

## B. The Concurrent Resolution on the Budget

### § 4. Content of Concurrent Resolutions on the Budget

#### ***Mandatory Components***

Section 301(a) of the Congressional Budget Act<sup>(1)</sup> lays out the mandatory components that are to be included in any concurrent resolution on the budget, while section 301(b) describes certain optional components. Section 301(a) requires that each concurrent resolution on the budget include “appropriate levels” for the following categories: (1) totals of new budget authority and outlays; (2) total Federal revenues; (3) the surplus or deficit; (4) new budget authority and outlays for each major functional category; (5) the public debt;<sup>(2)</sup> and (6) outlays and revenues for certain social security programs (for purposes of enforcing Senate points of order). Section 301(a) also requires that the Old Age, Survivors, and Disability Insurance Program (OASDI) be considered as “off-budget” and therefore not included in any surplus or deficit totals.

#### ***Optional Components—In General***

Section 301(b) contemplates certain optional matters that “may” be included in budget resolutions. These include: (1) the date for achieving certain unemployment reduction goals;<sup>(1)</sup> (2) reconciliation directives;<sup>(2)</sup> (3) procedures to delay the enrollment of certain bills providing new budget authority;<sup>(3)</sup> (4) projections for the level of public debt in each of the relevant fiscal years;<sup>(4)</sup> (5) Federal retirement trust fund balances; (6) loan obligation and loan guarantee levels;<sup>(5)</sup> (7) certain pay-as-you-go procedures;<sup>(6)</sup> and (8) any “appropriate” matters or procedures to carry out the purposes of the Congressional Budget Act.<sup>(7)</sup> This last item, which contains broad authority for Congress to create new procedural mechanisms for budgetary enforcement in budget resolutions themselves, is often referred to as the “elastic clause.”

Other subsections within section 301 contain additional requirements related to the formulation of the concurrent resolution on the budget. Section

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1. 2 USC § 632(a).

2. See § 29, *infra*.

1. 2 USC § 632(b)(1).

2. 2 USC § 632(b)(2). See §§ 19–21, *infra*.

3. 2 USC § 632(b)(3). See *Optional Components—Historical Provisions and Precursors* and § 4.3, *infra*.

4. 2 USC § 632(b)(5). See § 29, *infra*.

5. 2 USC § 632(b)(9). See *Optional Components—Credit Budgets*, *infra*.

6. 2 USC § 632(b)(8).

7. 2 USC § 632(b)(4).

301(d), for example, requires the legislative committees of each House to submit “views and estimates” relating to any of the inclusions in sections 301(a) and 301(b) to their respective Budget Committees.<sup>(8)</sup> Section 301(e) requires certain hearings and reports of the Budget Committees as the concurrent resolution on the budget is developed. Section 301(g) provides for a point of order against budget resolutions that do not abide by a single set of economic assumptions when setting forth appropriate budgetary amounts and levels. All of these requirements serve to aid Congress in carefully crafting a budget resolution that is informed by pertinent testimony and accurate data.

### ***Optional Components—Historical Provisions and Precursors***

Over the course of the history of the Congressional Budget Act, concurrent resolutions on the budget have included many optional components that have been made obsolete due to subsequent revisions of that Act and therefore have no applicability today. In addition, several optional components contained in early budget resolutions have formed the basis of later revisions to the Congressional Budget Act and may be viewed as precursors to budget rules incorporated therein.

As noted in Section 1, the Congressional Budget Act of 1974 originally required two concurrent resolutions on the budget to be adopted each fiscal year. The first represented non-binding spending targets while the second contained binding budgetary levels. In the era of two annual budget resolutions, the first budget resolution sometimes contained a separate section declaring in advance that if Congress failed to adopt a second concurrent resolution on the budget, then the first budget resolution would be automatically “deemed” to be the second budget resolution for Congressional Budget Act purposes, and its budgetary levels converted from non-binding targets to enforceable limits.

In the first budget resolution for fiscal year 1983,<sup>(1)</sup> section 7 provided that such budget resolution would be deemed to be the second budget resolution for purposes of section 311 of the Congressional Budget Act,<sup>(2)</sup> as well as for purposes of certain procedural provisions contained in the budget resolution itself,<sup>(3)</sup> if Congress failed to adopt a second budget resolution by a

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8. For more on the role of committees in the formulation of the concurrent resolution on the budget, see § 7, *infra*.

1. 128 CONG. REC. 14546, 97th Cong. 2d Sess., June 22, 1982 (S. Con. Res. 92, sec. 7).

2. 2 USC § 642. See § 10, *infra*.

3. The procedural provision referred to here is section 4 of the first budget resolution. Section 4(a) contained an enrollment delay provision (described below) for certain bills. Section 4(b) exempted certain trust fund spending from various budgetary definitions

certain date. In the first budget resolution for fiscal year 1985, section 4(a) provided that such budget resolution would automatically become the second concurrent resolution on the budget for purposes of section 311 points of order, effective at the beginning of the fiscal year.<sup>(4)</sup> Section 3(a) of the first budget resolution for fiscal year 1986<sup>(5)</sup> contained a similar provision, “deeming” such resolution to be the second budget resolution for section 311 enforcement if Congress failed to adopt a second budget resolution by a certain date.

On one occasion, the second budget resolution did not contain new budgetary levels but merely “reaffirmed” the first budget resolution, thus converting its non-binding targets into binding figures.<sup>(6)</sup>

As noted, the Gramm-Rudman-Hollings reforms of 1985 eliminated the requirement for a second budget resolution and thus it was unnecessary for any budget resolution after this time to contain provisions such as those described above.

In other instances, Congress has adopted budget resolutions containing provisions that would later be incorporated into the Congressional Budget Act itself, most notably through the budgetary reforms of Gramm-Rudman-Hollings. Three of these types of provisions are worth noting.

