

STATUTORY PAY-AS-YOU-GO ACT OF 2010
SECTION-BY-SECTION ANALYSIS OF THE STATUTORY PAY-AS-
YOU-GO ACT OF 2010

Section 1. Short Title: The title of this Act is the “Statutory Pay-As-You-Go Act of 2010.”

Section 2. Purpose: The purpose of the Statutory Pay-As-You-Go Act (PAYGO) of 2010 is to reestablish a statutory procedure to enforce a rule of budget neutrality on new revenue and direct spending legislation.

Section 3. Definitions and Applications: Section 3 sets forth definitions of terms used in the PAYGO statute. Many terms are defined by cross-references to the standard definitions used in other budget laws, including the Congressional Budget Act of 1974 and the Balanced Budget and Emergency Deficit Control Act (BBEDCA) of 1985.

Terms that are of particular importance include:

Budgetary effects. Budgetary effects are defined as the amount by which PAYGO legislation changes mandatory outlays or revenues relative to the baseline. The budgetary effects of changes in tax or mandatory spending law are measured relative to what revenues or mandatory spending would otherwise have been if not for the legislation, as measured by the baseline (as defined in section 257 of BBEDCA). Off-budget effects (i.e., Social Security trust funds and the Postal Service fund) and debt service are not counted as budgetary effects.

“Mandatory spending” and “direct spending” (the term used in the statutory language) are synonymous.

PAYGO legislation/PAYGO Act. Legislation, or provisions thereof, that increases or reduces revenues, or increases or reduces the cost of mandatory programs, is called PAYGO legislation or a PAYGO Act. In this Act, the terms are used interchangeably. PAYGO legislation is subject to statutory PAYGO.

Legislation subject to PAYGO also includes provisions in annual appropriations bills that change revenue or mandatory spending law in appropriations bills. Changes in mandatory spending law are considered discretionary in the current and budget years because the Appropriations Committees can offset the costs or use the savings by

adjusting funding levels for discretionary programs in those years. But mandatory spending provisions in appropriations bills having outyear budget authority effects—that is, effects in those years after the budget year—are considered PAYGO legislation. This is generally consistent with the existing point of order in the Senate against ChIMPs (Changes in Mandatory Programs). However, such provisions for which the mandatory outlay effects net to zero over the period consisting of the current year, the budget year, and the four subsequent years shall not be counted as having budgetary effects.

Timing shift. A timing shift involves a shift of costs from within the PAYGO window, i.e., the ten-year period covered by the PAYGO scorecard, to outside the window (or savings from outside the window to within the window). More technically, the term is defined to refer to a delay of the date on which mandatory outlays would otherwise occur from the ninth outyear (the last year taken into account in the PAYGO calculation) to the tenth outyear (not taken into account in the PAYGO calculation) or an acceleration of the date on which revenues or offsetting receipts or collections would otherwise occur from the tenth outyear to the ninth outyear. Timing shifts are not counted for purposes of statutory PAYGO to prevent gaming the PAYGO scorecard.

Section 4. PAYGO Estimates and PAYGO Scorecards:

Section 4 establishes procedures for determining the budgetary effects of legislation subject to PAYGO. These budgetary effects are entered by OMB on the PAYGO scorecards, as defined in section 4(d), and are used to determine whether a sequestration order must be issued.

Estimates of budgetary effects are made either by Congress or OMB.

Subsection (a) establishes the procedures Congress must follow in order for its estimate of budgetary effects of legislation to be used for PAYGO enforcement. If Congress follows these procedures, the Congressional estimate of budgetary effects shall be used by OMB. If Congress does not follow these procedures, the budgetary effects of legislation subject to PAYGO shall be estimated by OMB.

Subsection (b) establishes the procedures by which the House and Senate Budget Committees obtain estimates from CBO, and the procedures to be used by CBO for making estimates. Subsection (c) outlines the additional procedures to be followed by CBO or OMB, as applicable, when adjusting the estimates of budgetary effects for legislation that qualifies for a “current policy” adjustment under section 7 of this Act.

Subsections (d)-(f) relate to procedures used by OMB for PAYGO estimates and enforcement.

Subsection (g) addresses procedures for legislation designated as an emergency for the purpose of statutory PAYGO.

