

CHANGES TO FORMER SECTIONS 401 AND 402 OF
THE CONGRESSIONAL BUDGET ACT OF 1974

Deletions in **[bold in brackets]**
Additions in *italic*
Unamended text in roman

As amended by [Section 10116](#) of
the Budget Enforcement Act of 1997

TITLE IV—ADDITIONAL PROVISIONS TO IMPROVE FISCAL
PROCEDURES

[BILLS PROVIDING NEW SPENDING AUTHORITY]

*BUDGET-RELATED LEGISLATION NOT SUBJECT TO
APPROPRIATIONS*

SEC. 401. **[(a) CONTROLS ON LEGISLATION PROVIDING SPENDING AUTHORITY.—It shall not be in order in either the House of Representatives or the Senate to consider any bill, joint resolution, amendment motion, or conference report, as reported to its House which provides new spending authority described in subsection (c)(2) (A) or (B), unless that bill, resolution, conference report, or amendment also provides that such new spending authority as described in subsection (c)(2)(A) or (B) is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.]**

(a) REPORT 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.

(b) LEGISLATION PROVIDING [NEW] ENTITLEMENT AUTHORITY.—

[(1) It shall not be in order in either the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion or conference report, as reported to its House which provides new spending authority described in subsection (c)(2)(C) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.]

(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.

(2) If any committee of the House of Representatives or the Senate reports any bill or resolution which provides **[new spending authority described in subsection (c)(2)(C)]** *new entitlement authority* which is to become effective during a fiscal year and the amount of new budget authority which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported under section 302(b) in connection with the most recently agreed to concurrent resolution on the budget for such year, such bill or resolution shall then be referred to the Committee on Appropriations **[of that House]** *of the Senate or may then be referred to the Committee on Appropriations of the House, as the case may be, with instructions to report it, with the committee's recommendations, within 15 calendar days (not counting any day on which that House is not in session) with the day follow the day on which it is so referred. If the Committee on Appropriations of either House fails to report a bill or resolution referred to it under this paragraph within such 15-day period, the committee shall automatically be discharge from further consideration of such bill or resolution and such bill or resolution shall be placed on the appropriate calendar.*

(3) The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under paragraph (2) with an amendment which limits the total amount of new spending authority provided in such bill or resolution.

[(c) DEFINITIONS.—^[1]

(1) For purposes of this section, the term “new spending authority” means spending authority not provided by law on the effective date of this Act, including any increase in or addition to spending authority provided by law on such date.

(2) For purposes of paragraph (1), the term “spending authority” means authority (whether temporary or permanent)—

(A) 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;

(B) 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;

(C) to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law;

(D) 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

(E) to make payments by the United States (including loans, grants, and payments from revolving funds) other than those covered by subparagraph (A), (B), (C), or (D), the budget authority for which is not provided in advance by appropriation Acts.

Such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.]

¹ Section 10116(a)(3) (BEA 1997) repealed section 401(c). DEFINITIONS in its entirety:

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

[(d)] (c) EXCEPTIONS.—

(1) Subsections (a) and (b) shall not apply to **[new spending authority if the budget authority for outlays which]** will **[result from such new spending authority is derived]** *new authority described in those subsections if outlays from that new authority will flow*²

(A) from a trust fund established by the Social Security Act (as in effect on the date of the enactment of this Act); or

(B) from any other trust fund, 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954.

² In amending paragraph (1), the BEA 1990 omitted the word “will” from the words to be stricken, and hence the amendment could not be executed exactly as written. Law Revision Counsel included this advisory as to how they incorporated the amendment:

Subsec. (d)(1). Pub. L. 105–33, §10116(a)(4)(A), which directed substitution of “new authority described in those subsections if outlays from that new authority will flow” for “new spending authority if the budget authority for outlays which result from such new spending authority is derived”, was executed by making the substitution for “new spending authority if the budget authority for outlays which will result from such new spending authority is derived” in introductory provisions to reflect the probable intent of Congress.

With Law Revision Counsel’s attempt to interpret the flawed amendment language, the paragraph currently reads, in its entirety as follows:

(1) Subsections (a) and (b) shall not apply to new spending authority if the budget authority for outlays which will result from such new spending authority is derived —

(A) from a trust fund established by the Social Security Act (as in effect on the date of the enactment of this Act); or

(B) from any other trust fund, 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954.

This was likely not an appropriate rendering of the attempted amendment: the term “spending authority” was being removed in other places and likely should have been removed here; see underlined text above excerpt of current law paragraph (1).

[(2) Subsections (a) and (b) shall not apply to new spending authority which is an amendment to or extension of the State and Local Fiscal Assistance Act of 1972, or a continuation of the program of fiscal assistance to State and local governments provided by that Act, to the extent so provided in the bill or resolution providing such authority.]

[(3)] [2] Subsections (a) and (b) shall not apply to [new spending authority] *new authority described in those subsections* to the extent that—

(A) the outlays resulting therefrom are made by an organization which is (i) a mixed-ownership Government corporation (as defined in section 201 of the Government Corporation Control Act), or (ii) a wholly owned Government corporation (as defined in section 101 of such Act) which is specifically exempted by law from compliance with any or all of the provisions of that Act, as of the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985; or

(B) the outlays resulting therefrom consist exclusively of the proceeds of gifts or bequests made to the United States for a specific purpose.

[LEGISLATION PROVIDING NEW CREDIT AUTHORITY]

[SEC. 402. (a) CONTROLS ON LEGISLATION PROVING NEW CREDIT AUTHORITY.—It shall not be in order in either the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report, as reported to its House, which provides new credit authority described in subsection (b)(1), unless that bill, resolution, conference report, or amendment also provides that such new credit authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(b) DEFINITION.— For purposes of this Act, the term “new credit authority” means credit authority (as defined in section 3(10) of this Act) not provided by law on the effective date of this section including any increase in or addition to credit authority provided by law on such date.]

From the Budget Enforcement Act of 1997:

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) REPORT 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.”.

(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 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.