in that **account**<sup>3841</sup> at that time by the uniform percentage necessary to offset the total dollar amount by which **outlays**<sup>3842</sup> are not reduced in military personnel **accounts**<sup>3843</sup> by reason of the use of such authority.

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<sup>3830</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(3)*, 2 U.S.C. § 900(c)(3), *supra* p. 977, defines “breach.”

<sup>3831</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F)*, 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

<sup>3832</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255*, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>3833</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>3834</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>3835</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255(f)*, 2 U.S.C. § 905(f), *infra* p. 1075, addresses “Optional Exemption of Military Personnel.”

<sup>3836</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>3837</sup> *Id.*

<sup>3838</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255(f)*, 2 U.S.C. § 905(f), *infra* p. 1075, addresses “Optional Exemption of Military Personnel.”

<sup>3839</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255*, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>3840</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6)*, 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>3841</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>3842</sup> *Congressional Budget Act of 1974 § 3(1)*, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3843</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

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- 251(a)(4) (4) PART-YEAR APPROPRIATIONS.—If, on the date specified in [paragraph \(1\)](#),<sup>3844</sup> there is in effect an Act making or continuing appropriations for part of a fiscal year for any budget [account](#),<sup>3845</sup> then the dollar [sequestration](#)<sup>3846</sup> calculated for that [account](#)<sup>3847</sup> under [paragraphs \(2\)](#)<sup>3848</sup> and [\(3\)](#)<sup>3849</sup> shall be subtracted from—
- 251(a)(4)(A) (A) the annualized amount otherwise available by law in that [account](#)<sup>3850</sup> under that or a subsequent part-year appropriation; and
- 251(a)(4)(B) (B) when a full-year appropriation for that [account](#)<sup>3851</sup> is enacted, from the amount otherwise provided by the full-year appropriation for that [account](#).<sup>3852</sup>
- 251(a)(5) (5) LOOK-BACK.—If, after June 30, an appropriation for the fiscal year in progress is enacted that causes a [breach](#)<sup>3853</sup> within a [category](#)<sup>3854</sup> for that year (after taking into account any [sequestration](#)<sup>3855</sup> of amounts within that [category](#)<sup>3856</sup>), the [discretionary spending](#)

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<sup>3844</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251\(a\)\(1\)](#), 2 U.S.C. § 901(a)(1), *supra* p. 986, addresses “Sequestration.”

<sup>3845</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>3846</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>3847</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>3848</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251\(a\)\(2\)](#), 2 U.S.C. § 901(a)(2), *supra* p. 986, addresses “Eliminating a breach.”

<sup>3849</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251\(a\)\(3\)](#), 2 U.S.C. § 901(a)(3), *supra* p. 987, addresses “Military personnel.”

<sup>3850</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>3851</sup> *Id.*

<sup>3852</sup> *Id.*

<sup>3853</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(3\)](#), 2 U.S.C. § 900(c)(3), *supra* p. 977, defines “breach.”

<sup>3854</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(4\)\(F\)](#), 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

<sup>3855</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>3856</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(4\)\(F\)](#), 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

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**limits**<sup>3857</sup> for that **category**<sup>3858</sup> for the next fiscal year shall be reduced by the amount or amounts of that **breach**.<sup>3859</sup>

251(a)(6)           **(6) WITHIN-SESSION SEQUESTRATION.**<sup>3860</sup>—If an appropriation for a fiscal year in progress is enacted (after Congress adjourns to end the session for that **budget year**<sup>3861</sup> and before July 1 of that fiscal year) that causes a **breach**<sup>3862</sup> within a **category**<sup>3863</sup> for that year (after taking into account any prior **sequestration**<sup>3864</sup> of amounts within that **category**<sup>3865</sup>), 15 days later there shall be a **sequestration**<sup>3866</sup> to eliminate that **breach**<sup>3867</sup> within that **category**<sup>3868</sup> following the procedures set forth in **paragraphs (2) through (4)**.<sup>3869</sup>

251(a)(7)           **(7) ESTIMATES.—**

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<sup>3857</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing Balanced Budget and Emergency Deficit Control Act of 1985 § 251, 2 U.S.C. § 901), defines “discretionary spending limit.”

<sup>3858</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F), 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

<sup>3859</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(3), 2 U.S.C. § 900(c)(3), *supra* p. 977, defines “breach.”

<sup>3860</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>3861</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>3862</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(3), 2 U.S.C. § 900(c)(3), *supra* p. 977, defines “breach.”

<sup>3863</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F), 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

<sup>3864</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>3865</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F), 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

<sup>3866</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>3867</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(3), 2 U.S.C. § 900(c)(3), *supra* p. 977, defines “breach.”

<sup>3868</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F), 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

<sup>3869</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(a)(2)–(4), 2 U.S.C. § 901(a)(2)–(4), *supra* p. 986, address “Eliminating a breach,” “Military personnel,” and “Part-year appropriations.”

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251(a)(7)(A)

(A) **CBO**<sup>3870</sup> ESTIMATES.—As soon as practicable after Congress completes action on any **discretionary appropriation**,<sup>3871</sup> **CBO**,<sup>3872</sup> after consultation with the Committees on the Budget of the House of Representatives and the Senate, shall provide **OMB**<sup>3873</sup> with an estimate of the amount of discretionary **new budget authority**<sup>3874</sup> and **outlays**<sup>3875</sup> for the **current year**,<sup>3876</sup> if any, and the **budget year**<sup>3877</sup> provided by that legislation.

251(a)(7)(B)

(B) **OMB**<sup>3878</sup> ESTIMATES AND EXPLANATION OF DIFFERENCES.—Not later than 7 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of enactment of any **discretionary appropriation**,<sup>3879</sup> **OMB**<sup>3880</sup> shall transmit a report to the House of Representatives and to the Senate containing both the **CBO**<sup>3881</sup> and **OMB**<sup>3882</sup> estimates of the amount of discretionary **new budget**

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<sup>3870</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)*, 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>3871</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(7)*, 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>3872</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)*, 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>3873</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)*, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>3874</sup> *Congressional Budget Act of 1974 § 3(2)(C)*, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3875</sup> *Congressional Budget Act of 1974 § 3(1)*, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3876</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)*, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>3877</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>3878</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)*, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>3879</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(7)*, 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>3880</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)*, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>3881</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)*, 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>3882</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)*, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

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**authority<sup>3883</sup> for the current year,<sup>3884</sup> if any, and the budget year<sup>3885</sup> provided by that legislation, and an explanation of any difference between the 2 estimates. If during the preparation of the report OMB<sup>3886</sup> determines that there is a significant difference between OMB<sup>3887</sup> and CBO,<sup>3888</sup> OMB<sup>3889</sup> shall consult with the Committees on the Budget of the House of Representatives and the Senate regarding that difference and that consultation shall include, to the extent practicable, written communication to those committees that affords such committees the opportunity to comment before the issuance of the report.**

251(a)(7)(C)

**(C) ASSUMPTIONS AND GUIDELINES.— OMB<sup>3890</sup> estimates under this paragraph<sup>3891</sup> shall be made using current<sup>3892</sup> economic and technical assumptions. OMB<sup>3893</sup> shall use the OMB<sup>3894</sup> estimates transmitted to the Congress under this**

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<sup>3883</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3884</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13), 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>3885</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>3886</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>3887</sup> *Id.*

<sup>3888</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>3889</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>3890</sup> *Id.*

<sup>3891</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(a)(7), 2 U.S.C. § 901(a)(7), *supra* p. 989, addresses “Estimates.”

<sup>3892</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(9), 2 U.S.C. § 900(c)(9), *supra* p. 981, defines “current.”

<sup>3893</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>3894</sup> *Id.*



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paragraph.<sup>3895</sup> OMB<sup>3896</sup> and CBO<sup>3897</sup> shall prepare estimates under this paragraph<sup>3898</sup> in conformance with scorekeeping guidelines determined after consultation among the Committees on the Budget of the House of Representatives and the Senate, CBO,<sup>3899</sup> and OMB.<sup>3900</sup>

251(a)(7)(D) (D) ANNUAL APPROPRIATIONS.—For purposes of this paragraph,<sup>3901</sup> amounts provided by annual appropriations shall include any discretionary appropriations<sup>3902</sup> for the current year,<sup>3903</sup> if any, and the budget year<sup>3904</sup> in accounts<sup>3905</sup> for which funding is provided in that legislation that result from previously enacted legislation.

251(b) (b) ADJUSTMENTS TO DISCRETIONARY SPENDING LIMITS.<sup>3906</sup> —

251(b)(1) (1) CONCEPTS AND DEFINITIONS.—When the President submits the budget under section 1105 of title

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<sup>3895</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(a)(7), 2 U.S.C. § 901(a)(7), *supra* p. 989, addresses “Estimates.”

<sup>3896</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>3897</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>3898</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(a)(7), 2 U.S.C. § 901(a)(7), *supra* p. 989, addresses “Estimates.”

<sup>3899</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>3900</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>3901</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(a)(7), 2 U.S.C. § 901(a)(7), *supra* p. 989, addresses “Estimates.”

<sup>3902</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(7), 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>3903</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13), 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>3904</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>3905</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>3906</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing Balanced Budget and Emergency Deficit Control Act of 1985 § 251, 2 U.S.C. § 901), defines “discretionary spending limit.”



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**31, United States Code,**<sup>3907</sup> **OMB**<sup>3908</sup> shall calculate and the budget shall include adjustments to **discretionary spending limits**<sup>3909</sup> (and those limits as cumulatively adjusted) for the **budget year**<sup>3910</sup> and each **outyear**<sup>3911</sup> to reflect changes in concepts and definitions. Such changes shall equal the **baseline**<sup>3912</sup> levels of **new budget authority**<sup>3913</sup> and **outlays**<sup>3914</sup> using up-to-date concepts and definitions, minus those levels using the concepts and definitions in effect before such changes. Such changes may only be made after consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate, and that consultation shall include written communication to such committees that affords such committees the opportunity to comment before official action is taken with respect to such changes.

251(b)(2)                    **(2) SEQUESTRATION**<sup>3915</sup> **REPORTS.—When OMB**<sup>3916</sup> **submits a sequestration**<sup>3917</sup> **report under section**

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<sup>3907</sup> 31 U.S.C. § 1105, *supra* p. 156, addresses “Budget Contents and Submission to Congress.”

<sup>3908</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>3909</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing Balanced Budget and Emergency Deficit Control Act of 1985 § 251, 2 U.S.C. § 901), defines “discretionary spending limit.”

<sup>3910</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>3911</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(14), 2 U.S.C. § 900(c)(14), *supra* p. 982, defines “outyear.”

<sup>3912</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907, *infra* p. 980.

<sup>3913</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3914</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3915</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>3916</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>3917</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

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**254(e),<sup>3918</sup> (f),<sup>3919</sup> or (g)<sup>3920</sup> for a fiscal year, OMB<sup>3921</sup> shall calculate, and the sequestration<sup>3922</sup> report and subsequent budgets submitted by the President under section 1105(a) of title 31, United States Code,<sup>3923</sup> shall include<sup>3924</sup> adjustments to discretionary spending limits<sup>3925</sup> (and those limits as adjusted) for the fiscal year and each succeeding year, as follows:**

251(b)(2)(A)                    **(A) EMERGENCY<sup>3926</sup> APPROPRIATIONS; OVERSEAS CONTINGENCY OPERATIONS/GLOBAL WAR ON TERRORISM.—If, for any fiscal year, appropriations for discretionary accounts<sup>3927</sup> are enacted that—**

251(b)(2)(A)(i)                    **(i) the Congress designates as emergency<sup>3928</sup> requirements in statute on an account<sup>3929</sup> by account<sup>3930</sup> basis and the President subsequently so designates, or**

251(b)(2)(A)(ii)                    **(ii) the Congress designates for Overseas Contingency Operations/Global War on**

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<sup>3918</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254\(e\)](#), 2 U.S.C. § 904(e), *infra* p. 1066, addresses “Sequestration Update Reports.”

<sup>3919</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254\(f\)](#), 2 U.S.C. § 904(f), *infra* p. 1066, addresses “Final Sequestration Reports.”

<sup>3920</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254\(g\)](#), 2 U.S.C. § 904(g), *infra* p. 1071, addresses “Within-Session Sequestration Reports and Order.”

<sup>3921</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>3922</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>3923</sup> [31 U.S.C. § 1105](#), *supra* p. 156, addresses “Budget Contents and Submission to Congress.”

<sup>3924</sup> The House Office of the Law Revision Counsel, which maintains the U.S. Code, suggests that a comma belongs here. [2 U.S.C. § 901 note](#).

<sup>3925</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901), defines “discretionary spending limit.”

<sup>3926</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.”

<sup>3927</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>3928</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.”

<sup>3929</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>3930</sup> *Id.*

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Terrorism in statute on an **account**<sup>3931</sup> by **account**<sup>3932</sup> basis and the President subsequently so designates,

the adjustment shall be the total of such appropriations in discretionary **accounts**<sup>3933</sup> designated as **emergency**<sup>3934</sup> requirements or for Overseas Contingency Operations/Global War on Terrorism, as applicable.

251(b)(2)(B) **(B) CONTINUING DISABILITY REVIEWS**<sup>3935</sup> AND **REDETERMINATIONS**.<sup>3936</sup> —

251(b)(2)(B)(i) **(i) If a bill or joint resolution making appropriations**<sup>3937</sup> for a fiscal year is enacted that specifies an amount for **continuing disability reviews**<sup>3938</sup> under **titles II**<sup>3939</sup> and **XVI**<sup>3940</sup> of the Social Security Act, for the cost associated with conducting **redeterminations**<sup>3941</sup> of eligibility under **title XVI of the Social Security Act**,<sup>3942</sup> for

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<sup>3931</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>3932</sup> *Id.*

<sup>3933</sup> *Id.*

<sup>3934</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.”

<sup>3935</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(B)(ii)(I)**, 2 U.S.C. § 901(b)(2)(B)(ii)(I), *infra* p. 997 (citing **Social Security Act §§ 221(i) & 1614(a)(4)**, 42 U.S.C. §§ 421(i) & 1382c(a)(4)) defines “continuing disability reviews.”

<sup>3936</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(B)(ii)(II)**, 2 U.S.C. § 901(b)(2)(B)(ii)(II), *infra* p. 997 (citing **Social Security Act §§ 1611(c)(1) & 1614(a)(3)(H)**, 42 U.S.C. §§ 1382(c)(1) & 1382c(a)(3)(H)), defines “redetermination.”

<sup>3937</sup> **Congressional Budget Act of 1974 § 3(5)**, 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of **1 U.S.C. § 105**.

<sup>3938</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(B)(ii)(I)**, 2 U.S.C. § 901(b)(2)(B)(ii)(I), *infra* p. 997 (citing **Social Security Act §§ 221(i) & 1614(a)(4)**, 42 U.S.C. §§ 421(i) & 1382c(a)(4)) defines “continuing disability reviews.”

<sup>3939</sup> **Social Security Act tit. II**, 42 U.S.C. §§ 401–434, addresses “Federal Old-Age, Survivors, and Disability Insurance Benefits.”

<sup>3940</sup> **Social Security Act tit. XVI**, 42 U.S.C. §§ 1381–1385, addresses “Supplemental Security Income for Aged, Blind, and Disabled.”

<sup>3941</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(B)(ii)(II)**, 2 U.S.C. § 901(b)(2)(B)(ii)(II), *infra* p. 997 (citing **Social Security Act §§ 1611(c)(1) & 1614(a)(3)(H)**, 42 U.S.C. §§ 1382(c)(1) & 1382c(a)(3)(H)), defines “redetermination.”

<sup>3942</sup> **Social Security Act tit. XVI**, 42 U.S.C. §§ 1381–1385, addresses “Supplemental Security Income for Aged, Blind, and Disabled.”

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the cost of co-operative disability investigation units, and for the cost associated with the prosecution of fraud in the programs and operations of the Social Security Administration by Special Assistant United States Attorneys, then the adjustments for that fiscal year shall be the **additional new budget authority**<sup>3943</sup> provided in that Act<sup>3944</sup> for such expenses for that fiscal year, but shall not exceed –

- 251(b)(2)(B)(i)(I) (I) for fiscal year 2012, \$623,000,000 in **additional new budget authority**;<sup>3945</sup>
- 251(b)(2)(B)(i)(II) (II) for fiscal year 2013, \$751,000,000 in **additional new budget authority**;<sup>3946</sup>
- 251(b)(2)(B)(i)(III) (III) for fiscal year 2014, \$924,000,000 in **additional new budget authority**;<sup>3947</sup>
- 251(b)(2)(B)(i)(IV) (IV) for fiscal year 2015, \$1,123,000,000 in **additional new budget authority**;<sup>3948</sup>
- 251(b)(2)(B)(i)(V) (V) for fiscal year 2016, \$1,166,000,000 in **additional new budget authority**;<sup>3949</sup>
- 251(b)(2)(B)(i)(VI) (VI) for fiscal year 2017, \$1,546,000,000 in **additional new budget authority**;<sup>3950</sup>
- 251(b)(2)(B)(i)(VII) (VII) for fiscal year 2018, \$1,462,000,000 in **additional new budget authority**;<sup>3951</sup>
- 251(b)(2)(B)(i)(VIII) (VIII) for fiscal year 2019, \$1,410,000,000 in **additional new budget authority**;<sup>3952</sup>

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<sup>3943</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(B)(ii)(III)**, 2 U.S.C. § 901(b)(2)(B)(ii)(III), *infra* p. 998, defines “additional new budget authority.”

<sup>3944</sup> “[T]hat Act” is the “bill or joint resolution making appropriations for a fiscal year [that] is enacted that specifies an amount for continuing disability reviews” referred to earlier in this subparagraph.

<sup>3945</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(B)(ii)(III)**, 2 U.S.C. § 901(b)(2)(B)(ii)(III), *infra* p. 998, defines “additional new budget authority.”

<sup>3946</sup> *Id.*

<sup>3947</sup> *Id.*

<sup>3948</sup> *Id.*

<sup>3949</sup> *Id.*

<sup>3950</sup> *Id.*

<sup>3951</sup> *Id.*

<sup>3952</sup> *Id.*

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251(b)(2)(B)(i)(IX)	(IX) for fiscal year 2020, \$1,309,000,000 in <b>additional new budget authority</b> ; <sup>3953</sup> and
251(b)(2)(B)(i)(X)	(X) for fiscal year 2021, \$1,302,000,000 in <b>additional new budget authority</b> . <sup>3954</sup>
251(b)(2)(B)(ii)	(ii) As used in <sup>3955</sup> <b>this subparagraph</b> <sup>3956</sup> —
251(b)(2)(B)(ii)(I)	(I) the term “continuing disability reviews” means continuing disability reviews under <b>sections 221(i)</b> <sup>3957</sup> and <b>1614(a)(4)</b> <sup>3958</sup> of the Social Security Act, including work-related continuing disability reviews to determine whether earnings derived from services demonstrate an individual’s ability to engage in substantial gainful activity;
251(b)(2)(B)(ii)(II)	(II) the term “redetermination” means redetermination of eligibility under <b>sections 1611(c)(1)</b> <sup>3959</sup> and <b>1614(a)(3)(H)</b> <sup>3960</sup> of the Social Security Act; and

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<sup>3953</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(B)(ii)(III)**, 2 U.S.C. § 901(b)(2)(B)(ii)(III), *infra* p. 998, defines “additional new budget authority.”

<sup>3954</sup> *Id.*

<sup>3955</sup> Budget process laws define terms in many places. See **Congressional Budget Act of 1974 §§ 3, 310(b), 421**, 2 U.S.C. §§ 622, 641(b), 658, *supra* pp. 55, 529, 803; **Impoundment Control Act of 1974 § 1011**, 2 U.S.C. § 682, *supra* p. 923; **Balanced Budget and Emergency Deficit Control Act of 1985 §§ 250(c), 251(b)(2)(B)(ii), 256(g)(2)**, 2 U.S.C. §§ 900(c), 901(b)(2)(B)(ii), 906(g)(2), *supra* pp. 977, 997, *infra* p. 1097; **Federal Credit Reform Act of 1990 § 502**, 2 U.S.C. § 661a, *supra* p. 850; **Statutory Pay-As-You-Go Act of 2010 § 3**, 2 U.S.C. § 932, *infra* p. 1150; **S. Con. Res. 70, 110th Cong. § 314(b)**, 122 Stat. 5143, 5179 (2008), *infra* p. 1221; **H. Con. Res 71, 115th Cong. § 4106(a)(3)** (2017) (adopted), *infra* p. 1246; **S. Con. Res. 14, 117th Cong. §§ 4001(a)(4), 4001(a)(5), 4002(a)(2), 4003(a)(2)** (2021) (adopted), *infra* pp. 1258, 1259, 1262, 1267. For a glossary collecting these definitions in budget process law, see *infra* p. 1542.

<sup>3956</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(B)**, 2 U.S.C. § 901(b)(2)(B), *supra* p. 995, addresses “Continuing disability reviews and redeterminations.”

<sup>3957</sup> **Social Security Act § 221(i)**, 42 U.S.C. § 421(i), *infra* p. 1009.

<sup>3958</sup> **Social Security Act § 1614(a)(4)**, 42 U.S.C. § 1382c(a)(4), *infra* p. 1010.

<sup>3959</sup> **Social Security Act § 1611(c)(1)**, 42 U.S.C. § 1382(c)(1), *infra* p. 1012, addresses “Period for determination of benefits.”

<sup>3960</sup> **Social Security Act § 1614(a)(3)(H)**, 42 U.S.C. § 1382c(a)(3)(H), *infra* p. 1013.

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251(b)(2)(B)(ii)(III)

(III) the term “additional new budget authority”<sup>3961</sup> means the amount provided for a fiscal year, in excess of \$273,000,000, in an appropriation Act<sup>3962</sup> and specified to pay for the costs of continuing disability reviews,<sup>3963</sup> redeterminations,<sup>3964</sup> co-operative disability investigation units, and fraud prosecutions under the heading “Limitation on Administrative Expenses” for the Social Security Administration.

251(b)(2)(C)

(C) HEALTH CARE FRAUD AND ABUSE CONTROL.—

251(b)(2)(C)(i)

(i) If a bill or joint resolution making appropriations<sup>3965</sup> for a fiscal year is enacted that specifies an amount for the health care fraud abuse control program at the Department of Health and Human Services (75-8393-0-7-571), then the adjustments for that fiscal year shall be the amount of additional new budget authority<sup>3966</sup> provided in that Act for such program for that fiscal year, but shall not exceed—

251(b)(2)(C)(i)(I)

(I) for fiscal year 2012, \$270,000,000 in additional new budget authority;<sup>3967</sup>

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<sup>3961</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3962</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>3963</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(B)(ii)(I), 2 U.S.C. § 901(b)(2)(B)(ii)(I), *supra* p. 997 (citing Social Security Act §§ 221(i) & 1614(a)(4), 42 U.S.C. §§ 421(i) & 1382(c)(4)) defines “continuing disability reviews.”

<sup>3964</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(B)(ii)(III), 2 U.S.C. § 901(b)(2)(B)(ii)(III), *supra* p. 997 (citing Social Security Act §§ 1611(c)(1) & 1614(a)(3)(H), 42 U.S.C. §§ 1382(c)(1) & 1382(c)(3)(H)), defines “redetermination.”

<sup>3965</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>3966</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(C)(ii), 2 U.S.C. § 901(b)(2)(C)(ii), *infra* p. 999, defines “additional new budget authority.”

<sup>3967</sup> *Id.*



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251(b)(2)(C)(i)(II)	(II) for fiscal year 2013, \$299,000,000 in <b>additional new budget authority</b> , <sup>3968</sup>
251(b)(2)(C)(i)(III)	(III) for fiscal year 2014, \$329,000,000 in <b>additional new budget authority</b> , <sup>3969</sup>
251(b)(2)(C)(i)(IV)	(IV) for fiscal year 2015, \$361,000,000 in <b>additional new budget authority</b> , <sup>3970</sup>
251(b)(2)(C)(i)(V)	(V) for fiscal year 2016, \$395,000,000 in <b>additional new budget authority</b> , <sup>3971</sup>
251(b)(2)(C)(i)(VI)	(VI) for fiscal year 2017, \$414,000,000 in <b>additional new budget authority</b> , <sup>3972</sup>
251(b)(2)(C)(i)(VII)	(VII) for fiscal year 2018, \$434,000,000 in <b>additional new budget authority</b> , <sup>3973</sup>
251(b)(2)(C)(i)(VIII)	(VIII) for fiscal year 2019, \$454,000,000 in <b>additional new budget authority</b> , <sup>3974</sup>
251(b)(2)(C)(i)(IX)	(IX) for fiscal year 2020, \$475,000,000 in <b>additional new budget authority</b> , <sup>3975</sup> and
251(b)(2)(C)(i)(X)	(X) for fiscal year 2021, \$496,000,000 in <b>additional new budget authority</b> . <sup>3976</sup>
251(b)(2)(C)(ii)	(ii) As used in <b>this subparagraph</b> , <sup>3977</sup> the term “ <b>additional new budget authority</b> ” <sup>3978</sup> means the amount provided for a fiscal year, in excess of \$311,000,000, in an <b>appropriation Act</b> <sup>3979</sup> and

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<sup>3968</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251\(b\)\(2\)\(C\)\(ii\)](#), 2 U.S.C. § 901(b)(2)(C)(ii), *infra* p. 999, defines “additional new budget authority.”

<sup>3969</sup> *Id.*

<sup>3970</sup> *Id.*

<sup>3971</sup> *Id.*

<sup>3972</sup> *Id.*

<sup>3973</sup> *Id.*

<sup>3974</sup> *Id.*

<sup>3975</sup> *Id.*

<sup>3976</sup> *Id.*

<sup>3977</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251\(b\)\(2\)\(C\)](#), 2 U.S.C. § 901(b)(2)(C), *supra* p. 998, addresses “Health care fraud and abuse control.”

<sup>3978</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3979</sup> [Congressional Budget Act of 1974 § 3\(5\)](#), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

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specified to pay for the costs of the health care fraud and abuse control program.

251(b)(2)(D)

**(D) DISASTER FUNDING.—**

251(b)(2)(D)(i)

(i) If, for fiscal years 2012 through 2021, appropriations for discretionary **accounts**<sup>3980</sup> are enacted that Congress designates as being for disaster relief in statute, the adjustment for a fiscal year shall be the total of such appropriations for the fiscal year in discretionary **accounts**<sup>3981</sup> designated as being for disaster relief, but not to exceed the total of—

251(b)(2)(D)(i)(I)

(I) the average over the previous 10 years (excluding the highest and lowest years) of the sum of the funding provided for disaster relief (as that term is defined on the date immediately before March 23, 2018);

251(b)(2)(D)(i)(II)

(II) notwithstanding **clause (iv)**,<sup>3982</sup> starting in fiscal year 2018, five percent of the total appropriations provided after fiscal year 2011 or in the previous 10 years, whichever is less, net of any rescissions of **budget authority**<sup>3983</sup> enacted in the same period, with respect to amounts provided for major disasters declared pursuant to the **Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)**<sup>3984</sup> and designated by the Congress and the President as an

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<sup>3980</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>3981</sup> *Id.*

<sup>3982</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(D)(iv)**, 2 U.S.C. § 901(b)(2)(D)(iv), *infra* p. 1001, addresses eligibility for adjustments.

<sup>3983</sup> **Congressional Budget Act of 1974 § 3(2)(A)**, 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>3984</sup> **Robert T. Stafford Disaster Relief and Emergency Assistance Act**, 42 U.S.C. §§ 5121–5208.



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emergency<sup>3985</sup> pursuant to subparagraph (A)(i) of this paragraph,<sup>3986</sup> and

251(b)(2)(D)(i)(III)

(III) the cumulative net total of the unused carryover for fiscal year 2018 and all subsequent fiscal years, where the unused carryover for each fiscal year is calculated as the sum of the amounts in subclauses (I)<sup>3987</sup> and (II)<sup>3988</sup> less the enacted appropriations for that fiscal year that have been designated as being for disaster relief.

251(b)(2)(D)(ii)

(ii) OMB<sup>3989</sup> shall report to the Committees on Appropriations and Budget in each House the average calculated pursuant to clause (i)(II),<sup>3990</sup> not later than 30 days after March 23, 2018.

251(b)(2)(D)(iii)

(iii) For the purposes of this subparagraph,<sup>3991</sup> the term “disaster relief” means activities carried out pursuant to a determination under section 102(2) of the Robert T. Safford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).<sup>3992</sup>

251(b)(2)(D)(iv)

(iv) Appropriations considered disaster relief under this subparagraph<sup>3993</sup> in a fiscal year shall

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<sup>3985</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20), 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.”

<sup>3986</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(A)(i), 2 U.S.C. § 901(b)(2)(A)(i), *supra* p. 994.

<sup>3987</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(D)(i)(I), 2 U.S.C. § 901(b)(2)(D)(i)(I), *supra* p. 1000.

<sup>3988</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(D)(i)(II), 2 U.S.C. § 901(b)(2)(D)(i)(II), *supra* p. 1000.

<sup>3989</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>3990</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(D)(i)(II), 2 U.S.C. § 901(b)(2)(D)(i)(II), *supra* p. 1000.

<sup>3991</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(D), 2 U.S.C. § 901(b)(2)(D), *supra* p. 1000, addresses “Disaster funding.”

<sup>3992</sup> Robert T. Safford Disaster Relief and Emergency Assistance Act § 102(2), 42 U.S.C. § 5122(2), *infra* p. 1015, defines “Major disaster.”

<sup>3993</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(D), 2 U.S.C. § 901(b)(2)(D), *supra* p. 1000, addresses “Disaster funding.”

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not be eligible for adjustments under **subparagraph (A)**<sup>3994</sup> for the fiscal year.

251(b)(2)(E) (E) REEMPLOYMENT SERVICES AND ELIGIBILITY ASSESSMENTS. —

251(b)(2)(E)(i) (i) IN GENERAL. — If **a bill or joint resolution making appropriations**<sup>3995</sup> for a fiscal year is enacted that specifies an amount for grants to **States**<sup>3996</sup> under **section 306 of the Social Security Act**,<sup>3997</sup> then the adjustment for that fiscal year shall be the **additional new budget authority**<sup>3998</sup> provided in that Act for such grants for that fiscal year, but shall not exceed —

251(b)(2)(E)(i)(I) (I) for fiscal year 2018, \$0;

251(b)(2)(E)(i)(II) (II) for fiscal year 2019, \$33,000,000;

251(b)(2)(E)(i)(III) (III) for fiscal year 2020, \$58,000,000; and

251(b)(2)(E)(i)(IV) (IV) for fiscal year 2021, \$83,000,000.

251(b)(2)(E)(ii) (ii) DEFINITION. — As used in **this subparagraph**,<sup>3999</sup> the term “**additional new budget authority**”<sup>4000</sup> means the amount provided for a fiscal year, in excess of

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<sup>3994</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(A)**, 2 U.S.C. § 901(b)(2)(A), *supra* p. 994, addresses “Emergency Appropriations; Overseas Contingency Operations/Global War on Terrorism.”

<sup>3995</sup> **Congressional Budget Act of 1974 § 3(5)**, 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of **1 U.S.C. § 105**.

<sup>3996</sup> **Congressional Budget Act of 1974 § 421(12)**, 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of **31 U.S.C. § 6501(9)**, *supra* p. 814.

<sup>3997</sup> **Social Security Act § 306**, 42 U.S.C. § 506, *infra* p. 1015, addresses “Grants to States for reemployment services and eligibility assessments.”

<sup>3998</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(E)(ii)**, 2 U.S.C. § 901(b)(2)(E)(ii), *infra* p. 1002, defines “additional new budget authority.”

<sup>3999</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(E)**, 2 U.S.C. § 901(b)(2)(E), *supra* p. 1002, addresses “Reemployment services and eligibility assessments.”

<sup>4000</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

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\$117,000,000, in an **appropriation Act**<sup>4001</sup> and specified to pay for grants to **States**<sup>4002</sup> under **section 306 of the Social Security Act**.<sup>4003</sup>

251(b)(2)(F) (F) WILDFIRE SUPPRESSION. —

251(b)(2)(F)(i) (i) **ADDITIONAL NEW BUDGET AUTHORITY**.<sup>4004</sup> — If, for fiscal years 2020 through 2027, a **bill or joint resolution making appropriations**<sup>4005</sup> for a fiscal year is enacted that provides an amount for **wildfire suppression operations**<sup>4006</sup> in the Wildland Fire Management **accounts**<sup>4007</sup> at the Department of Agriculture or the Department of the Interior, then the adjustments for that fiscal year shall be the amount of **additional new budget authority**<sup>4008</sup> provided in that Act for **wildfire suppression operations**<sup>4009</sup> for that fiscal year, but shall not exceed —

251(b)(2)(F)(i)(I) (I) for fiscal year 2020, \$2,250,000,000;

251(b)(2)(F)(i)(II) (II) for fiscal year 2021, \$2,350,000,000;

251(b)(2)(F)(i)(III) (III) for fiscal year 2022, \$2,450,000,000;

251(b)(2)(F)(i)(IV) (IV) for fiscal year 2023, \$2,550,000,000;

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<sup>4001</sup> **Congressional Budget Act of 1974 § 3(5)**, 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of **1 U.S.C. § 105**.

<sup>4002</sup> **Congressional Budget Act of 1974 § 421(12)**, 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of **31 U.S.C. § 6501(9)**, *supra* p. 814.

<sup>4003</sup> **Social Security Act § 306**, 42 U.S.C. § 506, *infra* p. 1015, addresses “Grants to States for reemployment services and eligibility assessments.”

<sup>4004</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(F)(ii)(I)**, 2 U.S.C. § 901(b)(2)(F)(ii)(I), *infra* p. 1004, defines “additional new budget authority.”

<sup>4005</sup> **Congressional Budget Act of 1974 § 3(5)**, 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of **1 U.S.C. § 105**.

<sup>4006</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(F)(ii)(II)**, 2 U.S.C. § 901(b)(2)(F)(ii)(II), *infra* p. 1004, defines “wildfire suppression operations.”

<sup>4007</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4008</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(F)(ii)(I)**, 2 U.S.C. § 901(b)(2)(F)(ii)(I), *infra* p. 1004, defines “additional new budget authority.”

<sup>4009</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(F)(ii)(II)**, 2 U.S.C. § 901(b)(2)(F)(ii)(II), *infra* p. 1004, defines “wildfire suppression operations.”

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251(b)(2)(F)(i)(V)	(V) for fiscal year 2024, \$2,650,000,000;
251(b)(2)(F)(i)(VI)	(VI) for fiscal year 2025, \$2,750,000,000;
251(b)(2)(F)(i)(VII)	(VII) for fiscal year 2026, \$2,850,000,000; and
251(b)(2)(F)(i)(VIII)	(VIII) for fiscal year 2027, \$2,950,000,000.
251(b)(2)(F)(ii)	(ii) DEFINITIONS. — In <b>this subparagraph</b> <sup>4010</sup> :
251(b)(2)(F)(ii)(I)	(I) <b>ADDITIONAL NEW BUDGET AUTHORITY.</b> — The term “additional new budget authority” <sup>4011</sup> means the amount provided for a fiscal year in an <b>appropriation Act</b> <sup>4012</sup> that is in excess of the average costs for <b>wildfire suppression operations</b> <sup>4013</sup> as reported in the budget of the President submitted under <b>section 1105(a) of title 31, United States Code</b> , <sup>4014</sup> for fiscal year 2015 and are specified to pay for the costs of <b>wildfire suppression operations</b> <sup>4015</sup> in an amount not to exceed the amount specified for that fiscal year in <b>clause (i)</b> . <sup>4016</sup>
251(b)(2)(F)(ii)(II)	(II) <b>WILDFIRE SUPPRESSION OPERATIONS.</b> — The term “wildfire suppression operations”

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<sup>4010</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(F)**, 2 U.S.C. § 901(b)(2)(F), *supra* p. 1003, addresses “Wildfire suppression.”

<sup>4011</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4012</sup> **Congressional Budget Act of 1974 § 3(5)**, 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>4013</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(F)(ii)(II)**, 2 U.S.C. § 901(b)(2)(F)(ii)(II), *infra* p. 1004, defines “wildfire suppression operations.”

<sup>4014</sup> **31 U.S.C. § 1105**, *supra* p. 156, addresses “Budget Contents and Submission to Congress.”

<sup>4015</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(F)(i)**, 2 U.S.C. § 901(b)(2)(F)(i), *infra* p. 1003, defines “wildfire suppression operations.”

<sup>4016</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(F)**, 2 U.S.C. § 901(b)(2)(F), *supra* p. 1003, addresses “Additional new budget authority” for “Wildfire suppression.”

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means the **emergency**<sup>4017</sup> and unpredictable aspects of wildland firefighting, including –

251(b)(2)(F)(ii)(II)(aa) (aa) support, response, and **emergency**<sup>4018</sup> stabilization activities;

251(b)(2)(F)(ii)(II)(bb) (bb) other **emergency**<sup>4019</sup> management activities; and

251(b)(2)(F)(ii)(II)(cc) (cc) the funds necessary to repay any transfers needed for the costs of wildfire suppression operations.

251(b)(2)(G) (G) THE 2020 CENSUS.—If, for fiscal year 2020, appropriations for the Periodic Censuses and Programs **account**<sup>4020</sup> of the Bureau of the Census of the Department of Commerce are enacted that the Congress designates in statute as being for the 2020 Census, then the adjustment for that fiscal year shall be the total of such appropriations for that fiscal year designated as being for the 2020 Census, but shall not exceed \$2,500,000,000.

251(c) (c) **DISCRETIONARY SPENDING LIMIT**.<sup>4021</sup>—As used in **this part**,<sup>4022</sup> the term “**discretionary spending limits**”<sup>4023</sup> means –

251(c)(1) (1) for fiscal year 2014 –

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<sup>4017</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)*, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.”

<sup>4018</sup> *Id.*

<sup>4019</sup> *Id.*

<sup>4020</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4021</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing *Balanced Budget and Emergency Deficit Control Act of 1985 § 251*, 2 U.S.C. § 901), defines “discretionary spending limit.”

<sup>4022</sup> *Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C*, 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4023</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing *Balanced Budget and Emergency Deficit Control Act of 1985 § 251*, 2 U.S.C. § 901), defines “discretionary spending limit.”

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- 251(c)(1)(A) (A) for the revised security category,<sup>4024</sup> \$520,464,000,000 in new budget authority;<sup>4025</sup> and
- 251(c)(1)(B) (B) for the revised nonsecurity category,<sup>4026</sup> \$491,773,000,000 in new budget authority;<sup>4027</sup>
- 251(c)(2) (2) for fiscal year 2015—
- 251(c)(2)(A) (A) for the revised security category,<sup>4028</sup> \$521,272,000,000 in new budget authority;<sup>4029</sup> and
- 251(c)(2)(B) (B) for the revised nonsecurity category,<sup>4030</sup> \$492,356,000,000 in new budget authority;<sup>4031</sup>
- 251(c)(3) (3) for fiscal year 2016—
- 251(c)(3)(A) (A) for the revised security category,<sup>4032</sup> \$548,091,000,000 in new budget authority;<sup>4033</sup> and
- 251(c)(3)(B) (B) for the revised nonsecurity category<sup>4034</sup> \$518,491,000,000 in new budget authority;<sup>4035</sup>
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<sup>4024</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(D), 2 U.S.C. § 900(c)(4)(D), *supra* p. 979, defines “revised security category.”

<sup>4025</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4026</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(E), 2 U.S.C. § 900(c)(4)(E), *supra* p. 979, defines “revised nonsecurity category.”

<sup>4027</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4028</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(D), 2 U.S.C. § 900(c)(4)(D), *supra* p. 979, defines “revised security category.”

<sup>4029</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4030</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(E), 2 U.S.C. § 900(c)(4)(E), *supra* p. 979, defines “revised nonsecurity category.”

<sup>4031</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4032</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(D), 2 U.S.C. § 900(c)(4)(D), *supra* p. 979, defines “revised security category.”

<sup>4033</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4034</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(E), 2 U.S.C. § 900(c)(4)(E), *supra* p. 979, defines “revised nonsecurity category.”

<sup>4035</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.



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- 251(c)(4) (4) for fiscal year 2017 –
- 251(c)(4)(A) (A) for the revised security category,<sup>4036</sup> \$551,068,000,000 in new budget authority;<sup>4037</sup> and
- 251(c)(4)(B) (B) for the revised nonsecurity category,<sup>4038</sup> \$518,531,000,000 in new budget authority;<sup>4039</sup>
- 251(c)(5) (5) for fiscal year 2018 –
- 251(c)(5)(A) (A) for the revised security category,<sup>4040</sup> \$629,000,000,000 in new budget authority;<sup>4041</sup> and
- 251(c)(5)(B) (B) for the revised nonsecurity category<sup>4042</sup> \$579,000,000,000 in new budget authority;<sup>4043</sup>
- 251(c)(6) (6) for fiscal year 2019 –
- 251(c)(6)(A) (A) for the revised security category,<sup>4044</sup> \$647,000,000,000 in new budget authority;<sup>4045</sup> and
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<sup>4036</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(D), 2 U.S.C. § 900(c)(4)(D), *supra* p. 979, defines “revised security category.”

<sup>4037</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4038</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(E), 2 U.S.C. § 900(c)(4)(E), *supra* p. 979, defines “revised nonsecurity category.”

<sup>4039</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4040</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(D), 2 U.S.C. § 900(c)(4)(D), *supra* p. 979, defines “revised security category.”

<sup>4041</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4042</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(E), 2 U.S.C. § 900(c)(4)(E), *supra* p. 979, defines “revised nonsecurity category.”

<sup>4043</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4044</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(D), 2 U.S.C. § 900(c)(4)(D), *supra* p. 979, defines “revised security category.”

<sup>4045</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

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251(c)(6)(B) (B) for the revised nonsecurity category,<sup>4046</sup>  
\$597,000,000 in new budget authority;<sup>4047</sup>

251(c)(7) (7) for fiscal year 2020 —

251(c)(7)(A) (A) for the revised security category,<sup>4048</sup> \$666,500,000 in  
new budget authority;<sup>4049</sup> and

251(c)(7)(B) (B) for the revised nonsecurity category,<sup>4050</sup>  
\$621,500,000 in new budget authority;<sup>4051</sup> and

251(c)(8) (8) for fiscal year 2021 —

251(c)(8)(A) (A) for the revised security category,<sup>4052</sup> \$671,500,000 in  
new budget authority;<sup>4053</sup> and

251(c)(8)(B) (B) for the revised nonsecurity category,<sup>4054</sup>  
\$626,500,000 in new budget authority;<sup>4055</sup>

as adjusted in strict conformance with subsection  
(b).<sup>4056</sup>

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<sup>4046</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(E), 2 U.S.C. § 900(c)(4)(E), *supra* p. 979, defines “revised nonsecurity category.”

<sup>4047</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4048</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(D), 2 U.S.C. § 900(c)(4)(D), *supra* p. 979, defines “revised security category.”

<sup>4049</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4050</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(E), 2 U.S.C. § 900(c)(4)(E), *supra* p. 979, defines “revised nonsecurity category.”

<sup>4051</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4052</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(D), 2 U.S.C. § 900(c)(4)(D), *supra* p. 979, defines “revised security category.”

<sup>4053</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4054</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(E), 2 U.S.C. § 900(c)(4)(E), *supra* p. 979, defines “revised nonsecurity category.”

<sup>4055</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4056</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b), 2 U.S.C. § 901(b), *supra* p. 992, addresses “Adjustments to Discretionary Spending Limits.”



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*Adjustments*—The fiscal year 2022 budget resolution provides for adjustments like those in this section,<sup>4057</sup> and then provides:

**SEC. 4011. APPLICABILITY OF ADJUSTMENTS TO DISCRETIONARY SPENDING LIMITS.**

Except as expressly provided otherwise, the adjustments provided by section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)) shall not apply to allocations, aggregates, or other budgetary levels established pursuant to this concurrent resolution.<sup>4058</sup>

*“Continuing disability reviews” means continuing disability reviews under sections 221(i) and 1614(a)(4) of the Social Security Act*—Section 221(i) provides:

**(i) Review of disability cases to determine continuing eligibility; permanent disability cases; appropriate number of cases reviewed; reporting requirements**

(1) In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Commissioner of Social Security (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years, subject to paragraph (2); except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Commissioner of Social Security determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this subchapter.

(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Commissioner of Social Security determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Commissioner of Social Security shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Commissioner of Social Security shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to

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<sup>4057</sup> S. Con. Res. 14, 117th Cong. §§ 4005–4006, 4008–4010, 4013–4014 (2021) (adopted).

<sup>4058</sup> *Id.* § 4011.

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process case reviews in a timely fashion. The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Commissioner of Social Security under the preceding sentence.

(3) The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.

(4) In any case in which the Commissioner of Social Security initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Commissioner of Social Security shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.

(5) For suspension of reviews under this subsection in the case of an individual using a ticket to work and self-sufficiency, see section 1320b-19(i) of this title.<sup>4059</sup>

*Section 1614(a)(4) of the Social Security Act*—Section 1614(a)(4) provides:

(4) A recipient of benefits based on disability under this subchapter may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(A) in the case of an individual who is age 18 or older—

(i) substantial evidence which demonstrates that—

(I) there has been any medical improvement in the individual's impairment or combination of impairments (other

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<sup>4059</sup> [Social Security Act § 221\(i\)](#), 42 U.S.C. § 421(i).

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than medical improvement which is not related to the individual's ability to work), and

(II) the individual is now able to engage in substantial gainful activity; or

(ii) substantial evidence (except in the case of an individual eligible to receive benefits under section 1382h of this title) which –

(I) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that –

(aa) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(bb) the individual is now able to engage in substantial gainful activity, or

(II) demonstrates that –

(aa) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(bb) the individual is now able to engage in substantial gainful activity; or

(iii) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(B) in the case of an individual who is under the age of 18 –

(i) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments, and that such impairment or combination of impairments no longer results in marked and severe functional limitations; or

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(ii) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments, is not as disabling as it was considered to be at the time of the most recent prior decision that the individual was under a disability or continued to be under a disability, and such impairment or combination of impairments does not result in marked and severe functional limitations; or

(C) in the case of any individual, substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability under this subchapter is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected (i) to restore his or her ability to engage in substantial gainful activity, or (ii) in the case of an individual under the age of 18, to eliminate or improve the individual's impairment or combination of impairments so that it no longer results in marked and severe functional limitations. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Commissioner of Social Security. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.<sup>4060</sup>

***"Redetermination" means redetermination of eligibility under sections 1611(c)(1) and 1614(a)(3)(H) of the Social Security Act — Section 1611(c)(1) provides:***

**(c) Period for determination of benefits**

(1) An individual's eligibility for a benefit under this subchapter for a month shall be determined on the basis of the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics in

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<sup>4060</sup> Social Security Act § 1614(a)(4), 42 U.S.C. § 1382c(a)(4).

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such month, and, except as provided in paragraphs (2), (3), (4), (5), and (6), the amount of such benefit shall be determined for such month on the basis of income and other characteristics in the first or, if the Commissioner of Social Security so determines, second month preceding such month. Eligibility for and the amount of such benefits shall be redetermined at such time or times as may be provided by the Commissioner of Social Security.<sup>4061</sup>

***Section 1614(a)(3)(H) of the Social Security Act***—Section 1614(a)(3)(H) provides:

(H)(i) In making determinations with respect to disability under this subchapter, the provisions of sections 421(h), 421(k), and 423(d)(5) of this title shall apply in the same manner as they apply to determinations of disability under subchapter II.

(ii)(I) Not less frequently than once every 3 years, the Commissioner shall review in accordance with paragraph (4) the continued eligibility for benefits under this subchapter of each individual who has not attained 18 years of age and is eligible for such benefits by reason of an impairment (or combination of impairments) which is likely to improve (or, at the option of the Commissioner, which is unlikely to improve).

(II) A representative payee of a recipient whose case is reviewed under this clause shall present, at the time of review, evidence demonstrating that the recipient is, and has been, receiving treatment, to the extent considered medically necessary and available, of the condition which was the basis for providing benefits under this subchapter.

(III) If the representative payee refuses to comply without good cause with the requirements of subclause (II), the Commissioner of Social Security shall, if the Commissioner determines it is in the best interest of the individual, promptly suspend payment of benefits to the representative payee, and provide for payment of benefits to an alternative representative payee of the individual or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(IV) Subclause (II) shall not apply to the representative payee of any individual with respect to whom the Commissioner determines such application would be inappropriate or unnecessary. In making such determination, the Commissioner shall take into consideration the nature of the individual's impairment (or combination of impairments). Section 1383(c) of this title shall not apply to a finding by the Commissioner that

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<sup>4061</sup> [Social Security Act § 1611\(c\)\(1\)](#), 42 U.S.C. § 1382(c)(1).

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the requirements of subclause (II) should not apply to an individual's representative payee.

(iii) If an individual is eligible for benefits under this subchapter by reason of disability for the month preceding the month in which the individual attains the age of 18 years, the Commissioner shall redetermine such eligibility –

(I) by applying the criteria used in determining initial eligibility for individuals who are age 18 or older; and

(II) either during the 1-year period beginning on the individual's 18th birthday or, in lieu of a continuing disability review, whenever the Commissioner determines that an individual's case is subject to a redetermination under this clause.

With respect to any redetermination under this clause, paragraph (4) shall not apply.

(iv)(I) Except as provided in subclause (VI), not later than 12 months after the birth of an individual, the Commissioner shall review in accordance with paragraph (4) the continuing eligibility for benefits under this subchapter by reason of disability of such individual whose low birth weight is a contributing factor material to the Commissioner's determination that the individual is disabled.

(II) A review under subclause (I) shall be considered a substitute for a review otherwise required under any other provision of this subparagraph during that 12-month period.

(III) A representative payee of a recipient whose case is reviewed under this clause shall present, at the time of review, evidence demonstrating that the recipient is, and has been, receiving treatment, to the extent considered medically necessary and available, of the condition which was the basis for providing benefits under this subchapter.

(IV) If the representative payee refuses to comply without good cause with the requirements of subclause (III), the Commissioner of Social Security shall, if the Commissioner determines it is in the best interest of the individual, promptly suspend payment of benefits to the representative payee, and provide for payment of benefits to an alternative representative payee of the individual or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(V) Subclause (III) shall not apply to the representative payee of any individual with respect to whom the Commissioner determines such application would be inappropriate or unnecessary. In making such

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determination, the Commissioner shall take into consideration the nature of the individual's impairment (or combination of impairments). Section 1383(c) of this title shall not apply to a finding by the Commissioner that the requirements of subclause (III) should not apply to an individual's representative payee.

(VI) Subclause (I) shall not apply in the case of an individual described in that subclause who, at the time of the individual's initial disability determination, the Commissioner determines has an impairment that is not expected to improve within 12 months after the birth of that individual, and who the Commissioner schedules for a continuing disability review at a date that is after the individual attains 1 year of age.<sup>4062</sup>

***“Disaster relief” means activities carried out pursuant to a determination under section 102(2) of the Robert T. Safford Disaster Relief and Emergency Assistance Act – Section 102(2) provides:***

(2) MAJOR DISASTER. – “Major disaster” means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.<sup>4063</sup>

***Grants to States under section 306 of the Social Security Act – Section 306 provides:***

**§ 506. Grants to States for reemployment services and eligibility assessments**

**(a) In general**

The Secretary of Labor (in this section referred to as the “Secretary”) shall award grants under this section for a fiscal year to eligible States to conduct a program of reemployment services and eligibility assessments for individuals referred to reemployment services as described in section 503(j) of this title for weeks in such fiscal year for which such individuals receive unemployment compensation.

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<sup>4062</sup> [Social Security Act § 1614\(a\)\(3\)\(H\)](#), 42 U.S.C. § 1382c(a)(3)(H).

<sup>4063</sup> [Robert T. Safford Disaster Relief and Emergency Assistance Act § 102\(2\)](#), 42 U.S.C. § 5122(2).

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**(b) Purposes**

The purposes of this section are to accomplish the following goals:

(1) To improve employment outcomes of individuals that receive unemployment compensation and to reduce the average duration of receipt of such compensation through employment.

(2) To strengthen program integrity and reduce improper payments of unemployment compensation by States through the detection and prevention of such payments to individuals who are not eligible for such compensation.

(3) To promote alignment with the broader vision of the Workforce Innovation and Opportunity Act (29 U.S.C. 3101 et seq.) of increased program integration and service delivery for job seekers, including claimants for unemployment compensation.

(4) To establish reemployment services and eligibility assessments as an entry point for individuals receiving unemployment compensation into other workforce system partner programs.

**(c) Evidence-based standards**

**(1) In general**

In carrying out a State program of reemployment services and eligibility assessments using grant funds awarded to the State under this section, a State shall use such funds only for interventions demonstrated to reduce the number of weeks for which program participants receive unemployment compensation by improving employment outcomes for program participants.

**(2) Expanding evidence-based interventions**

In addition to the requirement imposed by paragraph (1), a State shall —

(A) for fiscal years 2023 and 2024, use no less than 25 percent of the grant funds awarded to the State under this section for interventions with a high or moderate causal evidence rating that show a demonstrated capacity to improve employment and earnings outcomes for program participants;



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(B) for fiscal years 2025 and 2026, use no less than 40 percent of such grant funds for interventions described in subparagraph (A); and

(C) for fiscal years beginning after fiscal year 2026, use no less than 50 percent of such grant funds for interventions described in subparagraph (A).

**(d) Evaluations**

**(1) Required evaluations**

Any intervention without a high or moderate causal evidence rating used by a State in carrying out a State program of reemployment services and eligibility assessments under this section shall be under evaluation at the time of use.

**(2) Funding limitation**

A State shall use not more than 10 percent of grant funds awarded to the State under this section to conduct or cause to be conducted evaluations of interventions used in carrying out a program under this section (including evaluations conducted pursuant to paragraph (1)).

**(e) State plan**

**(1) In general**

As a condition of eligibility to receive a grant under this section for a fiscal year, a State shall submit to the Secretary, at such time and in such manner as the Secretary may require, a State plan that outlines how the State intends to conduct a program of reemployment services and eligibility assessments under this section, including—

(A) assurances that, and a description of how, the program will provide—

(i) proper notification to participating individuals of the program's eligibility conditions, requirements, and benefits, including the issuance of warnings and simple, clear notifications to ensure that participating individuals are fully aware of the consequences of failing to adhere to such requirements, including policies related to non-attendance or non-fulfillment of work search requirements; and

(ii) reasonable scheduling accommodations to maximize participation for eligible individuals;

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(B) assurances that, and a description of how, the program will conform with the purposes outlined in subsection (b) and satisfy the requirement to use evidence-based standards under subsection (c), including —

(i) a description of the evidence-based interventions the State plans to use to speed reemployment;

(ii) an explanation of how such interventions are appropriate to the population served; and

(iii) if applicable, a description of the evaluation structure the State plans to use for interventions without at least a moderate or high causal evidence rating, which may include national evaluations conducted by the Department of Labor or by other entities; and

(C) a description of any reemployment activities and evaluations conducted in the prior fiscal year, and any data collected on —

(i) characteristics of program participants;

(ii) the number of weeks for which program participants receive unemployment compensation; and

(iii) employment and other outcomes for program participants consistent with State performance accountability measures provided by the State unemployment compensation program and in section 116(b) of the Workforce Innovation and Opportunity Act (29 U.S.C. 3141(b)).

## **(2) Approval**

The Secretary shall approve any State plan, that is timely submitted to the Secretary, in such manner as the Secretary may require, that satisfies the conditions described in paragraph (1).

## **(3) Disapproval and revision**

If the Secretary determines that a State plan submitted pursuant to this subsection fails to satisfy the conditions described in paragraph (1), the Secretary shall —

(A) disapprove such plan;

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(B) provide to the State, not later than 30 days after the date of receipt of the State plan, a written notice of such disapproval that includes a description of any portion of the plan that was not approved and the reason for the disapproval of each such portion; and

(C) provide the State with an opportunity to correct any such failure and submit a revised State plan.

**(f) Allocation of funds**

**(1) Base funding**

**(A) In general**

For each fiscal year after fiscal year 2020, the Secretary shall allocate a percentage equal to the base funding percentage for such fiscal year of the funds made available for grants under this section among the States awarded such a grant for such fiscal year using a formula prescribed by the Secretary based on the rate of insured unemployment (as defined in section 203(e)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note)) in the State for a period to be determined by the Secretary. In developing such formula with respect to a State, the Secretary shall consider the importance of avoiding sharp reductions in grant funding to a State over time.

**(B) Base funding percentage**

For purposes of subparagraph (A), the term “base funding percentage” means —

(i) for fiscal years 2021 through 2026, 89 percent; and

(ii) for fiscal years after 2026, 84 percent.

**(2) Reservation for outcome payments**

**(A) In general**

Of the amounts made available for grants under this section for each fiscal year after 2020, the Secretary shall reserve a percentage equal to the outcome reservation percentage for such fiscal year for outcome payments to increase the amount otherwise awarded to a State under paragraph (1). Such outcome payments shall be paid to States conducting reemployment services and eligibility assessments under this section that, during the previous fiscal year,

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met or exceeded the outcome goals provided in subsection (b)(1) related to reducing the average duration of receipt of unemployment compensation by improving employment outcomes.

**(B) Outcome reservation percentage**

For purposes of subparagraph (A), the term “outcome reservation percentage” means —

- (i) for fiscal years 2021 through 2026, 10 percent; and
- (ii) for fiscal years after 2026, 15 percent.

**(3) Reservation for research and technical assistance**

Of the amounts made available for grants under this section for each fiscal year after 2020, the Secretary may reserve not more than 1 percent to conduct research and provide technical assistance to States.

**(4) Consultation and public comment**

Not later than September 30, 2019, the Secretary shall —

(A) consult with the States and seek public comment in developing the allocation formula under paragraph (1) and the criteria for carrying out the reservations under paragraph (2); and

(B) make publicly available the allocation formula and criteria developed pursuant to subclause (A).

**(g) Notification to Congress**

Not later than 90 days prior to making any changes to the allocation formula or the criteria developed pursuant to subsection (f)(5)(A), the Secretary shall submit to Congress, including to the Committee on Ways and Means and the Committee on Appropriations of the House of Representatives and the Committee on Finance and the Committee on Appropriations of the Senate, a notification of any such change.

**(h) Supplement not supplant**

Funds made available to carry out this section shall be used to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would be expended to provide reemployment services and eligibility assessments to individuals receiving

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unemployment compensation, and in no case to supplant such Federal, State, or local public funds.

**(i) Definitions**

In this section:

**(1) Causal evidence rating**

The terms “high causal evidence rating” and “moderate causal evidence rating” shall have the meaning given such terms by the Secretary of Labor.

**(2) Eligible state**

The term “eligible State” means a State that has in effect a State plan approved by the Secretary in accordance with subsection (e).

**(3) Intervention**

The term “intervention” means a service delivery strategy for the provision of State reemployment services and eligibility assessment activities under this section.

**(4) State**

The term “State” has the meaning given the term in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

**(5) Unemployment compensation**

The term unemployment compensation means “regular compensation”, “extended compensation”, and “additional compensation” (as such terms are defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note)).<sup>4064</sup>

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<sup>4064</sup> [Social Security Act § 306](#), 42 U.S.C. § 506.

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251A      **SEC. 251A.**<sup>4065</sup> **ENFORCEMENT OF BUDGET GOAL**

**Discretionary**      **appropriations**<sup>4066</sup>      **and**      **direct**  
**spending**<sup>4067</sup>      **accounts**<sup>4068</sup>      **shall be reduced in accordance**  
**with this section**<sup>4069</sup> **as follows:**

251A(1)      **(1) CALCULATION OF TOTAL** **DEFICIT**<sup>4070</sup> **REDUCTION.—**  
**OMB**<sup>4071</sup> **shall calculate the amount of the** **deficit**<sup>4072</sup>  
**reduction required by this section**<sup>4073</sup> **for each of fiscal**  
**years 2013 through 2021 by —**

251A(1)(A)      **(A) starting with \$1,200,000,000,000;**

251A(1)(B)      **(B) subtracting the amount of** **deficit**<sup>4074</sup> **reduction**  
**achieved by the enactment of a joint committee bill,**  
**as provided in** **section 401(b)(3)(B)(i)(II) of the**  
**Budget Control Act of 2011;**<sup>4075</sup>

251A(1)(C)      **(C) reducing the difference by 18 percent to**  
**account for debt service;**

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<sup>4065</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A is codified as amended at [2 U.S.C. § 901a](#).

<sup>4066</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(7\)](#), 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>4067</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4068</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4069</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A](#), 2 U.S.C. § 901a, *supra* p. 1022, addresses “Enforcement of Budget Goal.”

<sup>4070</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4071</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4072</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4073</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A](#), 2 U.S.C. § 901a, *supra* p. 1022, addresses “Enforcement of Budget Goal.”

<sup>4074</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4075</sup> [Budget Control Act of 2011](#), Pub. L. No. 112-25, § 401(b)(3)(B)(i)(II), 125 Stat. 240, 260, *infra* p. 1039. As the Joint Select Committee on Deficit Reduction reported no legislation, the amount referred to here is zero.

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- 251A(1)(D) (D) dividing the result by 9; and
- 251A(1)(E) (E) for fiscal year 2013, reducing the amount calculated under [subparagraphs \(A\) through \(D\)](#)<sup>4076</sup> by \$24,000,000,000.
- 251A(2) (2) ALLOCATION TO FUNCTIONS. — On March 1, 2013, for fiscal year 2013, and in its [sequestration](#)<sup>4077</sup> preview report for fiscal years 2014 through 2021 pursuant to [section 254\(c\)](#),<sup>4078</sup> OMB<sup>4079</sup> shall allocate half of the total reduction calculated pursuant to [paragraph \(1\)](#)<sup>4080</sup> for that year to [discretionary appropriations](#)<sup>4081</sup> and [direct spending](#)<sup>4082</sup> [accounts](#)<sup>4083</sup> within function 050 (defense function) and half to [accounts](#)<sup>4084</sup> in all other functions (nondefense functions).
- 251A(3) (3) DEFENSE FUNCTION REDUCTION. — OMB<sup>4085</sup> shall calculate the reductions to [discretionary appropriations](#)<sup>4086</sup> and [direct spending](#)<sup>4087</sup> for each of fiscal years 2013 through 2021 for defense function spending as follows:

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<sup>4076</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(1\)](#), 2 U.S.C. § 901a(1), *supra* p. 1022, addresses “Calculation of total deficit reduction.”

<sup>4077</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4078</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254\(c\)](#), 2 U.S.C. § 904(c), *infra* p. 1062, addresses “Sequestration Preview Reports.”

<sup>4079</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4080</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(1\)\(A\)–\(D\)](#), 2 U.S.C. § 901a(1)(A)–(D), *supra* p. 1022.

<sup>4081</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(7\)](#), 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>4082</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4083</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4084</sup> *Id.*

<sup>4085</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4086</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(7\)](#), 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>4087</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

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- 251A(3)(A) (A) DISCRETIONARY.—OMB<sup>4088</sup> shall calculate the reduction to discretionary appropriations<sup>4089</sup> by—
- 251A(3)(A)(i) (i) taking the total reduction for the defense function allocated for that year under paragraph (2),<sup>4090</sup>
- 251A(3)(A)(ii) (ii) multiplying by the discretionary spending limit<sup>4091</sup> for the revised security category<sup>4092</sup> for that year; and
- 251A(3)(A)(iii) (iii) dividing by the sum of the discretionary spending limit<sup>4093</sup> for the security category<sup>4094</sup> and OMB’s<sup>4095</sup> baseline<sup>4096</sup> estimate of nonexempt<sup>4097</sup> outlays<sup>4098</sup> for direct spending<sup>4099</sup> programs within the defense function for that year.
- 251A(3)(B) (B) DIRECT SPENDING.<sup>4100</sup>—OMB<sup>4101</sup> shall calculate the reduction to direct spending<sup>4102</sup> by
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<sup>4088</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4089</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(7), 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>4090</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(2), 2 U.S.C. § 901a(2), *supra* p. 1023, addresses “Allocation to functions.”

<sup>4091</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing Balanced Budget and Emergency Deficit Control Act of 1985 § 251, 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4092</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(D), 2 U.S.C. § 900(c)(4)(D), *supra* p. 979, defines “revised security category.”

<sup>4093</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing Balanced Budget and Emergency Deficit Control Act of 1985 § 251, 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4094</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(B), 2 U.S.C. § 900(c)(4)(B), *supra* p. 978, defines “security category.”

<sup>4095</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4096</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907, *infra* p. 980.

<sup>4097</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4098</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4099</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4100</sup> *Id.*

<sup>4101</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4102</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”



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taking the total reduction for the defense function required for that year under [paragraph \(2\)](#)<sup>4103</sup> and subtracting the discretionary reduction calculated pursuant to [subparagraph \(A\)](#).<sup>4104</sup>

251A(4) (4) NONDEFENSE FUNCTION REDUCTION.—OMB<sup>4105</sup> shall calculate the reduction to [discretionary appropriations](#)<sup>4106</sup> and to [direct spending](#)<sup>4107</sup> for each of fiscal years 2013 through 2021 for programs in nondefense functions as follows:

251A(4)(A) (A) DISCRETIONARY.—OMB<sup>4108</sup> shall calculate the reduction to [discretionary appropriations](#)<sup>4109</sup> by—

251A(4)(A)(i) (i) taking the total reduction for nondefense functions allocated for that year under [paragraph \(2\)](#);<sup>4110</sup>

251A(4)(A)(ii) (ii) multiplying by the [discretionary spending limit](#)<sup>4111</sup> for the [revised nonsecurity category](#)<sup>4112</sup> for that year; and

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<sup>4103</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(2\)](#), 2 U.S.C. § 901a(2), *supra* p. 1023, addresses “Allocation to functions.”

<sup>4104</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(3\)\(A\)](#), 2 U.S.C. § 901a(3)(A), *supra* p. 1024, addresses “Discretionary.”

<sup>4105</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4106</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(7\)](#), 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>4107</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4108</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4109</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(7\)](#), 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>4110</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(2\)](#), 2 U.S.C. § 901a(2), *supra* p. 1023, addresses “Allocation to functions.”

<sup>4111</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4112</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(4\)\(E\)](#), 2 U.S.C. § 900(c)(4)(E), *supra* p. 979, defines “revised nonsecurity category.”

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- 251A(4)(A)(iii) (iii) dividing by the sum of the discretionary spending limit<sup>4113</sup> for the revised nonsecurity category<sup>4114</sup> and OMB's<sup>4115</sup> baseline<sup>4116</sup> estimate of nonexempt<sup>4117</sup> outlays<sup>4118</sup> for direct spending<sup>4119</sup> programs in nondefense functions for that year.
- 251A(4)(B) (B) DIRECT SPENDING.<sup>4120</sup> — OMB<sup>4121</sup> shall calculate the reduction to direct spending<sup>4122</sup> programs by taking the total reduction for nondefense functions required for that year under paragraph (2)<sup>4123</sup> and subtracting the discretionary reduction calculated pursuant to subparagraph (A).<sup>4124</sup>
- 251A(5) (5) IMPLEMENTING DISCRETIONARY REDUCTIONS. —
- 251A(5)(A) (A) FISCAL YEAR 2013. — On March 1, 2013, for fiscal year 2013, OMB<sup>4125</sup> shall calculate and the President shall order a
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<sup>4113</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing Balanced Budget and Emergency Deficit Control Act of 1985 § 251, 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4114</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(E), 2 U.S.C. § 900(c)(4)(E), *supra* p. 979, defines “revised nonsecurity category.”

<sup>4115</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4116</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907, *infra* p. 980.

<sup>4117</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4118</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4119</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4120</sup> *Id.*

<sup>4121</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4122</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4123</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(2), 2 U.S.C. § 901a(2), *supra* p. 1023, addresses “Allocation to functions.”

<sup>4124</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(3)(A), 2 U.S.C. § 901a(3)(A), *supra* p. 1024, addresses “Discretionary.”

<sup>4125</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

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sequestration,<sup>4126</sup> effective upon issuance and under the procedures set forth in section 253(f),<sup>4127</sup> to reduce each account<sup>4128</sup> within the security category<sup>4129</sup> or nonsecurity category<sup>4130</sup> by a dollar amount calculated by multiplying the baseline<sup>4131</sup> level of budgetary resources<sup>4132</sup> in that account<sup>4133</sup> at that time by a uniform percentage necessary to achieve —

251A(5)(A)(i) (i) for the revised security category,<sup>4134</sup> an amount equal to the defense function discretionary reduction calculated pursuant to paragraph (3),<sup>4135</sup> and

251A(5)(A)(ii) (ii) for the revised nonsecurity category,<sup>4136</sup> an amount equal to the nondefense function discretionary reduction calculated pursuant to paragraph (4).<sup>4137</sup>

251A(5)(B) (B) FISCAL YEARS 2014–2021.—Except as provided by paragraphs (10),<sup>4138</sup> (11),<sup>4139</sup> (12),<sup>4140</sup> and (13),<sup>4141</sup> on the date of

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<sup>4126</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4127</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253(f), 2 U.S.C. § 903(f), *infra* p. 1053, addresses “Baseline Assumptions; Part-Year Appropriations.”

<sup>4128</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4129</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(B), 2 U.S.C. § 900(c)(4)(B), *supra* p. 978, defines “security category.”

<sup>4130</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(A), 2 U.S.C. § 900(c)(4)(A), *supra* p. 978, defines “nonsecurity category.”

<sup>4131</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907, *infra* p. 980.

<sup>4132</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>4133</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4134</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(D), 2 U.S.C. § 900(c)(4)(D), *supra* p. 979, defines “revised security category.”

<sup>4135</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(3), 2 U.S.C. § 901a(3), *supra* p. 1023, addresses “Defense function reduction.”

<sup>4136</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(E), 2 U.S.C. § 900(c)(4)(E), *supra* p. 979, defines “revised nonsecurity category.”

<sup>4137</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(4), 2 U.S.C. § 901a(4), *supra* p. 1025, addresses “Nondefense function reduction.”

<sup>4138</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(10), 2 U.S.C. § 901a(10), *infra* p. 1033, addresses “Implementing direct spending reductions for fiscal years 2014 and 2015.”

<sup>4139</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(11), 2 U.S.C. § 901a(11), *infra* p. 1033, addresses “Implementing direct spending reductions for fiscal years 2016 and 2017.”

<sup>4140</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(12), 2 U.S.C. § 901a(12), *infra* p. 1034, addresses “Implementing direct spending reductions for fiscal years 2018 and 2019.”

<sup>4141</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(13), 2 U.S.C. § 901a(13), *infra* p. 1035, addresses “Implementing direct spending reductions for fiscal years 2020 and 2021.”

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the submission of its **sequestration**<sup>4142</sup> preview report for fiscal years 2014 through 2021 pursuant to **section 254(c)**<sup>4143</sup> for each of fiscal years 2014 through 2021, **OMB**<sup>4144</sup> shall reduce the **discretionary spending limit**<sup>4145</sup> —

251A(5)(B)(i) (i) for the **revised security category**<sup>4146</sup> by the amount of the defense function discretionary reduction calculated pursuant to **paragraph (3)**,<sup>4147</sup> and

251A(5)(B)(ii) (ii) for the **revised nonsecurity category**<sup>4148</sup> by the amount of the nondefense function discretionary reduction calculated pursuant to **paragraph (4)**.<sup>4149</sup>

251A(6) (6) IMPLEMENTING DIRECT SPENDING<sup>4150</sup>  
REDUCTIONS. —

251A(6)(A) (A) On the date specified in **paragraph (2)**<sup>4151</sup> during each applicable year, **OMB**<sup>4152</sup> shall prepare and the President shall order a **sequestration**,<sup>4153</sup> effective upon issuance, of **nonexempt**<sup>4154</sup> **direct**

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<sup>4142</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4143</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254(c)**, 2 U.S.C. § 904(c), *infra* p. 1062, addresses “Sequestration Preview Reports.”

<sup>4144</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4145</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing **Balanced Budget and Emergency Deficit Control Act of 1985 § 251**, 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4146</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(D)**, 2 U.S.C. § 900(c)(4)(D), *supra* p. 979, defines “revised security category.”

<sup>4147</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(3)**, 2 U.S.C. § 901a(3), *supra* p. 1023, addresses “Defense function reduction.”

<sup>4148</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(E)**, 2 U.S.C. § 900(c)(4)(E), *supra* p. 979, defines “revised nonsecurity category.”

<sup>4149</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(4)**, 2 U.S.C. § 901a(4), *supra* p. 1025, addresses “Nondefense function reduction.”

<sup>4150</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4151</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(2)**, 2 U.S.C. § 901a(2), *supra* p. 1023, addresses “Allocation to functions.”

<sup>4152</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4153</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4154</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 255**, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

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spending<sup>4155</sup> to achieve the direct spending<sup>4156</sup> reduction calculated pursuant to paragraphs (3)<sup>4157</sup> and (4).<sup>4158</sup> When implementing the sequestration<sup>4159</sup> of direct spending<sup>4160</sup> pursuant to this paragraph,<sup>4161</sup> OMB<sup>4162</sup> shall follow the procedures specified in section 6 of the Statutory Pay-As-You-Go Act of 2010, the exemptions specified in section 255,<sup>4163</sup> and the special rules specified in section 256,<sup>4164</sup> except that the percentage reduction for the Medicare programs specified in section 256(d)<sup>4165</sup> shall not be more than 2 percent for a fiscal year.

251A(6)(B)

(B) On the dates OMB<sup>4166</sup> issues its sequestration<sup>4167</sup> preview reports for each of fiscal years 2022 through 2031, pursuant to section 254(c),<sup>4168</sup> the President shall order a sequestration,<sup>4169</sup> effective upon issuance such that—

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<sup>4155</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4156</sup> *Id.*

<sup>4157</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(3), 2 U.S.C. § 901a(3), *supra* p. 1023, addresses “Defense function reduction.”

<sup>4158</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(4), 2 U.S.C. § 901a(4), *supra* p. 1025, addresses “Nondefense function reduction.”

<sup>4159</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4160</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4161</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(6), 2 U.S.C. § 901a(6), *supra* p. 1028, addresses “Implementing Direct Spending Reductions.”

<sup>4162</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4163</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4164</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 256, 2 U.S.C. § 906, *infra* p. 1088, addresses “General and Special Sequestration Rules.”

<sup>4165</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d), 2 U.S.C. § 906(d), *infra* p. 1089, addresses “Special Rules for Medicare Program.”

<sup>4166</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4167</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4168</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 254(c), 2 U.S.C. § 904(c), *infra* p. 1062, addresses “Sequestration Preview Reports.”

<sup>4169</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

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- 251A(6)(B)(i) (i) the percentage reduction for nonexempt<sup>4170</sup> direct spending<sup>4171</sup> for the defense function is the same percent as the percentage reduction for nonexempt<sup>4172</sup> direct spending<sup>4173</sup> for the defense function for fiscal year 2021 calculated under paragraph (3)(B);<sup>4174</sup> and
- 251A(6)(B)(ii) (ii) the percentage reduction for nonexempt<sup>4175</sup> direct spending<sup>4176</sup> for nondefense functions is the same percent as the percentage reduction for nonexempt<sup>4177</sup> direct spending<sup>4178</sup> for nondefense functions for fiscal year 2021 calculated under paragraph (4)(B).<sup>4179</sup>
- 251A(6)(C) (C) Notwithstanding the 2 percent limit specified in subparagraph (A)<sup>4180</sup> for payments for the Medicare programs specified in section 256(d),<sup>4181</sup> the sequestration<sup>4182</sup> order of the President under such subparagraph for fiscal year 2022 shall be applied to such payments so that with respect to the period beginning on April 1, 2022, and ending on June 30, 2022, the payment reduction shall be 1.0 percent.
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<sup>4170</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4171</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4172</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4173</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4174</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(3)(B), 2 U.S.C. § 901a(3)(B), *supra* p. 1024, addresses “Direct spending.”

<sup>4175</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4176</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4177</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4178</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4179</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(4)(B), 2 U.S.C. § 901a(4)(B), *supra* p. 1026, addresses “Direct spending.”

<sup>4180</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(6)(A), 2 U.S.C. § 901a(6)(A), *supra* p. 1028.

<sup>4181</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d), 2 U.S.C. § 906(d), *infra* p. 1089, addresses “Special Rules for Medicare Program.”

<sup>4182</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”



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- 251A(6)(D) (D) Notwithstanding the 2 percent limit specified in [subparagraph \(A\)](#)<sup>4183</sup> for payments for the Medicare programs specified in [section 256\(d\)](#),<sup>4184</sup> the [sequestration](#)<sup>4185</sup> order of the President under such subparagraph for fiscal year 2030 shall be applied to such payments so that –
- 251A(6)(D)(i) (i) with respect to the first 6 months in which such order is effective for such fiscal year, the payment reduction shall be 2.25 percent; and
- 251A(6)(D)(ii) (ii) with respect to the second 6 months in which such order is so effective for such fiscal year, the payment reduction shall be 3 percent.
- 251A(6)(E) (E) Notwithstanding the 2 percent limit specified in [subparagraph \(A\)](#)<sup>4186</sup> for payments for the Medicare programs specified in [section 256\(d\)](#),<sup>4187</sup> the [sequestration](#)<sup>4188</sup> order of the President under such subparagraph for fiscal year 2031 shall be applied to such payments so that –
- 251A(6)(E)(i) (i) with respect to the first 6 months in which such order is effective for such fiscal year, the payment reduction shall be 4.0 percent; and
- 251A(6)(E)(ii) (ii) with respect to the second 6 months in which such order is so effective for such fiscal year, the payment reduction shall be 0 percent.

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<sup>4183</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(6\)\(A\)](#), 2 U.S.C. § 901a(6)(A), *supra* p. 1028.

<sup>4184</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(d\)](#), 2 U.S.C. § 906(d), *infra* p. 1089, addresses “Special Rules for Medicare Program.”

<sup>4185</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4186</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(6\)\(A\)](#), 2 U.S.C. § 901a(6)(A), *supra* p. 1028.

<sup>4187</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(d\)](#), 2 U.S.C. § 906(d), *infra* p. 1089, addresses “Special Rules for Medicare Program.”

<sup>4188</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

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- 251A(7) (7) ADJUSTMENT FOR MEDICARE.—If the percentage reduction for the Medicare programs would exceed 2 percent for a fiscal year in the absence of [paragraph \(6\)](#),<sup>4189</sup> OMB<sup>4190</sup> shall increase the reduction for all other [discretionary appropriations](#)<sup>4191</sup> and [direct spending](#)<sup>4192</sup> under [paragraph \(4\)](#)<sup>4193</sup> by a uniform percentage to a level sufficient to achieve the reduction required by [paragraph \(4\)](#)<sup>4194</sup> in the non-defense function.
- 251A(8) (8) IMPLEMENTATION OF REDUCTIONS.—Any reductions imposed under [this section](#)<sup>4195</sup> shall be implemented in accordance with [section 256\(k\)](#).<sup>4196</sup>
- 251A(9) (9) REPORT.—On the dates specified in [paragraph \(2\)](#),<sup>4197</sup> OMB<sup>4198</sup> shall submit a report to Congress containing information about the calculations required under [this section](#),<sup>4199</sup> the adjusted [discretionary spending limits](#),<sup>4200</sup> a listing of the reductions required

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<sup>4189</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(6\)](#), 2 U.S.C. § 901a(6), *supra* p. 1028, addresses “Implementing direct spending reductions.”

<sup>4190</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4191</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(7\)](#), 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>4192</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4193</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(4\)](#), 2 U.S.C. § 901a(4), *supra* p. 1025, addresses “Nondefense function reduction.”

<sup>4194</sup> *Id.*

<sup>4195</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A](#), 2 U.S.C. § 901a, *supra* p. 1022, addresses “Enforcement of Budget Goal.”

<sup>4196</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(k\)](#), 2 U.S.C. § 906(k), *infra* p. 1106, addresses “Effects of Sequestration.”

<sup>4197</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(2\)](#), 2 U.S.C. § 901a(2), *supra* p. 1023, addresses “Allocation to functions.”

<sup>4198</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4199</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A](#), 2 U.S.C. § 901a, *supra* p. 1022, addresses “Enforcement of Budget Goal.”

<sup>4200</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”



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for each nonexempt<sup>4201</sup> direct spending<sup>4202</sup> account,<sup>4203</sup> and any other data and explanations that enhance public understanding of this title<sup>4204</sup> and actions taken under it.

251A(10) (10) IMPLEMENTING DIRECT SPENDING<sup>4205</sup> REDUCTIONS FOR FISCAL YEARS 2014 AND 2015. —

251A(10)(A) (A) OMB<sup>4206</sup> shall make the calculations necessary to implement the direct spending<sup>4207</sup> reductions calculated pursuant to paragraphs (3)<sup>4208</sup> and (4)<sup>4209</sup> without regard to the amendment made to section 251(c)<sup>4210</sup> revising the discretionary spending limits<sup>4211</sup> for fiscal years 2014 and 2015 by the Bipartisan Budget Act of 2013.<sup>4212</sup>

251A(10)(B) (B) Paragraph (5)(B)<sup>4213</sup> shall not be implemented for fiscal years 2014 and 2015.

251A(11) (11) IMPLEMENTING DIRECT SPENDING<sup>4214</sup> REDUCTIONS FOR FISCAL YEARS 2016 AND 2017. —

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<sup>4201</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4202</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4203</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4204</sup> “[T]his title” is Joint Resolution increasing the statutory limit on the public debt, Pub. L. No. 99-177, tit. II, 99 Stat. 1037, 1038–1101 (1985), that is, Balanced Budget and Emergency Deficit Control Act of 1985, 2 U.S.C. §§ 900–922, pp. 976–1143.

<sup>4205</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4206</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4207</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4208</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(3), 2 U.S.C. § 901a(3), *supra* p. 1023, addresses “Defense function reduction.”

<sup>4209</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(4), 2 U.S.C. § 901a(4), *supra* p. 1025, addresses “Nondefense function reduction.”

<sup>4210</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(c), 2 U.S.C. § 901(c), *supra* p. 1005, addresses “Discretionary Spending Limit.”

<sup>4211</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing Balanced Budget and Emergency Deficit Control Act of 1985 § 251, 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4212</sup> Bipartisan Budget Act of 2013, Pub. L. No. 113-67, 127 Stat. 1165.

<sup>4213</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(5)(B), 2 U.S.C. § 901a(5)(B), *supra* p. 1027, addresses “Fiscal years 2014–2021.”

<sup>4214</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

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- 251A(11)(A) (A) **OMB**<sup>4215</sup> shall make the calculations necessary to implement the **direct spending**<sup>4216</sup> reductions calculated pursuant to **paragraphs (3)**<sup>4217</sup> and **(4)**<sup>4218</sup> without regard to the amendment made to **section 251(c)**<sup>4219</sup> revising the **discretionary spending limits**<sup>4220</sup> for fiscal years 2016 and 2017 by the **Bipartisan Budget Act of 2015**.<sup>4221</sup>
- 251A(11)(B) (B) **Paragraph (5)(B)**<sup>4222</sup> shall not be implemented for fiscal years 2016 and 2017.
- 251A(12) (12) **IMPLEMENTING DIRECT SPENDING**<sup>4223</sup> REDUCTIONS FOR FISCAL YEARS 2018 AND 2019. —
- 251A(12)(A) (A) **OMB**<sup>4224</sup> shall make the calculations necessary to implement the **direct spending**<sup>4225</sup> reductions calculated pursuant to **paragraphs (3)**<sup>4226</sup> and **(4)**<sup>4227</sup> without regard to the amendment made to **section 251(c)**<sup>4228</sup> revising the **discretionary spending limits**<sup>4229</sup> for fiscal years 2018 and 2019 by the **Bipartisan Budget Act of 2018**.<sup>4230</sup>
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<sup>4215</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)*, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4216</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)*, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4217</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(3)*, 2 U.S.C. § 901a(3), *supra* p. 1023, addresses “Defense function reduction.”

<sup>4218</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(4)*, 2 U.S.C. § 901a(4), *supra* p. 1025, addresses “Nondefense function reduction.”

<sup>4219</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 251(c)*, 2 U.S.C. § 901(c), *supra* p. 1005, addresses “Discretionary Spending Limit.”

<sup>4220</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing *Balanced Budget and Emergency Deficit Control Act of 1985 § 251*, 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4221</sup> *Bipartisan Budget Act of 2015*, Pub. L. No. 114-74, 129 Stat. 584.

<sup>4222</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(5)(B)*, 2 U.S.C. § 901a(5)(B), *supra* p. 1027, addresses “Fiscal years 2014–2021.”

<sup>4223</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)*, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4224</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)*, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4225</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)*, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4226</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(3)*, 2 U.S.C. § 901a(3), *supra* p. 1023, addresses “Defense function reduction.”

<sup>4227</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 251A(4)*, 2 U.S.C. § 901a(4), *supra* p. 1025, addresses “Nondefense function reduction.”

<sup>4228</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 251(c)*, 2 U.S.C. § 901(c), *supra* p. 1005, addresses “Discretionary Spending Limit.”

<sup>4229</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing *Balanced Budget and Emergency Deficit Control Act of 1985 § 251*, 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4230</sup> *Bipartisan Budget Act of 2018*, Pub. L. No. 115-123, 132 Stat. 64.

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- 251A(12)(B) (B) **Paragraph (5)(B)**<sup>4231</sup> shall not be implemented for fiscal years 2018 and 2019.
- 251A(13) (13) **IMPLEMENTING DIRECT SPENDING**<sup>4232</sup> REDUCTIONS FOR FISCAL YEARS 2020 AND 2021. —
- 251A(13)(A) (A) **OMB**<sup>4233</sup> shall make the calculations necessary to implement the **direct spending**<sup>4234</sup> reductions calculated pursuant to **paragraphs (3)**<sup>4235</sup> and **(4)**<sup>4236</sup> without regard to the amendment made to **section 251(c)**<sup>4237</sup> revising the **discretionary spending limits**<sup>4238</sup> for fiscal years 2020 and 2021 by the **Bipartisan Budget Act of 2019**.<sup>4239</sup>
- 251A(13)(B) (B) **Paragraph (5)(B)**<sup>4240</sup> shall not be implemented for fiscal years 2020 and 2021.
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The Budget Control Act of 2011 added section 251A to the Balanced Budget and Emergency Deficit Control Act of 1985.<sup>4241</sup> The Congressional Research Service’s Grant Driessen summarized the history of the Budget Control Act of 2011:

The BCA was enacted in August 2011 in response to increased deficits in the wake of the Great Recession. The BCA as enacted implemented deficit reduction through both direct budgetary restrictions and by forming a Congressional Joint Select Committee on Deficit Reduction (or Joint

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<sup>4231</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(5\)\(B\)](#), 2 U.S.C. § 901a(5)(B), *supra* p. 1027, addresses “Fiscal years 2014–2021.”

<sup>4232</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4233</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4234</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4235</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(3\)](#), 2 U.S.C. § 901a(3), *supra* p. 1023, addresses “Defense function reduction.”

<sup>4236</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(4\)](#), 2 U.S.C. § 901a(4), *supra* p. 1025, addresses “Nondefense function reduction.”

<sup>4237</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251\(c\)](#), 2 U.S.C. § 901(c), *supra* p. 1005, addresses “Discretionary Spending Limit.”

<sup>4238</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4239</sup> [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, 133 Stat. 1049.

<sup>4240</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251A\(5\)\(B\)](#), 2 U.S.C. § 901a(5)(B), *supra* p. 1027, addresses “Fiscal years 2014–2021.”

<sup>4241</sup> [Budget Control Act of 2011](#), Pub. L. No. 112-25, § 302(a), 125 Stat. 240, 256.

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Committee) tasked with providing additional deficit reduction. Backup budgetary enforcement measures were installed and scheduled to take effect in the event that the Joint Committee did not reach a timely agreement.

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The Joint Committee was tasked with reaching an agreement on an additional \$1.2 trillion to \$1.5 trillion in deficit reduction over the FY2012-FY2021 period. Absent an agreement by January 2012, or with an agreement on deficit reduction lower than \$1.2 trillion, the BCA created “automatic enforcement measures” to ensure an additional \$1.2 trillion in deficit reduction was reached. These measures consisted of (1) lower caps on discretionary budget authority, implemented through separate restrictions on defense and nondefense activities, from FY2013 through FY2021; and (2) automatic reductions in mandatory spending from FY2013 through FY2021, with large exceptions for activities related to Social Security and Medicare.<sup>4242</sup>

Conveying the President’s fiscal year 2023 budget request to Congress, the Director of the Office of Management and Budget explained the continuing effect of this section:

*Balanced Budget and Emergency Deficit Control Act (BBEDCA) Section 251A Reductions*

The failure of the Joint Select Committee on Deficit Reduction to propose, and the Congress to enact, legislation to reduce the deficit by at least \$1.5 trillion triggered automatic reductions to discretionary and mandatory spending in fiscal years 2013 through 2021. The reductions were implemented through a combination of sequestration of mandatory spending and reductions in the discretionary caps, with some modifications as provided for in the American Taxpayer Relief Act of 2012, and the Bipartisan Budget Acts (BBAs) of 2013, 2015, 2018, and 2019. By amending section 251A of BBEDCA, the mandatory sequestration provisions were extended beyond 2021 through 2031. The 2023 Budget proposes to continue mandatory sequestration into 2032 to generate additional savings for deficit reduction.

Section 251A of BBEDCA generally requires that the percentage reductions calculated in 2021 for non-exempt mandatory defense and non-defense spending be applied each year through 2031. Those reductions are 5.7 percent for non-defense accounts, 8.3 percent for defense accounts, and

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<sup>4242</sup> GRANT A. DRIESSEN, CONG. RSCH. SERV., [IF10657, BUDGETARY EFFECTS OF THE BCA AS AMENDED: THE “PARITY PRINCIPLE”](#) (2018).

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2 percent for Medicare and community and migrant health centers. Because the percentage reduction is known in advance, the 2023 Budget presents these reductions at the account level. Prior to 2022, the Budget reflected sequestration reductions starting in the budget year in a central allowance account.<sup>4243</sup>

In a footnote, the Director recounted the history of the treatment of Medicare under this section:

The 251A sequestration for Medicare programs was suspended between May 1, 2020 and December 31, 2020 by the CARES Act. This suspension was extended to March 31, 2021 by Public Law 116-260, the Consolidated Appropriations Act, 2021, further extended to December 31, 2021 by Public Law 117-7, and extended again to March 31, 2022 by Public Law 117-71, the Protecting Medicare and American Farmers from Sequester Cuts Act, which also decreased the sequestration percentage for Medicare for the period from April 1, 2022 through June 30, 2022 to 1 percent and increased the sequestration percentage for Medicare to 2.25 percent for the first half of fiscal year 2030 and 3 percent for the second half of fiscal year 2030. Additionally, Public Law 117-58 modified the sequestration percentage for Medicare to 4 percent for the first half of fiscal year 2031 and 0 percent for the second half of fiscal year 2031.<sup>4244</sup>

The Director further noted: “Sequestration was most recently extended through 2031 by Public Law 117-58, the Infrastructure Investment and Jobs Act.”<sup>4245</sup>

Thus, pursuant to this section, on March 28, 2022, President Biden issued the following order:

SEQUESTRATION ORDER FOR FISCAL YEAR 2023 PURSUANT TO  
SECTION 251A OF THE BALANCED BUDGET AND EMERGENCY  
DEFICIT CONTROL ACT, AS AMENDED

By the authority vested in me as President by the laws of the United States of America, and in accordance with section 251A of the Balanced Budget and Emergency Deficit Control Act (the “Act”), as amended, 2 U.S.C. 901a, I hereby order that, on October 1, 2022, direct spending budgetary resources for fiscal year 2023 in each non-exempt budget account be

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<sup>4243</sup> Letter from Shalanda D. Young to Bernie Sanders (Mar. 28, 2022) (conveying “Significant Presentation and Technical Changes in the Budget of the United States Government Fiscal Year 2023”) (footnotes omitted).

<sup>4244</sup> *Id.* n.3.

<sup>4245</sup> *Id.* n.2.

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reduced by the amount calculated by the Office of Management and Budget in its report to the Congress of March 28, 2022.

All sequestrations shall be made in strict accordance with the requirements of section 251A of the Act and the specifications of the Office of Management and Budget's report of March 28, 2022, prepared pursuant to section 251A(9) of the Act.

JOSEPH R. BIDEN JR. <sup>4246</sup>

The Protecting Medicare and American Farmers from Sequester Cuts Act provides:

**SEC. 2. ADJUSTMENTS TO MEDICARE SEQUESTRATION REDUCTIONS.**

(a) EXTENSION OF TEMPORARY SUSPENSION THROUGH MARCH 2022. —

(1) IN GENERAL. — Section 3709(a) of division A of the CARES Act (2 U.S.C. 901a note) is amended —

(A) in the subsection header by inserting “AND ADJUSTMENT” after “SUSPENSION”; and

(B) by striking “December 31, 2021” and inserting “March 31, 2022”.

(2) EFFECTIVE DATE. — The amendments made by paragraph (1) shall take effect as if enacted as part of the CARES Act (Public Law 116-136).

(b) ADJUSTMENTS TO MEDICARE PROGRAM SEQUESTRATION REDUCTION WITH RESPECT TO FISCAL YEARS 2022 AND 2030. — Section 251A(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901a(6)) is amended —

(1) by redesignating subparagraph (C) as subparagraph (E); and

(2) by inserting after subparagraph (B) the following new subparagraphs:

“(C) Notwithstanding the 2 percent limit specified in subparagraph (A) for payments for the Medicare programs specified in section 256(d), the sequestration order of the

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<sup>4246</sup> [Sequestration Order for Fiscal Year 2023 Pursuant to Section 251A of the Balanced Budget And Emergency Deficit Control Act, as Amended](#) (Mar. 28, 2022).

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President under such subparagraph for fiscal year 2022 shall be applied to such payments so that with respect to the period beginning on April 1, 2022, and ending on June 30, 2022, the payment reduction shall be 1.0 percent.

“(D) Notwithstanding the 2 percent limit specified in subparagraph (A) for payments for the Medicare programs specified in section 256(d), the sequestration order of the President under such subparagraph for fiscal year 2030 shall be applied to such payments so that —

“(i) with respect to the first 6 months in which such order is effective for such fiscal year, the payment reduction shall be 2.25 percent; and

“(ii) with respect to the second 6 months in which such order is so effective for such fiscal year, the payment reduction shall be 3 percent.”.<sup>4247</sup>

***Section 401(b)(3)(B)(i)(II) of the Budget Control Act of 2011*** — Section 401(b)(3)(B)(i) provides:

(i) IN GENERAL. — Not later than November 23, 2011, the joint committee shall vote on —

(I) a report that contains a detailed statement of the findings, conclusions, and recommendations of the joint committee and the estimate of the Congressional Budget Office required by paragraph (5)(D)(ii); and

(II) proposed legislative language to carry out such recommendations as described in subclause (I), which shall include a statement of the deficit reduction achieved by the legislation over the period of fiscal years 2012 to 2021.<sup>4248</sup>

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<sup>4247</sup> [Protecting Medicare and American Farmers from Sequester Cuts Act](#), Pub. L. No. 117-71, § 2, 135 Stat. 1506–07 (2021).

<sup>4248</sup> [Budget Control Act of 2011](#), Pub. L. No. 112-25, § 401(b)(3)(B)(i)(II), 125 Stat. 240, 260.



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252            **SEC. 252.**<sup>4249</sup> **ENFORCING PAY-AS-YOU-GO**

252(a)            (a) **PURPOSE.**— The purpose of **this section**<sup>4250</sup> is to assure that any legislation enacted before October 1, 2002, affecting **direct spending**<sup>4251</sup> or receipts that increases the **deficit**<sup>4252</sup> will trigger an offsetting **sequestration**.<sup>4253</sup>

252(b)            (b) **SEQUESTRATION.**<sup>4254</sup> —

252(b)(1)            (1) **TIMING.**— Not later than 15 calendar days after the date Congress adjourns to end a session and on the same day as a **sequestration**<sup>4255</sup> (if any) under **section 251**<sup>4256</sup> or **253**,<sup>4257</sup> there shall be a **sequestration**<sup>4258</sup> to offset the amount of any net **deficit**<sup>4259</sup> increase caused by all **direct spending**<sup>4260</sup> and receipts legislation enacted before October 1, 2002, as calculated under **paragraph (2)**.<sup>4261</sup>

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<sup>4249</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 252 is codified as amended at **2 U.S.C. § 902**.

<sup>4250</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252**, 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>4251</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4252</sup> **Congressional Budget Act of 1974 § 3(6)**, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4253</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4254</sup> *Id.*

<sup>4255</sup> *Id.*

<sup>4256</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251**, 2 U.S.C. § 901, *supra* p. 986, addresses “Enforcing Discretionary Spending Limits,” but the law sets no such limits beyond fiscal year 2021.

<sup>4257</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 253**, 2 U.S.C. § 903, *infra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the **Budget Enforcement Act of 1990**, Pub. L. No. 101-508, 104 Stat. 1388.

<sup>4258</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4259</sup> **Congressional Budget Act of 1974 § 3(6)**, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4260</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4261</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252(b)(2)**, 2 U.S.C. § 902(b)(2), *infra* p. 1041, addresses “Calculation of deficit increase.”



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- 252(b)(2)                    **(2) CALCULATION OF DEFICIT<sup>4262</sup> INCREASE. — OMB<sup>4263</sup> shall calculate the amount of deficit<sup>4264</sup> increase or decrease by adding —**
- 252(b)(2)(A)                **(A) all OMB<sup>4265</sup> estimates for the budget year<sup>4266</sup> of direct spending<sup>4267</sup> and receipts legislation transmitted under subsection (d);<sup>4268</sup>**
- 252(b)(2)(B)                **(B) the estimated amount of savings in direct spending<sup>4269</sup> programs applicable to the budget year<sup>4270</sup> resulting from the prior year’s sequestration<sup>4271</sup> under this section<sup>4272</sup> or section 253,<sup>4273</sup> if any, as published in OMB’s<sup>4274</sup> final sequestration<sup>4275</sup> report for that prior year; and**
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<sup>4262</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4263</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)*, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4264</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4265</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)*, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4266</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4267</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)*, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4268</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 252(d)*, 2 U.S.C. § 902(d), *infra* p. 1045, addresses “Estimates.”

<sup>4269</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)*, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4270</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4271</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4272</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 252*, 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>4273</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 253*, 2 U.S.C. § 903, *infra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the *Budget Enforcement Act of 1990*, Pub. L. No. 101-508, 104 Stat. 1388.

<sup>4274</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)*, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4275</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

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252(b)(2)(C) (C) any net **deficit**<sup>4276</sup> increase or decrease in the **current year**<sup>4277</sup> resulting from all **OMB**<sup>4278</sup> estimates for the **current year**<sup>4279</sup> of **direct spending**<sup>4280</sup> and receipts legislation transmitted under **subsection (d)**<sup>4281</sup> that were not reflected in the final **OMB**<sup>4282</sup> **sequestration**<sup>4283</sup> report for the **current year**.<sup>4284</sup>

252(c) (c) ELIMINATING A **DEFICIT**<sup>4285</sup> INCREASE. —

252(c)(1) (1) The amount required to be **sequestered**<sup>4286</sup> in a fiscal year under **subsection (b)**<sup>4287</sup> shall be obtained from **non-exempt**<sup>4288</sup> **direct spending**<sup>4289</sup> **accounts**<sup>4290</sup> from actions taken in the following order:

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<sup>4276</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4277</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)**, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4278</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4279</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)**, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4280</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4281</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252(d)**, 2 U.S.C. § 902(d), *infra* p. 1045, addresses “Estimates.”

<sup>4282</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4283</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4284</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)**, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4285</sup> **Congressional Budget Act of 1974 § 3(6)**, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4286</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4287</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252(b)**, 2 U.S.C. § 902(b), *supra* p. 1040, addresses “Sequestration.”

<sup>4288</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 255**, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4289</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4290</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

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- 252(c)(1)(A) (A) FIRST.—All reductions in automatic spending increases specified in [section 256\(a\)](#)<sup>4291</sup> shall be made.
- 252(c)(1)(B) (B) SECOND.—If additional reductions in [direct spending](#)<sup>4292</sup> [accounts](#)<sup>4293</sup> are required to be made, the maximum reductions permissible under [sections 256\(b\)](#)<sup>4294</sup> (guaranteed and direct student loans) and [256\(c\)](#)<sup>4295</sup> (foster care and adoption assistance) shall be made.
- 252(c)(1)(C) (C) THIRD.—
- 252(c)(1)(C)(i) (i) If additional reductions in [direct spending](#)<sup>4296</sup> [accounts](#)<sup>4297</sup> are required to be made, each remaining non-exempt<sup>4298</sup> [direct spending](#)<sup>4299</sup> [account](#)<sup>4300</sup> shall be reduced by the uniform percentage necessary to make the reductions in [direct spending](#)<sup>4301</sup> required by [subsection \(b\)](#);<sup>4302</sup> except that the medicare
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<sup>4291</sup> [Statutory Pay-As-You-Go Act of 2010](#), Pub. L. No. 111-139, § 10(a), 124 Stat. 8, 21, *infra* p. 1208, repealed [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(a\)](#), 2 U.S.C. § 906(a), *infra* p. 1088, which formerly addressed “Automatic Spending Increases.”

<sup>4292</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4293</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4294</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(b\)](#), 2 U.S.C. § 906(b), *infra* p. 1088, addresses “Student Loans.”

<sup>4295</sup> [Statutory Pay-As-You-Go Act of 2010](#), Pub. L. No. 111-139, § 10(c), 124 Stat. 8, 22, *infra* p. 1208, repealed [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(c\)](#), 2 U.S.C. § 906(c), *infra* p. 1089, which formerly addressed “Treatment of Foster Care and Adoption Assistance Programs.”

<sup>4296</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4297</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4298</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4299</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4300</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4301</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4302</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252\(b\)](#), 2 U.S.C. § 902(b), *supra* p. 1040, addresses “Sequestration.”

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programs specified in [section 256\(d\)](#)<sup>4303</sup> shall not be reduced by more than 4 percent and the uniform percentage applicable to all other [direct spending](#)<sup>4304</sup> programs under [this paragraph](#)<sup>4305</sup> shall be increased (if necessary) to a level sufficient to achieve the required reduction in [direct spending](#).<sup>4306</sup>

252(c)(1)(C)(ii)

(ii) For purposes of determining reductions under [clause \(i\)](#),<sup>4307</sup> [outlay](#)<sup>4308</sup> reductions (as a result of [sequestration](#)<sup>4309</sup> of Commodity Credit Corporation commodity price support contracts in the fiscal year of a [sequestration](#)<sup>4310</sup>) that would occur in the following fiscal year shall be credited as [outlay](#)<sup>4311</sup> reductions in the fiscal year of the [sequestration](#).<sup>4312</sup>

252(c)(2)

(2) For purposes of [this subsection](#),<sup>4313</sup> [accounts](#)<sup>4314</sup> shall be assumed to be at the level in the [baseline](#).<sup>4315</sup>

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<sup>4303</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(d\)](#), 2 U.S.C. § 906(d), *infra* p. 1089, addresses “Special Rules for Medicare Program.”

<sup>4304</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4305</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252\(c\)\(1\)](#), 2 U.S.C. § 902(c)(1), *supra* p. 1042, addresses “The amount required to be sequestered.”

<sup>4306</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4307</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252\(c\)\(1\)\(C\)\(i\)](#), 2 U.S.C. § 902(c)(1)(C)(i), *supra* p. 1043.

<sup>4308</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4309</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4310</sup> *Id.*

<sup>4311</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4312</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4313</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252\(c\)](#), 2 U.S.C. § 902(c), *supra* p. 1042, addresses “Eliminating a Deficit Increase.”

<sup>4314</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4315</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(5\)](#), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to [Balanced Budget and Emergency Deficit Control Act of 1985 § 257](#), 2 U.S.C. § 907, *infra* p. 980.

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252(d) (d) ESTIMATES. —

252(d)(1) (1)<sup>4316</sup> CBO<sup>4317</sup> ESTIMATES.—As soon as practicable after Congress completes action on any direct spending<sup>4318</sup> or receipts legislation, CBO<sup>4319</sup> shall provide an estimate to OMB<sup>4320</sup> of that legislation.

252(d)(2) (2) OMB<sup>4321</sup> ESTIMATES.—Not later than 7 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of enactment of any direct spending<sup>4322</sup> or receipts legislation, OMB<sup>4323</sup> shall transmit a report to the House of Representatives and to the Senate containing—

252(d)(2)(A) (A)<sup>4324</sup> the CBO<sup>4325</sup> estimate of that legislation;<sup>4326</sup>

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<sup>4316</sup> Budget Control Act of 2011, Pub. L. No. 112-25, § 104(b), 125 Stat. 240, 246, renders this paragraph inoperative, providing: “Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not apply to the Congressional Budget Office.”

<sup>4317</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4318</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4319</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4320</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4321</sup> *Id.*

<sup>4322</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4323</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4324</sup> Budget Control Act of 2011, Pub. L. No. 112-25, § 104(b), 125 Stat. 240, 246, can render this subparagraph impossible to execute by negating the Congressional Budget Office’s duty under Balanced Budget and Emergency Deficit Control Act section 252(d)(1) to issue such estimates, providing: “Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not apply to the Congressional Budget Office.”

<sup>4325</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4326</sup> Budget Control Act of 2011, Pub. L. No. 112-25, § 104(b), 125 Stat. 240, 246, can render this subparagraph impossible to execute by negating the Congressional Budget Office’s duty under Balanced Budget and Emergency Deficit Control Act section 252(d)(1) to issue such estimates, providing: “Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not apply to the Congressional Budget Office.”

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- 252(d)(2)(B) (B) an **OMB**<sup>4327</sup> estimate of that legislation using **current**<sup>4328</sup> economic and technical assumptions; and
- 252(d)(2)(C) (C)<sup>4329</sup> an explanation of any difference between the 2 estimates.
- 252(d)(3) (3) SIGNIFICANT DIFFERENCES.—If during the preparation of the report under **paragraph (2)**<sup>4330</sup> **OMB**<sup>4331</sup> determines that there is a significant difference between the **OMB**<sup>4332</sup> and **CBO**<sup>4333</sup> estimates, **OMB**<sup>4334</sup> shall consult with the Committees on the Budget of the House of Representatives and the Senate regarding that difference and that consultation, to the extent practicable, shall include written communication to such committees that affords such committees the opportunity to comment before the issuance of that report.
- 252(d)(4) (4) SCOPE OF ESTIMATES.—The estimates under **this section**<sup>4335</sup> shall include the amount of change in **outlays**<sup>4336</sup> or receipts for the **current year**<sup>4337</sup> (if
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<sup>4327</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4328</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(9\)](#), 2 U.S.C. § 900(c)(9), *supra* p. 981, defines “current.”

<sup>4329</sup> [Budget Control Act of 2011](#), Pub. L. No. 112-25, § 104(b), 125 Stat. 240, 246, can render this subparagraph impossible to execute by negating the Congressional Budget Office’s duty under [Balanced Budget and Emergency Deficit Control Act section 252\(d\)\(1\)](#) to issue such estimates, providing: “Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the [Balanced Budget and Emergency Deficit Control Act of 1985](#) shall not apply to the Congressional Budget Office.”

<sup>4330</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252\(d\)\(2\)](#), 2 U.S.C. § 902(d)(2), *supra* p. 1045, addresses “OMB estimates.”

<sup>4331</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4332</sup> *Id.*

<sup>4333</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(16\)](#), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4334</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4335</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252](#), 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>4336</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4337</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(13\)](#), 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”



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applicable), the **budget year**,<sup>4338</sup> and each **outyear**<sup>4339</sup> excluding any amounts resulting from —

252(d)(4)(A) (A) full funding of, and continuation of, the **deposit insurance**<sup>4340</sup> guarantee commitment in effect under **current**<sup>4341</sup> estimates; and

252(d)(4)(B) (B) **emergency**<sup>4342</sup> provisions as designated under **subsection (e)**.<sup>4343</sup>

252(d)(5) (5) SCOREKEEPING GUIDELINES.—**OMB**<sup>4344</sup> and **CBO**,<sup>4345</sup> after consultation with each other and the Committees on the Budget of the House of Representatives and the Senate, shall —

252(d)(5)(A) (A) determine common scorekeeping guidelines; and

252(d)(5)(B) (B) in conformance with such guidelines, prepare estimates under **this section**.<sup>4346</sup>

252(e) (e) **EMERGENCY**<sup>4347</sup> LEGISLATION.—If a provision of **direct spending**<sup>4348</sup> or receipts legislation is enacted that

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<sup>4338</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4339</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(14\)](#), 2 U.S.C. § 900(c)(14), *supra* p. 982, defines “outyear.”

<sup>4340</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(18\)](#), 2 U.S.C. § 900(c)(18), *supra* p. 983, defines “deposit insurance.”

<sup>4341</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(9\)](#), 2 U.S.C. § 900(c)(9), *supra* p. 981, defines “current.”

<sup>4342</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.”

<sup>4343</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252\(e\)](#), 2 U.S.C. § 902(e), *infra* p. 1047, addresses “Emergency Legislation.”

<sup>4344</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4345</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(16\)](#), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4346</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252](#), 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>4347</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.”

<sup>4348</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

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the President designates as an **emergency**<sup>4349</sup> requirement and that the Congress so designates in statute, the amounts of **new budget authority**,<sup>4350</sup> **outlays**,<sup>4351</sup> and receipts in all fiscal years resulting from that provision shall be designated as an **emergency**<sup>4352</sup> requirement in the reports required under **subsection (d)**.<sup>4353</sup> **This subsection**<sup>4354</sup> shall not apply to **direct spending**<sup>4355</sup> provisions to cover agricultural crop disaster assistance.

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<sup>4349</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.”

<sup>4350</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4351</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4352</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.”

<sup>4353</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252(d)**, 2 U.S.C. § 902(d), *supra* p. 1045, addresses “Estimates.”

<sup>4354</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252(e)**, 2 U.S.C. § 902(e), *supra* p. 1047, addresses “Emergency Legislation.”

<sup>4355</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”



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253            SEC. 253.<sup>4356</sup> ENFORCING DEFICIT<sup>4357</sup> TARGETS

253(a)            (a) SEQUESTRATION.<sup>4358</sup>—Within 15 calendar days after Congress adjourns to end a session (other than of the One Hundred First Congress) and on the same day as a sequestration<sup>4359</sup> (if any) under section 251<sup>4360</sup> and section 252,<sup>4361</sup> but after any sequestration<sup>4362</sup> required by section 251<sup>4363</sup> (enforcing discretionary spending limits<sup>4364</sup>) or section 252<sup>4365</sup> (enforcing pay-as-you-go), there shall be a sequestration<sup>4366</sup> to eliminate the excess deficit<sup>4367</sup> (if any remains) if it exceeds the margin.

253(b)            (b) EXCESS DEFICIT;<sup>4368</sup> MARGIN.—The excess deficit<sup>4369</sup> is, if greater than zero, the estimated deficit<sup>4370</sup> for the budget year,<sup>4371</sup> minus—

253(b)(1)            (1) the maximum deficit<sup>4372</sup> amount for that year;

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<sup>4356</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253 is codified as amended at 2 U.S.C. § 903.

<sup>4357</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4358</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4359</sup> *Id.*

<sup>4360</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 251*, 2 U.S.C. § 901, *supra* p. 986, addresses “Enforcing Discretionary Spending Limits,” but the law sets no such limits beyond fiscal year 2021.

<sup>4361</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 252*, 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>4362</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4363</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 251*, 2 U.S.C. § 901, *supra* p. 986, addresses “Enforcing Discretionary Spending Limits,” but the law sets no such limits beyond fiscal year 2021.

<sup>4364</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing *Balanced Budget and Emergency Deficit Control Act of 1985 § 251*, 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4365</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 252*, 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>4366</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4367</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4368</sup> *Id.*

<sup>4369</sup> *Id.*

<sup>4370</sup> *Id.*

<sup>4371</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4372</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

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253(b)(2) (2) the amounts for that year designated as **emergency**<sup>4373</sup> **direct spending**<sup>4374</sup> or receipts legislation under **section 252(e)**;<sup>4375</sup> and

253(b)(3) (3) for any fiscal year in which there is not a full adjustment for technical and economic reestimates, the **deposit insurance**<sup>4376</sup> reestimate for that year, if any, calculated under **subsection (h)**.<sup>4377</sup>

The “margin” for fiscal year 1992 or 1993 is zero and for fiscal year 1994 or 1995 is \$15,000,000,000.

253(c) (c) DIVIDING SEQUESTRATION.<sup>4378</sup>—To eliminate the excess **deficit**<sup>4379</sup> in a **budget year**,<sup>4380</sup> half of the required **outlay**<sup>4381</sup> reductions shall be obtained from non-exempt<sup>4382</sup> defense **accounts**<sup>4383</sup> (**accounts**<sup>4384</sup> designated as function 050 in the President’s fiscal year 1991 budget submission) and half from non-exempt,<sup>4385</sup> non-defense **accounts**<sup>4386</sup> (all other non-exempt<sup>4387</sup> **accounts**<sup>4388</sup>).

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<sup>4373</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)*, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.”

<sup>4374</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)*, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4375</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 252(e)*, 2 U.S.C. § 902(e), *supra* p. 1047, addresses “Emergency Legislation.”

<sup>4376</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(18)*, 2 U.S.C. § 900(c)(18), *supra* p. 983, defines “deposit insurance.”

<sup>4377</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 253(h)*, 2 U.S.C. § 903(h), *infra* p. 1059, addresses “Treatment of Deposit Insurance.”

<sup>4378</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4379</sup> *Congressional Budget Act of 1974 § 3(6)*, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4380</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4381</sup> *Congressional Budget Act of 1974 § 3(1)*, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4382</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255*, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4383</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4384</sup> *Id.*

<sup>4385</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255*, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4386</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4387</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255*, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4388</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

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- 253(d) (d) DEFENSE.—Each non-exempt<sup>4389</sup> defense account<sup>4390</sup> shall be reduced by a dollar amount calculated by multiplying the level of sequesterable<sup>4391</sup> budgetary resources<sup>4392</sup> in that account<sup>4393</sup> at that time by the uniform percentage necessary to carry out subsection (c),<sup>4394</sup> except that, if any military personnel are exempt,<sup>4395</sup> adjustments shall be made under the procedure set forth in section 251(a)(3).<sup>4396</sup>
- 253(e) (e) NON-DEFENSE.—Actions to reduce non-defense accounts<sup>4397</sup> shall be taken in the following order:
- 253(e)(1) (1) FIRST.—All reductions in automatic spending increases under section 256(a)<sup>4398</sup> shall be made.
- 253(e)(2) (2) SECOND.—If additional reductions in non-defense accounts<sup>4399</sup> are required to be made, the maximum reduction permissible under sections 256(b)<sup>4400</sup> (guaranteed student loans) and 256(c)<sup>4401</sup> (foster care and adoption assistance) shall be made.
- 253(e)(3) (3) THIRD.—

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<sup>4389</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4390</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4391</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4392</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>4393</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4394</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253(c), 2 U.S.C. § 903(c), *supra* p. 1050, addresses “Dividing Sequestration.”

<sup>4395</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4396</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(a)(3), 2 U.S.C. § 901(a)(3), *supra* p. 987, addresses “Military personnel.”

<sup>4397</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4398</sup> Statutory Pay-As-You-Go Act of 2010, Pub. L. No. 111-139, § 10(a), 124 Stat. 8, 21, *infra* p. 1208, repealed Balanced Budget and Emergency Deficit Control Act of 1985 § 256(a), 2 U.S.C. § 906(a), *infra* p. 1088, which formerly addressed “Automatic Spending Increases.”

<sup>4399</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4400</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 256(b), 2 U.S.C. § 906(b), *infra* p. 1088, addresses “Student Loans.”

<sup>4401</sup> Statutory Pay-As-You-Go Act of 2010, Pub. L. No. 111-139, § 10(c), 124 Stat. 8, 22, *infra* p. 1208, repealed Balanced Budget and Emergency Deficit Control Act of 1985 § 256(c), 2 U.S.C. § 906(c), *infra* p. 1089, which formerly addressed “Treatment of Foster Care and Adoption Assistance Programs.”

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- 253(e)(3)(A) (A) If additional reductions in non-defense [accounts](#)<sup>4402</sup> are required to be made, each remaining non-exempt,<sup>4403</sup> non-defense [account](#)<sup>4404</sup> shall be reduced by the uniform percentage necessary to make the reductions in non-defense [outlays](#)<sup>4405</sup> required by [subsection \(c\)](#),<sup>4406</sup> except that –
- 253(e)(3)(A)(i) (i) the medicare program specified in [section 256\(d\)](#)<sup>4407</sup> shall not be reduced by more than 2 percent in total including any reduction of less than 2 percent made under [section 252](#)<sup>4408</sup> or, if it has been reduced by 2 percent or more under [section 252](#),<sup>4409</sup> it may not be further reduced under [this section](#),<sup>4410</sup> and
- 253(e)(3)(A)(ii) (ii) the health programs set forth in [section 256\(e\)](#)<sup>4411</sup> shall not be reduced by more than 2 percent in total (including any reduction made under [section 251](#)<sup>4412</sup>),
- and the uniform percent applicable to all other programs under [this subsection](#)<sup>4413</sup> shall be increased (if necessary) to a level sufficient to achieve the required reduction in non-defense [outlays](#).<sup>4414</sup>
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<sup>4402</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4403</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4404</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4405</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4406</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253\(c\)](#), 2 U.S.C. § 903(c), *supra* p. 1050, addresses “Dividing Sequestration.”

<sup>4407</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(d\)](#), 2 U.S.C. § 906(d), *infra* p. 1089, addresses “Special Rules for Medicare Program.”

<sup>4408</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252](#), 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>4409</sup> *Id.*

<sup>4410</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253](#), 2 U.S.C. § 903, *supra* p. 1049, addresses “Enforcing Deficit Targets.”

<sup>4411</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(e\)](#), 2 U.S.C. § 906(e), *infra* p. 1094, addresses “Community and Migrant Health Centers, Indian Health Services and Facilities, and Veterans’ Medical Care.”

<sup>4412</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *supra* p. 986, addresses “Enforcing Discretionary Spending Limits,” but the law sets no such limits beyond fiscal year 2021.

<sup>4413</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253\(e\)](#), 2 U.S.C. § 903(e), *supra* p. 1051, addresses “Non-Defense.”

<sup>4414</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

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253(e)(3)(B) (B) For purposes of determining reductions under subparagraph (A),<sup>4415</sup> outlay<sup>4416</sup> reduction (as a result of sequestration<sup>4417</sup> of Commodity Credit Corporation commodity price support contracts in the fiscal year of a sequestration<sup>4418</sup>) that would occur in the following fiscal year shall be credited as outlay<sup>4419</sup> reductions in the fiscal year of the sequestration.<sup>4420</sup>

253(f) (f) **BASILINE**<sup>4421</sup> ASSUMPTIONS; PART-YEAR APPROPRIATIONS. —

253(f)(1) (1) **BUDGET ASSUMPTIONS.**—For purposes of subsections (b),<sup>4422</sup> (c),<sup>4423</sup> (d),<sup>4424</sup> and (e),<sup>4425</sup> accounts<sup>4426</sup> shall be assumed to be at the level in the baseline<sup>4427</sup> minus any reductions required to be made under sections 251<sup>4428</sup> and 252.<sup>4429</sup>

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<sup>4415</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253(e)(3)(A), 2 U.S.C. § 903(e)(3)(A), *supra* p. 1052.

<sup>4416</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4417</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4418</sup> *Id.*

<sup>4419</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4420</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4421</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5)*, 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to *Balanced Budget and Emergency Deficit Control Act of 1985 § 257*, 2 U.S.C. § 907, *infra* p. 980.

<sup>4422</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 253(b)*, 2 U.S.C. § 903(b), *supra* p. 1049, addresses “Excess Deficit; Margin.”

<sup>4423</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 253(c)*, 2 U.S.C. § 903(c), *supra* p. 1050, addresses “Dividing Sequestration.”

<sup>4424</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 253(d)*, 2 U.S.C. § 903(d), *supra* p. 1051, addresses “Defense.”

<sup>4425</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 253(e)*, 2 U.S.C. § 903(e), *supra* p. 1051, addresses “Non-Defense.”

<sup>4426</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4427</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5)*, 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to *Balanced Budget and Emergency Deficit Control Act of 1985 § 257*, 2 U.S.C. § 907, *infra* p. 980.

<sup>4428</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 251*, 2 U.S.C. § 901, *supra* p. 986, addresses “Enforcing Discretionary Spending Limits,” but the law sets no such limits beyond fiscal year 2021.

<sup>4429</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 252*, 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

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- 253(f)(2) (2) PART-YEAR APPROPRIATIONS.—If, on the date specified in subsection (a),<sup>4430</sup> there is in effect an Act making or continuing appropriations for part of a fiscal year for any non-exempt<sup>4431</sup> budget account,<sup>4432</sup> then the dollar sequestration<sup>4433</sup> calculated for that account<sup>4434</sup> under subsection (d)<sup>4435</sup> or (e),<sup>4436</sup> as applicable, shall be subtracted from —
- 253(f)(2)(A) (A) the annualized amount otherwise available by law in that account<sup>4437</sup> under that or a subsequent part-year appropriation; and
- 253(f)(2)(B) (B) when a full-year appropriation for that account<sup>4438</sup> is enacted, from the amount otherwise provided by the full-year appropriation; except that the amount to be sequestered<sup>4439</sup> from that account<sup>4440</sup> shall be reduced (but not below zero) by the savings achieved by that appropriation when the enacted amount is less than the baseline<sup>4441</sup> for that account.<sup>4442</sup>
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<sup>4430</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253(a), 2 U.S.C. § 903(a), *supra* p. 1049, addresses “Sequestration.”

<sup>4431</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4432</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4433</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4434</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4435</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253(d), 2 U.S.C. § 903(d), *supra* p. 1051, addresses “Defense.”

<sup>4436</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253(e), 2 U.S.C. § 903(e), *supra* p. 1051, addresses “Non-Defense.”

<sup>4437</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4438</sup> *Id.*

<sup>4439</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4440</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4441</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907, *infra* p. 980.

<sup>4442</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”



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253(g) (g) ADJUSTMENTS TO MAXIMUM DEFICIT<sup>4443</sup> AMOUNTS. —

253(g)(1) (1) ADJUSTMENTS. —

253(g)(1)(A) (A) When the President submits the budget for fiscal year 1992, the maximum deficit<sup>4444</sup> amounts for fiscal years 1992, 1993, 1994, and 1995 shall be adjusted to reflect up-to-date reestimates of economic and technical assumptions and any changes in concepts or definitions. When the President submits the budget for fiscal year 1993, the maximum deficit<sup>4445</sup> amounts for fiscal years 1993, 1994, and 1995 shall be further adjusted to reflect up-to-date reestimates of economic and technical assumptions and any changes in concepts or definitions.

253(g)(1)(B) (B) When submitting the budget for fiscal year 1994, the President may choose to adjust the maximum deficit<sup>4446</sup> amounts for fiscal years 1994 and 1995 to reflect up-to-date reestimates of economic and technical assumptions. If the President chooses to adjust the maximum deficit<sup>4447</sup> amount when submitting the fiscal year 1994 budget, the President may choose to invoke the same adjustment procedure when submitting the budget for fiscal year 1995. In each case, the President must choose between making no adjustment or the full adjustment described in paragraph (2).<sup>4448</sup> If the President chooses to make that full adjustment, then those procedures for adjusting discretionary spending limits<sup>4449</sup> described in sections 251(b)(1)(C)<sup>4450</sup> and 251(b)(2)(E),<sup>4451</sup> otherwise applicable through fiscal year 1993 or 1994 (as the case may

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<sup>4443</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4444</sup> *Id.*

<sup>4445</sup> *Id.*

<sup>4446</sup> *Id.*

<sup>4447</sup> *Id.*

<sup>4448</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 253(g)(2)*, 2 U.S.C. § 903(g)(2), *infra* p. 1057, addresses “Calculations of adjustments.”

<sup>4449</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing *Balanced Budget and Emergency Deficit Control Act of 1985 § 251*, 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4450</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(1)*, 2 U.S.C. § 901(b)(1), *supra* p. 992, addresses adjustments for “Concepts and definitions.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(1)(C)*, which formerly addressed “Credit reestimates,” no longer exists.

<sup>4451</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(E)*, 2 U.S.C. § 901(b)(2)(E), *supra* p. 1002, addresses “Reemployment services and eligibility assessments.”

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be), shall be deemed to apply for fiscal year 1994 (and 1995 if applicable).

253(g)(1)(C)

(C) When the budget for fiscal year 1994 or 1995 is submitted and the **sequestration**<sup>4452</sup> reports for those years under **section 254**<sup>4453</sup> are made (as applicable), if the President does not choose to make the adjustments set forth in **subparagraph (B)**,<sup>4454</sup> the maximum **deficit**<sup>4455</sup> amount for that fiscal year shall be adjusted by the amount of the adjustment to **discretionary spending limits**<sup>4456</sup> first applicable for that year (if any) under **section 251(b)**.<sup>4457</sup>

253(g)(1)(D)

(D) For each fiscal year the adjustments required to be made with the submission of the President's budget for that year shall also be made when **OMB**<sup>4458</sup> submits the **sequestration**<sup>4459</sup> update report and the final **sequestration**<sup>4460</sup> report for that year, but **OMB**<sup>4461</sup> shall continue to use the economic and technical assumptions in the President's budget for that year.

Each adjustment shall be made by increasing or decreasing the maximum **deficit**<sup>4462</sup> amounts set forth in section 601 of the Congressional Budget Act of 1974.<sup>4463</sup>

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<sup>4452</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines "sequestration."

<sup>4453</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254**, 2 U.S.C. § 904, *infra* p. 1060, addresses "Reports and Orders."

<sup>4454</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 253(g)(1)(B)**, 2 U.S.C. § 903(g)(1)(B), *supra* p. 1055.

<sup>4455</sup> **Congressional Budget Act of 1974 § 3(6)**, 2 U.S.C. § 622(6), *supra* p. 58, defines "deficit." **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4456</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing **Balanced Budget and Emergency Deficit Control Act of 1985 § 251**, 2 U.S.C. § 901, *supra* p. 986), defines "discretionary spending limit."

<sup>4457</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)**, 2 U.S.C. § 901(b), *supra* p. 992, addresses "Adjustments to Discretionary Spending Limits."

<sup>4458</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines "OMB."

<sup>4459</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines "sequestration."

<sup>4460</sup> *Id.*

<sup>4461</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines "OMB."

<sup>4462</sup> **Congressional Budget Act of 1974 § 3(6)**, 2 U.S.C. § 622(6), *supra* p. 58, defines "deficit." **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4463</sup> **Balanced Budget Act of 1997**, Pub. L. No. 105-33, § 10118(a), 111 Stat. 251, 695, repealed Congressional Budget Act of 1974 § 601, which formerly addressed maximum deficit amounts.



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253(g)(2) (2) CALCULATIONS OF ADJUSTMENTS.—The required increase or decrease shall be calculated as follows:

253(g)(2)(A) (A) The [baseline](#)<sup>4464</sup> [deficit](#)<sup>4465</sup> or [surplus](#)<sup>4466</sup> shall be calculated using up-to-date economic and technical assumptions, using up-to-date concepts and definitions, and, in lieu of the [baseline](#)<sup>4467</sup> levels of [discretionary appropriations](#),<sup>4468</sup> using the [discretionary spending limits](#)<sup>4469</sup> set forth in section 601 of the Congressional Budget Act of 1974<sup>4470</sup> as adjusted under [section 251](#).<sup>4471</sup>

253(g)(2)(B) (B) The net [deficit](#)<sup>4472</sup> increase or decrease caused by all [direct spending](#)<sup>4473</sup> and receipts legislation enacted after November 5, 1990 (after adjusting for any [sequestration](#)<sup>4474</sup> of [direct spending](#)<sup>4475</sup> [accounts](#)<sup>4476</sup>) shall be calculated for each fiscal year by adding—

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<sup>4464</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(5\)](#), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to [Balanced Budget and Emergency Deficit Control Act of 1985 § 257](#), 2 U.S.C. § 907, *infra* p. 980.

<sup>4465</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4466</sup> [Congressional Budget Act of 1974 § 3\(7\)](#), 2 U.S.C. § 622(7), *supra* p. 58, defines “surplus.”

<sup>4467</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(5\)](#), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to [Balanced Budget and Emergency Deficit Control Act of 1985 § 257](#), 2 U.S.C. § 907, *infra* p. 980.

<sup>4468</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(7\)](#), 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>4469</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4470</sup> [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10118(a), 111 Stat. 251, 695, repealed Congressional Budget Act of 1974 § 601, which formerly addressed maximum deficit amounts.

<sup>4471</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *supra* p. 986, addresses “Enforcing Discretionary Spending Limits,” but the law sets no such limits beyond fiscal year 2021.

<sup>4472</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4473</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4474</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4475</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4476</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

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- 253(g)(2)(B)(i) (i) the estimates of **direct spending**<sup>4477</sup> and receipts legislation transmitted under **section 252(d)**<sup>4478</sup> applicable to each such fiscal year; and
- 253(g)(2)(B)(ii) (ii) the estimated amount of savings in **direct spending**<sup>4479</sup> programs applicable to each such fiscal year resulting from the prior year's **sequestration**<sup>4480</sup> under **this section**<sup>4481</sup> or **section 252**<sup>4482</sup> of **direct spending**,<sup>4483</sup> if any, as contained in **OMB's**<sup>4484</sup> final **sequestration**<sup>4485</sup> report for that year.
- 253(g)(2)(C) (C) The amount calculated under **subparagraph (B)**<sup>4486</sup> shall be subtracted from the amount calculated under **subparagraph (A)**.<sup>4487</sup>
- 253(g)(2)(D) (D) The maximum **deficit**<sup>4488</sup> amount set forth in section 601 of the Congressional Budget Act of 1974<sup>4489</sup> shall be subtracted from the amount calculated under **subparagraph (C)**.<sup>4490</sup>
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<sup>4477</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines "direct spending."

<sup>4478</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252(d)**, 2 U.S.C. § 902(d), *supra* p. 1045, addresses "Estimates."

<sup>4479</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines "direct spending."

<sup>4480</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines "sequestration."

<sup>4481</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 253**, 2 U.S.C. § 903, *infra* p. 1049, addresses "Enforcing Deficit Targets," but such deficit targets have ceased to have any effect since enactment of the **Budget Enforcement Act of 1990**, Pub. L. No. 101-508, 104 Stat. 1388.

<sup>4482</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252**, 2 U.S.C. § 902, *supra* p. 1040, addresses "Enforcing Pay-As-You-Go."

<sup>4483</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines "direct spending."

<sup>4484</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines "OMB."

<sup>4485</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines "sequestration."

<sup>4486</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 253(g)(2)(B)**, 2 U.S.C. § 903(g)(2)(B), *supra* p. 1057.

<sup>4487</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 253(g)(2)(A)**, 2 U.S.C. § 903(g)(2)(A), *supra* p. 1057.

<sup>4488</sup> **Congressional Budget Act of 1974 § 3(6)**, 2 U.S.C. § 622(6), *supra* p. 58, defines "deficit." **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4489</sup> **Balanced Budget Act of 1997**, Pub. L. No. 105-33, § 10118(a), 111 Stat. 251, 695, repealed Congressional Budget Act of 1974 § 601, which formerly addressed maximum deficit amounts.

<sup>4490</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 253(g)(2)(C)**, 2 U.S.C. § 903(g)(2)(C), *supra* p. 1058.

