

## G. Pay-As-You-Go Procedures

### § 22. Introduction

There have been several pay-as-you-go procedures for budget enforcement applicable in the House, provided by statute or by standing rule of the House. Although these procedures share common elements, they have varied in terms of applicability and enforcement mechanisms.

#### ***The Budget Enforcement Act of 1990***

The Budget Enforcement Act of 1990<sup>(1)</sup> created a pay-as-you-go procedure that applied to direct spending only.<sup>(2)</sup> An annual scorecard, maintained by the Office of Management and Budget, tracked spending and revenue legislation by Congress, and if such scorecard showed a net debit at the end of a congressional session (due to spending increases or a reduction in revenues), an automatic sequestration process was triggered. The PAYGO procedure did not require each bill to be deficit-neutral, but instead enforced budget neutrality in the aggregate.

This budget neutrality goal was enforced by sequestration (automatic canceling of budget authority).<sup>(3)</sup> If deficit targets were not met, the sequestration process required across-the-board cuts to be made in certain non-exempt categories to reach the target. Spending designated as emergency spending did not count towards the PAYGO scorecard.

This PAYGO mechanism was extended several times, but finally expired in 2002. The remaining balance on the PAYGO scorecard was, by law,<sup>(4)</sup> reduced to zero, thus avoiding sequesters of funds for the subsequent fiscal years.

#### ***House PAYGO Rule***

The House maintained its own pay-as-you-go rule applicable to House proceedings during the 110th and the 111th Congresses.<sup>(1)</sup> In 2011, the rule

1. Pub. L. No. 101–508.
2. Section 252 of the Budget Enforcement Act of 1990 comprised the PAYGO procedure. Discretionary spending was separately constrained by spending caps contained in section 251. A “firewall” was established between the two kinds of spending, such that savings in one area could not be used to offset spending in the other.
3. See § 26, *infra*.
4. Pub. L. No. 107–312; 2 USC § 902 note.
1. See former Rule XXI clause 10, *House Rules and Manual*, § 1068e (2009). Significant revisions were made to the PAYGO rule at the beginning of the 111th Congress, including a new method of evaluating amounts designated as emergencies and the procedural flexibility to consider multiple measures linked together in the engrossment to

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was replaced by a cut-as-you-go point of order (see below).<sup>(2)</sup> The former rule required budget neutrality over six- and 11-year time periods for each bill, joint resolution, amendment,<sup>(3)</sup> or conference report.<sup>(4)</sup> Any such measures that increased spending or decreased revenues were required to be offset by decreased spending or increased revenues. Thus, unlike the prior statutory PAYGO system, the House PAYGO rule required budget neutrality on a measure-by-measure basis.

In terms of spending analysis, the House PAYGO rule was concerned solely with direct spending and did not apply to discretionary spending.<sup>(5)</sup> The budgetary effect of each measure was determined on the basis of estimates provided by the Committee on the Budget relative to baseline estimates supplied by the Congressional Budget Office. Amendments to measures were also required to be PAYGO-compliant under the former House PAYGO rule. Amendments were evaluated on their marginal budgetary effect on the pending legislation.<sup>(6)</sup>

The Committee on Rules reported special orders of business that waived the PAYGO rule.<sup>(7)</sup> Special orders of business also “self-executed” the adoption of amendments that cured PAYGO violations in the underlying legislation.<sup>(8)</sup>

After the revisions of the 111th Congress, amounts in a measure designated as emergencies did not count for purposes of PAYGO determinations. However, amounts in amendments could not be designated as emergencies under the rule. If a bill, joint resolution, amendment made in order as original text by a special order of business, conference report, or an

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offset one another for PAYGO purposes. For an example of a special order of business resolution providing for the linking, in the engrossment, of two separate measures, see 155 CONG. REC. H4310 [Daily Ed.], 111th Cong. 1st Sess., Apr. 1, 2009 (H. Res. 307).

