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Congressional Budget Resolutions: Revisions and Adjustments

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Congressional Budget Resolutions: Revisions and Adjustments

Summary

The Congressional Budget Act of 1974 requires that the House and Senate adopt a concurrent resolution on the budget each year. For about the first decade of the congressional budget process, the 1974 act required that two budget resolutions be adopted each year (an advisory one in the spring and a binding one in the fall). In the early 1980s, the House and Senate changed to the practice of adopting a single annual budget resolution. In late 1985, the 1974 act was amended to conform it to the changed practice in this regard.

Initial implementation of the congressional budget process occurred in 1975 for FY1976, with full implementation of the process occurring the following year. The House and Senate have reached final agreement on a budget resolution for every succeeding fiscal year, except in three instances (in 1998 for FY1999, in 2002 for FY2003, and in 2004 for FY2005).

The 1974 act originally reflected the assumption that revisions would be a routine part of the congressional budget process by requiring the adoption each fall of a second budget resolution revising (or reaffirming) the first resolution. Although the House and Senate terminated this requirement in favor of adopting a single budget resolution each year, revisions may be made in budget resolutions in several other ways.

First, a revised budget resolution may be adopted by the House and Senate as a separate measure under authority provided in Section 304 of the 1974 act. Second, revisions in current-year levels may be incorporated into the budget resolution for the following fiscal year. Third, adjustments may be made under authority provided in Section 314 of the 1974 act or comparable provisions included in budget resolutions. Fourth, adjustments may be made pursuant to “reserve funds” or similar provisions included in budget resolutions. Fifth, adjustments may be made whenever the “fungibility rule” is used under the reconciliation process. Finally, “deeming resolutions” may include revisions to budget resolutions or provisions that effectively constitute revisions.

The House and Senate adopted a revised budget resolution under Section 304 as a separate measure only once, in March 1977 for FY1977. Due to the fact that two budget resolutions already had been adopted in 1976 for FY1977, as was required at the time, the revised budget resolution was referred to as the “third budget resolution” for that fiscal year. The development of the third budget resolution for FY1977 stemmed from budget revisions, including a stimulus package, submitted to Congress by incoming President Jimmy Carter at the beginning of the 1977 session.

The House and Senate have made changes in budget resolution levels on many occasions under the other authorities, cited above, that provide for revisions and adjustments.

This report will be updated as developments warrant.

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Congressional Budget Resolutions: Revisions and Adjustments

Following a brief discussion of budget resolutions and the congressional budget process, this report examines the several ways in which budget levels and other matters included in budget resolutions may be revised or adjusted, the authorities that underpin the making of such revisions and adjustments, and actual practices of the House and Senate in this regard.

Budget Resolutions and the Congressional Budget Process

The Congressional Budget Act of 1974 requires that the House and Senate adopt a concurrent resolution on the budget each year.¹ For about the first decade of the congressional budget process, the 1974 act required that two budget resolutions be adopted each year. In the early 1980s, the House and Senate changed to the practice of adopting a single annual budget resolution, and, in late 1985, the 1974 act was amended to conform it to the changed practice in this regard (see discussion below).

Initial implementation of the congressional budget process occurred in 1975 for FY1976, with full implementation of the process occurring the following year. The House and Senate have reached final agreement on a budget resolution for every succeeding fiscal year, except in three instances (in 1998 for FY1999, in 2002 for FY2003, and in 2004 for FY2005).²

As a concurrent resolution, the budget resolution is not sent to the President for his approval. Instead, the budget resolution reflects the agreement of the House and Senate and serves as internal guide to congressional action on legislation to implement budget policies. The 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. Additionally, the budget resolution may include certain optional matters, such as reconciliation directives. Over the years, the time frame of

¹ The Congressional Budget Act is Titles I-IX of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344; July 12, 1974; 88 Stat. 297-339), as amended and codified at 2 U.S.C. 621-692. For information on budget resolutions over the years, see CRS Report RL30297, *Congressional Budget Resolutions: Selected Statistics and Information Guide*, by Bill Heniff Jr.

² The House and Senate sometimes have used a “deeming resolution” to provide a basis for enforcement when they could not reach agreement on a budget resolution. For more information on this practice, see CRS Report RL31443, *The “Deeming Resolution”: A Budget Enforcement Tool*, by Robert Keith.

the budget resolution has lengthened from one fiscal year to at least five fiscal years (and sometimes as many as 10 fiscal years).

Budget Resolution Enforcement. Enforcement of the budget resolution relies primarily upon points of order and reconciliation procedures. Point-of-order provisions contained in the 1974 act, which sometimes are supplemented by point-of-order provisions carried in annual budget resolutions, allow any Member in either chamber to prevent the consideration of legislation that would violate budget resolution policies.³ 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 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.⁴ Section 302(f) generally bars the consideration of any spending measure that would violate the committee spending allocations made under Section 302(a) or the Appropriations Committees' suballocations of spending made under Section 302(b). In view of the different time frames for making committee spending allocations, the spending levels are enforceable for one year in the case of the Appropriations Committees but are enforceable for a 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

³ 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.