(a) *PAYGO Estimates.* Congress can establish the budgetary effects of PAYGO legislation by following a two-step process. First, the text of PAYGO legislation must include one of the statements prescribed in paragraphs (1)(A), (B), or (C). Second, the Chairman of the relevant Budget Committee must submit for printing in the Congressional Record a statement of the budgetary effects of the legislation, also referred to as the “cost estimate” or “score.” A Congressional estimate must satisfy both of these requirements to be valid. If Congress fails to follow this procedure for legislation that is subsequently enrolled and signed by the President, or chooses not to provide an estimate of budgetary effects, the OMB estimate of a PAYGO Act’s budgetary effects is used for PAYGO enforcement.

The statements prescribed in paragraphs (1)(A), (B), or (C) establish a reference in the legislative text of PAYGO legislation to an estimate of budgetary effects to be submitted for printing in the Congressional Report before a vote on passage. The statement may be included in the original text of the legislation, or by amendment as may be allowed under the regular procedures in either House. The estimate need only be submitted for printing in the Congressional Record before a vote on passage. The actual estimate of budgetary effects is never inserted into the legislative text of PAYGO legislation. This process avoids the need to amend PAYGO legislation to include an updated estimate of budgetary effects if amendments are adopted.

The Chairmen of the Budget Committees in each House are responsible for submitting estimates of budgetary effects for printing in the Congressional Record. Printing the statement in the Congressional Record ensures that the estimate of budgetary effects is, at the time of the vote on the bill that is enacted into law, unambiguous, fixed, and knowable, for Members, for OMB, and for the public.

This two-step process avoids the Constitutional concerns identified in *Bowsher v. Synar*, 479 U.S. 714 (1986) and *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983) because Congress will establish the budgetary effects of the PAYGO Act through the legislative process, not after enactment. An unambiguous and fixed estimate available prior to a vote is incorporated by reference in the PAYGO legislation. Matters incorporated by reference are binding on

the executive branch. See *Hershey Foods v. USDA*, 158 F. Supp. 2d 37, 41 (D.D.C. 2001), *aff'd* on other grounds, 293 F.3d 520 (D.C. Cir. 2002); see also *United States v. Sharpnack*, 355 U.S. 286, 293 (1958).

1. Required Designation in PAYGO Acts: One of three statements must be included in legislation subject to PAYGO for the Congressional estimate to be entered by OMB on the PAYGO scorecard. The statements provide the basis in the legislative text for incorporating the Congressional estimate by reference into the PAYGO Act.

The three statements address three possible scenarios under which a PAYGO Act may be signed by the President:

- (1) legislation is originated by the House and passed without amendment by the Senate;
- (2) legislation is originated by the Senate and passed without amendment by the House; and
- (3) legislation is agreed upon by both Houses after differences are resolved by a conference committee or by amendments between the Houses.

Statement (1)(A) refers to an estimate provided by the House Budget Committee Chairman. This statement would be included in legislation originated in the House of Representatives. If the House Budget Committee Chairman submits a statement of budgetary effects for printing in the Congressional Record before the vote on passage in the House, the budgetary effects of that legislation will have been set by the House. If the Senate then passes the House bill without amendment, the House PAYGO estimate will be placed on the PAYGO scorecard by OMB. Similarly, if the Senate originates and passes PAYGO legislation with the statement prescribed in (1)(B), and the Chairman of the Senate Budget Committee submits a statement of budgetary effects for printing in the Congressional Record before the Senate votes, the House of Representatives will have accepted the Senate estimate as controlling if it passes the Senate bill without amendment.

One House may strike the statement inserted in the legislative text by the other House and replace it with the statement referring to the estimate submitted by the Chairman of its Budget Committee. In doing so, the second House has rejected the first House's estimate. A disagreement between the Houses on the estimate of budgetary effects becomes a matter in dispute between the Houses to be resolved by the House and Senate Budget Committees.

The statement in (1)(C) refers to an estimate of budgetary effects jointly submitted to the Congressional Record by the Chairman of the House and Senate Budget Committees. This statement must be included in a conference report, or amendments between the Houses, when the Houses resolve the differences in their budgetary estimates. Where differences between the Houses are to be resolved in a process of amendments between the Houses, the requirement of a joint statement prevents the House acting first from having an advantage in negotiations. The joint statement also underscores that different estimates of the budgetary effects of legislation must be resolved to the satisfaction of the Chairmen of both Budget Committees if Congress wants a Congressional estimate to be placed on the PAYGO scorecard.

