

Budget Process

A. Introduction to the Budget Process

§ 1. Introduction

Pursuant to article I, section 8 of the Constitution of the United States, Congress retains the “power of the purse,” encompassing the authority to lay and collect taxes, pay debts, and borrow money on the credit of the United States. Furthermore, section 9 requires that all money drawn from the Treasury be in “consequence of appropriations made by law.” Apart from these simple prescriptions, however, the Constitution does not provide specific mechanisms for managing the nation’s finances. Instead, the congressional budgeting process has grown and evolved over time. What exists today is a complex system involving the interaction of a variety of laws (enacted over several decades), executive action, congressional rulemaking designed to guide budgetary policy, and additional congressional rules created to enforce budgetary decisions.⁽¹⁾

In order to allocate Federal fiscal resources, Congress engages in an authorization process, an appropriations process, and a congressional budget process. Federal programs are created during the authorization process, which contemplates legislation establishing the programs and authorizing funds to be spent thereon. Congress then provides funding for these Federal programs during the appropriations process, by which money is formally drawn from the Treasury for authorized programs. These spending decisions are made in the context of a framework provided by the congressional budget process, which outlines fiscal policy with regard to overall levels of revenues and spending. These different processes do not necessarily occur in chronological order.

In addition to the discretionary spending process described above, Congress has enacted laws that mandate spending on certain programs. Such “mandatory” or “direct” spending (including most kinds of entitlement spending) occurs by law without regard to the annual spending decisions made by Congress during the appropriations process. The annual cost of such programs is determined by formulas contained in the legislation itself,

1. For an earlier overview of the congressional budget process, see Deschler’s Precedents Ch. 13 § 21, *supra*.

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and can be altered by Congress only through revisions to the underlying law.

Congress establishes its fiscal policy with the development of an annual concurrent resolution on the budget.⁽²⁾ The budget resolution is not a law signed by the President, but represents instead an internal congressional plan to guide the consideration of spending bills in the House and the Senate.⁽³⁾ The concurrent resolution on the budget establishes the aggregate spending and revenue levels for the current fiscal year as well as targets for subsequent fiscal years.⁽⁴⁾ The aggregate spending levels are then subdivided among “major functional categories” to set funding priorities among the different areas of government.⁽⁵⁾

The concurrent resolution on the budget’s fiscal policies are enforced by both congressional and executive actions. The Congressional Budget and Impoundment Control Act of 1974 (Congressional Budget Act),⁽⁶⁾ the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings),⁽⁷⁾ the Budget Enforcement Act of 1990 (BEA of 1990),⁽⁸⁾ the Budget Enforcement Act of 1997 (BEA of 1997),⁽⁹⁾ the Statutory Pay-As-You-Go Act of 2010 (Stat-Paygo),⁽¹⁰⁾ and the Budget Control Act of 2011 (BCA of

2. See §§ 4, 5, *infra*.

3. Because the adoption of a congressional budget resolution does not require executive action, a proposal to convert the entire budget process from a concurrent resolution to a joint resolution is not germane to a bill merely requiring the executive to submit balanced budgets to Congress but not otherwise altering the congressional budget process. See Deschler-Brown Precedents Ch. 28 §§ 5.6, 6.31, *supra*.

4. The number of additional fiscal years covered by budget resolutions has varied over time. In its original form, the Congressional Budget Act required no projections beyond the fiscal year covered by the budget resolution. Throughout the 1980s, however, budget resolutions would occasionally contain projections for future fiscal years. The Budget Enforcement Act of 1997 codified this practice by requiring appropriate budgetary levels for both the current fiscal year and at least the four ensuing fiscal years.

5. There are currently 20 major functional categories used by the Federal government, each represented by a specific three-digit code and further subdivided into subfunctional categories. For example, the functional category of “National Defense” (050) is divided among the subfunctional categories of “Department of Defense–Military” (051), “Atomic Energy Defense Activities” (053), and “Defense-related Activities” (054). This classification system is based on one first developed in the budget for fiscal year 1948 and has changed little over the subsequent half-century. See 31 USC § 1104.

