

[111 STAT 690]

[2 USC 651.](#)

SEC. 10116. AMENDMENT TO SECTION 401 AND REPEAL OF SECTION 402.

(a) SECTION 401.—

(1) CONTROLS.—Section 401 of the Congressional Budget Act of 1974 is amended by—

(A) striking the heading and inserting the following:

“BUDGET-RELATED LEGISLATION NOT SUBJECT TO APPROPRIATIONS”;
and

(B) striking subsection (a) and inserting the following:

“(a) CONTROLS ON CERTAIN BUDGET-RELATED LEGISLATION NOT SUBJECT TO APPROPRIATIONS.—It shall not be in order in either the House of Representatives or the Senate to consider any bill or joint resolution (in the House of Representatives only, as reported), amendment, motion, or conference report that provides—

“(1) new authority to enter into contracts under which the United States is obligated to make outlays;

“(2) new authority to incur indebtedness (other than indebtedness incurred under chapter 31 of title 31 of the United States Code) for the repayment of which the United States is liable; or

“(3) new credit authority;

unless that bill, joint resolution, amendment, motion, or conference report also provides that the new authority is to be effective for any fiscal year only to the extent or in the amounts provided in advance in appropriation Acts.”.

[111 STAT 691]

[2 USC 651.](#)

(2) POINT OF ORDER.—Section 401(b) of the Congressional Budget Act of 1974 is amended—

(A) by inserting “new” before “entitlement” in the heading;

(B) by striking paragraph (1) and inserting the following:

“(1) POINT OF ORDER.—It shall not be in order in either the House of Representatives or the Senate to consider any bill or joint resolution (in the House of Representatives only, as reported), amendment, motion, or conference report that provides new entitlement authority that is to become effective during the current fiscal year.”; and

(C) in paragraph (2)—

(i) by striking “new spending authority described in subsection (c)(2)(C)” and inserting “new entitlement authority”; and

(ii) by striking “of that House” and inserting “of the Senate or may then be referred to the Committee on Appropriations of the House, as the case may be,”.

(3) DEFINITIONS.—Section 401 of the Congressional Budget Act of 1974 is amended by striking subsection (c).

(4) EXCEPTIONS.—Section 401(d) of the Congressional Budget Act of 1974 is amended—

(A) in paragraph (1), by striking “new spending authority if the budget authority for outlays which result from such new spending authority is derived” and inserting “new authority described in those subsections if outlays from that new authority will flow”;

(B) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2); and

(C) in paragraph (2), as redesignated, by striking “new spending authority” and inserting “new authority described in those subsections”.

(5) REDESIGNATION.—Subsection (d) of section 401 of the Congressional Budget Act of 1974 is redesignated as subsection (c).

(6) CONFORMING AMENDMENTS.—(A) Clause 1(b)(4) of rule X of the Rules of the House of Representatives is amended to read as follows:

“(4) The amount of new authority to enter into contracts under which the United States is obligated to make outlays, the budget authority for which is not provided in advance by appropriation Acts; new authority to incur indebtedness (other than indebtedness incurred under chapter 31 of title 31 of the United States Code) for the repayment of which the United States is liable, the budget authority for which is not provided in advance by appropriation Acts; new entitlement authority as defined in section 3(9) of the Congressional Budget Act of 1974, including bills and resolutions (reported by other committees) which provide new entitlement authority as defined in section 3(9) of the Congressional Budget Act of 1974 and are referred to the committee under clause 4(a); authority to forego the collection by the United States of proprietary offsetting receipts, the budget authority for which is not provided in advance by appropriation Acts to offset such foregone receipts; and authority to make payments by the United States (including loans, grants, and payments from

[111 STAT 692]

revolving funds) other than those covered by this subparagraph, the budget authority for which is not provided in advance by appropriation Acts.”.

(B) Clause 4(a)(2) of rule X of the Rules of the House of Representatives is amended by striking “new spending authority described in section 401(c)(2)(C)” and inserting “new entitlement authority as defined in section 3(9)” and by striking “total amount of new spending authority” and inserting “total amount of new entitlement authority”.

