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Federal Budget Process Reform: A Brief Overview

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Summary

In 2004, during the second session of the 108th Congress, the House and Senate face a wide array of budget process reform proposals, pertaining to such matters as restoration of the statutory discretionary spending limits and PAYGO requirement, modifications to budget resolution and reconciliation procedures, biennial budgeting, and constitutional amendments. (The House defeated one budget process reform measure, H.R. 4663, the Spending Control Act of 2004, on June 24 by a vote of 146-268.) The House and Senate may pursue budget process reform in various ways, including modifications to each chamber's rules and practices, the enactment of freestanding legislation, or the inclusion of budget process changes in other budgetary legislation, such as a reconciliation or debt-limit measure. This report provides a context for congressional actions in this area and briefly discusses selected proposals to illustrate the diversity of issues involved. The report will be updated.

Congress and the President regularly propose and make changes to the federal budget process. This year, projected deficits in the unified budget in each of the next several fiscal years have increased congressional interest in various budget process reform proposals.¹ This report briefly discusses the context in which federal budget process

¹ The Office of Management and Budget (OMB) projects that under President Bush's proposals the FY2004 unified budget deficit will be \$521 billion, with deficits continuing but declining through FY2009. The Congressional Budget Office (CBO) projects, under its baseline budget projections (which do not assume any changes in policy), that the FY2004 unified budget deficit will be \$477 billion, with a surplus not returning until FY2014. For further information on the current budget deficit projections, see OMB, *Budget of the U.S. Government, Fiscal Year 2005* (Washington: 2004), Table S-14, p. 388; and CBO, *The Budget and Economic Outlook: Fiscal (continued...)*

changes are made and identifies selected reform proposals by major category. The identification of reform proposals in this report is not intended to be comprehensive; other CRS reports discuss different aspects of budget process reform in more detail.²

The Context of Budget Process Reform

The federal budget process is rooted in constitutional mandates, statutory requirements, House and Senate rules and practices, and administrative directives.³ Thus, there are several avenues through which Congress and the President can change the various elements of the budget process. (This report addresses only changes made through legislative action.)

In some years, comprehensive changes were made in the budget process through statutes enacted by Congress and the President. The Budget and Accounting Act of 1921 established the executive budget process, the Congressional Budget Act of 1974 created the congressional budget process, and the Balanced Budget and Emergency Deficit Control Act of 1985 and the Budget Enforcement Act (BEA) of 1990 imposed additional budget controls on a temporary basis.⁴ In other years, such as 1987, 1993, and 1997, existing budget process statutes were modified in a less comprehensive fashion and extended for limited periods. At other times, Congress and the President enacted statutes changing selected aspects of the budget process; the Line Item Veto Act (of 1996) is one example. Finally, in every Congress, the House and Senate have modified existing rules and practices in the budget process and sometimes instituted new ones.⁵

Because nearly every committee of the House and Senate has jurisdiction over legislation with a budgetary impact, interest in the budget process and proposals to change it radiates throughout both chambers. Although jurisdiction over executive and congressional budget procedures generally resides with the Budget, Government Reform, and Rules Committees in the House, and with the Budget, Governmental Affairs, and

¹ (...continued)

Years 2005-2014, Jan. 2004, Table 1.1, p. 1.

² For example, see (1) CRS Report RL31478, *Federal Budget Process Reform: Analysis of Five Reform Issues*, by James V. Saturno and Bill Heniff Jr.; (2) CRS Report RL30550, *Biennial Budgeting: Issues and Options*, by James V. Saturno; (3) CRS Report RL30339, *Preventing Federal Government Shutdowns: Proposals for an Automatic Continuing Resolution*, by Robert Keith; and (4) CRS Issue Brief IB89148, *Item Veto and Expanded Impoundment Proposals*, by Virginia A. McMurtry.

³ For a comprehensive overview of the federal budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith and Allen Schick.

⁴ A comprehensive listing and description of major budget process laws enacted over the past century (and full legal citations to them) is provided in CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass.

⁵ For example, at the beginning of the 108th Congress, the House made several changes to its standing rules that affect the budget process. See CRS Report RL31728, *House Rules Changes Affecting the Congressional Budget Process in the 108th Congress (H.Res. 5)*, by Bill Heniff Jr.

Rules and Administration Committees in the Senate, other House and Senate committees may exert influence over budget process changes affecting their legislative interests.

Changes in the budget process may take the form of freestanding legislation (e.g., the Line Item Veto Act) or may be incorporated into other budgetary legislation, such as acts raising the debt limit (e.g., the 1985 Balanced Budget Act) or implementing reconciliation instructions (e.g., the BEA of 1990). Budget process changes also may be included in the annual budget resolution or other House and Senate resolutions.

Selected Budget Process Reform Proposals

Among the various budget process reform proposals currently under discussion, many pertain to categories such as the restoration of the statutory discretionary spending limits and the “pay-as-you-go” (PAYGO) requirement, the congressional budget resolution and reconciliation, the annual appropriations process, and budget concepts. These and other categories of reform are discussed separately below.