The first is a provision in a concurrent resolution on the budget that delays the enrollment of measures that exceed the relevant committee’s section 302 allocation.<sup>(7)</sup> All budget resolutions for fiscal years 1981 through 1984 contained such a provision. For fiscal years 1981<sup>(8)</sup> and 1982,<sup>(9)</sup> the enrollment of such bills was delayed until Congress adopted a second concurrent resolution on the budget and had completed action on any required reconciliation legislation. The House has agreed to a unanimous-consent request to enroll a bill notwithstanding a provision in a budget resolution delaying such enrollment.<sup>(10)</sup> The same provision was contained in the resolution for fiscal year 1983,<sup>(11)</sup> although the requirement to complete action on

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for purposes of this provision. 128 CONG. REC. 14546, 97th Cong. 2d Sess., June 22, 1982 (S. Con. Res. 92, sec. 4).

4. 130 CONG. REC. 28049, 98th Cong. 2d Sess., Oct. 1, 1984 (H. Con. Res. 280, sec. 4(a)).
5. 131 CONG. REC. 22637, 99th Cong. 1st Sess., Aug. 1, 1985 (S. Con. Res. 32, sec. 3(a)).
6. 127 CONG. REC. 30592, 97th Cong. 1st Sess., Dec. 10, 1981 (S. Con. Res. 50). Section 304 of the Congressional Budget Act (2 USC § 635), containing the authority to revise concurrent resolutions on the budget, was amended by Gramm-Rudman-Hollings to specifically authorize Congress to “reaffirm” existing budget resolutions as well.
7. See § 11, *infra*.
8. 126 CONG. REC. 14508, 96th Cong. 2d Sess., June 12, 1980 (H. Con. Res. 307, sec. 8).
9. 127 CONG. REC. 9964, 97th Cong. 1st Sess., May 18, 1981 (H. Con. Res. 115, sec. 305).
10. See § 4.3, *infra*.
11. 128 CONG. REC. 14546, 97th Cong. 2d Sess., June 22, 1982 (S. Con. Res. 92, sec. 4(a)).

reconciliation legislation was dropped. In the budget resolution for fiscal year 1984,<sup>(12)</sup> the trigger for enrolling such delayed bills was either completion of the second concurrent resolution or the beginning of the fiscal year, whichever occurred first.

The rationale for these provisions was to encourage committees to stay within their section 302 allocations and not report bills that exceeded such allocations (and to encourage the House not to exceed such allocations via floor amendments). The enrollment delay provided the House with a choice to either accept the excess spending (and revise the budgetary levels in the second budget resolution accordingly) or take other actions (such as rescinding or altering the enrollment) to keep spending within the limits set forth in the first budget resolution. The Gramm-Rudman-Hollings reforms added a new section 302(f) point of order that had similar goals. As noted in Section 11, a point of order raised on section 302(f) grounds will be sustained against any bill, joint resolution, or amendment that causes the relevant committee's section 302 allocation to be exceeded. With the advent of binding budgetary levels in the first (and only) budget resolution after Gramm-Rudman-Hollings, section 302(f) points of order presented the House with the same choice: to accept the excess spending (by waiving or failing to raise the point of order) or stay within the limits of the section 302 allocations.<sup>(13)</sup>

The second provision may be viewed as a precursor to what is now the point of order provided by section 302(c) of the Congressional Budget Act (as added by Gramm-Rudman-Hollings). The budget resolutions for both fiscal year 1983<sup>(14)</sup> and 1985<sup>(15)</sup> contained a procedural provision that prevented the consideration of any bill, resolution, or amendment containing new budget or spending authority if the committee reporting such a measure had not yet filed a report dividing its section 302(a) allocation into section 302(b) suballocations among its subcommittees. As noted in Section 11, a point of order under section 302(c) operates in the same manner, although it is applicable to a broader range of measures.<sup>(16)</sup>

The third provision can be described as the precursor to the so-called "Fazio exception" discussed in Sections 10 and 11. The budget resolutions

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12. 129 CONG. REC. 16585, 98th Cong. 1st Sess., June 21, 1983 (H. Con. Res. 91, sec. 4).

13. Further flexibility with regard to section 302 enforcement was created by the so-called "Fazio exception." See §§ 10, 11, *infra*.

14. 128 CONG. REC. 1454, 97th Cong. 2d Sess., June 22, 1982 (S. Con. Res. 92, sec. 8).

15. 130 CONG. REC. 28049, 98th Cong. 2d Sess., Oct. 1, 1984 (H. Con. Res. 280, sec. 5).

16. Section 302(c) applies to bills, joint resolutions, amendments, motions, and conference reports. However, it should be noted that the requirement for committees to subdivide their section 302(a) allocations was eliminated for all committees except the Committee on Appropriations by the Budget Enforcement Act of 1997. Thus, section 302(c) is currently only applicable to legislation arising from that committee.

for fiscal years 1984,<sup>(17)</sup> 1985,<sup>(18)</sup> and 1986<sup>(19)</sup> all contained an exception to the normal operation of section 311(a) of the Congressional Budget Act by making such section inapplicable to measures that do not cause the relevant committee allocation under section 302 to be exceeded. The rationale for such an exception was a desire not to penalize a committee whose spending did not exceed its own allocation but, due to overspending by other committees, did exceed the overall level of budget authority contained in a concurrent resolution on the budget. This exception has now been codified at section 311(c)<sup>(20)</sup> of the Congressional Budget Act.

### ***Optional Components—Reconciliation Directives***

One of the most common optional components that has been included in budget resolutions has been reconciliation directives to the committees of the House and the Senate. As discussed in sections 19 and 20, reconciliation directives are instructions to House and Senate committees to report legislation having certain budgetary effects, most often reductions in spending or increases in revenues, in order to achieve the budgetary targets in the concurrent resolution on the budget. In this way, existing law is *reconciled* with the budget priorities laid out in the budget resolution.