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

resolution policies.⁵ 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 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. When only one committee is given instructions, that committee reports its reconciliation legislation directly to its chamber, thus bypassing its respective Budget Committee.

Under the second step of the reconciliation process, reconciliation legislation 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 when the reconciliation legislation is enacted, and the policies of the budget resolution are put into effect, or the reconciliation legislation is vetoed (and the veto is not overridden).

From Two Required Annual Budget Resolutions to One. As originally framed, the 1974 act required the House and Senate to adopt two budget resolutions each year. The first budget resolution, scheduled for adoption by May 15, was to set advisory levels, while the second budget resolution, scheduled for adoption by September 15 (just before the start of the fiscal year on October 1), was to set binding levels. The requirement for a first budget resolution was established in Section 301 of the act; the requirement for a second budget resolution was established in Section 310. The second budget resolution could revise any or all of the levels recommended in the first resolution (or any revised budget resolution adopted subsequently, as discussed below), or it could reaffirm them without change.

The House and Senate reached agreement on a second budget resolution for each fiscal year during the first seven years of the congressional budget process, covering FY1976-FY1982. During the period from FY1983 through FY1986, however, the House and Senate effectively abandoned the practice of adopting more than one budget resolution each year.⁶ The first budget resolution in each of those years carried a provision, referred to as the “automatic second budget resolution,”

⁵ The reconciliation process is discussed extensively in CRS Report RL33030, *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr.

⁶ This change in practice may be attributed largely to the increased difficulty in passing budget resolutions in both chambers. Final action on the second budget resolution for FY1982 was delayed until December 10, 1981 (nearly three months behind schedule) and on the first budget resolution for FY1983 until June 23, 1982 (more than a month late). Further, on initial consideration, the two budget resolutions passed by narrow margins in the House (206-200 and 219-206, respectively) and the Senate (49-48 and 49-43, respectively).

that deemed the first budget resolution to be the second budget resolution for enforcement purposes automatically on October 1 if a second budget resolution had not been adopted by that date.⁷ Second budget resolutions, as well as “automatic second budget resolution” provisions in first budget resolutions, are identified in **Table 1**.

Table 1. Second Budget Resolutions and “Automatic Second Budget Resolution” Provisions in First Budget Resolutions: FY1976-FY1986

Fiscal Year	Second Budget Resolution	“ASBR” Provision in First Budget Resolution	Date Agreement Reached Between House and Senate
1976	H.Con.Res. 466	n/a	12-12-75
1977	S.Con.Res. 139	n/a	09-16-76
1978	H.Con.Res. 341	n/a	09-15-77
1979	H.Con.Res. 683	n/a	09-21-78
1980	S.Con.Res. 53	n/a	11-28-79
1981	H.Con.Res. 448	n/a	11-20-80
1982	S.Con.Res. 50	n/a	12-10-81
1983	[none]	S.Con.Res. 92 (Sec. 7)	06-22-82
1984	[none]	H.Con.Res. 91 (Sec. 5)	06-23-83
1985	[none]	H.Con.Res. 280 (Sec. 4)	10-01-84
1986	[none]	S.Con.Res. 32 (Sec. 3)	08-01-85

Source: Prepared by the Congressional Research Service.

Notes: “ASBR” refers to “automatic second budget resolution.” ASBR provisions deemed the first budget resolution to be the second budget resolution for enforcement purposes automatically on October 1 if a second budget resolution had not been adopted by that date. Only the provisions in the FY1985 and FY1986 budget resolutions carried the designation of an ASBR provision. The entry “n/a” means “not applicable.”

⁷ For example, Section 7 of S.Con.Res. 92 (97th Congress), the first budget resolution for FY1983, stated: “If Congress has not completed action by October 1, 1982, on the Concurrent Resolution on the Budget required to be reported under section 310(a) of the Budget Act for the 1983 fiscal year, then, for purposes of section 311 of such Act, and section 4 of this resolution, this concurrent resolution shall be deemed to be the concurrent resolution required to be reported under section 310(a) of such Act.”

Ultimately, the Balanced Budget and Emergency Deficit Control Act of 1985 amended the 1974 act to conform it to the changed congressional practice.⁸ Beginning with FY1987, the change required the adoption each year of only one budget resolution (and advanced the deadline for completed action on the budget resolution from May 15 to April 15).

Revision and Adjustment of the Budget Resolution

As indicated above, the 1974 act originally reflected the assumption that revisions and adjustments would be a routine part of the congressional budget process by requiring the adoption each fall of a second budget resolution revising (or reaffirming) the first resolution. Although the House and Senate terminated this requirement in favor of adopting a single budget resolution each year, revisions and adjustments may be made in budget resolutions in several other ways.

