

§ 13212 **SEC. 13212. SAVINGS TRANSFERS BETWEEN FISCAL YEARS.**

**Section 202 of Public Law 100-119 is repealed.<sup>1524</sup>**

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<sup>1524</sup> The statement of managers accompanying the conference report on the Budget Enforcement Act explains the repeal briefly by reference to an earlier edition of this volume: "The conference agreement also repeals section 202 of public law 100-119, the exceptions to which the conferees believe had come to be abused (*see* W. Dauster, CONGRESSIONAL BUDGET ACT ANNOTATED 567-77 (1990)) . . ." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1170 (1990), *reprinted in* 1990 U.S.C.C.A.N. 2017, 2875.

Section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 prohibited counting as savings shifts from one year to another. Section 202 provided:

**SEC. 202. PROHIBITION OF COUNTING AS SAVINGS THE TRANSFER OF GOVERNMENT ACTIONS FROM ONE YEAR TO ANOTHER**

(a) **IN GENERAL.** — Except as otherwise provided in this section, any law or regulation that has the effect of transferring an outlay, receipt, or revenue of the United States from one fiscal year to an adjacent fiscal year shall not be treated as altering the deficit or producing net deficit reduction in any fiscal year for purposes of the Congressional Budget Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) **EXCEPTIONS.** — Subsection (a) shall not apply if the law making the transfer stipulates that such transfer —

(1) is a necessary (but secondary) result of a significant policy change;

(2) provides for contingencies; or

(3) achieves savings made possible by changes in program requirements or by greater efficiency of operations.

Section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 202, 101 Stat. 754, 784 (1987) (codified at 2 U.S.C. § 909) (repealed 1990).

An editorial in the *Washington Post* (written after the adoption of section 202) described the evil that Congress originally intended section 202 to address:

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<sup>1224</sup>(...continued)

**Floating Paydays**

**OUR LEADERS** keep trying to do us the ultimate favor of cutting the budget deficit without cutting the budget, and we suppose it's churlish not to be grateful. Their latest effort involves the floating payday.

Federal employees tend to be paid two weeks at a time. For a lot of them this year, that will mean a payday the first week of October. That turns out to represent both a problem and an opportunity. The problem is that the fiscal year begins Oct. 1; the early October paychecks would thus normally be charged to fiscal 1990, and be part of the 1990 deficit. The opportunity is to pay these employees early, on Friday, Sept. 29. That would doubtless make the employees happier and move the expenditure into fiscal 1989, all in the same deft stroke. Since no one is paying that much attention to the 1989 deficit any more, as a political proposition the cost would simply disappear.

Of course grown-ups would not resort to games like these, you say. Wrong. The Department of Defense is already doing it. Secretary Dick Cheney ordered the forward creep himself, under authority Congress gave the department a couple of years ago when the virtues of the step first dawned on the armed services committees.

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It's an understandable point of view. Our own suggestion is that they simply give all federal employees their full year's pay for fiscal 1990 on Sept. 30 (with a suitable discount for the advance, of course). The fiscal 1990 deficit would positively melt away, and we would all live happily ever after.

*Floating Paydays*, Wash. Post, June 26, 1989, at A10, col. 1. (c) The Washington Post. Reprinted with permission.

What became section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 first appeared in the Senate leadership compromise version of the revision of Gramm-Rudman-Hollings. The Senate adopted the amendment (to H.J. Res. 324) containing the provision on July 31, 1987, by a vote of 71 to 21. The original Senate-passed version read as follows:

**PROHIBITION OF COUNTING AS SAVINGS  
THE TRANSFER OF GOVERNMENT ACTIONS  
FROM ONE YEAR TO ANOTHER**

**Sec. 225. (a)** For purposes of titles III and IV of the Congressional Budget and Impoundment Control Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985, any action of the United States Government that is transferred from one fiscal year to an adjacent fiscal year,

(continued...)

<sup>1324</sup>(...continued)

including a payment, expenditure, receipt of funds from the sale of an asset, and the collection of revenues and other receipts, shall not be treated as causing a reduction in the deficit for the fiscal year from which the transfer was made except to the extent that such transfer reduces the sum of the deficits for the two fiscal years by at least \$100,000,000. For purposes of this section, an action shall be considered to have been transferred when the action is taken in a different fiscal year and such change in the year is not —

(1) a necessary but secondary result of a significant policy change;

(2) to provide for contingencies; or

(3) to achieve savings made possible by or through changes in requirements or greater efficiency of operations.

(b) For purposes of the application of this section to the Congressional Budget and Impoundment Control Act of 1974, the level of outlays and the deficit for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as the case may be.

H.J. Res. 324, 100th Cong., 1st Sess. (July 31, 1987) (as received in the House with Senate amendments).

The conference report describes the section:

**7. Prohibition Against Counting Certain Actions  
as Savings**

*Current Law*

Under current practice, the deficit for a fiscal year can be reduced by transferring certain actions by the Federal Government between that fiscal year and another fiscal year, even if the deficit for the other fiscal year is increased as a result.