The first budget resolution to contain reconciliation directives was the budget for fiscal year 1981.<sup>(1)</sup> Since the enactment of the Congressional Budget Act, Congress has adopted over 20 budget resolutions containing reconciliation directives. In addition, House-adopted budget resolutions that have been “deemed” effective for Congressional Budget Act purposes have occasionally contained reconciliation directives to House committees.<sup>(2)</sup>

For more on the reconciliation process, including expedited procedures related thereto, see Sections 19–21.

### ***Optional Components—Credit Budgets***

Concurrent resolutions on the budget have provided different methods for the treatment of direct loans, loan guarantees, and other related government credit programs. The budget resolution for fiscal year 1981, for the first time, contained a separate section establishing a Federal credit budget,

17. 129 CONG. REC. 16585, 98th Cong. 1st Sess., June 21, 1983 (H. Con. Res. 91, sec. 5(b)).

18. 130 CONG. REC. 28049, 98th Cong. 2d Sess., Oct. 1, 1984 (H. Con. Res. 280, sec. 4(b)).

19. 131 CONG. REC. 22637, 99th Cong. 1st Sess., Aug. 1, 1985 (S. Con. Res. 32, sec. 3(b)).

20. 2 USC § 642(c). See §§ 10, 11, *infra*.

1. 126 CONG. REC. 14505, 14506, 96th Cong. 2d Sess., June 12, 1980 (H. Con. Res. 307, sec. 3).

2. See §§ 17, 18, 21.6, *infra*.

with total Federal credit levels for new direct loan obligations and primary loan guarantees.<sup>(1)</sup> The following year, a more detailed Federal credit budget, dividing the aggregate totals by functional category levels, was included as a separate section in the concurrent resolution on the budget for that fiscal year.<sup>(2)</sup>

The revisions to the Congressional Budget Act made by Gramm-Rudman-Hollings in 1985 included an amendment to section 301 which mandated the inclusion of direct loan obligations and primary loan guarantee commitments in concurrent resolutions on the budget.<sup>(3)</sup> Pursuant to this requirement, subsequent budget resolutions included credit totals along with the totals for new budget authority and outlays, rather than segregate credit totals in a separate section. The Budget Enforcement Act of 1997 eliminated this element from the list of required components and moved it to the list of optional components in section 301(b).<sup>(4)</sup> As a result, no budget resolution since that time has included credit totals.

The Federal Credit Reform Act, enacted by Congress as part of the Omnibus Reconciliation Act of 1990,<sup>(5)</sup> added a new title V to the Congressional Budget Act. This Act made several changes in how Congress measures the cost of credit programs. The most important change was to move from a cash accounting basis for the evaluation of the budgetary effects of credit programs to an accrual accounting method that more accurately reflected the true cost of such programs to the government.

### ***Optional Components—Reserve Funds and “Adjustment” Authorities***

Reserve funds in a concurrent resolution on the budget are special authorities to revise budget resolution aggregates, functional allocations, and committee allocations, which are triggered when certain legislative actions are taken. In this way, Congress can plan for the contingent enactment of legislation, establish certain legislative priorities, and create flexibility in the budget resolution itself to adjust budgetary levels in response to such legislation. A reserve fund was first included in the budget resolution for fiscal year 1984,<sup>(1)</sup> and reserve funds have been included in every budget resolution adopted since fiscal year 1987. The reserve fund contained in the

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1. 126 CONG. REC. 14508, 96th Cong. 2d Sess., June 12, 1980 (H. Con. Res. 307, sec. 10).

2. 127 CONG. REC. 9960, 9961, 97th Cong. 1st Sess., May 18, 1981 (H. Con. Res. 115, sec. 203).

3. Pub. L. No. 99-177.

4. Pub. L. No. 105-33.

5. Pub. L. No. 101-508.

1. 129 CONG. REC. 16584, 98th Cong. 1st Sess., June 21, 1983 (H. Con. Res. 91, sec. 2).

budget resolution for fiscal year 1984 operated in a slightly different manner than subsequent reserve funds. Unlike later reserve funds, this reserve fund set aside a specific amount of new budget authority and outlays that could only be used on the legislative initiatives described in that section of the budget resolution. The reporting by committees of qualifying legislation authorized the Committee on the Budget to revise any necessary allocations—essentially tapping the reserve fund to allow spending on such programs. Absent such qualifying legislation, the reserve fund amounts would simply not be used.

Reserve funds have been created for a variety of legislative purposes, including specific programs and funds designated as “emergencies.” The number of reserve funds in budget resolutions has varied over time but has generally been increasing. Recent budget resolutions have included over 30 reserve funds.<sup>(2)</sup> Concerns over budget deficits have also prompted Congress in recent years to require that legislation be deficit-neutral in order to qualify for a reserve fund adjustment.<sup>(3)</sup>

Modern reserve funds do not actually set aside amounts of new budget authority and outlays. Instead, they represent broad authority to revise any necessary budgetary levels (up to the amount of the reserve fund) in response to qualifying legislation. Such revisions do not take money out of separate reserve fund accounts, but simply re-allocate resources between accounts as necessary to cover the cost of the legislation described in the reserve fund. Budget resolutions have occasionally contained optional provisions that operate in a similar manner to reserve funds, but which are styled as “adjustment” authorities rather than reserve funds, and typically do not contain a specific amount of adjustment authority. For example, the budget resolution for fiscal year 1995 contained special authority to adjust budgetary levels in the event that health care reform legislation was reported in the House.<sup>(4)</sup> This provision contained no set amount of adjustment authority, but did require deficit-neutrality for the qualifying legislation. A similar provision can be found in the budget resolution for fiscal year 2004, which provided adjustment authorities if a supplemental appropriation bill was enacted by a certain date.<sup>(5)</sup>

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2. See 154 CONG. REC. 10000–05, 110th Cong. 2d Sess., May 20, 2008 (S. Con. Res. 70, secs. 201–37); and 155 CONG. REC. 10735–39, 111th Cong. 1st Sess., Apr. 27, 2009 (S. Con. Res. 13, secs. 301–34).