6. Pub. L. No. 93–344 (2 USC §§ 601–688). Relevant provisions of the Congressional Budget Act (with accompanying annotations) are also carried at *House Rules and Manual* § 1127 (2011).

7. Pub. L. No. 99–177 (2 USC §§ 900, *et seq.*).

8. Pub. L. No. 101–508.

9. Pub. L. No. 105–33.

10. Pub. L. No. 111–139 (2 USC §§ 931–939).

2011),⁽¹¹⁾ comprise the major statutory sources that have shaped how Congress and the executive branch enforce budgetary decisions. In addition to these statutory sources, specific budget-enforcement provisions contained in the rules of the House and the Senate,⁽¹²⁾ as well as in budget resolutions themselves,⁽¹³⁾ provide further mechanisms to govern such decisions.

Budget and Accounting Act of 1921

Prior to the 20th century, funding for government programs was achieved through separate appropriation bills, but such legislation was not coordinated within any overall Federal budget system. The basic framework for such a system was created by the Budget and Accounting Act of 1921. This Act, for the first time, created a role for the executive branch in the budgeting process, requiring the President to submit to Congress a comprehensive annual budget outlining all major spending priorities. It further created the Bureau of the Budget (later renamed the Office of Management and Budget or OMB) and the General Accounting Office (later renamed the Government Accountability Office or GAO) to provide budgetary data and accurate audits of Federal programs.⁽¹⁾ In response to the Act, Congress consolidated its spending decisions within the respective Committees on Appropriations of the House and the Senate. But the Act provided no framework for how overall spending decisions in Congress were to be made.

Congressional Budget Act of 1974

In 1974, Congress enacted a comprehensive framework for establishing a uniform mechanism for developing budgetary goals and enforcement. The Congressional Budget Act of 1974⁽¹⁾ consisted of ten titles, including the Impoundment Control Act⁽²⁾ found in title X.

The Congressional Budget Act created new budget committees in both the House and Senate, as well as the Congressional Budget Office (CBO). It established a timeline for development and consideration of budgetary policy, including, for the first time, a requirement that Congress adopt an annual spending plan.⁽³⁾ This plan initially took the form of a non-binding “first”

11. Pub. L. No. 112–25.

12. See § 5, *infra*.

13. See § 4, *infra*.

1. 31 USC § 1101.

1. Pub. L. No. 93–344 (2 USC §§ 601–688).

2. *House Rules and Manual* § 1130(6A) (2011); 2 USC §§ 682–88. See §§ 26–28, *infra*.

3. 2 USC § 601. For examples of “legislative budgets” adopted by Congress prior to the advent of the Congressional Budget Act, see Deschler’s Precedents Ch. 13 §§ 21.1, 21.2, and Ch. 24 § 5.25, *supra*.

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concurrent resolution on the budget (to be passed in advance of appropriation bills) and a binding “second” concurrent resolution (to be passed by the beginning of the fiscal year). That plan has since been revised to eliminate the non-binding budget resolution in favor of a single, binding annual budget resolution for each fiscal year.

Section 300 of the Budget Act established a timetable for the development and adoption of a concurrent resolution on the budget and the completion of congressional action on annual appropriation bills⁽⁴⁾ and any reconciliation legislation.⁽⁵⁾

Section 301 of the Budget Act⁽⁶⁾ outlines the content of the concurrent resolution on the budget, which includes totals of new budget authority and outlays, total Federal revenues, and the public debt.

Section 303 of the Budget Act⁽⁷⁾ provides a point of order against the consideration of budget-related legislation before the concurrent resolution on the budget is adopted. This ensures that all spending decisions are made as part of the overall budget plan set forth in the annual budget resolution.

Section 311 of the Budget Act⁽⁸⁾ precludes Congress from considering legislation that would cause revenues to fall below, or total new budget authority or total outlays to exceed, the appropriate level set forth in the budget resolution. Thus, section 311 prevents legislation that would either cause a breach in the overall spending “ceiling” or reduce revenues below the revenue “floor” established in the budget resolution.

