

CRS Report for Congress

Received through the CRS Web

The “Deeming Resolution”: A Budget Enforcement Tool

Updated August 9, 2004

Robert Keith
Specialist in American National Government
Government and Finance Division

The “Deeming Resolution”: A Budget Enforcement Tool

Summary

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

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

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

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

For FY1999, the first year that the two chambers failed to reach final agreement on a budget resolution, the Senate adopted two deeming resolutions (S.Res. 209 on April 2, 1998, and S.Res. 312 on October 21, 1998) and the House included deeming provisions in two resolutions dealing with other subjects as well (H.Res. 477, adopted on June 19, 1998, and H.Res. 5, adopted on January 6, 1999).

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

On May 19, 2004, the House adopted the conference report on the FY2005 budget resolution. A special rule providing for consideration of the conference report, H.Res. 649, adopted earlier that day, included a “deeming resolution” provision in Section 2 that put the budget policies in the conference report into effect. A “deeming resolution” provision for the Senate was included as Section 14007 in the conference report on H.R. 4613, the Defense Appropriations Act for FY2005, which President Bush signed into law on August 5, 2004, as P.L. 108-287.

Contents

Substantive Enforcement of the Budget Resolution	1
The “Deeming Resolution”	3
House and Senate Action on Deeming Resolutions	4
Tardy Adoption of the Budget Resolution	4
Failure to Adopt the Budget Resolution	6
Actions for FY1999	6
Actions for FY2003	7
Actions for FY2005	10
Waivers of Section 303 of the 1974 Congressional Budget Act	12

The “Deeming Resolution”: A Budget Enforcement Tool

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

Substantive Enforcement of the Budget Resolution

The Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344, as amended) requires the adoption by April 15th of each year of a concurrent resolution on the budget.¹ The annual budget resolution sets forth aggregate levels of revenues, spending, the debt limit, and the surplus or deficit, as well as allocations of spending (both budget authority and outlays) by each of 20 major functional categories of the budget. The congressional budget process was first implemented in 1975 for FY1976, with full implementation of the process occurring the following year. Over the years, the time frame of the budget resolution has lengthened from one fiscal year to at least five fiscal years (and sometimes as many as 10 fiscal years).

Enforcement of the budget resolution relies primarily upon points of order and reconciliation procedures. Point-of-order provisions contained in the 1974 Congressional Budget Act, which sometimes are supplemented by point-of-order provisions carried in annual budget resolutions, allow any Member in either chamber to prevent the consideration of legislation that would violate budget resolution

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

policies.² Of course, points of order are not self-enforcing and may be waived with a sufficient majority, thereby allowing legislation in violation of budget resolution policies to be considered. In the Senate, most of the points of order pertaining to budget enforcement require the affirmative vote of three-fifths of the membership (60 votes, if no seats are vacant) in order to be waived.

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

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

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

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

Reconciliation is a two-step process. Under the first step, reconciliation instructions are included in the budget resolution, directing one or more committees in each House to develop legislation that changes spending or revenues (or both) by

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

³The spending allocations to committees usually are included in the joint explanatory statement on the budget resolution; the spending suballocations made by the Appropriations Committees are set forth in House or Senate reports, as appropriate.

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

The “Deeming Resolution”

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

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

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

House and Senate Action on Deeming Resolutions

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

Tardy Adoption of the Budget Resolution

For 27 of the 30 fiscal years covering FY1976-FY2005, the House and Senate adopted at least one budget resolution, as shown in **Figure 1**. (In 1998 and 2002, the House and Senate were not able to reach agreement on budget resolutions for FY1999 and FY2003, respectively; further, no budget resolution for FY2005 has yet been agreed to in 2004.) In most of the 27 years for which a budget resolution was adopted, final agreement on the measure was reached in April, May, or early June, allowing the House and Senate to bring the regular appropriations bills and other budgetary legislation to the floor with little or no delay.

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

The tardy adoption of budget resolutions has been more of a problem for the House than the Senate, especially because the House usually begins the consideration of the regular appropriations bills at an earlier point in the session. In 1990, the House made a procedural change to allow the consideration of the regular appropriations acts to begin if the budget resolution was not finalized in a timely manner. The Budget Enforcement Act (BEA) of 1990 (Title XIII of P.L.