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- 253(g)(2)(E) (E) The amount calculated under [subparagraph \(D\)](#)<sup>4491</sup> shall be the amount of the adjustment required by [paragraph \(1\)](#).<sup>4492</sup>
- 253(h) (h) TREATMENT OF [DEPOSIT INSURANCE](#).<sup>4493</sup> —
- 253(h)(1) (1) INITIAL ESTIMATES. — The initial estimates of the net costs of federal [deposit insurance](#)<sup>4494</sup> for fiscal year 1994 and fiscal year 1995 (assuming full funding of, and continuation of, the [deposit insurance](#)<sup>4495</sup> guarantee commitment in effect on the date of the submission of the budget for fiscal year 1993) shall be set forth in that budget.
- 253(h)(2) (2) REESTIMATES. — For fiscal year 1994 and fiscal year 1995, the amount of the reestimate of [deposit insurance](#)<sup>4496</sup> costs shall be calculated by subtracting the amount set forth under [paragraph \(1\)](#)<sup>4497</sup> for that year from the [current](#)<sup>4498</sup> estimate of [deposit insurance](#)<sup>4499</sup> costs (but assuming full funding of, and continuation of, the [deposit insurance](#)<sup>4500</sup> guarantee commitment in effect on the date of submission of the budget for fiscal year 1993).
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Balanced Budget and Emergency Deficit Control Act of 1985 section 253 addresses “Enforcing Deficit Targets,”<sup>4501</sup> but such deficit targets have ceased to have any effect since enactment of the [Budget Enforcement Act of 1990](#).<sup>4502</sup>

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<sup>4491</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253\(g\)\(2\)\(D\)](#), 2 U.S.C. § 903(g)(2)(D), *supra* p. 1058.

<sup>4492</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253\(g\)\(1\)](#), 2 U.S.C. § 903(g)(1), *supra* p. 1055, addresses “Adjustments.”

<sup>4493</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(18\)](#), 2 U.S.C. § 900(c)(18), *supra* p. 983, defines “deposit insurance.”

<sup>4494</sup> *Id.*

<sup>4495</sup> *Id.*

<sup>4496</sup> *Id.*

<sup>4497</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253\(h\)\(1\)](#), 2 U.S.C. § 903(h)(1), *supra* p. 1059, addresses “Initial estimates.”

<sup>4498</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(9\)](#), 2 U.S.C. § 900(c)(9), *supra* p. 981, defines “current.”

<sup>4499</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(18\)](#), 2 U.S.C. § 900(c)(18), *supra* p. 983, defines “deposit insurance.”

<sup>4500</sup> *Id.*

<sup>4501</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253](#), 2 U.S.C. § 903, *supra* p. 1049.

<sup>4502</sup> [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388.

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254

**SEC. 254.<sup>4503</sup> REPORTS AND ORDERS**

254(a)

**(a) TIMETABLE.** <sup>4504</sup>—The timetable with respect to **this part**<sup>4505</sup> for any **budget year**<sup>4506</sup> is as follows:

**Date:**

**Action to be completed:**

**January 21 ..... Notification regarding optional adjustment of maximum deficit**<sup>4507</sup> **amount.**

**5 days before the President’s budget submission ..... CBO**<sup>4508</sup> **sequestration**<sup>4509</sup> **preview report.**

**The President’s budget submission ..... OMB**<sup>4510</sup> **sequestration**<sup>4511</sup> **preview report.**

**August 10 ..... Notification regarding military personnel.**

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<sup>4503</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 254 is codified as amended at [2 U.S.C. § 904](#).

<sup>4504</sup> Note that this section layers these calendar items on top of those in [Congressional Budget Act of 1974 § 300](#), 2 U.S.C. § 631, *supra* p. 113.

<sup>4505</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4506</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4507</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4508</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(16\)](#), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4509</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4510</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4511</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

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August 15 ..... **CBO**<sup>4512</sup> **sequestration**<sup>4513</sup> **update**  
**report.**

August 20 ..... **OMB**<sup>4514</sup> **sequestration**<sup>4515</sup> **update**  
**report.**

10 days after end of  
session ..... **CBO**<sup>4516</sup> **final** **sequestration**<sup>4517</sup>  
**report.**

15 days after end of  
session ..... **OMB**<sup>4518</sup> **final** **sequestration**<sup>4519</sup>  
**report; Presidential order.**

254(b)           **(b) SUBMISSION AND AVAILABILITY OF REPORTS.**— Each  
report required by **this section**<sup>4520</sup> shall be submitted, in  
the case of **CBO**,<sup>4521</sup> to the House of Representatives, the  
Senate and **OMB**<sup>4522</sup> and, in the case of **OMB**,<sup>4523</sup> to the  
House of Representatives, the Senate, and the President  
on the day it is issued. On the following day a notice of the  
report shall be printed in the Federal Register.

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<sup>4512</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)**, 2 U.S.C. § 900(c)(16), *supra*  
p. 982, defines “CBO.”

<sup>4513</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra*  
p. 977, defines “sequestration.”

<sup>4514</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra*  
p. 982, defines “OMB.”

<sup>4515</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra*  
p. 977, defines “sequestration.”

<sup>4516</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)**, 2 U.S.C. § 900(c)(16), *supra*  
p. 982, defines “CBO.”

<sup>4517</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra*  
p. 977, defines “sequestration.”

<sup>4518</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra*  
p. 982, defines “OMB.”

<sup>4519</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra*  
p. 977, defines “sequestration.”

<sup>4520</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254**, 2 U.S.C. § 904, *supra* p. 1060,  
addresses “Reports and Orders.”

<sup>4521</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)**, 2 U.S.C. § 900(c)(16), *supra*  
p. 982, defines “CBO.”

<sup>4522</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra*  
p. 982, defines “OMB.”

<sup>4523</sup> *Id.*

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254(c) (c)<sup>4524</sup> **SEQUESTRATION**<sup>4525</sup> **PREVIEW REPORTS.**—

254(c)(1) (1) **REPORTING REQUIREMENT.**—On the dates specified in subsection (a),<sup>4526</sup> **OMB**<sup>4527</sup> and **CBO**<sup>4528</sup> shall issue a preview report regarding discretionary, pay-as-you-go, and **deficit**<sup>4529</sup> **sequestration**<sup>4530</sup> based on laws enacted through those dates.

254(c)(2) (2) **DISCRETIONARY SEQUESTRATION**<sup>4531</sup> **REPORT.**—The preview reports shall set forth estimates for the **current year**<sup>4532</sup> and each subsequent year through 2021 of the applicable **discretionary spending limits**<sup>4533</sup> for each **category**<sup>4534</sup> and an explanation of any adjustments in such limits under **section 251**.<sup>4535</sup>

254(c)(3) (3) **PAY-AS-YOU-GO SEQUESTRATION**<sup>4536</sup> **REPORTS.**—The preview reports shall set forth, for the **current**

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<sup>4524</sup> **Budget Control Act of 2011**, Pub. L. No. 112-25, § 104(b), 125 Stat. 240, 246, renders this subsection inapplicable to CBO, providing: “Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not apply to the Congressional Budget Office.”

<sup>4525</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4526</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254(a)**, 2 U.S.C. § 904(a), *supra* p. 1060, addresses “Timetable.”

<sup>4527</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4528</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)**, 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.” **Budget Control Act of 2011**, Pub. L. No. 112-25, § 104(b), 125 Stat. 240, 246, renders this reference to CBO inapplicable, providing: “Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not apply to the Congressional Budget Office.”

<sup>4529</sup> **Congressional Budget Act of 1974 § 3(6)**, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4530</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4531</sup> *Id.*

<sup>4532</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)**, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4533</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing **Balanced Budget and Emergency Deficit Control Act of 1985 § 251**, 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4534</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F)**, 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

<sup>4535</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251**, 2 U.S.C. § 901, *supra* p. 986, addresses “Enforcing Discretionary Spending Limits,” but the law sets no such limits beyond fiscal year 2021.

<sup>4536</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”



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**year**<sup>4537</sup> and the **budget year**,<sup>4538</sup> estimates for each of the following:

- 254(c)(3)(A)            (A) The amount of net **deficit**<sup>4539</sup> increase or decrease, if any, calculated under **section 252(b)**.<sup>4540</sup>
- 254(c)(3)(B)            (B) A list identifying each law enacted and **sequestration**<sup>4541</sup> implemented after November 5, 1990, included in the calculation of the amount of **deficit**<sup>4542</sup> increase or decrease and specifying the budgetary effect of each such law.
- 254(c)(3)(C)            (C) The **sequestration**<sup>4543</sup> percentage or (if the required **sequestration**<sup>4544</sup> percentage is greater than the maximum allowable percentage for medicare) percentages necessary to eliminate a **deficit**<sup>4545</sup> increase under **section 252(c)**.<sup>4546</sup>

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<sup>4537</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)**, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4538</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)**, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4539</sup> **Congressional Budget Act of 1974 § 3(6)**, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4540</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252(b)**, 2 U.S.C. § 902(b), *supra* p. 1040, addresses “Sequestration.”

<sup>4541</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4542</sup> **Congressional Budget Act of 1974 § 3(6)**, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4543</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4544</sup> *Id.*

<sup>4545</sup> **Congressional Budget Act of 1974 § 3(6)**, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4546</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252(c)**, 2 U.S.C. § 902(c), *supra* p. 1042, addresses “Eliminating a Deficit Increase.”

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254(c)(4) (4) **DEFICIT**<sup>4547</sup> **SEQUESTRATION**<sup>4548</sup> **REPORTS.**—The preview reports shall set forth for the **budget year**<sup>4549</sup> estimates for each of the following:

254(c)(4)(A) (A) The maximum **deficit**<sup>4550</sup> amount, the estimated **deficit**<sup>4551</sup> calculated under **section 253(b)**,<sup>4552</sup> the excess **deficit**,<sup>4553</sup> and the margin.

254(c)(4)(B) (B) The amount of reductions required under **section 252**,<sup>4554</sup> the excess **deficit**<sup>4555</sup> remaining after those reductions have been made, and the amount of reductions required from defense **accounts**<sup>4556</sup> and the reductions required from non-defense **accounts**.<sup>4557</sup>

254(c)(4)(C) (C) The **sequestration**<sup>4558</sup> percentage necessary to achieve the required reduction in defense **accounts**<sup>4559</sup> under **section 253(d)**.<sup>4560</sup>

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<sup>4547</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4548</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4549</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)**, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4550</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4551</sup> *Id.*

<sup>4552</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 253(b)**, 2 U.S.C. § 903(b), *supra* p. 1049, addresses “Excess Deficit; Margin.”

<sup>4553</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4554</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252**, 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>4555</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4556</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4557</sup> *Id.*

<sup>4558</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4559</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4560</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 253(d)**, 2 U.S.C. § 903(d), *supra* p. 1051, addresses “Defense.”



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254(c)(4)(D)                    **(D) The reductions required under sections 253(e)(1)<sup>4561</sup> and 253(e)(2).<sup>4562</sup>**

254(c)(4)(E)                    **(E) The sequestration<sup>4563</sup> percentage necessary to achieve the required reduction in non-defense accounts<sup>4564</sup> under section 253(e)(3).<sup>4565</sup>**

The CBO<sup>4566</sup> report need not set forth the items other than the maximum deficit<sup>4567</sup> amount for fiscal year 1992, 1993, or any fiscal year for which the President notifies the House of Representatives and the Senate that he will adjust the maximum deficit<sup>4568</sup> amount under the option under section 253(g)(1)(B).<sup>4569</sup>

254(c)(5)                    **(5) EXPLANATION OF DIFFERENCES.—The OMB<sup>4570</sup> reports shall explain the differences between OMB<sup>4571</sup> and CBO<sup>4572</sup> estimates for each item set forth in this subsection.<sup>4573</sup>**

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<sup>4561</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253(e)(1), 2 U.S.C. § 903(e)(1), *supra* p. 1051.

<sup>4562</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253(e)(2), 2 U.S.C. § 903(e)(2), *supra* p. 1051.

<sup>4563</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4564</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4565</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253(e)(3), 2 U.S.C. § 903(e)(3), *supra* p. 1051.

<sup>4566</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4567</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4568</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4569</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253(g)(1)(B), 2 U.S.C. § 903(g)(1)(B), *supra* p. 1055.

<sup>4570</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4571</sup> *Id.*

<sup>4572</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4573</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 254(c), 2 U.S.C. § 904(c), *supra* p. 1062, addresses “Sequestration Preview Reports.”

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- 254(d) (d) NOTIFICATION REGARDING MILITARY PERSONNEL. — On or before the date specified in subsection (a),<sup>4574</sup> the President shall notify the Congress of the manner in which he intends to exercise flexibility with respect to military personnel accounts<sup>4575</sup> under section 255(f).<sup>4576</sup>
- 254(e) (e) SEQUESTRATION<sup>4577</sup> UPDATE REPORTS. — On the dates specified in subsection (a),<sup>4578</sup> OMB<sup>4579</sup> and CBO<sup>4580</sup> shall issue a sequestration<sup>4581</sup> update report, reflecting laws enacted through those dates, containing all of the information required in the sequestration<sup>4582</sup> preview reports. This report shall also contain a preview estimate of the adjustment for disaster funding for the upcoming fiscal year.
- 254(f) (f)<sup>4583</sup> FINAL SEQUESTRATION<sup>4584</sup> REPORTS. —

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<sup>4574</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 254(a), 2 U.S.C. § 904(a), *supra* p. 1060, addresses “Timetable.”

<sup>4575</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4576</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255(f), 2 U.S.C. § 905(f), *infra* p. 1075, addresses “Optional Exemption of Military Personnel.”

<sup>4577</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4578</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 254(a), 2 U.S.C. § 904(a), *supra* p. 1060, addresses “Timetable.”

<sup>4579</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4580</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4581</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4582</sup> *Id.*

<sup>4583</sup> A 2012 House Budget Committee print argued: “The Congressional Budget Office is not required to prepare a report under this subsection pursuant to section 104(b) of the Budget Control Act of 2011.” STAFF OF H. COMM. ON THE BUDGET, 112TH CONG., *COMPILATION OF LAWS AND RULES RELATING TO THE CONGRESSIONAL BUDGET PROCESS AS AMENDED THROUGH AUGUST 3, 2012*, at 102 n.56 (Comm. Print 2012). *Budget Control Act of 2011*, Pub. L. No. 112-25, § 104(b), 125 Stat. 240, 246, provides: “Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not apply to the Congressional Budget Office.”

<sup>4584</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

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- 254(f)(1) (1) REPORTING REQUIREMENT.—On the dates specified in subsection (a),<sup>4585</sup> OMB<sup>4586</sup> and CBO<sup>4587</sup> shall issue a final sequestration<sup>4588</sup> report, updated to reflect laws enacted through those dates.
- 254(f)(2) (2) DISCRETIONARY SEQUESTRATION<sup>4589</sup> REPORTS.—The final reports shall set forth estimates for each of the following:
- 254(f)(2)(A) (A) For the current year<sup>4590</sup> and each subsequent year through 2021 the applicable discretionary spending limits<sup>4591</sup> for each category<sup>4592</sup> and an explanation of any adjustments in such limits under section 251,<sup>4593</sup> including a final estimate of the adjustment for disaster funding.
- 254(f)(2)(B) (B) For the current year<sup>4594</sup> and the budget year<sup>4595</sup> the estimated new budget authority<sup>4596</sup> and

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<sup>4585</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 254(a), 2 U.S.C. § 904(a), *supra* p. 1060, addresses “Timetable.”

<sup>4586</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4587</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4588</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4589</sup> *Id.*

<sup>4590</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13), 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4591</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing Balanced Budget and Emergency Deficit Control Act of 1985 § 251, 2 U.S.C. § 901, *supra* p. 986), defines “discretionary spending limit.”

<sup>4592</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F), 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

<sup>4593</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251, 2 U.S.C. § 901, *supra* p. 986, addresses “Enforcing Discretionary Spending Limits,” but the law sets no such limits beyond fiscal year 2021.

<sup>4594</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13), 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4595</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4596</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

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outlays<sup>4597</sup> for each category<sup>4598</sup> and the breach,<sup>4599</sup> if any, in each category.<sup>4600</sup>

254(f)(2)(C) (C) For each category<sup>4601</sup> for which a sequestration<sup>4602</sup> is required, the sequestration<sup>4603</sup> percentages necessary to achieve the required reduction.

254(f)(2)(D) (D) For the budget year,<sup>4604</sup> for each account<sup>4605</sup> to be sequestered,<sup>4606</sup> estimates of the baseline<sup>4607</sup> level of sequestrable<sup>4608</sup> budgetary resources<sup>4609</sup> and resulting outlays<sup>4610</sup> and the amount of budgetary

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<sup>4597</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4598</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F)*, 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

<sup>4599</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(3)*, 2 U.S.C. § 900(c)(3), *supra* p. 977, defines “breach.”

<sup>4600</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F)*, 2 U.S.C. § 900(c)(4)(F), *supra* p. 979, defines “category.”

<sup>4601</sup> *Id.*

<sup>4602</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4603</sup> *Id.*

<sup>4604</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4605</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4606</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4607</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5)*, 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to *Balanced Budget and Emergency Deficit Control Act of 1985 § 257*, 2 U.S.C. § 907, *infra* p. 980.

<sup>4608</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4609</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6)*, 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>4610</sup> *Congressional Budget Act of 1974 § 3(1)*, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

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resources<sup>4611</sup> to be sequestered<sup>4612</sup> and resulting outlay<sup>4613</sup> reductions.

254(f)(3) (3)<sup>4614</sup> PAY-AS-YOU-GO AND DEFICIT<sup>4615</sup> SEQUESTRATION<sup>4616</sup> REPORTS.—The final reports shall contain all the information required in the pay-as-you-go and deficit<sup>4617</sup> sequestration<sup>4618</sup> preview reports. In addition, these reports shall contain, for the budget year,<sup>4619</sup> for each account<sup>4620</sup> to be sequestered,<sup>4621</sup> estimates of the baseline<sup>4622</sup> level of sequestrable<sup>4623</sup> budgetary resources<sup>4624</sup> and resulting outlays<sup>4625</sup> and the amount of budgetary resources<sup>4626</sup> to be

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<sup>4611</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>4612</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4613</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4614</sup> Budget Control Act of 2011, Pub. L. No. 112-25, § 104(b), 125 Stat. 240, 246, renders this paragraph inapplicable to CBO, providing: “Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not apply to the Congressional Budget Office.”

<sup>4615</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4616</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4617</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4618</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4619</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4620</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4621</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4622</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907, *infra* p. 980.

<sup>4623</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4624</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>4625</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4626</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

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sequestered<sup>4627</sup> and resulting outlay<sup>4628</sup> reductions. The reports shall also contain estimates of the effects on outlays<sup>4629</sup> of the sequestration<sup>4630</sup> in each outyear<sup>4631</sup> for direct spending<sup>4632</sup> programs.

254(f)(4) (4) EXPLANATION OF DIFFERENCES.—The OMB<sup>4633</sup> report shall explain any differences between OMB<sup>4634</sup> and CBO<sup>4635</sup> estimates of the amount of any net deficit<sup>4636</sup> change calculated under section 252(b),<sup>4637</sup> any excess deficit,<sup>4638</sup> any breach,<sup>4639</sup> and any required sequestration<sup>4640</sup> percentage. The OMB<sup>4641</sup> report shall also explain differences in the amount of

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<sup>4627</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4628</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4629</sup> *Id.*

<sup>4630</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4631</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(14), 2 U.S.C. § 900(c)(14), *supra* p. 982, defines “outyear.”

<sup>4632</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4633</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4634</sup> *Id.*

<sup>4635</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4636</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4637</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 252(b), 2 U.S.C. § 902(b), *supra* p. 1040, addresses “Sequestration.”

<sup>4638</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4639</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(3), 2 U.S.C. § 900(c)(3), *supra* p. 977, defines “breach.”

<sup>4640</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4641</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”



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**sequesterable**<sup>4642</sup> resources for any budget **account**<sup>4643</sup> to be reduced if such difference is greater than \$5,000,000.

254(f)(5) **(5) PRESIDENTIAL ORDER.**—On the date specified in **subsection (a)**,<sup>4644</sup> if in its final **sequestration**<sup>4645</sup> report **OMB**<sup>4646</sup> estimates that any **sequestration**<sup>4647</sup> is required, the President shall issue an order fully implementing without change all **sequestrations**<sup>4648</sup> required by the **OMB**<sup>4649</sup> calculations set forth in that report. This order shall be effective on issuance.

254(g) **(g) WITHIN-SESSION SEQUESTRATION**<sup>4650</sup> **REPORTS AND ORDER.**—If an appropriation for a fiscal year in progress is enacted (after Congress adjourns to end the session for that **budget year**<sup>4651</sup> and before July 1 of that fiscal year) that causes a **breach**,<sup>4652</sup> 10 days later **CBO**<sup>4653</sup> shall issue a report containing the information required in **paragraph (f)(2)**.<sup>4654</sup> Fifteen days after enactment, **OMB**<sup>4655</sup> shall issue a report containing the information required in

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<sup>4642</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.” The House Office of the Law Revision Counsel, which maintains the U.S. Code, suggests that “sequesterable” here “[p]robably should be ‘sequestrable’.” 2 U.S.C. § 904 note.

<sup>4643</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4644</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 254(a)*, 2 U.S.C. § 904(a), *supra* p. 1060, addresses “Timetable.”

<sup>4645</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4646</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)*, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4647</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4648</sup> *Id.*

<sup>4649</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)*, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4650</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4651</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4652</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(3)*, 2 U.S.C. § 900(c)(3), *supra* p. 977, defines “breach.”

<sup>4653</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)*, 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4654</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 254(f)(2)*, 2 U.S.C. § 904(f)(2), *supra* p. 1067, addresses “Discretionary Sequestration Reports.”

<sup>4655</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)*, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

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paragraphs (f)(2) and (f)(4).<sup>4656</sup> On the same day as the OMB<sup>4657</sup> report, the President shall issue an order fully implementing without change all **sequestrations**<sup>4658</sup> required by the OMB<sup>4659</sup> calculations set forth in that report. This order shall be effective on issuance.

254(h) (h) GAO COMPLIANCE REPORT.—Upon request of the Committee on the Budget of the House of Representatives or the Senate, the **Comptroller General**<sup>4660</sup> shall submit to the Congress and the President a report on —

254(h)(1) (1) the extent to which each order issued by the President under **this section**<sup>4661</sup> complies with all of the requirements contained in **this part**,<sup>4662</sup> either certifying that the order fully and accurately complies with such requirements or indicating the respects in which it does not; and

254(h)(2) (2) the extent to which each report issued by OMB<sup>4663</sup> or CBO<sup>4664</sup> under **this section**<sup>4665</sup> complies with all of the requirements contained in **this part**,<sup>4666</sup> either

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<sup>4656</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254(f)(2)–(4)**, 2 U.S.C. § 904(f)(2)–(4), *supra* p. 1067, address “Discretionary sequestration reports,” “Pay-as-you-go and deficit sequestration reports,” and “Explanation of differences.”

<sup>4657</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4658</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4659</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4660</sup> **Impoundment Control Act of 1974 § 1011(2)**, 2 U.S.C. § 682(2), *supra* p. 924, defines “Comptroller General.”

<sup>4661</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254**, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4662</sup> **Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C**, 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4663</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4664</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)**, 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4665</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254**, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4666</sup> **Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C**, 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”



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certifying that the report fully and accurately complies with such requirements or indicating the respects in which it does not.

- 254(i) (i)<sup>4667</sup> **LOW-GROWTH REPORT.**— At any time, **CBO**<sup>4668</sup> shall notify the Congress if —
- 254(i)(1) (1) during the period consisting of the quarter during which such notification is given, the quarter preceding such notification, and the 4 quarters following such notification, **CBO**<sup>4669</sup> or **OMB**<sup>4670</sup> has determined that **real economic growth**<sup>4671</sup> is projected or estimated to be less than zero with respect to each of any 2 consecutive quarters within such period; or
- 254(i)(2) (2) the most recent of the Department of Commerce’s advance preliminary or final reports of actual **real economic growth**<sup>4672</sup> indicate that the rate of **real economic growth**<sup>4673</sup> for each of the most recently reported quarter and the immediately preceding quarter is less than one percent.
- 254(j) (j) **ECONOMIC AND TECHNICAL ASSUMPTIONS.**— In all reports required by **this section**,<sup>4674</sup> **OMB**<sup>4675</sup> shall use the same economic and technical assumptions as used in the most recent budget submitted by the President under **section 1105(a) of title 31, United States Code**.<sup>4676</sup>
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<sup>4667</sup> **Budget Control Act of 2011**, Pub. L. No. 112-25, § 104(b), 125 Stat. 240, 246, renders this subsection inoperative, providing: “Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not apply to the Congressional Budget Office.”

<sup>4668</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)**, 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4669</sup> *Id.*

<sup>4670</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4671</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(10)**, 2 U.S.C. § 900(c)(10), *supra* p. 981, defines “real economic growth.”

<sup>4672</sup> *Id.*

<sup>4673</sup> *Id.*

<sup>4674</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254**, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4675</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4676</sup> **31 U.S.C. § 1105**, *supra* p. 156, addresses “Budget Contents and Submission to Congress.”

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255        **SEC. 255.<sup>4677</sup> EXEMPT PROGRAMS AND ACTIVITIES**

255(a)        **(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.—**Benefits payable under the old-age, survivors, and disability insurance program established under [title II of the Social Security Act \(42 U.S.C. 401 et seq.\)](#),<sup>4678</sup> and benefits payable under [sections 3 and 4 of the Railroad Retirement Act of 1937 \(45 U.S.C. 231 et seq.\)](#),<sup>4679</sup> shall be exempt from reduction under any order issued under [this part](#).<sup>4680</sup>

255(b)        **(b) VETERANS PROGRAMS.—**The following programs shall be exempt from reduction under any order issued under [this part](#).<sup>4681</sup>

All programs administered by the Department of Veterans Affairs.

Special benefits for certain World War II veterans (28-0401-0-1-701).

255(c)        **(c) NET INTEREST.—**No reduction of payments for net interest (all of major functional category 900) shall be made under any order issued under [this part](#).<sup>4682</sup>

255(d)        **(d) REFUNDABLE INCOME TAX CREDITS.—**Payments to individuals made pursuant to provisions of the [Internal Revenue Code of 1986](#)<sup>4683</sup> establishing refundable tax

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<sup>4677</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255 is codified as amended at [2 U.S.C. § 905](#).

<sup>4678</sup> [Social Security Act tit. II](#), 42 U.S.C. §§ 401–434, addresses “Federal Old-Age, Survivors, and Disability Insurance Benefits.”

<sup>4679</sup> [Railroad Retirement Act of 1937 §§ 3 & 4](#), 45 U.S.C. 231 et seq.

<sup>4680</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4681</sup> *Id.*

<sup>4682</sup> *Id.*

<sup>4683</sup> [Internal Revenue Code of 1986](#), 26 U.S.C. §§ 1–9834.

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credits shall be exempt from reduction under any order issued under [this part](#).<sup>4684</sup>

255(e) (e) NON-DEFENSE UNOBLIGATED BALANCES.— Unobligated balances of [budget authority](#)<sup>4685</sup> carried over from prior fiscal years, except balances in the defense category, shall be exempt from reduction under any order issued under [this part](#).<sup>4686</sup>

255(f) (f) OPTIONAL EXEMPTION OF MILITARY PERSONNEL.—

255(f)(1) (1) IN GENERAL.— The President may, with respect to any military personnel [account](#),<sup>4687</sup> exempt that [account](#)<sup>4688</sup> from [sequestration](#)<sup>4689</sup> or provide for a lower uniform percentage reduction than would otherwise apply.

255(f)(2) (2) LIMITATION.— The President may not use the authority provided by [paragraph \(1\)](#)<sup>4690</sup> unless the President notifies the Congress of the manner in which such authority will be exercised on or before the date specified in [section 254\(a\)](#)<sup>4691</sup> for the [budget year](#).<sup>4692</sup>

255(g) (g) OTHER PROGRAMS AND ACTIVITIES.—

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<sup>4684</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4685</sup> [Congressional Budget Act of 1974 § 3\(2\)\(A\)](#), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4686</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4687</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4688</sup> *Id.*

<sup>4689</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4690</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255\(f\)\(1\)](#), 2 U.S.C. § 905(f)(1), *supra* p. 1075, addresses “Optional Exemption of Military Personnel” “In general.”

<sup>4691</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254\(a\)](#), 2 U.S.C. § 904(a), *supra* p. 1060, addresses “Timetable.”

<sup>4692</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

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255(g)(1)(A)

(1)(A) The following budget **accounts**<sup>4693</sup> and activities shall be exempt from reduction under any order issued under **this part**<sup>4694</sup>:

Activities resulting from private donations, bequests, or voluntary contributions to the Government.

Activities financed by voluntary payments to the Government for goods or services to be provided for such payments.

Administration of Territories, Northern Mariana Islands Covenant grants (14-0412-0-1-808).

Advances to the Unemployment Trust Fund and Other Funds (16-0327-0-1-600).

Black Lung Disability Trust Fund Refinancing (16-0329-0-1-601).

Bonneville Power Administration Fund and **borrowing authority**<sup>4695</sup> established pursuant to **section 13 of Public Law 93-454 (1974)**,<sup>4696</sup> as amended (89-4045-0-3-271).

Claims, Judgments, and Relief Acts (20-1895-0-1-808).

Compact of Free Association (14-0415-0-1-808).

Compensation of the President (11-0209-01-1-802).

Comptroller of the Currency, Assessment Funds (20-8413-0-8-373).

Continuing Fund, Southeastern Power Administration (89-5653-0-2-271).

Continuing Fund, Southwestern Power Administration (89-5649-0-2-271).

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<sup>4693</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4694</sup> **Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C**, 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4695</sup> **Congressional Budget Act of 1974 § 3(2)(A)(ii)**, 2 U.S.C. § 622(2)(A)(ii), *supra* p. 56, defines “borrowing authority.”

<sup>4696</sup> **Federal Columbia River Transmission System Act § 13**, 16 U.S.C. § 838k, addresses “Bonneville Power Administration bonds.”

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Dual Benefits Payments [Account](#)<sup>4697</sup> (60-0111-0-1-601).

Emergency Fund, Western Area Power Administration  
(89-5069-0-2-271).

Exchange Stabilization Fund (20-4444-0-3-155).

Farm Credit Administration Operating Expenses Fund  
(78-4131-0-3-351).

Farm Credit System Insurance Corporation, Farm Credit  
Insurance Fund (78-4171-0-3-351).

Federal Deposit Insurance Corporation, Deposit  
Insurance Fund (51-4596-0-4-373).

Federal Deposit Insurance Corporation, FSLIC Resolution  
Fund (51-4065-0-3-373).

Federal Deposit Insurance Corporation, Noninterest  
Bearing Transaction [Account](#)<sup>4698</sup> Guarantee (51-4458-0-3-373).

Federal Deposit Insurance Corporation, Senior Unsecured  
Debt Guarantee (51-4457-0-3-373).

Federal Home Loan Mortgage Corporation (Freddie Mac).

Federal Housing Finance [Agency](#),<sup>4699</sup> Administrative  
Expenses (95-5532-0-2-371).

Federal National Mortgage Corporation (Fannie Mae).

Federal Payment to the District of Columbia Judicial  
Retirement and Survivors Annuity Fund (20-1713-0-1-752).

Federal Payment to the District of Columbia Pension  
Fund (20-1714-0-1-601).

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<sup>4697</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4698</sup> *Id.*

<sup>4699</sup> [Congressional Budget Act of 1974 § 421\(1\)](#), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of [5 U.S.C. § 551\(1\)](#), *supra* p. 813.

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Federal Payments to the Railroad Retirement [Accounts](#)<sup>4700</sup> (60-0113-0-1-601).

Federal Reserve Bank Reimbursement Fund (20-1884-0-1-803).

Financial Agent Services (20-1802-0-1-803).

Foreign Military Sales Trust Fund (11-8242-0-7-155).

Hazardous Waste Management, Conservation Reserve Program (12-4336-0-3-999).

Host Nation Support Fund for Relocation (97-8337-0-7-051).

Internal Revenue Collections for Puerto Rico (20-5737-0-2-806).

Intragovernmental funds, including those from which the [outlays](#)<sup>4701</sup> are derived primarily from resources paid in from other government [accounts](#),<sup>4702</sup> except to the extent such funds are augmented by direct appropriations for the fiscal year during which an order is in effect.

Medical Facilities Guarantee and Loan Fund (75-9931-0-3-551).

National Credit Union Administration, Central Liquidity Facility (25-4470-0-3-373).

National Credit Union Administration, Corporate Credit Union Share Guarantee Program (25-4476-0-3-376).

National Credit Union Administration, Credit Union Homeowners Affordability Relief Program (25-4473-0-3-371).

National Credit Union Administration, Credit Union Share Insurance Fund (25-4468-0-3-373).

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<sup>4700</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4701</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4702</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

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National Credit Union Administration, Credit Union System Investment Program (25-4474-0-3-376).

National Credit Union Administration, Operating fund (25-4056-0-3-373).

National Credit Union Administration, Share Insurance Fund Corporate Debt Guarantee Program (25-4469-0-3-376).

National Credit Union Administration, U.S. Central Federal Credit Union Capital Program (25-4475-0-3-376).

Office of Thrift Supervision (20-4108-0-3-373).

Panama Canal Commission Compensation Fund (16-5155-0-2-602).

Payment of Vietnam and USS Pueblo prisoner-of-war claims within the Salaries and Expenses, Foreign Claims Settlement [account](#)<sup>4703</sup> (15-0100-0-1-153).

Payment to Civil Service Retirement and Disability Fund (24-0200-0-1-805).

Payment to Department of Defense Medicare-Eligible Retiree Health Care Fund (97-0850-0-1-054).

Payment to Judiciary Trust Funds (10-0941-0-1-752).

Payment to Military Retirement Fund (97-0040-0-1-054).

Payment to the Foreign Service Retirement and Disability Fund (19-0540-0-1-153).

Payments to Copyright Owners (03-5175-0-2-376).

Payments to Health Care Trust Funds (75-0580-0-1-571).

Payment to Radiation Exposure Compensation Trust Fund (15-0333-0-1-054).

Payments to Social Security Trust Funds (28-0404-0-1-651).

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<sup>4703</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

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Payments to the United States Territories, Fiscal Assistance (14-0418-0-1-806).

Payments to trust funds from excise taxes or other receipts properly creditable to such trust funds.

Payments to widows and heirs of deceased Members of Congress (00-0215-0-1-801).

Postal Service Fund (18-4020-0-3-372).

Radiation Exposure Compensation Trust Fund (15-8116-0-1-054).

Reimbursement to Federal Reserve Banks (20-0562-0-1-803).

Salaries of Article III judges.

Soldiers and Airmen's Home, payment of claims (84-8930-0-7-705).

Tennessee Valley Authority Fund, except nonpower programs and activities (64-4110-0-3-999).

Tribal and Indian trust [accounts](#)<sup>4704</sup> within the Department of the Interior which fund prior legal obligations of the Government or which are established pursuant to Acts of Congress regarding Federal management of tribal real property or other fiduciary responsibilities, including but not limited to Tribal Special Fund (14-5265-0-2-452), Tribal Trust Fund (14-8030-0-7-452), White Earth Settlement (14-2204-0-1-452), and Indian Water Rights and Habitat Acquisition (14-5505-0-2-303).

United Mine Workers of America 1992 Benefit Plan (95-8260-0-7-551).

United Mine Workers of America 1993 Benefit Plan (95-8535-0-7-551).

United Mine Workers of America Combined Benefit Fund (95-8295-0-7-551).

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<sup>4704</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines "account."



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United States Enrichment Corporation Fund (95-4054-0-3-271).

Universal Service Fund (27-5183-0-2-376).

Vaccine Injury Compensation (75-0320-0-1-551).

Vaccine Injury Compensation Program Trust Fund (20-8175-0-7-551).

255(g)(1)(A) (B) The following Federal retirement and disability **accounts**<sup>4705</sup> and activities shall be exempt from reduction under any order issued under **this part**<sup>4706</sup>:

Black Lung Disability Trust Fund (20-8144-0-7-601).

Central Intelligence **Agency**<sup>4707</sup> Retirement and Disability System Fund (56-3400-0-1-054).

Civil Service Retirement and Disability Fund (24-8135-0-7-602).

Comptrollers general retirement system (05-0107-0-1-801).

Contributions to U.S. Park Police annuity benefits, Other Permanent Appropriations (14-9924-0-2-303).

Court of Appeals for Veterans Claims Retirement Fund (95-8290-0-7-705).

Department of Defense Medicare-Eligible Retiree Health Care Fund (97-5472-0-2-551).

District of Columbia Federal Pension Fund (20-5511-0-2-601).

District of Columbia Judicial Retirement and Survivors Annuity Fund (20-8212-0-7-602).

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<sup>4705</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4706</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4707</sup> [Congressional Budget Act of 1974 § 421\(1\)](#), 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of [5 U.S.C. § 551\(1\)](#), *supra* p. 813.

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Energy Employees Occupational Illness Compensation Fund (16-1523-0-1-053).

Foreign National Employees Separation Pay (97-8165-0-7-051).

Foreign Service National Defined Contributions Retirement Fund (19-5497-0-2-602).

Foreign Service National Separation Liability Trust Fund (19-8340-0-7-602).

Foreign Service Retirement and Disability Fund (19-8186-0-7-602).

Government Payment for Annuitants, Employees Health Benefits (24-0206-0-1-551).

Government Payment for Annuitants, Employee Life Insurance (24-0500-0-1-602).

Judicial Officers' Retirement Fund (10-8122-0-7-602).

Judicial Survivors' Annuities Fund (10-8110-0-7-602).

Military Retirement Fund (97-8097-0-7-602).

National Railroad Retirement Investment Trust (60-8118-0-7-601).

National Oceanic and Atmospheric Administration retirement (13-1450-0-1-306).

Pensions for former Presidents (47-0105-0-1-802).

Postal Service Retiree Health Benefits Fund (24-5391-0-2-551).

Public Safety Officer Benefits (15-0403-0-1-754).

Rail Industry Pension Fund (60-8011-0-7-601).

Retired Pay, Coast Guard (70-0602-0-1-403).

Retirement Pay and Medical Benefits for Commissioned Officers, Public Health Service (75-0379-0-1-551).

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September 11th Victim Compensation Fund (15-0340-0-1-754).

Special Benefits for Disabled Coal Miners (16-0169-0-1-601).

Special Benefits, Federal Employees' Compensation Act (16-1521-0-1-600).

Special Workers Compensation Expenses (16-9971-0-7-601).

Tax Court Judges Survivors Annuity Fund (23-8115-0-7-602).

United States Court of Federal Claims Judges' Retirement Fund (10-8124-0-7-602).

United States Secret Service, DC Annuity (70-0400-0-1-751).

Victims Compensation Fund established under section 410 of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note).

United States Victims of State Sponsored Terrorism Fund.

Voluntary Separation Incentive Fund (97-8335-0-7-051).

World Trade Center Health Program Fund (75-0946-0-1-551).

255(g)(2)

(2) Prior legal obligations of the Government in the following budget **accounts**<sup>4708</sup> and activities shall be exempt from any order issued under **this part**<sup>4709</sup>:

Biomass Energy Development (20-0114-0-1-271).

Check Forgery Insurance Fund (20-4109-0-3-803).

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<sup>4708</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines "account."

<sup>4709</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses "Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount."

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Credit [liquidating accounts](#).<sup>4710</sup>

Credit reestimates.

Employees Life Insurance Fund (24-8424-0-8-602).

Federal Aviation Insurance Revolving Fund (69-4120-0-3-402).

Federal Crop Insurance Corporation Fund (12-4085-0-3-351).

Federal Emergency Management [Agency](#),<sup>4711</sup> National Flood Insurance Fund (58-4236-0-3-453).

Geothermal resources development fund (89-0206-0-1-271).

Low-Rent Public Housing-Loans and Other Expenses (86-4098-0-3-604).

Maritime Administration, War Risk Insurance Revolving Fund (69-4302-0-3-403).

Natural Resource Damage Assessment Fund (14-1618-0-1-302).

United States International Development Finance Corporation.

Pension Benefit Guaranty Corporation Fund (16-4204-0-3-601).

San Joaquin Restoration Fund (14-5537-0-2-301).

Servicemembers' Group Life Insurance Fund (36-4009-0-3-701).

Terrorism Insurance Program (20-0123-0-1-376).

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<sup>4710</sup> [Federal Credit Reform Act of 1990 § 502\(8\)](#), 2 U.S.C. § 661a(8), *supra* p. 854, defines "liquidating account."

<sup>4711</sup> [Congressional Budget Act of 1974 § 421\(1\)](#), 2 U.S.C. § 658(1), *supra* p. 803, defines "agency," adopting, in part, the definition of [5 U.S.C. § 551\(1\)](#), *supra* p. 813.

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255(h)

**(h) LOW-INCOME PROGRAMS.—**The following programs shall be exempt from reduction under any order issued under [this part](#)<sup>4712</sup>:

Academic Competitiveness/Smart Grant Program (91-0205-0-1-502).

Child Care Entitlement to States (75-1550-0-1-609).

Child Enrollment Contingency Fund (75-5551-0-2-551).

Child Nutrition Programs (with the exception of special milk programs) (12-3539-0-1-605).

Children’s Health Insurance Fund (75-0515-0-1-551).

Commodity Supplemental Food Program (12-3507-0-1-605).

Contingency Fund (75-1522-0-1-609).

Family Support Programs (75-1501-0-1-609).

Federal Pell Grants under [section 401 Title IV of the Higher Education Act](#).<sup>4713</sup>

Grants to States for Medicaid (75-0512-0-1-551).

Payments for Foster Care and Permanency (75-1545-0-1-609).

Supplemental Nutrition Assistance Program (12-3505-0-1-605).<sup>4714</sup>

Supplemental Security Income Program (28-0406-0-1-609).

Temporary Assistance for Needy Families (75-1552-0-1-609).

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<sup>4712</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4713</sup> [Higher Education Act of 1965 § 401](#), 20 U.S.C. § 1070a, addresses “Federal Pell Grants: amount and determinations; applications.”

<sup>4714</sup> [Food, Conservation, and Energy Act of 2008](#), Pub. L. No. 110-246, § 4001, 122 Stat. 1651, 1853 (2008) (the 2008 Farm Bill) renamed the Food Stamp Program as the Supplemental Nutrition Assistance Program (SNAP).

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255(i) (i) **ECONOMIC RECOVERY PROGRAMS.**—The following programs shall be exempt from reduction under any order issued under [this part](#)<sup>4715</sup>:

GSE Preferred Stock Purchase Agreements (20-0125-0-1-371).

Office of Financial Stability (20-0128-0-1-376).

Special Inspector General for the Troubled Asset Relief Program (20-0133-0-1-376).

255(j) (j) **SPLIT TREATMENT PROGRAMS.**—Each of the following programs shall be exempt from any order under [this part](#)<sup>4716</sup> to the extent that the [budgetary resources](#)<sup>4717</sup> of such programs are subject to obligation limitations in [appropriations bills](#)<sup>4718</sup>:

Federal-Aid Highways (69-8083-0-7-401).

Highway Traffic Safety Grants (69-8020-0-7-401).

Operations and Research NHTSA and National Driver Register (69-8016-0-7-401).

Motor Carrier Safety Operations and Programs (69-8159-0-7-401).

Motor Carrier Safety Grants (69-8158-0-7-401).

Formula and Bus Grants (69-8350-0-7-401).

Grants-In-Aid for Airports (69-8106-0-7-402).

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<sup>4715</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4716</sup> *Id.*

<sup>4717</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(6\)](#), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>4718</sup> [Congressional Budget Act of 1974 § 3\(5\)](#), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of [1 U.S.C. § 105](#).

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255(k)            **(k) IDENTIFICATION OF PROGRAMS.—**For purposes of subsections (b),<sup>4719</sup> (g),<sup>4720</sup> and (h),<sup>4721</sup> each account<sup>4722</sup> is identified by the designated budget account<sup>4723</sup> identification code number set forth in the **Budget of the United States Government 2010–Appendix**,<sup>4724</sup> and an activity within an account<sup>4725</sup> is designated by the name of the activity and the identification code number of the account.<sup>4726</sup>

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<sup>4719</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 255(b)**, 2 U.S.C. § 905(b), *supra* p. 1074, addresses “Veterans Programs.”

<sup>4720</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 255(g)**, 2 U.S.C. § 905(g), *supra* p. 1075, addresses “Other Programs and Activities.”

<sup>4721</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 255(h)**, 2 U.S.C. § 905(h), *supra* p. 1085, addresses “Low-Income Programs.”

<sup>4722</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4723</sup> *Id.*

<sup>4724</sup> OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, **APPENDIX: BUDGET OF THE U.S. GOVERNMENT: FISCAL YEAR 2010** (2009).

<sup>4725</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4726</sup> *Id.*

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256        **SEC. 256.**<sup>4727</sup>        **GENERAL AND SPECIAL**  
             **SEQUESTRATION**<sup>4728</sup> **RULES**

256(a)        (a) [Repealed.]<sup>4729</sup>

256(b)        (b) **STUDENT LOANS.**—For all student loans under **part B**<sup>4730</sup> or **D**<sup>4731</sup> of title IV of the Higher Education Act of 1965 made during the period when a **sequestration**<sup>4732</sup> order under **section 254**<sup>4733</sup> is in effect as required by **section 252**<sup>4734</sup> or **253**,<sup>4735</sup> origination fees under **sections 438(c)(2)**<sup>4736</sup> and **(6)**<sup>4737</sup> and **455(c)**<sup>4738</sup> and loan processing and issuance fees under **section 428(f)(1)(A)(ii)**<sup>4739</sup> of that Act shall each be increased by the uniform percentage specified in that **sequestration**<sup>4740</sup> order, and, for student loans originated during the period of the **sequestration**,<sup>4741</sup> special allowance payments under **section 438(b)**<sup>4742</sup> of that Act accruing during the period of the **sequestration**<sup>4743</sup>

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<sup>4727</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 256 is codified as amended at 2 U.S.C. § 906.

<sup>4728</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4729</sup> Statutory Pay-As-You-Go Act of 2010, Pub. L. No. 111-139, § 10(a), 124 Stat. 8, 21, *infra* p. 1208, repealed Balanced Budget and Emergency Deficit Control Act of 1985 § 256(a), 2 U.S.C. § 906(a), which formerly addressed “Automatic Spending Increases.”

<sup>4730</sup> Higher Education Act of 1965 tit. IV, part B, 20 U.S.C. §§ 1071 to 1087-4, addresses “Federal Family Education Loan Program.”

<sup>4731</sup> Higher Education Act of 1965 tit. IV, part D, 20 U.S.C. §§ 1087a–1087j, addresses “William D. Ford Federal Direct Loan Program.”

<sup>4732</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4733</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 254, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4734</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 252, 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>4735</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253, 2 U.S.C. § 903, *supra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the Budget Enforcement Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388.

<sup>4736</sup> Higher Education Act of 1965 § 438(c)(2), 20 U.S.C. § 1087-1(c)(2), addresses “Amount of origination fees.”

<sup>4737</sup> Higher Education Act of 1965 § 438(c)(6), 20 U.S.C. § 1087-1(c)(6), addresses “SLS and PLUS loans.”

<sup>4738</sup> Higher Education Act of 1965 § 455(c), 20 U.S.C. § 1087e(c), addresses “Loan fee.”

<sup>4739</sup> Higher Education Act of 1965 § 428(f)(1)(A)(ii), 20 U.S.C. § 1078(f)(1)(A)(ii).

<sup>4740</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4741</sup> *Id.*

<sup>4742</sup> Higher Education Act of 1965 § 438(b), 20 U.S.C. § 1087-1(b), addresses “Computation and payment.”

<sup>4743</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”



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shall be reduced by the uniform percentage specified in that [sequestration](#)<sup>4744</sup> order.

256(c) (c) [Repealed.]<sup>4745</sup>

256(d) (d) SPECIAL RULES FOR MEDICARE PROGRAM. —

256(d)(1) (1) CALCULATION OF REDUCTION IN PAYMENT AMOUNTS.—To achieve the total percentage reduction in those programs required by [section 252](#)<sup>4746</sup> or [253](#),<sup>4747</sup> subject to [paragraph \(2\)](#),<sup>4748</sup> and notwithstanding [section 710 of the Social Security Act](#),<sup>4749</sup> [OMB](#)<sup>4750</sup> shall determine, and the applicable Presidential order under [section 254](#)<sup>4751</sup> shall implement, the percentage reduction that shall apply, with respect to the health insurance programs under [title XVIII of the Social Security Act](#)<sup>4752</sup> —

256(d)(1)(A) (A) in the case of [parts A](#)<sup>4753</sup> and [B](#)<sup>4754</sup> of such title, to individual payments for services furnished during the one-year period beginning on the first day of the first month beginning after the date the

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<sup>4744</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4745</sup> [Statutory Pay-As-You-Go Act of 2010](#), Pub. L. No. 111-139, § 10(c), 124 Stat. 8, 22, *infra* p. 1208, repealed [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(c\)](#), 2 U.S.C. § 906(c), which formerly addressed “Treatment of Foster Care and Adoption Assistance Programs.”

<sup>4746</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252](#), 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>4747</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253](#), 2 U.S.C. § 903, *supra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388.

<sup>4748</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(d\)\(2\)](#), 2 U.S.C. § 906(d)(2), *infra* p. 1090, addresses “Uniform reduction rate; maximum permissible reduction.”

<sup>4749</sup> [Social Security Act § 710](#), 42 U.S.C. § 911, addresses “Budgetary treatment of trust fund operations.”

<sup>4750</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4751</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4752</sup> [Social Security Act tit. XVIII](#), 42 U.S.C. §§ 1395–1395III, addresses “Health Insurance for Aged and Disabled.”

<sup>4753</sup> [Social Security Act tit. XVIII, part A](#), 42 U.S.C. §§ 1395c to 1395i-6, addresses “Hospital Insurance Benefits for Aged and Disabled.”

<sup>4754</sup> [Social Security Act tit. XVIII, part B](#), 42 U.S.C. §§ 1395j to 1395w-6, addresses “Supplementary Medical Insurance Benefits for Aged and Disabled.”

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order is issued (or, if later, the date specified in **paragraph (4)**<sup>4755</sup>); and

256(d)(1)(B) (B) in the case of **parts C**<sup>4756</sup> and **D**,<sup>4757</sup> to monthly payments under contracts under such parts for the same one-year period;

such that the reduction made in payments under that order shall achieve the required total percentage reduction in those payments for that period.

256(d)(2) (2) UNIFORM REDUCTION RATE; MAXIMUM PERMISSIBLE REDUCTION.—Reductions in payments for programs and activities under such **title XVIII**<sup>4758</sup> pursuant to a **sequestration**<sup>4759</sup> order under **section 254**<sup>4760</sup> shall be at a uniform rate, which shall not exceed 4 percent, across all such programs and activities subject to such order.

256(d)(3) (3) TIMING OF APPLICATION OF REDUCTIONS.—

256(d)(3)(A) (A) IN GENERAL.—Except as provided in **subparagraph (B)**,<sup>4761</sup> if a reduction is made under **paragraph (1)**<sup>4762</sup> in payment amounts pursuant to a **sequestration**<sup>4763</sup> order, the reduction shall be applied to payment for services furnished during

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<sup>4755</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)(4)**, 2 U.S.C. § 906(d)(4), *infra* p. 1091, addresses “Timing of subsequent sequestration order.”

<sup>4756</sup> **Social Security Act tit. XVIII, part C**, 42 U.S.C. §§ 1395w-21 to 1395w-29, addresses “Medicare+Choice Program.”

<sup>4757</sup> **Social Security Act tit. XVIII, part D**, 42 U.S.C. §§ 1395w-101 to 1395w-154, addresses “Voluntary Prescription Drug Benefit Program.”

<sup>4758</sup> **Social Security Act tit. XVIII**, 42 U.S.C. §§ 1395–1395III, addresses “Health Insurance for Aged and Disabled.”

<sup>4759</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4760</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254**, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4761</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)(3)(B)**, 2 U.S.C. § 906(d)(3)(B), *infra* p. 1091, addresses “Payment on the basis of cost reporting periods.”

<sup>4762</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)(1)**, 2 U.S.C. § 906(d)(1), *supra* p. 1089, addresses “Calculation of reduction in payment amounts.”

<sup>4763</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

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the effective period of the order. For purposes of the previous sentence, in the case of inpatient services furnished for an individual, the services shall be considered to be furnished on the date of the individual's discharge from the inpatient facility.

256(d)(3)(B)

**(B) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.**— In the case in which payment for services of a provider of services is made under [title XVIII of the Social Security Act](#)<sup>4764</sup> on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, if a reduction is made under [paragraph \(1\)](#)<sup>4765</sup> in payment amounts pursuant to a [sequestration](#)<sup>4766</sup> order, the reduction shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the effective period of the order, but only (for each such cost reporting period) in the same proportion as the fraction of the cost reporting period that occurs during the effective period of the order.

256(d)(4)

**(4) TIMING OF SUBSEQUENT SEQUESTRATION**<sup>4767</sup> ORDER.— A [sequestration](#)<sup>4768</sup> order required by [section 252](#)<sup>4769</sup> or [253](#)<sup>4770</sup> with respect to programs under such [title XVIII](#)<sup>4771</sup> shall not take effect until the first month beginning after the end of the effective period of any

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<sup>4764</sup> [Social Security Act tit. XVIII](#), 42 U.S.C. §§ 1395–1395III, addresses “Health Insurance for Aged and Disabled.”

<sup>4765</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(d\)\(1\)](#), 2 U.S.C. § 906(d)(1), *supra* p. 1089, addresses “Calculation of reduction in payment amounts.”

<sup>4766</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4767</sup> *Id.*

<sup>4768</sup> *Id.*

<sup>4769</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252](#), 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>4770</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253](#), 2 U.S.C. § 903, *supra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388.

<sup>4771</sup> [Social Security Act tit. XVIII](#), 42 U.S.C. §§ 1395–1395III, addresses “Health Insurance for Aged and Disabled.”

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prior [sequestration](#)<sup>4772</sup> order with respect to such programs, as determined in accordance with [paragraph \(1\)](#).<sup>4773</sup>

256(d)(5) (5) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment amounts is made under [paragraph \(1\)](#)<sup>4774</sup> for services for which payment under [part B of title XVIII of the Social Security Act](#)<sup>4775</sup> is made on the basis of an assignment described in [section 1842\(b\)\(3\)\(B\)\(ii\)](#),<sup>4776</sup> in accordance with [section 1842\(b\)\(6\)\(B\)](#),<sup>4777</sup> or under the procedure described in [section 1870\(f\)\(1\)](#),<sup>4778</sup> of such Act, the person furnishing the services shall be considered to have accepted payment of the reasonable charge for the services, less any reduction in payment amount made pursuant to a [sequestration](#)<sup>4779</sup> order, as payment in full.

256(d)(6) (6) [SEQUESTRATION](#)<sup>4780</sup> DISREGARDED IN COMPUTING PAYMENT AMOUNTS.—The Secretary of Health and Human Services shall not take into account any reductions in payment amounts which have been or may be effected under [this part](#),<sup>4781</sup> for purposes of computing any adjustments to payment rates under such [title XVIII](#),<sup>4782</sup> specifically including—

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<sup>4772</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4773</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(d\)\(1\)](#), 2 U.S.C. § 906(d)(1), *supra* p. 1089, addresses “Calculation of reduction in payment amounts.”

<sup>4774</sup> *Id.*

<sup>4775</sup> [Social Security Act tit. XVIII, part B](#), 42 U.S.C. §§ 1395j to 1395w-6, addresses “Supplementary Medical Insurance Benefits for Aged and Disabled.”

<sup>4776</sup> [Social Security Act § 1842\(b\)\(3\)\(B\)\(ii\)](#), 42 U.S.C. § 1395u(b)(3)(B)(ii).

<sup>4777</sup> [Social Security Act § 1842\(b\)\(6\)\(B\)](#), 42 U.S.C. § 1395u(b)(6)(B).

<sup>4778</sup> [Social Security Act § 1870\(f\)\(1\)](#), 42 U.S.C. § 1395gg(f)(1).

<sup>4779</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4780</sup> *Id.*

<sup>4781</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4782</sup> [Social Security Act tit. XVIII](#), 42 U.S.C. §§ 1395–1395III, addresses “Health Insurance for Aged and Disabled.”

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- 256(d)(6)(A) (A) the [part C](#)<sup>4783</sup> growth percentage under [section 1853\(c\)\(6\)](#);<sup>4784</sup>
- 256(d)(6)(B) (B) the [part D](#)<sup>4785</sup> annual growth rate under [section 1860D-2\(b\)\(6\)](#);<sup>4786</sup> and
- 256(d)(6)(C) (C) application of risk corridors to [part D](#)<sup>4787</sup> payment rates under [section 1860D-15\(e\)](#).<sup>4788</sup>
- 256(d)(7) (7) EXEMPTIONS FROM [SEQUESTRATION](#).<sup>4789</sup> — In addition to the programs and activities specified in [section 255](#),<sup>4790</sup> the following shall be exempt from [sequestration](#)<sup>4791</sup> under [this part](#)<sup>4792</sup>:
- 256(d)(7)(A) (A) [PART D](#)<sup>4793</sup> LOW-INCOME SUBSIDIES. — Premium and cost-sharing subsidies under [section 1860D-14](#)<sup>4794</sup> of the Social Security Act.

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<sup>4783</sup> [Social Security Act tit. XVIII, part C](#), 42 U.S.C. §§ 1395w-21 to 1395w-29, addresses “Medicare+Choice Program.”

<sup>4784</sup> [Social Security Act § 1853\(c\)\(6\)](#), 42 U.S.C. § 1395w-23(c)(6), addresses “‘National per capita Medicare+Choice growth percentage’ defined.”

<sup>4785</sup> [Social Security Act tit. XVIII, part D](#), 42 U.S.C. §§ 1395w-101 to 1395w-154, addresses “Voluntary Prescription Drug Benefit Program.”

<sup>4786</sup> [Social Security Act § 1860D-2\(b\)\(6\)](#), 42 U.S.C. § 1395w-102(b)(6), addresses “Annual percentage increase.”

<sup>4787</sup> [Social Security Act tit. XVIII, part D](#), 42 U.S.C. §§ 1395w-101 to 1395w-154, addresses “Voluntary Prescription Drug Benefit Program.”

<sup>4788</sup> [Social Security Act § 1860D-15\(e\)](#), 42 U.S.C. § 1395w-115(e), addresses “Portion of total payments to a sponsor or organization subject to risk (application of risk corridors).”

<sup>4789</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4790</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4791</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4792</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4793</sup> [Social Security Act tit. XVIII, part D](#), 42 U.S.C. §§ 1395w-101 to 1395w-154, addresses “Voluntary Prescription Drug Benefit Program.”

<sup>4794</sup> [Social Security Act § 1860D-14](#), 42 U.S.C. § 42 U.S.C. § 1395w-114, addresses “Premium and cost-sharing subsidies for low-income individuals.”

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- 256(d)(7)(B) (B) **PART D**<sup>4795</sup> CATASTROPHIC SUBSIDY.— Payments under **section 1860D-15(b)**<sup>4796</sup> and **(e)(2)(B)**<sup>4797</sup> of the Social Security Act.
- 256(d)(7)(C) (C) **QUALIFIED INDIVIDUAL (QI) PREMIUMS.**— Payments to **States**<sup>4798</sup> for coverage of Medicare cost-sharing for certain low-income Medicare beneficiaries under **section 1933**<sup>4799</sup> of the Social Security Act.
- 256(e) (e) **COMMUNITY AND MIGRANT HEALTH CENTERS, INDIAN HEALTH SERVICES AND FACILITIES, AND VETERANS' MEDICAL CARE.**—
- 256(e)(1) (1) The maximum permissible reduction in **budget authority**<sup>4800</sup> for any **account**<sup>4801</sup> listed in **paragraph (2)**<sup>4802</sup> for any fiscal year, pursuant to an order issued under **section 254**,<sup>4803</sup> shall be 2 percent.
- 256(e)(2) (2) The **accounts**<sup>4804</sup> referred to in **paragraph (1)**<sup>4805</sup> are as follows:
- 256(e)(2)(A) (A) **Community health centers (75-0350-0-1-550).**
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<sup>4795</sup> *Social Security Act* tit. XVIII, part D, 42 U.S.C. §§ 1395w-101 to 1395w-154, addresses “Voluntary Prescription Drug Benefit Program.”

<sup>4796</sup> *Social Security Act* § 1860D-15(b), 42 U.S.C. § 1395w-115(b), addresses “Reinsurance payment amount.”

<sup>4797</sup> *Social Security Act* § 1860D-15(e)(2)(B), 42 U.S.C. § 1395w-115(e)(2)(B), addresses “Increase in payment if adjusted allowable risk corridor costs above upper limit of risk corridor.”

<sup>4798</sup> *Congressional Budget Act of 1974* § 421(12), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>4799</sup> *Social Security Act* § 1933, 42 U.S.C. § 1396u-3, addresses “State coverage of medicare cost-sharing for additional low-income medicare beneficiaries.”

<sup>4800</sup> *Congressional Budget Act of 1974* § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.” *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4801</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4802</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* § 256(e)(2), 2 U.S.C. § 906(e)(2), *infra* p. 1094.

<sup>4803</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* § 254, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4804</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4805</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* § 256(e)(1), 2 U.S.C. § 906(e)(1), *supra* p. 1094.



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- 256(e)(2)(B) (B) Migrant health centers (75-0350-0-1-550).
- 256(e)(2)(C) (C) Indian health facilities (75-0391-0-1-551).
- 256(e)(2)(D) (D) Indian health services (75-0390-0-1-551).
- 256(e)(2)(E) (E) Veterans' medical care (36-0160-0-1-703).

For purposes of the preceding provisions of [this paragraph](#),<sup>4806</sup> programs are identified by the designated budget [account](#)<sup>4807</sup> identification code numbers set forth in the Budget of the United States Government–Appendix.<sup>4808</sup>

- 256(f) (f) TREATMENT OF CHILD SUPPORT ENFORCEMENT PROGRAM.—Notwithstanding any change in the display of budget [accounts](#),<sup>4809</sup> any order issued by the President under [section 254](#)<sup>4810</sup> shall accomplish the full amount of any required reduction in expenditures under [sections 455](#)<sup>4811</sup> and [458](#)<sup>4812</sup> of the Social Security Act by reducing the Federal matching rate for [State](#)<sup>4813</sup> administrative costs under such program, as specified (for the fiscal year involved) in [section 455\(a\)](#)<sup>4814</sup> of such Act, to the extent necessary to reduce such expenditures by that amount.

- 256(g) (g) FEDERAL PAY.—

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<sup>4806</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(e\)\(2\)](#), 2 U.S.C. § 906(e)(2), *supra* p. 1094.

<sup>4807</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4808</sup> *E.g.*, OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, [APPENDIX: BUDGET OF THE U.S. GOVERNMENT: FISCAL YEAR 2023](#) (2022).

<sup>4809</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4810</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4811</sup> [Social Security Act § 455](#), 42 U.S.C. § 655, addresses “Payments to States.”

<sup>4812</sup> [Social Security Act § 458](#), 42 U.S.C. § 658a, addresses “Incentive payments to States.”

<sup>4813</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of [31 U.S.C. § 6501\(9\)](#), *supra* p. 814.

<sup>4814</sup> [Social Security Act § 455\(a\)](#), 42 U.S.C. § 655(a), addresses “Amounts payable each quarter.”

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256(g)(1) (1) IN GENERAL.—For purposes of any order issued under [section 254](#)<sup>4815</sup> —

256(g)(1)(A) (A) Federal pay under a [statutory pay system](#),<sup>4816</sup> and

256(g)(1)(B) (B) [elements of military pay](#),<sup>4817</sup>

shall be subject to reduction under an order in the same manner as other administrative expense components of the Federal budget; except that no such order may reduce or have the effect of reducing the rate of pay to which any individual is entitled under any such [statutory pay system](#)<sup>4818</sup> (as increased by any amount payable under [section 5304 of title 5, United States Code](#),<sup>4819</sup> or [section 302 of the Federal Employees Pay Comparability Act of 1990](#)<sup>4820</sup>) or the rate of any element of military pay to which any individual is entitled under [title 37, United States Code](#),<sup>4821</sup> or any increase in rates of pay which is scheduled to take effect under [section 5303 of title 5](#),<sup>4822</sup> [section 1009 of title 37, United States Code](#),<sup>4823</sup> or any other provision of law.

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<sup>4815</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4816</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(g\)\(2\)\(A\)](#), 2 U.S.C. § 906(g)(2)(A), *infra* p. 1097, defines “statutory pay system” by adopting the definition of [5 U.S.C. § 5302\(1\)](#), *infra* p. 1108.

<sup>4817</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(g\)\(2\)\(B\)](#), 2 U.S.C. § 906(g)(2)(B), *infra* p. 1097, defines “elements of military pay.”

<sup>4818</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(g\)\(2\)\(A\)](#), 2 U.S.C. § 906(g)(2)(A), *infra* p. 1097, defines “statutory pay system” by adopting the definition of [5 U.S.C. § 5302\(1\)](#), *infra* p. 1108.

<sup>4819</sup> [5 U.S.C. § 5304](#) addresses “Locality-based comparability payments.”

<sup>4820</sup> [Treasury, Postal Service and General Government Appropriations Act, 1991](#), Pub. L. No. 101-509, § 529, 104 Stat. 1389, 1427, 1462–63 (1990), included Federal Employees Pay Comparability Act of 1990 § 302, [5 U.S.C. § 5304 note](#), which addresses “Interim geographic adjustments.”

<sup>4821</sup> [37 U.S.C.](#) addresses “Pay and Allowances of the Uniformed Services.”

<sup>4822</sup> [5 U.S.C. § 5303](#) addresses “Annual adjustments to pay schedules.”

<sup>4823</sup> [37 U.S.C. § 1009](#) addresses “Adjustments of monthly basic pay.”



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256(g)(2)                    **(2) DEFINITIONS.**<sup>4824</sup> — For purposes of **this subsection**<sup>4825</sup>:

256(g)(2)(A)                    **(A) The term “statutory pay system” shall have the meaning given that term in [section 5302\(1\)](#) of [title 5, United States Code](#).**<sup>4826</sup>

256(g)(2)(B)                    **(B) The term “elements of military pay” means —**

256(g)(2)(B)(i)                    **(i) the elements of compensation of members of the [uniformed services](#)**<sup>4827</sup> **specified in [section 1009](#) of [title 37, United States Code](#),**<sup>4828</sup>

256(g)(2)(B)(ii)                    **(ii) allowances provided members of the [uniformed services](#)**<sup>4829</sup> **under [sections 403a](#)**<sup>4830</sup> **and [475](#)**<sup>4831</sup> **of such title, and**

256(g)(2)(B)(iii)                    **(iii) cadet pay and midshipman pay under [section 203\(c\)](#)**<sup>4832</sup> **of such title.**

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<sup>4824</sup> Budget process laws define terms in many places. See [Congressional Budget Act of 1974 §§ 3, 310\(b\), 421](#), 2 U.S.C. §§ 622, 641(b), 658, *supra* pp. 55, 529, 803; [Impoundment Control Act of 1974 § 1011](#), 2 U.S.C. § 682, *supra* p. 923; [Balanced Budget and Emergency Deficit Control Act of 1985 §§ 250\(c\), 251\(b\)\(2\)\(B\)\(ii\), 256\(g\)\(2\)](#), 2 U.S.C. §§ 900(c), 901(b)(2)(B)(ii), 906(g)(2), *supra* pp. 977, 997, 1097; [Federal Credit Reform Act of 1990 § 502](#), 2 U.S.C. § 661a, *supra* p. 850; [Statutory Pay-As-You-Go Act of 2010 § 3](#), 2 U.S.C. § 932, *infra* p. 1150; S. Con. Res. 70, 110th Cong. § 314(b), 122 Stat. 5143, 5179 (2008), *infra* p. 1221; H. Con. Res 71, 115th Cong. § 4106(a)(3) (2017) (adopted), *infra* p. 1246; S. Con. Res. 14, 117th Cong. §§ 4001(a)(4), 4001(a)(5), 4002(a)(2), 4003(a)(2) (2021) (adopted), *infra* pp. 1258, 1259, 1262, 1267. For a glossary collecting these definitions in budget process law, see *infra* p. 1542.

<sup>4825</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(g\)\(2\)\(B\)](#), 2 U.S.C. § 906(g)(2)(B), *supra* p. 1095, addresses “Federal Pay.”

<sup>4826</sup> [5 U.S.C. § 5302\(1\)](#), *infra* p. 1108, defines “statutory pay system.”

<sup>4827</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(g\)\(2\)\(C\)](#), 2 U.S.C. § 906(g)(2)(C), *infra* p. 1098, defines “uniformed services” by adopting the definition of [37 U.S.C. § 101\(3\)](#).

<sup>4828</sup> [37 U.S.C. § 1009](#) addresses “Adjustments of monthly basic pay.”

<sup>4829</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(g\)\(2\)\(C\)](#), 2 U.S.C. § 906(g)(2)(C), *infra* p. 1098, defines “uniformed services” by adopting the definition of [37 U.S.C. § 101\(3\)](#).

<sup>4830</sup> [37 U.S.C. § 403a](#) addresses “Housing treatment for certain members of the armed forces, and their spouses and other dependents, undergoing a permanent change of station within the United States.” [James M. Inhofe National Defense Authorization Act for Fiscal Year 2023](#), S. 4543, 117th Cong., § 605 (as reported by S. Comm. on Armed Servs., July 18, 2022) would have corrected this reference.

<sup>4831</sup> [37 U.S.C. § 405](#) addresses “Travel and transportation allowances: per diem while on duty outside the continental United States.” [William M. \(Mac\) Thornberry National Defense Authorization Act for Fiscal Year 2021](#), Pub. L. No. 116-283, § 604(a)(1), 134 Stat. 3388, 3672 (2021), transferred 37 U.S.C. § 475 to [37 U.S.C. § 405](#). [James M. Inhofe National Defense Authorization Act for Fiscal Year 2023](#), S. 4543, 117th Cong., § 605 (as reported by S. Comm. on Armed Servs., July 18, 2022) would have corrected this reference.

<sup>4832</sup> [37 U.S.C. § 203](#) addresses “Rates.”

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256(g)(2)(C) (C) The term “uniformed services” shall have the meaning given that term in [section 101\(3\) of title 37, United States Code](#).<sup>4833</sup>

256(h) (h) TREATMENT OF FEDERAL ADMINISTRATIVE EXPENSES. —

256(h)(1) (1) Notwithstanding any other provision of [this title](#),<sup>4834</sup> administrative expenses incurred by the departments and agencies, including independent agencies, of the Federal Government in connection with any program, project, activity, or [account](#)<sup>4835</sup> shall be subject to reduction pursuant to an order issued under [section 254](#),<sup>4836</sup> without regard to any [exemption](#),<sup>4837</sup> exception, limitation, or special rule which is otherwise applicable with respect to such program, project, activity, or [account](#)<sup>4838</sup> under [this part](#).<sup>4839</sup>

256(h)(2) (2) Notwithstanding any other provision of law, administrative expenses of any program, project, activity, or [account](#)<sup>4840</sup> which is self-supporting and does not receive appropriations shall be subject to

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<sup>4833</sup> [37 U.S.C. § 101\(3\)](#) says: “‘uniformed services’ means the Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.”

<sup>4834</sup> “[T]his title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 99-177, tit. II, 99 Stat. 1037, 1038–1101 (1985), that is, [Balanced Budget and Emergency Deficit Control Act of 1985](#), 2 U.S.C. §§ 900–922, pp. 976–1143.

<sup>4835</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4836</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4837</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *infra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>4838</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4839</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4840</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

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reduction under a [sequester](#)<sup>4841</sup> order, unless specifically exempted in [this part](#).<sup>4842</sup>

256(h)(3)

(3) Payments made by the Federal Government to reimburse or match administrative costs incurred by a [State](#)<sup>4843</sup> or political subdivision under or in connection with any program, project, activity, or [account](#)<sup>4844</sup> shall not be considered administrative expenses of the Federal Government for purposes of [this section](#),<sup>4845</sup> and shall be subject to reduction or [sequestration](#)<sup>4846</sup> under [this part](#)<sup>4847</sup> to the extent (and only to the extent) that other payments made by the Federal Government under or in connection with that program, project, activity, or [account](#)<sup>4848</sup> are subject to such reduction or [sequestration](#);<sup>4849</sup> except that Federal payments made to a [State](#)<sup>4850</sup> as reimbursement of administrative costs incurred by such [State](#)<sup>4851</sup> under or in connection with the unemployment compensation programs specified in [subsection \(h\)\(1\)](#)<sup>4852</sup> shall be subject to reduction or

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<sup>4841</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4842</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4843</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of [31 U.S.C. § 6501\(9\)](#), *supra* p. 814.

<sup>4844</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4845</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256](#), 2 U.S.C. § 906, *supra* p. 1088, addresses “General and Special Sequestration Rules.”

<sup>4846</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4847</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4848</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4849</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4850</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of [31 U.S.C. § 6501\(9\)](#), *supra* p. 814.

<sup>4851</sup> *Id.*

<sup>4852</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(h\)\(1\)](#), 2 U.S.C. § 906(h)(1), *supra* p. 1098.

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**sequestration<sup>4853</sup> under this part<sup>4854</sup> notwithstanding the exemption otherwise granted to such programs under that subsection.<sup>4855</sup>**

256(h)(4) **(4) Notwithstanding any other provision of law, this subsection<sup>4856</sup> shall not apply with respect to the following:**

256(h)(4)(A) **(A) Comptroller of the Currency.**

256(h)(4)(B) **(B) Federal Deposit Insurance Corporation.**

256(h)(4)(C) **(C) National Credit Union Administration.**

256(h)(4)(D) **(D) National Credit Union Administration, central liquidity facility.**

256(h)(4)(E) **(E) Federal Retirement Thrift Investment Board.**

256(h)(4)(F) **(F) Farm Credit Administration.**

256(i) **(i) TREATMENT OF PAYMENTS AND ADVANCES MADE WITH RESPECT TO UNEMPLOYMENT COMPENSATION PROGRAMS. —**

256(i)(1) **(1) For purposes of section 254<sup>4857</sup> —**

256(i)(1)(A) **(A) any amount paid as regular unemployment compensation by a State<sup>4858</sup> from its account<sup>4859</sup> in**

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<sup>4853</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4854</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 part C, §§ 250–258C*, 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>4855</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 256(h)(1)*, 2 U.S.C. § 906(h)(1), *supra* p. 1098.

<sup>4856</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 256(h)*, 2 U.S.C. § 906(h), *supra* p. 1098, addresses “Treatment of Federal Administrative Expenses.”

<sup>4857</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 254*, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4858</sup> *Congressional Budget Act of 1974 § 421(12)*, 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>4859</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

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the Unemployment Trust Fund (established by section 904(a) of the Social Security Act<sup>4860</sup>),

256(i)(1)(B) (B) any advance made to a State<sup>4861</sup> from the Federal unemployment account<sup>4862</sup> (established by section 904(g) of such Act<sup>4863</sup>) under title XII of such Act<sup>4864</sup> and any advance appropriated to the Federal unemployment account<sup>4865</sup> pursuant to section 1203 of such Act,<sup>4866</sup>

256(i)(1)(C) (C) any payment made from the Federal Employees Compensation Account<sup>4867</sup> (as established under section 909 of such Act<sup>4868</sup>) for the purpose of carrying out chapter 85 of title 5, United States Code,<sup>4869</sup> and funds appropriated or transferred to or otherwise deposited in such Account,<sup>4870</sup> and

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<sup>4860</sup> Social Security Act § 904(a), 42 U.S.C. § 1104(a), addresses “Establishment” of the Unemployment Trust Fund.

<sup>4861</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>4862</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4863</sup> Social Security Act § 904(g), 42 U.S.C. § 1104(g), addresses “Federal unemployment account; establishment.”

<sup>4864</sup> Social Security Act tit. XII, 42 U.S.C. §§ 1321–1324, addresses “Advances to State Unemployment Funds.”

<sup>4865</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4866</sup> Social Security Act § 1203, 42 U.S.C. § 1323, addresses “Repayable advances to Federal unemployment account.”

<sup>4867</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4868</sup> Social Security Act § 909, 42 U.S.C. § 1109, addresses “Federal Employees Compensation Account.”

<sup>4869</sup> 5 U.S.C. ch. 85, §§ 8501–8525, addresses “Unemployment Compensation.”

<sup>4870</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

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256(i)(1)(D) (D)<sup>4871</sup> any payment made from the Railroad Unemployment Insurance Account<sup>4872</sup> (established by section 10 of the Railroad Unemployment Insurance Act<sup>4873</sup>) for the purpose of carrying out the Railroad Unemployment Insurance Act,<sup>4874</sup> and funds appropriated or transferred to or otherwise deposited in such Account,<sup>4875</sup>

shall not be subject to reduction.

256(i)(2)(A) (2)(A) A State<sup>4876</sup> may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970<sup>4877</sup> for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 254<sup>4878</sup> by a percentage not to exceed the percentage by which the Federal payment to the State<sup>4879</sup> under section 204 of such Act<sup>4880</sup> is to be reduced for such week as a result of such order.

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<sup>4871</sup> Continued Assistance to Rail Workers Act of 2020, Pub. L. No. 116-260, § 235, 134 Stat. 1182, 1957, 1959 (part of the Consolidated Appropriations Act, 2021), added subparagraph (D), and also sunsets it, saying that it:

shall apply only to obligations incurred during the period . . . ending on the date that is 30 days after the date on which the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates.

Railroad Employee Equity and Fairness Act (REEF Act), S. 545, 117th Cong. (2021), would make this subsection permanent.

<sup>4872</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4873</sup> Railroad Unemployment Insurance Act § 10, 45 U.S.C. § 360, addresses “Railroad unemployment insurance account.”

<sup>4874</sup> Railroad Unemployment Insurance Act, 45 U.S.C. § 351–369.

<sup>4875</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4876</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>4877</sup> Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C. 3304 note.

<sup>4878</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 254, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4879</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>4880</sup> Federal-State Extended Unemployment Compensation Act of 1970 § 204, 26 U.S.C. 3304 note.



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256(i)(2)(B) (B) A reduction by a [State](#)<sup>4881</sup> in accordance with [subparagraph \(A\)](#)<sup>4882</sup> shall not be considered as a failure to fulfill the requirements of [section 3304\(a\)\(11\) of the Internal Revenue Code of 1986](#).<sup>4883</sup>

256(j) (j) COMMODITY CREDIT CORPORATION. —

256(j)(1) (1) POWERS AND AUTHORITIES OF THE COMMODITY CREDIT CORPORATION. — [This title](#)<sup>4884</sup> shall not restrict the Commodity Credit Corporation in the discharge of its authority and responsibility as a corporation to buy and sell commodities in world trade, to use the proceeds as a revolving fund to meet other obligations and otherwise operate as a corporation, the purpose for which it was created.

256(j)(2) (2) REDUCTION IN PAYMENTS MADE UNDER CONTRACTS. —

256(j)(2)(A) (A) Loan eligibility under any contract entered into with a person by the Commodity Credit Corporation prior to the time an order has been issued under [section 254](#)<sup>4885</sup> shall not be reduced by an order subsequently issued. Subject to [subparagraph \(B\)](#),<sup>4886</sup> after an order is issued under such section for a fiscal year, any cash payments for loans or loan deficiencies made by the Commodity Credit Corporation shall be subject to reduction under the order.

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<sup>4881</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of [31 U.S.C. § 6501\(9\)](#), *supra* p. 814.

<sup>4882</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(i\)\(2\)\(A\)](#), 2 U.S.C. § 906(i)(2)(A), *supra* p. 1102.

<sup>4883</sup> [Internal Revenue Code of 1986 § 3304\(a\)\(11\)](#), 26 U.S.C. § 3304(a)(11), provides “extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970.”

<sup>4884</sup> “[T]his title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 99-177, tit. II, 99 Stat. 1037, 1038–1101 (1985), that is, [Balanced Budget and Emergency Deficit Control Act of 1985](#), 2 U.S.C. §§ 900–922, pp. 976–1143.

<sup>4885</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4886</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(j\)\(2\)\(B\)](#), 2 U.S.C. § 906(j)(2)(B), *infra* p. 1104.

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256(j)(2)(B)

(B) Each loan contract entered into with producers or producer cooperatives with respect to a particular crop of a commodity and subject to reduction under [subparagraph \(A\)](#)<sup>4887</sup> shall be reduced in accordance with the same terms and conditions. If some, but not all, contracts applicable to a crop of a commodity have been entered into prior to the issuance of an order under [section 254](#),<sup>4888</sup> the order shall provide that the necessary reduction in payments under contracts applicable to the commodity be uniformly applied to all contracts for the next succeeding crop of the commodity, under the authority provided in [paragraph \(3\)](#).<sup>4889</sup>

256(j)(3)

(3) DELAYED REDUCTION IN [OUTLAYS](#)<sup>4890</sup> PERMISSIBLE. — Notwithstanding any other provision of [this title](#),<sup>4891</sup> if an order under [section 254](#)<sup>4892</sup> is issued with respect to a fiscal year, any reduction under the order applicable to contracts described in [paragraph \(1\)](#)<sup>4893</sup> may provide for reductions in [outlays](#)<sup>4894</sup> for the [account](#)<sup>4895</sup> involved to occur in the fiscal year following the fiscal year to which the order applies.

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<sup>4887</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(j\)\(2\)\(A\)](#), 2 U.S.C. § 906(j)(2)(A), *supra* p. 1102.

<sup>4888</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4889</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(j\)\(3\)](#), 2 U.S.C. § 906(j)(3), *infra* p. 1104, addresses “Delayed reduction in outlays permissible.”

<sup>4890</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4891</sup> “[T]his title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 99-177, tit. II, 99 Stat. 1037, 1038–1101 (1985), that is, [Balanced Budget and Emergency Deficit Control Act of 1985](#), 2 U.S.C. §§ 900–922, pp. 976–1143.

<sup>4892</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4893</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(j\)\(1\)](#), 2 U.S.C. § 906(j)(1), *supra* p. 1103, addresses “Powers and authorities of the Commodity Credit Corporation.”

<sup>4894</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4895</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”



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256(j)(4)

**(4) UNIFORM PERCENTAGE RATE OF REDUCTION AND OTHER LIMITATIONS.**—All reductions described in [paragraph \(2\)](#)<sup>4896</sup> which are required to be made in connection with an order issued under [section 254](#)<sup>4897</sup> with respect to a fiscal year shall be made so as to ensure that [outlays](#)<sup>4898</sup> for each program, project, activity, or [account](#)<sup>4899</sup> involved are reduced by a percentage rate that is uniform for all such programs, projects, activities, and [accounts](#),<sup>4900</sup> and may not be made so as to achieve a percentage rate of reduction in any such item exceeding the rate specified in the order.

256(j)(5)

**(5) DAIRY PROGRAM.**—Notwithstanding any other provision of [this subsection](#),<sup>4901</sup> as the sole means of achieving any reduction in [outlays](#)<sup>4902</sup> under the milk price support program, the Secretary of Agriculture shall provide for a reduction to be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use. That price reduction (measured in cents per hundred weight of milk marketed) shall occur under [section 201\(d\)\(2\)\(A\) of the Agricultural Act of 1949 \(7 U.S.C. 1446\(d\)\(2\)\(A\)\)](#),<sup>4903</sup> shall begin on the day any [sequestration](#)<sup>4904</sup> order is issued under [section](#)

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<sup>4896</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(j\)\(2\)](#), 2 U.S.C. § 906(j)(2), *supra* p. 1103, addresses “Reduction in payments made under contracts.”

<sup>4897</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>4898</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4899</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4900</sup> *Id.*

<sup>4901</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(j\)](#), 2 U.S.C. § 906(j), *supra* p. 1103, addresses “Commodity Credit Corporation.”

<sup>4902</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4903</sup> [Agricultural Act of 1949 § 201\(d\)\(2\)\(A\)](#), 7 U.S.C. § 1446(d)(2)(A), states: “Beginning after March 31, 1986, the Secretary shall provide for a reduction to be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use.”

<sup>4904</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

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**254**,<sup>4905</sup> and shall not exceed the aggregate amount of the reduction in **outlays**<sup>4906</sup> under the milk price support program that otherwise would have been achieved by reducing payments for the purchase of milk or the products of milk under **this subsection**<sup>4907</sup> during the applicable fiscal year.

256(j)(6)           **(6) CERTAIN AUTHORITY NOT TO BE LIMITED.—** Nothing in **this joint resolution**<sup>4908</sup> shall limit or reduce, in any way, any appropriation that provides the Commodity Credit Corporation with **budget authority**<sup>4909</sup> to cover the Corporation's net realized losses.

256(k)           **(k) EFFECTS OF SEQUESTRATION.**<sup>4910</sup>—The effects of **sequestration**<sup>4911</sup> shall be as follows:

256(k)(1)           **(1) Budgetary resources**<sup>4912</sup> **sequestered**<sup>4913</sup> from any **account**<sup>4914</sup> shall be permanently cancelled, except as provided in **paragraph (6)**.<sup>4915</sup>

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<sup>4905</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254**, 2 U.S.C. § 904, *supra* p. 1060, addresses "Reports and Orders."

<sup>4906</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines "outlays." **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4907</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(j)**, 2 U.S.C. § 906(j), *supra* p. 1103, addresses "Commodity Credit Corporation."

<sup>4908</sup> "[T]his joint resolution" is **Joint Resolution increasing the statutory limit on the public debt**, Pub. L. No. 99-177, 99 Stat. 1037, 1038–1101 (1985), title II of which is **Balanced Budget and Emergency Deficit Control Act of 1985**, 2 U.S.C. §§ 900–922, pp. 976–1143.

<sup>4909</sup> **Congressional Budget Act of 1974 § 3(2)(A)**, 2 U.S.C. § 622(2)(A), *supra* p. 55, defines "budget authority." **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4910</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines "sequestration."

<sup>4911</sup> *Id.*

<sup>4912</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6)**, 2 U.S.C. § 900(c)(6), *supra* p. 980, defines "budgetary resources."

<sup>4913</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines "sequester."

<sup>4914</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines "account."

<sup>4915</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(k)(6)**, 2 U.S.C. § 906(k)(6), *infra* p. 1108.

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256(k)(2) (2) Except as otherwise provided, the same percentage **sequestration**<sup>4916</sup> shall apply to all programs, projects, and activities within a budget **account**<sup>4917</sup> (with programs, projects, and activities as delineated in the **appropriation Act**<sup>4918</sup> or accompanying report for the relevant fiscal year covering that **account**,<sup>4919</sup> or for **accounts**<sup>4920</sup> not included in **appropriation Acts**,<sup>4921</sup> as delineated in the most recently submitted President's budget).

256(k)(3) (3) Administrative **regulations**<sup>4922</sup> or similar actions implementing a **sequestration**<sup>4923</sup> shall be made within 120 days of the **sequestration**<sup>4924</sup> order. To the extent that formula allocations differ at different levels of **budgetary resources**<sup>4925</sup> within an **account**,<sup>4926</sup> program, project, or activity, the **sequestration**<sup>4927</sup> shall be interpreted as producing a lower total appropriation, with the remaining amount of the appropriation being obligated in a manner consistent with program allocation formulas in substantive law.

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<sup>4916</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines "sequestration."

<sup>4917</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines "account."

<sup>4918</sup> **Congressional Budget Act of 1974 § 3(5)**, 2 U.S.C. § 622(5), *supra* p. 58, defines "appropriation Act" by adopting the definition of **1 U.S.C. § 105**.

<sup>4919</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines "account."

<sup>4920</sup> *Id.*

<sup>4921</sup> **Congressional Budget Act of 1974 § 3(5)**, 2 U.S.C. § 622(5), *supra* p. 58, defines "appropriation Act" by adopting the definition of **1 U.S.C. § 105**.

<sup>4922</sup> **Congressional Budget Act of 1974 § 421(10)**, 2 U.S.C. § 658(10), *supra* p. 812, defines "regulation" by adopting the definition of **5 U.S.C. § 601(2)**, *supra* p. 814.

<sup>4923</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines "sequestration."

<sup>4924</sup> *Id.*

<sup>4925</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6)**, 2 U.S.C. § 900(c)(6), *supra* p. 980, defines "budgetary resources."

<sup>4926</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines "account."

<sup>4927</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines "sequestration."

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- 256(k)(4) (4) Except as otherwise provided, obligations in **sequestered**<sup>4928</sup> **accounts**<sup>4929</sup> shall be reduced only in the fiscal year in which a **sequester**<sup>4930</sup> occurs.
- 256(k)(5) (5) If an automatic spending increase is **sequestered**,<sup>4931</sup> the increase (in the applicable index) that was disregarded as a result of that **sequestration**<sup>4932</sup> shall not be taken into account in any subsequent fiscal year.
- 256(k)(6) (6) **Budgetary resources**<sup>4933</sup> **sequestered**<sup>4934</sup> in revolving, trust, and special fund **accounts**<sup>4935</sup> and offsetting collections **sequestered**<sup>4936</sup> in appropriation **accounts**<sup>4937</sup> shall not be available for obligation during the fiscal year in which the **sequestration**<sup>4938</sup> occurs, but shall be available in subsequent years to the extent otherwise provided in law.
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*“Statutory pay system” shall have the meaning given that term in section 5302(1) of title 5, United States Code—*Section 5302(1) provides:

- (1) the term “statutory pay system” means a pay system under —

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<sup>4928</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4929</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4930</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4931</sup> *Id.*

<sup>4932</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>4933</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6)*, 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>4934</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4935</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4936</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>4937</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4938</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

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(A) [subchapter III](#), relating to the General Schedule;

(B) [section 403 of the Foreign Service Act of 1980](#), relating to the Foreign Service of the United States; or

(C) [chapter 74 of title 38](#), relating to the Veterans Health Administration (other than a position subject to [section 7451 of title 38](#));<sup>4939</sup>

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<sup>4939</sup> [5 U.S.C. § 5302\(1\)](#).

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257        **SEC. 257.**<sup>4940</sup> **THE BASELINE**<sup>4941</sup>

257(a)        **(a) IN GENERAL.—**For any **budget year**,<sup>4942</sup> the **baseline**<sup>4943</sup> refers to a projection of **current-year**<sup>4944</sup> levels of **new budget authority**,<sup>4945</sup> **outlays**,<sup>4946</sup> **revenues**,<sup>4947</sup> and the **surplus**<sup>4948</sup> or **deficit**<sup>4949</sup> into the **budget year**<sup>4950</sup> and the **outyears**<sup>4951</sup> based on laws enacted through the applicable date.

257(b)        **(b) DIRECT SPENDING**<sup>4952</sup> **AND RECEIPTS.—**For the **budget year**<sup>4953</sup> and each **outyear**,<sup>4954</sup> the **baseline** shall be calculated using the following assumptions:

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<sup>4940</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 257 is codified as amended at 2 U.S.C. § 907.

<sup>4941</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907.

<sup>4942</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4943</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907.

<sup>4944</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13), 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4945</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4946</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4947</sup> U.S. GOV’T ACCOUNTABILITY OFF., A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS 87 (2005), *supra* p. 49, defines “revenues.”

<sup>4948</sup> Congressional Budget Act of 1974 § 3(7), 2 U.S.C. § 622(7), *supra* p. 58, defines “surplus.”

<sup>4949</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4950</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4951</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(14), 2 U.S.C. § 900(c)(14), *supra* p. 982, defines “outyear.”

<sup>4952</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4953</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4954</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(14), 2 U.S.C. § 900(c)(14), *supra* p. 982, defines “outyear.”

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- 257(b)(1) (1) IN GENERAL. — Laws providing or creating **direct spending**<sup>4955</sup> and receipts are assumed to operate in the manner specified in those laws for each such year and funding for **entitlement authority**<sup>4956</sup> is assumed to be adequate to make all payments required by those laws.
- 257(b)(2) (2) EXCEPTIONS. —
- 257(b)(2)(A)(i) (A)(i) No program established by a law enacted on or before August 5, 1997, with estimated **current year**<sup>4957</sup> **outlays**<sup>4958</sup> greater than \$50,000,000 shall be assumed to expire in the **budget year**<sup>4959</sup> or the **outyears**.<sup>4960</sup> The scoring of new programs with estimated **outlays**<sup>4961</sup> greater than \$50,000,000 a year shall be based on scoring by the Committees on Budget or **OMB**,<sup>4962</sup> as applicable. **OMB**,<sup>4963</sup> **CBO**,<sup>4964</sup> and the Budget Committees shall consult on the scoring of such programs where there are differences between **CBO**<sup>4965</sup> and **OMB**.<sup>4966</sup>
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<sup>4955</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>4956</sup> **Congressional Budget Act of 1974 § 3(9)**, 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(17)**, 2 U.S.C. § 900(c)(17), *supra* p. 982, expands upon that definition for purposes of the the Balanced Budget and Emergency Deficit Control Act.

<sup>4957</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)**, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4958</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4959</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)**, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4960</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(14)**, 2 U.S.C. § 900(c)(14), *supra* p. 982, defines “outyear.”

<sup>4961</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4962</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>4963</sup> *Id.*

<sup>4964</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)**, 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>4965</sup> *Id.*

<sup>4966</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”



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- 257(b)(2)(A)(ii) (ii) On the expiration of the suspension of a provision of law that is suspended under [section 7301 of title 7, United States Code](#),<sup>4967</sup> and that authorizes a program with estimated fiscal year [outlays](#)<sup>4968</sup> that are greater than \$50,000,000, for purposes of [clause \(i\)](#),<sup>4969</sup> the program shall be assumed to continue to operate in the same manner as the program operated immediately before the expiration of the suspension.
- 257(b)(2)(B) (B) The increase for veterans' compensation for a fiscal year is assumed to be the same as that required by law for veterans' pensions unless otherwise provided by law enacted in that session.
- 257(b)(2)(C) (C) Excise taxes dedicated to a trust fund, if expiring, are assumed to be extended at [current](#)<sup>4970</sup> rates.
- 257(b)(2)(D) (D) If any law expires before the [budget year](#)<sup>4971</sup> or any [outyear](#),<sup>4972</sup> then any program with estimated [current year](#)<sup>4973</sup> [outlays](#)<sup>4974</sup> greater than \$50,000,000 that operates under that law shall be assumed to continue to operate under that law as in effect immediately before its expiration.
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<sup>4967</sup> 7 U.S.C. § 7301 addresses "Suspension and repeal of permanent price support authority."

<sup>4968</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines "outlays." [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4969</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 257\(b\)\(2\)\(A\)\(i\)](#), 2 U.S.C. § 907(b)(2)(A)(i), *supra* p. 1111.

<sup>4970</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(9\)](#), 2 U.S.C. § 900(c)(9), *supra* p. 981, defines "current."

<sup>4971</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines "budget year."

<sup>4972</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(14\)](#), 2 U.S.C. § 900(c)(14), *supra* p. 982, defines "outyear."

<sup>4973</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(13\)](#), 2 U.S.C. § 900(c)(13), *supra* p. 982, defines "current year."

<sup>4974</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines "outlays." [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.



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- 257(b)(3)            **(3) HOSPITAL INSURANCE TRUST FUND.**<sup>4975</sup> — Notwithstanding any other provision of law, the receipts and disbursements of the **Hospital Insurance Trust Fund**<sup>4976</sup> shall be included in all calculations required by **this Act**.<sup>4977</sup>
- 257(c)            **(c) DISCRETIONARY APPROPRIATIONS.**<sup>4978</sup> — For the **budget year**<sup>4979</sup> and each **outyear**,<sup>4980</sup> the **baseline** shall be calculated using the following assumptions regarding all amounts other than those covered by **subsection (b)**<sup>4981</sup>:
- 257(c)(1)            **(1) INFLATION OF CURRENT-YEAR**<sup>4982</sup> APPROPRIATIONS. — **Budgetary resources**<sup>4983</sup> other than unobligated balances shall be at the level provided for the **budget year**<sup>4984</sup> in full-year **appropriation Acts**.<sup>4985</sup> If for any **account**<sup>4986</sup> a full-year appropriation has not yet been enacted, **budgetary resources**<sup>4987</sup> other than unobligated balances shall be at the level available in
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<sup>4975</sup> [Social Security Amendments of 1965](#), Pub. L. No. 89-97, § 102(a), 79 Stat. 286, 299, created the Federal Hospital Insurance Trust Fund at [Social Security Act of 1935 § 1817](#), 42 U.S.C. § 1395i. The Hospital Insurance Trust Fund relates to Medicare Part A.

<sup>4976</sup> [Social Security Amendments of 1965](#), Pub. L. No. 89-97, § 102(a), 79 Stat. 286, 299, created the Federal Hospital Insurance Trust Fund at [Social Security Act of 1935 § 1817](#), 42 U.S.C. § 1395i. The Hospital Insurance Trust Fund relates to Medicare Part A.

<sup>4977</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), 2 U.S.C. §§ 900–922, *supra* pp. 976–1143.

<sup>4978</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(7\)](#), 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>4979</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4980</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(14\)](#), 2 U.S.C. § 900(c)(14), *supra* p. 982, defines “outyear.”

<sup>4981</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 257\(b\)](#), 2 U.S.C. § 907(b), *supra* p. 1110, addresses “Direct Spending and Receipts.”

<sup>4982</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(13\)](#), 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4983</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(6\)](#), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>4984</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>4985</sup> [Congressional Budget Act of 1974 § 3\(5\)](#), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>4986</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>4987</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(6\)](#), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

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the **current year**,<sup>4988</sup> adjusted sequentially and cumulatively for expiring housing contracts as specified in **paragraph (2)**,<sup>4989</sup> for social insurance administrative expenses as specified in **paragraph (3)**,<sup>4990</sup> to offset pay absorption and for pay annualization as specified in **paragraph (4)**,<sup>4991</sup> for inflation as specified in **paragraph (5)**,<sup>4992</sup> and to account for changes required by law in the level of **agency**<sup>4993</sup> payments for personnel benefits other than pay.

257(c)(2)           **(2) EXPIRING HOUSING CONTRACTS.—New budget authority**<sup>4994</sup> to renew expiring multiyear subsidized housing contracts shall be adjusted to reflect the difference in the number of such contracts that are scheduled to expire in that fiscal year and the number expiring in the **current year**,<sup>4995</sup> with the per-contract renewal cost equal to the average **current-year**<sup>4996</sup> cost of renewal contracts.

257(c)(3)           **(3) SOCIAL INSURANCE ADMINISTRATIVE EXPENSES.—Budgetary resources**<sup>4997</sup> for the administrative expenses of the following trust funds shall be adjusted by the percentage change in the beneficiary population from

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<sup>4988</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)*, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4989</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 257(c)(2)*, 2 U.S.C. § 907(c)(2), *infra* p. 1114, addresses “Expiring housing contracts.”

<sup>4990</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 257(c)(3)*, 2 U.S.C. § 907(c)(3), *infra* p. 1114, addresses “Social insurance administrative expenses.”

<sup>4991</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 257(c)(4)*, 2 U.S.C. § 907(c)(4), *infra* p. 1115, addresses “Pay annualization; offset to pay absorption.”

<sup>4992</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 257(c)(5)*, 2 U.S.C. § 907(c)(5), *infra* p. 1115, addresses “Inflators.”

<sup>4993</sup> *Congressional Budget Act of 1974 § 421(1)*, 2 U.S.C. § 658(1), *supra* p. 803, defines “agency,” adopting, in part, the definition of 5 U.S.C. § 551(1), *supra* p. 813.

<sup>4994</sup> *Congressional Budget Act of 1974 § 3(2)(C)*, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>4995</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)*, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4996</sup> *Id.*

<sup>4997</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6)*, 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

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the **current year**<sup>4998</sup> to that fiscal year: the **Federal Hospital Insurance Trust Fund**,<sup>4999</sup> the **Supplementary Medical Insurance Trust Fund**,<sup>5000</sup> the **Unemployment Trust Fund**,<sup>5001</sup> and the **railroad retirement account**,<sup>5002</sup>

257(c)(4) (4) PAY ANNUALIZATION; OFFSET TO PAY ABSORPTION.—**Current-year**<sup>5003</sup> **new budget authority**<sup>5004</sup> for Federal employees shall be adjusted to reflect the full 12-month costs (without absorption) of any pay adjustment that occurred in that fiscal year.

257(c)(5) (5) INFLATORS.—The inflator used in **paragraph (1)**<sup>5005</sup> to adjust **budgetary resources**<sup>5006</sup> relating to personnel shall be the percent by which the average of the Bureau of Labor Statistics Employment Cost Index (wages and salaries, private industry workers) for that fiscal year differs from such index for the **current year**.<sup>5007</sup> The inflator used in **paragraph (1)**<sup>5008</sup> to adjust all other **budgetary resources**<sup>5009</sup> shall be the percent by which the average of the estimated gross domestic

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<sup>4998</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)**, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>4999</sup> **Social Security Amendments of 1965**, Pub. L. No. 89-97, § 102(a), 79 Stat. 286, 299, created the Federal Hospital Insurance Trust Fund at **Social Security Act of 1935 § 1817**, 42 U.S.C. § 1395i. The Hospital Insurance Trust Fund relates to Medicare Part A.

<sup>5000</sup> **Social Security Amendments of 1965**, Pub. L. No. 89-97, § 102(a), 79 Stat. 286, 308, created the Supplementary Medical Insurance Trust Fund at **Social Security Act of 1935 § 1841**, 42 U.S.C. § 1395t. The Supplementary Medical Insurance Trust Fund relates to Medicare Part B, which covers physician services and medical supplies, and Part D, which covers prescription drugs.

<sup>5001</sup> **Social Security Act of 1935 § 904**, 42 U.S.C. § 1104, created the Unemployment Trust Fund.

<sup>5002</sup> **45 U.S.C. §§ 201–231v** addresses “Retirement of Railroad Employees.”

<sup>5003</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)**, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>5004</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>5005</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 257(c)(1)**, 2 U.S.C. § 907(c)(1), *supra* p. 1113, addresses “Inflation of current-year appropriations.”

<sup>5006</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6)**, 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>5007</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)**, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>5008</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 257(c)(1)**, 2 U.S.C. § 907(c)(1), *supra* p. 1113, addresses “Inflation of current-year appropriations.”

<sup>5009</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6)**, 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

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product chain-type price index for that fiscal year differs from the average of such estimated index for the **current year**.<sup>5010</sup>

257(c)(6) (6) **CURRENT-YEAR**<sup>5011</sup> APPROPRIATIONS.—If, for any **account**,<sup>5012</sup> a continuing appropriation is in effect for less than the entire **current year**,<sup>5013</sup> then the **current-year**<sup>5014</sup> amount shall be assumed to equal the amount that would be available if that continuing appropriation covered the entire fiscal year. If law permits the transfer of **budget authority**<sup>5015</sup> among budget **accounts**<sup>5016</sup> in the **current year**,<sup>5017</sup> the **current-year**<sup>5018</sup> level for an **account**<sup>5019</sup> shall reflect transfers accomplished by the submission of, or assumed for the **current year**<sup>5020</sup> in, the President’s original budget for the **budget year**.<sup>5021</sup>

257(d) (d) **UP-TO-DATE CONCEPTS**.—In deriving the **baseline** for any **budget year**<sup>5022</sup> or **outyear**,<sup>5023</sup> **current-year**<sup>5024</sup>

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<sup>5010</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)*, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>5011</sup> *Id.*

<sup>5012</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>5013</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)*, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>5014</sup> *Id.*

<sup>5015</sup> *Congressional Budget Act of 1974 § 3(2)(A)*, 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>5016</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>5017</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)*, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>5018</sup> *Id.*

<sup>5019</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)*, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>5020</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)*, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

<sup>5021</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>5022</sup> *Id.*

<sup>5023</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(14)*, 2 U.S.C. § 900(c)(14), *supra* p. 982, defines “outyear.”

<sup>5024</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)*, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.”

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amounts shall be calculated using the concepts and definitions that are required for that **budget year**.<sup>5025</sup>

- 257(e) (e) **ASSET SALES**.<sup>5026</sup> — Amounts realized from the **sale of an asset**<sup>5027</sup> shall not be included in estimates under **section 251**,<sup>5028</sup> **252**,<sup>5029</sup> or **253**<sup>5030</sup> if that sale would result in a financial cost to the Federal Government as determined pursuant to scorekeeping guidelines.
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<sup>5025</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)**, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.”

<sup>5026</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(19)**, 2 U.S.C. § 900(c)(19), *supra* p. 983, defines “asset sale.”

<sup>5027</sup> *Id.*

<sup>5028</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251**, 2 U.S.C. § 901, *supra* p. 986, addresses “Enforcing Discretionary Spending Limits,” but the law sets no such limits beyond fiscal year 2021.

<sup>5029</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252**, 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>5030</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 253**, 2 U.S.C. § 903, *supra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the **Budget Enforcement Act of 1990**, Pub. L. No. 101-508, 104 Stat. 1388.

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258            **SEC. 258.<sup>5031</sup> SUSPENSION IN EVENT OF WAR<sup>5032</sup>  
OR LOW GROWTH**

258(a)            **(a)<sup>5033</sup> PROCEDURES IN EVENT OF LOW-GROWTH REPORT. —**

258(a)(1)            **(1) TRIGGER. — Whenever CBO<sup>5034</sup> issues a low-growth report under section 254(i),<sup>5035</sup> the Majority Leader of the House of Representatives may, and the Majority Leader of the Senate shall, introduce a joint resolution (in the form set forth in paragraph (2)<sup>5036</sup>) declaring that the conditions specified in section 254(i)<sup>5037</sup> are met and suspending the relevant provisions of this title,<sup>5038</sup> titles III<sup>5039</sup> and VI<sup>5040</sup> of the Congressional Budget Act of 1974, and section 1103 of title 31, United States Code.<sup>5041</sup>**

258(a)(2)            **(2) FORM OF JOINT RESOLUTION. —**

258(a)(2)(A)            **(A) The matter after the resolving clause in any joint resolution introduced pursuant to paragraph (1)<sup>5042</sup> shall be as follows: “That the Congress declares that the conditions**

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<sup>5031</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258 is codified as amended at [2 U.S.C. § 907a](#).

<sup>5032</sup> U.S. CONST. art. I, § 8, cl. 11, provides: “Congress shall have power to . . . declare War.”

<sup>5033</sup> [Budget Control Act of 2011](#), Pub. L. No. 112-25, § 104(b), 125 Stat. 240, 246, renders this subsection inoperative by negating the Congressional Budget Office’s authority under Balanced Budget and Emergency Deficit Control Act section 254(i) to issue low-growth reports, providing: “Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not apply to the Congressional Budget Office.”

<sup>5034</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(16\)](#), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.”

<sup>5035</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254\(i\)](#), 2 U.S.C. § 904(i), *supra* p. 1073, addresses “Low-Growth Report.”

<sup>5036</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)\(2\)](#), 2 U.S.C. § 907a(a)(2), *infra* p. 1118, addresses “Form of Joint Resolution.”

<sup>5037</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254\(i\)](#), 2 U.S.C. § 904(i), *supra* p. 1073, addresses “Low-Growth Report.”

<sup>5038</sup> “[T]his title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 99-177, tit. II, 99 Stat. 1037, 1038–1101 (1985), that is, [Balanced Budget and Emergency Deficit Control Act of 1985](#), 2 U.S.C. §§ 900–922, pp. 976–1143.

<sup>5039</sup> [Congressional Budget Act of 1974 tit. III, §§ 300–315](#), 2 U.S.C. §§ 631–645a, *supra* pp. 113–782, addresses “Congressional Budget Process.”

<sup>5040</sup> [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10118(a), 111 Stat. 251, 695, repealed Congressional Budget Act of 1974 tit. VI, which formerly addressed “Budget Agreement Enforcement Provisions.”

<sup>5041</sup> [31 U.S.C. § 1103](#) addresses “Budget ceiling,” stating: “Congress reaffirms its commitment that budget outlays of the United States Government for a fiscal year may be not more than the receipts of the Government for that year.”

<sup>5042</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)\(1\)](#), 2 U.S.C. § 907a(a)(1), *supra* p. 1118, addresses “Trigger.”



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specified in [section 254\(j\)](#)<sup>5043</sup> of the Balanced Budget and Emergency Deficit Control Act of 1985 are met, and the implementation of the [Congressional Budget and Impoundment Control Act of 1974](#),<sup>5044</sup> chapter 11 of title 31, United States Code,<sup>5045</sup> and part C of the Balanced Budget and Emergency Deficit Control Act of 1985<sup>5046</sup> are modified as described in [section 258\(b\)](#) of the Balanced Budget and Emergency Deficit Control Act of 1985.”<sup>5047</sup>

258(a)(2)(B) (B) The title of the joint resolution shall be “Joint resolution suspending certain provisions of law pursuant to [section 258\(a\)\(2\)](#) of the [Balanced Budget and Emergency Deficit Control Act of 1985](#).”<sup>5048</sup> and the joint resolution shall not contain any preamble.

258(a)(3) (3) COMMITTEE ACTION.—Each joint resolution introduced pursuant to [paragraph \(1\)](#)<sup>5049</sup> shall be referred to the appropriate committees of the House of Representatives or the Committee on the Budget of the Senate, as the case may be; and such Committee shall report the joint resolution to its House without amendment on or before the fifth day on which such House is in session after the date on which the joint resolution is introduced. If the Committee fails to report the joint resolution within the five-day period referred to in the preceding sentence, it shall be automatically discharged from further consideration of the joint resolution, and the joint resolution shall be placed on the appropriate calendar.

258(a)(4) (4) CONSIDERATION OF JOINT RESOLUTION.—

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<sup>5043</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254\(j\)](#), 2 U.S.C. § 904(j), *supra* p. 1073, addresses “Economic and Technical Assumptions.” The reference here should be to [Balanced Budget and Emergency Deficit Control Act of 1985 § 254\(i\)](#), 2 U.S.C. § 904(i), *supra* p. 1073 (which addresses “Low-Growth Report” and its conditions), as the reference is in [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)\(1\)](#), 2 U.S.C. § 907a(a)(1), *supra* p. 1118.

<sup>5044</sup> [Congressional Budget and Impoundment Control Act of 1974](#), 2 U.S.C. §§ 601–688, *supra* pp. 49–969.

<sup>5045</sup> [31 U.S.C. ch. 11, §§ 1101–1126](#), addresses “The Budget and Fiscal, Budget, and Program Information.”

<sup>5046</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>5047</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(b\)](#), 2 U.S.C. § 907a(b), *infra* p. 1121, addresses “Suspension of Sequestration Procedures.”

<sup>5048</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)\(2\)](#), 2 U.S.C. § 907a(a)(2), *infra* p. 1118, addresses “Form of Joint Resolution.”

<sup>5049</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)\(1\)](#), 2 U.S.C. § 907a(a)(1), *supra* p. 1118, addresses “Trigger.”

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258(a)(4)(A) (A) A vote on final passage of a joint resolution reported to the Senate or discharged pursuant to [paragraph \(3\)](#)<sup>5050</sup> [shall be taken](#)<sup>5051</sup> on or before the close of the fifth calendar day of session after the date on which the joint resolution is reported or after the Committee has been discharged from further consideration of the joint resolution. If prior to the passage by one House of a joint resolution of that House, that House receives the same joint resolution from the other House, then —

258(a)(4)(A)(i) (i) the procedure in that House shall be the same as if no such joint resolution had been received from the other House, but

258(a)(4)(A)(ii) (ii) the vote on final passage shall be on the joint resolution of the other House.

When the joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a House joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a Senate joint resolution agreed to in the Senate) shall cause the joint resolution to be engrossed, certified, and transmitted to the other House of the Congress as soon as practicable.

258(a)(4)(B)(i) (B)(i) In the Senate, a joint resolution under [this paragraph](#)<sup>5052</sup> shall be privileged. It shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

258(a)(4)(B)(ii) (ii) Debate in the Senate on a joint resolution under [this paragraph](#),<sup>5053</sup> and all debatable motions and appeals in connection therewith, shall be limited to not more than five hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

258(a)(4)(B)(iii) (iii) Debate in the Senate on any debatable motion or appeal in connection with a joint resolution under [this paragraph](#)<sup>5054</sup> shall be limited to not more than one hour, to be

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<sup>5050</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)\(3\)](#), 2 U.S.C. § 907a(a)(3), *supra* p. 1119, addresses “Committee action.”

<sup>5051</sup> For a discussion of how the Presiding Officer enforces this language, see *infra* p. 1122.

<sup>5052</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)\(4\)](#), 2 U.S.C. § 907a(a)(4), *supra* p. 1119, addresses “Consideration of joint resolution.”

<sup>5053</sup> *Id.*

<sup>5054</sup> *Id.*



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equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee.

- 258(a)(4)(B)(iv) (iv) A motion in the Senate to further limit debate on a joint resolution under [this paragraph](#)<sup>5055</sup> is not debatable. A motion to table or to recommit a joint resolution under [this paragraph](#)<sup>5056</sup> is not in order.
- 258(a)(4)(C) (C) No amendment to a joint resolution considered under [this paragraph](#)<sup>5057</sup> shall be in order in the Senate.
- 258(b) (b) SUSPENSION OF [SEQUESTRATION](#)<sup>5058</sup> PROCEDURES.— Upon the enactment of a declaration of war<sup>5059</sup> or a joint resolution described in [subsection \(a\)](#)<sup>5060</sup> —
- 258(b)(1) (1) the subsequent issuance of any [sequestration](#)<sup>5061</sup> report or any [sequestration](#)<sup>5062</sup> order is precluded;
- 258(b)(2) (2) [sections 302\(f\)](#),<sup>5063</sup> [310\(d\)](#),<sup>5064</sup> [311\(a\)](#),<sup>5065</sup> and title VI<sup>5066</sup> of the Congressional Budget Act of 1974 are suspended; and

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<sup>5055</sup> *Id.*

<sup>5056</sup> *Id.*

<sup>5057</sup> *Id.*

<sup>5058</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5059</sup> U.S. CONST. art. I, § 8, cl. 11, provides: “Congress shall have power to . . . declare War.”

<sup>5060</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)](#), 2 U.S.C. § 907a(a), *supra* p. 1118, addresses “Procedures in Event of Low-Growth Report.”

<sup>5061</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5062</sup> *Id.*

<sup>5063</sup> [Congressional Budget Act of 1974 § 302\(f\)](#), 2 U.S.C. § 633(f), *supra* p. 202, addresses “Legislation Subject to Point of Order.”

<sup>5064</sup> [Congressional Budget Act of 1974 § 310\(d\)](#), 2 U.S.C. § 641(d), *supra* p. 544, addresses “Limitation on Amendments to Reconciliation Bills and Resolutions.”

<sup>5065</sup> [Congressional Budget Act of 1974 § 311\(a\)](#), 2 U.S.C. § 642(a), *supra* p. 573, addresses “Enforcement of Budget Aggregates.”

<sup>5066</sup> [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10118(a), 111 Stat. 251, 695, repealed Congressional Budget Act of 1974 tit. VI, which formerly addressed “Budget Agreement Enforcement Provisions.”

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258(b)(3) (3) [section 1103 of title 31, United States Code](#),<sup>5067</sup> is suspended.

258(c) (c) RESTORATION OF [SEQUESTRATION](#)<sup>5068</sup> PROCEDURES.—

258(c)(1) (1) In the event of a suspension of [sequestration](#)<sup>5069</sup> procedures due to a declaration of war,<sup>5070</sup> then, effective with the first fiscal year that begins in the session after the state of war is concluded by Senate ratification of the necessary treaties, the provisions of [subsection \(b\)](#)<sup>5071</sup> triggered by that declaration of war<sup>5072</sup> are no longer effective.

258(c)(2) (2) In the event of a suspension of [sequestration](#)<sup>5073</sup> procedures due to the enactment of a joint resolution described in [subsection \(a\)](#),<sup>5074</sup> then, effective with regard to the first fiscal year beginning at least 12 months after the enactment of that resolution, the provisions of [subsection \(b\)](#)<sup>5075</sup> triggered by that resolution are no longer effective.

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*A vote . . . shall be taken*—The Presiding Officer enforced this deadline by putting the question on the joint resolution at midnight of the day of the deadline. The Parliamentarian reported in *Riddick's Senate Procedure*<sup>5076</sup>:

In response to a parliamentary inquiry, the Chair indicated that at midnight that day the Chair would put the question on the passage of a

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<sup>5067</sup> [31 U.S.C. § 1103](#) addresses “Budget ceiling,” stating: “Congress reaffirms its commitment that budget outlays of the United States Government for a fiscal year may be not more than the receipts of the Government for that year.”

<sup>5068</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5069</sup> *Id.*

<sup>5070</sup> U.S. CONST. art. I, § 8, cl. 11, provides: “Congress shall have power to . . . declare War.”

<sup>5071</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(b\)](#), 2 U.S.C. § 907a(b), *supra* p. 1121, addresses “Suspension of Sequestration Procedures.”

<sup>5072</sup> U.S. CONST. art. I, § 8, cl. 11, provides: “Congress shall have power to . . . declare War.”

<sup>5073</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5074</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)](#), 2 U.S.C. § 907a(a), *supra* p. 1118, addresses “Procedures in Event of Low-Growth Report.”

<sup>5075</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(b\)](#), 2 U.S.C. § 907a(b), *supra* p. 1121, addresses “Suspension of Sequestration Procedures.”

<sup>5076</sup> FLOYD M. RIDDICK & ALAN S. FRUMIN, [RIDDICK'S SENATE PROCEDURE](#) 636 (1992) (footnotes renumbered and reformatted).

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sequester resolution, regardless of whether the Senate was then on another (privileged) matter.<sup>[5077]</sup> Later that day, the Chair on its own initiative put the question on the passage of a sequester resolution, the vote on passage of which was required by statute to occur by the end of a certain calendar day, immediately after announcing the result of a roll call vote which began before midnight on that day, and which concluded at approximately 12:10 a.m. on the following day.<sup>[5078]</sup>

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<sup>5077</sup> See 132 CONG. REC. 24,807 (Sept. 19, 1986).

<sup>5078</sup> *Id.* at 24,947–51. The sequestration resolution was considered pursuant to the provisions of [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 254(a)(4)(A), 99 Stat. 1038, 1079, as incorporated by [Balanced Budget and Emergency Deficit Control Act of 1985](#), Pub. L. No. 99-177, § 274(f)(4), 99 Stat. 1038, 1100. [The operative language of § 254(a)(4)(A) now appears in [Balanced Budget and Emergency Deficit Control Act of 1985 § 258\(a\)\(4\)\(A\)](#), 2 U.S.C. § 907a(a)(4)(A), *supra* p. 1120.]

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258A      **SEC. 258A.<sup>5079</sup> MODIFICATION OF PRESIDENTIAL ORDER**

258A(a)      **(a) INTRODUCTION OF JOINT RESOLUTION.**— At any time after the Director of OMB issues a final sequestration report under [section 254<sup>5080</sup>](#) for a fiscal year, but before the close of the twentieth calendar day of the session of Congress beginning after the date of issuance of such report, the majority leader of either House of Congress may introduce a joint resolution which contains provisions directing the President to modify the most recent order issued under [section 254<sup>5081</sup>](#) or provide an alternative to reduce the deficit for such fiscal year. After the introduction of the first such joint resolution in either House of Congress in any calendar year, then no other joint resolution introduced in such House in such calendar year shall be subject to the procedures set forth in [this section<sup>5082</sup>](#).

258A(b)      **(b) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.**—

258A(b)(1)      **(1) REFERRAL TO COMMITTEE.**— A joint resolution introduced in the Senate under [subsection \(a\)<sup>5083</sup>](#) shall not be referred to a committee of the Senate and shall be placed on the calendar pending disposition of such joint resolution in accordance with [this subsection<sup>5084</sup>](#).

258A(b)(2)      **(2) CONSIDERATION IN THE SENATE.**— On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is

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<sup>5079</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258A is codified as amended at [2 U.S.C. § 907b](#).

<sup>5080</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>5081</sup> *Id.*

<sup>5082</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258A](#), 2 U.S.C. § 907b, *supra* p. 1124, addresses “Modification of Presidential Order.”

<sup>5083</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258A\(a\)](#), 2 U.S.C. § 907b(a), *supra* p. 1124, addresses “Introduction of Joint Resolution.”

<sup>5084</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258A\(b\)](#), 2 U.S.C. § 907b(b), *supra* p. 1124, addresses “Procedures for Consideration of Joint Resolutions.”

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introduced under **subsection (a)**,<sup>5085</sup> notwithstanding any rule or precedent of the Senate, including **Rule XXII of the Standing Rules of the Senate**,<sup>5086</sup> it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of the joint resolution. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution (to which the motion applies) is introduced. The joint resolution is privileged in the Senate. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the Senate shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the Senate until disposed of.

258A(b)(3)                    **(3) DEBATE IN THE SENATE. —**

258A(b)(3)(A)            **(A) In the Senate, debate on a joint resolution introduced under **subsection (a)**,<sup>5087</sup> amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees).**

258A(b)(3)(B)            **(B) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order,**

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<sup>5085</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258A(a)**, 2 U.S.C. § 907b(a), *supra* p. 1124, addresses “Introduction of Joint Resolution.”

<sup>5086</sup> **Senate Rule XXII** addresses the cloture process (among other things).

<sup>5087</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258A(a)**, 2 U.S.C. § 907b(a), *supra* p. 1124, addresses “Introduction of Joint Resolution.”

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and a motion to recommit the joint resolution is not in order.

258A(b)(3)(C)(i) (C)(i) No amendment that is not **germane**<sup>5088</sup> to the provisions of the joint resolution or to the order issued under **section 254**<sup>5089</sup> shall be in order in the Senate. In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between, and controlled by, the mover and the majority leader (or their designees), except that in the event that the majority leader favors the amendment, motion, or appeal, the minority leader (or the minority leader's designee) shall control the time in opposition to the amendment, motion, or appeal.

258A(b)(3)(C)(ii) (ii) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are **mathematically consistent**.<sup>5090</sup>

258A(b)(4) (4) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on a joint resolution introduced under **subsection (a)**,<sup>5091</sup> a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under

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<sup>5088</sup> For a discussion of germaneness, see *supra* p. 268.

<sup>5089</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254**, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>5090</sup> For a discussion of mathematical consistency, see *supra* p. 303.

<sup>5091</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258A(a)**, 2 U.S.C. § 907b(a), *supra* p. 1124, addresses “Introduction of Joint Resolution.”

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**paragraph (3),<sup>5092</sup> the vote on final passage of the joint resolution shall occur.**

258A(b)(5) **(5) APPEALS.— Appeals from the decisions of the Chair shall be decided without debate.**

258A(b)(6) **(6) CONFERENCE REPORTS.— In the Senate, points of order under **titles III,**<sup>5093</sup> **IV,**<sup>5094</sup> and **VI**<sup>5095</sup> of the Congressional Budget Act of 1974 are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.**

258A(b)(7) **(7) RESOLUTION FROM OTHER HOUSE.— If, before the passage by the Senate of a joint resolution of the Senate introduced under **subsection (a),**<sup>5096</sup> the Senate receives from the House of Representatives a joint resolution introduced under **subsection (a),**<sup>5097</sup> then the following procedures shall apply:**

258A(b)(7)(A) **(A) The joint resolution of the House of Representatives shall not be referred to a committee and shall be placed on the calendar.**

258A(b)(7)(B) **(B) With respect to a joint resolution introduced under **subsection (a)**<sup>5098</sup> in the Senate —**

258A(b)(7)(B)(i) **(i) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but**

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<sup>5092</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258A(b)(3)**, 2 U.S.C. § 907b(b)(3), *supra* p. 1125, addresses “Debate in the Senate.”

<sup>5093</sup> **Congressional Budget Act of 1974 tit. III, §§ 300–315**, 2 U.S.C. §§ 631–645a, *supra* pp. 113–782, addresses “Congressional Budget Process.”

<sup>5094</sup> **Congressional Budget Act of 1974 tit. IV, §§ 401–428**, 2 U.S.C. §§ 651–658g, *supra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>5095</sup> **Balanced Budget Act of 1997**, Pub. L. No. 105-33, § 10118(a), 111 Stat. 251, 695, repealed Congressional Budget Act of 1974 tit. VI, which formerly addressed “Budget Agreement Enforcement Provisions.”

<sup>5096</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258A(a)**, 2 U.S.C. § 907b(a), *supra* p. 1124, addresses “Introduction of Joint Resolution.”

<sup>5097</sup> *Id.*

<sup>5098</sup> *Id.*

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- 258A(b)(7)(B)(ii)(I) (ii)(I) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or
- 258A(b)(7)(B)(ii)(II) (II) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.
- 258A(b)(7)(C) (C) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the resolution originated in the Senate.
- 258A(b)(8) (8) SENATE ACTION ON HOUSE RESOLUTION.—If the Senate receives from the House of Representatives a joint resolution introduced under [subsection \(a\)](#)<sup>5099</sup> after the Senate has disposed of a Senate originated resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.
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<sup>5099</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258A\(a\)](#), 2 U.S.C. § 907b(a), *supra* p. 1124, addresses “Introduction of Joint Resolution.”



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258B      **SEC. 258B.<sup>5100</sup> FLEXIBILITY AMONG DEFENSE PROGRAMS, PROJECTS, AND ACTIVITIES**

258B(a)      **(a) REDUCTIONS BEYOND AMOUNT SPECIFIED IN PRESIDENTIAL ORDER.—Subject to subsections (b),<sup>5101</sup> (c),<sup>5102</sup> and (d),<sup>5103</sup> new budget authority<sup>5104</sup> and unobligated balances for any programs, projects, or activities within major functional category 050 (other than a military personnel account<sup>5105</sup>) may be further reduced beyond the amount specified in an order issued by the President under section 254<sup>5106</sup> for such fiscal year. To the extent such additional reductions are made and result in additional outlay reductions, the President may provide for lesser reductions in new budget authority<sup>5107</sup> and unobligated balances for other programs, projects, or activities within major functional category 050 for such fiscal year, but only to the extent that the resulting outlay increases do not exceed the additional outlay reductions, and no such program, project, or activity may be increased above the level actually made available by law in appropriation Acts<sup>5108</sup> (before taking sequestration<sup>5109</sup> into account). In making calculations under this subsection,<sup>5110</sup>**

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<sup>5100</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258B is codified as amended at 2 U.S.C. § 907c.

<sup>5101</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258B(b), 2 U.S.C. § 907c(b), *infra* p. 1130, addresses “Base Closures Prohibited.”

<sup>5102</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258B(c), 2 U.S.C. § 907c(c), *infra* p. 1130, addresses “Report and Joint Resolution Required.”

<sup>5103</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258B(d), 2 U.S.C. § 907c(d), *infra* p. 1131, addresses “Introduction of Joint Resolution.”

<sup>5104</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>5105</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>5106</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 254, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>5107</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>5108</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>5109</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5110</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258B(a), 2 U.S.C. § 907c(a), *supra* p. 1129, addresses “Reductions Beyond Amount Specified in Presidential Order.”

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the President shall use [account](#)<sup>5111</sup> outlay rates that are identical to those used in the report by the Director of [OMB](#)<sup>5112</sup> under [section 254](#).<sup>5113</sup>

258B(b) (b) BASE CLOSURES PROHIBITED.—No actions taken by the President under [subsection \(a\)](#)<sup>5114</sup> for a fiscal year may result in a domestic base closure or realignment that would otherwise be subject to [section 2687 of title 10, United States Code](#).<sup>5115</sup>

258B(c) (c) REPORT AND JOINT RESOLUTION REQUIRED.—The President may not exercise the authority provided by [this paragraph](#)<sup>5116</sup> for a fiscal year unless —

258B(c)(1) (1) the President submits a single report to Congress specifying, for each [account](#),<sup>5117</sup> the detailed changes proposed to be made for such fiscal year pursuant to [this section](#);<sup>5118</sup>

258B(c)(2) (2) that report is submitted within 5 calendar days of the start of the next session of Congress; and

258B(c)(3) (3) a joint resolution affirming or modifying the changes proposed by the President pursuant to [this paragraph](#)<sup>5119</sup> becomes law.

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<sup>5111</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>5112</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>5113</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>5114</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(a\)](#), 2 U.S.C. § 907c(a), *supra* p. 1129, addresses “Reductions Beyond Amount Specified in Presidential Order.”

<sup>5115</sup> [10 U.S.C. § 2687](#) addresses “Base closures and realignments.”

<sup>5116</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(c\)](#), 2 U.S.C. § 907c(c), addresses “Report and Joint Resolution Required.” The House Office of the Law Revision Counsel, which maintains the U.S. Code, suggests (at [2 U.S.C. § 907c note](#)) that this reference probably should be to “section,” so that this reference is to [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B](#), 2 U.S.C. § 907c, *supra* p. 1129, which addresses “Flexibility Among Defense Programs, Projects, and Activities” generally.

<sup>5117</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>5118</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B](#), 2 U.S.C. § 907c, *supra* p. 1129, addresses “Flexibility Among Defense Programs, Projects, and Activities.”

<sup>5119</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(c\)\(3\)](#), 2 U.S.C. § 907c(c)(3). The House Office of the Law Revision Counsel, which maintains the U.S. Code, suggests (at [2 U.S.C. § 907c note](#))

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- 258B(d) (d) INTRODUCTION OF JOINT RESOLUTION.—Within 5 calendar days of session after the President submits a report to Congress under [subsection \(c\)\(1\)](#)<sup>5120</sup> for a fiscal year, the majority leader of each House of Congress shall (by request) introduce a joint resolution which contains provisions affirming the changes proposed by the President pursuant to [this paragraph](#).<sup>5121</sup>
- 258B(e) (e) FORM AND TITLE OF JOINT RESOLUTION.—
- 258B(e)(1) (1) The matter after the resolving clause in any joint resolution introduced pursuant to [subsection \(d\)](#)<sup>5122</sup> shall be as follows: “That the report of the President as submitted on [Insert Date] under [section 258B](#)<sup>5123</sup> is hereby approved.”
- 258B(e)(2) (2) The title of the joint resolution shall be “Joint resolution approving the report of the President submitted under [section 258B of the Balanced Budget and Emergency Deficit Control Act of 1985](#).”<sup>5124</sup>
- 258B(e)(3) (3) Such joint resolution shall not contain any preamble.
- 258B(f) (f) CALENDARING AND CONSIDERATION OF JOINT RESOLUTION IN SENATE.—

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that this reference probably should be to “section,” so that this reference is to [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B](#), 2 U.S.C. § 907c, *supra* p. 1129, which addresses “Flexibility Among Defense Programs, Projects, and Activities” generally.

<sup>5120</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(c\)\(1\)](#), 2 U.S.C. § 907c(c)(1), *supra* p. 1130.

<sup>5121</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(d\)](#), 2 U.S.C. § 907c(d), *supra* p. 1131, addresses “Introduction of Joint Resolution.” The House Office of the Law Revision Counsel, which maintains the U.S. Code, suggests (at [2 U.S.C. § 907c note](#)) that this reference probably should be to “section,” so that this reference is to [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B](#), 2 U.S.C. § 907c, *supra* p. 1129, which addresses “Flexibility Among Defense Programs, Projects, and Activities” generally.

<sup>5122</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(d\)](#), 2 U.S.C. § 907c(d), *supra* p. 1131, addresses “Introduction of Joint Resolution.”

<sup>5123</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B](#), 2 U.S.C. § 907c, *supra* p. 1129, addresses “Flexibility Among Defense Programs, Projects, and Activities.”

<sup>5124</sup> *Id.*

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258B(f)(1) (1) A joint resolution introduced in the Senate under [subsection \(d\)](#)<sup>5125</sup> shall be referred to the Committee on Appropriations, and if not reported within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of introduction shall be considered as having been discharged therefrom and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with [this subsection](#).<sup>5126</sup> In the Senate, no amendment proposed in the Committee on Appropriations shall be in order other than an amendment (in the nature of a substitute) that is [germane](#)<sup>5127</sup> or [relevant](#)<sup>5128</sup> to the provisions of the joint resolution or to the order issued under [section 254](#).<sup>5129</sup> For purposes of [this paragraph](#),<sup>5130</sup> an amendment shall be considered to be [relevant](#)<sup>5131</sup> if it relates to function 050 (national defense).

258B(f)(2) (2) On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is placed on the Senate calendar, notwithstanding any rule or precedent of the Senate, including [Rule XXII of the Standing Rules of the Senate](#),<sup>5132</sup> it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of the joint resolution. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after such joint resolution is placed on the appropriate calendar. The motion is not debatable. The joint

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<sup>5125</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(d\)](#), 2 U.S.C. § 907c(d), *supra* p. 1131, addresses “Introduction of Joint Resolution.”

<sup>5126</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(f\)](#), 2 U.S.C. § 907c(f), *supra* p. 1131, addresses “Calendaring and Consideration of Joint Resolution in Senate.”

<sup>5127</sup> For a discussion of germaneness, see *supra* p. 268.

<sup>5128</sup> For a discussion of relevance, see *supra* p. 300.

<sup>5129</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>5130</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(f\)\(1\)](#), 2 U.S.C. § 907c(f)(1), *supra* p. 1132, addresses process for a joint resolution.