Presumably not all PAYGO legislation will contain a Congressional estimate of budgetary effects. For example, the budgetary effects of a particular PAYGO Act may be so small that Congress chooses not to complete an estimate. It is also possible that the Houses cannot come to an agreement on an estimate of budgetary effects. Absent a designation pursuant to section 4(a)(1) and estimate submitted pursuant to section 4(a)(2), the estimate made by OMB post-enactment will be entered on the PAYGO scorecards.

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In some cases, one piece of PAYGO legislation could have multiple designations and estimates throughout the legislative process—the first by the originating House, the second by the second House acting upon the legislation, and a third by the conference committee. For the purpose of directing OMB as to what amounts are to be entered on the PAYGO scorecards, the only estimate that matters is the one contained in the version of the legislation passed by both Houses and presented to the President for signature. Conversely, the omission by one or both Houses of a designation and estimate earlier in the legislative process, for whatever reason, has no bearing on the validity of an otherwise valid estimate appropriately referenced in a PAYGO Act signed by the President.

2. Determination of Budgetary Effects of PAYGO Acts: In order for Congress's estimate of budgetary effects to bind OMB, a valid statement must be submitted for printing in the Congressional Record by a Chairman of the Budget Committee, or by the Chairmen jointly, as applicable. However, the Chairmen are not obligated to submit a statement. The statement, if submitted, must be titled "Budgetary Effects of PAYGO Legislation."

The Chairmen of the Budget Committees retain full discretion over the Congressional estimate of budgetary effects for the purposes of enforcing this Act, consistent with Section 312 of the Congressional Budget Act. The Congressional Budget Office will continue to provide estimates to the Budget Committees.

It is the responsibility of the Budget Committee Chairmen to ensure that statements of budgetary effects are submitted for the Congressional Record in a timely manner, and that they identify with specificity any previously submitted statement for the same legislation that it supersedes. A previous statement is no longer valid and is superseded when that House adopts an amendment to a PAYGO Act after the statement has been submitted. Any subsequent amendment, regardless of its budgetary effects, will invalidate a previously submitted estimate.

In the case of a conference report, a statement of budgetary effects is not valid if it is first submitted for printing in the Congressional Record after one House passes the report. It is incumbent on both Houses to ensure that prior to a vote in either House on PAYGO legislation leading to enrollment and presentation to the President, there is an unambiguous, fixed, and knowable statement of budgetary effects.

3. Procedure in the Senate: It is in order in the Senate for the Legislative Clerk to read the statement of budgetary effects into the record of proceedings once it has been submitted by the Chairman of the Senate Budget Committee. This reading provides an added assurance that all Senators have been given notice of the Congressional estimate of the budgetary effects prior to a vote on passage of legislation. Notice to Senators will also be provided by printing the estimate in the Congressional Record. As a practical matter, votes on some legislation subject to PAYGO may be taken after the statement has been submitted for the Congressional Record, but before it has been printed. If the vote will be taken after the statement has been printed, the Senate may waive the reading of the estimate by unanimous consent.

4. Jurisdiction of the Budget Committees: When Congress follows the procedure set forth in this section, the designated legislation is not subject to a point of order under section 306 of the Congressional Budget Act. (Section 306 generally bars the consideration of legislation dealing with matters within the jurisdiction of the Budget Committee unless it has been reported by the committee, or the committee has been discharged from further consideration.) The inclusion of the statements specified in (1)(A), (B), and (C)—without

modification—in legislation subject to PAYGO avoids a point of order under section 306. If different language is used, for example, or if an authorizing committee includes some other budgetary provision, a point of order under section 306 would be in order. This is consistent with Senate precedent that “directed scoring” language in legislation is within the jurisdiction of the Budget Committees.

(b) CBO PAYGO Estimates. Subsection (b) amends Section 308 of the Congressional Budget Act of 1974 to establish a procedure by which Congress may request that CBO estimate the budgetary effects of PAYGO legislation. Consistent with section 312 of the Congressional Budget Act, and existing Congressional practice and procedure, the Chairmen of the Budget Committees are responsible for requesting estimates from the Congressional Budget Office. CBO shall prepare its estimates consistent with section 257 of BBEDCA, but shall not count timing shifts as those are defined in section 3(8) of this Act. CBO estimates shall also be scored in accordance with the scorekeeping guidelines determined under section 252(d)(5) of BBEDCA.

