

Some Background

FEDERAL BUDGET PROCESS

How does the budget process work?

Q. How does the budget process work?

A. Ideally, following submission of the president's budget proposal, Congress passes a concurrent budget resolution setting total spending, revenue, and deficit targets for at least the next five years, and then passes annual appropriation bills to fund discretionary programs and legislation to enact any changes to mandatory programs and taxes. The process has typically broken down at various points in recent years, however, with Congress failing to pass a concurrent resolution or not completing timely action on appropriations.

THE PRESIDENT'S BUDGET

The congressional budget process begins each year with the president submitting a budget for the following fiscal year. The president's budget proposes spending levels for federal programs whose funding is determined annually (discretionary programs) and may recommend policy changes to ongoing programs that do not require annual appropriations (mandatory programs) and to the tax code.

CONGRESSIONAL BUDGET RESOLUTION

Within the six weeks following submission, the various congressional committees report to the House and Senate budget committees outlining how their spending and revenue proposals will differ from the president's budget. After each budget committee compiles this information, Congress is supposed to pass a concurrent budget resolution setting out total spending, revenue, and deficit targets for at least the next five years and more usually for 10 years. Concurrent resolutions are endorsed by both the House and the Senate, yet lack the force of law and do not require the president's signature—which, of course, implies that the president cannot veto them, either.

The budget resolution divides total spending among the main functions of government, such as defense, transportation, and health, through spending allocations to individual congressional committees. The House and Senate appropriations committees further divide their spending allocations among their subcommittees.

The budget resolution allows individual congressional committees to decide the details of their budgets, program by program, consistent with the aggregate targets. In practice, however, the debate over the resolution often becomes a debate over individual program budgets and their implications.

In recent years the Senate and the House have had difficulty agreeing to a single budget resolution. In early

Some Background

FEDERAL BUDGET PROCESS

How does the budget process work?

2015, they agreed to a resolution for fiscal 2016—the first time they’d been successful since fiscal 2010. For fiscal 2017 and 2018, they passed perfunctory resolutions for the sole purpose of attempting to repeal the Affordable Care Act and passing a tax cut and tax reform.

For fiscal 2019 and again for 2020, the House passed a resolution out of committee but took no floor action. In neither year did the Senate pass a budget resolution.

Even when they pass a resolution, Congress frequently violates the resolution’s spending and revenue targets.

THE APPROPRIATIONS PROCESS

After the budget resolution passes, the House Appropriations Committee may begin the appropriations process. If a budget resolution is not passed by May 15, the House Appropriations Committee may begin appropriations in its absence. There are 12 appropriations bills covering different parts of the government. Agencies that are not funded because their appropriations have not been passed by October 1 are funded under continuing resolutions. These typically cover spending for only part of a year, but Congress sometimes extends them to cover the whole fiscal year. Continuing resolutions often limit spending to last year’s level.

Recently, it has become common for no appropriation bills to pass by October 1. Then the government is funded by an extremely complicated omnibus bill. This makes it difficult for legislators to implement a rational set of national priorities. In 2019, Congress combined appropriations into two bills for fiscal 2020. Both bills passed in mid-December.

THE CONGRESSIONAL BUDGET OFFICE

The Congressional Budget Office provides Congress with technical, nonpartisan advice on budget matters. Every bill Senate and House committees report to the floor must include a Congressional Budget Office cost estimate that covers at least five years (more recently, 10 years).

RECONCILIATION

Congress occasionally uses a special procedure called reconciliation to fast-track revenue and entitlement spending legislation. The budget resolution instructs committees to implement certain targets for changing revenues and mandatory expenditures. The resulting reconciliation bill combines spending and revenue provisions into a single piece of legislation. Debate is limited, and the bill cannot be filibustered in the Senate. The Senate’s Byrd rule states that a reconciliation bill cannot contain items not germane to the budget and that the bill cannot increase the deficit beyond the budget horizon, usually 10 years.

Updated May 2020

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Some Background

FEDERAL BUDGET PROCESS

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Some Background

FEDERAL BUDGET PROCESS

What is the history of the budget process?

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A. In 1972, President Richard Nixon impounded funds for various social programs. Nixon argued that because Congress lacked a process for controlling the federal budget, budget deficits might expand irresponsibly if the president lacked the power to block funding. Congress responded by establishing a formal budget process through the Congressional Budget and Impoundment Control Act of 1974.

