

MEMORANDUM

May 15, 2014

To: House Committee on the Budget
Attention: Mary Popadiuk

From: Bill Heniff Jr., Analyst on Congress and the Legislative Process, 7-8646

Subject: **Budgetary Effects Excluded From the Statutory Pay-As-You-Go (PAYGO) Scorecards**

This memorandum responds to your request for information regarding legislation, signed into law, in which the budgetary effects resulting from such legislation were excluded from the Statutory Pay-As-You-Go (PAYGO) scorecards.

Statutory PAYGO Act in Brief

The Statutory PAYGO Act (Title I of P.L. 111-139, 2 U.S.C. 931-939) generally requires that the net budgetary effect of all direct spending and revenue legislation (referred to in the act as PAYGO legislation) enacted during a session of Congress not cause an increase in the deficit in either a five-year period or a 10-year period, both beginning with the budget year.¹ The budgetary effects of any such PAYGO legislation are averaged over the five-year period and the 10-year period and recorded for each year of the five-year PAYGO scorecard and the 10-year PAYGO scorecard, respectively.² If, at the end of a session of Congress, either PAYGO scorecard displays a positive balance (i.e., a deficit increase) in the budget year (i.e., the first year of either the five-year or the 10-year scorecard), the President is required to issue a sequestration order implementing largely across-the-board cuts in non-exempt direct spending programs sufficient to eliminate the PAYGO balance in the budget year.³

Certain budgetary effects of PAYGO legislation may be excluded from the PAYGO scorecards. First, the Statutory PAYGO Act provided for the exclusion of the budgetary effects resulting from legislation enacted prior to the end of 2012 that would extend certain direct spending and revenue policies, current at the time the act was enacted. These so-called current policy adjustments included the budgetary effects pertaining to four policy areas: (1) Medicare payments to physicians, relating to the Sustainable Growth

¹ Any current-year costs are counted in the budget year, so that the act effectively provides for counting the budgetary effects over six-year and 11-year periods. For a more detailed description of how the Statutory PAYGO Act operates, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*.

² For example, if legislation is projected, when it is enacted, to increase the deficit by \$50 million over five years, then OMB would record \$10 million for each of the years on the five-year scorecard (i.e., the average annual deficit increase over the five years).

³ Certain programs are exempt from any sequestration or subject to special rules under any sequestration. For further information, see CRS Report R42050, *Budget "Sequestration" and Selected Program Exemptions and Special Rules*.

Rate (SGR) formula; (2) the estate and gift tax; (3) the alternative minimum tax (AMT); and (4) middle-class tax cuts.⁴ Second, the act excludes from the scorecards any budgetary savings resulting from the enactment of legislation titled “Community Living Assistance Services and Supports Act” (CLASS Act), which establishes a Federal insurance program for long-term care.⁵ Third, the act excludes from the scorecards any budgetary effects designated as an emergency requirement in statute.⁶ Finally, Congress has included in certain legislation, subsequently signed into law, a provision expressly excluding from the PAYGO scorecards the budgetary effects, in whole or in part, resulting from that legislation.

Budgetary Effects Excluded From PAYGO Scorecards

Since 2010, when the Statutory PAYGO Act was enacted, 18 measures have been enacted in which the budgetary effects, in whole or in part, resulting from such measures were excluded from the PAYGO scorecards.⁷ These measures are listed in **Table 1**, which includes the basis for the exclusion, as described above, and the amounts excluded from the five-year and 10-year scorecards.⁸

As indicated in the table, in most cases the budgetary effects excluded from the scorecards were projected to increase the deficit. The largest increases in the deficit excluded from the scorecards (\$1.70 trillion over five years and \$3.97 trillion over 10 years) were projected to result from the American Taxpayer Relief Act of 2012 (P.L. 112-240). In a few cases, the budgetary effects excluded from the scorecards were projected to reduce the deficit. Among those cases, the largest deficit reduction excluded from the five-year scorecard (almost \$40 billion) was projected to result from the CLASS Act provisions in the Patient Protection and Affordable Care Act (P.L. 111-148). The largest deficit reduction excluded from the 10-year scorecard (over \$85 billion) was projected to result from the Bipartisan Budget Act of 2013 and Pathway for SGR Reform Act of 2013 (P.L. 113-67). In sum, the total net amount excluded from the five-year scorecard was about \$2.82 trillion; the total net amount excluded from the 10-year scorecard was over \$4.85 trillion.⁹