(c) Current Policy Adjustments for Certain Legislation. Section 4(c) establishes procedures for making adjustments to the estimates of budgetary effects for legislation in four policy areas:

- (1) physician payments under section 1848 of the Social Security Act;
- (2) the Estate and Gift Tax;
- (3) the Alternative Minimum Tax; and (4) certain middle class tax cuts provided in EGTRRA and JGTRRA. The criteria for determining whether legislation, or provisions of legislation, qualify for current policy adjustments are set forth in section 7.

1. In General: If the Chairman of either Budget Committee determines that legislation meets the criteria set forth in section 7 of this Act, that Chairman shall request that CBO adjust its estimate of budgetary effects. If OMB estimates the budgetary effects of legislation that meets the criteria of section 7 because Congress has not provided a valid estimate, then OMB shall adjust its estimate of budgetary effects.

2. Adjustments: For qualifying legislation or provisions of legislation, CBO or OMB, as applicable, shall exclude from the estimate of budgetary effects no more than the amount of the budgetary effects of that legislation or provision as allowed in the applicable part of section 7. The amount that may be excluded is determined with reference to the amounts

previously excluded pursuant to the same subsection of section 7. In other words, if the cost of a particular provision, when added to the costs or savings of all other provisions that previously qualified for an adjustment under that subsection of section 7 exceeds the maximum amount allowable for the subsection, the excess costs shall not be excluded from the estimate of budgetary effects. In implementing these adjustments, CBO shall use CBO's baseline estimates; this requirement is not intended to apply to estimates prepared by OMB. If CBO makes an adjustment, its estimate shall state the unadjusted and adjusted costs, and an updated total of all costs previously excluded under the same provisions of section 7.

3. Limitation on Availability of Excess Savings: The intent of the current policy adjustment is to give Congress flexibility to extend certain current policies with budgetary effects over specified periods of time. Savings from the extension of current policies with budgetary effects less than allowed under section 7—in other words extensions that generate savings in comparison with the extension of current policy—cannot be used to offset costs of other legislation. This paragraph establishes two rules that reinforce the prohibition on the fungibility of savings relative to the current policy extensions.

A. Excess savings cannot be used to offset the budgetary effects of PAYGO legislation that would not otherwise qualify for a current policy exemption under section 7. For example, if Congress were to enact only a one-year fix for the Alternative Minimum Tax, the difference in revenue generated by a two-year and one-year fix of the AMT cannot be used to offset the cost of a new entitlement program.

B. Excess savings in one of the policy areas specified in section 7 cannot be used to offset the budgetary effects of a more expensive policy extension in another policy area. For example, if Congress were to enact only a one-year fix for the Alternative Minimum Tax, the difference in revenue generated by a two-year and one-year fix of the AMT cannot be used to offset a reduction in the estate and gift tax that costs more than is otherwise provided in section 7. In other words, savings among the policies in sections 7(c), (d), (e), and (f), and among the subparagraphs of section 7(f)(1), are not fungible.

4. Further Guidance on Estimating Budgetary Effects: To determine adjustments for the budgetary effects for qualifying legislation, CBO or OMB, as applicable, shall use the conventions concerning the stacking order of estimates of the interactive effects of AMT relief and extension of the middle class tax cuts set forth section 7(h).

5. Inclusion of Statement: Any adjustments for current policy legislation shall be explained by the appropriate Chairman of the Budget Committee in the statement “Budgetary Effects of PAYGO Legislation” submitted for printing in the Congressional Record.

(d) OMB PAYGO Scorecards. The subsection outlines OMB's responsibilities under statutory PAYGO. OMB will maintain two “PAYGO scorecards,” available to the public, that maintain a running tally of the budgetary effects of enacted legislation subject to PAYGO. In making entries onto the scorecards, OMB will use the “look-back” and “averaging” rules discussed below.

OMB will use the Congressional estimate of the budgetary effects of a PAYGO Act if one was incorporated pursuant to section (4)(a). If not, OMB will enter its own estimates on the scorecards.

The scorekeeping and baseline rules for current policy adjustments are the same as those that apply to CBO and OMB for estimating all legislation subject to PAYGO. OMB estimates must be consistent with the scorekeeping approaches described in section 308 of the Congressional Budget Act, as amended by section 4(b) of this Act, and the current policy adjustments in section 7. In other words, OMB and CBO estimates should be made using the same rules and scorekeeping conventions. However, CBO will use the baseline as defined by section 257 of the Congressional Budget Act, while OMB will use the economic and technical assumptions included in the latest budget submitted by the President.