2. *House Rules and Manual* §§ 1068f, 1068j (2011).
3. Including an amendment contained in a motion to recommit. See § 24.4, *infra*.
4. For the requirement of budget neutrality for reconciliation directives in a concurrent resolution on the budget (Rule XXI clause 7, *House Rules and Manual* § 1068b (2011)), see § 5, *supra*.
5. See § 24.3, *infra*.
6. For an example of an amendment modified on the floor to cure a potential PAYGO violation, see 155 CONG. REC. 12005, 111th Cong. 1st Sess., May 7, 2009.
7. See 153 CONG. REC. 9378, 9404, 9405, 9407, 110th Cong. 1st Sess., Apr. 19, 2007 (H. Res. 317). Where such waivers have been provided, no PAYGO point of order will lie. 154 CONG. REC. 12316, 12318, 12319, 110th Cong. 2d Sess., June 12, 2008. For an example of a special order of business that waived PAYGO for the bill but not amendments thereto, see 154 CONG. REC. 15225, 110th Cong. 2d Sess., July 16, 2008 (H. Res. 1343). For parliamentary inquiries on the effect of suspension procedures on House PAYGO, see 153 CONG. REC. 36251, 110th Cong. 1st Sess., Dec. 12, 2007.
8. 155 CONG. REC. H12069–70, 111th Cong. 1st Sess., Oct. 29, 2009 (H. Res. 875).

amendment between Houses included a provision that expressly designated it as an emergency (under the rule), the Chair was required to put to the House the question of consideration.<sup>(9)</sup> The question of consideration was automatic and did not require action from the floor for the question to be put before the body. In this way, the House could decide whether or not to proceed to consider the measure, notwithstanding the presence of emergency designations.

### ***House CUTGO Rule***

In the 112th Congress, the House replaced its pay-as-you-go rule with a cut-as-you-go rule (CUTGO).<sup>(1)</sup> The rule provides that it shall not be in order to consider a bill or joint resolution, or amendment thereto,<sup>(2)</sup> or conference report if its provisions have the net effect of increasing direct spending over 6- and 11-year periods. Like the former PAYGO rule, an amendment under CUTGO is evaluated on the basis of its marginal effect on the bill (and not against a “baseline” of existing law). Unlike the former PAYGO rule, CUTGO does not take revenues into consideration. Thus, an increase in spending may not be offset by an increase in revenues.

The rule applies to direct spending only, not discretionary spending, and direct spending is specifically defined by reference to section 250 of Gramm-Rudman-Hollings.<sup>(3)</sup> The CUTGO rule maintains the same measure-by-measure approach of budget neutrality as the former House PAYGO rule. The Chair is authoritatively guided by estimates from the Committee on the Budget with respect to the net effect of a measure on direct spending.<sup>(4)</sup>

Rule XXI clause 7<sup>(5)</sup> also provides a point of order against concurrent resolutions on the budget containing reconciliation directives that are not CUTGO compliant. Specifically, it shall not be in order to consider a concurrent resolution on the budget, or an amendment thereto, or a conference report thereon that contains reconciliation directives under section 310 of the

9. See § 24.2, *infra*. For an example of a unanimous-consent request to waive this requirement, see § 23.2, *infra*. For more on the question of consideration, see Deschler-Brown Precedents Ch. 29 § 5, *supra*.

1. *House Rules and Manual* § 1068f (2011). In addition, the 112th Congress established a separate point of order (in the opening-day resolution adopting the standing rules of the House) against consideration of a measure increasing mandatory spending above a certain threshold over certain periods. See 157 CONG. REC. H9 [Daily Ed.], Jan. 5, 2011 (H. Res. 5, sec. 3(g)). *House Rules and Manual* § 1068h (2011).

2. An amendment is evaluated on the basis of its marginal effect on the measure proposed to be amended. For an example of a CUTGO point of order raised against an amendment contained in a motion to recommit, see § 25.3, *infra*.

3. 2 USC § 900.

4. Pursuant to Rule XXIX clause 4, such estimates may be provided by the chairman of such committee. *House Rules and Manual* § 1105d (2011).

5. *House Rules and Manual* § 1068b (2011).

Congressional Budget Act<sup>(6)</sup> that specify changes in law that would cause an increase in net direct spending for the period of the concurrent resolution on the budget.<sup>(7)</sup>

### ***Stat-Paygo***

In 2010, the Statutory Pay-As-You-Go Act was enacted.<sup>(1)</sup> This Act mirrored the original PAYGO procedure of the Budget Enforcement Act of 1990 by providing a running PAYGO scorecard followed by enforcement through end-of-session sequestration. Thus, like the previous PAYGO procedure, the PAYGO scorecard is used to determine budget neutrality in the aggregate, (*i.e.*, over the course of a congressional session) rather than on a measure-by-measure basis. As with the prior PAYGO statute, Stat-Paygo applies only to direct spending, not discretionary spending.