The bulk of the budgetary effects excluded from the PAYGO scorecards were excluded pursuant to provisions expressly providing for such exclusion within the respective legislation. That is, most of such budgetary effects were excluded outside the operations of the Statutory PAYGO Act as originally enacted. On this basis, a total net amount of \$1.85 trillion was excluded from the five-year scorecard and \$3.95 trillion was excluded from the 10-year scorecard. Lesser amounts were excluded from the scorecards pursuant to the authorities provided in the Statutory PAYGO Act, as originally enacted. A total of \$570

⁴ The current policy adjustments are specified in section 7 of the act.

⁵ The CLASS Act exclusion is provided in section 4(d)(6) of the act.

⁶ The emergency designation exemption is provided in section 4(g) of the act. Under the act, if legislation contains an emergency designation for PAYGO purposes, 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 from the PAYGO requirement all or certain budgetary effects resulting from such legislation. If the question of consideration is decided in the affirmative (by simple majority) the legislation is then considered. Alternatively, if the question is decided in the negative, the legislation may not be considered.

⁷ The Statutory PAYGO reports annually issued by OMB identify legislation in which some or all the budgetary effects were excluded from the PAYGO scorecards. Those reports identified 16 such measures enacted through the end of 2013. Since the beginning of 2014, two additional measures have been enacted in which certain budgetary effects have been excluded from the PAYGO scorecards. Those were found through a full-text search of legislation enacted since the beginning of 2014.

⁸ Amounts in the table reflect on-budget effects only. Information on the budgetary effects was compiled from OMB Statutory Pay-As-You-Go annual reports, unless otherwise indicated in the table notes.

⁹ The net amounts reported here, as well as in the following paragraph, reflect the deficit increases excluded from the scorecards minus the deficit reductions excluded from the scorecards.

billion and \$545 billion were excluded from the five-year and 10-year scorecards, respectively, as provided by the emergency designation provisions contained in the Statutory PAYGO Act. In addition, a total of \$436 billion and \$434 billion were excluded from the five-year and 10-year scorecards, respectively, as a result of the current policy adjustment provisions contained in the Statutory PAYGO Act, as described above. Finally, as indicated in Table 1, the CLASS Act provision contained in the Statutory PAYGO Act excluded deficit reduction amounts of almost \$40 billion and over \$78 billion from being recorded on the five-year and 10-year scorecards, respectively.

I trust this information meets your needs. If you have questions or if I can be of further assistance, please do not hesitate to contact me.

**Table I. Legislation in Which the Budgetary Effects, in Whole or in Part,
Were Excluded from the Statutory PAYGO Scorecards**

Date of Enactment	Legislation	Basis of Exclusion from Scorecards	Budgetary Effects Excluded (in millions of dollars) ^a	
			5-year	10-year
03-02-2010	Temporary Extension Act of 2010 (P.L. 111-144)	current policy adjustments (SGR)	1,040	1,040
		emergency designation	9,176	9,261
03-23-2010	Patient Protection and Affordable Care Act (P.L. 111-148)	CLASS Act exclusion	-39,900	-78,600
		current policy adjustments (tax cuts)	269	269
04-15-2010	Continuing Extension Act of 2010 (P.L. 111-157)	current policy adjustments (SGR)	2,115	2,115
		emergency designation	16,075	16,112
06-25-2010	Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (P.L. 111-192)	current policy adjustments (SGR)	6,348	6,348
07-22-2010	Unemployment Compensation Extension Act of 2010 (P.L. 111-205)	emergency designation	33,885	33,943
09-27-2010	Small Business Jobs Act of 2010 (Public Law 111-240)	current policy adjustments (tax cuts)	1,436	218
11-24-2010	To extend the deadline for Social Services Block Grant expenditures of supplemental funds appropriated following disasters occurring in 2008 (P.L. 111-285)	emergency designation	30	30
11-30-2010	The Physician Payment and Therapy Relief Act of 2010 (P.L. 111-286)	current policy adjustments (SGR)	1,004	1,004