Section 302(a) of the Budget Act provides a framework for committee spending decisions.⁽⁹⁾ The joint explanatory statement accompanying the conference report on the concurrent resolution on the budget must include “allocations” of total new budget authority and total outlays to each House (and Senate) committee with jurisdiction over legislation creating such amounts.⁽¹⁰⁾ As described below, points of order can be raised to keep spending within the limits of these 302(a) allocations. Pursuant to section 302(b),

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4. 2 USC § 631 and see § 6, *infra*.
 5. See §§ 19–21, *infra*.
 6. 2 USC § 632 and see § 4, *infra*.
 7. 2 USC § 634 and see § 9, *infra*.
 8. 2 USC § 642 and see § 10, *infra*.
 9. 2 USC § 633(a) and see § 11, *infra*.
 10. Although both represent an effort to divide the overall Federal budget into logical sub-categories, committee allocations and major functional categories (described above) are different methods to achieve this goal. Because the major functional categories do not correspond to the different committee jurisdictions of the House and the Senate, the functional category amounts must be reformulated (“crosswalked”) in order to be distributed to congressional committees as section 302 allocations. Congressional enforcement of budgetary levels takes cognizance only of such committee allocations and not the functional categories.

the Committee on Appropriations is required to subdivide its section 302(a) allocation among its subcommittees, and points of order may be raised to keep each such subcommittee's spending within its section 302(b) suballocation.

Section 302(f)⁽¹¹⁾ (as added by the Balanced Budget and Emergency Deficit Control Act of 1985) enforces the 302(a) or 302(b) allocation amounts by providing a point of order against the adoption or enactment of any bill, resolution, amendment, or conference report that would cause the applicable allocation of new budget authority to be exceeded.

Section 310 of the Budget Act⁽¹²⁾ outlines the procedures for the inclusion of reconciliation directives in the concurrent resolution on the budget. Reconciliation directives instruct committees to recommend changes in existing law to achieve the goals in spending or revenues contemplated by the budget resolution. Section 310 provides for expedited procedures for qualifying reconciliation measures.

As originally written, title IV of the Congressional Budget Act provided additional restrictions on legislation containing certain kinds of budget authority not subject to appropriations⁽¹³⁾ and entitlement spending that becomes effective prior to the start of the fiscal year. While some of these features remain in place today, this title has been extensively revised over the years.⁽¹⁴⁾

Part B of title IV of the Congressional Budget Act was added by the Unfunded Mandates Reform Act of 1995,⁽¹⁵⁾ and contains restrictions on legislation containing certain kinds of intergovernmental mandates.

Balanced Budget and Emergency Deficit Control Act of 1985

The Balanced Budget and Emergency Deficit Control Act of 1985 or Gramm-Rudman-Hollings added new deficit control measures to the budget process.⁽¹⁾ Gramm-Rudman-Hollings instituted a single binding budget resolution to replace the prior requirement of two annual budget resolutions. The Act also established binding committee allocations by creating a new point of order under section 302(f).⁽²⁾ Additionally, the Act provided for sequestration of budget authority as a mechanism for enforcing discretionary spending limits and deficit targets.⁽³⁾

11. 2 USC § 633(f) and see § 11, *infra*.

12. 2 USC § 641 and see § 19, *infra*.

13. This describes so-called “backdoor” spending that makes funds available outside of the appropriations process.

14. See §§ 12–14, *infra*.

15. 2 USC §§ 658–658g. See § 30, *infra*.

1. 2 USC § 900.

2. 2 USC § 633(f) and see § 11, *infra*.

3. See § 26, *infra*. Gramm-Rudman-Hollings also provided for the suspension of certain budgetary controls in the case of a declaration of war or the issuance of a “low growth”

Budget Enforcement Act of 1990

The Budget Enforcement Act of 1990⁽¹⁾ was the result of a budget summit between the executive and legislative branches to revise the Gramm-Rudman-Hollings deficit targets and discretionary spending caps. The Act also created a pay-as-you-go (PAYGO) process that mandated the sequestration of funds should the net effect of spending and revenue legislation result in a deficit for the year. Additionally, the Act created a new title VI of the Congressional Budget Act that contained these temporary budget enforcement mechanisms.⁽²⁾