<sup>5131</sup> For a discussion of relevance, see *supra* p. 300.

<sup>5132</sup> [Senate Rule XXII](#) addresses the cloture process (among other things).

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resolution is privileged in the Senate. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the Senate shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the Senate until disposed of.

258B(g) (g) DEBATE OF JOINT RESOLUTION; MOTIONS. —

258B(g)(1) (1) In the Senate, debate on a joint resolution introduced under [subsection \(d\)](#),<sup>5133</sup> amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees).

258B(g)(2) (2) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order. In the Senate, a motion to recommit the joint resolution is not in order.

258B(h) (h) AMENDMENT OF JOINT RESOLUTION. —

258B(h)(1) (1) No amendment that is not [germane](#)<sup>5134</sup> or [relevant](#)<sup>5135</sup> to the provisions of the joint resolution or to the order issued under [section 254](#)<sup>5136</sup> shall be in order in the Senate. For purposes of [this paragraph](#),<sup>5137</sup>

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<sup>5133</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(d\)](#), 2 U.S.C. § 907c(d), *supra* p. 1131, addresses “Introduction of Joint Resolution.”

<sup>5134</sup> For a discussion of germaneness, see *supra* p. 268.

<sup>5135</sup> For a discussion of relevance, see *supra* p. 300.

<sup>5136</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>5137</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(h\)\(1\)](#), 2 U.S.C. § 907c(h)(1), *supra* p. 1133, addresses process for a joint resolution.

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an amendment shall be considered to be **relevant**<sup>5138</sup> if it relates to function 050 (national defense). In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between, and controlled by, the mover and the majority leader (or their designees), except that in the event that the majority leader favors the amendment, motion, or appeal, the minority leader (or the minority leader's designee) shall control the time in opposition to the amendment, motion, or appeal.

258B(h)(2) (2) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended, so long as the amendment makes or maintains **mathematical consistency**.<sup>5139</sup> It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are **mathematically consistent**.<sup>5140</sup>

258B(h)(3) (3) It shall not be in order in the Senate to consider any amendment to any joint resolution introduced under **subsection (d)**<sup>5141</sup> or any conference report thereon if such amendment or conference report would have the effect of decreasing any specific **budget outlay**<sup>5142</sup> reductions below the level of such outlay reductions provided in such joint resolution unless such amendment or conference report makes a reduction in other specific **budget outlays**<sup>5143</sup> at least

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<sup>5138</sup> For a discussion of relevance, see *supra* p. 300.

<sup>5139</sup> For a discussion of mathematical consistency, see *supra* p. 303.

<sup>5140</sup> *Id.*

<sup>5141</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258B(d)**, 2 U.S.C. § 907c(d), *supra* p. 1131, addresses "Introduction of Joint Resolution."

<sup>5142</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines "budget outlays."

<sup>5143</sup> *Id.*



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equivalent to any increase in **outlays**<sup>5144</sup> provided by such amendment or conference report.

258B(h)(4)           **(4)** For purposes of the application of **paragraph (3)**,<sup>5145</sup> the level of **outlays**<sup>5146</sup> and specific **budget outlay**<sup>5147</sup> reductions provided in an amendment shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

258B(i)           **(i) VOTE ON FINAL PASSAGE OF JOINT RESOLUTION.—**Immediately following the conclusion of the debate on a joint resolution introduced under **subsection (d)**,<sup>5148</sup> a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under **subsection (h)**,<sup>5149</sup> the vote on final passage of the joint resolution shall occur.

258B(j)           **(j) APPEAL FROM DECISION OF CHAIR.—**Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in **subsection (d)**<sup>5150</sup> shall be decided without debate.

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<sup>5144</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>5145</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258B(h)(3)**, 2 U.S.C. § 907c(h)(3), *supra* p. 1134, addresses the deficit effect of amendments (among other things).

<sup>5146</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>5147</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “budget outlays.”

<sup>5148</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258B(d)**, 2 U.S.C. § 907c(d), *supra* p. 1131, addresses “Introduction of Joint Resolution.”

<sup>5149</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258B(h)**, 2 U.S.C. § 907c(h), *supra* p. 1133, addresses “Amendment of Joint Resolution.”

<sup>5150</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258B(d)**, 2 U.S.C. § 907c(d), *supra* p. 1131, addresses “Introduction of Joint Resolution.”

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- 258B(k)            **(k) CONFERENCE REPORTS.**—In the Senate, points of order under [titles III](#)<sup>5151</sup> and [IV](#)<sup>5152</sup> of the Congressional Budget Act of 1974 (including points of order under [sections 302\(c\)](#),<sup>5153</sup> [303\(a\)](#),<sup>5154</sup> [306](#),<sup>5155</sup> and [401\(b\)\(1\)](#)<sup>5156</sup>) are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.
- 258B(l)            **(l) RESOLUTION FROM OTHER HOUSE.**—If, before the passage by the Senate of a joint resolution of the Senate introduced under [subsection \(d\)](#),<sup>5157</sup> the Senate receives from the House of Representatives a joint resolution introduced under [subsection \(d\)](#),<sup>5158</sup> then the following procedures shall apply:
- 258B(l)(1)            **(1)** The joint resolution of the House of Representatives shall not be referred to a committee.
- 258B(l)(2)            **(2)** With respect to a joint resolution introduced under [subsection \(d\)](#)<sup>5159</sup> in the Senate —
- 258B(l)(2)(A)            **(A)** the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but
- 258B(l)(2)(B)(i)            **(B)(i)** the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or
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<sup>5151</sup> [Congressional Budget Act of 1974 tit. III, §§ 300–315](#), 2 U.S.C. §§ 631–645a, *supra* pp. 113–782, addresses “Congressional Budget Process.”

<sup>5152</sup> [Congressional Budget Act of 1974 tit. IV, §§ 401–428](#), 2 U.S.C. §§ 651–658g, *supra* pp. 783–840, addresses “Additional Provisions To Improve Fiscal Procedures.”

<sup>5153</sup> [Congressional Budget Act of 1974 § 302\(c\)](#), 2 U.S.C. § 633(c), *supra* p. 192, addresses “Point of Order” against spending before allocation.

<sup>5154</sup> [Congressional Budget Act of 1974 § 303\(a\)](#), 2 U.S.C. § 634(a), *supra* p. 219, addresses “Concurrent Resolution on the Budget Must Be Adopted Before Budget-Related Legislation Is Considered” “In General.”

<sup>5155</sup> [Congressional Budget Act of 1974 § 306](#), 2 U.S.C. § 637, *supra* p. 353, addresses “Legislation Dealing with Congressional Budget Must Be Handled by Budget Committees.”

<sup>5156</sup> [Congressional Budget Act of 1974 § 401\(b\)\(1\)](#), 2 U.S.C. § [651\(b\)\(1\)](#), *supra* p. 784, addresses “Point of Order” against new entitlement authority during the current fiscal year.

<sup>5157</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(d\)](#), 2 U.S.C. § 907c(d), *supra* p. 1131, addresses “Introduction of Joint Resolution.”

<sup>5158</sup> *Id.*

<sup>5159</sup> *Id.*



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- 258B(l)(2)(B)(ii) (ii) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.
- 258B(l)(3) (3) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the joint resolution originated in the Senate.
- 258B(m) (m) SENATE ACTION ON HOUSE RESOLUTION.—If the Senate receives from the House of Representatives a joint resolution introduced under [subsection \(d\)](#)<sup>5160</sup> after the Senate has disposed of a Senate originated joint resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.
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<sup>5160</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258B\(d\)](#), 2 U.S.C. § 907c(d), *supra* p. 1131, addresses “Introduction of Joint Resolution.”

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258C      **SEC. 258C.<sup>5161</sup> SPECIAL RECONCILIATION  
PROCESS**

258C(a)      **(a) REPORTING OF RESOLUTIONS AND RECONCILIATION  
BILLS AND RESOLUTIONS, IN THE SENATE. —**

258C(a)(1)      **(1) COMMITTEE ALTERNATIVES TO PRESIDENTIAL  
ORDER.—**After the submission of an **OMB<sup>5162</sup>**  
**sequestration<sup>5163</sup>** update report under **section 254<sup>5164</sup>**  
that envisions a **sequestration<sup>5165</sup>** under **section 252<sup>5166</sup>**  
or **253,<sup>5167</sup>** each standing committee of the Senate may,  
not later than October 10, submit to the Committee on  
the Budget of the Senate information of the type  
described in **section 301(d) of the Congressional Budget  
Act of 1974<sup>5168</sup>** with respect to alternatives to the order  
envisioned by such report insofar as such order affects  
laws within the jurisdiction of the committee.

258C(a)(2)      **(2) INITIAL BUDGET COMMITTEE ACTION.—**After the  
submission of such a report, the Committee on the  
Budget of the Senate may, not later than October 15,  
report to the Senate a resolution. The resolution may  
affirm the impact of the order envisioned by such  
report, in whole or in part. To the extent that any part is  
not affirmed, the resolution shall state which parts are  
not affirmed and shall contain instructions to  
committees of the Senate of the type referred to in

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<sup>5161</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258C is codified as amended at **2 U.S.C. § 907d.**

<sup>5162</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>5163</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5164</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254**, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>5165</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5166</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 252**, 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>5167</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 253**, 2 U.S.C. § 903, *supra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the **Budget Enforcement Act of 1990**, Pub. L. No. 101-508, 104 Stat. 1388.

<sup>5168</sup> **Congressional Budget Act of 1974 § 301(d)**, 2 U.S.C. § 632(d), *supra* p. 152, addresses “Views and Estimates of Other Committees.”

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section 310(a) of the Congressional Budget Act of 1974,<sup>5169</sup> sufficient to achieve at least the total level of deficit<sup>5170</sup> reduction contained in those sections which are not affirmed.

258C(a)(3) (3) RESPONSE OF COMMITTEES.—Committees instructed pursuant to paragraph (2),<sup>5171</sup> or affected thereby, shall submit their responses to the Budget Committee no later than 10 days<sup>5172</sup> after the resolution referred to in paragraph (2)<sup>5173</sup> is agreed to, except that if only one such Committee is so instructed such Committee shall, by the same date, report to the Senate a reconciliation bill or reconciliation resolution<sup>5174</sup> containing its recommendations in response to such instructions. A committee shall be considered to have complied with all instructions to it pursuant to a resolution adopted under paragraph (2)<sup>5175</sup> if it has made recommendations with respect to matters within its jurisdiction which would result in a reduction in the deficit<sup>5176</sup> at least equal to the total reduction directed by such instructions.

258C(a)(4) (4) BUDGET COMMITTEE ACTION.—Upon receipt of the recommendations received in response to a resolution referred to in paragraph (2),<sup>5177</sup> the Budget

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<sup>5169</sup> Congressional Budget Act of 1974 § 310(a), 2 U.S.C. § 641(a), *supra* p. 514, addresses “Inclusion of Reconciliation Directives in Concurrent Resolutions on the Budget.”

<sup>5170</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>5171</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(2), 2 U.S.C. § 907d(a)(2), *supra* p. 1138, addresses “Initial Budget Committee Action.”

<sup>5172</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(7), 2 U.S.C. § 907d(a)(7), *infra* p. 1141, defines “day” to mean “any calendar day on which the Senate is in session.”

<sup>5173</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(2), 2 U.S.C. § 907d(a)(2), *supra* p. 1138, addresses “Initial Budget Committee Action.”

<sup>5174</sup> Congressional Budget Act of 1974 § 310(b), 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.”

<sup>5175</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(2), 2 U.S.C. § 907d(a)(2), *supra* p. 1138, addresses “Initial Budget Committee Action.”

<sup>5176</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>5177</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(2), 2 U.S.C. § 907d(a)(2), *supra* p. 1138, addresses “Initial Budget Committee Action.”

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Committee shall report to the Senate a reconciliation bill or **reconciliation resolution**,<sup>5178</sup> or both, carrying out all such recommendations without any substantive revisions. In the event that a committee instructed in a resolution referred to in **paragraph (2)**<sup>5179</sup> fails to submit any recommendation (or, when only one committee is instructed, fails to report a reconciliation bill or resolution) in response to such instructions, the Budget Committee shall include in the reconciliation bill or **reconciliation resolution**<sup>5180</sup> reported pursuant to **this subparagraph**<sup>5181</sup> legislative language within the jurisdiction of the noncomplying committee to achieve the amount of **deficit**<sup>5182</sup> reduction directed in such instructions.

258C(a)(5)           **(5) POINT OF ORDER.**— It shall not be in order in the Senate to consider any reconciliation bill or **reconciliation resolution**<sup>5183</sup> reported under **paragraph (4)**<sup>5184</sup> with respect to a fiscal year, any amendment thereto, or any conference report thereon if —

258C(a)(5)(A)           **(A) the enactment of such bill or resolution as reported;**

258C(a)(5)(B)           **(B) the adoption and enactment of such amendment; or**

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<sup>5178</sup> **Congressional Budget Act of 1974 § 310(b)**, 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.”

<sup>5179</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(2)**, 2 U.S.C. § 907d(a)(2), *supra* p. 1138, addresses “Initial Budget Committee Action.”

<sup>5180</sup> **Congressional Budget Act of 1974 § 310(b)**, 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.”

<sup>5181</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(4)**, 2 U.S.C. § 907d(a)(4), *supra* p. 1139, addresses “Budget Committee Action.”

<sup>5182</sup> **Congressional Budget Act of 1974 § 3(6)**, 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>5183</sup> **Congressional Budget Act of 1974 § 310(b)**, 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.”

<sup>5184</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(4)**, 2 U.S.C. § 907d(a)(4), *supra* p. 1139, addresses “Budget Committee Action.”

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258C(a)(5)(C) (C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the amount of the **deficit**<sup>5185</sup> for such fiscal year to exceed the maximum **deficit**<sup>5186</sup> amount for such fiscal year, unless the low-growth report submitted under **section 254**<sup>5187</sup> projects negative **real economic growth**<sup>5188</sup> for such fiscal year, or for each of any two consecutive quarters during such fiscal year.

258C(a)(6) (6) TREATMENT OF CERTAIN AMENDMENTS.—In the Senate, an amendment which adds to a resolution reported under **paragraph (2)**<sup>5189</sup> an instruction of the type referred to in **such paragraph**<sup>5190</sup> shall be in order during the consideration of such resolution if such amendment would be in order but for the fact that it would be held to be non-**germane**<sup>5191</sup> on the basis that the instruction constitutes new matter.

258C(a)(7) (7) “DAY” DEFINED.—For purposes of **paragraphs (1)**,<sup>5192</sup> **(2)**,<sup>5193</sup> and **(3)**,<sup>5194</sup> the term “day” shall mean any calendar day on which the Senate is in session.

258C(b) (b) PROCEDURES.—

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<sup>5185</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, adopts the Congressional Budget Act definition.

<sup>5186</sup> *Id.*

<sup>5187</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254**, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>5188</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(10)**, 2 U.S.C. § 900(c)(10), *supra* p. 981, defines “real economic growth.”

<sup>5189</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(2)**, 2 U.S.C. § 907d(a)(2), *supra* p. 1138, addresses “Initial Budget Committee Action.”

<sup>5190</sup> *Id.*

<sup>5191</sup> For a discussion of germaneness, see *supra* p. 268.

<sup>5192</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(1)**, 2 U.S.C. § 907d(a)(1), *supra* p. 1138, addresses “Committee Alternatives to Presidential Order.”

<sup>5193</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(2)**, 2 U.S.C. § 907d(a)(2), *supra* p. 1138, addresses “Initial Budget Committee Action.”

<sup>5194</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(3)**, 2 U.S.C. § 907d(a)(3), *supra* p. 1139, addresses “Response of Committees.”

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- 258C(b)(1)           **(1) IN GENERAL.**—Except as provided in [paragraph \(2\)](#),<sup>5195</sup> in the Senate the provisions of [sections 305](#)<sup>5196</sup> and [310](#)<sup>5197</sup> of the Congressional Budget Act of 1974 for the consideration of [concurrent resolutions on the budget](#)<sup>5198</sup> and conference reports thereon shall also apply to the consideration of [resolutions](#),<sup>5199</sup> and reconciliation bills and [reconciliation resolutions](#)<sup>5200</sup> reported under [this paragraph](#)<sup>5201</sup> and conference reports thereon.
- 258C(b)(2)           **(2) LIMIT ON DEBATE.**—Debate in the Senate on any [resolution](#)<sup>5202</sup> reported pursuant to [subsection \(a\)\(2\)](#),<sup>5203</sup> and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to 10 hours.
- 258C(b)(3)           **(3) LIMITATION ON AMENDMENTS.**—[Section 310\(d\)\(2\) of the Congressional Budget Act of 1974](#)<sup>5204</sup> shall apply
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<sup>5195</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258C\(b\)\(2\)](#), 2 U.S.C. § 907d(b)(2), *infra* p. 1142, addresses “Limit on Debate.”

<sup>5196</sup> [Congressional Budget Act of 1974 § 305](#), 2 U.S.C. § 636, *supra* p. 250, addresses “Provisions Relating to Consideration of Concurrent Resolutions on the Budget.”

<sup>5197</sup> [Congressional Budget Act of 1974 § 310](#), 2 U.S.C. § 641, *supra* p. 514, addresses “Reconciliation.”

<sup>5198</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>5199</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258C\(b\)\(5\)](#), 2 U.S.C. § 907d(b)(5), *infra* p. 1143, defines “resolution” to mean “a simple, joint, or concurrent resolution.”

<sup>5200</sup> [Congressional Budget Act of 1974 § 310\(b\)](#), 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.” For the purposes of this subsection, [Balanced Budget and Emergency Deficit Control Act of 1985 § 258C\(b\)\(5\)](#), 2 U.S.C. § 907d(b)(5), *infra* p. 1143, defines “resolution” to mean “a simple, joint, or concurrent resolution.”

<sup>5201</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258C\(b\)\(1\)](#), 2 U.S.C. § 907d(b)(1), *supra* p. 1142, addresses “Limit on Debate.” This reference probably should be to “this section,” as [Balanced Budget and Emergency Deficit Control Act of 1985 § 258C\(a\)\(2\)](#), 2 U.S.C. § 907d(a)(2), *supra* p. 1138, provides for reporting such legislation.

<sup>5202</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258C\(b\)\(5\)](#), 2 U.S.C. § 907d(b)(5), *infra* p. 1143, defines “resolution” to mean “a simple, joint, or concurrent resolution.”

<sup>5203</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 258C\(a\)\(2\)](#), 2 U.S.C. § 907d(a)(2), *supra* p. 1138, addresses “Initial Budget Committee Action.”

<sup>5204</sup> [Congressional Budget Act of 1974 § 310\(d\)\(2\)](#), 2 U.S.C. § 641(d)(2), *supra* p. 544, addresses “Limitation on Amendments to Reconciliation Bills and Resolutions” in the Senate.

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to reconciliation bills and **reconciliation resolutions**<sup>5205</sup> reported under **this subsection**.<sup>5206</sup>

258C(b)(4)           **(4) BILLS AND RESOLUTIONS**<sup>5207</sup> RECEIVED FROM THE HOUSE.—Any bill or **resolution**<sup>5208</sup> received in the Senate from the House, which is a companion to a reconciliation bill or **reconciliation resolution**<sup>5209</sup> of the Senate for the purposes of **this subsection**,<sup>5210</sup> shall be considered in the Senate pursuant to the provisions of **this subsection**.<sup>5211</sup>

258C(b)(5)           **(5) “RESOLUTION” DEFINED.**—For purposes of **this subsection**,<sup>5212</sup> the term “resolution” means a simple, joint, or concurrent resolution.

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<sup>5205</sup> **Congressional Budget Act of 1974 § 310(b)**, 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.” For the purposes of this subsection, **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(b)(5)**, 2 U.S.C. § 907d(b)(5), *infra* p. 1143, defines “resolution” to mean “a simple, joint, or concurrent resolution.”

<sup>5206</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(b)**, 2 U.S.C. § 907d(b), *supra* p. 1141, addresses “Procedures.” This reference probably should be to “this section,” as **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)(2)**, 2 U.S.C. § 907d(a)(2), *supra* p. 1138, provides for reporting such legislation.

<sup>5207</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(b)(5)**, 2 U.S.C. § 907d(b)(5), *infra* p. 1143, defines “resolution” to mean “a simple, joint, or concurrent resolution.”

<sup>5208</sup> *Id.*

<sup>5209</sup> **Congressional Budget Act of 1974 § 310(b)**, 2 U.S.C. § 641(b), *supra* p. 529, defines “reconciliation resolution.” For the purposes of this subsection, **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(b)(5)**, 2 U.S.C. § 907d(b)(5), *infra* p. 1143, defines “resolution” to mean “a simple, joint, or concurrent resolution.”

<sup>5210</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(b)**, 2 U.S.C. § 907d(b), *supra* p. 1141, addresses “Procedures.” This reference probably should be to “this section,” as **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)**, 2 U.S.C. § 907d(a), *supra* p. 1138, also addresses such legislation.

<sup>5211</sup> *Id.*

<sup>5212</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(b)**, 2 U.S.C. § 907d(b), *supra* p. 1141, addresses “Procedures.” This reference probably should be to “this section,” as **Balanced Budget and Emergency Deficit Control Act of 1985 § 258C(a)**, 2 U.S.C. § 907d(a), *supra* p. 1138, also addresses such resolutions.

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**STATUTORY PAY-AS-YOU-GO  
ACT**

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# Statutory Pay-As-You-Go Act

**P**ay-as-you-go is an idea from the 1990 Budget Enforcement Act. That law replaced unattainable fixed deficit targets with a system in which Congress has to pay for direct spending and tax legislation, or else trigger cuts in direct spending programs. That system expired in 2003. Congress reinstated it with the Statutory Pay-As-You-Go Act of 2010.

The Congressional Research Service's Bill Heniff and Bob Keith explain how the statutory paygo process works:

The Statutory Pay-As-You-Go Act of 2010 (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 Office of Management and Budget (OMB) on two PAYGO scorecards covering rolling five-year and 10-year periods (i.e., in each new session, the periods covered by the scorecards roll forward one fiscal year). The budgetary effects of PAYGO measures are determined by statements inserted into the

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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 reflect cost estimates prepared by the Congressional Budget Office (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.

The new statutory PAYGO process was created on a permanent basis; there are no expiration dates in the act. The process became effective upon enactment.

As a budget enforcement tool, the new statutory PAYGO process is aimed at preventing, or at least discouraging, net deficit increases arising from the enactment of direct spending and revenue legislation. Any costs designated as emergencies are excluded from the scorecards, and significant costs associated with four specified categories of legislation may be excluded as well. . . . Finally, debt service costs are excluded as well.

The statutory PAYGO process does not address deficit increases, stemming from changes in direct spending or revenue levels, that are projected to occur under existing law. Other budget enforcement procedures, such as the reconciliation process under the Congressional Budget Act (CBA) of 1974, may be used to reduce deficit levels projected under existing law. Further, the statutory PAYGO process does not apply to discretionary spending, which is provided in annual appropriations acts.<sup>5213</sup>

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<sup>5213</sup> BILL HENIFF JR. & ROBERT KEITH, CONG. RSCH. SERV., [R41157, THE STATUTORY PAY-AS-YOU-GO ACT OF 2010: SUMMARY AND LEGISLATIVE HISTORY](#) summary (2010). See also CONG. BUDGET OFF., [THE STATUTORY PAY-AS-YOU GO ACT AND THE ROLE OF THE CONGRESS](#) (2020).

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# TITLE I

## STATUTORY PAY-AS-YOU-GO

### ACT OF 2010

1        **SEC. 1. SHORT TITLE.**

**This title**<sup>5214</sup> may be cited as the “Statutory Pay-As-You-Go Act of 2010”.

2        **SEC. 2.**<sup>5215</sup> **PURPOSE.**

The purpose of **this title**<sup>5216</sup> is to reestablish a statutory procedure to enforce a rule of budget neutrality on new **revenue**<sup>5217</sup> and **direct spending**<sup>5218</sup> legislation.

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<sup>5214</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

<sup>5215</sup> Statutory Pay-As-You-Go Act of 2010 § 2 is codified as amended at [2 U.S.C. § 931](#).

<sup>5216</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

<sup>5217</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5218</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *infra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

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3                    **SEC. 3.<sup>5219</sup> DEFINITIONS<sup>5220</sup> AND APPLICATIONS.**

As used in **this title**<sup>5221</sup> —

- 3(1)                    **(1) The term “BBEDCA” means the **Balanced Budget and Emergency Deficit Control Act of 1985**.<sup>5222</sup>**
- 3(2)                    **(2) The definitions set forth in **section 3 of the Congressional Budget and Impoundment Control Act of 1974**<sup>5223</sup> and in **section 250**<sup>5224</sup> of **BBEDCA**<sup>5225</sup> shall apply to **this title**,<sup>5226</sup> except to the extent that they are specifically modified as follows:**
- 3(2)(A)                    **(A) The term “outyear” means a fiscal year one or more years after the **budget year**.<sup>5227</sup>**
- 3(2)(B)                    **(B) In **section 250(c)(8)(C)**,<sup>5228</sup> the reference to the food stamp program shall be deemed to be a**

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<sup>5219</sup> Statutory Pay-As-You-Go Act of 2010 § 3 is codified as amended at 2 U.S.C. § 932.

<sup>5220</sup> Budget process laws define terms in many places. See **Congressional Budget Act of 1974 § 3, 310(b), 421**, 2 U.S.C. §§ 622, 641(b), 658, *supra* pp. 55, 529, 803; **Impoundment Control Act of 1974 § 1011**, 2 U.S.C. § 682, *supra* p. 923; **Balanced Budget and Emergency Deficit Control Act of 1985 §§ 250(c), 251(b)(2)(B)(ii), 256(g)(2)**, 2 U.S.C. §§ 900(c), 901(b)(2)(B)(ii), 906(g)(2), *supra* pp. 977, 997, 1097; **Federal Credit Reform Act of 1990 § 502**, 2 U.S.C. § 661a, *supra* p. 850; **Statutory Pay-As-You-Go Act of 2010 § 3**, 2 U.S.C. § 932, *supra* p. 1150; **S. Con. Res. 70, 110th Cong. § 314(b)**, 122 Stat. 5143, 5179 (2008), *infra* p. 1221; **H. Con. Res 71, 115th Cong. § 4106(a)(3)** (2017) (adopted), *infra* p. 1246; **S. Con. Res. 14, 117th Cong. §§ 4001(a)(4), 4001(a)(5), 4002(a)(2), 4003(a)(2)** (2021) (adopted), *infra* pp. 1258, 1259, 1262, 1267. For a glossary collecting these definitions in budget process law, see *infra* p. 1542.

<sup>5221</sup> “This title” is **Joint Resolution increasing the statutory limit on the public debt**, Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, **Statutory Pay-As-You-Go Act of 2010**, 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the **Statutory Pay-As-You-Go Act of 2010** appear as references to “this chapter” in the U.S. Code.

<sup>5222</sup> **Balanced Budget and Emergency Deficit Control Act of 1985**, 2 U.S.C. §§ 900–922, *supra* pp. 976–1143.

<sup>5223</sup> **Congressional Budget Act of 1974 § 3**, 2 U.S.C. § 622, *supra* p. 55, addresses “Definitions.”

<sup>5224</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250**, 2 U.S.C. § 900, *supra* p. 976, addresses “Statement of Budget Enforcement Through Sequestration; Definitions.”

<sup>5225</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(1)**, 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5226</sup> “This title” is **Joint Resolution increasing the statutory limit on the public debt**, Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, **Statutory Pay-As-You-Go Act of 2010**, 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the **Statutory Pay-As-You-Go Act of 2010** appear as references to “this chapter” in the U.S. Code.

<sup>5227</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)**, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the **Balanced Budget and Emergency Deficit Control Act** definition.

<sup>5228</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)(C)**, 2 U.S.C. § 900(c)(8)(C), *supra* p. 981, formerly referred to the Food Stamp Program.

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reference to the Supplemental Nutrition Assistance Program.<sup>5229</sup>

3(3) (3) The term “AMT” means the Alternative Minimum Tax for individuals under [sections 55–59 of the Internal Revenue Code of 1986](#),<sup>5230</sup> the term “EGTRRA” means the [Economic Growth and Tax Relief Reconciliation Act of 2001 \(Public Law 107-16\)](#),<sup>5231</sup> and the term “JGTRRA” means the [Jobs and Growth Tax Relief \[ \] Reconciliation Act of 2003 \(Public Law 108-27\)](#).<sup>5232</sup>

3(4)(A) (4)(A) The term “budgetary effects” means the amount by which [PAYGO legislation](#)<sup>5234</sup> changes [outlays](#)<sup>5235</sup> flowing from [direct spending](#)<sup>5236</sup> or [revenues](#)<sup>5237</sup> relative to the [baseline](#)<sup>5238</sup> and shall be determined on the basis of estimates prepared under [section 4](#).<sup>5239</sup> [Budgetary effects](#) that increase [outlays](#)<sup>5240</sup>

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<sup>5229</sup> [Food, Conservation, and Energy Act of 2008](#), Pub. L. No. 110-246, § 4001, 122 Stat. 1651, 1853 (2008) (the 2008 Farm Bill) renamed the Food Stamp Program as the Supplemental Nutrition Assistance Program (SNAP).

<sup>5230</sup> [Internal Revenue Code of 1986 §§ 55–59](#), 26 U.S.C. §§ 55–59.

<sup>5231</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, 115 Stat. 38.

<sup>5232</sup> The word “and” appears here in the original but is not in the short title of the [Jobs and Growth Tax Relief Reconciliation Act of 2003](#), Pub. L. No. 108-27, 117 Stat. 752. The House Office of the Law Revision Counsel, which maintains the U.S. Code, noted that “[t]he word ‘and’ probably should not appear.” 2 U.S.C. § 932 note.

<sup>5233</sup> [Jobs and Growth Tax Relief Reconciliation Act of 2003](#), Pub. L. No. 108-27, 117 Stat. 752.

<sup>5234</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(7\)](#), 2 U.S.C. § 932(7), *infra* p. 1154, defines “PAYGO legislation.”

<sup>5235</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5236</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5237</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5238</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(5\)](#), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to [Balanced Budget and Emergency Deficit Control Act of 1985 § 257](#), 2 U.S.C. § 907, *supra* p. 980. [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5239</sup> [Statutory Pay-As-You-Go Act of 2010 § 4](#), 2 U.S.C. § 933, *infra* p. 1156, addresses “PAYGO Estimates and PAYGO Scorecards.”

<sup>5240</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

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flowing from **direct spending**<sup>5241</sup> or decrease **revenues**<sup>5242</sup> are termed “costs” and **budgetary effects** that increase **revenues**<sup>5243</sup> or decrease **outlays**<sup>5244</sup> flowing from **direct spending**<sup>5245</sup> are termed “savings”. **Budgetary effects** shall not include any costs associated with debt service.

3(4)(B) (B) For purposes of these definitions, off-budget effects shall not be counted as **budgetary effects**.<sup>5246</sup>

3(4)(C) (C) Solely for purposes of recording entries on a PAYGO scorecard, provisions in **appropriation Acts**<sup>5247</sup> are also considered to be **budgetary effects**<sup>5248</sup> for purposes of **this title**<sup>5249</sup> if such provisions make **outyear**<sup>5250</sup> **modifications to substantive law**,<sup>5251</sup> except that provisions for which the **outlay**<sup>5252</sup> effects net to

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<sup>5241</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5242</sup> U.S. GOV’T ACCOUNTABILITY OFF., **A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS** 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5243</sup> *Id.*

<sup>5244</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5245</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5246</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5247</sup> **Congressional Budget Act of 1974 § 3(5)**, 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of **1 U.S.C. § 105**. **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5248</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5249</sup> “This title” is **Joint Resolution increasing the statutory limit on the public debt**, Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, **Statutory Pay-As-You-Go Act of 2010**, 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the **Statutory Pay-As-You-Go Act of 2010** appear as references to “this chapter” in the U.S. Code.

<sup>5250</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(2)(A)**, 2 U.S.C. § 932(2)(A), *supra* p. 1150, defines “outyear.”

<sup>5251</sup> This subparagraph, **Statutory Pay-As-You-Go Act of 2010 § 3(4)(C)**, 2 U.S.C. § 932(4)(C), *infra* p. 1153, defines “modifications to substantive law.”

<sup>5252</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.



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zero over a period consisting of the **current year**,<sup>5253</sup> the **budget year**,<sup>5254</sup> and the 4 subsequent years shall not be considered **budgetary effects**.<sup>5255</sup> For purposes of **this paragraph**,<sup>5256</sup> the term, “modifications to substantive law” refers to changes to or restrictions on **entitlement law**<sup>5257</sup> or other mandatory spending contained in **appropriations Acts**,<sup>5258</sup> notwithstanding **section 250(c)(8)**<sup>5259</sup> of **BBEDCA**.<sup>5260</sup> Provisions in **appropriations Acts**<sup>5261</sup> that are neither **outyear**<sup>5262</sup> **modifications to substantive law**<sup>5263</sup> nor changes in **revenues**<sup>5264</sup> have no **budgetary effects**<sup>5265</sup> for purposes of **this title**.<sup>5266</sup>

- 3(5) (5) The term “debit” refers to the net total amount, when positive, by which **costs**<sup>5267</sup> recorded on the

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<sup>5253</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)*, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5254</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5255</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)*, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5256</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(4)(C)*, 2 U.S.C. § 932(4)(C), *supra* p. 1152.

<sup>5257</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(6)*, 2 U.S.C. § 932(6), *infra* p. 1154, defines “entitlement law.”

<sup>5258</sup> *Congressional Budget Act of 1974 § 3(5)*, 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105. *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5259</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)*, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.”

<sup>5260</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(1)*, 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5261</sup> *Congressional Budget Act of 1974 § 3(5)*, 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105. *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5262</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(2)(A)*, 2 U.S.C. § 932(2)(A), *supra* p. 1150, defines “outyear.”

<sup>5263</sup> This subparagraph, *Statutory Pay-As-You-Go Act of 2010 § 3(4)(C)*, 2 U.S.C. § 932(4)(C), *supra* p. 1153, defines “modifications to substantive law.”

<sup>5264</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5265</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)*, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5266</sup> “This title” is *Joint Resolution increasing the statutory limit on the public debt*, Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, *Statutory Pay-As-You-Go Act of 2010*, 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the *Statutory Pay-As-You-Go Act of 2010* appear as references to “this chapter” in the U.S. Code.

<sup>5267</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)*, 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “costs.”

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PAYGO scorecards for a fiscal year exceed [savings](#)<sup>5268</sup> recorded on those scorecards for that year.

3(6) (6) The term “entitlement law” refers to a section of law which provides [entitlement authority](#).<sup>5269</sup>

3(7) (7) The term “PAYGO legislation” or a “PAYGO Act” refers to a bill or joint resolution that affects [direct spending](#)<sup>5270</sup> or [revenue](#)<sup>5271</sup> relative to the [baseline](#).<sup>5272</sup> The [budgetary effects](#)<sup>5273</sup> of changes in [revenues](#)<sup>5274</sup> and [outyear](#)<sup>5275</sup> modifications to substantive law<sup>5276</sup> included in [appropriation Acts](#)<sup>5277</sup> as defined in [paragraph \(4\)](#)<sup>5278</sup> shall be treated as if they were contained in [PAYGO legislation](#)<sup>5279</sup> or a [PAYGO Act](#).<sup>5280</sup>

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<sup>5268</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)](#), 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “savings.”

<sup>5269</sup> [Congressional Budget Act of 1974 § 3\(9\)](#), 2 U.S.C. § 622(9), *supra* p. 59, defines “entitlement authority.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(17\)](#), 2 U.S.C. § 900(c)(17), *supra* p. 982, expands upon that definition for purposes of the the Balanced Budget and Emergency Deficit Control Act. [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act and Balanced Budget and Emergency Deficit Control Act definitions.

<sup>5270</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5271</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5272</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(5\)](#), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to [Balanced Budget and Emergency Deficit Control Act of 1985 § 257](#), 2 U.S.C. § 907, *supra* p. 980. [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5273</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5274</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5275</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)\(A\)](#), 2 U.S.C. § 932(2)(A), *supra* p. 1150, defines “outyear.”

<sup>5276</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(C\)](#), 2 U.S.C. § 932(4)(C), *supra* p. 1153, defines “modifications to substantive law.”

<sup>5277</sup> [Congressional Budget Act of 1974 § 3\(5\)](#), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105. [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5278</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)](#), 2 U.S.C. § 932(4), *supra* p. 1151, defines “budgetary effects.”

<sup>5279</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(7\)](#), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5280</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(7\)](#), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

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3(8)

(8) The term “timing shift” refers to a delay of the date on which **outlays**<sup>5281</sup> flowing from **direct spending**<sup>5282</sup> would otherwise occur from the ninth **outyear**<sup>5283</sup> to the tenth **outyear**<sup>5284</sup> or an acceleration of the date on which **revenues**<sup>5285</sup> would otherwise occur from the tenth **outyear**<sup>5286</sup> to the ninth **outyear**.<sup>5287</sup>

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<sup>5281</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5282</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5283</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(2)(A)*, 2 U.S.C. § 932(2)(A), *supra* p. 1150, defines “outyear.”

<sup>5284</sup> *Id.*

<sup>5285</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5286</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(2)(A)*, 2 U.S.C. § 932(2)(A), *supra* p. 1150, defines “outyear.”

<sup>5287</sup> *Id.*

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4            **SEC. 4.<sup>5288</sup> PAYGO ESTIMATES AND PAYGO SCORECARDS.**

4(a)            **(a) PAYGO ESTIMATES.—**

4(a)(1)            **(1) REQUIRED DESIGNATION IN PAYGO ACTS.<sup>5289</sup> —**

4(a)(1)(A)            **(A) HOUSE OF REPRESENTATIVES.—To establish the *budgetary effects*<sup>5290</sup> of a *PAYGO Act*<sup>5291</sup> consistent with the determination made by the Chairman of the House Budget Committee, a *PAYGO Act*<sup>5292</sup> originated in or amended by the House of Representatives may include the following statement: “The *budgetary effects*<sup>5293</sup> of this Act, for the purpose of complying with the *Statutory Pay-As-You-Go* [Act of 2010],<sup>5294</sup> shall be determined by reference to the latest statement titled ‘*Budgetary Effects*<sup>5295</sup> of *PAYGO Legislation*’<sup>5296</sup> for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.”<sup>5297</sup>**

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<sup>5288</sup> Statutory Pay-As-You-Go Act of 2010 § 4 is codified as amended at 2 U.S.C. § 933.

<sup>5289</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5290</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5291</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5292</sup> *Id.*

<sup>5293</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5294</sup> Statutory Pay-As-You-Go Act of 2010, 2 U.S.C. §§ 931–939, pp. 1149–1214. This reference appears with a superfluous hyphen in the original as “the Statutory Pay-As-You-Go-Act of 2010.” The House Office of the Law Revision Counsel, which maintains the U.S. Code, noted that this reference “[p]robably should be ‘Pay-As-You-Go Act’.” 2 U.S.C. § 933 note.

<sup>5295</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5296</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5297</sup> For examples of such statements, see *Circulating Collectible Coin Redesign Act of 2020*, Pub. L. No. 116-330, § 7, 134 Stat. 5101, 5107 (2021); *An Act to amend the Water Resources Development Act of 2000 to extend and modify the program allowing the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits, and for other purposes*, Pub. L. No. 111-315, § 2, 124 Stat. 3450, 3451 (2010); *Truth in Fur Labeling Act of 2010*, Pub. L. No. 111-313, § 5, 124 Stat. 3326, 3326–27; *Plain Writing Act of 2010*, Pub. L. No. 111-274, § 7, 124 Stat. 2861, 2863; *Federal Supply*

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4(a)(1)(B)

(B) SENATE.—To establish the **budgetary effects**<sup>5298</sup> of a **PAYGO Act**<sup>5299</sup> consistent with the determination made by the Chairman of the Senate Budget Committee, a **PAYGO Act**<sup>5300</sup> originated in or amended by the Senate shall include the following statement: “The **budgetary effects**<sup>5301</sup> of this Act, for the purpose of complying with the **Statutory Pay-As-You-Go Act of 2010**,<sup>5302</sup> shall be determined by reference to the latest statement titled ‘**Budgetary Effects**<sup>5303</sup> of **PAYGO Legislation**’<sup>5304</sup> for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.”<sup>5305</sup>

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[Schedules Usage Act of 2010](#), Pub. L. No. 111-263, § 5, 124 Stat. 2787, 2788; [An Act to improve the operation of certain facilities and programs of the House of Representatives, and for other purposes](#), Pub. L. No. 111-248, § 4, 124 Stat. 2625, 2626.

<sup>5298</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5299</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(7\)](#), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5300</sup> *Id.*

<sup>5301</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5302</sup> [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. This reference appears with a superfluous hyphen in the original as “the Statutory Pay-As-You-Go-Act of 2010.” The House Office of the Law Revision Counsel, which maintains the U.S. Code, noted that this reference “[p]robably should be ‘Pay-As-You-Go Act.’” 2 U.S.C. § 933 note.

<sup>5303</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5304</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(7\)](#), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5305</sup> For examples of such statements, see [Preventing Sex Trafficking and Strengthening Families Act](#), Pub. L. No. 113-183, § 401, 128 Stat. 1919, 1949 (2014); [Post-9/11 Veterans Educational Assistance Improvements Act of 2010](#), Pub. L. No. 111-377, § 3, 124 Stat. 4106, 4107 (2011); [Section 202 Supportive Housing for the Elderly Act of 2010](#), Pub. L. No. 111-372, § 401, 124 Stat. 4077, 4084–85 (2011); [America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010](#), Pub. L. No. 111-358, § 3, 124 Stat. 3982, 3984 (2011); [Omnibus Trade Act of 2010](#), Pub. L. No. 111-358, § 401, 124 Stat. 3611, 3617; [Medicare and Medicaid Extenders Act of 2010](#), Pub. L. No. 111-309, § 209(a), 124 Stat. 3285, 3292; [Healthy, Hunger-Free Kids Act of 2010](#), Pub. L. No. 111-296, § 444, 124 Stat. 3183, 3265; [Help Haitian Adoptees Immediately to Integrate Act of 2010 \(Help HAITI Act of 2010\)](#), Pub. L. No. 111-293, § 3, 124 Stat. 3175, 3176; [Claims Resolution Act of 2010](#), Pub. L. No. 111-291, § 851, 124 Stat. 3064, 3164; [The Physician Payment and Therapy Relief Act of 2010](#), Pub. L. No. 111-286, § 4, 124 Stat. 3056, 3057; [Veterans’ Benefits Act of 2010](#), Pub. L. No. 111-275, § 1002, 124 Stat. 2864, 2897–98; [National Aeronautics and Space Administration Authorization Act of 2010](#), Pub. L. No. 111-267, § 1301, 124 Stat. 2805, 2846; [Intelligence Authorization Act for Fiscal Year 2010](#), Pub. L. No. 111-259, § 103, 124 Stat. 2654, 2657 (2010).

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4(a)(1)(C)

(C) CONFERENCE REPORTS AND AMENDMENTS BETWEEN THE HOUSES.—To establish the **budgetary effects**<sup>5306</sup> of the conference report on a **PAYGO Act**,<sup>5307</sup> or an amendment to an amendment between Houses on a **PAYGO Act**,<sup>5308</sup> which if estimated shall be estimated jointly by the Chairmen of the House and Senate Budget Committees, the conference report or amendment between the Houses shall include the following statement: “The **budgetary effects**<sup>5309</sup> of this Act, for the purpose of complying with the **Statutory Pay-As-You-Go Act of 2010**,<sup>5310</sup> shall be determined by reference to the latest statement titled ‘**Budgetary Effects**<sup>5311</sup> of **PAYGO Legislation**’<sup>5312</sup> for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendment between the Houses.”<sup>5313</sup>

4(a)(2)

(2) DETERMINATION OF **BUDGETARY EFFECTS**<sup>5314</sup> OF **PAYGO ACTS**.<sup>5315</sup> —

4(a)(2)(A)

(A) ORIGINAL LEGISLATION. —

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<sup>5306</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5307</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5308</sup> *Id.*

<sup>5309</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5310</sup> **Statutory Pay-As-You-Go Act of 2010**, 2 U.S.C. §§ 931–939, pp. 1149–1214. This reference appears with a superfluous hyphen in the original as “the Statutory Pay-As-You-Go-Act of 2010.” The House Office of the Law Revision Counsel, which maintains the U.S. Code, noted that this reference “[p]robably should be ‘Pay-As-You-Go Act’.” 2 U.S.C. § 933 note.

<sup>5311</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5312</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5313</sup> For an example of such a statement, see **FAA Modernization and Reform Act of 2012**, Pub. L. No. 112-95, § 1201, 126 Stat. 11, 155.

<sup>5314</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5315</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”



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4(a)(2)(A)(i)

(i) **STATEMENT AND ESTIMATE.**—Prior to a vote on passage of a **PAYGO Act**<sup>5316</sup> originated or amended by one House, the Chairman of the Budget Committee of that House may submit for printing in the Congressional Record a statement titled “**Budgetary Effects**<sup>5317</sup> of **PAYGO Legislation**”<sup>5318</sup> which shall include an estimate of the **budgetary effects**<sup>5319</sup> of that Act, if available prior to passage of the Act by that House and shall submit, if applicable, an identification of any current policy adjustments made pursuant to **section 7 of this Act**.<sup>5320</sup> The timely submission of such a statement, in conjunction with the appropriate designation made pursuant to **paragraph (1)(A)**<sup>5321</sup> or **(1)(B)**,<sup>5322</sup> as applicable, shall establish the **budgetary effects**<sup>5323</sup> of the **PAYGO Act**<sup>5324</sup> for the purposes of **this Act**.<sup>5325</sup>

4(a)(2)(A)(ii)

(ii) **EFFECT.**—The latest statement submitted by the Chairman of the Budget Committee of that House prior to passage shall supersede any prior statements submitted in the Congressional

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<sup>5316</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5317</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5318</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5319</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5320</sup> Statutory Pay-As-You-Go Act of 2010 § 7, 2 U.S.C. § 936, *infra* p. 1190, addresses “Adjustment for Current Policies.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5321</sup> Statutory Pay-As-You-Go Act of 2010 § 4(a)(1)(A), 2 U.S.C. § 933(a)(1)(A), *supra* p. 1156, addresses “Required Designation in PAYGO Acts” in the House of Representatives.

<sup>5322</sup> Statutory Pay-As-You-Go Act of 2010 § 4(a)(1)(B), 2 U.S.C. § 933(a)(1)(B), *supra* p. 1157, addresses “Required Designation in PAYGO Acts” in the Senate.

<sup>5323</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5324</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5325</sup> Statutory Pay-As-You-Go Act of 2010, 2 U.S.C. §§ 931–939, pp. 1149–1214.

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Record and shall be valid only if the **PAYGO Act**<sup>5326</sup> is not further amended by either House.

4(a)(2)(A)(iii) (iii) FAILURE TO SUBMIT ESTIMATE. — If —

4(a)(2)(A)(iii)(I) (I) the estimate required by **clause (i)**<sup>5327</sup> has not been submitted prior to passage by that House;

4(a)(2)(A)(iii)(II) (II) such estimate has been submitted but is no longer valid due to a subsequent amendment to the **PAYGO Act**;<sup>5328</sup> or

4(a)(2)(A)(iii)(III) (III) the designation required pursuant to this subsection has not been made;

the **budgetary effects**<sup>5329</sup> of the **PAYGO Act**<sup>5330</sup> shall be determined under **subsection (d)(3)**,<sup>5331</sup> provided that this clause shall not apply if a valid designation is subsequently included in that **PAYGO Act**<sup>5332</sup> pursuant to **paragraph (1)(C)**<sup>5333</sup> and a statement is submitted pursuant to **subparagraph (B)**.<sup>5334</sup>

4(a)(2)(B) (B) CONFERENCE REPORTS AND AMENDMENTS BETWEEN THE HOUSES. —

4(a)(2)(B)(i) (i) IN GENERAL.—Prior to the adoption of a report of a committee of conference on a **PAYGO**

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<sup>5326</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5327</sup> Statutory Pay-As-You-Go Act of 2010 § 4(a)(2)(A)(i), 2 U.S.C. § 933(a)(2)(A)(i), *supra* p. 1159, addresses “Statement and estimate.”

<sup>5328</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5329</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5330</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5331</sup> Statutory Pay-As-You-Go Act of 2010 § 4(d)(3), 2 U.S.C. § 933(d)(3), *infra* p. 1170, addresses “OMB PAYGO Estimates.”

<sup>5332</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5333</sup> Statutory Pay-As-You-Go Act of 2010 § 4(a)(1)(C), 2 U.S.C. § 933(a)(1)(C), *supra* p. 1158, addresses “Conference reports and amendments between the Houses.”

<sup>5334</sup> Statutory Pay-As-You-Go Act of 2010 § 4(a)(2)(B), 2 U.S.C. § 933(a)(2)(B), *infra* p. 1160, addresses “Conference reports and amendments between the Houses.”



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**Act**<sup>5335</sup> in either House, or disposition of an amendment to an amendment between Houses on a **PAYGO Act**,<sup>5336</sup> the Chairmen of the Budget Committees of the House and Senate may jointly submit for printing in the Congressional Record a statement titled “**Budgetary Effects**”<sup>5337</sup> of **PAYGO Legislation**”<sup>5338</sup> which shall include an estimate of the **budgetary effects**<sup>5339</sup> of that Act if available prior to passage of the Act by the House acting first on the legislation and shall submit, if applicable, an identification of any current policy adjustments made pursuant to **section 7 of this Act**.<sup>5340</sup> The timely submission of such a statement, in conjunction with the appropriate designation made pursuant to **paragraph (1)(C)**,<sup>5341</sup> shall establish the **budgetary effects**<sup>5342</sup> of the **PAYGO Act**<sup>5343</sup> for the purposes of **this Act**.<sup>5344</sup>

4(a)(2)(B)(ii)

(ii) **FAILURE TO SUBMIT ESTIMATE.**—If such estimate has not been submitted prior to the adoption of a report of a committee of conference by either House, or if the designation required pursuant to this subsection has not been made,

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<sup>5335</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5336</sup> *Id.*

<sup>5337</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5338</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5339</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5340</sup> **Statutory Pay-As-You-Go Act of 2010 § 7**, 2 U.S.C. § 936, *infra* p. 1190, addresses “Adjustment for Current Policies.” **Statutory Pay-As-You-Go Act of 2010 § 7(b)**, 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5341</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(a)(1)(C)**, 2 U.S.C. § 933(a)(1)(C), *supra* p. 1158, addresses “Conference reports and amendments between the Houses.”

<sup>5342</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5343</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5344</sup> **Statutory Pay-As-You-Go Act of 2010**, 2 U.S.C. §§ 931–939, pp. 1149–1214.

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the **budgetary effects**<sup>5345</sup> of the **PAYGO Act**<sup>5346</sup> shall be determined under **subsection (d)(3)**.<sup>5347</sup>

4(a)(3)           **(3) PROCEDURE IN THE SENATE.**— In the Senate, upon submission of a statement titled “**Budgetary Effects**<sup>5348</sup> of **PAYGO Legislation**”<sup>5349</sup> by the Chairman of the Senate Budget Committee for printing in the Congressional Record, the Legislative Clerk shall read the statement.

4(a)(4)           **(4) JURISDICTION OF THE BUDGET COMMITTEES.**— For the purposes of enforcing **section 306 of the Congressional Budget Act of 1974**,<sup>5350</sup> a designation made pursuant to **paragraph (1)(A)**,<sup>5351</sup> **(1)(B)**,<sup>5352</sup> or **(1)(C)**,<sup>5353</sup> that includes only the language specifically prescribed therein, shall not be considered a matter within the jurisdiction of either the Senate or House Committees on the Budget.

4(b)               **(b) CBO**<sup>5354</sup> **PAYGO ESTIMATES.**—

4(b)(1)           **(1) IN GENERAL.**—

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<sup>5345</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5346</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(7\)](#), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5347</sup> [Statutory Pay-As-You-Go Act of 2010 § 4\(d\)\(3\)](#), 2 U.S.C. § 933(d)(3), *infra* p. 1170, addresses “OMB PAYGO Estimates.”

<sup>5348</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5349</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(7\)](#), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5350</sup> [Congressional Budget Act of 1974 § 306](#), 2 U.S.C. § 637, *supra* p. 353, addresses “Legislation Dealing with Congressional Budget Must Be Handled by Budget Committees.”

<sup>5351</sup> [Statutory Pay-As-You-Go Act of 2010 § 4\(a\)\(1\)\(A\)](#), 2 U.S.C. § 933(a)(1)(A), *supra* p. 1156, addresses “Required Designation in PAYGO Acts” in the House of Representatives.

<sup>5352</sup> [Statutory Pay-As-You-Go Act of 2010 § 4\(a\)\(1\)\(B\)](#), 2 U.S.C. § 933(a)(1)(B), *supra* p. 1157, addresses “Required Designation in PAYGO Acts” in the Senate.

<sup>5353</sup> [Statutory Pay-As-You-Go Act of 2010 § 4\(a\)\(1\)\(C\)](#), 2 U.S.C. § 933(a)(1)(C), *supra* p. 1158, addresses “Conference reports and amendments between the Houses.”

<sup>5354</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(16\)](#), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

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- 4(b)(1)(A) (A) ESTIMATES.—Section 308(a) of the Congressional Budget Act of 1974<sup>5355</sup> is amended by adding at the end the following new paragraph:
- 308(a)(3) “(3) CBO<sup>5356</sup> PAYGO ESTIMATES.—
- 308(a)(3)(A) “(A) The Chairs of the Committees on the Budget of the House and Senate, as applicable, shall request from the Director of the Congressional Budget Office an estimate of the budgetary effects<sup>5357</sup> of PAYGO legislation.<sup>5358</sup>
- 308(a)(3)(B) “(B) Estimates shall be prepared using baseline<sup>5359</sup> estimates supplied by the Congressional Budget Office, consistent with section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.<sup>5360</sup>
- 308(a)(3)(C) “(C) The Director shall not count timing shifts,<sup>5361</sup> as that term is defined at section 3(8) of the Statutory Pay-As-You-Go Act of 2010,<sup>5362</sup> in estimates of the budgetary effects<sup>5363</sup> of PAYGO legislation.”<sup>5364</sup>
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<sup>5355</sup> Congressional Budget Act of 1974 § 308(a), 2 U.S.C. § 639(a), *supra* p. 379, addresses “Legislation Providing New Budget Authority or Providing Increase or Decrease in Revenues or Tax Expenditures.”

<sup>5356</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5357</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5358</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5359</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907, *supra* p. 980.

<sup>5360</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907, *supra* p. 1110, addresses “The Baseline.”

<sup>5361</sup> Statutory Pay-As-You-Go Act of 2010 § 3(8), 2 U.S.C. § 932(8), *supra* p. 1155, defines “timing shift.”

<sup>5362</sup> *Id.*

<sup>5363</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5364</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

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- 4(b)(1)(B) (B) SIDEHEADING.—The side heading of [section 308\(a\) of the Congressional Budget Act of 1974](#)<sup>5365</sup> is amended by striking “Reports on”.
- 4(b)(2) (2) GUIDELINES.—[Section 308 of the Congressional Budget Act of 1974](#)<sup>5366</sup> is amended by adding at the end the following new subsection:
- 308(d) “(d) SCOREKEEPING GUIDELINES.—Estimates under [this section](#)<sup>5367</sup> shall be provided in accordance with the scorekeeping guidelines determined under [section 252\(d\)\(5\) of the Balanced Budget and Emergency Deficit Control Act of 1985](#).”<sup>5368</sup>
- 4(c) (c) CURRENT POLICY ADJUSTMENTS FOR CERTAIN LEGISLATION.—
- 4(c)(1) (1) IN GENERAL.—For any provision of legislation that meets the criteria in [subsection \(c\)](#),<sup>5369</sup> [\(d\)](#),<sup>5370</sup> [\(e\)](#)<sup>5371</sup> or [\(f\)](#)<sup>5372</sup> of [section 7](#),<sup>5373</sup> the Chairs of the Committees on the Budget of the House and Senate, as applicable, shall request that [CBO](#)<sup>5374</sup> adjust the estimate of [budgetary](#)
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<sup>5365</sup> [Congressional Budget Act of 1974 § 308\(a\)](#), 2 U.S.C. § 639(a), *supra* p. 379, addresses “Legislation Providing New Budget Authority or Providing Increase or Decrease in Revenues or Tax Expenditures.”

<sup>5366</sup> [Congressional Budget Act of 1974 § 308](#), 2 U.S.C. § 639, *supra* p. 379, addresses “Reports, Summaries, and Projections of Congressional Budget Actions.”

<sup>5367</sup> *Id.*

<sup>5368</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252\(d\)\(5\)](#), 2 U.S.C. § 902(d)(5), *supra* p. 1047, addresses “Scorekeeping Guidelines.”

<sup>5369</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(c\)](#), 2 U.S.C. § 936(c), *infra* p. 1191, addresses “Medicare Payments to Physicians.” [Statutory Pay-As-You-Go Act of 2010 § 7\(b\)](#), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5370</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(d\)](#), 2 U.S.C. § 936(d), *infra* p. 1193, addresses “Estate and Gift Tax.” [Statutory Pay-As-You-Go Act of 2010 § 7\(b\)](#), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5371</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(e\)](#), 2 U.S.C. § 936(e), *infra* p. 1194, addresses “AMT Relief.” [Statutory Pay-As-You-Go Act of 2010 § 7\(b\)](#), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5372</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(f\)](#), 2 U.S.C. § 936(f), *infra* p. 1196, addresses “Permanent Extension of Middle-Class Tax Cuts.” [Statutory Pay-As-You-Go Act of 2010 § 7\(b\)](#), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5373</sup> [Statutory Pay-As-You-Go Act of 2010 § 7](#), 2 U.S.C. § 936, *infra* p. 1190, addresses “Adjustment for Current Policies.” [Statutory Pay-As-You-Go Act of 2010 § 7\(b\)](#), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5374</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(16\)](#), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

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effects<sup>5375</sup> of that legislation pursuant to paragraph (2)<sup>5376</sup> for the purposes of this title.<sup>5377</sup> A single piece of legislation may contain provisions that meet criteria in more than one of the subsections referred to in the preceding sentence. CBO<sup>5378</sup> shall adjust estimates for legislation designated under subsection (a)<sup>5379</sup> and estimated under subsection (b).<sup>5380</sup> OMB<sup>5381</sup> shall adjust estimates for legislation estimated under subsection (d)(3).<sup>5382</sup>

4(c)(2) (2) ADJUSTMENTS. —

4(c)(2)(A) (A) ESTIMATES. — CBO<sup>5383</sup> or OMB,<sup>5384</sup> as applicable, shall exclude from the estimate of budgetary effects<sup>5385</sup> any budgetary effects<sup>5386</sup> of a provision that meets the criteria in

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<sup>5375</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5376</sup> Statutory Pay-As-You-Go Act of 2010 § 4(c)(2), 2 U.S.C. § 933(c)(2), *infra* p. 1165, addresses “Adjustments.”

<sup>5377</sup> “This title” is Joint Resolution increasing the statutory limit on the public debt, Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, Statutory Pay-As-You-Go Act of 2010, 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the Statutory Pay-As-You-Go Act of 2010 appear as references to “this chapter” in the U.S. Code.

<sup>5378</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5379</sup> Statutory Pay-As-You-Go Act of 2010 § 4(a), 2 U.S.C. § 933(a), *supra* p. 1156, addresses “PAYGO Estimates.”

<sup>5380</sup> Statutory Pay-As-You-Go Act of 2010 § 4(b), 2 U.S.C. § 933(b), *supra* p. 1162, addresses “CBO PAYGO Estimates.”

<sup>5381</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5382</sup> Statutory Pay-As-You-Go Act of 2010 § 4(d)(3), 2 U.S.C. § 933(d)(3), *infra* p. 1170, addresses “OMB PAYGO Estimates.”

<sup>5383</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5384</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.”

<sup>5385</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5386</sup> *Id.*

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subsection (c),<sup>5387</sup> (d),<sup>5388</sup> (e)<sup>5389</sup> or (f)<sup>5390</sup> of section 7,<sup>5391</sup> to the extent that those budgetary effects,<sup>5392</sup> when combined with all other excluded budgetary effects<sup>5393</sup> of any other previously designated provisions of enacted legislation under the same subsection of section 7,<sup>5394</sup> do not exceed the maximum applicable current policy adjustment defined under the applicable subsection of section 7<sup>5395</sup> for the applicable 10-year period.

4(c)(2)(B) (B) **BASILINE**,<sup>5396</sup>—Any estimate made pursuant to subparagraph (A)<sup>5397</sup> shall be prepared using baseline<sup>5398</sup> estimates supplied by the Congressional Budget Office, consistent with section 257<sup>5399</sup> of the BBEDCA,<sup>5400</sup> CBO<sup>5401</sup> estimates of legislation adjusted for current policy shall include a separate presentation of costs<sup>5402</sup> excluded from the

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<sup>5387</sup> Statutory Pay-As-You-Go Act of 2010 § 7(c), 2 U.S.C. § 936(c), *infra* p. 1191, addresses “Medicare Payments to Physicians.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5388</sup> Statutory Pay-As-You-Go Act of 2010 § 7(d), 2 U.S.C. § 936(d), *infra* p. 1193, addresses “Estate and Gift Tax.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5389</sup> Statutory Pay-As-You-Go Act of 2010 § 7(e), 2 U.S.C. § 936(e), *infra* p. 1194, addresses “AMT Relief.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5390</sup> Statutory Pay-As-You-Go Act of 2010 § 7(f), 2 U.S.C. § 936(f), *infra* p. 1196, addresses “Permanent Extension of Middle-Class Tax Cuts.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5391</sup> Statutory Pay-As-You-Go Act of 2010 § 7, 2 U.S.C. § 936, *infra* p. 1190, addresses “Adjustment for Current Policies.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5392</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5393</sup> *Id.*

<sup>5394</sup> Statutory Pay-As-You-Go Act of 2010 § 7, 2 U.S.C. § 936, *infra* p. 1190, addresses “Adjustment for Current Policies.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5395</sup> *Id.*

<sup>5396</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907, *supra* p. 980.

<sup>5397</sup> Statutory Pay-As-You-Go Act of 2010 § 4(c)(2)(A), 2 U.S.C. § 933(c)(2)(A), *supra* p. 1165, addresses “Estimates.”

<sup>5398</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907, *supra* p. 980.

<sup>5399</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907, *supra* p. 1110, addresses “The Baseline.”

<sup>5400</sup> Statutory Pay-As-You-Go Act of 2010 § 3(1), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5401</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5402</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A), 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “costs.”



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calculation of **budgetary effects**<sup>5403</sup> for the legislation, as well as an updated total of all excluded **costs**<sup>5404</sup> of provisions within **subsection (c)**,<sup>5405</sup> **(d)**,<sup>5406</sup> or **(e)**<sup>5407</sup> of **section 7**,<sup>5408</sup> as applicable, and in the case of **paragraph (1) of section 7(f)**,<sup>5409</sup> within any of the **subparagraphs (A) through (L)**<sup>5410</sup> of **such paragraph**,<sup>5411</sup> as applicable.

4(c)(3) (3) LIMITATION ON AVAILABILITY OF EXCESS **SAVINGS**.<sup>5412</sup> —

4(c)(3)(A) (A) PROHIBITION ON USE OF EXCESS **SAVING[S]**<sup>5413</sup> FOR INELIGIBLE POLICIES.—To the extent the adjustment for current policy of any provision estimated under **this subsection**<sup>5414</sup> exceeds the estimated **budgetary effects**<sup>5415</sup> of that provision, these excess **savings**<sup>5416</sup> shall not be available to offset the **costs**<sup>5417</sup> of any provisions not otherwise eligible for a current policy adjustment under **section 7**,<sup>5418</sup> and shall

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<sup>5403</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5404</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A), 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “costs.”

<sup>5405</sup> Statutory Pay-As-You-Go Act of 2010 § 7(c), 2 U.S.C. § 936(c), *infra* p. 1191, addresses “Medicare Payments to Physicians.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5406</sup> Statutory Pay-As-You-Go Act of 2010 § 7(d), 2 U.S.C. § 936(d), *infra* p. 1193, addresses “Estate and Gift Tax.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5407</sup> Statutory Pay-As-You-Go Act of 2010 § 7(e), 2 U.S.C. § 936(e), *infra* p. 1194, addresses “AMT Relief.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5408</sup> Statutory Pay-As-You-Go Act of 2010 § 7, 2 U.S.C. § 936, *infra* p. 1190, addresses “Adjustment for Current Policies.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5409</sup> Statutory Pay-As-You-Go Act of 2010 § 7(f)(1), 2 U.S.C. § 936(f)(1), *infra* p. 1196, addresses “Criteria.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5410</sup> Statutory Pay-As-You-Go Act of 2010 § 7(f)(1)(A)–(L), 2 U.S.C. § 936(f)(1)(A)–(L), *infra* p. 1197. Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5411</sup> Statutory Pay-As-You-Go Act of 2010 § 7(f)(1), 2 U.S.C. § 936(f)(1), *infra* p. 1196, addresses “Criteria.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5412</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A), 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “savings.”

<sup>5413</sup> *Id.* This reference appears as “saving” in the original. The House Office of the Law Revision Counsel, which maintains the U.S. Code, noted that this reference “[p]robably should be ‘savings’.” 2 U.S.C. § 933 note.

<sup>5414</sup> Statutory Pay-As-You-Go Act of 2010 § 4(c), 2 U.S.C. § 933(c), *supra* p. 1164, addresses “Current Policy Adjustments for Certain Legislation.”

<sup>5415</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5416</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A), 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “savings.”

<sup>5417</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A), 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “costs.”

<sup>5418</sup> Statutory Pay-As-You-Go Act of 2010 § 7, 2 U.S.C. § 936, *infra* p. 1190, addresses “Adjustment for Current Policies.” Statutory Pay-As-You-Go Act of 2010 § 7(b), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

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not be counted on the PAYGO scorecards established pursuant to [subsections \(d\)\(4\)](#)<sup>5419</sup> and [\(d\)\(5\)](#).<sup>5420</sup>

4(c)(3)(B)

(B) PROHIBITION ON USE OF EXCESS SAVINGS<sup>5421</sup> ACROSS BUDGET AREAS.—For provisions eligible for a current policy adjustment under [subsections \(c\) through \(f\)](#)<sup>5422</sup> of [section 7](#),<sup>5423</sup> to the extent the adjustment for current policy of any provision exceeds the estimated [budgetary effects](#)<sup>5424</sup> of that same provision, the excess [savings](#)<sup>5425</sup> shall be available only to offset the [costs](#)<sup>5426</sup> of other provisions that qualify for a current policy adjustment in that same subsection. Each paragraph in [section 7\(f\)\(1\)](#)<sup>5427</sup> shall be considered a separate subsection for purposes of [this section](#).<sup>5428</sup>

4(c)(4)

(4) FURTHER GUIDANCE ON ESTIMATING BUDGETARY EFFECTS.<sup>5429</sup>—Estimates of [budgetary effects](#)<sup>5430</sup> under this subsection shall be consistent with the guidance provided at [section 7\(h\)](#).<sup>5431</sup>

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<sup>5419</sup> [Statutory Pay-As-You-Go Act of 2010 § 4\(d\)\(4\)](#), 2 U.S.C. § 933(d)(4), *infra* p. 1171, addresses “5-year scorecard.”

<sup>5420</sup> [Statutory Pay-As-You-Go Act of 2010 § 4\(d\)\(5\)](#), 2 U.S.C. § 933(d)(5), *infra* p. 1171, addresses “10-year scorecard.”

<sup>5421</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)](#), 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “savings.”

<sup>5422</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(c\)–\(f\)](#), 2 U.S.C. § 936(c)–(f), *infra* p. 1191, addresses “Medicare Payments to Physicians,” “Estate and Gift Tax,” “AMT Relief,” and “Permanent Extension of Middle-Class Tax Cuts.” [Statutory Pay-As-You-Go Act of 2010 § 7\(b\)](#), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5423</sup> [Statutory Pay-As-You-Go Act of 2010 § 7](#), 2 U.S.C. § 936, *infra* p. 1190, addresses “Adjustment for Current Policies.” [Statutory Pay-As-You-Go Act of 2010 § 7\(b\)](#), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5424</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5425</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)](#), 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “savings.”

<sup>5426</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)](#), 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “costs.”

<sup>5427</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(f\)\(1\)](#), 2 U.S.C. § 936(f)(1), *infra* p. 1196, addresses “Criteria.” [Statutory Pay-As-You-Go Act of 2010 § 7\(b\)](#), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5428</sup> [Statutory Pay-As-You-Go Act of 2010 § 4](#), 2 U.S.C. § 933, *supra* p. 1156, addresses “PAYGO Estimates and PAYGO Scorecards.”

<sup>5429</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5430</sup> *Id.*

<sup>5431</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(h\)](#), 2 U.S.C. § 936(h), *infra* p. 1201, addresses “Guidance on Estimates and Current Policy Adjustments.” [Statutory Pay-As-You-Go Act of 2010 § 7\(b\)](#), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.



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- 4(c)(5) (5) INCLUSION OF STATEMENT.—For **PAYGO legislation**<sup>5432</sup> adjusted pursuant to **section 7**,<sup>5433</sup> the Chairman of the House or Senate Budget Committee, as applicable, shall include in any statement titled “**Budgetary Effects**<sup>5434</sup> of **PAYGO Legislation**”,<sup>5435</sup> submitted for that legislation pursuant to **section 4**,<sup>5436</sup> an explanation of the current policy designation and adjustments.
- 4(d) (d) **OMB**<sup>5437</sup> **PAYGO SCORECARDS**.—
- 4(d)(1) (1) IN GENERAL.—**OMB**<sup>5438</sup> shall maintain and make publicly available a continuously updated document containing two PAYGO scorecards displaying the **budgetary effects**<sup>5439</sup> of **PAYGO legislation**<sup>5440</sup> as determined under **section 308 of the Congressional Budget Act of 1974**,<sup>5441</sup> applying the look-back requirement in **subsection (e)**<sup>5442</sup> and the averaging requirement in **subsection (f)**,<sup>5443</sup> and a separate addendum displaying the estimates of the **costs**<sup>5444</sup> of

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<sup>5432</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.” **Statutory Pay-As-You-Go Act of 2010 § 7(b)**, 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5433</sup> **Statutory Pay-As-You-Go Act of 2010 § 7**, 2 U.S.C. § 936, *infra* p. 1190, addresses “Adjustment for Current Policies.” **Statutory Pay-As-You-Go Act of 2010 § 7(b)**, 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5434</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5435</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5436</sup> **Statutory Pay-As-You-Go Act of 2010 § 4**, 2 U.S.C. § 933, *supra* p. 1156, addresses “PAYGO Estimates and PAYGO Scorecards.”

<sup>5437</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5438</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5439</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5440</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5441</sup> **Congressional Budget Act of 1974 § 308**, 2 U.S.C. § 639, *supra* p. 379, addresses “Reports, Summaries, and Projections of Congressional Budget Actions.”

<sup>5442</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(e)**, 2 U.S.C. § 933(e), *infra* p. 1172, addresses “Look-Back To Capture Current-Year Effects.”

<sup>5443</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(f)**, 2 U.S.C. § 933(f), *infra* p. 1172, addresses “Averaging Used To Measure Compliance Over 5-Year and 10-Year Periods.”

<sup>5444</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)**, 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “costs.”

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provisions designated in statute as **emergency**<sup>5445</sup> requirements.

4(d)(2)           **(2) ESTIMATES IN LEGISLATION.**— Except as provided in **paragraph (3)**,<sup>5446</sup> in making the calculations for the PAYGO scorecards, **OMB**<sup>5447</sup> shall use the **budgetary effects**<sup>5448</sup> included by reference in the applicable legislation pursuant to **subsection (a)**.<sup>5449</sup>

4(d)(3)           **(3) OMB**<sup>5450</sup> PAYGO ESTIMATES.— If a **PAYGO Act**<sup>5451</sup> does not contain a valid reference to its **budgetary effects**<sup>5452</sup> consistent with **subsection (a)**,<sup>5453</sup> **OMB**<sup>5454</sup> shall estimate the **budgetary effects**<sup>5455</sup> of that legislation upon its enactment. The **OMB**<sup>5456</sup> estimate shall be based on the approaches to scorekeeping set forth in **section 308 of the Congressional Budget Act of**

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<sup>5445</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5446</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(d)(3)**, 2 U.S.C. § 933(d)(3), *infra* p. 1170, addresses “OMB PAYGO Estimates.”

<sup>5447</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5448</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5449</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(a)**, 2 U.S.C. § 933(a), *supra* p. 1156, addresses “PAYGO Estimates.”

<sup>5450</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5451</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5452</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5453</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(a)**, 2 U.S.C. § 933(a), *supra* p. 1156, addresses “PAYGO Estimates.”

<sup>5454</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5455</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B)**, 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5456</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

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1974,<sup>5457</sup> as amended by [this title](#),<sup>5458</sup> and [subsection \(g\)\(4\)](#),<sup>5459</sup> and shall use the same economic and technical assumptions as used in the most recent budget submitted by the President under [section 1105\(a\) of title 31 of the United States Code](#).<sup>5460</sup>

4(d)(4)           **(4) 5-YEAR SCORECARD.**—The first scorecard shall display the [budgetary effects](#)<sup>5461</sup> of [PAYGO legislation](#)<sup>5462</sup> in each year over the 5-year period beginning in the [budget year](#).<sup>5463</sup>

4(d)(5)           **(5) 10-YEAR SCORECARD.**—The second scorecard shall display the [budgetary effects](#)<sup>5464</sup> of [PAYGO legislation](#)<sup>5465</sup> in each year over the 10-year period beginning in the [budget year](#).<sup>5466</sup>

4(d)(6)           **(6) COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORTS ACT.**<sup>5467</sup>—Neither scorecard maintained by [OMB](#)<sup>5468</sup> pursuant to

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<sup>5457</sup> [Congressional Budget Act of 1974 § 308](#), 2 U.S.C. § 639, *supra* p. 379, addresses “Reports, Summaries, and Projections of Congressional Budget Actions.”

<sup>5458</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

<sup>5459</sup> [Statutory Pay-As-You-Go Act of 2010 § 4\(g\)\(4\)](#), 2 U.S.C. § 933(g)(4), *infra* p. 1177, addresses “Effect of designation on scoring.”

<sup>5460</sup> [31 U.S.C. § 1105](#), *supra* p. 156, addresses “Budget Contents and Submission to Congress.”

<sup>5461</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5462</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(7\)](#), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5463</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5464</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5465</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(7\)](#), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5466</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5467</sup> [American Taxpayer Relief Act of 2012](#), Pub. L. No. 112-240, § 642, 126 Stat. 2313, 2358, repealed the Community Living Assistance Services and Supports Act.

<sup>5468</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

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**this subsection<sup>5469</sup> shall include net savings<sup>5470</sup> from any provisions of legislation titled “Community Living Assistance Services and Supports Act”, which establishes a Federal insurance program for long-term care, if such legislation is enacted into law, or amended, subsequent to February 12, 2010.**

4(e) **(e) LOOK-BACK TO CAPTURE CURRENT-YEAR<sup>5471</sup> EFFECTS.—For purposes of this section,<sup>5472</sup> OMB<sup>5473</sup> shall treat the budgetary effects<sup>5474</sup> of PAYGO legislation<sup>5475</sup> enacted during a session of Congress that occur during the current year<sup>5476</sup> as though they occurred in the budget year.<sup>5477</sup>**

4(f) **(f) AVERAGING USED TO MEASURE COMPLIANCE OVER 5-YEAR AND 10-YEAR PERIODS.—OMB<sup>5478</sup> shall cumulate the budgetary effects<sup>5479</sup> of a PAYGO Act<sup>5480</sup> over the**

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<sup>5469</sup> Statutory Pay-As-You-Go Act of 2010 § 4(d), 2 U.S.C. § 933(d), *supra* p. 1169, addresses “OMB PAYGO Scorecards.”

<sup>5470</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A), 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “savings.”

<sup>5471</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13), 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5472</sup> Statutory Pay-As-You-Go Act of 2010 § 4, 2 U.S.C. § 933, *supra* p. 1156, addresses “PAYGO Estimates and PAYGO Scorecards.”

<sup>5473</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5474</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5475</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5476</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13), 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5477</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5478</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5479</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5480</sup> Statutory Pay-As-You-Go Act of 2010 § 3(7), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

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**budget year**<sup>5481</sup> (which includes any look-back effects under **subsection (e)**<sup>5482</sup>) and —

4(f)(1) (1) for purposes of the 5-year scorecard referred to in **subsection (d)(4)**,<sup>5483</sup> the four subsequent **outyears**,<sup>5484</sup> divide that cumulative total by five, and enter the quotient in the **budget-year**<sup>5485</sup> column and in each subsequent column of the 5-year PAYGO scorecard; and

4(f)(2) (2) for purposes of the 10-year scorecard referred to in **subsection (d)(5)**,<sup>5486</sup> the nine subsequent **outyears**,<sup>5487</sup> divide that cumulative total by ten, and enter the quotient in the **budget-year**<sup>5488</sup> column and in each subsequent column of the 10-year PAYGO scorecard.

4(g) (g) **EMERGENCY**<sup>5489</sup> **LEGISLATION.** —

4(g)(1) (1) **DESIGNATION IN STATUTE.**—If a provision of **direct spending**<sup>5490</sup> or **revenue**<sup>5491</sup> legislation in a

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<sup>5481</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5482</sup> *Statutory Pay-As-You-Go Act of 2010 § 4(e)*, 2 U.S.C. § 933(e), *supra* p. 1172, addresses “Look-Back To Capture Current-Year Effects.”

<sup>5483</sup> *Statutory Pay-As-You-Go Act of 2010 § 4(d)(4)*, 2 U.S.C. § 933(d)(4), *supra* p. 1171, addresses “5-year scorecard.”

<sup>5484</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(2)(A)*, 2 U.S.C. § 932(2)(A), *supra* p. 1150, defines “outyear.”

<sup>5485</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5486</sup> *Statutory Pay-As-You-Go Act of 2010 § 4(d)(5)*, 2 U.S.C. § 933(d)(5), *supra* p. 1171, addresses “10-year scorecard.”

<sup>5487</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(2)(A)*, 2 U.S.C. § 932(2)(A), *supra* p. 1150, defines “outyear.”

<sup>5488</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5489</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)*, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5490</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)*, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5491</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”



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**PAYGO Act**<sup>5492</sup> is enacted as an **emergency**<sup>5493</sup> requirement that the Congress so designates in statute pursuant to **this section**,<sup>5494</sup> the amounts of **new budget authority**,<sup>5495</sup> **outlays**,<sup>5496</sup> and **revenue**<sup>5497</sup> in all fiscal years resulting from that provision shall be treated as an **emergency**<sup>5498</sup> requirement for the purposes of **this Act**.<sup>5499</sup>

4(g)(2)                   **(2) DESIGNATION IN THE HOUSE OF REPRESENTATIVES.—**If a **PAYGO Act**<sup>5500</sup> includes a provision expressly designated as an **emergency**<sup>5501</sup> for the purposes of **this title**,<sup>5502</sup> the Chair shall put the question of consideration with respect thereto.

4(g)(3)                   **(3) POINT OF ORDER IN THE SENATE.—**

4(g)(3)(A)               **(A) IN GENERAL.—**When the Senate is considering a **PAYGO Act**,<sup>5503</sup> if a point of order is

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<sup>5492</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(7)*, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5493</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)*, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5494</sup> *Statutory Pay-As-You-Go Act of 2010 § 4*, 2 U.S.C. § 933, *supra* p. 1156, addresses “PAYGO Estimates and PAYGO Scorecards.”

<sup>5495</sup> *Congressional Budget Act of 1974 § 3(2)(C)*, 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150 adopts the Congressional Budget Act definition.

<sup>5496</sup> *Congressional Budget Act of 1974 § 3(1)*, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5497</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5498</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)*, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5499</sup> *Statutory Pay-As-You-Go Act of 2010*, 2 U.S.C. §§ 931–939, pp. 1149–1214.

<sup>5500</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(7)*, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5501</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)*, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5502</sup> “This title” is *Joint Resolution increasing the statutory limit on the public debt*, Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, *Statutory Pay-As-You-Go Act of 2010*, 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the *Statutory Pay-As-You-Go Act of 2010* appear as references to “this chapter” in the U.S. Code.

<sup>5503</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(7)*, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

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made by a Senator against an **emergency**<sup>5504</sup> designation in that measure, that provision making such a designation shall be stricken from the measure and may not be offered as an amendment from the floor.

4(g)(3)(B) (B) SUPERMAJORITY WAIVER AND APPEALS.—

4(g)(3)(B)(i) (i) WAIVER.—**Subparagraph (A)**<sup>5505</sup> may be waived or suspended in the Senate only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.

4(g)(3)(B)(ii) (ii) APPEALS.— Appeals in the Senate from the decisions of the Chair relating to any provision of **this subsection**<sup>5506</sup> shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the bill or joint resolution, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under **this subsection**.<sup>5507</sup>

4(g)(3)(C) (C) DEFINITION OF AN **EMERGENCY**<sup>5508</sup> DESIGNATION.—For purposes of **subparagraph (A)**,<sup>5509</sup> a provision shall be considered an

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<sup>5504</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5505</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(g)(3)(A)**, 2 U.S.C. § 933(g)(3)(A), *supra* p. 1174, addresses “Point of Order in the Senate” “In general.”

<sup>5506</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(g)**, 2 U.S.C. § 933(g), *supra* p. 1173, addresses “Emergency Legislation.”

<sup>5507</sup> *Id.*

<sup>5508</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5509</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(g)(3)(A)**, 2 U.S.C. § 933(g)(3)(A), *supra* p. 1174, addresses “Point of Order in the Senate” “In general.”

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**emergency**<sup>5510</sup> designation if it designates any item as an **emergency**<sup>5511</sup> requirement pursuant to **this subsection**.<sup>5512</sup>

4(g)(3)(D) (D) FORM OF THE POINT OF ORDER.—A point of order under **subparagraph (A)**<sup>5513</sup> may be raised by a Senator as provided in **section 313(e) of the Congressional Budget Act of 1974**.<sup>5514</sup>

4(g)(3)(E) (E) CONFERENCE REPORTS.—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a **PAYGO Act**,<sup>5515</sup> upon a point of order being made by any Senator pursuant to **this section**,<sup>5516</sup> and such point of order being sustained, such material contained in such conference report shall be deemed stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of

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<sup>5510</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5511</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5512</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(g)**, 2 U.S.C. § 933(g), *supra* p. 1173, addresses “Emergency Legislation.”

<sup>5513</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(g)(3)(A)**, 2 U.S.C. § 933(g)(3)(A), *supra* p. 1174, addresses “Point of Order in the Senate” “In general.”

<sup>5514</sup> **Congressional Budget Act of 1974 § 313(e)**, 2 U.S.C. § 644(e), *supra* p. 760, addresses “General Point of Order.”

<sup>5515</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO Act.”

<sup>5516</sup> **Statutory Pay-As-You-Go Act of 2010 § 4**, 2 U.S.C. § 933, *supra* p. 1156, addresses “PAYGO Estimates and PAYGO Scorecards.”



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**this subsection<sup>5517</sup>), no further amendment shall be in order.**

4(g)(4) **(4) EFFECT OF DESIGNATION ON SCORING.—If a provision is designated as an emergency<sup>5518</sup> requirement under this Act,<sup>5519</sup> CBO<sup>5520</sup> or OMB,<sup>5521</sup> as applicable, shall not include the budgetary effects<sup>5522</sup> of such a provision in its estimate of the budgetary effects<sup>5523</sup> of that PAYGO legislation.<sup>5524</sup>**

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### Scorecards

On a number of occasions, Congress has excluded legislation from the PAYGO scorecards<sup>5525</sup> (often at the same time excluding legislation from the Senate PAYGO scorecards, and often also making changes to budgetary classification). Note that such language will generally violate Budget Act section 306.<sup>5526</sup>

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<sup>5517</sup> [Statutory Pay-As-You-Go Act of 2010 § 4\(g\)](#), 2 U.S.C. § 933(g), *supra* p. 1173, addresses “Emergency Legislation.”

<sup>5518</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(20\)](#), 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5519</sup> [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214.

<sup>5520</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(16\)](#), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5521</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5522</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5523</sup> *Id.*

<sup>5524</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(7\)](#), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5525</sup> See, e.g., [Further Additional Extending Government Funding Act](#), Pub. L. No. 117-86, § 1201, 136 Stat. 15, 17–18 (2022); [Infrastructure Investment and Jobs Act](#), Pub. L. No. 117-58, § 905, 135 Stat. 429, 1444–45 (2021); [PPP Extension Act of 2021](#), Pub. L. No. 117-6, § 3, 135 Stat. 250; [Consolidated Appropriations Act, 2021](#), Pub. L. No. 116-260, § 1401(a), 134 Stat. 1182, 2158 (2020); [Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019](#), Pub. L. No. 116-69, § 1801(a), 133 Stat. 1134, 1143 (2019); [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, § 501, 133 Stat. 1049, 1058–59; [Bipartisan Budget Act of 2018](#), Pub. L. No. 115-123, § 70101, 132 Stat. 64, 313; [An Act to amend the Homeland Security Act of 2002 to require the Secretary of Homeland Security to issue Department of Homeland Security-wide guidance and develop training programs as part of the Department of Homeland Security Blue Campaign, and for other purposes](#), Pub. L. No. 115-96, §§ 5001, 5002, 131 Stat. 2044, 2053 (2017); [Fixing America’s Surface Transportation Act \(FAST Act\)](#), Pub. L. No. 114-94, § 32401, 129 Stat. 1312, 1741 (2015).

<sup>5526</sup> [Congressional Budget Act of 1974 § 306](#), 2 U.S.C. § 637, *supra* p. 353, addresses “Legislation Dealing with Congressional Budget Must Be Handled by Budget Committees.”

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For example, the Further Additional Extending Government Funding Act provides:

## **TITLE II—BUDGETARY EFFECTS**

### **SEC. 1201. BUDGETARY EFFECTS.**

(a) **STATUTORY PAYGO SCORECARDS.**—The budgetary effects of this division shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) **SENATE PAYGO SCORECARDS.**—The budgetary effects of this division shall not be entered on any PAYGO scorecard maintained for purposes of section 4106 of H. Con. Res. 71 (115th Congress).

(c) **CLASSIFICATION OF BUDGETARY EFFECTS.**—Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105-217 and section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, the budgetary effects of this division shall not be estimated —

(1) for purposes of section 251 of such Act;

(2) for purposes of an allocation to the Committee on Appropriations pursuant to section 302(a) of the Congressional Budget Act of 1974; and

(3) for purposes of paragraph (4)(C) of section 3 of the Statutory Pay-As-You-Go Act of 2010 as being included in an appropriation Act.<sup>5527</sup>

The Infrastructure Investment and Jobs Act provides:

### **BUDGETARY EFFECTS**

**SEC. 905. (a) STATUTORY PAYGO SCORECARDS.**—The budgetary effects of this division and amounts rescinded in section 90007 of division I that were previously designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not be entered on either PAYGO scorecard

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<sup>5527</sup> [Further Additional Extending Government Funding Act](#), Pub. L. No. 117-86, § 1201, 136 Stat. 15, 17–18 (2022).

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maintained pursuant to section 4(d) of the Statutory Pay As-You-Go Act of 2010.

(b) **SENATE PAYGO SCORECARDS.**—The budgetary effects of this division and amounts rescinded in section 90007 of division I that were previously designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not be entered on any PAYGO scorecard maintained for purposes of section 4106 of H. Con. Res. 71 (115th Congress).

(c) **CLASSIFICATION OF BUDGETARY EFFECTS.**—Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105–217 and section 250(c)(7) and (c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, the budgetary effects of this division and amounts rescinded in section 90007 of division I that were previously designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be estimated for purposes of section 251 of such Act and as appropriations for discretionary accounts for purposes of the allocation to the Committee on Appropriations pursuant to section 302(a) of the Congressional Budget Act of 1974 and section 4112 of H. Con. Res. 71 (115th Congress), the concurrent resolution on the budget for fiscal year 2018.<sup>5528</sup>

And the PPP Extension Act of 2021 provides:

**SEC. 3. DETERMINATION OF BUDGETARY EFFECTS.**

(a) **IN GENERAL.**—The budgetary effects of this Act shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(d)).

(b) **SENATE PAYGO SCORECARDS.**—The budgetary effects of this Act shall not be entered on any PAYGO scorecard maintained for purposes of section 4106 of H. Con. Res. 71 (115th Congress).<sup>5529</sup>

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<sup>5528</sup> [Infrastructure Investment and Jobs Act](#), Pub. L. No. 117-58, § 905, 135 Stat. 429, 1444–45 (2021).

<sup>5529</sup> [PPP Extension Act of 2021](#), Pub. L. No. 117-6, § 3, 135 Stat. 250.

On a number of occasions, Congress has rolled over or wiped clean the PAYGO balances.<sup>5530</sup>

Legislation	Date Enacted	Approach
<a href="#">Third Continuing Appropriations for Fiscal Year 2018</a>	Dec. 22, 2017	Removed tax cut reconciliation bill and itself from the scorecard
<a href="#">Bipartisan Budget Act of 2018</a>	Feb. 9, 2018	Set balances to zero effective on date of enactment
<a href="#">Further Additional Continuing Appropriations Act, 2019</a>	Jan. 25, 2019	Moved balances from 2019 to 2020
<a href="#">Bipartisan Budget Act of 2019</a>	Aug. 2, 2019	Set balances to zero effective on date of enactment
<a href="#">Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019</a>	Nov. 21, 2019	Moved balances from 2020 to 2021
<a href="#">Consolidated Appropriations Act, 2021</a>	Dec. 27, 2020	Set the balance at the end of the Congress to zero
<a href="#">Protecting Medicare and American Farmers from Sequester Cuts Act</a>	Dec. 10, 2021	Moved balances from 2022 to 2023

For example, the Protecting Medicare and American Farmers from Sequester Cuts Act provides:

**SEC. 7. PAYGO ANNUAL REPORT.**

For the purposes of the annual report issued pursuant to section 5 of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 934) after adjournment of the first session of the 117th Congress, and for determining whether a sequestration order is necessary under such section, the debit for the budget year on the 5-year scorecard, if any, and the 10-year scorecard, if any, shall be deducted from such scorecard in 2022 and added to such scorecard in 2023.<sup>5531</sup>

<sup>5530</sup> See, e.g., [Protecting Medicare and American Farmers from Sequester Cuts Act](#), Pub. L. No. 117-71, § 7, 135 Stat. 1506, 1508 (2021); [Consolidated Appropriations Act, 2021](#), Pub. L. No. 116-260, § 1401(d), 134 Stat. 1182, 2158–59 (2020); [Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019](#), Pub. L. No. 116-69, § 1801(d), 133 Stat. 1134, 1144 (2019); [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, § 102, 133 Stat. 1049, 1050; [Further Additional Continuing Appropriations Act, 2019](#), Pub. L. No. 116-5, § 104, 133 Stat. 10, 11–12 (2019); [Bipartisan Budget Act of 2018](#), Pub. L. No. 115-123, § 30102, 132 Stat. 64, 123. Thanks to Joshua Smith for information in this table.

<sup>5531</sup> [Protecting Medicare and American Farmers from Sequester Cuts Act](#), Pub. L. No. 117-71, § 7, 135 Stat. 1506, 1508 (2021).

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The Consolidated Appropriations Act, 2021, provided:

(d) **BALANCES ON THE PAYGO SCORECARDS.**— Effective on the date of the adjournment of the second session of the 116th Congress, and for the purposes of the annual report issued pursuant to section 5 of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 934) after such adjournment and for determining whether a sequestration order is necessary under such section, the balances on the PAYGO scorecards established pursuant to paragraphs (4) and (5) of section 4(d) of such Act shall be zero.<sup>5532</sup>

The Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019 provided:

(d) **PAYGO ANNUAL REPORT.**— For the purposes of the annual report issued pursuant to section 5 of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 934) after adjournment of the first session of the 116th Congress, and for determining whether a sequestration order is necessary under such section, the debit for the budget year on the 5-year scorecard, if any, and the 10-year scorecard, if any, shall be deducted from such scorecard in 2020 and added to such scorecard in 2021.<sup>5533</sup>

Bipartisan Budget Act of 2019 provided:

**SEC. 102. BALANCES ON THE PAYGO SCORECARDS.**

Effective on the date of the enactment of this Act, the balances on the PAYGO scorecards established pursuant to paragraphs (4) and (5) of section 4(d) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(d)) shall be zero.<sup>5534</sup>

The Further Additional Continuing Appropriations Act, 2019, provided:

**SEC. 104.** For the purposes of the annual report issued pursuant to section 5 of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 934) after adjournment of the second session of the 115th Congress, and for determining whether a sequestration order is necessary under such section, the debit for the budget year on the 5-year scorecard, if any, and

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<sup>5532</sup> [Consolidated Appropriations Act, 2021](#), Pub. L. No. 116-260, § 1401, 134 Stat. 1182, 2158–59 (2020).

<sup>5533</sup> [Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019](#), Pub. L. No. 116-69, § 1801, 133 Stat. 1134, 1143–44 (2019).

<sup>5534</sup> [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, § 102, 133 Stat. 1049, 1050.

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the 10-year scorecard, if any, shall be deducted from such scorecard in 2019 and added to such scorecard in 2020.<sup>5535</sup>

The Bipartisan Budget Act of 2018 provided:

**SEC. 30102. BALANCES ON THE PAYGO SCORECARDS.**

Effective on the date of enactment of this Act, the balances on the PAYGO scorecards established pursuant to paragraphs (4) and (5) of section 4(d) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(d)) shall be zero.<sup>5536</sup>

Note that such language will generally violate Budget Act section 306.<sup>5537</sup>

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<sup>5535</sup> [Further Additional Continuing Appropriations Act, 2019](#), Pub. L. No. 116-5, § 104, 133 Stat. 10, 11–12 (2019).

<sup>5536</sup> [Bipartisan Budget Act of 2018](#), Pub. L. No. 115-123, § 30102, 132 Stat. 64, 123.

<sup>5537</sup> [Congressional Budget Act of 1974 § 306](#), 2 U.S.C. § 637, *supra* p. 353, addresses “Legislation Dealing with Congressional Budget Must Be Handled by Budget Committees.”

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5            **SEC.    5.<sup>5538</sup>    ANNUAL    REPORT    AND**  
**SEQUESTRATION<sup>5539</sup> ORDER**

- 5(a)            **(a) ANNUAL REPORT.**— Not later than 14 days (excluding weekends and holidays) after Congress adjourns to end a session, **OMB<sup>5540</sup>** shall make publicly available and cause to be printed in the Federal Register an annual PAYGO report. The report shall include an up-to-date document containing the PAYGO scorecards, a description of any current policy adjustments made under **section 4(c),<sup>5541</sup>** information about **emergency<sup>5542</sup>** legislation (if any) designated under **section 4(g),<sup>5543</sup>** information about any **sequestration<sup>5544</sup>** if required by **subsection (b),<sup>5545</sup>** and other data and explanations that enhance public understanding of **this title<sup>5546</sup>** and actions taken under it.
- 5(b)            **(b) SEQUESTRATION<sup>5547</sup> ORDER.**—If the annual report issued at the end of a session of Congress under

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<sup>5538</sup> Statutory Pay-As-You-Go Act of 2010 § 5 is codified as amended at 2 U.S.C. § 934.

<sup>5539</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5540</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5541</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(c)**, 2 U.S.C. § 933(c), *supra* p. 1164, addresses “Current Policy Adjustments for Certain Legislation.”

<sup>5542</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *supra* p. 983, defines “emergency.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5543</sup> **Statutory Pay-As-You-Go Act of 2010 § 4(g)**, 2 U.S.C. § 933(g), *supra* p. 11731156, addresses “Emergency Legislation.”

<sup>5544</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5545</sup> **Statutory Pay-As-You-Go Act of 2010 § 5(b)**, 2 U.S.C. § 934(b), *infra* p. 1183, addresses “Sequestration Order.”

<sup>5546</sup> “This title” is **Joint Resolution increasing the statutory limit on the public debt**, Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, **Statutory Pay-As-You-Go Act of 2010**, 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the **Statutory Pay-As-You-Go Act of 2010** appear as references to “this chapter” in the U.S. Code.

<sup>5547</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.



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subsection (a)<sup>5548</sup> shows a debit<sup>5549</sup> on either PAYGO scorecard for the budget year,<sup>5550</sup> OMB<sup>5551</sup> shall prepare and the President shall issue and include in that report a sequestration<sup>5552</sup> order that, upon issuance, shall reduce budgetary resources<sup>5553</sup> of direct spending<sup>5554</sup> programs by enough to offset that debit<sup>5555</sup> as prescribed in section 6.<sup>5556</sup> If there is a debit<sup>5557</sup> on both scorecards, the order shall fully offset the larger of the two debits.<sup>5558</sup> OMB<sup>5559</sup> shall transmit the order and the report to the House of Representatives and the Senate. If the President issues a sequestration<sup>5560</sup> order, the annual report shall contain, for each budget account<sup>5561</sup> to be sequestered,<sup>5562</sup> estimates of the baseline<sup>5563</sup> level of budgetary resources<sup>5564</sup> subject to

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<sup>5548</sup> Statutory Pay-As-You-Go Act of 2010 § 5(a), 2 U.S.C. § 934(a), *supra* p. 1183, addresses “Annual Report.”

<sup>5549</sup> Statutory Pay-As-You-Go Act of 2010 § 3(5), 2 U.S.C. § 932(5), *supra* p. 1153, defines “debit.”

<sup>5550</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5551</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5552</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5553</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>5554</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5555</sup> Statutory Pay-As-You-Go Act of 2010 § 3(5), 2 U.S.C. § 932(5), *supra* p. 1153, defines “debit.”

<sup>5556</sup> Statutory Pay-As-You-Go Act of 2010 § 6, 2 U.S.C. § 935, *infra* p. 1186, addresses “Calculating a Sequestration.”

<sup>5557</sup> Statutory Pay-As-You-Go Act of 2010 § 3(5), 2 U.S.C. § 932(5), *supra* p. 1153, defines “debit.”

<sup>5558</sup> *Id.*

<sup>5559</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5560</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5561</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>5562</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>5563</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to Balanced Budget and Emergency Deficit Control Act of 1985 § 257, 2 U.S.C. § 907, *supra* p. 980.

<sup>5564</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”



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sequestration,<sup>5565</sup> the amount of budgetary resources<sup>5566</sup> to be sequestered,<sup>5567</sup> and the outlay<sup>5568</sup> reductions that will occur in the budget year<sup>5569</sup> and the subsequent fiscal year because of that sequestration.<sup>5570</sup>

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<sup>5565</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5566</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(6\)](#), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>5567</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5568</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5569</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5570</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

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6                    **SEC. 6.**<sup>5571</sup> **CALCULATING A SEQUESTRATION.**<sup>5572</sup>

6(a)                    **(a)        REDUCING        NONEXEMPT**<sup>5573</sup> **BUDGETARY**  
**RESOURCES**<sup>5574</sup> **BY A UNIFORM PERCENTAGE. —**

6(a)(1)                    **(1) IN GENERAL. — OMB**<sup>5575</sup> **shall calculate the**  
**uniform percentage by which the budgetary**  
**resources**<sup>5576</sup> **of nonexempt**<sup>5577</sup> **direct spending**<sup>5578</sup>  
**programs are to be sequestered**<sup>5579</sup> **such that the**  
**outlay**<sup>5580</sup> **savings**<sup>5581</sup> **resulting from that**  
**sequestration,**<sup>5582</sup> **as calculated under subsection (b),**<sup>5583</sup>  
**shall offset the budget-year**<sup>5584</sup> **debit,**<sup>5585</sup> **if any, on the**  
**applicable PAYGO scorecard. If the uniform**  
**percentage calculated under the prior sentence exceeds**

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<sup>5571</sup> Statutory Pay-As-You-Go Act of 2010 § 6 is codified as amended at 2 U.S.C. § 935.

<sup>5572</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5573</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.” Statutory Pay-As-You-Go Act of 2010 § 8(1), 2 U.S.C. § 937(1), *infra* p. 1203, applies § 255 to the Statutory Pay-As-You-Go Act.

<sup>5574</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>5575</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5576</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>5577</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.” Statutory Pay-As-You-Go Act of 2010 § 8(1), 2 U.S.C. § 937(1), *infra* p. 1203, applies § 255 to the Statutory Pay-As-You-Go Act.

<sup>5578</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5579</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.”

<sup>5580</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5581</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A), 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “savings.”

<sup>5582</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5583</sup> Statutory Pay-As-You-Go Act of 2010 § 6(b), 2 U.S.C. § 935(b), *infra* p. 1188, addresses “Outlay Savings.”

<sup>5584</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5585</sup> Statutory Pay-As-You-Go Act of 2010 § 3(5), 2 U.S.C. § 932(5), *supra* p. 1153, defines “debit.”

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4 percent, the Medicare programs described in [section 256\(d\)](#)<sup>5586</sup> of [BBEDCA](#)<sup>5587</sup> shall be reduced by 4 percent and the uniform percentage by which the [budgetary resources](#)<sup>5588</sup> of all other [nonexempt](#)<sup>5589</sup> [direct spending](#)<sup>5590</sup> programs are to be [sequestered](#)<sup>5591</sup> shall be increased, as necessary, so that the [sequestration](#)<sup>5592</sup> of Medicare and of all other [nonexempt](#)<sup>5593</sup> [direct spending](#)<sup>5594</sup> programs together produce the required [outlay](#)<sup>5595</sup> [savings](#).<sup>5596</sup>

6(a)(2) (2) PROGRAMS AND ACTIVITIES IN UNIFIED BUDGET ONLY.—Subject to the [exemptions](#)<sup>5597</sup> set forth in [section 11](#),<sup>5598</sup> [OMB](#)<sup>5599</sup> shall determine the uniform

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<sup>5586</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(d\)](#), 2 U.S.C. § 906(d), *supra* p. 1089, addresses “Special Rules for Medicare Program.”

<sup>5587</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(1\)](#), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5588</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(6\)](#), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>5589</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.” [Statutory Pay-As-You-Go Act of 2010 § 8\(1\)](#), 2 U.S.C. § 937(1), *infra* p. 1203, applies § 255 to the [Statutory Pay-As-You-Go Act](#).

<sup>5590</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5591</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequester.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5592</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5593</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.” [Statutory Pay-As-You-Go Act of 2010 § 8\(1\)](#), 2 U.S.C. § 937(1), *infra* p. 1203, applies § 255 to the [Statutory Pay-As-You-Go Act](#).

<sup>5594</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5595</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5596</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)](#), 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “savings.”

<sup>5597</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.” [Statutory Pay-As-You-Go Act of 2010 § 8\(1\)](#), 2 U.S.C. § 937(1), *infra* p. 1203, applies § 255 to the [Statutory Pay-As-You-Go Act](#).

<sup>5598</sup> [Statutory Pay-As-You-Go Act of 2010](#), Pub. L. No. 111-139, § 11, 124 Stat. 8, 23, *infra* p. 1212, addresses “Exempt Programs and Activities.” [Statutory Pay-As-You-Go Act of 2010 § 11](#) amended [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *supra* p. 1074.

<sup>5599</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(15\)](#), 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

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percentage required under **paragraph (1)**<sup>5600</sup> with respect to programs and activities contained in the unified budget only.

6(b)           **(b) OUTLAY**<sup>5601</sup> **SAVINGS**.<sup>5602</sup> —In determining the amount by which a **sequestration**<sup>5603</sup> offsets a **budget-year**<sup>5604</sup> **debit**,<sup>5605</sup> **OMB**<sup>5606</sup> shall count —

6(b)(1)           **(1)** the amount by which the **sequestration**<sup>5607</sup> in a crop year of crop support payments, pursuant to **section 256(j)**<sup>5608</sup> of **BBEDCA**,<sup>5609</sup> reduces **outlays**<sup>5610</sup> in the **budget year**<sup>5611</sup> and the subsequent fiscal year;

6(b)(2)           **(2)** the amount by which the **sequestration**<sup>5612</sup> of Medicare payments in the 12-month period following

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<sup>5600</sup> **Statutory Pay-As-You-Go Act of 2010 § 6(a)(1)**, 2 U.S.C. § 935(a)(1), *supra* p. 1186, addresses “Reducing Nonexempt Budgetary Resources by a Uniform Percentage” “In general.”

<sup>5601</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5602</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)**, 2 U.S.C. § 932(4)(A), *supra* p. 1152, defines “savings.”

<sup>5603</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5604</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)**, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5605</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(5)**, 2 U.S.C. § 932(5), *supra* p. 1153, defines “debit.”

<sup>5606</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982, defines “OMB.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5607</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5608</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(j)**, 2 U.S.C. § 906(j), *supra* p. 1103, addresses “Commodity Credit Corporation.”

<sup>5609</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(1)**, 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5610</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5611</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)**, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5612</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

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the sequestration<sup>5613</sup> order, pursuant to section 256(d)<sup>5614</sup> of BBEDCA,<sup>5615</sup> reduces outlays<sup>5616</sup> in the budget year<sup>5617</sup> and the subsequent fiscal year; and

6(b)(3) (3) the amount by which the sequestration<sup>5618</sup> in the budget year<sup>5619</sup> of the budgetary resources<sup>5620</sup> of other nonexempt<sup>5621</sup> mandatory programs reduces outlays<sup>5622</sup> in the budget year<sup>5623</sup> and in the subsequent fiscal year.

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<sup>5613</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5614</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d), 2 U.S.C. § 906(d), *supra* p. 1089, addresses “Special Rules for Medicare Program.”

<sup>5615</sup> Statutory Pay-As-You-Go Act of 2010 § 3(1), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5616</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5617</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5618</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5619</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5620</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6), 2 U.S.C. § 900(c)(6), *supra* p. 980, defines “budgetary resources.”

<sup>5621</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.” Statutory Pay-As-You-Go Act of 2010 § 8(1), 2 U.S.C. § 937(1), *infra* p. 1203, applies § 255 to the Statutory Pay-As-You-Go Act.

<sup>5622</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5623</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.



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- 7            SEC. 7.<sup>5624</sup> ADJUSTMENT FOR CURRENT POLICIES.<sup>5625</sup>
- 7(a)            (a) PURPOSE.—The purpose of [this section](#)<sup>5626</sup> is to provide for adjustments of estimates of [budgetary effects](#)<sup>5627</sup> of [PAYGO legislation](#)<sup>5628</sup> for legislation affecting 4 areas of the budget—
- 7(a)(1)            (1) payments made under [section 1848 of the Social Security Act](#)<sup>5629</sup> (referred to in [this section](#)<sup>5630</sup> as “Payment for Physicians’ Services”);
- 7(a)(2)            (2) the Estate and Gift Tax under [subtitle B of the Internal Revenue Code of 1986](#);<sup>5631</sup>
- 7(a)(3)            (3) the [AMT](#);<sup>5632</sup> and
- 7(a)(4)            (4) provisions of [EGTRRA](#)<sup>5633</sup> or [JGTRRA](#)<sup>5634</sup> that amended the [Internal Revenue Code of 1986](#)<sup>5635</sup> (or provisions in later statutes further amending the amendments made by [EGTRRA](#)<sup>5636</sup> or [JGTRRA](#)<sup>5637</sup>), other than—
- 7(a)(4)(A)            (A) the provisions of [those 2 Acts](#)<sup>5638</sup> that were made permanent by [the Pension Protection Act of 2006 \(Public Law 109-280\)](#);<sup>5639</sup>
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<sup>5624</sup> Statutory Pay-As-You-Go Act of 2010 § 7 is codified as amended at [2 U.S.C. § 936](#).

<sup>5625</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(b\)](#), 2 U.S.C. § 936(b), *infra* p. 1191, provides that section 7 is no longer in effect.

<sup>5626</sup> [Statutory Pay-As-You-Go Act of 2010 § 7](#), 2 U.S.C. § 936, *supra* p. 1190, addresses “Adjustment for Current Policies.”

<sup>5627</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5628</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(7\)](#), 2 U.S.C. § 932(7), *supra* p. 1154, defines “PAYGO legislation.”

<sup>5629</sup> [Social Security Act § 1848](#), 42 U.S.C. § 1395w-4, addresses “Payment for Physicians’ Services.”

<sup>5630</sup> [Statutory Pay-As-You-Go Act of 2010 § 7](#), 2 U.S.C. § 936, *supra* p. 1190, addresses “Adjustment for Current Policies.”

<sup>5631</sup> [Internal Revenue Code of 1986 subtit. B, §§ 2001–2801](#), 26 U.S.C. §§ 2001–2801, addresses “Estate and Gift Taxes.”

<sup>5632</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “AMT” by reference to [Internal Revenue Code of 1986 §§ 55–59](#), 26 U.S.C. §§ 55–59.

<sup>5633</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA.”

<sup>5634</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “JGTRRA.”

<sup>5635</sup> [Internal Revenue Code of 1986](#), 26 U.S.C. §§ 1–9834.

<sup>5636</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA.”

<sup>5637</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “JGTRRA.”

<sup>5638</sup> EGTRRA and JGTRRA. [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA” and “JGTRRA.”

<sup>5639</sup> [Pension Protection Act of 2006](#), Pub. L. No. 109–280, 120 Stat. 780.

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- 7(a)(4)(B) (B) amendments to the Estate and Gift Tax referred to in [paragraph \(2\)](#),<sup>5640</sup>
- 7(a)(4)(C) (C) the [AMT](#)<sup>5641</sup> referred to in [paragraph \(3\)](#),<sup>5642</sup> and
- 7(a)(4)(D) (D) the income tax rates on ordinary income that apply to individuals with adjusted gross incomes greater than \$200,000 for a single filer and \$250,000 for joint filers.
- 7(b) (b) DURATION.—[This section](#)<sup>5643</sup> shall remain in effect through December 31, 2011.
- 7(c) (c) MEDICARE PAYMENTS TO PHYSICIANS.—
- 7(c)(1) (1) CRITERIA.—Legislation that includes provisions amending or superseding the system for updating payments under [subsections \(d\)](#)<sup>5644</sup> and [\(f\)](#)<sup>5645</sup> of [section 1848 of the Social Security Act](#)<sup>5646</sup> shall trigger the current policy adjustment required by [this title](#).<sup>5647</sup>
- 7(c)(2) (2) ADJUSTMENT.—The amount of the maximum current policy adjustment shall be the difference between —
- 7(c)(2)(A) (A) estimated net [outlays](#)<sup>5648</sup> attributable to the payment rates and related parameters in accordance with [subsections \(d\)](#)<sup>5649</sup> and [\(f\)](#)<sup>5650</sup> of [section 1848 of the Social Security Act](#)<sup>5651</sup> (as scheduled on December 31, 2009, to be in effect); and
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<sup>5640</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(a\)\(2\)](#), 2 U.S.C. § 936(a)(2), *supra* p. 1190, refers to “the Estate and Gift Tax under subtitle B of the Internal Revenue Code of 1986,” 26 U.S.C. §§ 2001–2801.

<sup>5641</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “AMT” by reference to [Internal Revenue Code of 1986 §§ 55–59](#), 26 U.S.C. §§ 55–59.

<sup>5642</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(a\)\(3\)](#), 2 U.S.C. § 936(a)(3), *supra* p. 1190, refers to “the AMT.” [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “AMT” by reference to [Internal Revenue Code of 1986 §§ 55–59](#), 26 U.S.C. §§ 55–59.

<sup>5643</sup> [Statutory Pay-As-You-Go Act of 2010 § 7](#), 2 U.S.C. § 936, *supra* p. 1190, addresses “Adjustment for Current Policies.”

<sup>5644</sup> [Social Security Act § 1848\(d\)](#), 42 U.S.C. § 1395w-4(d), addresses “Conversion Factors.”

<sup>5645</sup> [Social Security Act § 1848\(f\)](#), 42 U.S.C. § 1395w-4(f), addresses “Sustainable Growth Rate.”

<sup>5646</sup> [Social Security Act § 1848](#), 42 U.S.C. § 1395w-4, addresses “Payment for Physicians’ Services.”

<sup>5647</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

<sup>5648</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5649</sup> [Social Security Act § 1848\(d\)](#), 42 U.S.C. § 1395w-4(d), addresses “Conversion Factors.”

<sup>5650</sup> [Social Security Act § 1848\(f\)](#), 42 U.S.C. § 1395w-4(f), addresses “Sustainable Growth Rate.”

<sup>5651</sup> [Social Security Act § 1848](#), 42 U.S.C. § 1395w-4, addresses “Payment for Physicians’ Services.”

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- 7(c)(2)(B) (B) what those net **outlays**<sup>5652</sup> would have been if —
- 7(c)(2)(B)(i) (i) the nominal payment rates and related parameters in effect for 2009 had been in effect through December 31, 2014, without change; and
- 7(c)(2)(B)(ii) (ii) thereafter, the nominal payment rates and related parameters described in **subparagraph (A)**<sup>5653</sup> had applied and the assumption described in **clause (i)**<sup>5654</sup> had never applied.
- 7(c)(3) (3) LIMITATION.—If the provisions in the legislation that cause it to meet the criteria in **paragraph (1)**<sup>5655</sup> cover a time period that ends before December 31, 2014, subject to the maximum adjustment provided for under **paragraph (2)**,<sup>5656</sup> the amount of each current policy adjustment made pursuant to **this section**<sup>5657</sup> shall be limited to the difference between —
- 7(c)(3)(A) (A) estimated net **outlays**<sup>5658</sup> attributable to the payment rates and related parameters specified in **section 1848 of the Social Security Act**<sup>5659</sup> (as scheduled on December 31, 2009, to be in effect for the period of time covered by the relevant provisions of the eligible legislation); and
- 7(c)(3)(B) (B) what those net **outlays**<sup>5660</sup> would have been if the nominal payment rates and related parameters in effect for 2009 had been in effect, without change, for the same period of time covered by the relevant provisions of the eligible legislation as under **subparagraph (A)**.<sup>5661</sup>
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<sup>5652</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5653</sup> **Statutory Pay-As-You-Go Act of 2010 § 7(c)(2)(A)**, 2 U.S.C. § 936(c)(2)(A), *infra* p. 1191.

<sup>5654</sup> **Statutory Pay-As-You-Go Act of 2010 § 7(c)(2)(B)(i)**, 2 U.S.C. § 936(c)(2)(B)(i), *infra* p. 1192.

<sup>5655</sup> **Statutory Pay-As-You-Go Act of 2010 § 7(c)(1)**, 2 U.S.C. § 936(c)(1), *supra* p. 1191, addresses “Criteria.”

<sup>5656</sup> **Statutory Pay-As-You-Go Act of 2010 § 7(c)(2)**, 2 U.S.C. § 936(c)(2), *supra* p. 1191, addresses “Adjustment.”

<sup>5657</sup> **Statutory Pay-As-You-Go Act of 2010 § 7**, 2 U.S.C. § 936, *supra* p. 1190, addresses “Adjustment for Current Policies.”

<sup>5658</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5659</sup> **Social Security Act § 1848**, 42 U.S.C. § 1395w-4, addresses “Payment for Physicians’ Services.”

<sup>5660</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5661</sup> **Statutory Pay-As-You-Go Act of 2010 § 7(c)(3)(A)**, 2 U.S.C. § 936(c)(3)(A), *supra* p. 1192.



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- 7(d) (d) ESTATE AND GIFT TAX. —
- 7(d)(1) (1) CRITERIA. — Legislation that includes provisions amending the Estate and Gift Tax under [subtitle B of the Internal Revenue Code of 1986](#)<sup>5662</sup> shall trigger the current policy adjustment required by [this title](#).<sup>5663</sup>
- 7(d)(2) (2) ADJUSTMENT. — The amount of the maximum current policy adjustment shall be the difference between —
- 7(d)(2)(A) (A) total [revenues](#)<sup>5664</sup> projected to be collected under [the Internal Revenue Code of 1986](#)<sup>5665</sup> (as scheduled on December 31, 2009, to be in effect); and
- 7(d)(2)(B) (B) what those [revenue](#)<sup>5666</sup> collections would have been if, on the date of enactment of the legislation meeting the criteria in [paragraph \(1\)](#),<sup>5667</sup> estate and gift tax law had instead been amended so that the tax rates, nominal exemption amounts, and related parameters in effect for tax year 2009 had remained in effect through December 31, 2011, with nominal exemption amounts indexed for inflation after 2009 consistent with [subsection \(g\)](#).<sup>5668</sup>
- 7(d)(3) (3) LIMITATION. — If the provisions in the legislation that cause it to meet the criteria in [paragraph \(1\)](#)<sup>5669</sup> cover a time period that ends before December 31, 2011, subject to the maximum adjustment provided for under [paragraph \(2\)](#),<sup>5670</sup> the amount of

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<sup>5662</sup> [Internal Revenue Code of 1986 subtit. B, §§ 2001–2801](#), 26 U.S.C. §§ 2001–2801, addresses “Estate and Gift Taxes.”

<sup>5663</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

<sup>5664</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5665</sup> [Internal Revenue Code of 1986](#), 26 U.S.C. §§ 1–9834.

<sup>5666</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5667</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(d\)\(1\)](#), 2 U.S.C. § 936(d)(1), *supra* p. 1193, addresses “Criteria.”

<sup>5668</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(g\)](#), 2 U.S.C. § 936(g), *infra* p. 1201, addresses “Indexing for Inflation.”

<sup>5669</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(d\)\(1\)](#), 2 U.S.C. § 936(d)(1), *supra* p. 1193, addresses “Criteria.”

<sup>5670</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(d\)\(2\)](#), 2 U.S.C. § 936(d)(2), *supra* p. 1193, addresses “Adjustment.”

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each current policy adjustment made pursuant to [this section](#)<sup>5671</sup> shall be limited to the difference between —

- 7(d)(3)(A) (A) total [revenues](#)<sup>5672</sup> projected to be collected under [the Internal Revenue Code of 1986](#)<sup>5673</sup> (as scheduled on December 31, 2009, to be in effect for the period of time covered by the relevant provisions of the eligible legislation); and
- 7(d)(3)(B) (B) what those [revenues](#)<sup>5674</sup> would have been if the estate and gift tax law rates, nominal exemption amounts, and related parameters in effect for 2009, with nominal exemption amounts indexed for inflation after 2009 consistent with [subsection \(g\)](#),<sup>5675</sup> had been in effect for the same period of time covered by the relevant provisions of the eligible legislation as under [subparagraph \(A\)](#).<sup>5676</sup>
- 7(d)(4) (4) DURATION OF POLICY ADJUSTMENT. — Adjustments made pursuant to [this subsection](#)<sup>5677</sup> are available for policies affecting the estate and gift tax through only December 31, 2011. Any adjustments shall include [budgetary effects](#)<sup>5678</sup> in all years from these policy changes.
- 7(e) (e) [AMT](#)<sup>5679</sup> RELIEF. —
- 7(e)(1) (1) CRITERIA. — Legislation that includes provisions extending [AMT](#)<sup>5680</sup> relief shall trigger the current policy adjustment required by [this title](#).<sup>5681</sup>

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<sup>5671</sup> [Statutory Pay-As-You-Go Act of 2010 § 7](#), 2 U.S.C. § 936, *supra* p. 1190, addresses “Adjustment for Current Policies.”

<sup>5672</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5673</sup> [Internal Revenue Code of 1986](#), 26 U.S.C. §§ 1–9834.

<sup>5674</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5675</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(g\)](#), 2 U.S.C. § 936(g), *infra* p. 1201, addresses “Indexing for Inflation.”

<sup>5676</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(d\)\(3\)\(A\)](#), 2 U.S.C. § 936(d)(3)(A), *supra* p. 1194.

<sup>5677</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(d\)](#), 2 U.S.C. § 936(d), *supra* p. 1193, addresses “Estate and Gift Tax.”

<sup>5678</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5679</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “AMT” by reference to [Internal Revenue Code of 1986 §§ 55–59](#), 26 U.S.C. §§ 55–59.

<sup>5680</sup> *Id.*

<sup>5681</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

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- 7(e)(2) (2) ADJUSTMENT.—The amount of the maximum current policy adjustment shall be the difference between —
- 7(e)(2)(A) (A) total [revenues](#)<sup>5682</sup> projected to be collected under [the Internal Revenue Code of 1986](#)<sup>5683</sup> (as scheduled on December 31, 2009, to be in effect); and
- 7(e)(2)(B) (B) what those [revenue](#)<sup>5684</sup> collections would have been if, on the date of enactment of legislation meeting the criteria in [paragraph \(1\)](#),<sup>5685</sup> [AMT](#)<sup>5686</sup> law had instead been amended by making commensurate adjustments in the exemption amounts for joint and single filers in such a manner that the number of taxpayers with [AMT](#)<sup>5687</sup> liability or lost credits that occur as a result of the [AMT](#)<sup>5688</sup> would not be estimated to exceed the number of taxpayers affected by the [AMT](#)<sup>5689</sup> in tax year 2008 in any year for which relief is provided, through December 31, 2011.
- 7(e)(3) (3) LIMITATION.—If the provisions in the legislation that cause it to meet the criteria in [paragraph \(1\)](#)<sup>5690</sup> cover a time period that ends before December 31, 2011, subject to the maximum adjustment provided for under [paragraph \(2\)](#),<sup>5691</sup> the amount of each current policy adjustment made pursuant to [this section](#)<sup>5692</sup> shall be limited to the difference between —
- 7(e)(3)(A) (A) total [revenues](#)<sup>5693</sup> projected to be collected under [the Internal Revenue Code of 1986](#)<sup>5694</sup> (as scheduled on December
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<sup>5682</sup> U.S. GOV'T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5683</sup> [Internal Revenue Code of 1986](#), 26 U.S.C. §§ 1–9834.

<sup>5684</sup> U.S. GOV'T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5685</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(e\)\(1\)](#), 2 U.S.C. § 936(e)(1), *supra* p. 1194, addresses “Criteria.”

<sup>5686</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “AMT” by reference to [Internal Revenue Code of 1986 §§ 55–59](#), 26 U.S.C. §§ 55–59.

<sup>5687</sup> *Id.*

<sup>5688</sup> *Id.*

<sup>5689</sup> *Id.*

<sup>5690</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(e\)\(1\)](#), 2 U.S.C. § 936(e)(1), *supra* p. 1194, addresses “Criteria.”

<sup>5691</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(e\)\(2\)](#), 2 U.S.C. § 936(e)(2), *supra* p. 1195, addresses “Adjustment.”

<sup>5692</sup> [Statutory Pay-As-You-Go Act of 2010 § 7](#), 2 U.S.C. § 936, *supra* p. 1190, addresses “Adjustment for Current Policies.”

<sup>5693</sup> U.S. GOV'T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5694</sup> [Internal Revenue Code of 1986](#), 26 U.S.C. §§ 1–9834.

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31, 2009, to be in effect for the period of time covered by the relevant provisions of the eligible legislation); and

- 7(e)(3)(B) (B) what those [revenues](#)<sup>5695</sup> would have been if, on the date of enactment of legislation meeting the criteria in [paragraph \(1\)](#),<sup>5696</sup> [AMT](#)<sup>5697</sup> law had instead been amended by making commensurate adjustments in the exemption amounts for joint and single filers in such a manner that the number of taxpayers with [AMT](#)<sup>5698</sup> liability or lost credits that occur as a result of the [AMT](#)<sup>5699</sup> would not be estimated to exceed the number of [AMT](#)<sup>5700</sup> taxpayers in tax year 2008 for the same period of time covered by the relevant provisions of the eligible legislation as under [subparagraph \(A\)](#).<sup>5701</sup>
- 7(e)(4) (4) DURATION OF POLICY ADJUSTMENT. — Adjustments made pursuant to [this subsection](#)<sup>5702</sup> are available for policies affecting the [AMT](#)<sup>5703</sup> through only December 31, 2011. Any adjustments shall include [budgetary effects](#)<sup>5704</sup> in all years from these policy changes.
- 7(f) (f) PERMANENT EXTENSION OF MIDDLE-CLASS TAX CUTS. —
- 7(f)(1) (1) CRITERIA. — Legislation that includes provisions extending middle-class tax cuts shall trigger the current policy adjustment required by [this title](#)<sup>5705</sup> if those provisions extend 1 or more of the following provisions:

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<sup>5695</sup> U.S. GOV'T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5696</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(e\)\(1\)](#), 2 U.S.C. § 936(e)(1), *supra* p. 1194, addresses “Criteria.”

<sup>5697</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “AMT” by reference to [Internal Revenue Code of 1986 §§ 55–59](#), 26 U.S.C. §§ 55–59.

<sup>5698</sup> *Id.*

<sup>5699</sup> *Id.*

<sup>5700</sup> *Id.*

<sup>5701</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(e\)\(3\)\(A\)](#), 2 U.S.C. § 936(e)(3)(A), *supra* p. 1195.

<sup>5702</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(e\)](#), 2 U.S.C. § 936(e), *infra* p. 1194, addresses “AMT Relief.”

<sup>5703</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “AMT” by reference to [Internal Revenue Code of 1986 §§ 55–59](#), 26 U.S.C. §§ 55–59.

<sup>5704</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>5705</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

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- 7(f)(1)(A) (A) The 10 percent bracket as in effect for tax year 2010, as provided for under [section 101\(a\)](#)<sup>5706</sup> of [EGTRRA](#)<sup>5707</sup> and any later amendments through December 31, 2009.
- 7(f)(1)(B) (B) The child tax credit as in effect for tax year 2010, as provided for under [section 201](#)<sup>5708</sup> of [EGTRRA](#)<sup>5709</sup> and any later amendments through December 31, 2009.
- 7(f)(1)(C) (C) Tax benefits for married couples as in effect for tax year 2010, as provided for under [title III](#)<sup>5710</sup> of [EGTRRA](#)<sup>5711</sup> and any later amendments through December 31, 2009.
- 7(f)(1)(D) (D) The adoption credit as in effect in tax year 2010, as provided for under [section 202](#)<sup>5712</sup> of [EGTRRA](#)<sup>5713</sup> and any later amendments through December 31, 2009.
- 7(f)(1)(E) (E) The dependent care credit as in effect in tax year 2010, as provided for under [section 204](#)<sup>5714</sup> of [EGTRRA](#)<sup>5715</sup> and any later amendments through December 31, 2009.
- 7(f)(1)(F) (F) The employer-provided child care credit as in effect in tax year 2010, as provided for under [section 205](#)<sup>5716</sup> of [EGTRRA](#)<sup>5717</sup> and any later amendments through December 31, 2009.
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<sup>5706</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, § 101(a), 115 Stat. 38, 41–42, addresses “Reduction in Income Tax Rates for Individuals” “In General” and amended [26 U.S.C. § 1](#).

<sup>5707</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA.”

<sup>5708</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, § 201, 115 Stat. 38, 45–47, addresses “Modifications to Child Tax Credit,” amended [26 U.S.C. §§ 23–26](#), [32](#), [904](#) & 1400C, and enacted provisions that appear at [26 U.S.C. § 24 note](#).

<sup>5709</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA.”

<sup>5710</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, tit. III, §§ 301–303, 115 Stat. 38, 53–57, addresses “Marriage Penalty Relief” and amended numerous sections of [26 U.S.C.](#)

<sup>5711</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA.”

<sup>5712</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, § 202, 115 Stat. 38, 47–49, addresses “Expansion of Adoption Credit and Adoption Assistance Programs,” amended [26 U.S.C. § 23](#), [24](#), [26](#), [137](#), [904](#) & 1400C, and enacted provisions that appear at [26 U.S.C. § 23 note](#).

<sup>5713</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA.”

<sup>5714</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, § 204, 115 Stat. 38, 49–50, addresses “Dependent Care Credit,” amended [26 U.S.C. § 21](#) and enacted provisions that appear at [26 U.S.C. § 21 note](#).

<sup>5715</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA.”

<sup>5716</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, § 205, 115 Stat. 38, 50–53, addresses “Allowance of Credit for Employer Expenses for Child Care Assistance,” enacted [26 U.S.C. § 45F](#), amended [26 U.S.C. § 38](#) & [1016](#), and enacted provisions that appear at [26 U.S.C. § 38 note](#).

<sup>5717</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA.”

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- 7(f)(1)(G) (G) The education tax benefits as in effect in tax year 2010, as provided for under [title IV](#)<sup>5718</sup> of [EGTRRA](#)<sup>5719</sup> and any later amendments through December 31, 2009.
- 7(f)(1)(H) (H) The 25 and 28 percent brackets as in effect for tax year 2010, as provided for under [section 101\(a\)](#)<sup>5720</sup> of [EGTRRA](#)<sup>5721</sup> and any later amendments through December 31, 2009.
- 7(f)(1)(I) (I) The 33 percent bracket as in effect for tax year 2010, as provided for under [section 101\(a\)](#)<sup>5722</sup> of [EGTRRA](#)<sup>5723</sup> and any later amendment through December 31, 2009, affecting taxpayers with adjusted gross income of \$200,000 or less for single filers and \$250,000 or less for joint filers in tax year 2010, with these income levels indexed for inflation in each subsequent year consistent with [subsection \(g\)](#).<sup>5724</sup>
- 7(f)(1)(J) (J) The rates on income derived from capital gains and qualified dividends as in effect for tax year 2010, as provided for under [sections 301](#)<sup>5725</sup> and [302](#)<sup>5726</sup> of [JGTRRA](#)<sup>5727</sup> and any later amendment through December 31, 2009, affecting taxpayers with adjusted gross income of \$200,000 or less for single filers and \$250,000 for joint filers with these income levels indexed for inflation in each subsequent year consistent with [subsection \(g\)](#).<sup>5728</sup>
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<sup>5718</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, tit. IV, §§ 401–431, 115 Stat. 38, 57–69, addresses “Affordable Education Provisions” and amended numerous sections of [26 U.S.C.](#)

<sup>5719</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA.”

<sup>5720</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, § 101(a), 115 Stat. 38, 41–42, addresses “Reduction in Income Tax Rates for Individuals” “In General” and amended [26 U.S.C. § 1](#).

<sup>5721</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA.”

<sup>5722</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, § 101(a), 115 Stat. 38, 41–42, addresses “Reduction in Income Tax Rates for Individuals” “In General” and amended [26 U.S.C. § 1](#).

<sup>5723</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA.”

<sup>5724</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(g\)](#), 2 U.S.C. § 936(g), *infra* p. 1201, addresses “Indexing for Inflation.”

<sup>5725</sup> [Jobs and Growth Tax Relief Reconciliation Act of 2003](#), Pub. L. No. 108-27, § 301, 117 Stat. 752, 758–60, addresses “Reduction in Capital Gains Rates for Individuals; Repeal of 5-Year Holding Period Requirement” and amended [26 U.S.C. §§ 1, 55, 57, 1445 & 7518](#), and enacted provisions that appear at [26 U.S.C. § 1 note](#).

<sup>5726</sup> [Jobs and Growth Tax Relief Reconciliation Act of 2003](#), Pub. L. No. 108-27, § 302, 117 Stat. 752, 760–64, addresses “Dividends of Individuals Taxed at Capital Gain Rates” and amended [26 U.S.C. § 1, 163, 301, 306, 338, 467, 531, 541, 584, 702, 854, 857, 1255 & 1257](#), and enacted provisions that appear at [26 U.S.C. § 1 note](#).

<sup>5727</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “JGTRRA.”

<sup>5728</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(g\)](#), 2 U.S.C. § 936(g), *infra* p. 1201, addresses “Indexing for Inflation.”



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- 7(f)(1)(K) (K) The phaseout of personal exemptions and the overall limitation on itemized deductions as in effect for tax year 2010, as provided for under [sections 102<sup>5729</sup>](#) and [103<sup>5730</sup>](#) of [EGTRRA<sup>5731</sup>](#) of 2001, respectively, and any later amendment through December 31, 2009, affecting taxpayer[s]<sup>5732</sup> with adjusted gross income of \$200,000 or less for single filers and \$250,000 for joint filers, with these income levels indexed for inflation in each subsequent year consistent with [subsection \(g\)<sup>5733</sup>](#).
- 7(f)(1)(L) (L) The increase in the limitations on expensing depreciable business assets for small businesses under [section 179\(b\) of the Internal Revenue Code of 1986<sup>5734</sup>](#) as in effect in tax year 2010, as provided under [section 202<sup>5735</sup>](#) of [JGTRRA<sup>5736</sup>](#) and any later amendment through December 31, 2009.
- 7(f)(2) (2) ADJUSTMENT.—The amount of the maximum current policy adjustment shall be the difference between —
- 7(f)(2)(A) (A) total [revenues<sup>5737</sup>](#) projected to be collected and [outlays<sup>5738</sup>](#) to be paid under [the Internal Revenue Code of 1986<sup>5739</sup>](#) (as scheduled on December 31, 2009, to be in effect); and
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<sup>5729</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, § 102, 115 Stat. 38, 44, addresses “Repeal of Phaseout of Personal Exemptions,” amended [26 U.S.C. § 151](#), and enacted provisions that appear at [26 U.S.C. § 151 note](#).

