

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a light blue color with darker blue outlines for continents. The hourglass is centered on the page.

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Report R40113

*Federal Budget Process Reform in the 111th Congress: A  
Brief Overview*

Robert Keith, Specialist in American National Government

January 16, 2009

**Abstract.** Legislative changes in the budget process may take the form of freestanding bills or joint resolutions (e.g., the Line Item Veto Act), or may be incorporated into other budgetary legislation, such as acts raising the debt limit (e.g., the Balanced Budget and Emergency Deficit Control Act of 1985, also referred to as the Gramm-Rudman-Hollings Act), implementing reconciliation instructions (e.g., the Budget Enforcement Act of 1990), or providing annual appropriations (e.g., revisions in the Senate's cap on discretionary appropriations). Budget process changes also may be included in the annual budget resolution (a concurrent resolution), or in simple House or Senate resolutions.

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# Federal Budget Process Reform in the 111<sup>th</sup> Congress: A Brief Overview

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**CRS Report for Congress**

*Prepared for Members and Committees of Congress*

## Summary

Procedural change is a recurrent feature of federal budgeting, although the scope and impact of changes may vary from year to year. In order to advance their budgetary, economic, or political objectives, both Congress and the President regularly propose and make changes to the federal budget process. This report briefly discusses the context in which federal budget process changes are made and identifies selected reform proposals by major category. The identification of reform proposals in this report is not intended to be comprehensive.

A variety of sources give rise to the interest in budget process reform, including Congress, the President, State and local government officials, and special commissions, among others. Congress initiated a thorough overhaul of its internal budget process and ameliorated ongoing conflicts with President Richard Nixon over the withholding of appropriated funds through enactment of the Congressional Budget and Impoundment Control Act of 1974. President Bill Clinton, like many Presidents before him, requested line-item veto authority, which Congress granted in 1996 in the Line Item Veto Act (but was invalidated by court action in 1998). State and local government officials were instrumental in securing passage of the Unfunded Mandates Reform Act of 1995. Finally, special commissions, such as the President's National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission"), have recommended changes in budget structure and procedure that have been adopted.

The federal budget process is rooted in constitutional mandates, statutory requirements, House and Senate rules and practices, and administrative directives. Thus, there are several avenues through which budget process changes can occur. Either chamber may focus on changes in its rules, thereby minimizing the time needed to effect the change and the scale of potential conflict needed to be resolved, but at the same time possibly minimizing the impact of the changes. Broader and potentially more consequential changes, involving statutes or constitutional amendments, may entail a larger set of participants in the decision-making (i.e., the other chamber, the President, state legislatures), likely escalating the effort required to reach agreement and lengthening the time period before the changes take effect.

Legislative changes in the budget process may take the form of freestanding bills or joint resolutions (e.g., the Line Item Veto Act), or may be incorporated into other budgetary legislation, such as acts raising the debt limit (e.g., the Balanced Budget and Emergency Deficit Control Act of 1985, also referred to as the Gramm-Rudman-Hollings Act), implementing reconciliation instructions (e.g., the Budget Enforcement Act of 1990), or providing annual appropriations (e.g., revisions in the Senate's cap on discretionary appropriations). Budget process changes also may be included in the annual budget resolution (a concurrent resolution), or in simple House or Senate resolutions.

This report will be updated as developments warrant.

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## The Context of Budget Process Reform

### Sources of Budget Process Reform Proposals

A variety of sources give rise to the interest in budget process reform, including Congress, the President, State and local government officials, and special commissions, among others. Congress initiated a thorough overhaul of its internal budget process and ameliorated ongoing conflicts with President Richard Nixon over the withholding of appropriated funds through enactment of the Congressional Budget and Impoundment Control Act of 1974. President Bill Clinton, like many Presidents before him, requested line-item veto authority, which Congress granted in 1996 in the Line Item Veto Act (but was invalidated by court action in 1998). State and local government officials were instrumental in securing passage of the Unfunded Mandates Reform Act of 1995. Finally, special commissions, such as the President's National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission"), have recommended changes in budget structure and procedure that have been adopted. (Citations to laws identified in this report are provided in the **Appendix**.)