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA)⁽¹⁾ added a new part B to title IV of the Congressional Budget Act. The Act created a new reporting requirement for estimating the cost of mandates and established parliamentary procedures for considering legislation creating unfunded intergovernmental mandates. The primary parliamentary mechanism used is the question of consideration, through which the House decides whether to consider legislation imposing certain kinds of unfunded mandates.⁽²⁾

Budget Enforcement Act of 1997

The Budget Enforcement Act of 1997⁽¹⁾ was included as title X of the Balanced Budget Act of 1997. This Act, the result of budget negotiations between the President and Congress, extended the discretionary spending limits and PAYGO process of the Budget Enforcement Act of 1990 through fiscal year 2002. It made significant revisions to title IV⁽²⁾ of the Congressional Budget Act and created a new process for adjusting committee allocations.⁽³⁾

economic report by the Congressional Budget Office. A joint resolution enacting such suspension procedures was entitled to expedited consideration in the House and Senate. The Budget Enforcement Act of 1990 removed most expedited procedures as they applied to the House (with the exception of committee consideration). The House has never considered such a joint resolution.

1. Pub. L. No. 101–508.
2. Title VI was originally enacted as a five-year budget enforcement plan, but it was extended through 1998 by the Omnibus Budget Reconciliation Act of 1993. Pub. L. No. 103–66.
 1. 2 USC §§ 658–658g. See § 30, *infra*.
 2. See Deschler-Brown Precedents Ch. 29 § 5, *supra*.
1. Pub. L. No. 105–33.
 2. See §§ 12, 13, 14, *infra*.
3. This authority was contained in a new section 314 of the Congressional Budget Act. However, this section was extensively rewritten by the Budget Control Act of 2011. See §§ 4, 11, 26, *infra*.

Stat-Paygo of 2010; PAYGO/CUTGO Rules

In 2010, the Statutory Pay-As-You-Go Act of 2010 was enacted.⁽¹⁾ The Act created a procedure to measure the budgetary effects of direct spending and revenue legislation over the course of a congressional session. The legislation is carried on PAYGO scorecards that measure the budgetary effects over 5- and 10-year periods. If at the end of a congressional session, a scorecard shows a net debit, the President will issue a sequestration order of across-the-board cuts (with certain exceptions) equal to the amount of the debit.⁽²⁾

The Statutory Pay-As-You-Go Act should not be confused with the House PAYGO rule⁽³⁾ (first established in 2007), which provided a point of order against the consideration of measures affecting direct spending and revenues that have the net effect of increasing the deficit or reducing the surplus on a five- and 10-year basis. In 2011, the House repealed the PAYGO rule and created a cut-as-you-go (CUTGO) rule that did not take into consideration the budgetary effects of revenue legislation.⁽⁴⁾ Under both rules, the budgetary effect of the measure was determined by the estimates made by the Committee on the Budget.⁽⁵⁾

Budget Control Act of 2011

The Budget Control Act of 2011⁽¹⁾ was enacted, *inter alia*, in response to the need to increase the statutory limit on the public debt through 2012. The Act established discretionary spending caps over a 10-year period and a sequestration process to enforce such spending limits.⁽²⁾ The Act allowed for staged increases in the limit of the public debt, subject to congressional resolutions of disapproval.⁽³⁾ The Act also established a Joint Select Committee on Deficit Reduction tasked with recommending changes in law to achieve at least \$1.5 trillion in budgetary savings over a 10-year period.⁽⁴⁾

1. 2 USC §§ 931–939. See §§ 22, 23, *infra*.

2. See §§ 22, 23, 26, *infra*.

3. See Rule XXI clause 10 of the 111th Congress. *House Rules and Manual* § 1068f (2009). See § 24, *infra*.

4. See Rule XXI clause 10 of the 112th Congress. *House Rules and Manual* § 1068f (2011). See § 25, *infra*.

5. See §§ 7, 22, *infra*.

1. Pub. L. No. 112–25.

2. See § 26, *infra*.

3. See § 29, *infra*. This disapproval mechanism was modelled on that found in the Economic Stabilization Act of 2008 (Pub. L. No. 110–343).