First, a revised budget resolution may be adopted by the House and Senate as a separate measure under authority provided in Section 304 of the 1974 act. Second, revisions in current-year levels may be incorporated into the budget resolution for the following fiscal year. Third, adjustments may be made under authority provided in Section 314 of the 1974 act or comparable provisions included in budget resolutions. Fourth, adjustments may be made pursuant to “reserve funds” or similar provisions included in budget resolutions. Fifth, adjustments may be made whenever the “fungibility rule” is used under the reconciliation process. Finally, “deeming resolutions” may include revisions to budget resolutions or provisions that effectively constitute revisions. The authority for each of these six categories of revisions, and the record of experience in each category, is discussed below.

Revised Budget Resolutions Under Section 304. Section 304 of the 1974 act, which is codified at 2 U.S.C. 635, authorizes the House and Senate to adopt a revised budget resolution for a fiscal year as a separate measure.⁹ This action may occur at any time after the initial budget resolution for that fiscal year (required by Section 301) has been agreed to, but before the applicable fiscal year has ended. The revised budget resolution may change any or all of the budget levels or other matter contained in a prior resolution, or merely reaffirm them.

As noted by the conferees on the 1974 act, the use of revised budget resolutions from time to time was contemplated by both the House and Senate for several reasons:

The House and Senate versions authorized the adoption of additional budget resolutions.

⁸ The 1985 act is Title II of a measure increasing the statutory limit on the public debt (P.L. 99-177; December 12, 1985; 99 Stat. 1037-1101), as amended. Section 201(b) of the 1985 act (99 Stat. 1040) provided a new Title III of the 1974 act; the requirement for a single annual budget resolution was set forth in the new Section 301.

⁹ Section 304 of the 1974 act originally was codified at 31 U.S.C. 1325, in the title dealing with “Money and Finance.” As part of the recodification and enactment of Title 31 under P.L. 97-258 (Sept. 13, 1982), the provision was moved to Title 2, which pertains to “The Congress.”

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.¹⁰

Section 304 has been amended four times, by: (1) the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177); (2) the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Title I of P.L. 100-119); (3) the Budget Enforcement Act of 1990 (Title XIII of P.L. 101-508); and (4) the Budget Enforcement Act of 1997 (Title X of P.L. 105-33). Two of the changes were temporary and were repealed later. They made certain enforcement procedures, dealing with maximum deficit amounts (tied to sequestration procedures) and a ban in the Senate against using more than one set of economic assumptions in developing a budget resolution, applicable to revised budget resolutions as well as the budget resolutions required under Section 301. The other amendments were minor adjustments or conforming changes (e.g., inserting "Permissible" in the section heading).

During the consideration of a revised budget resolution, the regular procedures for the consideration of a budget resolution set forth in Section 305 of the 1974 act apply. Section 305(b)(1) provides a debate limitation of 15 hours in the Senate for the consideration of a revised budget resolution (compared to a debate limitation of 50 hours for the budget resolution required under Section 301).

The text of Section 304 in its current form is set forth in **Box 1**.

Box 1. Section 304 of the Congressional Budget Act of 1974

Permissible Revisions of Concurrent Resolutions on the Budget

Sec. 304. At any time after the concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301 of this title, 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.

Third Budget Resolution for FY1977. The House and Senate adopted a revised budget resolution as a separate measure only once, in March 1977 for FY1977. Due to the fact that two budget resolutions already had been adopted in 1976 for FY1977, as was required at the time, the revised budget resolution was referred to as the "third budget resolution" for that fiscal year.

¹⁰ *Congressional Budget and Impoundment Control Act of 1974*, conference report to accompany H.R. 7130, H.Rept. 93-1101 (June 11, 1974), p. 61.

The development of the third budget resolution for FY1977 stemmed from budget revisions, including a stimulus package, submitted to Congress by incoming President Jimmy Carter at the beginning of the 1977 session. President Carter's message to Congress stated:

This budget includes the economic stimulus package, which will reduce unemployment and promote steady, balanced economic growth. The package, which has been slightly changed since it was first presented to the Congress last month, provides for \$15.7 billion in tax reductions and increased outlays in 1977 and \$15.9 billion in 1978. It includes a \$50 per capita rebate on personal income taxes; an increase in the standard deduction; reduction in business taxes to stimulate employment and provide incentives for investment; expansion in training and employment programs; increases in public works funding; and additional money for countercyclical revenue sharing grants to State and local governments.¹¹

The House Budget Committee reported the third budget resolution, H.Con.Res. 110, on February 8, 1977 (H.Rept. 95-12), and the Senate Budget Committee reported the third budget resolution, S.Con.Res. 10, on February 10 (S.Rept. 95-9).

