



# Emergency Designation: Current Budget Rules and Procedures

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**B**udgetary legislation is constrained by certain enforcement rules that are generally intended to control spending, revenues, and the deficit. Since 1990, those rules have provided, in various forms, procedural mechanisms allowing Congress to effectively exempt certain budgetary amounts from such constraints by designating a provision in a measure as an emergency requirement. This report provides a brief description of the current rules and congressional procedures associated with the emergency designation.

## **Budget Enforcement Procedures**

Congress considers budgetary legislation under a set of enforcement procedures associated with the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended; 2 U.S.C. 601-688) and other congressional and statutory rules, such as pay-as-you-go (PAYGO) or cut-as-you-go (CUTGO) rules.<sup>1</sup>

Current procedures associated with the Budget Act generally allow Congress to set forth revenue and spending levels in the annual budget resolution and to enforce those levels through points of order during the consideration of budgetary legislation. For example, revenue legislation may not cause the projected level of revenues to fall below the total level of revenues set forth in the budget resolution. In addition, spending legislation is primarily constrained by each committee's spending allocations (commonly referred to as 302(a) allocations) for new direct spending and by each appropriations subcommittee's suballocation amounts (commonly referred to as 302(b) allocations) for new discretionary spending.<sup>2</sup>

The Senate and statutory PAYGO rules (Section 201 of S.Con.Res. 21, the FY2008 budget resolution, and Title I of P.L. 111-139, respectively) are generally intended to discourage or prevent Congress from taking certain legislative action that would increase the deficit.<sup>3</sup> The current PAYGO rules basically require that legislation affecting revenues or direct spending not increase the budget deficit over a six-year and an 11-year period. The House CUTGO rule (clause 10 of House Rule XXI) is generally intended to discourage or prevent the House from taking legislative action that would increase direct spending, regardless of whether it is offset by a revenue increase, over the same six-year and 11-year period.<sup>4</sup> The congressional PAYGO and CUTGO rules are enforced through points of order during the consideration of budgetary legislation on the floor of each chamber; the statutory PAYGO rule is enforced through

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<sup>1</sup> For further information on these budget enforcement procedures, see CRS Report 98-721, *Introduction to the Federal Budget Process*, coordinated by Bill Heniff Jr., and CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

<sup>2</sup> Budget rules distinguish between two types of federal spending, direct spending and discretionary spending. Direct spending, also referred to as mandatory spending, is generally provided or controlled in authorizing legislation that requires federal payments to individuals or entities, often based on eligibility criteria and benefit formulas set forth in statute. Some direct spending is funded in appropriations acts, referred to as appropriated entitlements, but is controlled by the authorizing statute(s). Discretionary spending, in contrast, is provided and controlled through the annual appropriations process. For further information on spending allocations associated with the budget resolution, see CRS Report RS20144, *Allocations and Subdivisions in the Congressional Budget Process*, by Bill Heniff Jr.

<sup>3</sup> For further information on the congressional and statutory PAYGO rules, see (1) CRS Report RL31943, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.; and (2) CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Bill Heniff Jr.

<sup>4</sup> At the beginning of the 112<sup>th</sup> Congress, the House amended its PAYGO rule, which basically reflected the Senate and statutory PAYGO rules, with a new CUTGO rule. See Section 2(d)(1) of H.Res. 5 (112<sup>th</sup> Congress).

sequestration—the cancellation of budgetary resources provided by laws affecting direct spending—to eliminate an increase in the deficit resulting from the enactment of legislation.

## Emergency Designation

Congress may exempt the budgetary effects of a provision in legislation from certain enforcement procedures by designating such provision as an emergency requirement.<sup>5</sup> Under the existing budget enforcement rules, if a provision is so designated, the spending and revenue effects projected to result from that provision are not counted for purposes of enforcing the budget procedures.

Congress designates a provision as an emergency requirement simply by including a provision stating such in the legislative text of the measure. The Unemployment Compensation Extension Act of 2010 (H.R. 4213, P.L. 111-205) is a recent example. Congress included the emergency designation in Section 5(b) of H.R. 4213:

(b) Emergency Designations—Sections 2 and 3—

(1) are designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139; 2 U.S.C. 933(g));

(2) in the House of Representatives, are designated as an emergency for purposes of pay-as-you-go principles; and

(3) in the Senate, are designated as an emergency requirement pursuant to section 403(a) of S.Con.Res. 13 (111<sup>th</sup> Congress), the concurrent resolution on the budget for fiscal year 2010.