Outside of Congress itself, the President probably has been the most important source of budget process reform proposals over the years. The President's annual budget submission to Congress typically includes at least several proposed changes in budget procedure.<sup>2</sup> In his final budget submission, for example, President George W. Bush advocated proposals involving such matters as enhanced controls over mandatory and discretionary spending, stricter standards for emergency spending designations, changes in how baseline calculations are made, earmark reform, line-item veto, biennial budgeting, a joint budget resolution, and an automatic continuing resolution.<sup>3</sup>

In late November 2008, President-elect Barack Obama signaled his interest in pursuing budget process reform during the 111<sup>th</sup> Congress when he announced that he intended to nominate Peter Orszag to the position of director of the Office of Management and Budget (OMB) and Rob Nabors to the position of OMB deputy director. In making the announcement, President-elect

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<sup>1</sup> CRS reports on different budget process reforms are listed under the appropriate terms under "Current Legislative Issues" on the CRS homepage; other pertinent CRS reports may be accessed in several ways, including by subject term and author searches on the CRS homepage. Also, see CRS Report RL31478, *Federal Budget Process Reform: Analysis of Five Reform Issues*, by James V. Saturno, for a discussion of selected reforms proposed in past years.

<sup>2</sup> In recent years, the President's budget process reform proposals have been included in a separate chapter of the *Analytical Perspectives* volume.

<sup>3</sup> See the Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2009, Analytical Perspectives*, Feb. 4, 2008, Chapter 15 (Budget Reform Proposals), pp. 215-225.

Obama stated: “In these challenging times, when we are facing both rising deficits and a sinking economy, budget reform is not an option. It is an imperative.”<sup>4</sup>

Perhaps more than any other factor over the years, concern about the size and persistence of the federal deficit has animated calls for budget process reform. The federal deficit, which amounted to \$162 billion for FY2007, jumped to \$455 billion for FY2008 in the face of a significant economic downturn. Several research organizations have indicated that the deficit for FY2009, driven upward by further economic deterioration and the need for economic stabilization and stimulus legislation, may reach or exceed the \$1 trillion level.<sup>5</sup> The dramatic increase in the deficit, and its likely persistence at high levels in the short term, can be expected to fuel strong interest in procedural reform.

## Avenues of Reform

The federal budget process is rooted in constitutional mandates, statutory requirements, House and Senate rules and practices, and administrative directives.<sup>6</sup> Thus, there are several avenues through which budget process changes can occur. Either chamber may focus on changes in its rules, thereby minimizing the time needed to effect the change and the scale of potential conflict needed to be resolved, but at the same time possibly minimizing the impact of the changes. Broader and potentially more consequential changes, involving statutes or constitutional amendments, may entail a larger set of participants in the decision-making (i.e., the other chamber, the President, state legislatures), likely escalating the effort required to reach agreement and lengthening the time period before the changes take effect.

Legislative changes in the budget process may take the form of freestanding bills or joint resolutions (e.g., the Line Item Veto Act), or may be incorporated into other budgetary legislation, such as acts raising the debt limit (e.g., the Balanced Budget and Emergency Deficit Control Act of 1985, also referred to as the Gramm-Rudman-Hollings Act), implementing reconciliation instructions (e.g., the Budget Enforcement Act of 1990), or providing annual appropriations (e.g., revisions in the Senate’s cap on discretionary appropriations).<sup>7</sup> Budget process changes also may be included in the annual budget resolution (a concurrent resolution), or in simple House or Senate resolutions.

In some years, changes made in the budget process were comprehensive. The Budget and Accounting Act of 1921 established the executive budget process, the Congressional Budget Act of 1974 created the congressional budget process, and the Balanced Budget and Emergency Deficit Control Act of 1985 and the Budget Enforcement Act of 1990 imposed additional budget controls on a temporary basis. In other years, such as 1987, 1993, and 1997, existing budget process statutes were modified in a less comprehensive fashion and extended for limited periods.

<sup>4</sup> Press release, “President-elect Barack Obama announces Office of Management and Budget Director and Deputy Director,” Nov. 25, 2008, available on the Obama transition Website at [<http://change.gov/newsroom>].