The Senate began consideration of the third budget resolution first, on February 21, 1977, pursuant to a privileged motion made by Senate Majority Leader Robert C. Byrd. Senate Budget Committee Chairman Edmund Muskie, in explaining the need for action on the budget resolution, indicated that it was an appropriate response to the circumstances but not the type of action that should be expected to occur routinely:

The Budget Committee is reporting this third budget resolution now because of the serious economic conditions facing the country. The possibility of such additional budget resolutions to meet changed conditions, demonstrates the flexibility of the budget process. But the committee wishes to emphasize that additional resolutions should be the exception and not the rule. The Budget Act provides for such additional resolutions to meet changed conditions, not simply to take account of matters which might have been considered in the first and second resolution.¹²

On February 22, the Senate agreed to S.Con.Res. 10 without amendment, by a vote of 72-20.

The House began consideration of H.Con.Res. 110 on February 22, pursuant to a privileged motion under the 1974 act made by the chairman of the House Budget Committee, Representative Robert Giaimo, as well as a unanimous consent agreement reached days earlier.¹³ Although the House subsequently developed the

¹¹ See "Proposed Changes in 1978 Budget — Message From the President of the United States (H.Doc. 95-77)" in the *Congressional Record*, vol. 123, pt. 4, Feb. 22, 1977, p. 4905.

¹² See the remarks of Senator Edmund Muskie in the *Congressional Record*, vol. 123, pt. 4, Feb. 21, 1977, pp. 4757-4758.

¹³ The unanimous consent agreement, which allowed the House to begin consideration of
(continued...)

practice of considering budget resolutions pursuant to the terms of a special rule reported by the House Rules Committee, a special rule was not used in this case. The 10-hour debate limit applicable in the House under Section 305(a) of the 1974 act was split equally between Chairman Giaimo and the ranking minority member of the Budget Committee, Representative Delbert Latta. The House agreed to the budget resolution the next day, by a vote of 239-169, after agreeing to a committee amendment in the nature of a substitute and an amendment that added \$215 million for countercyclical assistance to States and localities, and rejecting an amendment in the nature of a substitute that proposed a permanent tax rate reduction.

In explaining the need for the third budget resolution, Chairman Giaimo commented:

It is made necessary, in the final analysis, by the continuing economic recession which began in late 1974. Although the Congress' actions in early 1975 helped to reverse the economic decline and to begin the recovery from recession, that recovery, as we now know, stalled badly last summer and fall. As a result, the economic goals we set last September in the second budget resolution are no longer valid.¹⁴

According to Chairman Giaimo, the committee's recommendations in the third budget resolution with respect to a stimulus package (\$17.3 billion in total for FY1977, including \$13.8 billion in tax reductions and \$3.5 billion in outlay increases) exceeded the President's recommendations by \$1.3 billion. Additionally, the committee's recommendations included 13 proposals unrelated to the stimulus package.

The conferees reported S.Con.Res. 10 on February 28 (H.Rept. 95-30; S.Rept. 95-31). On March 3, House Budget Committee Chairman Giaimo called up the conference report as a privileged matter. The five-hour debate limit provided for under Section 305(a) of the 1974 act was evenly divided between Chairman Giaimo and Ranking Minority Member Latta.

Chairman Giaimo explained that the conference agreement included \$17.5 billion in economic stimulus for FY1977, including \$13.8 billion for tax stimulus and \$3.7 billion for accelerated program spending; \$1.7 billion in spending for job creation programs, he noted, exceeded the President's recommendations.¹⁵ In addition, the budget resolution accommodated some non-stimulus matters, including rescission of funding for two naval vessels and \$12.6 billion in budget authority for additional housing subsidies.

¹³ (...continued)

the measure one day before a 10-day layover rule expired, was entered into on February 16, 1977. See the *Congressional Record* of that date, vol. 123, pt. 4, at pp. 4498-4499.

¹⁴ See the remarks of Representative Robert Giaimo in the *Congressional Record*, vol. 123, pt. 4, Feb. 22, 1977, pp. 4920-4921.

¹⁵ See the remarks of Representative Robert Giaimo in the *Congressional Record*, vol. 123, pt. 4, Mar. 3, 1977, pp. 6197-6199.

The House agreed to the conference report on March 3, by a vote of 226-174. On the same day, the Senate agreed to the conference report, by voice vote.

Revisions in the Following Year's Budget Resolution. Following the experience in 1977, the House and Senate in various years incorporated revisions for the current fiscal year into the budget resolution for the following fiscal year, thereby avoiding the need to adopt a revised budget resolution as a separate measure.