Restoration of Discretionary Spending Limits and PAYGO Requirement.

For FY1991 through FY2002, federal budget legislation was constrained by statutory limits on discretionary spending and a PAYGO requirement for direct spending (sometimes referred to as mandatory spending) and revenue legislation. Both of these budget constraints were established by the BEA of 1990, which amended the Balanced Budget and Emergency Deficit Control Act of 1985. The discretionary spending limits and the PAYGO requirement were enforced by sequestration, a process by which violations were remedied by automatic, across-the-board spending cuts. These statutory budget constraints were extended in 1993 and 1997, but effectively expired at the end of FY2002 (i.e., September 30, 2002).

For the last several years, there has been considerable interest in restoring the BEA procedures beyond FY2002, possibly with significant modification. Many Members of Congress, as well as outside observers, agree that the budget enforcement mechanisms associated with the BEA promoted fiscal discipline throughout the 1990s, and contributed to the federal government achieving a unified budget surplus in FY1998 — the first in almost 30 years. With the return of deficits, some have argued for restoring such fiscal discipline mechanisms.

Two of the major issues in this area are the duration of any new discretionary spending limits and whether the PAYGO requirement should apply to both revenue and direct spending legislation, or instead be confined to just direct spending legislation. In the past, the discretionary spending limits covered a five-year time frame and were adjusted from time to time. Eventually, the limits became quite out of sync with actual spending policy, so much so that they were regarded as “unrealistic,” leading to practices which undermined enforcement. Some argue that restricting the renewal of the discretionary spending limits to a shorter time frame, such as two years, would be more likely to yield realistic, workable enforcement. President Bush recommended a two-year extension of discretionary spending limits in his FY2004 budget and a five-year extension

in his FY2005 budget.⁶ In addition, he recommended that the PAYGO requirement be reestablished, but that it apply only to direct spending legislation and not revenue legislation. Some have countered that restricting the PAYGO requirement to the spending side of the budget could hamper overall efforts to contend with projected large deficits.

On March 19, 2004, the House Budget Committee reported H.R. 3973 (H.Rept. 108-442), the Spending Control Act of 2004, a measure restoring discretionary spending limits and a PAYGO requirement (applicable only to direct spending) for FY2005-FY2009. The House considered H.R. 4663, a revised version of H.R. 3973, on June 24, defeating it by a vote of 146-268. Amendments dealing with various topics in budget process reform were considered; two were agreed to and the remainder were rejected or withdrawn.

Congressional Budget Resolution and Reconciliation. The Congressional Budget Act of 1974 requires the House and Senate to adopt a budget resolution each year, setting forth aggregate spending and revenue levels, and spending levels by major functional categories, for at least five fiscal years. The budget resolution, which is a concurrent resolution and therefore does not become law, provides an overall budget plan that guides congressional action on individual spending, revenue, and debt-limit measures. The 1974 act includes an optional reconciliation procedure that provides for the development and consideration of revenue, spending, and debt-limit legislation to carry out budget resolution policies; enforcement of budget resolution policies also occurs by means of various points of order that may be raised on the floor. Budget resolutions and reconciliation measures are considered under expedited procedures in both chambers.

Some Members of Congress, as well as the President, have argued that the budget resolution would be more effective in enforcing budget policy by making it a joint resolution requiring the President's approval. A joint budget resolution would directly involve the President in congressional actions on the budget early in the process. If the President and Congress reach an impasse on a joint budget resolution, however, some are concerned that action on spending and revenue bills may be significantly delayed.

The expedited features applicable to the consideration of budget resolutions and reconciliation measures are a particular concern in the Senate, which often operates under "extended debate," where legislation may be considered without constraints on debate time or the offering of nongermane amendments. Limits on debate time sometimes lead to a situation referred to as "vote-arama," where the Senate considers and disposes of many amendments after official debate time has expired. Some Senators have proposed various solutions to the "vote-arama" problem so that they have better opportunities to understand the content of amendments and to debate them adequately.

The Senate also expedites reconciliation legislation by a device known as the Byrd rule (which is Section 313 of the 1974 act). Under the Byrd rule, which prohibits the inclusion of extraneous matter in reconciliation legislation, a Senator may raise a point of order against a provision that meets any of the six definitions of extraneous matter specified in the 1974 act. While the Byrd rule has been very effective in excluding

⁶ President Bush's proposals in this regard, and on other budget process matters, are set forth in the *Budget of the United States Government, Fiscal Year 2005, Analytical Perspectives*, Chapter 14, pp. 215-219.

extraneous matter from reconciliation measures, some assert that the rule unduly limits the flexibility needed to formulate effective legislative policies and disadvantages the House in conference negotiations with the Senate on such legislation.⁷

As mentioned, Congress enforces budget resolution policies through points of order on the floor of each chamber during the consideration of budget legislation. Points of order, however, are not self-enforcing; a Member must raise a point of order on the floor. In addition, points of order under the 1974 act may be waived or set aside by unanimous consent. In the Senate, a motion to waive most Budget Act points of order requires a three-fifths vote (60 Senators if no seats are vacant). In the House, points of order may be waived by a special rule reported by the Rules Committee. Therefore, points of order under the 1974 act may be waived by a simple majority. Some argue that a super-majority vote should be required to waive Budget Act points of order in the House, to make it more difficult to consider legislation that would violate the policies set forth in the budget resolution. Others, however, argue that a super-majority threshold to waive Budget Act points of order would obstruct the will of the majority in the House.

