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The House's "Pay-As-You-Go" (PAYGO) Rule in the 110th Congress: A Brief Overview

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The House's "Pay-As-You-Go" (PAYGO) Rule in the 110th Congress: A Brief Overview

Summary

On January 5, 2007, the House of Representatives adopted H.Res. 6, a measure setting forth its rules for the 110th Congress. Section 405 of the measure added a new rule, known as the House's "pay-as-you-go" (PAYGO) rule, as Clause 10 of Rule XXI. The new rule was a key element of the House Democratic leadership's legislative agenda for the beginning of the 110th Congress.

The House's PAYGO rule requires that legislation affecting direct spending or revenues must not increase the deficit (or reduce the surplus) over a six-year period, including the current year, the upcoming fiscal year, and the four following fiscal years, as well as an 11-year period (the previously cited period and the ensuing five fiscal years). The rule is enforced on the basis of estimates made by the House Budget Committee relative to the baseline projections made by the Congressional Budget Office under established procedures.

While a PAYGO rule is new in the House, the Senate has had such a rule since 1993. The Senate has modified its PAYGO rule several times over the years, and efforts are expected to be made in 2007 to make its application more stringent. At present, there are notable differences between the House and Senate PAYGO rules. In addition, efforts may be made to renew the statutory PAYGO requirement that affected legislation enacted during calendar year 1991 through the end of FY2002.

This report will be updated as developments warrant. For additional information on PAYGO rules, see CRS Report RL32835, *PAYGO Rules for Budget Enforcement in the House and Senate*, by Robert Keith and Bill Heniff Jr.

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While a PAYGO rule is new in the House, the Senate has had such a rule since 1993.[1] The Senate has modified its PAYGO rule several times over the years, and efforts are expected to be made in 2007 to make its application more stringent. At present, there are notable differences between the House and Senate PAYGO rules. In addition, efforts may be made to renew the statutory PAYGO requirement that affected legislation enacted during calendar year 1991 through the end of FY2002.

This report provides a brief overview of the House's PAYGO rule, including a legislative history and a discussion of procedures under the rule.

Legislative History

On January 4, 2007, the House began consideration of H.Res. 6, a measure introduced by the House Majority Leader, Representative Steny Hoyer, establishing the chamber's rules for the 110th Congress. The measure was considered under the terms of a special rule, H.Res. 5, introduced by the chair of the House Rules Committee, Representative Louise Slaughter. The special rule, which had been agreed to that day by a vote of 235-195, required that each of the five titles of H.Res. 6 be considered separately. Titles I and II of H.Res. 6 were agreed to on January 4, and the remaining three titles were agreed to on January 5, thus completing action on the measure.

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[1] For additional information on PAYGO rules, see CRS Report RL32835, *PAYGO Rules for Budget Enforcement in the House and Senate*, by Robert Keith and Bill Heniff Jr., and CRS Report RL31943, *Budget Enforcement Procedures: Senate's Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

Title IV (Fiscal Responsibility) sets forth several changes in the budget process, including a bar against the consideration of a budget resolution containing reconciliation directives that would increase the deficit or reduce the surplus (Section 402); a requirement that points of order under Title III of the 1974 Congressional Budget Act apply to measures considered under a special rule even if they have not been reported by committee (Section 403); and congressional earmark reform (Section 404). Section 405 sets forth the House's PAYGO rule, as Clause 10 of Rule XXI.[2] (The text of the PAYGO rule is provided in **Box 1**.) Title IV was agreed to by a vote of 280-152.[3]

Box 1. House's PAYGO Rule

Rule XXI

10. It shall not be in order to consider any bill, joint resolution, amendment, or conference report if the provisions of such measure affecting direct spending and revenues have the net effect of increasing the deficit or reducing the surplus for either the period comprising the current fiscal year and the five fiscal years beginning with the fiscal year that ends in the following calendar year or the period comprising the current fiscal year and the ten fiscal years beginning with the fiscal year that ends in the following calendar year. The effect of such measure on the deficit or surplus shall be determined on the basis of estimates made by the Committee on the Budget relative to —