The first instance of revisions being made in this manner occurred for FY1977, when the first budget resolution for FY1978 included further revisions to the revisions made by the third budget resolution for FY1977. In an effort to accommodate President Carter's stimulus package, the third budget resolution for FY1977 had, among other things, increased the deficit for that fiscal year by \$19.150 billion, from \$50.600 billion in the second budget resolution for FY1977 to \$69.750 billion in the third budget resolution for that year. When the need for the economic stimulus dissipated, and President Carter withdrew his stimulus proposal centered on tax rebates, Congress used the FY1978 budget resolution to revise the FY1977 deficit level downward to \$52.6 billion, close to the level recommended in the second budget resolution for FY1977; other budget levels for FY1977 were revised in the first budget resolution for FY1978 as well.¹⁶

In this first instance, the revisions to current-year levels made in the budget resolution for the following fiscal year cited the authority of Section 304 of the 1974 act. The revisions in FY1977 levels made in the FY1978 budget resolution began as follows:

Pursuant to section 304 of the Congressional Budget Act of 1974, the appropriate aggregate amounts for the fiscal year 1977 set forth in the first section of S.Con.Res. 10 are revised as follows:

In the second instance, FY1979 levels set forth in Section 1 of the second budget resolution for FY1979 (H.Con.Res. 683) were revised by the first budget resolution for FY1980, but the reference to the authority of Section 304 was not used. The first budget resolution for FY1980 simply began as follows: "Section 1 of H.Con.Res. 683 is revised as follows:"¹⁷

This approach to making revisions in current-year budget levels was followed in the case of subsequent budget resolutions, including those for FY1981-FY1986. In those years, revisions in current-year levels were incorporated throughout the sections dealing with budget aggregates and functional allocations of spending for the other years, rather than being segregated into their own section of the budget resolution, as occurred in earlier years. In the case of these revisions, no reference was made to the authority provided under Section 304.

¹⁶ See Section 4 of S.Con.Res. 19 in *First Concurrent Resolution on the Budget for Fiscal Year 1978*, conference report to accompany S.Con.Res. 19, H.Rept. 95-291 (May 11, 1977), pp. 4 and 5.

¹⁷ See Section 1 of H.Con.Res. 107 in *First Concurrent Resolution on the Budget for Fiscal Year 1980*, conference report to accompany H.Con.Res. 107, H.Rept. 96-211 (May 21, 1979), pp. 3-5.

Revisions in current-year levels were not made by the budget resolutions for FY1987-FY1999. For FY1992, the budget resolution (H.Con.Res. 121) included a section that authorized the House Budget Committee chairman to submit revised aggregates and committee spending allocations, but the House and Senate did not agree on a common set of revised levels.¹⁸

For FY2000, the budget resolution provided that budget levels for FY1999 activated previously under “deeming resolutions” in the House and Senate be considered “revisions” of the budget resolution for that year.¹⁹

The practice of incorporating revisions in current-year levels in the following year’s budget resolution recurred with respect to the budget resolutions for FY2001, FY2002, and FY2004 (budget resolutions were not adopted for FY2003 and FY2005). Most recently, the budget resolution for FY2006 adopted by the House and Senate earlier this session included revisions in FY2005 levels.²⁰

Adjustments Under Section 314 or Comparable Authorities. Section 314 of the 1974 act, which was added by the Budget Enforcement Act of 1997 and codified at 2 U.S.C. 645, provided for adjustments in budget resolution levels (see **Appendix A** for the text of the section).²¹ Under the section, the chairmen of the Budget Committees were required to adjust various budgetary levels, generally for FY1998-FY2002 (but through FY2003 for adoption incentive payments). The adjustments were to be made pursuant to the consideration of legislation in several different categories and were meant to parallel similar adjustments made automatically in the statutory discretionary spending limits (and the “pay-as-you-go” scorecard) established initially under the Budget Enforcement Act (BEA) of 1990. The changes made by the BEA took the form of amendments to the underlying law, the Balanced Budget and Emergency Deficit Control Act of 1985.²²

The budgetary levels subject to adjustment were the discretionary spending limits and budgetary aggregates set forth in the most recent budget resolution, and the spending allocations to committees made thereunder. Adjustments were triggered by legislation (mainly annual appropriations acts) in the following six categories:

¹⁸ See Section 12 of the FY1992 budget resolution, H.Con.Res. 121.

¹⁹ See Section 209 of the FY2000 budget resolution, H.Con.Res. 68. The deeming resolutions referred to in the section were S.Res. 312, adopted by the Senate in the second session of the 105th Congress, and H.Res. 5, adopted by the House in the first session of the 106th Congress.

²⁰ See Sections 101-103 of H.Con.Res. 95 in *Concurrent Resolution on the Budget for Fiscal Year 2006*, conference report to accompany H.Con.Res. 95, H.Rept. 109-62 (Apr. 28, 2005), pp. 2-11.

²¹ Section 10114 of the Budget Enforcement Act (BEA) of 1997 added Section 314 to the 1974 act. The BEA of 1997 was Title X of the Balanced Budget Act of 1997 (P.L. 105-33; Aug. 5, 1997; 111 Stat. 677-712).