OMB will maintain two PAYGO scorecards, one covering a five-year period and the other covering a ten-year period beginning in the budget year.

OMB shall not include on either PAYGO scorecard any net savings generated by subsequently enacted legislation titled “Community Living Assistance Services and Supports Act” (CLASS Act). The CLASS Act was included in the Senate- and House- [page S294] passed health care reform bills and would establish a federal insurance program for long-term care. OMB shall also not include any net savings generated by subsequent amendments to that Act, if enacted.

(e) Look-Back to Capture Current Year Effects. To take into account any budgetary effects of PAYGO legislation in the current year (i.e., the year of enactment if before October 1st), a “look back” rule is included. The rule provides that budgetary effects in the current year are to be treated as if they were budgetary effects in the budget year (which is the year subsequent to the current year). This is why the averaging

provision described below actually sums eleven years of costs (the current year, the budget year, and the nine outyears) and divides the sum by ten. This look-back provision similarly applies to the five-year scorecard.

(f) Averaging Used to Measure Compliance Over 5-Year and 10-Year Periods. For the budget year and the applicable four or nine outyears, OMB is to enter the annual average budgetary effect associated with PAYGO legislation. For instance, a bill that pays for itself over ten years will have a total, and thus average, score of zero, so zero would be entered in each column of the ten-year PAYGO scorecard. If a bill enacted in FY10 costs a net of \$10 billion over FY2010-FY2020, OMB would insert +\$1 billion in each of the ten columns on the PAYGO ledger (FY11 through FY20). The same PAYGO legislation could well have different averages over five years and over ten. For example, if a bill enacted this session costs \$2 billion through 2015 and \$10 billion through 2020, the five-year scorecard would record entries of \$0.4 billion for each of 2011 through 2015, while the ten-year scorecard would record entries of \$1 billion for each of 2011 through 2020.

(g) Emergency Legislation. If legislation subject to PAYGO contains an emergency designation, the budgetary effects of provisions that are designated as emergencies shall not be placed on the PAYGO scorecards by OMB. The designation should refer to subsection (g)(1) of this Act. The procedure for challenging a statutory emergency designation for PAYGO enforcement reflects the current practices for challenging emergency designations under Congressional budget rules. In the Senate, an emergency designation is subject to a point of order that may be waived upon a vote of 3/5 of the members duly chosen and sworn. If the Senate does not waive this point of order, the emergency designation is struck from the legislation.

Section 5. Annual Report and Sequestration Order: Section 5 defines the timing of the annual PAYGO report and, if one is needed, the sequestration order. OMB is to produce an annual PAYGO report, which shall include up-to-date PAYGO scorecards and a description of any sequestration if required. The report is to be released no more than 14 days (excluding weekends and legal holidays) after Congress adjourns to end a session.

If the annual report shows a debit (i.e., net budgetary cost) on either PAYGO scorecard for the budget year, the President is required to issue an order sequestering budgetary resources from non-exempt mandatory programs sufficient to fully pay off that debit. If it shows a debit on both the five-year and ten-year

scorecards, the sequestration must pay off the larger debit. If the President issues this order, then the PAYGO annual report must contain its details, including such information as the outlay reductions that would occur in the budget year and the subsequent fiscal year for each affected account.

Because the PAYGO statute creates a permanent law, the two scorecards are permanent. In effect, they will record all PAYGO legislation enacted from the date the bill becomes law. The cost estimates of individual PAYGO bills, however, will eventually slide off the scorecards since only the five-year or ten-year costs are recorded on those scorecards. For example, a PAYGO bill enacted later this year will show cost or savings entries of the same size (the average amount through 2015) for each fiscal year 2011 through 2015 on the five-year scorecard. Next year, new PAYGO legislation will add entries to the five-year scorecard covering years 2012-2016. The entries made this year in the 2012-2015 columns of that scorecard will remain on that scorecard, however. If those entries are net savings, the savings will be available to cover costs in new legislation, but if they are net debits, avoiding a sequestration at the end of each of the next four sessions of Congress will require that the net debits be worked off by the enactment of new offsetting savings. The same approach applies to the ten-year scorecard.

Section 6. Calculating a Sequestration: Section 6 describes how sequestration is to be implemented if triggered. Many mandatory programs, such as Social Security, veterans' disability and other benefits, and major low-income entitlements, such as Supplemental Security Income and Medicaid, are totally exempt from sequestration. Only programs in the unified budget are subject to sequestration.