3. See, e.g., 153 CONG. REC. 12661–65, 110th Cong. 1st Sess., May 16, 2007 (S. Con. Res. 21, secs. 301–23).

4. 140 CONG. REC. 9260, 103d Cong. 2d Sess., May 4, 1994 (H. Con. Res. 218, sec. 26).

5. 149 CONG. REC. 9302, 108th Cong. 1st Sess., Apr. 10, 2003 (H. Con. Res. 95, sec. 421).

It is important to note that the adjustment authorities found in reserve funds or similar provisions are usually discretionary and need not be exercised, even in the event that qualifying legislation is reported.<sup>(6)</sup> The lack of an adjustment may subject the legislation to points of order. A similar discretionary authority can be found in section 314(a) of the Congressional Budget Act, as revised by the Budget Control Act of 2011.<sup>(7)</sup> That section provides the chairman of the Committee on the Budget with discretionary authority to adjust the appropriate allocations for certain categories of spending in response to qualifying legislation. As with reserve funds, the chairman need not exercise such adjustment authority.<sup>(8)</sup>

The authority to make adjustments contemplated by a reserve fund has been most often contingent on the reporting of qualifying legislation, rather than, for example, the enactment of such legislation into law or the offering of an amendment that achieves the same legislative goal.<sup>(9)</sup> However, this is not always the case and reserve fund authority may be conditioned on any number of legislative actions. For example, a reserve fund for agriculture in the budget resolution for fiscal year 2000 allowed an amendment in the nature of a substitute (made in order by a special order of business) to qualify.<sup>(10)</sup>

The House has also adopted a special order of business resolution that provided a specific procedural mechanism designed to trigger an adjustment authority contained in the most recent budget resolution.<sup>(11)</sup>

### ***Optional Components—Treatment of Amounts Designated as “Emergencies”***

Throughout the history of the congressional budget process, Congress has utilized numerous methods to achieve flexibility in funding unanticipated needs such as natural disasters, military operations, and other unforeseen emergencies. One method is to establish a reserve fund, as described above,

6. One notable exception was the budget resolution for fiscal year 1998, which contained several reserve funds with mandatory (rather than discretionary) adjustment authorities. 143 CONG. REC. 9985, 105th Cong. 1st Sess., June 4, 1997 (H. Con. Res. 84, sec. 210).
7. Prior to the enactment of the Budget Control Act of 2011, section 314(a) provided for an *automatic* adjustment of the appropriate allocations in response to certain legislative actions, requiring no further action by Congress. The chairman of the Committee on the Budget was merely under a ministerial duty to publish such adjustments in the *Congressional Record*.
8. See § 11, *infra*.
9. See § 11.15, *infra*.
10. See 145 CONG. REC. 23106, 23107, 106th Cong. 1st Sess., Sept. 29, 1999.
11. See § 4.2, *infra*.

allowing certain adjustments to be made in budgetary levels and allocations. Such a method was used, for example, in the budget resolution for fiscal year 1987, via a special contingency fund for “unmet critical needs.”<sup>(1)</sup>

The Budget Enforcement Act of 1990<sup>(2)</sup> established a new mechanism to address amounts specifically designated as emergencies. Section 606(d) provided that certain categories of spending, including emergency amounts, would be exempt from the operation of sections 302, 303, and 311 of the Congressional Budget Act. This provision had the effect of rendering such amounts “invisible” for purposes of Congressional Budget Act enforcement. Rather than authorizing any adjustments to budgetary levels or allocations, the provision merely stated that determinations made under the specified points of order “shall not take into account” any new budget authority contained in the applicable legislation.

The Budget Enforcement Act of 1997<sup>(3)</sup> made significant changes to the Congressional Budget Act, including a complete repeal of title VI, as added by the Budget Enforcement Act of 1990. The section 606(d) “invisibility” mechanism was replaced by new adjustment authorities contained in section 314 of the Congressional Budget Act.<sup>(4)</sup> As described in Section 11, section 314 of the Budget Act authorized adjustments to be made in budget aggregates, allocations, and discretionary spending limits in response to certain legislative actions, including the consideration of measures containing amounts designated as emergencies. Rather than rendering such emergency amounts “invisible” for Congressional Budget Act enforcement purposes, section 314 authorized automatic “adjustments” (*i.e.*, increases) to the necessary accounts to cover the cost of the emergency provisions.

The adjustment mechanism of section 314 for emergency amounts was textually linked to a section of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) that expired in 2002.<sup>(5)</sup> Thus, from the period between 2002 and the enactment of the Budget Control Act of 2011,<sup>(6)</sup> there was no statutory mechanism for addressing amounts designated as emergencies. Instead, Congress proceeded on an *ad hoc* basis, providing different kinds of mechanisms as optional components in each annual budget resolution.

In many cases, Congress chose an “invisibility” mechanism similar to the one created by the Budget Enforcement Act of 1990. The budget resolution

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1. 132 CONG. REC. 15744, 99th Cong. 2d Sess., June 26, 1986 (S. Con. Res. 120, sec. 3).

2. Pub. L. No. 101–508.

3. Pub. L. No. 105–33.

4. 2 USC § 645.

5. Pub. L. No. 99–177.

6. The Budget Control Act of 2011 repealed the expiration of several Gramm-Rudman-Hollings provisions and extensively revised section 314 of the Congressional Budget Act. For more on the Budget Control Act of 2011, see § 1, *supra*.