The Congressional Budget Office estimated that Sections 2 and 3 of H.R. 4213 would increase spending by about \$33 billion and decrease revenues by about \$900 million, resulting in an increase in the budget deficit by \$33.9 billion, over the FY2010-FY2020 period.<sup>6</sup> However, as designated as an emergency requirement, the projected increase in spending, decrease in revenues, and increase in the deficit resulting from this act were not counted for purposes of the existing budget enforcement procedures.

Since 1990, the emergency designation has been provided by different underlying authorities, although the effect has been generally the same. Currently, the authority and the procedures

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<sup>5</sup> In addition to the emergency designation, beginning in 2005, Congress has provided for provisions to be designated as being for “overseas contingency operations” or “overseas deployments and related activities.” Such a designation, like the emergency designation, has effectively exempted the corresponding spending from some budget enforcement rules. Moreover, specified legislative initiatives are exempt from some enforcement procedures. For example, the Statutory PAYGO Act exempts the budgetary effects resulting from legislation extending current policy, which are scheduled to expire, in four areas: (1) Medicare payments to physicians; (2) the estate and gift tax; (3) the alternative minimum tax (AMT); and (4) middle-class tax cuts. For further information on these and other exemptions applicable in the House only, see Section 4(c) of the Statutory Pay-As-You-Go Act of 2010 (Title I of P.L. 111-139) and Section 3(h) of H.Res. 5 (112<sup>th</sup> Congress), respectively.

<sup>6</sup> See “CBO Estimate of the Statutory Pay-As-You-Go Effects for Senate Amendment 4425, the Unemployment Compensation Extension Act of 2010, as amended by unanimous consent on July 21, 2010,” available at <http://www.cbo.gov/doc.cfm?index=11685&zzzz=40992>.

related to designating a provision as an emergency requirement are different for the House and Senate.

## **House Rules and Procedures**

In the House, the rules and procedures pertaining to the emergency designation are currently governed by three separate authorities: (1) a separate order contained in H.Res. 5 (112<sup>th</sup> Congress); (2) the House standing rules; and (3) the Statutory PAYGO Act of 2010.<sup>7</sup> First, Section 3(c) of H.Res. 5 provides that, until a budget resolution for FY2012 is adopted, any new spending or reduction in revenues designated as an emergency shall not be counted for purposes of the Budget Act and the House Rules.<sup>8</sup> Under this authority, there are no other requirements other than so designating a provision in a bill.

Second, the House CUTGO rule (clause 10 of House Rule XXI), which applies to direct spending only, exempts provisions designated as an emergency from being counted in determining compliance with the rule. Under clause 10(c) of House Rule XXI, a determination as to whether legislation increases direct spending shall exclude any provision “expressly designated as an emergency for the Statutory Pay-As-You-Go Act of 2010.”<sup>9</sup> An emergency designation under the Statutory PAYGO Act, as described below, will result in the chair submitting a question of consideration to the full House prior to the consideration of a measure including such a designation.

Finally, Section 4(g) of the Statutory PAYGO Act of 2010 provides that any provision in a PAYGO act (i.e., generally legislation affecting direct spending or revenues) designated as an emergency requirement shall not be counted for purposes of projecting the budgetary effects of the legislation. If legislation contains such a designation, the chair must put the question of consideration to the full House prior to its consideration. That is, the House must vote on whether to consider the legislation even though it contains an emergency designation exempting all or certain budgetary effects resulting from such legislation from the Statutory PAYGO rule. If the question is decided in the affirmative (by majority), the legislation is then considered. Alternatively, if the question is decided in the negative, the legislation may not be considered. The procedure effectively requires a separate vote to include such an emergency designation.