Date of Enactment	Legislation	Basis of Exclusion from Scorecards	Budgetary Effects Excluded (in millions of dollars) ^a	
			5-year	10-year
12-15-2010	Medicare and Medicaid Extenders Act of 2010 (P.L. 111-309)	current policy adjustments (SGR)	14,505	14,505
12-17-2010	Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312)	current policy adjustments (tax cuts) emergency designation	409,679 510,901	408,251 485,793
12-23-2011	Temporary Payroll Tax Cut Continuation Act of 2011 (P.L. 112-78)	exclusion provision within act (section 512) ^b	15,957 ^c	-2,286 ^c
02-22-2012	Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96)	exclusion provision within act (section 7003)	120,032 ^d	92,215 ^d
07-06-2012	Moving Ahead for Progress in the 21 st Century Act (P.L. 112-141)	exclusion provision within act (section 120001)	-17,452 ^e	-16,324 ^e
01-02-2013	American Taxpayer Relief Act of 2012 (P.L. 112-240)	exclusion provision within act (section 911)	1,704,385 ^f	3,967,279 ^f
08-09-2013	Bipartisan Student Loan Certainty Act of 2013 (P.L. 113-28)	exclusion provision within act (section 3)	24,975 ^g	-715 ^g
12-26-2013	Bipartisan Budget Act of 2013 and Pathway for SGR Reform Act of 2013 (P.L. 113-67)	exclusion provision within act (section 117)	-12,859 ^h	-85,174 ^h
01-17-2014	Consolidated Appropriations Act, 2014 (P.L. 113-76)	exclusion provision within act (section 10001(d))	80 ⁱ	573 ⁱ
04-01-2014	Protecting Access to Medicare Act of 2014 (P.L. 113-93)	exclusion provision within act (section 225)	17,700 ⁱ	-1,200 ⁱ

Sources: OMB Statutory Pay-As-You-Go annual reports for 2010-2013 and text of legislation.

- a. Amounts in the table reflect on-budget effects only. The budgetary effects were compiled from OMB Statutory Pay-As-You-Go annual reports, unless otherwise indicated. Positive amounts indicate an increase in the deficit; negative amounts indicate a decrease in the deficit.
- b. The OMB 2011 report indicates that if the budgetary effects of the legislation had been entered on the scorecards, the amount would have been reduced by a current policy adjustment related to the SGR provisions (see p. 3 of report).
- c. CBO, Budgetary Effects of the Temporary Payroll Tax Cut Continuation Act of 2011, as posted on the web site of the House Committee on Rules on December 22, 2011.
- d. CBO, Letter to Honorable Dave Camp, Chairman, Committee on Ways and Means, U.S. House of Representatives, cost estimate for the conference agreement on H.R. 3630, Middle Class Tax Relief and Jobs Creation Act of 2012, as posted on the web site of the House Committee on Rules, February 16, 2012.
- e. CBO, Letter to Honorable David Dreier, Chairman, Committee on Rules, U.S. House of Representatives, cost estimate for the conference report for H.R. 4348, MAP-21, as posted on the web site of the House Committee on Rules, June 29, 2012 (excluding intragovernmental transfers from the general fund to the highway trust fund).
- f. CBO, Estimate of the Budgetary Effects of H.R. 8, the American Taxpayer Relief Act of 2012, as passed by the Senate on January 1, 2013.
- g. CBO, Estimate of the Budgetary Effects of the Bipartisan Student Loan Certainty Act of 2013, draft legislation for a Senate proposal provided to CBO, July 22, 2013.
- h. CBO, Cost Estimate for Bipartisan Budget Act of 2013, as posted on the web site of the House Committee on Rules, December 11, 2013; and CBO, Estimate for Amendment to H.J. Res. 59, Pathway for SGR Reform Act of 2013, as revised and posted on the web site of the House Committee on Rules, December 11, 2013. (Amounts do not reflect the changes to caps on spending subject to appropriations included in the BBA.)
- i. Unpublished CBO data table of changes to mandatory programs contained in H.R. 3547, Consolidated Appropriations Act, 2014, January 14, 2014.
- j. CBO, Cost Estimate for the Protecting Access to Medicare Act of 2014, as posted March 26, 2014. (Cost estimate provided amounts in terms of billions; therefore, for purposes of this table, amounts were converted to millions.)