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for fiscal year 2004, for example, contained a provision exempting amounts designated as emergencies from the operation of certain Congressional Budget Act points of order.<sup>(7)</sup> Similar provisions were included in the budget resolutions for fiscal years 2005,<sup>(8)</sup> 2006,<sup>(9)</sup> 2008,<sup>(10)</sup> 2009,<sup>(11)</sup> and 2012.<sup>(12)</sup> Additional requirements, such as an explanation of how funding meets the criteria for an emergency designation, have also been included.<sup>(13)</sup>

Funding for the “global war on terrorism” has also been the subject of provisions in budget resolutions that effectively exempt such spending from the reach of Congressional Budget Act enforcement. For example, the budget resolution for fiscal year 2005 contained an exemption for “overseas contingency operations related to the global war on terrorism.”<sup>(14)</sup> A similar provision was included in the House-adopted budget for fiscal year 2007 (“deemed” adopted by Congress)<sup>(15)</sup> that exempted such funding from all points of order under titles III and IV of the Congressional Budget Act. In the budget resolution for fiscal year 2010, Congress employed both “invisibility” and “adjustment” mechanisms for overseas deployment funding, authorizing allocation adjustments up to a certain amount, and exempting any funding above this amount from the operation of the Congressional Budget Act.<sup>(16)</sup> The adjustment mechanism was retained in the House-adopted budget resolution for fiscal year 2012,<sup>(17)</sup> while a separate allocation under section 302 of the Congressional Budget Act was used for overseas contingency operations in the House-adopted budget resolution for fiscal year 2013.<sup>(18)</sup>

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7. 149 CONG. REC. 9302, 108th Cong. 1st Sess., Apr. 10, 2003 (H. Con. Res. 95, sec. 502).
  8. 150 CONG. REC. 10040, 108th Cong. 2d Sess., May 18, 2004 (S. Con. Res. 95, sec. 402).
  9. 151 CONG. REC. 8280, 109th Cong. 1st Sess., Apr. 28, 2005 (H. Con. Res. 95, sec. 402).
  10. 153 CONG. REC. 12658–59, 110th Cong. 1st Sess., May 16, 2007 (S. Con. Res. 21, sec. 204).
  11. 154 CONG. REC. 10000–05, 110th Cong. 2d Sess., May 20, 2008 (S. Con. Res. 70, sec. 301(b)).
  12. 157 CONG. REC. H2889 [Daily Ed.], 112th Cong. 1st Sess., Apr. 15, 2011 (H. Con. Res. 34, sec. 302).
  13. See § 4.1, *infra*.
  14. 150 CONG. REC. 10041, 108th Cong. 2d Sess., May 18, 2004 (S. Con. Res. 95, sec. 403) (House-adopted budget resolution “deemed” adopted by Congress for Congressional Budget Act purposes). See § 17, *infra*.
  15. 152 CONG. REC. 8484, 109th Cong. 2d Sess., May 17, 2006 (H. Con. Res. 376, sec. 402) (House-adopted budget resolution “deemed” adopted by Congress for Congressional Budget Act purposes). See § 17, *infra*.
  16. 155 CONG. REC. 10743, 111th Cong. 1st Sess., Apr. 27, 2009 (S. Con. Res. 13, sec. 423).
  17. 157 CONG. REC. H2888–9 [Daily Ed.], 112th Cong. 1st Sess., Apr. 15, 2011 (H. Con. Res. 34, sec. 301) (House-adopted budget resolution “deemed” adopted by Congress for Congressional Budget Act purposes). See § 17, *infra*.
  18. 158 CONG. REC. H1703 [Daily Ed.], 112th Cong. 2d Sess., Mar. 28, 2012 (H. Con. Res. 112, sec. 509) (House-adopted budget resolution “deemed” adopted by Congress for Congressional Budget Act purposes). See § 17, *infra*.

The House-adopted budget resolution for fiscal year 2007 set up a special reserve fund for amounts designated as emergencies, with authorization for the chairman of the Committee on the Budget to revise the necessary aggregates and allocations in response to qualifying legislation.<sup>(19)</sup> Additional provisions allowed further revisions to those amounts (above the total of the reserve fund) in special circumstances.

This *ad hoc* treatment of emergency funding in budget resolutions was replaced by a new statutory mechanism contained in the Budget Control Act of 2011.<sup>(20)</sup> That Act, as noted above, made significant changes to section 314 of the Congressional Budget Act, including a return to the “invisibility” approach that prevailed during the 1990–1998 period. Section 314(d) now provides that, in the House, amounts designated as emergencies shall be exempt from titles III and IV of the Congressional Budget Act.<sup>(21)</sup>

### ***Optional Components—Creation of New Points of Order***

Concurrent resolutions on the budget have also created *ad hoc* points of order typically applicable only to spending in the fiscal years covered by such resolutions. Such “extra” budgetary controls (beyond those provided in statute) contained in budget resolutions have been fairly common for Senate procedures, but less so for the House of Representatives. This is primarily due to the fact that the Committee on Rules in the House has broad authority to report special orders of business or other orders of the House that can alter or waive budget rules. Lacking this kind of flexibility, the Senate has had a greater need to insert into budget resolutions additional procedures to govern consideration of spending bills in that body.

Beginning with the budget resolution for fiscal year 2001,<sup>(1)</sup> all budget resolutions have included a prohibition against consideration in the House of advance appropriations. Advance appropriations are typically defined as appropriations made available for any fiscal year after the fiscal year covered by the budget resolution. Such a prohibition has also been included in House-adopted budget resolutions “deemed” adopted by Congress.<sup>(2)</sup>

19. 152 CONG. REC. 8484, 8485, 109th Cong. 2d Sess., May 17, 2006 (H. Con. Res. 376, secs. 501–05) (House-adopted budget resolution “deemed” adopted by Congress for Congressional Budget Act purposes). See § 17, *infra*.

20. Pub. L. No. 112–25, sec. 105.

21. *Id.*

1. 146 CONG. REC. 5505, 106th Cong. 2d Sess., Apr. 12, 2000 (H. Con. Res. 290, sec. 203(b)).

2. 152 CONG. REC. 8484, 109th Cong. 2d Sess., May 17, 2006 (H. Con. Res. 376, sec. 401) (House-adopted budget resolution “deemed” adopted by Congress for Congressional Budget Act purposes). See § 17, *infra*.