Figure 1. Date Budget Resolution Finally Adopted: FY1976-2005

Fiscal year	Date adopted
1976	05-14-1975
1977	05-13-1976
1978	05-17-1977
1979	05-17-1978
1980	05-24-1979
1981	06-12-1980
1982	05-21-1981
1983	06-23-1982
1984	06-23-1983
1985	10-01-1984
1986	08-01-1985
1987	06-27-1986
1988	06-24-1987
1989	06-06-1988
1990	05-18-1989
1991	10-09-1990
1992	05-22-1991
1993	05-21-1992
1994	04-01-1993
1995	05-12-1994
1996	06-29-1995
1997	06-13-1996
1998	06-05-1997
1999	[none]
2000	04-15-1999
2001	04-13-2000
2002	05-10-2001
2003	[none]
2004	04-11-2003
2005	[none yet]

101-508, as amended) added a temporary provision to the 1974 Congressional Budget Act authorizing the chairman of the House Budget Committee to issue a provisional spending allocation to the House Appropriations Committee (consistent with the statutory limits on discretionary spending set by the BEA) if the budget resolution were not agreed to by the April 15 deadline.⁴ In 1997, the Budget Enforcement Act (BEA) of 1997 (Title X of P.L. 105-33) repealed Section 603 (and all of the other sections in Title VI of the 1974 Congressional Budget Act), but incorporated a modified version of the provision into Section 302 as a permanent part of procedure.⁵ The modification requires the allocation to the House Appropriations Committee to be consistent with the most recently agreed to budget resolution rather than the statutory limits on discretionary spending.

Notwithstanding the authority established in 1990 for making provisional spending allocations to the House Appropriations Committee based on prior budget resolutions, the House on several occasions has adopted deeming resolutions so that consideration of regular appropriations acts could proceed under more updated spending allocations. In 1990, 1995, and 1996, several special rules⁶ on regular appropriations bills included provisions that deemed a House-passed budget resolution to be in effect (until superseded by final House-Senate agreement on a budget resolution), or that deemed a particular spending allocation to be in effect.⁷

In 1990, when the final adoption of the budget resolution for FY1991 was delayed until October 9 (while extensive negotiations were conducted in a budget summit between the administration and Congress), the Senate adopted a deeming resolution to allow consideration of the regular appropriations acts for that year to proceed. S.Res. 308, which set forth FY1991 allocations of \$680.512 billion in new budget authority and \$690.606 billion in outlays to the Senate Appropriations Committee “for purposes of section 302(a) of the Congressional Budget Act of 1974,” was adopted by the Senate on July 12, 1990, by unanimous consent.⁸ Under the terms of S.Res. 308, the spending allocations were effective pending final agreement on the budget resolution or the agreement to different spending levels in the budget summit negotiations.

⁴See the new Section 603 of the 1974 Congressional Budget Act as added by Section 13111 of the BEA of 1990 (104 *Stat.* 1388-605).

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

⁶ A special rule is a simple House resolution (i.e., numbered “H.Res.”) reported by the House Rules Committee that sets the parliamentary terms for the consideration of one or more specified measures.

⁷ See H.Res. 413 (Section 3), adopted on June 19, 1990; H.Res. 167 (Section 2), adopted on June 16, 1995; and H.Res. 451 (Section 2) and 453, adopted on June 11 and 13, 1996, respectively.

⁸ See the remarks of Senator Robert C. Byrd in the Congressional Record of July 12, 1990, at pp. S9642-9643, in which explains the purpose of S.Res. 308 and the status of congressional action on the regular appropriations acts for FY1991.

Failure to Adopt the Budget Resolution

As stated previously, the House and Senate failed to adopt a budget resolution twice during the past 30 years — in 1998 for FY1999 and in 2002 for FY2003 — and have not adopted a FY2005 budget resolution so far in 2004.

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

In order to impose a binding restraint on annual appropriations acts and other budgetary legislation for that year, the House and Senate followed similar approaches. The Senate passed its version of the FY1999 budget resolution, S.Con.Res. 86, on April 2, 1998. Anticipating an impasse with the House, the Senate also that day agreed to S.Res. 209, a measure setting forth spending allocations to the Senate Appropriations Committee “until a concurrent resolution on the budget for fiscal year 1999 is agreed to by the Senate and the House of Representatives.”⁹ On October 21, 1998, several weeks after FY1999 had begun, the Senate agreed to S.Res. 312, informally referred to as the “deeming budget resolution.”¹⁰ The measure amended S.Res. 209 by incorporating budget aggregates for FY1999-FY2003 and authorizing the chairman of the Senate Budget Committee to file committee spending allocations consistent with them. The budget aggregates included in S.Res. 312 reflected the policies of the previous budget resolution updated for enacted legislation and revised economic and technical assumptions and provided the basis for enforcement under Section 302, Section 311, and other sections of the 1974 Congressional Budget Act.