<sup>5730</sup> [Economic Growth and Tax Relief Reconciliation Act of 2001](#), Pub. L. No. 107-16, § 103, 115 Stat. 38, 44–45, addresses “Phaseout of Overall Limitation on Itemized Deductions” and amended [26 U.S.C. § 68](#), and enacted provisions that appear at [26 U.S.C. § 68 note](#).

<sup>5731</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “EGTRRA.”

<sup>5732</sup> “[T]axpayer[s]” is “taxpayer” in the original. The House Office of the Law Revision Counsel, which maintains the U.S. Code, noted that this reference “[p]robably should be ‘taxpayers’.” [2 U.S.C. § 936 note](#).

<sup>5733</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(g\)](#), 2 U.S.C. § 936(g), *infra* p. 1201, addresses “Indexing for Inflation.”

<sup>5734</sup> [Internal Revenue Code of 1986 § 179\(b\)](#), 26 U.S.C. § 179, addresses “Limitations” on the “Election To Expense Certain Depreciable Business Assets.”

<sup>5735</sup> [Jobs and Growth Tax Relief Reconciliation Act of 2003](#), Pub. L. No. 108-27, § 202, 117 Stat. 752, 757–58, addresses “Increased Expensing for Small Business” and amended [26 U.S.C. § 179](#), and enacted provisions that appear at [26 U.S.C. § 179 note](#).

<sup>5736</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151, defines “JGTRRA.”

<sup>5737</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5738</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5739</sup> [Internal Revenue Code of 1986](#), 26 U.S.C. §§ 1–9834.

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- 7(f)(2)(B) (B) what those [revenue](#)<sup>5740</sup> collections and [outlay](#)<sup>5741</sup> payments would have been if, on the date of enactment of legislation meeting the criteria in [paragraph \(1\)](#),<sup>5742</sup> the provisions identified in [paragraph \(1\)](#)<sup>5743</sup> were made permanent.
- 7(f)(3) (3) LIMITATION.—If the provisions in the legislation that cause it to meet the criteria in [paragraph \(1\)](#)<sup>5744</sup> are not permanent, subject to the maximum adjustment provided for under [paragraph \(2\)](#),<sup>5745</sup> the amount of each current policy adjustment made pursuant to [this section](#)<sup>5746</sup> shall be limited to the difference between —
- 7(f)(3)(A) (A) total [revenues](#)<sup>5747</sup> projected to be collected and [outlays](#)<sup>5748</sup> to be paid under [the Internal Revenue Code of 1986](#)<sup>5749</sup> (as scheduled on December 31, 2009, to be in effect for the period of time covered by the relevant provisions of the eligible legislation); and
- 7(f)(3)(B) (B) what those [revenue](#)<sup>5750</sup> collections and [outlay](#)<sup>5751</sup> payments would have been if, on the date of enactment of legislation meeting the criteria in [paragraph \(1\)](#),<sup>5752</sup> the provisions identified in [paragraph \(1\)](#)<sup>5753</sup> had been in effect,
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<sup>5740</sup> U.S. GOV'T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5741</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5742</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(f\)\(1\)](#), 2 U.S.C. § 936(f)(1), *supra* p. 1196, addresses “Criteria.”

<sup>5743</sup> *Id.*

<sup>5744</sup> *Id.*

<sup>5745</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(f\)\(2\)](#), 2 U.S.C. § 936(f)(2), *supra* p. 1199, addresses “Adjustment.”

<sup>5746</sup> [Statutory Pay-As-You-Go Act of 2010 § 7](#), 2 U.S.C. § 936, *supra* p. 1190, addresses “Adjustment for Current Policies.”

<sup>5747</sup> U.S. GOV'T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5748</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5749</sup> [Internal Revenue Code of 1986](#), 26 U.S.C. §§ 1–9834.

<sup>5750</sup> U.S. GOV'T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5751</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5752</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(f\)\(1\)](#), 2 U.S.C. § 936(f)(1), *supra* p. 1196, addresses “Criteria.”

<sup>5753</sup> *Id.*



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without change, for the same period of time covered by the relevant provisions of the eligible legislation as under [subparagraph \(A\)](#).<sup>5754</sup>

- 7(g) (g) INDEXING FOR INFLATION.—Indexed amounts are assumed to increase in each year by an amount equal to the cost-of-living adjustment determined under [section 1\(f\)\(3\) of the Internal Revenue Code of 1986](#)<sup>5755</sup> for the calendar year in which the taxable year begins, determined by substituting “calendar year 2008” for “calendar year 1992” in [subparagraph \(B\) of such section](#).<sup>5756</sup>
- 7(h) (h) GUIDANCE ON ESTIMATES AND CURRENT POLICY ADJUSTMENTS.—
- 7(h)(1) (1) MIDDLE CLASS TAX CUTS.—For purposes of estimates made pursuant to [subsection \(f\)](#)<sup>5757</sup> —
- 7(h)(1)(A) (A) each of the income tax provisions shall be estimated as though the [AMT](#)<sup>5758</sup> had remained at current law as scheduled on December 31, 2009 to be in effect; and
- 7(h)(1)(B) (B) if more than 1 of the income tax provisions [are]<sup>5759</sup> included in a single piece of legislation, those provisions shall be estimated in the order in which they appear.
- 7(h)(2) (2) [AMT](#).<sup>5760</sup> —For purposes of estimates made pursuant to [subsection \(e\)](#),<sup>5761</sup> changes to the [AMT](#)<sup>5762</sup> shall be estimated as if, on the date of enactment of legislation meeting the criteria in [subsection \(e\)\(1\)](#),<sup>5763</sup> all of the income tax provisions identified in [subsection \(f\)\(1\)](#)<sup>5764</sup> were made permanent.

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<sup>5754</sup> Statutory Pay-As-You-Go Act of 2010 § 7(f)(3)(A), 2 U.S.C. § 936(f)(3)(A), *supra* p. 1200.

<sup>5755</sup> Internal Revenue Code of 1986 § 1(f)(3), 26 U.S.C. § 1(f)(3), addresses “Cost-of-living adjustment.”

<sup>5756</sup> Internal Revenue Code of 1986 § 1(f)(3)(B), 26 U.S.C. § 1(f)(3)(B), addresses “Amount determined.”

<sup>5757</sup> Statutory Pay-As-You-Go Act of 2010 § 7(f), 2 U.S.C. § 936(f), *supra* p. 1196, addresses “Permanent Extension of Middle-Class Tax Cuts.”

<sup>5758</sup> Statutory Pay-As-You-Go Act of 2010 § 3(3), 2 U.S.C. § 932(3), *supra* p. 1151, defines “AMT” by reference to Internal Revenue Code of 1986 §§ 55–59, 26 U.S.C. §§ 55–59.

<sup>5759</sup> The verb here is “is” in the original. The House Office of the Law Revision Counsel, which maintains the U.S. Code, suggests that this verb “[p]robably should be ‘are.’” 2 U.S.C. § 936 note.

<sup>5760</sup> Statutory Pay-As-You-Go Act of 2010 § 3(3), 2 U.S.C. § 932(3), *supra* p. 1151, defines “AMT” by reference to Internal Revenue Code of 1986 §§ 55–59, 26 U.S.C. §§ 55–59.

<sup>5761</sup> Statutory Pay-As-You-Go Act of 2010 § 7(e), 2 U.S.C. § 936(e), *supra* p. 1194, addresses “AMT Relief.”

<sup>5762</sup> Statutory Pay-As-You-Go Act of 2010 § 3(3), 2 U.S.C. § 932(3), *supra* p. 1151, defines “AMT” by reference to Internal Revenue Code of 1986 §§ 55–59, 26 U.S.C. §§ 55–59.

<sup>5763</sup> Statutory Pay-As-You-Go Act of 2010 § 7(e)(1), 2 U.S.C. § 936(e)(1), *supra* p. 1194, addresses “Criteria.”

<sup>5764</sup> Statutory Pay-As-You-Go Act of 2010 § 7(f)(1), 2 U.S.C. § 936(f)(1), *supra* p. 1196, addresses “Criteria.”

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This section is no longer in effect, as [section 7\(b\)](#) provides, “This section shall remain in effect through December 31, 2011.”<sup>5765</sup>

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<sup>5765</sup> [Statutory Pay-As-You-Go Act of 2010 § 7\(b\)](#), 2 U.S.C. § 936(b), *supra* p. 1191.

For purposes of **this title**<sup>5768</sup> —

- 8(1) (1) notwithstanding **section 275**<sup>5769</sup> of **BBEDCA**,<sup>5770</sup> the provisions of **sections 255**,<sup>5771</sup> **256**,<sup>5772</sup> **257**,<sup>5773</sup> and **274**<sup>5774</sup> of **BBEDCA**,<sup>5775</sup> as amended by **this title**,<sup>5776</sup> shall apply to the provisions of **this title**,<sup>5777</sup>

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<sup>5766</sup> Statutory Pay-As-You-Go Act of 2010 § 8 is codified as amended at [2 U.S.C. § 937](#).

<sup>5767</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(1\)](#), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5768</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

<sup>5769</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 275](#), 2 U.S.C. § 900 note, addresses “Effective Dates.”

<sup>5770</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(1\)](#), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5771</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>5772</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256](#), 2 U.S.C. § 906, *supra* p. 1088, addresses “General and Special Sequestration Rules.”

<sup>5773</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 257](#), 2 U.S.C. § 907, *supra* p. 1110, addresses “The Baseline.”

<sup>5774</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 274](#), 2 U.S.C. § 922, addresses “Judicial Review.”

<sup>5775</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(1\)](#), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5776</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

<sup>5777</sup> *Id.*

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8(2) (2) references in sections 255,<sup>5778</sup> 256,<sup>5779</sup> 257,<sup>5780</sup> and 274<sup>5781</sup> to “this part”<sup>5782</sup> or “this title”<sup>5783</sup> shall be interpreted as applying to this title,<sup>5784</sup>

8(3) (3) references in sections 255,<sup>5785</sup> 256,<sup>5786</sup> 257,<sup>5787</sup> and 274<sup>5788</sup> of BBEDCA<sup>5789</sup> to “section 254”<sup>5790</sup> shall be interpreted as referencing section 5 of this title;<sup>5791</sup>

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<sup>5778</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>5779</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256](#), 2 U.S.C. § 906, *supra* p. 1088, addresses “General and Special Sequestration Rules.”

<sup>5780</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 257](#), 2 U.S.C. § 907, *supra* p. 1110, addresses “The Baseline.”

<sup>5781</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 274](#), 2 U.S.C. § 922, addresses “Judicial Review.”

<sup>5782</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, *supra* pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>5783</sup> In those sections, “this title” refers to [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 99-177, tit. II, 99 Stat. 1037, 1038–1101 (1985), that is, [Balanced Budget and Emergency Deficit Control Act of 1985](#), 2 U.S.C. §§ 900–922, *supra* pp. 976–1143.

<sup>5784</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

<sup>5785</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>5786</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256](#), 2 U.S.C. § 906, *supra* p. 1088, addresses “General and Special Sequestration Rules.”

<sup>5787</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 257](#), 2 U.S.C. § 907, *supra* p. 1110, addresses “The Baseline.”

<sup>5788</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 274](#), 2 U.S.C. § 922, addresses “Judicial Review.”

<sup>5789</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(1\)](#), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5790</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 254](#), 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>5791</sup> [Statutory Pay-As-You-Go Act of 2010 § 5](#), 2 U.S.C. § 934, *supra* p. 1183, addresses “Annual Report and Sequestration Order.”

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- 8(4) (4) the reference in [section 256\(b\)](#)<sup>5792</sup> of [BBEDCA](#)<sup>5793</sup> to “[section 252](#)<sup>5794</sup> or [253](#)”<sup>5795</sup> shall be interpreted as referencing [section 5 of this title](#),<sup>5796</sup>
- 8(5) (5) the reference in [section 256\(d\)\(1\)](#)<sup>5797</sup> of [BBEDCA](#)<sup>5798</sup> to “[section 252](#)<sup>5799</sup> or [253](#)”<sup>5800</sup> shall be interpreted as referencing [section 6 of this title](#),<sup>5801</sup>
- 8(6) (6) the reference in [section 256\(d\)\(4\)](#)<sup>5802</sup> of [BBEDCA](#)<sup>5803</sup> to “[section 252](#)<sup>5804</sup> or [253](#)”<sup>5805</sup> shall be interpreted as referencing [section 5 of this title](#),<sup>5806</sup>

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<sup>5792</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(b\)](#), 2 U.S.C. § 906(b), *supra* p. 1088, addresses “Student Loans.”

<sup>5793</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(1\)](#), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5794</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252](#), 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>5795</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253](#), 2 U.S.C. § 903, *supra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388.

<sup>5796</sup> [Statutory Pay-As-You-Go Act of 2010 § 5](#), 2 U.S.C. § 934, *supra* p. 1183, addresses “Annual Report and Sequestration Order.”

<sup>5797</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(d\)\(1\)](#), 2 U.S.C. § 906(d)(1), *supra* p. 1089, addresses “Calculation of reduction in payment amounts.”

<sup>5798</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(1\)](#), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5799</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252](#), 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>5800</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253](#), 2 U.S.C. § 903, *supra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388.

<sup>5801</sup> [Statutory Pay-As-You-Go Act of 2010 § 6](#), 2 U.S.C. § 935, *supra* p. 1186, addresses “Calculating a Sequestration.”

<sup>5802</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(d\)\(4\)](#), 2 U.S.C. § 906(d)(4), *supra* p. 1091, addresses “Timing of subsequent sequestration order.”

<sup>5803</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(1\)](#), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5804</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252](#), 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>5805</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253](#), 2 U.S.C. § 903, *supra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388.

<sup>5806</sup> [Statutory Pay-As-You-Go Act of 2010 § 5](#), 2 U.S.C. § 934, *supra* p. 1183, addresses “Annual Report and Sequestration Order.”

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8(6) (7) [section 256\(k\)](#)<sup>5807</sup> of [BBEDCA](#)<sup>5808</sup> shall apply to a sequestration,<sup>5809</sup> if any, under [this title](#),<sup>5810</sup> and

8(8) (8) references in [section 257\(e\)](#)<sup>5811</sup> of [BBEDCA](#)<sup>5812</sup> to “[section 251](#),<sup>5813</sup> [252](#),<sup>5814</sup> or [253](#)”<sup>5815</sup> shall be interpreted as referencing [section 4 of this title](#).<sup>5816</sup>

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<sup>5807</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(k\)](#), 2 U.S.C. § 906(k), *supra* p. 1106, addresses “Effects of Sequestration.”

<sup>5808</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(1\)](#), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5809</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5810</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

<sup>5811</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 257\(e\)](#), 2 U.S.C. § 907(e), *supra* p. 1117, addresses “Asset Sales.”

<sup>5812</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(1\)](#), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5813</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *supra* p. 986, addresses “Enforcing Discretionary Spending Limits,” but the law sets no such limits beyond fiscal year 2021.

<sup>5814</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 252](#), 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>5815</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 253](#), 2 U.S.C. § 903, *supra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the [Budget Enforcement Act of 1990](#), Pub. L. No. 101-508, 104 Stat. 1388.

<sup>5816</sup> [Statutory Pay-As-You-Go Act of 2010 § 4](#), 2 U.S.C. § 933, *supra* p. 1156, addresses “PAYGO Estimates and PAYGO Scorecards.”

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9           **SEC. 9. TECHNICAL CORRECTIONS.**

- 9(a)           **(a) Section 250(c)(18)**<sup>5817</sup> **of BBEDCA**<sup>5818</sup> **is amended by striking “the expenses the Federal deposit insurance**<sup>5819</sup> **agencies” and inserting “the expenses of the Federal deposit insurance**<sup>5820</sup> **agencies”.**
- 9(b)           **(b) Section 256(k)(1)**<sup>5821</sup> **of BBEDCA**<sup>5822</sup> **is amended by striking “in paragraph (5)” and inserting “in paragraph (6)”**<sup>5823</sup>.
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<sup>5817</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(18)**, 2 U.S.C. § 900(c)(18), *supra* p. 983, defines “deposit insurance.”

<sup>5818</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(1)**, 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5819</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(18)**, 2 U.S.C. § 900(c)(18), *supra* p. 983, defines “deposit insurance.”

<sup>5820</sup> *Id.*

<sup>5821</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(k)(1)**, 2 U.S.C. § 906(k)(1), *supra* p. 1106.

<sup>5822</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(1)**, 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5823</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(k)(6)**, 2 U.S.C. § 906(k)(6), *supra* p. 1108.

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10            **SEC. 10. CONFORMING AMENDMENTS.**

10(a)            **(a) Section 256(a)<sup>5824</sup> of BBEDCA<sup>5825</sup> is repealed.**

10(b)            **(b) Section 256(b)<sup>5826</sup> of BBEDCA<sup>5827</sup> is amended by striking “origination fees under sections 438(c)(2)<sup>5828</sup> and 455(c)<sup>5829</sup> of that Act shall each be increased by 0.50 percentage point.” and inserting in lieu thereof**

**“origination fees under sections 438(c)(2)<sup>5830</sup> and (6)<sup>5831</sup> and 455(c)<sup>5832</sup> and loan processing and issuance fees under section 428(f)(1)(A)(ii)<sup>5833</sup> of that Act shall each be increased by the uniform percentage specified in that sequestration<sup>5834</sup> order, and, for student loans originated during the period of the sequestration,<sup>5835</sup> special allowance payments under section 438(b)<sup>5836</sup> of that Act accruing during the period of the sequestration<sup>5837</sup> shall be reduced by the uniform percentage specified in that sequestration<sup>5838</sup> order.”.**

10(c)            **(c) Section 256(c)<sup>5839</sup> of BBEDCA<sup>5840</sup> is repealed.**

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<sup>5824</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 256(a)*, 2 U.S.C. § 906(a), *supra* p. 1088, formerly addressed “Automatic Spending Increases.”

<sup>5825</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(1)*, 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5826</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 256(b)*, 2 U.S.C. § 906(b), *supra* p. 1088, addresses “Student Loans.”

<sup>5827</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(1)*, 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5828</sup> *Higher Education Act of 1965 § 438(c)(2)*, 20 U.S.C. § 1087-1(c)(2), addresses “Amount of origination fees.”

<sup>5829</sup> *Higher Education Act of 1965 § 455(c)*, 20 U.S.C. § 1087e(c), addresses “Loan fee.”

<sup>5830</sup> *Higher Education Act of 1965 § 438(c)(2)*, 20 U.S.C. § 1087-1(c)(2), addresses “Amount of origination fees.”

<sup>5831</sup> *Higher Education Act of 1965 § 438(c)(6)*, 20 U.S.C. § 1087-1(c)(6), addresses “SLS and PLUS loans.”

<sup>5832</sup> *Higher Education Act of 1965 § 455(c)*, 20 U.S.C. § 1087e(c), addresses “Loan fee.”

<sup>5833</sup> *Higher Education Act of 1965 § 428(f)(1)(A)(ii)*, 20 U.S.C. § 1078(f)(1)(A)(ii).

<sup>5834</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5835</sup> *Id.*

<sup>5836</sup> *Higher Education Act of 1965 § 438(b)*, 20 U.S.C. § 1087-1(b), addresses “Computation and payment.”

<sup>5837</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)*, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5838</sup> *Id.*

<sup>5839</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 256(c)*, 2 U.S.C. § 906(c), *supra* p. 1089, formerly addressed “Treatment of Foster Care and Adoption Assistance Programs.”

<sup>5840</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(1)*, 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”



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- 10(d) (d) **Section 256(d)**<sup>5841</sup> of **BBEDCA**<sup>5842</sup> is amended —
- 10(d)(1) (1) by redesignating paragraphs (2), (3), and (4) as **paragraphs (3)**,<sup>5843</sup> **(5)**,<sup>5844</sup> and **(6)**;<sup>5845</sup>
- 10(d)(2) (2) by amending **paragraph (1)**<sup>5846</sup> to read as follows:
- “...”,<sup>5847</sup>
- 10(d)(3) (3) by inserting after **paragraph (1)**<sup>5848</sup> the following:
- 256(d)(2) “(2) **UNIFORM REDUCTION RATE; MAXIMUM PERMISSIBLE REDUCTION.**—Reductions in payments for programs and activities under such **title XVIII**<sup>5849</sup> pursuant to a **sequestration**<sup>5850</sup> order under **section 254**<sup>5851</sup> shall be at a uniform rate, which shall not exceed 4 percent, across all such programs and activities subject to such order.”;
- 10(d)(4) (4) by inserting after **paragraph (3)**,<sup>5852</sup> as redesignated, the following:
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<sup>5841</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)**, 2 U.S.C. § 906(d), *supra* p. 1089, addresses “Special Rules for Medicare Program.”

<sup>5842</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(1)**, 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5843</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)(3)**, 2 U.S.C. § 906(d)(3), *supra* p. 1090, addresses “Timing of application of reductions.”

<sup>5844</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)(5)**, 2 U.S.C. § 906(d)(5), *supra* p. 1092, addresses “No increase in beneficiary charges in assignment-related cases.”

<sup>5845</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)(6)**, 2 U.S.C. § 906(d)(6), *supra* p. 1092, addresses “Sequestration disregarded in computing payment amounts.”

<sup>5846</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)(1)**, 2 U.S.C. § 906(d)(1), *supra* p. 1089, addresses “Calculation of reduction in payment amounts.”

<sup>5847</sup> *See supra* p. 1089.

<sup>5848</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)(1)**, 2 U.S.C. § 906(d)(1), *supra* p. 1089, addresses “Calculation of reduction in payment amounts.”

<sup>5849</sup> **Social Security Act tit. XVIII**, 42 U.S.C. §§ 1395–1395III, addresses “Health Insurance for Aged and Disabled.”

<sup>5850</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2)**, 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5851</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 254**, 2 U.S.C. § 904, *supra* p. 1060, addresses “Reports and Orders.”

<sup>5852</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)(3)**, 2 U.S.C. § 906(d)(3), *supra* p. 1090, addresses “Timing of application of reductions.”

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- 256(d)(4)                   “(4)           TIMING           OF           SUBSEQUENT  
SEQUESTRATION<sup>5853</sup> ORDER.— A sequestration<sup>5854</sup>  
order required by section 252<sup>5855</sup> or 253<sup>5856</sup> with  
respect to programs under such title XVIII<sup>5857</sup>  
shall not take effect until the first month  
beginning after the end of the effective period of  
any prior sequestration<sup>5858</sup> order with respect to  
such programs, as determined in accordance with  
paragraph (1).”<sup>5859</sup>
- 10(d)(5)                   (5) in paragraph (6),<sup>5860</sup> as redesignated, to read as  
follows:
- “...”,<sup>5861</sup> and
- 10(d)(6)                   (6) by adding after paragraph (6),<sup>5862</sup> as redesignated,  
the following:
- 256(d)(7)                   “(7) EXEMPTIONS FROM SEQUESTRATION.<sup>5863</sup> —  
In addition to the programs and activities

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<sup>5853</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5854</sup> *Id.*

<sup>5855</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 252, 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>5856</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 253, 2 U.S.C. § 903, *supra* p. 1049, addresses “Enforcing Deficit Targets,” but such deficit targets have ceased to have any effect since enactment of the Budget Enforcement Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388.

<sup>5857</sup> Social Security Act tit. XVIII, 42 U.S.C. §§ 1395–1395III, addresses “Health Insurance for Aged and Disabled.”

<sup>5858</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5859</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)(1), 2 U.S.C. § 906(d)(1), *supra* p. 1089, addresses “Calculation of reduction in payment amounts.”

<sup>5860</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)(6), 2 U.S.C. § 906(d)(6), *supra* p. 1092, addresses “Sequestration disregarded in computing payment amounts.”

<sup>5861</sup> *See supra* p. 1092.

<sup>5862</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 256(d)(6), 2 U.S.C. § 906(d)(6), *supra* p. 1092, addresses “Sequestration disregarded in computing payment amounts.”

<sup>5863</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

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specified in [section 255](#),<sup>5864</sup> the following shall be exempt from [sequestration](#)<sup>5865</sup> under [this part](#)<sup>5866</sup>:

256(d)(7)(A)

**“(A) [PART D](#)<sup>5867</sup> LOW-INCOME SUBSIDIES.—Premium and cost-sharing subsidies under [section 1860D-14](#)<sup>5868</sup> of the Social Security Act.**

256(d)(7)(B)

**“(B) [PART D](#)<sup>5869</sup> CATASTROPHIC SUBSIDY.—Payments under [section 1860D-15\(b\)](#)<sup>5870</sup> and [\(e\)\(2\)\(B\)](#)<sup>5871</sup> of the Social Security Act.**

256(d)(7)(C)

**“(C) QUALIFIED INDIVIDUAL (QI) PREMIUMS.—Payments to [States](#)<sup>5872</sup> for coverage of Medicare cost-sharing for certain low-income Medicare beneficiaries under [section 1933](#)<sup>5873</sup> of the Social Security Act.”.**

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<sup>5864</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 255](#), 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>5865</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(2\)](#), 2 U.S.C. § 900(c)(2), *supra* p. 977, defines “sequestration.”

<sup>5866</sup> [Balanced Budget and Emergency Deficit Control Act of 1985, part C, §§ 250–258C](#), 2 U.S.C. §§ 900–907d, pp. 976–1143, addresses “Emergency Powers To Eliminate Deficits in Excess of Maximum Deficit Amount.”

<sup>5867</sup> [Social Security Act tit. XVIII, part D](#), 42 U.S.C. §§ 1395w-101 to 1395w-154, addresses “Voluntary Prescription Drug Benefit Program.”

<sup>5868</sup> [Social Security Act § 1860D-14](#), 42 U.S.C. § 1395w-114, addresses “Premium and cost-sharing subsidies for low-income individuals.”

<sup>5869</sup> [Social Security Act tit. XVIII, part D](#), 42 U.S.C. §§ 1395w-101 to 1395w-154, addresses “Voluntary Prescription Drug Benefit Program.”

<sup>5870</sup> [Social Security Act § 1860D-15\(b\)](#), 42 U.S.C. § 1395w-115(b), addresses “Reinsurance payment amount.”

<sup>5871</sup> [Social Security Act § 1860D-15\(e\)\(2\)\(B\)](#), 42 U.S.C. § 1395w-115(e)(2)(B), addresses “Increase in payment if adjusted allowable risk corridor costs above upper limit of risk corridor.”

<sup>5872</sup> [Congressional Budget Act of 1974 § 421\(12\)](#), 2 U.S.C. § 658(12), *supra* p. 812, defines “State” by adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814.

<sup>5873</sup> [Social Security Act § 1933](#), 42 U.S.C. § 1396u-3, addresses “State coverage of medicare cost-sharing for additional low-income medicare beneficiaries.”

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11            **SEC. 11. EXEMPT<sup>5874</sup> PROGRAMS AND ACTIVITIES.**

11(a)            **(a) DESIGNATIONS.—Section 255<sup>5875</sup> of BBEDCA<sup>5876</sup> is amended by redesignating subsection (i) as (j)<sup>5877</sup> and striking “1998” and inserting in lieu thereof “2010”.**

11(b)            **(b) SOCIAL SECURITY, VETERANS PROGRAMS, NET INTEREST, AND TAX CREDITS.—Subsections (a) through (d)<sup>5878</sup> of section 255<sup>5879</sup> of BBEDCA<sup>5880</sup> are amended to read as follows:**

“...”<sup>5881</sup>

11(c)            **(c) OTHER PROGRAMS AND ACTIVITIES, LOW-INCOME PROGRAMS, AND ECONOMIC RECOVERY PROGRAMS.—Subsections (g)<sup>5882</sup> and (h)<sup>5883</sup> of section 255<sup>5884</sup> of BBEDCA<sup>5885</sup> are amended to read as follows:**

“...”<sup>5886</sup>

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<sup>5874</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255*, 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.” *Statutory Pay-As-You-Go Act of 2010 § 8(1)*, 2 U.S.C. § 937(1), *supra* p. 1203, applies § 255 to the *Statutory Pay-As-You-Go Act*.

<sup>5875</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255*, 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>5876</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(1)*, 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5877</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255(j)*, 2 U.S.C. § 905(j), *supra* p. 1086, addresses “Split Treatment Programs.”

<sup>5878</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255(a)–(d)*, 2 U.S.C. § 905(a)–(d), *supra* p. 1074, address “Social Security Benefits and Tier I Railroad Retirement Benefits,” “Veterans Programs,” “Net Interest,” and “Refundable Income Tax Credits.”

<sup>5879</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255*, 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>5880</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(1)*, 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5881</sup> *See supra* p. 1074.

<sup>5882</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255(g)*, 2 U.S.C. § 905(g), *supra* p. 1075, addresses “Other Programs and Activities.”

<sup>5883</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255(h)*, 2 U.S.C. § 905(h), *supra* p. 1085, addresses “Low-Income Programs.”

<sup>5884</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 255*, 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.”

<sup>5885</sup> *Statutory Pay-As-You-Go Act of 2010 § 3(1)*, 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”

<sup>5886</sup> *See supra* p. 1075.

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**SEC. 12.<sup>5887</sup> DETERMINATIONS AND POINTS OF ORDER.**

Nothing in **this title**<sup>5888</sup> shall be construed as limiting the authority of the chairmen of the Committees on the Budget of the House and Senate under **section 312 of the Congressional Budget Act of 1974.**<sup>5889</sup> **CBO**<sup>5890</sup> may consult with the Chairmen of the House and Senate Budget Committees to resolve any ambiguities in **this title.**<sup>5891</sup>

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<sup>5887</sup> Statutory Pay-As-You-Go Act of 2010 § 12 is codified as amended at [2 U.S.C. § 938](#).

<sup>5888</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

<sup>5889</sup> [Congressional Budget Act of 1974 § 312](#), 2 U.S.C. § 643, *supra* p. 605, addresses “Determinations and Points of Order.”

<sup>5890</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(16\)](#), 2 U.S.C. § 900(c)(16), *supra* p. 982, defines “CBO.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5891</sup> “This title” is [Joint Resolution increasing the statutory limit on the public debt](#), Pub. L. No. 111-139, tit. I, 124 Stat. 8 (2010), that is, [Statutory Pay-As-You-Go Act of 2010](#), 2 U.S.C. §§ 931–939, pp. 1149–1214. References to “this title” in the [Statutory Pay-As-You-Go Act of 2010](#) appear as references to “this chapter” in the U.S. Code.

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13        **SEC. 13.<sup>5892</sup> LIMITATION ON CHANGES TO THE SOCIAL SECURITY ACT.**

13(a)        **(a) LIMITATION ON CHANGES TO THE SOCIAL SECURITY ACT.—**Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any bill or resolution pursuant to any expedited procedure to consider the recommendations of a Task Force for Responsible Fiscal Action or other commission that contains recommendations with respect to the old-age, survivors, and disability insurance program established under [title II of the Social Security Act](#),<sup>5893</sup> or the taxes received under subchapter A of chapter 9,<sup>5894</sup> the taxes imposed by subchapter E of chapter 1,<sup>5895</sup> and the taxes collected under [section 86 of part II of subchapter B of chapter 1](#)<sup>5896</sup> of the Internal Revenue Code.

13(b)        **(b) WAIVER.—**This section may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

13(c)        **(c) APPEALS.—**An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

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<sup>5892</sup> Statutory Pay-As-You-Go Act of 2010 § 13 is codified as amended at [2 U.S.C. § 939](#).

<sup>5893</sup> [Social Security Act tit. II](#), 42 U.S.C. §§ 401–434, addresses “Federal Old-Age, Survivors, and Disability Insurance Benefits.”

<sup>5894</sup> The House Office of the Law Revision Counsel, which maintains the U.S. Code, says with regard to this reference:

Subchapter A of chapter 9 and subchapter E of chapter 1, referred to in subsec. (a), probably mean subchapter A of chapter 9 and subchapter E of chapter 1, respectively, of the Internal Revenue Code of 1939, which were comprised of sections 1400 to 1432 and 480 to 482, respectively, and were repealed (subject to certain exceptions) by [section 7851\(a\)\(1\)\(A\), \(3\) of Title 26](#), Internal Revenue Code of 1986.

[2 U.S.C. § 939 note](#).

<sup>5895</sup> *See id.*

<sup>5896</sup> [Internal Revenue Code of 1986 ch. 1, subch. B, part II, § 86](#), 26 U.S.C. § 86, addresses “Social Security and Tier 1 Railroad Retirement Benefits.”

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**BUDGET PROCESS LAW IN  
BUDGET RESOLUTIONS**



**A Chimp**

Image: Wikimedia



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# CHIMPs

**Y**ou can be forgiven if you think of chimps as animals that live in zoos. But in the budget world, a CHIMP (or ChIMP) is a CHange In a Mandatory Program done in an appropriation act. The 2009 budget resolution created a point of order against certain kinds of these changes.

According to longstanding scorekeeping conventions, “Substantive changes to or restrictions on entitlement law or other mandatory spending law in appropriations laws will be scored against the Appropriations Committee’s section 302(b) allocations in the House and the Senate.”<sup>5897</sup> This follows the general rule that the doer of the deed gets the credit or the blame.

Thus, by including savings in mandatory programs in appropriations law, appropriators can make room for more appropriations under the same top line. Some view this as an evasion of the allocation to the

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<sup>5897</sup> OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, [CIRCULAR NO. A-11: PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET](#), Appendix A (2022).

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Appropriations Committee under Budget Act section 302 or of discretionary spending limits (when they existed). Efforts to constrain these changes led to the provision here.

The joint explanatory statement accompanying the conference report on the 2009 budget resolution explained the provision:

*Senate-passed Resolution*

....

The Senate-passed resolution for 2009, S. Con. Res. 70, included the following enforcement provisions, most of which updated provisions that were part of the 2008 budget resolution.

....

*Sec. 213. Appropriations changes in mandatory programs (ChIMPs) with net costs*

The Senate-passed resolution again included a 60-vote point of order against any provision of appropriations legislation that would have been estimated as affecting direct spending or receipts if it were included in legislation other than appropriations legislation, if all three of the following conditions are met:

(1) the provision would increase BA in —

(a) at least one of the nine fiscal years that follow the budget year, and

(b) over the period of the total of the budget year and the nine fiscal years following the budget year;

(2) the provision would increase net outlays over the period of the total of the nine fiscal years following the budget year; and

(3) the sum total of all changes in mandatory programs in the legislation would increase net outlays as measured over the period of the total of the nine fiscal years following the budget year.

The point of order would not apply against any ChIMPs that were enacted in each of the three fiscal years prior to the budget year. The point of order works like the Byrd rule in that it applies against individual provisions of legislation rather than against an entire bill, amendment, or

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conference report. If the point of order is not waived then the offending provision is stricken.

. . . .

*Conference Agreement*

Title III contains the following enforcement provisions:

. . . .

Sec. 314. Senate point of order against provisions of appropriations legislation that constitute changes in mandatory programs with net costs (Sec. 213 of the Senate-passed resolution, as modified)<sup>5898</sup>

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<sup>5898</sup> CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2009: CONFERENCE REPORT TO ACCOMPANY S. CON. RES. 70, H.R. REP. NO. 110-659, at 126, 128, 130, 131 (2008) (Conf. Rep.); see also S. COMM. ON THE BUDGET, CONCURRENT RESOLUTION ON THE BUDGET FY 2009: COMMITTEE PRINT TO ACCOMPANY S. CON. RES. 70, at 26–27 (Comm. Print 2008).

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314        **SEC. 314. SENATE POINT OF ORDER AGAINST PROVISIONS OF APPROPRIATIONS LEGISLATION<sup>5899</sup> THAT CONSTITUTE CHANGES IN MANDATORY PROGRAMS WITH NET COSTS.<sup>5900</sup>**

314(a)        **(a) IN GENERAL. — In the Senate, it shall not be in order to consider any appropriations legislation,<sup>5901</sup> including any amendment thereto, motion in relation thereto, or conference report thereon, that includes any provision which constitutes a change in a mandatory program producing net costs,<sup>5902</sup> as defined<sup>5903</sup> in subsection (b),<sup>5904</sup> that would have been estimated as affecting direct spending<sup>5905</sup> or receipts under section 252<sup>5906</sup> of the Balanced Budget and Emergency Deficit Control Act of 1985 (as in effect prior to September 30, 2002) were they included in legislation other than appropriations legislation.<sup>5907</sup> A point of order pursuant to this section**

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<sup>5899</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>5900</sup> S. Con. Res. 70, 110th Cong. § 314(b), 122 Stat. 5143, 5179 (2008), *infra* p. 1221, defines “changes in mandatory programs producing net costs.”

<sup>5901</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>5902</sup> S. Con. Res. 70, 110th Cong. § 314(b), 122 Stat. 5143, 5179 (2008), *infra* p. 1221, defines “changes in mandatory programs producing net costs.”

<sup>5903</sup> Budget process laws define terms in many places. See Congressional Budget Act of 1974 §§ 3, 310(b), 421, 2 U.S.C. §§ 622, 641(b), 658, *supra* pp. 55, 529, 803; Impoundment Control Act of 1974 § 1011, 2 U.S.C. § 682, *supra* p. 923; Balanced Budget and Emergency Deficit Control Act of 1985 §§ 250(c), 251(b)(2)(B)(ii), 256(g)(2), 2 U.S.C. §§ 900(c), 901(b)(2)(B)(ii), 906(g)(2), *supra* pp. 977, 997, 1097; Federal Credit Reform Act of 1990 § 502, 2 U.S.C. § 661a, *supra* p. 850; Statutory Pay-As-You-Go Act of 2010 § 3, 2 U.S.C. § 932, *supra* p. 1150; S. Con. Res. 70, 110th Cong. § 314(b), 122 Stat. 5143, 5179 (2008), *infra* p. 1221; H. Con. Res. 71, 115th Cong. § 4106(a)(3) (2017) (adopted), *infra* p. 1246; S. Con. Res. 14, 117th Cong. §§ 4001(a)(4), 4001(a)(5), 4002(a)(2), 4003(a)(2) (2021) (adopted), *infra* pp. 1258, 1259, 1262, 1267. For a glossary collecting these definitions in budget process law, see *infra* p. 1542.

<sup>5904</sup> S. Con. Res. 70, 110th Cong. § 314(b), 122 Stat. 5143, 5179 (2008), *infra* p. 1221, addresses “Changes in Mandatory Programs Producing Net Costs.”

<sup>5905</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, and S. Con. Res. 14, 117th Cong. § 4001(a)(4) (2021) (adopted), *infra* p. 1258, adopt the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5906</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 252, 2 U.S.C. § 902, *supra* p. 1040, addresses “Enforcing Pay-As-You-Go.”

<sup>5907</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

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shall be raised against such provision or provisions as described in **subsections (e)**<sup>5908</sup> and **(f)**.<sup>5909</sup>

314(b) **(b) CHANGES IN MANDATORY PROGRAMS PRODUCING NET COSTS.—A provision or provisions shall be subject to a point of order pursuant to this section if —**

314(b)(1) **(1) the provision would increase **budget authority**<sup>5910</sup> in at least 1 of the 9 fiscal years that follow the **budget year**<sup>5911</sup> and over the period of the total of the **budget year**<sup>5912</sup> and the 9 fiscal years following the **budget year**,<sup>5913</sup>**

314(b)(2) **(2) the provision would increase net **outlays**<sup>5914</sup> over the period of the total of the 9 fiscal years following the **budget year**,<sup>5915</sup> and**

314(b)(3) **(3) the sum total of all changes in mandatory programs in the legislation would increase net**

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<sup>5908</sup> S. Con. Res. 70, 110th Cong. § 314(e), 122 Stat. 5143, 5180 (2008), *infra* p. 12221221, addresses “General Point of Order.”

<sup>5909</sup> S. Con. Res. 70, 110th Cong. § 314(f), 122 Stat. 5143, 5180 (2008), *infra* p. 12231221, addresses “Form of the Point of Order.”

<sup>5910</sup> Congressional Budget Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>5911</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5912</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5913</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5914</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5915</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

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**outlays**<sup>5916</sup> as measured over the period of the total of the 9 fiscal years following the **budget year**.<sup>5917</sup>

- 314(c) (c) **DETERMINATION.**—The determination of whether a provision is subject to a point of order pursuant to this section shall be made by the Committee on the Budget of the Senate.
- 314(d) (d) **SUPERMAJORITY WAIVER AND APPEAL.**—This section may be waived or suspended in the Senate only by an affirmative vote of three-fifths of the Members, duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.
- 314(e) (e) **GENERAL POINT OF ORDER.**—It shall be in order for a Senator to raise a single point of order that several provisions of a bill, resolution, amendment, motion, or conference report violate this section. The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some of the provisions (including provisions of an amendment, motion, or conference report) against which the Senator raised the point of order, then only those provisions (including provision of an amendment, motion, or conference report) against which the Presiding Officer sustains the point of order shall be deemed stricken pursuant to this section. Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with rules and precedents of the Senate. After

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<sup>5916</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>5917</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(12\)](#), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

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the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

314(f) (f) **FORM OF THE POINT OF ORDER.**—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a bill, upon a point of order being made by any Senator pursuant to this section, and such point of order being sustained, such material contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion shall be debatable. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

314(g) (g) **EFFECTIVENESS.**—This section shall not apply to any provision constituting a **change in a mandatory program**<sup>5918</sup> in **appropriations legislation**<sup>5919</sup> if such provision has been enacted in each of the 3 fiscal years prior to the **budget year**.<sup>5920</sup>

314(h) (h) **INAPPLICABILITY.**—In the Senate, section 209 of S. Con. Res. 21 (110th Congress)<sup>5921</sup> shall no longer apply.

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<sup>5918</sup> S. Con. Res. 70, 110th Cong. § 314(b), 122 Stat. 5143, 5179 (2008), *supra* p. 12211221, defines “changes in mandatory programs producing net costs.”

<sup>5919</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>5920</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5921</sup> S. Con. Res. 21, 110th Cong. § 209, 121 Stat. 2590, 2610–11 (2007), addressed “Senate Point of Order Against Provisions of Appropriations Legislation that Constitute Changes in Mandatory Programs With Net Costs.”

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*Repeal and restoration*—The fiscal year 2016 budget resolution repealed this section,<sup>5922</sup> but then the fiscal year 2018 budget resolution restored it, providing:

(2) Applicability. — In the Senate, section 314 of S. Con. Res. 70 (110th Congress), the concurrent resolution on the budget for fiscal year 2009, shall be applied and administered as if section 3103(e) of S. Con. Res. 11 (114th Congress), the concurrent resolution on the budget for fiscal year 2016, had not been enacted.<sup>5923</sup>

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<sup>5922</sup> S. Con. Res. 11, 114th Cong. § 3103(e) (2015) (adopted).

<sup>5923</sup> H. Con. Res. 71, 115th Cong. § 4102(e)(2) (2017) (adopted).



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**“any fiscal year . . .  
in the . . . budget”**

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# Short-Term Deficits

The fiscal year 2010 budget resolution created a point of order against worsening the deficit in the short term.<sup>5924</sup> That point of order replaced (and repealed) a predecessor point of order in the fiscal year 2009 budget resolution.<sup>5925</sup>

The joint explanatory statement accompanying the conference report on the 2010 budget resolution reported: “The Senate-passed resolution updates the expiration date in the point of order against legislation that increases the short-term deficit.”

The joint explanatory statement accompanying the conference report on the 2009 budget resolution explained the original short-term deficit point of order:

*Conference Agreement*

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<sup>5924</sup> S. Con. Res. 13, 111th Cong. § 404, 123 Stat. 3506, 3538 (2009).

<sup>5925</sup> S. Con. Res. 70, 110th Cong. § 315, 122 Stat. 5143, 5180–81 (2008), addressed “Senate Point of Order Against Legislation Increasing Short-Term Deficit.”

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Title III contains the following enforcement provisions:

. . . .

Sec. 315. Senate point of order against legislation increasing short-term deficit

This section creates a point of order in the Senate against legislation other than appropriations measures that would increase the on-budget deficit by more than \$10 billion in any year covered by the budget resolution, unless the legislation is fully offset over the total of all of the years covered by the budget resolution. Its purpose is to complement paygo, by requiring that any measure with a cost of over \$10 billion in any year be paid for over the budget window. The point of order can be waived only with 60 votes.<sup>5926</sup>

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<sup>5926</sup> CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2009: CONFERENCE REPORT TO ACCOMPANY S. CON. RES. 70, H.R. REP. NO. 110-659, at 130, 131 (2008) (Conf. Rep.).

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404        **SEC. 404. POINT OF ORDER AGAINST  
LEGISLATION INCREASING SHORT-TERM  
DEFICIT.**<sup>5927</sup>

404(a)        (a) POINT OF ORDER.—It shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report (except measures within the jurisdiction of the Committee on Appropriations) that would cause a net increase in the **deficit**<sup>5928</sup> in excess of \$10,000,000,000 in any fiscal year provided for in the most recently adopted **concurrent resolution on the budget**<sup>5929</sup> unless it is fully offset over the period of all fiscal years provided for in the most recently adopted **concurrent resolution on the budget**.<sup>5930</sup>

404(b)        (b) SUPERMAJORITY WAIVER AND APPEAL IN THE SENATE.—

404(b)(1)        (1) WAIVER.—**This section**<sup>5931</sup> may be waived or suspended only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

404(b)(2)        (2) APPEAL.—An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under **this section**.<sup>5932</sup>

404(c)        (c) LIMITATION.—The provisions of **this section**<sup>5933</sup> shall not apply to any bills, joint resolutions,

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<sup>5927</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, and **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopt the Congressional Budget Act definition.

<sup>5928</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977, and **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopt the Congressional Budget Act definition.

<sup>5929</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>5930</sup> *Id.*

<sup>5931</sup> S. Con. Res. 13, 111th Cong. § 404, 123 Stat. 3506, 3538 (2009), *supra* p. 1229.

<sup>5932</sup> *Id.*

<sup>5933</sup> *Id.*

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amendments, motions, or conference reports for which the chairman of the Senate Committee on the Budget has made adjustments to the allocations, levels or limits contained in this resolution pursuant to [Section 301\(a\) of this resolution](#).<sup>5934</sup>

404(d)           **(d) DETERMINATIONS OF BUDGET LEVELS.—**For purposes of [this section](#),<sup>5935</sup> the levels shall be determined on the basis of estimates provided by the Senate Committee on the Budget.

404(e)           **[(e) Repealed.]**<sup>5936</sup>

404(f)           **(f) INAPPLICABILITY.—**In the Senate, [section 315 of S. Con. Res. 70 \(110th Congress\)](#),<sup>5937</sup> the concurrent resolution in the budget for fiscal year 2009, shall no longer apply.

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<sup>5934</sup> [S. Con. Res. 13, 111th Cong. § 301\(a\)](#), 123 Stat. 3506 (2009), addresses “Transform and Modernize America’s Health Care System.”

<sup>5935</sup> [S. Con. Res. 13, 111th Cong. § 404](#), 123 Stat. 3506, 3538 (2009), *supra* p. 1229.

<sup>5936</sup> The fiscal year 2016 budget resolution repealed this subsection. [S. Con. Res. 11, 114th Cong. § 3201](#) (2015) (adopted). Previously, subsection (e) provided: “(e) SUNSET.—This section shall expire on September 30, 2018.” Thus, by virtue of [S. Con. Res. 11, 114th Cong. § 3201](#), this section continues in force.

<sup>5937</sup> [S. Con. Res. 70, 110th Cong. § 315](#), 122 Stat. 5143, 5180–81 (2008), addressed “Senate Point of Order Against Legislation Increasing Short-Term Deficit.”

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**“any of the 4 . . . 10-  
fiscal year periods”**



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# Long-Term Deficits

The fiscal year 2016 budget resolution addresses long-term deficits.<sup>5938</sup> That point of order updated a predecessor point of order in the fiscal year 2009 budget resolution.<sup>5939</sup>

The joint explanatory statement accompanying the conference report on the 2016 budget resolution reported:

*Point of Order against Legislation Increasing Long-Term Deficits or Direct Spending*

## SENATE RESOLUTION

Section 402 of the Senate resolution extends the current Senate point of order prohibiting the consideration of legislation that would increase the on-budget deficit by more than \$5 billion in any of the 4 consecutive 10-year periods beginning after the last year covered in the most recently

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<sup>5938</sup> S. Con. Res. 11, 114th Cong. § 3101 (2015) (adopted), *infra* p. 1236.

<sup>5939</sup> S. Con. Res. 70, 110th Cong. § 311, 122 Stat. 5143, 5175–76 (2008), addressed “Senate Point of Order Against Legislation Increasing Long-Term Deficits.”

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agreed to budget resolution. The prohibition is enforced with a point of order that, if raised, could be waived with the affirmative vote of three-fifths of Members, duly chosen and sworn. Paragraph (d) provides an exception for any legislation considered under the reserve fund in section 303(1) – repeal of the President’s health care law.

#### HOUSE AMENDMENT

Section 407 of the House amendment prohibits the consideration of any measure reported by an authorizing committee that increases direct spending by \$5 billion over the long-term. The prohibition is enforced with a point of order. Subsection (b) states the applicable periods for this section are any of the 4 consecutive 10 fiscal year periods beginning in fiscal year 2026.

#### CONFERENCE AGREEMENT

Section 3101 of the conference agreement extends the Senate-passed provision to the House and includes an exception in paragraph (d) for reserve funds in sections 4303(1), 4501, 4502, and 4503 of the conference agreement relating to repeal of the President’s health care law. In the House the point of order lies against the bill increasing direct spending over the period.<sup>5940</sup>

The joint explanatory statement accompanying the conference report on the fiscal year 2009 budget resolution explained the earlier long-term deficit point of order:

#### *Senate-passed Resolution*

....

The Senate-passed resolution for 2009, S. Con. Res. 70, included the following enforcement provisions, most of which updated provisions that were part of the 2008 budget resolution.

....

#### *Sec. 201. Point of order against legislation increasing long-term deficits*

The Senate-passed resolution included a point of order in the Senate against legislation that would cause a net deficit increase (including

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<sup>5940</sup> CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2016, H.R. REP. NO. 114-96, at 162 (2015) (Conf. Rep.); see also S. COMM. ON THE BUDGET, CONCURRENT RESOLUTION ON THE BUDGET FY 2016: COMMITTEE PRINT TO ACCOMPANY S. CON. RES. 11, at 23 (Comm. Print 2015).

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changes in revenues and mandatory spending, but excluding debt service) in any of the four consecutive ten-year periods beginning with the first fiscal year that is ten years after the budget year provided for in the most recently-adopted budget resolution (for 2009 these time periods would be 2019–2028, 2029–2038, 2039–2048, and 2049–2058). The point of order could be waived with 60 votes . . . .

. . . .

*Conference Agreement*

Title III contains the following enforcement provisions:

. . . .

Sec. 311. Senate point of order against legislation increasing long-term deficits (Sec. 201 of the Senate-passed resolution, as modified)<sup>5941</sup>

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<sup>5941</sup> [CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2009: CONFERENCE REPORT TO ACCOMPANY S. CON. RES. 70](#), H.R. REP. NO. 110-659, at 126, 127, 130 (2008) (Conf. Rep.); *see also* S. COMM. ON THE BUDGET, [CONCURRENT RESOLUTION ON THE BUDGET FY 2009: COMMITTEE PRINT TO ACCOMPANY S. CON. RES. 70](#), at 25 (Comm. Print 2008).

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3101        **SEC. 3101. POINT OF ORDER AGAINST  
INCREASING LONG-TERM DEFICITS<sup>5942</sup> OR  
DIRECT SPENDING.<sup>5943</sup>**

3101(a)        **(a) CONGRESSIONAL BUDGET OFFICE ANALYSIS OF  
PROPOSALS.—The Director of the Congressional Budget  
Office shall, to the extent practicable, prepare an estimate  
of whether a measure would cause, relative to current law,  
a net increase in on-budget deficits<sup>5944</sup> in the Senate, and a  
net increase in direct spending<sup>5945</sup> in the House, in excess  
of \$5,000,000,000 in any of the 4 consecutive 10-fiscal year  
periods beginning with the first fiscal year that is 10 fiscal  
years after the budget year<sup>5946</sup> provided for in the most  
recently adopted concurrent resolution on the budget<sup>5947</sup> —**

3101(a)(1)        **(1) in the Senate, for each bill and joint resolution  
reported by a committee, other than the Committee on  
Appropriations, and amendments thereto,  
amendments between the Houses in relation thereto,  
conference reports thereon, and motions thereon; and**

3101(a)(2)        **(2) in the House of Representatives, for each bill and  
joint resolution reported by a committee, other than the**

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<sup>5942</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, and *Statutory Pay-As-You-Go Act of 2010* § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopt the Congressional Budget Act definition.

<sup>5943</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” *Statutory Pay-As-You-Go Act of 2010* § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, and *S. Con. Res. 14, 117th Cong. § 4001(a)(4)* (2021) (adopted), *infra* p. 1258, adopt the *Balanced Budget and Emergency Deficit Control Act* definition.

<sup>5944</sup> *Congressional Budget Act of 1974* § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, and *Statutory Pay-As-You-Go Act of 2010* § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopt the Congressional Budget Act definition.

<sup>5945</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” *Statutory Pay-As-You-Go Act of 2010* § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, and *S. Con. Res. 14, 117th Cong. § 4001(a)(4)* (2021) (adopted), *infra* p. 1258, adopt the *Balanced Budget and Emergency Deficit Control Act* definition.

<sup>5946</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” *Statutory Pay-As-You-Go Act of 2010* § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the *Balanced Budget and Emergency Deficit Control Act* definition.

<sup>5947</sup> *Congressional Budget Act of 1974* § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

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Committee on Appropriations, and amendments thereto and conference reports thereon.

- 3101(b) (b) POINT OF ORDER.— It shall not be in order —
- 3101(b)(1) (1) in the Senate to consider any bill, joint resolution, amendment, amendment between the Houses, conference report, or motion that would cause a net increase in on-budget [deficits](#)<sup>5948</sup> in excess of \$5,000,000,000 in any of the 4 consecutive 10-fiscal year periods described in [subsection \(a\)](#);<sup>5949</sup> and
- 3101(b)(2) (2) in the House of Representatives to consider any bill or joint resolution, or amendment thereto or conference report thereon, that would cause a net increase in [direct spending](#)<sup>5950</sup> in excess of \$5,000,000,000 in any of the 4 consecutive 10-fiscal year periods described in [subsection \(a\)](#).<sup>5951</sup>
- 3101(c) (c) SUPERMAJORITY WAIVER AND APPEAL IN THE SENATE. —
- 3101(c)(1) (1) WAIVER.— In the Senate, [subsection \(b\)](#)<sup>5952</sup> may be waived or suspended only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.
- 3101(c)(2) (2) APPEAL.— In the Senate, an affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of

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<sup>5948</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, and [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopt the Congressional Budget Act definition.

<sup>5949</sup> [S. Con. Res. 11, 114th Cong. § 3101\(a\)](#) (2015) (adopted), *supra* p. 1236.

<sup>5950</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, and [S. Con. Res. 14, 117th Cong. § 4001\(a\)\(4\)](#) (2021) (adopted), *infra* p. 1258, adopt the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5951</sup> [S. Con. Res. 11, 114th Cong. § 3101\(a\)](#) (2015) (adopted), *supra* p. 1236.

<sup>5952</sup> [S. Con. Res. 11, 114th Cong. § 3101\(b\)](#) (2015) (adopted), *supra* p. 1237.

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the Chair on a point of order raised under [subsection \(b\)](#).<sup>5953</sup>

3101(d) (d) LIMITATION.—The provisions of [this section](#)<sup>5954</sup> shall not apply to—

3101(d)(1) (1) in the Senate, any bills, joint resolutions, amendments, amendments between the Houses, conference reports, or motions for which the Chairman of the Committee on the Budget of the Senate has made adjustments to the allocations, levels, or limits contained in [this concurrent resolution](#)<sup>5955</sup> pursuant to [section 4303\(1\)](#),<sup>5956</sup> and

3101(d)(2) (2) in the House of Representatives, any bills or joint resolutions, or amendments thereto or conference reports thereon, for which the Chairman of the Committee on the Budget of House of Representatives has made adjustments to the allocations, levels, or limits contained in [this concurrent resolution](#)<sup>5957</sup> pursuant to [section 4501](#),<sup>5958</sup> [4502](#),<sup>5959</sup> or [4503](#).<sup>5960</sup>

3101(e) (e) DETERMINATIONS OF BUDGET LEVELS.—For purposes of [this section](#)<sup>5961</sup>—

3101(e)(1) (1) the levels of net increases in [deficits](#)<sup>5962</sup> shall be determined on the basis of estimates provided by the Committee on the Budget of the Senate; and

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<sup>5953</sup> S. Con. Res. 11, 114th Cong. § 3101(b) (2015) (adopted), *supra* p. 1237.

<sup>5954</sup> S. Con. Res. 11, 114th Cong. § 3101 (2015) (adopted), *supra* p. 1236.

<sup>5955</sup> S. Con. Res. 11, 114th Cong. (2015) (adopted).

<sup>5956</sup> S. Con. Res. 11, 114th Cong. § 4303(1) (2015) (adopted), addressed “full repeal of the Patient Protection and Affordable Care Act (Public Law 111-148; 124 Stat. 119) and the health care related provisions of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152; 124 Stat. 1029).”

<sup>5957</sup> S. Con. Res. 11, 114th Cong. (2015) (adopted).

<sup>5958</sup> S. Con. Res. 11, 114th Cong. § 4501 (2015) (adopted), addressed “Reserve Fund for the Repeal of the President’s Health Care Law.”

<sup>5959</sup> S. Con. Res. 11, 114th Cong. § 4502 (2015) (adopted), addressed “Deficit-Neutral Reserve Fund for Promoting Real Health Care Reform.”

<sup>5960</sup> S. Con. Res. 11, 114th Cong. § 4503 (2015) (adopted), addressed “Deficit-Neutral Reserve Fund Related to the Medicare Provisions of the President’s Health Care Law.”

<sup>5961</sup> S. Con. Res. 11, 114th Cong. § 3101 (2015) (adopted), *supra* p. 1236.

<sup>5962</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, and [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopt the Congressional Budget Act definition.

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- 3101(e)(2) (2) the levels of net increases in [direct spending](#)<sup>5963</sup> shall be determined on the basis of estimates provided by the Committee on the Budget of the House of Representatives.
- 3101(f) (f) REPEAL IN THE SENATE. — In the Senate, [section 311 of S. Con. Res. 70 \(110th Congress\)](#),<sup>5964</sup> the [concurrent resolution on the budget](#)<sup>5965</sup> for fiscal year 2009, shall no longer apply.
- 3101(g) (g) SUNSET IN THE HOUSE OF REPRESENTATIVES. — In the House of Representatives, [this section](#)<sup>5966</sup> shall remain in effect through September 30, 2017.
- 

*Point of Order* — On March 8, 2022, Senator Rick Scott raised a point of order under this section against the Postal Service Reform Act of 2022,<sup>5967</sup> saying:

Mr. SCOTT of Florida. Mr. President, the pending measure, H.R. 3076, Postal Service Reform Act of 2022, would increase on-budget deficits by \$5 billion or more in at least one of the four 10- year periods beginning in 2032.

This increase violates section 3101 of the 2016 budget resolution, which prohibits consideration of legislation that would cause a net increase in on-budget deficits in any of the four 10-year periods beyond the current budget window.

I raise a point of order under section 3101(b) of S. Con. Res. 11, the concurrent resolution on the budget for fiscal year 2016.<sup>5968</sup>

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<sup>5963</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, and [S. Con. Res. 14, 117th Cong. § 4001\(a\)\(4\)](#) (2021) (adopted), *infra* p. 1258, adopt the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5964</sup> [S. Con. Res. 70, 110th Cong. § 311](#), 122 Stat. 5143, 5175–76 (2008), addressed “Senate Point of Order Against Legislation Increasing Long-Term Deficits.”

<sup>5965</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>5966</sup> [S. Con. Res. 11, 114th Cong. § 3101](#) (2015) (adopted), *supra* p. 1236.

<sup>5967</sup> [Postal Service Reform Act of 2022](#), Pub. L. No. 117-108, 136 Stat. 1127.

<sup>5968</sup> [168 CONG. REC. S1046](#) (daily ed. Mar. 8, 2022) (statement of Sen. Rick Scott re [Postal Service Reform Act of 2022](#), H.R. 3076, 117th Cong.).

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*Waiver*— On March 8, 2022, Budget Committee Chair Bernie Sanders moved to waive this point of order for consideration of the Postal Service Reform Act of 2022,<sup>5969</sup> saying:

Mr. SANDERS. Mr. President, pursuant to section 3101(c) of the fiscal year 2016 budget resolution, I move to waive section 3101 of that resolution for purposes of the pending measure, and I ask for the yeas and nays.<sup>5970</sup>

The Senate voted 68 to 30 to waive the point of order.<sup>5971</sup>

The Parliamentarian's office has noted as a precedent an instance of a waiver of the predecessor to this section, writing, "The Senate waived the relevant provisions of the Congressional Budget Act for consideration of a conference report, rendering moot a § 311(b) point of order under S. Con. Res. 70 of the 110th Congress that the conference report increased long-term deficits."<sup>5972</sup> Thus, the Parliamentarian's office reports:

On July 15, 2010, the Senate was considering the conference report to accompany H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act. Mr. Gregg (of New Hampshire) raised a point of order that the conference report would cause an increase in long-term deficits, in violation of §311(b) of S. Con. Res. 70 (110th). Mr. Dodd (of Connecticut) moved to waive all applicable budget points of order for consideration of the conference report, which was agreed to by a vote of 60 yeas to 39 nays.

Mr. GREGG. . . . Therefore, I make a point of order that the pending bill violates section 311(b) of S. Con. Res. 70 of the 110th Congress.

Mr. DODD. Madam President, pursuant to section 904 of the Congressional Budget Act of 1974 and the waiver provisions of applicable budget resolutions, I move to waive all applicable sections of that act and those budget resolutions for purposes of the pending conference report, and I ask for the yeas and nays.

\* \* \*

The PRESIDING OFFICER [Mrs. Gillibrand of New York]. The question is on agreeing to the motion. The yeas and nays have been ordered. The Clerk will call the roll.

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<sup>5969</sup> [Postal Service Reform Act of 2022](#), Pub. L. No. 117-108, 136 Stat. 1127.

<sup>5970</sup> [168 CONG. REC. S1046](#) (daily ed. Mar. 8, 2022) (statement of Sen. Sanders).

<sup>5971</sup> [Id. at S1047](#) (daily ed. Mar. 8, 2022) (roll-call vote no. 70 leg.).

<sup>5972</sup> Off. of the Sec'y of the Senate, [Senate Precedent PRL20100715-001](#).



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The PRESIDING OFFICER. On this vote, the yeas are 60, the nays are 39. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.<sup>5973</sup>

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<sup>5973</sup> *Id.* See also [156 CONG. REC. 13145, 13200](#) (July 15, 2010).

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**current year**  
**budget year**  
**6 years**  
**11 years**

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# Senate PAYGO

The fiscal year 2018 budget resolution updates the paygo point of order in the Senate.<sup>5974</sup> The Congressional Research Service's Bill Heniff Jr. described the paygo rule:

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

The rule generally requires that any legislation estimated to increase direct spending or reduce revenues must be offset so that the legislation does not increase the on-budget deficit. The offsetting provisions must be estimated to reduce direct spending, increase revenues, or a combination of the two. Without such offsetting provisions, the legislation would require the

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<sup>5974</sup> H. Con. Res 71, 115th Cong. § 4106 (2017) (adopted), *infra* p. 1245.

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support of at least 60 Senators to waive the rule and be considered on the Senate floor.

The Senate first established the PAYGO rule in the FY1994 budget resolution in 1993. As originally established, the rule prohibited the consideration of any direct spending and revenue legislation that was projected to increase the deficit over a 10-year period. The Senate has modified and extended the rule seven times in subsequent budget resolutions and once in a Senate simple resolution. Most recently, in the FY2018 budget resolution, the Senate modified the rule to add two additional periods (the current fiscal year and the budget year) to the existing periods (the six-year and 11-year periods) for which legislation may not increase the projected on-budget deficit.

Since 1993, when the rule was established, through November 5, 2021, the PAYGO rule has been used to prevent the consideration of 46 amendments. During the same period, the Senate voted to waive the PAYGO rule 18 times, allowing consideration of the matter: six times in relation to a measure, 11 times in relation to an amendment (eight of these amendments were full-text substitutes to a bill), and once in relation to the disposition of a House amendment.<sup>5975</sup>

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<sup>5975</sup> BILL HENIFF JR., CONG. RSCH. SERV., [RL31943, BUDGET ENFORCEMENT PROCEDURES: THE SENATE PAY-AS-YOU-GO \(PAYGO\) RULE](#), summary (2021).

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4106        **SEC. 4106. PAY-AS-YOU-GO POINT OF ORDER IN  
THE SENATE.**

4106(a)        **(a) POINT OF ORDER. —**

4106(a)(1)        **(1) IN GENERAL. —**It shall not be in order in the Senate to consider any **direct spending**<sup>5976</sup> or **revenue**<sup>5977</sup> legislation that would increase the on-budget **deficit**<sup>5978</sup> or cause an on-budget **deficit**<sup>5979</sup> for any of the **applicable time periods**<sup>5980</sup> as measured in **paragraphs (5)**<sup>5981</sup> and **(6)**.<sup>5982</sup>

4106(a)(2)        **(2) APPLICABLE TIME PERIODS. —**For purposes of **this subsection**,<sup>5983</sup> the term “applicable time period” means any of —

4106(a)(2)(A)        **(A) the period of the **current fiscal year**;**<sup>5984</sup>

4106(a)(2)(B)        **(B) the period of the **budget year**;**<sup>5985</sup>

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<sup>5976</sup> H. Con. Res 71, 115th Cong. § 4106(a)(3) (2017) (adopted), *infra* p. 1246, defines “direct spending legislation.”

<sup>5977</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>5978</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, and *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopt the Congressional Budget Act definition.

<sup>5979</sup> Congressional Budget Act of 1974 § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)*, 2 U.S.C. § 900(c)(1), *supra* p. 977, and *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopt the Congressional Budget Act definition.

<sup>5980</sup> H. Con. Res 71, 115th Cong. § 4106(a)(2) (2017) (adopted), *infra* p. 1245, defines “applicable time period.”

<sup>5981</sup> H. Con. Res 71, 115th Cong. § 4106(a)(5) (2017) (adopted), *infra* p. 1247, addresses “Baseline.”

<sup>5982</sup> H. Con. Res 71, 115th Cong. § 4106(a)(6) (2017) (adopted), *infra* p. 1248, addresses “Prior surplus.”

<sup>5983</sup> H. Con. Res 71, 115th Cong. § 4106(a) (2017) (adopted), *supra* p. 1245, addresses “Point of Order.”

<sup>5984</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)*, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the *Balanced Budget and Emergency Deficit Control Act* definition.

<sup>5985</sup> *Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)*, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” *Statutory Pay-As-You-Go Act of 2010 § 3(2)*, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the *Balanced Budget and Emergency Deficit Control Act* definition.

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4106(a)(2)(C) (C) the period of the **current fiscal year**,<sup>5986</sup> the **budget year**,<sup>5987</sup> and the ensuing 4 fiscal years following the **budget year**,<sup>5988</sup> or

4106(a)(2)(D) (D) the period of the **current fiscal year**,<sup>5989</sup> the **budget year**,<sup>5990</sup> and the ensuing 9 fiscal years following the **budget year**.<sup>5991</sup>

4106(a)(3) (3) **DIRECT SPENDING**<sup>5992</sup> LEGISLATION. — For purposes of **this subsection**<sup>5993</sup> and except as provided in **paragraph (4)**,<sup>5994</sup> the term<sup>5995</sup> “**direct spending**<sup>5996</sup> legislation” means any bill, joint resolution, amendment, motion, or conference report that affects **direct spending**<sup>5997</sup> as that term is defined by, and

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<sup>5986</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)**, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5987</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)**, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5988</sup> *Id.*

<sup>5989</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13)**, 2 U.S.C. § 900(c)(13), *supra* p. 982, defines “current year.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5990</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12)**, 2 U.S.C. § 900(c)(12), *supra* p. 982, defines “budget year.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5991</sup> *Id.*

<sup>5992</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, and **S. Con. Res. 14, 117th Cong. § 4001(a)(4)** (2021) (adopted), *infra* p. 1258, adopt the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5993</sup> **H. Con. Res. 71, 115th Cong. § 4106(a)** (2017) (adopted), *supra* p. 1245, addresses “Point of Order.”

<sup>5994</sup> **H. Con. Res. 71, 115th Cong. § 4106(a)(4)** (2017) (adopted), *infra* p. 1247, addresses “Exclusion.”

<sup>5995</sup> Budget process laws define terms in many places. See **Congressional Budget Act of 1974 §§ 3, 310(b), 421**, 2 U.S.C. §§ 622, 641(b), 658, *supra* pp. 55, 529, 803; **Impoundment Control Act of 1974 § 1011**, 2 U.S.C. § 682, *supra* p. 923; **Balanced Budget and Emergency Deficit Control Act of 1985 §§ 250(c), 251(b)(2)(B)(ii), 256(g)(2)**, 2 U.S.C. §§ 900(c), 901(b)(2)(B)(ii), 906(g)(2), *supra* pp. 977, 997, 1097; **Federal Credit Reform Act of 1990 § 502**, 2 U.S.C. § 661a, *supra* p. 850; **Statutory Pay-As-You-Go Act of 2010 § 3**, 2 U.S.C. § 932, *supra* p. 1150; **S. Con. Res. 70, 110th Cong. § 314(b)**, 122 Stat. 5143, 5179 (2008), *supra* p. 1221; **H. Con. Res. 71, 115th Cong. § 4106(a)(3)** (2017) (adopted), *supra* p. 1246; **S. Con. Res. 14, 117th Cong. §§ 4001(a)(4), 4001(a)(5), 4002(a)(2), 4003(a)(2)** (2021) (adopted), *infra* pp. 1258, 1259, 1262, 1267. For a glossary collecting these definitions in budget process law, see *infra* p. 1542.

<sup>5996</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150, and **S. Con. Res. 14, 117th Cong. § 4001(a)(4)** (2021) (adopted), *infra* p. 1258, adopt the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5997</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(8)**, 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150,

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interpreted for purposes of, the [Balanced Budget and Emergency Deficit Control Act of 1985 \(2 U.S.C. 900 et seq.\)](#).<sup>5998</sup>

4106(a)(4) (4) EXCLUSION.—For purposes of [this subsection](#),<sup>5999</sup> the terms “[direct spending](#)”<sup>6000</sup> legislation” and “[revenue](#)”<sup>6001</sup> legislation” do not include —

4106(a)(4)(A) (A) any [concurrent resolution on the budget](#);<sup>6002</sup>  
or

4106(a)(4)(B) (B) any provision of legislation that affects the full funding of, and continuation of, the [deposit insurance](#)”<sup>6003</sup> guarantee commitment in effect on November 5, 1990.

4106(a)(5) (5) [BASELINE](#).<sup>6004</sup>—Estimates prepared pursuant to [this subsection](#)<sup>6005</sup> shall —

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and [S. Con. Res. 14, 117th Cong. § 4001\(a\)\(4\)](#) (2021) (adopted), *infra* p. 1258, adopt the Balanced Budget and Emergency Deficit Control Act definition.

<sup>5998</sup> [Balanced Budget and Emergency Deficit Control Act of 1985](#), 2 U.S.C. §§ 900–922, *supra* pp. 976–1143.

<sup>5999</sup> [H. Con. Res 71, 115th Cong. § 4106\(a\)](#) (2017) (adopted), *supra* p. 1245, addresses “Point of Order.”

<sup>6000</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, and [S. Con. Res. 14, 117th Cong. § 4001\(a\)\(4\)](#) (2021) (adopted), *infra* p. 1258, adopt the Balanced Budget and Emergency Deficit Control Act definition.

<sup>6001</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>6002</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>6003</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(18\)](#), 2 U.S.C. § 900(c)(18), *supra* p. 983, defines “deposit insurance.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Balanced Budget and Emergency Deficit Control Act definition.

<sup>6004</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(5\)](#), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to [Balanced Budget and Emergency Deficit Control Act of 1985 § 257](#), 2 U.S.C. § 907, *supra* p. 980.

<sup>6005</sup> [H. Con. Res 71, 115th Cong. § 4106\(a\)](#) (2017) (adopted), *supra* p. 1245, addresses “Point of Order.”

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- 4106(a)(5)(A) (A) use the [baseline](#)<sup>6006</sup> [surplus](#)<sup>6007</sup> or [deficit](#)<sup>6008</sup> used for the most recently adopted [concurrent resolution on the budget](#);<sup>6009</sup> and
- 4106(a)(5)(B) (B) be calculated under the requirements of [subsections \(b\) through \(d\) of section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985](#)<sup>6010</sup> (as in effect prior to September 30, 2002) for fiscal years beyond those covered by that [concurrent resolution on the budget](#).<sup>6011</sup>
- 4106(a)(6) (6) PRIOR SURPLUS.<sup>6012</sup> — If [direct spending](#)<sup>6013</sup> or [revenue](#)<sup>6014</sup> legislation increases the on-budget [deficit](#)<sup>6015</sup> or causes an on-budget [deficit](#)<sup>6016</sup> when taken individually, it must also increase the on-budget [deficit](#)<sup>6017</sup> or cause an on-budget [deficit](#)<sup>6018</sup> when taken

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<sup>6006</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(5\)](#), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to [Balanced Budget and Emergency Deficit Control Act of 1985 § 257](#), 2 U.S.C. § 907, *supra* p. 980.

<sup>6007</sup> [Congressional Budget Act of 1974 § 3\(7\)](#), 2 U.S.C. § 622(7), *supra* p. 58, defines “surplus.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>6008</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, and [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopt the Congressional Budget Act definition.

<sup>6009</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>6010</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 257\(b\)–\(d\)](#), 2 U.S.C. § 907(b)–(d), *supra* p. 1110, address “Direct Spending and Receipts,” “Discretionary Appropriations,” and “Up-to-Date Concepts.”

<sup>6011</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>6012</sup> [Congressional Budget Act of 1974 § 3\(7\)](#), 2 U.S.C. § 622(7), *supra* p. 58, defines “surplus.” [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopts the Congressional Budget Act definition.

<sup>6013</sup> [H. Con. Res 71, 115th Cong. § 4106\(a\)\(3\)](#) (2017) (adopted), *supra* p. 1246, defines “direct spending legislation.”

<sup>6014</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>6015</sup> [Congressional Budget Act of 1974 § 3\(6\)](#), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977, and [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150, adopt the Congressional Budget Act definition.

<sup>6016</sup> *Id.*

<sup>6017</sup> *Id.*

<sup>6018</sup> *Id.*



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together with all **direct spending**<sup>6019</sup> and **revenue**<sup>6020</sup> legislation enacted since the beginning of the calendar year not accounted for in the **baseline**<sup>6021</sup> under **paragraph (5)(A)**,<sup>6022</sup> except that **direct spending**<sup>6023</sup> or **revenue**<sup>6024</sup> effects resulting in net **deficit**<sup>6025</sup> reduction enacted in any bill pursuant to a **reconciliation**<sup>6026</sup> instruction since the beginning of that same calendar year shall never be made available on the pay-as-you-go ledger and shall be dedicated only for **deficit**<sup>6027</sup> reduction.

4106(b) (b) SUPERMAJORITY WAIVER AND APPEALS.—

4106(b)(1) (1) WAIVER.—**This section**<sup>6028</sup> may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

4106(b)(2) (2) APPEALS.—Appeals in the Senate from the decisions of the Chair relating to any provision of **this section**<sup>6029</sup> shall be limited to 1 hour, to be equally

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<sup>6019</sup> H. Con. Res 71, 115th Cong. § 4106(a)(3) (2017) (adopted), *supra* p. 1246, defines “direct spending legislation.”

<sup>6020</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>6021</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(5), 2 U.S.C. § 900(c)(5), *supra* p. 980, defines “baseline” by reference to *Balanced Budget and Emergency Deficit Control Act of 1985* § 257, 2 U.S.C. § 907, *supra* p. 980.

<sup>6022</sup> H. Con. Res 71, 115th Cong. § 4106(a)(5)(A) (2017) (adopted), *supra* p. 1248, requires “us[ing] the baseline surplus or deficit used for the most recently adopted concurrent resolution on the budget.”

<sup>6023</sup> *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(8), 2 U.S.C. § 900(c)(8), *supra* p. 980, defines “direct spending.” S. Con. Res. 14, 117th Cong. § 4001(a)(4) (2021) (adopted), *infra* p. 1258, adopts the *Balanced Budget and Emergency Deficit Control Act* definition.

<sup>6024</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>6025</sup> *Congressional Budget Act of 1974* § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, and *Statutory Pay-As-You-Go Act of 2010* § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopt the *Congressional Budget Act* definition.

<sup>6026</sup> *Congressional Budget Act of 1974* § 310, 2 U.S.C. § 641, *supra* p. 514, addresses “Reconciliation.”

<sup>6027</sup> *Congressional Budget Act of 1974* § 3(6), 2 U.S.C. § 622(6), *supra* p. 58, defines “deficit.” *Balanced Budget and Emergency Deficit Control Act of 1985* § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977, and *Statutory Pay-As-You-Go Act of 2010* § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150, adopt the *Congressional Budget Act* definition.

<sup>6028</sup> H. Con. Res 71, 115th Cong. § 4106 (2017) (adopted), *supra* p. 1245, addresses “Pay-as-You-Go Point of Order in the Senate.”

<sup>6029</sup> *Id.*

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divided between, and controlled by, the appellant and the manager of the bill or joint resolution, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under [this section](#).<sup>6030</sup>

4106(c) (c) DETERMINATION OF BUDGET LEVELS.—For purposes of [this section](#),<sup>6031</sup> the levels of [new budget authority](#),<sup>6032</sup> [outlays](#),<sup>6033</sup> and [revenues](#)<sup>6034</sup> for a fiscal year shall be determined on the basis of estimates made by the Senate Committee on the Budget.

4106(d) (d) REPEAL.—In the Senate, [section 201 of S. Con. Res. 21 \(110th Congress\)](#),<sup>6035</sup> the [concurrent resolution on the budget](#)<sup>6036</sup> for fiscal year 2008, shall no longer apply.

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The Congressional Research Service’s Bill Heniff Jr. has listed points of order raised under the Senate paygo rule.<sup>6037</sup>

During consideration of the Inflation Reduction Act of 2022, the Presiding Officer sustained a point of order raised by Budget Committee Chair Bernie Sanders under section 4106 against an amendment by Senator Maggie Hassan to eliminate the reinstatement of Superfund taxes.<sup>6038</sup>

Also during consideration of the Inflation Reduction Act, the Presiding Officer sustained a point of order raised by Senator Brian Schatz under section 4106 against an amendment by Senator Ted Cruz to provide for

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<sup>6030</sup> *Id.*

<sup>6031</sup> *Id.*

<sup>6032</sup> [Congressional Budget Act of 1974 § 3\(2\)\(C\)](#), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>6033</sup> [Congressional Budget Act of 1974 § 3\(1\)](#), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>6034</sup> U.S. GOV’T ACCOUNTABILITY OFF., [A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS](#) 87 (2005), *supra* p. 49, defines “revenues.”

<sup>6035</sup> [S. Con. Res. 21, 110th Cong. § 201](#), 121 Stat. 2590, 2601–02 (2007), addressed “Pay-as-You-Go Point of Order in the Senate.”

<sup>6036</sup> [Congressional Budget Act of 1974 § 3\(4\)](#), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>6037</sup> BILL HENIFF JR., CONG. RSCH. SERV., [RL31943, BUDGET ENFORCEMENT PROCEDURES: THE SENATE PAY-AS-YOU-GO \(PAYGO\) RULE 5–11](#) (2021).

<sup>6038</sup> [168 CONG. REC. S4171](#) (daily ed. Aug. 6, 2022).

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conditions on the export of crude oil from the Strategic Petroleum Reserve to China.<sup>6039</sup>

On a number of occasions, Congress has excluded legislation from the Senate PAYGO scorecards<sup>6040</sup> (usually at the same time excluding legislation from the Statutory PAYGO scorecards, and often also making changes to budgetary classification).<sup>6041</sup> Note that such language will generally violate Budget Act section 306.<sup>6042</sup>

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<sup>6039</sup> *Id.* at S4191–92.

<sup>6040</sup> See, e.g., [Further Additional Extending Government Funding Act](#), Pub. L. No. 117-86, § 1201(b), 136 Stat. 15, 18 (2022); [Infrastructure Investment and Jobs Act](#), Pub. L. No. 117-58, § 905(b), 135 Stat. 429, 1444 (2021); [PPP Extension Act of 2021](#), Pub. L. No. 117-6, § 3(b), 135 Stat. 250; [Consolidated Appropriations Act, 2021](#), Pub. L. No. 116-260, § 1401(a), 134 Stat. 1182, 2158 (2020); [Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019](#), Pub. L. No. 116-69, § 1801(a), 133 Stat. 1134, 1143 (2019); [Bipartisan Budget Act of 2019](#), Pub. L. No. 116-37, § 501(b), 133 Stat. 1049, 1059; [Bipartisan Budget Act of 2018](#), Pub. L. No. 115-123, § 70101(b), 132 Stat. 64, 313; [An Act to amend the Homeland Security Act of 2002 to require the Secretary of Homeland Security to issue Department of Homeland Security-wide guidance and develop training programs as part of the Department of Homeland Security Blue Campaign, and for other purposes](#), Pub. L. No. 115-96, § 5001(b), 131 Stat. 2044, 2053 (2017).

<sup>6041</sup> For examples of language used to do so, see *supra* p. 1177.

<sup>6042</sup> [Congressional Budget Act of 1974 § 306](#), 2 U.S.C. § 637, *supra* p. 353, addresses “Legislation Dealing with Congressional Budget Must Be Handled by Budget Committees.”



Photo: Wikimedia

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# Emergencies and Advance Appropriations

The budget resolution for fiscal year 2022 includes permanent budget process provisions on two issues—emergencies and advance appropriations.<sup>6043</sup>

*Emergencies*—The budget resolution’s emergency legislation provision updates the provision on emergency provisions last adopted in the fiscal year 2018 budget resolution.<sup>6044</sup> The section permits the Senate Budget Committee Chair to exempt emergency legislation from allocations, aggregates, and levels included in this resolution. And the section defines what constitutes an emergency.

The budget process created emergency designations in the Budget Enforcement Act of 1990, which created caps on discretionary spending and a pay-as-you-go system for mandatory spending and taxes, and also

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<sup>6043</sup> [S. Con. Res. 14, 117th Cong.](#) §§ 4001, 4002, 4003 (2021) (adopted).

<sup>6044</sup> [H. Con. Res 71, 115th Cong.](#) § 4112 (2017) (adopted).

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created exceptions to those constraints for emergencies.<sup>6045</sup> The budget resolution for fiscal year 1994 extended those caps, enforced by points of order, and also adjusted those caps for emergency appropriations.<sup>6046</sup> The budget resolutions for fiscal years 1996,<sup>6047</sup> 1997,<sup>6048</sup> and 1998<sup>6049</sup> included similar language. Similarly, the budget resolution for fiscal year 1995 created a point of order for enforcing pay-as-you-go that included an exception for emergency provisions.<sup>6050</sup> The Balanced Budget Act of 1997 added a parallel system of adjustments<sup>6051</sup> to the Congressional Budget Act as section 314.<sup>6052</sup>

The budget resolution for fiscal year 1997 expressed the sense of the House that “Congress should consider alternative approaches to budgeting for emergencies, including codifying the definition of an emergency,”<sup>6053</sup> and the budget resolution for fiscal year 2001 similarly expressed the sense of the House that the Budget Committees should develop a definition of emergencies.<sup>6054</sup> The budget resolution for fiscal year 2000 permitted the Senate Budget Committee Chair to make adjustments for emergency legislation much as the fiscal year 2022 resolution does and also created a point of order allowing Senators to challenge emergency designations.<sup>6055</sup> The budget resolutions for fiscal years 2001,<sup>6056</sup> 2004,<sup>6057</sup> 2006,<sup>6058</sup> 2008,<sup>6059</sup> 2010,<sup>6060</sup> and 2018<sup>6061</sup> included similar provisions, as did the Statutory Pay-As-You-Go Act of 2010.<sup>6062</sup> The section in the fiscal year 2022 resolution also parallels that in the 2021 House resolution providing for budget allocations for the Committee on Appropriations.<sup>6063</sup>

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<sup>6045</sup> Budget Enforcement Act of 1990, Pub. L. No. 101-508, § 13101, [104 Stat. 1388-573](#), 1388-580 to 1388-582 (1990), adding §§ 251(b)(2)(D) & 252(e) to the Balanced Budget and Emergency Deficit Control Act of 1985, codified at 2 U.S.C. §§ [901\(b\)\(2\)\(D\)](#), [902\(e\)](#).

<sup>6046</sup> [H. Con. Res. 64](#), [103d Cong.](#) § 12(b), 107 Stat. 2508, 2533–34 (1993).

<sup>6047</sup> [H. Con. Res. 67](#), [104th Cong.](#) § 201, 109 Stat. 996, 1018–19 (1995).

<sup>6048</sup> [H. Con. Res. 178](#), [104th Cong.](#) § 301, 110 Stat. 4434, 4457–58 (1996).

<sup>6049</sup> [H. Con. Res. 84](#), [105th Cong.](#) § 201, 111 Stat. 2710, 2729–30 (1997).

<sup>6050</sup> [H. Con. Res. 218](#), [103d Cong.](#) § 23, 108 Stat. 5075, 5092–93 (1994).

<sup>6051</sup> [Balanced Budget Act of 1997](#), Pub. L. No. 105-33, § 10114, 111 Stat. 251, 688–90.

<sup>6052</sup> [Congressional Budget Act of 1974 § 314](#), 2 U.S.C. § 645, *supra* p. 766.

<sup>6053</sup> [H. Con. Res. 178](#), [104th Cong.](#) § 422, 110 Stat. 4434, 4472–73 (1996).

<sup>6054</sup> [H. Con. Res. 290](#), [106th Cong.](#) § 312, 114 Stat. 3139, 3161–62 (2000).

<sup>6055</sup> [H. Con. Res. 68](#), [106th Cong.](#) § 206, 113 Stat. 1968, 1984–85 (1999).

<sup>6056</sup> [H. Con. Res. 290](#), [106th Cong.](#) § 205, 114 Stat. 3139, 3151–52 (2000).

<sup>6057</sup> [H. Con. Res. 95](#), [108th Cong.](#) § 502, 117 Stat. 2910, 2933–36 (2003).

<sup>6058</sup> [H. Con. Res. 95](#), [109th Cong.](#) § 402, 119 Stat. 3633, 3650–52 (2005).

<sup>6059</sup> [S. Con. Res. 21](#), [110th Cong.](#) § 204, 121 Stat. 2590, 2603–05 (2007).

<sup>6060</sup> [S. Con. Res. 13](#), [111th Cong.](#) § 403, 123 Stat. 3506, 3536–38 (2009).

<sup>6061</sup> [H. Con. Res. 71](#), [115th Cong.](#) § 4112 (2017) (adopted).

<sup>6062</sup> [Statutory Pay-As-You-Go Act of 2010](#), Pub. L. No. 111-139, § 4(g), 124 Stat. 8, 14–15.

<sup>6063</sup> [H. Res. 467](#), [117th Cong.](#) § 1(f) (2021) (adopted).

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*Advance Appropriations*—This section reinstates a longstanding 60-vote point of order against advance appropriations, with exemptions for certain accounts. Budget resolutions for fiscal years 2001,<sup>6064</sup> 2002,<sup>6065</sup> 2004,<sup>6066</sup> 2006,<sup>6067</sup> 2008,<sup>6068</sup> 2009,<sup>6069</sup> 2010,<sup>6070</sup> 2016,<sup>6071</sup> 2018,<sup>6072</sup> and 2021<sup>6073</sup> have included similar prohibitions, as did the Bipartisan Budget Act of 2019<sup>6074</sup> and the 2021 House resolution providing for budget allocations for the Committee on Appropriations.<sup>6075</sup>

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<sup>6064</sup> H. Con. Res. 290, 106th Cong. §§ 203(b), 204, 114 Stat. 3139, 3152–53 (2000).

<sup>6065</sup> H. Con. Res. 83, 107th Cong. §§ 201, 202, 115 Stat. 2486, 2503–04 (2001).

<sup>6066</sup> H. Con. Res. 95, 108th Cong. § 501, 117 Stat. 2910, 2932–33 (2003).

<sup>6067</sup> H. Con. Res. 95, 109th Cong. § 401, 119 Stat. 3633, 3649–50 (2005).

<sup>6068</sup> S. Con. Res. 21, 110th Cong. § 206, 121 Stat. 2590, 2605 (2007).

<sup>6069</sup> S. Con. Res. 70, 110th Cong. §§ 302, 313, 122 Stat. 5143, 5175, 5178 (2008).

<sup>6070</sup> S. Con. Res. 13, 111th Cong. §§ 402, 424, 123 Stat. 3506, 3535–36, 3544 (2009).

<sup>6071</sup> S. Con. Res. 11, 114th Cong. §§ 3202, 3304 (2015) (adopted).

<sup>6072</sup> H. Con. Res. 71, 115th Cong. §§ 4101, 5104 (2017) (adopted).

<sup>6073</sup> S. Con. Res. 5, 117th Cong. § 4006 (2021) (adopted).

<sup>6074</sup> Bipartisan Budget Act of 2019, Pub. L. No. 116-37, § 206(a), 133 Stat. 1049, 1054–55.

<sup>6075</sup> H. Res. 467, 117th Cong. § 3 (2021) (adopted).

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4001        **SEC. 4001. EMERGENCY<sup>6076</sup> LEGISLATION.**

4001(a)        **(a) SENATE. —**

4001(a)(1)        **(1) AUTHORITY TO DESIGNATE. — In the Senate, with respect to a provision of direct spending<sup>6077</sup> or receipts legislation or appropriations for discretionary<sup>6078</sup> accounts<sup>6079</sup> that Congress designates as an emergency<sup>6080</sup> requirement in such measure, the amounts of new budget authority,<sup>6081</sup> outlays,<sup>6082</sup> and receipts in all fiscal years resulting from that provision shall be treated as an emergency<sup>6083</sup> requirement for the purpose of this subsection.<sup>6084</sup>**

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<sup>6076</sup> S. Con. Res. 14, 117th Cong. § 4001(a)(5) (2021) (adopted), *infra* p. 1259, defines “emergency.” Cf. Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20), 2 U.S.C. § 900(c)(20), *supra* p. 983; Congressional Budget Act of 1974 § 3(11), 2 U.S.C. § 622(11), *supra* p. 60 (adopting the Balanced Budget and Emergency Deficit Control Act definition); Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6077</sup> H. Con. Res. 71, 115th Cong. § 4106(a)(3) (2017) (adopted), *supra* p. 1246, defines “direct spending legislation.”

<sup>6078</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(7), 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>6079</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>6080</sup> S. Con. Res. 14, 117th Cong. § 4001(a)(5) (2021) (adopted), *infra* p. 1259, defines “emergency.”

<sup>6081</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>6082</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>6083</sup> S. Con. Res. 14, 117th Cong. § 4001(a)(5) (2021) (adopted), *infra* p. 1259, defines “emergency.” Cf. Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20), 2 U.S.C. § 900(c)(20), *supra* p. 983; Congressional Budget Act of 1974 § 3(11), 2 U.S.C. § 622(11), *supra* p. 60 (adopting the Balanced Budget and Emergency Deficit Control Act definition); Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6084</sup> S. Con. Res. 14, 117th Cong. § 4001(a) (2021) (adopted), *supra* p. 1256, addresses “Emergency Legislation” in the “Senate.”



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4001(a)(2)

**(2) EXEMPTION<sup>6085</sup> OF EMERGENCY<sup>6086</sup> PROVISIONS.—** Any new budget authority,<sup>6087</sup> outlays,<sup>6088</sup> and receipts resulting from any provision designated as an emergency<sup>6089</sup> requirement, pursuant to this subsection,<sup>6090</sup> in any bill, joint resolution, amendment, amendment between the Houses, or conference report shall not count for purposes of sections 302<sup>6091</sup> and 311<sup>6092</sup> of the Congressional Budget Act of 1974 (2 U.S.C. 633, 642), section 404(a) of S. Con. Res. 13 (111th Congress),<sup>6093</sup> the concurrent resolution on the budget<sup>6094</sup> for fiscal year 2010, section 3101 of S. Con. Res. 11 (114th Congress),<sup>6095</sup> the concurrent resolution on the budget<sup>6096</sup> for fiscal year 2016, and section 4106 of H. Con. Res. 71 (115th Congress),<sup>6097</sup> the concurrent resolution on the budget<sup>6098</sup> for fiscal year 2018.

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<sup>6085</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 255, 2 U.S.C. § 905, *supra* p. 1074, addresses “Exempt Programs and Activities.” Statutory Pay-As-You-Go Act of 2010 § 8(1), 2 U.S.C. § 937(1), *supra* p. 1203, applies § 255 to the Statutory Pay-As-You-Go Act.

<sup>6086</sup> S. Con. Res. 14, 117th Cong. § 4001(a)(5) (2021) (adopted), *infra* p. 1259, defines “emergency.” Cf. Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20), 2 U.S.C. § 900(c)(20), *supra* p. 983; Congressional Budget Act of 1974 § 3(11), 2 U.S.C. § 622(11), *supra* p. 60 (adopting the Balanced Budget and Emergency Deficit Control Act definition); Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6087</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>6088</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>6089</sup> S. Con. Res. 14, 117th Cong. § 4001(a)(5) (2021) (adopted), *infra* p. 1259, defines “emergency.” Cf. Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20), 2 U.S.C. § 900(c)(20), *supra* p. 983; Congressional Budget Act of 1974 § 3(11), 2 U.S.C. § 622(11), *supra* p. 60 (adopting the Balanced Budget and Emergency Deficit Control Act definition); Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6090</sup> S. Con. Res. 14, 117th Cong. § 4001(a) (2021) (adopted), *supra* p. 1256, addresses “Emergency Legislation” in the “Senate.”

<sup>6091</sup> Congressional Budget Act of 1974 § 302, 2 U.S.C. § 633, *supra* p. 185, addresses “Committee Allocations.”

<sup>6092</sup> Congressional Budget Act of 1974 § 311, 2 U.S.C. § 642, *supra* p. 573, addresses “Budget-Related Legislation Must Be Within Appropriate Levels.”

<sup>6093</sup> S. Con. Res. 13, 111th Cong. § 404(a), 123 Stat. 3506, 3538 (2009), *supra* p. 1229, addresses “Point of Order Against Legislation Increasing Short-Term Deficit.”

<sup>6094</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>6095</sup> S. Con. Res. 11, 114th Cong. § 3101 (2015) (adopted), *supra* p. 1236, addresses “Point of Order Against Increasing Long-Term Deficits or Direct Spending.”

<sup>6096</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>6097</sup> H. Con. Res. 71, 115th Cong. § 4106 (2017) (adopted), *supra* p. 1245, addresses “Pay-as-You-Go Point of Order in the Senate.”

<sup>6098</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

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4001(a)(3) (3) DESIGNATIONS.—If a provision of legislation is designated as an **emergency**<sup>6099</sup> requirement under **this subsection**,<sup>6100</sup> the committee report and any statement of managers accompanying that legislation shall include an explanation of the manner in which the provision meets the criteria in **paragraph (5)**.<sup>6101</sup>

4001(a)(4) (4) DEFINITIONS.<sup>6102</sup>—In **this subsection**,<sup>6103</sup> the terms “**direct spending**,”<sup>6104</sup> “**receipts**,” and “**appropriations for discretionary accounts**”<sup>6105</sup> mean any provision of a bill, joint resolution, amendment, motion, amendment between the Houses, or conference report that affects **direct spending**,<sup>6107</sup> receipts, or appropriations as those terms have been defined and interpreted for purposes of **the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.)**.<sup>6108</sup>

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<sup>6099</sup> S. Con. Res. 14, 117th Cong. § 4001(a)(5) (2021) (adopted), *infra* p. 1259, defines “emergency.” Cf. **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *supra* p. 983; **Congressional Budget Act of 1974 § 3(11)**, 2 U.S.C. § 622(11), *supra* p. 60 (adopting the Balanced Budget and Emergency Deficit Control Act definition); **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6100</sup> S. Con. Res. 14, 117th Cong. § 4001(a) (2021) (adopted), *supra* p. 1256, addresses “Emergency Legislation” in the “Senate.”

<sup>6101</sup> S. Con. Res. 14, 117th Cong. § 4001(a)(5) (2021) (adopted), *infra* p. 1259, addresses “Criteria.”

<sup>6102</sup> Budget process laws define terms in many places. See **Congressional Budget Act of 1974 §§ 3, 310(b), 421**, 2 U.S.C. §§ 622, 641(b), 658, *supra* pp. 55, 529, 803; **Impoundment Control Act of 1974 § 1011**, 2 U.S.C. § 682, *supra* p. 923; **Balanced Budget and Emergency Deficit Control Act of 1985 §§ 250(c), 251(b)(2)(B)(ii), 256(g)(2)**, 2 U.S.C. §§ 900(c), 901(b)(2)(B)(ii), 906(g)(2), *supra* pp. 977, 997, 1097; **Federal Credit Reform Act of 1990 § 502**, 2 U.S.C. § 661a, *supra* p. 850; **Statutory Pay-As-You-Go Act of 2010 § 3**, 2 U.S.C. § 932, *supra* p. 1150; S. Con. Res. 70, 110th Cong. § 314(b), 122 Stat. 5143, 5179 (2008), *supra* p. 1221; H. Con. Res 71, 115th Cong. § 4106(a)(3) (2017) (adopted), *supra* p. 1246; S. Con. Res. 14, 117th Cong. §§ 4001(a)(4), 4001(a)(5), 4002(a)(2), 4003(a)(2) (2021) (adopted), *supra* p. 1258, *infra* pp. 1259, 1262, 1267. For a glossary collecting these definitions in budget process law, see *infra* p. 1542.

<sup>6103</sup> S. Con. Res. 14, 117th Cong. § 4001(a) (2021) (adopted), *supra* p. 1256, addresses “Emergency Legislation” in the “Senate.”

<sup>6104</sup> H. Con. Res 71, 115th Cong. § 4106(a)(3) (2017) (adopted), *supra* p. 1246, defines “direct spending legislation.”

<sup>6105</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(7)**, 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>6106</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>6107</sup> H. Con. Res 71, 115th Cong. § 4106(a)(3) (2017) (adopted), *supra* p. 1246, defines “direct spending legislation.”

<sup>6108</sup> **Balanced Budget and Emergency Deficit Control Act of 1985**, 2 U.S.C. §§ 900–922, *supra* pp. 976–1143.

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- 4001(a)(5) **(5) CRITERIA.**<sup>6109</sup> —
- 4001(a)(5)(A) **(A) IN GENERAL.**—For purposes of **this subsection**,<sup>6110</sup> any provision is an **emergency requirement** if the situation addressed by such provision is —
- 4001(a)(5)(A)(i) **(i) necessary, essential, or vital (not merely useful or beneficial);**
- 4001(a)(5)(A)(ii) **(ii) sudden, quickly coming into being, and not building up over time;**
- 4001(a)(5)(A)(iii) **(iii) an urgent**,<sup>6111</sup> **pressing, and compelling need requiring immediate action;**
- 4001(a)(5)(A)(iv) **(iv) subject to subparagraph (B)**,<sup>6112</sup> **unforeseen**,<sup>6113</sup> **unpredictable, and unanticipated; and**
- 4001(a)(5)(A)(v) **(v) not permanent, temporary in nature.**
- 4001(a)(5)(B) **(B) UNFORESEEN.**—An **emergency** that is part of an aggregate level of anticipated emergencies, particularly when normally estimated in advance, is not unforeseen.
- 4001(a)(6) **(6) REPEAL.**—In the Senate, **section 4112 of H. Con. Res. 71 (115th Congress)**,<sup>6114</sup> **the concurrent resolution**
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<sup>6109</sup> Cf. **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *supra* p. 983.

<sup>6110</sup> **S. Con. Res. 14, 117th Cong. § 4001(a)** (2021) (adopted), *supra* p. 1256, addresses “Emergency Legislation” in the “Senate.”

<sup>6111</sup> Cf. **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(21)(B)**, 2 U.S.C. § 900(c)(21)(B), *supra* p. 984; **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6112</sup> **S. Con. Res. 14, 117th Cong. § 4001(a)(5)(B)** (2021) (adopted), *infra* p. 1259, defines “unforeseen.”  
<sup>6113</sup> See also **S. Con. Res. 14, 117th Cong. § 4001(a)(5)(B)** (2021) (adopted), *infra* p. 1259, further defining “unforeseen.” Cf. **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(21)(C)**, 2 U.S.C. § 900(c)(21)(C), *supra* p. 984; **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6114</sup> **H. Con. Res 71, 115th Cong. § 4112** (2017) (adopted), addressed “Emergency Legislation.”

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on the budget<sup>6115</sup> for fiscal year 2018, shall no longer apply.

4001(b) (b) HOUSE OF REPRESENTATIVES. —

4001(b)(1) (1) IN GENERAL. — In the House of Representatives, if a bill, joint resolution, amendment, or conference report contains a provision providing new budget authority<sup>6116</sup> and outlays<sup>6117</sup> or reducing revenue,<sup>6118</sup> and a designation of such provision as emergency requirement, the chair of the Committee on the Budget of the House of Representatives shall not count the budgetary effects<sup>6119</sup> of such provision for any purpose in the House of Representatives.

4001(b)(2) (2) PROPOSAL TO STRIKE. — A proposal to strike a designation under paragraph (1)<sup>6120</sup> shall be excluded from an evaluation of budgetary effects<sup>6121</sup> for any purpose in the House of Representatives.

4001(b)(2) (3) AMENDMENT TO REDUCE AMOUNTS. — An amendment offered under paragraph (2)<sup>6122</sup> that also proposes to reduce each amount appropriated or otherwise made available by the pending measure that is not required to be appropriated or otherwise made available shall be in order at any point in the reading of the pending measure.

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<sup>6115</sup> Congressional Budget Act of 1974 § 3(4), 2 U.S.C. § 622(4), *supra* p. 57, defines “concurrent resolution on the budget.”

<sup>6116</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>6117</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55, defines “outlays.”

<sup>6118</sup> U.S. GOV’T ACCOUNTABILITY OFF., *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* 87 (2005), *supra* p. 49, defines “revenues.”

<sup>6119</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>6120</sup> S. Con. Res. 14, 117th Cong. § 4001(b)(1) (2021) (adopted), *supra* p. 1260, addresses “Emergency Legislation” in the “House of Representatives” “In general.”

<sup>6121</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A)–(B), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151, defines “budgetary effects.”

<sup>6122</sup> S. Con. Res. 14, 117th Cong. § 4001(b)(2) (2021) (adopted), *supra* p. 1260, addresses “Proposal To Strike.”

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4001(b)(4)

**(4) REFERENCES. —**

4001(b)(4)(A)

**(A) IN GENERAL. —** All references to [section 1\(f\) of H. Res. 467 \(117th Congress\)](#)<sup>6123</sup> in any bill or joint resolution, or an amendment thereto or conference report thereon, shall be treated for all purposes in the House of Representatives as references to [this subsection](#)<sup>6124</sup> of this concurrent resolution.

4001(b)(4)(B)

**(B) BBEDCA.**<sup>6125</sup> — All references to a designation by the Congress for an [emergency](#) requirement pursuant to [section 251\(b\) of the Balanced Budget and Emergency Deficit Control Act of 1985 \(2 U.S.C. 901\(b\)\)](#)<sup>6126</sup> for amounts for fiscal year 2022 or succeeding fiscal years in any legislation implementing a bipartisan infrastructure agreement shall be treated for all purposes in the House of Representatives as references to [this subsection](#)<sup>6127</sup> of this concurrent resolution.

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<sup>6123</sup> H. Res. 467, 117th Cong. § 1(f) (2021) (adopted), addresses “Emergency Requirements.”  
<sup>6124</sup> S. Con. Res. 14, 117th Cong. § 4001(b) (2021) (adopted), *supra* p. 1260, addresses “Emergency Legislation” in the “House of Representatives.”

<sup>6125</sup> Statutory Pay-As-You-Go Act of 2010 § 3(1), 2 U.S.C. § 932(1), *supra* p. 1150, defines “BBEDCA.”  
<sup>6126</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b), 2 U.S.C. § 901(b), *supra* p. 992, addresses “Adjustments to Discretionary Spending Limits.”

<sup>6127</sup> S. Con. Res. 14, 117th Cong. § 4001(b) (2021) (adopted), *supra* p. 1260, addresses “Emergency Legislation” in the “House of Representatives.”

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4002        **SEC. 4002. POINT OF ORDER AGAINST [ADVANCE](#)**  
**[APPROPRIATIONS](#)<sup>6128</sup> IN THE SENATE.**

4002(a)        **(a) IN GENERAL.—**

4002(a)(1)        **(1) POINT OF ORDER.—**Except as provided in [subsection \(b\)](#),<sup>6129</sup> it shall not be in order in the Senate to consider any bill, joint resolution, motion, amendment, amendment between the Houses, or conference report that would provide an [advance appropriation](#)<sup>6130</sup> for a [discretionary](#)<sup>6131</sup> [account](#).<sup>6132</sup>

4002(a)(2)        **(2) DEFINITION.—**In [this section](#),<sup>6133</sup> the term “advance appropriation” means any [new budget authority](#)<sup>6134</sup> provided in [a bill or joint resolution making appropriations](#)<sup>6135</sup> for fiscal year 2022 that first becomes available for any fiscal year after 2022, or any [new budget authority](#)<sup>6136</sup> provided in [a bill or joint resolution making appropriations](#)<sup>6137</sup> for fiscal year 2023, that first becomes available for any fiscal year after 2023.

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<sup>6128</sup> S. Con. Res. 14, 117th Cong. § 4002(a)(2) (2021) (adopted), *infra* p. 1262, defines “advance appropriation” in the Senate. Cf. S. Con. Res. 14, 117th Cong. § 4003(a)(2), *infra* p. 1267, defining “advance appropriation” in the House.

<sup>6129</sup> S. Con. Res. 14, 117th Cong. § 4002(b) (2021) (adopted), *infra* p. 1263, addresses “Exceptions.”

<sup>6130</sup> S. Con. Res. 14, 117th Cong. § 4002(a)(2) (2021) (adopted), *infra* p. 1262, defines “advance appropriation” in the Senate. Cf. S. Con. Res. 14, 117th Cong. § 4003(a)(2), *infra* p. 1267, defining “advance appropriation” in the House.

<sup>6131</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(7), 2 U.S.C. § 900(c)(7), *supra* p. 980, defines “discretionary appropriations.”

<sup>6132</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>6133</sup> S. Con. Res. 14, 117th Cong. § 4002 (2021) (adopted), *supra* p. 1262, addresses “Point of Order Against Advance Appropriations in the Senate.”

<sup>6134</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>6135</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>6136</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>6137</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.



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4002(b) (b) EXCEPTIONS.—**Advance appropriations**<sup>6138</sup> may be provided —

4002(b)(1) (1) for fiscal years 2023 and 2024 for programs, projects, activities, or **accounts**<sup>6139</sup> identified in the joint explanatory statement of managers accompanying **this resolution**,<sup>6140</sup> under the heading “**Accounts**<sup>6141</sup> Identified for **Advance Appropriations**”<sup>6142</sup> in an aggregate amount not to exceed \$28,852,000,000 in **new budget authority**<sup>6143</sup> in each fiscal year;

4002(b)(2) (2) for the Corporation for Public Broadcasting;

4002(b)(3) (3) for the Department of Veterans Affairs for the Medical Services, Medical Community Care, Medical Support and Compliance, and Medical Facilities **accounts**<sup>6144</sup> of the Veterans Health Administration;

4002(b)(4) (4) for **legislation implementing a bipartisan infrastructure agreement**,<sup>6145</sup> as determined by the Chairman of the Committee on the Budget of the Senate; and

4002(b)(5) (5) for the Department of Health and Human Services for the Indian Health Services and Indian Health Facilities **accounts**<sup>6146</sup> —

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<sup>6138</sup> S. Con. Res. 14, 117th Cong. § 4002(a)(2) (2021) (adopted), *supra* p. 1262, defines “advance appropriation” in the Senate. Cf. S. Con. Res. 14, 117th Cong. § 4003(a)(2), *infra* p. 1267, defining “advance appropriation” in the House.

<sup>6139</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>6140</sup> S. Con. Res. 14, 117th Cong. (2021) (adopted).

<sup>6141</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>6142</sup> S. Con. Res. 14, 117th Cong. § 4002(a)(2) (2021) (adopted), *supra* p. 1262, defines “advance appropriation” in the Senate. Cf. S. Con. Res. 14, 117th Cong. § 4003(a)(2), *infra* p. 1267, defining “advance appropriation” in the House.

<sup>6143</sup> Congressional Budget Act of 1974 § 3(2)(C), 2 U.S.C. § 622(2)(C), *supra* p. 56, defines “new budget authority.”

<sup>6144</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>6145</sup> *E.g.*, Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021).

<sup>6146</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

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- 4002(b)(5)(A) (A) in an amount that is not more than the amount provided for fiscal year 2022 in a bill or joint resolution making appropriations<sup>6147</sup> for fiscal year 2022; and
- 4002(b)(5)(B) (B) in an amount that is not more than the amount provided for fiscal year 2023 in a bill or joint resolution making appropriations<sup>6148</sup> for fiscal year 2023.
- 4002(c) (c) SUPERMAJORITY WAIVER AND APPEAL. —
- 4002(c)(1) (1) WAIVER. — In the Senate, subsection (a)<sup>6149</sup> may be waived or suspended only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.
- 4002(c)(2) (2) APPEAL. — An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under subsection (a).<sup>6150</sup>
- 4002(d) (d) FORM OF POINT OF ORDER. — A point of order under subsection (a)<sup>6151</sup> may be raised by a Senator as provided in section 313(e) of the Congressional Budget Act of 1974 (2 U.S.C. 644(e)).<sup>6152</sup>
- 4002(e) (e) CONFERENCE REPORTS.<sup>6153</sup> — When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a bill or joint

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<sup>6147</sup> Congressional Budget Act of 1974 § 3(5), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>6148</sup> *Id.*

<sup>6149</sup> S. Con. Res. 14, 117th Cong. § 4002(a) (2021) (adopted), *supra* p. 1262, addresses “Point of Order Against Advance Appropriations in the Senate” “In general.”

<sup>6150</sup> *Id.*

<sup>6151</sup> *Id.*

<sup>6152</sup> Congressional Budget Act of 1974 § 313(e), 2 U.S.C. § 644(e), *supra* p. 760, addresses “General Point of Order.”

<sup>6153</sup> Cf. Congressional Budget Act of 1974 § 313(d)(1), 2 U.S.C. § 644(d)(1), *supra* p. 747, which addresses “Conference Reports.”



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resolution, upon a point of order being made by any Senator pursuant to [this section](#),<sup>6154</sup> and such point of order being sustained, such material contained in such conference report or House amendment shall be stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of [this subsection](#)<sup>6155</sup>), no further amendment shall be in order.

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Conveying the President’s fiscal year 2023 budget request to Congress, the Director of the Office of Management and Budget acknowledged this provision, stating:

*Advance Appropriations*

The 2023 Budget freezes most discretionary advance appropriations at the 2024 proposed level, below the limits included in sections 4002 and 4003 for the Senate and the House, respectively, of the Concurrent Resolution on the Budget for Fiscal Year 2022 (S. Con. Res. 14). Those limits apply only to the accounts explicitly specified in the joint explanatory statement of managers accompanying the resolution. Outside of these limits, the Administration would allow discretionary advance appropriations for veterans’ medical care, as is required by the Veterans Health Care Budget Reform and Transparency Act (Public Law 111-81).<sup>6156</sup>

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<sup>6154</sup> [S. Con. Res. 14, 117th Cong. § 4002](#) (2021) (adopted), *supra* p. 1262, addresses “Point of Order Against Advance Appropriations in the Senate.”

<sup>6155</sup> [S. Con. Res. 14, 117th Cong. § 4002\(e\)](#) (2021) (adopted), *supra* p. 1264, addresses “Conference Reports.”

<sup>6156</sup> Letter from Shalanda D. Young to Bernie Sanders (Mar. 28, 2022) (conveying “Significant Presentation and Technical Changes in the Budget of the United States Government Fiscal Year 2023”).

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4003        **SEC. 4003. POINT OF ORDER AGAINST [ADVANCE APPROPRIATIONS](#)<sup>6157</sup> IN THE HOUSE OF REPRESENTATIVES.**

4003(a)        **(a) IN GENERAL.—**In the House of Representatives, except as provided in [subsection \(b\)](#),<sup>6158</sup> any [general appropriation bill](#)<sup>6159</sup> or bill or joint resolution continuing appropriations, or an amendment thereto or conference report thereon, may not provide an [advance appropriation](#).<sup>6160</sup>

4003(b)        **(b) EXCEPTIONS.—**An [advance appropriation](#)<sup>6161</sup> may be provided for programs, activities, or [accounts](#)<sup>6162</sup> identified in lists submitted for printing in the Congressional Record by the chair of the Committee on the Budget—

4003(b)(1)        **(1)** for fiscal year 2023, under the heading “[Accounts](#)<sup>6163</sup> Identified for [Advance Appropriations](#)”<sup>6164</sup> in an aggregate amount not to exceed \$28,852,000,000 in [new budget authority](#), and for fiscal year 2024, [accounts](#)<sup>6165</sup> separately identified under the same heading; and

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<sup>6157</sup> [S. Con. Res. 14, 117th Cong. § 4003\(a\)\(2\)](#) (2021) (adopted), *infra* p. 1267, defines “advance appropriation” in the House. Cf. [S. Con. Res. 14, 117th Cong. § 4002\(a\)\(2\)](#), *supra* p. 1262, defining “advance appropriation” in the Senate.

<sup>6158</sup> [S. Con. Res. 14, 117th Cong. § 4003\(b\)](#) (2021) (adopted), *infra* p. 1266, addresses “Exceptions.”

<sup>6159</sup> [Congressional Budget Act of 1974 § 3\(5\)](#), 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

<sup>6160</sup> [S. Con. Res. 14, 117th Cong. § 4003\(a\)\(2\)](#) (2021) (adopted), *infra* p. 1267, defines “advance appropriation” in the House. Cf. [S. Con. Res. 14, 117th Cong. § 4002\(a\)\(2\)](#), *supra* p. 1262, defining “advance appropriation” in the Senate.

<sup>6161</sup> *Id.*

<sup>6162</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>6163</sup> *Id.*

<sup>6164</sup> [S. Con. Res. 14, 117th Cong. § 4003\(a\)\(2\)](#) (2021) (adopted), *infra* p. 1267, defines “advance appropriation” in the House. Cf. [S. Con. Res. 14, 117th Cong. § 4002\(a\)\(2\)](#), *supra* p. 1262, defining “advance appropriation” in the Senate.

<sup>6165</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

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4003(b)(2) (2) for fiscal year 2023, under the heading “Veterans  
**Accounts**<sup>6166</sup> Identified for **Advance  
Appropriations**”.<sup>6167</sup>

4003(c) (c) DEFINITION.—In **this section**,<sup>6168</sup> the term “advance appropriation” means any new discretionary **budget authority**<sup>6169</sup> provided in a **general appropriation bill**<sup>6170</sup> or bill or joint resolution continuing appropriations for fiscal year 2022, or an amendment thereto or conference report thereon, that first becomes available following fiscal year 2022.

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<sup>6166</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(11)**, 2 U.S.C. § 900(c)(11), *supra* p. 981, defines “account.”

<sup>6167</sup> **S. Con. Res. 14, 117th Cong. § 4003(a)(2)** (2021) (adopted), *infra* p. 1267, defines “advance appropriation” in the House. Cf. **S. Con. Res. 14, 117th Cong. § 4002(a)(2)**, *supra* p. 1262, defining “advance appropriation” in the Senate.

<sup>6168</sup> **S. Con. Res. 14, 117th Cong. § 4003** (2021) (adopted), *supra* p. 1266, addresses “Point of Order Against Advance Appropriations in the House Of Representatives.”

<sup>6169</sup> **Congressional Budget Act of 1974 § 3(2)(A)**, 2 U.S.C. § 622(2)(A), *supra* p. 55, defines “budget authority.”

<sup>6170</sup> **Congressional Budget Act of 1974 § 3(5)**, 2 U.S.C. § 622(5), *supra* p. 58, defines “appropriation Act” by adopting the definition of 1 U.S.C. § 105.

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## **APPENDICES**

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## **BUILD BACK BETTER ACT AND INFLATION REDUCTION ACT OF 2022 COMMUNICATIONS WITH THE PARLIAMENTARIAN**

Apr. 22, 2021 – Initial Discussion

May 10–June 1, 2021 – Immigration

June 1–14, 2021 – Agriculture, Nutrition, and Forestry Listening Tour

June 1–14, 2021 – Environment and Public Works Listening Tour

June 1–18, 2021 – Banking, Housing, and Urban Affairs Listening Tour

June 1–18, 2021 – Indian Affairs Listening Tour

June 3–7, 2021 – Paid Family Leave

June 8–21, 2021 – Homeland Security and Governmental Affairs Listening  
Tour

June 8–25, 2021 – Health, Education, Labor, and Pensions Listening Tour

June 8–25, 2021 – Finance Listening Tour

June 8–July 12, 2021 – Commerce, Science, and Transportation Listening  
Tour

June 17–21, 2021 – Veterans’ Affairs Listening Tour

June 17–21, 2021 – Small Business and Entrepreneurship Listening Tour

July 14–16, 2021 – Child Care, Pre-K, and Medicaid HCBS

July 15–19, 2021 – Paid Leave and Labor-Related Policies

July 21–Aug. 2, 2021 – Paid Leave

July 26–Aug. 5, 2021 – Budget Resolution

July 27–30, 2021 – Rules and Administration Listening Tour

[\[July 28, 2021 – Manchin-Schumer Agreement to Start Budget  
Resolution\]](#)

July 28–Aug. 18, 2021 – Prescription Drugs

[\[Aug. 9, 2021 – S. Con. Res. 14, 117th Cong. \(2021\) submitted &  
discharged\]](#)

[\[Aug. 11, 2021 – S. Con. Res. 14, 117th Cong. \(2021\) passed by the Senate\]](#)

Aug. 16–18, 2021 – Environment and Public Works Methane Fee

Aug. 17–19, 2021 – Energy and Natural Resources Listening Tou

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Aug. 23–Sept. 2, 2021 – Prescription Drugs

[\[Aug. 24, 2021 – S. Con. Res. 14, 117th Cong. \(2021\) passed by the House\]](#)

Aug. 24–Sept. 7, 2021 – Coverage Gap

Aug. 25, 2021 – Carbon Tax

Sept. 1–19, 2021 – Immigration

Sept. 3–7, 2021 – Commerce, Science, and Transportation Listening Tour

Sept. 4–7, 2021 – Environment and Public Works Listening Tour

Sept. 9, 2021 – Anti-Deferral Taxation

Sept. 10–13, 2021 – Homeland Security and Governmental Affairs Listening  
Tour

Sept. 14–17, 2021 – Medicare Vision, Dental, and Hearing

Sept. 21–Oct. 22, 2021 – Veterans Affairs Privilege Scrub

Sept. 24–Oct. 21, 2021 – Tribal Transportation Program Funding

Sept. 26–28, 2021 – Debt Limit

[\[Sept. 27, 2021 – H.R. 5376, 117th Cong. \(2021\) reported by H. Comm. on  
the Budget\]](#)

Sept. 27–29, 2021 – Immigration

Sept. 30, 2021 – Tribal Colleges and Universities and HELP Jurisdiction

Oct. 11, 2021 – Finance Home and Community Based Services and  
Affordable Care Act Privilege Scrub

Oct. 15, 2021 – Refundable Tax Credits Privilege Scrub

Oct. 22, 2021 – Small Business and Entrepreneurship Privilege Scrub

Oct. 23–24, 2021 – Home and Community Based Services Privilege Scrub

Oct. 26–27, 2021 – Transferring NIIT Revenues into the Hospital Insurance  
Trust Fund

Oct. 27, 2021 – Commerce Supply Chain Resilience Office

Oct. 28–29, 2021 – Immigration Fees

Nov. 1–3, 2021 – Homeland Security Privilege Scrub

Nov. 1–3, 2021 – Small Business and Entrepreneurship Privilege Scrub

Nov. 1–3, 2021 – Veterans Affairs Privilege Scrub

Nov. 1–8, 2021 – Transportation and Infrastructure Privilege Scrub

Nov. 1–8, 2021 – Oversight and Reform Privilege Scrub



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Nov. 1-18, 2021 – Agriculture Privilege Scrub  
Nov. 1-18, 2021 – Financial Services Privilege Scrub  
Nov. 4-18, 2021 – Natural Resources Privilege Scrub  
Nov. 4-18, 2021 – Science, Space, and Technology Privilege Scrub  
Nov. 4-18, 2021 – Education and Labor Privilege Scrub  
Nov. 4-18, 2021 – Energy and Commerce Privilege Scrub  
Nov. 5-15, 2021 – Judiciary Privilege Scrub  
Nov. 5-18, 2021 – Ways and Means Privilege Scrub  
Nov. 12-15, 2021 – Veterans Affairs Dem-Only Byrd Bath  
Nov. 12-15, 2021 – Small Business and Entrepreneurship Dem-Only Byrd Bath  
Nov. 16-23, 2021 – Homeland Security and Governmental Affairs Dem-Only Byrd Bath  
Nov. 16-24, 2021 – Banking, Housing, and Urban Affairs Dem-Only Byrd Bath  
Nov. 19-23, 2021 – Agriculture, Nutrition, and Forestry Dem-Only Byrd Bath  
Nov. 21-29, 2021 – Immigration Dem-Only Byrd Bath  
Nov. 22-Dec. 8, 2021 – Health, Education, Labor, and Pensions Dem-Only Byrd Bath  
Nov. 23-Dec. 6, 2021 – Finance Dem-Only Byrd Bath  
Nov. 24-29, 2021 – Commerce, Science, and Transportation Dem-Only Byrd Bath  
Dec. 1-8, 2021 – Indian Affairs Dem-Only Byrd Bath  
Dec. 1-16, 2021 – Immigration Bipartisan Byrd Bath  
Dec. 2-8, 2021 – Environment and Public Works Dem-Only  
Dec. 3, 2021 – Small Business and Entrepreneurship Bipartisan Byrd Bath  
Dec. 3-20, 2021 – Veterans’ Affairs Bipartisan Byrd Bath  
Dec. 3-21, 2021 – Commerce, Science, and Transportation Bipartisan Byrd Bath  
Dec. 4, 2021 – Agriculture, Nutrition, and Forestry Bipartisan Byrd Bath  
Dec. 4, 2021 – Banking, Housing, and Urban Affairs Bipartisan Byrd Bath

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Dec. 4–15, 2021 – Homeland Security and Governmental Affairs Bipartisan Byrd Bath

Dec. 6, 2021 – Judiciary Non-Immigration Dem-Only

Dec. 7–9, 2021 – Energy and Natural Resources Dem-Only

Dec. 10–14, 2021 – Energy and Natural Resources Bipartisan Byrd Bath

Dec. 11, 2021 – Health, Education, Labor, and Pensions Bipartisan Byrd Bath

Dec. 11, 2021 – Environment and Public Works Bipartisan Byrd Bath

Dec. 11, 2021 – Finance Bipartisan Byrd Bath

Dec. 15–17, 2021 – Indian Affairs Bipartisan Byrd Bath

[\[Dec. 19, 2021 – Sen. Manchin announces that he cannot vote for the bill\]](#)

[\[Feb. 1, 2022 – Sen. Manchin declares that Build Back Better is dead\]](#)

Mar. 17–23, 2022 – House Deeming Resolution

June 6–9, 2022 – Finance Dem-Only Byrd Bath

June 16–21, 2022 – Environment and Public Works Dem-Only Byrd Bath

June 16–21, 2022 – Agriculture, Nutrition, and Forestry Dem-Only Byrd Bath

[\[June 30, 2022 – Sen. McConnell tweets “no bipartisan USICA as long as Democrats are pursuing . . . reconciliation”\]](#)

July 6–28, 2022 – Prescription Drug Bipartisan Byrd Bath

[\[July 14, 2022 – Sen. Manchin Says He Won’t Support Climate Spending or Tax Hikes on Wealthy\]](#)

July 22, 2022 – Affordable Care Act Bipartisan Byrd Bath

[\[July 27, 2022 – Sens. Schumer and Manchin Announce Inflation Reduction Act of 2022\]](#)

July 27–Aug. 5, 2022 – Inflation Reduction Act Bipartisan Byrd Bath

July 29–Aug. 5, 2022 – Energy and Natural Resources Bipartisan Byrd Bath

Aug. 1–4, 2022 – Electric Vehicles Dem-Only Byrd Bath

Aug. 2–5, 2022 – Banking, Housing, and Urban Affairs Bipartisan Byrd Bath

Aug. 2–5, 2022 – Agriculture, Nutrition, and Forestry Bipartisan Byrd Bath

Aug. 2–6, 2022 – Environment and Public Works Bipartisan Byrd Bath

Aug. 4–6, 2022 – Finance Committee Bipartisan Byrd Bath

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Aug. 5, 2022 – Privilege Challenge

Aug. 6, 2022 – Reconciliation Floor Questions

Aug. 6, 2022 – Sanders Amendments

Aug. 6-7, 2022 – Senate Floor Consideration of the Inflation Reduction Act  
of 2022

## SENATE BUDGET POINTS OF ORDER

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Congressional Budget Act of 1974, as amended (codified at 2 U.S.C. §§ 601–688)</b>						
<b>Sec. 301(g)—Assumptions.</b> Prohibits more than one set of economic and technical assumptions in a budget resolution.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 301(i)—Social Security.</b> Prohibits consideration of a budget resolution that would decrease the Social Security surplus in any year covered by the resolution.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 302(c)—Appropriations.</b> Prohibits consideration of legislation from the Appropriations Committee that provides new budget authority if the Committee has not yet filed its subcommittee allocations.						
S. Amend. No. 2123, 117th Cong., <a href="#">167 CONG. REC. S5155</a> (daily ed. July 29, 2021) (Leahy-Shelby amendment “[i]n the nature of a substitute”).	<a href="#">167 CONG. REC. S5155</a> (daily ed. July 29, 2021) (statement of Sen. Braun).	<a href="#">167 CONG. REC. S5155</a> (daily ed. July 29, 2021) (statement of Sens. Braun & Leahy).	<a href="#">167 CONG. REC. S5155</a> (daily ed. July 29, 2021) (statement of Sen. Leahy).	<a href="#">167 CONG. REC. S5155</a> (daily ed. July 29, 2021) (vote no. 286) (72-26).	<a href="#">167 CONG. REC. S5155</a> (daily ed. July 29, 2021) (the motion was agreed to and the point of order fell).	
S. Amend. No. 2264, 99th Cong., <a href="#">132 CONG. REC. 18,733</a> (Aug. 1, 1986) (Sasser amendment "To provide emergency assistance to farmers and ranchers adversely affected by this year's drought and excessively hot weather").	<a href="#">132 CONG. REC. 18,735</a> (parliamentary inquiry) (Aug. 1, 1986) (statement of Sen. Harkin).	<a href="#">132 CONG. REC. 18,732–37, 18,740–41</a> (Aug. 1, 1986) (statements of Sens. Harkin & Domenici).			<a href="#">132 CONG. REC. 18,735</a> (Aug. 1, 1986) (the presiding officer responded that a point of order under § 311 would fail because it calls for money in 1987, but points of order might lie under §§ 302(c) and 302(f) of the Budget Act).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 302(f)(2)—Allocations to Committees.</b> Prohibits consideration of legislation that exceeds (1) an authorizing committee’s allocation of budget authority and outlays or (2) an appropriations subcommittee’s sub-allocation of budget authority and outlays.						
S. Amend. No. 1717, 115th Cong., <a href="#">163 CONG. REC. S7707</a> (daily ed. Dec. 1, 2017) (Cantwell amendment “[t]o strike title II.”)	<a href="#">163 CONG. REC. S7711</a> (daily ed. Dec. 1, 2017) (statement by Sen. Murkowski).	<a href="#">163 CONG. REC. S7711</a> (daily ed. Dec. 1, 2017) (statement by Sens. Cantwell & Murkowski).	<a href="#">163 CONG. REC. S7711</a> (daily ed. Dec. 1, 2017) (statement by Sen. Cantwell).	<a href="#">163 CONG. REC. S7711</a> (daily ed. Dec. 1, 2017) (vote no. 301) (48-52).	<a href="#">163 CONG. REC. S7711</a> (daily ed. Dec. 1, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1854, 115th Cong., <a href="#">163 CONG. REC. S7700</a> (daily ed. Dec. 1, 2017) (Brown amendment “[t]o amend the Internal Revenue Code of 1986 to increase the Child Tax Credit, and for other purposes.”)	<a href="#">163 CONG. REC. S7702</a> (daily ed. Dec. 1, 2017) (statement by Sen. Enzi).	<a href="#">163 CONG. REC. S7702</a> (daily ed. Dec. 1, 2017) (statement by Sens. Brown & Enzi).	<a href="#">163 CONG. REC. S7702</a> (daily ed. Dec. 1, 2017) (statement by Sen. Brown).	<a href="#">163 CONG. REC. S7702–03</a> (daily ed. Dec. 1, 2017) (vote no. 295) (48-52).	<a href="#">163 CONG. REC. S7703</a> (daily ed. Dec. 1, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1850, 115th Cong., <a href="#">163 CONG. REC. S7701</a> (daily ed. Dec. 1, 2017) (Rubio amendment “[t]o increase the refundability of the child tax credit, and for other purposes.”)	<a href="#">163 CONG. REC. S7703</a> (daily ed. Dec. 1, 2017) (statement by Sen. Wyden).	<a href="#">163 CONG. REC. S7703</a> (daily ed. Dec. 1, 2017) (statement by Sens. Rubio & Wyden).	<a href="#">163 CONG. REC. S7703</a> (daily ed. Dec. 1, 2017) (statement by Sen. Rubio).	<a href="#">163 CONG. REC. S7703</a> (daily ed. Dec. 1, 2017) (vote no. 296) (29-71).	<a href="#">163 CONG. REC. S7703</a> (daily ed. Dec. 1, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 389, 115th Cong., <a href="#">163 CONG. REC. S4370</a> (daily ed. July 27, 2017) (Strange amendment “[t]o provide for premium assistance for low-income individuals.”)	<a href="#">163 CONG. REC. S4386</a> (daily ed. July 27, 2017) (statement of Sen. Schatz).	<a href="#">163 CONG. REC. S4386</a> (daily ed. July 27, 2017) (statement of Sens. Strange & Schatz).	<a href="#">163 CONG. REC. S4386</a> (daily ed. July 27, 2017) (statement of Sen. Strange).	<a href="#">163 CONG. REC. S4386–87</a> (daily ed. July 27, 2017) (vote no. 174) (50-50).	<a href="#">163 CONG. REC. S4387</a> (daily ed. July 27, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3395, 114th Cong., <a href="#">162 CONG. REC. S1192</a> (daily ed. Mar. 2, 2016) (Wyden amendment “[t]o provide for comprehensive provisions for the prevention and enforcement of opioid abuse and treatment of opioid addiction.”)	<a href="#">162 CONG. REC. S1204</a> (daily ed. Mar. 2, 2016) (statement of Sen. Enzi).	<a href="#">162 CONG. REC. S1204</a> (daily ed. Mar. 2, 2016) (statement of Sens. Wyden & Enzi).	<a href="#">162 CONG. REC. S1204</a> (daily ed. Mar. 2, 2016) (statement of Sen. Wyden).	<a href="#">162 CONG. REC. S1204</a> (daily ed. Mar. 2, 2016) (vote no. 29) (46-50).	<a href="#">162 CONG. REC. S1204</a> (daily ed. Mar. 2, 2016) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2893, 114th Cong., <a href="#">161 CONG. REC. S8343</a> (daily ed. Dec. 3, 2015) (Casey amendment “[t]o amend the Internal Revenue Code of 1986 to establish a credit for married couples who are both employed and have young children, and for other purposes.”)	<a href="#">161 CONG. REC. S8344</a> (daily ed. Dec. 3, 2015) (statement of Sen. Enzi).	<a href="#">161 CONG. REC. S8343–44</a> (daily ed. Dec. 3, 2015) (statement of Sens. Casey & Enzi).	<a href="#">161 CONG. REC. S8344</a> (daily ed. Dec. 3, 2015) (statement of Sen. Casey).	<a href="#">161 CONG. REC. S8344</a> (daily ed. Dec. 3, 2015) (vote no. 315) (46-54).	<a href="#">161 CONG. REC. S8344</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2919, 114th Cong., <a href="#">161 CONG. REC. S8354</a> (daily ed. Dec. 3, 2015) (Baldwin amendment “[t]o ensure that individuals can keep their health insurance coverage.”)	<a href="#">161 CONG. REC. S8355</a> (daily ed. Dec. 3, 2015) (statement of Sen. Enzi).	<a href="#">161 CONG. REC. S8355</a> (daily ed. Dec. 3, 2015) (statement of Sens. Baldwin & Enzi).	<a href="#">161 CONG. REC. S8355</a> (daily ed. Dec. 3, 2015) (statement of Sen. Baldwin).	<a href="#">161 CONG. REC. S8355</a> (daily ed. Dec. 3, 2015) (vote no. 327) (45-54).	<a href="#">161 CONG. REC. S8355</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2883, 114th Cong., <a href="#">161 CONG. REC. S8342</a> (daily ed. Dec. 3, 2015) (Brown-Wyden amendment “[t]o maintain the 100 percent FMAP for the Medicaid expansion population.”)	<a href="#">161 CONG. REC. S8343</a> (daily ed. Dec. 3, 2015) (statement of Sen. Enzi).	<a href="#">161 CONG. REC. S8342–43</a> (daily ed. Dec. 3, 2015) (statement of Sens. Brown & Enzi).	<a href="#">161 CONG. REC. S8343</a> (daily ed. Dec. 3, 2015) (statement of Sen. Brown).	<a href="#">161 CONG. REC. S8343</a> (daily ed. Dec. 3, 2015) (vote no. 313) (45-55).	<a href="#">161 CONG. REC. S8343</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2892, 114th Cong., <a href="#">161 CONG. REC. S8345</a> (daily ed. Dec. 3, 2015) (Shaheen amendment “[t]o improve mental health and substance use prevention and treatment.”).	<a href="#">161 CONG. REC. S8345</a> (daily ed. Dec. 3, 2015) (statement of Sen. Enzi).	<a href="#">161 CONG. REC. S8345</a> (daily ed. Dec. 3, 2015) (statement of Sens. Shaheen & Enzi).	<a href="#">161 CONG. REC. S8345</a> (daily ed. Dec. 3, 2015) (statement of Sen. Shaheen).	<a href="#">161 CONG. REC. S8345</a> (daily ed. Dec. 3, 2015) (vote no. 317) (47-52).	<a href="#">161 CONG. REC. S8345</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2893, 114th Cong., <a href="#">161 CONG. REC. S8343</a> (daily ed. Dec. 3, 2015) (Casey amendment “[t]o amend the Internal Revenue Code of 1986 to establish a credit for married couples who are both employed and have young children, and for other purposes.”).	<a href="#">161 CONG. REC. S8344</a> (daily ed. Dec. 3, 2015) (statement of Sen. Enzi).	<a href="#">161 CONG. REC. S8343–44</a> (daily ed. Dec. 3, 2015) (statement of Sens. Casey & Enzi).	<a href="#">161 CONG. REC. S8344</a> (daily ed. Dec. 3, 2015) (statement of Sen. Casey).	<a href="#">161 CONG. REC. S8344</a> (daily ed. Dec. 3, 2015) (vote no. 315) (46-54).	<a href="#">161 CONG. REC. S8344</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2918, 114th Cong., <a href="#">161 CONG. REC. S8355</a> (daily ed. Dec. 3, 2015) (Murphy amendment “[t]o protect victims of violence or disease, veterans, workers who have lost their health insurance and their jobs, and other vulnerable populations from the repeal of the advanced premium tax credit.”)	<a href="#">161 CONG. REC. S8355</a> (daily ed. Dec. 3, 2015) (statement of Sen. Enzi).	<a href="#">161 CONG. REC. S8355</a> (daily ed. Dec. 3, 2015) (statement of Sens. Murphy & Enzi).	<a href="#">161 CONG. REC. S8356</a> (daily ed. Dec. 3, 2015) (statement of Sen. Murphy).	<a href="#">161 CONG. REC. S8356</a> (daily ed. Dec. 3, 2015) (vote no. 328) (46-53).	<a href="#">161 CONG. REC. S8356</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2907, 114th Cong., <a href="#">161 CONG. REC. S8348</a> (daily ed. Dec. 3, 2015) (Bennet amendment “[t]o provide additional amounts to the Department of Veterans Affairs to increase the access of veterans to care and improve the physical infrastructure of the Department of Veterans Affairs and to impose a fair share tax on high-income taxpayers.”)	<a href="#">161 CONG. REC. S8349</a> (daily ed. Dec. 3, 2015) (statement of Sen. Enzi).	<a href="#">161 CONG. REC. S8348–49</a> (daily ed. Dec. 3, 2015) (statement of Sens. Bennet & Enzi).	<a href="#">161 CONG. REC. S8349</a> (daily ed. Dec. 3, 2015) (statement of Sen. Bennet).	<a href="#">161 CONG. REC. S8349–50</a> (daily ed. Dec. 3, 2015) (vote no. 322) (47-52).	<a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<a href="#">A bill to temporarily extend the transaction account guarantee program, and for other purposes</a> , S. 3637, 112th Cong., (as reported by S. Comm. on Banking, Hous. & Urb. Affs. on Dec. 13, 2012).	<a href="#">158 CONG. REC. S8001</a> (daily ed. Dec. 13, 2012) (statement of Sen. Toomey).	<a href="#">158 CONG. REC. S8002–03</a> (daily ed. Dec. 13, 2012) (statements of Sens. Toomey, Johnson, Corker, Wicker & Sessions).	<a href="#">158 CONG. REC. S8002</a> (daily ed. Dec. 13, 2012) (statement of Sen. Johnson).	<a href="#">158 CONG. REC. S8003–04</a> (daily ed. Dec. 13, 2012) (vote no. 227) (50-42).	<a href="#">158 CONG. REC. S8004</a> (daily ed. Dec. 13, 2012) (the motion was not agreed to, the point of order was sustained, and the motion to invoke cloture on S. 3637 was withdrawn).	
S. Amend. No. 3073, 112th Cong., <a href="#">158 CONG. REC. S7284</a> (daily ed. Nov. 30, 2012) (Nelson amendment “[t]o repeal the requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans’ dependency and indemnity compensation”).	<a href="#">158 CONG. REC. S7284</a> (daily ed. Nov. 30, 2012) (statement of Sen. Corker).	<a href="#">158 CONG. REC. S7284</a> (daily ed. Nov. 30, 2012) (statements of Sens. Corker & Nelson).	<a href="#">158 CONG. REC. S7284</a> (daily ed. Nov. 30, 2012) (statement of Sen. Nelson).	<a href="#">158 CONG. REC. S7284</a> (daily ed. Nov. 30, 2012) (vote no. 216) (58-34).	<a href="#">158 CONG. REC. S7285</a> (daily ed. Nov. 30, 2012) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">158 CONG. REC. S7285</a> (daily ed. Nov. 30, 2012) (statement of Sen. Levin).