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<sup>7</sup> Previous rules and procedures pertaining to the emergency designation applicable to the House have included the following: Sections 251(b)(2)(A) (related to the statutory discretionary caps in effect from 1990-2002) and 252(e) (related to the statutory PAYGO requirement in effect from 1990-2002) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177), as amended, codified at 2 U.S.C. 900-922; Section 314(b)(1) of the Budget Act; Section 502(b) of H.Con.Res. 95 (108<sup>th</sup> Congress), the FY2004 budget resolution; Section 402(a) of S.Con.Res. 95 (108<sup>th</sup> Congress), the FY2005 budget resolution, as made applicable to the House by H.Res. 649 (108<sup>th</sup> Congress) and H.Res. 5 (109<sup>th</sup> Congress); Section 402(a) of H.Con.Res. 95 (109<sup>th</sup> Congress), the FY2006 budget resolution; Title V of H.Con.Res. 376 (109<sup>th</sup> Congress), the FY2007 budget resolution, as made applicable to the House by H.Res. 818 (109<sup>th</sup> Congress) and H.Res. 6 (110<sup>th</sup> Congress); Section 204(b) of S.Con.Res. 21 (110<sup>th</sup> Congress), the FY2008 budget resolution; Section 301(b)(2) of S.Con.Res. 70 (110<sup>th</sup> Congress), the FY2009 budget resolution; Section 423(b) of S.Con.Res. 13 (111<sup>th</sup> Congress), the FY2010 budget resolution.

<sup>8</sup> This provision was included in H.Res. 5 as a separate order. The term “separate order” has come to be used for a provision in the rules package considered at the beginning of a Congress that has procedural effects for the new Congress, but is not codified in the Standing Rules of the House.

<sup>9</sup> The exemption applies to an emergency designation contained in a bill or joint resolution, an amendment made in order as original text by a special rule, a conference report, or an amendment between the Houses. It does not apply to an emergency designation contained in other types of amendments, such as a floor amendment.

In the example mentioned earlier, H.R. 4213, the Unemployment Compensation Extension Act of 2010, which included an emergency designation pursuant to the previous House PAYGO rule (the precursor to the current CUTGO rule) and the Statutory PAYGO Act, as noted above, the House agreed to the question of consideration by voice vote.<sup>10</sup>

## **Senate Rules and Procedures**

In the Senate, the rules and procedures pertaining to the emergency designation are currently governed by two separate authorities: (1) the FY2010 budget resolution; and (2) the Statutory PAYGO Act of 2010.<sup>11</sup> First, Section 403 of S.Con.Res. 13 (111<sup>th</sup> Congress), the FY2010 budget resolution, provides that any spending and revenue effects designated as an emergency requirement shall not count “for purposes of sections 302 and 311 of the Congressional Budget Act of 1974, section 201 of S.Con.Res. 21 (110<sup>th</sup> Congress) (relating to pay-as-you-go), section 311 of S.Con.Res. 70 (110<sup>th</sup> Congress) (relating to long-term deficits), and sections 401 and 404 of this resolution (relating to discretionary spending and short-term deficits).”<sup>12</sup>

The Senate rule also includes a corresponding point of order against any emergency designation contained in legislation. That is, any Senator may raise a point of order against any emergency designation in legislation. The point of order may be waived by an affirmative vote of three-fifths of Senators duly chosen and sworn (i.e., 60 Senators if there is no more than one vacancy). This 60-vote requirement to waive the point of order has effectively required that at least 60 Senators support any emergency designation. If the motion to waive is not agreed to, the point of order is sustained and the emergency designation is stricken. The spending or revenue provision remains, but without the emergency designation exempting its budgetary effects from the existing budget enforcement constraints. Therefore, a Senator may then raise a point of order against the spending or revenue provision under the applicable budget enforcement rule.

A recent example illustrates how the point of order operates. During the consideration of H.R. 4213, at the time entitled the Tax Extenders Act of 2009, Senator Scott Brown offered an amendment (S.Amdt. 3391), to provide for a 6-month employee payroll tax rate cut, that also included a provision (Section 103(d)) designating the proposed new section as an emergency requirement. Pursuant to Section 403(e) of S.Con.Res. 13, Senator Max Baucus raised a point of order against the emergency designation. Subsequently, Senator Brown made a motion to waive the point of order. The Senate rejected the motion by a vote of 44-56; the point of order was sustained and the emergency designation was removed from the amendment. Then, Senator

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<sup>10</sup> See *Congressional Record*, daily edition, vol. 156 (July 22, 2010), p. H5939.