With respect to the types of measures to which Stat-Paygo is applicable, the act defines “PAYGO legislation” or “PAYGO Act” as a bill or joint resolution.<sup>(2)</sup> This definition has also been interpreted to cover amendments between the Houses.<sup>(3)</sup>

Amounts considered as emergencies are not counted on the PAYGO scorecard under Stat-Paygo.<sup>(4)</sup> Estimates of the budgetary effects of a given piece of legislation are to be provided by the Congressional Budget Office, at the request of the chairman of the Committee on the Budget, and printed in the *Congressional Record*. If such an estimate is not provided, the Office of Management and Budget is authorized to estimate the budgetary effect of the legislation. Like the former House PAYGO rule, measures containing amounts designated as emergencies under Stat-Paygo require the Chair to put an automatic question of consideration prior to consideration of that measure.<sup>(5)</sup>

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6. 2 USC § 641.

7. Prior to the 112th Congress, this clause merely required budget neutrality for reconciliation directives, rather than prohibiting reconciliation directives that would cause an increase in net direct spending.

1. Pub. L. No. 111–139; 2 USC §§ 931–939.

2. 2 USC § 932(7).

3. See *Parliamentarian’s Note* at § 23.1, *infra*.

4. 2 USC § 933(g). That section also provides the definition of an emergency under the Act.

5. When the question of consideration was required to be put pursuant to both House PAYGO and Stat-Paygo, the two questions merged such that the Chair was required to put only a single question of consideration before the House. See 156 CONG. REC. H5939 [Daily Ed.], 111th Cong. 2d Sess., July 22, 2010. For an example of a unanimous-consent request specifically obviating the question of consideration under Stat-Paygo, see § 23.2, *infra*. A motion to suspend the rules also waives this requirement. See § 23.3, *infra*.

Section 306 of the Congressional Budget Act<sup>(6)</sup> does not apply to directed scorekeeping language included in a bill pursuant to Stat-Paygo. While such language does trigger the jurisdiction of the Committee on the Budget, Stat-Paygo provides a specific exception to section 306.<sup>(7)</sup>

## § 23. Statutory Pay-As-You-Go Act

**§ 23.1 Under section 4(g)(2) of the Statutory Pay-As-You-Go Act of 2010<sup>(1)</sup> and under former Rule XXI clause 10(c)(3),<sup>(2)</sup> the Speaker put the question of consideration with respect to a measure containing the relevant emergency designations pending its consideration.**

On May 28, 2010,<sup>(3)</sup> where a measure contained an emergency designation under section 4(g)(1) of the Statutory Pay-As-You-Go Act of 2010 and an emergency designation for purposes of pay-as-you-go principles under former Rule XXI clause 10(c), the Speaker put a unified question of consideration with respect thereto pending its consideration. The question of consideration required under section 4(g)(2) of the Statutory Pay-As-You-Go Act of 2010 applies to emergency designations contained in a House amendment to a Senate amendment.<sup>(4)</sup>

6. 2 USC § 637. See § 16, *supra*.

7. Pub. L. No. 111–139, sec. 4(a)(4). See § 16, *supra*. This principle is illustrated by a special order of business that provided a germaneness waiver for the directed scorekeeping language (because such language triggers the jurisdiction of the Committee on the Budget and would thus not be germane) but not a waiver of section 306 of the Congressional Budget Act (because such language is specifically excepted from section 306). See 156 CONG. REC. H3347–8, [Daily Ed.], 111th Cong. 2d Sess., May 12, 2010 (H. Res. 1344).

1. 2 USC § 933(g)(2).

2. Rule XXI clause 10 was modified in the 112th Congress. See *House Rules and Manual* §§ 1068f, 1068j (2011).

3. 156 CONG. REC. H4130 [Daily Ed.], 111th Cong. 2d Sess.

4. *Parliamentarian's Note*: Although former Rule XXI clause 10(c) specifically applies to designations within amendments between the Houses, section 4(g)(2) of the Statutory Pay-As-You-Go Act of 2010 is less clear. Under section 4(g), the question of consideration is required whenever a “PAYGO Act” includes an emergency designation. Under section 3(7) of that Act, however, a “PAYGO Act” is defined as a “bill or joint resolution.” The Parliamentarian decided that section 4(g) should be understood to apply to a designation contained in a PAYGO bill and a proposal to insert such a designation into a PAYGO bill. This interpretation is consistent with the order of the House of Apr. 15, 2010, that specifically disabled questions of consideration for a motion that the House concur in a Senate amendment containing an emergency designation under section 4(g) of the Act. See § 23.2, *infra*.