²² The Budget Enforcement Acts of 1990 and 1997, as well as the Balanced Budget and Emergency Deficit Control Act of 1985, are discussed in CRS Report RL30795, *General Management Laws: A Compendium*, Clinton T. Brass (coordinator).

- measures containing designated emergency amounts of discretionary spending, direct spending, or revenues;
- measures funding continuing disability reviews, subject to certain limitations;
- measures providing an allowance for the International Monetary Fund;
- measures funding arrearages for international organizations, international peacekeeping, and multilateral development banks (but only for the period covering FY1998-FY2000 and subject to a limit of \$1.884 billion in budget authority);
- measures providing funds for an earned income tax credit compliance initiative, subject to annual limits ranging from \$138 million for FY1998 to \$146 million for FY2002; and
- measures providing funds for adoption incentive payments, not to exceed \$20 million for FY1999-FY2003.²³

The adjustments made under this section applied while the legislation was being considered, but took effect permanently only when the legislation was enacted. The Appropriations Committees were authorized to report revised spending suballocations conforming to any adjustments that were made.

Section 314 of the 1974 act in part replaced authority for certain adjustments that had been authorized in temporary procedures under Section 606(d) and (e) of the act (Title VI of the 1974 act later was repealed).

The chairmen of the House and Senate Budget Committees made the adjustments required by Section 314 and provided notification of their actions in the *Congressional Record*. In some instances, adjustments made in budgetary levels were adjusted a second time. Senate Budget Committee Chairman Kent Conrad, for example, announced in September 2002 that an increase in budget levels of nearly \$30 billion in budget authority for FY2002 made the previous July, stemming from the enactment of emergency supplemental appropriations, was being reduced by \$5.1 billion because the President had not concurred in the emergency designation:

Mr. President, section 314 of the Congressional Budget Act, as amended, requires the chairman of the Senate Budget Committee to adjust the budgetary aggregates and the allocation for the Appropriations Committee by the amount of appropriations designated as emergency spending pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

On July 23, I filed adjustments to the 2002 budgetary aggregates and allocation for the Appropriations Committee resulting from the \$29.9 billion in emergency funding included in the conference report to H.R. 4775, the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States (Public Law 107-206). The legislation, however, included \$5.1 billion in emergency funding that the Congress made

²³ This provision was added by Section 201(b) of the Adoption and Safe Families Act of 1997 (P.L. 105-89; Nov. 19, 1997; 111 Stat. 2115 et. seq.).

contingent on the President designating the total amount as emergency spending within 30 days of enactment. On August 13, the President announced that he would not declare the \$5.1 billion as emergency spending, thereby vitiating the entire amount. Consequently, I am lowering the adjustments I made on July 23 by the amount of the contingency — \$5.1 billion in budget authority — as well as by the estimated amount of the contingency's impact on 2002 outlays — \$0.96 billion.²⁴

The House and Senate have included provisions in recent budget resolutions that renew on a yearly basis some of the types of authorities to make adjustments that were granted under Section 314, or that are tantamount to such a renewal. The FY2006 budget resolution (H.Con.Res. 95), for example, provides in Section 404(a) discretionary spending limits for FY2006-FY2008 for purposes of enforcement in the Senate (but not the House).²⁵ Under Section 404(b) of the budget resolution, the chairman of the Senate Budget Committee is authorized to adjust the discretionary spending limits, as well as the budget aggregates and the committee spending allocations, in the event that FY2006 appropriations legislation is reported in four areas: (1) continuing disability reviews; (2) Internal Revenue Service tax enforcement; (3) health care fraud and abuse control program; and (4) unemployment insurance improper payments. The adjustment amounts are subject to limits stated in Section 404(b).²⁶

The exemption of emergency spending provisions from budget enforcement also has been accommodated by the FY2006 budget resolution. Instead of providing for adjustments to cover such spending, however, the budget resolution (in Section 402) stipulates that such spending “shall not count” for purposes of specified enforcement provisions under the 1974 act.

Finally, provisions have been included in recent budget resolutions that provide for adjustments beyond the scope of what had been authorized under Section 314. The FY2006 budget resolution (in Section 406), for example, requires the chairmen of the House and Senate Budget Committees to make adjustments in budget levels upon the enactment of any measure making a change in budget concepts or definitions.

Adjustments Pursuant to Reserve Funds. Reserve funds have been a recurring component of budget resolutions for many years. A reserve fund is a provision in a budget resolution that authorizes the chairman of the House or Senate Budget Committee to adjust the aggregate levels of revenue and spending in the budget resolution, and the spending allocations made to committees thereunder, as

²⁴ See the remarks of Senate Budget Committee Chairman Kent Conrad in the *Congressional Record* (daily ed.) of Sep. 10, 2002, at p. S8446.