<sup>5</sup> See, for example, the Committee for a Responsible Federal Budget, “CRFB Projects a One Trillion Dollar Deficit,” press release, Nov. 10, 2008, available at [<http://crfb.org/documents/trilliondollardeficit.doc>].

<sup>6</sup> For an overview of the federal budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith.

<sup>7</sup> A comprehensive listing and description of major budget process laws enacted over the past century (and full legal citations to them) is provided in CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al..

At other times, Congress and the President enacted statutes changing only selected aspects of the budget process; the Line Item Veto Act (of 1996) is one example. Finally, in every Congress, the House and Senate have modified existing rules and practices affecting the budget process and sometimes instituted new ones.

Like other types of legislation, statutes making changes in the budget process are subject to review by the judiciary. In several major instances, the Supreme Court has declared procedures established by Congress and the President to be invalid on constitutional grounds. The one-House legislative veto (found in many acts, including the Impoundment Control Act of 1974), for example, was invalidated by *I.N.S. v. Chadha* in 1983, 103 S.Ct. 715 (1983); the triggering of a sequester by the Comptroller General under the Gramm-Rudman-Hollings Act was invalidated by *Bowsher v. Synar* in 1986, 478 U.S. 714 (1986); and the Line Item Veto Act was invalidated by *Clinton v. City of New York* in 1998, 118 S.Ct. 2091 (1998). In the wake of court decisions, Congress and the President may successfully modify legislation (e.g., 1987 legislation modifying the Gramm-Rudman-Hollings Act, vesting the authority to trigger a sequester in the director of the Office of Management and Budget), but sometimes persistent efforts to enact corrective legislation do not succeed (e.g., line-item veto proposals).

Given that nearly every committee of the House and Senate has jurisdiction over legislation with a budgetary impact, interest in the budget process and proposals to change it radiate throughout both chambers. Although jurisdiction over executive and congressional budget procedures generally resides with the Budget, Oversight and Government Reform, and Rules Committees in the House, and with the Budget, Homeland Security and Governmental Affairs, and Rules and Administration Committees in the Senate, other House and Senate committees, particularly the appropriations and tax committees, may exert influence over budget process changes affecting their legislative interests.

## Early Opportunities for Budget Process Changes in the 111<sup>th</sup> Congress

The first opportunity in a new Congress to change budget procedures usually occurs on the first or second day of session. The House, which unlike the Senate is not a continuous body, must adopt its rules anew at the beginning of each Congress. Traditionally, the House adopts its rules from the previous Congress, with modifications (that may include changes in the budget process), in the form of a simple resolution. The rules package for the 110<sup>th</sup> Congress, H.Res. 6, contained several changes in the budget process, including a “pay-as-you-go” (PAYGO) rule for the House.<sup>8</sup>

A second opportunity for budget process changes typically comes in March and April, when the two chambers consider the annual budget resolution for the fiscal year beginning on October 1. Under authority referred to as the “elastic clause” (in Section 301 of the 1974 Congressional Budget Act), either chamber may include procedural provisions in the annual budget resolution that are consistent with the purposes of the 1974 act. Several procedural provisions were incorporated, for example, into the FY2009 budget resolution (S.Con.Res. 70), including House and Senate restrictions on the use of advance appropriations, procedures to adjust budget levels to

<sup>8</sup> For a detailed discussion regarding the changes in the budget process made by H.Res. 6, see CRS Report RL34149, *House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 110th Congress*, by Bill Heniff Jr..

accommodate program integrity initiatives, and Senate points of order pertaining to short-term and long-term deficits and provisions of appropriations legislation that constitute changes in mandatory programs with net costs.<sup>9</sup>

House and Senate leaders have indicated their intent to consider sizeable economic stimulus and recovery legislation in January 2009. Given that the budgetary impact of such legislation may be quite significant, it is possible that such legislation also may be the vehicle for strengthened budget enforcement provisions.