Today's congressional budget process has its origins in the Congressional Budget and Impoundment Control Act of 1974. That law sought to create a coherent procedure for Congress's revenue and spending decisions, and to constrain a president's ability to impound funds appropriated by Congress.

In 1972, newly reelected president Richard Nixon refused to spend funds appropriated for various social programs. Although the Constitution provides that a president may not spend money without a congressional appropriation, it was less clear whether he was obliged to spend every dollar appropriated.

Prospective recipients quickly challenged Nixon's impoundments in court, and he lost every case at the appellate level except one. Before the Supreme Court could consider the issue, Congress moved to limit the president's power to impound funds explicitly.

But Nixon had an effective counterargument. He pointed out that Congress had no formal, orderly process of its own for adding up individual spending and revenue decisions, and for relating total spending to total revenue. Nixon argued that if the president lacked the power to impound spending, total spending might expand irresponsibly.

Congress realized that Nixon had won the substantive argument and that it could not limit the president's impoundment powers unless it created a formal budget process of its own. It responded by passing the Congressional Budget and Impoundment Control Act of 1974.

The designers of the new process were intent on avoiding any significant reduction in the powers of existing committees or else they could not get the legislation passed. With a few exceptions, the new budget process only established targets for aggregate spending and revenue totals. Traditional committees were left to determine the details. This compromise made the new process much more complicated than it would otherwise have been.

The budget process has evolved since. Originally, two budget resolutions were required; now, only one. Reconciliation was originally seen as a mechanism for reconciling the first budget resolution with the second but now it is a way to expedite debate and to avoid filibusters in the Senate and provides a mechanism for

Some Background

FEDERAL BUDGET PROCESS

What is the history of the budget process?

expediting changes in entitlements and tax policy.

Updated May 2020

Further Reading

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Some Background

What is the schedule for the budget process?

Q. What is the schedule for the budget process?

A. The congressional budget process is meant to last from early February to the end of June, but recent years have seen delays at each stage, particularly in passing congressional budget resolutions and in completing action on appropriation bills.

The congressional budget process begins each year with the president submitting a budget for the following fiscal year. Usually, Congress receives the budget no later than the first Monday in February. The whole procedure is supposed to be completed by June 30, but that almost never happens.

Within the six weeks following submission, the various congressional committees report to the House and Senate budget committees, outlining how their spending and revenue proposals will differ from the president's budget. After each budget committee compiles this information, Congress is supposed to pass a concurrent budget resolution by April 15.

From fiscal 1976 (the first effective year of the budget process) through 1998, Congress successfully passed budget resolutions each year. Failure to pass a budget resolution has recently become more common, however. Indeed, the longest period without a budget resolution passed by the whole Congress lasted from fiscal 2011 through fiscal 2015.

After the budget resolution passes, the House Appropriations Committee may begin the appropriations process. If a budget resolution is not passed by May 15, however, the House Appropriations Committee may begin appropriations in its absence. All necessary appropriations bills are supposed to be passed by June 30 but seldom are.

Congress occasionally uses a special procedure called reconciliation to fast-track revenue and spending legislation. Reconciliation bills are supposed to be complete by June 15.

If appropriations are not complete by October 1—and that is common—those federal agencies that do not have an appropriation are funded under continuing resolutions. These typically cover spending for only part of a year, but Congress sometimes extends them to cover the whole fiscal year. Continuing resolutions are generally understood to limit spending to last year's level, but specific programs can be adjusted up and down.

In 2018 and 2019, the House passed a resolution out of committee but took no floor action. In neither year did the Senate pass a budget resolution.

Some Background

FEDERAL BUDGET PROCESS

What is the schedule for the budget process?

Updated May 2020

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Some Background

What is reconciliation?

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A. Congressional budget committees use the reconciliation process to ensure tax laws and mandatory spending programs are revised according to the budget resolution's revenue and mandatory spending targets. Reconciliation is a way to fast-track revenue and spending legislation into becoming law.

Reconciliation legislation is passed through an expedited process. First, Congress passes a budget resolution containing "reconciliation instructions" telling congressional committees how much they need to change revenue and mandatory spending to conform to a new budget resolution. The committees' responses are then bundled by the House and Senate budget committees into a single reconciliation bill for consideration in each chamber.