> (a) the most recent baseline estimates supplied by the Congressional Budget Office consistent with section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 used in considering a concurrent resolution on the budget; or
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> (b) after the beginning of a new calendar year and before consideration of a concurrent resolution on the budget, the most recent baseline estimates supplied by the Congressional Budget Office consistent with section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

Procedures Under the Rule

The House's PAYGO rule requires that legislation affecting direct spending or revenues not increase the deficit (or reduce the surplus) over a six-year period, including the current year, the upcoming fiscal year, and the four following fiscal years, as well as an 11-year period (the previously cited period and the ensuing five fiscal years). The rule is enforced on the basis of estimates made by the House Budget Committee relative to the baseline projections made by the Congressional

[2] For the consideration of Title IV of H.Res. 6, see the *Congressional Record* (daily ed.), vol. 153, no. 2, Jan. 5, 2007, pp. H60-H79, H82-H83.

[3] The 280 affirmative votes included 232 Democrats and 48 Republicans; the 152 negative votes included no Democrats and 152 Republicans.

Budget Office under established procedures. Different facts of the House's PAYGO rule are discussed below.

Types of Legislation Covered by the Rule. The rule applies to any bill or joint resolution (or amendment thereto or conference report thereon) that includes one or more provisions affecting *direct spending* or *revenues*.

Direct spending (also referred to as *mandatory spending*) generally is provided in substantive legislation under the jurisdiction of the legislative committees and is used principally to fund entitlement programs — such as Social Security, Medicare, Medicaid, federal employee retirement, and unemployment compensation — and other programs of a mandatory nature. Some income to the federal government, such as Medicare premiums, is regarded as *offsetting receipts*, while other income, such as certain regulatory user fees, is regarded as *offsetting collections*; both are counted as negative spending rather than as revenue. The Congressional Budget Office (CBO) estimates that direct spending will total $1.533 trillion for FY2008, reflecting $1.708 trillion in direct spending and $175 billion in offsetting receipts and offsetting collections.[4] All other spending in the budget is referred to as *discretionary spending*, which is provided in and controlled by the annual appropriations process and is not subject to the PAYGO rule.[5]

Revenues (also referred to as *receipts*) are income arising largely from the federal government's exercise of its sovereign powers to tax or otherwise compel payments, and include such revenue sources as individual and corporate income taxes, social insurance taxes, excise taxes, estate and gift taxes, customs duties, and gifts. Under House Rule X, revenue legislation generally falls under the jurisdiction of the Ways and Means Committee. In some cases, other House committees exercise jurisdiction over legislation including transactions that are treated as revenues, such as criminal fines under the jurisdiction of the House Judiciary Committee. (The revenue attributed to such cases, however, represents a very small portion of total revenues.)

From time to time, provisions affecting direct spending or revenues are included in annual appropriations acts.[6] The Consolidated Appropriations Act for FY2001 (P.L. 106-554; December 21, 2000), for example, which was used to wrap up action at the end of the session, enacted several measures by cross-reference, including the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 and the Community Renewal Tax Relief Act of 2000. While discretionary spending is not within the purview of the PAYGO rule, direct spending or revenue provisions included in an annual appropriations act could be subject to the

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[4] Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2008 to 2017*, January 2007, Table 3-3, pp. 55-56.

[5] Discretionary spending is provided in regular, supplemental, and continuing appropriations acts under the jurisdiction of the House and Senate Appropriations Committees.

[6] See, for example, CRS Report 98-846, *Revenue Provisions in Annual Appropriations Acts*, by Robert Keith.

rule; some maintain, however, that conventional scoring practices may exempt such provisions in annual appropriations acts from coverage under the PAYGO rule.[7]

Violations of the Rule. Violations of the rule occur when direct spending or revenue provisions in legislation have the effect of increasing the deficit or reducing the surplus. Two different time periods are used in evaluating the impact of the legislation: (1) the six-year period encompassing the current fiscal year and the ensuing five fiscal years; and (2) the 11-year period encompassing the current fiscal year and the ensuing 10 fiscal years. A violation of the PAYGO rule occurs if the deficit is increased (or the surplus is reduced) in either or both time periods.