Congress also may express its interest in the budget process in venues that do not involve legislative activity. In the past, consideration in the Senate of nominations to the position of OMB director often has afforded the opportunity to discuss budget process reforms. Nominations to the position of OMB director are considered, pursuant to S.Res. 445 (108<sup>th</sup> Congress), by both the Senate Budget Committee and the Senate Homeland Security and Governmental Affairs Committee.<sup>10</sup>

## Selected Budget Process Reform Proposals

Among the various budget process reform proposals that may be considered during the 111<sup>th</sup> Congress, many pertain to categories such as internal “pay-as-you-go” (PAYGO) rules in the House and Senate; restoration of the statutory discretionary spending limits and PAYGO requirement; earmarking; and modifications to budget resolution, reconciliation, and appropriations processes. In order to illustrate the diversity of proposals, these and other categories of reform are discussed briefly below.

### PAYGO Rules and Discretionary Spending Limits

#### Statutory Enforcement Procedures

For FY1991 through FY2002, federal budget legislation was constrained by statutory limits on discretionary spending and a PAYGO requirement for direct spending (sometimes referred to as mandatory spending) and revenue legislation. Both these budget constraints were established by the Budget Enforcement Act of 1990, which amended the Balanced Budget and Emergency Deficit Control Act of 1985. The discretionary spending limits and the PAYGO requirement were enforced by sequestration, a process by which violations were remedied by automatic, across-the-board spending cuts. These statutory budget constraints were extended in 1993 and 1997 (and further modified by other legislation), but the discretionary spending limits expired at the end of FY2002 and the PAYGO requirement effectively was terminated in December 2002.

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<sup>9</sup> The House and Senate reached final agreement on the FY2009 budget resolution by agreeing to the conference report on S.Con.Res. 70 (H.Rept. 110-659; May 20, 2008), by a vote of 48-45 in the Senate, on June 4, 2008, and by a vote of 214-210 in the House, on June 5.

<sup>10</sup> Most recently, during the 110<sup>th</sup> Congress, the Senate considered the nomination of Jim Nussle to be OMB director, confirming his appointment on September 4, 2007 (by a vote of 69-24). Although budget process changes were not a prominent part of the debate in committee and on the floor, a PAYGO requirement and other procedural matters were discussed briefly.



In recent years, there has been considerable interest in restoring, and possibly making significant modifications to, the statutory enforcement procedures. Some observers have argued that the budget enforcement mechanisms associated with the BEA promoted fiscal discipline throughout the 1990s, and contributed to the federal government achieving a total budget surplus in FY1998—the first in almost 30 years—and the following three fiscal years.

With the return of sizeable deficits in the short term due to economic decline and in the long term due principally to the growth of Medicare, Medicaid, and Social Security, some have argued for restoring such statutory mechanisms to strengthen fiscal discipline. A principal point of contention with regard to the PAYGO requirement has been whether it should apply to revenue legislation. While some maintain that revenue reductions should not face the hurdle of a statutory PAYGO requirement because they are needed to continue the economic growth that fuels growing revenues, others assert that accommodating further revenue reductions in a PAYGO requirement (i.e., by applying it only to direct spending) likely would undermine efforts to achieve significant deficit reduction, in part by encouraging some spending initiatives to be reformulated as revenue-losing provisions.

The FY2008 and FY2009 budget resolutions included sense-of-the-Congress statements that a statutory PAYGO requirement should be reinstated to help control the deficit (Section 508 of S.Con.Res. 21 and Section 515 of S.Con.Res. 70, respectively), but the 110<sup>th</sup> Congress did not take any action in this regard.

In the current economic climate, Congress and the President are likely to address additional legislation that would increase the deficit in the short term in order to promote economic stimulus and recovery. Consequently, it may be more difficult at present to deal with restoring the statutory PAYGO requirement while not impeding current economic stimulus efforts.

In the case of the statutory limits on discretionary spending, one issue has been the period of time for which they should be established. Advocates of two- or three-year limits argue that the five-year framework employed earlier leads to limits that are too unrealistic in the later years (due to changing circumstances). Limits that are unrealistically high fail to impose discipline, while limits that are unrealistically low encourage evasions through gimmickry and other means. Shorter term limits, they argue, are more apt to be realistic and effective constraints on spending.