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2875, 112th Cong., <a href="#">158 CONG. REC. S6749–59</a> (daily ed. Nov. 26, 2012) (Reid amendment “[i]n the nature of a substitute”).	<a href="#">158 CONG. REC. S6890</a> (daily ed. Nov. 26, 2012) (statement of Sen. Sessions).	<a href="#">158 CONG. REC. S6890</a> (daily ed. Nov. 26, 2012) (statements of Sens. Sessions & Tester).	<a href="#">158 CONG. REC. S6890</a> (daily ed. Nov. 26, 2012) (statement of Sen. Tester).	<a href="#">158 CONG. REC. S6890</a> (daily ed. Nov. 26, 2012) (vote no. 204) (50-44).	<a href="#">158 CONG. REC. S6890</a> (daily ed. Nov. 26, 2012) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2789, 112th Cong., <a href="#">158 CONG. REC. S6233–37</a> (daily ed. Sep. 11, 2012) (Murray amendment “[i]n the nature of a substitute”).	<a href="#">158 CONG. REC. S6396</a> (daily ed. Sep. 19, 2012) (statement of Sen. Sessions).	<a href="#">158 CONG. REC. S6396–04</a> (daily ed. Sep. 19, 2012) (statements of Sens. Sessions, Durbin, Udall, Coburn, Nelson & Murray).	<a href="#">158 CONG. REC. S6396</a> (daily ed. Sep. 19, 2012) (statement of Sen. Durbin).	<a href="#">158 CONG. REC. S6404</a> (daily ed. Sep. 19, 2012) (vote no. 193) (58-40).	<a href="#">158 CONG. REC. S6405</a> (daily ed. Sep. 19, 2012) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 4214, 111th Cong., <a href="#">156 CONG. REC. S4182</a> (daily ed. May 25, 2010) (McCain amendment “[t]o provide for National Guard support to secure the southern land border of the United States”).	<a href="#">156 CONG. REC. S4479</a> (daily ed. May 27, 2010) (statement of Sen. Schumer).	<a href="#">156 CONG. REC. S4478–79</a> (daily ed. May 27, 2010) (statements of Sens. Schumer & McCain).	<a href="#">156 CONG. REC. S4479</a> (daily ed. May 27, 2010) (statement of Sen. McCain).	<a href="#">156 CONG. REC. S4479</a> (daily ed. May 27, 2010) (vote no. 165) (51-46).	<a href="#">156 CONG. REC. S4479</a> (daily ed. May 27, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3739, 111th Cong., <a href="#">156 CONG. REC. S2816–973</a> (daily ed. Apr. 29, 2010) (Dodd amendment “[i]n the nature of a substitute”).	<a href="#">156 CONG. REC. S4077</a> (daily ed. May 20, 2010) (statement of Sen. Sessions).	<a href="#">156 CONG. REC. S4077</a> (daily ed. May 20, 2010) (statements of Sens. Sessions & Dodd).	<a href="#">156 CONG. REC. S4077</a> (daily ed. May 20, 2010) (statement of Sen. Dodd).	<a href="#">156 CONG. REC. S4077</a> (daily ed. May 20, 2010) (vote no. 161) (60-39).	<a href="#">156 CONG. REC. S4077</a> (daily ed. May 20, 2010) (the motion was agreed to and the point of order fell).	<a href="#">156 CONG. REC. S4077</a> (daily ed. May 20, 2010) (statement of Sen. Murray).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2648, 111th Cong., <a href="#">155 CONG. REC. S10272</a> (daily ed. Oct. 8, 2009) (Ensign amendment “[t]o provide additional funds for the State Criminal Alien Assistance Program by reducing corporate welfare programs”).	<a href="#">155 CONG. REC. S11171</a> (daily ed. Nov. 5, 2009) (statement of Sen. Mikulski).	<a href="#">155 CONG. REC. S11171</a> (daily ed. Nov. 5, 2009) (statements of Sens. Mikulski & Ensign).	<a href="#">155 CONG. REC. S11171</a> (daily ed. Nov. 5, 2009) (statement of Sen. Ensign).	<a href="#">155 CONG. REC. S11171–72</a> (daily ed. Nov. 5, 2009) (vote no. 339) (32–67).	<a href="#">155 CONG. REC. S11172</a> (daily ed. Nov. 5, 2009) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2667, 111th Cong., <a href="#">155 CONG. REC. S10343</a> (daily ed. Oct. 13, 2009) (Coburn amendment “[t]o reduce waste and abuse at the Department of Commerce”).	<a href="#">155 CONG. REC. S11170</a> (daily ed. Nov. 5, 2009) (statement of Sen. Mikulski).	<a href="#">155 CONG. REC. S11170</a> (daily ed. Nov. 5, 2009) (statements of Sens. Mikulski & Coburn).	<a href="#">155 CONG. REC. S11170</a> (daily ed. Nov. 5, 2009) (statement of Sen. Coburn).	<a href="#">155 CONG. REC. S11170</a> (daily ed. Nov. 5, 2009) (vote no. 337) (42–57).	<a href="#">155 CONG. REC. S11170</a> (daily ed. Nov. 5, 2009) (the motion was rejected, the point of order is sustained, and the amendment fell).	<a href="#">155 CONG. REC. S11170</a> (daily ed. Nov. 5, 2009) (statement of Sen. Boxer).
S. Amend. No. 2558, 111th Cong., <a href="#">155 CONG. REC. S9906</a> (daily ed. Sept. 29, 2009) (McCain amendment “[t]o strike amounts available for procurement of C-17 aircraft in excess of the amount requested by the President in the budget for fiscal year 2010 and to make such amounts available instead for operation and maintenance in accordance with amounts requested by the President in that budget and for Operation and Maintenance, Army, for overseas contingent operations”).	<a href="#">155 CONG. REC. S9971</a> (daily ed. Sept. 30, 2009) (statement of Sen. Inouye).	<a href="#">155 CONG. REC. S9971</a> (daily ed. Sept. 30, 2009) (statements of Sens. Inouye & McCain).	<a href="#">155 CONG. REC. S9971</a> (daily ed. Sept. 30, 2009) (statement of Sen. McCain).	<a href="#">155 CONG. REC. S9971</a> (daily ed. Sept. 30, 2009) (vote no. 303) (34–64).	<a href="#">155 CONG. REC. S9971</a> (daily ed. Sept. 30, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">155 CONG. REC. S9971</a> (daily ed. Sept. 30, 2009) (statement of Sen. Murray).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2276, 111th Cong., <a href="#">155 CONG. REC. S8663</a> (daily ed. Aug. 4, 2009) (Sanders amendment “[t]o modify the amount made available for the Farm Service Agency”).	<a href="#">155 CONG. REC. S8726</a> (daily ed. Aug. 4, 2009) (statement of Sen. Brownback).	<a href="#">155 CONG. REC. S8726</a> (daily ed. Aug. 4, 2009) (statements of Sens. Brownback & Sanders).	<a href="#">155 CONG. REC. S8726</a> (daily ed. Aug. 4, 2009) (statement of Sen. Sanders).	<a href="#">155 CONG. REC. S8727</a> (daily ed. Aug. 4, 2009) (vote no. 260) (60-37).	<a href="#">155 CONG. REC. S8727</a> (daily ed. Aug. 4, 2009) (the motion was agreed to and the point of order was rendered moot).	
To restore sums to the Highway Trust Fund, and for other purposes, H.R.3357, 111th Cong.; <a href="#">155 CONG. REC. S8512</a> (daily ed. July 30, 2009).	<a href="#">155 CONG. REC. S8512</a> (daily ed. July 30, 2009) (statement of Sen. Vitter).	<a href="#">155 CONG. REC. S8530–31</a> (daily ed. July 30, 2009) (statements of Sens. Vitter, Inhofe & Boxer).	<a href="#">155 CONG. REC. S8512</a> (daily ed. July 30, 2009) (statement of Sen. Boxer).	<a href="#">155 CONG. REC. S8531</a> (daily ed. July 30, 2009) (vote no. 253) (71-26).	<a href="#">155 CONG. REC. S8531</a> (daily ed. July 30, 2009) (the motion was agreed to and the point of order fell).	
S. Amend. No. 1904, 111th Cong., <a href="#">155 CONG. REC. S8517</a> (daily ed. July 30, 2009) (Bond amendment “[t]o repeal a certain provision of the SAFETEA-LU”).	<a href="#">155 CONG. REC. S8530</a> (daily ed. July 30, 2009) (statement of Sen. Durbin).	<a href="#">155 CONG. REC. S8530</a> (daily ed. July 30, 2009) (statements of Sens. Durbin & Bond).	<a href="#">155 CONG. REC. S8530</a> (daily ed. July 30, 2009) (statement of Sen. Bond).	<a href="#">155 CONG. REC. S8530</a> (daily ed. July 30, 2009) (vote no. 251) (34-63).	<a href="#">155 CONG. REC. S8530</a> (daily ed. July 30, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1862, 111th Cong., <a href="#">155 CONG. REC. S8183</a> (daily ed. July 28, 2009) (Alexander amendment “[t]o limit disbursement of additional funds under the Troubled Asset Relief Program to certain automobile manufacturers” and for other purposes).	<a href="#">155 CONG. REC. S8223</a> (daily ed. July 29, 2009) (statement of Sen. Dorgan).	<a href="#">155 CONG. REC. S8223–25</a> (daily ed. July 29, 2009) (statements of Sens. Dorgan, Durbin, Levin, Stabenow & Alexander).	<a href="#">155 CONG. REC. S8223</a> (daily ed. July 29, 2009) (statement of Sen. Alexander).	<a href="#">155 CONG. REC. S8225</a> (daily ed. July 29, 2009) (vote no. 244) (38-59).	<a href="#">155 CONG. REC. S8225</a> (daily ed. July 29, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">155 CONG. REC. S8225</a> (daily ed. July 29, 2009) (statement of Sen. Dorgan).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1062, 111th Cong., <a href="#">155 CONG. REC. S5362–63</a> (daily ed. May 12, 2009) (Sanders amendment “[t]o establish a national consumer credit usury rate”).	<a href="#">155 CONG. REC. S5423</a> (daily ed. May 13, 2009) (statement of Sen. Shelby).	<a href="#">155 CONG. REC. S5423</a> (daily ed. May 13, 2009) (statements of Sens. Shelby & Sanders).	<a href="#">155 CONG. REC. S5423</a> (daily ed. May 13, 2009) (statement of Sen. Sanders).	<a href="#">155 CONG. REC. S5423</a> (daily ed. May 13, 2009) (vote no. 191) (33-60).	<a href="#">155 CONG. REC. S5423</a> (daily ed. May 13, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1085, 111th Cong., <a href="#">155 CONG. REC. S5360–61</a> (daily ed. May 12, 2009) (Gregg amendment “[t]o enhance public knowledge regarding the national debt by requiring the publication of the facts about the national debt”).	<a href="#">155 CONG. REC. S5424</a> (daily ed. May 13, 2009) (statement of Sen. Sanders).	<a href="#">155 CONG. REC. S5424</a> (daily ed. May 13, 2009) (statements of Sens. Sanders & Gregg).	<a href="#">155 CONG. REC. S5424</a> (daily ed. May 13, 2009) (statement of Sen. Gregg).	<a href="#">155 CONG. REC. S5424</a> (daily ed. May 13, 2009) (vote no. 192) (59-35).	<a href="#">155 CONG. REC. S5424</a> (daily ed. May 13, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 688, 111th Cong., <a href="#">155 CONG. REC. S3637</a> (daily ed. Mar. 24s, 2009) (Crapo amendment “[t]o increase the borrowing authority of the Federal Deposit Insurance Corporation, and for other purposes”).	<a href="#">155 CONG. REC. S3760</a> (daily ed. Mar. 25, 2009) (statement of Sen. Mikulski).	<a href="#">155 CONG. REC. S3760</a> (daily ed. Mar. 25, 2009) (statements of Sens. Mikulski & Crapo).	<a href="#">155 CONG. REC. S3760</a> (daily ed. Mar. 25, 2009) (statement of Sen. Crapo).	<a href="#">155 CONG. REC. S3760</a> (daily ed. Mar. 25, 2009) (vote no. 110) (48-49).	<a href="#">155 CONG. REC. S3760</a> (daily ed. Mar. 25, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 635, 111th Cong., <a href="#">155 CONG. REC. S2754</a> (daily ed. Mar. 4, 2009) (Thune amendment “[t]o provide funding for the Emergency Fund for Indian Safety and Health, with an offset”).	<a href="#">155 CONG. REC. S2800</a> (daily ed. Mar. 5, 2009) (statement of Sen. Feinstein).	<a href="#">155 CONG. REC. S2800</a> (daily ed. Mar. 5, 2009) (statements of Sens. Feinstein, Dorgan & Thune).	<a href="#">155 CONG. REC. S2800</a> (daily ed. Mar. 5, 2009) (statement of Sen. Thune).	<a href="#">155 CONG. REC. S2814</a> (daily ed. Mar. 5, 2009) (vote no. 84) (26-68).	<a href="#">155 CONG. REC. S2814</a> (daily ed. Mar. 5, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">155 CONG. REC. S2814</a> (daily ed. Mar. 5, 2009) (statement of Sen. Cochran).

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S. Amend. No. 353, 111th Cong., <a href="#">155 CONG. REC. S1601-09</a> (daily ed. Feb. 4, 2009) (Ensign amendment “[i]n the nature of a substitute”).	<a href="#">155 CONG. REC. S1662</a> (daily ed. Feb. 5, 2009) (statement of Sen. Baucus).	<a href="#">155 CONG. REC. S1662</a> (daily ed. Feb. 5, 2009) (statements of Sens. Baucus & Ensign).	<a href="#">155 CONG. REC. S1662</a> (daily ed. Feb. 5, 2009) (statement of Sen. Ensign).	<a href="#">155 CONG. REC. S1662</a> (daily ed. Feb. 5, 2009) (vote no. 48) (35-62).	<a href="#">155 CONG. REC. S1662</a> (daily ed. Feb. 5, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 262, 111th Cong., <a href="#">155 CONG. REC. S1499</a> (daily ed. Feb. 4, 2009) (Inhofe amendment “[t]o appropriate, with an offset, \$5,232,000,000 for procurement for the Department of Defense to reconstitute military units to an acceptable readiness rating and to restock prepositioned assets and war reserve material”).	<a href="#">155 CONG. REC. S1526</a> (daily ed. Feb. 4, 2009) (statement of Sen. Baucus).	<a href="#">155 CONG. REC. S1526</a> (daily ed. Feb. 4, 2009) (statements of Sens. Baucus & Inhofe).	<a href="#">155 CONG. REC. S1526</a> (daily ed. Feb. 4, 2009) (statement of Sen. Inhofe).	<a href="#">155 CONG. REC. S1526</a> (daily ed. Feb. 4, 2009) (vote no. 41) (38-59).	<a href="#">155 CONG. REC. S1526</a> (daily ed. Feb. 4, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1592, 108th Cong., <a href="#">149 CONG. REC. S11231</a> (daily ed. Sept. 9, 2003) (Reed amendment “[t]o increase funding for immunization services”).	<a href="#">149 CONG. REC. S11232</a> (daily ed. Sept. 9, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11272</a> (daily ed. Sept. 10, 2003) (statements of Sens. Reed & Specter).	<a href="#">149 CONG. REC. S11232</a> (daily ed. Sept. 9, 2003) (statement of Sen. Reed).	<a href="#">149 CONG. REC. S11273</a> (daily ed. Sept. 10, 2003) (vote no. 337) (47-49).	<a href="#">149 CONG. REC. S11273</a> (daily ed. Sept. 10, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1554, 108th Cong., <a href="#">149 CONG. REC. S11040</a> (daily ed. Sept. 3, 2003) (Dayton amendment “[t]o increase funding for a part B of the individuals with Disabilities Education Act”).	<a href="#">149 CONG. REC. S11015</a> (daily ed. Sept. 3, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11015</a> (daily ed. Sept. 3, 2003) (statements of Sens. Specter & Reid).	<a href="#">149 CONG. REC. S11015</a> (daily ed. Sept. 3, 2003) (statement of Sen. Reid).	<a href="#">149 CONG. REC. S11018</a> (daily ed. Sept. 3, 2003) (vote no. 324) (42-54).	<a href="#">149 CONG. REC. S11018</a> (daily ed. Sept. 3, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	

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S. Amend. No. 1368, 108th Cong., <a href="#">149 CONG. REC. S9851</a> (daily ed. July 24, 2003) (Specter amendment “[t]o increase the funding for discretionary grants for use in high-threat urban areas”).	<a href="#">149 CONG. REC. S9853</a> (daily ed. July 24, 2003) (statement of Sen. Cochran).	<a href="#">149 CONG. REC. S9853–56</a> (daily ed. July 24, 2003) (statements of Sens. Cochran, Kennedy, Clinton, Lautenberg & Specter).	<a href="#">149 CONG. REC. S9853</a> (daily ed. July 24, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S9856</a> (daily ed. July 24, 2003) (vote no. 301) (50-46).	<a href="#">149 CONG. REC. S9856</a> (daily ed. July 24, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S9856</a> (daily ed. July 24, 2003) (statement of Sen. Cochran).
S. Amend. No. 1372, 108th Cong., <a href="#">149 CONG. REC. S9861</a> (daily ed. July 24, 2003) (Reed-Sarbanes-Clinton amendment “for grants to public transit agencies to enhance public transportation security against terrorist threats”).	<a href="#">149 CONG. REC. S9864</a> (daily ed. July 24, 2003) (statement of Sen. Cochran).	<a href="#">149 CONG. REC. S9864</a> (daily ed. July 24, 2003) (statements of Sens. Cochran & Reed).	<a href="#">149 CONG. REC. S9864</a> (daily ed. July 24, 2003) (statement of Sen. Reed).	<a href="#">149 CONG. REC. S9867</a> (daily ed. July 24, 2003) (vote no. 304) (44-50).	<a href="#">149 CONG. REC. S9867</a> (daily ed. July 24, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1363, 108th Cong., <a href="#">149 CONG. REC. S9832</a> (daily ed. July 24, 2003) (Dodd-Stabenow amendment “[t]o fund . . . firefighters, law enforcement personnel, and emergency medical personnel . . . by reducing the 2003 tax breaks for individuals with annual income in excess of \$1,000,000”).	<a href="#">149 CONG. REC. S9837</a> (daily ed. July 24, 2003) (statement of Sen. Cochran).	<a href="#">149 CONG. REC. S9837–46</a> (daily ed. July 24, 2003) (statements of Sens. Cochran, Stabenow, Stevens, Reid, Sarbanes, Lieberman, Byrd & Dodd).	<a href="#">149 CONG. REC. S9837</a> (daily ed. July 24, 2003) (statement of Sen. Dodd).	<a href="#">146 CONG. REC. S9846–47</a> (daily ed. July 24, 2003) (vote no. 299) (41-54).	<a href="#">146 CONG. REC. S9847</a> (daily ed. July 24, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">146 CONG. REC. S9847</a> (daily ed. July 24, 2003) (statement of Sen. Cochran).
S. Amend. No. 1346, 108th Cong., <a href="#">149 CONG. REC. S9807</a> (daily ed. July 23, 2003) (Mikulski amendment “[t]o increase the amount of the appropriation for firefighter assistance grants by \$150,000,000”).	<a href="#">149 CONG. REC. S9772</a> (daily ed. July 23, 2003) (statement of Sen. Cochran).	<a href="#">149 CONG. REC. S9772</a> (daily ed. July 23, 2003) (statements of Sens. Cochran, Dodd Byrd, Mikulski & Clinton).	<a href="#">149 CONG. REC. S9772</a> (daily ed. July 23, 2003) (statement of Sen. Mikulski).	<a href="#">149 CONG. REC. S9774–75</a> (daily ed. July 23, 2003) (vote no. 296) (48-49).	<a href="#">149 CONG. REC. S9775</a> (daily ed. July 23, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S9775</a> (daily ed. July 23, 2003) (statement of Sen. Cochran).

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S. Amend. No. 1351, 108th Cong., <a href="#">149 CONG. REC. S9781</a> (daily ed. July 23, 2003) (Schumer amendment “to increase the number of border personnel at the northern border of the United States by the end of fiscal year 2004”).	<a href="#">149 CONG. REC. S9782</a> (daily ed. July 23, 2003) (statement of Sen. Cochran).	<a href="#">149 CONG. REC. S9782</a> (daily ed. July 23, 2003) (statements of Sens. Cochran & Schumer).	<a href="#">149 CONG. REC. S9782</a> (daily ed. July 23, 2003) (statement of Sen. Schumer).	<a href="#">149 CONG. REC. S9783</a> (daily ed. July 23, 2003) (vote no. 298) (45-51).	<a href="#">149 CONG. REC. S9783</a> (daily ed. July 23, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S9783</a> (daily ed. July 23, 2003) (statement of Sen. Cochran).
S. Amend. No. 1327, 108th Cong., <a href="#">149 CONG. REC. S9753</a> (daily ed. July 23, 2003) (Murray amendment “[t]o increase funding for emergency management performance grants”).	<a href="#">149 CONG. REC. S9756</a> (daily ed. July 23, 2003) (statement of Sen. Cochran).	<a href="#">149 CONG. REC. S9756</a> (daily ed. July 23, 2003) (statements of Sens. Cochran & Murray).	<a href="#">149 CONG. REC. S9756</a> (daily ed. July 23, 2003) (statement of Sen. Murray).	<a href="#">149 CONG. REC. S9756</a> (daily ed. July 23, 2003) (vote no. 293) (45-53).	<a href="#">149 CONG. REC. S9756</a> (daily ed. July 23, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S9756</a> (daily ed. July 23, 2003) (statement of Sen. Reid).
S. Amend. No. 1317, 108th Cong., <a href="#">149 CONG. REC. S9629</a> (daily ed. July 21, 2003) (Byrd amendment “[t]o fulfill Homeland Security promises”).	<a href="#">149 CONG. REC. S9695</a> (daily ed. July 22, 2003) (statement of Sen. Cochran).	<a href="#">149 CONG. REC. S9695</a> (daily ed. July 22, 2003) (statements of Sens. Cochran & Byrd).	<a href="#">149 CONG. REC. S9695</a> (daily ed. July 22, 2003) (statement of Sen. Byrd).	<a href="#">149 CONG. REC. S9697</a> (daily ed. July 22, 2003) (vote no. 291) (43-50).	<a href="#">149 CONG. REC. S9697</a> (daily ed. July 22, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<a href="#">Medicare Prescription Drug, Improvement, and Modernization Act of 2003: Conference Report to Accompany H.R. 1</a> , H.R. REP. 108-391 (2003) (Conf. Rep.).	<a href="#">149 CONG. REC. S15698</a> (daily ed. Nov. 24, 2003) (statement of Sen. Daschle).	<a href="#">149 CONG. REC. S15698–711</a> (daily ed. Nov. 24, 2003) (statements of Sens. Daschle, Domenici, Nickles, Reid, Graham, Boxer, Dodd, Santorum, Corzine, Grassley, Durbin, Breaux & Frist).	<a href="#">149 CONG. REC. S15698</a> (daily ed. Nov. 24, 2003) (statement of Sen. Frist on behalf of Sens. Grassley, Baucus & Breaux).	<a href="#">149 CONG. REC. S15711</a> (daily ed. Nov. 24, 2003) (vote no. 458) (61-39).	<a href="#">149 CONG. REC. S15711</a> (daily ed. Nov. 24, 2003) (the motion was agreed to and the point of order fell).	<a href="#">149 CONG. REC. S15711</a> (daily ed. Nov. 24, 2003) (statement of Sen. Frist).

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S. Amend. No. 3632, 108th Cong., <a href="#">150 CONG. REC. S9172</a> (daily ed. Sept. 14, 2004) (Clinton amendment “[t]o appropriate an additional \$625,000,000 for discretionary grants for high-threat, high-density urban areas”).	<a href="#">150 CONG. REC. S9182</a> (daily ed. Sept. 14, 2004) (statement of Sen. Cochran).	<a href="#">150 CONG. REC. S9182</a> (daily ed. Sept. 14, 2004) (statements of Sens. Cochran & Clinton).	<a href="#">150 CONG. REC. S9182</a> (daily ed. Sept. 14, 2004) (statement of Sen. Clinton).	<a href="#">150 CONG. REC. S9182</a> (daily ed. Sept. 14, 2004) (vote no. 178) (44-50).	<a href="#">150 CONG. REC. S9182</a> (daily ed. Sept. 14, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3655, 108th Cong., <a href="#">150 CONG. REC. S9205</a> (daily ed. Sept. 14, 2004) (Schumer amendment “[t]o appropriate an additional \$350,000,000 to improve the security at points of entry into the United States”).	<a href="#">150 CONG. REC. S9206</a> (daily ed. Sept. 14, 2004) (statement of Sen. Cochran).	<a href="#">150 CONG. REC. S9206</a> (daily ed. Sept. 14, 2004) (statements of Sens. Cochran & Schumer).	<a href="#">150 CONG. REC. S9206</a> (daily ed. Sept. 14, 2004) (statement of Sen. Schumer).	<a href="#">150 CONG. REC. S9208</a> (daily ed. Sept. 14, 2004) (vote no. 182) (44-49).	<a href="#">150 CONG. REC. S9208</a> (daily ed. Sept. 14, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S9208</a> (daily ed. Sept. 14, 2004) (statement of Sen. Cochran).
S. Amend. No. 3656, 108th Cong., <a href="#">150 CONG. REC. S9204</a> (daily ed. Sept. 14, 2004) (Schumer amendment “[t]o increase funding for rain and transit security grants”).	<a href="#">150 CONG. REC. S9205</a> (daily ed. Sept. 14, 2004) (statement of Sen. Cochran).	<a href="#">150 CONG. REC. S9205</a> (daily ed. Sept. 14, 2004) (statements of Sens. Cochran & Schumer).	<a href="#">150 CONG. REC. S9205</a> (daily ed. Sept. 14, 2004) (statement of Sen. Schumer).	<a href="#">150 CONG. REC. S9207</a> (daily ed. Sept. 14, 2004) (vote no. 181) (43-51).	<a href="#">150 CONG. REC. S9207</a> (daily ed. Sept. 14, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S9207</a> (daily ed. Sept. 14, 2004) (statement of Sen. Cochran).
S. Amend. No. 3617, 108th Cong., <a href="#">150 CONG. REC. S9056</a> (daily ed. Sept. 10, 2004) (Lautenberg amendment “[t]o ensure that the Coast Guard has sufficient resources for its traditional core”).	<a href="#">150 CONG. REC. S9116</a> (daily ed. Sept. 13, 2004) (statement of Sen. Cochran).	<a href="#">150 CONG. REC. S9116–17</a> (daily ed. Sept. 13, 2004) (statements of Sens. Cochran & Lautenberg).	<a href="#">150 CONG. REC. S9117</a> (daily ed. Sept. 13, 2004) (statement of Sen. Lautenberg).	<a href="#">150 CONG. REC. S9117</a> (daily ed. Sept. 13, 2004) (vote no. 174) (38-50).	<a href="#">150 CONG. REC. S9117</a> (daily ed. Sept. 13, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S9117</a> (daily ed. Sept. 13, 2004) (statement of Sen. Cochran).



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S. Amend. No. 2047, 108th Cong., <a href="#">149 CONG. REC. S13639</a> (daily ed. Oct. 30, 2003) (Durbin amendment “[t]o increase assistance to combat HIV/AIDS”).	<a href="#">149 CONG. REC. S13643</a> (daily ed. Oct. 30, 2003) (statement of Sen. McConnell).	<a href="#">149 CONG. REC. S13643–44</a> (daily ed. Oct. 30, 2003) (statements of Sens. McConnell & Durbin).	<a href="#">149 CONG. REC. S13643</a> (daily ed. Oct. 30, 2003) (statement of Sen. Durbin).	<a href="#">149 CONG. REC. S13647</a> (daily ed. Oct. 30, 2003) (vote no. 431) (42-50).	<a href="#">149 CONG. REC. S13647</a> (daily ed. Oct. 30, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S13647</a> (daily ed. Oct. 30, 2003) (statement of Sen. Frist).
S. Amend. No. 2031, 108th Cong., <a href="#">149 CONG. REC. S13601</a> (daily ed. Oct. 30, 2003) (Bingaman amendment “to borrow . . . to pay for firefighting costs that exceed funds available and to provide funding to conduct hazardous fuels reduction and burned area restoration projects on non-Federal lands in and around communities”).	<a href="#">149 CONG. REC. S13604</a> (daily ed. Oct. 30, 2003) (statement of Sen. Cochran).	<a href="#">149 CONG. REC. S13601–05</a> (daily ed. Oct. 30, 2003) (statements of Sens. Cochran, Craig, Bingaman, Wyden & Reid).	<a href="#">149 CONG. REC. S13604</a> (daily ed. Oct. 30, 2003) (statement of Sen. Reid).	<a href="#">149 CONG. REC. S13605</a> (daily ed. Oct. 30, 2003) (vote no. 421) (36-60).	<a href="#">149 CONG. REC. S13605</a> (daily ed. Oct. 30, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S13605</a> (daily ed. Oct. 30, 2003) (statement of Sen. Cochran).
S. Amend. No. 1928, 108th Cong., <a href="#">149 CONG. REC. S13106</a> (daily ed. Oct. 23, 2003) (Dodd amendment “[t]o fund the Election Assistance Commission for fiscal year 2004”).	<a href="#">149 CONG. REC. S13112</a> (daily ed. Oct. 23, 2003) (statement of Sen. Stevens).	<a href="#">149 CONG. REC. S13112–13</a> (daily ed. Oct. 23, 2003) (statements of Sens. Stevens & Dodd).	<a href="#">149 CONG. REC. S13112–13</a> (daily ed. Oct. 23, 2003) (statement of Sen. Dodd).	<a href="#">149 CONG. REC. S13113</a> (daily ed. Oct. 23, 2003) (vote no. 409) (63-31).	<a href="#">149 CONG. REC. S13113</a> (daily ed. Oct. 23, 2003) (the motion was agreed to and the point of order was not sustained).	<a href="#">149 CONG. REC. S13113</a> (daily ed. Oct. 23, 2003) (statement of Sen. Dodd).
S. Amend. No. 1811, 108th Cong., <a href="#">149 CONG. REC. S12523</a> (daily ed. Oct. 14, 2003) (Corzine amendment “to reduce the age for receipt of military retired pay for nonregular service from 60 to 55”).	<a href="#">149 CONG. REC. S12575</a> (daily ed. Oct. 15, 2003) (statement of Sen. Stevens).	<a href="#">149 CONG. REC. S12575</a> (daily ed. Oct. 15, 2003) (statements of Sens. Stevens & Corzine).	<a href="#">149 CONG. REC. S12575</a> (daily ed. Oct. 15, 2003) (statement of Sen. Corzine).	<a href="#">149 CONG. REC. S12575</a> (daily ed. Oct. 15, 2003) (vote no. 381) (47-49).	<a href="#">149 CONG. REC. S12575</a> (daily ed. Oct. 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S12575</a> (daily ed. Oct. 15, 2003) (statement of Sen. Stevens).

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S. Amend. No. 3624, 108th Cong., <a href="#">150 CONG. REC. S9108</a> (daily ed. Sept. 13, 2004) (Mikulski amendment “[t]o increase the amount appropriated for firefighter assistance grants”).	<a href="#">150 CONG. REC. S9177</a> (daily ed. Sept. 14, 2004) (statement of Sen. Cochran).	<a href="#">150 CONG. REC. S9177</a> (daily ed. Sept. 14, 2004) (statements of Sens. Cochran & Mikulski).	<a href="#">150 CONG. REC. S9177</a> (daily ed. Sept. 14, 2004) (statement of Sen. Mikulski).	<a href="#">150 CONG. REC. S9177</a> (daily ed. Sept. 14, 2004) (vote no. 175) (50-45).	<a href="#">150 CONG. REC. S9177</a> (daily ed. Sept. 14, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S9177</a> (daily ed. Sept. 14, 2004) (statement of Sen. Cochran).
S. Amend. No. 1350, 108th Cong., <a href="#">149 CONG. REC. S9778</a> (daily ed. July 23, 2003) (Corzine amendment “[t]o appropriate \$8,000,000 for the Office of the Under Secretary for Information Analysis and Infrastructure Protection to conduct chemical facility security assessments”).	<a href="#">149 CONG. REC. S9780</a> (daily ed. July 23, 2003) (statement of Sen. Cochran).	<a href="#">149 CONG. REC. S9780</a> (daily ed. July 23, 2003) (statements of Sens. Cochran & Corzine).	<a href="#">149 CONG. REC. S9780</a> (daily ed. July 23, 2003) (statement of Sen. Corzine).	<a href="#">149 CONG. REC. S9783</a> (daily ed. July 23, 2003) (vote no. 297) (43-52).	<a href="#">149 CONG. REC. S9783</a> (daily ed. July 23, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S9783</a> (daily ed. July 23, 2003) (statement of Sen. Cochran).
S. Amend. No. 678, 108th Cong., <a href="#">149 CONG. REC. S6449</a> (daily ed. May 15, 2003) (Dorgan amendment “[t]o provide emergency funding for food aid to HIV/AIDS affected populations in sub-Saharan Africa”).	<a href="#">149 CONG. REC. S6450</a> (daily ed. May 15, 2003) (statement of Sen. Lugar).	<a href="#">149 CONG. REC. S6450</a> (daily ed. May 15, 2003) (statements of Sens. Lugar & Dorgan).	<a href="#">149 CONG. REC. S6450</a> (daily ed. May 15, 2003) (statement of Sen. Dorgan).	<a href="#">149 CONG. REC. S6450</a> (daily ed. May 15, 2003) (vote no. 178) (48-52).	<a href="#">149 CONG. REC. S6450</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6450</a> (daily ed. May 15, 2003) (statement of Sen. Lugar).
S. Amend. No. 587, 108th Cong., <a href="#">149 CONG. REC. S6195</a> (daily ed. May 14, 2003) (Jeffords amendment “[t]o accelerate the elimination of the marriage penalty in the earned income credit”).	<a href="#">149 CONG. REC. S6412</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6412</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Jeffords).	<a href="#">149 CONG. REC. S6412</a> (daily ed. May 15, 2003) (statement of Sen. Jeffords).	<a href="#">149 CONG. REC. S6413</a> (daily ed. May 15, 2003) (vote no. 155) (49-51).	<a href="#">149 CONG. REC. S6413</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6413</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).

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S. Amend No. 611, 108th Cong., <a href="#">149 CONG. REC. S6246</a> (daily ed. May 14, 2003) (Conrad amendment “[t]o make the child tax credit acceleration applicable to 2002”).	<a href="#">149 CONG. REC. S6429</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6429</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Conrad).	<a href="#">149 CONG. REC. S6429</a> (daily ed. May 15, 2003) (statement of Sen. Conrad).	<a href="#">149 CONG. REC. S6429</a> (daily ed. May 15, 2003) (vote no. 166) (49-51).	<a href="#">149 CONG. REC. S6429</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6429</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).
S. Amend. No. 564, 108th Cong., <a href="#">149 CONG. REC. S6210–11</a> (daily ed. May 14, 2003) (Murray amendment “[t]o provide temporary State fiscal relief”).	<a href="#">149 CONG. REC. S6414</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6414</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Murray).	<a href="#">149 CONG. REC. S6414</a> (daily ed. May 15, 2003) (statement of Sen. Murray).	<a href="#">149 CONG. REC. S6414–15</a> (daily ed. May 15, 2003) (vote no. 158) (47-52).	<a href="#">149 CONG. REC. S6415</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 570, 108th Cong., <a href="#">149 CONG. REC. S6178</a> (daily ed. May 14, 2003) (Baucus amendment “[t]o ensure that the limit on refundability shall not apply to the additional \$400 child credit for 2003, to make the dividend exclusion effective . . . in 2003, and to eliminate the increase in the dividend exclusion . . . of dividends over \$500”).	<a href="#">149 CONG. REC. S6410</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6410</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Baucus).	<a href="#">149 CONG. REC. S6410</a> (daily ed. May 15, 2003) (statement of Sen. Baucus).	<a href="#">149 CONG. REC. S6410</a> (daily ed. May 15, 2003) (vote no. 151) (47-53).	<a href="#">149 CONG. REC. S6410</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6410</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).
S. Amend. No. 656, 108th Cong., <a href="#">149 CONG. REC. S6533–48</a> (daily ed. May 15, 2003) (Daschle amendment “[t]o create jobs, provide opportunity, and restore prosperity”).	<a href="#">149 CONG. REC. S6430</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6430</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Daschle).	<a href="#">149 CONG. REC. S6430</a> (daily ed. May 15, 2003) (statement of Sen. Daschle).	<a href="#">149 CONG. REC. S6430</a> (daily ed. May 15, 2003) (vote no. 167) (46-54).	<a href="#">149 CONG. REC. S6430</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 578, 108th Cong., <a href="#">149 CONG. REC. S6188</a> (daily ed. May 14, 2003) (Lincoln amendment “[t]o expand the refundability of the child tax credit”).	<a href="#">149 CONG. REC. S6411</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6411</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Lincoln).	<a href="#">149 CONG. REC. S6411</a> (daily ed. May 15, 2003) (statement of Sen. Lincoln).	<a href="#">149 CONG. REC. S6411–12</a> (daily ed. May 15, 2003) (vote no. 153) (49-51).	<a href="#">149 CONG. REC. S6412</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6411–12</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).
S. Amend. No. 1596, 108th Cong., <a href="#">149 CONG. REC. S11,232–33</a> (daily ed. Sept. 9, 2003) (Reed amendment “[t]o increase funding for certain literacy, library, and museum programs”).	<a href="#">149 CONG. REC. S11,234</a> (daily ed. Sept. 9, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,234</a> (daily ed. Sept. 9, 2003) (statements of Sens. Specter & Reid).	<a href="#">149 CONG. REC. S11,234</a> (daily ed. Sept. 9, 2003) (statement of Sen. Reid).	<a href="#">149 CONG. REC. S11,274</a> (daily ed. Sept. 10, 2003) (vote no. 338) (47-49).	<a href="#">149 CONG. REC. S11,274</a> (daily ed. Sept. 10, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1343, 108th Cong., <a href="#">149 CONG. REC. S9807</a> (daily ed. July 23, 2003) (Schumer amendment “[t]o increase the funds for research and development related to transportation security, and for other purposes”).	<a href="#">149 CONG. REC. S9766</a> (daily ed. July 23, 2003) (statement of Sen. Cochran).	<a href="#">149 CONG. REC. S9766</a> (daily ed. July 23, 2003) (statements of Sens. Cochran & Schumer).	<a href="#">149 CONG. REC. S9766</a> (daily ed. July 23, 2003) (statement of Sen. Schumer).	<a href="#">149 CONG. REC. S9774</a> (daily ed. July 23, 2003) (vote no. 295) (45-51).	<a href="#">149 CONG. REC. S9774</a> (daily ed. July 23, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S9774</a> (daily ed. July 23, 2003) (statement of Sen. Cochran).
S. Amend. No. 1734, 108th Cong., <a href="#">149 CONG. REC. S11,738–39</a> (daily ed. Sept. 22, 2003) (Daschle amendment “[t]o provide additional funds for clinical services of the Indian Health Service, with an offset”).	<a href="#">149 CONG. REC. S11,781</a> (daily ed. Sept. 23, 2003) (statement of Sen. Burns).	<a href="#">149 CONG. REC. S11,781</a> (daily ed. Sept. 23, 2003) (statements of Sens. Burns & Daschle).	<a href="#">149 CONG. REC. S11,781</a> (daily ed. Sept. 23, 2003) (statement of Sen. Daschle).	<a href="#">149 CONG. REC. S11,781</a> (daily ed. Sept. 23, 2003) (vote no. 356) (49-45).	<a href="#">149 CONG. REC. S11,781</a> (daily ed. Sept. 23, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2285, 108th Cong., <a href="#">150 CONG. REC. S812–946</a> (daily ed. Feb. 10, 2004) (Inhofe amendment “[t]o provide a complete substitute” to S. 1072, the “Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004”).	<a href="#">150 CONG. REC. S1207</a> (daily ed. Feb. 12, 2004) (statement of Sen. McCain).	<a href="#">150 CONG. REC. S1207–19</a> (daily ed. Feb. 12, 2004) (statements of Sen. McCain, Bond, Gregg, Kyl, Ensign, Grassley, Baucus, Reid, Nickles, Craig, Inhofe, Graham, Santorum & Conrad).	<a href="#">150 CONG. REC. S1207</a> (daily ed. Feb. 12, 2004) (statement of Sen. Bond).	<a href="#">150 CONG. REC. S1219</a> (daily ed. Feb. 12, 2004) (vote no. 12) (72-24).	<a href="#">150 CONG. REC. S1219</a> (daily ed. Feb. 12, 2004) (the motion was agreed to and the point of order was not sustained).	<a href="#">150 CONG. REC. S1219</a> (daily ed. Feb. 12, 2004) (statement of Sen. Reid).
S. Amend. No. 2617, 108th Cong., <a href="#">150 CONG. REC. S1641</a> (daily ed. Feb. 26, 2004) (Cantwell amendment “[t]o extend and expand the Temporary Extended Unemployment Compensation Act of 2002, and for other purposes”).	<a href="#">150 CONG. REC. S1648</a> (daily ed. Feb. 26, 2004) (statement of Sen. Nickles).	<a href="#">150 CONG. REC. S1648–49</a> (daily ed. Feb. 26, 2004) (statements of Sens. Nickles, Ensign & Cantwell).	<a href="#">150 CONG. REC. S1649</a> (daily ed. Feb. 26, 2004) (statement of Sen. Cantwell).	<a href="#">150 CONG. REC. S1655</a> (daily ed. Feb. 26, 2004) (vote no. 18) (58-39).	<a href="#">150 CONG. REC. S1655</a> (daily ed. Feb. 26, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S1655</a> (daily ed. Feb. 26, 2004) (statement of Sen. Craig).
S. Amend. No. 3144, 108th Cong., <a href="#">150 CONG. REC. S5327–28</a> (daily ed. May 12, 2004) (Harkin amendment “[t]o amend part B of the Individuals with Disabilities Education Act to reach full Federal funding of such part in 6 years, and for other purposes”).	<a href="#">150 CONG. REC. S5345</a> (daily ed. May 12, 2004) (statement of Sen. Gregg).	<a href="#">150 CONG. REC. S5345</a> (daily ed. May 12, 2004) (statements of Sens. Gregg & Harkin).	<a href="#">150 CONG. REC. S5345</a> (daily ed. May 12, 2004) (statement of Sen. Harkin).	<a href="#">150 CONG. REC. S5345</a> (daily ed. May 12, 2004) (vote no. 93) (56-41).	<a href="#">150 CONG. REC. S5345</a> (daily ed. May 12, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S5345</a> (daily ed. May 12, 2004) (statement of Sen. Gregg).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3303, 108th Cong., <a href="#">150 CONG. REC. S6513</a> (daily ed. June 7, 2004) (Corzine amendment “[t]o amend title 10, United States Code, to reduce the age for receipt of military retired pay for nonregular service from 60 to 55”).	<a href="#">150 CONG. REC. S7207</a> (daily ed. June 23, 2004) (statement of Sen. Warner).	<a href="#">150 CONG. REC. S7205–07</a> (daily ed. June 23, 2004) (statements of Sens. Nelson, Warner & Corzine).	<a href="#">150 CONG. REC. S7207</a> (daily ed. June 23, 2004) (statement of Sen. Corzine).	<a href="#">150 CONG. REC. S7223–24</a> (daily ed. June 23, 2004) (vote no. 136) (49–49).	<a href="#">150 CONG. REC. S7224</a> (daily ed. June 23, 2004) (the motion was rejected).	<a href="#">150 CONG. REC. S7224</a> (daily ed. June 23, 2004) (statement of Sen. Warner).
S. Amend. No. 3409, 108th Cong., <a href="#">150 CONG. REC. S7128–29</a> (daily ed. June 22, 2004) (Daschle amendment “[t]o assure that funding is provided for veterans health care each fiscal year to cover increases in population and inflation”).	<a href="#">150 CONG. REC. S7290</a> (daily ed. June 23, 2004) (statement of Sen. Nickles).	<a href="#">150 CONG. REC. S7289–90</a> (daily ed. June 23, 2004) (statements of Sens. Nickles & Daschle).	<a href="#">150 CONG. REC. S7290</a> (daily ed. June 23, 2004) (statement of Sen. Daschle).	<a href="#">150 CONG. REC. S7290</a> (daily ed. June 23, 2004) (vote no. 145) (49–48).	<a href="#">150 CONG. REC. S7290</a> (daily ed. June 23, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S7290</a> (daily ed. June 23, 2004) (statement of Sen. Warner).
S. Amend. No. 3580, 108th Cong., <a href="#">150 CONG. REC. S8941</a> (daily ed. Sept. 8, 2004) (Schumer amendment “[t]o appropriate an additional \$150,000,000 for port security research and development grants”).	<a href="#">150 CONG. REC. S8944</a> (daily ed. Sept. 8, 2004) (statement of Sen. Cochran).	<a href="#">150 CONG. REC. S8944</a> (daily ed. Sept. 8, 2004) (statements of Sens. Cochran & Schumer).	<a href="#">150 CONG. REC. S8944</a> (daily ed. Sept. 8, 2004) (statement of Sen. Schumer).	<a href="#">150 CONG. REC. S8945</a> (daily ed. Sept. 8, 2004) (vote no. 166) (50–46).	<a href="#">150 CONG. REC. S8945</a> (daily ed. Sept. 8, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3596, 108th Cong., <a href="#">150 CONG. REC. S9003</a> (daily ed. Sept. 9, 2004) (Murray amendment “[t]o increase the amount available for report security grants by \$300,000,000”).	<a href="#">150 CONG. REC. S9006</a> (daily ed. Sept. 9, 2004) (statement of Sen. Cochran).	<a href="#">150 CONG. REC. S9006</a> (daily ed. Sept. 9, 2004) (statements of Sens. Cochran & Murray).	<a href="#">150 CONG. REC. S9006</a> (daily ed. Sept. 9, 2004) (statement of Sen. Murray).	<a href="#">150 CONG. REC. S9006</a> (daily ed. Sept. 9, 2004) (vote no. 171) (45–49).	<a href="#">150 CONG. REC. S9006</a> (daily ed. Sept. 9, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S9006</a> (daily ed. Sept. 9, 2004) (statement of Sen. Cochran).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3597, 108th Cong., <a href="#">150 CONG. REC. S8987–88</a> (daily ed. Sept. 9, 2004) (Byrd amendment “[t]o make available funds for certain border and transportation security programs”).	<a href="#">150 CONG. REC. S8992–93</a> (daily ed. Sept. 9, 2004) (statement of Sen. Cochran).	<a href="#">150 CONG. REC. S8993–96</a> (daily ed. Sept. 9, 2004) (statements of Sens. Cochran, Reid, Rockefeller, Burns, Dorgan & Byrd).	<a href="#">150 CONG. REC. S8993</a> (daily ed. Sept. 9, 2004) (statement of Sen. Byrd).	<a href="#">150 CONG. REC. S9002–03</a> (daily ed. Sept. 9, 2004) (vote no. 169) (43-51).	<a href="#">150 CONG. REC. S9003</a> (daily ed. Sept. 9, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S9003</a> (daily ed. Sept. 9, 2004) (statement of Sen. Cochran).
S. Amend. No. 3604, 108th Cong., <a href="#">150 CONG. REC. S8996</a> (daily ed. Sept. 9, 2004) (Dodd amendment “[t]o increase the among provided for first responder programs, and to provide offsets”).	<a href="#">150 CONG. REC. S9002</a> (daily ed. Sept. 9, 2004) (statement of Sen. Cochran).	<a href="#">150 CONG. REC. S9000–02</a> (daily ed. Sept. 9, 2004) (statements of Sens. Cochran, Dodd, Stabenow & Reid).	<a href="#">150 CONG. REC. S9002</a> (daily ed. Sept. 9, 2004) (statement of Sen. Reid).	<a href="#">150 CONG. REC. S9003</a> (daily ed. Sept. 9, 2004) (vote no. 170) (41-53).	<a href="#">150 CONG. REC. S9003</a> (daily ed. Sept. 9, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S9003</a> (daily ed. Sept. 9, 2004) (statement of Sen. Cochran).
S. Amend. No. 3631, 106th Cong., <a href="#">146 CONG. REC. S5839</a> (daily ed. June 27, 2000) (Wellstone amendment “[t]o increase funding for part A of title I of the Elementary and Secondary Education Act of 1965”).	<a href="#">146 CONG. REC. S5850</a> (daily ed. June 27, 2000) (statement of Sen. Gregg).	<a href="#">146 CONG. REC. S5850</a> (daily ed. June 27, 2000) (statements of Sens. Gregg & Wellstone).	<a href="#">146 CONG. REC. S5850</a> (daily ed. June 27, 2000) (statement of Sen. Wellstone).	<a href="#">146 CONG. REC. S5862</a> (daily ed. June 27, 2000) (vote no. 146) (47-52).	<a href="#">146 CONG. REC. S5862</a> (daily ed. June 27, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	
A joint resolution making emergency additional funds available by transfer for the fiscal year ending September 30, 1987, for the Emergency Food and Shelter Program of the Federal Emergency Management Agency, H.J. Res. 102, 100th Cong., <a href="#">133 CONG. REC. 2320</a> (Jan. 29, 1987).	Sen. Chiles asserted that the resolution would be subject to points of order under §§ 302(f) and 311(a) of the Budget Act. <a href="#">133 CONG. REC. 2298</a> (Jan. 29, 1987) (statement of Sen. Chiles).	<a href="#">133 CONG. REC. 2298–303</a> (Jan. 29, 1987) (statements of Sens. Chiles, Domenici, Gramm, Proxmire & Helms).	<a href="#">133 CONG. REC. 2298</a> (Jan. 29, 1987) (statement of Sen. Chiles).	<a href="#">133 CONG. REC. 2303</a> (Jan. 29, 1987) (vote no. 10) (67-22).	<a href="#">133 CONG. REC. 2303</a> (Jan. 29, 1987) (the motion to waive the Budget Act was agreed to).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 250, 100th Cong., <a href="#">133 CONG. REC. 14,128</a> (May. 29, 1987) (Melcher amendment "To transfer unobligated funds . . . of the Older Americans Act of 1965, to subpart 2 of part C of title III of that Act, relating to Home Delivered Nutrition Services.").	<a href="#">133 CONG. REC. 14,128</a> (May. 29, 1987) (statement of Sen. Gramm).	<a href="#">133 CONG. REC. 14,128–29</a> (May. 29, 1987) (statements of Sens. Gramm, Cochran & Melcher).	<a href="#">133 CONG. REC. 14,128</a> (May. 29, 1987) (statement of Sen. Melcher).	<a href="#">133 CONG. REC. 14,129</a> (May. 29, 1987) (vote no. 138) (66-16).	<a href="#">133 CONG. REC. 14,129</a> (May. 29, 1987) (the motion to waive the Budget Act was agreed to).	
H. R. 1827, 100th Cong., <a href="#">133 CONG. REC. 14,119</a> (May. 29, 1987) ("Supplemental Appropriations Act, 1987").	<a href="#">133 CONG. REC. 13,923</a> (May. 29, 1987) (statement of Sen. Gramm).	<a href="#">133 CONG. REC. 14,121–24</a> (May. 29, 1987) (statements of Sens. Johnston, Gramm, Stennis & Chiles).	<a href="#">133 CONG. REC. 13,924; 14,120</a> (May. 29, 1987) (statement of Sen. Johnston).	<a href="#">133 CONG. REC. 14,124</a> (May. 29, 1987) (vote no. 137) (55-34).	<a href="#">133 CONG. REC. 14,124</a> (May. 29, 1987) (the motion was rejected, and the motion to reconsider was postponed).	
S. Amend. No. 953, 100th Cong., <a href="#">133 CONG. REC. 27,381</a> (Oct. 13, 1987) (Weicker amendment "To restore funding for the Low Income Home Energy Assistance Program").	<a href="#">133 CONG. REC. 27,790</a> (Oct. 14, 1987) (statement of Sen. Chiles).	<a href="#">133 CONG. REC. 27,789–90</a> (Oct. 14, 1987) (statements of Sens. Chiles & Weicker).	<a href="#">133 CONG. REC. 27,790</a> (Oct. 14, 1987) (statements of Sen. Weicker).	<a href="#">133 CONG. REC. 27,790</a> (Oct. 14, 1987) (vote no. 324) (47-50).	<a href="#">133 CONG. REC. 27,790</a> (Oct. 14, 1987) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3100, 99th Cong., <a href="#">132 CONG. REC. 27,570</a> (Oct. 1, 1986) (Boren amendment "to provide payments to certain cattle producers, interest rate relief on agricultural loans, and drought assistance to farmers and ranchers in the U.S.").	<a href="#">132 CONG. REC. 27,581</a> (Oct. 1, 1986) (statement of Sen. Stevens).	<a href="#">132 CONG. REC. 27,581–94</a> (Oct. 1, 1986) (statements of Sens. Stevens, Boren, Dixon, Riegle, Sasser, Exon, Bumpers, Mattingly, Harkin, Cochran & Dole).	<a href="#">132 CONG. REC. 27,581</a> (Oct. 1, 1986) (statement of Sen. Stevens).	<a href="#">132 CONG. REC. 27,594</a> (Oct. 1, 1986) (vote no. 304) (45-53).	<a href="#">132 CONG. REC. 27,594</a> (Oct. 1, 1986) (the motion was rejected, the point of order was sustained, and the amendment fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3104, 99th Cong., <a href="#">132 CONG. REC. 27,600</a> (Oct. 1, 1986) (Dixon amendment "To provide . . . to States under . . . the Job Training Partnership Act, so that each service delivery area receives . . . an amount equal to its program year 1985 allocation.").	<a href="#">132 CONG. REC. 27,602</a> (Oct. 1, 1986) (statement of Sen. Hatfield).	<a href="#">132 CONG. REC. 27600–02</a> (Oct. 1, 1986) (statements of Sens. Dixon, Simon & Hatfield).	<a href="#">132 CONG. REC. 27,602</a> (Oct. 1, 1986) (statement of Sen. Dixon).	<a href="#">132 CONG. REC. 27,602</a> (Oct. 1, 1986) (vote no. 307) (67-31).	<a href="#">132 CONG. REC. 27602</a> (Oct. 1, 1986) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3141, 99th Cong., <a href="#">132 CONG. REC. 27,912</a> (Oct. 2, 1986) (Abdnor amendment "To allow the prepayment of certain loans made by rural electrification and telephone systems.").	<a href="#">132 CONG. REC. 27,916</a> (Oct. 2, 1986) (statement of Sen. Hatfield).	<a href="#">132 CONG. REC. 27,914–16</a> (Oct. 2, 1986) (statements of Sens. Domenici, Abdnor, Burdick & Hatfield ).	<a href="#">132 CONG. REC. 27,916</a> (Oct. 2, 1986) (statement of Sen. Abdnor).	<a href="#">132 CONG. REC. 27,916</a> (Oct. 2, 1986) (vote no. 318) (45-51).	<a href="#">132 CONG. REC. 27,916</a> (Oct. 2, 1986) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3842, 106th Cong., <a href="#">146 CONG. REC. S6753–59</a> (daily ed. July 13, 2000) (Lott amendment "[t]o provide tax relief by providing modifications to education individual retirement accounts").	<a href="#">146 CONG. REC. S6769</a> (daily ed. July 14, 2000) (statement of Sen. Reid).	<a href="#">146 CONG. REC. S6769</a> (daily ed. July 14, 2000) (statements of Sens. Reid & Lott).	<a href="#">146 CONG. REC. S6769</a> (daily ed. July 14, 2000) (statement of Sen. Lott).	<a href="#">146 CONG. REC. S6769–70</a> (daily ed. July 14, 2000) (vote no. 194) (14-84).	<a href="#">146 CONG. REC. S6770</a> (daily ed. July 14, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3837, 106th Cong., <a href="#">146 CONG. REC. S6708–10</a> (daily ed. July 13, 2000) (Dodd amendment "to increase the unified credit exemption and the qualified family-owned business interest deduction, to increase . . . the child and dependent care tax credit, to expand the adoption credit for special needs children, to provide incentives for employer-provided child care").	<a href="#">146 CONG. REC. S6768</a> (daily ed. July 14, 2000) (statement of Sen. Domenici).	<a href="#">146 CONG. REC. S6768</a> (daily ed. July 14, 2000) (statements of Sens. Domenici & Wellstone).	<a href="#">146 CONG. REC. S6768</a> (daily ed. July 14, 2000) (statement of Sen. Wellstone).	<a href="#">146 CONG. REC. S6768–69</a> (daily ed. July 14, 2000) (vote no. 191) (41-56).	<a href="#">146 CONG. REC. S6769</a> (daily ed. July 14, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3835, 106th Cong., <a href="#">146 CONG. REC. S6706-08</a> (daily ed. July 13, 2000) (Baucus amendment “[t]o amend the internal Revenue Code of 1986 to increase the unified credit exemption and the qualified family-owned business interest deduction, to provide a refundable credit to certain individuals for elective deferrals and IRA contributions, and to provide an incentive to small businesses to establish and maintain qualified pension plans, to amend the Social Security Act to provide each American child with a KidSave Account”).	<a href="#">146 CONG. REC. S6640</a> (daily ed. July 13, 2000) (statement of Sen. Roth).	<a href="#">146 CONG. REC. S6640</a> (daily ed. July 13, 2000) (statements of Sens. Roth & Baucus).	<a href="#">146 CONG. REC. S6640</a> (daily ed. July 13, 2000) (statement of Sen. Baucus).	<a href="#">146 CONG. REC. S6644</a> (daily ed. July 13, 2000) (vote no. 187) (44-55).	<a href="#">146 CONG. REC. S6644</a> (daily ed. July 13, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3699, 106th Cong., <a href="#">146 CONG. REC. S6099</a> (daily ed. June 29, 2000) (Harkin amendment “[t]o fully fund the Individuals with Disabilities Education Act (IDEA)”).	<a href="#">146 CONG. REC. S6187</a> (daily ed. June 30, 2000) (statement of Sen. Specter).	<a href="#">146 CONG. REC. S6187</a> (daily ed. June 30, 2000) (statements of Sens. Specter & Harkin).	<a href="#">146 CONG. REC. S6187</a> (daily ed. June 30, 2000) (statement of Sen. Harkin).	<a href="#">146 CONG. REC. S6187-88</a> (daily ed. June 30, 2000) (vote no. 170) (40-55).	<a href="#">146 CONG. REC. S6188</a> (daily ed. June 30, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3672, 106th Cong., <a href="#">146 CONG. REC. S5952</a> (daily ed. June 28, 2000) (Dodd amendment “[t]o provide \$1,000,000,000 for 21st Century Community Learning Centers”).	<a href="#">146 CONG. REC. S5954</a> (daily ed. June 28, 2000) (statement of Sen. Specter).	<a href="#">146 CONG. REC. S5954</a> (daily ed. June 28, 2000) (statement of Sens. Specter & Dodd).	<a href="#">146 CONG. REC. S5954</a> (daily ed. June 28, 2000) (statement of Sen. Dodd).	<a href="#">146 CONG. REC. S5977</a> (daily ed. June 28, 2000) (vote no. 154) (48-51).	<a href="#">146 CONG. REC. S5977</a> (daily ed. June 28, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">146 CONG. REC. S5977</a> (daily ed. June 28, 2000) (statement of Sen. Lott).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3661, 106th Cong., <a href="#">146 CONG. REC. S5944</a> (daily ed. June 28, 2000) (Kennedy amendment “[t]o provide an additional \$202,000,000 to carry out title II of the Higher Education Act of 1965, relating to the training and recruitment of teachers”).	<a href="#">146 CONG. REC. S5952</a> (daily ed. June 28, 2000) (statement of Sen. Specter).	<a href="#">146 CONG. REC. S5952</a> (daily ed. June 28, 2000) (statements of Sens. Specter & Dodd).	<a href="#">146 CONG. REC. S5952</a> (daily ed. June 28, 2000) (statement of Sen. Dodd).	<a href="#">146 CONG. REC. S5952</a> (daily ed. June 28, 2000) (vote no. 153) (51-48).	<a href="#">146 CONG. REC. S5952</a> (daily ed. June 28, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">146 CONG. REC. S5952</a> (daily ed. June 28, 2000) (statement of Sen. Reid).
S. Amend. No. 3678, 106th Cong., <a href="#">146 CONG. REC. S5963</a> (daily ed. June 28, 2000) (Kennedy amendment “[t]o adjust appropriations for workforce investment activities”).	<a href="#">146 CONG. REC. S5971</a> (daily ed. June 28, 2000) (statement of Sen. Gorton).	<a href="#">146 CONG. REC. S5971</a> (daily ed. June 28, 2000) (statements of Sens. Gorton & Kennedy).	<a href="#">146 CONG. REC. S5971</a> (daily ed. June 28, 2000) (statement of Sen. Kennedy).	<a href="#">146 CONG. REC. S5979</a> (daily ed. June 28, 2000) (vote no. 157) (49-50).	<a href="#">146 CONG. REC. S5979</a> (daily ed. June 28, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3659, 106th Cong., <a href="#">146 CONG. REC. S5955</a> (daily ed. June 28, 2000) (Kerry amendment “[t]o increase the funding for the technology literacy challenge fund”).	<a href="#">146 CONG. REC. S5957</a> (daily ed. June 28, 2000) (statement of Sen. Specter).	<a href="#">146 CONG. REC. S5957</a> (daily ed. June 28, 2000) (statements of Sens. Specter & Kerry).	<a href="#">146 CONG. REC. S5957</a> (daily ed. June 28, 2000) (statement of Sen. Kerry).	<a href="#">146 CONG. REC. S5978</a> (daily ed. June 28, 2000) (vote no. 155) (48-51).	<a href="#">146 CONG. REC. S5978</a> (daily ed. June 28, 2000) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3649, 106th Cong., <a href="#">146 CONG. REC. S5853</a> (daily ed. June 27, 2000) (Bingaman amendment “[t]o ensure accountability in programs for disadvantaged students and . . . to turn around failing schools”).	<a href="#">146 CONG. REC. S5862</a> (daily ed. June 27, 2000) (statement of Sen. Gregg).	<a href="#">146 CONG. REC. S5862</a> (daily ed. June 27, 2000) (statements of Sens. Gregg & Bingaman).	<a href="#">146 CONG. REC. S5862</a> (daily ed. June 27, 2000) (statement of Sen. Bingaman).	<a href="#">146 CONG. REC. S5862</a> (daily ed. June 27, 2000) (vote no. 147) (49-50).	<a href="#">146 CONG. REC. S5863</a> (daily ed. June 27, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3604, 106th Cong., <a href="#">146 CONG. REC. S5858</a> (daily ed. June 27, 2000) (Murray amendment “[t]o provide for class-size reduction and other activities”).	<a href="#">146 CONG. REC. S5863</a> (daily ed. June 27, 2000) (statement of Sen. Specter).	<a href="#">146 CONG. REC. S5863</a> (daily ed. June 27, 2000) (statements of Sens. Specter & Murray).	<a href="#">146 CONG. REC. S5863</a> (daily ed. June 27, 2000) (statement of Sen. Murray).	<a href="#">146 CONG. REC. S5863</a> (daily ed. June 27, 2000) (vote no. 148) (44-55).	<a href="#">146 CONG. REC. S5863</a> (daily ed. June 27, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">146 CONG. REC. S5863</a> (daily ed. June 27, 2000) (statement of Sen. Shelby).
S. Amend. No. 3191, 106th Cong., <a href="#">146 CONG. REC. S4620–21</a> (daily ed. June 7, 2000) (Johnson amendment “[t]o restore health care coverage to retired members of the uniformed services”).	<a href="#">146 CONG. REC. S4628</a> (daily ed. June 7, 2000) (statement of Sen. Warner, on behalf of Sen. Gramm).	<a href="#">146 CONG. REC. S4628</a> (daily ed. June 7, 2000) (statements of Sens. Warner & Johnson).	<a href="#">146 CONG. REC. S4628</a> (daily ed. June 7, 2000) (statement of Sen. Johnson).	<a href="#">146 CONG. REC. S4632</a> (daily ed. June 7, 2000) (vote no. 118) (52-46).	<a href="#">146 CONG. REC. S4632</a> (daily ed. June 7, 2000) (the motion was rejected and the point of order was sustained).	<a href="#">146 CONG. REC. S4632</a> (daily ed. June 7, 2000) (statement of Sen. Gramm).
Enactment of Provisions of H.R. 5408, <a href="#">The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001: Conference Report to Accompany H.R. 4205</a> , H.R. REP. 106-945 (2000) (Conf. Rep.).	<a href="#">146 CONG. REC. S10,365</a> (daily ed. Oct. 12, 2000) (statement of Sen. Kerrey).	<a href="#">146 CONG. REC. S10,365–74</a> (daily ed. Oct. 12, 2000) (statements of Sens. Kerrey, Domenici, Levin, Gramm & Warner).	<a href="#">146 CONG. REC. S10,365</a> (daily ed. Oct. 12, 2000) (statement of Sen. Warner).	<a href="#">146 CONG. REC. S10,374</a> (daily ed. Oct. 12, 2000) (vote no. 274) (84-9).	<a href="#">146 CONG. REC. S10,374</a> (daily ed. Oct. 12, 2000) (the motion was agreed to).	<a href="#">146 CONG. REC. S10,374</a> (daily ed. Oct. 12, 2000) (statement of Sen. Stevens).
S. Amend. No. 3828, 106th Cong., <a href="#">146 CONG. REC. S6627</a> (daily ed. July 13, 2000) (Bingaman amendment “to increase the unified credit exemption and the qualified family-owned business interest deduction and expand education initiatives”).	<a href="#">146 CONG. REC. S6631</a> (daily ed. July 13, 2000) (statement of Sen. Hutchinson).	<a href="#">146 CONG. REC. S6631</a> (daily ed. July 13, 2000) (statements of Sens. Hutchinson & Bingaman).	<a href="#">146 CONG. REC. S6631</a> (daily ed. July 13, 2000) (statement of Sen. Bingaman).	<a href="#">146 CONG. REC. S6642</a> (daily ed. July 13, 2000) (vote no. 184) (47-53).	<a href="#">146 CONG. REC. S6642</a> (daily ed. July 13, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2875, 106th Cong., <a href="#">146 CONG. REC. S1072</a> (daily ed. Mar. 2, 2000) (Kennedy amendment “[t]o increase funding for Federal Pell Grant”).	<a href="#">146 CONG. REC. S1099</a> (daily ed. Mar. 2, 2000) (statement of Sen. Coverdell).	<a href="#">146 CONG. REC. S1099</a> (daily ed. Mar. 2, 2000) (statements of Sens. Coverdell & Kennedy).	<a href="#">146 CONG. REC. S1099</a> (daily ed. Mar. 2, 2000) (statement of Sen. Kennedy).	<a href="#">146 CONG. REC. S1099–100</a> (daily ed. Mar. 2, 2000) (vote no. 29) (41-57).	<a href="#">146 CONG. REC. S1100</a> (daily ed. Mar. 2, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2857, 106th Cong., <a href="#">146 CONG. REC. S955</a> (daily ed. Feb. 29, 2000) (Dodd amendment “[t]o increase funding for part B of the Individuals with Disabilities Education Act”).	<a href="#">146 CONG. REC. S919</a> (daily ed. Feb. 29, 2000) (statement of Sen. Coverdell).	<a href="#">146 CONG. REC. S919</a> (daily ed. Feb. 29, 2000) (statements of Sens. Coverdell & Dodd).	<a href="#">146 CONG. REC. S919</a> (daily ed. Feb. 29, 2000) (statement of Sen. Dodd).	<a href="#">146 CONG. REC. S919</a> (daily ed. Feb. 29, 2000) (vote no. 15) (44-54).	<a href="#">146 CONG. REC. S919</a> (daily ed. Feb. 29, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3638, 106th Cong., <a href="#">146 CONG. REC. S5961</a> (daily ed. June 28, 2000) (Reed amendment “[t]o provide funds for the GEAR UP Program”).	<a href="#">146 CONG. REC. S5963</a> (daily ed. June 28, 2000) (statement of Sen. Specter).	<a href="#">146 CONG. REC. S5963</a> (daily ed. June 28, 2000) (statements of Sens. Specter & Reed).	<a href="#">146 CONG. REC. S5963</a> (daily ed. June 28, 2000) (statement of Sen. Reed).	<a href="#">146 CONG. REC. S5979</a> (daily ed. June 28, 2000) (vote no. 156) (47-52).	<a href="#">146 CONG. REC. S5979</a> (daily ed. June 28, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3199, 105th Cong., <a href="#">144 CONG. REC. S8425</a> (daily ed. July 17, 1998) (Wellstone/Murray/McCain amendment “to restore veterans tobacco-related benefits as in effect before the enactment of the Transportation Equity Act for the 21st Century.”)	<a href="#">144 CONG. REC. S8427</a> (daily ed. July 17, 1998) (statement of Sen. Domenici).	<a href="#">144 CONG. REC. S8425–27</a> (daily ed. July 17, 1998) (statement of Sens. Wellstone, Rockefeller, Reid & Domenici).	<a href="#">144 CONG. REC. S8427</a> (daily ed. July 17, 1998) (statement of Sen. Wellstone).	<a href="#">144 CONG. REC. S8427–28</a> (daily ed. July 17, 1998) (vote no. 210) (51-40).	<a href="#">144 CONG. REC. S8428</a> (daily ed. July 17, 1998) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3193, 105th Cong., <a href="#">144 CONG. REC. S8317</a> (daily ed. July 16, 1998) (Harkin amendment “[t]o provide for the conduct of antitobacco activities by the Food and Drug Administration.”)	<a href="#">144 CONG. REC. S8323</a> (daily ed. July 16, 1998) (statement of Sen. Domenici).	<a href="#">144 CONG. REC. S8317–23</a> (daily ed. July 16, 1998) (statement of Sens. Harkin, Reed, Faircloth, Kennedy, Ford, Lautenberg, Lott, Nickles, Gramm & Domenici).	<a href="#">144 CONG. REC. S8323</a> (daily ed. July 16, 1998) (statement of Sen. Harkin).	<a href="#">144 CONG. REC. S8323</a> (daily ed. July 16, 1998) (vote no. 208) (49-50).	<a href="#">144 CONG. REC. S8323–24</a> (daily ed. July 16, 1998) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2729, 105th Cong., <a href="#">144 CONG. REC. S8049</a> (daily ed. July 13, 1998) (Daschle amendment “to reform and structure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, and to redress the adverse health effects of tobacco use.”)	<a href="#">144 CONG. REC. S8049</a> (daily ed. July 13, 1998) (statement of Sen. Lott).	<a href="#">144 CONG. REC. S8049</a> (daily ed. July 13, 1998) (statement of Sens. Daschle & Lott); <a href="#">144 CONG. REC. S8091–92</a> (daily ed. July 14, 1998) (statement of Sens. Cochran, Domenici & Kennedy).	<a href="#">144 CONG. REC. S8049</a> (daily ed. July 13, 1998) (statement of Sen. Daschle).	<a href="#">144 CONG. REC. S8092</a> (daily ed. July 14, 1998) (vote no. 198) (43-55).	<a href="#">144 CONG. REC. S8092</a> (daily ed. July 14, 1998) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2714, 105th Cong., <a href="#">144 CONG. REC. S6508</a> (daily ed. June 18, 1998) (Daschle amendment “[t]o add provisions of Amendment No. 2420 relating to tobacco policy.”)	<a href="#">144 CONG. REC. S6510</a> (daily ed. June 18, 1998) (statement of Sen. Domenici).	<a href="#">144 CONG. REC. S6508–11</a> (daily ed. June 18, 1998) (statement of Sens. Daschle, Gorton, Nickles, Faircloth, Reid, Domenici, McCain & Lott).	<a href="#">144 CONG. REC. S6510</a> (daily ed. June 18, 1998) (statement of Sen. Reid).	<a href="#">144 CONG. REC. S6511</a> (daily ed. June 18, 1998) (vote no. 164) (54-44).	<a href="#">144 CONG. REC. S6511</a> (daily ed. June 18, 1998) (the motion was rejected, the point of order was sustained, and the bill fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2305, 105th Cong., <a href="#">144 CONG. REC. S3476</a> (daily ed. Apr. 23, 1998) (Dodd amendment “[t]o strike § 101, and to provide funding for part B of the Individuals with Disabilities Education Act.”)	<a href="#">144 CONG. REC. S3479</a> (daily ed. Apr. 23, 1998) (statement of Sen. Coverdell).	<a href="#">144 CONG. REC. S3476–79</a> (daily ed. Apr. 23, 1998) (statement of Sens. Dodd, Coverdell & Reed).	<a href="#">144 CONG. REC. S3479</a> (daily ed. Apr. 23, 1998) (statement of Sen. Dodd).	<a href="#">144 CONG. REC. S3479</a> (daily ed. Apr. 23, 1998) (vote no. 98) (46-53).	<a href="#">144 CONG. REC. S3479</a> (daily ed. Apr. 23, 1998) (the motion was rejected, the point of order was sustained, and the bill fell).	
S. 1415, 105th Cong. (a bill “[t]o reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes”) (as reported to Senate, Nov. 7, 1997).	<a href="#">144 CONG. REC. S6479</a> (daily ed. June 17, 1998) (statement of Sen. Stevens).	<a href="#">144 CONG. REC. S6479–81</a> (daily ed. June 17, 1998) (statement of Sens. Stevens, Daschle, Domenici, Kerry, Lautenberg & Nickles).	<a href="#">144 CONG. REC. S6480</a> (daily ed. June 17, 1998) (statement of Sen. Daschle).	<a href="#">144 CONG. REC. S6481</a> (daily ed. June 17, 1998) (vote no. 162) (53-46).	<a href="#">144 CONG. REC. S6481</a> (daily ed. June 17, 1998) (the motion was rejected, the point of order was sustained, and the bill fell).	
S. Amend. No. 1091, 105th Cong., <a href="#">143 CONG. REC. S8945</a> (daily ed. Sept. 9, 1997) (McCain/Gramm amendment “to eliminate Medicare incentive payments under plans for voluntary reduction in the number of residents.”)	<a href="#">143 CONG. REC. S8968</a> (daily ed. Sept. 9, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S8950–52, 8959–61, 8965–71, 8999</a> (daily ed. Sept. 9, 1997) (statement of Sens. Roth, Moynihan, D’Amato, McCain, Gramm, Specter, Harkin, Domenici & Hutchison).	<a href="#">143 CONG. REC. S8968</a> (daily ed. Sept. 9, 1997) (statement of Sen. McCain).	<a href="#">143 CONG. REC. S8999</a> (daily ed. Sept. 9, 1997) (vote no. 223) (45-54).	<a href="#">143 CONG. REC. S8999</a> (daily ed. Sept. 9, 1997) (the motion was rejected, the point of order was sustained, and the bill fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 532, 105th Cong., <a href="#">143 CONG. REC. S6690</a> (daily ed. June 27, 1997) (Landrieu amendment “[t]o allow taxpayers with income tax liability to take the child tax credit before the earned income tax credit.”)	<a href="#">143 CONG. REC. S6691</a> (daily ed. June 27, 1997) (statement of Sen. Nickles).	<a href="#">143 CONG. REC. S6690</a> (daily ed. June 27, 1997) (statement of Sens. Landrieu, Moynihan & Nickles).	<a href="#">143 CONG. REC. S6691</a> (daily ed. June 27, 1997) (statement of Sen. Nickles).	<a href="#">143 CONG. REC. S6691</a> (daily ed. June 27, 1997) (vote no. 156) (39-59).	<a href="#">143 CONG. REC. S6691</a> (daily ed. June 27, 1997) (the motion was rejected, the point of order was sustained, and the bill fell).	
S. Amend. No. 573, 105th Cong., <a href="#">143 CONG. REC. S6682</a> (daily ed. June 27, 1997) (Kennedy amendment “[t]o increase the excise tax on cigarettes by 43 cents per pack and increase the tax on other tobacco products by a proportionate amount, and direct \$12,000,000,000 of the resulting revenues be applied to the children’s health initiative.”)	<a href="#">143 CONG. REC. S6682</a> (daily ed. June 27, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6682–83</a> (daily ed. June 27, 1997) (statement of Sens. Kennedy, Nickles & Domenici).	<a href="#">143 CONG. REC. S6682</a> (daily ed. June 27, 1997) (statement of Sen. Kennedy).	<a href="#">143 CONG. REC. S6683</a> (daily ed. June 27, 1997) (vote no. 149) (30-70).	<a href="#">143 CONG. REC. S6683</a> (daily ed. June 27, 1997) (the motion was rejected, the point of order was sustained, and the bill fell).	
S. Amend. No. 554, 105th Cong., <a href="#">143 CONG. REC. S6670</a> (daily ed. June 27, 1997) (Kerry amendment “to allow payroll taxes to be included in the calculation of tax liability for receiving the children’s tax credit.”)	<a href="#">143 CONG. REC. S6672</a> (daily ed. June 27, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6671–72</a> (daily ed. June 27, 1997) (statement of Sens. Roth, Kerry, Nickles & Domenici).	<a href="#">143 CONG. REC. S6672</a> (daily ed. June 27, 1997) (statement of Sen. Kerry).	<a href="#">143 CONG. REC. S6672</a> (daily ed. June 27, 1997) (vote no. 140) (39-60).	<a href="#">143 CONG. REC. S6672</a> (daily ed. June 27, 1997) (the motion was rejected, the point of order was sustained, and the bill fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 520, 105th Cong., <a href="#">143 CONG. REC. S6394</a> (daily ed. June 26, 1997) (Roth amendment “to provide for children’s health insurance initiatives.”)	<a href="#">143 CONG. REC. S6437</a> (daily ed. June 26, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6434–37</a> (daily ed. June 26, 1997) (statement of Sens. Roth, Moynihan, Kennedy, Hatch, Chafee, Rockefeller & Domenici).	<a href="#">143 CONG. REC. S6437</a> (daily ed. June 26, 1997) (statement of Sen. Roth).	<a href="#">143 CONG. REC. S6437</a> (daily ed. June 26, 1997) (vote no. 135) (80-19).	<a href="#">143 CONG. REC. S6437</a> (daily ed. June 26, 1997) (the motion was agreed to and the point of order fell).	
<b>Sec. 303(a)—New Spending, Revenue, or Debt-Limit Legislation.</b> Prohibits consideration of any new spending, revenue, or debt-limit legislation for a fiscal year until a budget resolution covering that fiscal year has been approved.						
S. Amend. No. 161, 100th Cong., <a href="#">133 CONG. REC. 9378</a> (Apr. 23, 1987) (Boschwitz amendment “To improve the bill”).	<a href="#">133 CONG. REC. 9389</a> (Apr. 23, 1987) (statement of Sen. Chiles & Sen. Domenici).	<a href="#">133 CONG. REC. 9389–91</a> (Apr. 23, 1987) (statements of Sens. Harkin, Boschwitz, Cochran & Chiles).	<a href="#">133 CONG. REC. 9389</a> (Apr. 23, 1987) (statement of Sen. Boschwitz).	<a href="#">133 CONG. REC. 9391</a> (Apr. 23, 1987) (vote no. 79) (33-63).	<a href="#">133 CONG. REC. 9391–92</a> (Apr. 23, 1987) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2039, 99th Cong., <a href="#">132 CONG. REC. 12,858</a> (June 6, 1986) (Johnston amendment “To amend the Trade Act of 1974 to make workers and firms that supply parts and services for the oil and gas industry eligible for trade adjustment assistance.”).	<a href="#">132 CONG. REC. 12,862</a> (June 6, 1986) (statement of Sen. Gramm).	<a href="#">132 CONG. REC. 12,862–68</a> (June 6, 1986) (statements of Sens. Johnston, Gramm, Boren, Packwood, Danforth, Nickles, Bentsen & Long).	<a href="#">132 CONG. REC. 12,862</a> (June 6, 1986) (statement of Sen. Johnston).	<a href="#">132 CONG. REC. 12,868</a> (June 6, 1986) (vote no. 118) (55-40).	<a href="#">132 CONG. REC. 12,868</a> (June 6, 1986) (the motion was agreed to, and the Budget Act was waived).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
Conrail Sale Amendments Act of 1985, S. 638, 99th Cong., <a href="#">132 CONG. REC. 369–77</a> (Jan. 23, 1986).	<a href="#">132 CONG. REC. 549</a> (Jan. 27, 1986) (statement of Sen. Metzenbaum).	<a href="#">132 CONG. REC. 549–56</a> (Jan. 27, 1986), continued at <a href="#">132 CONG. REC. 734–47</a> (Jan. 29, 1986) (statements of Sens. Danforth, Metzenbaum, Pressler, Specter, Domenici, Dole & Hollings).	<a href="#">132 CONG. REC. 549</a> (Jan. 27, 1986) (statement of Sen. Danforth).	<a href="#">132 CONG. REC. 747</a> (Jan. 29, 1986) (vote no. 2) (68-31).	<a href="#">132 CONG. REC. 550</a> (Jan. 29, 1986) (the chair clarified that the bill would violate § 303 of the Budget Act in response to a parliamentary inquiry); <a href="#">132 CONG. REC. 747</a> (Jan. 29, 1986) (the motion was agreed to, and the Budget Act was waived).	
Conf. Rep. on S. 1200, 99th Cong., <a href="#">132 CONG. REC. 32,375</a> (Oct. 16, 1986) ("Immigration Reform and Control Act of 1986—Conference Report").	Sen. Domenici explained why a point of order would lie under § 303(a) of the Budget Act. <a href="#">132 CONG. REC. 32,375–78</a> (Oct. 16, 1986) (statement of Sen. Domenici).	<a href="#">132 CONG. REC. 32,375–78, 32,408–09</a> (Oct. 16, 1986) (statements of Sens. Simpson, Gramm, Metzenbaum & Domenici).	<a href="#">132 CONG. REC. 32,376</a> (Oct. 16, 1986) (statement of Sen. Simpson).	<a href="#">132 CONG. REC. 32,378</a> (Oct. 16, 1986) (vote no. 348) (75-21).	<a href="#">132 CONG. REC. 32,376</a> (Oct. 16, 1986) (the motion to waive the Budget Act was agreed to).	
S. Amend. No. 427, 99th Cong., <a href="#">131 CONG. REC. 17,300</a> (June 26, 1985) (Chafee amendment "To exclude from gross income of individuals over 65 an amount equal to investment income not greater than the interest on \$90,000").	<a href="#">131 CONG. REC. 17,301</a> (June 26, 1985) (statement of Sen. Packwood).	<a href="#">131 CONG. REC. 17,301</a> (June 26, 1985) (statements of Sens. Chafee).			<a href="#">131 CONG. REC. 17,301</a> (June 26, 1985) (the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1473, 98th Cong., <a href="#">129 CONG. REC. 19,060</a> (July 13, 1983) (Armstrong amendment "To establish two new programs of educational assistance designed to assist the Armed Forces in recruiting and retaining highly qualified men and women, to repeal a termination date applicable to certain current GI Bill benefits.").	<a href="#">129 CONG. REC. 19,018</a> (July 13, 1983) (statement of Sen. Domenici).	<a href="#">129 CONG. REC. 19,017–18</a> (July 13, 1983) (statements of Sens. Armstrong, Simpson & Domenici).	<a href="#">129 CONG. REC. 19,018</a> (July 13, 1983) (statement of Sen. Armstrong).	<a href="#">129 CONG. REC. 19,018</a> (July 13, 1983) (vote no. 187) (motion to table 52-46).	<a href="#">129 CONG. REC. 19,018</a> (July 13, 1983) (the motion to waive the Budget Act was tabled, the point of order was sustained, and the amendment fell).	
Treasury, Postal Service, and General Government Appropriations Act, 1985, H.R. 5798, 98th Cong., <a href="#">130 CONG. REC. 20,499</a> (July 23, 1984).		<a href="#">130 CONG. REC. 20,498–99</a> (July 23, 1984) (statement of Sen. Baker).	<a href="#">130 CONG. REC. 20,498–99</a> (July 23, 1984) (statement of Sen. Baker).		<a href="#">130 CONG. REC. 20,499</a> (July 23, 1984) (the Budget Act was waived without objection).	
A bill making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1985, and for other purposes, H.R. 5743, 98th Cong., <a href="#">130 CONG. REC. 21,167</a> (July 26, 1984).		<a href="#">130 CONG. REC. 21,784–803</a> (Aug. 1, 1984); <a href="#">id. at 22,094–107, 22,108–18</a> (Aug. 2, 1984); <a href="#">id. at 22,327–29</a> (Aug. 3, 1984); <a href="#">id. at 22,506–11</a> (Aug. 6, 1984); <a href="#">id. at 22,715–22</a> (Aug. 8, 1984).	<a href="#">130 CONG. REC. 21,784</a> (Aug. 1, 1984) (statement of Sen. Baker).	<a href="#">130 CONG. REC. 22,721–22</a> (Aug. 8, 1984) (vote no. 214) (63-34).	<a href="#">130 CONG. REC. 22,722</a> (Aug. 8, 1984) (the motion to waive the Budget Act was agreed to).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 303(c)—No Budget, No Appropriations.</b> Prohibits consideration of any appropriations legislation until a budget has been agreed to and an allocation to the Appropriations Committee has been made.						
Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2012, H.R. 2055, 112th Cong. (as reported by S. Comm. on Appropriations, June 30, 2011).	157 CONG. REC. S4586 (daily ed. July 14, 2011) (statement of Sen. Sessions).	157 CONG. REC. S4586–601 (daily ed. July 14, 2011) (statements of Sens. Sessions, Johnson, Corker, Paul, Kirk, Lee, Cornyn, Shaheen, Harken, Coons, Sanders, Barrasso, Toomey & Inouye).	157 CONG. REC. S4586 (daily ed. July 14, 2011) (statement of Sen. Johnson).	157 CONG. REC. S4601–02 (daily ed. July 14, 2011) (vote no. 111) (56-40).	157 CONG. REC. S4601 (daily ed. July 14, 2011) (the motion was agreed to).	157 CONG. REC. S4602 (daily ed. July 14, 2011) (statement of Sen. Johnson).
S. Amend. No. 2156, 99th Cong., 132 CONG. REC. 14,990 (June 24, 1986) (Melcher amendment "To allow a 30 percent capital gains exclusion for the sale of property by an individual actively engaged in the trade or business of farming or woodlot operations; and to limit net operating loss carrybacks").	132 CONG. REC. 14,992 (June 24, 1986) (statement of Sen. Packwood).	132 CONG. REC. 14,992 (June 24, 1986) (statements of Sens. Packwood & Melcher).	132 CONG. REC. 14,992 (June 24, 1986) (statement of Sen. Melcher).	132 CONG. REC. 14,994 (June 24, 1986) (vote no. 146, motion to table the motion to waive) (54-39).	132 CONG. REC. 14,994 (June 24, 1986) (the motion was tabled, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3189, 98th Cong., 130 CONG. REC. 16,168 (June 13, 1984) (Armstrong amendment "To establish two new programs of educational assistance for veterans of peacetime service").	130 CONG. REC. 16,096 (June 13, 1984) (statement of Sen. Baker).	130 CONG. REC. 16,096–104 (June 13, 1984) (statements of Sens. Armstrong, Baker, Chiles, Cranston, Domenici, Nunn, Stennis, Cohen, Tower, Glenn & Goldwater).	130 CONG. REC. 16,096 (June 13, 1984) (statement of Sen. Armstrong).	130 CONG. REC. 16,104 (June 13, 1984) (vote no. 124) (44-48).	130 CONG. REC. 16,104 (June 13, 1984) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>305(b)(2)—Germaneness.</b> Prohibits consideration of non-germane amendments to a budget resolution or reconciliation bill.						
S. Amend. No. 91, 117th Cong., <a href="#">167 CONG. REC. 443</a> (daily ed. Feb. 4, 2021) (Grassley amendment “[t]o create a point of order against legislation that would allow for six-figure tax cuts for the top 1/10/th of 1 percent of taxpayers”).	<a href="#">167 CONG. REC. 443</a> (daily ed. Feb. 4, 2021) (statement of Sen. Wyden).	<a href="#">167 CONG. REC. 443</a> (daily ed. Feb. 4, 2021) (statement of Sens. Wyden & Grassley).	<a href="#">167 CONG. REC. 443</a> (daily ed. Feb. 4, 2021) (statement of Sen. Grassley).	<a href="#">167 CONG. REC. 443</a> (daily ed. Feb. 4, 2021) (vote no. 29) (49-51).	<a href="#">167 CONG. REC. 443</a> (daily ed. Feb. 4, 2021) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 132, 117th Cong., <a href="#">167 CONG. REC. 440</a> (daily ed. Feb. 4, 2021) (Ernst amendment “[t]o establish a deficit-neutral reserve fund relating to prioritizing taking into custody aliens charged with a crime resulting in death or serious bodily injury”).	<a href="#">167 CONG. REC. 440</a> (daily ed. Feb. 4, 2021) (statement of Sen. Sanders).	<a href="#">167 CONG. REC. 440</a> (daily ed. Feb. 4, 2021) (statement of Sens. Sanders & Ernst).	<a href="#">167 CONG. REC. 440</a> (daily ed. Feb. 4, 2021) (statement of Sen. Ernst).	<a href="#">167 CONG. REC. 440</a> (daily ed. Feb. 4, 2021) (vote no. 25) (52-48).	<a href="#">167 CONG. REC. 440</a> (daily ed. Feb. 4, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 192, 117th Cong., <a href="#">167 CONG. REC. 438–39</a> (daily ed. Feb. 4, 2021) (Sasse amendment “[t]o establish a deficit-neutral reserve fund relating to improving health care to prohibit a health care practitioner from failing to exercise the proper degree of care in the case of a child who survives an abortion or attempted abortion”).	<a href="#">167 CONG. REC. 439</a> (daily ed. Feb. 4, 2021) (statement of Sen. Durbin).	<a href="#">167 CONG. REC. 439</a> (daily ed. Feb. 4, 2021) (statement of Sens. Durbin & Sasse).	<a href="#">167 CONG. REC. 439</a> (daily ed. Feb. 4, 2021) (statement of Sen. Sasse).	<a href="#">167 CONG. REC. 439</a> (daily ed. Feb. 4, 2021) (vote no. 23) (52-48).	<a href="#">167 CONG. REC. 439</a> (daily ed. Feb. 4, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 687, 117th Cong., <a href="#">167 CONG. REC. 439</a> (daily ed. Feb. 4, 2021) (Graham amendment “[t]o establish a deficit-neutral reserve fund relating to strengthening and protecting international agreements, joint declarations, or proclamations entered into by the United States and Mexico”).	<a href="#">167 CONG. REC. 440</a> (daily ed. Feb. 4, 2021) (statement of Sen. Menendez).	<a href="#">167 CONG. REC. 440</a> (daily ed. Feb. 4, 2021) (statement of Sens. Menendez & Graham).	<a href="#">167 CONG. REC. 440</a> (daily ed. Feb. 4, 2021) (statement of Sen. Graham).	<a href="#">167 CONG. REC. 440</a> (daily ed. Feb. 4, 2021) (vote no. 24) (50-50).	<a href="#">167 CONG. REC. 440</a> (daily ed. Feb. 4, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 66, 117th Cong., <a href="#">167 CONG. REC. 448</a> (daily ed. Feb. 4, 2021) (Cotton amendment “[t]o create a point of order against a provision in legislation that would increase the number of justices on the Supreme Court of the United States”).	<a href="#">167 CONG. REC. 448</a> (daily ed. Feb. 4, 2021) (statement of Sen. Durbin).	<a href="#">167 CONG. REC. 448</a> (daily ed. Feb. 4, 2021) (statement of Sens. Durbin & Cotton).	<a href="#">167 CONG. REC. 448</a> (daily ed. Feb. 4, 2021) (statement of Sen. Cotton).	<a href="#">167 CONG. REC. 449</a> (daily ed. Feb. 4, 2021) (vote no. 36) (50-50).	<a href="#">167 CONG. REC. 449</a> (daily ed. Feb. 4, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 461, 117th Cong., <a href="#">167 CONG. REC. 458</a> (daily ed. Feb. 4, 2021) (Sullivan amendment “[t]o establish a deficit-neutral reserve fund relating to expanding natural gas as a vital fuel source to reduce greenhouse gas emissions and provide reliable and affordable heat, electricity, and transportation fuel for consume”).	<a href="#">167 CONG. REC. 458</a> (daily ed. Feb. 4, 2021) (statement of Sen. Sanders).	<a href="#">167 CONG. REC. 458</a> (daily ed. Feb. 4, 2021) (statement of Sens. Sanders & Sullivan).	<a href="#">167 CONG. REC. 458</a> (daily ed. Feb. 4, 2021) (statement of Sen. Sullivan).	<a href="#">167 CONG. REC. 458–59</a> (daily ed. Feb. 4, 2021) (vote no. 50) (51-49).	<a href="#">167 CONG. REC. 459</a> (daily ed. Feb. 4, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 483, 117th Cong., <a href="#">167 CONG. REC. 449</a> (daily ed. Feb. 4, 2021) (Cassidy amendment “[t]o create a point of order against legislation that would provide Economic Impact Payments to prisoners”).	<a href="#">167 CONG. REC. 449</a> (daily ed. Feb. 4, 2021) (statement of Sen. Wyden).	<a href="#">167 CONG. REC. 449</a> (daily ed. Feb. 4, 2021) (statement of Sens. Wyden & Cassidy).	<a href="#">167 CONG. REC. 449</a> (daily ed. Feb. 4, 2021) (statement of Sen. Cassidy).	<a href="#">167 CONG. REC. 449</a> (daily ed. Feb. 4, 2021) (vote no. 37) (50-50).	<a href="#">167 CONG. REC. 449</a> (daily ed. Feb. 4, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 811, 117th Cong., <a href="#">167 CONG. REC. 451–52</a> (daily ed. Feb. 4, 2021) (Cruz amendment “[t]o create a point of order against the consideration of any legislation that increases employment-based visas until the United States’ labor market stabilizes and unemployment levels reach pre-pandemic levels, ensuring that Congress prioritizes the needs of American workers who have lost their jobs due to the pandemic”).	<a href="#">167 CONG. REC. 452</a> (daily ed. Feb. 4, 2021) (statement of Sen. Durbin).	<a href="#">167 CONG. REC. 452</a> (daily ed. Feb. 4, 2021) (statement of Sens. Durbin & Cruz).	<a href="#">167 CONG. REC. 452</a> (daily ed. Feb. 4, 2021) (statement of Sen. Cruz).	<a href="#">167 CONG. REC. 452</a> (daily ed. Feb. 4, 2021) (vote no. 41) (40-60).	<a href="#">167 CONG. REC. 452</a> (daily ed. Feb. 4, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1197, H.R. 1319, 117th Cong., <a href="#">167 CONG. REC. S1238</a> (daily ed. Mar. 5, 2021).	<a href="#">167 CONG. REC. 1239</a> (daily ed. Mar. 5, 2021) (statement of Sen. Sanders).	<a href="#">167 CONG. REC. 1239</a> (daily ed. Mar. 5, 2021) (statement of Sens. Sanders & Tester).	<a href="#">167 CONG. REC. 1239</a> (daily ed. Mar. 5, 2021) (statement of Sen. Tester).	<a href="#">167 CONG. REC. 1239</a> (daily ed. Mar. 5, 2021) (vote no. 83) (51-48).	<a href="#">167 CONG. REC. 1239</a> (daily ed. Mar. 5, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3681, 117th Cong., <a href="#">167 CONG. REC. 6236</a> (daily ed. Aug. 10, 2021) (Cruz amendment “[t]o create a point of order against legislation that would provide funding or subsidize the import from the Xinjiang Uyghur Autonomous Region of the People’s Republic of China of items relating to electric cars”).	<a href="#">167 CONG. REC. 6236</a> (daily ed. Aug. 10, 2021) (statement of Sen. Wyden).	<a href="#">167 CONG. REC. 6236</a> (daily ed. Aug. 10, 2021) (statement of Sens. Wyden & Cruz).	<a href="#">167 CONG. REC. 6236</a> (daily ed. Aug. 10, 2021) (statement of Sen. Cruz).	<a href="#">167 CONG. REC. 6236</a> (daily ed. Aug. 10, 2021) (vote no. 355) (50-49).	<a href="#">167 CONG. REC. 6236</a> (daily ed. Aug. 10, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1375, 115th Cong., <a href="#">163 CONG. REC. S6621</a> (daily ed. Oct. 19, 2017) (Cardin amendment “[t]o create a point of order against legislation that includes deficit-financed tax cuts.”)	<a href="#">163 CONG. REC. S6622</a> (daily ed. Oct. 19, 2017) (statement by Sen. Enzi).	<a href="#">163 CONG. REC. S6622</a> (daily ed. Oct. 19, 2017) (statement by Sens. Cardin & Enzi).	<a href="#">163 CONG. REC. S6622</a> (daily ed. Oct. 19, 2017) (statement by Sen. Cardin).	<a href="#">163 CONG. REC. S6622</a> (daily ed. Oct. 19, 2017) (vote no. 234) (47-52).	<a href="#">163 CONG. REC. S6622</a> (daily ed. Oct. 19, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1228, 115th Cong., <a href="#">163 CONG. REC. S6616</a> (daily ed. Oct. 19, 2017) (Heitkamp amendment “[t]o create a point of order against legislation that would increase taxes on taxpayers whose annual income is below \$250,000.”)	<a href="#">163 CONG. REC. S6619</a> (daily ed. Oct. 19, 2017) (statement by Sen. Enzi).	<a href="#">163 CONG. REC. S6619</a> (daily ed. Oct. 19, 2017) (statement by Sens. Heitkamp & Enzi).	<a href="#">163 CONG. REC. S6619</a> (daily ed. Oct. 19, 2017) (statement by Sen. Heitkamp).	<a href="#">163 CONG. REC. S6619–20</a> (daily ed. Oct. 19, 2017) (vote no. 231) (47-51).	<a href="#">163 CONG. REC. S6620</a> (daily ed. Oct. 19, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1141, 115th Cong., <a href="#">163 CONG. REC. S6603</a> (daily ed. Oct. 19, 2017) (Cantwell amendment “[t]o create a point of order against legislation that would raise taxes on middle class families by double-taxing income already taxed at the state or local level.”)	<a href="#">163 CONG. REC. S6604</a> (daily ed. Oct. 19, 2017) (statement by Sen. Enzi).	<a href="#">163 CONG. REC. S6603–04</a> (daily ed. Oct. 19, 2017) (statement by Sens. Cantwell & Enzi).	<a href="#">163 CONG. REC. S6604</a> (daily ed. Oct. 19, 2017) (statement by Sen. Cantwell).	<a href="#">163 CONG. REC. S6604</a> (daily ed. Oct. 19, 2017) (vote no. 227) (47-52).	<a href="#">163 CONG. REC. S6604</a> (daily ed. Oct. 19, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1120, 115th Cong., <a href="#">163 CONG. REC. S6519</a> (daily ed. Oct. 18, 2017) (Sanders amendment “[t]o ensure that there are no tax cuts for the top 1 percent of Americans.”)	<a href="#">163 CONG. REC. S6525</a> (daily ed. Oct. 18, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S6525</a> (daily ed. Oct. 18, 2017) (statement of Sens. Sanders & Enzi).	<a href="#">163 CONG. REC. S6525</a> (daily ed. Oct. 18, 2017) (statement of Sen. Sanders).	<a href="#">163 CONG. REC. S6525</a> (daily ed. Oct. 18, 2017) (vote no. 224) (46-52).	<a href="#">163 CONG. REC. S6525</a> (daily ed. Oct. 18, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 184, 115th Cong., <a href="#">163 CONG. REC. S263</a> (daily ed. Jan. 11, 2017) (Fischer amendment “[t]o establish a deficit-neutral reserve fund relating to strengthening Social Security or health care for women, which may include strengthening community health centers, and repealing and replacing Obamacare.”)	<a href="#">163 CONG. REC. S263</a> (daily ed. Jan. 11, 2017) (statement of Sen. Gillibrand).	<a href="#">163 CONG. REC. S263</a> (daily ed. Jan. 11, 2017) (statement of Sens. Fischer & Gillibrand).	<a href="#">163 CONG. REC. S263</a> (daily ed. Jan. 11, 2017) (statement of Sen. Fischer).	<a href="#">163 CONG. REC. S263–64</a> (daily ed. Jan. 11, 2017) (vote no. 22) (52-46).	<a href="#">163 CONG. REC. S264</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 180, 115th Cong., <a href="#">163 CONG. REC. S263</a> (daily ed. Jan. 11, 2017) (Hatch amendment “[t]o establish a deficit-neutral reserve fund relating to strengthening Social Security and repealing and replacing Obamacare.”)	<a href="#">163 CONG. REC. S264</a> (daily ed. Jan. 11, 2017) (statement of Sen. Brown).	<a href="#">163 CONG. REC. S264</a> (daily ed. Jan. 11, 2017) (statement of Sens. Hatch & Brown).	<a href="#">163 CONG. REC. S264</a> (daily ed. Jan. 11, 2017) (statement of Sen. Hatch).	<a href="#">163 CONG. REC. S265</a> (daily ed. Jan. 11, 2017) (vote no. 24) (51-47).	<a href="#">163 CONG. REC. S265</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 86, 115th Cong., <a href="#">163 CONG. REC. S253</a> (daily ed. Jan. 11, 2017) (Brown amendment “[t]o create a point of order against legislation that would undermine the historic coverage gains the United States has made in children’s health, which have resulted in the lowest uninsured rate for children in the Nation’s history.”)	<a href="#">163 CONG. REC. S265</a> (daily ed. Jan. 11, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S265</a> (daily ed. Jan. 11, 2017) (statement of Sens. Brown & Enzi).	<a href="#">163 CONG. REC. S265</a> (daily ed. Jan. 11, 2017) (statement of Sen. Brown).	<a href="#">163 CONG. REC. S265</a> (daily ed. Jan. 11, 2017) (vote no. 25) (49-49).	<a href="#">163 CONG. REC. S265</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 82, 115th Cong., <a href="#">163 CONG. REC. S250</a> (daily ed. Jan. 11, 2017) (Gillibrand amendment “[t]o create a point of order against legislation that makes women sick again.”)	<a href="#">163 CONG. REC. S264</a> (daily ed. Jan. 11, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S264</a> (daily ed. Jan. 11, 2017) (statement of Sens. Gillibrand & Enzi).	<a href="#">163 CONG. REC. S264</a> (daily ed. Jan. 11, 2017) (statement of Sen. Gillibrand).	<a href="#">163 CONG. REC. S264</a> (daily ed. Jan. 11, 2017) (vote no. 23) (49-49).	<a href="#">163 CONG. REC. S264</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 188, 115th Cong., <a href="#">163 CONG. REC. S260</a> (daily ed. Jan. 11, 2017) (Wyden amendment “[t]o create a point of order against legislation that does not lower drug prices.”)	<a href="#">163 CONG. REC. S262</a> (daily ed. Jan. 11, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S262</a> (daily ed. Jan. 11, 2017) (statement of Sens. Wyden & Enzi).	<a href="#">163 CONG. REC. S262</a> (daily ed. Jan. 11, 2017) (statement of Sen. Wyden).	<a href="#">163 CONG. REC. S262</a> (daily ed. Jan. 11, 2017) (vote no. 21) (47-51).	<a href="#">163 CONG. REC. S262</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 181, 115th Cong., <a href="#">163 CONG. REC. S257</a> (daily ed. Jan. 11, 2017) (Barrasso amendment “[t]o establish a deficit-neutral reserve fund relating to strengthening Social Security and repealing Obamacare.”)	<a href="#">163 CONG. REC. S259</a> (daily ed. Jan. 11, 2017) (statement of Sen. Sanders).	<a href="#">163 CONG. REC. S258–59</a> (daily ed. Jan. 11, 2017) (statement of Sens. Barrasso & Sanders).	<a href="#">163 CONG. REC. S259</a> (daily ed. Jan. 11, 2017) (statement of Sen. Barrasso).	<a href="#">163 CONG. REC. S259</a> (daily ed. Jan. 11, 2017) (vote no. 16) (47–51).	<a href="#">163 CONG. REC. S259</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 179, 115th Cong., <a href="#">163 CONG. REC. S257</a> (daily ed. Jan. 11, 2017) (Hatch amendment “[t]o establish a deficit-neutral reserve fund relating to reforming housing and Medicaid without prioritizing able-bodied adults over the disabled or raiding the Medicare Trust Funds to pay for new government programs, like Obamacare.”)	<a href="#">163 CONG. REC. S259</a> (daily ed. Jan. 11, 2017) (statement of Sen. Menendez).	<a href="#">163 CONG. REC. S259</a> (daily ed. Jan. 11, 2017) (statements of Sen. Flake & Menendez).	<a href="#">163 CONG. REC. S259</a> (daily ed. Jan. 11, 2017) (statement of Sen. Flake).	<a href="#">163 CONG. REC. S259–60</a> (daily ed. Jan. 11, 2017) (vote no. 17) (51–47).	<a href="#">163 CONG. REC. S260</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 176, 115th Cong., <a href="#">163 CONG. REC. S254</a> (daily ed. Jan. 11, 2017) (Flake amendment “[t]o establish a deficit-neutral reserve fund relating to enhancing health care and housing for veterans and their dependents by repealing Obamacare.”)	<a href="#">163 CONG. REC. S256</a> (daily ed. Jan. 11, 2017) (statement of Sen. Sanders).	<a href="#">163 CONG. REC. S256</a> (daily ed. Jan. 11, 2017) (statement of Sens. Flake, Tester & Sanders).	<a href="#">163 CONG. REC. S256</a> (daily ed. Jan. 11, 2017) (statement of Sen. Flake).	<a href="#">163 CONG. REC. S256</a> (daily ed. Jan. 11, 2017) (vote no. 13) (50–48).	<a href="#">163 CONG. REC. S256</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 174, 115th Cong., <a href="#">163 CONG. REC. S260</a> (daily ed. Jan. 11, 2017) (Alexander amendment “[t]o strengthen Social Security and Medicare without raiding them to pay for new government programs, like Obamacare.”)	<a href="#">163 CONG. REC. S261</a> (daily ed. Jan. 11, 2017) (statement of Sen. Sanders).	<a href="#">163 CONG. REC. S261</a> (daily ed. Jan. 11, 2017) (statements of Sens. Alexander & Sanders).	<a href="#">163 CONG. REC. S261</a> (daily ed. Jan. 11, 2017) (statement of Sen. Alexander).	<a href="#">163 CONG. REC. S261</a> (daily ed. Jan. 11, 2017) (vote no. 19) (49-49).	<a href="#">163 CONG. REC. S261</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 173, 115th Cong., <a href="#">163 CONG. REC. S251</a> (daily ed. Jan. 11, 2017) (Barrasso amendment “[t]o establish a deficit-neutral reserve fund relating to rural health and repealing and replacing Obamacare.”)	<a href="#">163 CONG. REC. S253</a> (daily ed. Jan. 11, 2017) (statement of Sen. Manchin).	<a href="#">163 CONG. REC. S252–53</a> (daily ed. Jan. 11, 2017) (statements of Sens. Barrasso, Sanders & Manchin).	<a href="#">163 CONG. REC. S253</a> (daily ed. Jan. 11, 2017) (statement of Sen. Barrasso).	<a href="#">163 CONG. REC. S253</a> (daily ed. Jan. 11, 2017) (vote no. 9) (51-47).	<a href="#">163 CONG. REC. S253</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 167, 115th Cong., <a href="#">163 CONG. REC. S254</a> (daily ed. Jan. 11, 2017) (Heller amendment “[t]o establish a deficit-neutral reserve fund relating to strengthening Social Security and repealing Obamacare.”)	<a href="#">163 CONG. REC. S255</a> (daily ed. Jan. 11, 2017) (statement of Sen. Sanders).	<a href="#">163 CONG. REC. S254–55</a> (daily ed. Jan. 11, 2017) (statement of Sens. Heller, Baldwin & Sanders).	<a href="#">163 CONG. REC. S255</a> (daily ed. Jan. 11, 2017) (statement of Sen. Heller).	<a href="#">163 CONG. REC. S255</a> (daily ed. Jan. 11, 2017) (vote no. 11) (51-47).	<a href="#">163 CONG. REC. S255</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 104, 115th Cong., <a href="#">163 CONG. REC. S250</a> (daily ed. Jan. 11, 2017) (Tester amendment “[t]o create a point of order against legislation that would limit veterans’ ability to choose VA health care.”)	<a href="#">163 CONG. REC. S256</a> (daily ed. Jan. 11, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S256</a> (daily ed. Jan. 11, 2017) (statement of Sens. Tester & Enzi).	<a href="#">163 CONG. REC. S256</a> (daily ed. Jan. 11, 2017) (statement of Sen. Tester).	<a href="#">163 CONG. REC. S257</a> (daily ed. Jan. 11, 2017) (vote no. 14) (48-50).	<a href="#">163 CONG. REC. S257</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 83, 115th Cong., <a href="#">163 CONG. REC. S250</a> (daily ed. Jan. 11, 2017) (Menendez amendment “[t]o create a point of order against legislation that would eliminate or reduce Federal funding to States under the Medicaid expansion.”)	<a href="#">163 CONG. REC. S260</a> (daily ed. Jan. 11, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S260</a> (daily ed. Jan. 11, 2017) (statement of Sens. Menendez & Enzi).	<a href="#">163 CONG. REC. S260</a> (daily ed. Jan. 11, 2017) (statement of Sen. Sanders).	<a href="#">163 CONG. REC. S260</a> (daily ed. Jan. 11, 2017) (vote no. 18) (48-50).	<a href="#">163 CONG. REC. S260</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 81, 115th Cong., <a href="#">163 CONG. REC. S250</a> (daily ed. Jan. 11, 2017) (Baldwin amendment “[t]o create a point of order against legislation that makes young people sick again.”)	<a href="#">163 CONG. REC. S255</a> (daily ed. Jan. 11, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S255</a> (daily ed. Jan. 11, 2017) (statement of Sens. Baldwin & Enzi).	<a href="#">163 CONG. REC. S255</a> (daily ed. Jan. 11, 2017) (statement of Sen. Baldwin).	<a href="#">163 CONG. REC. S255</a> (daily ed. Jan. 11, 2017) (vote no. 12) (48-50).	<a href="#">163 CONG. REC. S256</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 64, 115th Cong., <a href="#">163 CONG. REC. S249</a> (daily ed. Jan. 11, 2017) (Manchin amendment “[t]o create a point of order against legislation that would harm rural hospitals and health care providers.”)	<a href="#">163 CONG. REC. S254</a> (daily ed. Jan. 11, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S254</a> (daily ed. Jan. 11, 2017) (statement of Sens. Manchin & Enzi).	<a href="#">163 CONG. REC. S254</a> (daily ed. Jan. 11, 2017) (statement of Sen. Manchin).	<a href="#">163 CONG. REC. S254</a> (daily ed. Jan. 11, 2017) (vote no. 10) (51-47).	<a href="#">163 CONG. REC. S254</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 61, 115th Cong., <a href="#">163 CONG. REC. S250</a> (daily ed. Jan. 11, 2017) (Casey amendment “[t]o create a point of order against legislation that would make people with disabilities and chronic conditions sick again.”)	<a href="#">163 CONG. REC. S257</a> (daily ed. Jan. 11, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S257</a> (daily ed. Jan. 11, 2017) (statement of Sens. Casey & Enzi).	<a href="#">163 CONG. REC. S257</a> (daily ed. Jan. 11, 2017) (statement of Sen. Casey).	<a href="#">163 CONG. REC. S257</a> (daily ed. Jan. 11, 2017) (vote no. 15) (49-49).	<a href="#">163 CONG. REC. S257</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 60, 115th Cong., <a href="#">163 CONG. REC. S250</a> (daily ed. Jan. 11, 2017) (King amendment “[t]o create a point of order against legislation that would reduce health insurance access and affordability for individuals based on their occupation.”)	<a href="#">163 CONG. REC. S252</a> (daily ed. Jan. 11, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S252</a> (daily ed. Jan. 11, 2017) (statements of Sens. King & Enzi).	<a href="#">163 CONG. REC. S252</a> (daily ed. Jan. 11, 2017) (statement of Sen. King).	<a href="#">163 CONG. REC. S252</a> (daily ed. Jan. 11, 2017) (vote no. 8) (48-50).	<a href="#">163 CONG. REC. S252</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 13, 115th Cong., <a href="#">163 CONG. REC. S249</a> (daily ed. Jan. 11, 2017) (Nelson amendment “[t]o create a point of order against legislation that would repeal health reforms that closed the prescription drug coverage gap under Medicare.”)	<a href="#">163 CONG. REC. S251</a> (daily ed. Jan. 11, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S251</a> (daily ed. Jan. 11, 2017) (statements pf Sens. Nelson & Flake).	<a href="#">163 CONG. REC. S251</a> (daily ed. Jan. 11, 2017) (statement of Sen. Sanders).	<a href="#">163 CONG. REC. S252</a> (daily ed. Jan. 11, 2017) (vote no. 7) (47-49).	<a href="#">163 CONG. REC. S252</a> (daily ed. Jan. 11, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 52, 115th Cong., <a href="#">163 CONG. REC. S187</a> (daily ed. Jan. 10, 2017) (Flake amendment to “[t]o strengthen Social Security and Medicare without raiding it to pay for new Government programs, like Obamacare.”)	<a href="#">163 CONG. REC. S191</a> (daily ed. Jan. 10, 2017) (statement of Sen. Sanders).	<a href="#">163 CONG. REC. S190–91</a> (daily ed. Jan. 10, 2017) (statements of Sens. Flake & Sanders).	<a href="#">163 CONG. REC. S191</a> (daily ed. Jan. 10, 2017) (statement of Sen. Flake).	<a href="#">163 CONG. REC. S191</a> (daily ed. Jan. 10, 2017) (vote no. 5) (31-67).	<a href="#">163 CONG. REC. S191</a> (daily ed. Jan. 10, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 19, 115th Cong., <a href="#">163 CONG. REC. S107</a> (daily ed. Jan. 5, 2017) (Sanders amendment “[t]o prevent the Senate from breaking Donald Trump’s promise that ‘there will be no cuts to Social Security, Medicare, and Medicaid.’”)	<a href="#">163 CONG. REC. S191</a> (daily ed. Jan. 5, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S191</a> (daily ed. Jan. 10, 2017) (statements of Sens. Sanders & Enzi).	<a href="#">163 CONG. REC. S191</a> (daily ed. Jan. 10, 2017) (statement of Sen. Sanders).	<a href="#">163 CONG. REC. S191</a> (daily ed. Jan. 10, 2017) (vote no. 6) (49-49).	<a href="#">163 CONG. REC. S191</a> (daily ed. Jan. 10, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 20, 115th Cong., <a href="#">163 CONG. REC. S133</a> (daily ed. Jan. 9, 2017) (Hirono-Donnelly amendment “[t]o protect Medicare and Medicaid.”)	<a href="#">163 CONG. REC. S138</a> (daily ed. Jan. 9, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S137–38</a> (daily ed. Jan. 9, 2017) (statements of Sens. Hirono & Enzi).	<a href="#">163 CONG. REC. S138</a> (daily ed. Jan. 9, 2017) (statement of Sen. Hirono).	<a href="#">163 CONG. REC. S138</a> (daily ed. Jan. 9, 2017) (vote no. 4) (49–47).	<a href="#">163 CONG. REC. S138</a> (daily ed. Jan. 9, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 8, 115th Cong., <a href="#">163 CONG. REC. 79</a> (daily ed. Jan. 5, 2017) (Kaine amendment “[t]o prohibit legislation that makes America sick again”).	<a href="#">163 CONG. REC. S95</a> (daily ed. Jan. 5, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S79–95</a> (daily ed. Jan. 5, 2017) (statements of Sens. Kaine, Murphy, Cornyn, Blunt, Wyden, Enzi, Moran, Carper, Cassidy, Hatch & Portman).	<a href="#">163 CONG. REC. S95</a> (daily ed. Jan. 5, 2017) (statement of Sen. Kaine).	<a href="#">163 CONG. REC. S95</a> (daily ed. Jan. 5, 2017) (vote no. 2) (48–52).	<a href="#">163 CONG. REC. S95</a> (daily ed. Jan. 5, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2328, 114th Cong., <a href="#">161 CONG. REC. S5893</a> (daily ed. July 27, 2015) (McConnell amendment “to repeal the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 entirely.”)	<a href="#">161 CONG. REC. S5921</a> (daily ed. July 27, 2015) (statement of Sen. Reid).	<a href="#">161 CONG. REC. S5921</a> (daily ed. July 27, 2015) (statement of Sen. Reid).			<a href="#">161 CONG. REC. S5921</a> (daily ed. July 27, 2015) (the point of order was sustained and the amendment fell).	
S. Amend. No. 1564, 114th Cong., <a href="#">161 CONG. REC. S4222</a> (daily ed. June 17, 2015) (Blumenthal amendment “to enhance protections accorded to service-members and their spouses.”)	<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (statement of Sen. McCain).	<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (statement of Sen. McCain).			<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (the point of order was sustained and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1825, 114th Cong., <a href="#">161 CONG. REC. S4222</a> (daily ed. June 17, 2015) (Fischer-Booker amendment “to authorize appropriations for national security aspects of the Merchant Marine for fiscal years 2016 and 2017.”)	<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (statement of Sen. McCain).	<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (statement of Sen. McCain).			<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (the point of order was sustained and the amendment fell).	
S. Amend. No. 1559, 114th Cong., <a href="#">161 CONG. REC. S4222</a> (daily ed. June 17, 2015) (Reed amendment “to prohibit the award of Department of Defense contracts to inverted domestic corporations.”)	<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (statement of Sen. McCain).	<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (statement of Sen. McCain).			<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (the point of order was sustained and the amendment fell).	
S. Amend. No. 1543, 114th Cong., <a href="#">161 CONG. REC. S4222</a> (daily ed. June 17, 2015) (Paul amendment “to strengthen employee cost savings suggestions programs within the Federal Government.”)	<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (statement of Sen. McCain).	<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (statement of Sen. McCain).			<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (the point of order was sustained and the amendment fell).	
S. Amend. No. 1645, 114th Cong., <a href="#">161 CONG. REC. S4222</a> (daily ed. June 17, 2015) (Markey amendment “to express the sense of Congress that exports of crude oil to United States allies and partners should not be determined to be consistent with the national interest if those exports would increase energy prices in the United States.”)	<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (statement of Sen. McCain).	<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (statement of Sen. McCain).			<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (the point of order was sustained and the amendment fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1486, 114th Cong., <a href="#">161 CONG. REC. S4222</a> (daily ed. June 17, 2015) (Cornyn amendment “to require reporting on energy security issues involving Europe and the Russian Federation.”)	<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (statement of Sen. McCain).	<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (statement of Sen. McCain).			<a href="#">161 CONG. REC. S4247</a> (daily ed. June 17, 2015) (the point of order was sustained and the amendment fell).	
S. Amend. No. 1227, 114th Cong., <a href="#">161 CONG. REC. S3256</a> (daily ed. May 22, 2015) (Inhofe amendment “to amend the African Growth and Opportunity Act to require the development of a plan for each sub-Saharan African country for negotiating and entering into free trade agreements.”)	<a href="#">161 CONG. REC. S3294</a> (daily ed. May 22, 2015) (statement of Sen. Hatch).	<a href="#">161 CONG. REC. S3294</a> (daily ed. May 22, 2015) (statement of Sens. Inhofe & Hatch).			<a href="#">161 CONG. REC. S3294</a> (daily ed. May 22, 2015) (the point of order was sustained and the amendment fell).	
S. Amend. No. 1227, 114th Cong., <a href="#">161 CONG. REC. S3256</a> (daily ed. May 22, 2015) (McCain amendment “to repeal a duplicative inspection and grading program.”)	<a href="#">161 CONG. REC. S3294</a> (daily ed. May 22, 2015) (statement of Sen. Hatch).	<a href="#">161 CONG. REC. S3294</a> (daily ed. May 22, 2015) (statement of Sens. McCain & Hatch).			<a href="#">161 CONG. REC. S3294</a> (daily ed. May 22, 2015) (the point of order was sustained and the amendment fell).	
S. Amend. No. 1227, 114th Cong., <a href="#">161 CONG. REC. S3256</a> (daily ed. May 22, 2015) (Shaheen amendment “to make trade agreements work for small businesses.”)	<a href="#">161 CONG. REC. S3293</a> (daily ed. May 22, 2015) (statement of Sen. Hatch).	<a href="#">161 CONG. REC. S3293</a> (daily ed. May 22, 2015) (statement of Sens. Shaheen & Hatch).			<a href="#">161 CONG. REC. S3293</a> (daily ed. May 22, 2015) (the point of order was sustained and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 471, 114th Cong., <a href="#">161 CONG. REC. S1762</a> (daily ed. Mar. 24, 2015) (Wyden amendment “[t]o create a point of order against legislation that would cut benefits, raise the retirement age, or privatize Social Security.”)	<a href="#">161 CONG. REC. S1767</a> (daily ed. Mar. 24, 2015) (statement of Sen. Enzi).	<a href="#">161 CONG. REC. S1767-68</a> (daily ed. Mar. 24, 2015) (statement of Sens. Wyden & Enzi).	<a href="#">161 CONG. REC. S1768</a> (daily ed. Mar. 24, 2015) (statement of Sen. Wyden).	<a href="#">161 CONG. REC. S1767</a> (daily ed. Mar. 24, 2015) (vote no. 84) (51-48).	<a href="#">161 CONG. REC. S1767</a> (daily ed. Mar. 24, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 601, 114th Cong., <a href="#">161 CONG. REC. S1844</a> (daily ed. Mar. 25, 2015) (Bennet-Stabenow amendment “[t]o create a point of order against legislation that would privatize Medicare, cut guaranteed benefits, increase out-of-pocket spending, or turn Medicare into a premium support plan.”)	<a href="#">161 CONG. REC. S1870-71</a> (daily ed. Mar. 25, 2015) (statement of Sen. Enzi).	<a href="#">161 CONG. REC. S1870-71</a> (daily ed. Mar. 25, 2015) (statement of Sens. Wyden & Enzi).	<a href="#">161 CONG. REC. S1871</a> (daily ed. Mar. 25, 2015) (statement of Sen. Stabenow).	<a href="#">161 CONG. REC. S1871</a> (daily ed. Mar. 25, 2015) (vote no. 90) (46-53).	<a href="#">161 CONG. REC. S1871</a> (daily ed. Mar. 25, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 944, 114th Cong., <a href="#">161 CONG. REC. S1968</a> (daily ed. Mar. 26, 2015) (Nelson-Schatz amendment “[t]o create a point of order against legislation that would use tax dollars to censor publicly-funded climate science.”)	<a href="#">161 CONG. REC. S2007</a> (daily ed. Mar. 26, 2015) (statement of Sen. Enzi).	<a href="#">161 CONG. REC. S2006-07</a> (daily ed. Mar. 26, 2015) (statement of Sens. Nelson & Enzi).	<a href="#">161 CONG. REC. S2007</a> (daily ed. Mar. 26, 2015) (statement of Sen. Nelson).	<a href="#">161 CONG. REC. S2007</a> (daily ed. Mar. 26, 2015) (vote no. 123) (51-49).	<a href="#">161 CONG. REC. S2007</a> (daily ed. Mar. 26, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 664, 114th Cong., <a href="#">161 CONG. REC. S1996</a> (daily ed. Mar. 26, 2015) (Cotton amendment “[t]o establish a deficit-neutral reserve fund relating to construction of new facilities and improvements to existing facilities at the detention facilities at United States Naval Station, Guantanamo Bay, Cuba.”)	<a href="#">161 CONG. REC. S2010</a> (daily ed. Mar. 26, 2015) (statement of Sen. Sanders).	<a href="#">161 CONG. REC. S2010</a> (daily ed. Mar. 26, 2015) (statement of Sens. Cotton & Sanders).	<a href="#">161 CONG. REC. S2010</a> (daily ed. Mar. 26, 2015) (statement of Sen. Cotton).	<a href="#">161 CONG. REC. S2010–11</a> (daily ed. Mar. 26, 2015) (vote no. 129) (49-48).	<a href="#">161 CONG. REC. S2011</a> (daily ed. Mar. 26, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 292, 113th Cong., <a href="#">159 CONG. REC. S2281</a> (daily ed. Mar. 22, 2013) (Rubio amendment “[t]o express the sense of the Senate to enact the Child Interstate Abortion Notification Act”).	<a href="#">159 CONG. REC. S2281</a> (daily ed. Mar. 22, 2013) (statement of Sen. Boxer).	<a href="#">159 CONG. REC. S2281</a> (daily ed. Mar. 22, 2013) (statement of Sens. Boxer & Rubio).	<a href="#">159 CONG. REC. S2281</a> (daily ed. Mar. 22, 2013) (statement of Sen. Rubio).	<a href="#">159 CONG. REC. S2281–82</a> (daily ed. Mar. 22, 2013) (vote no. 64) (48-51).	<a href="#">159 CONG. REC. S2282</a> (daily ed. Mar. 22, 2013) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 697, 113th Cong., <a href="#">159 CONG. REC. S2284</a> (daily ed. Mar. 22, 2013) (Burr amendment “[t]o create a point of order against legislation that would raise taxes on veterans”).	<a href="#">159 CONG. REC. S. 2287</a> (daily ed. Mar. 22, 2013) (statement of Sen. Sanders).	<a href="#">159 CONG. REC. S. 2287</a> (daily ed. Mar. 22, 2013) (statements of Sens. Sanders & Burr).	<a href="#">159 CONG. REC. S. 2287</a> (daily ed. Mar. 22, 2013) (statement of Sen. Burr).	<a href="#">159 CONG. REC. S. 2287</a> (daily ed. Mar. 22, 2013) (vote no. 68) (45-54).	<a href="#">159 CONG. REC. S. 2287</a> (daily ed. Mar. 22, 2013) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 673, 113th Cong., <a href="#">159 CONG. REC. S2316</a> (daily ed. Mar. 22, 2013) (Lee amendment “[t]o create a point of order against legislation that would further restrict the right of law-abiding Americans to own a firearm”).	<a href="#">159 CONG. REC. S2316</a> (daily ed. Mar. 22, 2013) (statement of Sen. Murray).	<a href="#">159 CONG. REC. S2316</a> (daily ed. Mar. 22, 2013) (statements of Sens. Murray & Lee).	<a href="#">159 CONG. REC. S2316</a> (daily ed. Mar. 22, 2013) (statement of Sen. Lee).	<a href="#">159 CONG. REC. S2316</a> (daily ed. Mar. 22, 2013) (vote no. 87) (50-49).	<a href="#">159 CONG. REC. S2316</a> (daily ed. Mar. 22, 2013) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 261, 113th Cong., <a href="#">159 CONG. REC. S2270–71</a> (daily ed. Mar. 22, 2013) (Blunt amendment “[t]o create a point of order against legislation that would create a Federal tax or fee on carbon emissions”).	<a href="#">159 CONG. REC. S2271</a> (daily ed. Mar. 22, 2013) (statement of Sen. Murray).	<a href="#">159 CONG. REC. S2271</a> (daily ed. Mar. 22, 2013) (statements of Sens. Murray & Blunt).	<a href="#">159 CONG. REC. S2271</a> (daily ed. Mar. 22, 2013) (statement of Sen. Blunt).	<a href="#">159 CONG. REC. S2271</a> (daily ed. Mar. 22, 2013) (vote no. 59) (53-46).	<a href="#">159 CONG. REC. S2271</a> (daily ed. Mar. 22, 2013) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3568, 111th Cong., <a href="#">156 CONG. REC. S2008</a> (daily ed. Mar. 24, 2010) (Bennett amendment “[t]o protect the democratic process and the right of the people of the District of Columbia to define marriage”).	<a href="#">156 CONG. REC. S2008</a> (daily ed. Mar. 24, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S2008–09</a> (daily ed. Mar. 24, 2010) (statements of Sens. Baucus & Bennett).	<a href="#">156 CONG. REC. S2009</a> (daily ed. Mar. 24, 2010) (statement of Sen. Bennett).	<a href="#">156 CONG. REC. S2009</a> (daily ed. Mar. 24, 2010) (vote no. 89) (36-59).	<a href="#">156 CONG. REC. S2009</a> (daily ed. Mar. 24, 2010) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 934, 111th Cong., <a href="#">155 CONG. REC. S4273</a> (daily ed. Apr. 2, 2009) (Cornyn amendment “[t]o increase transparency by requiring five days of public review of legislation before passage by the Senate”).	<a href="#">155 CONG. REC. S4273</a> (daily ed. Apr. 2, 2009) (statement of Sen. Conrad).		<a href="#">155 CONG. REC. S4255</a> (daily ed. Apr. 2, 2009) (statement of Sen. Conrad) (motion provided for by unanimous consent).	<a href="#">155 CONG. REC. S4273</a> (daily ed. Apr. 2, 2009) (vote no. 144) (46-52).	<a href="#">155 CONG. REC. S4273</a> (daily ed. Apr. 2, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 798, 111th Cong., <a href="#">155 CONG. REC. S4274</a> (daily ed. Apr. 2, 2009) (Wicker amendment to allow Amtrak passengers to transport firearms in their checked baggage).	<a href="#">155 CONG. REC. S4274</a> (daily ed. Apr. 2, 2009) (statement of Sen. Lautenberg).	<a href="#">155 CONG. REC. S4274</a> (daily ed. Apr. 2, 2009) (statements of Sens. Wicker, Lautenberg & Gregg).	<a href="#">155 CONG. REC. S4255</a> (daily ed. Apr. 2, 2009) (statement of Sen. Conrad) (motion provided for by unanimous consent).	<a href="#">155 CONG. REC. S4274</a> (daily ed. Apr. 2, 2009) (vote no. 145) (63-35).	<a href="#">155 CONG. REC. S4274</a> (daily ed. Apr. 2, 2009) (the motion was agreed to and the point of order fell).	<a href="#">155 CONG. REC. S4274</a> (daily ed. Apr. 2, 2009) (statement of Sen. Reid).
S. Amend. No. 967, 111th Cong., <a href="#">155 CONG. REC. S4283</a> (daily ed. Apr. 2, 2009) (DeMint amendment “[t]o implement President Obama’s earmark reforms”).	<a href="#">155 CONG. REC. S4283</a> (daily ed. Apr. 2, 2009) (statement of Sen. Conrad).	<a href="#">155 CONG. REC. S4283</a> (daily ed. Apr. 2, 2009) (statements of Sens. DeMint, Conrad, Inouye & Cochran).	<a href="#">155 CONG. REC. S4277–78</a> (daily ed. Apr. 2, 2009) (statement of Sen. Conrad) (motion provided for by unanimous consent).	<a href="#">155 CONG. REC. S4283–84</a> (daily ed. Apr. 2, 2009) (vote no. 149) (28-69).	<a href="#">155 CONG. REC. S4284</a> (daily ed. Apr. 2, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 969, 111th Cong., <a href="#">155 CONG. REC. S4285</a> (daily ed. Apr. 2, 2009) (Sessions amendment to create a point of order against any appropriations bill that fails to fully fund the construction of the Southwest border fence).	<a href="#">155 CONG. REC. S4286</a> (daily ed. Apr. 2, 2009) (statement of Sen. Conrad).	<a href="#">155 CONG. REC. S4277–78</a> (daily ed. Apr. 2, 2009) (statement of Sen. Conrad).	<a href="#">155 CONG. REC. S4277–78</a> (daily ed. Apr. 2, 2009) (statement of Sen. Conrad) (motion provided for by unanimous consent).	<a href="#">155 CONG. REC. S4286</a> (daily ed. Apr. 2, 2009) (vote no. 150) (36-61).	<a href="#">155 CONG. REC. S4286</a> (daily ed. Apr. 2, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 869, 111th Cong., <a href="#">155 CONG. REC. S4149</a> (daily ed. Apr. 1, 2009) (Whitehouse-Boxer amendment “[r]elative to a deficit-neutral reserve fund to invest in clean energy and preserve the environment”).	<a href="#">155 CONG. REC. S4149</a> (daily ed. Apr. 1, 2009) (statement of Sen. Gregg).	<a href="#">155 CONG. REC. S4149</a> (daily ed. Apr. 1, 2009) (statements of Sens. Gregg, Boxer & Whitehouse).	<a href="#">155 CONG. REC. S4149</a> (daily ed. Apr. 1, 2009) (statement of Sen. Whitehouse).	<a href="#">155 CONG. REC. S4149</a> (daily ed. Apr. 1, 2009) (vote no. 125) (42-56).	<a href="#">155 CONG. REC. S4149</a> (daily ed. Apr. 1, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">155 CONG. REC. S4149</a> (daily ed. Apr. 1, 2009) (statement of Sen. Conrad).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 641, § 431, 110th Cong., <a href="#">153 CONG. REC. S3776–77</a> (daily ed. Mar. 26, 2007) (Byrd amendment “[i]n the nature of a substitute”).	<a href="#">153 CONG. REC. S4087</a> (daily ed. Mar. 29, 2007) (statement of Sen. Murray).	<a href="#">153 CONG. REC. S4087</a> (daily ed. Mar. 29, 2007) (statements of Sens. Murray, DeMint & Bunning).	<a href="#">153 CONG. REC. S4087</a> (daily ed. Mar. 29, 2007) (statement of Sen. DeMint).	<a href="#">153 CONG. REC. S4088</a> (daily ed. Mar. 29, 2007) (vote no. 125) (57–41).	<a href="#">153 CONG. REC. S4088</a> (daily ed. Mar. 29, 2007) (the motion to waive was agreed to and the point of order fell).	
S. Amend. No. 4242, 110th Cong., <a href="#">154 CONG. REC. S1961</a> (daily ed. Mar. 12, 2008) (Cornyn amendment “[t]o protect the family budget by providing for a budget point of order against legislation that increases income taxes on taxpayers, including hard-working middle-income families, entrepreneurs, and college students”).	<a href="#">154 CONG. REC. S2053</a> (daily ed. Mar. 13, 2008) (statement of Sen. Conrad).	<a href="#">154 CONG. REC. S2053</a> (daily ed. Mar. 13, 2008) (statements of Sens. Conrad & Cornyn).	<a href="#">154 CONG. REC. S2053</a> (daily ed. Mar. 13, 2008) (statement of Sen. Cornyn).	<a href="#">154 CONG. REC. S2053</a> (daily ed. Mar. 13, 2008) (vote no. 61) (58–40).	<a href="#">154 CONG. REC. S2053</a> (daily ed. Mar. 13, 2008) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 4340, 110th Cong., <a href="#">154 CONG. REC. S2071</a> (daily ed. Mar. 13, 2008) (DeMint amendment “[t]o create a point of order against bills that would raise gasoline prices”).	<a href="#">154 CONG. REC. S2071</a> (daily ed. Mar. 13, 2008) (statement of Sen. Conrad).	<a href="#">154 CONG. REC. S2071</a> (daily ed. Mar. 13, 2008) (statements of Sens. Conrad & DeMint).	<a href="#">154 CONG. REC. S2071</a> (daily ed. Mar. 13, 2008) (statement of Sen. DeMint).	<a href="#">154 CONG. REC. S2071</a> (daily ed. Mar. 13, 2008) (vote no. 72) (39–59).	<a href="#">154 CONG. REC. S2071</a> (daily ed. Mar. 13, 2008) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 4313, 110th Cong., <a href="#">154 CONG. REC. S2072</a> (daily ed. Mar. 13, 2008) (Cornyn amendment “[t]o protect the family budget from runaway Government spending by increasing the number of Senators necessary to waive the PAYGO Point of Order from 60 to 100”).	<a href="#">154 CONG. REC. S2072</a> (daily ed. Mar. 13, 2008) (statement of Sen. Conrad).	<a href="#">154 CONG. REC. S2072</a> (daily ed. Mar. 13, 2008) (statements of Sens. Conrad & Cornyn).	<a href="#">154 CONG. REC. S2072</a> (daily ed. Mar. 13, 2008) (statement of Sen. Cornyn).	<a href="#">154 CONG. REC. S2072</a> (daily ed. Mar. 13, 2008) (vote no. 73) (27-71).	<a href="#">154 CONG. REC. S2072</a> (daily ed. Mar. 13, 2008) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 4347, 110th Cong., <a href="#">154 CONG. REC. S2074</a> (daily ed. Mar. 13, 2008) (DeMint amendment “[t]o establish an earmark moratorium for fiscal year 2009”).	<a href="#">154 CONG. REC. S2075</a> (daily ed. Mar. 13, 2008) (statement of Sen. Conrad).	<a href="#">154 CONG. REC. S2075</a> (daily ed. Mar. 13, 2008) (statements of Sens. Conrad & DeMint).	<a href="#">154 CONG. REC. S2075</a> (daily ed. Mar. 13, 2008) (statement of Sen. DeMint).	<a href="#">154 CONG. REC. S2075</a> (daily ed. Mar. 13, 2008) (vote no. 75) (29-71).	<a href="#">154 CONG. REC. S2075</a> (daily ed. Mar. 13, 2008) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2353, 110th Cong., <a href="#">153 CONG. REC. S9592</a> (daily ed. July 19, 2007) (Kyl amendment “to amend the Internal Revenue Code of 1986 to repeal the individual alternative minimum tax”).	<a href="#">153 CONG. REC. S9592</a> (daily ed. July 19, 2007) (statement of Sen. Conrad).	<a href="#">153 CONG. REC. S9591–92</a> (daily ed. July 19, 2007) (statements of Sens. Conrad & Kyl).	<a href="#">153 CONG. REC. S9592</a> (daily ed. July 19, 2007) (statement of Sen. Kyl).	<a href="#">153 CONG. REC. S9592</a> (daily ed. July 19, 2007) (vote no. 271) (47-49).	<a href="#">153 CONG. REC. S9592</a> (daily ed. July 19, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2364, 110th Cong., <a href="#">153 CONG. REC. S9591</a> (daily ed. July 19, 2007) (Kerry amendment “[as] a sense of the Senate relative to the Alternative Minimum Tax”).	<a href="#">153 CONG. REC. S9592</a> (daily ed. July 19, 2007) (statement of Sen. Kyl).	<a href="#">153 CONG. REC. S9592</a> (daily ed. July 19, 2007) (statements of Sens. Kyl & Kerry).	<a href="#">153 CONG. REC. S9592</a> (daily ed. July 19, 2007) (statement of Sen. Kerry).	<a href="#">153 CONG. REC. S9592</a> (daily ed. July 19, 2007) (vote no. 270) (48-48).	<a href="#">153 CONG. REC. S9592</a> (daily ed. July 19, 2007) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2352, 110th Cong., <a href="#">153 CONG. REC. S9579</a> (daily ed. July 19, 2007) (DeMint amendment “[t]o amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board”).	<a href="#">153 CONG. REC. S9580</a> (daily ed. July 19, 2007) (statement of Sen. Kennedy).	<a href="#">153 CONG. REC. S9579–80</a> (daily ed. July 19, 2007) (statements of Sens. DeMint, Kennedy & Reid).	<a href="#">153 CONG. REC. S9580</a> (daily ed. July 19, 2007) (statement of Sen. DeMint).	<a href="#">153 CONG. REC. S9580</a> (daily ed. July 19, 2007) (vote no. 260) (42-54).	<a href="#">153 CONG. REC. S9580</a> (daily ed. July 19, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2334, 110th Cong., <a href="#">153 CONG. REC. S9577</a> (daily ed. July 19, 2007) (Coleman amendment “[t]o prevent the Federal Communications Commission from repromulgating the fairness doctrine”).	<a href="#">153 CONG. REC. S9577</a> (daily ed. July 19, 2007) (statement of Sen. Kennedy).	<a href="#">153 CONG. REC. S9577</a> (daily ed. July 19, 2007) (statements of Sens. Kennedy & Coleman).	<a href="#">153 CONG. REC. S9577</a> (daily ed. July 19, 2007) (statement of Sen. Coleman).	<a href="#">153 CONG. REC. S9577</a> (daily ed. July 19, 2007) (vote no. 258) (49-48).	<a href="#">153 CONG. REC. S9577</a> (daily ed. July 19, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2341, 110th Cong., <a href="#">153 CONG. REC. S9586</a> (daily ed. July 19, 2007) (Sununu amendment “[t]o permanently extend certain education-related tax incentives”).	<a href="#">153 CONG. REC. S9587</a> (daily ed. July 19, 2007) (statement of Sen. Kennedy).	<a href="#">153 CONG. REC. S9587</a> (daily ed. July 19, 2007) (statements of Sens. Kennedy & Sununu).	<a href="#">153 CONG. REC. S9587</a> (daily ed. July 19, 2007) (statement of Sen. Sununu).	<a href="#">153 CONG. REC. S9587</a> (daily ed. July 19, 2007) (vote no. 265) (48-48).	<a href="#">153 CONG. REC. S9587</a> (daily ed. July 19, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2340, 110th Cong., <a href="#">153 CONG. REC. S9580–81</a> (daily ed. July 19, 2007) (Collins amendment “[t]o provide limited immunity for reports of suspicious behavior and response”).	<a href="#">153 CONG. REC. S9581</a> (daily ed. July 19, 2007) (statement of Sen. Leahy).	<a href="#">153 CONG. REC. S9581</a> (daily ed. July 19, 2007) (statements of Sens. Leahy & Collins).	<a href="#">153 CONG. REC. S9581</a> (daily ed. July 19, 2007) (statement of Sen. Collins).	<a href="#">153 CONG. REC. S9581</a> (daily ed. July 19, 2007) (vote no. 261) (57-39).	<a href="#">153 CONG. REC. S9581</a> (daily ed. July 19, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2355, 110th Cong., <a href="#">153 CONG. REC. 9583–84</a> (daily ed. July 19, 2007) (Ensign amendment “[t]o reduce document fraud, prevent identity theft, and preserve the integrity of the Social Security system, by ensuring that individuals are not able to receive Social Security benefits as a result of unlawful activity”).	<a href="#">153 CONG. REC. S9585</a> (daily ed. July 19, 2007) (statement of Sen. Kennedy).	<a href="#">153 CONG. REC. S9585</a> (daily ed. July 19, 2007) (statements of Sens. Kennedy & Ensign).	<a href="#">153 CONG. REC. S9585</a> (daily ed. July 19, 2007) (statement of Sen. Ensign).	<a href="#">153 CONG. REC. S9585</a> (daily ed. July 19, 2007) (vote no. 263) (57-40).	<a href="#">153 CONG. REC. S9585</a> (daily ed. July 19, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2362, 110th Cong., <a href="#">153 CONG. REC. 9588</a> (daily ed. July 19, 2007) (DeMint amendment “[t]o repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the expansion of the adoption credit and adoption assistance programs”).	<a href="#">153 CONG. REC. 9589</a> (daily ed. July 19, 2007) (statement of Sen. Kennedy).	<a href="#">153 CONG. REC. 9589</a> (daily ed. July 19, 2007) (statements of Sens. Kennedy & DeMint).	<a href="#">153 CONG. REC. 9589</a> (daily ed. July 19, 2007) (statement of Sen. DeMint).	<a href="#">153 CONG. REC. 9590</a> (daily ed. July 19, 2007) (vote no. 268) (48-48).	<a href="#">153 CONG. REC. 9590</a> (daily ed. July 19, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2358, 110th Cong., <a href="#">153 CONG. REC. 9584</a> (daily ed. July 19, 2007) (Stabenow amendment “[r]elative to illegal aliens qualifying for Social Security benefits”).	<a href="#">153 CONG. REC. 9584</a> (daily ed. July 19, 2007) (statement of Sen. Ensign).	<a href="#">153 CONG. REC. 9584–85</a> (daily ed. July 19, 2007) (statements of Sens. Ensign & Stabenow).	<a href="#">153 CONG. REC. 9585</a> (daily ed. July 19, 2007) (statement of Sen. Stabenow).	<a href="#">153 CONG. REC. 9585</a> (daily ed. July 19, 2007) (vote no. 262) (53-44).	<a href="#">153 CONG. REC. 9585</a> (daily ed. July 19, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2363, 110th Cong., <a href="#">153 CONG. REC. 9589</a> (daily ed. July 19, 2007) (Landrieu amendment “[as] a sense of the Senate relative to the adoption tax credit”).	<a href="#">153 CONG. REC. 9589</a> (daily ed. July 19, 2007) (statement of Sen. DeMint).	<a href="#">153 CONG. REC. 9589</a> (daily ed. July 19, 2007) (statements of Sens. DeMint & Landrieu).	<a href="#">153 CONG. REC. 9589</a> (daily ed. July 19, 2007) (statement of Sen. Landrieu).	<a href="#">153 CONG. REC. 9589</a> (daily ed. July 19, 2007) (vote no. 267) (48-48).	<a href="#">153 CONG. REC. 9589</a> (daily ed. July 19, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2361, 110th Cong., <a href="#">153 CONG. REC. 9586</a> (daily ed. July 19, 2007) (Schumer amendment “[as] a sense of the Senate relative to tax policy”).	<a href="#">153 CONG. REC. 9587</a> (daily ed. July 19, 2007) (statement of Sen. Sununu).	<a href="#">153 CONG. REC. 9587</a> (daily ed. July 19, 2007) (statements of Sens. Sununu & Schumer).	<a href="#">153 CONG. REC. 9587</a> (daily ed. July 19, 2007) (statement of Sen. Schumer).	<a href="#">153 CONG. REC. 9587</a> (daily ed. July 19, 2007) (vote no. 264) (48-48).	<a href="#">153 CONG. REC. 9587</a> (daily ed. July 19, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2339, 110th Cong., <a href="#">153 CONG. REC. 9588</a> (daily ed. July 19, 2007) (Cornyn amendment “[t]o provide interim relief for shortages in employment-based visas for aliens with extraordinary ability and advanced degrees and for nurses”).	<a href="#">153 CONG. REC. 9588</a> (daily ed. July 19, 2007) (statement of Sen. Durbin).	<a href="#">153 CONG. REC. 9588</a> (daily ed. July 19, 2007) (statements of Sens. Durbin & Cornyn).	<a href="#">153 CONG. REC. 9588</a> (daily ed. July 19, 2007) (statement of Sen. Cornyn).	<a href="#">153 CONG. REC. 9588</a> (daily ed. July 19, 2007) (vote no. 266) (55-40).	<a href="#">153 CONG. REC. 9588</a> (daily ed. July 19, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2350, 110th Cong., <a href="#">153 CONG. REC. 9590</a> (daily ed. July 19, 2007) (Dole amendment “[t]o amend the Help America Vote Act of 2002 to require individuals voting in person to present photo identification”).	<a href="#">153 CONG. REC. 9590</a> (daily ed. July 19, 2007) (statement of Sen. Feinstein).	<a href="#">153 CONG. REC. 9590</a> (daily ed. July 19, 2007) (statements of Sens. Feinstein & Dole).	<a href="#">153 CONG. REC. 9590</a> (daily ed. July 19, 2007) (statement of Sen. Dole).	<a href="#">153 CONG. REC. 9591</a> (daily ed. July 19, 2007) (vote no. 269) (42-54).	<a href="#">153 CONG. REC. 9591</a> (daily ed. July 19, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 521, 110th Cong., <a href="#">153 CONG. REC. S3671-72</a> (daily ed. Mar. 23, 2007) (Allard amendment “[t]o improve the economy, efficiency, and effectiveness of Federal programs and reduce the Federal debt by eliminating waste, fraud, and abuse”).	<a href="#">153 CONG. REC. S3672</a> (daily ed. Mar. 23, 2007) (statement of Sen. Conrad).	<a href="#">153 CONG. REC. S3672</a> (daily ed. Mar. 23, 2007) (statements of Sens. Conrad & Allard).	<a href="#">153 CONG. REC. S3672</a> (daily ed. Mar. 23, 2007) (statement of Sen. Allard).	<a href="#">153 CONG. REC. S3672</a> (daily ed. Mar. 23, 2007) (vote no. 104) (39-60).	<a href="#">153 CONG. REC. S3672</a> (daily ed. Mar. 23, 2007) (the motion was rejected, the point of order was sustained, and the amendment failed).	
S. Amend. No. 426, 108th Cong., <a href="#">149 CONG. REC. S4368</a> (daily ed. Mar. 25, 2003) (Bayh amendment “[t]o express the sense of the Senate on low income programs and the income tax on certain Social Security benefits”).	<a href="#">149 CONG. REC. S4368</a> (daily ed. Mar. 25, 2003) (statement of Sen. Nickles).	<a href="#">149 CONG. REC. S4368</a> (daily ed. Mar. 25, 2003) (statements of Sens. Nickles & Bayh).	<a href="#">149 CONG. REC. S4368</a> (daily ed. Mar. 25, 2003) (statement of Sen. Bayh).	<a href="#">149 CONG. REC. S4368</a> (daily ed. Mar. 25, 2003) (vote no. 101) (49-50).	<a href="#">149 CONG. REC. S4368</a> (daily ed. Mar. 25, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 264, 108th Cong., <a href="#">149 CONG. REC. S3817</a> (daily ed. Mar. 18, 2003) (Conrad amendment “[t]o prevent further deficit increases, except for national and homeland security and short-term effects of measures providing for economic recovery, until the President submits to Congress a detailed estimate of the full cost of the conflict with Iraq”).	<a href="#">149 CONG. REC. S3841</a> (daily ed. Mar. 18, 2003) (statement of Sen. Nickles).	<a href="#">149 CONG. REC. S3841</a> (daily ed. Mar. 18, 2003) (statements of Sens. Nickles & Conrad).	<a href="#">149 CONG. REC. S3841</a> (daily ed. Mar. 18, 2003) (statement of Sen. Conrad).	<a href="#">149 CONG. REC. S3854</a> (daily ed. Mar. 18, 2003) (vote no. 57) (43-56).	<a href="#">149 CONG. REC. S3854</a> (daily ed. Mar. 18, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2765, 108th Cong., <a href="#">150 CONG. REC. S2630–31</a> (daily ed. Mar. 11, 2004) (Bingaman amendment “[t]o ensure that legislation is not enacted that increases the number of taxpayers affected by the alternative minimum tax”).	<a href="#">150 CONG. REC. S2646</a> (daily ed. Mar. 11, 2004) (statement of Sen. Nickles).	<a href="#">150 CONG. REC. S2646</a> (daily ed. Mar. 11, 2004) (statements of Sens. Nickles & Bingaman).	<a href="#">150 CONG. REC. S2646</a> (daily ed. Mar. 11, 2004) (statement of Sen. Bingaman).	<a href="#">150 CONG. REC. S2646</a> (daily ed. Mar. 11, 2004) (vote no. 49) (43-53).	<a href="#">150 CONG. REC. S2647</a> (daily ed. Mar. 11, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2840, 108th Cong., <a href="#">150 CONG. REC. S2666</a> (daily ed. Mar. 11, 2004) (McConnell amendment “[t]o prohibit future income tax hikes on upper incomes that fail to exempt small businesses that file individual income tax returns as partnerships, sole proprietors, or subchapter S corporations”).	<a href="#">150 CONG. REC. S2667</a> (daily ed. Mar. 11, 2004) (statement of Sen. Baucus).	<a href="#">150 CONG. REC. S2667</a> (daily ed. Mar. 11, 2004) (statements of Sens. Baucus & McConnell).	<a href="#">150 CONG. REC. S2667</a> (daily ed. Mar. 11, 2004) (statement of Sen. McConnell).	<a href="#">150 CONG. REC. S2667</a> (daily ed. Mar. 11, 2004) (vote no. 55) (51-45).	<a href="#">150 CONG. REC. S2667–68</a> (daily ed. Mar. 11, 2004) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 575, 108th Cong., <a href="#">149 CONG. REC. S6298–300</a> (daily ed. May 14, 2003) (Kyl amendment “[t]o further enhance the denial of deduction for certain fines, penalties, and other amounts”).	<a href="#">149 CONG. REC. S6424</a> (daily ed. May 15, 2003) (statement of Sen. Breaux).	<a href="#">149 CONG. REC. S6424</a> (daily ed. May 15, 2003) (statements of Sens. Breaux & Kyl).	<a href="#">149 CONG. REC. S6424</a> (daily ed. May 15, 2003) (statement of Sen. Kyl).	<a href="#">149 CONG. REC. S6424</a> (daily ed. May 15, 2003) (vote no. 161) (37-61).	<a href="#">149 CONG. REC. S6424</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6424</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 617, 108th Cong., <a href="#">149 CONG. REC. S6367–84</a> (daily ed. May 14, 2003) (Graham amendment “[i]n the nature of a substitute”).	<a href="#">149 CONG. REC. S6423</a> (daily ed. May 15, 2003) (statement of Sen. Kyl).	<a href="#">149 CONG. REC. S6423</a> (daily ed. May 15, 2003) (statements of Sens. Kyl & Graham).	<a href="#">149 CONG. REC. S6423</a> (daily ed. May 15, 2003) (statement of Sen. Graham).	<a href="#">149 CONG. REC. S6423</a> (daily ed. May 15, 2003) (vote no. 160) (35-65).	<a href="#">149 CONG. REC. S6423</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6423</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).
S. Amend. No. 662, 108th Cong., <a href="#">149 CONG. REC. S6441</a> (daily ed. May 15, 2003) (Edwards amendment “[t]o amend the Internal Revenue Code of 1996 to close the “janitors insurance” tax loophole”).	<a href="#">149 CONG. REC. S6441</a> (daily ed. May 15, 2003) (statement of Sen. Kyl).	<a href="#">149 CONG. REC. S6441</a> (daily ed. May 15, 2003) (statements of Sens. Kyl & Edwards).	<a href="#">149 CONG. REC. S6441</a> (daily ed. May 15, 2003) (statement of Sen. Edwards).	<a href="#">149 CONG. REC. S6441</a> (daily ed. May 15, 2003) (vote no. 175) (37-63).	<a href="#">149 CONG. REC. S6441</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 622, 108th Cong., <a href="#">149 CONG. REC. S6426–27</a> (daily ed. May 15, 2003) (Ensign amendment “[t]o encourage the investment of foreign earnings within the United States for productive business investments and job creation”).	<a href="#">149 CONG. REC. S6428</a> (daily ed. May 15, 2003) (statement of Sen. Breaux).	<a href="#">149 CONG. REC. S6428</a> (daily ed. May 15, 2003) (statements of Sens. Breaux & Ensign).	<a href="#">149 CONG. REC. S6428</a> (daily ed. May 15, 2003) (statement of Sen. Ensign).	<a href="#">149 CONG. REC. S6428</a> (daily ed. May 15, 2003) (vote no. 165) (75-25).	<a href="#">149 CONG. REC. S6428</a> (daily ed. May 15, 2003) (the motion was agreed to and the point of order was not sustained).	
S. Amend. No. 605, 108th Cong., <a href="#">149 CONG. REC. S6335–37</a> (daily ed. May 14, 2003) (Mikulski amendment “[t]o provide a partially refundable tax credit for caregiving related expenses”).	<a href="#">149 CONG. REC. S6431</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6431</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Mikulski).	<a href="#">149 CONG. REC. S6431</a> (daily ed. May 15, 2003) (statement of Sen. Mikulski).	<a href="#">149 CONG. REC. S6431</a> (daily ed. May 15, 2003) (vote no. 169) (48-51).	<a href="#">149 CONG. REC. S6431</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6431</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 615, 108th Cong., <a href="#">149 CONG. REC. S6345–67</a> (daily ed. May 14, 2003) (Dayton amendment “[i]n the nature of a substitute”).	<a href="#">149 CONG. REC. S6430</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6430</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Baucus).	<a href="#">149 CONG. REC. S6430</a> (daily ed. May 15, 2003) (statement of Sen. Baucus).	<a href="#">149 CONG. REC. S6430–31</a> (daily ed. May 15, 2003) (vote no. 168) (44–56).	<a href="#">149 CONG. REC. S6430</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 577, 108th Cong., <a href="#">149 CONG. REC. S6300</a> (daily ed. May 14, 2003) (Cantwell amendment “[t]o permanently extend and modify the research and experimentation tax credit and strike the partial exclusion of dividends provision”).	<a href="#">149 CONG. REC. S6412</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6412</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Cantwell).	<a href="#">149 CONG. REC. S6412</a> (daily ed. May 15, 2003) (statement of Sen. Cantwell).	<a href="#">149 CONG. REC. S6412</a> (daily ed. May 15, 2003) (vote no. 154) (49–50).	<a href="#">149 CONG. REC. S6412</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6412</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).
S. Amend. No. 619, 108th Cong., <a href="#">149 CONG. REC. S6388–403</a> (daily ed. May 14, 2003) (Landrieu amendment “[t]o provide a complete substitute”).	<a href="#">149 CONG. REC. S6425</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6425</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Landrieu).	<a href="#">149 CONG. REC. S6425</a> (daily ed. May 15, 2003) (statement of Sen. Landrieu).	<a href="#">149 CONG. REC. S6425</a> (daily ed. May 15, 2003) (vote no. 162) (47–53).	<a href="#">149 CONG. REC. S6425</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6425</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 544, 108th Cong., <a href="#">149 CONG. REC. S6266–68</a> (daily ed. May 14, 2003) (Kennedy amendment “[t]o provide for additional weeks of temporary extended unemployment compensation and to provide for a program of temporary enhanced regular unemployment compensation”).	<a href="#">149 CONG. REC. S6411</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6411</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Kennedy).	<a href="#">149 CONG. REC. S6411</a> (daily ed. May 15, 2003) (statement of Sen. Kennedy).	<a href="#">149 CONG. REC. S6411</a> (daily ed. May 15, 2003) (vote no. 152) (50-49).	<a href="#">149 CONG. REC. S6411</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6411</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).
S. Amend. No. 556, 108th Cong., <a href="#">149 CONG. REC. S6154–55</a> (daily ed. May 14, 2003) (Dorgan amendment “[t]o repeal the 1993 income tax increase on Social Security benefits and to offset the revenue loss”).	<a href="#">149 CONG. REC. S6408</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6408</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Dorgan).	<a href="#">149 CONG. REC. S6408</a> (daily ed. May 15, 2003) (statement of Sen. Dorgan).	<a href="#">149 CONG. REC. S6409</a> (daily ed. May 15, 2003) (vote no. 149) (49-51).	<a href="#">149 CONG. REC. S6409</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6409</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).
S. Amend. No. 614, 108th Cong., <a href="#">149 CONG. REC. S6214</a> (daily ed. May 14, 2003) (Stabenow amendment “[t]o ensure the enactment of a Medicare prescription drug benefit”).	<a href="#">149 CONG. REC. S6421</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6421</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Stabenow).	<a href="#">149 CONG. REC. S6421</a> (daily ed. May 15, 2003) (statement of Sen. Stabenow).	<a href="#">149 CONG. REC. S6421</a> (daily ed. May 15, 2003) (vote no. 159) (44-56).	<a href="#">149 CONG. REC. S6421</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6421</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 557, 108th Cong., <a href="#">149 CONG. REC. S6241</a> (daily ed. May 14, 2003) (Schumer amendment “[t]o amend the Internal Revenue Code of 1986 to make higher education more affordable”).	<a href="#">149 CONG. REC. S6426</a> (daily ed. May 15, 2003) (statement of Sen. Kyl).	<a href="#">149 CONG. REC. S6426</a> (daily ed. May 15, 2003) (statements of Sens. Kyl & Schumer).	<a href="#">149 CONG. REC. S6426</a> (daily ed. May 15, 2003) (statement of Sen. Schumer).	<a href="#">149 CONG. REC. S6426</a> (daily ed. May 15, 2003) (vote no. 164) (49-51).	<a href="#">149 CONG. REC. S6426</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6426</a> (daily ed. May 15, 2003) (statement of Sen. Baucus).
S. Amend. No. 620, 108th Cong., <a href="#">149 CONG. REC. S638–39</a> (daily ed. May 14, 2003) (Landrieu amendment “[t]o provide pay protection for members of the Reserve and the National Guard”).	<a href="#">149 CONG. REC. S6425</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).	<a href="#">149 CONG. REC. S6425</a> (daily ed. May 15, 2003) (statements of Sens. Grassley & Landrieu).	<a href="#">149 CONG. REC. S6425</a> (daily ed. May 15, 2003) (statement of Sen. Landrieu).	<a href="#">149 CONG. REC. S6425–26</a> (daily ed. May 15, 2003) (vote no. 163) (46-54).	<a href="#">149 CONG. REC. S6426</a> (daily ed. May 15, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6426</a> (daily ed. May 15, 2003) (statement of Sen. Kyl).
S. Amend. No. 560, 108th Cong., <a href="#">149 CONG. REC. S6164</a> (daily ed. May 14, 2003) (Reid amendment “[t]o ensure that Social Security surpluses are not raided in order to fund tax cuts on corporate dividends”).	<a href="#">149 CONG. REC. S6174</a> (daily ed. May 14, 2003) (statement of Sen. Thomas).	<a href="#">149 CONG. REC. S6174</a> (daily ed. May 14, 2003) (statements of Sens. Thomas & Reid).	<a href="#">149 CONG. REC. S6174</a> (daily ed. May 14, 2003) (statement of Sen. Reid).	<a href="#">149 CONG. REC. S6174</a> (daily ed. May 14, 2003) (vote no. 147) (44-53).	<a href="#">149 CONG. REC. S6174</a> (daily ed. May 14, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6174</a> (daily ed. May 14, 2003) (statement of Sen. Grassley).
S. Amend. No. 426, 108th Cong., <a href="#">149 CONG. REC. S4368</a> (daily ed. Mar. 25, 2003) (Bayh amendment “[t]o express the sense of the Senate on low income programs and the income tax on certain Social Security benefits”).	<a href="#">149 CONG. REC. S4368</a> (daily ed. Mar. 25, 2003) (statement of Sen. Nickles).	<a href="#">149 CONG. REC. S4368</a> (daily ed. Mar. 25, 2003) (statements of Sens. Nickles & Bayh).	<a href="#">149 CONG. REC. S4368</a> (daily ed. Mar. 25, 2003) (statement of Sen. Bayh).	<a href="#">149 CONG. REC. S4368</a> (daily ed. Mar. 25, 2003) (vote no. 101) (49-50).	<a href="#">149 CONG. REC. S4368</a> (daily ed. Mar. 25, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 264, 108th Cong., <a href="#">149 CONG. REC. S3817</a> (daily ed. Mar. 18, 2003) (Conrad amendment “[t]o prevent further deficit increases, except for national and homeland security and short-term effects of measures providing for economic recovery, until the President submits to Congress a detailed estimate of the full cost of the conflict with Iraq”).	<a href="#">149 CONG. REC. S3841</a> (daily ed. Mar. 18, 2003) (statement of Sen. Nickles).	<a href="#">149 CONG. REC. S3841</a> (daily ed. Mar. 18, 2003) (statements of Sens. Nickles & Conrad).	<a href="#">149 CONG. REC. S3841</a> (daily ed. Mar. 18, 2003) (statement of Sen. Conrad).	<a href="#">149 CONG. REC. S3854</a> (daily ed. Mar. 18, 2003) (vote no. 57) (43-56).	<a href="#">149 CONG. REC. S3854</a> (daily ed. Mar. 18, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
H. Con. Res. 93, 100th Cong., <a href="#">133 CONG. REC. 17,222</a> (June 24, 1987) ("A concurrent resolution setting forth the congressional budget for the United States Government for the fiscal years 1988, 1989, and 1990.").	<a href="#">133 CONG. REC. 17,298</a> (June 24, 1987) (statement of Sen. Domenici).	<a href="#">133 CONG. REC. 17,298–302</a> (June 24, 1987) (statements of Sens. Domenici & Chiles).			<a href="#">133 CONG. REC. 17,298</a> (June 24, 1987) (the point of order was not sustained, and the motion to appeal the ruling of the chair did not carry).	<a href="#">133 CONG. REC. 17,298</a> (June 24, 1987) (statement of Sen. Domenici). Appeal did not carry. <a href="#">133 CONG. REC. 17,302</a> (June 24, 1987) (vote no. 156) (54-45).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1254, 100th Cong., <a href="#">128 CONG. REC. 34,465</a> (Dec. 9, 1987) (Byrd-Dole amendment "to implement the agreement of the summit on deficit reduction"); S. Amend. No. 1259, 100th Cong., <a href="#">128 CONG. REC. 34,964</a> (Dec. 10, 1987) (Kassebaum amendment to amendment No. 1254 "To guarantee budget deficit reduction compliance"); S. Amend. No. 1260, 100th Cong., <a href="#">128 CONG. REC. 34,875</a> (Dec. 10, 1987) (Gramm amendment to amendment No. 1254 "To reduce federal expenditures by imposing a discretionary spending freeze").	No point of order was raised; the provisions of the Budget Act requiring 60 votes to waive were waived preemptively.	<a href="#">128 CONG. REC. 34,792-93</a> (Dec. 10, 1987) (statements of Sens. Byrd, Exon, Domenici, Chiles, Roth & Conrad).	<a href="#">128 CONG. REC. 34,792</a> (Dec. 10, 1987) (statement of Sen. Byrd) (moving to waive just §§ 310(d), 310(g), 311, 305(b) with respect to germaneness, and § 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 for the consideration of the Byrd, Kassebaum & Gramm amendments).	<a href="#">128 CONG. REC. 34,793</a> (Dec. 10, 1987) (vote no. 401) (81-13).	<a href="#">128 CONG. REC. 34,793</a> (Dec. 10, 1987) (the motion was agreed to).	
S. Amend. No. 839, 99th Cong., <a href="#">131 CONG. REC. 28,395</a> (Oct. 22, 1985) (Chafee amendment "To increase the cigarette tax by 8 cents.").	<a href="#">131 CONG. REC. 28,407</a> (Oct. 22, 1985) (statement of Sen. Domenici).	<a href="#">131 CONG. REC. 28,401-08</a> (Oct. 22, 1985) (statements of Sens. Helms, Ford, Packwood, McConnell, Warner, Sasser, Bradley & East).	<a href="#">131 CONG. REC. 28,407</a> (Oct. 22, 1985) (statement of Sen. Chafee).	<a href="#">131 CONG. REC. 28,408</a> (Oct. 22, 1985) (vote no. 240) (motion to table 66-30).	<a href="#">131 CONG. REC. 28,408</a> (Oct. 22, 1985) (the motion to waive the Budget Act was tabled, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 875, 99th Cong., <a href="#">131 CONG. REC. 28,933</a> (Oct. 24, 1985) (Hollings & Thurmond amendment "To achieve the objectives of the Multi-fiber Arrangement, to promote the economic recovery of the U.S. textile and apparel industry and its workers, to reduce unemployment").	<a href="#">131 CONG. REC. 28,946</a> (Oct. 24, 1985) (statement of Sen. Domenici).	<a href="#">131 CONG. REC. 28,940, 28,946-53</a> (Oct. 24, 1985) (statements of Sens. Domenici, Bumpers, Evans, Long, Baucus & Hollings).	<a href="#">131 CONG. REC. 28,946</a> (Oct. 24, 1985) (statement of Sen. Hollings).	<a href="#">131 CONG. REC. 28,953</a> (Oct. 24, 1985) (vote no. 252) (57-39).	<a href="#">131 CONG. REC. 28,953</a> (Oct. 24, 1985) (the motion to table the motion to waive the Budget Act was rejected, and the motion to waive the Budget Act was agreed to).	
S. Amend. No. 1039, 99th Cong., <a href="#">131 CONG. REC. 31,906</a> (Nov. 14, 1985) (Heinz amendment "Consolidated Omnibus Budget Reconciliation Act of 1985").	<a href="#">131 CONG. REC. 31,907</a> (Nov. 14, 1985) (statement of Sen. Domenici).				<a href="#">131 CONG. REC. 31,907</a> (Nov. 14, 1985) (the point of order was sustained, and the amendment fell).	
S. Amend. No. 1041, 99th Cong., <a href="#">131 CONG. REC. 31,926</a> (Nov. 14, 1985) (Wilson amendment "To exempt Israel bonds from the imputed interest rules of the Internal Revenue Code of 1954").	<a href="#">131 CONG. REC. 31,927</a> (Nov. 14, 1985) (statement of Sen. Domenici).		<a href="#">131 CONG. REC. 31,927</a> (Nov. 14, 1985) (statement of Sen. Wilson (attempt)).		<a href="#">131 CONG. REC. 31,927</a> (Nov. 14, 1985) (the point of order was sustained, the amendment fell, and the motion to waive was ruled out of order because it had been made after the point of order had been sustained).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1042, 99th Cong., <a href="#">131 CONG. REC. 31,927</a> (Nov. 14, 1985) (DeConcini amendment "To freeze the effects of a Wage Area Survey regarding Federal blue collar pay rates for the Department of Defense, Veterans' Administration and other Federal agency employees in Tucson, Arizona").	<a href="#">131 CONG. REC. 31,928</a> (Nov. 14, 1985) (statement of Sen. Gorton).		<a href="#">131 CONG. REC. 31,928</a> (Nov. 14, 1985) (statement of Sen. DeConcini).		<a href="#">131 CONG. REC. 31,928</a> (Nov. 14, 1985) (the Budget Act was waived without objection; the chair responded that the amendment "appear[ed] not to be germane").	
S. Amend. No. 2853, 99th Cong., <a href="#">132 CONG. REC. 24,845</a> (Sep. 19, 1986) (Quayle amendment "To establish procedures for the expedited consideration by the Congress of certain bills and joint resolutions submitted by the President.").	<a href="#">132 CONG. REC. 24,851</a> (Sep. 19, 1986) (statement of Sen. Chiles).	<a href="#">132 CONG. REC. 24,847–51</a> (Sep. 19, 1986) (statements of Sens. Quayle, Exon, Chiles, Domenici, Byrd, Hatfield & Chafee).	<a href="#">132 CONG. REC. 24,851</a> (Sep. 19, 1986) (statement of Sen. Quayle).	<a href="#">132 CONG. REC. 24,851</a> (Sep. 19, 1986) (vote no. 270) (34-62).	<a href="#">132 CONG. REC. 24,851</a> (Sep. 19, 1986) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2850, 99th Cong., <a href="#">132 CONG. REC. 24,905</a> (Sep. 19, 1986) (Domenici, Dole & Chiles amendment "to provide for increased budgetary savings").		<a href="#">132 CONG. REC. 24,839–43</a> (Sep. 19, 1986) (statements of Sens. Domenici, Chiles, Harkin, Levin & Metzenbaum).	<a href="#">132 CONG. REC. 24,843</a> (Sep. 19, 1986) (statement of Sen. Domenici).	<a href="#">132 CONG. REC. 24,843</a> (Sep. 19, 1986) (vote no. 268) (87-10).	<a href="#">132 CONG. REC. 24,843</a> (Sep. 19, 1986) (the motion to waive the Budget Act was agreed to).	
S. Amend. No. 2855, 99th Cong., <a href="#">132 CONG. REC. 24,872</a> (Sep. 19, 1986) (Kassebaum amendment "An original bill to extend the expiration date of the Defense Production Act of 1950").	<a href="#">132 CONG. REC. 24,876</a> (Sep. 19, 1986) (statement of Sen. Chiles).	<a href="#">132 CONG. REC. 24,872–76</a> (Sep. 19, 1986) (statements of Sens. Metzenbaum, Johnston, Kassebaum & Chiles).	<a href="#">132 CONG. REC. 24,876</a> (Sep. 19, 1986) (statement of Sen. Kassebaum).	<a href="#">132 CONG. REC. 24,876</a> (Sep. 19, 1986) (vote no. 272) (43-52).	<a href="#">132 CONG. REC. 24,876</a> (Sep. 19, 1986) (the motion to waive was rejected; the chair did not issue a ruling but the amendment was not considered further).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2857, 99th Cong., <a href="#">132 CONG. REC. 24,882</a> (Sep. 19, 1986) (Danforth & Eagleton amendment "to ensure the preservations of employee seniority rights in airline mergers and similar transactions").	<a href="#">132 CONG. REC. 24,883</a> (Sep. 19, 1986) (statement of Sen. Chiles).	<a href="#">132 CONG. REC. 24,883–84</a> (Sep. 19, 1986) (statements of Sens. Danforth, Metzenbaum, Eagleton, Domenici & Symms).	<a href="#">132 CONG. REC. 24,883</a> (Sep. 19, 1986) (statement of Sen. Danforth).	<a href="#">132 CONG. REC. 24,884</a> (Sep. 19, 1986) (vote no. 274) (43-52).	<a href="#">132 CONG. REC. 24,884</a> (Sep. 19, 1986) (the point of order was sustained, and the amendment fell).	
S. Amend. No. 2626, 98th Cong., <a href="#">129 CONG. REC. 32,928</a> (Nov. 16, 1983) (Domenici & Chiles amendment "To provide for deficit reduction.").	<a href="#">129 CONG. REC. 32,951</a> (Nov. 16, 1983) (statement of Sen. Armstrong).	<a href="#">129 CONG. REC. 32,948–51</a> (Nov. 16, 1983) (statements of Sens. Hatfield, Domenici, Armstrong, Chiles, Hollings & Levin).	<a href="#">129 CONG. REC. 32,951</a> (Nov. 16, 1983) (statement of Sen. Domenici).	<a href="#">129 CONG. REC. 32,951</a> (Nov. 16, 1983) (vote no. 368) (33-65).	<a href="#">129 CONG. REC. 32,951</a> (Nov. 16, 1983) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Up. Amend. No. 42, 97th Cong., <a href="#">127 CONG. REC. 6037</a> (Apr. 1, 1981) (Metzenbaum amendment "To require reductions in tax expenditures").	<a href="#">127 CONG. REC. 6039</a> (Apr. 1, 1981) (statement of Sen. Long) (ruled premature); <a href="#">127 CONG. REC. 6043</a> (daily ed. Apr. 1, 1981). (statement of Sen. Domenici).	<a href="#">127 CONG. REC. 6039–43</a> (Apr. 1, 1981) (statements of Sens. Long, Metzenbaum, Domenici, Dole, Moynihan, Hollings & Sarbanes).	<a href="#">127 CONG. REC. 6043</a> (Apr. 1, 1981) (statement of Sen. Metzenbaum).	<a href="#">127 CONG. REC. 6043</a> (Apr. 1, 1981) (vote no. 64) (15-82).	<a href="#">127 CONG. REC. S6043</a> (Apr. 1, 1981) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3846, 106th Cong., <a href="#">146 CONG. REC. S6847–49</a> (daily ed. July 14, 2000) (Feingold amendment to provide a credit against tax for costs of COBRA continuation insurance and allow extended COBRA coverage for qualified retirees).	<a href="#">146 CONG. REC. S7046</a> (daily ed. July 17, 2000) (statement of Sen. Reid).	<a href="#">146 CONG. REC. S7046</a> (daily ed. July 17, 2000) (statements of Sens. Reid & Feingold).	<a href="#">146 CONG. REC. S7046</a> (daily ed. July 17, 2000) (statement of Sen. Feingold).	<a href="#">146 CONG. REC. S7046–47</a> (daily ed. July 17, 2000) (vote no. 202) (30-68).	<a href="#">146 CONG. REC. S7047</a> (daily ed. July 17, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3848, 106th Cong., <a href="#">146 CONG. REC. S6851–53</a> (daily ed. July 14, 2000) (Kennedy amendment “[t]o amend title XIX and XXI of the Social Security Act to permit States to expand coverage under the Medicaid program and SCHIP to parents of enrolled children”).	<a href="#">146 CONG. REC. S7048</a> (daily ed. July 17, 2000) (statement of Sen. Roth).	<a href="#">146 CONG. REC. S7048</a> (daily ed. July 17, 2000) (statements of Sens. Roth & Kennedy).	<a href="#">146 CONG. REC. S7048</a> (daily ed. July 17, 2000) (statement of Sen. Kennedy).	<a href="#">146 CONG. REC. S7049</a> (daily ed. July 17, 2000) (vote no. 204) (51-47).	<a href="#">146 CONG. REC. S7049</a> (daily ed. July 17, 2000) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	<a href="#">146 CONG. REC. S7049</a> (daily ed. July 17, 2000) (statement of Sen. Roth).
S. Amend. No. 3847, 106th Cong., <a href="#">146 CONG. REC. S6849–51</a> (daily ed. July 14, 2000) (Harkin amendment “[t]o amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex”).	<a href="#">146 CONG. REC. S7047</a> (daily ed. July 17, 2000) (statement of Sen. Nickles).	<a href="#">146 CONG. REC. S7047</a> (daily ed. July 17, 2000) (statements of Sens. Nickles & Harkin).	<a href="#">146 CONG. REC. S7047</a> (daily ed. July 17, 2000) (statement of Sen. Harkin).	<a href="#">146 CONG. REC. S7047–48</a> (daily ed. July 17, 2000) (vote no. 203) (45-53).	<a href="#">146 CONG. REC. S7048</a> (daily ed. July 17, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">146 CONG. REC. S7048</a> (daily ed. July 17, 2000) (statement of Sen. Roth).
S. Amend. No. 2966, 106th Cong., <a href="#">146 CONG. REC. S2390</a> (daily ed. Apr. 7, 2000) (Graham amendment “[t]o establish a reserve fund for additional ESEA funding”).	<a href="#">146 CONG. REC. S2390</a> (daily ed. Apr. 7, 2000) (statement of Sen. Domenici).	<a href="#">146 CONG. REC. S2390</a> (daily ed. Apr. 7, 2000) (statements of Sens. Domenici & Graham).	<a href="#">146 CONG. REC. S2390</a> (daily ed. Apr. 7, 2000) (statement of Sen. Graham).	<a href="#">146 CONG. REC. S2390</a> (daily ed. Apr. 7, 2000) (vote no. 67) (46-54).	<a href="#">146 CONG. REC. S2390</a> (daily ed. Apr. 7, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3032, 106th Cong., <a href="#">146 CONG. REC. S2393-94</a> (daily ed. Apr. 7, 2000) (Ashcroft amendment “[t]o protect the Medicare surpluses through strengthened budgetary enforcement mechanisms”).	<a href="#">146 CONG. REC. S2395</a> (daily ed. Apr. 7, 2000) (statement of Sen. Domenici).	<a href="#">146 CONG. REC. S2395</a> (daily ed. Apr. 7, 2000) (statements of Sens. Domenici & Ashcroft).	<a href="#">146 CONG. REC. S2395</a> (daily ed. Apr. 7, 2000) (statement of Sen. Ashcroft).	<a href="#">146 CONG. REC. S2395</a> (daily ed. Apr. 7, 2000) (vote no. 70) (30-70).	<a href="#">146 CONG. REC. S2395</a> (daily ed. Apr. 7, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">146 CONG. REC. S2395</a> (daily ed. Apr. 7, 2000) (statement of Sen. Lautenberg).
S. Amend. No. 2906, 106th Cong., <a href="#">146 CONG. REC. S2179</a> (daily ed. Apr. 5, 2000) (Allard amendment “[t]o protect social security and provide for repayment of the Federal debt”).	<a href="#">146 CONG. REC. S2197</a> (daily ed. Apr. 5, 2000) (statement of Sen. Domenici).	<a href="#">146 CONG. REC. S2197</a> (daily ed. Apr. 5, 2000) (statements of Sens. Domenici & Allard).	<a href="#">146 CONG. REC. S2197</a> (daily ed. Apr. 5, 2000) (statement of Sen. Allard).	<a href="#">146 CONG. REC. S2197</a> (daily ed. Apr. 5, 2000) (vote no. 56) (16-84).	<a href="#">146 CONG. REC. S2197</a> (daily ed. Apr. 5, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">146 CONG. REC. S2197</a> (daily ed. Apr. 5, 2000) (statement of Sen. Domenici).
S. Amend. No. 3016, 106th Cong., <a href="#">146 CONG. REC. S2384-85</a> (daily ed. Apr. 7, 2000) (Conrad amendment “[t]o protect Social Security surpluses and reserve a portion of on-budget surpluses for Medicare and debt reduction”).	<a href="#">146 CONG. REC. S2385</a> (daily ed. Apr. 7, 2000) (statement of Sen. Domenici).	<a href="#">146 CONG. REC. S2385</a> (daily ed. Apr. 7, 2000) (statements of Sens. Domenici & Conrad).	<a href="#">146 CONG. REC. S2385</a> (daily ed. Apr. 7, 2000) (statement of Sen. Conrad).	<a href="#">146 CONG. REC. S2385</a> (daily ed. Apr. 7, 2000) (vote no. 65) (44-56).	<a href="#">146 CONG. REC. S2385</a> (daily ed. Apr. 7, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2915, 106th Cong., <a href="#">146 CONG. REC. S2145</a> (daily ed. Apr. 5, 2000) (Robb amendment “[t]o condition Senate consideration of any tax cut reconciliation legislation on previous enactment of legislation to provide an outpatient prescription drug benefit under the Medicare program that is consistent with Medicare reform”).	<a href="#">146 CONG. REC. S2155</a> (daily ed. Apr. 5, 2000) (statement of Sen. Domenici).	<a href="#">146 CONG. REC. S2155</a> (daily ed. Apr. 5, 2000) (statements of Sens. Domenici & Robb).	<a href="#">146 CONG. REC. S2155</a> (daily ed. Apr. 5, 2000) (statement of Sen. Robb).	<a href="#">146 CONG. REC. S2155</a> (daily ed. Apr. 5, 2000) (vote no. 52) (51-49).	<a href="#">146 CONG. REC. S2155</a> (daily ed. Apr. 5, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1747, 106th Cong., <a href="#">145 CONG. REC. S11,213</a> (daily ed. Sept. 22, 1999) (Wellstone amendment “[t]o increase the amount appropriated for the Veterans Health Administration of the Department of Veterans Affairs by \$1,300,000,000”).	<a href="#">145 CONG. REC. S11,225–26</a> (daily ed. Sept. 22, 1999) (statement of Sen. Bond).	<a href="#">145 CONG. REC. S11,225–26</a> (daily ed. Sept. 22, 1999) (statements of Sens. Bond & Wellstone).	<a href="#">145 CONG. REC. S11,226</a> (daily ed. Sept. 22, 1999) (statement of Sen. Wellstone).	<a href="#">145 CONG. REC. S11,226–27</a> (daily ed. Sept. 22, 1999) (vote no. 285) (36-63).	<a href="#">145 CONG. REC. S11,227</a> (daily ed. Sept. 22, 1999) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	<a href="#">145 CONG. REC. S11,227</a> (daily ed. Sept. 22, 1999) (statement of Sen. Bond).
S. Amend. No. 3853, 106th Cong., <a href="#">146 CONG. REC. S6796</a> (daily ed. July 14, 2000) (Robb amendment “[t]o make the bill effective upon enactment of a Medicare prescription drug benefit”).	<a href="#">146 CONG. REC. S7050</a> (daily ed. July 17, 2000) (statement of Sen. Roth).	<a href="#">146 CONG. REC. S7050</a> (daily ed. July 17, 2000) (statements of Sens. Roth & Robb).	<a href="#">146 CONG. REC. S7050</a> (daily ed. July 17, 2000) (statement of Sen. Robb).	<a href="#">146 CONG. REC. S7050</a> (daily ed. July 17, 2000) (vote no. 206) (49-50).	<a href="#">146 CONG. REC. S7050</a> (daily ed. July 17, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">146 CONG. REC. S7050</a> (daily ed. July 17, 2000) (statement of Sen. Roth).