<sup>11</sup> Previous rules and procedures pertaining to the emergency designation applicable to the Senate have included the following: Sections 251(b)(2)(A) (related to the statutory discretionary caps in effect from 1990-2002) and 252(e) (related to the statutory PAYGO requirement in effect from 1990-2002) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177), as amended, codified at 2 U.S.C. 900-922; Section 314(b)(1) of the Budget Act; Section 206 of H.Con.Res. 68 (106<sup>th</sup> Congress), the FY2000 budget resolution; Section 205 of H.Con.Res. 290 (106<sup>th</sup> Congress), the FY2001 budget resolution; Section 502(c) of H.Con.Res. 95 (108<sup>th</sup> Congress), the FY2004 budget resolution; Section 402 of S.Con.Res. 95 (108<sup>th</sup> Congress), the FY2005 budget resolution, as made applicable to the Senate by Section 14007 of P.L. 108-287; Sections 402(b) and (c) of H.Con.Res. 95 (109<sup>th</sup> Congress), the FY2006 budget resolution; Section 402 of S.Con.Res. 83 (109<sup>th</sup> Congress), as passed the Senate, as made applicable to the Senate by Section 7035 of P.L. 109-234; Section 204(a) of S.Con.Res. 21 (110<sup>th</sup> Congress), the FY2008 budget resolution; and Section 403 of S.Con.Res. 13 (111<sup>th</sup> Congress), the FY2010 budget resolution.

<sup>12</sup> For information on these specific budget enforcement rules, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

Baucus raised a second point of order against the amendment under Section 201 of S.Con.Res. 21, the Senate PAYGO rule. That point of order was sustained and the amendment fell.<sup>13</sup>

The rule also requires that the committee report or managers' statement (in the case of a conference report) accompanying the legislation include an explanation of how the designated provision meets a set of criteria specified in the rule.<sup>14</sup> It is worth noting that the rule simply requires the explanation, but there is no point of order based on whether the criteria are met based on some objective standard. Therefore, the criteria basically serve as guidelines for what constitutes an emergency requirement. Under these guidelines,

any provision is an emergency requirement if the situation addressed by such provision is—

- (A) necessary, essential, or vital (not merely useful or beneficial);
- (B) sudden, quickly coming into being, and not building up over time;
- (C) an urgent, pressing, and compelling need requiring immediate action;
- (D) subject to paragraph (2), unforeseen, unpredictable, and unanticipated; and
- (E) not permanent, temporary in nature.

(2) UNFORESEEN.—An emergency that is part of an aggregate level of anticipated emergencies, particularly when normally estimated in advance, is not unforeseen.

Finally, as noted above, Section 4(g) of the Statutory PAYGO Act of 2010 provides that any provision in a PAYGO act (i.e., generally legislation affecting direct spending or revenues) designated as an emergency requirement shall not be counted for purposes of projecting the budgetary effects of the legislation. In the Senate, like the emergency designation authority in the FY2010 budget resolution, if a PAYGO Act includes such an emergency designation, a Senator may raise a point of order against it. This point of order also may be waived by an affirmative vote of three-fifths of Senators duly chosen and sworn (i.e., 60 Senators if there is no more than one vacancy). In this case, if the motion is rejected and the designation stricken, and the legislation is enacted, then the budgetary effects of the legislation would be placed on the five- and 10-year PAYGO scorecards, as specified under the Statutory PAYGO Act.

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<sup>13</sup> See *Congressional Record*, daily edition, vol. 156 (March 4, 2010), pp. S1151-S1152.

<sup>14</sup> For example, the committee report (S.Rept. 111-3) to accompany S. 336, providing supplemental appropriations for FY2009, which was the precursor to the Senate amendment to H.R. 1, the American Recovery and Reinvestment Act of 2010 (P.L. 111-5), included this explanation:

The congressional budget resolution (S.Con.Res. 21) agreed to by Congress for fiscal year 2008 includes a spending provision related to the notification of emergency spending. This provision requires a statement of how the emergency provisions contained in the bill meet the criteria for emergency spending as identified in the budget resolution. The bill contains emergency funding for fiscal year 2009 for responses to the deteriorating economy, natural disasters and for other needs. The funding recommended herein is related to unanticipated needs and is for situations that are sudden, urgent, and unforeseen, specifically the devastating effects of the economic crisis, natural disasters, and rising unemployment. These needs meet the criteria for emergency funding.

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