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

On January 6, 1999, at the beginning of the next session, the House adopted H.Res. 5, a measure setting forth its standing rules. Section 2(a) of the resolution directed the chairman of the House Budget Committee to publish budget aggregates and committee spending allocations for FY1999-FY2003 in the *Congressional Record* and stated that these levels should provide the basis for enforcement in lieu

⁹ The text of S.Res. 209 is set forth on page S3160 of the *Congressional Record* of Apr. 2, 1998.

¹⁰ The text of S.Res. 312, and the debate thereon, may be found in the *Congressional Record* of Oct. 21, 1998, on pages S12915 and S12916.

of a budget resolution.¹¹ House Budget Committee Chairman John Kasich submitted the aggregates and allocations on February 25 and March 3, 1999.¹²

Actions for FY2003. As the prospect of a second instance without final agreement of the House and Senate on a budget resolution became more likely, both chambers turned to deeming resolutions as an enforcement alternative. Concern about budget discipline also has been heightened by the expiration on September 30, 2002, of statutory budget enforcement mechanisms under the Balanced Budget and Emergency Deficit Control Act of 1985 (i.e., the discretionary spending limits and pay-as-you-go requirement, which are enforced by sequestration) and the Senate's pay-as-you-go point of order and three-fifths vote requirement in the Senate for waivers of certain points of order under the 1974 Congressional Budget Act.¹³

The House adopted a budget resolution for FY2003, H.Con.Res. 353, on March 20, 2002. About two months later, on May 22, and with the Senate not having considered a budget resolution on the floor, the House included a deeming provision in a special rule, H.Res. 428, on a supplemental appropriations act for FY2002 (H.R. 4775).¹⁴ Section 2 of the special rule provided that the budget resolution passed in March by the House, H.Con.Res. 353, "shall have force and effect in the House as though Congress has adopted such concurrent resolution." Additionally, the chairman of the House Budget Committee was directed to have the committee spending allocations and other budgetary information printed in the *Congressional Record*. House Budget Committee Chairman Jim Nussle submitted the required information that same day.¹⁵

With regard to the extension of expiring budget enforcement mechanisms, the House Budget Committee held a hearing on the matter on April 25, 2002. Representative John Spratt, ranking minority member of the House Budget Committee, introduced H.R. 5502, the Restoring Budget Disciplines Act of 2002, on September 30, 2002. His bill would have extended the discretionary spending limits and pay-as-you-go requirement for five fiscal years, through FY2007. The House did not take any action on such legislation. In early October, Speaker Dennis Hastert indicated that the House might not act on such legislation until 2003.¹⁶

¹¹ The text of Section 2(a) of H.Res. 5 is printed in the *Congressional Record* of Jan. 6, 1999, on page H34.

¹² See the remarks of Rep. Kasich in the *Congressional Records* of Feb. 25 and Mar. 3, 1999, on pages H809-H810 and H949-H951, respectively.

¹³For more information on these enforcement procedures, see CRS Report RL31137, *Sequestration Procedures Under the 1985 Balanced Budget Act*, by Robert Keith, and CRS Report RS21316, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

¹⁴ See the consideration of H.Res. 428 in the *Congressional Record* of May 22, 2002, at pages H2891-H2902.

¹⁵ See the remarks of Rep. Jim Nussle in the *Congressional Record* of May 22, 2002, at pages H2929-H2930.

¹⁶See "Hastert Supports Renewal of Pay-Go But Expects No Action Until 2003," by Bud (continued...)

The Senate Budget Committee reported a budget resolution for FY2003, S.Con.Res. 100, on April 11, 2002, but it was not considered on the Senate floor during the session.¹⁷

During June 2002, several efforts were made in the Senate to amend legislation with provisions serving as a “deeming resolution” or otherwise extending certain budget enforcement procedures. On June 5, during consideration of an emergency supplemental appropriations act (H.R. 4775), the Senate rejected Gregg-Feingold amendment #3687, which would have extended certain budget enforcement procedures through FY2007, and Santorum amendment #3765, which would have deemed the budget resolution reported earlier by the Senate Budget Committee to be in effect.¹⁸ The Gregg-Feingold amendment fell on a point of order after a motion to waive the point of order was rejected on a 49-49 vote (rollcall vote #133). The Santorum amendment was tabled by a 96-0 vote (rollcall vote #134). The next day, on June 6, Daschle amendment #3764, an extension of certain budget enforcement procedures through FY2007, also failed.¹⁹ The amendment fell on a point of order that it was nongermane after cloture had been invoked.