*Senate Amendment*

The Senate amendment (Section 225) provides that a transfer of any action by the Federal Government — including payments, expenditures, asset sales, and the collection of revenues and receipts — from one fiscal year to an adjacent fiscal year shall not be treated as reducing the deficit for the fiscal year from which the transfer is made unless, as a result of the transfer, the deficit for the period covered by both fiscal years is reduced by at least \$100 million.

(continued...)

<sup>1824</sup>(...continued)

The Senate amendment specifies the conditions for determining (for purposes of this requirement) whether an action by the Federal Government constitutes a transfer and further specifies that its provisions shall be enforced on the basis of estimates made by the House and Senate Budget Committees.

*Conference Agreement*

The conference agreement prohibits the savings resulting from the transfer of outlays, receipts, or revenues from one year to another to be counted as changing the deficit, except for certain types of transfers identified in law. The conferees recognize that the determinations required under this provision for the 1974 Budget Act will be based on estimates made by the House and Senate Budget Committees.

H.R. CONF. REP. NO. 100-313, 100th Cong., 1st Sess. 65-66 (1987), reprinted in 1987 U.S.C.C.A.N. 739, 765-66.

In conference, House conferees insisted on the substitution of a new mechanism for applying the exceptions by which the law in question could direct its own scorekeeping. This led to the two problems that section 202 created.

By providing this mechanism for applying the exception, the law impliedly prohibited all transfers that did not contain the magic words applying the exception. Even if the transfer was a necessary (but secondary) result of a significant policy change, did provide for contingencies, or did achieve savings made possible by changes in program requirements or by greater efficiency of operations, the section by its terms would apply to prohibit scorekeepers from counting the savings.

The language thus created a trap for the unwary Senator. Unless the Senator knew about the section and thought about the issue while drafting the legislation in question, the section stood as a snare waiting to catch the legislation. The result led to increased disrespect for the budget process.

The second problem that the language of section 202 created was the one to which the statement of managers accompanying the conference report on the Budget Enforcement Act referred: The exceptions invited overuse. As the exception required simply that the subject legislation specify that it was for one of the good purposes listed in order to avoid the sanction of the prohibition, the exception was applied to a number of shifts between years that clearly did not fall within the exception as intended. Section 202 became an easily-avoided prohibition on budget gimmickry. For cases where the law cited "a necessary (but secondary) result of a significant policy change," see, e.g., Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 11001 (1989); H.R. CONF. REP. No. 101-386, 101st Cong., 1st Sess. 405-06 (1989); 125 CONG. REC. H9,446 (daily ed. Nov. 21, 1989) ("any provision of this Act"); Act making supplemental appropriations for the Department of Veterans Affairs for the fiscal year ending September 30, 1989, and for  
(continued...)

§ 13213 **SEC. 13213. CONFORMING CHANGE TO  
TITLE 31.**

§ 13213(a) **(a) LIMITATIONS ON EXPENDING AND OBLIGATING.**<sup>1825</sup>  
— Section 1341(a)(1) of title 31, United States Code, is amended—

§ 13213(a)(1) **(1) in subparagraph (A), by striking the final word  
“or”;**

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<sup>1824</sup>(...continued)

other purposes, Pub. L. No. 101-45, 103 Stat. 97, 108 (1989) (Advance Deficiency Payments); Stuart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628, § 1004(b), 102 Stat. 3224, 3264 (1988) (Prohibition of Reduction of Section 8 Contract Rents); Rural Development—Agriculture Appropriations Act, 1989, Pub. L. No. 100-460, 102 Stat. 2229, 2253 (1988) (Conservation Reserve Program); Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989, Pub. L. No. 100-404, 102 Stat. 1014, 1026 (1988) (NASA Research and Development); Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, § 4031(c), 101 Stat. 1330, 1330-76 (1987) (Payment Cycle Standards for medicare); Joint Resolution making continuing appropriations for the fiscal year 1988, and for other purposes, Pub. L. No. 100-202, 101 Stat. 1329, 1329-202 (1987) (NASA Research and Development). For a case where the law cited “changes in program requirements,” see Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, § 7004(a), 101 Stat. 1330, 1330-280 (1987) (Cash Sales of Properties Acquired Through Foreclosures). In something less than full compliance with this provision, one stipulation simply specified that “amendments made by this title shall be considered an exemption under section (b).” See Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, § 6004, 101 Stat. 1330, 1330-278 (1987) (Civil Service and Postal Service Programs).

Senator Sanford’s bill S. 101, 101st Cong., 1st Sess., 135 CONG. REC. S170, S425-29 (daily ed. Jan. 25, 1989), proposed repealing the exception but leaving the prohibition intact. The Senate-passed version of the Budget Enforcement Act followed this tact. See H.R. 5835, 101st Cong., 2d Cong., 136 CONG. REC. S15,868, S15,998 (daily ed. Oct. 18, 1990) (as amended by the Senate). The conferees opted for the simpler path of simply repealing section 202. This result leaves the decision to count or not to count a shift between years to those whom the law elsewhere designates as scorekeepers.

<sup>1825</sup> The statement of managers accompanying the conference report on the Budget Enforcement Act briefly explains the changes made by this subsection: “The conference report also makes conforming changes to title 31 of the United States Code to make clear that funds sequestered are not available for expenditure . . . .” H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1170 (1990), *reprinted in* 1990 U.S.C.C.A.N. 2017, 2875.