With the exception of Medicare, non-exempt mandatory programs would be cut by a uniform percent, such that the outlay savings produced in the budget year and the subsequent fiscal year would be sufficient to fully offset the budget-year debit on the PAYGO ledger. Medicare can be cut by no more than four percent. If a larger cut is needed to offset the debit on the PAYGO ledger, the uniform percentage cut to the other non-exempt mandatory programs would be increased so that the sequester of Medicare and the other non-exempt programs would together produce sufficient savings to offset the budget-year debit. Sequestrations are temporary, not permanent, and with a few exceptions occur only in the budget year.

For most non-exempt mandatory programs, the uniform sequestration percentage reduces budgetary resources by a specified percent over the course of the entire fiscal year. If a sequestration starts a month or more into the fiscal year

because Congress adjourns in November or December, then the reduction during the remaining 9, 10, or 11 months of the fiscal year will be larger than the uniform percentage so that the average sequestration over the year equals the required uniform percentage. In the case of Medicare, the sequestration lasts for a full 12 months even if it takes effect after the beginning of the fiscal year, in which case it will run into the start of the next fiscal year. This means the uniform percentage cut in payments to providers or insurance plans will not be higher at any time than the four-percent limit (or the calculated uniform percentage, if lower).

In the case of price support payments for crops, the sequestration for any given crop will start at the beginning of the next crop year. As a consequence, sequestrations for crops will not all be running concurrently, and some sequestrations may occur partly in the following fiscal year.

Section 7. Adjustments for Certain Current Policies:

(a) Purpose. Section 7 establishes a temporary rule to adjust the estimates of the budgetary effects of PAYGO legislation in four policy areas: Medicare physician payments, the estate tax, the Alternative Minimum Tax, and the 2001 and 2003 income tax cuts for the middle class. In each of these areas, current policies have either expired at the end of 2009 or will expire by the end of 2010. This section allows for an adjustment so that the cost of extending specified individual policies for a defined period (two years for estate tax and AMT, five years for Medicare physician payments, and permanently for the middle-class tax cuts) is not counted for statutory PAYGO purposes.

This scoring rule applies only for the purposes of statutory PAYGO. For other purposes, including the Congressional Budget Act and the congressional PAYGO rules, existing scoring rules and points of order apply.

General approach. The statute authorizes a maximum adjustment to the estimate of budgetary effects of PAYGO legislation in the four specified policy areas equal to the difference between:

The cost of continuing a specified policy under current law as of December 31, 2009, consistent with baseline calculations under section 257 of BBEDCA, which, for each of the four policy areas, would assume that the specified policy has expired (AMT and estate tax), or will expire by the end of 2010 (all other policies); and

The projected cost of the specified policy assuming the policy continues beyond its scheduled expiration date.

The cost of continuing these policies over the specified period is larger than the cost of letting them expire, as would happen under current law. The adjustment allows Congress to address these policies without having the cost added to the PAYGO scorecard. The difference between these two estimated costs is the maximum adjustment that may be used to offset the cost of legislation addressing each specified policy for the purposes of PAYGO enforcement. If the estimate of the legislation has a greater budgetary effect than the maximum amount of the adjustment, then the adjustment can be used to offset a portion of its cost. The additional cost would be counted for statutory PAYGO purposes. If a less costly policy is enacted, any remaining amount in the adjustment cannot be used to offset the cost of policies in other areas (as specified in Section 4(c)(3) of the PAYGO statute).

In addition, the adjustments in each policy area are further limited to prevent using the full amount of the available adjustment to offset the cost of a more generous policy for a shorter period. Under this limitation, the amount of the adjustment is estimated consistent with the time period covered by the eligible policy action.

(b) Duration. This section expires on December 31, 2011, so any policies eligible for an adjustment must be enacted by that time in order to receive the adjustment.

(c)-(f) Policy areas eligible for adjustment. For statutory PAYGO purposes, legislation addressing four policy areas qualifies for a current policy adjustment to the estimate of that legislation's budgetary effects.