## House and Senate PAYGO Rules

As a supplement to the statutory PAYGO requirement, the Senate established its own PAYGO rule in 1993 as a provision in the FY1994 budget resolution. The rule, which operates differently than the statutory requirement, has been modified several times.

Over the years, several unsuccessful efforts were made to establish a PAYGO rule in the House. As indicated previously, a PAYGO rule was contained in the House's rules package for the 110<sup>th</sup> Congress, in Section 405 of H.Res. 6. Title IV was considered separately and adopted by the House on January 5, 2007, by a vote of 280-152 (all five titles of H.Res. 6 were adopted by the House and took effect on that day). The House's PAYGO rule imposes a bar against revenue and direct spending legislation that increases a deficit (or reduces a surplus) over different time periods (i.e., the six-year and 11-year periods beginning with the current fiscal year) and makes no exception for revenue or direct spending proposals assumed in the budget resolution.

In May 2007, the Senate revised its PAYGO rule as part of the FY2008 budget resolution (Section 201 of S.Con.Res. 21). The revised Senate rule conforms closely to the House rule, applying to the same two time periods and eliminating any exception for revenue or direct spending proposals assumed in the budget resolution; it expires on September 30, 2017. In addition, the revised Senate PAYGO rule is buttressed by other Senate rules designed to discourage legislation that increases the deficit in both the short- and long-terms; these rules can be waived only by the affirmative vote of three-fifths of the membership (60 Senators, if no seats are vacant).

The operation of the House and Senate PAYGO rules was confounded in 2008, during the second session of the 110<sup>th</sup> Congress, by the need to enact legislation dealing with the housing crisis and economic downturn in a manner that substantially increases the deficit in the short term. The expectation that additional legislation will be addressed in 2009 to stimulate the economy and facilitate recovery, with the associated increases in the deficit, makes the issue of potentially revising the House and Senate PAYGO rules more complicated and uncertain.

## Earmarking

Reform of congressional earmarking practices in appropriations, direct spending, and tax legislation (and accompanying reports) was addressed by the House and Senate with the adoption of new rules in the 110<sup>th</sup> Congress. In late 2008, House Republicans rejected a proposed moratorium with respect to earmark requests through mid-February 2009; a special 10-member panel of House Republicans is expected to report on further earmark reforms at that time.<sup>11</sup> Other proposals regarding earmark reform are expected to be proposed in the House and Senate during the 111<sup>th</sup> Congress, as well.

While definitions of earmarking vary, an earmark generally is considered to be an allocation of resources to specifically-targeted beneficiaries, either through earmarks of discretionary or direct spending, limited tax benefits, or limited tariff benefits. Earmarks may be proposed by the President or may be originated by Congress. Concern about recent earmarking practices arose because some of them were inserted into legislation or accompanying reports without any identification of the sponsor, and the belief that many earmarks were not subject to proper scrutiny and diverted resources to lesser-priority items or items without sufficient justification, thereby contributing to wasteful spending or revenue loss.

The essential feature of earmark reform proposals is a bar against the consideration of legislation that does not identify individual earmarks and the Members who sponsored them, the distribution of such information in a way that makes it readily available before the legislation is considered, and certification by earmark sponsors that neither they nor their spouses have a financial interest in the earmark.

Earmark reform provisions, requiring the identification of earmarks and their sponsors before legislation may be considered and imposing other restrictions on the use of earmarks, were contained in Title IV (Section 404) of the House's rules package for the 110<sup>th</sup> Congress, H.Res. 6, adopted on January 5, 2007. The earmark reform provisions were added to the rules of the House as Clause 9 of Rule XXI and Clauses 16 and 17 of Rule XXIII. The earmark identification

<sup>11</sup> See *CQ Today*: (1) "House GOP Backs Away from Earmark Moratorium," by David Clarke and Alan K. Ota, Nov. 20, 2008; and (2) "House Republicans Create Anti-Earmark Panel," by Catharine Richert, Dec. 19, 2008.

requirement applies to all legislation; if no earmarks are included, then a statement to that effect must be supplied. Later in the session, on June 18, 2007, the House adopted H.Res. 491, a measure dealing (for the remainder of the 110<sup>th</sup> Congress) with the consideration of conference reports on regular appropriations acts containing earmarks that were not submitted to the conference by either chamber. The measure established a point of order that is intended to curtail the practice of “air-dropping” earmark provisions, not first passed by either chamber, into appropriations acts at the conference stage.