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3852, 106th Cong., <a href="#">146 CONG. REC. S6811-12</a> (daily ed. July 14, 2000) (Durbin amendment “[t]o amend the Internal Revenue Code of 1986 to allow small business employers a credit against income tax for employee health insurance expenses paid or incurred by the employer”).	<a href="#">146 CONG. REC. S7049</a> (daily ed. July 17, 2000) (statement of Sen. Nickles).	<a href="#">146 CONG. REC. S7049</a> (daily ed. July 17, 2000) (statements of Sens. Nickles & Durbin).	<a href="#">146 CONG. REC. S7049</a> (daily ed. July 17, 2000) (statement of Sen. Durbin).	<a href="#">146 CONG. REC. S7049-50</a> (daily ed. July 17, 2000) (vote no. 205) (49-49).	<a href="#">146 CONG. REC. S7049</a> (daily ed. July 17, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">146 CONG. REC. S7049</a> (daily ed. July 17, 2000) (statement of Sen. Roth).
S. Amend. No. 1416, 106th Cong., <a href="#">145 CONG. REC. 18,490-92</a> (July 29, 1999) (Schumer amendment “[t]o amend the Internal Revenue Code of 1986 to make higher education more affordable by providing a full tax deduction for higher education expenses and a tax credit for student education loans”).	<a href="#">145 CONG. REC. S9898</a> (daily ed. July 30, 1999) (statement of Sen. Roth).	<a href="#">145 CONG. REC. S9898</a> (daily ed. July 30, 1999) (statements of Sens. Roth & Schumer).	<a href="#">145 CONG. REC. S9898</a> (daily ed. July 30, 1999) (statement of Sen. Schumer).	<a href="#">145 CONG. REC. S9898</a> (daily ed. July 30, 1999) (vote no. 241) (53-47).	<a href="#">145 CONG. REC. S9898</a> (daily ed. July 30, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1383, 106th Cong., <a href="#">145 CONG. REC. 18,259</a> (July 28, 1999) (Kennedy amendment “[t]o increase the Federal minimum wage”).	<a href="#">145 CONG. REC. S9897</a> (daily ed. July 30, 1999) (statement of Sen. Nickles).	<a href="#">145 CONG. REC. S9897</a> (daily ed. July 30, 1999) (statements of Sens. Nickles & Kennedy).	<a href="#">145 CONG. REC. S9897</a> (daily ed. July 30, 1999) (statement of Sen. Kennedy).	<a href="#">145 CONG. REC. S9897</a> (daily ed. July 30, 1999) (vote no. 239) (46-54).	<a href="#">145 CONG. REC. S9897</a> (daily ed. July 30, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1439, 106th Cong., <a href="#">145 CONG. REC. 18,514–15</a> (July 29, 1999) (Conrad amendment “[t]o amend the Internal Revenue Code of 1986 to allow employers a credit against income tax for information technology training expenses paid or incurred by the employer”).	<a href="#">145 CONG. REC. S9902</a> (daily ed. July 30, 1999) (statement of Sen. Nickles).	<a href="#">145 CONG. REC. S9902</a> (daily ed. July 30, 1999) (statements of Sens. Nickles & Conrad).	<a href="#">145 CONG. REC. S9902</a> (daily ed. July 30, 1999) (statement of Sen. Conrad).	<a href="#">145 CONG. REC. S9902</a> (daily ed. July 30, 1999) (vote no. 244) (46-54).	<a href="#">145 CONG. REC. S9902</a> (daily ed. July 30, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">145 CONG. REC. S9902</a> (daily ed. July 30, 1999) (statement of Sen. Moynihan).
S. Amend. No. 1454, 106th Cong., <a href="#">145 CONG. REC. 18,551</a> (July 29, 1999) (Harkin amendment “[t]o block companies from entering into a situation where they are giving benefits to younger workers and denying those same benefits to older employees”).	<a href="#">145 CONG. REC. S9902</a> (daily ed. July 30, 1999) (statement of Sen. Thompson).	<a href="#">145 CONG. REC. S9902</a> (daily ed. July 30, 1999) (statements of Sens. Thompson & Harkin).	<a href="#">145 CONG. REC. S9902</a> (daily ed. July 30, 1999) (statement of Sen. Harkin).	<a href="#">145 CONG. REC. S9902</a> (daily ed. July 30, 1999) (vote no. 245) (48-52).	<a href="#">145 CONG. REC. S9903</a> (daily ed. July 30, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">145 CONG. REC. S9903</a> (daily ed. July 30, 1999) (statement of Sen. Moynihan).
S. Amend. No. 1386, 106th Cong., <a href="#">145 CONG. REC. 18,307–11</a> (July 28, 1999) (Specter amendment “[t]o provide a complete substitute”).	<a href="#">145 CONG. REC. S9897</a> (daily ed. July 30, 1999) (statement of Sen. Baucus).	<a href="#">145 CONG. REC. S9897</a> (daily ed. July 30, 1999) (statements of Sens. Baucus & Specter).	<a href="#">145 CONG. REC. S9897</a> (daily ed. July 30, 1999) (statement of Sen. Specter).	<a href="#">145 CONG. REC. S9897–98</a> (daily ed. July 30, 1999) (vote no. 240) (35-65).	<a href="#">145 CONG. REC. S9898</a> (daily ed. July 30, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1397, 106th Cong., <a href="#">145 CONG. REC. 18315–17</a> (July 28, 1999) (McCain amendment “[t]o provide educational opportunities for disadvantaged children”).	<a href="#">145 CONG. REC. S9896</a> (daily ed. July 30, 1999) (statement of Sen. Reed).	<a href="#">145 CONG. REC. S9896</a> (daily ed. July 30, 1999) (statements of Sens. Reed & McCain).	<a href="#">145 CONG. REC. S9896</a> (daily ed. July 30, 1999) (statement of Sen. McCain).	<a href="#">145 CONG. REC. S9896</a> (daily ed. July 30, 1999) (vote no. 238) (13-87).	<a href="#">145 CONG. REC. S9896</a> (daily ed. July 30, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1398, 106th Cong., <a href="#">145 CONG. REC. 18317–18</a> (July 28, 1999) (Abraham amendment “[t]o preserve and protect the surpluses of the social security trust funds by reaffirming the exclusion of receipts and disbursement from the budget, by setting a limit on the debt held by the public”).	<a href="#">145 CONG. REC. S9651</a> (daily ed. July 29, 1999) (statement of Sen. Reid).	<a href="#">145 CONG. REC. S9651</a> (daily ed. July 29, 1999) (statements of Sens. Reid & Abraham).	<a href="#">145 CONG. REC. S9651</a> (daily ed. July 29, 1999) (statement of Sen. Abraham).	<a href="#">145 CONG. REC. S9651</a> (daily ed. July 29, 1999) (vote no. 227) (54-46).	<a href="#">145 CONG. REC. S9651</a> (daily ed. July 29, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1405, 106th Cong., <a href="#">145 CONG. REC. 18483–88</a> (July 29, 1999) (Gramm amendment “[t]o return to the taxpayers a portion of the budget surplus that they created with their tax payments”).	<a href="#">145 CONG. REC. S9682</a> (daily ed. July 29, 1999) (statement of Sen. Moynihan).	<a href="#">145 CONG. REC. S9682</a> (daily ed. July 29, 1999) (statements of Sens. Moynihan & Hutchison).	<a href="#">145 CONG. REC. S9682</a> (daily ed. July 29, 1999) (statement of Sen. Hutchison).	<a href="#">145 CONG. REC. S9682</a> (daily ed. July 29, 1999) (vote no. 230) (46-54).	<a href="#">145 CONG. REC. S9682</a> (daily ed. July 29, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">145 CONG. REC. S9682</a> (daily ed. July 29, 1999) (statement of Sen. Moynihan).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1401, 106th Cong., <a href="#">145 CONG. REC. 18210–11</a> (July 28, 1999) (Robb amendment “[t]o delay the effective dates of the provisions of, and amendments made by, the Act until the long-term solvency of social security and Medicare programs is ensured”).	<a href="#">145 CONG. REC. S9653</a> (daily ed. July 29, 1999) (statement of Sen. Thompson).	<a href="#">145 CONG. REC. S9653</a> (daily ed. July 29, 1999) (statements of Sens. Thompson & Robb).	<a href="#">145 CONG. REC. S9653</a> (daily ed. July 29, 1999) (statement of Sen. Robb).	<a href="#">145 CONG. REC. S9653</a> (daily ed. July 29, 1999) (vote no. 229) (46-54).	<a href="#">145 CONG. REC. S9653</a> (daily ed. July 29, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">145 CONG. REC. S9653</a> (daily ed. July 29, 1999) (statement of Sen. Moynihan).
S. Amend. No. 195, 106th Cong., <a href="#">145 CONG. REC. S3336</a> (daily ed. Mar. 25, 1999) (Kennedy amendment “[t]o express the sense of the Senate concerning an increase in the minimum wage”).	<a href="#">145 CONG. REC. S3396</a> (daily ed. Mar. 25, 1999) (statement of Sen. Domenici).	<a href="#">145 CONG. REC. S3396</a> (daily ed. Mar. 25, 1999) (statements of Sens. Domenici & Kennedy).	<a href="#">145 CONG. REC. S3396</a> (daily ed. Mar. 25, 1999) (statement of Sen. Kennedy).	<a href="#">145 CONG. REC. S3396</a> (daily ed. Mar. 25, 1999) (vote no. 77) (45-53).	<a href="#">145 CONG. REC. S3396</a> (daily ed. Mar. 25, 1999) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 190, 106th Cong., <a href="#">145 CONG. REC. S5806</a> (daily ed. Mar. 25, 1999) (Kerry amendment “[t]o provide for a 1-year delay in a portion of certain tax provisions necessary to avoid future budget deficits”).	<a href="#">145 CONG. REC. S3428</a> (daily ed. Mar. 25, 1999) (statement of Sen. Domenici).	<a href="#">145 CONG. REC. S3428</a> (daily ed. Mar. 25, 1999) (statements of Sens. Domenici & Kerry).	<a href="#">145 CONG. REC. S3428</a> (daily ed. Mar. 25, 1999) (statement of Sen. Kerry).	<a href="#">145 CONG. REC. S3428</a> (daily ed. Mar. 25, 1999) (vote no. 80) (45-54).	<a href="#">145 CONG. REC. S3428</a> (daily ed. Mar. 25, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 232, 106th Cong., <a href="#">145 CONG. REC. S5822</a> (daily ed. Mar. 25, 1999) (Snowe amendment “[t]o allow increased tobacco tax revenues to be used as an offset for the Medicare prescription drug benefit”).	<a href="#">145 CONG. REC. S3395–96</a> (daily ed. Mar. 25, 1999) (statement of Sen. Bunning).	<a href="#">145 CONG. REC. S3395–96</a> (daily ed. Mar. 25, 1999) (statements of Sens. Bunning & Wyden).	<a href="#">145 CONG. REC. S3396</a> (daily ed. Mar. 25, 1999) (statement of Sen. Wyden).	<a href="#">145 CONG. REC. S3396</a> (daily ed. Mar. 25, 1999) (vote no. 76) (54-44).	<a href="#">145 CONG. REC. S3396</a> (daily ed. Mar. 25, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 157, 106th Cong., <a href="#">145 CONG. REC. S5560</a> (daily ed. Mar. 24, 1999) (Specter amendment “[t]o provide for funding of biomedical research”).	<a href="#">145 CONG. REC. S3352</a> (daily ed. Mar. 25, 1999) (statement of Sen. Bunning).	<a href="#">145 CONG. REC. S3352</a> (daily ed. Mar. 25, 1999) (statements of Sens. Bunning & Domenici).	<a href="#">145 CONG. REC. S3352</a> (daily ed. Mar. 25, 1999) (statement of Sen. Domenici).	<a href="#">145 CONG. REC. S3352</a> (daily ed. Mar. 25, 1999) (vote no. 64) (47-52).	<a href="#">145 CONG. REC. S3352</a> (daily ed. Mar. 25, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">145 CONG. REC. S3352</a> (daily ed. Mar. 25, 1999) (statement of Sen. Domenici).
S. Amend. No. 147, 106th Cong., <a href="#">145 CONG. REC. S3200</a> (daily ed. Mar. 24, 1999) (Conrad amendment “[t]o use any Federal budget surplus to save Social Security and Medicare first”).	<a href="#">145 CONG. REC. S3225</a> (daily ed. Mar. 24, 1999) (statement of Sen. Domenici).	<a href="#">145 CONG. REC. S3225</a> (daily ed. Mar. 24, 1999) (statements of Sens. Domenici & Conrad).	<a href="#">145 CONG. REC. S3225</a> (daily ed. Mar. 24, 1999) (statement of Sen. Conrad).	<a href="#">145 CONG. REC. S3225–26</a> (daily ed. Mar. 24, 1999) (vote no. 61) (45-54).	<a href="#">145 CONG. REC. S3225–26</a> (daily ed. Mar. 24, 1999) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 144, 106th Cong., <a href="#">145 CONG. REC. S3187</a> (daily ed. Mar. 24, 1999) (Lautenberg amendment “[t]o ensure that Congress saves Social Security and strengthens Medicare before using projected budget surpluses for new spending or tax breaks”).	<a href="#">145 CONG. REC. S3195</a> (daily ed. Mar. 24, 1999) (statement of Sen. Domenici).	<a href="#">145 CONG. REC. S3195</a> (daily ed. Mar. 24, 1999) (statements of Sens. Domenici & Lautenberg).	<a href="#">145 CONG. REC. S3195</a> (daily ed. Mar. 24, 1999) (statement of Sen. Lautenberg).	<a href="#">145 CONG. REC. S3195–96</a> (daily ed. Mar. 24, 1999) (vote no. 59) (45-54).	<a href="#">145 CONG. REC. S3196</a> (daily ed. Mar. 24, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 163, 106th Cong., <a href="#">145 CONG. REC. S5575</a> (daily ed. Mar. 25, 1999) (Crapo amendment “[t]o create a reserve fund to lock in additional non-Social Security surplus in the outyears for tax relief and/or debt reduction”).	<a href="#">145 CONG. REC. S5854</a> (daily ed. Mar. 25, 1999) (statement of Sen. Lautenberg).	<a href="#">145 CONG. REC. S5854</a> (daily ed. Mar. 25, 1999) (statements of Sens. Lautenberg & Domenici).	<a href="#">145 CONG. REC. S5854</a> (daily ed. Mar. 25, 1999) (statement of Sen. Domenici).	<a href="#">145 CONG. REC. S5863</a> (daily ed. Mar. 25, 1999) (vote no. 73) (42-57).	<a href="#">145 CONG. REC. S5854</a> (daily ed. Mar. 25, 1999) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2232, 105th Cong., <a href="#">144 CONG. REC. S3024</a> (daily ed. Apr. 2, 1998) (Robb amendment “to ensure that the tobacco reserve fund in the resolution protects tobacco farmers.”)	<a href="#">144 CONG. REC. S3089</a> (daily ed. Apr. 2, 1998) (statement of Sen. Domenici).	<a href="#">144 CONG. REC. S3089</a> (daily ed. Apr. 2, 1998) (statement of Sens. Robb & Domenici).	<a href="#">144 CONG. REC. S3089</a> (daily ed. Apr. 2, 1998) (statement of Sen. Robb).	<a href="#">144 CONG. REC. S3089</a> (daily ed. Apr. 2, 1998) (vote no. 83) (31-67).	<a href="#">144 CONG. REC. S3089</a> (daily ed. Apr. 2, 1998) (the motion was rejected, the point of order was sustained, and the bill fell).	
S. Amend. No. 2224, 105th Cong., <a href="#">144 CONG. REC. S3024</a> (daily ed. Apr. 2, 1998) (Feingold amendment “to establish a disability reserve fund.”)	<a href="#">144 CONG. REC. S3088</a> (daily ed. Apr. 2, 1998) (statement of Sen. Domenici).	<a href="#">144 CONG. REC. S3088</a> (daily ed. Apr. 2, 1998) (statement of Sens. Feingold, Kennedy & Domenici).	<a href="#">144 CONG. REC. S3088</a> (daily ed. Apr. 2, 1998) (statement of Sen. Feingold).	<a href="#">144 CONG. REC. S3088–89</a> (daily ed. Apr. 2, 1998) (vote no. 82) (47-51).	<a href="#">144 CONG. REC. S3089</a> (daily ed. Apr. 2, 1998) (the motion was rejected, the point of order was sustained, and the bill fell).	
S. Amend. No. 2257, 105th Cong., <a href="#">144 CONG. REC. S3025</a> (daily ed. Apr. 2, 1998) (Nickles amendment “to establish a prohibition on precatory language on budget resolutions.”)	<a href="#">144 CONG. REC. S3084</a> (daily ed. Apr. 2, 1998) (statement of Sen. Lautenberg).	<a href="#">144 CONG. REC. S3083–84</a> (daily ed. Apr. 2, 1998) (statement of Sens. Domenici, Nickles, Lautenberg, Ford, Daschle, Coverdell, Durbin & Sarbanes).	<a href="#">144 CONG. REC. S3084</a> (daily ed. Apr. 2, 1998) (statement of Sen. Lautenberg).	<a href="#">144 CONG. REC. S3084</a> (daily ed. Apr. 2, 1998) (vote no. 80) (59-39).	<a href="#">144 CONG. REC. S3085</a> (daily ed. Apr. 2, 1998) (the motion was rejected, the point of order was sustained, and the bill fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2244, 105th Cong., <a href="#">144 CONG. REC. S3024</a> (daily ed. Apr. 2, 1998) (Daschle amendment “in the nature of a substitute.”)	<a href="#">144 CONG. REC. S3075</a> (daily ed. Apr. 2, 1998) (statement of Sen. Domenici).	<a href="#">144 CONG. REC. S3055–59, 3060–61, 3075</a> (daily ed. Apr. 2, 1998) (statement of Sens. Lautenberg, Daschle & Domenici).	<a href="#">144 CONG. REC. S3075</a> (daily ed. Apr. 2, 1998) (statement of Sen. Lautenberg).	<a href="#">144 CONG. REC. S3075</a> (daily ed. Apr. 2, 1998) (vote no. 69) (42-55).	<a href="#">144 CONG. REC. S3075</a> (daily ed. Apr. 2, 1998) (the motion was rejected, the point of order was sustained, and the bill fell).	
S. Amend. No. 2195, 105th Cong., <a href="#">144 CONG. REC. S2880</a> (daily ed. Apr. 1, 1998) (Lautenberg amendment “to establish a disability reserve fund.”)	<a href="#">144 CONG. REC. S2961</a> (daily ed. Apr. 1, 1998) (statement of Sen. Domenici).	<a href="#">144 CONG. REC. S2958–61</a> (daily ed. Apr. 1, 1998) (statement of Sens. Lautenberg & Domenici); <a href="#">144 CONG. REC. S3035–36</a> (daily ed. Apr. 2, 1998) (statement of Sens. Lautenberg, Domenici & Graham)	<a href="#">144 CONG. REC. S2961</a> (daily ed. Apr. 1, 1998) (statement of Sen. Lautenberg).	<a href="#">144 CONG. REC. S3036</a> (daily ed. Apr. 2, 1998) (vote no. 65) (47-52).	<a href="#">144 CONG. REC. S3036–37</a> (daily ed. Apr. 2, 1998) (the motion was rejected, the point of order was sustained, and the bill fell).	
S. Amend. No. 2170, 105th Cong., <a href="#">144 CONG. REC. S2880</a> (daily ed. Apr. 1, 1998) (Allard amendment “to require the reduction of the deficit, a balanced Federal budget, and the repayment of the national debt.”)	<a href="#">144 CONG. REC. S2958</a> (daily ed. Apr. 1, 1998) (statement of Sen. Lautenberg).	<a href="#">144 CONG. REC. S2955–58</a> (daily ed. Apr. 1, 1998) (statement of Sens. Allard, Enzi & Lautenberg); <a href="#">144 CONG. REC. S3034–35</a> (daily ed. Apr. 2, 1998) (statement of Sens. Allard, Domenici & Lautenberg)	<a href="#">144 CONG. REC. S2958</a> (daily ed. Apr. 1, 1998) (statement of Sen. Allard).	<a href="#">144 CONG. REC. S3035</a> (daily ed. Apr. 2, 1998) (vote no. 65) (53-45).	<a href="#">144 CONG. REC. S3035</a> (daily ed. Apr. 2, 1998) (the motion was rejected, the point of order was sustained, and the bill fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2211, 105th Cong., <a href="#">144 CONG. REC. S2880</a> (daily ed. Apr. 1, 1998) (Craig amendment “to modify the pay-as-you-go requirement of the budget process to require that direct spending increases be offset only with direct spending decreases.”)	<a href="#">144 CONG. REC. S2948</a> (daily ed. Apr. 1, 1998) (statement of Sen. Lautenberg).	<a href="#">144 CONG. REC. S2946–48, S2950–51</a> (daily ed. Apr. 1, 1998) (statement of Sens. Craig & Lautenberg).	<a href="#">144 CONG. REC. S2948</a> (daily ed. Apr. 1, 1998) (statement of Sen. Craig).	<a href="#">144 CONG. REC. S2951</a> (daily ed. Apr. 1, 1998) (vote no. 60) (54-45).	<a href="#">144 CONG. REC. S2951</a> (daily ed. Apr. 1, 1998) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2193, 105th Cong., <a href="#">144 CONG. REC. S2933</a> (daily ed. Apr. 1, 1998) (Hollings amendment “[t]o provide a supermajority point of order against any change in the offbudget status of Social Security.”)	<a href="#">144 CONG. REC. S2944</a> (daily ed. Apr. 1, 1998) (statement of Sen. Domenici).	<a href="#">144 CONG. REC. S2940–44, 2949</a> (daily ed. Apr. 1, 1998) (statement of Sens. Hollings, Feingold, Lautenberg & Domenici).	<a href="#">144 CONG. REC. S2944</a> (daily ed. Apr. 1, 1998) (statement of Sen. Hollings).	<a href="#">144 CONG. REC. S2950</a> (daily ed. Apr. 1, 1998) (vote no. 58) (42-58).	<a href="#">144 CONG. REC. S2950</a> (daily ed. Apr. 1, 1998) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2199, 105th Cong., <a href="#">144 CONG. REC. S2880</a> (daily ed. Apr. 1, 1998) (Coverdell amendment “[t]o provide middle class tax relief.”)	<a href="#">144 CONG. REC. S2908</a> (daily ed. Apr. 1, 1998) (statement of Sen. Lautenberg).	<a href="#">144 CONG. REC. S2880–87, 2908</a> (daily ed. Apr. 1, 1998) (statements of Sens. Coverdell, Lautenberg, McCain, Specter, Abraham, Bond, Domenici & Gramm).	<a href="#">144 CONG. REC. S2944</a> (daily ed. Apr. 1, 1998) (statement of Sen. McCain).	<a href="#">144 CONG. REC. S2908</a> (daily ed. Apr. 1, 1998) (vote no. 55) (38-62).	<a href="#">144 CONG. REC. S2908</a> (daily ed. Apr. 1, 1998) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2174, 105th Cong., <a href="#">144 CONG. REC. S2879</a> (daily ed. Apr. 1, 1998) (Conrad amendment “to ensure that the tobacco reserve fund in the resolution protects public health.”)	<a href="#">144 CONG. REC. S2908</a> (daily ed. Apr. 1, 1998) (statement of Sen. Domenici).	<a href="#">144 CONG. REC. S2904–08</a> (daily ed. Apr. 1, 1998) (statement of Sens. Kennedy, Domenici, Lautenberg & Conrad).	<a href="#">144 CONG. REC. S2908</a> (daily ed. Apr. 1, 1998) (statement of Sen. Conrad).	<a href="#">144 CONG. REC. S2908</a> (daily ed. Apr. 1, 1998) (vote no. 54) (46-54).	<a href="#">144 CONG. REC. S2908</a> (daily ed. Apr. 1, 1998) (the motion was rejected, the point of order was sustained, and the amendment fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2173, 105th Cong., <a href="#">144 CONG. REC. S2781</a> (daily ed. Mar. 31, 1998) (Dodd amendment “to establish a deficit-neutral reserve fund for child care improvements.”)	<a href="#">144 CONG. REC. S2810</a> (daily ed. Mar. 31, 1998) (statement of Sen. Domenici).	<a href="#">144 CONG. REC. S2800–09, 2810, 2811</a> (daily ed. Mar. 31, 1998) (statement of Sens. Dodd, Feinstein, Wellstone, Murray, Kerry, Lautenberg, Moseley-Braun, Domenici, Durbin & Hatch).	<a href="#">144 CONG. REC. S2810</a> (daily ed. Mar. 31, 1998) (statement of Sen. Dodd).	<a href="#">144 CONG. REC. S2811</a> (daily ed. Mar. 31, 1998) (vote no. 52) (50-48).	<a href="#">144 CONG. REC. S2811</a> (daily ed. Mar. 31, 1998) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2165, 105th Cong., <a href="#">144 CONG. REC. S2781</a> (daily ed. Mar. 31, 1998) (Murray amendment “to establish a deficit-neutral reserve fund to reduce class size by hiring 100,000 teachers.”)	<a href="#">144 CONG. REC. S2799</a> (daily ed. Mar. 31, 1998) (statement of Sen. Domenici).	<a href="#">144 CONG. REC. S2787–99</a> (daily ed. Mar. 31, 1998) (statement of Sens. Murray, Wellstone, Feingold, Lautenberg, Kennedy, Moseley-Braun, Boxer & Domenici).	<a href="#">144 CONG. REC. S2799</a> (daily ed. Mar. 31, 1998) (statement of Sen. Murray).	<a href="#">144 CONG. REC. S2799</a> (daily ed. Mar. 31, 1998) (vote no. 50) (46-52).	<a href="#">144 CONG. REC. S2799</a> (daily ed. Mar. 31, 1998) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 582, 105th Cong., <a href="#">143 CONG. REC. S6693</a> (daily ed. June 27, 1997) (Feingold amendment “[t]o eliminate the percentage depletion allowance for certain minerals.”)	<a href="#">143 CONG. REC. S6693</a> (daily ed. June 27, 1997) (statement of Sen. Roth).	<a href="#">143 CONG. REC. S6693</a> (daily ed. June 27, 1997) (statement of Sens. Feingold, Gramm & Roth).	<a href="#">143 CONG. REC. S6693</a> (daily ed. June 27, 1997) (statement of Sen. Feingold).	<a href="#">143 CONG. REC. S6693</a> (daily ed. June 27, 1997) (vote no. 158) (37-61).	<a href="#">143 CONG. REC. S6693</a> (daily ed. June 27, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 579, 105th Cong., <a href="#">143 CONG. REC. S6687</a> (daily ed. June 27, 1997) (Harkin amendment “[t]o improve health care quality and reduce health care costs by establishing a National Fund for Health Research.”)	<a href="#">143 CONG. REC. S6688</a> (daily ed. June 27, 1997) (statement of Sen. Nickles).	<a href="#">143 CONG. REC. S6687–88</a> (daily ed. June 27, 1997) (statement of Sens. Harkin, D’Amato, Specter, Roth, Santorum & Nickles).	<a href="#">143 CONG. REC. S6688</a> (daily ed. June 27, 1997) (statement of Sen. Harkin).	<a href="#">143 CONG. REC. S6688</a> (daily ed. June 27, 1997) (vote no. 154) (51-48).	<a href="#">143 CONG. REC. S6688</a> (daily ed. June 27, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 555, 105th Cong., <a href="#">143 CONG. REC. S6685</a> (daily ed. June 27, 1997) (Jeffords amendment “[t]o encourage improvements in child care services and options for meeting employment-related child care needs.”)	<a href="#">143 CONG. REC. S6686</a> (daily ed. June 27, 1997) (statement of Sen. Roth).	<a href="#">143 CONG. REC. S6685</a> (daily ed. June 27, 1997) (statement of Sens. Jeffords, Coats & Roth).	<a href="#">143 CONG. REC. S6686</a> (daily ed. June 27, 1997) (statement of Sen. Jeffords).	<a href="#">143 CONG. REC. S6686</a> (daily ed. June 27, 1997) (vote no. 153) (57-42).	<a href="#">143 CONG. REC. S6686</a> (daily ed. June 27, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 575, 105th Cong., <a href="#">143 CONG. REC. S6682</a> (daily ed. June 27, 1997) (Kohl amendment “[t]o provide a credit against tax for employers who provide child care assistance for dependents of their employees.”)	<a href="#">143 CONG. REC. S6682</a> (daily ed. June 27, 1997) (statement of Sen. Roth).	<a href="#">143 CONG. REC. S6682</a> (daily ed. June 27, 1997) (statement of Sens. Kohl & Roth).	<a href="#">143 CONG. REC. S6682</a> (daily ed. June 27, 1997) (statement of Sen. Kohl).	<a href="#">143 CONG. REC. S6682</a> (daily ed. June 27, 1997) (vote no. 152) (72-28).	<a href="#">143 CONG. REC. S6682</a> (daily ed. June 27, 1997) (the motion was agreed to and the point of order fell).	
S. Amend. No. 519, 105th Cong., <a href="#">143 CONG. REC. S6394</a> (daily ed. June 26, 1997) (Durbin amendment “to increase the deduction for health insurance costs of self-employed individuals, and to increase the excise tax on tobacco products.”)	<a href="#">143 CONG. REC. S6454</a> (daily ed. June 26, 1997) (statement of Sen. Roth).	<a href="#">143 CONG. REC. S6449–55</a> (daily ed. June 26, 1997) (statement of Sens. Durbin, Bond, Ford, McConnell, Faircloth, Helms, Moseley-Braun, Nickles & Roth).	<a href="#">143 CONG. REC. S6454</a> (daily ed. June 26, 1997) (statement of Sen. Durbin).	<a href="#">143 CONG. REC. S6455</a> (daily ed. June 26, 1997) (vote no. 137) (41-58).	<a href="#">143 CONG. REC. S6455</a> (daily ed. June 26, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 540, 105th Cong., <a href="#">143 CONG. REC. S6442</a> (daily ed. June 26, 1997) (Byrd amendment “to eliminate tax deductions for advertising and promotion expenditures relating to alcoholic beverages and to increase funding for programs that educate and prevent the abuse of alcohol.”)	<a href="#">143 CONG. REC. S6447</a> (daily ed. June 26, 1997) (statement of Sen. Roth).	<a href="#">143 CONG. REC. S6442–47</a> (daily ed. June 26, 1997) (statement of Sens. Byrd, Roth, McConnell & Burns).	<a href="#">143 CONG. REC. S6447</a> (daily ed. June 26, 1997) (statement of Sen. Byrd).	<a href="#">143 CONG. REC. S6447</a> (daily ed. June 26, 1997) (vote no. 136) (12-86).	<a href="#">143 CONG. REC. S6447</a> (daily ed. June 26, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
Revenue Reconciliation Act of 1997, S. 949, Motion to Refer § 602, 105th Cong. (a bill “[t]o provide for revenue reconciliation pursuant to section 104(b) of the concurrent resolution on the budget for fiscal year 1998”) (June 20, 1997).	143 CONG. REC. S6400 (daily ed. June 26, 1997) (statement of Sen. Roth).	143 CONG. REC. S6333–37 (daily ed. June 25, 1997) (statement of Sen. Roth, Byrd, Moynihan, Brownback & Dorgan); 143 CONG. REC. S6399–401 (daily ed. June 26, 1997) (statement of Sen. Moynihan, Dorgan, Domenici, Roth & Nickles).	143 CONG. REC. S6400 (daily ed. June 26, 1997) (statement of Sen. Dorgan).	143 CONG. REC. S6401 (daily ed. June 26, 1997) (vote no. 133) (34-64).	143 CONG. REC. S6401 (daily ed. June 26, 1997) (the motion was rejected and the point of order was sustained).	
S. Amend. No. 518, 105th Cong., 143 CONG. REC. S6394 (daily ed. June 26, 1997) (Bumpers amendment “to repeal the depletion allowance available to certain hardrock mining companies.”)	143 CONG. REC. S6396 (daily ed. June 26, 1997) (statement of Sen. Murkowski).	143 CONG. REC. S6396 (daily ed. June 26, 1997) (statement of Sens. Bumpers, Gregg, Reid, Murkowski, Craig & Bryan).	143 CONG. REC. S6396 (daily ed. June 26, 1997) (statement of Sen. Bumpers).	143 CONG. REC. S6396–97 (daily ed. June 26, 1997) (vote no. 131) (36-63).	143 CONG. REC. S6397 (daily ed. June 26, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 469, 105th Cong., 143 CONG. REC. S6171 (daily ed. June 24, 1997) (Specter amendment “[t]o extend premium protection for low-income medicare beneficiaries under the medicaid program.”)	143 CONG. REC. S6302 (daily ed. June 25, 1997) (statement of Sen. Domenici).	143 CONG. REC. S6302–03 (daily ed. June 25, 1997) (statement of Sens. Domenici, Specter & Rockefeller).	143 CONG. REC. S6303 (daily ed. June 25, 1997) (statement of Sen. Specter).	143 CONG. REC. S6303 (daily ed. June 25, 1997) (vote no. 121) (52-48).	143 CONG. REC. S6303 (daily ed. June 25, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 468, 105th Cong., 143 CONG. REC. S6171 (daily ed. June 24, 1997) (Kyl amendment “[t]o allow medicare beneficiaries to enter into private contracts for services.”)	143 CONG. REC. S6298 (daily ed. June 25, 1997) (statement of Sen. Lautenberg).	143 CONG. REC. S6298–99 (daily ed. June 25, 1997) (statement of Sens. Kyl, Lautenberg & Domenici).	143 CONG. REC. S6298 (daily ed. June 25, 1997) (statement of Sen. Kyl).	143 CONG. REC. S6299 (daily ed. June 25, 1997) (vote no. 120) (64-35).	143 CONG. REC. S6299 (daily ed. June 25, 1997) (the motion was agreed to and the point of order fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 451, 105th Cong., <a href="#">143 CONG. REC. S6152</a> (daily ed. June 24, 1997) (D’Amato amendment “[t]o improve health care quality and reduce health care costs by establishing a national fund for health research.”)	<a href="#">143 CONG. REC. S6154</a> (daily ed. June 24, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6152–55</a> (daily ed. June 24, 1997) (statement of Sens. D’Amato, Harkin & Domenici); <a href="#">143 CONG. REC. S6293</a> (daily ed. June 25, 1997) (statement of Sens. Domenici, D’Amato & Harkin).	<a href="#">143 CONG. REC. S6155</a> (daily ed. June 24, 1997) (statement of Sen. D’Amato).	<a href="#">143 CONG. REC. S6293</a> (daily ed. June 25, 1997) (vote no. 117) (46-54).	<a href="#">143 CONG. REC. S6293</a> (daily ed. June 25, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 450, 105th Cong., <a href="#">143 CONG. REC. S6151</a> (daily ed. June 24, 1997) (Durbin amendment “[t]o provide food stamp benefits to child immigrants.”)	<a href="#">143 CONG. REC. S6292</a> (daily ed. June 25, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6151–52</a> (daily ed. June 24, 1997) (statement of Sens. Durbin & Domenici); <a href="#">143 CONG. REC. S6292</a> (daily ed. June 25, 1997) (statement of Sens. Domenici, Breaux & Durbin).	<a href="#">143 CONG. REC. S6292</a> (daily ed. June 25, 1997) (statement of Sen. Durbin).	<a href="#">143 CONG. REC. S6292</a> (daily ed. June 25, 1997) (vote no. 116) (48-52).	<a href="#">143 CONG. REC. S6292</a> (daily ed. June 25, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 322, 105th Cong., <a href="#">143 CONG. REC. S4839</a> (daily ed. May 21, 1997) (Ashcroft amendment “[t]o add enforcement mechanisms to reflect the stated commitment to reach a balanced budget in 2002, to maintain a balanced budget thereafter, and to achieve these goals without raising taxes.”)	<a href="#">143 CONG. REC. S4973</a> (daily ed. May 22, 1997) (statement of Sen. Lautenberg).	<a href="#">143 CONG. REC. S4969–73, 4986</a> (daily ed. May 22, 1997) (statement of Sens. Ashcroft, Inhofe, Gramm, Lautenberg, Gorton, Wellstone & Domenici).	<a href="#">143 CONG. REC. S4973</a> (daily ed. May 22, 1997) (statement of Sen. Ashcroft).	<a href="#">143 CONG. REC. S4986</a> (daily ed. May 22, 1997) (vote no. 83) (41-58).	<a href="#">143 CONG. REC. S4986</a> (daily ed. May 22, 1997) (the motion was rejected, the point of order was sustained, and the emergency designation was removed).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 305(c)(4)—Germaneness/Disagreement between Houses.</b> Prohibits consideration of non-germane amendments to amendments reported in disagreement between the House and the Senate.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 305(d)—Mathematical Consistency.</b> Prohibits a vote on the adoption of a budget resolution unless the figures in the resolution are mathematically consistent.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 306—Budget Committee Jurisdiction.</b> Prohibits consideration of legislation that contains matters within the Budget Committee’s jurisdiction unless the legislation was reported by or discharged from the Committee or is amending a measure that was reported by or discharged from the Committee.						
S. Amend. No. 2137, 117th Cong., <a href="#">167 CONG. REC. 6056–57</a> (daily ed. Aug. 8, 2021) (Sinema amendment “[i]n the nature of a substitute”).	<a href="#">167 CONG. REC. 6057</a> (daily ed. Aug. 8, 2021) (statement of Sen. Lankford).		<a href="#">167 CONG. REC. 6057</a> (daily ed. Aug. 8, 2021) (statement of Sen. Sinema).	<a href="#">167 CONG. REC. 6057</a> (daily ed. Aug. 8, 2021) (vote no. 312) (69-28).	<a href="#">167 CONG. REC. 6057</a> (daily ed. Aug. 8, 2021) (the motion was agreed to and the point of order fell).	
H.R. 1370, 115th Cong., <a href="#">163 CONG. REC. S8234</a> (daily ed. Dec. 21, 2017) (Paul point of order in relation to the statutory pay-go scorecard).	<a href="#">163 CONG. REC. S8234</a> (daily ed. Dec. 21, 2017) (statement of Sen. Paul).	<a href="#">163 CONG. REC. S8233–35</a> (daily ed. Dec. 21, 2017) (statement of Sens. Paul, Collins & McConnell).	<a href="#">163 CONG. REC. S8234</a> (daily ed. Dec. 21, 2017) (statement of Sen. Collins).	<a href="#">163 CONG. REC. S8235</a> (daily ed. Dec. 21, 2017) (vote no. 324) (91-8).	<a href="#">163 CONG. REC. S8235</a> (daily ed. Dec. 21, 2017) (the motion was agreed to and the point of order fell).	
<a href="#">Emergency Supplemental Appropriations Act, 2014</a> , S. 2648, 113th Cong. (as referred to S. Comm. on Appropriations, July 31, 2014).	<a href="#">160 CONG. REC. S5204</a> (daily ed. July 31, 2014) (statement of Sen. Sessions).	<a href="#">160 CONG. REC. S5205</a> (daily ed. July 31, 2014) (statement of Sens. Sessions & Mikulski).	<a href="#">160 CONG. REC. S5204</a> (daily ed. July 31, 2014) (statement of Sen. Mikulski).	<a href="#">160 CONG. REC. S5205</a> (daily ed. July 31, 2014) (vote no. 252) (50-44).	<a href="#">160 CONG. REC. S5205</a> (daily ed. July 31, 2014) (the motion was rejected and the point of order was sustained).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1785, 112th Cong., <a href="#">158 CONG. REC. S1605</a> (daily ed. Mar. 13, 2012) (Corker amendment “[d]iscretionary spending cap adjustment for fiscal year 2013”).	<a href="#">158 CONG. REC. S1605</a> (daily ed. Mar. 13, 2012) (statement of Sen. Inouye).	<a href="#">158 CONG. REC. S1605</a> (daily ed. Mar. 13, 2012) (statements of Sens. Inouye & Corker).	<a href="#">158 CONG. REC. S1605</a> (daily ed. Mar. 13, 2012) (statement of Sen. Corker).	<a href="#">158 CONG. REC. S1605</a> (daily ed. Mar. 13, 2012) (vote no. 44) (40-58).	<a href="#">158 CONG. REC. S1605</a> (daily ed. Mar. 13, 2012) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 4303, 111th Cong., <a href="#">156 CONG. REC. S4729–31</a> (daily ed. June 9, 2010) (Sessions amendment “[t]o establish 3 year discretionary spending caps”).	<a href="#">156 CONG. REC. S4734</a> (daily ed. June 9, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S4734–35</a> (daily ed. June 9, 2010) (statements of Sens. Baucus & Sessions).	<a href="#">156 CONG. REC. S4735</a> (daily ed. June 9, 2010) (statement of Sen. Sessions).	<a href="#">156 CONG. REC. S4735</a> (daily ed. June 9, 2010) (vote no. 181) (57-41).	<a href="#">156 CONG. REC. S4735</a> (daily ed. June 9, 2010) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 4020, 111th Cong., <a href="#">156 CONG. REC. S3732–33</a> (daily ed. May 13, 2010) (Crapo amendment “[t]o limit further bailouts of Fannie Mae and Freddie Mac, to enhance the regulation and oversight of such enterprises”).	<a href="#">156 CONG. REC. S3809</a> (daily ed. May 17, 2010) (statement of Sen. Dodd).	<a href="#">156 CONG. REC. S3809</a> (daily ed. May 17, 2010) (statements of Sens. Dodd, Byrd & Crapo).	<a href="#">156 CONG. REC. S3809</a> (daily ed. May 17, 2010) (statement of Sen. Crapo).	<a href="#">156 CONG. REC. S3809–10</a> (daily ed. May 17, 2010) (vote no. 151) (47-46).	<a href="#">156 CONG. REC. S3809–10</a> (daily ed. May 17, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	<a href="#">156 CONG. REC. S3809–10</a> (daily ed. May 17, 2010) (statement of Sen. Dodd).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3549, 111th Cong., <a href="#">156 CONG. REC. S1676–78</a> (daily ed. Mar. 17, 2010) (Inhofe amendment “[t]o reduce the deficit by establishing discretionary spending caps for non-security spending”).	<a href="#">156 CONG. REC. S1722</a> (daily ed. Mar. 18, 2010) (statement of Sen. Dorgan).	<a href="#">156 CONG. REC. S1722</a> (daily ed. Mar. 18, 2010) (statements of Sens. Dorgan & Inhofe).	<a href="#">156 CONG. REC. S1722</a> (daily ed. Mar. 18, 2010) (statement of Sen. Inhofe).	<a href="#">156 CONG. REC. S1722</a> (daily ed. Mar. 18, 2010) (vote no. 59) (41-56).	<a href="#">156 CONG. REC. S1723</a> (daily ed. Mar. 18, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3548, 111th Cong., <a href="#">156 CONG. REC. S1675–76</a> (daily ed. Mar. 17, 2010) (Pryor amendment “[t]o reduce the deficit by establishing discretionary spending caps”).	<a href="#">156 CONG. REC. S1716</a> (daily ed. Mar. 18, 2010) (statement of Sen. Sessions).	<a href="#">156 CONG. REC. S1716</a> (daily ed. Mar. 18, 2010) (statements of Sens. Sessions & Pryor).	<a href="#">156 CONG. REC. S1716</a> (daily ed. Mar. 18, 2010) (statement of Sen. Pryor).	<a href="#">156 CONG. REC. S1716</a> (daily ed. Mar. 18, 2010) (vote no. 58) (27-70).	<a href="#">156 CONG. REC. S1716</a> (daily ed. Mar. 18, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3453, 111th Cong., <a href="#">156 CONG. REC. S1448–50</a> (daily ed. Mar. 11, 2010) (Sessions-McCaskill amendment “[t]o reduce the deficit by establishing discretionary spending caps”).	<a href="#">156 CONG. REC. S1715</a> (daily ed. Mar. 18, 2010) (statement of Sen. Inouye).	<a href="#">156 CONG. REC. S1715</a> (daily ed. Mar. 18, 2010) (statements of Sens. Inouye & Sessions).	<a href="#">156 CONG. REC. S1715</a> (daily ed. Mar. 18, 2010) (statement of Sen. Sessions).	<a href="#">156 CONG. REC. S1716</a> (daily ed. Mar. 18, 2010) (vote no. 57) (56-40).	<a href="#">156 CONG. REC. S1716</a> (daily ed. Mar. 18, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3337, 111th Cong., <a href="#">156 CONG. REC. S887–88</a> (daily ed. Mar. 1, 2010) (Sessions-McCaskill amendment “[t]o reduce the deficit by establishing discretionary spending caps”).	<a href="#">156 CONG. REC. S1152</a> (daily ed. Mar. 4, 2010) (statement of Sen. Inouye).	<a href="#">156 CONG. REC. S1152</a> (daily ed. Mar. 4, 2010) (statements of Sens. Inouye & McCaskill).	<a href="#">156 CONG. REC. S1152–53</a> (daily ed. Mar. 4, 2010) (statement of Sen. McCaskill).	<a href="#">156 CONG. REC. S1153</a> (daily ed. Mar. 4, 2010) (vote no. 42) (59-41).	<a href="#">156 CONG. REC. S1153</a> (daily ed. Mar. 4, 2010) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">156 CONG. REC. S1153</a> (daily ed. Mar. 4, 2010) (statement of Sen. Durbin).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2302, 111th Cong., <a href="#">155 CONG. REC. S8950</a> (daily ed. Aug. 6, 2009) (Gregg amendment “[t]o protect the generations of tomorrow from paying for new cars today”).	<a href="#">155 CONG. REC. S8962</a> (daily ed. Aug. 6, 2009) (statement of Sen. Murray).	<a href="#">155 CONG. REC. S8962</a> (daily ed. Aug. 6, 2009) (statements of Sens. Murray & Gregg).	<a href="#">155 CONG. REC. S8962</a> (daily ed. Aug. 6, 2009) (statement of Sen. Gregg).	<a href="#">155 CONG. REC. S8962</a> (daily ed. Aug. 6, 2009) (vote no. 265) (46-51).	<a href="#">155 CONG. REC. S8962</a> (daily ed. Aug. 6, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">155 CONG. REC. S8962</a> (daily ed. Aug. 6, 2009) (statement of Sen. Murray).
S. Amend. No. 364, 111th Cong., <a href="#">155 CONG. REC. S1656</a> (daily ed. Feb. 5, 2009) (McCain amendment “[i]n the nature of a substitute”).	<a href="#">155 CONG. REC. S1659</a> (daily ed. Feb. 5, 2009) (statement of Sen. Baucus).	<a href="#">155 CONG. REC. S1659</a> (daily ed. Feb. 5, 2009) (statements of Sens. Baucus & McCain).	<a href="#">155 CONG. REC. S1659</a> (daily ed. Feb. 5, 2009) (statement of Sen. McCain).	<a href="#">155 CONG. REC. S1659</a> (daily ed. Feb. 5, 2009) (vote no. 45) (40-57).	<a href="#">155 CONG. REC. S1659</a> (daily ed. Feb. 5, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 278, 111th Cong., <a href="#">155 CONG. REC. S1494</a> (daily ed. Feb. 4, 2009) (McCain amendment “[t]o reimplement Gramm-Rudman-Hollings to require deficit reduction and spending cuts upon 2 consecutive quarters of positive GDP growth”).	<a href="#">155 CONG. REC. S1525</a> (daily ed. Feb. 4, 2009) (statement of Sen. Conrad).	<a href="#">155 CONG. REC. S1525</a> (daily ed. Feb. 4, 2009) (statements of Sens. Conrad & McCain).	<a href="#">155 CONG. REC. S1525</a> (daily ed. Feb. 4, 2009) (statement of Sen. McCain).	<a href="#">155 CONG. REC. S1525</a> (daily ed. Feb. 4, 2009) (vote no. 40) (44-53).	<a href="#">155 CONG. REC. S1525</a> (daily ed. Feb. 4, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1546, 110th Cong., <a href="#">153 CONG. REC. S7706</a> (daily ed. June 14, 2007) (DeMint amendment “[t]o provide that legislation that would increase the national average fuel prices for automobiles is subject to a point of order in the Senate”).	<a href="#">153 CONG. REC. S8004</a> (daily ed. June 20, 2007) (statement of Sen. Bingaman).	<a href="#">153 CONG. REC. S8004</a> (daily ed. June 20, 2007) (statements of Sens. Bingaman & DeMint).	<a href="#">153 CONG. REC. S8004</a> (daily ed. June 20, 2007) (statement of Sen. DeMint).	<a href="#">153 CONG. REC. S8004</a> (daily ed. June 20, 2007) (vote no. 217) (37-55).	<a href="#">153 CONG. REC. S8004</a> (daily ed. June 20, 2007) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 13, 110th Cong., <a href="#">153 CONG. REC. S321</a> (daily ed. Jan. 10, 2007) (DeMint amendment “[t]o prevent government shutdowns”).	<a href="#">153 CONG. REC. S430</a> (daily ed. Jan. 11, 2007) (statement of Sen. Conrad).	<a href="#">153 CONG. REC. S430</a> (daily ed. Jan. 11, 2007) (statements of Sens. Conrad & DeMint).	<a href="#">153 CONG. REC. S430</a> (daily ed. Jan. 11, 2007) (statement of Sen. DeMint).	<a href="#">153 CONG. REC. S430</a> (daily ed. Jan. 11, 2007) (vote no. 6) (25-72).	<a href="#">153 CONG. REC. S430</a> (daily ed. Jan. 11, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 6, 104th Cong., <a href="#">141 CONG. REC. S540</a> (daily ed. Jan. 6, 1995) (Exon amendment “To apply the balanced budget amendment to Congress”).	<a href="#">141 CONG. REC. S546</a> (daily ed. Jan. 6, 1995) (statement of Sen. Domenici)	<a href="#">141 CONG. REC. S545–56</a> (daily ed. Jan. 6, 1995) (statement of Sens. Dominici, Nickles, Reid, Exon, Boxer, Pryor, Dole, Specter, Byrd, Simon, Daschle, Grassley, Bradley, Dorgan, Conrad)	<a href="#">141 CONG. REC. S546</a> (daily ed. Jan. 6, 1995) (statement of Sen. Exon)	<a href="#">141 CONG. REC. S556</a> (daily ed. Jan. 6, 1995) (vote no. 4) (53-30).	<a href="#">141 CONG. REC. S556</a> (daily ed. Jan. 6, 1995) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 423, 104th Cong. <a href="#">141 CONG. REC. S4785</a> (daily ed. Mar. 29, 1995) (Byrd amendment to Amend. 420 of Emergency Supplemental Appropriations Act regarding Budget Act requiring OMB to lower discretionary spending limits to match savings from the Act).	Sen. Domenici asserted that a point of order would lie if raised. <a href="#">141 CONG. REC. S4787</a> (daily ed. Mar. 29, 1995) (statement of Sen. Domenici).	<a href="#">141 CONG. REC. S4787, S4789</a> (daily ed. Mar. 29, 1995) (statements of Sens. Domenici & Byrd).	<a href="#">141 CONG. REC. S4789</a> (daily ed. Mar. 29, 1995) (statement of Sen. Byrd).	Unanimous consent, rather than a roll call vote, was requested. <a href="#">141 CONG. REC. S4789</a> (daily ed. Mar. 29, 1995) (statement of Sen. Byrd).	<a href="#">141 CONG. REC. S4789</a> (daily ed. Mar. 29, 1995) (no objection was made to the call for unanimous consent, the motion was accepted, and the amendment was adopted).	
S. Amend. No. 626, 100th Cong., <a href="#">133 CONG. REC. 21,008</a> (June 23, 1987) (Chiles amendment “to revise the procedures set forth in the Balanced Budget and Emergency Deficit Control Act of 1985”).	<a href="#">133 CONG. REC. 20,966</a> (June 23, 1987) (statement of Sen. Weicker).	<a href="#">133 CONG. REC. 20,966</a> (June 23, 1987) (statements of Sens. Weicker, Domenici & Chiles).	<a href="#">133 CONG. REC. 20,966</a> (June 23, 1987) (statement of Sen. Chiles) (amendment to Chiles motion-to-waive offered by Sen. Domenici to simultaneously waive all Budget Act § 306 points of order with respect to the forthcoming Gramm-Domenici amendment); see S. Amend. No. 630, <a href="#">103 CONG. REC. 20,966</a> (June 23, 1987).	<a href="#">133 CONG. REC. 20,967</a> (June 23, 1987) (vote no. 210) (71-25) (on the question of waiving § 306 of the Budget Act with respect to the Chiles amendment); <a href="#">103 CONG. REC. 20,967</a> (June 23, 1987) (vote no. 209) (50-47) (on the question of tabling the Domenici amendment to the Chiles motion to waive).	<a href="#">133 CONG. REC. 20,968</a> (June 23, 1987) (the Domenici amendment to the motion-to-waive was tabled; the original Chiles motion to waive the Budget Act was accepted; the amendment was then rejected by the Senate).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 631, 100th Cong., <a href="#">133 CONG. REC. 21,018</a> (June 23, 1987) (Gramm and Domenici amendment “to revise the procedures set forth in the Balanced Budget and Emergency Deficit Control Act of 1985”).	<a href="#">133 CONG. REC. 20,973</a> (June 23, 1987) (statement of Sen. Johnston).	<a href="#">133 CONG. REC. 20,968–73</a> (June 23, 1987) (statement of Sens. Domenici, Chiles, Conrad, Gramm & Levin).	<a href="#">133 CONG. REC. 20,973</a> (June 23, 1987) (statement of Sen. Domenici); <i>see also</i> S. Amend. No. 630, <a href="#">103 CONG. REC. 20,966</a> (June 23, 1987) (Domenici amendment to Childs motion to waive the Budget Act with respect to S. Amend. 626 to also include S. Amend. 631) (tabled).	<a href="#">133 CONG. REC. 20,973</a> (June 23, 1987) (vote no. 212) (47-49).	<a href="#">133 CONG. REC. 20,973</a> (June 23, 1987) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 651, 100th Cong., <a href="#">133 CONG. REC. 21,866</a> (July 31, 1987) (Conrad amendment “To reduce spending for fiscal year 1988 by 2 percent”).	<a href="#">133 CONG. REC. 21,867</a> (July 31, 1987) (statement of Sen. Johnston).	<a href="#">133 CONG. REC. 21,867–68</a> (July 31, 1987) (statement of Sens. Conrad, Johnston, Boschwitz, Domenici).	<a href="#">133 CONG. REC. 21,867</a> (July 31, 1987) (statement of Sen. Conrad).	<a href="#">133 CONG. REC. 21,868</a> (July 31, 1987) (vote no. 221) (36-53).	<a href="#">133 CONG. REC. 21,868</a> (July 31, 1987) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 528, 98th Cong., <a href="#">129 CONG. REC. 6574</a> (Mar. 22, 1983) (Heinz amendment "To remove the Social Security Trust Funds from the unified budget").	<a href="#">129 CONG. REC. 6589–90</a> (Mar. 22, 1983) (statement of Sen. Domenici).	<a href="#">129 CONG. REC. 6586–90</a> (Mar. 22, 1983) (statements of Sens. Domenici, Heinz, Armstrong, Chiles & Byrd).	<a href="#">129 CONG. REC. 6589</a> (Mar. 22, 1983) (statement of Sen. Heinz).	<a href="#">129 CONG. REC. 6590</a> (Mar. 22, 1983) (vote no. 39) (motion to table 56-41).	<a href="#">129 CONG. REC. 6590</a> (Mar. 22, 1983) (the point of order was sustained, the motion to waive the Budget Act was tabled, and the amendment fell).	S. Amend. No. 528, 98th Cong., <a href="#">129 CONG. REC. 6574</a> (Mar. 22, 1983) (Heinz amendment "To remove the Social Security Trust Funds from the unified budget").
S. Amend. No. 3824, 106th Cong., <a href="#">146 CONG. REC. S6634</a> (daily ed. July 13, 2000) (Abraham amendment "[t]o provide additional budget resources for a Medicare prescription drug benefit program").	<a href="#">146 CONG. REC. S6636</a> (daily ed. July 13, 2000) (statement of Sen. Domenici).	<a href="#">146 CONG. REC. S6634–36</a> (daily ed. July 13, 2000) (statements of Sens. Roth, Robb, Burns, Nickles, Domenici & Graham).	<a href="#">146 CONG. REC. S6636</a> (daily ed. July 13, 2000) (statement of Sen. Graham).	<a href="#">146 CONG. REC. S6643</a> (daily ed. July 13, 2000) (vote no. 186) (46-53).	<a href="#">146 CONG. REC. S6643</a> (daily ed. July 13, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1087, 105th Cong., <a href="#">143 CONG. REC. S9053</a> (daily ed. Sept. 10, 1997) (Wellstone amendment "[t]o increase funding for the Head Start Act.")	<a href="#">143 CONG. REC. S9058</a> (daily ed. Sept. 10, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S9053–58, 9063</a> (daily ed. Sept. 10, 1997) (statement of Sens. Wellstone, Harkin & Domenici).	<a href="#">143 CONG. REC. S9063</a> (daily ed. Sept. 10, 1997) (statement of Sen. Wellstone).	<a href="#">143 CONG. REC. S9063</a> (daily ed. Sept. 10, 1997) (vote no. 229) (27-72).	<a href="#">143 CONG. REC. S9063</a> (daily ed. Sept. 10, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<a href="#">Revenue Reconciliation Act of 1997</a> , S. 949, Motion to Refer § 602, 105th Cong. (a bill “[t]o provide for revenue reconciliation pursuant to section 104(b) of the concurrent resolution on the budget for fiscal year 1998”) (June 20, 1997).	<a href="#">143 CONG. REC. S6400</a> (daily ed. June 26, 1997) (statement of Sen. Roth).	<a href="#">143 CONG. REC. S6333–37</a> (daily ed. June 25, 1997) (statement of Sen. Roth, Byrd, Moynihan, Brownback & Dorgan); <a href="#">id. at S6399–401</a> (daily ed. June 26, 1997) (statements of Sens. Moynihan, Dorgan, Domenici, Roth & Nickles).	<a href="#">143 CONG. REC. S6400</a> (daily ed. June 26, 1997) (statement of Sen. Dorgan).	<a href="#">143 CONG. REC. S6401</a> (daily ed. June 26, 1997) (vote no. 133) (34-64).	<a href="#">143 CONG. REC. S6401</a> (daily ed. June 26, 1997) (the motion was rejected and the point of order was sustained).	
<b>Sec. 310(d)(2)—Noncompliance.</b> Prohibits consideration of amendments to reconciliation legislation that, on net, would increase the deficit relative to the applicable reconciliation instructions, unless they are a motion to strike.						
S. Amend. No. 1254, 100th Cong., <a href="#">128 CONG. REC. 34,465</a> (Dec. 9, 1987) (Byrd-Dole amendment to implement the deficit reduction agreement); S. Amend. No. 1259, 100th Cong., <a href="#">128 CONG. REC. 34,964</a> (Dec. 10, 1987) (Kassebaum “To guarantee budget deficit reduction compliance”); S. Amend. No. 1260, 100th Cong., <a href="#">128 CONG. REC. 34,875</a> (Dec. 10, 1987) (Gramm amendment “To reduce federal expenditures by imposing a discretionary spending freeze”).	The provisions of the Budget Act requiring 60 votes to waive were waived preemptively.	<a href="#">128 CONG. REC. 34,792–93</a> (Dec. 10, 1987) (statements of Sens. Byrd, Exon, Domenici, Chiles, Roth & Conrad).	<a href="#">128 CONG. REC. 34,792</a> (Dec. 10, 1987) (statement of Sen. Byrd) (moving to waive §§ 310(d), 310(g), 311, 305(b) with respect to germaneness, and § 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 for the consideration of the Byrd, Kassebaum & Gramm amendments).	<a href="#">128 CONG. REC. 34,793</a> (Dec. 10, 1987) (vote no. 401) (81-13).	<a href="#">128 CONG. REC. 34,793</a> (Dec. 10, 1987) (the motion was agreed to).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3651, 111th Cong., <a href="#">156 CONG. REC. S1972</a> (daily ed. Mar. 24, 2010) (Gregg amendment “[t]o provide for a long-term fix to the Medicare sustainable growth rate formula in order to improve access for Medicare beneficiaries”).	<a href="#">156 CONG. REC. S2003</a> (daily ed. Mar. 24, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S2003</a> (daily ed. Mar. 24, 2010) (statements of Sens. Baucus & Gregg).	<a href="#">156 CONG. REC. S2003</a> (daily ed. Mar. 24, 2010) (statement of Sen. Gregg).	<a href="#">156 CONG. REC. S2003</a> (daily ed. Mar. 24, 2010) (vote no. 82) (42-56).	<a href="#">156 CONG. REC. S2003</a> (daily ed. Mar. 24, 2010) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">156 CONG. REC. S2003</a> (daily ed. Mar. 24, 2010) (statement of Sen. Levin).
S. Amend. No. 3640, 111th Cong., <a href="#">156 CONG. REC. S1958</a> (daily ed. Mar. 24, 2010) (Thune amendment “[t]o repeal the CLASS Act”).	<a href="#">156 CONG. REC. S2000</a> (daily ed. Mar. 24, 2010) (statement of Sen. Harkin).	<a href="#">156 CONG. REC. S2000</a> (daily ed. Mar. 24, 2010) (statements of Sens. Harkin & Thune).	<a href="#">156 CONG. REC. S2000</a> (daily ed. Mar. 24, 2010) (statement of Sen. Thune).	<a href="#">156 CONG. REC. S2000</a> (daily ed. Mar. 24, 2010) (vote no. 77) (43-55).	<a href="#">156 CONG. REC. S2000</a> (daily ed. Mar. 24, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 488, 105th Cong., <a href="#">143 CONG. REC. S6174</a> (daily ed. June 24, 1997) (Wellstone amendment “[t]o provide for actuarially sufficient reimbursement rates for providers.”)	<a href="#">143 CONG. REC. S6306</a> (daily ed. June 25, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6305–06</a> (daily ed. June 25, 1997) (statement of Sens. Wellstone, Domenici & Roth).	<a href="#">143 CONG. REC. S6306</a> (daily ed. June 25, 1997) (statement of Sen. Wellstone).	<a href="#">143 CONG. REC. S6306</a> (daily ed. June 25, 1997) (vote no. 125) (39-60).	<a href="#">143 CONG. REC. S6306</a> (daily ed. June 25, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 479, 105th Cong., <a href="#">143 CONG. REC. S6172</a> (daily ed. June 24, 1997) (Dodd amendment “[t]o provide for medicaid eligibility of disabled children who lose SSI benefits.”)	<a href="#">143 CONG. REC. S6296</a> (daily ed. June 25, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6295–96</a> (daily ed. June 25, 1997) (statement of Sens. Dodd, Lautenberg & Domenici).	<a href="#">143 CONG. REC. S6296</a> (daily ed. June 25, 1997) (statement of Sen. Dodd).	<a href="#">143 CONG. REC. S6296</a> (daily ed. June 25, 1997) (vote no. 118) (49-51).	<a href="#">143 CONG. REC. S6296</a> (daily ed. June 25, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 445, 105th Cong., <a href="#">143 CONG. REC. S6145</a> (daily ed. June 24, 1997) (Reed amendment “[t]o provide for a complete substitute of division 1 of title V.”)	<a href="#">143 CONG. REC. S6146</a> (daily ed. June 24, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6145–46</a> (daily ed. June 24, 1997) (statement of Sens. Reed, Domenici & Lautenberg); <a href="#">143 CONG. REC. S6291–92</a> (daily ed. June 25, 1997) (statement of Sens. Stevens, Domenici, Kerrey & Reed).	<a href="#">143 CONG. REC. S6146</a> (daily ed. June 24, 1997) (statement of Sen. Reed).	<a href="#">143 CONG. REC. S6292</a> (daily ed. June 25, 1997) (vote no. 115) (25-75).	<a href="#">143 CONG. REC. S6292</a> (daily ed. June 25, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 440, Division II, 105th Cong., <a href="#">143 CONG. REC. S6132</a> (daily ed. June 24, 1997) (Kennedy amendment “(1) [t]o strike income-relating of the Medicare part B premiums and deductibles; (2) to delay the effective date of income-relating of the Medicare part B premiums and deductibles; and (3) to means-test Senatorial health benefits in the same way as the bill means-tests Medicare part B premiums and deductibles.”)	<a href="#">143 CONG. REC. S6141</a> (daily ed. June 24, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6132–44</a> (daily ed. June 24, 1997) (statement of Sens. Kennedy, Roth, Domenici, Gramm, Gregg, Breaux, Mikulski, Rockefeller, Lautenberg, Chafee, Kerrey, Moynihan, Wellstone, Reed, Nickles, Lott, Daschle & Bumpers).	<a href="#">143 CONG. REC. S6141</a> (daily ed. June 24, 1997) (statement of Sen. Kennedy).	<a href="#">143 CONG. REC. S6142</a> (daily ed. June 24, 1997) (vote no. 114) (37-63).	<a href="#">143 CONG. REC. S6142</a> (daily ed. June 24, 1997) (the motion was rejected, the point of order was sustained, and Division II of the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 310(g)—Social Security.</b> Prohibits consideration of reconciliation legislation that contains changes to the Old-Age and Survivor's Insurance program and Disability Insurance program.						
S. Amend. No. 1254, 100th Cong., <a href="#">128 CONG. REC. 34,465</a> (Dec. 9, 1987) (Byrd-Dole amendment "to implement the agreement of the summit on deficit reduction"); S. Amend. No. 1259, 100th Cong., <a href="#">128 CONG. REC. 34,964</a> (Dec. 10, 1987) (Kassebaum amendment to amendment No. 1254 "To guarantee budget deficit reduction compliance"); S. Amend. No. 1260, 100th Cong., <a href="#">128 CONG. REC. 34,875</a> (Dec. 10, 1987) (Gramm amendment to amendment No. 1254 "To reduce federal expenditures by imposing a discretionary spending freeze").	No point of order was raised; the provisions of the Budget Act requiring 60 votes to waive were waived preemptively.	<a href="#">128 CONG. REC. 34,792–93</a> (Dec. 10, 1987) (statements of Sens. Byrd, Exon, Domenici, Chiles, Roth & Conrad).	<a href="#">128 CONG. REC. 34,792</a> (Dec. 10, 1987) (statement of Sen. Byrd) (moving to waive just §§ 310(d), 310(g), 311, 305(b) with respect to germaneness, and § 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 for the consideration of the Byrd, Kassebaum & Gramm amendments).	<a href="#">128 CONG. REC. 34,793</a> (Dec. 10, 1987) (vote no. 401) (81-13).	<a href="#">128 CONG. REC. 34,793</a> (Dec. 10, 1987) (the motion was agreed to).	
<b>Sec. 311(a)(2)—Spending and Revenue Aggregates.</b> Prohibits consideration of legislation that would (1) cause budget authority and outlay spending totals to exceed the totals in the budget resolution, or (2) cause total revenues to fall below the totals in the budget resolution.						
S. Amend. No. 270, 115th Cong., <a href="#">163 CONG. REC. S4176</a> (daily ed. July 25, 2017) (McConnell amendment "[o]f a perfecting nature.")	<a href="#">163 CONG. REC. S4183</a> (daily ed. July 25, 2017) (statement of Sen. Murray).	<a href="#">163 CONG. REC. S4176–83</a> (daily ed. July 25, 2017) (statement of Sens. McConnell, Murray, Enzi, Wyden, Portman, Markey, Cruz & Merkley)	<a href="#">163 CONG. REC. S4183</a> (daily ed. July 25, 2017) (statement of Sen. Cruz).	<a href="#">163 CONG. REC. S4183</a> (daily ed. July 25, 2017) (vote no. 168) (43-57).	<a href="#">163 CONG. REC. S4183</a> (daily ed. July 25, 2017) (statement of Sen. Murray) (the motion was rejected, the point of order was sustained, and the amendment fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3787, 114th Cong., <a href="#">162 CONG. REC. S2161</a> (daily ed. Apr. 19, 2016) (Paul amendment “[t]o provide for the establishment of free market enterprise zones in order to help facilitate the creation of new jobs, entrepreneurial opportunities, enhanced and renewed educational opportunities, and increased community involvement in bankrupt or economically distressed areas.”)	<a href="#">162 CONG. REC. S2190</a> (daily ed. Apr. 19, 2016) (statement of Sen. Cantwell).	<a href="#">162 CONG. REC. S2190</a> (daily ed. Apr. 19, 2016) (statement of Sens. Cantwell & Paul).	<a href="#">162 CONG. REC. S2190</a> (daily ed. Apr. 19, 2016) (statement of Sen. Paul).	<a href="#">162 CONG. REC. S2190–91</a> (daily ed. Apr. 19, 2016) (vote no. 53) (33-64).	<a href="#">162 CONG. REC. S2191</a> (daily ed. Apr. 19, 2016) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3345, 114th Cong., <a href="#">162 CONG. REC. S1181</a> (daily ed. Mar. 2, 2016) (Shaheen amendment “[t]o make appropriations to address the heroin and opioid drug abuse epidemic for the fiscal year ending September 30, 2016.”)	<a href="#">162 CONG. REC. S1205</a> (daily ed. Mar. 2, 2016) (statement of Sen. Enzi).	<a href="#">162 CONG. REC. S1205</a> (daily ed. Mar. 2, 2016) (statement of Sens. Shaheen, Grassley & Enzi).	<a href="#">162 CONG. REC. S1205</a> (daily ed. Mar. 2, 2016) (statement of Sen. Shaheen).	<a href="#">162 CONG. REC. S1205–06</a> (daily ed. Mar. 2, 2016) (vote no. 30) (48-47).	<a href="#">162 CONG. REC. S1206</a> (daily ed. Mar. 2, 2016) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<a href="#">Consolidated Appropriations Act, 2016</a> , H.R. 2029, 114th Cong.; <a href="#">161 CONG. REC. S8858</a> (daily ed. Dec. 18, 2015) (point of order against motion to concur).	<a href="#">161 CONG. REC. S8858</a> (daily ed. Dec. 18, 2015) (statement of Sen. Manchin).	<a href="#">161 CONG. REC. S8858–59</a> (daily ed. Dec. 18, 2015) (statement of Sens. Manchin & Wyden).	<a href="#">161 CONG. REC. S8858</a> (daily ed. Dec. 18, 2015) (statement of Sen. Wyden).	<a href="#">161 CONG. REC. S8859</a> (daily ed. Dec. 18, 2015) (vote no. 3389) (65-33).	<a href="#">161 CONG. REC. S8859</a> (daily ed. Dec. 18, 2015) (the motion was agreed to and the point of order fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<a href="#">Comprehensive Veterans Health and Benefits and Military Retirement Pay Restoration Act of 2014</a> , S. 1982, 113th Cong. (as committed to S. Comm. on Veterans' Affairs, Feb. 27, 2014).	<a href="#">160 CONG. REC. S1197</a> (daily ed. Feb. 27, 2014) (statement of Sen. Sessions).	<a href="#">160 CONG. REC. S1197–201</a> (daily ed. Feb. 27, 2014) (statements of Sens. Sessions, Casey, Shaheen & Hoeven).	<a href="#">160 CONG. REC. S1197</a> (daily ed. Feb. 27, 2014) (statement of Sen. Sanders).	<a href="#">160 CONG. REC. S1210</a> (daily ed. Feb. 27, 2014) (vote no. 46) (56-41).	<a href="#">160 CONG. REC. S1210</a> (daily ed. Feb. 27, 2014) (the motion was rejected and the point of order was sustained).	
<a href="#">Moving Ahead for Progress in the 21<sup>st</sup> Century Act: Conference Report to Accompany H.R. 4348</a> , H.R. REP. NO. 112-557 (2012) (Conf. Rep.).	<a href="#">158 CONG. REC. S4752</a> (daily ed. June 29, 2012) (statement of Sen. Corker).	<a href="#">158 CONG. REC. S4752–54</a> (daily ed. June 29, 2012) (statements of Sens. Corker & Reid).	<a href="#">158 CONG. REC. S4752</a> (daily ed. June 29, 2012) (statement of Sen. Reid).	<a href="#">158 CONG. REC. S4754–55</a> (daily ed. June 29, 2012) (vote no. 171) (63-30).	<a href="#">158 CONG. REC. S4755</a> (daily ed. Sep. 19, 2012) (the motion was agreed to and the point of order fell).	
S. Amend. No. 1556, 112th Cong., <a href="#">158 CONG. REC. S1647</a> (daily ed. Mar. 14, 2012) (Paul amendment “[t]o permit emergency exemptions from compliance with certain laws for highway construction projects”).	<a href="#">158 CONG. REC. S1650</a> (daily ed. Mar. 14, 2012) (statement of Sen. Boxer).	<a href="#">158 CONG. REC. S1650</a> (daily ed. Mar. 14, 2012) (statements of Sens. Boxer & Paul).	<a href="#">158 CONG. REC. S1650</a> (daily ed. Mar. 14, 2012) (statement of Sen. Paul).	<a href="#">158 CONG. REC. S1650</a> (daily ed. Mar. 14, 2012) (vote no. 47) (42-54).	<a href="#">158 CONG. REC. S1650</a> (daily ed. Mar. 14, 2012) (the point of order was sustained and the amendment fell).	
<a href="#">Moving Ahead for Progress in the 21<sup>st</sup> Century Act</a> , S. 1813, 112th Cong. (as reported by S. Comm. on Env't & Pub. Works, Feb. 6, 2012).	<a href="#">158 CONG. REC. S1518</a> (daily ed. Mar. 8, 2012) (statement of Sen. Corker).	<a href="#">158 CONG. REC. S1530–31</a> (daily ed. Mar. 8, 2012) (statements of Sens. Corker, Boxer, Inhofe & Coburn).	<a href="#">158 CONG. REC. S1518</a> (daily ed. Mar. 8, 2012) (statement of Sen. Boxer).	<a href="#">158 CONG. REC. S1531</a> (daily ed. Mar. 8, 2012) (vote no. 35) (66-31).	<a href="#">158 CONG. REC. S1531</a> (daily ed. Mar. 8, 2012) (the motion was agreed to and the point of order fell).	
S. Amend. No. 4301, 111th Cong., <a href="#">156 CONG. REC. S4660–96</a> (daily ed. June 8, 2010) (Baucus amendment “[i]n the nature of a substitute”).	<a href="#">156 CONG. REC. S4958</a> (daily ed. June 16, 2010) (statement of Sen. Gregg).	<a href="#">156 CONG. REC. S4958</a> (daily ed. June 16, 2010) (statements of Sens. Gregg & Baucus).	<a href="#">156 CONG. REC. S4958</a> (daily ed. June 16, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S4958–59</a> (daily ed. June 16, 2010) (vote no. 190) (45-52).	<a href="#">156 CONG. REC. S49589</a> (daily ed. June 16, 2010) (the motion was rejected, the point of order was sustained, and the amendment was withdrawn).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 4304, 111th Cong., <a href="#">156 CONG. REC. S4642</a> (daily ed. June 8, 2010) (Cardin amendment “[t]o provide for the extension of dependent coverage under the Federal Employees Health Benefits Program”).	<a href="#">156 CONG. REC. S4733</a> (daily ed. June 9, 2010) (statement of Sen. Hatch).	<a href="#">156 CONG. REC. S4733</a> (daily ed. June 9, 2010) (statements of Sens. Hatch & Cardin).	<a href="#">156 CONG. REC. S4733</a> (daily ed. June 9, 2010) (statement of Sen. Cardin).	<a href="#">156 CONG. REC. S4733</a> (daily ed. June 9, 2010) (vote no. 179) (57-42).	<a href="#">156 CONG. REC. S4733</a> (daily ed. June 9, 2010) (the motion was rejected, the point of order was sustained, and the amendment failed).	
<a href="#">Hiring Incentives to Restore Employment Act</a> , H.R.2847, 111th Cong. (2010) (enacted).	<a href="#">156 CONG. REC. S1634</a> (daily ed. Mar. 17, 2010) (statement of Sen. Gregg).	<a href="#">156 CONG. REC. S1634</a> (daily ed. Mar. 17, 2010) (statements of Sens. Gregg & Schumer).	<a href="#">156 CONG. REC. S1634</a> (daily ed. Mar. 17, 2010) (statement of Sen. Schumer).	<a href="#">156 CONG. REC. S1635</a> (daily ed. Mar. 17, 2010) (vote no. 54) (63-34).	<a href="#">156 CONG. REC. S1635</a> (daily ed. Mar. 17, 2010) (the motion was agreed to and the point of order fell).	
S. Amend. No. 3458, 111th Cong., <a href="#">156 CONG. REC. S1598</a> (daily ed. Mar. 16, 2010) (Vitter amendment “[t]o clarify application requirements relating to the coastal impact assistance program”).	<a href="#">156 CONG. REC. S1603</a> (daily ed. Mar. 16, 2010) (statement of Sen. Bingaman).	<a href="#">156 CONG. REC. S1603</a> (daily ed. Mar. 16, 2010) (statements of Sens. Bingaman & Vitter).	<a href="#">156 CONG. REC. S1603</a> (daily ed. Mar. 16, 2010) (statement of Sen. Vitter).	<a href="#">156 CONG. REC. S1603–04</a> (daily ed. Mar. 16, 2010) (vote no. 52) (41-57).	<a href="#">156 CONG. REC. S1604</a> (daily ed. Mar. 16, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3338, 111th Cong., <a href="#">156 CONG. REC. S998</a> (daily ed. Mar. 3, 2010) (Thune amendment “[t]o create additional tax relief for businesses”).	<a href="#">156 CONG. REC. S998</a> (daily ed. Mar. 3, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S998</a> (daily ed. Mar. 3, 2010) (statements of Sens. Baucus & Cornyn).	<a href="#">156 CONG. REC. S998</a> (daily ed. Mar. 3, 2010) (statement of Sen. Cornyn).	<a href="#">156 CONG. REC. S998</a> (daily ed. Mar. 3, 2010) (vote no. 33) (38-61).	<a href="#">156 CONG. REC. S998</a> (daily ed. Mar. 3, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3355, 111th Cong., <a href="#">156 CONG. REC. S967–69</a> (daily ed. Mar. 2, 2010) (Bunning amendment “[I]n the nature of a substitute”).	<a href="#">156 CONG. REC. S933</a> (daily ed. Mar. 2, 2010) (statement of Sen. Boxer).	<a href="#">156 CONG. REC. S933</a> (daily ed. Mar. 2, 2010) (statements of Sens. Boxer & Bunning).	<a href="#">156 CONG. REC. S933</a> (daily ed. Mar. 2, 2010) (statement of Sen. Bunning).	<a href="#">156 CONG. REC. S933</a> (daily ed. Mar. 2, 2010) (vote no. 31) (43-53).	<a href="#">156 CONG. REC. S933</a> (daily ed. Mar. 2, 2010) (the motion was not agreed to and the point of order was sustained).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
Department of Defense Appropriations Act of 2010, H.R. 3326, 111th Cong.; <a href="#">155 Cong. Rec. S13476</a> (daily ed. Dec. 19, 2009) (point of order against motion to concur).	<a href="#">155 Cong. Rec. S13476</a> (daily ed. Dec. 19, 2009) (statement of Sen. Coburn).	<a href="#">155 Cong. Rec. S13476</a> (daily ed. Dec. 19, 2009) (statements of Sens. Coburn & Reid).	<a href="#">155 Cong. Rec. S13476</a> (daily ed. Dec. 19, 2009) (statement of Sen. Reid).	<a href="#">155 Cong. Rec. S13476</a> (daily ed. Dec. 19, 2009) (vote no. 383) (63-35).	<a href="#">155 Cong. Rec. S13476</a> (daily ed. Dec. 19, 2009) (the motion was agreed to and the point of order fell).	
Legislative Branch Appropriations Act, 2010: Conference Report to Accompany H.R. 2918, H.R. REP. 111-265 (2009) (Conf. Rep.).	<a href="#">155 CONG. REC. S9967</a> (daily ed. Sept. 30, 2009) (statement of Sen. Gregg).	<a href="#">155 CONG. REC. S9966</a> (daily ed. Sept. 30, 2009) (statements of Sens. Gregg, Inouye, Collins & Nelson).	<a href="#">155 CONG. REC. S9967</a> (daily ed. Sept. 30, 2009) (statement of Sen. Nelson).	<a href="#">155 CONG. REC. S9968–69</a> (daily ed. Sept. 30, 2009) (vote no. 302) (62-38).	<a href="#">155 CONG. REC. S9969</a> (daily ed. Sept. 30, 2009) (the conference report was agreed to).	<a href="#">155 CONG. REC. S9969</a> (daily ed. Sept. 30, 2009) (statement of Sen. Boxer).
S. Amend. No. 197, 111th Cong., <a href="#">155 CONG. REC. S1466–70</a> (daily ed. Feb. 3, 2009) (Thune amendment “[i]n the nature of a substitute”).	<a href="#">155 CONG. REC. S1664</a> (daily ed. Feb. 5, 2009) (statement of Sen. Baucus).	<a href="#">155 CONG. REC. S1664</a> (daily ed. Feb. 5, 2009) (statements of Sens. Baucus & Thune).	<a href="#">155 CONG. REC. S1664</a> (daily ed. Feb. 5, 2009) (statement of Sen. Thune).	<a href="#">155 CONG. REC. S1664</a> (daily ed. Feb. 5, 2009) (vote no. 49) (37-60).	<a href="#">155 CONG. REC. S1664</a> (daily ed. Feb. 5, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">155 CONG. REC. S1664</a> (daily ed. Feb. 5, 2009) (statement of Sen. Boxer).
S. Amend. No. 1598, 108th Cong., <a href="#">149 CONG. REC. S11,228</a> (daily ed. Sept. 9, 2003) (Schumer amendment “[t]o provide additional funding for programs under the Ryan White Care Act”).	<a href="#">149 CONG. REC. S11,229</a> (daily ed. Sept. 9, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,269–70</a> (daily ed. Sept. 10, 2003) (statements of Sens. Schumer, Nelson & Specter).	<a href="#">149 CONG. REC. S11,229</a> (daily ed. Sept. 9, 2003) (statement of Sen. Schumer).	<a href="#">149 CONG. REC. S11,270</a> (daily ed. Sept. 10, 2003) (vote no. 335) (44-53).	<a href="#">149 CONG. REC. S11,270</a> (daily ed. Sept. 10, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
Medicare Prescription Drug, Improvement, and Modernization Act of 2003: Conference Report to Accompany H.R. 1, H.R. REP. 108-391 (2003) (Conf. Rep.).	149 CONG. REC. S15,698 (daily ed. Nov. 24, 2003) (statement of Sen. Daschle).	149 CONG. REC. S15,698–711 (daily ed. Nov. 24, 2003) (statements of Sens. Daschle, Domenici, Nickles, Reid, Graham, Boxer, Dodd, Santorum, Corzine, Grassley, Durbin, Breaux & Frist).	149 CONG. REC. S15,698 (daily ed. Nov. 24, 2003) (statement of Sen. Frist on behalf of Sens. Grassley, Baucus & Breaux).	149 CONG. REC. S15,711 (daily ed. Nov. 24, 2003) (vote no. 458) (61-39).	149 CONG. REC. S15,711 (daily ed. Nov. 24, 2003) (the motion was agreed to and the point of order fell).	149 CONG. REC. S15,711 (daily ed. Nov. 24, 2003) (statement of Sen. Frist).
H.J. Res. No. 102, 100th Cong., 133 CONG. REC. 2320 (Jan. 29, 1987) ("A joint resolution making emergency additional funds available by transfer for the fiscal year ending September 30, 1987, for the Emergency Food and Shelter Program of the Federal Emergency Management Agency.").	No point of order was raised, but Sen. Chiles asserted that the resolution would be subject to points of order under §§ 302(f) and 311(a) of the Budget Act. 133 CONG. REC. 2298 (statement of Sen. Chiles). <i>But see id.</i> (statement of Sen. Domenici) (asserting that the Parliamentarian's policy on this issue is to defer to the opinion of the Budget Committee chair, and (2) that no point of order should lie).	133 CONG. REC. 2298–2303 (Jan. 29, 1987) (statements of Sens. Chiles, Domenici, Gramm, Proxmire & Helms).	133 CONG. REC. 2298 (Jan. 29, 1987) (statement of Sen. Chiles).	133 CONG. REC. 2303 (Jan. 29, 1987) (vote no. 10) (67-22).	133 CONG. REC. 2303 (Jan. 29, 1987) (the motion to waive the Budget Act was agreed to).	
S. Amend. No. 161, 100th Cong., 133 CONG. REC. 9378 (Apr. 23, 1987) (Boschwitz amendment "To improve the bill").	133 CONG. REC. 9389 (Apr. 23, 1987) (statement of Sen. Chiles & Sen. Domenici).	133 CONG. REC. 9389–91 (Apr. 23, 1987) (statements of Sens. Harkin, Boschwitz, Cochran & Chiles).	133 CONG. REC. 9389 (Apr. 23, 1987) (statement of Sen. Boschwitz).	133 CONG. REC. 9391 (Apr. 23, 1987) (vote no. 79) (33-63).	133 CONG. REC. 9391–92 (Apr. 23, 1987) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 207, 100th Cong., <a href="#">133 CONG. REC. 13,697</a> (May. 27, 1987) (Heinz amendment "To provide an additional \$10,000,000 for title V of the Older Americans Act of 1965, relating to community service employment for older Americans.").	<a href="#">133 CONG. REC. 13,703</a> (May. 27, 1987) (statement of Sen. Chiles).		<a href="#">133 CONG. REC. 13,703</a> (May. 27, 1987) (statement of Sen. Heinz).	<a href="#">133 CONG. REC. 13,730</a> (May. 27, 1987) (vote no. 126) (74-21).	<a href="#">133 CONG. REC. 13,730</a> (May. 27, 1987) (the motion to waive the Budget Act was agreed to).	
S. Amend. No. 220, 100th Cong., <a href="#">133 CONG. REC. 13,704</a> (May. 27, 1987) (Dixon amendment "To provide an additional \$100,000,000 and a method of distributing these supplemental funds for the Summer Youth Employment and Training Program under title II-B of the Job Training Partnership Act").	<a href="#">133 CONG. REC. 13,712</a> (May. 27, 1987) (statement of Sen. Chiles).	<a href="#">133 CONG. REC. 13,730-31</a> (May. 27, 1987) (statements of Sens. Chiles).	<a href="#">133 CONG. REC. 13,712</a> (May. 27, 1987) (statement of Sen. Dixon).	<a href="#">133 CONG. REC. 13,730</a> (May. 27, 1987) (vote no. 128) (33-62).	<a href="#">133 CONG. REC. 13,731</a> (May. 27, 1987) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 231, 100th Cong., <a href="#">133 CONG. REC. 13,881</a> (May. 28, 1987) (Cranston amendment "To add appropriations for homeless housing programs").	<a href="#">133 CONG. REC. 13,886</a> (May. 28, 1987) (statement of Sen. Johnston).	<a href="#">133 CONG. REC. 13,885-86</a> (May. 28, 1987) (statements of Sens. Domenici, Cranston, D'Amato, Chiles & Johnston).	<a href="#">133 CONG. REC. 13,885</a> (May. 28, 1987) (statement of Sen. D'Amato).	<a href="#">133 CONG. REC. 13,886</a> (May. 28, 1987) (vote no. 132) (47-46).	<a href="#">133 CONG. REC. 13,886</a> (May. 28, 1987) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 250, 100th Cong., <a href="#">133 CONG. REC. 14,128</a> (May. 29, 1987) (Melcher amendment "To transfer unobligated funds . . . of the Older Americans Act of 1965, to subpart 2 of part C of title III of that Act, relating to Home Delivered Nutrition Services").	<a href="#">133 CONG. REC. 14,128</a> (May. 29, 1987) (statement of Sen. Gramm).	<a href="#">133 CONG. REC. 14,128–29</a> (May. 29, 1987) (statements of Sens. Gramm, Cochran & Melcher).	<a href="#">133 CONG. REC. 14,128</a> (May. 29, 1987) (statement of Sen. Melcher).	<a href="#">133 CONG. REC. 14,129</a> (May. 29, 1987) (vote no. 138) (66-16).	<a href="#">133 CONG. REC. 14,129</a> (May. 29, 1987) (the motion to waive the Budget Act was agreed to).	
H. R. 1827, 100th Cong., <a href="#">133 CONG. REC. 14,119</a> (May. 29, 1987) ("Supplemental Appropriations Act, 1987").	<a href="#">133 CONG. REC. 13,923</a> (May. 29, 1987) (statement of Sen. Gramm).	<a href="#">133 CONG. REC. 14,121–24</a> (May. 29, 1987) (statements of Sens. Johnston, Gramm, Stennis & Chiles).	<a href="#">133 CONG. REC. 13,924; 14,120</a> (May. 29, 1987) (statement of Sen. Johnston).	<a href="#">133 CONG. REC. 14,124</a> (May. 29, 1987) (vote no. 137) (55-34).	<a href="#">133 CONG. REC. 14,124</a> (May. 29, 1987) (the motion was rejected, and the motion to reconsider was postponed).	
S. Amend. No. 230, 100th Cong., <a href="#">133 CONG. REC. 13,872</a> (May. 28, 1987) (Grassley amendment "to revise the basis for computation of emergency compensation for the 1986 crop of feed grains").	<a href="#">133 CONG. REC. 13,880</a> (May. 28, 1987) (statement of Sen. Chiles).	None.	<a href="#">133 CONG. REC. 13,880</a> (May. 28, 1987) (statement of Sen. Grassley).	<a href="#">133 CONG. REC. 13,880</a> (May. 28, 1987) (vote no. 131) (33-60).	<a href="#">133 CONG. REC. 13,880</a> (May. 28, 1987) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 218, 100th Cong., <a href="#">133 CONG. REC. 13,751</a> (May. 27, 1987) (Metzenbaum amendment to provide \$500,000 for grants and contracts under § 5 of the Orphan Drug Act, and to reduce funds).	Sen. Hatfield made a parliamentary inquiry as to whether a point of order would lie. <a href="#">133 CONG. REC. 13,713</a> (May. 27, 1987) (statement of Sen. Hatfield).				<a href="#">133 CONG. REC. 13,713</a> (May. 27, 1987) (presiding officer responded that the point of order would have been sustained); amendment modified and agreed to by voice vote. <a href="#">133 CONG. REC. 13,899–900</a> (May 28, 1989).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1254, 100th Cong., <a href="#">128 CONG. REC. 34,465</a> (Dec. 9, 1987) (Byrd-Dole amendment "to implement the agreement of the summit on deficit reduction"); S. Amend. No. 1259, 100th Cong., <a href="#">128 CONG. REC. 34,964</a> (Dec. 10, 1987) (Kassebaum amendment to amendment No. 1254 "To guarantee budget deficit reduction compliance"); S. Amend. No. 1260, 100th Cong., <a href="#">128 CONG. REC. 34,875</a> (Dec. 10, 1987) (Gramm amendment to amend. no. 1254 "To reduce federal expenditures by imposing a discretionary spending freeze").	No point of order was raised; the provisions of the Budget Act requiring 60 votes to waive were waived preemptively.	<a href="#">128 CONG. REC. 34,792–93</a> (Dec. 10, 1987) (statements of Sens. Byrd, Exon, Domenici, Chiles, Roth & Conrad).	<a href="#">128 CONG. REC. 34,792</a> (Dec. 10, 1987) (statement of Sen. Byrd) (moving to waive just §§ 310(d), 310(g), 311, 305(b) with respect to germaneness, and § 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 for the consideration of the Byrd, Kassebaum & Gramm amendments).	<a href="#">128 CONG. REC. 34,793</a> (Dec. 10, 1987) (vote no. 401) (81-13).	<a href="#">128 CONG. REC. 34,793</a> (Dec. 10, 1987) (the motion was agreed to).	
S. Amend. No. 427, 99th Cong., <a href="#">131 CONG. REC. 17,300</a> (June 26, 1985) (Chafee amendment "To exclude from gross income of individuals over 65 an amount equal to investment income not greater than the interest on \$90,000.").	<a href="#">131 CONG. REC. 17,301</a> (June 26, 1985) (statement of Sen. Packwood).	<a href="#">131 CONG. REC. 17,301</a> (June 26, 1985) (statements of Sens. Chafee).			<a href="#">131 CONG. REC. 17,301</a> (June 26, 1985) (the point of order was sustained, and the amendment fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 428, 99th Cong., <a href="#">131 CONG. REC. 17,303</a> (June 26, 1985) (Melcher amendment "To provide for a blended imputed interest rate where debt exceeds \$2 million for sales of seller-financed farms and ranches, and real property used in an active trade or small business.").	<a href="#">131 CONG. REC. 17,307</a> (June 26, 1985) (statement of Sen. Packwood).	<a href="#">131 CONG. REC. 17,304–07</a> (June 26, 1985) (statements of Sens. Melcher & Packwood).	<a href="#">131 CONG. REC. 17,307</a> (June 26, 1985) (statement of Sen. Melcher).	<a href="#">131 CONG. REC. 17,307</a> (June 26, 1985) (vote no. 138) (motion to table 54-43).	<a href="#">131 CONG. REC. 17,307</a> (June 26, 1985) (the motion to waive the Budget Act was tabled, the point of order was sustained, and the amendment fell).	
Conf. Rep. on H. J. Res. 534, 99th Cong., <a href="#">132 CONG. REC. 4765</a> (Mar. 13, 1986) ("A joint resolution making an urgent supplemental appropriation for the Department of Agriculture for the fiscal year ending September 30, 1986, and for other purposes.").	<a href="#">132 CONG. REC. 4775</a> (Mar. 13, 1986) (statement of Sen. Gramm).	<a href="#">132 CONG. REC. 4767–74</a> (Mar. 13, 1986) (statements of Sens. Gramm, Domenici, Cochran, Harkin, Helms, Hatfield, Rudman, Stennis, Exon & Dole).	<a href="#">132 CONG. REC. 4767</a> (Mar. 13, 1986) (statement of Sen. Gramm).	<a href="#">132 CONG. REC. 4774</a> (Mar. 13, 1986) (vote no. 37) (92-7).	<a href="#">132 CONG. REC. 4774</a> (Mar. 13, 1986) (the motion was rejected, the point of order was sustained, and the amendment fell).	
Sixth Comm. Amend. on page 65, lines 1–5 of the Conf. Rep. to H.R. 4515, 99th Cong., <a href="#">132 CONG. REC. 12,728</a> (June 5, 1986) (barring appropriation to temporary IRS regulations dealing with recordkeeping requirements).	<a href="#">132 CONG. REC. 12,731</a> (June 5, 1986) (statement of Sen. Metzenbaum).	<a href="#">132 CONG. REC. 12,731</a> (June 5, 1986) (statements of Sens. Abdnor, Metzenbaum & Stevens).	<a href="#">132 CONG. REC. 12,731</a> (June 5, 1986) (statement of Sen. Abdnor).	<a href="#">132 CONG. REC. 12,732</a> (June 5, 1986) (vote no. 115) (65-33).	<a href="#">132 CONG. REC. 12,732</a> (June 5, 1986) (the motion to waive the Budget Act was agreed to).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2264, 99th Cong., <a href="#">132 CONG. REC. 18,733</a> (Aug. 1, 1986) (Sasser amendment "To provide emergency assistance to farmers and ranchers adversely affected by this year's drought and excessively hot weather").	<a href="#">132 CONG. REC. 18,735</a> (parliamentary inquiry) (Aug. 1, 1986) (statement of Sen. Harkin).	<a href="#">132 CONG. REC. 18,732–37, 18,740–41</a> (Aug. 1, 1986) (statements of Sens. Harkin & Domenici).			<a href="#">132 CONG. REC. 18,735</a> (Aug. 1, 1986) (the presiding officer responded that a point of order under § 311 would fail because it calls for money in 1987, but points of order might lie under §§ 302(c) and 302(f) of the Budget Act).	
Conrail Sale Amendments Act of 1985, S. 638, 99th Cong., <a href="#">132 CONG. REC. 369–77</a> (Jan. 23, 1986).	<a href="#">132 CONG. REC. 549</a> (Jan. 27, 1986) (statement of Sen. Metzenbaum); see also <i>id.</i> at 555 (statement of Sen. Metzenbaum) (asserting that a point of order should lie under § 311 of the Budget Act, although the debate was regarding whether a point of order would lie under § 303 of the Act).	<a href="#">132 CONG. REC. 549–556</a> (Jan. 27, 1986), continued at <a href="#">132 CONG. REC. 734–47</a> (Jan. 29, 1986) (statements of Sens. Danforth, Metzenbaum, Pressler, Specter, Domenici, Dole & Hollings).	<a href="#">132 CONG. REC. 549</a> (Jan. 27, 1986) (statement of Sen. Danforth).	<a href="#">132 CONG. REC. 747</a> (Jan. 29, 1986) (vote no. 2) (68-31).	<a href="#">132 CONG. REC. 550</a> (Jan. 29, 1986) (the chair clarified that the bill would violate § 303 of the Budget Act in response to a parliamentary inquiry, but did not address whether a point of order would also lie under § 311 of the Act); <a href="#">132 CONG. REC. 747</a> (Jan. 29, 1986) (the motion was agreed to, and the Budget Act was waived).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
Conf. Rep. on S. 1200, 99th Cong., <a href="#">132 CONG. REC. 32,375</a> (Oct. 16, 1986) ("Immigration Reform and Control Act of 1986—Conference Report").	No point of order was raised; the Budget Act was waived preemptively after Senator Domenici explained why a point of order would lie under § 303(a) of the Budget Act, but would <i>not</i> lie under §§ 311 or 302(c) of the Budget Act. <a href="#">132 CONG. REC. 32,375–78</a> (Oct. 16, 1986) (statement of Sen. Domenici).	<a href="#">132 CONG. REC. 32,375–78, 32,408–09</a> (Oct. 16, 1986) (statements of Sens. Simpson, Gramm, Metzenbaum & Domenici).	<a href="#">132 CONG. REC. 32,376</a> (Oct. 16, 1986) (statement of Sen. Simpson).	<a href="#">132 CONG. REC. 32,378</a> (Oct. 16, 1986) (vote no. 348) (75-21).	<a href="#">132 CONG. REC. 32,376</a> (Oct. 16, 1986) (the motion to waive the Budget Act was agreed to).	
S. Up. Amend. No. 117, 98th Cong., <a href="#">129 CONG. REC. 6626</a> (Mar. 22, 1983) (Heinz amendment "to accelerate general revenue sharing from the end of the quarter to the beginning of the quarter").	<a href="#">129 CONG. REC. 6628</a> (Mar. 22, 1983) (statement of Sen. Hatfield).	<a href="#">129 CONG. REC. 6628–29</a> (Mar. 22, 1983) (statements of Sens. Heinz, Specter, Metzenbaum & Hatfield).			<a href="#">129 CONG. REC. 6629</a> (Mar. 22, 1983) (the point of order was sustained, the motion to appeal the ruling was tabled, and the amendment fell).	<a href="#">129 CONG. REC. 6629</a> (Mar. 22, 1983) (statement of Sen. Heinz). The motion to appeal was tabled. <i>Id.</i> (vote no. 45) (62-32).
S. Amend. No. 531, 98th Cong., <a href="#">129 CONG. REC. 6562</a> (Mar. 22, 1983) (Melcher amendment "To delay implementation of the withholding provisions on interest and dividend income until January 1, 1984").	<a href="#">129 CONG. REC. 6573</a> (Mar. 22, 1983) (statement of Sen. Domenici).	<a href="#">129 CONG. REC. 6565–73</a> (Mar. 22, 1983) (statements of Sens. Domenici, Melcher, Long, Baker & Moynihan).	<a href="#">129 CONG. REC. 6564</a> (Mar. 22, 1983) (statement of Sen. Melcher).	<a href="#">129 CONG. REC. 6573</a> (Mar. 22, 1983) (vote no. 38) (motion to table 54-43).	<a href="#">129 CONG. REC. 6573</a> (Mar. 22, 1983) (the point of order was sustained, the motion to waive the Budget Act was tabled, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1180, 98th Cong., <a href="#">129 CONG. REC. 9138</a> (Apr. 20, 1983) (Dole amendment "In the nature of a substitute, adding the compromise language on withholding [to the International Trade and Investment Act]").	<a href="#">129 CONG. REC. 9151</a> (Apr. 20, 1983) (statement of Sen. Danforth).	<a href="#">129 CONG. REC. 9151–56</a> (Apr. 20, 1983) (statements of Sens. Danforth, Melcher, DeConcini & Baker).	<a href="#">129 CONG. REC. 9151, 9156–57</a> (Apr. 20, 1983) (statement of Sen. Baker); <i>see also</i> S. Amend. No. 1181, 98th Cong., <a href="#">129 CONG. REC. 9156</a> (Apr. 20, 1983) (Melcher amendment to expand Sen. Baker's motion to waive the Budget Act so that it also would also waive the Budget Act with respect to any other amendments on that bill or any other considered in that session of congress). The Melcher amendment was tabled by a vote of 60-37. <i>Id.</i> (vote no. 59).	<a href="#">129 CONG. REC. 9157</a> (Apr. 20, 1983) (vote no. 60) (94-3).	<a href="#">129 CONG. REC. 9157</a> (Apr. 20, 1983) (the motion to waive the Budget Act was agreed to).	
S. Amend. No. 1473, 98th Cong., <a href="#">129 CONG. REC. 19,060</a> (July 13, 1983) (Armstrong amendment "To establish two new programs of educational assistance designed to assist the Armed Forces in recruiting and retaining highly qualified men and women, to repeal a termination date applicable to certain current GI Bill benefits.").	<a href="#">129 CONG. REC. 19,018</a> (July 13, 1983) (statement of Sen. Domenici).	<a href="#">129 CONG. REC. 19,017–18</a> (July 13, 1983) (statements of Sens. Armstrong, Simpson & Dominici ).	<a href="#">129 CONG. REC. 19,018</a> (July 13, 1983) (statement of Sen. Armstrong).	<a href="#">129 CONG. REC. 19,018</a> (July 13, 1983) (vote no. 187) (motion to table 52-46).	<a href="#">129 CONG. REC. 19,018</a> (July 13, 1983) (the motion to waive the Budget Act was tabled, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1482, 97th Cong., <a href="#">128 CONG. REC. 31,286</a> (Dec. 16, 1982) (Dole amendment "To provide for additional weeks of Federal supplemental compensation").	<a href="#">128 CONG. REC. 31,288</a> (Dec. 16, 1982) (statement of Sen. Humphrey).	<a href="#">128 CONG. REC. 31,288–91</a> (Dec. 16, 1982) (statements of Sens. Dole, Randolph, Humphrey, Byrd & Baker).	<a href="#">128 CONG. REC. 31,291</a> (Dec. 16, 1982) (statement of Sen. Domenici).	<a href="#">128 CONG. REC. 31,291</a> (Dec. 16, 1982) (vote no. 419) (87-9).	<a href="#">128 CONG. REC. 31,291</a> (Dec. 16, 1982) (the motion was agreed to, and the Budget Act was waived).	
S. Amend. No. 3838, 106th Cong., <a href="#">146 CONG. REC. S6710–37</a> (daily ed. July 13, 2000) (Santorum amendment "[t]o provide for the designation of renewal communities and to provide tax incentives relating to such communities, to provide a tax credit to taxpayers investing in entities seeking to provide capital to create new markets in low-income communities, and to provide for the establishment of Individual Development Accounts (IDAs)").	<a href="#">146 CONG. REC. S6651</a> (daily ed. July 13, 2000) (statement of Sen. Robb).	<a href="#">146 CONG. REC. S6651</a> (daily ed. July 13, 2000) (statements of Sens. Robb & Santorum).	<a href="#">146 CONG. REC. S6651</a> (daily ed. July 13, 2000) (statement of Sen. Santorum).	<a href="#">146 CONG. REC. S6768</a> (daily ed. July 14, 2000) (vote no. 190) (57-40).	<a href="#">146 CONG. REC. S6768</a> (daily ed. July 14, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3827, 106th Cong., <a href="#">146 CONG. REC. S6617</a> (daily ed. July 13, 2000) (Abraham amendment "[t]o amend the Internal Revenue Code of 1986 to temporarily reduce the Federal fuels tax to zero").	<a href="#">146 CONG. REC. S6627</a> (daily ed. July 13, 2000) (statement of Sen. Reid).	<a href="#">146 CONG. REC. S6627</a> (daily ed. July 13, 2000) (statements of Sens. Reid & Abraham).	<a href="#">146 CONG. REC. S6627</a> (daily ed. July 13, 2000) (statement of Sen. Abraham).	<a href="#">146 CONG. REC. S6627</a> (daily ed. July 13, 2000) (vote no. 183) (40-59).	<a href="#">146 CONG. REC. S6627</a> (daily ed. July 13, 2000) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">146 CONG. REC. S6627</a> (daily ed. July 13, 2000) (statement of Sen. Moynihan).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<a href="#">Consolidated Appropriations Act of 2001</a> , H.R. 4577, § 515, 106th Cong. (2000) (enacted).	<a href="#">146 CONG. REC. 12,833</a> (June 28, 2000) (statement of Sen. Gramm).	<a href="#">146 CONG. REC. 12,833–38</a> (June 28, 2000) (statements of Sens. Gramm, Specter, Reid, Dorgan, Harkin, Baucus & Nickles).	<a href="#">146 CONG. REC. 12,833</a> (June 28, 2000) (statement of Sen. Specter).	<a href="#">146 CONG. REC. S6218</a> (daily ed. June 30, 2000) (vote no. 171) (52-43).	<a href="#">146 CONG. REC. S6218</a> (daily ed. June 30, 2000) (the bill was passed).	<a href="#">146 CONG. REC. S6218</a> (daily ed. June 30, 2000) (statement of Sen. Coverdell).
S. Amend. No. 1906, 105th Cong., <a href="#">144 CONG. REC. S1743</a> (daily ed. Mar. 11, 1998) (Mack amendment “[t]o repeal the 4.3-cent transportation motor fuels excise tax transferred to the Highway Trust Fund by the Taxpayer Relief Act of 1997, effective on the date of enactment of this Act.”)	<a href="#">144 CONG. REC. S1751</a> (daily ed. Mar. 11, 1998) (statement of Sen. Warner).	<a href="#">144 CONG. REC. S1743–52</a> (daily ed. Mar. 11, 1998) (statement of Sens. Mack, Warner, Roth, Baucus, Chafee, Graham, Kyl, Nickles & Stevens).	<a href="#">144 CONG. REC. S1752</a> (daily ed. Mar. 11, 1998) (statement of Sen. Mack).	<a href="#">144 CONG. REC. S1752</a> (daily ed. Mar. 11, 1998) (vote no. 26) (18-80).	<a href="#">144 CONG. REC. S1752</a> (daily ed. Mar. 11, 1998) (the motion was rejected, the point of order was sustained, and Division II of the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 311(a)(3)—Social Security Aggregates.</b> Prohibits consideration of legislation that would increase the Social Security deficit compared to the levels in the budget resolution.						
S. Amend. No. 1254, 100th Cong., <a href="#">128 CONG. REC. 34,465</a> (Dec. 9, 1987) (Byrd-Dole amendment "to implement the agreement of the summit on deficit reduction"); S. Amend. No. 1259, 100th Cong., <a href="#">128 CONG. REC. 34,964</a> (Dec. 10, 1987) (Kassebaum amendment to amendment No. 1254 "To guarantee budget deficit reduction compliance"); S. Amend. No. 1260, 100th Cong., <a href="#">128 CONG. REC. 34,875</a> (Dec. 10, 1987) (Gramm amendment to amendment No. 1254 "To reduce federal expenditures by imposing a discretionary spending freeze").	No point of order was raised; the provisions of the Budget Act requiring 60 votes to waive were waived preemptively.	<a href="#">128 CONG. REC. 34,792–93</a> (Dec. 10, 1987) (statements of Sens. Byrd, Exon, Domenici, Chiles, Roth & Conrad).	<a href="#">128 CONG. REC. 34,792</a> (Dec. 10, 1987) (statement of Sen. Byrd) (moving to waive just §§ 310(d), 310(g), 311, 305(b) with respect to germaneness, and § 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 for the consideration of the Byrd, Kassebaum & Gramm amendments).	<a href="#">128 CONG. REC. 34,793</a> (Dec. 10, 1987) (vote no. 401) (81-13).	<a href="#">128 CONG. REC. 34,793</a> (Dec. 10, 1987) (the motion was agreed to).	
<b>Sec. 312(b)—Statutory Discretionary Spending Caps.</b> Prohibits consideration of a measure that would cause spending to exceed statutory discretionary limits. A similar point of order exists under § 314(f).						
S. Amend. No. 423, 114th Cong., <a href="#">161 CONG. REC. S1770</a> (daily ed. Mar. 24, 2015) (Rubio amendment "[t]o increase new budget authority fiscal years 2016 and 2017 and modify outlays for fiscal years 2016 through 2022 for National Defense.")	<a href="#">161 CONG. REC. S1985</a> (daily ed. Mar. 26, 2015) (statement of Sen. Sanders).	<a href="#">161 CONG. REC. S1985</a> (daily ed. Mar. 26, 2015) (statement of Sens. Rubio & Sanders).	<a href="#">161 CONG. REC. S1985</a> (daily ed. Mar. 26, 2015) (statement of Sen. Rubio).	<a href="#">161 CONG. REC. S1985</a> (daily ed. Mar. 26, 2015) (vote no. 96) (32-68).	<a href="#">161 CONG. REC. S1985–86</a> (daily ed. Mar. 26, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 940, 114th Cong., <a href="#">161 CONG. REC. S1872</a> (daily ed. Mar. 25, 2015) (Paul amendment to increase new budget authority and modify outlays for National Defense with offsets.”)	<a href="#">161 CONG. REC. S1986</a> (daily ed. Mar. 26, 2015) (statement of Sen. Sanders).	<a href="#">161 CONG. REC. S1986</a> (daily ed. Mar. 26, 2015) (statement of Sens. Paul & Sanders).	<a href="#">161 CONG. REC. S1986</a> (daily ed. Mar. 26, 2015) (statement of Sen. Paul).	<a href="#">161 CONG. REC. S1986</a> (daily ed. Mar. 26, 2015) (vote no. 97) (4-96).	<a href="#">161 CONG. REC. S1986</a> (daily ed. Mar. 26, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Con. Res. 27, 105th Cong. (May 17, 1997) (Concurrent Resolution “[s]etting forth the congressional budget for the United States Government for fiscal years 1998, 1999, 2000, 2001, and 2002.”)	<a href="#">143 CONG. REC. S5029</a> (daily ed. May 23, 1997) (statement of Sen. Gramm) (point of order raised as § 601(b), which was permanently codified as 312(b)).	<a href="#">143 CONG. REC. S5029–30</a> (daily ed. May 23, 1997) (statement of Sens. Gramm & Domenici).	<a href="#">143 CONG. REC. S5029</a> (daily ed. May 23, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S5030</a> (daily ed. May 23, 1997) (vote no. 87) (66-33).	<a href="#">143 CONG. REC. S5030</a> (daily ed. May 23, 1997) (the motion was agreed to and the point of order fell).	
<b>Sec. 313(b)—Byrd Rule.</b> Prohibits consideration of extraneous provisions in reconciliation legislation. (subparagraphs below)						
S. Amend. No. 639, 108th Cong., <a href="#">149 CONG. REC. S6432</a> (daily ed. May 15, 2003) (Sessions amendment “[t]o apply the sunset provision to the revenue increase provisions”).	S. Amend. No. 639, 108th Cong., <a href="#">149 CONG. REC. S6432</a> (daily ed. May 15, 2003) (Sessions amendment “[t]o apply the sunset provision to the revenue increase provisions”). No subparagraph of § 313(b) was designated.	S. Amend. No. 639, 108th Cong., <a href="#">149 CONG. REC. S6432</a> (daily ed. May 15, 2003) (Sessions amendment “[t]o apply the sunset provision to the revenue increase provisions”).	S. Amend. No. 639, 108th Cong., <a href="#">149 CONG. REC. S6432</a> (daily ed. May 15, 2003) (Sessions amendment “[t]o apply the sunset provision to the revenue increase provisions”).	S. Amend. No. 639, 108th Cong., <a href="#">149 CONG. REC. S6432</a> (daily ed. May 15, 2003) (Sessions amendment “[t]o apply the sunset provision to the revenue increase provisions”).	S. Amend. No. 639, 108th Cong., <a href="#">149 CONG. REC. S6432</a> (daily ed. May 15, 2003) (Sessions amendment “[t]o apply the sunset provision to the revenue increase provisions”).	S. Amend. No. 639, 108th Cong., <a href="#">149 CONG. REC. S6432</a> (daily ed. May 15, 2003) (Sessions amendment “[t]o apply the sunset provision to the revenue increase provisions”).