(c) Medicare Physician Payments. Under current law, the Sustainable Growth Rate (SGR) formula requires physician payments under Medicare part B to be cut automatically by over 21 percent after February 28, 2010. Section 7(c) provides a maximum adjustment equal to the difference between the cost of freezing through December 31, 2014, the Medicare Part B payment rates to physicians at the 2009 rate, and the cost of allowing the automatic cuts to occur after February 28, 2010. Legislation providing relief from the scheduled SGR cut—including legislation that reforms or supersedes the SGR formula—would only be scored for PAYGO purposes to the extent that it costs more than this five-year freeze at 2009 levels. If legislation to reform or supersede the SGR formula through or beyond 2014 is enacted that costs less than a five-year freeze in the [p. S295] years through 2014, any remaining amount in the adjustment could be used to offset costs of that policy after 2014, but the total adjustment cannot exceed the maximum adjustment amount of a five-year SGR freeze.

(d) *Estate and gift tax.* Under EGTRRA, the estate tax exemption was gradually increased and the tax rate gradually lowered so that by 2009, the exemption level was \$3.5 million for an individual, with amounts above the exemption level taxed at a 45 percent rate. In 2010, the estate tax is repealed, replaced with a new tax on inherited assets with unrealized capital gains. In 2011, with the expiration of EGTRRA, the estate tax will return, with the pre-2001 law parameters of a \$1 million exemption for an individual and a top rate of 55 percent.

The maximum adjustment in section 7(d) is equal to the difference between the revenues expected from continuing the 2009 estate tax policy, with the nominal exemption level indexed for inflation, through December 31, 2011, and the revenues expected under the 2010 repeal and 2011 return to pre-2001 law. In other words, legislation restoring the estate tax would be scored for PAYGO purposes only to the extent that it costs more than implementing the 2009 policy (indexed) in 2010 and 2011. Because the cost of estate tax policy through 2011 will have budgetary effects beyond 2011, this section clarifies that the adjustment is intended to capture the full budgetary effects in all years resulting from the two-year policy change.

(e) *Alternative Minimum Tax.* A “patch” for the AMT was provided in the Recovery Act, increasing the 2009 AMT exemption to \$70,950 for couples and \$46,700 for singles in order to prevent the number of taxpayers affected by the AMT from exploding from about four million to about 30 million. This patch expired at the end of 2009.

Section 7(e) provides a maximum adjustment equal to the difference between the revenues expected from adjusting the the [sic] AMT exemption levels through 2011 in order to hold the number of taxpayers affected by the AMT at 2008 levels (about 4.2 million), and the revenues expected assuming the expiration of the 2009 AMT patch. Because the cost of AMT relief through 2011 will have budgetary effects beyond 2011, this section clarifies that the adjustment is intended to capture the full budgetary effects in all years resulting from the two-year policy change.

(f) *2001 and 2003 middle-class tax cuts.* The 2001 and 2003 income tax reductions enacted under EGTRRA and JGTRRA, as subsequently amended through December 31, 2009, are scheduled to expire at the end of 2010. Section 7(f) provides 12 adjustments for policies benefiting the middle class as they are in effect in 2010. The specific middle-class policies are:

10 percent bracket;

- Child Tax Credit, including the expansion in the Recovery Act;
- Marriage penalty relief, including the relevant EITC expansion in the Recovery Act;
- Adoption credit;
- Dependent care credit;
- Employer-provided child care credit;
- Education tax benefits;
- 25 percent and 28 percent brackets;
- 33 percent bracket, but only for individuals with incomes of \$200,000 or less, and couples with incomes of \$250,000 or less;
- Reduced rates on capital gains and dividends, but only for individuals with incomes of \$200,000 or less, and couples with incomes of \$250,000 or less;
- Repeal of the personal exemption phase-out and the limitation on itemized deductions, but only for individuals with incomes of \$200,000 or less, and couples with incomes of \$250,000 or less; and
- Section 179 expensing for small businesses, allowing up to \$125,000 of qualified property to be expensed, phasing out for property over \$500,000.

The maximum adjustment for the policies in section 7(f) is equal to the difference between the revenues expected if the specified policy were in place after 2010 and the revenues expected if the related provisions expired as scheduled.

(g) Indexing for Inflation. Amounts indexed for inflation are done in accordance with the cost-of-living adjustment rules in section 1(f)(3) of the Internal Revenue Code of 1986. That provision in the Code designates the Department of Labor's Consumer Price Index for all-urban consumers (usually expressed as CPI-U) as the measuring standard. Amounts indexed for inflation in this Act are the nominal exemption amount under the estate tax, as well as the income thresholds for income tax brackets, the rates for capital gains and dividends, the personal exemption phase-out, and the limitation on itemized deductions.