On January 18, 2007, the Senate adopted S. 1, ethics reform legislation. Title I of the act, referred to separately as the Legislative Transparency and Accountability Act of 2007, included earmark reform provisions requiring the prior identification of earmarks, and their sponsors, in all spending and revenue legislation, and various other constraints on earmarking practices. Senator Robert C. Byrd, the chairman of the Senate Appropriations Committee, announced on April 17 that the committee would follow a policy of requiring earmark disclosure for the FY2008 appropriations cycle, similar to the requirements set forth in S. 1, pending further action on the measure.

On July 31, 2007, the House passed S. 1 with an amendment under the suspension of the rules procedure, by a vote of 411-8. The Senate agreed to the House amendment, by a vote of 83-14, on August 2, thus clearing the measure. President George W. Bush signed the bill into law on September 14, 2007, as P.L. 110-81 (121 Stat. 735-776), the Honest Leadership and Open Government Act of 2007. In its final form, P.L. 110-81 included earmark reform provisions in Section 521 (Congressionally Directed Spending), which were added to the Standing Rules of the Senate as a new Rule XLIV.

## **Congressional Budget Resolution and Reconciliation**

The Congressional Budget Act of 1974 requires the House and Senate to adopt a budget resolution each year, setting forth aggregate spending and revenue levels, and spending levels by major functional categories, for at least five fiscal years. The budget resolution, which is a concurrent resolution and therefore does not become law, provides an overall budget plan that guides congressional action on individual spending, revenue, and debt-limit measures. The 1974 act includes an optional reconciliation procedure that provides for the development and consideration of revenue, spending, and debt-limit legislation to carry out budget resolution policies; enforcement of budget resolution policies also occurs by means of various points of order that may be raised on the floor. Budget resolutions and reconciliation measures are considered under expedited procedures in both chambers.

Some Members of Congress, as well as the President, have argued that the budget resolution would be more effective in enforcing budget policy by making it a joint resolution requiring the President’s approval. A joint budget resolution would directly involve the President in congressional actions on the budget early in the process. If the President and Congress reach an impasse on a joint budget resolution, however, some are concerned that action on spending and revenue bills might be significantly delayed.

During the 1980s and much of the 1990s, reconciliation was used principally as a means of reducing the deficit. While some reconciliation measures included spending increases or revenue reductions, the net impact of the legislation was to reduce the deficit. In recent years, the reconciliation process has been used mainly to expedite the passage of legislation that increases the deficit, primarily through revenue reduction.

Some Members in the House and Senate have argued that the reconciliation process should be altered so that it may be used only to reduce the deficit. As part of the changes in the budget process included in the rules package for the 110<sup>th</sup> Congress, H.Res. 6, the House included a ban (in Section 402) against the consideration of a budget resolution containing reconciliation directives that would increase the deficit or reduce the surplus over the six-year or 11-year periods beginning with the current fiscal year. The Senate included a similar ban for the same two time periods in the FY2008 budget resolution (Section 202 of S.Con.Res. 21).

## Annual Appropriations Process

Discretionary spending, which amounts to more than one-third of federal spending, is provided each year in regular, supplemental, and continuing appropriations acts. Discretionary spending funds most of the routine operations of federal agencies.

Considerable attention was focused during the past two Congresses on Appropriations Committee structure. At the beginning of the 109<sup>th</sup> Congress, the House and Senate Appropriations Committees consolidated and realigned their subcommittees in order to streamline the appropriations process, facilitate the timely enactment of appropriations bills, and minimize the likelihood of using consolidated appropriations acts. Both committees disbanded their VA-HUD Subcommittee, and the House Appropriations Committee disbanded two others (District of Columbia and Legislative Branch), leaving 12 Senate and 10 House appropriations subcommittees.