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<a href="#">Marriage Tax Relief Reconciliation Act of 2000</a> , H.R. 4810, 106th Cong. (2000) (point of order against § 4, from page 5, line 12, through page 7, line 3).	<a href="#">146 CONG. REC. 14,396</a> (daily ed. July 14, 2000) (statement of Sen. Roth).	<a href="#">146 CONG. REC. 14,396</a> (daily ed. July 14, 2000) (statement of Sen. Roth).	<a href="#">146 CONG. REC. 14,396</a> , <a href="#">14,685</a> (daily ed. July 14, 2000) (statements of Sen. Roth).		<a href="#">146 CONG. REC. 14,685</a> (daily ed. July 14, 2000) (statement of Sen. Roth) (motion to waive modified by unanimous consent).	
S. Amend. No. 568, 105th Cong., <a href="#">143 CONG. REC. S6674</a> (daily ed. June 27, 1997) (Bumpers amendment “[t]o prohibit the scoring, for budget purposes, of revenues associated with the sale of certain federal lands.”)	<a href="#">143 CONG. REC. S6675</a> (daily ed. June 27, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6674</a> (daily ed. June 27, 1997) (statement of Sens. Bumpers & Domenici).	<a href="#">143 CONG. REC. S6675</a> (daily ed. June 27, 1997) (statement of Sen. Bumpers).	<a href="#">143 CONG. REC. S6675</a> (daily ed. June 27, 1997) (vote no. 143) (48-52).	<a href="#">143 CONG. REC. S6675</a> (daily ed. June 27, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<a href="#">Revenue Reconciliation Act of 1997</a> , S. 949, § 602, 105th Cong. (a bill “[t]o provide for revenue reconciliation pursuant to § 104(b) of the concurrent resolution on the budget for fiscal year 1998”) (June 20, 1997).	<a href="#">143 CONG. REC. S6336</a> (daily ed. June 25, 1997) (statement of Sen. Brownback).	<a href="#">143 CONG. REC. S6333–37</a> (daily ed. June 25, 1997) (statement of Sen. Roth, Byrd, Moynihan, Brownback & Dorgan); <a href="#">143 CONG. REC. S6447–48</a> (daily ed. June 26, 1997) (statement of Sens. Roth, Bond, Kerry & Brownback).	<a href="#">143 CONG. REC. S6336</a> (daily ed. June 25, 1997) (statement of Sen. Roth).		<a href="#">143 CONG. REC. S6448</a> (daily ed. June 26, 1997) (the motion was withdrawn, the point of order was sustained, and § 602 was stricken).	
S. Amend. No. 504, 105th Cong., <a href="#">143 CONG. REC. S6180</a> (daily ed. June 24, 1997) (Kennedy amendment “[t]o immediately transfer to part B certain home health benefits.”)	<a href="#">143 CONG. REC. S6316</a> (daily ed. June 25, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6316</a> (daily ed. June 25, 1997) (statement of Sens. Domenici, Kennedy & Roth).	<a href="#">143 CONG. REC. S6316</a> (daily ed. June 25, 1997) (statement of Sen. Kennedy).	<a href="#">143 CONG. REC. S6316–17</a> (daily ed. June 25, 1997) (vote no. 127) (38-62).	<a href="#">143 CONG. REC. S6317</a> (daily ed. June 25, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 313(b)(1)(A)</b> those that do not change revenues or spending						
<a href="#">Tax Cuts and Jobs Act: Conference Report To Accompany H.R. 1</a> , H.R. REP. NO. 115-466, at 1 (2017) (Conf. Rep.); <a href="#">163 Cong. Rec. S8101</a> (daily ed. Dec. 19, 2017) (point of order § 11000(a) of H.R. 1).	<a href="#">163 CONG. REC. S8101</a> (daily ed. Dec. 19, 2017) (statement of Sen. Sanders).	<a href="#">163 CONG. REC. S8101–41</a> (daily ed. Dec. 19, 2017) (statement of Sens. Sanders, Murkowski, Reed, Heller, Donnelly, Grassley, Leahy, Klobuchar, Burr, Hoeven, Tillis, Hatch, Udall, Tester, Schatz, Toomey, Brown, Portman, Casey, Wyden, Young, Warren, Durbin, Perdue, Cardin, Sullivan, Carper, Merkley, Peters, Van Hollen, Cruz, Enzi & Schumer).	<a href="#">163 CONG. REC. S8101</a> (daily ed. Dec. 19, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S8141</a> (daily ed. Dec. 19, 2017) (vote no. 322) (51-48).	<a href="#">163 CONG. REC. S8141</a> (daily ed. Dec. 19, 2017) (the motion was rejected, the point of order was sustained, and the material was stricken from the conference report).	
S. Amend. No. 1720, 115th Cong., <a href="#">163 CONG. REC. S7700</a> (daily ed. Dec. 1, 2017) (Sanders amendment “[t]o create a point of order against legislation that cuts Social Security, Medicare, or Medicaid benefits.”)	<a href="#">163 CONG. REC. S7702</a> (daily ed. Dec. 1, 2017) (statement by Sen. Enzi).	<a href="#">163 CONG. REC. S7702</a> (daily ed. Dec. 1, 2017) (statement by Sens. Sanders & Enzi).	<a href="#">163 CONG. REC. S7702</a> (daily ed. Dec. 1, 2017) (statement by Sen. Sanders).	<a href="#">163 CONG. REC. S7702</a> (daily ed. Dec. 1, 2017) (vote no. 294) (46-54).	<a href="#">163 CONG. REC. S7702</a> (daily ed. Dec. 1, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 288, 115th Cong., <a href="#">163 CONG. REC. S4256</a> (daily ed. July 26, 2017) (Heller amendment “[t]o express the sense of the Senate that Medicaid expansion is a priority and that Obamacare must be improved.”)	<a href="#">163 CONG. REC. S4262</a> (daily ed. July 26, 2017) (statement of Sen. Sanders).	<a href="#">163 CONG. REC. S4262</a> (daily ed. July 26, 2017) (statement of Sens. Heller & Sanders).	<a href="#">163 CONG. REC. S4262</a> (daily ed. July 26, 2017) (statement of Sen. Heller).	<a href="#">163 CONG. REC. S4262</a> (daily ed. July 26, 2017) (vote no. 172) (10-90).	<a href="#">163 CONG. REC. S4262–63</a> (daily ed. July 26, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<a href="#">Health Care and Education Reconciliation Act of 2010</a> , H.R. 4872, 111th Cong. (2010) (enacted) (point of order against page 120, lines 3–5).	<a href="#">156 CONG. REC. S2086</a> (daily ed. Mar. 25, 2010) (statement of Sen. Gregg).				<a href="#">156 CONG. REC. S2086</a> (daily ed. Mar. 25, 2010) (the point of order was sustained and the provision was stricken).	
<a href="#">Health Care and Education Reconciliation Act of 2010</a> , H.R. 4872, 111th Cong. (2010) (enacted) (point of order against page 118, lines 15–25).	<a href="#">156 CONG. REC. S2086</a> (daily ed. Mar. 25, 2010) (statement of Sen. Gregg).				<a href="#">156 CONG. REC. S2086</a> (daily ed. Mar. 25, 2010) (the point of order was sustained and the provision was stricken).	
S. Amend. No. 1467, 106th Cong., <a href="#">145 CONG. REC. S18555</a> (daily ed. July 29, 1999) (Frist amendment “[t]o express the sense of the Senate on the Medicare Reserve Fund”).	<a href="#">145 CONG. REC. S9891</a> (daily ed. July 30, 1999) (statement of Sen. Baucus).	<a href="#">145 CONG. REC. S9891</a> (daily ed. July 30, 1999) (statements of Sens. Baucus & Frist).	<a href="#">145 CONG. REC. S9891</a> (daily ed. July 30, 1999) (statement of Sen. Frist).	<a href="#">145 CONG. REC. S9891</a> (daily ed. July 30, 1999) (vote no. 235) (54-46).	<a href="#">145 CONG. REC. S9891</a> (daily ed. July 30, 1999) (the motion was rejected, the point of order was sustained, and the section was stricken).	<a href="#">145 CONG. REC. S9891</a> (daily ed. July 30, 1999) (statement of Sen. Moynihan).
S. Amend. No. 1462, 106th Cong., <a href="#">145 CONG. REC. S18554</a> (daily ed. July 29, 1999) (Bingaman amendment “[t]o express the sense of the Senate regarding investment in education”).	<a href="#">145 CONG. REC. S9887</a> (daily ed. July 30, 1999) (statement of Sen. Domenici).	<a href="#">145 CONG. REC. S9887</a> (daily ed. July 30, 1999) (statements of Sens. Domenici & Bingaman).	<a href="#">145 CONG. REC. S9887</a> (daily ed. July 30, 1999) (statement of Sen. Bingaman).	<a href="#">145 CONG. REC. S9889</a> (daily ed. July 30, 1999) (vote no. 232) (48-52).	<a href="#">145 CONG. REC. S9889</a> (daily ed. July 30, 1999) (the motion was rejected, the point of order was sustained, and the section was stricken).	<a href="#">145 CONG. REC. S9889</a> (daily ed. July 30, 1999) (statement of Sen. Lott).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<a href="#">Revenue Reconciliation Act of 1997</a> , S. 949, Motion to Refer § 702(d), 105th Cong. (June 20, 1997).	<a href="#">143 CONG. REC. S6692</a> (daily ed. June 27, 1997) (statement of Sen. McCain).	<a href="#">143 CONG. REC. S6691–922</a> (daily ed. June 27, 1997) (statement of Sens. McCain, Bond, Roth, Domenici & Chafee).	<a href="#">143 CONG. REC. S6692</a> (daily ed. June 27, 1997) (statement of Sen. Roth).	<a href="#">143 CONG. REC. S6692–93</a> (daily ed. June 27, 1997) (vote no. 157) (77-21).	<a href="#">143 CONG. REC. S6693</a> (daily ed. June 27, 1997) (the motion was agreed to and the point of order fell).	
S. Amend. No. 538, 105th Cong., <a href="#">143 CONG. REC. S6678</a> (daily ed. June 27, 1997) (Abraham amendment “[t]o ensure that future revenue windfalls to the federal Treasury are reserved for tax or deficit reduction—not additional spending.”)	<a href="#">143 CONG. REC. S6679</a> (daily ed. June 27, 1997) (statement of Sen. Lautenberg).	<a href="#">143 CONG. REC. S6678–79</a> (daily ed. June 27, 1997) (statement of Sens. Abraham, Grams & Lautenberg).	<a href="#">143 CONG. REC. S6679</a> (daily ed. June 27, 1997) (statement of Sen. Abraham).	<a href="#">143 CONG. REC. S6679–80</a> (daily ed. June 27, 1997) (vote no. 147) (53-47).	<a href="#">143 CONG. REC. S6680</a> (daily ed. June 27, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 571, 105th Cong., <a href="#">143 CONG. REC. S6677</a> (daily ed. June 27, 1997) (Frist amendment “[t]o establish an enforcement mechanism in the Senate to ensure a balanced budget beginning with fiscal year 2002 and to require the President to submit balanced budgets.”)	<a href="#">143 CONG. REC. S6678</a> (daily ed. June 27, 1997) (statement of Sen. Lautenberg).	<a href="#">143 CONG. REC. S6677–78</a> (daily ed. June 27, 1997) (statement of Sens. Frist, Lautenberg & Domenici).	<a href="#">143 CONG. REC. S6678</a> (daily ed. June 27, 1997) (statement of Sen. Frist).	<a href="#">143 CONG. REC. S6678</a> (daily ed. June 27, 1997) (vote no. 146) (59-41).	<a href="#">143 CONG. REC. S6678</a> (daily ed. June 27, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 570, 105th Cong., <a href="#">143 CONG. REC. S6676</a> (daily ed. June 27, 1997) (Brownback amendment “[t]o establish procedures to ensure a balanced Federal budget by fiscal year 2002.”)	<a href="#">143 CONG. REC. S6677</a> (daily ed. June 27, 1997) (statement of Sen. Lautenberg).	<a href="#">143 CONG. REC. S6676–77</a> (daily ed. June 27, 1997) (statement of Sens. Brownback, Kohl & Lautenberg).	<a href="#">143 CONG. REC. S6677</a> (daily ed. June 27, 1997) (statement of Sen. Brownback).	<a href="#">143 CONG. REC. S6677</a> (daily ed. June 27, 1997) (vote no. 145) (57-43).	<a href="#">143 CONG. REC. S6677</a> (daily ed. June 27, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 569, 105th Cong., <a href="#">143 CONG. REC. S6675</a> (daily ed. June 27, 1997) (Craig amendment “[t]o modify the pay-as-you-go requirement of the budget process to prohibit the use of tax increases to pay for mandatory spending increases.”)	<a href="#">143 CONG. REC. S6675</a> (daily ed. June 27, 1997) (statement of Sen. Lautenberg).	<a href="#">143 CONG. REC. S6675</a> (daily ed. June 27, 1997) (statement of Sens. Craig & Lautenberg).	<a href="#">143 CONG. REC. S6675</a> (daily ed. June 27, 1997) (statement of Sen. Craig).	<a href="#">143 CONG. REC. S6675–76</a> (daily ed. June 27, 1997) (vote no. 144) (42-58).	<a href="#">143 CONG. REC. S6676</a> (daily ed. June 27, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 566, 105th Cong., <a href="#">143 CONG. REC. S6673</a> (daily ed. June 27, 1997) (Gramm amendment “[t]o guarantee a balanced Federal budget and expand tax relief options.”)	<a href="#">143 CONG. REC. S6673</a> (daily ed. June 27, 1997) (statement of Sen. Lautenberg).	<a href="#">143 CONG. REC. S6673–74</a> (daily ed. June 27, 1997) (statement of Sens. Gramm, Lautenberg & Domenici).	<a href="#">143 CONG. REC. S6674</a> (daily ed. June 27, 1997) (statement of Sen. Gramm).	<a href="#">143 CONG. REC. S6674</a> (daily ed. June 27, 1997) (vote no. 142) (37-63).	<a href="#">143 CONG. REC. S6674</a> (daily ed. June 27, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<a href="#">Revenue Reconciliation Act of 1997</a> , S. 949, § 602, 105th Cong. (a bill “[t]o provide for revenue reconciliation pursuant to section 104(b) of the concurrent resolution on the budget for fiscal year 1998”) (June 20, 1997).	<a href="#">143 CONG. REC. S6336</a> (daily ed. June 25, 1997) (statement of Sen. Brownback).	<a href="#">143 CONG. REC. S6336</a> (daily ed. June 25, 1997) (statement of Sen. Brownback).	<a href="#">143 CONG. REC. S6336</a> (daily ed. June 25, 1997) (statement of Sen. Roth).			
<a href="#">Balanced Budget Act of 1997</a> , S. 947, § 1949(a)(2), 105th Cong. (a bill “[t]o provide for reconciliation pursuant to section 104(a) of the concurrent resolution on the budget for fiscal year 1998”) (June 25, 1997).	<a href="#">143 CONG. REC. S6316</a> (daily ed. June 25, 1997) (statement of Sen. Murray).	<a href="#">143 CONG. REC. S6316</a> (daily ed. June 25, 1997) (statement of Sens. Murray, Lautenberg & Domenici).			<a href="#">143 CONG. REC. S6316</a> (daily ed. June 25, 1997) (the motion was withdrawn in Senate by Unanimous Consent).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<a href="#">Balanced Budget Act of 1997</a> , S. 947, § 5001, 105th Cong. (a bill “[t]o provide for reconciliation pursuant to section 104(a) of the concurrent resolution on the budget for fiscal year 1998”) (June 25, 1997).	<a href="#">143 CONG. REC. S6295</a> (daily ed. June 25, 1997) (statement of Sen. Rockefeller).	<a href="#">143 CONG. REC. S6295, S6303–04</a> (daily ed. June 25, 1997) (statement of Sens. Rockefeller, Domenici, Byrd & Gramm).	<a href="#">143 CONG. REC. S6304</a> (daily ed. June 25, 1997) (statement of Sen. Gramm).	<a href="#">143 CONG. REC. S6304</a> (daily ed. June 25, 1997) (vote no. 122) (62-37).	<a href="#">143 CONG. REC. S6304</a> (daily ed. June 25, 1997) (the motion was agreed to and the point of order fell).	
S. Amend. No. 482, 105th Cong., <a href="#">143 CONG. REC. S6172</a> (daily ed. June 24, 1997) (Levin/Jeffords amendment “[t]o allow vocational educational training to be counted as a work activity under the temporary assistance for needy families program for 24 months.”)	<a href="#">143 CONG. REC. S6298</a> (daily ed. June 25, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6297–98</a> (daily ed. June 25, 1997) (statement of Sens. Levin, Jeffords, Domenici & Santorum).	<a href="#">143 CONG. REC. S6298</a> (daily ed. June 25, 1997) (statement of Sen. Levin).	<a href="#">143 CONG. REC. S6298</a> (daily ed. June 25, 1997) (vote no. 119) (55-45).	<a href="#">143 CONG. REC. S6298</a> (daily ed. June 25, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<a href="#">Balanced Budget Act of 1997</a> , S. 947, § 5611, 105th Cong. (a bill “[t]o provide for reconciliation pursuant to section 104(a) of the concurrent resolution on the budget for fiscal year 1998”) (June 25, 1997).	<a href="#">143 CONG. REC. S6092</a> (daily ed. June 23, 1997) (statement of Sen. Durbin).	<a href="#">143 CONG. REC. S6092–93</a> (daily ed. June 23, 1997); <a href="#">143 CONG. REC. S6117–32</a> (daily ed. June 24, 1997).	<a href="#">143 CONG. REC. S6092</a> (daily ed. June 23, 1997) (statement of Sen. Roth).	<a href="#">143 CONG. REC. S6132</a> (daily ed. June 24, 1997) (vote no. 112) (62-38).	<a href="#">143 CONG. REC. S6132</a> (daily ed. June 24, 1997) (the motion was agreed to and the point of order fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 313(b)(1)(B)</b> those that increase spending or decrease revenue when the committee is not in compliance with its reconciliation instructions						
H. Con. Res. 93, 100th Cong., <a href="#">133 CONG. REC. 17,222</a> (June 24, 1987) ("A concurrent resolution setting forth the congressional budget for the United States Government for the fiscal years 1988, 1989, and 1990.").	<a href="#">133 CONG. REC. 17,298</a> (June 24, 1987) (statement of Sen. Domenici).	<a href="#">133 CONG. REC. 17,298–17,302</a> (June 24, 1987) (statements of Sens. Domenici & Chiles).			<a href="#">133 CONG. REC. 17,298</a> (June 24, 1987) (the point of order was not sustained, and the motion to appeal the ruling of the chair did not carry).	<a href="#">133 CONG. REC. 17,298</a> (June 24, 1987) (statement of Sen. Domenici). The appeal did not carry. <a href="#">133 CONG. REC. 17,302</a> (June 24, 1987) (vote no. 156) (54-45).
S. 2706, "Omnibus Budget Reconciliation Act, 1986," 99th Cong., <a href="#">132 CONG. REC. 24,905</a> (Sep. 19, 1986) (point of order raised specifically against page 1, line 1 through page 161, line 17 and page 162, lines 1–24 of the bill).	<a href="#">132 CONG. REC. 24,906</a> (Sep. 19, 1986) (statement of Sen. Thurmond).	<a href="#">132 CONG. REC. 24,906–07</a> (Sep. 19, 1986) (statements of Sens. Thurmond & Cohen).	<a href="#">132 CONG. REC. 24,907</a> (Sep. 19, 1986) (statement of Sen. Cohen).	<a href="#">132 CONG. REC. 24,907</a> (Sep. 19, 1986) (vote no. 275) (79-15).	<a href="#">132 CONG. REC. 24,907</a> (Sep. 19, 1986) (the motion to waive the Budget Act was agreed to).	
Section 403 of S. 2706, "Omnibus Budget Reconciliation Act, 1986," 99th Cong., <a href="#">132 CONG. REC. 24,905</a> (Sep. 19, 1986) (relating to State energy conservation programs).	<a href="#">132 CONG. REC. 24,907</a> (Sep. 19, 1986) (statement of Sen. Gramm).	<a href="#">132 CONG. REC. 24,907–09</a> (Sep. 19, 1986) (statements of Sens. Domenici, Metzenbaum & Gramm).	<a href="#">132 CONG. REC. 24,907–08</a> (Sep. 19, 1986) (statement of Sen. Metzenbaum).	<a href="#">132 CONG. REC. 24,908</a> (Sep. 19, 1986) (vote no. 276) (32-61).	<a href="#">132 CONG. REC. 24,909</a> (Sep. 19, 1986) (the point of order was sustained before Sen. Metzenbaum moved to waive the Budget Act; the motion to waive was allowed to proceed by unanimous consent; the motion was defeated and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 490, 105th Cong., <a href="#">143 CONG. REC. S6174</a> (daily ed. June 24, 1997) (Kennedy amendment “[t]o improve the provisions relating to the Higher Education Act of 1965.”)	<a href="#">143 CONG. REC. S6308</a> (daily ed. June 25, 1997) (statement of Sen. Domenici).	<a href="#">143 CONG. REC. S6306–08</a> (daily ed. June 25, 1997) (statement of Sens. Domenici, Kennedy, Lautenberg, Dodd & Jeffords).	<a href="#">143 CONG. REC. S6308</a> (daily ed. June 25, 1997) (statement of Sen. Dodd).	<a href="#">143 CONG. REC. S6308</a> (daily ed. June 25, 1997) (vote no. 126) (43-57).	<a href="#">143 CONG. REC. S6308</a> (daily ed. June 25, 1997) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<b>Sec. 313(b)(1)(C)</b> those that are outside the jurisdiction of the committee reporting the provision						
S. Amend. No. 2899, 114th Cong., <a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (Paul amendment “[t]o prevent the entry of extremists into the United States under the refugee program.”)	<a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (statement of Sen. Leahy).	<a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (statement of Sens. Paul & Leahy).	<a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (statement of Sen. Paul).	<a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (vote no. 323) (10-90).	<a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2908, 114th Cong., <a href="#">161 CONG. REC. S8348</a> (daily ed. Dec. 3, 2015) (Manchin amendment “[t]o protect Second Amendment rights, ensure that all individuals who should be prohibited from buying a firearm are listed in the National Instant Criminal Background Check System, and provide a responsible and consistent background check process.”)	<a href="#">161 CONG. REC. S8348</a> (daily ed. Dec. 3, 2015) (statement of Sen. Grassley).	<a href="#">161 CONG. REC. S8348</a> (daily ed. Dec. 3, 2015) (statement of Sens. Manchin & Grassley).	<a href="#">161 CONG. REC. S8348</a> (daily ed. Dec. 3, 2015) (statement of Sen. Manchin).	<a href="#">161 CONG. REC. S8348</a> (daily ed. Dec. 3, 2015) (vote no. 321) (48-50).	<a href="#">161 CONG. REC. S8348</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2910, 114th Cong., <a href="#">161 CONG. REC. S8346</a> (daily ed. Dec. 3, 2015) (Feinstein amendment “[t]o increase public safety by permitting the Attorney General to deny the transfer of firearms or the issuance of firearms and explosives licenses to known or suspected dangerous terrorists.”)	<a href="#">161 CONG. REC. S8347</a> (daily ed. Dec. 3, 2015) (statement of Sen. Enzi).	<a href="#">161 CONG. REC. S8346–47</a> (daily ed. Dec. 3, 2015) (statement of Sens. Feinstein, Cornyn & Enzi).	<a href="#">161 CONG. REC. S8347</a> (daily ed. Dec. 3, 2015) (statement of Sen. Feinstein).	<a href="#">161 CONG. REC. S8347</a> (daily ed. Dec. 3, 2015) (vote no. 319) (45-54).	<a href="#">161 CONG. REC. S8347</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2912, 114th Cong., <a href="#">161 CONG. REC. S8345</a> (daily ed. Dec. 3, 2015) (Cornyn amendment to “provide that due process, notice, and an opportunity to be heard, and provide new tools and increased authorities to prevent terrorism and prevent violence by blocking the transfer of firearms following that notice and opportunity to be heard, which would also give the judicial authority an opportunity to grant an emergency terrorism order which would actually detain the person who is identified and proven to be a terrorist.”)	<a href="#">161 CONG. REC. S8346</a> (daily ed. Dec. 3, 2015) (statement of Sen. Reid).	<a href="#">161 CONG. REC. S8345–46</a> (daily ed. Dec. 3, 2015) (statement of Sens. Cornyn & Reid).	<a href="#">161 CONG. REC. S8346</a> (daily ed. Dec. 3, 2015) (statement of Sen. Cornyn).	<a href="#">161 CONG. REC. S8346</a> (daily ed. Dec. 3, 2015) (vote no. 318) (55-44).	<a href="#">161 CONG. REC. S8346</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2914, 114th Cong., <a href="#">161 CONG. REC. S8347</a> (daily ed. Dec. 3, 2015) (Grassley amendment to “address gun violence, improve the availability of records to the National Instant Criminal Background Check System, address mental illness in the criminal justice system, and end straw purchases and trafficking of illegal firearms.”)	<a href="#">161 CONG. REC. S8347</a> (daily ed. Dec. 3, 2015) (statement of Sen. Durbin).	<a href="#">161 CONG. REC. S8347</a> (daily ed. Dec. 3, 2015) (statement of Sens. Grassley & Durbin).	<a href="#">161 CONG. REC. S8347</a> (daily ed. Dec. 3, 2015) (statement of Sen. Grassley).	<a href="#">161 CONG. REC. S8348</a> (daily ed. Dec. 3, 2015) (vote no. 320) (53-46).	<a href="#">161 CONG. REC. S8347</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2899, 114th Cong., <a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (Paul amendment “[t]o prevent the entry of extremists into the United States under the refugee program”).	<a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (statement of Sen. Leahy).	<a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (statement of Sens. Paul & Leahy).	<a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (statement of Sen. Paul).	<a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (vote no. 323) (10-90).	<a href="#">161 CONG. REC. S8350</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3711, 111th Cong., <a href="#">156 CONG. REC. S2077</a> (daily ed. Mar. 25, 2010) (Murkowski amendment “[t]o provide an inflation adjustment for the additional hospital insurance tax on high-income taxpayers”).	<a href="#">156 CONG. REC. S2077</a> (daily ed. Mar. 25, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S2077</a> (daily ed. Mar. 25, 2010) (statements of Sens. Baucus & Murkowski).	<a href="#">156 CONG. REC. S2077</a> (daily ed. Mar. 25, 2010) (statement of Sen. Murkowski).	<a href="#">156 CONG. REC. S2077</a> (daily ed. Mar. 25, 2010) (vote no. 102) (42-57).	<a href="#">156 CONG. REC. S2077</a> (daily ed. Mar. 25, 2010) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3665, 111th Cong., <a href="#">156 CONG. REC. S2075</a> (daily ed. Mar. 25, 2010) (Vitter amendment “[t]o prevent the new government entitlement program from further increasing an unsustainable deficit”).	<a href="#">156 CONG. REC. S2075</a> (daily ed. Mar. 25, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S2075</a> (daily ed. Mar. 25, 2010) (statements of Sens. Baucus & Vitter).	<a href="#">156 CONG. REC. S2075</a> (daily ed. Mar. 25, 2010) (statement of Sen. Vitter).	<a href="#">156 CONG. REC. S2075</a> (daily ed. Mar. 25, 2010) (vote no. 99) (39-56).	<a href="#">156 CONG. REC. S2075</a> (daily ed. Mar. 25, 2010) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3700, 111th Cong., <a href="#">156 CONG. REC. S2070-71</a> (daily ed. Mar. 25, 2010) (Coburn amendment “[t]o help protect Second Amendment rights of law-abiding Americans”).	<a href="#">156 CONG. REC. S2071</a> (daily ed. Mar. 25, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S2071</a> (daily ed. Mar. 25, 2010) (statements of Sens. Baucus & Coburn).	<a href="#">156 CONG. REC. S2071</a> (daily ed. Mar. 25, 2010) (statement of Sen. Coburn).	<a href="#">156 CONG. REC. S2071</a> (daily ed. Mar. 25, 2010) (vote no. 94) (45-53).	<a href="#">156 CONG. REC. S2071</a> (daily ed. Mar. 25, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	<a href="#">156 CONG. REC. S2071</a> (daily ed. Mar. 25, 2010) (statement of Sen. Durbin).
S. Amend. No. 3593, 111th Cong., <a href="#">156 CONG. REC. S2069-70</a> (daily ed. Mar. 25, 2010) (Ensign amendment to provide limited medical liability protections).	<a href="#">156 CONG. REC. S2070</a> (daily ed. Mar. 25, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S2070</a> (daily ed. Mar. 25, 2010) (statements of Sens. Baucus & Ensign).	<a href="#">156 CONG. REC. S2070</a> (daily ed. Mar. 25, 2010) (statement of Sen. Ensign).	<a href="#">156 CONG. REC. S2070</a> (daily ed. Mar. 25, 2010) (vote no. 93) (40-55).	<a href="#">156 CONG. REC. S2070</a> (daily ed. Mar. 25, 2010) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3635, 111th Cong., <a href="#">156 CONG. REC. S2010</a> (daily ed. Mar. 24, 2010) (Hutchison amendment “[t]o repeal the sunset on marriage penalty relief and to make the election to deduct State and local sales taxes permanent”).	<a href="#">156 CONG. REC. S2010</a> (daily ed. Mar. 24, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S2010</a> (daily ed. Mar. 24, 2010) (statements of Sens. Baucus & Hutchison).	<a href="#">156 CONG. REC. S2010</a> (daily ed. Mar. 24, 2010) (statement of Sen. Hutchison).	<a href="#">156 CONG. REC. S2010</a> (daily ed. Mar. 24, 2010) (vote no. 91) (40-55).	<a href="#">156 CONG. REC. S2010</a> (daily ed. Mar. 24, 2010) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3699, 111th Cong., <a href="#">156 CONG. REC. S2007-08</a> (daily ed. Mar. 24, 2010) (Grassley amendment “[t]o provide a temporary extension of certain programs”).	<a href="#">156 CONG. REC. S2008</a> (daily ed. Mar. 24, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S2008</a> (daily ed. Mar. 24, 2010) (statements of Sens. Baucus & Grassley).	<a href="#">156 CONG. REC. S2008</a> (daily ed. Mar. 24, 2010) (statement of Sen. Grassley).	<a href="#">156 CONG. REC. S2008</a> (daily ed. Mar. 24, 2010) (vote no. 88) (40-56).	<a href="#">156 CONG. REC. S2008</a> (daily ed. Mar. 24, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3586, 111th Cong., <a href="#">156 CONG. REC. S1934</a> (daily ed. Mar. 24, 2010) (LeMieux amendment “[t]o enroll Members of Congress in the Medicaid program”).	<a href="#">156 CONG. REC. S1997</a> (daily ed. Mar. 24, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S1997</a> (daily ed. Mar. 24, 2010) (statements of Sens. Baucus & LeMieux).	<a href="#">156 CONG. REC. S1997</a> (daily ed. Mar. 24, 2010) (statement of Sen. LeMieux).	<a href="#">156 CONG. REC. S1997</a> (daily ed. Mar. 24, 2010) (vote no. 71) (40-59).	<a href="#">156 CONG. REC. S1997</a> (daily ed. Mar. 24, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3564, 111th Cong., <a href="#">156 CONG. REC. S1860</a> (daily ed. Mar. 24, 2010) (Grassley amendment “[t]o make sure the President, Cabinet Members, all White House Senior staff and Congressional Committee and Leadership Staff are purchasing health insurance through the health insurance exchanges established by the Patient Protection and Affordable Care Act”).	<a href="#">156 CONG. REC. S1996</a> (daily ed. Mar. 24, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S1996</a> (daily ed. Mar. 24, 2010) (statements of Sens. Baucus & Grassley).	<a href="#">156 CONG. REC. S1996</a> (daily ed. Mar. 24, 2010) (statement of Sen. Grassley).	<a href="#">156 CONG. REC. S1996</a> (daily ed. Mar. 24, 2010) (vote no. 69) (43-56).	<a href="#">156 CONG. REC. S1996</a> (daily ed. Mar. 24, 2010) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<a href="#">Balanced Budget Act of 1997</a> , S. 947, § 5713, 5833, and 5987, 105th Cong. (a bill “[t]o provide for reconciliation pursuant to section 104(a) of the concurrent resolution on the budget for fiscal year 1998”) (June 25, 1997).	<a href="#">143 CONG. REC. S6320</a> (daily ed. June 25, 1997) (statement of Sen. Daschle).	<a href="#">143 CONG. REC. S6320</a> (daily ed. June 25, 1997) (statement of Sen. Daschle).			<a href="#">143 CONG. REC. S6320</a> (daily ed. June 25, 1997) (the point of order was sustained and the §§ were stricken).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 313(b)(1)(D)</b> those where the change in revenue or spending is “merely incidental” to the non-budgetary changes						
S. Amend. No. 972, 117th Cong., <a href="#">167 CONG. REC. S1208–09</a> (daily ed. Mar. 4, 2021) (Sanders amendment “[t]o provide for increases in the Federal minimum wage”).	<a href="#">167 CONG. REC. 1230</a> (daily ed. Mar. 5, 2021) (statement of Sen. Graham).		<a href="#">167 CONG. REC. 1230</a> (daily ed. Mar. 5, 2021) (statement of Sen. Sanders).	<a href="#">167 CONG. REC. 1230</a> (daily ed. Mar. 5, 2021) (vote no. 74) (42-58).	<a href="#">167 CONG. REC. 1230</a> (daily ed. Mar. 5, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1031, 117th Cong., <a href="#">167 CONG. REC. S1295–300</a> (daily ed. Mar. 5, 2021) (Lankford amendment “[t]o improve the bill”).	<a href="#">167 CONG. REC. 1247</a> (daily ed. Mar. 5, 2021) (statement of Sen. Murray).		<a href="#">167 CONG. REC. 1247</a> (daily ed. Mar. 5, 2021) (statement of Sen. Lankford).	<a href="#">167 CONG. REC. 1247</a> (daily ed. Mar. 5, 2021) (vote no. 94) (52-47).	<a href="#">167 CONG. REC. 1247</a> (daily ed. Mar. 5, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1242, 117th Cong., <a href="#">167 CONG. REC. S1347–54</a> (daily ed. Mar. 5, 2021) (Collins amendment “[i]n the nature of a substitute”).	<a href="#">167 CONG. REC. 1233</a> (daily ed. Mar. 5, 2021) (statement of Sen. Sanders).		<a href="#">167 CONG. REC. 1233</a> (daily ed. Mar. 5, 2021) (statement of Sen. Collins).	<a href="#">167 CONG. REC. 1233</a> (daily ed. Mar. 5, 2021) (vote no. 77) (48-51).	<a href="#">167 CONG. REC. 1233</a> (daily ed. Mar. 5, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1386, 117th Cong., <a href="#">167 CONG. REC. S1250</a> (daily ed. Mar. 5, 2021) (Tuberville amendment “[t]o prohibit funds made available under title II to States, local educational agencies, and institutions of high education that permit any student whose biological sex is male to participate in an athletic program or activity designated for women or girls”).	<a href="#">167 CONG. REC. 1250</a> (daily ed. Mar. 5, 2021) (statement of Sen. Murray).		<a href="#">167 CONG. REC. 1250</a> (daily ed. Mar. 5, 2021) (statement of Sen. Tuberville).	<a href="#">167 CONG. REC. 1250–51</a> (daily ed. Mar. 5, 2021) (vote no. 97) (49-50).	<a href="#">167 CONG. REC. 1251</a> (daily ed. Mar. 5, 2021) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<a href="#">Tax Cuts and Jobs Act: Conference Report To Accompany H.R. 1</a> , H.R. REP. NO. 115-466, at 30, 117 (2017) (Conf. Rep.); <a href="#">163 Cong. Rec. S8101</a> (daily ed. Dec. 19, 2017) (points of order against § 11032(b) and the phrase “tuition-paying” on page 309 of H.R. 1).	<a href="#">163 CONG. REC. S8101</a> (daily ed. Dec. 19, 2017) (statement of Sen. Sanders).	<a href="#">163 CONG. REC. S8101–41</a> (daily ed. Dec. 19, 2017) (statement of Sens. Sanders, Murkowski, Reed, Heller, Donnelly, Grassley, Leahy, Klobuchar, Burr, Hoeven, Tillis, Hatch, Udall, Tester, Schatz, Toomey, Brown, Portman, Casey, Wyden, Young, Warren, Durbin, Perdue, Cardin, Sullivan, Carper, Merkley, Peters, Van Hollen, Cruz, Enzi & Schumer).	<a href="#">163 CONG. REC. S8101</a> (daily ed. Dec. 19, 2017) (statement of Sen. Enzi).	<a href="#">163 CONG. REC. S8141</a> (daily ed. Dec. 19, 2017) (vote no. 322) (51-48).	<a href="#">163 CONG. REC. S8141</a> (daily ed. Dec. 19, 2017) (the motion was rejected, the point of order was sustained, and the material was stricken from the conference report).	
S. Amend. No. 2916, § 105(b), 114th Cong., <a href="#">161 CONG. REC. S8354</a> (daily ed. Dec. 3, 2015) (McConnell amendment “[i]n the nature of a substitute”).	<a href="#">161 CONG. REC. S8354</a> (daily ed. Dec. 3, 2015) (statement of Sen. Murray).	<a href="#">161 CONG. REC. S8354</a> (daily ed. Dec. 3, 2015) (statements of Sens. Enzi, Murray & Rubio).	<a href="#">161 CONG. REC. S8354</a> (daily ed. Dec. 3, 2015) (statement of Sen. Rubio).	<a href="#">161 CONG. REC. S8354</a> (daily ed. Dec. 3, 2015) (vote no. 326) (52-47).	<a href="#">161 CONG. REC. S8354</a> (daily ed. Dec. 3, 2015) (the motion was rejected, the point of order was sustained, and § 105(b) was stricken).	
S. Amend. No. 3577, 111th Cong., <a href="#">156 CONG. REC. S1980</a> (daily ed. Mar. 24, 2010) (Roberts amendment “[t]o protect Medicare beneficiary access to hospital care in rural areas from recommendations by the Independent Payment Advisory Board”).	<a href="#">156 CONG. REC. S2004</a> (daily ed. Mar. 24, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S2004</a> (daily ed. Mar. 24, 2010) (statements of Sens. Baucus & Roberts).	<a href="#">156 CONG. REC. S2004</a> (daily ed. Mar. 24, 2010) (statement of Sen. Roberts).	<a href="#">156 CONG. REC. S2004–05</a> (daily ed. Mar. 24, 2010) (vote no. 85) (42-54).	<a href="#">156 CONG. REC. S2005</a> (daily ed. Mar. 24, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	<a href="#">156 CONG. REC. S2005</a> (daily ed. Mar. 24, 2010) (statement of Sen. Reid).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<a href="#">Balanced Budget Act of 1997</a> , S. 947, § 5822, 105th Cong. (a bill “[t]o provide for reconciliation pursuant to section 104(a) of the concurrent resolution on the budget for fiscal year 1998”) (June 25, 1997).	<a href="#">143 CONG. REC. S6177</a> (daily ed. June 24, 1997) (statement of Sen. Conrad).	<a href="#">143 CONG. REC. S6177–78</a> (daily ed. June 24, 1997) (statement of Sens. Conrad & Roth).	<a href="#">143 CONG. REC. S6178</a> (daily ed. June 24, 1997) (statement of Sen. Roth).		<a href="#">143 CONG. REC. S6308</a> (daily ed. June 25, 1997) (the point of order was sustained and the amendment fell).	
<b>Sec. 313(b)(1)(E)</b> those which increase deficits beyond the budget window if that committee’s title as a whole increases deficits beyond the budget window						
<a href="#">Taxpayer Refund Act of 1999</a> , S. 1429, § 1502, 106th Cong. (as passed by Senate, July 30, 1999).	<a href="#">145 CONG. REC. S9478</a> (daily ed. July 28, 1999) (statement of Sen. Lott).	<a href="#">145 CONG. REC. S9478</a> (daily ed. July 28, 1999) (statements of Sens. Lott & Roth).	<a href="#">145 CONG. REC. S9478</a> (daily ed. July 28, 1999) (statement of Sen. Roth).	<a href="#">145 CONG. REC. S9484</a> (daily ed. July 28, 1999) (vote no. 225) (51-48).	<a href="#">145 CONG. REC. S9484</a> (daily ed. July 28, 1999) (the motion was rejected, the point of order was sustained, and the section was stricken).	
S. Amend. No. 3864, 106th Cong., <a href="#">146 CONG. REC. S6804</a> (daily ed. July 14, 2000) (Roth amendment “[t]o amend the Internal Revenue Code of 1986 to provide marriage tax relief by adjusting the standard deduction, 15-percent and 28-percent rate brackets, and earned income credit”).	<a href="#">146 CONG. REC. S6784</a> (daily ed. July 14, 2000) (statement of Sen. Roth).	<a href="#">146 CONG. REC. S6804</a> (daily ed. July 14, 2000) (statements of Sen. Roth).	<a href="#">146 CONG. REC. S6804</a> (daily ed. July 14, 2000) (statement of Sen. Roth).	<a href="#">146 CONG. REC. S7045</a> (daily ed. July 17, 2000) (vote no. 199) (48-47).	<a href="#">146 CONG. REC. S7045</a> (daily ed. July 17, 2000) (the motion was rejected and the point of order was sustained).	<a href="#">146 CONG. REC. S7045</a> (daily ed. July 17, 2000) (statement of Sen. Santorum).
S. Amend. No. 3865, 106th Cong., <a href="#">146 CONG. REC. S6804</a> (daily ed. July 14, 2000) (Roth amendment “[t]o strike sunset provision”).	<a href="#">146 CONG. REC. S6784</a> (daily ed. July 14, 2000) (statement of Sen. Roth).	<a href="#">146 CONG. REC. S6804</a> (daily ed. July 14, 2000) (statements of Sen. Roth).	<a href="#">146 CONG. REC. S6804</a> (daily ed. July 14, 2000) (statement of Sen. Roth).	<a href="#">146 CONG. REC. S7045</a> (daily ed. July 17, 2000) (vote no. 199) (48-47).	<a href="#">146 CONG. REC. S7045</a> (daily ed. July 17, 2000) (the motion was rejected and the point of order was sustained).	<a href="#">146 CONG. REC. S7045</a> (daily ed. July 17, 2000) (statement of Sen. Santorum).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 313(b)(1)(F)</b> those that would change Social Security's Old-Age and Survivor's Insurance program						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 314(e)—Emergency Legislation.</b> Surgical point of order against emergency designations pursuant to § 251(b)(1)(A)(i) of the Balanced Budget and Emergency Deficit Control Act for discretionary appropriations. Note: Not relevant for years after 2021 in which there are no statutory caps on discretionary spending.						
<a href="#">United States-Mexico-Canada Agreement Implementation Act</a> , H.R. 5430, 116th Cong. (as reported by S. Comm. on Finance, Jan. 15, 2020).	<a href="#">166 CONG. REC. S260</a> (daily ed. Jan. 16, 2020) (statement of Sen. Toomey).	<a href="#">166 CONG. REC. S260–65</a> (daily ed. Jan. 16, 2020) (statements of Sens. Toomey, Grassley, Wyden, Moran, Crawley, Leahy, Feinstein, Reed, Collins).	<a href="#">166 CONG. REC. S265</a> (daily ed. Jan. 16, 2020) (statement of Sen. Collins).	<a href="#">166 CONG. REC. S265</a> (daily ed. Jan. 16, 2020) (vote no. 13) (78-21).	<a href="#">166 CONG. REC. S265</a> (daily ed. Jan. 16, 2020) (the motion was agreed to, and the point of order fell).	
<a href="#">Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2017</a> , H.R. 601, 115th Cong. (Sept. 7, 2017).	<a href="#">163 CONG. REC. S6737</a> (daily ed. Oct. 24, 2017) (statement of Sen. Paul).		<a href="#">163 CONG. REC. S6737</a> (daily ed. Oct. 24, 2017) (statement of Sen. Roberts).	<a href="#">163 CONG. REC. S6737</a> (daily ed. Oct. 24, 2017) (vote no. 247) (80-19).	<a href="#">163 CONG. REC. S6737</a> (daily ed. Oct. 24, 2017) (the motion was agreed to and the point of order fell).	
S. Amend. No. 3900, 114th Cong., <a href="#">162 CONG. REC. S3004</a> (daily ed. May 19, 2016) (Blunt amendment “Zika response and preparedness.”)	<a href="#">162 CONG. REC. S3006</a> (daily ed. May 19, 2016) (statement of Sen. Lee).	<a href="#">162 CONG. REC. S3006–07</a> (daily ed. May 19, 2016) (statement of Sens. Lee & Collins).	<a href="#">162 CONG. REC. S3007</a> (daily ed. May 19, 2016) (statement of Sen. Collins).	<a href="#">162 CONG. REC. S3007</a> (daily ed. May 19, 2016) (vote no. 76) (70-28).	<a href="#">162 CONG. REC. S3007</a> (daily ed. May 19, 2016) (the motion was agreed to and the point of order fell).	
S. Amend. No. 4039, 114th Cong., <a href="#">162 CONG. REC. S2957</a> (daily ed. May 18, 2016) (McCain amendment to “expand eligibility for the Veterans Choice Program of the Department of Veterans Affairs.”)	<a href="#">162 CONG. REC. S3009</a> (daily ed. May 19, 2016) (statement of Sen. Enzi).	<a href="#">162 CONG. REC. S3007–09</a> (daily ed. May 19, 2016) (statement of Sen. Isakson, Enzi & McCain).	<a href="#">162 CONG. REC. S3009</a> (daily ed. May 19, 2016) (statement of Sen. McCain).	<a href="#">162 CONG. REC. S3009</a> (daily ed. May 19, 2016) (vote no. 79) (84-14).	<a href="#">162 CONG. REC. S3009</a> (daily ed. May 19, 2016) (the motion was agreed to and the point of order fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3367, 112th Cong., <a href="#">158 CONG. REC. S8434–37</a> (daily ed. Dec. 27, 2012) (Merkley amendment “[t]o extend certain supplemental agriculture disaster assistance programs”).	<a href="#">158 CONG. REC. S8482</a> (daily ed. Dec. 28, 2012) (statement of Sen. Sessions).	<a href="#">158 CONG. REC. S8482</a> (daily ed. Dec. 28, 2012) (statements of Sens. Sessions & Merkley).	<a href="#">158 CONG. REC. S8482</a> (daily ed. Dec. 28, 2012) (statement of Sen. Merkley).	<a href="#">158 CONG. REC. S8482</a> (daily ed. Dec. 28, 2012) (vote no. 246) (55-40).	<a href="#">158 CONG. REC. S8482</a> (daily ed. Dec. 28, 2012) (the motion was rejected, the point of order was sustained, and the emergency designation was removed).	
S. Amend. No. 3350, 112th Cong., <a href="#">158 CONG. REC. S8429</a> (daily ed. Dec. 27, 2012) (Tester amendment “[t]o provide additional funds for wildland fire management”).	<a href="#">158 CONG. REC. S8464</a> (daily ed. Dec. 28, 2012) (statement of Sen. Sessions).	<a href="#">158 CONG. REC. S8464</a> (daily ed. Dec. 28, 2012) (statements of Sens. Sessions & Tester).	<a href="#">158 CONG. REC. S8464</a> (daily ed. Dec. 28, 2012) (statement of Sen. Tester).	<a href="#">158 CONG. REC. S8464</a> (daily ed. Dec. 28, 2012) (vote no. 238) (51-44).	<a href="#">158 CONG. REC. S8464</a> (daily ed. Dec. 28, 2012) (the motion was rejected, the point of order was sustained, and the emergency designation was removed).	
S. Amend. No. 3395, 112th Cong., <a href="#">158 CONG. REC. S8212–23</a> (daily ed. Dec. 19, 2012) (Reid amendment “[i]n the nature of a substitute”).	<a href="#">158 CONG. REC. S8341–42</a> (daily ed. Dec. 21, 2012) (statement of Sen. Toomey).	<a href="#">158 CONG. REC. S8342</a> (daily ed. Dec. 21, 2012) (statements of Sens. Toomey & Mikulski).	<a href="#">158 CONG. REC. S8342</a> (daily ed. Dec. 21, 2012) (statement of Sen. Mikulski).	<a href="#">158 CONG. REC. S8342</a> (daily ed. Dec. 21, 2012) (vote no. 231) (57-34).	<a href="#">158 CONG. REC. S8342</a> (daily ed. Dec. 21, 2012) (the motion was rejected, the point of order was sustained, and the emergency designation was removed).	
<b>Sec. 314(f)—Discretionary spending caps.</b> Prohibits consideration of legislation that would cause any of the discretionary spending limits established in the Budget Control Act of 2011, as amended, to be exceeded. This point of order is enforced by category—revised security (fn 050) and revised non-security (NDD). This point of order does not apply to a concurrent resolution on the budget. A similar point of order exists under § 312(b). Note: Not relevant for years after 2021 in which there are no statutory caps on discretionary spending.						
None located in the Congressional Record from 1997 through 2022.						

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 401(a)—New Borrowing Authority.</b> Prohibits consideration of legislation that would provide new contract authority, borrowing authority, or credit authority not limited by amounts provided in advance in an appropriations act.						
S. Amend. No. 230, 100th Cong., <a href="#">133 CONG. REC. 13,872</a> (May. 28, 1987) (Grassley amendment "to revise the basis for computation of emergency compensation for the 1986 crop of feed grains").	<a href="#">133 CONG. REC. 13,880</a> (May. 28, 1987) (statement of Sen. Chiles).	None.	<a href="#">133 CONG. REC. 13,880</a> (May. 28, 1987) (statement of Sen. Grassley).	<a href="#">133 CONG. REC. 13,880</a> (May. 28, 1987) (vote no. 131) (33-60).	<a href="#">133 CONG. REC. 13,880</a> (May. 28, 1987) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2039, 99th Cong., <a href="#">132 CONG. REC. 12,858</a> (June 6, 1986) (Johnston amendment to amend the Trade Act of 1974 to make workers and firms that supply parts and services for the oil and gas industry eligible for trade adjustment assistance).	<a href="#">132 CONG. REC. 12,862</a> (June 6, 1986) (statement of Sen. Gramm).	<a href="#">132 CONG. REC. 12,862–68</a> (June 6, 1986) (statements of Sens. Johnston, Gramm, Boren, Packwood, Danforth, Nickles, Bentsen & Long).	<a href="#">132 CONG. REC. 12,862</a> (June 6, 1986) (statement of Sen. Johnston).	<a href="#">132 CONG. REC. 12,868</a> (June 6, 1986) (vote no. 118) (55-40).	<a href="#">132 CONG. REC. 12,868</a> (June 6, 1986) (the motion was agreed to, and the Budget Act was waived).	
<b>Sec. 401(b)(1)—New Entitlement Authority.</b> Prohibits consideration of legislation that would provide new entitlement authority that is to become effective during the current fiscal year.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 402—Analysis by Congressional Budget Office.</b> Requires the CBO director, to the extent practicable, to prepare estimates for committee-reported legislation. This is a requirement of the Budget Act but not a traditional point of order.						
S. 675, 98th Cong., <a href="#">129 CONG. REC. 18,505</a> (July 11, 1983) ("Department of Defense Authorization Act, 1984").	None.	98th Cong., <a href="#">129 CONG. REC. 18,535–49</a> (July 11, 1983) (statements of Sens. Baker, Metzenbaum, Tower, Jackson, Domenici, Jackson, Goldwater, Kennedy & Quayle).	98th Cong., <a href="#">129 CONG. REC. 18,534–35</a> (July 11, 1983) (statement of Sen. Baker).	98th Cong., <a href="#">129 CONG. REC. 18,593</a> (July 12, 1983) (voice vote).	98th Cong., <a href="#">129 CONG. REC. 18,593</a> (July 12, 1983) (the motion to waive § 402 of the Budget Act was agreed to by voice vote).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 425(a)(1)—No Unfunded Mandates Without CBO Estimate.</b> Prohibits consideration of any committee-reported legislation outside of Conference unless a CBO estimate of any Federal, intergovernmental, or private sector mandates has been printed in the committee report or the Congressional Record.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 425(a)(2)—No Unfunded Mandates in Excess of Limit.</b> Prohibits consideration of any legislation that contains an unfunded intergovernmental mandate in excess of the statutory limit for the fiscal year in which it becomes effective or any of the following four fiscal years.						
S. Amend. No. 4865, 114th Cong., <a href="#">162 CONG. REC. S4685</a> (daily ed. June 29, 2016) (McConnell amendment “to concur in the House amendment to the bill.”)	<a href="#">162 CONG. REC. S4691</a> (daily ed. June 29, 2016) (statement of Sen. Sanders).	<a href="#">162 CONG. REC. S4691–701</a> (daily ed. June 29, 2016) (statement of Sens. McConnell, Reid, Sanders, Hatch, Menendez, Udall, Heitkamp, Cantwell, Grassley, Cornyn & Carper).	<a href="#">162 CONG. REC. S4702</a> (daily ed. June 29, 2016) (statement of Sen. McConnell).	<a href="#">162 CONG. REC. S4702</a> (daily ed. June 29, 2016) (vote no. 115) (85-15).	<a href="#">162 CONG. REC. S4702</a> (daily ed. June 29, 2016) (the motion was agreed to and the point of order fell).	
S. Amend. No. 2786, 111th Cong., <a href="#">155 CONG. REC. S11,607–816</a> (daily ed. Nov. 19, 2009) (Reid amendment “[i]n the nature of a substitute”).	<a href="#">155 CONG. REC. S13,803–84</a> (daily ed. Dec. 23, 2009) (statement of Sen. Corker).	<a href="#">155 CONG. REC. S13,804</a> (daily ed. Dec. 23, 2009) (statements of Sens. Corker & Baucus).	<a href="#">155 CONG. REC. S13,804</a> (daily ed. Dec. 23, 2009) (statement of Sen. Baucus).	<a href="#">155 CONG. REC. S13,831</a> (daily ed. Dec. 23, 2009) (vote no. 390) (55-44).	<a href="#">155 CONG. REC. S13,831</a> (daily ed. Dec. 23, 2009) (the motion was agreed to and the point of order fell).	
S. Amend. No. 158, 110th Cong., <a href="#">153 CONG. REC. S1035</a> (daily ed. Jan. 24, 2007) (DeMint amendment “[t]o increase the Federal minimum wage by an amount that is based on applicable State minimum wages”).	<a href="#">153 CONG. REC. S1141</a> (daily ed. Jan. 25, 2007) (statement of Sen. Kennedy).	<a href="#">153 CONG. REC. S1141</a> (daily ed. Jan. 25, 2007) (statements of Sens. Kennedy & DeMint).	<a href="#">153 CONG. REC. S1141</a> (daily ed. Jan. 25, 2007) (statement of Sen. DeMint).	<a href="#">153 CONG. REC. S1141</a> (daily ed. Jan. 25, 2007) (vote no. 25) (18-76).	<a href="#">153 CONG. REC. S1141</a> (daily ed. Jan. 25, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Statutory Pay-As-You-Go Act of 2010</b>						
<b>Sec. 4(g)(3)—Emergency Designation.</b> Permits any Senator to strike an emergency designation of direct spending or revenues made pursuant to Statutory PAYGO.						
S. Amend. No. 3336, 111th Cong., <a href="#">156 CONG. REC. S996–97</a> (daily ed. Mar. 3, 2010) (Baucus amendment “[i]n the nature of a substitute”).	<a href="#">156 CONG. REC. S1007</a> (daily ed. Mar. 3, 2010) (statement of Sen. LeMieux).	<a href="#">156 CONG. REC. S1007</a> (daily ed. Mar. 3, 2010) (statements of Sens. LeMieux & Baucus).	<a href="#">156 CONG. REC. S1007</a> (daily ed. Mar. 3, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S1012</a> (daily ed. Mar. 3, 2010) (vote no. 39) (60–37).	<a href="#">156 CONG. REC. S1012</a> (daily ed. Mar. 3, 2010) (the motion was agreed to and the point of order fell).	<a href="#">156 CONG. REC. S1012</a> (daily ed. Mar. 3, 2010) (statement of Sen. Baucus).
S. Amend. No. 3721, 111th Cong., <a href="#">156 CONG. REC. S2266–67</a> (daily ed. Apr. 14, 2010) (Baucus amendment “[i]n the nature of a substitute”).	<a href="#">156 CONG. REC. S2269</a> (daily ed. Apr. 14, 2010) (statement of Sen. LeMieux).	<a href="#">156 CONG. REC. S2269</a> (daily ed. Apr. 14, 2010) (statements of Sens. LeMieux & Baucus).	<a href="#">156 CONG. REC. S2269</a> (daily ed. Apr. 14, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S2269</a> (daily ed. Apr. 14, 2010) (vote no. 110) (58–40).	<a href="#">156 CONG. REC. S2269</a> (daily ed. Apr. 14, 2010) (the motion was not agreed to, the point of order was sustained, and the emergency designation was stricken).	<a href="#">156 CONG. REC. S2269</a> (daily ed. Apr. 14, 2010) (statement of Sen. Reid).
<b>Sec. 13(a)—Fast Track Procedures to Change Social Security.</b> Prohibits the consideration of legislation pursuant to expedited procedures (as recommended by a task force or other commission) that contains recommendations with respect to Social Security.						
None located in the Congressional Record from 1997 through 2022.						
<b>Fiscal Year 1983 Budget Resolution (S. Con. Res. 92, 97th Congress)</b>						
<b>Sec. 3—Loan Obligations &amp; Appropriations.</b> Prohibits consideration of legislation during FY1982 and FY1983 that authorizes new direct loan obligations or loan guarantee commitments unless effective only to extent appropriations are also provided (with exceptions).						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 8—Suballocations to Committees.</b> Prohibits consideration of legislation that provides spending for FY1983 if the committee has not made 302(b) suballocations.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 9—Loan Obligations.</b> Prohibits consideration of legislation, after second budget resolution has been adopted, that authorizes new direct loan obligations or loan guarantee commitments for FY1983 that would cause such levels in the budget resolution to be exceeded.						
None located in the Congressional Record from 1997 through 2022.						
<b>Fiscal Year 1994 Budget Resolution (H. Con. Res. 64, 103rd Congress)</b>						
<b>Sec. 12(b)—Discretionary spending limits.</b> Prohibits consideration of a budget resolution for FY1995, FY1996, FY1997, or FY1998 that would exceed specified discretionary spending limits for such years.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 12(c)—Senate Pay-As-You-Go Rule.</b> Prohibits consideration of legislation that would increase the deficit, as a result of changes to mandatory spending or revenues, assumed in the FY1994 budget resolution for any fiscal year through FY1998 or increase the deficit for any other fiscal year through FY2003.						
None located in the Congressional Record from 1997 through 2022.						

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Fiscal Year 1995 Budget Resolution (H. Con. Res. 218, 103rd Congress)</b>						
<b>Sec. 23—Senate Pay-As-You-Go Rule.</b> Prohibits consideration of legislation that would increase the deficit in any of three time periods: budget year, first five fiscal years, and next five years.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 24—Discretionary Spending Limits.</b> Prohibits consideration of a budget resolution for FY1996, FY1997, or FY1998 that would exceed statutory discretionary spending limits (§ 601(a)(2)(F) of the Budget Act), reduced by specified amounts.						
None located in the Congressional Record from 1997 through 2022.						
<b>Fiscal Year 1996 Budget Resolution (H. Con. Res. 67, 104th Congress)</b>						
<b>Sec. 201—Discretionary Spending Limits.</b> Prohibits consideration of a budget resolution or appropriations bill that exceeds specified discretionary spending limits for each of FY1996–FY2002.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 202—Senate Pay-As-You-Go Rule.</b> Prohibits consideration of legislation that would increase the deficit in any of three time periods: budget year, first five fiscal years, and next five years.						
S. Amend. No. 3249, 105th Cong., <a href="#">144 CONG. REC. S9124</a> (daily ed. July 28, 1998) (Hutchinson amendment “[t]o terminate the Internal Revenue Code of 1986.”)	<a href="#">144 CONG. REC. S9129</a> (daily ed. July 28, 1998) (statement of Sen. Kohl).	<a href="#">144 CONG. REC. S9124–29</a> (daily ed. July 28, 1998) (statement of Sens. Hutchinson, Dorgan, Grams, Baucus, Daschle, Collins, Johnson & Kohl).	<a href="#">144 CONG. REC. S9129</a> (daily ed. July 28, 1998) (statement of Sen. Hutchinson).	<a href="#">144 CONG. REC. S9129–30</a> (daily ed. July 28, 1998) (vote no. 241) (49-49).	<a href="#">144 CONG. REC. S9130</a> (daily ed. July 28, 1998) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2353, 105th Cong., <a href="#">144 CONG. REC. S4512</a> (daily ed. May 7, 1998) (Coverdell amendment “[t]o amend the Internal Revenue Code of 1986 to prohibit the use of random audits.”)	<a href="#">144 CONG. REC. S4513</a> (daily ed. May 7, 1998) (statement of Sen. Kerrey).	<a href="#">144 CONG. REC. S4512–14, S4519</a> (daily ed. May 7, 1998) (statement of Sens. Coverdell, Cochran, Kerrey, Lott & Roth).	<a href="#">144 CONG. REC. S4514</a> (daily ed. May 7, 1998) (statement of Sen. Coverdell).	<a href="#">144 CONG. REC. S4519</a> (daily ed. May 7, 1998) (vote no. 125) (37-60).	<a href="#">144 CONG. REC. S4519</a> (daily ed. May 7, 1998) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<b>Fiscal Year 1997 Budget Resolution (H. Con. Res. 67, 104th Congress)</b>						
<b>Sec. 301—Discretionary Spending Limits.</b> Prohibits consideration of a budget resolution or appropriations bill that exceeds specified discretionary spending limits for each of FY1997–FY2002.						
None located in the Congressional Record from 1997 through 2022.						
<b>Fiscal Year 1998 Budget Resolution (H. Con. Res. 67, 104th Congress)</b>						
<b>Sec. 201—Discretionary Spending Limits.</b> Prohibits consideration of a budget resolution or appropriations bill that exceeds specified discretionary spending limits for each of FY1998–FY2002.						
None located in the Congressional Record from 1997 through 2022.						
<b>Fiscal Year 2000 Budget Resolution (H. Con. Res. 68, 106th Congress, as amended by S. Res. 304, 107th Congress)</b>						
<b>Sec. 201—Deficit Creation.</b> Prohibits consideration of a budget resolution for FY2001 (or a revision to this budget resolution) that would set forth a deficit in any fiscal year.						
None located in the Congressional Record from 1997 through 2022.						

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 206(b)—Emergency Designation.</b> Permits any Senator to strike an emergency designation of direct spending, revenues, or non-defense discretionary spending.						
<a href="#">Making Emergency Supplemental Appropriations for The Fiscal Year Ending September 30, 1999, and for Other Purposes: Conference Report to Accompany H.R. 1141</a> , H.R. REP. 106-143 (1999) (Conf. Rep.).	<a href="#">145 CONG. REC. S5655</a> (daily ed. May 20, 1999) (statement of Sen. Gramm).	<a href="#">145 CONG. REC. S5655</a> (daily ed. May 20, 1999) (statements of Sens. Gramm, Stevens, Enzi, Specter & Domenici).	<a href="#">145 CONG. REC. S5655–59</a> (daily ed. May 20, 1999) (statement of Sen. Domenici).	<a href="#">145 CONG. REC. S5659</a> (daily ed. May 20, 1999) (vote no. 135) (70-30).	<a href="#">145 CONG. REC. S5659</a> (daily ed. May 20, 1999) (the motion was agreed to and the point of order fell).	<a href="#">145 CONG. REC. S5659</a> (daily ed. May 20, 1999) (statement of Sen. Stevens).
<b>Sec. 207—Senate Pay-As-You-Go Rule.</b> Prohibits legislation with direct spending or revenue legislation that adds to the deficit over 1 year, 5 years, or the second 5 years, unless sufficient surpluses have been enacted earlier that calendar year.						
S. Amend. No. 258, 108th Cong., <a href="#">149 CONG. REC. S3551–55</a> (daily ed. Mar. 11, 2003) (Murray amendment “[t]o improve the availability of contraceptives for women”).	<a href="#">149 CONG. REC. S3466</a> (daily ed. Mar. 11, 2003) (statement of Sen. Santorum).	<a href="#">149 CONG. REC. S3466</a> (daily ed. Mar. 11, 2003) (statements of Sens. Santorum & Murray).	<a href="#">149 CONG. REC. S3466</a> (daily ed. Mar. 11, 2003) (statement of Sen. Murray).	<a href="#">149 CONG. REC. S3466</a> (daily ed. Mar. 11, 2003) (vote no. 45) (49-47).	<a href="#">149 CONG. REC. S3466</a> (daily ed. Mar. 11, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 89, 108th Cong., <a href="#">149 CONG. REC. S1256–58</a> (daily ed. Jan. 21, 2003) (Clinton amendment “[t]o improve health care under the Medicare and Medicaid programs”).	<a href="#">149 CONG. REC. S1402</a> (daily ed. Jan. 23, 2003) (statement of Sen. Nickles).	<a href="#">149 CONG. REC. S1402–03</a> (daily ed. Jan. 23, 2003) (statements of Sens. Nickles, Frist, Daschle, Stevens & Clinton).	<a href="#">149 CONG. REC. S1402</a> (daily ed. Jan. 23, 2003) (statement of Sen. Clinton).	<a href="#">149 CONG. REC. S1403</a> (daily ed. Jan. 23, 2003) (vote no. 21) (41-56).	<a href="#">149 CONG. REC. S1403</a> (daily ed. Jan. 23, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S1403</a> (daily ed. Jan. 23, 2003) (statement of Sen. Domenici).
S. Amend. No. 40, 108th Cong., <a href="#">149 CONG. REC. S1222</a> (daily ed. Jan. 21, 2003) (Reed amendment “[t]o expend the Temporary Extended Unemployment Compensation Act of 2002”).	<a href="#">149 CONG. REC. S1229</a> (daily ed. Jan. 21, 2003) (statement of Sen. Nickles).	<a href="#">149 CONG. REC. S1229</a> (daily ed. Jan. 21, 2003) (statements of Sens. Nickles & Reid).	<a href="#">149 CONG. REC. S1229</a> (daily ed. Jan. 21, 2003) (statement of Sen. Reid on behalf of Sen. Reed).	<a href="#">149 CONG. REC. S1326–27</a> (daily ed. Jan. 22, 2003) (vote no. 14) (45-49).	<a href="#">149 CONG. REC. S1326–27</a> (daily ed. Jan. 22, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Fiscal Year 2001 Budget Resolution (H. Con. Res. 290, 106th Congress)</b>						
<b>Sec. 201—Deficit Creation.</b> Prohibits consideration of a budget resolution for FY2002 (or a revision to this budget resolution) that would set forth a deficit in any fiscal year.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 204(b)—Advance Appropriations.</b> Prohibits consideration of legislation that would cause the total level of discretionary advance appropriations provided for fiscal years after 2001 to exceed \$23.5 billion.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 204(c)—Delayed Obligations.</b> Prohibits consideration of legislation that contains “an appropriation of new budget authority for any fiscal year which does not become available upon enactment of such legislation or on the first day of that fiscal year (whichever is later),” with exceptions for defense category budget authority or if reoccurring.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 205—Emergency Designation.</b> Surgical point of order against emergency designations (provided under §§ 251 and 252 of the Deficit Control Act) contained in legislation, with an exception for discretionary appropriations in defense category.						
S. Amend. No. 3964, 106th Cong., 146 Cong. Rec. S7344 (daily ed. July 20, 2000) (Harkin amendment “[t]o provide the use of funds for the Emergency Watershed Program for emergency expenses for floodplain operations identified as of July 18, 2000”).	146 Cong. Rec. S7348 (daily ed. July 20, 2000) (statement of Sen. Domenici).	146 Cong. Rec. S7348 (daily ed. July 20, 2000) (statements of Sens. Domenici & Cochran).	146 Cong. Rec. S7348 (daily ed. July 20, 2000) (statement of Sen. Cochran).	146 Cong. Rec. S7351 (daily ed. July 20, 2000) (statement of Sen. Cochran, moving for amendment no. 3964 and the other emergency designation amendments to be agreed to en bloc).	146 Cong. Rec. S7351 (daily ed. July 20, 2000) (the motion was agreed to and the amendment was agreed to).	146 Cong. Rec. S7351 (daily ed. July 20, 2000) (statement of Sen. Cochran).
<b>Sec. 207—Discretionary Spending Limits.</b> Prohibits consideration of legislation that would exceed specified discretionary spending limits for FY2001.						
None located in the Congressional Record from 1997 through 2022.						
<b>Fiscal Year 2002 Budget Resolution (H. Con. Res. 83, 107th Congress)</b>						
<b>Sec. 202—Advance Appropriations.</b> Prohibits consideration legislation that contains advance appropriations, except for FY2003 for specified programs, projects, and activities, in the total amount of \$23.159 billion, or for the Corporation for Public Broadcasting.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 203(c)—Discretionary Spending Limits.</b> Prohibits consideration of legislation that would exceed specified discretionary spending limits for FY2002.						
None located in the Congressional Record from 1997 through 2022.						



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Fiscal Year 2004 Budget Resolution (H. Con. Res. 95, 108th Congress)</b>						
<b>Sec. 202(a)—Limit on Senate Consideration of Reconciliation.</b> Prohibits consideration of reconciliation legislation arising from this resolution’s instructions during fiscal years 2003 through 2013 that would cause the revenue reduction to exceed \$322.524 billion or the outlay increase to exceed \$27.476 billion for fiscal years 2003 through 2013, except for the purpose of inserting the text of a Senate-passed measure and requesting a conference with the House of Representatives. The underlying reconciliation instructions allowed for a \$200 billion greater revenue reduction.						
S. Amend. No. 666, 108th Cong., <a href="#">149 CONG. REC. S6552–53</a> (daily ed. May 15, 2003) (Dorgan amendment “[t]o strike the section relating to qualified tax collection contracts”).	<a href="#">149 CONG. REC. S6443</a> (daily ed. May 15, 2003) (statement of Sen. Kyl).	<a href="#">149 CONG. REC. S6443</a> (daily ed. May 15, 2003) (statements of Sens. Kyl & Dorgan).	<a href="#">149 CONG. REC. S6443</a> (daily ed. May 15, 2003) (statement of Sen. Dorgan).	<a href="#">149 CONG. REC. S6443</a> (daily ed. May 15, 2003) (vote no. 176) (43-57).	<a href="#">149 CONG. REC. S6443</a> (daily ed. May 15, 2003) (the motion was not agreed to, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S6443</a> (daily ed. May 15, 2003) (statement of Sen. Grassley).
<b>Sec. 501(b)—Advance Appropriations.</b> Prohibits advance appropriations for years beyond fiscal years 2004 and 2005, except for specified advance appropriations up to \$23.158 billion.						
S. Amend. No. 3649, 108th Cong., <a href="#">150 CONG. REC. S9167</a> (daily ed. Sept. 14, 2004) (Byrd amendment “[t]o provide funds for the Transportation Security Administration, United States Coast Guard, and the Office of State and Local Government Coordination and Preparedness”).	<a href="#">150 CONG. REC. S9201</a> (daily ed. Sept. 14, 2004) (statement of Sen. Cochran).	<a href="#">150 CONG. REC. S9201</a> (daily ed. Sept. 14, 2004) (statements of Sens. Cochran & Byrd).	<a href="#">150 CONG. REC. S9201</a> (daily ed. Sept. 14, 2004) (statement of Sen. Byrd).	<a href="#">150 CONG. REC. S9202</a> (daily ed. Sept. 14, 2004) (vote no. 179) (48-47).	<a href="#">150 CONG. REC. S9202</a> (daily ed. Sept. 14, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S9202</a> (daily ed. Sept. 14, 2004) (statement of Sen. Cochran).
<b>Sec. 502(c)(5)—Emergency Designation.</b> Permits any Senator to strike an emergency designation of direct spending, revenues, or non-defense discretionary spending.						
S. Amend. No. 2178, 108th Cong., <a href="#">149 CONG. REC. S14512</a> (daily ed. Nov. 12, 2003) (Mikulski amendment “[t]o provide for certain capitalization grants”).	<a href="#">149 CONG. REC. S14517–18</a> (daily ed. Nov. 12, 2003) (statement of Sen. Bond).	<a href="#">149 CONG. REC. S14517–18</a> (daily ed. Nov. 12, 2003) (statements of Sens. Bond & Mikulski).	<a href="#">149 CONG. REC. S14518</a> (daily ed. Nov. 12, 2003) (statement of Sen. Mikulski).	<a href="#">149 CONG. REC. S14518</a> (daily ed. Nov. 12, 2003) (vote no. 449) (44-49).	<a href="#">149 CONG. REC. S14518</a> (daily ed. Nov. 12, 2003) (the motion was rejected, the point of order was sustained, and the emergency designation was stricken).	<a href="#">149 CONG. REC. S14518</a> (daily ed. Nov. 12, 2003) (statement of Sen. Bond).



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2089, 108th Cong., <a href="#">149 CONG. REC. S14,066–67</a> (daily ed. Nov. 5, 2003) (Dayton amendment “[t]o provide emergency disaster assistance to agricultural producers”).	<a href="#">149 CONG. REC. S14,005</a> (daily ed. Nov. 5, 2003) (statement of Sen. Bennett).	<a href="#">149 CONG. REC. S14,005</a> (daily ed. Nov. 5, 2003) (statements of Sens. Bennett & Dayton).	<a href="#">149 CONG. REC. S14,005</a> (daily ed. Nov. 5, 2003) (statement of Sen. Dayton).	<a href="#">149 CONG. REC. S14,005</a> (daily ed. Nov. 5, 2003) (vote no. 440) (40–55).	<a href="#">149 CONG. REC. S14,005</a> (daily ed. Nov. 5, 2003) (the motion was rejected, the point of order was sustained, and the emergency designation was stricken).	
S. Amend. No. 1622, 108th Cong., <a href="#">149 CONG. REC. 11,309–10</a> (daily ed. Sept. 10, 2003) (Specter-Harkin-Feinstein amendment “[t]o increase funding for the National Institutes of Health”).	<a href="#">149 CONG. REC. S11,312</a> (daily ed. Sept. 10, 2003) (statement of Sen. Nickles).	<a href="#">149 CONG. REC. S11,312–14</a> (daily ed. Sept. 10, 2003) (statements of Sens. Nickles, Conrad, Specter, Frist, Harkin, Feinstein & Stevens).	<a href="#">149 CONG. REC. S11,313</a> (daily ed. Sept. 10, 2003) (statement of Sen. Stevens).	<a href="#">149 CONG. REC. S11,314–15</a> (daily ed. Sept. 10, 2003) (vote no. 346) (52–43).	<a href="#">149 CONG. REC. S11,315</a> (daily ed. Sept. 10, 2003) (the motion was rejected and the emergency designation was stricken).	
<b>Sec. 504(b)—Exceeding Discretionary Spending Limits.</b> Prohibits consideration of legislation that would exceed the established specified discretionary spending limits of the budget resolution for fiscal years 2003, 2004, or 2005.						
S. Amend. No. 1591, 108th Cong., <a href="#">149 CONG. REC. S11,219</a> (daily ed. Sept. 9, 2003) (Durbin amendment “[t]o provide funding for the prevention, treatment, and control of, and research on, global HIV/AIDS”).	<a href="#">149 CONG. REC. S11,226</a> (daily ed. Sept. 9, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,226</a> (daily ed. Sept. 9, 2003) (statements of Sens. Specter & Durbin).	<a href="#">149 CONG. REC. S11,226</a> (daily ed. Sept. 9, 2003) (statement of Sen. Durbin).	<a href="#">149 CONG. REC. S11,226</a> (daily ed. Sept. 9, 2003) (vote no. 332) (43–51).	<a href="#">149 CONG. REC. S11,226</a> (daily ed. Sept. 9, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1543, 108th Cong., <a href="#">149 CONG. REC. 10,945</a> (daily ed. Sept. 2, 2003) (Byrd amendment “[t]o provide additional funding for education for the disadvantaged”).	<a href="#">149 CONG. REC. S11,224</a> (daily ed. Sept. 9, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,224</a> (daily ed. Sept. 9, 2003) (statements of Sens. Specter & Reid).	<a href="#">149 CONG. REC. S11,224</a> (daily ed. Sept. 9, 2003) (statement of Sen. Reid).	<a href="#">149 CONG. REC. S11,225</a> (daily ed. Sept. 9, 2003) (vote no. 330) (44–51).	<a href="#">149 CONG. REC. S11,225</a> (daily ed. Sept. 9, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1597, 108th Cong., <a href="#">149 CONG. REC. S11226</a> (daily ed. Sept. 9, 2003) (Dodd amendment “[t]o increase funds for Head Start”).	<a href="#">149 CONG. REC. S11227</a> (daily ed. Sept. 9, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11227</a> (daily ed. Sept. 9, 2003) (statements of Sens. Specter & Dodd).	<a href="#">149 CONG. REC. S11227</a> (daily ed. Sept. 9, 2003) (statement of Sen. Dodd).	<a href="#">149 CONG. REC. S11227</a> (daily ed. Sept. 9, 2003) (vote no. 333) (47-47).	<a href="#">149 CONG. REC. S11227</a> (daily ed. Sept. 9, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S11227</a> (daily ed. Sept. 9, 2003) (statement of Sen. Specter).
S. Amend. No. 1566, 108th Cong., <a href="#">149 CONG. REC. S11,069</a> (daily ed. Sept. 4, 2003) (Kennedy amendment “[t]o increase student financial aid by an amount that matches the increase in low- and middle-income family college costs”).	<a href="#">149 CONG. REC. S11,225</a> (daily ed. Sept. 9, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,225</a> (daily ed. Sept. 9, 2003) (statements of Sens. Specter & Kennedy).	<a href="#">149 CONG. REC. S11,225</a> (daily ed. Sept. 9, 2003) (statement of Sen. Kennedy).	<a href="#">149 CONG. REC. S11,225</a> (daily ed. Sept. 9, 2003) (vote no. 331) (49-46).	<a href="#">149 CONG. REC. S11,225</a> (daily ed. Sept. 9, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1565, 108th Cong., <a href="#">149 CONG. REC. S11,103</a> (daily ed. Sept. 4, 2003) (Clinton amendment “[t]o provide additional funding to ensure an adequate bioterrorism preparedness workforce”).	<a href="#">149 CONG. REC. S11,134–35</a> (daily ed. Sept. 5, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,134–35</a> (daily ed. Sept. 5, 2003) (statements of Sens. Specter & Harkin).	<a href="#">149 CONG. REC. S11,135</a> (daily ed. Sept. 5, 2003) (statement of Sen. Harkin).	<a href="#">149 CONG. REC. S11,135</a> (daily ed. Sept. 5, 2003) (vote no. 328) (41-47).	<a href="#">149 CONG. REC. S11,135</a> (daily ed. Sept. 5, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1553, 108th Cong., <a href="#">149 CONG. REC. S11,009</a> (daily ed. Sept. 3, 2003) (Dorgan-Inhofe amendment “[t]o provide additional funding for the Impact Aid Program”).	<a href="#">149 CONG. REC. S11,015</a> (daily ed. Sept. 3, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,015</a> (daily ed. Sept. 3, 2003) (statements of Sens. Specter & Reid).	<a href="#">149 CONG. REC. S11,015</a> (daily ed. Sept. 3, 2003) (statement of Sen. Reid).	<a href="#">149 CONG. REC. S11,017</a> (daily ed. Sept. 3, 2003) (vote no. 323) (53-43).	<a href="#">149 CONG. REC. S11,017</a> (daily ed. Sept. 3, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1614, 108th Cong., <a href="#">149 CONG. REC. S11,292</a> (daily ed. Sept. 10, 2003) (Landrieu amendment “[t]o provide additional funds for programs relating to West Nile Virus and to fund the Mosquito Abatement for Safety and Health Act”).	<a href="#">149 CONG. REC. S11,308</a> (daily ed. Sept. 10, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,308</a> (daily ed. Sept. 10, 2003) (statements of Sens. Specter & Landrieu).	<a href="#">149 CONG. REC. S11,308</a> (daily ed. Sept. 10, 2003) (statement of Sen. Landrieu).	<a href="#">149 CONG. REC. S11,308–09</a> (daily ed. Sept. 10, 2003) (vote no. 345) (46-49).	<a href="#">149 CONG. REC. S11,309</a> (daily ed. Sept. 10, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1559, 108th Cong., <a href="#">149 CONG. REC. S11,057</a> (daily ed. Sept. 4, 2003) (Murray amendment “[t]o restore funding for certain programs under the Workforce Investment Act of 1998”).	<a href="#">149 CONG. REC. S11,077</a> (daily ed. Sept. 4, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,077</a> (daily ed. Sept. 4, 2003) (statements of Sens. Specter & Reid).	<a href="#">149 CONG. REC. S11,077</a> (daily ed. Sept. 4, 2003) (statement of Sen. Reid).	<a href="#">149 CONG. REC. S11,077</a> (daily ed. Sept. 4, 2003) (vote no. 325) (46-49).	<a href="#">149 CONG. REC. S11,077</a> (daily ed. Sept. 4, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1568, 108th Cong., <a href="#">149 CONG. REC. S11,078</a> (daily ed. Sept. 4, 2003) (Daschle amendment “[t]o provide funding for rural education”).	<a href="#">149 CONG. REC. S11,094</a> (daily ed. Sept. 4, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,094</a> (daily ed. Sept. 4, 2003) (statements of Sens. Specter & Harkin).	<a href="#">149 CONG. REC. S11,094</a> (daily ed. Sept. 4, 2003) (statement of Sen. Harkin).	<a href="#">149 CONG. REC. S11,094–95</a> (daily ed. Sept. 4, 2003) (vote no. 326) (52-43).	<a href="#">149 CONG. REC. S11,095</a> (daily ed. Sept. 4, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S11,095</a> (daily ed. Sept. 4, 2003) (statement of Sen. Specter).
S. Amend. No. 1547, 108th Cong., <a href="#">149 CONG. REC. S10,992–1000</a> (daily ed. Sept. 3, 2003) (Reid amendment “[t]o increase funding for certain education and related programs”).	<a href="#">149 CONG. REC. S11,002</a> (daily ed. Sept. 3, 2003) (statement of Sen. Bond).	<a href="#">149 CONG. REC. S11,002</a> (daily ed. Sept. 3, 2003) (statements of Sens. Bond & Reid).	<a href="#">149 CONG. REC. S11,002</a> (daily ed. Sept. 3, 2003) (statement of Sen. Reid).	<a href="#">149 CONG. REC. S11,002</a> (daily ed. Sept. 3, 2003) (vote no. 322) (46-48).	<a href="#">149 CONG. REC. S11,003</a> (daily ed. Sept. 3, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S11,003</a> (daily ed. Sept. 3, 2003) (statement of Sen. Specter).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1575, 108th Cong., <a href="#">149 CONG. REC. S11,090</a> (daily ed. Sept. 4, 2003) (Harkin amendment “[t]o provide additional funding for the Fund for the Improvement of Education”).	<a href="#">149 CONG. REC. S11,134</a> (daily ed. Sept. 5, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,134</a> (daily ed. Sept. 5, 2003) (statements of Sens. Specter & Harkin).	<a href="#">149 CONG. REC. S11,135</a> (daily ed. Sept. 5, 2003) (statement of Sen. Harkin).	<a href="#">149 CONG. REC. S11,135</a> (daily ed. Sept. 5, 2003) (vote no. 329) (43-46).	<a href="#">149 CONG. REC. S11,135</a> (daily ed. Sept. 5, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S11,135</a> (daily ed. Sept. 5, 2003) (statement of Sen. Reid).
S. Amend. No. 1610, 108th Cong., <a href="#">149 CONG. REC. S11,282</a> (daily ed. Sept. 10, 2003) (Landrieu amendment “[t]o increase funding for the promoting safe and stable families program”).	<a href="#">149 CONG. REC. S11,294</a> (daily ed. Sept. 10, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,294–95</a> (daily ed. Sept. 10, 2003) (statements of Sens. Specter & Landrieu).	<a href="#">149 CONG. REC. S11,295</a> (daily ed. Sept. 10, 2003) (statement of Sen. Landrieu).	<a href="#">149 CONG. REC. S11,295</a> (daily ed. Sept. 10, 2003) (vote no. 340) (46-49).	<a href="#">149 CONG. REC. S11,295</a> (daily ed. Sept. 10, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1613, 108th Cong., <a href="#">149 CONG. REC. S11,290</a> (daily ed. Sept. 10, 2003) (Durbin amendment “[t]o provide additional funding for teacher quality programs under the Elementary and Secondary Education Act of 1965 and the Higher Education Act of 1965 and for the Mathematics and Science Partnerships and the school leadership program under the Elementary and Secondary Education Act of 1965”).	<a href="#">149 CONG. REC. S11,302</a> (daily ed. Sept. 10, 2003) (statement of Sen. Craig).	<a href="#">149 CONG. REC. S11,302</a> (daily ed. Sept. 10, 2003) (statements of Sens. Craig & Durbin).	<a href="#">149 CONG. REC. S11,302</a> (daily ed. Sept. 10, 2003) (statement of Sen. Durbin).	<a href="#">149 CONG. REC. S11,302</a> (daily ed. Sept. 10, 2003) (vote no. 343) (43-51).	<a href="#">149 CONG. REC. S11,302</a> (daily ed. Sept. 10, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S11,302</a> (daily ed. Sept. 10, 2003) (statement of Sen. Hatch).