(h) Guidance on Estimates and Current Policy Adjustments. Estimates of budgetary effects of certain tax policies can vary depending on the order in which those policies are enacted into law. The PAYGO statute lays out three rules for addressing

costs associated with the interaction of these various provisions.

1. For the interaction between AMT relief and the middle-class tax cuts, all interaction costs are scored as part of AMT relief. Specifically, estimates for determining the AMT adjustment must assume that all of the middle-class tax cuts eligible for a PAYGO adjustment have been enacted, even if these tax cuts have not yet been enacted.
2. Estimates for determining the adjustment for the middle-class tax cuts must assume that AMT relief follows current law as of the end of 2009—that is, they must assume that the 2009 AMT patch expired at the end of 2009, even if AMT relief beyond 2009 has already been enacted.
3. To address the interaction between individual middle-class tax provisions included in the same piece of legislation, provisions must be scored in the order in which they appear in the legislation.

Section 8. Application of BBEDCA: Section 8 specifies how various provisions of BBEDCA, including the special sequestration rules in section 256 of BBEDCA and the baseline rules in section 257 of BBEDCA, apply to this new PAYGO statute.

Section 9. Technical Corrections: Section 9 corrects typographical errors in the text of BBEDCA.

Section 10. Conforming Amendments: Section 10 makes conforming amendments to section 256 of BBEDCA. This section establishes special rules for sequestration for certain mandatory programs or updates the special rules to reflect programs as they now exist.

Section 11. Exempt Programs and Activities: Section 11 lists mandatory programs and activities that are exempt from sequestration. Exemptions under this Act are consistent with the exemption list that was first created in 1990. That said, the exemption list has been updated to address accounts that have had their account names or numbers changed since 1990, or have been merged or divided. Further, new accounts (since 1990) have been treated the same way that analogous accounts were treated. For example, in the 1990 law the major low-income programs such as Medicaid were exempted from sequestration. The Children's Health Insurance Program (CHIP), new since 1990, is in the same category as Medicaid and also exempt.

The list has been expanded to clarify the treatment of certain transportation programs, notably federal-aid highways and grants-in-aid for airports. The budgetary treatment of these programs is split. They receive mandatory contract authority through authorization bills, but are treated as discretionary programs because their annual spending is controlled by obligation limitations in appropriations bills. These programs are exempt from sequestration to the extent they are controlled by obligation limitations. Remaining mandatory resources in these programs are subject to sequestration.

Finally, as noted in Section 6, non-exempt accounts are subject to a single, uniform percentage cut if a sequestration is required (except Medicare, where the cut is limited to four percent). Under the 1990 law, if a small sequestration was needed, four programs would have been the first ones sequestered: special milk, vocational rehabilitation state grants, student loans, and foster care / adoption assistance. Because this PAYGO statute eliminated this rule, the first three of those programs are treated as any non-exempt account would be treated. But the foster care account is included in the exempt list on the grounds that it is like other low-income programs that were exempted from sequestration in the 1990 law.

Section 12. Determinations and Points of Order: Section 12 affirms that nothing in this Act is intended to limit the authority of the Budget Committee Chairmen to make determinations and estimates of the costs or savings of legislation. In addition, the section authorizes CBO to consult with the Budget Committees to resolve any ambiguities in the interpretation of the Act.

COUNSEL NOTES

Source: This section by section is published in the Congressional Record and January 28, 2010, inserted by Senator Kent Conrad, Chairman of the Senate Budget Committee. He made the following statement

Mr. CONRAD. Madam President, today the Senate passed the Statutory Pay-As-You-Go Act of 2010 as an amendment to [H.J. Res. 45](#). As chairman of the Senate Budget Committee, I ask that the following section-by-section analysis of that act be printed in the Record. There being no objection, the material was ordered to be printed in the Record, as follows: [Text inserted on pages [S291 through S295](#)].

Formatting: The text is repeated here verbatim, is reformatted for easier reading.

Statutory Pay-As-You-Go Act of 2010, 111th Cong., 2nd Sess.,

121 CONG. REC. S932-935 (daily ed. Jan. 28, 2010).
[Pages 291-295](#) on Legislative Information Services.

Link to Congressional Record:

<https://www.congress.gov/congressional-record/2010/01/28/senate-section/article/S291-1>