²⁵ See Section 404 of H.Con.Res. 95 in *Concurrent Resolution on the Budget for Fiscal Year 2006*, conference report to accompany H.Con.Res. 95, H.Rept. 109-62 (Apr. 28, 2005), pp. 22-23.

²⁶ For an example of an adjustment under Section 404(b) of the FY2006 budget resolution, see the remarks of Senate Budget Committee Chairman Judd Gregg in the *Congressional Record* (daily ed.) of July 28, 2005, at pp. S9274-S9275.

appropriate, if a specified legislative action occurs. Generally, the legislative action specified is the reporting of a bill or joint resolution by a named committee (or the offering of an amendment thereto or the submission of a conference report thereon) dealing with a particular subject. As long as the conditions specified in the reserve fund are met when the measure is reported (or other appropriate legislative action occurs), then the Budget Committee chairman may make the authorized adjustments. Such action is taken at the discretion of the Budget Committee chairman and is not automatic.

Reserve funds often set the condition that the net budgetary impact of the specified legislation be deficit neutral. Under deficit-neutral reserve fund procedures, a committee could report legislation with spending in excess of its allocations, but if the excess amounts were “offset” by equivalent amounts of revenue increases, then the Budget Committee chairman could increase the committee spending allocations by the appropriate amounts to prevent a point of order under Section 302 (and adjust the revenue aggregates appropriately, as well).

Reserve funds sometimes are not subject to a deficit-neutral requirement. Instead, they allow a higher level of spending than initially is reflected in the budget resolution, as long as the legislation meets the conditions of the reserve fund. In some instances, the increases authorized by a reserve fund are limited to specified amounts.

A recent and well known example of a reserve fund is the one provided for “Medicare Modernization and Prescription Drugs” in Section 401 of the FY2004 Budget Resolution (H.Con.Res. 95). The purpose of the reserve fund was to allow the applicable budget levels to be increased by up to \$7 billion for FY2004 and \$400 billion for FY2004-FY2013 to accommodate legislation involving a Medicare prescription drug program and related matters. The reserve fund procedure applicable in the Senate under Section 401(b), which was a little less complicated than the reserve fund procedure applicable in the House under Section 401(a), read as follows:

(b) In the Senate. — If the Committee on Finance of the Senate reports a bill or joint resolution, or an amendment is offered thereto or a conference report thereon is submitted, that strengthens and enhances the Medicare Program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and improves the access of beneficiaries under that program to prescription drugs or promotes geographic equity payments, the chairman of the Committee on the Budget, may revise appropriate budgetary aggregates and committee allocations of new budget authority and outlays provided by that measure for that purpose, but not to exceed \$7,000,000,000 for fiscal year 2004 and \$400,000,000,000 for the period of fiscal years 2004 through 2013.²⁷

²⁷ See Section 401 of H.Con.Res. 95 in *Concurrent Resolution on the Budget for Fiscal Year 2004*, conference report to accompany H.Con.Res. 95, H.Rept. 108-71 (Apr. 10, 2003), pp. 20-21.

The reserve fund in Section 401 was triggered and the legislation was enacted into law on December 8, 2003, as the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-173).²⁸

Adjustments Pursuant to Use of the “Fungibility Rule”. Section 310(c) of the 1974 act, known informally as the “fungibility rule” and codified at 2 U.S.C. 641, grants some flexibility to committees subject to reconciliation directives pertaining to both spending and revenues. This provision applies principally to the House Ways and Means Committee and the Senate Finance Committee because they exercise jurisdiction in their chambers over tax legislation generally; some other committees exercise jurisdiction over matters, such as certain fees, involving budgetary transactions that are scored as revenues.

In essence, the fungibility rule deems either committee to be in compliance with its reconciliation directives if its recommended legislation does not cause either the spending changes or the revenue changes to exceed or fall below its instruction by more than 20% of the sum of the two types of changes, and the total amount of changes recommended is not less than the total amount of changes that were directed.

The rule authorizes the chairman of the Budget Committee to file changes in budget resolution levels, and committee spending allocations thereunder, whenever the fungibility rule is exercised. Further, it requires that any committee receiving revised spending allocations report committee spending suballocations.

The fungibility rule has been used from time to time. Most recently, it was used by the House and Senate with respect to consideration of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27; May 28, 2003).²⁹

Revisions Under “Deeming Resolutions”. “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.³⁰ 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 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.

²⁸ See the remarks of Senate Budget Committee Chairman Don Nickles in the *Congressional Record* (daily ed.) of June 18, 2003, at p. S8118 regarding the adjustment under the Medicare reserve fund.

²⁹ See the remarks of Senate Budget Committee Chairman Don Nickles in the *Congressional Record* (daily ed.) of May 22, 2003, at pp. S6969-S6971, and the remarks of House Budget Committee Chairman Jim Nussle in the *Congressional Record* (daily ed.) of June 12, 2003, at pp. H5354-H5355.