The current fiscal year is the one in progress when a regular session of Congress begins; the first of the ensuing fiscal years, referred to as the budget year, is the fiscal year that begins toward the end of the congressional session, on October 1; the remaining fiscal years are referred to as outyears. Accordingly, during the first session of the 110th Congress (calendar year 2007), the current fiscal year is FY2007 and the budget year is FY2008, and the two time periods covered by the PAYGO rule during the session are FY2007-FY2012 and FY2007-FY2017.

The rule focuses on the "net effect" of the provisions on the deficit or surplus. Thus, a measure could increase the deficit (or reduce the surplus) in some years and reduce the deficit (or increase the surplus) in others, but a violation would occur only if the net effect over the six-year or 11-year time periods was an increase in the deficit (or a reduction in the surplus).

The time periods employed by the PAYGO rule are consistent with time periods used in the congressional budget process under the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344, as amended; 2 U.S.C. 621 et. seq.). Under the 1974 act, the annual budget resolution must cover a period of at least five years, beginning with the budget year. In addition, the budget resolution may include revisions in the current year. In past years, the House and Senate have used a budget resolution covering up to 10 years, plus the current year.

Deficit/Surplus Estimates and the Baseline. The House Budget Committee is charged with providing estimates to the presiding officer of the impact of legislation on the deficit or surplus when a point of order is raised under the PAYGO rule. This feature of the rule is consistent with the manner in which

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[7] Conventional scoring practices are linked to the baseline methodology under Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. House Budget Committee determinations of the budgetary impact of legislation for purposes of enforcing the PAYGO rule must use baseline estimates made by the Congressional Budget Office, consistent with Section 257. In adopting and revising Section 257 in reconciliation legislation in 1990 and 1997, respectively, the conferees included scorekeeping rules in the joint explanatory statements accompanying the conference reports on those measures. These scorekeeping rules are available online at the Office of Management and Budget Web site, at [http://www.whitehouse.gov/omb/circulars/a11/current_year/app_a.pdf], as Appendix A in OMB Circular A-11. Scorekeeping rule 3 ("Direct Spending Programs") requires in part that changes in direct spending laws made in annual appropriations acts be counted as discretionary spending.

estimates are made to enforce the various points of order under the 1974 Congressional Budget Act. In particular, Section 312(a) of the 1974 act requires that estimates of new budget authority, outlays, direct spending, new entitlement authority, and revenues be made by the House or Senate Budget Committee, as applicable.

Estimates prepared by the House Budget Committee under the PAYGO rule must be made "relative to" the most recent baseline estimates supplied by the Congressional Budget Office (CBO). The CBO baseline (as adjusted periodically) typically underpins the annual budget resolution required by the 1974 act, and the Budget Committee regularly uses CBO cost estimates on legislation for its scorekeeping activities. The Budget Committee retains authority under the 1974 act, however, to modify the CBO baseline for purposes of developing and enforcing the budget resolution.[8] On the other hand, in the case of the House PAYGO rule, presumably the Budget Committee would not be able to modify the CBO baseline or use alternatives to it. With respect to Budget Committee estimates for purposes of the PAYGO rule, the committee is not restricted in their preparation. Consequently, the committee's estimate for a measure under the PAYGO rule could coincide exactly with CBO's cost estimate for the same measure, or could deviate from it.

The baseline estimates supplied by CBO to the Budget Committee for the purpose of making determinations under the PAYGO rule must be consistent with Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 907). Section 257 sets forth a methodology for preparing a budget baseline. The original purpose of the section was to set guidelines for the Office of Management and Budget (OMB) and CBO when preparing baseline estimates that would be used to determine whether certain statutory budget enforcement mechanisms had been violated, thereby triggering sequestration. The procedures for baseline construction set forth in Section 257 represented, for the most part, a common approach used by the two agencies for a specific purpose, but which OMB and CBO also used to prepare baselines for the President's budget and the congressional budget resolution, respectively. When the statutory budget enforcement mechanisms lapsed in 2002, CBO continued to be required to adhere to the procedures of Section 257. Although Section 257 expired on September 30, 2006, CBO has indicated that it views the section as the most recent statement of congressional policy in this area and will continue to follow its procedures.