Reconciliation bills are subject to special rules in the Senate. Debate on reconciliation bills is limited to 20 hours. If the law is free of points of order, it can be passed in the Senate by a simple majority; the 60 votes necessary to shut off a filibuster are not required. Any member, however, can raise a point of order against a reconciliation bill if it violates the spending and revenue targets in the budget resolution or other budget rules and laws. Sixty votes are needed to overcome a point of order. The House can set procedural rules on any legislation, including reconciliation bills, by adopting a special "rule" determined by the House Rules Committee. Debate is limited in the House to whatever time the Rules Committee allows.

The George W. Bush tax cuts of 2001–03, a substantial portion of Barack Obama's health reform, and Donald Trump's more recent tax cut and reform bill of 2017 were passed using reconciliation procedures. The content of reconciliation laws is limited in the Senate by the Byrd rule, which generally disallows items that do not affect outlays or revenue. The Byrd rule also prohibits initiatives that would increase the deficit beyond the fiscal years covered by the budget resolution.

EXAMPLES

Congress has enacted 25 budget reconciliation bills since they first used the procedure in 1980. Presidents vetoed four of these bills and signed the other 21 into law. For example, the Senate could not muster the 60-vote supermajority necessary to pass the 2001 tax cuts. Instead, it passed the legislation as a reconciliation bill with 58 yeas. However, to avoid abrogating the Byrd rule—which disallows bills that increase the deficit beyond the budget resolution's window—the tax cuts were scheduled to expire after 10 years. Reconciliation was used again in 2010 to amend portions of the Patient Protection and Affordable Care Act shortly after it was enacted. Reconciliation was also used to pass the tax cut and reform bill of 2017. Many provisions of the bill were made temporary to avoid violating the Byrd rule.

Some Background

FEDERAL BUDGET PROCESS

What is reconciliation?

Updated May 2020

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Some Background

How is a budget resolution enforced?

Q. How is a budget resolution enforced?

A. Spending and revenue targets set in the annual budget resolution are enforced by points of order, which any member of Congress may raise against legislation inconsistent with those targets.

The House and Senate budget committees are responsible for calculating whether spending and revenue targets are being met. A House or Senate member may raise a point of order against a bill or an amendment if it violates the spending and revenue regulations contained in the most recent budget resolution or if it violates other budget laws and rules. If a point of order is sustained, the bill or amendment is ineligible for consideration.

In the House, the rules committee often reports a so-called special rule that sets aside one or more points of order. The House then votes on adoption of the special rule, which needs only a simple majority to pass.

The House rules committee also determines what amendments can be offered during the budget resolution debate. Because the rules committee has immense power, the House budget committee has less influence in enforcing the budget resolution than its Senate counterpart.

In the Senate, if a point of order is lodged against a bill or an amendment, a supermajority vote of 60 senators is needed to overcome it. The chair of the House or the Senate budget committee, often with the concurrence of the ranking member, may threaten to lodge a point of order against a legislative initiative that seriously violates the budget resolution or an established budget rule, but this step may just start a bargaining process. Eventually, the member pushing the initiative may settle for a less egregious violation in return for withdrawing the threatened point of order.

Updated May 2020

Some Background

FEDERAL BUDGET PROCESS

What is PAYGO?

Q. What is PAYGO?

A. A budget rule requiring that new legislation that affects revenues and spending on entitlement programs, taken as a whole, does not increase projected budget deficits.

OVERVIEW

PAYGO, which stands for “pay as you go,” is a budget rule requiring that tax cuts and mandatory spending increases must be offset (i.e., “paid for”) by tax increases or cuts in mandatory spending. PAYGO does not apply to discretionary spending (spending that is controlled through the appropriations process).

Various versions of PAYGO have been enacted in law, most recently in 2010. In addition, both the House and Senate have sometimes adopted their own PAYGO rules for considering new legislation.

HISTORY

The original PAYGO was part of the Budget Enforcement Act of 1990. In that year, President George H. W. Bush and congressional leaders painfully negotiated a large deficit reduction package combining spending cuts and tax increases. Having accomplished so much, Congress became concerned that future Congresses would reverse the agreement bit by bit. PAYGO helped prevent this, supplemented by caps on appropriations and outlays for discretionary spending programs. Budget experts generally agree that PAYGO worked extremely well from 1990 through 1997. In 1998, an unexpected budget surplus emerged and the discipline driven by PAYGO began to wane. The law officially expired at the end of fiscal 2002.