(C) Clause 2(l)(3) of rule XI of the Rules of the House of Representatives is amended by striking “new spending authority as described in section 401(c)(2)” and by inserting “new entitlement authority as defined in section 3(9)”.

(b) REPEALER OF SECTION 402.—Section 402 of the Congressional Budget Act of 1974 is repealed.

[2 USC 652.](#)

(c) CONFORMING AMENDMENTS.—

2 USC 653-656.

(1) REDESIGNATION.—Sections 403 through 407 of the Congressional Budget Act of 1974 are redesignated as sections 402 through 406, respectively.

[2 USC 654.](#)

(2) GAO ANALYSIS.—Section 404 (as redesignated) of the Congressional Budget Act of 1974 is amended by striking “spending authority as described by section 401(c)(2) and which provide permanent appropriations,” and inserting “mandatory spending”.

(3) TABLE OF CONTENTS.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by—

(A) striking the item for section 401 and inserting the following:

“Sec. 401. Budget-related legislation not subject to appropriations.”; and

(B) striking the item relating to section 402 and redesignating the items relating to sections 403 through 407 as the items relating to sections 402 through 406, respectively.

(4) CONFORMING AMENDMENTS.—

(A) Clause 2(l)(3) of rule XI of the Rules of the House of Representatives is amended by striking “section 403” and inserting “section 402”.

Loans.

(B) Clause 7(d) of rule XIII of the Rules of the House of Representatives is amended by striking “section 403” and inserting “section 402”.

**EXPLANATORY STATEMENT OF MANAGERS
(H. CONF. REPT. 105-217)**

*17. Amendments to section 401 and repeal of section 402 of the
Congressional Budget Act*

HOUSE BILL (SECTION 11115)

The House bill makes changes in section 401 (which defines and enforces various forms of spending authority that are not controlled through the annual appropriations process). It repeals the definition of new entitlement authority (which is shifted into section 3 of the Budget Act). It repeals a seldom used process in the House for referring bills providing certain forms of mandatory appropriations to the Committee on Appropriations. Finally, it collapses a point of order against legislation providing credit authority not subject to appropriations into section 401, which also prohibits the consideration of legislation providing contract or borrowing authority.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT (SECTION 10116)

The Conference agreement reflects the House bill with modifications.

Sections 401 and 402 were enacted as a means of controlling 'backdoor' spending. This is spending not under the annual control of the Congress through the appropriations process. The Conference agreement's changes to section 401 are not intended to weaken this section, but to update it.

The conference agreement provides that section 401(a) will apply, just as it does under current law, to contract authority and borrowing authority. The conference expands section 401(a) to apply to credit authority and repeals section 402. This change has no practical effect. It just consolidates the point of order against creating these types of spending authority in one section of the Budget Act.

The Conference agreement repeals the definition of 'new spending authority'. This definition is no longer needed and raises questions about what constitutes new spending authority. Since being defined in the original 1974 Budget Act, the Congress has expanded the definition of budget authority. Under the current definition, 'new spending authority' as defined in section 401(c) and 'budget authority' as defined in section 3 are essentially the same. As a result, the separate definition in section 401(c) of the Budget Act is unneeded.

The important provisions of section 401 of the Budget Act are to provide controls on backdoor spending and to provide a definition of

“entitlement authority”. The definition of the term “entitlement authority” has been moved to section 3 of the Budget Act. The conference agreement refers to ‘new entitlement authority.’ The conferees intend that this term applies to legislation that either expands an existing entitlement or creates a new entitlement. The existing controls on backdoor spending authority have been retained.

This Conference agreement generally makes technical and conforming changes to the Budget Act. The conferees note that there are major deficiencies in section 401 that have not been corrected in this section. It is the intent of the conferees that future legislation should address the purposes of section 401 and the definitions of “contract authority” and “borrowing authority”, and should provide an up-to-date and more effective means of controlling backdoor spending.