On June 20, during consideration of the National Defense Authorization Act (S. 2514), the Senate rejected Feingold amendment #3915, as perfected by the modified Reid-Conrad amendment #3916.²⁰ The Feingold amendment, as perfected, would have extended the discretionary spending limits through FY2004 and certain other budget enforcement procedures through FY2007. It fell on a point of order when a motion to waive the point of order was rejected on a 59-40 vote, one short of the required 60 affirmative votes (rollcall vote #159).

On September 18, 2002, Senators Kent Conrad and Pete Domenici, the chairman and ranking minority member, respectively, of the Senate Budget Committee, sent a letter to Majority Leader Daschle urging action on a resolution extending the Senate’s pay-as-you-go point of order and the three-fifths vote requirement for certain waivers of the 1974 Congressional Budget Act.²¹ Majority

¹⁶(...continued)

Newman in BNA’s *Daily Report for Executives*, Oct. 4, 2002.

¹⁷See S.Rept. 107-141; the Committee reported S.Con.Res. 100 favorably by a vote of 12-10.

¹⁸For the text and discussion of the Gregg-Feingold amendment, see pages S5005-5015 in the *Congressional Record* of June 5, 2002; for the text and discussion of the Santorum amendment, see pages S5018-S5021.

¹⁹For the text and discussion of the Daschle amendment, see pages S5015-S5022 and S5114-S5120 in the *Congressional Record* of June 5 and 6, 2002, respectively.

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

²¹The letter, as well as the text of the resolution, is available online at [<http://www.senate.gov/~budget/democratic/budgetresFY03/resletter091902.pdf>]

Leader Daschle confirmed that the Senate would consider such legislation before adjournment.²²

On October 16, the Senate considered S.Res. 304, a measure introduced earlier in the session encouraging the Senate Appropriations Committee to report the regular appropriations bills for FY2003 by July 31, 2002. The Senate agreed to the resolution by unanimous consent, after adopting by unanimous consent Conrad amendment #4886, a substitute amendment extending the Senate's pay-as-you-go point of order and the three-fifths vote requirement for certain waivers of the 1974 Congressional Budget Act through April 15, 2003.²³ The resolution did not address extension of the discretionary spending limits and pay-as-you-go requirement in statute.

The following year, in 2003, the House and Senate took additional actions pertaining to budget enforcement for FY2003. On the opening day of the 108th Congress, January 7, 2003, the House adopted H.Res. 5, a measure setting forth its standing rules. Separate orders pertaining to the budget process and other matters were set forth in Section 3 of the resolution.²⁴ Section 3(a)(4) made the provisions of the FY2003 budget resolution adopted in 2002 (H.Con.Res. 353) effective for purposes of budget enforcement in 2003, pending adoption of a FY2003 budget resolution.

In addition, Section 3(a)(4) of H.Res. 5 directed the chairman of the House Budget Committee, when elected, to have the committee spending allocations and other budgetary information printed in the *Congressional Record*. On the next day, January 8, the House adopted H.Res. 14. Section 2 of that resolution authorized Representative Jim Nussle of Iowa, the prospective chairman of the House Budget Committee, to submit the spending allocations and other information required by H.Res. 5, which he did later that day.²⁵

On April 11, 2003, the House and Senate reached final agreement on a budget resolution for FY2004 (H.Con.Res. 95).²⁶ In addition to setting forth the appropriate budgetary levels for FY2004-FY2013, the budget resolution also established budgetary levels for FY2003. The FY2004 budget resolution also included certain

²²See "Daschle Promises Senate Will Debate Resolution Extending Budget Disciplines," by Bud Newman in BNA's *Daily Report for Executives*, Oct. 2, 2002.

²³See the consideration of S.Res. 304 in the *Congressional Record* of Oct. 16, 2002, at pages S10527-S10531 and page S10553. Also, see "In Late Deal, Senate Approves by Voice Vote Renewing Expiring Budget Enforcement Rules," by Bud Newman in BNA's *Daily Report for Executives*, Oct. 17, 2002.

²⁴ For more information on this topic, see CRS Report RL31728, *House Rules Changes Affecting the Congressional Budget Process in the 108th Congress (H.Res. 5)*, by Bill Heniff Jr.

²⁵ See the remarks of Rep. Jim Nussle in the *Congressional Record* of Jan. 8, 2003, at pages H74-H75. Rep. Nussle was elected chairman of the House Budget Committee on Jan. 8 by virtue of the House's adoption of H.Res. 24.