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S. Amend. No. 1595, 108th Cong., <a href="#">149 CONG. REC. S11,230</a> (daily ed. Sept. 9, 2003) (Reed amendment “[t]o provide funding for home energy assistance needs under the Low-Income Home Energy Assistance Act of 1981”).	<a href="#">149 CONG. REC. S11,230</a> (daily ed. Sept. 9, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,230</a> (daily ed. Sept. 9, 2003) (statements of Sens. Specter & Reed).	<a href="#">149 CONG. REC. S11,230</a> (daily ed. Sept. 9, 2003) (statement of Sen. Reed).	<a href="#">149 CONG. REC. S11,272</a> (daily ed. Sept. 10, 2003) (vote no. 336) (49-46).	<a href="#">149 CONG. REC. S11,272</a> (daily ed. Sept. 10, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1609, 108th Cong., <a href="#">149 CONG. REC. S11,280</a> (daily ed. Sept. 10, 2003) (Boxer amendment “[t]o provide additional funding for afterschool programs under the Elementary and Secondary Education Act of 1965”).	<a href="#">149 CONG. REC. S11,294</a> (daily ed. Sept. 10, 2003) (statement of Sen. Specter).	<a href="#">149 CONG. REC. S11,294</a> (daily ed. Sept. 10, 2003) (statements of Sens. Specter & Reid).	<a href="#">149 CONG. REC. S11,294</a> (daily ed. Sept. 10, 2003) (statement of Sen. Reid).	<a href="#">149 CONG. REC. S11,294</a> (daily ed. Sept. 10, 2003) (vote no. 340) (46-49).	<a href="#">149 CONG. REC. S11,294</a> (daily ed. Sept. 10, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<b>Sec. 505(a)—Senate Pay-As-You-Go Rule.</b> Extends the Pay-As-You-Go point of order in the Senate through fiscal year 2008.						
S. Amend. No. 538, 111th Cong., <a href="#">155 CONG. REC. S1829–30</a> (daily ed. Feb. 6, 2009) (Thune amendment “[t]o replace all spending and tax provisions with a direct rebate to all Americans filing a tax return”).	<a href="#">155 CONG. REC. S1856</a> (daily ed. Feb. 6, 2009) (statement of Sen. Baucus).	<a href="#">155 CONG. REC. S1856</a> (daily ed. Feb. 6, 2009) (statements of Sens. Baucus & Thune).	<a href="#">155 CONG. REC. S1856</a> (daily ed. Feb. 6, 2009) (statement of Sen. Thune).	<a href="#">155 CONG. REC. S1856</a> (daily ed. Feb. 6, 2009) (vote no. 58) (35-61).	<a href="#">155 CONG. REC. S1856</a> (daily ed. Feb. 6, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 115, 110th Cong., <a href="#">153 CONG. REC. S882</a> (daily ed. Jan. 23, 2007) (Kyl amendment “[t]o extend through December 31, 2008, the depreciation treatment of leasehold, restaurant, and retail space improvements”).	<a href="#">153 CONG. REC. S1379</a> (daily ed. Jan. 31, 2007) (statement of Sen. Baucus).	<a href="#">153 CONG. REC. S1379</a> (daily ed. Jan. 31, 2007) (statements of Sen. Baucus).	<a href="#">153 CONG. REC. S1379</a> (daily ed. Jan. 31, 2007) (statement of Sen. Baucus on behalf of Sen. Kyl).	<a href="#">153 CONG. REC. S1379</a> (daily ed. Jan. 31, 2007) (vote no. 38) (46-50).	<a href="#">153 CONG. REC. S1379</a> (daily ed. Jan. 31, 2007) (the motion was rejected, the point of order was sustained, and the amendment failed).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 154, 110th Cong., <a href="#">153 CONG. REC. S898</a> (daily ed. Jan. 23, 2007) (Ensign amendment “[t]o improve access to affordable health care”).	<a href="#">153 CONG. REC. S1152</a> (daily ed. Jan. 25, 2007) (statement of Sen. Stabenow).	<a href="#">153 CONG. REC. S1152</a> (daily ed. Jan. 25, 2007) (statements of Sens. Stabenow & Ensign).	<a href="#">153 CONG. REC. S1152</a> (daily ed. Jan. 25, 2007) (statement of Sen. Ensign).	<a href="#">153 CONG. REC. S1152</a> (daily ed. Jan. 25, 2007) (vote no. 26) (47-48).	<a href="#">153 CONG. REC. S1152</a> (daily ed. Jan. 25, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 113, 110th Cong., <a href="#">153 CONG. REC. S1021</a> (daily ed. Jan. 24, 2007) (Smith amendment “[t]o make permanent certain education-related tax incentives”).	<a href="#">153 CONG. REC. S1171</a> (daily ed. Jan. 25, 2007) (statement of Sen. Baucus).	<a href="#">153 CONG. REC. S1171</a> (daily ed. Jan. 25, 2007) (statements of Sens. Baucus & Smith).	<a href="#">153 CONG. REC. S1171</a> (daily ed. Jan. 25, 2007) (statement of Sen. Smith).	<a href="#">153 CONG. REC. S1171</a> (daily ed. Jan. 25, 2007) (vote no. 30) (43-50).	<a href="#">153 CONG. REC. S1171</a> (daily ed. Jan. 25, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 119, 110th Cong., <a href="#">153 CONG. REC. S895–96</a> (daily ed. Jan. 23, 2007) (Bunning amendment “[t]o amend the Internal Revenue Code of 1986 to repeal the 1993 income tax increase on Social Security benefits”).	<a href="#">153 CONG. REC. S1163</a> (daily ed. Jan. 25, 2007) (statement of Sen. Baucus).	<a href="#">153 CONG. REC. S1163</a> (daily ed. Jan. 25, 2007) (statements of Sens. Baucus & Bunning).	<a href="#">153 CONG. REC. S1163</a> (daily ed. Jan. 25, 2007) (statement of Sen. Bunning).	<a href="#">153 CONG. REC. S1163</a> (daily ed. Jan. 25, 2007) (vote no. 28) (42-51).	<a href="#">153 CONG. REC. S1163</a> (daily ed. Jan. 25, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3109, 108th Cong., <a href="#">150 CONG. REC. S4806–12</a> (daily ed. May 4, 2004) (Wyden amendment “[t]o provide trade adjustment assistance for service workers”).	<a href="#">150 CONG. REC. S4820</a> (daily ed. May 4, 2004) (statement of Sen. Nickles).	<a href="#">150 CONG. REC. S4820</a> (daily ed. May 4, 2004) (statements of Sens. Nickles & Wyden).	<a href="#">150 CONG. REC. S4820</a> (daily ed. May 4, 2004) (statement of Sen. Wyden).	<a href="#">150 CONG. REC. S4821</a> (daily ed. May 4, 2004) (vote no. 80) (54-45).	<a href="#">150 CONG. REC. S4821</a> (daily ed. May 4, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S4821</a> (daily ed. May 4, 2004) (statement of Sen. Grassley).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2859, 108th Cong., <a href="#">150 CONG. REC. S2804-21</a> (daily ed. Mar. 12, 2004) (Murray amendment “[t]o provide for domestic violence prevention”).	<a href="#">150 CONG. REC. S3164</a> (daily ed. Mar. 25, 2004) (statement of Sen. Nickles).	<a href="#">150 CONG. REC. S3164</a> (daily ed. Mar. 25, 2004) (statements of Sens. Nickles & Murray).	<a href="#">150 CONG. REC. S3164</a> (daily ed. Mar. 25, 2004) (statement of Sen. Murray).	<a href="#">150 CONG. REC. S3164</a> (daily ed. Mar. 25, 2004) (vote no. 62) (46-53).	<a href="#">150 CONG. REC. S3164</a> (daily ed. Mar. 25, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S3164</a> (daily ed. Mar. 25, 2004) (statement of Sen. Nickles).
S. Amend. No. 2859, 108th Cong., <a href="#">150 CONG. REC. S2804-21</a> (daily ed. Mar. 12, 2004) (Murray amendment “[t]o provide for domestic violence prevention”).	<a href="#">150 CONG. REC. S3164</a> (daily ed. Mar. 25, 2004) (statement of Sen. Nickles).	<a href="#">150 CONG. REC. S3164</a> (daily ed. Mar. 25, 2004) (statements of Sens. Nickles & Murray).	<a href="#">150 CONG. REC. S3164</a> (daily ed. Mar. 25, 2004) (statement of Sen. Murray).	<a href="#">150 CONG. REC. S3164</a> (daily ed. Mar. 25, 2004) (vote no. 62) (46-53).	<a href="#">150 CONG. REC. S3164</a> (daily ed. Mar. 25, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S3164</a> (daily ed. Mar. 25, 2004) (statement of Sen. Nickles).
S. Amend. No. 3109, 108th Cong., <a href="#">150 CONG. REC. S4806-12</a> (daily ed. May 4, 2004) (Wyden-Coleman amendment “[t]o provide trade adjustment assistance for service workers”).	<a href="#">150 CONG. REC. S4820</a> (daily ed. May 4, 2004) (statement of Sen. Nickles).	<a href="#">150 CONG. REC. S4820</a> (daily ed. May 4, 2004) (statements of Sens. Nickles & Wyden).	<a href="#">150 CONG. REC. S4820</a> (daily ed. May 4, 2004) (statement of Sen. Wyden).	<a href="#">150 CONG. REC. S4821</a> (daily ed. May 4, 2004) (vote no. 80) (54-45).	<a href="#">150 CONG. REC. S4821</a> (daily ed. May 4, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S4821</a> (daily ed. May 4, 2004) (statement of Sen. Grassley).
S. Amend. No. 3114, 108th Cong., <a href="#">150 CONG. REC. S4812</a> (daily ed. May 4, 2004) (Cantwell amendment “[t]o extend the Temporary Extended Unemployment Compensation Act of 2002”).	<a href="#">150 CONG. REC. S5185</a> (daily ed. May 11, 2004) (statement of Sen. Nickles).	<a href="#">150 CONG. REC. S5185</a> (daily ed. May 11, 2004) (statements of Sens. Nickles & Cantwell).	<a href="#">150 CONG. REC. S5185</a> (daily ed. May 11, 2004) (statement of Sen. Cantwell).	<a href="#">150 CONG. REC. S5186</a> (daily ed. May 11, 2004) (vote no. 88) (59-40).	<a href="#">150 CONG. REC. S5186</a> (daily ed. May 11, 2004) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">150 CONG. REC. S5186</a> (daily ed. May 11, 2004) (statement of Sen. Reid).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1170, 108th Cong., <a href="#">149 CONG. REC. S9170</a> (daily ed. July 10, 2003) (Murray amendment to provide additional weeks of temporary extended unemployment compensation and to make extended unemployment benefits under the Railroad Unemployment Insurance Act temporarily available).	<a href="#">149 CONG. REC. S9180</a> (daily ed. July 10, 2003) (statement of Sen. Nickles).	<a href="#">149 CONG. REC. S9180</a> (daily ed. July 10, 2003) (statements of Sens. Nickles & Murray).	<a href="#">149 CONG. REC. S9180</a> (daily ed. July 10, 2003) (statement of Sen. Murray).	<a href="#">149 CONG. REC. S9181</a> (daily ed. July 10, 2003) (vote no. 269) (48-48).	<a href="#">149 CONG. REC. S9181</a> (daily ed. July 10, 2003) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">149 CONG. REC. S9181</a> (daily ed. July 10, 2003) (statement of Sen. Reid).
<b>Fiscal Year 2006 Budget Resolution (H. Con. Res. 95, 109th Congress)</b>						
<b>Sec. 401—Advance Appropriations.</b> Prohibits consideration of legislation that contains advance appropriations, except for each of FY2007 and FY2008 for specified programs, projects, and activities, in the total amount of \$23.158 billion.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 402—Emergency Designation.</b> Surgical point of order against emergency designations, with an exception for discretionary appropriations in defense category.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 404—Discretionary Spending Limits.</b> Prohibits consideration of legislation that exceeds specified discretionary spending limits for each of FY2006–FY2008.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 407—Long-Term Spending.</b> Prohibits consideration of legislation that would cause net increase in direct spending in excess of \$5 billion in any of the four 10-year periods beginning in 2016 through 2055.						
None located in the Congressional Record from 1997 through 2022.						
<b>Fiscal Year 2008 Budget Resolution (S. Con. Res. 21, 110th Congress)</b>						
<b>Sec. 201(a)—Senate-Pay-As-You-Go Rule.</b> Extends the Pay-As-You-Go point of order rule in the Senate through fiscal year 2017 and applying it to the 1-year, 5-year, and 10-year windows instead of the 1-year, 5-year, and second 5-year windows.						
S. Amend. No. 4979, 114th Cong., <a href="#">162 CONG. REC. S5694</a> (daily ed. Sept. 14, 2016) (Inhofe amendment “in the nature of a substitute.”)	<a href="#">162 CONG. REC. S5706</a> (daily ed. Sept. 14, 2016) (statement of Sen. Enzi).	<a href="#">162 CONG. REC. S5694–706</a> (daily ed. Sept. 14, 2016) (statement of Sen. Grassley, Durbin, Coats, Hirono, Donnelly, McCain, Graham, Manchin, Brown, Capito, Portman & Enzi).	<a href="#">162 CONG. REC. S5706</a> (daily ed. Sept. 14, 2016) (statement of Sen. Inhofe).	<a href="#">162 CONG. REC. S5706</a> (daily ed. Sept. 14, 2016) (vote no. 139) (85-12).	<a href="#">162 CONG. REC. S5706–07</a> (daily ed. Sept. 14, 2016) (the motion was agreed to and the point of order fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1115, 114th Cong., <a href="#">161 CONG. REC. S2157</a> (daily ed. Apr. 14, 2015) (Democratic amendment “[t]o protect and retain our Children’s Health Insurance Program for 4 years (PRO-CHIP).”)	<a href="#">161 CONG. REC. S2158</a> (daily ed. Apr. 14, 2015) (statement of Sen. Hatch).	<a href="#">161 CONG. REC. S2157–58</a> (daily ed. Apr. 14, 2015) (statement of Sens. Bennet, Grassley & Hatch).	<a href="#">161 CONG. REC. S2158</a> (daily ed. Apr. 14, 2015) (statement of Sen. Bennet).	<a href="#">161 CONG. REC. S2158</a> (daily ed. Apr. 14, 2015) (vote no. 138) (50-50).	<a href="#">161 CONG. REC. S2158</a> (daily ed. Apr. 14, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1117, 114th Cong., <a href="#">161 CONG. REC. S2158</a> (daily ed. Apr. 14, 2015) (Democratic amendment “[t]o improve women’s access to quality health care.”)	<a href="#">161 CONG. REC. S2159</a> (daily ed. Apr. 14, 2015) (statement of Sen. Hatch).	<a href="#">161 CONG. REC. S2158–59</a> (daily ed. Apr. 14, 2015) (statement of Sens. Murray & Hatch).	<a href="#">161 CONG. REC. S2159</a> (daily ed. Apr. 14, 2015) (statement of Sen. Murray).	<a href="#">161 CONG. REC. S2159</a> (daily ed. Apr. 14, 2015) (vote no. 140) (43-57).	<a href="#">161 CONG. REC. S2159</a> (daily ed. Apr. 14, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1119, 114th Cong., <a href="#">161 CONG. REC. S2160</a> (daily ed. Apr. 14, 2015) (Democratic amendment “[t]o repeal the therapy cap and provide for medical review of outpatient therapy services.”)	<a href="#">161 CONG. REC. S2160</a> (daily ed. Apr. 14, 2015) (statement of Sen. Hatch).	<a href="#">161 CONG. REC. S2160</a> (daily ed. Apr. 14, 2015) (statement of Sens. Cardin & Hatch).	<a href="#">161 CONG. REC. S2160</a> (daily ed. Apr. 14, 2015) (statement of Sen. Cardin).	<a href="#">161 CONG. REC. S2160</a> (daily ed. Apr. 14, 2015) (vote no. 142) (58-42).	<a href="#">161 CONG. REC. S2160</a> (daily ed. Apr. 14, 2015) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3549, 113th Cong., <a href="#">160 CONG. REC. S4588</a> (daily ed. July 17, 2014) (Coburn amendment “[t]o allow the Secretary to extend the deadline for collecting terrorism loss risk-spreading premiums if the mandatory recoupment is more than \$1,000,000,000”).	<a href="#">160 CONG. REC. S4588</a> (daily ed. July 17, 2014) (statement of Sen. Schumer).	<a href="#">160 CONG. REC. S4588</a> (daily ed. July 17, 2014) (statements of Sens. Schumer & Crapo).	<a href="#">160 CONG. REC. S4588</a> (daily ed. July 17, 2014) (statement of Sen. Crapo).	<a href="#">160 CONG. REC. S4588</a> (daily ed. July 17, 2014) (vote no. 229) (48-49).	<a href="#">160 CONG. REC. S4588</a> (daily ed. July 17, 2014) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<a href="#">Protecting Access to Medicare Act of 2014</a> , H.R. 4302, 113th Cong. (2014) (enacted).	160 CONG. REC. S1855 (daily ed. Mar. 31, 2014) (statement of Sen. Sessions).	160 CONG. REC. S1855 (daily ed. Mar. 31, 2014) (statements of Sens. Sessions & Wyden).	160 CONG. REC. S1855 (daily ed. Mar. 31, 2014) (statement of Sen. Wyden).	160 CONG. REC. S1859 (daily ed. Mar. 31, 2014) (vote no. 92) (64-35).	160 CONG. REC. S1859 (daily ed. Mar. 31, 2014) (the motion was agreed to and the point of order fell).	
<a href="#">A bill to delay the implementation of certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 and to reform the National Association of Registered Agents and Brokers, and for other purposes</a> , S. 1926, 113th Cong. (as passed by Senate, Jan. 30, 2014).	160 CONG. REC. S573 (daily ed. Jan. 29, 2014) (statement of Sen. Coburn).	160 CONG. REC. S573–74 (daily ed. Jan. 29, 2014) (statements of Sens. Coburn, Menendez & Landrieu).	160 CONG. REC. S573 (daily ed. Jan. 29, 2014) (statement of Sen. Menendez).	160 CONG. REC. S588 (daily ed. Jan. 29, 2014) (vote no. 15) (64-35).	160 CONG. REC. S588 (daily ed. Jan. 29, 2014) (the motion was agreed to and the point of order fell).	
<a href="#">Border Security, Economic Opportunity, and Immigration Modernization Act</a> , S. 744, 113th Cong. (as passed by Senate, June 27, 2013).	159 CONG. REC. S5128 (daily ed. June 25, 2013) (statement of Sen. Vitter).	159 CONG. REC. S5128–34 (daily ed. June 25, 2013) (statement of Sens. Vitter, Sessions & Inhofe).	159 CONG. REC. S5128–29 (daily ed. June 25, 2013) (statement of Sen. Leahy).	159 CONG. REC. S5215 (daily ed. June 26, 2013) (vote no. 162) (68-30).	159 CONG. REC. S5215 (daily ed. June 26, 2013) (the motion was agreed to and the point of order fell).	
S. Amend. 2000, 112th Cong. 158 CONG. REC. S2333–41 (daily ed. Apr. 16, 2012) (Reid amendment “[i]n the nature of a substitute”).	158 CONG. REC. S2634 (daily ed. Apr. 24, 2012) (statement of Sen. Sessions).	158 CONG. REC. S2634–37 (daily ed. Apr. 24, 2012) (statements of Sens. Sessions, Lieberman, Collins, Carper, Corker, Landrieu, Brown, Coats, Coburn & Kyl).	158 CONG. REC. S2634 (daily ed. Apr. 24, 2012) (statement of Sen. Lieberman).	158 CONG. REC. S2637 (daily ed. Apr. 24, 2012) (vote no. 69) (62-37).	158 CONG. REC. S2637 (daily ed. Apr. 24, 2012) (the motion was agreed to).	158 CONG. REC. S2637 (daily ed. Apr. 24, 2012) (statement of Sen. Lieberman).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3356, 111th Cong., <a href="#">156 CONG. REC. S1240–41</a> (daily ed. Mar. 9, 2010) (Murray amendment “[t]o extend the TANF Emergency Fund through fiscal year 2011 and to provide funding for summer employment for youth”).	<a href="#">156 CONG. REC. S1286</a> (daily ed. Mar. 9, 2010) (statement of Sen. Gregg).	<a href="#">156 CONG. REC. S1286</a> (daily ed. Mar. 9, 2010) (statements of Sens. Gregg & Murray).	<a href="#">156 CONG. REC. S1286</a> (daily ed. Mar. 9, 2010) (statement of Sen. Murray).	<a href="#">156 CONG. REC. S1286</a> (daily ed. Mar. 9, 2010) (vote no. 45) (55-45).	<a href="#">156 CONG. REC. S1286</a> (daily ed. Mar. 9, 2010) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3389, 111th Cong., <a href="#">156 CONG. REC. S1005–06</a> (daily ed. Mar. 3, 2010) (Burr amendment “[t]o provide Federal reimbursement to State and local governments for a limited sales, use, and retailers’ occupation tax holiday, and to offset the cost of such reimbursements”).	<a href="#">156 CONG. REC. S1152</a> (daily ed. Mar. 4, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S1152</a> (daily ed. Mar. 4, 2010) (statements of Sens. Baucus & Burr).	<a href="#">156 CONG. REC. S1152</a> (daily ed. Mar. 4, 2010) (statement of Sen. Burr).	<a href="#">156 CONG. REC. S1152</a> (daily ed. Mar. 4, 2010) (vote no. 41) (22-78).	<a href="#">156 CONG. REC. S1152</a> (daily ed. Mar. 4, 2010) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 3390, 111th Cong., <a href="#">156 CONG. REC. S1105–06</a> (daily ed. Mar. 3, 2010) (Burr amendment “[t]o provide an emergency benefit of \$250 to seniors, veterans, and persons with disabilities in 2010 to compensate for the lack of cost-of-living adjustment for such year, to provide an offset using unobligated stimulus funds”).	<a href="#">156 CONG. REC. S1009</a> (daily ed. Mar. 3, 2010) (statement of Sen. Baucus).	<a href="#">156 CONG. REC. S1009</a> (daily ed. Mar. 3, 2010) (statement of Sen. Baucus).			<a href="#">156 CONG. REC. S1009</a> (daily ed. Mar. 3, 2010) (the point of order was sustained).	
S. Amend. No. 3310, 111th Cong., <a href="#">156 CONG. REC. S575–86</a> (daily ed. Feb. 11, 2010) (Reid amendment “[i]n the nature of a substitute”).	<a href="#">156 CONG. REC. S685</a> (daily ed. Feb. 23, 2010) (statement of Sen. Gregg).	<a href="#">156 CONG. REC. S685</a> (daily ed. Feb. 23, 2010) (statements of Sens. Gregg & Cardin).	<a href="#">156 CONG. REC. S685</a> (daily ed. Feb. 23, 2010) (statement of Sen. Cardin).	<a href="#">156 CONG. REC. S724–25</a> (daily ed. Feb. 24, 2010) (vote no. 24) (62-34).	<a href="#">156 CONG. REC. S725</a> (daily ed. Feb. 24, 2010) (the motion was agreed to and the point of order fell).	

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S. Amend. No. 2304, 111th Cong., <a href="#">155 CONG. REC. S8952</a> (daily ed. Aug. 6, 2009) (Coburn amendment “[t]o provide assistance to charities and families in need”).	<a href="#">155 CONG. REC. S8962</a> (daily ed. Aug. 6, 2009) (statement of Sen. Murray).	<a href="#">155 CONG. REC. S8962</a> (daily ed. Aug. 6, 2009) (statements of Sens. Murray & Coburn).	<a href="#">155 CONG. REC. S8962</a> (daily ed. Aug. 6, 2009) (statement of Sen. Coburn).	<a href="#">155 CONG. REC. S8962–63</a> (daily ed. Aug. 6, 2009) (vote no. 266) (41-56).	<a href="#">155 CONG. REC. S8963</a> (daily ed. Aug. 6, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">155 CONG. REC. S8963</a> (daily ed. Aug. 6, 2009) (statement of Sen. Murray).
S. Amend. No. 2306, 111th Cong., <a href="#">155 CONG. REC. S8956–57</a> (daily ed. Aug. 6, 2009) (Isakson amendment “[t]o amend the Internal Revenue Code of 1986 to provide an income tax credit for certain home purchases, and to transfer to the Treasury unobligated funds made available by the American Recovery and Reinvestment Act in the amount of the reduction in revenue resulting from such credit”).	<a href="#">155 CONG. REC. S8963</a> (daily ed. Aug. 6, 2009) (statement of Sen. Levin).	<a href="#">155 CONG. REC. S8963</a> (daily ed. Aug. 6, 2009) (statements of Sens. Levin & Isakson).	<a href="#">155 CONG. REC. S8963</a> (daily ed. Aug. 6, 2009) (statement of Sen. Isakson).	<a href="#">155 CONG. REC. S8964</a> (daily ed. Aug. 6, 2009) (vote no. 268) (47-50).	<a href="#">155 CONG. REC. S8964</a> (daily ed. Aug. 6, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">155 CONG. REC. S8964</a> (daily ed. Aug. 6, 2009) (statement of Sen. Murray).
S. Amend. No. 1042, 111th Cong., <a href="#">155 CONG. REC. S5164–66</a> (daily ed. May 5, 2009) (Coburn amendment “[t]o establish a pilot program for the expedited disposal of Federal real property”).	<a href="#">155 CONG. REC. S5179</a> (daily ed. May 6, 2009) (statement of Sen. Dodd on behalf of Sen. Reed).	<a href="#">155 CONG. REC. S5179</a> (daily ed. May 6, 2009) (statements of Sens. Dodd & Coburn).	<a href="#">155 CONG. REC. S5179</a> (daily ed. May 6, 2009) (statement of Sen. Coburn).	<a href="#">155 CONG. REC. S5179–80</a> (daily ed. May 6, 2009) (vote no. 183) (50-46).	<a href="#">155 CONG. REC. S5180</a> (daily ed. May 6, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	

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S. Amend. No. 570, 111th Cong., <a href="#">155 CONG. REC. S1907–89</a> (daily ed. Feb. 7, 2009) (Collins-Nelson amendment “[i]n the nature of a substitute”).	<a href="#">155 CONG. REC. S2069</a> (daily ed. Feb. 10, 2009) (statement of Sen. Sessions).	<a href="#">155 CONG. REC. S2069</a> (daily ed. Feb. 10, 2009) (statements of Sens. Sessions & Reid).	<a href="#">155 CONG. REC. S1859</a> (daily ed. Feb. 6, 2009) (statement of Sen. Reid) (motion provided for by unanimous consent).	<a href="#">155 CONG. REC. S2069</a> (daily ed. Feb. 10, 2009) (vote no. 60) (61-37).	<a href="#">155 CONG. REC. S2069</a> (daily ed. Feb. 10, 2009) (the motion was agreed to and the point of order fell).	<a href="#">155 CONG. REC. S2069</a> (daily ed. Feb. 10, 2009) (statement of Sen. Durbin).
S. Amend. No. 274, 111th Cong., <a href="#">155 CONG. REC. S1853</a> (daily ed. Feb. 6, 2009) (Cantwell amendment “[t]o improve provisions relating to energy tax incentives and provisions relating manufacturing tax incentives for energy property”).	<a href="#">155 CONG. REC. S1853</a> (daily ed. Feb. 6, 2009) (statement of Sen. Sessions).	<a href="#">155 CONG. REC. S1853</a> (daily ed. Feb. 6, 2009) (statements of Sens. Sessions & Cantwell).	<a href="#">155 CONG. REC. S1853</a> (daily ed. Feb. 6, 2009) (statement of Sen. Cantwell).	<a href="#">155 CONG. REC. S1853–54</a> (daily ed. Feb. 6, 2009) (vote no. 55) (80-16).	<a href="#">155 CONG. REC. S1854</a> (daily ed. Feb. 6, 2009) (the motion was agreed to and the point of order fell).	
S. Amend. No. 168, 111th Cong., <a href="#">155 CONG. REC. S1485–86</a> (daily ed. Feb. 4, 2009) (DeMint amendment “[i]n the nature of a substitute”).	<a href="#">155 CONG. REC. S1524</a> (daily ed. Feb. 4, 2009) (statement of Sen. Baucus).	<a href="#">155 CONG. REC. S1524</a> (daily ed. Feb. 4, 2009) (statements of Sens. Baucus & DeMint).	<a href="#">155 CONG. REC. S1524</a> (daily ed. Feb. 4, 2009) (statement of Sen. DeMint).	<a href="#">155 CONG. REC. S1524</a> (daily ed. Feb. 4, 2009) (vote no. 38) (36-61).	<a href="#">155 CONG. REC. S1524</a> (daily ed. Feb. 4, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 277, 111th Cong., <a href="#">155 CONG. REC. S1500</a> (daily ed. Feb. 4, 2009) (Cornyn amendment “[t]o reduce income taxes for all working taxpayers”).	<a href="#">155 CONG. REC. S1527</a> (daily ed. Feb. 4, 2009) (statement of Sen. Baucus).	<a href="#">155 CONG. REC. S1527</a> (daily ed. Feb. 4, 2009) (statements of Sens. Baucus & Cornyn).	<a href="#">155 CONG. REC. S1527</a> (daily ed. Feb. 4, 2009) (statement of Sen. Cornyn).	<a href="#">155 CONG. REC. S1527</a> (daily ed. Feb. 4, 2009) (vote no. 42) (37-60).	<a href="#">155 CONG. REC. S1527</a> (daily ed. Feb. 4, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 242, 111th Cong., <a href="#">155 CONG. REC. S1501</a> (daily ed. Feb. 4, 2009) (Bunning amendment “[t]o amend the Internal Revenue Code of 1986 to suspend for 2009 the 1993 income tax increase on Social Security benefits”).	<a href="#">155 CONG. REC. S1528</a> (daily ed. Feb. 4, 2009) (statement of Sen. Baucus).	<a href="#">155 CONG. REC. S1528</a> (daily ed. Feb. 4, 2009) (statements of Sens. Baucus & Bunning).	<a href="#">155 CONG. REC. S1528</a> (daily ed. Feb. 4, 2009) (statement of Sen. Bunning).	<a href="#">155 CONG. REC. S1528</a> (daily ed. Feb. 4, 2009) (vote no. 43) (39-57).	<a href="#">155 CONG. REC. S1528</a> (daily ed. Feb. 4, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 112, 111th Cong., <a href="#">155 CONG. REC. S1408</a> (daily ed. Feb. 3, 2009) (Boxer-Ensign amendment “[t]o amend the Internal Revenue Code of 1986 to allow the deduction for dividends received from controlled foreign corporations for an additional year”).	<a href="#">155 CONG. REC. S1420</a> (daily ed. Feb. 3, 2009) (statement of Sen. Baucus).	<a href="#">155 CONG. REC. S1420</a> (daily ed. Feb. 3, 2009) (statements of Sens. Baucus & Boxer).	<a href="#">155 CONG. REC. S1420</a> (daily ed. Feb. 3, 2009) (statement of Sen. Boxer).	<a href="#">155 CONG. REC. S1420</a> (daily ed. Feb. 3, 2009) (vote no. 36) (42-55).	<a href="#">155 CONG. REC. S1420</a> (daily ed. Feb. 3, 2009) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 104, 111th Cong., <a href="#">155 CONG. REC. S1278–79</a> (daily ed. Feb. 2, 2009) (Mikulski amendment “[t]o amend the Internal Revenue Code of 1986 to allow an above-the-line deduction against individual income tax for interest on indebtedness and for State sales and excise taxes with respect to the purchase of certain motor vehicles”).	<a href="#">155 CONG. REC. S1400</a> (daily ed. Feb. 3, 2009) (statement of Sen. Grassley).	<a href="#">155 CONG. REC. S1400</a> (daily ed. Feb. 3, 2009) (statements of Sens. Grassley & Mikulski).	<a href="#">155 CONG. REC. S1400</a> (daily ed. Feb. 3, 2009) (statement of Sen. Mikulski).	<a href="#">155 CONG. REC. S1401</a> (daily ed. Feb. 3, 2009) (vote no. 35) (71-26).	<a href="#">155 CONG. REC. S1401</a> (daily ed. Feb. 3, 2009) (the motion was agreed to and the point of order fell).	<a href="#">155 CONG. REC. S1401</a> (daily ed. Feb. 3, 2009) (statement of Sen. Durbin).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<a href="#">Making Supplemental Appropriations for Job Preservation and Creation, Infrastructure Investment, Energy Efficiency and Science, Assistance to the Unemployed, and State and Local Fiscal Stabilization, for the Fiscal Year Ending September 30, 2009, and for Other Purposes: Conference Report to Accompany H.R. 1, H.R. REP. 111-16 (2009) (Conf. Rep.).</a>	<a href="#">155 CONG. REC. S2312</a> (daily ed. Feb. 13, 2009) (statement of Sen. McCain).	<a href="#">155 CONG. REC. S2288–312</a> (daily ed. Feb. 13, 2009) (statements of Sens. Reid, McConnell, Graham, Ensign, Alexander, Shelby, Schumer, Coburn, Sanders, Hatch, Chambliss, Nelson, Durbin, Murkowski, Inouye, Specter, Murray, Warner, Boxer, Grassley, Bingaman, Cantwell, Leahy, Akaka, Feinstein, Carper, Baucus, Sessions & McCain).	<a href="#">155 CONG. REC. S2288</a> (daily ed. Feb. 13, 2009) (statement of Sen. Reid).	<a href="#">155 CONG. REC. S2312</a> (daily ed. Feb. 13, 2009) (vote no. 63) (58-39).	<a href="#">155 CONG. REC. S2312</a> (daily ed. Feb. 13, 2009) (the motion was agreed to and the point of order fell).	
S. Amend. No. 110, 111th Cong., <a href="#">155 CONG. REC. S1374</a> (daily ed. Feb. 3, 2009) (Murray amendment “[t]o strengthen the infrastructure investments made by the bill”).	<a href="#">155 CONG. REC. S1382</a> (daily ed. Feb. 3, 2009) (statement of Sen. Inhofe).	<a href="#">155 CONG. REC. S1382–87</a> (daily ed. Feb. 3, 2009) (statements of Sens. Inhofe, Inouye, Boxer, Baucus, Thune, Murray, Stabenow, Lautenberg, Cardin & Specter).	<a href="#">155 CONG. REC. S1382</a> (daily ed. Feb. 3, 2009) (statement of Sen. Inouye).	<a href="#">155 CONG. REC. S1387</a> (daily ed. Feb. 3, 2009) (vote no. 33) (58-39).	<a href="#">155 CONG. REC. S1387</a> (daily ed. Feb. 3, 2009) (the motion was rejected, the point of order was sustained, and the emergency designation was stricken).	<a href="#">155 CONG. REC. S1387</a> (daily ed. Feb. 3, 2009) (statement of Sen. Murray).

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 5635, 110th Cong., <a href="#">154 CONG. REC. S9304</a> (daily ed. Sept. 23, 2008) (Baucus amendment “to amend the Internal Revenue Code of 1986 to provide incentives for energy production and conservation, to extend certain expiring provisions, to provide individual income tax relief”).	<a href="#">154 CONG. REC. S9255</a> (daily ed. Sept. 23, 2008) (statement of Sen. Conrad).	<a href="#">154 CONG. REC. S9255</a> (daily ed. Sept. 23, 2008) (statements of Sens. Conrad, Baucus & Reid).	<a href="#">154 CONG. REC. S9255</a> (daily ed. Sept. 23, 2008) (statement of Sen. Baucus).	<a href="#">154 CONG. REC. S9255</a> (daily ed. Sept. 23, 2008) (vote no. 204) (84-11).	<a href="#">154 CONG. REC. S9255</a> (daily ed. Sept. 23, 2008) (the motion was agreed to and the point of order fell).	
S. Amend. No. 4985, 110th Cong., <a href="#">154 CONG. REC. S5781</a> (daily ed. June 19, 2008) (Bond amendment “[t]o strike provisions relating to the HOPE for Homeowners Program”).	<a href="#">154 CONG. REC. S5812</a> (daily ed. June 19, 2008) (statement of Sen. Dodd).	<a href="#">154 CONG. REC. S5812</a> (daily ed. June 19, 2008) (statements of Sens. Dodd & Bond).	<a href="#">154 CONG. REC. S5812</a> (daily ed. June 19, 2008) (statement of Sen. Bond).	<a href="#">154 CONG. REC. S5812</a> (daily ed. June 19, 2008) (vote no. 153) (21-69).	<a href="#">154 CONG. REC. S5812</a> (daily ed. June 19, 2008) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 4707, 110th Cong., <a href="#">154 CONG. REC. S3946</a> (daily ed. May 8, 2008) (Dodd-Shelby amendment “in the nature of a substitute”).	<a href="#">154 CONG. REC. S3950</a> (daily ed. May 8, 2008) (statement of Sen. Coburn).	<a href="#">154 CONG. REC. S3950</a> (daily ed. May 8, 2008) (statements of Sens. Dodd & Coburn).	<a href="#">154 CONG. REC. S3950</a> (daily ed. May 8, 2008) (statement of Sen. Dodd).	<a href="#">154 CONG. REC. S3950</a> (daily ed. May 8, 2008) (vote no. 121) (70-26).	<a href="#">154 CONG. REC. S3950</a> (daily ed. May 8, 2008) (the motion was agreed to and the point of order fell).	
S. Amend. No. 4397, 110th Cong., <a href="#">154 CONG. REC. S2407</a> (daily ed. Apr. 3, 2008) (Murray-Schumer amendment “[t]o increase funding for housing counseling resources”).	<a href="#">154 CONG. REC. S2422</a> (daily ed. Apr. 3, 2008) (statement of Sen. Kyl).	<a href="#">154 CONG. REC. S2422</a> (daily ed. Apr. 3, 2008) (statement of Sens. Kyl, Murray & Shelby).	<a href="#">154 CONG. REC. S2422</a> (daily ed. Apr. 3, 2008) (statement of Sen. Murray).	<a href="#">154 CONG. REC. S2422</a> (daily ed. Apr. 3, 2008) (vote no. 89) (44-40).	<a href="#">154 CONG. REC. S2422</a> (daily ed. Apr. 3, 2008) (the motion was rejected, the point of order was sustained, and the amendment fell).	



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 4407, 110th Cong., <a href="#">154 CONG. REC. S2412</a> (daily ed. Apr. 3, 2008) (Kyl amendment “[t]o amend the Internal Revenue Code of 1986 to adjust for inflation the dollar limitation for the principal residence gain exclusion”).	<a href="#">154 CONG. REC. S2422</a> (daily ed. Apr. 3, 2008) (statement of Sen. Baucus). Sen. Baucus raised this point of order under “section 401 of the Senate Concurrent Resolution 21,” but meant “section 201.”	<a href="#">154 CONG. REC. S2422–23</a> (daily ed. Apr. 3, 2008) (statements of Sens. Baucus, Dodd & Kyl).	<a href="#">154 CONG. REC. S2422</a> (daily ed. Apr. 3, 2008) (statement of Sen. Kyl).	<a href="#">154 CONG. REC. S2423</a> (daily ed. Apr. 3, 2008) (vote no. 90) (41-44).	<a href="#">154 CONG. REC. S2423</a> (daily ed. Apr. 3, 2008) (the motion was rejected, the point of order was sustained, and the amendment fell).	<a href="#">154 CONG. REC. S2423</a> (daily ed. Apr. 3, 2008) (statement of Sen. Dodd).
S. Amend. No. 2558, 110th Cong., <a href="#">153 CONG. REC. S10731</a> (daily ed. Aug. 2, 2007) (Graham amendment “[t]o sunset the increase in the tax on tobacco products on September 30, 2012”).	<a href="#">153 CONG. REC. S10736</a> (daily ed. Aug. 2, 2007) (statement of Sen. Baucus).	<a href="#">153 CONG. REC. S10736</a> (daily ed. Aug. 2, 2007) (statements of Sens. Baucus & Graham).	<a href="#">153 CONG. REC. S10736</a> (daily ed. Aug. 2, 2007) (statement of Sen. Graham).	<a href="#">153 CONG. REC. S10737</a> (daily ed. Aug. 2, 2007) (vote no. 296) (39-60).	<a href="#">153 CONG. REC. S10737</a> (daily ed. Aug. 2, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 2557, 110th Cong., <a href="#">153 CONG. REC. S10586–97</a> (daily ed. Aug. 1, 2007) (Specter amendment “[t]o amend the Internal Revenue Code of 1986 to reset the rate of tax under the alternative minimum tax at 24 percent”).	<a href="#">153 CONG. REC. S10736</a> (daily ed. Aug. 2, 2007) (statement of Sen. Baucus).	<a href="#">153 CONG. REC. S10736</a> (daily ed. Aug. 2, 2007) (statements of Sens. Baucus & Specter).	<a href="#">153 CONG. REC. S10736</a> (daily ed. Aug. 2, 2007) (statement of Sen. Specter).	<a href="#">153 CONG. REC. S10736</a> (daily ed. Aug. 2, 2007) (vote no. 295) (47-52).	<a href="#">153 CONG. REC. S10736</a> (daily ed. Aug. 2, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2562, 110th Cong., <a href="#">153 CONG. REC. S10584</a> (daily ed. Aug. 1, 2007) (Kyl amendment “[t]o amend the Internal Revenue Code of 1986 to extend and modify the 15-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant improvements and to provide a 15-year straight-line cost recovery for certain improvements to retail space”).	<a href="#">153 CONG. REC. S10749</a> (daily ed. Aug. 2, 2007) (statement of Sen. Baucus).	<a href="#">153 CONG. REC. S10749</a> (daily ed. Aug. 2, 2007) (statements of Sens. Baucus & Kyl).	<a href="#">153 CONG. REC. S10749</a> (daily ed. Aug. 2, 2007) (statement of Sen. Kyl).	<a href="#">153 CONG. REC. S10749</a> (daily ed. Aug. 2, 2007) (vote no. 304) (49-50).	<a href="#">153 CONG. REC. S10749</a> (daily ed. Aug. 2, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1733, 110th Cong., <a href="#">153 CONG. REC. S8042</a> (daily ed. June 20, 2007) (Kyl amendment “[t]o provide a condition precedent for the effective date of the revenue raisers”).	<a href="#">153 CONG. REC. S8175</a> (daily ed. June 21, 2007) (statement of Sen. Baucus).	<a href="#">153 CONG. REC. S8175</a> (daily ed. June 21, 2007) (statements of Sens. Baucus & Kyl).	<a href="#">153 CONG. REC. S8175</a> (daily ed. June 21, 2007) (statement of Sen. Kyl).	<a href="#">153 CONG. REC. S8175</a> (daily ed. June 21, 2007) (vote no. 222) (38-55).	<a href="#">153 CONG. REC. S8175</a> (daily ed. June 21, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1718, 110th Cong., <a href="#">153 CONG. REC. S8005</a> (daily ed. June 20, 2007) (Gregg amendment “[t]o strike the provision extending the additional duty on ethanol and for other purposes”).	<a href="#">153 CONG. REC. S8009</a> (daily ed. June 20, 2007) (statement of Sen. Grassley).	<a href="#">153 CONG. REC. S8009</a> (daily ed. June 20, 2007) (statements of Sens. Grassley & Gregg).	<a href="#">153 CONG. REC. S8009</a> (daily ed. June 20, 2007) (statement of Sen. Gregg).	<a href="#">153 CONG. REC. S8009–10</a> (daily ed. June 20, 2007) (vote no. 218) (36-56).	<a href="#">153 CONG. REC. S8010</a> (daily ed. June 20, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1666, 110th Cong., <a href="#">153 CONG. REC. S8034</a> (daily ed. June 20, 2007) (Inhofe amendment “[t]o ensure agricultural equity with respect to the renewable fuels standard”).	<a href="#">153 CONG. REC. S8041</a> (daily ed. June 20, 2007) (statement of Sen. Durbin).	<a href="#">153 CONG. REC. S8041</a> (daily ed. June 20, 2007) (statements of Sens. Durbin & Inhofe).	<a href="#">153 CONG. REC. S8041</a> (daily ed. June 20, 2007) (statement of Sen. Inhofe).	<a href="#">153 CONG. REC. S8041</a> (daily ed. June 20, 2007) (vote no. 220) (31-63).	<a href="#">153 CONG. REC. S8041</a> (daily ed. June 20, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 1183, 110th Cong., <a href="#">153 CONG. REC. S7117</a> (daily ed. June 6, 2007) (Clinton amendment “[t]o reclassify the spouses and minor children of lawful permanent residents as immediate relatives”).	<a href="#">153 CONG. REC. S7159</a> (daily ed. June 6, 2007) (statement of Sen. Kyl).	<a href="#">153 CONG. REC. S7159</a> (daily ed. June 6, 2007) (statements of Sens. Kyl & Kennedy).	<a href="#">153 CONG. REC. S7159</a> (daily ed. June 6, 2007) (statement of Sen. Kennedy).	<a href="#">153 CONG. REC. S7159</a> (daily ed. June 6, 2007) (vote no. 195) (44-53).	<a href="#">153 CONG. REC. S7159</a> (daily ed. June 6, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
S. Amend. No. 1194, 110th Cong., <a href="#">153 CONG. REC. S6598</a> (daily ed. May 24, 2007) (Menendez amendment “[t]o modify the deadline for the family backlog reduction”).	<a href="#">153 CONG. REC. S7147</a> (daily ed. June 6, 2007) (statement of Sen. Kyl).	<a href="#">153 CONG. REC. S7147</a> (daily ed. June 6, 2007) (statements of Sens. Kyl & Menendez).	<a href="#">153 CONG. REC. S7147</a> (daily ed. June 6, 2007) (statement of Sen. Menendez).	<a href="#">153 CONG. REC. S7147</a> (daily ed. June 6, 2007) (vote no. 193) (53-44).	<a href="#">153 CONG. REC. S7147</a> (daily ed. June 6, 2007) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<b>Sec. 202(a)—Limit on Reconciliation.</b> Prohibits consideration of reconciliation legislation that would increase the deficit or reduce a surplus over 1, 5, and 10 years. (This is colloquially referred to as “the Conrad rule.”)						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 203(b)—Long-Term Deficits.</b> Prohibits consideration of legislation that would cause a net increase in the on-budget deficit in excess of \$5 billion in any of the four 10-year periods between fiscal years 2018 and 2057.						
S. Amend. No. 2645, 110th Cong., <a href="#">153 CONG. REC. S10836</a> (daily ed. Aug. 2, 2007) (Baucus amendment “to amend title XXI of the Social Security Act to reauthorize the State Children’s Health Insurance Program”).	<a href="#">153 CONG. REC. S10753</a> (daily ed. Aug. 2, 2007) (statement of Sen. Dole).	<a href="#">153 CONG. REC. S10752–53</a> (daily ed. Aug. 2, 2007) (statements of Sens. Baucus & Dole).	<a href="#">153 CONG. REC. S10753</a> (daily ed. Aug. 2, 2007) (statement of Sen. Baucus).	<a href="#">153 CONG. REC. S10753</a> (daily ed. Aug. 2, 2007) (vote no. 306) (67-32).	<a href="#">153 CONG. REC. S10753</a> (daily ed. Aug. 2, 2007) (the motion was agreed to and the point of order fell).	
<a href="#">Food, Conservation, and Energy Act of 2008</a> , H.R. 2419, 110th Cong. (as passed by Senate, May 22, 2008).	<a href="#">154 CONG. REC. S4160</a> (daily ed. May 14, 2008) (statement of Sen. Gregg).	<a href="#">154 CONG. REC. S4160</a> (daily ed. May 14, 2008) (statements of Sens. Gregg & Conrad).	<a href="#">154 CONG. REC. S4160</a> (daily ed. May 14, 2008) (statement of Sen. Conrad).	<a href="#">154 CONG. REC. S4227</a> (daily ed. May 15, 2008) (vote no. 128) (74-21).	<a href="#">154 CONG. REC. S4227</a> (daily ed. May 15, 2008) (the motion was agreed to and the point of order fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 204(a)(5)—Emergency Designation.</b> Permits any Senator to strike an emergency designation of direct spending, revenues, or discretionary spending.						
H. message to H. amend. to S. amend. to H. amend. to S. amend. to Supplemental Appropriations Act, 2008, H.R. 2642, 110th Cong., <a href="#">154 CONG. REC. S5940</a> (daily ed. June 20, 2008) (as agreed to by Senate, June 26, 2008).	<a href="#">154 CONG. REC. S6238</a> (daily ed. June 26, 2008) (statement of Sen. Coburn).	<a href="#">154 CONG. REC. S6238</a> (daily ed. June 26, 2008) (statements of Sens. Coburn & Murray).	<a href="#">154 CONG. REC. S6238</a> (daily ed. June 26, 2008) (statement of Sen. Murray).	<a href="#">154 CONG. REC. S6238–39</a> (daily ed. June 26, 2008) (vote no. 161) (77–21).	<a href="#">154 CONG. REC. S6239</a> (daily ed. June 26, 2008) (the motion was agreed to).	<a href="#">154 CONG. REC. S6238</a> (daily ed. June 26, 2008) (statement of Sen. Murray).
S. Amend. No. 4389, 110th Cong., <a href="#">154 CONG. REC. S2810–11</a> (daily ed. Apr. 9, 2008) (Landrieu amendment “[t]o amend the Internal Revenue Code of 1986 to allow use of amended income tax returns to take into account receipt of certain hurricane-related casualty loss grants by disallowing previously taken casualty loss deductions and to waive the deadline on the construction of GO Zone property which is eligible for bonus depreciation”).	<a href="#">154 CONG. REC. S2594</a> (daily ed. Apr. 4, 2008) (statement of Sen. Corker).	<a href="#">154 CONG. REC. S2594</a> (daily ed. Apr. 4, 2008) (statements of Sens. Corker & Landrieu).	<a href="#">154 CONG. REC. S2594</a> (daily ed. Apr. 4, 2008) (statement of Sen. Landrieu).	<a href="#">154 CONG. REC. S2594</a> (daily ed. Apr. 4, 2008) (vote no. 92) (74–5).	<a href="#">154 CONG. REC. S2594</a> (daily ed. Apr. 4, 2008) (the motion was agreed to and the point of order was moot).	<a href="#">154 CONG. REC. S2594</a> (daily ed. Apr. 4, 2008) (statements of Sens. Reid & Landrieu).
<b>Sec. 206(a)—Advance Appropriations.</b> Prohibits advance appropriations for fiscal years beyond 2008 and 2009, except for specified advance appropriations up to \$25.158 billion or for the Corporation for Public Broadcasting.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 207(a)—Exceeding Discretionary Spending Limits.</b> Prohibits consideration of legislation that would exceed the established specified discretionary spending limits in the budget resolution for fiscal years 2007 and 2008.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 209(a)—CHIMPs.</b> Prohibits appropriations legislation provisions that constitute changes in mandatory programs with net costs.						
None located in the Congressional Record from 1997 through 2022.						

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Fiscal Year 2009 Budget Resolution (S. Con. Res. 70, 110th Congress)</b>						
<b>Sec. 311(b)—Long-Term Deficits.</b> Prohibits consideration of legislation that would cause a net increase in the on-budget deficit in excess of \$5 billion in any of the four 10-year periods beginning with the first fiscal year that is 10 years after the budget year.						
Medicare Access and CHIP Reauthorization Act of 2015, H.R. 2, 114th Cong. (Apr. 16, 2015).	161 CONG. REC. S2161 (daily ed. Apr. 14, 2015) (statement of Sen. Sessions).	161 CONG. REC. S2160–61 (daily ed. Apr. 14, 2015) (statements of Sens. Reed, Sessions & Hatch).	161 CONG. REC. S2161 (daily ed. Apr. 14, 2015) (statement of Sen. Hatch).	161 CONG. REC. S2161 (daily ed. Apr. 14, 2015) (vote no. 143) (71-29).	161 CONG. REC. S2161 (daily ed. Apr. 14, 2015) (the motion was agreed to and the point of order fell).	
S. Amend. No. 2874, 113th Cong., 160 CONG. REC. S1874–77 (daily ed. Mar. 31, 2014) (Reed amendment “[o]f a perfecting nature”).	160 CONG. REC. S2148 (daily ed. Apr. 3, 2014) (statement of Sen. Sessions).	160 CONG. REC. S2148 (daily ed. Apr. 3, 2014) (statements of Sen. Sessions & Murray).	160 CONG. REC. S2148 (daily ed. Apr. 3, 2014) (statement of Sen. Murray).	160 CONG. REC. S2149–50 (daily ed. Apr. 3, 2014) (vote no. 99) (60-36).	160 CONG. REC. S2150 (daily ed. Apr. 3, 2014) (the motion was agreed to and the point of order fell).	
Dodd-Frank Wall Street Reform and Consumer Protection Act: Conference Report to Accompany H.R. 4173, H.R. REP. 111-517 (2010) (Conf. Rep.).	156 CONG. REC. S5880 (daily ed. July 15, 2010) (statement of Sen. Gregg).	156 CONG. REC. S5880 (daily ed. July 15, 2010) (statements of Sens. Gregg & Dodd).	156 CONG. REC. S5880 (daily ed. July 15, 2010) (statement of Sen. Dodd).	156 CONG. REC. S5932–33 (daily ed. July 15, 2010) (vote no. 207) (60-39).	156 CONG. REC. S5933 (daily ed. July 15, 2010) (the motion was agreed to and the point of order fell).	
S. Amend. No. 9, 112th Cong., 157 CONG. REC. S382 (daily ed. Feb. 1, 2011) (Stabenow amendment “[t]o repeal the expansion of information reporting requirements for payments of \$600 or more to corporations, and other purposes”).	157 CONG. REC. S474 (daily ed. Feb. 2, 2011) (statement of Sen. Inouye).	157 CONG. REC. S474 (daily ed. Feb. 2, 2011) (statements of Sens. Inouye & Stabenow).	157 CONG. REC. S474 (daily ed. Feb. 2, 2011) (statement of Sen. Stabenow).	157 CONG. REC. S474 (daily ed. Feb. 2, 2011) (vote no. 8) (81-17).	157 CONG. REC. S474 (daily ed. Feb. 2, 2011) (the motion was agreed to and the amendment was agreed to under the previous order).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 13, 112th Cong., <a href="#">157 CONG. REC. S382</a> (daily ed. Feb. 1, 2011) (McConnell amendment to repeal Obamacare and health care-related provisions in the Health Care and Education Reconciliation Act of 2010).	<a href="#">157 CONG. REC. S474</a> (daily ed. Feb. 2, 2011) (statement of Sen. Conrad).	<a href="#">157 CONG. REC. S474</a> (daily ed. Feb. 2, 2011) (statements of Sens. Conrad, McConnell & Reid).	<a href="#">157 CONG. REC. S474</a> (daily ed. Feb. 2, 2011) (statement of Sen. McConnell).	<a href="#">157 CONG. REC. S475</a> (daily ed. Feb. 2, 2011) (vote no. 9) (47-51).	<a href="#">157 CONG. REC. S475</a> (daily ed. Feb. 2, 2011) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<b>Sec. 312(a)—Exceeding Discretionary Spending Limits.</b> Prohibits consideration of legislation that would exceed the established specified discretionary spending limits if the budget resolution for fiscal years 2008 and 2009.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 313(a)—Advance Appropriations.</b> Prohibits advance appropriations for fiscal years beyond 2009 and 2010, except for specified advance appropriations up to \$28.852 billion or for the Corporation on Public Broadcasting.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 314(a)—CHIMPs.</b> Prohibits appropriations legislation provisions that constitute changes in mandatory programs with net costs.						
S. Amend. No. 3694, 115th Cong., <a href="#">164 CONG. REC. S5904</a> (daily ed. Aug. 23, 2018) (Leahy amendment “[t]o provide for the use of funds by the Secretary of Health and Human Services to issue regulations on direct-to-consumer advertising of prescription drugs and biological products.”)	<a href="#">164 CONG. REC. S5905</a> (daily ed. Aug. 23, 2018) (statement of Sen. Enzi).	<a href="#">164 CONG. REC. S5905</a> (daily ed. Aug. 23, 2018) (statement of Sens. Enzi & Leahy).	<a href="#">164 CONG. REC. S5905</a> (daily ed. Aug. 23, 2018) (statement of Sen. Leahy).	<a href="#">164 CONG. REC. S5905</a> (daily ed. Aug. 23, 2018) (vote no. 192) (68-24).	<a href="#">164 CONG. REC. S5905</a> (daily ed. Aug. 23, 2018) (the motion was agreed to and the point of order fell).	
<b>Sec. 315(a)—Legislation Increasing Short-Term Deficits.</b> Prohibits consideration of legislation (except appropriations bills) that would cause a net increase in the deficit in excess of \$10 billion in any year in the budget window, unless the legislation is fully offset over the period of the budget resolution.						
None located in the Congressional Record from 1997 through 2022.						
<b>Fiscal Year 2010 Budget Resolution (S. Con. Res. 13, 111th Congress)</b>						
<b>Sec. 401(a)—Exceeding Discretionary Spending Limits.</b> Prohibits consideration of legislation that would exceed the established specified discretionary spending limits in the budget resolution for fiscal years 2009 and 2010.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 402(a)—Advance Appropriations.</b> Prohibits advance appropriations for fiscal years beyond 2010 and 2011, except for specified advance appropriations up to \$28.852 billion or for the Corporation on Public Broadcasting or the Department of Veterans Affairs.						
None located in the Congressional Record from 1997 through 2022.						

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 403(e)—Emergency Legislation.</b> Provides for a point of order against the use of an emergency designation as allowed under § 403(a) of this budget resolution to provide for exemption in the Senate from budget enforcement mechanisms specified in § 403(b).						
Veterans Access, Choice, and Accountability Act of 2014: Conference Report To Accompany H.R. 3230, H.R. REP. NO. 113-564 (2014) (Conf. Rep.).	160 CONG. REC. S5206 (daily ed. July 31, 2014) (statement of Sen. Coburn).	160 CONG. REC. S5206–07 (daily ed. July 31, 2014) (statements of Sens. McCain, Coburn, Corker & Sanders).	160 CONG. REC. S5206 (daily ed. July 31, 2014) (statement of Sen. Sanders).	160 CONG. REC. S5207–08 (daily ed. July 31, 2014) (vote no. 253) (86-8).	160 CONG. REC. S5208 (daily ed. July 31, 2014) (the motion was agreed to and the point of order fell).	
S. Amend. No. 4376, 111th Cong., 156 CONG. REC. S5063 (daily ed. June 17, 2010) (Thune amendment “[o]f a perfecting nature”).	156 CONG. REC. S5064 (daily ed. June 17, 2010) (statement of Sen. Baucus).	156 CONG. REC. S5064 (daily ed. June 17, 2010) (statements of Sens. Baucus & Thune).	156 CONG. REC. S5064 (daily ed. June 17, 2010) (statement of Sen. Thune).	156 CONG. REC. S5064–65 (daily ed. June 17, 2010) (vote no. 193) (41-57).	156 CONG. REC. S5065 (daily ed. June 17, 2010) (the motion was not agreed to, the point of order was sustained, and the amendment was withdrawn).	
S. Amend. No. 3391, 111th Cong., 156 CONG. REC. S1005 (daily ed. Mar. 3, 2010) (Brown amendment “[t]o provide for a 6-month employee payroll tax rate cut”).	156 CONG. REC. S1151 (daily ed. Mar. 4, 2010) (statement of Sen. Baucus).	156 CONG. REC. S1151 (daily ed. Mar. 4, 2010) (statements of Sens. Baucus & Brown).	156 CONG. REC. S1151 (daily ed. Mar. 4, 2010) (statement of Sen. Brown).	156 CONG. REC. S1151–52 (daily ed. Mar. 4, 2010) (vote no. 40) (44-56).	156 CONG. REC. S1152 (daily ed. Mar. 4, 2010) (the motion was rejected, the point of order was sustained, and the emergency designation was removed).	
S. Amend. No. 3390, 111th Cong., 156 CONG. REC. S1105–06 (daily ed. Mar. 3, 2010) (Burr amendment “[t]o provide an emergency benefit of \$250 to seniors, veterans, and persons with disabilities in 2010 to compensate for the lack of cost-of-living adjustment for such year, to provide an offset using unobligated stimulus funds”).	156 CONG. REC. S1009 (daily ed. Mar. 3, 2010) (statement of Sen. Baucus).	156 CONG. REC. S1009 (daily ed. Mar. 3, 2010) (statements of Sens. Baucus & Burr).	156 CONG. REC. S1009 (daily ed. Mar. 3, 2010) (statement of Sen. Burr).	156 CONG. REC. S1009 (daily ed. Mar. 3, 2010) (vote no. 35) (38-59).	156 CONG. REC. S1009 (daily ed. Mar. 3, 2010) (the motion was rejected and the point of order was sustained).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 3353, 111th Cong., <a href="#">156 CONG. REC. S992–93</a> (daily ed. Mar. 3, 2010) (Sanders amendment “[t]o provide an emergency benefit of \$250 to seniors, veterans, and persons with disabilities in 2010 to compensate for the lack of cost-of-living adjustment for such year”).	<a href="#">156 CONG. REC. S1010</a> (daily ed. Mar. 3, 2010) (statement of Sen. Gregg). Sen. Gregg raised this point of order under “section 403(a),” but meant “section 403(e).”	<a href="#">156 CONG. REC. S1010</a> (daily ed. Mar. 3, 2010) (statements of Sens. Gregg & Sanders).	<a href="#">156 CONG. REC. S1010</a> (daily ed. Mar. 3, 2010) (statement of Sen. Sanders).	<a href="#">156 CONG. REC. S1010</a> (daily ed. Mar. 3, 2010) (vote no. 36) (47-50).	<a href="#">156 CONG. REC. S1010</a> (daily ed. Mar. 3, 2010) (the motion was rejected, the point of order was sustained, and the emergency designation was stricken).	
<a href="#">Making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program</a> , H.R. 3435, 111th Cong. (2009) (enacted).	<a href="#">155 CONG. REC. S8964</a> (daily ed. Aug. 6, 2009) (statement of Sen. Kyl).	<a href="#">155 CONG. REC. S8964</a> (daily ed. Aug. 6, 2009) (statements of Sens. Kyl, Stabenow & Murray).	<a href="#">155 CONG. REC. S8964</a> (Aug. 6, 2009) (statement of Sen. Murray).	<a href="#">155 CONG. REC. S8964</a> (daily ed. Aug. 6, 2009) (vote no. 269) (60-37).	<a href="#">155 CONG. REC. S8964</a> (daily ed. Aug. 6, 2009) (the motion was agreed to and the point of order fell).	<a href="#">155 CONG. REC. S8964</a> (daily ed. Aug. 6, 2009) (statement of Sen. Murray).
<b>Sec. 404(a)—Short-Term Deficits.</b> Prohibits consideration of legislation (except appropriations bills) that would cause a net increase in the deficit in excess of \$10 billion in any year in the 10-year budget window unless the legislation is fully offset over the period of the budget resolution.						
<a href="#">PPP Extension Act of 2021</a> , H.R. 1799, 117th Cong. (as placed on S. Calendar, Mar. 18, 2021).	<a href="#">167 CONG. REC. S1797</a> (daily ed. Mar. 25, 2021) (statement of Sen. Paul).	<a href="#">167 CONG. REC. S1797</a> (daily ed. Mar. 25, 2021) (statements of Sens. Paul & Cardin).	<a href="#">167 CONG. REC. S1797</a> (daily ed. Mar. 25, 2021) (statement of Sen. Cardin).	<a href="#">167 CONG. REC. S1797</a> (daily ed. Mar. 25, 2021) (vote no. 139) (64-36).	<a href="#">167 CONG. REC. S1797</a> (daily ed. Mar. 25, 2021) (the motion was agreed to and the point of order fell).	
S. Amend. No. 4575, 111th Cong., <a href="#">156 CONG. REC. S6587–92</a> (daily ed. Aug. 2, 2010) (Murray amendment “[i]n the nature of a substitute.”).	<a href="#">156 CONG. REC. S6682</a> (daily ed. Aug. 4, 2010) (statement of Sen. Gregg).	<a href="#">156 CONG. REC. S6682–85</a> (daily ed. Aug. 4, 2010) (statements of Sens. Gregg, Reid & Murray).	<a href="#">156 CONG. REC. S6682</a> (daily ed. Aug. 4, 2010) (statement of Sen. Murray).	<a href="#">156 CONG. REC. S6685</a> (daily ed. Aug. 4, 2010) (vote no. 225) (61-38).	<a href="#">156 CONG. REC. S6685</a> (daily ed. Aug. 4, 2010) (the motion was agreed to and the point of order fell).	<a href="#">156 CONG. REC. S6685</a> (daily ed. Aug. 4, 2010) (statement of Sen. Murray).



Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 405(a) Legislation Related to Surface Transportation Funding.</b> Prohibits legislation that extends the authority or reauthorizes surface transportation programs that appropriates budget authority from sources other than the Highway Trust Fund.						
None located in the Congressional Record from 1997 through 2022.						
<b>Fiscal Year 2016 Budget Resolution (S. Con. Res. 11, 114th Congress)</b>						
<b>Sec. 2001(b)– Limit on Senate Consideration of Reconciliation.</b> Prohibits consideration of a reconciliation bill under this resolution’s instructions that would increase the debt limit during fiscal years 2016 through 2025.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 3101(b)—Long-Term Deficits.</b> Adds direct spending to the previous point of order on long-term deficits. Prohibits consideration of legislation that would cause a net increase in direct spending or the on-budget deficit in excess of \$5 billion in any of the four 10-year periods beyond the current budget window.						
<a href="#">Postal Service Reform Act of 2022</a> , H.R. 3076, 117th Cong. (as placed on S. Calendar, Feb. 15, 2022).	<a href="#">168 CONG. REC. S1046</a> (daily ed. Mar. 8, 2022) (statement of Sen. Scott).	<a href="#">168 CONG. REC. S1046–47</a> (daily ed. Mar. 8, 2022) (statements of Sens. Scott & Sanders).	<a href="#">168 CONG. REC. S1046</a> (daily ed. Mar. 8, 2022) (statement of Sen. Sanders).	<a href="#">168 CONG. REC. S1047</a> (daily ed. Mar. 8, 2022) (vote no. 70) (68-30).	<a href="#">168 CONG. REC. S1047</a> (daily ed. Mar. 8, 2022) (the motion was agreed to and the point of order fell).	
<a href="#">National Defense Authorization Act for Fiscal Year 2020: Conference Report To Accompany S. 1790</a> , H.R. REP. NO. 116-333 (2019) (Conf. Rep.).	<a href="#">165 CONG. REC. S7065</a> (daily ed. Dec. 17, 2019) (statement of Sen. Enzi).	<a href="#">165 CONG. REC. S7065–69</a> (daily ed. Dec. 17, 2019) (statements of Sens. Enzi, Reed, Collins, Jones, Thune, Inhofe).	<a href="#">165 CONG. REC. S7069</a> (daily ed. Dec. 17, 2019) (statement of Sen. Inhofe).	<a href="#">165 CONG. REC. S7069</a> (daily ed. Dec. 17, 2019) (vote no. 399) (82-12).	<a href="#">165 CONG. REC. S7069</a> (daily ed. Dec. 17, 2019) (the motion was agreed to, and the point of order fell).	
<a href="#">H. amend. to S. amend. to Further Consolidated Appropriations Act of 2020</a> , H.R. 1865, 116th Cong. (as passed by House, Dec. 17, 2019).	<a href="#">165 CONG. REC. S7185</a> (daily ed. Dec. 19, 2019) (statement of Sen. Enzi).	<a href="#">165 CONG. REC. S7185–86</a> (daily ed. Dec. 19, 2019) (statement of Sen. Enzi).	<a href="#">165 CONG. REC. S7186</a> (daily ed. Dec. 19, 2019) (statement of Sen. Shelby).	<a href="#">165 CONG. REC. S7186</a> (daily ed. Dec. 19, 2019) (vote no. 414) (64-30).	<a href="#">165 CONG. REC. S7186</a> (daily ed. Dec. 19, 2019) (the motion was agreed to, and the point of order fell).	
<a href="#">H.R. amend. to the Bipartisan Budget Act of 2015</a> , H.R. 1314, 114th Cong., <a href="#">161 CONG. REC. S7585</a> (daily ed. Oct. 28, 2015).	<a href="#">161 CONG. REC. S7674</a> (daily ed. Oct. 30, 2015) (statement of Sen. Paul).	<a href="#">161 CONG. REC. S7674</a> (daily ed. Oct. 30, 2015) (statement of Sens. Paul & Cornyn).	<a href="#">161 CONG. REC. S7674</a> (daily ed. Oct. 30, 2015) (statement of Sen. Cornyn).	<a href="#">161 CONG. REC. S7674</a> (daily ed. Oct. 30, 2015) (vote no. 293) (64-35).	<a href="#">161 CONG. REC. S7674</a> (daily ed. Oct. 30, 2015) (the motion was agreed to and the point of order fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
National Defense Authorization Act for Fiscal Year 2016, H.R. 1735, 114th. Cong. (as passed by Senate, Oct. 7, 2015).	161 CONG. REC. S7195 (daily ed. Oct. 7, 2015) (statement of Sen. Reid).	161 CONG. REC. S7192-95 (daily ed. Oct. 7, 2015) (statement of Sens. McCain & Reid).	161 CONG. REC. S7195 (daily ed. Oct. 7, 2015) (statement of Sen. McCain).	161 CONG. REC. S7195 (daily ed. Oct. 7, 2015) (vote no. 276) (71-26).	161 CONG. REC. S7195 (daily ed. Oct. 7, 2015) (the motion was agreed to and the point of order fell).	
<b>Sec. 3103(b)—CHIMPs.</b> Prohibits appropriations legislation provisions that constitute changes in mandatory programs with net costs that, if enacted, would cause the absolute value of the total budget authority of all such CHIMPs enacted in relation to a full fiscal year to be more than the amounts specified in the budget resolution for fiscal years 2016, 2017, 2018, or 2019.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 3104(b)—CHIMPs affecting the Crimes Victims Fund (CVF).</b> Prohibits appropriations legislation provisions that constitute changes in mandatory programs with net costs affecting the CVF that, if enacted, would cause the absolute value of the total budget authority of all CHIMPs affecting the CVF in relation to fiscal year 2016 to be more than \$10.8 billion.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 3202(a)—Advance Appropriations.</b> Prohibits advance appropriations for fiscal years beyond 2016 and 2017, except for specified advance appropriations up to \$28.852 billion or for the Corporation on Public Broadcasting or the Department of Veterans Affairs.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 3202(a)—Cost Estimates.</b> Prohibits consideration of legislation (reported by committee) unless CBO cost estimate has been available 28 hours before vote commences.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 3206—Reconciliation Amendments.</b> Applied to the Senate the point of order against amendments to reconciliation legislation that would increase the deficit in relation to the estimated deficit of the bill, as provided in sec. 310(d)(1) of Budget Act.						
None located in the Congressional Record from 1997 through 2022.						
<b>Fiscal 2018 Budget Resolution (H. Con. Res. 71, 115th Congress)</b>						
<b>Sec. 4101—Advance Appropriations.</b> Prohibits advance appropriations for fiscal years beyond 2018 and 2019, except for specified advance appropriations up to \$28.852 billion or for the Corporation on Public Broadcasting or the Department of Veterans Affairs.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 4102—CHIMPs.</b> Prohibits appropriations legislation provisions that constitute changes in mandatory programs with net costs that, if enacted, would cause the absolute value of the total budget authority of all such CHIMPs enacted in relation to a full fiscal year to be more than the amounts specified in the budget resolution for fiscal years 2018, 2019, or 2020.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 4103—CHIMPs affecting the Crime Victims Fund (CVF).</b> Prohibits appropriations legislation provisions that constitute changes in mandatory programs with net costs affecting the CVF that, if enacted, would cause the absolute value of the total budget authority of all CHIMPs affecting the CVF in relation to fiscal year 2018 to be more than \$11.224 billion.						
None located in the Congressional Record from 1997 through 2022.						
<b>Sec. 4104—Overseas Contingency Operations (OCO).</b> Prohibits consideration of legislation that designates funds for fiscal year 2018 for overseas contingency operations.						
None located in the Congressional Record from 1997 through 2022.						

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
<b>Sec. 4105—Reconciliation Amendment Limitation.</b> Prohibits reconciliation amendments with unknown budgetary effects.						
S. Amend. No. 1846, 115th Cong., <a href="#">163 CONG. REC. S7704</a> (daily ed. Dec. 1, 2017) (Kaine amendment “[t]o provide middle class tax relief.”)	<a href="#">163 CONG. REC. S7706</a> (daily ed. Dec. 1, 2017) (statement of Sen. Toomey).	<a href="#">163 CONG. REC. S7705–06</a> (daily ed. Dec. 1, 2017) (statement of Sens. Kaine & Toomey).	<a href="#">163 CONG. REC. S7706</a> (daily ed. Dec. 1, 2017) (statement of Sen. Kaine).	<a href="#">163 CONG. REC. S7706</a> (daily ed. Dec. 1, 2017) (vote no. 299) (34-65).	<a href="#">163 CONG. REC. S7706</a> (daily ed. Dec. 1, 2017) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<b>Sec. 4106—Senate-Pay-As-You-Go Rule.</b> Prohibits consideration of direct spending or revenue legislation that would cause or increase an on-budget deficit over the current year, the budget year, or the next 5 or 10 years, unless sufficient surpluses have been enacted earlier that calendar year.						
S. Amend. No. 1502, 117th Cong., <a href="#">167 CONG. REC. S3976</a> (daily ed. June 8, 2021) (Schumer amendment “[i]n the nature of a substitute”).	<a href="#">167 CONG. REC. S3976</a> (daily ed. June 8, 2021) (statement of Sen. Scott).		<a href="#">167 CONG. REC. S3976</a> (daily ed. June 8, 2021) (statement of Sen. Cantwell).	<a href="#">167 CONG. REC. S3976–77</a> (daily ed. June 8, 2021) (vote no. 224) (72-28).	<a href="#">167 CONG. REC. S3977</a> (daily ed. June 8, 2021) (the motion was agreed to and the point of order fell).	
S. Amend. No. 1617, 116th Cong., <a href="#">166 CONG. REC. S2832</a> (daily ed. June 9, 2020) (the “Great American Outdoors Act”).	<a href="#">166 CONG. REC. S2970</a> (daily ed. June 15, 2020) (statement of Sen. Enzi).	<a href="#">166 CONG. REC. S2963–71</a> , (daily ed. June 15, 2020) (statements of Sens. Cantwell, Gardner, Portman, Cassidy, Manchin & Enzi).	<a href="#">166 CONG. REC. S2970</a> (daily ed. June 15, 2020) (statement of Sen. Gardner).	<a href="#">166 CONG. REC. S2971–72</a> (daily ed. June 15, 2020) (vote no. 118) (68-30).	<a href="#">166 CONG. REC. S2972</a> (daily ed. June 15, 2020) (the motion was agreed to, and the point of order fell).	
S. Amend. No. 2282, 115th Cong., <a href="#">164 CONG. REC. S3932</a> (daily ed. June 14, 2018) (Inhofe-McCain amendment “in the nature of a substitute.”)	<a href="#">164 CONG. REC. S3967</a> (daily ed. June 18, 2018) (statement of Sen. Sanders).	<a href="#">164 CONG. REC. S3967–72</a> (daily ed. June 18, 2018) (statement of Sens. Sanders, Inhofe, Hatch, Leahy, Boozman, King & Reed).	<a href="#">164 CONG. REC. S3967</a> (daily ed. June 18, 2018) (statement of Sen. Inhofe).	<a href="#">164 CONG. REC. S3972</a> (daily ed. June 18, 2018) (vote no. 127) (81-14).	<a href="#">164 CONG. REC. S3967</a> (daily ed. June 18, 2018) (the motion was agreed to and the point of order fell).	

Provision Challenged	Point of Order Raised	Debate	Motion To Waive Made	Vote on Motion To Waive	Result	Appeal
S. Amend. No. 2213, 115th Cong., <a href="#">164 CONG. REC. S1865</a> (daily ed. Mar. 21, 2018) (Wyden amendment “provide additional funding to the Department of Justice to combat the online facilitation of sex trafficking.”)	<a href="#">164 CONG. REC. S1871</a> (daily ed. Mar. 21, 2018) (statement of Sen. McConnell).	<a href="#">164 CONG. REC. S1865–71</a> (daily ed. Mar. 21, 2018) (statement of Sens. Wyden & McConnell).	<a href="#">164 CONG. REC. S1871</a> (daily ed. Mar. 21, 2018) (statement of Sen. Wyden).	<a href="#">164 CONG. REC. S1871</a> (daily ed. Mar. 21, 2018) (vote no. 59) (21-79).	<a href="#">164 CONG. REC. S1871</a> (daily ed. Mar. 21, 2018) (the motion was rejected, the point of order was sustained, and the amendment fell).	
<a href="#">Economic Growth, Regulatory Relief, and Consumer Protection Act</a> , S. 2155, 115th Cong. (Mar. 14, 2018).	<a href="#">164 CONG. REC. S1708</a> (daily ed. Mar. 14, 2018) (statement of Sen. Sanders).	<a href="#">164 CONG. REC. S1708–29</a> (daily ed. Mar. 14, 2018) (statement of Sens. Sanders, Crapo, Daines, Warren, Leahy, Collins, Klobuchar, Warner, Hassan, Barrasso, Hoeven, Shelby, Toomey, Durbin, Cornyn & Brown).	<a href="#">164 CONG. REC. S1708</a> (daily ed. Mar. 14, 2018) (statement of Sen. Crapo).	<a href="#">164 CONG. REC. S1730</a> (daily ed. Mar. 14, 2018) (vote no. 53) (67-31).	<a href="#">164 CONG. REC. S1730</a> (daily ed. Mar. 14, 2018) (the motion was agreed to and the point of order fell).	
<b>Sec. 4112—Emergency Designation.</b> Surgical point of order against emergency designations, subject to exceptions.						
None located in the Congressional Record from 1997 through 2022.						
<b>Fiscal Year 2022 Budget Resolution (S. Con. Res. 14, 117th Congress)</b>						
<b>Sec. 4002—Advance Appropriations.</b> Prohibits advance appropriations for fiscal years beyond 2022 and 2023 except under specified conditions.						
None located in the Congressional Record from 1997 through 2022.						

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- [Accurate Budgeting Act](#), S. 200, 114th Cong. (as introduced, Jan. 21, 2015).
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- [An Act to amend section 1105\(a\) of title 31, United States Code, to require that annual budget submissions of the President to Congress provide an estimate of the cost per taxpayer of the deficit, and for other purposes](#), H.R. 668, 113th Cong. (as passed by House, Mar. 5, 2013).
- [An Act to amend section 1105\(a\) of title 31, United States Code, to require that annual budget submissions of the President to Congress provide an estimate of the cost per taxpayer of the deficit, and for other purposes](#), H.R. 1315, 114th Cong. (as passed by House, Oct. 20, 2015).
- [An Act to provide Internal Revenue to support the Government, to pay Interest on the Public Debt, and for other Purposes](#), ch. 173, 13 Stat. 223 (1864).
- [An Act to reduce taxation, to provide revenue for the Government, and for other purposes](#), ch. 349, § 27, 28 Stat. 509, 553 (1894).
- [An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, "Money and Finance"](#), Pub. L. No. 97-258, 96 Stat. 938 (1982).
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- [American Cures Act](#), S. 1250, 116th Cong. (as introduced, Apr. 30, 2019).
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  - --, PROVIDING FOR CONSIDERATION OF HOUSE CONCURRENT RESOLUTION 353, THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2003, H.R. REP. NO. 107-380 (2002).
  - --, PROVIDING FOR THE RECOMMITTAL OF THE CONFERENCE REPORT TO ACCOMPANY H. CON. RES. 83, THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2002, H.R. REP. NO. 107-58 (2001).
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  - H. COMM. ON RULES, 108TH CONG., PROVIDING FOR CONSIDERATION OF HOUSE CONCURRENT RESOLUTION 95, THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2004, H.R. REP. NO. 108-44 (2003).
  - --, PROVIDING FOR FURTHER CONSIDERATION OF HOUSE CONCURRENT RESOLUTION 393, THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2005, H.R. REP. NO. 108-446 (2004).
  - --, PROVIDING FOR THE CONSIDERATION OF THE CONFERENCE REPORT TO ACCOMPANY SENATE CONCURRENT RESOLUTION 95, THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2005, H.R. REP. NO. 108-500 (2004).
  - --, WAIVING POINTS OF ORDER AGAINST THE CONFERENCE REPORT TO ACCOMPANY HOUSE CONCURRENT RESOLUTION 95, THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2004, H.R. REP. NO. 108-72 (2003).
  - H. COMM. ON RULES, 109TH CONG., LEGISLATIVE LINE ITEM VETO ACT OF 2006, H.R. REP. NO. 109-505, PART 2 (2006).
  - --, PROVIDING FOR CONSIDERATION OF H. CON. RES. 95, THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2006, H.R. REP. NO. 109-19 (2005).
  - --, PROVIDING FOR CONSIDERATION OF H. CON. RES. 376, CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2007, H.R. REP. NO. 109-405 (2006).
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  - --, RELATING TO CONSIDERATION OF THE BILL (S. 1932) TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 202(a) OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2006 (H. CON. RES. 95), H.R. REP. NO. 109-366 (2006).
  - --, WAIVING POINTS OF ORDER AGAINST THE CONFERENCE REPORT TO ACCOMPANY H. CON. RES. 95, THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2006, H.R. REP. NO. 109-63 (2005).
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  - H. COMM. ON RULES, 110TH CONG., PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2669) TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 601 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2008, H.R. REP. NO. 110-224 (2007).
  - --, PROVIDING FOR CONSIDERATION OF THE CONCURRENT RESOLUTION (H. CON. RES. 99) REVISING THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2007, ESTABLISHING THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2008, AND SETTING FORTH APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2009 THROUGH 2012, H.R. REP. NO. 110-79 (2007)
  - --, PROVIDING FOR CONSIDERATION OF THE CONCURRENT RESOLUTION (S. CON. RES. 21) SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2008 AND INCLUDING THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2007 AND 2009 THROUGH 2012, H.R. REP. NO. 110-121 (2007).
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- GOVERNMENT FOR FISCAL YEAR 2008 AND INCLUDING THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2007 AND 2009 THROUGH 2012, H.R. REP. NO. 110-156 (2007)
- — —, PROVIDING FOR CONSIDERATION OF THE CONFERENCE REPORT TO ACCOMPANY THE CONCURRENT RESOLUTION (S. CON. RES. 70) SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2009 AND INCLUDING THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2008 AND 2010 THROUGH 2013, H.R. REP. NO. 110-662 (2008).
  - — —, PROVIDING FOR THE ADOPTION OF THE CONCURRENT RESOLUTION (S. CON. RES. 70) SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2009 AND INCLUDING THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2008 AND 2010 THROUGH 2013, H.R. REP. NO. 110-630 (2008).
- H. COMM. ON RULES, 111TH CONG., PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2920) TO REINSTITUTE AND UPDATE THE PAY-AS-YOU-GO REQUIREMENT OF BUDGET NEUTRALITY ON NEW TAX AND MANDATORY SPENDING LEGISLATION, ENFORCED BY THE THREAT OF ANNUAL, AUTOMATIC SEQUESTRATION, H.R. REP. NO. 111-217 (2009).
- — —, PROVIDING FOR CONSIDERATION OF THE CONCURRENT RESOLUTION (H. CON. RES. 85) SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2010 AND INCLUDING THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2009 AND 2011 THROUGH 2014, H.R. REP. NO. 111-70 (2009).
  - — —, PROVIDING FOR CONSIDERATION OF THE CONFERENCE REPORT TO ACCOMPANY THE CONCURRENT RESOLUTION (S. CON. RES. 13) SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2010, REVISING THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEAR 2009, AND SETTING FORTH THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2011 THROUGH 2014, H.R. REP. NO. 111-90 (2009).
  - — —, PROVIDING FOR CONSIDERATION OF THE SENATE AMENDMENTS TO THE BILL (H.R. 3590) TO AMEND THE INTERNAL REVENUE CODE OF 1986 TO MODIFY THE FIRST-TIME HOMEBUYERS CREDIT IN THE CASE OF MEMBERS OF THE ARMED FORCES AND CERTAIN OTHER FEDERAL EMPLOYEES, AND FOR OTHER PURPOSES, AND PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 4872) TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 202 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010, H.R. REP. NO. 111-448 (2010).
  - — —, PROVIDING FOR CONSIDERATION OF THE SENATE AMENDMENTS TO THE BILL (H.R. 3961) TO AMEND TITLE XVIII OF THE SOCIAL SECURITY ACT TO REFORM THE MEDICARE SGR PAYMENT SYSTEM FOR PHYSICIANS AND TO REINSTITUTE AND UPDATE THE PAY-AS-YOU-GO REQUIREMENT OF BUDGET NEUTRALITY ON NEW TAX AND MANDATORY SPENDING LEGISLATION, ENFORCED BY THE THREAT OF ANNUAL, AUTOMATIC SEQUESTRATION, H.R. REP. NO. 111-420 (2010).
  - — —, PROVIDING FOR CONSIDERATION OF THE SENATE AMENDMENTS TO THE BILL (H.R. 4872) TO PROVIDE FOR RECONCILIATION PURSUANT TO TITLE II OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010 (S. CON. RES. 13), H.R. REP. NO. 111-458 (2010).
  - — —, PROVIDING FOR CONSIDERATION OF THE SENATE AMENDMENT TO THE JOINT RESOLUTION (H.J. RES. 45) INCREASING THE STATUTORY LIMIT ON THE PUBLIC DEBT, H.R. REP. NO. 111-411 (2010) (Statutory Pay-As-You-Go Act of 2010).
  - — —, PROVIDING FOR FURTHER CONSIDERATION OF THE CONCURRENT RESOLUTION (H. CON. RES. 85) SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2010 AND INCLUDING THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2009 AND 2011 THROUGH 2014, H.R. REP. NO. 111-73 (2009).
- H. COMM. ON RULES, 112TH CONG., EXPEDITED LEGISLATIVE LINE-ITEM VETO AND RESCISSIONS ACT OF 2012, H.R. REP. NO. 112-364, PART 2 (2012).
- — —, LEGALLY BINDING BUDGET ACT OF 2011, H.R. REP. NO. 112-379, PART 1 (2012).
  - — —, PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2560) TO CUT, CAP, AND BALANCE THE FEDERAL BUDGET, H.R. REP. NO. 112-150 (2011).
  - — —, PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 3521) TO AMEND THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974 TO PROVIDE FOR A LEGISLATIVE LINE-ITEM VETO TO EXPEDITE CONSIDERATION OF RESCISSIONS, AND FOR OTHER PURPOSES, H.R. REP. NO. 112-389 (2012).

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  - — —, [PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 3581\) TO AMEND THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985 TO INCREASE TRANSPARENCY IN FEDERAL BUDGETING, AND FOR OTHER PURPOSES](#), H.R. REP. NO. 112-388 (2012).
  - — —, [PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 5652\) TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 201 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2013](#), H.R. REP. NO. 112-472 (2012).
  - — —, [PROVIDING FOR CONSIDERATION OF THE CONCURRENT RESOLUTION \(H. CON. RES. 34\) ESTABLISHING THE BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2012 AND SETTING FORTH APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2013 THROUGH 2021](#), H.R. REP. NO. 112-62 (2011).
  - — —, [PROVIDING FOR CONSIDERATION OF THE CONCURRENT RESOLUTION \(H. CON. RES. 112\) ESTABLISHING THE BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2013 AND SETTING FORTH APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2014 THROUGH 2022, AND PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES](#), H.R. REP. NO. 112-423 (2012).
  - — —, [PROVIDING FOR CONSIDERATION OF THE JOINT RESOLUTION \(H.J. RES. 117\) MAKING CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2013, AND FOR OTHER PURPOSES; AND PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 6365\) TO AMEND THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985 TO REPLACE THE SEQUESTER ESTABLISHED BY THE BUDGET CONTROL ACT OF 2011](#), H.R. REP. NO. 112-667 (2012).
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  - — —, [RULES COMMITTEE PRINT 112-10: TEXT OF H.R. 3582, THE PRO-GROWTH BUDGETING ACT OF 2011: \[SHOWING THE TEXT OF H.R. 3582 AS ORDERED REPORTED BY THE COMMITTEE ON THE BUDGET\]](#) (Comm. Print 2012).
  - — —, [RULES COMMITTEE PRINT 112-12: TEXT OF H.R. 3521, THE EXPEDITED LEGISLATIVE LINE-ITEM VETO AND RESCISSIONS ACT OF 2012: \[SHOWING THE TEXT OF THE BILL AS REPORTED BY THE COMMITTEE ON THE BUDGET AND ORDERED REPORTED BY THE COMMITTEE ON RULES.\]](#) (Comm. Print 2012).
  - — —, [RULES COMMITTEE PRINT 112-13: TEXT OF H.R. 3581, THE BUDGET AND ACCOUNTING TRANSPARENCY ACT OF 2012: \[SHOWING THE TEXT OF THE BILL AS REPORTED BY THE COMMITTEE ON THE BUDGET\]](#) (Comm. Print 2012).
- H. COMM. ON RULES, 113TH CONG., [OVERSIGHT PLAN OF THE COMMITTEE ON RULES FOR THE ONE HUNDRED THIRTEENTH CONGRESS](#) (Comm. Print 2013).
- — —, [PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 444\) TO REQUIRE THAT, IF THE PRESIDENT'S FISCAL YEAR 2014 BUDGET DOES NOT ACHIEVE BALANCE IN A FISCAL YEAR COVERED BY SUCH BUDGET, THE PRESIDENT SHALL SUBMIT A SUPPLEMENTAL UNIFIED BUDGET BY APRIL 1, 2013, WHICH IDENTIFIES A FISCAL YEAR IN WHICH BALANCE IS ACHIEVED, AND FOR OTHER PURPOSES](#), H.R. REP. NO. 113-8 (2013).
  - — —, [PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 1874\) TO AMEND THE CONGRESSIONAL BUDGET ACT OF 1974 TO PROVIDE FOR MACROECONOMIC ANALYSIS OF THE IMPACT OF LEGISLATION](#), PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1871) TO AMEND THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985 TO REFORM THE BUDGET BASELINE, AND PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1872) TO AMEND THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985 TO INCREASE TRANSPARENCY IN FEDERAL BUDGETING, AND FOR OTHER PURPOSES, H.R. REP. NO. 113-400 (2014).
  - — —, [PROVIDING FOR CONSIDERATION OF THE CONCURRENT RESOLUTION \(H. CON. RES. 25\) ESTABLISHING THE BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2014 AND SETTING FORTH APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2015 THROUGH 2023; PROVIDING FOR CONSIDERATION OF THE RESOLUTION \(H. RES. 115\) PROVIDING FOR THE EXPENSES OF CERTAIN](#)



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- COMMITTEES OF THE HOUSE OF REPRESENTATIVES IN THE ONE HUNDRED THIRTEENTH CONGRESS; and for Other Purposes, H.R. REP. NO. 113-21 (2013).
- — —, [PROVIDING FOR CONSIDERATION OF THE CONCURRENT RESOLUTION \(H. CON. RES. 96\) ESTABLISHING THE BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2015](#) AND SETTING FORTH APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2016 THROUGH 2024, AND PROVIDING FOR PROCEEDINGS DURING THE PERIOD FROM APRIL 11, 2014, THROUGH APRIL 25, 2014, H.R. REP. NO. 113-405 (2014).
  - H. COMM. ON RULES, 114TH CONG., PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 650) TO AMEND THE TRUTH IN LENDING ACT TO MODIFY THE DEFINITIONS OF A MORTGAGE ORIGINATOR AND A HIGH-COST MORTGAGE, PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 685) TO AMEND THE TRUTH IN LENDING ACT TO IMPROVE UPON THE DEFINITIONS PROVIDED FOR POINTS AND FEES IN CONNECTION WITH A MORTGAGE TRANSACTION, AND [PROVIDING FOR THE ADOPTION OF THE CONCURRENT RESOLUTION \(S. CON. RES. 11\) SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2016](#) AND SETTING FORTH THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2017 THROUGH 2025, H.R. REP. NO. 114-65 (2015).
  - — —, PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1732) TO PRESERVE EXISTING RIGHTS AND RESPONSIBILITIES WITH RESPECT TO WATERS OF THE UNITED STATES, AND FOR OTHER PURPOSES; [PROVIDING FOR CONSIDERATION OF THE CONFERENCE REPORT TO ACCOMPANY THE CONCURRENT RESOLUTION \(S. CON. RES. 11\) SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2016](#) AND SETTING FORTH THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2017 THROUGH 2025; AND PROVIDING FOR CONSIDERATION OF THE JOINT RESOLUTION (H.J. RES. 43) DISAPPROVING THE ACTION OF THE DISTRICT OF COLUMBIA COUNCIL IN APPROVING THE REPRODUCTIVE HEALTH NON-DISCRIMINATION AMENDMENT ACT OF 2014, H.R. REP. NO. 114-98 (2015).
  - — —, PROVIDING FOR CONSIDERATION OF THE BILL (S. 2012) TO PROVIDE FOR THE MODERNIZATION OF THE ENERGY POLICY OF THE UNITED STATES, AND FOR OTHER PURPOSES; [PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 5233\) TO REPEAL THE LOCAL BUDGET AUTONOMY AMENDMENT ACT OF 2012](#), TO AMEND THE DISTRICT OF COLUMBIA HOME RULE ACT TO CLARIFY THE RESPECTIVE ROLES OF THE DISTRICT GOVERNMENT AND CONGRESS IN THE LOCAL BUDGET PROCESS OF THE DISTRICT GOVERNMENT, AND FOR OTHER PURPOSES; AND PROVIDING FOR PROCEEDINGS DURING THE PERIOD FROM MAY 27, 2016, THROUGH JUNE 6, 2016, H.R. REP. NO. 114-593 (2016).
  - — —, [PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 3762\) TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 2002 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2016](#); WAIVING A REQUIREMENT OF CLAUSE 6(A) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS REPORTED FROM THE COMMITTEE ON RULES; AND PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES, H.R. REP. NO. 114-303 (2015).
  - — —, [PROVIDING FOR CONSIDERATION OF THE CONCURRENT RESOLUTION \(H. CON. RES. 27\) ESTABLISHING THE BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2016](#) AND SETTING FORTH APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2017 THROUGH 2025, H.R. REP. NO. 114-49 (2015).
  - H. COMM. ON RULES, 115TH CONG., [PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 1\) TO PROVIDE FOR RECONCILIATION PURSUANT TO TITLE II OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2018](#), AND PROVIDING FOR PROCEEDINGS DURING THE PERIOD FROM NOVEMBER 17, 2017, THROUGH NOVEMBER 27, 2017, H.R. REP. NO. 115-410 (2017).
  - — —, [PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 1628\) TO PROVIDE FOR RECONCILIATION PURSUANT TO TITLE II OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2017](#), H.R. REP. NO. 115-58 (2017).
  - — —, PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2192) TO AMEND THE PUBLIC HEALTH SERVICE ACT TO ELIMINATE THE NON-APPLICATION OF CERTAIN STATE WAIVER PROVISIONS TO MEMBERS OF CONGRESS AND CONGRESSIONAL STAFF, AND [PROVIDING FOR FURTHER CONSIDERATION OF THE BILL \(H.R. 1628\) TO PROVIDE FOR RECONCILIATION PURSUANT TO TITLE II OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2017](#), H.R. REP. NO. 115-109 (2017).
  - — —, [PROVIDING FOR CONSIDERATION OF THE CONCURRENT RESOLUTION \(H. CON. RES. 71\) ESTABLISHING THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR](#)

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- 2018 AND SETTING FORTH THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2019 THROUGH 2027, H.R. REP. NO. 115-339 (2017).
- — —, [PROVIDING FOR CONSIDERATION OF THE CONCURRENT RESOLUTION \(S. CON. RES. 3\) SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2017 AND SETTING FORTH THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2018 THROUGH 2026, AND PROVIDING FOR CONSIDERATION OF THE BILL \(S. 84\) TO PROVIDE FOR AN EXCEPTION TO A LIMITATION AGAINST APPOINTMENT OF PERSONS AS SECRETARY OF DEFENSE WITHIN SEVEN YEARS OF RELIEF FROM ACTIVE DUTY AS A REGULAR COMMISSIONED OFFICER OF THE ARMED FORCES](#), H.R. REP. NO. 115-4 (2017).
  - — —, [PROVIDING FOR CONSIDERATION OF THE CONFERENCE REPORT TO ACCOMPANY THE BILL \(H.R. 1\) TO PROVIDE FOR RECONCILIATION PURSUANT TO TITLES II AND V OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2018; PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 3312\) TO AMEND THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT TO SPECIFY WHEN BANK HOLDING COMPANIES MAY BE SUBJECT TO CERTAIN ENHANCED SUPERVISION, AND FOR OTHER PURPOSES; AND FOR OTHER PURPOSES](#), H.R. REP. NO. 115-474 (2017).
  - — —, [PROVIDING FOR CONSIDERATION OF THE SENATE AMENDMENT TO THE BILL \(H.R. 1\) TO PROVIDE FOR RECONCILIATION PURSUANT TO TITLES II AND V OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2018](#), H.R. REP. NO. 115-476 (2017).
  - — —, [PROVIDING FOR CONSIDERATION OF THE SENATE AMENDMENT TO THE BILL \(H.R. 3762\) TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 2002 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2016](#), H.R. REP. NO. 114-387 (2016).
  - — —, [PROVIDING FOR CONSIDERATION OF THE SENATE AMENDMENT TO THE CONCURRENT RESOLUTION \(H. CON. RES. 71\) ESTABLISHING THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2018 AND SETTING FORTH THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2019 THROUGH 2027](#), H.R. REP. NO. 115-369 (2017).
  - — —, [PROVIDING FOR FURTHER CONSIDERATION OF THE BILL \(H.R. 1628\) TO PROVIDE FOR RECONCILIATION PURSUANT TO TITLE II OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2017](#), H.R. REP. NO. 115-88 (2017).
  - — —, [PROVIDING FOR FURTHER CONSIDERATION OF THE BILL \(H.R. 5895\) MAKING APPROPRIATIONS FOR ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2019, AND FOR OTHER PURPOSES, AND PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 3\) TO RESCIND CERTAIN BUDGET AUTHORITY PROPOSED TO BE RESCINDED IN SPECIAL MESSAGES TRANSMITTED TO THE CONGRESS BY THE PRESIDENT ON MAY 8, 2018, IN ACCORDANCE WITH TITLE X OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT 1974](#), H.R. REP. NO. 115-712 (2018).
- H. COMM. ON RULES, 116TH CONG., [PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 1644\) TO RESTORE THE OPEN INTERNET ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION; PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 2021\) TO AMEND THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985 AND TO ESTABLISH A CONGRESSIONAL BUDGET FOR FISCAL YEAR 2020; AND FOR OTHER PURPOSES](#), H.R. REP. NO. 116-37 (2019).
- — —, [PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 3877\) TO AMEND THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985, TO ESTABLISH A CONGRESSIONAL BUDGET FOR FISCAL YEARS 2020 AND 2021, TO TEMPORARILY SUSPEND THE DEBT LIMIT, AND FOR OTHER PURPOSES; PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 549\) TO DESIGNATE VENEZUELA UNDER SECTION 244 OF THE IMMIGRATION AND NATIONALITY ACT TO PERMIT NATIONALS OF VENEZUELA TO BE ELIGIBLE FOR TEMPORARY PROTECTED STATUS UNDER SUCH SECTION, AND FOR OTHER PURPOSES; AND WAIVING A REQUIREMENT OF CLAUSE 6\(A\) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS REPORTED FROM THE COMMITTEE ON RULES](#), H.R. REP. NO. 116-183 (2019).
- H. COMM. ON RULES, 117TH CONG., [PROVIDING FOR THE ADOPTION OF THE CONCURRENT \[RESOLUTION\] \(S. CON. RES. 5\) SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2021 AND SETTING FORTH THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2022 THROUGH 2030](#), H.R. REP. NO. 117-5 (2021).
- — —, [PROVIDING FOR CONSIDERATION OF THE BILL \(H.R. 4\) TO AMEND THE VOTING RIGHTS ACT OF 1965 TO REVISE THE CRITERIA FOR DETERMINING WHICH STATES AND POLITICAL SUBDIVISIONS ARE SUBJECT TO SECTION 4 OF THE ACT, AND FOR OTHER PURPOSES; PROVIDING FOR CONSIDERATION OF THE SENATE](#)

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## GLOSSARY

**account**—an item for which appropriations are made in any [appropriation Act](#) and, for items not provided for in [appropriation Acts](#), an item for which there is a designated budget account identification code number in the President’s budget.<sup>6171</sup>

**advance appropriation**—any [new budget authority](#) provided in a bill or joint resolution making appropriations for fiscal year 2022 that first becomes available for any fiscal year after 2022, or any [new budget authority](#) provided in a bill or joint resolution making appropriations for fiscal year 2023, that first becomes available for any fiscal year after 2023.<sup>6172</sup>

**agency**—has the same meaning as defined in [5 U.S.C. § 551\(1\)](#), but does not include independent regulatory agencies.<sup>6173</sup>

**amount**—with respect to an authorization of appropriations for Federal financial assistance, the amount of [budget authority](#) for any Federal grant assistance program or any Federal program providing [loan guarantees](#) or [direct loans](#).<sup>6174</sup>

**AMT**—the Alternative Minimum Tax for individuals under [sections 55–59 of the Internal Revenue Code of 1986](#).<sup>6175</sup>

**appropriation Act**—an Act referred to in [1 U.S.C. § 105](#), which provides that the style and title of all Acts making appropriations for the support of Government shall be: “An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year).”<sup>6176</sup>

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<sup>6171</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(11\)](#), 2 U.S.C. § 900(c)(11), *supra* p. 981; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6172</sup> [S. Con. Res. 14, 117th Cong. § 4002\(a\)\(2\)](#) (2021) (adopted), *supra* p. 1262 (in the Senate); *cf.* [S. Con. Res. 14, 117th Cong. § 4003\(a\)\(2\)](#), *supra* p. 1267 (in the House).

<sup>6173</sup> [Congressional Budget Act of 1974 § 421\(1\)](#), 2 U.S.C. § 658(1), *supra* p. 803 (adopting, in part, the definition of [5 U.S.C. § 551\(1\)](#), *supra* p. 813).

<sup>6174</sup> [Congressional Budget Act of 1974 § 421\(2\)](#), 2 U.S.C. § 658(2), *supra* p. 803.

<sup>6175</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(3\)](#), 2 U.S.C. § 932(3), *supra* p. 1151 (citing [Internal Revenue Code of 1986 §§ 55–59](#), 26 U.S.C. §§ 55–59).

<sup>6176</sup> [Congressional Budget Act of 1974 § 3\(5\)](#), 2 U.S.C. § 622(5), *supra* p. 58 (citing [1 U.S.C. § 105](#)); [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Congressional Budget Act definition).



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**asset sale**—the sale to the public of any asset (except for those assets covered by the [Federal Credit Reform Act](#), title V of the Congressional Budget Act of 1974), whether physical or financial, owned in whole or in part by the United States.<sup>6177</sup>

**baseline**—the projection (described in Balanced Budget and Emergency Deficit Control Act of 1985 section 257) of [current-year](#) levels of new [budget authority](#), [outlays](#), receipts, and the [surplus](#) or [deficit](#) into the [budget year](#) and the [outyears](#).<sup>6178</sup>

**BBEDCA**—the Balanced Budget and Emergency Deficit Control Act of 1985.<sup>6179</sup>

**borrowing authority**—authority granted to a Federal entity to borrow and obligate and expend the borrowed funds, including through the issuance of promissory notes or other monetary credits.<sup>6180</sup>

**breach**—for any fiscal year, the amount (if any) by which [new budget authority](#) or [outlays](#) for that year (within a [category](#) of [discretionary appropriations](#)) is above that [category's discretionary spending limit](#) for [new budget authority](#) or [outlays](#) for that year, as the case may be.<sup>6181</sup>

**budgetary effects**—the amount by which [PAYGO legislation](#) changes [outlays](#) flowing from [direct spending](#) or revenues relative to the [baseline](#) determined on the basis of estimates prepared under [Statutory Pay-As-You-Go Act section 4](#). Budgetary effects that increase [outlays](#) flowing from [direct spending](#) or decrease revenues are “[costs](#),” and [budgetary effects](#) that increase revenues or decrease [outlays](#) flowing from [direct spending](#) are “[savings](#).” Budgetary effects do not include any costs associated with debt service or off-budget effects.<sup>6182</sup>

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<sup>6177</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(19\)](#), 2 U.S.C. § 900(c)(19), *supra* p. 983; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6178</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(5\)](#), 2 U.S.C. § 900(c)(5), *supra* p. 980 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 257](#), 2 U.S.C. § 907, *supra* p. 980); [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6179</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(1\)](#), 2 U.S.C. § 932(1), *supra* p. 1150.

<sup>6180</sup> [Congressional Budget Act of 1974 § 3\(2\)\(A\)\(ii\)](#), 2 U.S.C. § 622(2)(A)(ii), *supra* p. 56; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Congressional Budget Act definition).

<sup>6181</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(3\)](#), 2 U.S.C. § 900(c)(3), *supra* p. 977; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6182</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)–\(B\)](#), 2 U.S.C. § 932(4)(A)–(B), *supra* p. 1151.

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**budgetary resources** — new budget authority, unobligated balances, direct spending authority, and obligation limitations.<sup>6183</sup>

**budget authority** — the authority provided by Federal law to incur financial obligations, including (1) provisions of law that make funds available for obligation and expenditure (other than borrowing authority), including the authority to obligate and expend the proceeds of offsetting receipts and collections; (2) borrowing authority; (3) contract authority; and (4) offsetting receipts and collections as negative budget authority, and the reduction thereof as positive budget authority.<sup>6184</sup>

**budget outlays** — with respect to any fiscal year, expenditures and net lending of funds under budget authority during that year.<sup>6185</sup>

**budget year** — with respect to a session of Congress, the fiscal year of the Government that starts on October 1 of the calendar year in which that session begins.<sup>6186</sup>

**category** — the subsets of discretionary appropriations in Balanced Budget and Emergency Deficit Control Act of 1985 section 251(c). Discretionary appropriations in each of the categories are those designated in the joint explanatory statement accompanying the conference report on the Balanced Budget Act of 1997. New accounts or activities shall be categorized only after consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate and that consultation shall, to the extent practicable, include written communication to such committees that affords such committees the opportunity to comment before official action is taken with respect to new accounts or activities.<sup>6187</sup>

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<sup>6183</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(6), 2 U.S.C. § 900(c)(6), *supra* p. 980; Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6184</sup> Congressional Budget Act of 1974 § 3(2)(A), 2 U.S.C. § 622(2)(A), *supra* p. 55; Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1), 2 U.S.C. § 900(c)(1), *supra* p. 977 (adopting the Congressional Budget Act definition); Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Congressional Budget Act definition).

<sup>6185</sup> Congressional Budget Act of 1974 § 3(1), 2 U.S.C. § 622(1), *supra* p. 55; Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Congressional Budget Act definition).

<sup>6186</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(12), 2 U.S.C. § 900(c)(12), *supra* p. 982; Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6187</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(F), 2 U.S.C. § 900(c)(4)(F), *supra* p. 979 (citing Balanced Budget and Emergency Deficit Control Act of 1985 § 251, 2 U.S.C. § 901, *supra* p. 9861004); Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).



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**CBO** — the Director of the Congressional Budget Office.<sup>6188</sup>

**change in a mandatory program producing net costs** — a provision in appropriations legislation where (1) the provision would increase **budget authority** in at least 1 of the 9 fiscal years that follow the **budget year** and over the period of the total of the **budget year** and the 9 fiscal years following the **budget year**; (2) the provision would increase net **outlays** over the period of the total of the 9 fiscal years following the **budget year**; and (3) the sum total of all changes in mandatory programs in the legislation would increase net **outlays** as measured over the period of the total of the 9 fiscal years following the **budget year**.<sup>6189</sup>

**Comptroller General** — the Comptroller General of the United States.<sup>6190</sup>

**concurrent resolution on the budget** — (1) a concurrent resolution setting forth the congressional budget for the United States Government for a fiscal year as provided in Congressional Budget Act section 301 or (2) any other concurrent resolution revising the congressional budget for the United States Government for a fiscal year as described in Congressional Budget Act section 304.<sup>6191</sup>

**continuing disability reviews** — continuing disability reviews under **Social Security Act sections 221(i) and 1614(a)(4)**, including work-related continuing disability reviews to determine whether earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity.<sup>6192</sup>

**contract authority** — the making of funds available for obligation but not for expenditure.<sup>6193</sup>

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<sup>6188</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(16)**, 2 U.S.C. § 900(c)(16), *supra* p. 982; **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6189</sup> **S. Con. Res. 70, 110th Cong. § 314(b)**, 122 Stat. 5143, 5179 (2008), *supra* p. 1221.

<sup>6190</sup> **Impoundment Control Act of 1974 § 1011(2)**, 2 U.S.C. § 682(2), *supra* p. 924.

<sup>6191</sup> **Congressional Budget Act of 1974 § 3(4)**, 2 U.S.C. § 622(4), *supra* p. 57; **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Congressional Budget Act definition).

<sup>6192</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 251(b)(2)(B)(ii)(I)**, 2 U.S.C. § 901(b)(2)(B)(ii)(I), *supra* p. 997 (citing **Social Security Act §§ 221(i) & 1614(a)(4)**, 42 U.S.C. §§ 421(i) & 1382c(a)(4)), *supra* pp. 1009 & 1010.

<sup>6193</sup> **Congressional Budget Act of 1974 § 3(2)(A)(iii)**, 2 U.S.C. § 622(2)(A)(iii), *supra* p. 56; **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Congressional Budget Act definition).

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**cost**—for purposes of the [Federal Credit Reform Act](#), the estimated long-term cost to the Government of a [direct loan](#) or [loan guarantee](#) or [modification](#) thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or [outlays](#).<sup>6194</sup>

**cost of a direct loan**—the net present value, at the time when the [direct loan](#) is disbursed, of the following estimated cash flows: (1) loan disbursements; (2) repayments of principal; and (3) payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries; including the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.<sup>6195</sup>

**cost of a loan guarantee**—the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows: (1) payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments; and (2) payments to the Government including origination and other fees, penalties and recoveries; including the effects of changes in loan terms resulting from the exercise by the guaranteed lender of an option included in the [loan guarantee](#) contract, or by the borrower of an option included in the guaranteed loan contract.<sup>6196</sup>

**cost of a modification**—the difference between the [current](#) estimate of the net present value of the remaining cash flows under the terms of a [direct loan](#) or [loan guarantee](#) contract, and the [current](#) estimate of the net present value of the remaining cash flows under the terms of the contract, as modified.<sup>6197</sup>

**costs**—for purposes of the [Statutory Pay-As-You-Go Act](#), [budgetary effects](#) that increase [outlays](#) flowing from [direct spending](#) or decrease revenues.<sup>6198</sup>

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<sup>6194</sup> [Federal Credit Reform Act of 1990 § 502\(5\)\(A\)](#), 2 U.S.C. § 661a(5)(A), *supra* p. 851.

<sup>6195</sup> [Federal Credit Reform Act of 1990 § 502\(5\)\(B\)](#), 2 U.S.C. § 661a(5)(B), *supra* p. 851.

<sup>6196</sup> [Federal Credit Reform Act of 1990 § 502\(5\)\(C\)](#), 2 U.S.C. § 661a(5)(C), *supra* p. 852.

<sup>6197</sup> [Federal Credit Reform Act of 1990 § 502\(5\)\(D\)](#), 2 U.S.C. § 661a(5)(D), *supra* p. 852.

<sup>6198</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(4\)\(A\)](#), 2 U.S.C. § 932(4)(A), *supra* p. 1152.

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**credit authority**—authority to incur **direct loan obligations** or to incur primary **loan guarantee commitments**.<sup>6199</sup>

**credit program account**—the budget **account** into which an appropriation to cover the **cost** of a **direct loan** or **loan guarantee** program is made and from which that **cost** is disbursed to the financing **account**.<sup>6200</sup>

**current**—with respect to **OMB** estimates included with a budget submission under 31 U.S.C. § 1105(a), the estimates consistent with the economic and technical assumptions underlying that budget, and with respect to estimates made after that budget submission that are not included with it, estimates consistent with the economic and technical assumptions underlying the most recently submitted President’s budget.<sup>6201</sup>

**current year**—with respect to a **budget year**, the fiscal year that immediately precedes that **budget year**.<sup>6202</sup>

**debit**—the net total amount, when positive, by which **costs** recorded on the PAYGO scorecards for a fiscal year exceed **savings** recorded on those scorecards for that year.<sup>6203</sup>

**deferral of budget authority**—(1) withholding or delaying the obligation or expenditure of **budget authority** (whether by establishing reserves or otherwise) provided for projects or activities; or (2) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of **budget authority**, including authority to obligate by contract in advance of appropriations as specifically authorized by law.<sup>6204</sup>

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<sup>6199</sup> Congressional Budget Act of 1974 § 3(10), 2 U.S.C. § 622(10), *supra* p. 60; Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Congressional Budget Act definition).

<sup>6200</sup> Federal Credit Reform Act of 1990 § 502(6), 2 U.S.C. § 661a(6), *supra* p. 853.

<sup>6201</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(9), 2 U.S.C. § 900(c)(9), *supra* p. 981; Federal Credit Reform Act of 1990 § 502(10), 2 U.S.C. § 661a(10), *supra* p. 855 (adopting the Balanced Budget and Emergency Deficit Control Act of definition); Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6202</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(13), 2 U.S.C. § 900(c)(13), *supra* p. 982; Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6203</sup> Statutory Pay-As-You-Go Act of 2010 § 3(5), 2 U.S.C. § 932(5), *supra* p. 1153.

<sup>6204</sup> Impoundment Control Act of 1974 § 1011(1), 2 U.S.C. § 682(1), *supra* p. 923.

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**deficit**—with respect to a fiscal year, the amount by which **outlays** exceed receipts during that year.<sup>6205</sup>

**deposit insurance**—the expenses of the Federal deposit insurance agencies, and other Federal agencies supervising insured depository institutions, resulting from full funding of, and continuation of, the **deposit insurance** guarantee commitment in effect under **current** estimates.<sup>6206</sup>

**direct costs**—(A)(i) in the case of a **Federal intergovernmental mandate**, the aggregate estimated amounts that all **State**, **local**, and **Tribal governments** would be required to spend or would be prohibited from raising in revenues in order to comply with the **Federal intergovernmental mandate**; or (ii) the amount of Federal financial assistance eliminated or reduced; (B) in the case of a **Federal private sector mandate**, the aggregate estimated amounts that the **private sector** will be required to spend in order to comply with the **Federal private sector mandate**.<sup>6207</sup>

**direct loan**—a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of those funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Government asset on credit terms. The term does not include the acquisition of a Federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.<sup>6208</sup>

**direct loan obligation**—a binding agreement by a Federal **agency** to make a **direct loan** when specified conditions are fulfilled by the borrower.<sup>6209</sup>

**Director**—for purposes of the **Federal Credit Reform Act**, the Director of the Office of Management and Budget.<sup>6210</sup>

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<sup>6205</sup> **Congressional Budget Act of 1974 § 3(6)**, 2 U.S.C. § 622(6), *supra* p. 58; **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977 (adopting the Congressional Budget Act definition); **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Congressional Budget Act definition).

<sup>6206</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(18)**, 2 U.S.C. § 900(c)(18), *supra* p. 983; **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6207</sup> **Congressional Budget Act of 1974 § 421(3)**, 2 U.S.C. § 658(3), *supra* p. 803.

<sup>6208</sup> **Federal Credit Reform Act of 1990 § 502(1)**, 2 U.S.C. § 661a(1), *supra* p. 850.

<sup>6209</sup> **Federal Credit Reform Act of 1990 § 502(2)**, 2 U.S.C. § 661a(2), *supra* p. 850.

<sup>6210</sup> **Federal Credit Reform Act of 1990 § 502(11)**, 2 U.S.C. § 661a(11), *supra* p. 855.

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**direct savings**—when used with respect to the result of compliance with the [Federal mandate](#), (A) in the case of a [Federal intergovernmental mandate](#), the aggregate estimated reduction in costs to any [State](#), [local](#), or [Tribal government](#) as a result of compliance with the [Federal intergovernmental mandate](#); and (B) in the case of a [Federal private sector mandate](#), the aggregate estimated reduction in costs to the [private sector](#) as a result of compliance with the [Federal private sector mandate](#).<sup>6211</sup>

**direct spending**—(1) [budget authority](#) provided by law other than [appropriation Acts](#), (2) [entitlement authority](#), and (3) the Supplemental Nutrition Assistance Program (SNAP).<sup>6212</sup>

**direct spending legislation**—any bill, joint resolution, amendment, motion, or conference report that affects [direct spending](#) as defined by, and interpreted for purposes of, the Balanced Budget and Emergency Deficit Control Act of 1985. Direct spending legislation does not include (A) any [concurrent resolution on the budget](#); or (B) any provision of legislation that affects the full funding of, and continuation of, the [deposit insurance](#) guarantee commitment in effect on November 5, 1990.<sup>6213</sup>

**discretionary appropriations**—[budgetary resources](#) (except to fund [direct-spending](#) programs) provided in [appropriation Acts](#).<sup>6214</sup>

**discretionary category**—all [discretionary appropriations](#).<sup>6215</sup>

**discretionary spending limit**—the amounts specified in [section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985](#).<sup>6216</sup>

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<sup>6211</sup> [Congressional Budget Act of 1974 § 421\(4\)](#), 2 U.S.C. § 658(4), *supra* p. 807.

<sup>6212</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(8\)](#), 2 U.S.C. § 900(c)(8), *supra* p. 980; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition); [S. Con. Res. 14, 117th Cong. § 4001\(a\)\(4\)](#) (2021) (adopted), *supra* p. 1258 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6213</sup> [H. Con. Res. 71, 115th Cong. § 4106\(a\)\(3\)](#) (2017) (adopted), *supra* p. 1246.

<sup>6214</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(7\)](#), 2 U.S.C. § 900(c)(7), *supra* p. 980; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6215</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(4\)\(C\)](#), 2 U.S.C. § 900(c)(4)(C), *supra* p. 979; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6216</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(1\)](#), 2 U.S.C. § 900(c)(1), *supra* p. 977 (citing [Balanced Budget and Emergency Deficit Control Act of 1985 § 251](#), 2 U.S.C. § 901, *supra* p.

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**EGTRRA** — the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16).<sup>6217</sup>

**elements of military pay** — (1) the elements of compensation of members of the **uniformed services** specified in 37 U.S.C. § 1009, (2) allowances provided members of the **uniformed services** under 37 U.S.C. §§ 403a and 405, and (3) cadet pay and midshipman pay under 37 U.S.C. § 203(c).<sup>6218</sup>

**emergency** — a situation that both (1) requires **new budget authority** and **outlays** (or **new budget authority** and the **outlays** flowing therefrom) for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security, and (2) is **unanticipated**.<sup>6219</sup>

**entitlement authority** — (1) the authority to make payments (including loans and grants), the **budget authority** for which is not provided for in advance by **appropriation Acts**, to any person or government if, under the provisions of the law containing that authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by that law; or (2) the program formerly known as the Food Stamp program, now known as the Supplemental Nutrition Assistance Program (or SNAP).<sup>6220</sup> As used in Balanced Budget and Emergency Deficit Control Act of 1985, all references to **entitlement authority** include the list of mandatory appropriations included in the joint explanatory statement of managers accompanying the conference report on the Balanced Budget Act of 1997.<sup>6221</sup>

**entitlement law** — a section of law that provides **entitlement authority**.<sup>6222</sup>

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9861004); **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6217</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(3)**, 2 U.S.C. § 932(3), *supra* p. 1151.

<sup>6218</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 256(g)(2)(B)**, 2 U.S.C. § 906(g)(2)(B), *supra* p. 1097.

<sup>6219</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(20)**, 2 U.S.C. § 900(c)(20), *supra* p. 983; **Congressional Budget Act of 1974 § 3(11)**, 2 U.S.C. § 622(11), *supra* p. 60 (adopting the Balanced Budget and Emergency Deficit Control Act definition); **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition); *cf.* **S. Con. Res. 14**, 117th Cong. § 4001(a)(5) (2021) (adopted), *supra* p. 1259.

<sup>6220</sup> **Congressional Budget Act of 1974 § 3(9)**, 2 U.S.C. § 622(9), *supra* p. 59; **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Congressional Budget Act definition).

<sup>6221</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(17)**, 2 U.S.C. § 900(c)(17), *supra* p. 982; **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6222</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(6)**, 2 U.S.C. § 932(6), *supra* p. 1154.



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**Federal intergovernmental mandate**—(A) any provision in legislation, statute, or **regulation** that (i) would impose an enforceable duty upon **State, local, or Tribal governments**, except a condition of Federal assistance; or a duty arising from participation in a voluntary Federal program (except as provided in (B) below); or would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that would be provided to **State, local, or Tribal governments** for the purpose of complying with any such previously imposed duty unless such duty is reduced or eliminated by a corresponding amount; or the control of borders by the Federal Government; or reimbursement to **State, local, or Tribal governments** for the net cost associated with illegal, deportable, and excludable aliens, including court-mandated expenses related to **emergency** health care, education or criminal justice; when such a reduction or elimination would result in increased net costs to **State, local, or Tribal governments** in providing education or **emergency** health care to, or incarceration of, illegal aliens; except that this subclause shall not be in effect with respect to a **State, local, or Tribal government**, to the extent that such government has not fully cooperated in the efforts of the Federal Government to locate, apprehend, and deport illegal aliens; (B) any provision in legislation, statute, or **regulation** that relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to **State, local, and Tribal governments** under **entitlement authority**, if the provision (i) would increase the stringency of conditions of assistance to **State, local, or Tribal governments** under the program; or would place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding to **State, local, or Tribal governments** under the program; and (ii) the **State, local, or Tribal governments** that participate in the Federal program lack authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or **regulation**.<sup>6223</sup>

**Federal mandate**—a **Federal intergovernmental mandate** or a **Federal private sector mandate**.<sup>6224</sup>

**Federal private sector mandate**—any provision in legislation, statute, or **regulation** that (A) would impose an enforceable duty upon the **private**

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<sup>6223</sup> Congressional Budget Act of 1974 § 421(5), 2 U.S.C. § 658(5), *supra* p. 808.

<sup>6224</sup> Congressional Budget Act of 1974 § 421(6), 2 U.S.C. § 658(6), *supra* p. 811.

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sector, except a condition of Federal assistance or a duty arising from participation in a voluntary Federal program; or (B) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with such duty.<sup>6225</sup>

**financing account**—the non-budget account or accounts associated with each credit program account which holds balances, receives the cost payment from the credit program account, and also includes all other cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made on or after October 1, 1991.<sup>6226</sup>

**government-sponsored enterprise (GSE)**—a corporate entity created by a law of the United States that (1) has a Federal charter authorized by law; (2) is privately owned, as evidenced by capital stock owned by private entities or individuals; (3) is under the direction of a board of directors, a majority of which is elected by private owners; (4) is a financial institution with power to make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector; and raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts; and does not exercise powers that are reserved to the Government as sovereign (such as the power to tax or to regulate interstate commerce); does not have the power to commit the Government financially (but it may be a recipient of a loan guarantee commitment made by the Government); and has employees whose salaries and expenses are paid by the enterprise and are not Federal employees subject to title 5 of the United States Code.<sup>6227</sup>

**impoundment resolution**—a resolution of the House of Representatives or the Senate which only expresses its disapproval of a proposed deferral of budget authority set forth in a special message transmitted by the President under Impoundment Control Act section 1013.<sup>6228</sup>

**JGTRRA**—the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27).<sup>6229</sup>

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<sup>6225</sup> Congressional Budget Act of 1974 § 421(7), 2 U.S.C. § 658(7), *supra* p. 811.

<sup>6226</sup> Federal Credit Reform Act of 1990 § 502(7), 2 U.S.C. § 661a(7), *supra* p. 853.

<sup>6227</sup> Congressional Budget Act of 1974 § 3(8), 2 U.S.C. § 622(8), *supra* p. 58; Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Congressional Budget Act definition).

<sup>6228</sup> Impoundment Control Act of 1974 § 1011(4), 2 U.S.C. § 682(4), *supra* p. 924.

<sup>6229</sup> Statutory Pay-As-You-Go Act of 2010 § 3(3), 2 U.S.C. § 932(3), *supra* p. 1151.



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**liquidating account** — the budget **account** that includes all cash flows to and from the Government resulting from **direct loan** obligations or **loan guarantee commitments** made prior to October 1, 1991. These **accounts** shall be shown in the budget on a cash basis.<sup>6230</sup>

**loan guarantee** — any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.<sup>6231</sup>

**loan guarantee commitment** — a binding agreement by a Federal **agency** to make a **loan guarantee** when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.<sup>6232</sup>

**local government** — a unit of general local government, a school district, or other special district established under **State** law.<sup>6233</sup>

**modification** — for purposes of the **Federal Credit Reform Act**, any Government action that alters the estimated **cost** of an outstanding **direct loan** (or **direct loan obligation**) or an outstanding **loan guarantee** (or **loan guarantee commitment**) from the **current** estimate of cash flows. This includes the sale of loan assets, with or without recourse, and the purchase of guaranteed loans. This also includes any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated **cost** of outstanding **direct loans** (or **direct loan obligations**) or **loan guarantees** (or **loan guarantee commitments**) such as a change in collection procedures.<sup>6234</sup>

**modifications to substantive law** — for purposes of the **Statutory Pay-As-You-Go Act**, changes to or restrictions on **entitlement law** or other mandatory spending contained in **appropriations Acts**, notwithstanding **BBEDCA section 250(c)(8)**.<sup>6235</sup>

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<sup>6230</sup> **Federal Credit Reform Act of 1990 § 502(8)**, 2 U.S.C. § 661a(8), *supra* p. 854.

<sup>6231</sup> **Federal Credit Reform Act of 1990 § 502(3)**, 2 U.S.C. § 661a(3), *supra* p. 850.

<sup>6232</sup> **Federal Credit Reform Act of 1990 § 502(4)**, 2 U.S.C. § 661a(4), *supra* p. 851.

<sup>6233</sup> **Congressional Budget Act of 1974 § 421(8)**, 2 U.S.C. § 658(8), *supra* p. 812 (adopting the definition of 31 U.S.C. § 6501(6)).

<sup>6234</sup> **Federal Credit Reform Act of 1990 § 502(9)**, 2 U.S.C. § 661a(9), *supra* p. 854.

<sup>6235</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(4)(C)**, 2 U.S.C. § 932(4)(C), *supra* p. 1153.

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**new budget authority** — with respect to a fiscal year, (1) **budget authority** that first becomes available for obligation in that year, including **budget authority** that becomes available in that year as a result of a reappropriation; or (2) a change in any **account** in the availability of unobligated balances of **budget authority** carried over from a prior year, resulting from a provision of law first effective in that year; and includes a change in the estimated level of **new budget authority** provided in indefinite amounts by existing law.<sup>6236</sup>

**nonsecurity category** — all **discretionary appropriations** not included in the **security category**.<sup>6237</sup>

**OMB** — the Director of the Office of Management and Budget.<sup>6238</sup>

**outlays** — with respect to any fiscal year, expenditures and net lending of funds under **budget authority** during that year.<sup>6239</sup>

**outyear** — a fiscal year one or more years after the **budget year**.<sup>6240</sup>

**PAYGO Act** — a bill or joint resolution that affects **direct spending** or revenue relative to the **baseline**. The **budgetary effects** of changes in revenues and **outyear modifications to substantive law** included in **appropriation Acts** as defined in **Statutory Pay-As-You-Go Act section 3(4)** are treated as if they were contained in **PAYGO legislation** or a **PAYGO Act**.<sup>6241</sup>

**PAYGO legislation** — a bill or joint resolution that affects **direct spending** or revenue relative to the **baseline**. The **budgetary effects** of changes in

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<sup>6236</sup> **Congressional Budget Act of 1974 § 3(2)(C)**, 2 U.S.C. § 622(2)(C), *supra* p. 56; **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977 (adopting the Congressional Budget Act definition); **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Congressional Budget Act definition).

<sup>6237</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(A)**, 2 U.S.C. § 900(c)(4)(A), *supra* p. 978; **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6238</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(15)**, 2 U.S.C. § 900(c)(15), *supra* p. 982; **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6239</sup> **Congressional Budget Act of 1974 § 3(1)**, 2 U.S.C. § 622(1), *supra* p. 55; **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(1)**, 2 U.S.C. § 900(c)(1), *supra* p. 977 (adopting the Congressional Budget Act definition); **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Congressional Budget Act definition).

<sup>6240</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(14)**, 2 U.S.C. § 900(c)(14), *supra* p. 982; **Statutory Pay-As-You-Go Act of 2010 § 3(2)(A)**, 2 U.S.C. § 932(2)(A), *supra* p. 1150.

<sup>6241</sup> **Statutory Pay-As-You-Go Act of 2010 § 3(7)**, 2 U.S.C. § 932(7), *supra* p. 1154.

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revenues and [outyear modifications to substantive law](#) included in [appropriation Acts](#) as defined in [Statutory Pay-As-You-Go Act section 3\(4\)](#) are treated as if they were contained in [PAYGO legislation](#) or a [PAYGO Act](#).<sup>6242</sup>

**private sector**—all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but not including [State](#), [local](#), or [Tribal governments](#).<sup>6243</sup>

**real economic growth**—with respect to any fiscal year, the growth in the gross national product during that fiscal year, adjusted for inflation, consistent with Department of Commerce definitions.<sup>6244</sup>

**reconciliation resolution**—a concurrent resolution directing the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be, to make specified changes in bills and resolutions that have not been enrolled.<sup>6245</sup>

**redetermination**—redetermination of eligibility under [Social Security Act](#) sections [1611\(c\)\(1\)](#) and [1614\(a\)\(3\)\(H\)](#).<sup>6246</sup>

**regulation**—any rule for which the [agency](#) publishes a general notice of proposed rulemaking pursuant to [5 U.S.C. § 553\(b\)](#), or any other law, including any rule of general applicability governing Federal grants to [State](#) and [local governments](#) for which the [agency](#) provides an opportunity for notice and public comment, except that the term does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances.<sup>6247</sup>

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<sup>6242</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(7\)](#), 2 U.S.C. § 932(7), *supra* p. 1154.

<sup>6243</sup> [Congressional Budget Act of 1974 § 421\(9\)](#), 2 U.S.C. § 658(9), *supra* p. 812.

<sup>6244</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(10\)](#), 2 U.S.C. § 900(c)(10), *supra* p. 981; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6245</sup> [Congressional Budget Act of 1974 § 310\(b\)](#), 2 U.S.C. § 641(b), *supra* p. 529.

<sup>6246</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251\(b\)\(2\)\(B\)\(ii\)\(II\)](#), 2 U.S.C. § 901(b)(2)(B)(ii)(II), *supra* p. 997 (citing [Social Security Act §§ 1611\(c\)\(1\) & 1614\(a\)\(3\)\(H\)](#), 42 U.S.C. §§ 1382(c)(1) & 1382(c)(3)(H), *supra* pp. 1012 & 1013).

<sup>6247</sup> [Congressional Budget Act of 1974 § 421\(10\)](#), 2 U.S.C. § 658(10), *supra* p. 812 (adopting the definition of [5 U.S.C. § 601\(2\)](#), *supra* p. 814).

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**rescission bill**—a bill or joint resolution that only rescinds, in whole or in part, **budget authority** proposed to be rescinded in a special message transmitted by the President under **Impoundment Control Act section 1012**, and upon which the Congress completes action before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President’s message is received by the Congress.<sup>6248</sup>

**revenues**—a synonym for governmental receipts. Revenues result from amounts that result from the government’s exercise of its sovereign power to tax or otherwise compel payment or from gifts to the government. Article I, Section 7, of the U.S. Constitution requires that revenue bills originate in the House of Representatives.<sup>6249</sup>

**revised nonsecurity category**—**discretionary appropriations** other than in budget function 050.<sup>6250</sup>

**revised security category**—**discretionary appropriations** in budget function 050.<sup>6251</sup>

**rule**—(except with respect to a rule of either House of the Congress) any rule for which the **agency** publishes a general notice of proposed rulemaking pursuant to **5 U.S.C. § 553(b)**, or any other law, including any rule of general applicability governing Federal grants to **State** and **local governments** for which the **agency** provides an opportunity for notice and public comment, except that the term does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances.<sup>6252</sup>

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<sup>6248</sup> **Impoundment Control Act of 1974 § 1011(3)**, 2 U.S.C. § 682(3), *supra* p. 924.

<sup>6249</sup> U.S. GOV’T ACCOUNTABILITY OFF., **A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS** 87 (2005).

<sup>6250</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(E)**, 2 U.S.C. § 900(c)(4)(E), *supra* p. 979; **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6251</sup> **Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(D)**, 2 U.S.C. § 900(c)(4)(D), *supra* p. 979; **Statutory Pay-As-You-Go Act of 2010 § 3(2)**, 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6252</sup> **Congressional Budget Act of 1974 § 421(10)**, 2 U.S.C. § 658(10), *supra* p. 812 (adopting the definition of **5 U.S.C. § 601(2)**, *supra* p. 814).

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**savings**—budgetary effects that increase revenues or decrease outlays flowing from direct spending.<sup>6253</sup>

**security category**—discretionary appropriations associated with agency budgets for the Department of Defense, the Department of Homeland Security, the Department of Veterans Affairs, the National Nuclear Security Administration, the intelligence community management account (95-0401-0-1-054), and all budget accounts in budget function 150 (international affairs).<sup>6254</sup>

**sequester**—the cancellation of budgetary resources provided by discretionary appropriations or direct spending law.<sup>6255</sup>

**sequestration**—the cancellation of budgetary resources provided by discretionary appropriations or direct spending law.<sup>6256</sup>

**small government**—(1) any small governmental jurisdictions defined in 5 U.S.C. § 601(5), which are governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000, unless an agency establishes, after opportunity for public comment, one or more definitions of that term that are appropriate to the activities of the agency and that are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register, and (2) any Tribal government.<sup>6257</sup>

**State**—a State of the United States, the District of Columbia, a territory or possession of the United States, and an agency, instrumentality, or fiscal agent of a State, but not a local government of a State.<sup>6258</sup>

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<sup>6253</sup> Statutory Pay-As-You-Go Act of 2010 § 3(4)(A), 2 U.S.C. § 932(4)(A), *supra* p. 1152.

<sup>6254</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(4)(B), 2 U.S.C. § 900(c)(4)(B), *supra* p. 978; Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6255</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977; Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6256</sup> Balanced Budget and Emergency Deficit Control Act of 1985 § 250(c)(2), 2 U.S.C. § 900(c)(2), *supra* p. 977; Statutory Pay-As-You-Go Act of 2010 § 3(2), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition).

<sup>6257</sup> Congressional Budget Act of 1974 § 421(11), 2 U.S.C. § 658(11), *supra* p. 812 (adopting and expanding on the definition of 5 U.S.C. § 601(5), *supra* p. 814).

<sup>6258</sup> Congressional Budget Act of 1974 § 421(12), 2 U.S.C. § 658(12), *supra* p. 812 (adopting the definition of 31 U.S.C. § 6501(9), *supra* p. 814).

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**statutory pay system**—a pay system under (1) 5 U.S.C. §§ 5331–5338, relating to the General Schedule; (2) [Foreign Service Act of 1980 section 403](#), 22 U.S.C. § 3963, relating to the Foreign Service of the United States; or (3) [38 U.S.C. §§ 7401–7474](#), relating to the Veterans Health Administration (other than a position subject to [38 U.S.C. § 7451](#), relating to health-care personnel).<sup>6259</sup>

**sudden**—quickly coming into being or not building up over time.<sup>6260</sup>

**surplus**—with respect to a fiscal year, the amount by which receipts exceed [outlays](#) during that year.<sup>6261</sup>

**tax expenditures**—those revenue losses attributable to provisions of the Federal tax laws that allow a special exclusion, exemption, or deduction from gross income or that provide a special credit, a preferential rate of tax, or a deferral of tax liability.<sup>6262</sup>

**tax expenditures budget**—an enumeration of [tax expenditures](#).<sup>6263</sup>

**temporary**—not of a permanent duration.<sup>6264</sup>

**timing shift**—a delay of the date on which [outlays](#) flowing from [direct spending](#) would otherwise occur from the ninth [outyear](#) to the tenth [outyear](#) or an acceleration of the date on which revenues would otherwise occur from the tenth [outyear](#) to the ninth [outyear](#).<sup>6265</sup>

**Tribal government**—any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional

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<sup>6259</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(g\)\(2\)\(A\)](#), 2 U.S.C. § 906(g)(2)(A), *supra* p. 1097 (adopting the definition of [5 U.S.C. § 5302\(1\)](#), *supra* p. 1108).

<sup>6260</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(21\)\(A\)](#), 2 U.S.C. § 900(c)(21)(A), *supra* p. 984; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the [Balanced Budget and Emergency Deficit Control Act](#) definition); *cf.* [S. Con. Res. 14, 117th Cong. § 4001\(a\)\(5\)\(A\)\(ii\)](#) (2021) (adopted), *supra* p. 1259.

<sup>6261</sup> [Congressional Budget Act of 1974 § 3\(7\)](#), 2 U.S.C. § 622(7), *supra* p. 58; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the [Congressional Budget Act](#) definition).

<sup>6262</sup> [Congressional Budget Act of 1974 § 3\(3\)](#), 2 U.S.C. § 622(3), *supra* p. 57; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the [Congressional Budget Act](#) definition).

<sup>6263</sup> [Congressional Budget Act of 1974 § 3\(3\)](#), 2 U.S.C. § 622(3), *supra* p. 57; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the [Congressional Budget Act](#) definition).

<sup>6264</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(21\)\(D\)](#), 2 U.S.C. § 900(c)(21)(D), *supra* p. 984; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the [Balanced Budget and Emergency Deficit Control Act](#) definition); *cf.* [S. Con. Res. 14, 117th Cong. § 4001\(a\)\(5\)\(A\)\(v\)](#) (2021) (adopted), *supra* p. 1259.

<sup>6265</sup> [Statutory Pay-As-You-Go Act of 2010 § 3\(8\)](#), 2 U.S.C. § 932(8), *supra* p. 1155.



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or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; [43 U.S.C. §§ 1601–1629h](#)) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.<sup>6266</sup>

**unanticipated**—that the underlying situation is [sudden](#), [urgent](#), [unforeseen](#), and [temporary](#).<sup>6267</sup>

**unforeseen**—not predicted or anticipated as an emerging need.<sup>6268</sup>

**uniformed services**—the Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.<sup>6269</sup>

**urgent**—a pressing and compelling need requiring immediate action.<sup>6270</sup>

**wildfire suppression operations**—the [emergency](#) and unpredictable aspects of wildland firefighting, including (1) support, response, and [emergency](#) stabilization activities, (2) other [emergency](#) management activities, and (3) the funds necessary to repay any transfers needed for the costs of wildfire suppression operations.<sup>6271</sup>

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<sup>6266</sup> Congressional Budget Act of 1974 § 421(13), 2 U.S.C. § 658(13), *supra* p. 812.

<sup>6267</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(21\)](#), 2 U.S.C. § 900(c)(21), *supra* p. 983; [Congressional Budget Act of 1974 § 3\(11\)](#), 2 U.S.C. § 622(11), *supra* p. 60 (adopting the Balanced Budget and Emergency Deficit Control Act definition); [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition); *cf.* [S. Con. Res. 14, 117th Cong. § 4001\(a\)\(5\)](#) (2021) (adopted), *supra* p. 1259.

<sup>6268</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(21\)\(C\)](#), 2 U.S.C. § 900(c)(21)(C), *supra* p. 984; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition); *cf.* [S. Con. Res. 14, 117th Cong. § 4001\(a\)\(5\)\(A\)\(iv\)](#) (2021) (adopted), *supra* p. 1259.

<sup>6269</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 256\(g\)\(2\)\(C\)](#), 2 U.S.C. § 906(g)(2)(C), *supra* p. 1098 (adopting the definition of [37 U.S.C. § 101\(3\)](#)).

<sup>6270</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 250\(c\)\(21\)\(B\)](#), 2 U.S.C. § 900(c)(21)(B), *supra* p. 984; [Statutory Pay-As-You-Go Act of 2010 § 3\(2\)](#), 2 U.S.C. § 932(2), *supra* p. 1150 (adopting the Balanced Budget and Emergency Deficit Control Act definition); *cf.* [S. Con. Res. 14, 117th Cong. § 4001\(a\)\(5\)\(A\)\(iii\)](#) (2021) (adopted), *supra* p. 1259.

<sup>6271</sup> [Balanced Budget and Emergency Deficit Control Act of 1985 § 251\(b\)\(2\)\(F\)\(ii\)\(II\)](#), 2 U.S.C. § 901(b)(2)(F)(ii)(II), *supra* p. 1004.

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