In the budget resolution for fiscal year 2001, Congress included a prohibition (applicable in the House only) against consideration of any measure containing a directed scorekeeping provision.<sup>(3)</sup> A directed scorekeeping provision is defined as one that instructs either the Congressional Budget Office or the Office of Management and Budget how to estimate new discretionary budget authority provided in a measure.

Some points of order created in budget resolutions have been established under the term “lock-box” to indicate a prohibition against spending that would reduce a budget surplus in a given account. The budget resolutions for fiscal years 2000<sup>(4)</sup> and 2001<sup>(5)</sup> both contained a provision creating a Social Security “lock-box” or “safe deposit box.” The point of order, applicable in both the House and the Senate, prohibited the consideration of any budget resolution (or revision thereto) that set forth a deficit for any given year. The purpose was to prevent surpluses in the Social Security trust funds from being used to finance the general operations of the Federal government, and the budget resolution for fiscal year 2001 included a provision that would deduct from discretionary spending any amounts taken from the Social Security fund.

In the budget resolution for fiscal year 2001,<sup>(6)</sup> Congress created a debt reduction “lock-box” to ensure that budget surpluses would be used solely to pay down the debt and not to fund new spending. This point of order, applicable only in the House, prohibited the consideration of certain measures that would cause the surplus to be less than a set amount.

### ***Optional Components—Altering Existing Budget Act Points of Order***

The House retains the constitutional authority to vary rulemaking contained in statute.<sup>(1)</sup> Concurrent resolutions on the budget have sometimes made changes to the operation of existing Congressional Budget Act points of order. For example, the House-adopted budget resolution for fiscal year 2003,<sup>(2)</sup> included a provision establishing a highway reserve fund and making section 302(f) points of order applicable to outlays as well as budget authority. This is in contrast to the normal operation of section 302(f) of the

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3. 146 CONG. REC. 5505, 106th Cong. 2d Sess., Apr. 12, 2000 (H. Con. Res. 290, sec. 203(a)).

4. 145 CONG. REC. 6340, 6341, 106th Cong. 1st Sess., Apr. 13, 1999 (H. Con. Res. 68, sec. 201).

5. 146 CONG. REC. 5505, 106th Cong. 2d Sess., Apr. 12, 2000 (H. Con. Res. 290, sec. 201).

6. 146 CONG. REC. 5505, 106th Cong. 2d Sess., Apr. 12, 2000 (H. Con. Res. 290, sec. 202).

1. See Deschler-Brown Precedents Ch. 31 § 10.1, *supra*. See § 8, *infra*.

2. 148 CONG. REC. 3691, 107th Cong. 2d Sess., Mar. 20, 2002, (H. Con. Res. 353, sec. 204(b)) (House-adopted budget resolution “deemed” adopted by Congress for Budget Act purposes). See § 17, *infra*.

Congressional Budget Act, which does not take cognizance of outlays.<sup>(3)</sup> Similarly, provisions requiring committee allocations to include administrative expenses for certain off-budget accounts have also altered the application of section 302(f) to address outlays as well as budget authority for such accounts.<sup>(4)</sup>

### ***Optional Components—Treatment of “Off-Budget” Amounts***

Beginning with the budget resolution for fiscal year 2001,<sup>(1)</sup> all budget resolutions have included a provision regarding the treatment of certain off-budget amounts. These have included both the discretionary administrative expenses of the Social Security Administration and (beginning with the budget resolution for fiscal year 2009)<sup>(2)</sup> of the postal service as well. Spending on these items is technically “off-budget” pursuant to section 13301 of the Budget Enforcement Act of 1990.<sup>(3)</sup> However, the provision described here requires that the discretionary administrative expenses (but not other spending) for such programs be included in the section 302(a) allocation to the Committee on Appropriations, and thus subject to the same rules for other discretionary spending. As noted above, such provisions have also typically included an additional section explicitly including such amounts in any evaluation of a point of order under section 302(f).<sup>(4)</sup>

### ***Optional Components—Authority to Establish Committee Allocations***

Concurrent resolutions on the budget have sometimes contained provisions authorizing the chairman of the Committee on the Budget to publish committee allocations in the *Congressional Record* and to have such allocations be considered as those required under section 302(a) of the Congressional Budget Act.<sup>(1)</sup>

### ***Optional Components—Requiring Analysis of Budgetary Data***

Congress has used budget resolutions to call for the production of reports or analysis of budgetary data. These provisions have directed committees of

3. See § 11.5, *infra*.

4. See *Optional Components—Treatment of “Off-Budget” Amounts, infra*.

1. 146 CONG. REC. 5507, 106th Cong. 2d Sess., Apr. 12, 2000 (H. Con. Res. 290, sec. 231).

2. 154 CONG. REC. 10007, 110th Cong. 2d Sess., May 20, 2008 (S. Con. Res. 70, sec. 322).

3. Pub. L. No. 101–508.

4. See § 11, *infra*.

1. See 132 CONG. REC. 15745, 99th Cong. 2d Sess., June 26, 1986 (S. Con. Res. 120, sec. 13); and 133 CONG. REC. 16885, 100th Cong. 1st Sess., June 22, 1987 (H. Con. Res. 93, sec. 13).

the House or the Senate, the Congressional Budget Office, the Office of Management and Budget, or other governmental entities, to produce such reports, often with deadlines for submission. Budget resolutions have frequently called on House committees to report potential legislative savings in certain areas,<sup>(1)</sup> or to report on waste, fraud, and abuse in programs within the jurisdiction of such committees.<sup>(2)</sup> In the budget resolution for fiscal year 1996, the Congressional Budget Office was directed to certify whether certain legislative recommendations of congressional committees would result in a balanced budget by fiscal year 2002.<sup>(3)</sup>