Drafting Legislation to Avoid Violations. In order to avoid being in violation of the PAYGO rule, legislation must be drafted so as to not increase the deficit (or reduce the surplus) over the two aforementioned time periods. A measure may contain increases in direct spending over one or both time periods so long as at least an equivalent amount of decreases in direct spending or increases in revenues is included. Similarly, a measure may contain decreases in revenues over one or both time periods so long as at least an equivalent amount of increases in revenues or

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[8] For information on instances in which the House and Senate Budget Committees used alternate baseline assumptions, see Appendix G in CRS Report RL30297, *Congressional Budget Resolutions: Selected Statistics and Information Guide*, by Bill Heniff Jr. and Justin Murray.

decreases in direct spending is included. The PAYGO rule applies in the same fashion when increases in direct spending and decreases in revenues are combined in the same measure; as long as at least an equivalent amount of offsets is included (direct spending decreases, revenue increases, or a combination of the two), then the rule is not violated.

The present jurisdictional alignments in the House may afford more flexibility to some committees than to others with respect to incorporating offsets into their legislation to comply with the PAYGO rule. The Ways and Means Committee, with its jurisdiction over revenues generally and its sizeable direct spending jurisdiction, has considerable experience in including offsets in its legislation to comply with various budget enforcement mechanisms, and may have more flexibility in this regard than any other committee. Other House committees may include as offsets in their legislation cuts in direct spending that entail reductions in program benefits, restrictions on program eligibility, the curtailment of benefit increases, and the like, but they also may propose offsets in the form of new or increased offsetting receipts or offsetting collections, or in some instances, transactions treated as revenues.[9]

Offsets used to secure initial passage of legislation in the House may be used again until they are enacted, at which time they are no longer available.

Due to certain requirements in Section 257 of the 1985 act pertaining to baseline construction, some direct spending and revenue provisions are not subject to the PAYGO rule. Section 257, for example, requires that direct spending programs with outlays greater than $50 million a year and excise taxes dedicated to a trust fund are assumed to continue in the baseline, even if they are scheduled to expire. Consequently, legislation merely extending such direct spending programs or excise taxes at baseline levels is not scored as having a budgetary impact.

The PAYGO rule applies on a measure-by-measure basis, without reference to action on other measures affecting direct spending or revenues. In determining compliance with the rule, each measure is assessed solely on its own budgetary impact, irrespective of prior action on direct spending and revenue measures or assumptions made in the budget resolution. As a consequence, the rule does not allow "savings" from prior measures to cover the "costs" of a pending measure, or for the "costs" of a measure to be accommodated if assumed in the budget resolution.

In this regard, the House's PAYGO rule differs from the lapsed statutory PAYGO requirement and the current Senate PAYGO rule. The statutory PAYGO requirement (under the 1985 Balanced Budget Act, as amended), which affected legislation enacted during calendar year 1991 through the end of FY2002, assessed the net effect of all direct spending and revenue legislation enacted during a session in determining whether a sequester should occur. The budgetary impact of each measure was recorded by the director of OMB on a rolling, multi-year PAYGO scorecard. Direct spending or revenue legislation that achieved "savings," therefore,

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[9] For a listing of mandatory (and discretionary) offsetting receipts and collections that involve user charges, see: *Budget of the United States Government, Fiscal Year 2007, Analytical Perspectives*, Table 18-2 (Total User Charge Collections), p. 274.

could offset the impact of other legislation that entailed "costs." In a related vein, the Senate's PAYGO rule in recent years has excepted increases in direct spending and decreases in revenues that are assumed in the budget resolution; enforcement of the rule relies on the monitoring of a PAYGO scorecard maintained by the Senate Budget Committee.

From time to time, the leadership may arrange for the consideration of separate but related measures to be paired so that policy and political objectives are not undermined by procedural obstacles. In some instances, for example, a special rule may make one measure in order as an amendment to the other (possibly under a "self-executing" feature of the rule so that it occurs automatically upon adoption of the rule). While such an approach lies outside of the scope of the PAYGO rule, it could be used to pair together a measure that otherwise would violate the rule with another providing sufficient offsets so that the end result is the same as if the rule had been adhered to.