At the start of the 110<sup>th</sup> Congress, further adjustments in subcommittee alignments of the House and Senate Appropriations Committees were made, leaving each committee with 12 subcommittees. Among the changes made, each committee established a Financial Services and General Government Subcommittee and the House Appropriations Committee reestablished a Legislative Branch Subcommittee. Later during the 110<sup>th</sup> Congress, the House adopted H.Res. 35, a measure establishing a Select Intelligence Oversight Panel of the House Appropriations Committee. The panel is charged with studying and reviewing intelligence activities and the intelligence budget and making recommendations in this area; it does not exercise jurisdiction over appropriations legislation for these purposes. The panel includes Members of the House Appropriations Committee and the House Permanent Select Committee on Intelligence. This action represented the House's response to one of the recommendations of the 9/11 Commission.

When a regular appropriations act or a continuing resolution is not in place after the start of the fiscal year on October 1, an agency does not have the legal authority to incur obligations in order to function and must shut down, resulting in the furlough of federal employees and disruptions in service. In order to prevent a government shutdown (or the threat of one) due to the expiration of funding, some Members have proposed establishing an automatic continuing resolution. An automatic continuing resolution would provide an uninterrupted source of funding for discretionary activities in the event one or more regular appropriations acts are not enacted by the start of a new fiscal year. While such a device could eliminate or reduce employee furloughs and service disruptions, some view an automatic continuing resolution as substituting a formulaic response for deliberate and informed decision-making.

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## Item Veto/Expanded Rescission Authority

When a spending or revenue act is sent to the President for his consideration, he must approve or veto the measure in its entirety. After a spending measure has become law, the President may impound funds through rescission, which cancels the funding, or deferral, which delays the expenditure of funds. Congress exercises its responsibilities in this area through procedures established under the Congressional Budget and Impoundment Control Act of 1974 and the regular legislative process.

Advocates of greater budget discipline proposed the Line Item Veto Act, which became law in 1996 (P.L. 104-130) but was struck down by the Supreme Court on June 25, 1998, in *Clinton v. City of New York*, 118 S.Ct. 2091 (1998). Under this act, the President was authorized to strike individual items of discretionary spending, direct spending, and certain limited tax benefits in any law.

In the years following the Supreme Court decision, various proposals have been made in Congress to grant item veto authority to the President in a manner that passes constitutional muster or to otherwise expand his rescission powers. President George W. Bush, in 2006, proposed a “legislative line-item veto,” under which Congress would have to consider proposed rescissions in an expedited manner. The House passed H.R. 4890, the Legislative Line Item Veto Act of 2006, on June 22, 2006, by a vote of 247-172; the Senate did not act on the measure. The Senate considered a legislative line-item veto proposal in the 110<sup>th</sup> Congress, in the form of an amendment offered by Senator Judd Gregg, first to S. 1 and then to minimum wage legislation, H.R. 2; in both instances, the Gregg amendment ultimately was withdrawn.

While advocates of the item veto or expanded rescission powers for the President contend that such tools will enhance budgetary discipline, critics suggest that their usefulness for budgetary discipline is overstated and that they may adversely affect the balance of power between Congress and the President over budget decisions.

## Commission/Task Force on Long-Term Budgetary Issues

Considerable attention has been focused recently on the large imbalances projected in the federal budget over the long term, particularly with respect to the Social Security, Medicare, and Medicaid programs. One device advocated by some as a means of compelling action on long-term budgetary issues is a bipartisan commission or task force empowered to recommend legislative changes that would correct or mitigate the imbalances.

Advocates of the commission or task force approach argue that it would be an effective means of surmounting political opposition and achieving an end result because of the bipartisan nature of the group, the avoidance of preconditions with respect to policy options (i.e., all options would be “on the table”), and the action-forcing nature of expedited legislative procedures. Adherents to the use of regular legislative procedures to deal with these issues maintain that while they may entail a more time-consuming and difficult route, they afford more openness and participation in the decision-making process and are more likely to lead to widespread acceptance of the results.