³⁰ For more information on this topic, see CRS Report RL31443, *The “Deeming Resolution”: A Budget Enforcement Tool*, by Robert Keith.

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.

The use of a deeming resolution for FY2005 was especially important in the Senate because it was the vehicle used to revise a limit on discretionary spending for that year (enforceable by a point of order) that had been included in the prior year's budget resolution, but that had become insufficient to accommodate current Senate policy.

The House considered the conference report on the FY2005 budget resolution, S.Con.Res. 95, under the terms of a special rule, H.Res. 649 (H.Rept. 108-500, May 19, 2004). 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. The House agreed to H.Res. 649 on May 19, 2004, by a vote of 220-204. The following month, on June 24, the House rejected a resolution (H.Res. 685) offered by Representative David Obey, that would have amended the budget levels in effect under the deeming resolution.

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, a "deeming resolution" provision 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).

Revision of Reconciliation Directives

Reconciliation directives included in a budget resolution have not been revised by a subsequent budget resolution. The first use of reconciliation directives by the House and Senate occurred in the second budget resolution for FY1981. The resultant reconciliation measure was enacted into law (P.L. 96-499) in late 1980, before the next budget resolution (the first budget resolution for FY1982) was considered.

The second use of reconciliation directives occurred in the first budget resolution for FY1982. The resultant reconciliation measure was enacted into law (P.L. 97-35) in mid-1981, before the next budget resolution (the second budget resolution for FY1982) was considered.

Thereafter, the House and Senate have agreed to no more than one budget resolution in each year. Final action on any reconciliation measures that were considered pursuant to a budget resolution and enacted or vetoed during this period was completed before the next budget resolution was considered.

Appendix A. Text of Section 314 of the Congressional Budget Act of 1974

Sec. 314. (a) Adjustments. —

(1) In General . — After the reporting of a bill or joint resolution, 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 shall make the adjustments set forth in paragraph (2) for the amount of new budget authority in that measure (if that measure meets the requirements set forth in subsection (b) of this section) and the outlays flowing from that budget authority.

(2) Matters to be Adjusted. — The adjustments referred to in paragraph (1) are to be made to —

(A) the discretionary spending limits, if any, set forth in the appropriate concurrent resolution on the budget;

(B) the allocations made pursuant to the appropriate concurrent resolution on the budget pursuant to section 302(a); and

(C) the budgetary aggregates as set forth in the appropriate concurrent resolution on the budget.

(b) Amounts of Adjustments. — The adjustment referred to in subsection (a) of this section shall be —

(1) an amount provided and designated as an emergency requirement pursuant to section 251(b)(2)(A) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985;

(2) an amount provided for continuing disability reviews subject to the limitations in section 251(b)(2)(C) of that Act;

(3) for any fiscal year through 2002, an amount provided that is the dollar equivalent of the Special Drawing Rights with respect to —

(A) an increase in the United States quota as part of the International Monetary Fund Eleventh General Review of Quotas (United States Quota); or

(B) any increase in the maximum amount available to the Secretary of the Treasury pursuant to section 17 of the Bretton Woods Agreements Act, as amended from time to time (New Arrangements to Borrow);

(4) an amount provided not to exceed \$1,884,000,000 for the period of fiscal years 1998 through 2000 for arrearages for international organizations, international peacekeeping, and multilateral development banks;

(5) an amount provided for an earned income tax credit compliance initiative but not to exceed —

(A) with respect to fiscal year 1998, \$138,000,000 in new budget authority;

(B) with respect to fiscal year 1999, \$143,000,000 in new budget authority;

(C) with respect to fiscal year 2000, \$144,000,000 in new budget authority;

(D) with respect to fiscal year 2001, \$145,000,000 in new budget authority; and

(E) with respect to fiscal year 2002, \$146,000,000 in new budget authority; or

(6) in the case of an amount for adoption incentive payments (as defined in section 901(b)(2)(G) of this title) for fiscal year 1999, 2000, 2001, 2002, or 2003 for the Department of Health and Human Services, an amount not to exceed \$20,000,000.

(c) Application of Adjustments. — The adjustments made pursuant to subsection (a) for legislation shall —

(1) apply while that legislation is under consideration;

(2) take effect upon the enactment of that legislation; and

(3) be published in the Congressional Record as soon as practicable.

(d) Reporting Revised Suballocations. — Following any adjustment made under subsection (a), the Committees on Appropriations of the Senate and the House of Representatives may report appropriately revised suballocations under section 302(b) to carry out this section.

(e) Definitions for CDRs. — As used in subsection (b)(2) of this section —

(1) the term “continuing disability reviews” shall have the same meaning as provided in section 251(b)(2)(C)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985; and

(2) the term “new budget authority” shall have the same meaning as the term “additional new budget authority” and the term “outlays” shall have the same meaning as “additional outlays” in that section.