4. Title IV of Pub. L. No. 112–25. The Joint Select Committee on Deficit Reduction was composed of six Senators and six Members of the House, equally divided by political

Such recommendations would then qualify for expedited procedures in both the House and the Senate.⁽⁵⁾ The committee’s inability to come to an agreement would trigger automatic sequestration in January 2013 if Congress did not further alter these procedures.⁽⁶⁾

Terminology

Several budgetary terms will be used throughout this work:

Section 3 of the Congressional Budget Act defines “budget authority” to be the legal authority for the Federal government to incur financial obligations.⁽¹⁾ This includes “borrowing authority” (authority to allow a Federal entity to borrow and obligate funds and to expend); and “contract authority” (the authority to make funds available for obligation but not to expend).⁽²⁾

Gramm-Rudman-Hollings further defined key budgetary terms. The term “direct spending” (also known as mandatory spending) refers to “budget authority provided by law other than appropriation Acts; entitlement authority; and the Supplemental Nutrition Assistance Program.”⁽³⁾ “Discretionary appropriations” means “budgetary resources (except to fund direct-spending programs) provided in appropriation acts.”⁽⁴⁾

“Sequestration” refers to the “cancellation of budgetary resources provided by discretionary appropriations and direct spending law[s].”⁽⁵⁾

Outline of Work

This budget process chapter will mainly focus on the congressional side of the budget process.⁽¹⁾ The chapter will outline the timeline of the budget process; content, development, procedural history, and consideration of the

party. For the committee’s procedural rules, see 157 CONG. REC. S6760–61 [Daily Ed.], 112th Cong. 1st Sess., Oct. 19, 2011.

5. Pub. L. No. 112–25, sec. 402. In the House, such expedited procedures included: deadlines for House committee consideration of the joint committee’s bill (and special procedures to discharge House committees from consideration); a privileged motion to proceed to consider such bill; two hours of debate on the bill; and the previous question ordered to final passage without intervening motion. These procedures also restricted otherwise available motions, such as the motion to reconsider.
6. Pub. L. 112–240 postponed the automatic sequestration until March, 2013.
 1. 2 USC § 622.
 2. *Id.*
 3. 2 USC § 900.
 4. *Id.*
 5. *Id.*
1. As a catalog of precedents of the House of Representatives, this chapter will contain only cursory treatment of Senate proceedings, primarily as they relate to House procedures.

concurrent resolution on the budget; various points of order to enforce budgetary decisions; the development of reconciliation directives within the concurrent resolution on the budget and reconciliation procedures in the House; and cancellation of budgetary authority. In addition, this chapter will touch upon procedures concerning the debt limit, unfunded mandates, and earmarks.

The reader is encouraged to consult other related chapters of *Deschler-Brown-Johnson Precedents* and *House Practice* for related topics not elucidated here.

§ 2. Timeline of Budget Process

Section 300 of the Congressional Budget Act⁽¹⁾ sets out a nonmandatory timetable for the congressional budget process.

Section 300 Requirements

On the first Monday in February the President submits a budget to the Congress. On or before February 15, the Congressional Budget Office submits its annual report to the Budget Committees. Not later than six weeks after the President submits a budget, committees submit views and estimates to the respective Budget Committees which include estimates of new budget authority and outlays within their respective jurisdictions.⁽¹⁾ On or before April 1, the Senate Budget Committee reports a concurrent resolution on the budget. Pursuant to section 300, congressional action on the concurrent resolution on the budget is to be completed by April 15.

Until a concurrent resolution on the budget is adopted by Congress, spending bills (including annual appropriation bills) may not be considered in the House.⁽²⁾ However, section 303(b)(2) of the Budget Act⁽³⁾ provides that general appropriation bills, and amendments thereto, may be considered in the House after May 15 even if a budget resolution for the ensuing fiscal year has yet to be agreed to. On or before June 10, the Committee on Appropriations reports its last annual appropriation bill.

On or before June 15, Congress completes action on reconciliation legislation contemplated in a concurrent resolution on the budget.⁽⁴⁾ On or before

1. 2 USC § 631.

1. See § 7, *infra*.

2. 2 USC § 633(a).

3. 2 USC § 633(b)(2).

4. The mandatory June 15 deadline was repealed by the BEA of 1990 and replaced with a new House prohibition (section 310(f)) on adjourning for more than three calendar