## Capital Budgeting

Unlike many states, the federal government does not employ separate capital and operating budgets; instead, all revenue and spending is merged together into a “unified” budget. Information on capital budgeting, however, has been provided for many years as a separate chapter in one of the volumes of the President’s budget. Interest in adopting a capital budget for the federal government has been examined from time to time. In 1999, a commission established by President Bill Clinton pursuant to Executive Order 13037 (March 3, 1997), the President’s Commission to Study Capital Budgeting, recommended several changes in budgetary practice but did not recommend the adoption of a formal capital budget.

Advocates of capital budgeting generally regard it as a means of boosting resources for infrastructure needs (e.g., surface transportation and aviation systems struggling to meet capacity and deteriorating water infrastructure), overcoming an alleged bias against capital spending in the current budget process, and rationalizing decision-making in this area. Critics of capital budgeting assert that shifting a significant portion of the budget to an accrual basis (in which costs are apportioned over the lifetime of an asset rather than accounted for up front) would unduly complicate the budget process and undermine the task of setting priorities over the full range of governmental activities.

As a first step toward improved budgeting for infrastructure needs, some have advocated more information gathering and analysis in this area. One proposal introduced in the 110<sup>th</sup> Congress, for example, would have created a bipartisan National Commission on the Infrastructure of the United States charged with studying, among other things, “the methods used to finance the construction, acquisition, rehabilitation, and maintenance of public works improvements (including general obligation bonds, tax-credit bonds, revenue bonds, user fees, excise taxes, direct governmental assistance, and private investment).”

## Biennial Budgeting

While many authorizations are enacted on a multiyear cycle, Congress acts on budget resolutions and appropriations acts annually. Biennial budgeting proposals would change the cycle under which Congress acts on budget resolutions and appropriations acts (and annual authorization acts) to two years.

Biennial budgeting proposals are intended to reduce the amount of time Congress spends on budgetary legislation, to allow more time for congressional oversight of federal agencies and programs, and generally to provide for more efficient budget decision-making. In the view of some, however, a biennial approach could impair Congress’s ability to respond quickly to changing economic and budgetary circumstances.

<http://wikileaks.org/wiki/CRS-R40113>

## **Appendix. Citations to Selected Budget Process Laws**

### **Budget and Accounting Act of 1921**

P.L. 67-13; June 10, 1921; 42 Stat. 20-27.

### **Budget and Accounting Procedures Act of 1950**

P.L. 81-784; September 12, 1950; 64 Stat. 832-845.

### **Congressional Budget and Impoundment Control Act of 1974**

P.L. 93-344; July 12, 1974; 88 Stat. 297-339.

### **Balanced Budget and Emergency Deficit Control Act of 1985**

Title II of P.L. 99-177 (Increasing the Statutory Limit on the Public Debt); December 12, 1985; 99 Stat. 1038-1101.

### **Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987**

Title I of P.L. 100-119 (Increasing the Statutory Limit on the Public Debt); September 29, 1987; 101 Stat. 754-784.

### **Budget Enforcement Act of 1990**

Title XIII of P.L. 101-508 (Omnibus Budget Reconciliation Act of 1990); November 5, 1990; 104 Stat. 1388-573 through 630.

### **Omnibus Budget Reconciliation Act of 1993**

P.L. 103-66; August 10, 1993; 107 Stat. 683-685 (Title XIV).

### **Unfunded Mandates Reform Act of 1995**

P.L. 104-4; March 22, 1995; 109 Stat. 48-71.

### **Line Item Veto Act**

P.L. 104-130; April 9, 1996; 110 Stat. 1200-1212.

## **Budget Enforcement Act of 1997**

Title X of P.L. 105-33 (Balanced Budget Act of 1997); August 5, 1997; 111 Stat. 677-712.

**Notes:** Major portions of selected budget process laws are codified as follows:

2 U.S.C. 621, et seq. (Congressional Budget and Impoundment Control Act of 1974, as amended);

2 U.S.C. 900, et seq. (Balanced Budget and Emergency Deficit Control Act of 1985, as amended); and

31 U.S.C. 1101, et seq. (Budget and Accounting Act of 1921, as amended).

For additional information on these and other budget process laws, see CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al..

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