RECENT VERSIONS

The most recent version of statutory PAYGO was established in 2010. If legislation does not pay for increases in mandatory spending or cuts in tax revenues, the cumulative amount of the projected increase in the deficit is averaged over two periods—5 years and 10 years. (Budget imbalances in the current budget year are included so in practice, the averaging is over 6 and 11 years.) The president is then supposed to sequester (i.e., withhold) enough funding from mandatory programs to offset that deficit increase. To prevent manipulation of the rules, legislation subject to PAYGO cannot move costs outside the budget window (i.e., after 10 years) or move saving into the budget window from later years.

SEQUESTRATION

If the Office of Management and Budget determines that either the 5- or 10-year average cost is greater

Some Background

FEDERAL BUDGET PROCESS

What is PAYGO?

than zero when Congress adjourns, the president must sequester certain mandatory spending programs. In other words, those programs will face an across-the-board spending cut. The higher of the two averages determines the sequestered amount. Spending for each program is reduced by the same percentage for one year to offset the average projected deficit increase. Unless Congress acts to reduce or eliminate the projected deficit increase, there is another sequestration the following year.

Some programs are exempt from sequestration. Social Security and the postal service are exempt because they are classified as “off-budget” programs (although they are included in consideration of the unified budget). Moreover, numerous welfare and other safety net programs, such as Medicaid, the Supplemental Nutrition Assistance Program, and unemployment insurance, are also exempt. Medicare is subject to sequestration, but the spending reduction for Medicare is limited to 4 percent. If sequestration calls for an across-the-board reduction of more than 4 percent, the additional amount that would have come from Medicare is allocated proportionally to other programs.

ENFORCEMENT

The PAYGO rule has not been enforced consistently. For example, the 1997 budget act put in place a method, known as the SGR (the sustainable growth rate), for determining Medicare payments to physicians. Application of that formula threatened huge cuts in Medicare physician reimbursements. Congress prevented the payment rates determined by SGR from taking effect, but only for one year at a time. While Congress did pay for these one-year fixes, by limiting the fix to one year it did not need to pay the cost of the fix over the full budget window. When the Medicare Access and CHIP Reauthorization Act of 2015 replaced the SGR formula with a new system in 2015, Congress waived the PAYGO rules, exempting itself from paying for the entire cost of the new legislation. They again waived the PAYGO rules at the end of 2017 so that they did not have to pay for the 2017 tax cut and reform. It appears that PAYGO can no longer be considered an effective tool for imposing budget discipline.

CONGRESSIONAL PAYGO

The House and the Senate also have their own versions of PAYGO rules. These rules govern how legislation is handled in the respective chambers. Bills that violate PAYGO requirements face additional hurdles—such as points of order—before they can be enacted. Statutory PAYGO, in contrast, applies after laws are enacted, using sequesters to impose cuts on existing mandatory programs.

Updated May 2020

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Some Background

What are rescissions?

Q. What are rescissions?

A. The rescission process allows a president to avoid spending money on discretionary programs that has been appropriated by the Congress, but not yet obligated for the purchases of goods and services.

The Constitution is clear that a president cannot spend money without a Congressional appropriation. It is less clear whether a president must spend money that has been appropriated by the Congress. Various presidents had from time to time refused to spend appropriations, but it was very unusual and almost always involved small amounts. It was said that the president impounded the money.

President Nixon broke precedent when, fresh off an overwhelming electoral victory in 1972, he refused to spend money that had been appropriated for several social programs. He was immediately sued and lost all cases except one before the US Court of Appeals. The case never reached the Supreme Court because the Congress quickly moved to restrict a president's ability to impound funds in the Congressional Budget and Impoundment Control Act of 1974. That act also created the congressional budget process.

The Congress did not want to totally outlaw a president's ability to impound funds, so they created two processes: rescission and deferral. The latter was later ruled unconstitutional by the Supreme Court.

In the rescission process, the president sends the Congress a request to cancel specified appropriations that have not yet been obligated to fund the purchase of goods and services. The Congress has 45 days to consider—or ignore—the president's request. If the Congress votes to approve the request or any portion thereof, the spending is cancelled. If not, the president must spend the money.

Various presidents and numerous lawmakers have backed a reform called enhanced rescission. Under this approach, the Congress would not be able to ignore a president's rescission request. They would have to vote on it within 45 days. At first sight this sounds like a minor change, but it could greatly enhance the power of rescission requests. Lawmakers voting against the president's request would be saying that an activity the president deemed wasteful was, in fact, effective. That could be a hard vote. The Congress could no longer just ignore the president.

Updated May 2020