Setting the Rule Aside. The PAYGO rule, like other House rules generally, is not self enforcing. Enforcement of the rule depends on a Member raising the point of order. While Rule XXI permits points of order in two instances to be raised "at any time during pendency of that measure for amendment," points of order under the PAYGO rule must be raised in a timely manner (i.e., before consideration of the legislation has begun).[10]

Legislation potentially in violation of the PAYGO rule may be protected from a point of order, primarily by two techniques. First, the House commonly uses special rules (in the form of a simple House resolution) reported by the House Rules Committee to establish procedures for the consideration of a particular measure. Among other things, the procedures under the special rule may waive the application of points of order, including a point of order under the PAYGO rule. Most major budgetary legislation is considered under the terms of a special rule, which requires only a simple majority for approval.

Second, the House often considers measures under the "suspension procedure," in which all House rules are waived. In order to be passed under the suspension procedure, a measure must secure a two-thirds vote; the procedure is not usually employed for the consideration of measures with any significant budgetary impact.[11]

Relation of the Rule to Other Enforcement Procedures. The House's PAYGO rule is one of many different rules effective in the House that

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[10] The expanded time period under Rule XXI during which points of order may be raised applies in the case of appropriations included in legislative measures (Clause 4) and tax or tariff provisions included in measures reported by a committee without such jurisdiction (Clause 5(a)). In the case of general appropriations bills that have been reported, Clause 1 of Rule XXI automatically reserves points of order.

[11] For additional information on the suspension procedure and restrictions on its use, see CRS Report RL32474, *Suspension of the Rules in the House of Representatives*, by Thomas P. Carr (the report is archived and may be obtained from the author of this report).

enforce budgetary levels. The other rules that focus on the enforcement of budget levels are found principally in Titles III and IV of the 1974 Congressional Budget Act and in procedural provisions included in annual budget resolutions.[12]

The PAYGO rule establishes a test that must be met on its own terms. Compliance with other enforcement provisions does not eliminate or suspend the requirement that legislation comply with the PAYGO rule.

The PAYGO rule may complement the operation of other enforcement mechanisms, especially if the annual budget resolution is oriented toward reducing the deficit (or not increasing it). Conversely, the PAYGO rule could complicate the consideration of legislation assumed in the budget resolution, especially if direct spending increases or revenue decreases are prominent elements of the budget plan.

The different orientations of budget enforcement schemes are a primary cause of potential conflicts in the implementation of the rule. The House PAYGO rule, like PAYGO procedures generally, focuses on changes in direct spending and revenues taken together; the 1974 Congressional Budget Act, on the other hand, requires the House and Senate to enforce direct spending changes largely under one set of procedures (the spending allocation process under Section 302(a) of the act) and revenue changes under another (the revenue floor under Section 311). While changes in revenue could offset changes in direct spending, and vice versa, under the PAYGO rule, such offsets generally would not be allowed in the congressional budget process. An increase in direct spending beyond what could be accommodated by a committee's Section 302(a) allocation of spending, would violate the 1974 act unless offset by at least an equivalent amount of direct spending decreases in the committee's legislation; generally, offsets in the form of revenue increases would not remedy the direct spending violation. In some instances, the House and Senate have incorporated deficit-neutral reserve funds into budget resolutions to allow the use of offsets in ways that otherwise would not be allowed under the 1974 act.[13]

Period During Which the Rule Is In Effect. The House PAYGO rule took effect on January 5, 2007, when House action on H.Res. 6 was completed. The rule does not contain an expiration date, but as part of the standing rules of the House, it must be renewed at the beginning of a new Congress to remain in effect.

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[12] Titles III and IV were enacted as an exercise of the rulemaking powers of the House and Senate. Accordingly, the House and Senate effectively may change these rules at any time (even without amending the 1974 act). An "elastic clause" in Section 301 of the 1974 act authorizes the House and Senate to include, within constraints, procedural provisions in annual budget resolutions.

[13] For more information on the use of reserve funds, see CRS Report RL30297, *Congressional Budget Resolutions: Selected Statistics and Information Guide*, by Bill Heniff Jr. and Justin Murray; and CRS Report RS21038, *Reserve Funds in the FY2002 Budget Resolution*, by Bill Heniff Jr. (archived and available from the author).