***Optional Components—Senses of Congress***

From the earliest days of the Congressional Budget Act, Congress has taken the opportunity to include within concurrent resolutions on the budget certain non-binding statements of policy. Such a statement may be termed a “sense of Congress,”<sup>(1)</sup> (or of the House or Senate alone), a “policy” statement,<sup>(2)</sup> or similar formulations. As merely hortatory or advisory in nature, such statements have no parliamentary effect and do not create enforceable points of order. The first such statement was included in the budget resolution for fiscal year 1978, and declared that Congress “recognize[d] . . . unusual uncertainties” in the economic outlook that might require legislative responses with budgetary impacts.<sup>(3)</sup> Every budget resolution since fiscal year 1981 has included at least one such non-binding provision (and often 10 or more), with the exception of the budget resolution for fiscal year 1991.<sup>(4)</sup> Although non-binding, the House has nonetheless chosen at times to comply with the recommendations contained in such provisions.<sup>(5)</sup>

1. See, e.g., 125 CONG. REC. 12562, 96th Cong. 1st Sess., May 24, 1979 (H. Con. Res. 107, sec. 4(b)); and 150 CONG. REC. 10042, 108th Cong. 2d Sess., May 18, 2004 (S. Con. Res. 95, secs. 411–12).
2. 149 CONG. REC. 9300, 9301, 108th Cong. 1st Sess., Apr. 10, 2003 (H. Con. Res. 95, sec. 301); and 154 CONG. REC. 10007, 110th Cong. 2d Sess., May 20, 2008 (S. Con. Res. 70, sec. 321).
3. 141 CONG. REC. 17185, 104th Cong. 1st Sess., June 26, 1995 (H. Con. Res. 67, sec. 205).
1. See, e.g., 154 CONG. REC. 10008–10, 110th Cong. 2d Sess., May 20, 2008 (S. Con. Res. 70, secs. 501–22).
2. See, e.g., 153 CONG. REC. 12665, 110th Cong. 1st Sess., May 16, 2007 (S. Con. Res. 21, sec. 401); and 158 CONG. REC. H1704 [Daily Ed.], 112th Cong. 2d Sess., Mar. 28, 2012 (H. Con. Res. 112, sec. 601).
3. 123 CONG. REC. 14412, 95th Cong. 1st Sess., May 11, 1977 (S. Con. Res. 19, sec. 3).
4. 136 CONG. REC. 27958–63, 101st Cong. 2d Sess., Oct. 7, 1990 (H. Con. Res. 310).
5. For example, the budget enforcement resolution (“deemer”) for fiscal year 2010 contained a sense of the House that committee chairs should submit for printing in the *Congressional Record* findings on waste, fraud, and abuse in government programs

### ***Optional Components—Revisions to Prior Budget Resolutions***

Budget resolutions have also contained provisions revising earlier budget resolutions,<sup>(1)</sup> or containing authorization to revise prior budget resolutions in response to executive-legislative budget agreements.<sup>(2)</sup> Section 304 of the Congressional Budget Act provides specific authority for Congress to revise concurrent resolutions on the budget any time after the completion of action on a budget resolution.<sup>(3)</sup>

### ***Optional Components—Senate Procedures***

Concurrent resolutions on the budget have contained many procedural provisions applicable to the Senate only. Such provisions have created new points of order applicable to Senate procedures and other provisions varying the normal application of Senate rules. Such Senate-only provisions, however, are too numerous to be documented here.

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### **§ 4.1 Pursuant to the concurrent resolution on the budget, the chairman of the Committee on Appropriations explained how provisions in a supplemental appropriation bill that were designated as “emergency requirements” under such concurrent resolution met the criteria for such designation.**

On Sept. 7, 2005,<sup>(1)</sup> the following statement was submitted for inclusion in the *Congressional Record*:

STATEMENT REQUIRED BY SECTION 402(a)(3) OF H. CON. RES. 95, THE  
CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2006

The SPEAKER pro tempore.<sup>(2)</sup> Under a previous order of the House, the gentleman from California (Mr. LEWIS) is recognized for 5 minutes.

Mr. [Jerry] LEWIS of California. Mr. Speaker, the funds provided in H.R. 3673 to meet the urgent needs arising from the consequences of Hurricane Katrina are designated as emergency

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within the jurisdiction of their respective committees. A nominal deadline of Sept. 15, 2010, was included and many committee chairmen complied with this recommendation by making such submissions, despite the lack of any parliamentary enforcement mechanism. See 156 CONG. REC. E1611–1617 [Daily Ed.], 111th Cong. 2d Sess., Sept. 15, 2010.

1. See, e.g., 123 CONG. REC. 14412, 95th Cong. 1st Sess., May 11, 1977 (S. Con. Res. 19, sec. 4).
2. 137 CONG. REC. 11610, 102d Cong. 1st Sess., May 21, 1991 (H. Con. Res. 121, sec. 12).
3. 2 USC § 635.
1. 151 CONG. REC. 19673, 109th Cong. 1st Sess.
2. Charles Dent (PA).

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requirements for the purposes of section 402 of H. Con. Res. 95, 109th Congress. The requirements funded in the bill meet criteria outlined in section 402(c) since they are in response to a situation which poses a direct threat to life and property, is sudden, is urgent and compelling, is unpredictable, and is not permanent in nature. The funds are also essential to the continuing recovery effort.

The devastation that has occurred in New Orleans and around the Gulf Coast as the result of Hurricane Katrina is of monumental proportions. It already is the most costly natural disaster in the Nation's history, and most government natural disaster assistance experts anticipate recovery needs far beyond the \$62.3 billion to be provided by Congress in the first two Hurricane Katrina supplemental measures. The funds in H.R. 3673 will provide urgently needed food, shelter, security, and reconstruction. The funds will help to save lives. Clearly, the funds meet emergency needs and are consistent with the criteria outlined in the budget resolution.