Annual Appropriations Process. Discretionary spending, which amounts to about one-third of federal spending, is provided each year in regular, supplemental, and continuing appropriations acts. Discretionary spending funds most of the routine operations of federal agencies.

When a regular appropriations act or a continuing resolution is not in place after the start of the fiscal year on October 1, an agency does not have the legal authority to incur obligations in order to function and must shut down, resulting in the furlough of federal employees and disruptions in service. To prevent a government shutdown (or the threat of one) due to the expiration of funding, some Members have proposed establishing an automatic continuing resolution. An automatic continuing resolution would provide an uninterrupted source of funding for discretionary activities in the event one or more regular appropriations acts are not enacted by the start of a new fiscal year. While such a device could eliminate or reduce employee furloughs and service disruptions, some view an automatic continuing resolution as substituting a formulaic response for deliberate and informed decision-making.

Dynamic Scoring. In recent years, there has been controversy over whether budgetary legislation, especially tax measures, would be scored more accurately using “dynamic” rather than “static” estimates, as well as whether dynamic estimating is feasible. At the beginning of the 108th Congress, the House adopted a rule (House Rule XIII, Clause 3(h)(2)) to require the inclusion of dynamic revenue estimates in reports of the Ways and Means Committee accompanying revenue legislation. Neither the new rule nor the 1974 act requires the Budget Committee to use these estimates for budget enforcement purposes; accordingly, some have proposed that the use of such estimates be required and that a similar requirement be imposed in the Senate.

⁷ For example, see the explanations of the modifications to the Byrd rule proposed by H.R. 853, the Comprehensive Budget Process Reform Act of 1999, which was introduced and defeated in the 106th Congress: *Comprehensive Budget Process Reform Act of 1999*, report to accompany H.R. 853, H.Rept. 106-198 (August 5, 1999), part 2 (House Budget Committee) and part 3 (House Rules Committee).

Biennial Budgeting. While most authorizations are enacted on a multiyear cycle, Congress acts on budget resolutions and appropriations acts annually. Biennial budgeting proposals would change the cycle under which Congress acts on budget resolutions and appropriations acts (and annual authorization acts) to two years. Biennial budgeting proposals are intended to reduce the amount of time Congress spends on budgetary legislation, to allow more time for congressional oversight of federal agencies and programs, and generally to provide for more efficient budget decision-making. In the view of some, a biennial approach could impair Congress's ability to respond to changing economic and budgetary circumstances.

Constitutional Amendments. Over the years, constitutional amendments have been proposed to change the budget process in various ways, including requiring a balanced budget, providing for a line-item veto, and limiting tax increases. First, balanced budget amendment proposals generally would require that total federal spending not exceed total federal revenues.⁸ Second, line-item veto amendment proposals would provide the President the constitutional authority to disapprove items contained in budgetary legislation signed into law. In 1996, Congress and the President enacted the Line Item Veto Act, which provided the President statutory authority to cancel any dollar amount of discretionary budget authority, any item of new direct spending, or any limited tax benefit. In 1998, however, the U.S. Supreme Court found that this statutory authority was unconstitutional. Third, tax limitation amendment proposals would require a super-majority vote in each chamber to pass legislation that would increase revenues.⁹

Advocates of these budget reforms argue that the changes must be incorporated into the Constitution in order to be enforced effectively, while critics maintain that they would impede the ability to respond to compelling budget circumstances and would diminish Congress's "power of the purse" by delegating too much power to the President.

Budget Concepts. The federal budget reflects an amalgam of numerous concepts and conventions developed over many years. Conceptual deficiencies, according to some, may adversely affect policy-making (for example, some assert that budget scoring concepts may lead to distortions in policy merely to comply with budget rules). A comprehensive approach to evaluating federal budget concepts and conventions, particularly with regard to the basic structure of the budget (e.g., how to group related activities conducted by different agencies for purposes of budgetary analysis and presentation, and how to account for long-term obligations of the government) has been suggested by some inside and outside Congress. One proposal in this area would create a new commission modeled after the 1967 President's Commission on Budget Concepts.¹⁰

⁸ For a more comprehensive discussion of balanced budget constitutional amendment proposals, see CRS Report 98-671, *A Balanced Budget Constitutional Amendment: Procedural Issues and Legislative History*, by James V. Saturno.

⁹ For more information, see CRS Report 98-368, *A Tax Limitation Constitutional Amendment: Issues and Options Concerning a Super-Majority Requirement*, by James V. Saturno.

¹⁰ U.S. Congress, House Committee on the Budget, *Federal Budget Process: Structural Reform*, hearing, 107th Cong., 1st sess., July 19, 2001 (Washington: GPO, 2002), pp. 78-84.