²⁶ See the conference report on H.Con.Res. 95, H.Rept. 108-71 (Apr. 10, 2003).

procedural requirements applicable to FY2003. In particular, Section 421 directed the chairmen of the House and Senate Budget Committees to make appropriate revisions in spending allocations to accommodate any supplemental appropriations for FY2003 enacted into law before May 1, 2003.²⁷

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

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

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

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

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

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

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

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

Section 2(b) of H.Res. 649 barred the automatic engrossment of a measure raising the debt limit by the amount recommended in the budget resolution, an action otherwise required under House Rule XXVII whenever a budget resolution is finally agreed to by the House and Senate. Consequently, the automatic engrossment of such a measure can occur in 2004 only if the Senate adopts the conference report on

²⁷ P.L. 108-11, the Emergency Wartime Supplemental Appropriations Act, 2003, was enacted into law on Apr. 16, 2003.

S.Con.Res. 95. (In most instances, the House and Senate use other means to enact debt-limit legislation.²⁸)

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

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

On July 22, 2004, the Senate resolved these problems by adopting the conference report on H.R. 4613, the Defense Appropriations Act for FY2005. President Bush signed the measure into law on August 5, 2004, as P.L. 108-287 (118 Stat. 951 et. seq.). Section 14007 of the act, which took effect upon enactment, established the revised level of \$821 billion as the allocation of new budget authority to the Senate Appropriations Committee for purposes of Section 302(a) of the 1974 act (and repealed the outdated limit of \$814 billion in the prior year's budget resolution). The section reads as follows:

SEC. 14007. 2005 Discretionary Limits. (a) IN GENERAL — For the purposes of section 302(a) of the Congressional Budget Act of 1974, the allocation of the appropriate levels of budget totals for the Senate Committee on Appropriations for fiscal year 2005 shall be —

(1) for total discretionary spending —

- (A) \$821,419,000,000 in total new budget authority; and
- (B) \$905,328,000,000 in total budget outlays; and

(2) for mandatory —

- (A) \$460,008,000,000 in total new budget authority; and
- (B) \$445,525,000,000 in total budget outlays;

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

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

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

²⁸ See CRS Report RS21519, *Legislative Procedures for Adjusting the Public Debt Limit: A Brief Overview*, by Robert Keith and Bill Heniff Jr.

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

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

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

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

Waivers of Section 303 of the 1974 Congressional Budget Act

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

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

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

Over the years, the Senate has waived Section 303(a) dozens of times for various types of budgetary legislation. In many years, however, the Senate has chosen not to waive Section 303(a) with respect to the consideration of regular appropriations bills. Instead, the Senate Appropriations Committee in these instances generally delayed action on its bills until after the budget resolution had been adopted. Data collected from the 94th-100th Congresses show that, with respect to regular appropriations bills, Section 303(a) waivers were granted in only 13 cases,²⁹ as follows:

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

²⁹See (1) CRS Report 89-37, *Senate Consideration of Regular Appropriations Bills Under Waivers of Section 303(a) of the 1974 Budget Act*, by Robert Keith; and (2) CRS Report 89-76, *Waivers of the 1974 Budget Act Considered in the Senate During the 100th Congress*, by Robert Keith.

- FY1986, for two bills considered in July-August 1985 (the FY1986 budget resolution was adopted on August 1).

In most of these 13 cases, the waiver was obtained under a successful motion directed specifically to waiving Section 303(a). In several other instances, the waiver was obtained under a unanimous consent request. The use of the waiver motions or unanimous consent requests in these cases attested to the consensus regarding the need to consider the regular appropriations bills. After all, such motions are subject to extended debate, and any Senator can raise an objection to a unanimous consent request. An extended debate on a motion, and an objection to a unanimous consent request, occurred only once (both occurred in August 1984 in connection with the Agriculture appropriations bill for FY1985). The extended debate on the waiver motion began on August 1 and was brought to a close on August 8, when the Senate voted 68-34 to invoke cloture. The subsequent vote to approve the waiver motion (63-34) was the only rollcall vote taken on such motions; the others were approved by voice vote.

In more recent years, the budget resolution has been adopted in a fairly timely manner. During the period covering the 102nd Congress through the first session of the 108th Congresses, nine of the 12 budget resolutions were adopted in April or May; the remaining three were adopted in June. Accordingly, in these years the Senate Appropriations Committee has been able to avoid the need for waivers of Section 303(a). During the 1998 session, when the House and Senate failed to agree on a budget resolution for FY1999, regular appropriations bills were taken up by unanimous consent, apparently without any effort to raise points of order under Section 303(a).