**§ 4.2 The House has adopted a special order of business resolution reported by the Committee on Rules containing a separate section “deeming” a particular amendment to have been formally “offered” within the meaning of a section of the most recent concurrent resolution on the budget, in order to trigger the application of that section<sup>(1)</sup> and thus allow the chairman of the Committee on the Budget to increase the relevant committee’s section 302 allocation to cover the budget authority contained in that amendment.**

On Apr. 1, 2004,<sup>(2)</sup> the House adopted the following resolution:

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 3550, TRANSPORTATION  
EQUITY ACT: A LEGACY FOR USERS

Mr. [David] DREIER [of California]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 593 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 593

*Resolved*, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved in the Committee of the Whole House on the state of the Union for further consideration of the bill (H.R. 3550)

1. *Parliamentarian’s Note*: Section 411 of the concurrent resolution on the budget for fiscal year 2004 (H. Con. Res. 95) provided authority for the chairman of the Committee on the Budget to adjust the section 302(a) allocation to the Committee on Transportation and Infrastructure if: (1) a bill providing funding for certain transportation projects were reported; (2) a conference report containing such funding were submitted; or (3) an amendment containing such funding were offered. Because the special order of business above “self-executed” an amendment containing such funding, that amendment was not formally “offered” within the meaning of section 411 of H. Con. Res. 95. Thus, it was necessary for section 2 of the special order to “deem” the amendment to have been offered in order to trigger the authority to adjust the section 302(a) allocation.
2. 150 CONG. REC. 6059, 108th Cong. 2d Sess.

to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes. No further general debate (except for the final period contemplated in the order of the House of March 30, 2004) shall be in order. The amendment in the nature of a substitute recommended by the Committee on Transportation and Infrastructure now printed in the bill, modified by the amendments printed in part A of the report of the Committee on Rules accompanying this resolution, shall be considered as adopted in the House and in the Committee of the Whole. The bill, as amended, shall be considered as the original bill for the purpose of further amendment under the five-minute rule and shall be considered as read. All points of order against provisions in the bill, as amended, are waived. No further amendment shall be in order except those printed in part B of the report of the Committee on Rules. Each further amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment or demand for division of the question. All points of order against such further amendments are waived. At the conclusion of consideration of the bill, as amended, the Committee shall rise and report the bill, as amended, to the House with such further amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. The amendment considered as adopted under the first section of this resolution shall be considered an amendment offered under section 411 of House Concurrent Resolution 95.

**§ 4.3 The House has, by unanimous consent, ordered the enrollment of a particular House bill (exceeding the relevant committee's section 302 allocation), notwithstanding the provision in the most recent concurrent resolution on the budget delaying the enrollment of such legislation until after the completion of the second annual budget resolution<sup>(1)</sup> and required reconciliation legislation.**

On Nov. 22, 1981,<sup>(2)</sup> the following occurred:

AUTHORIZING SPEAKER TO SIGN ENROLLMENT OF HOUSE JOINT RESOLUTION 357, NOTWITHSTANDING PROVISIONS OF HOUSE CONCURRENT RESOLUTION 115

Mr. [Silvio] CONTE [of Massachusetts]. Mr. Speaker, I ask unanimous consent that notwithstanding the provisions of House Concurrent Resolution 115, the Speaker be authorized to sign the enrollment of House Joint Resolution 357.

The SPEAKER.<sup>(3)</sup> Is there objection to the request of the gentleman from Massachusetts that the Clerk be permitted to enroll House Joint Resolution 357 if finally passed by both Houses?

Mr. [Leon] PANETTA [of California]. Mr. Speaker, reserving the right to object, does the gentleman refer to section 315 or 305?

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1. As noted, the Gramm-Rudman-Hollings reforms eliminated the requirement for a second annual budget resolution.
  2. 127 CONG. REC. 28768, 97th Cong. 1st Sess.
  3. Thomas O'Neill (MA).

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Mr. CONTE. Really all the provisions of the House concurrent resolution.

Mr. PANETTA. The gentleman is moving notwithstanding all the provisions of House Concurrent Resolution 115?

Mr. CONTE. Yes, in particular House Joint Resolution 357.

Mr. PANETTA. Mr. Speaker, further reserving the right to object, as I understand it, this provision would then allow for the continuing resolution to be enrolled.

Mr. CONTE. That is right, and go to the President.

Mr. PANETTA. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts? There was no objection.

## **§ 5. Consideration of Concurrent Resolutions on the Budget**

### ***Procedures in the Congressional Budget Act***

The annual adoption of a concurrent resolution on the budget is an important part of the Federal budget process. Consequently, the Congressional Budget Act accords the concurrent resolution on the budget high privilege for consideration in the House and Senate and special procedures to expedite such consideration. Provisions relating to the consideration of concurrent resolutions on the budget are found in section 305 of the Congressional Budget Act.<sup>(1)</sup> In addition to the special procedures contained in that section, the House has frequently adopted standing rules that pertain specifically to the budget process and may affect how budget resolutions are considered.<sup>(2)</sup> For many years, the House has also considered budget resolutions pursuant to a special order of business resolution reported by the Committee on Rules.<sup>(3)</sup>

Section 305 of the Congressional Budget Act prescribes procedures relating to various aspects of considering budget resolutions in the House, including privileged status, layover requirements, debate, the amendment process, consideration of conference reports, and appeals. Pursuant to section 305(a)(1), a concurrent resolution on the budget reported by the Committee on the Budget and referred to the appropriate calendar may be considered “any day thereafter” and the motion to proceed to consideration is “highly privileged” and not debatable.<sup>(4)</sup> To further expedite consideration, such motion is neither amendable nor subject to the motion to reconsider.<sup>(5)</sup>

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1. 2 USC § 636.

2. See *Procedures Contained in the Rules of the House, infra*.

3. See *Consideration by Special Order, et seq., infra*.

4. 2 USC § 636(a)(1).

5. *Id.* For a clarifying statement by the Chair regarding the applicability of motions to reconsider, see 123 CONG. REC. 12549, 95th Cong. 1st Sess., Apr. 27, 1977.