



BUDGET BULLETIN



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INFORMED BUDGETEER

BROTHER, CAN YOU SPARE A DEEM?

- With rumors swirling anew this week of a budget conference, it is too early to say that Congress will not adopt a conference report on a Budget Resolution for 2009, but the possibility of no conference agreement has been the subject of some speculation. So it may be useful to refresh the memories of budgeteers who want to know what happens if there is no conference agreement on the 2009 Budget Resolution.

What is a “deemer”?

- A deeming resolution or a deeming provision (known by budget geeks as a “deemer”) refers to legislation that establishes, in whole or in part, updated budget levels and related budget enforcement for a budget cycle. The House or Senate, or both, have sometimes used deemers, either on a temporary basis when Congress is late in adopting a Budget Resolution conference agreement, or for a whole year when it fails to adopt a Budget Resolution conference agreement altogether.
- There are no rules regarding the form or content of deemers, as they were not contemplated by the Congressional Budget Act. Their use has evolved, *ad hoc*, out of necessity. They are just like any other legislation, so, unlike Budget Resolutions, they do not qualify for privileged consideration under the House or Senate rules. They may be shaped to meet the particular needs for the upcoming fiscal year and may take the form of a simple resolution or be incorporated into a bill that is enacted into law.
- Thanks to an excellent [summary by the Congressional Research Service](#) (clickable for some *Bulletin* readers), the following is some background information on the history of deemers. Then the *Bulletin* summarizes the procedural consequences if Congress fails to adopt a conference report on the Budget Resolution for 2009.

History

- For **FY 1999**, the first year for which the Congress failed to adopt a conference report on the budget, the House and the Senate took separate, but similar, approaches to “deem” budget-resolution-like information for each chamber.
- When the Senate passed its version of the 1999 Budget Resolution, it also adopted a Senate resolution setting out a 302(a) allocation for the Senate Appropriations Committee until a 1999 Budget Resolution was adopted. When Congress did not adopt a Budget Resolution by the time FY 1999 started, the Senate adopted another Senate resolution setting budgetary aggregates for 1999-2003 and providing allocations for all Senate committees.
- The House also adopted two separate House resolutions dealing with 1999. The first resolution simply provided the House Appropriations Committee with a 302(a) allocation for 1999. Subsequently, at the beginning of the new session in January 1999, the House adopted a House resolution with a section directing the chairman of the House Budget Committee to publish in the *Congressional Record* budget aggregates and committee spending allocations for 1999-2003 (based on the House-passed Budget Resolution for 1999) to provide the basis of budget enforcement. This model, where the House used two

deemers for separate sessions spanning a fiscal year, was used in subsequent years (see table below).

- For **FY 2003**, the Senate did not even attempt to pass a Budget Resolution, so there was no conference. As a result, the House adopted a deeming resolution (as a part of a rule for the consideration of the 2002 Supplemental Appropriations Act) that put into effect in the House all the levels and allocations under the House-passed 2003 Budget Resolution.
- In the Senate, Senator Gramm’s opposition throughout 2002 thwarted bipartisan attempts to adopt a deeming resolution along with an extension of budget enforcement points of order (such as the Gregg/Feingold extension of the old-fashioned pay-go rule) that were expiring on September 30, 2002. (By October 2002, Senator Gramm partially relented and allowed the Senate to extend the pay-go point of order only until April 2003; but there was still no 2003 deemer.)
- In January 2003, after the Republicans regained control of the Senate, they were able to finish passing appropriation bills for 2003 without a 302(a) allocation in place for appropriations. When Democrats offered amendments to increase spending in each bill above the levels reported to the floor, Republicans defeated those amendments by simple majority vote through tabling motions (so they didn’t need the easier, 41-vote 302(f) point of order that would have been available if there were 302(a) and 302(b) allocations for appropriation bills).

Previous Senate Deemers			
Year	Number	Adopted	Measure
1999	S. Res. 209	4/2/1998	Senate resolution
	S. Res. 312	10/21/1998	Senate resolution
2003	Actions to establish a deeming resolution were unsuccessful		
2005	H.R. 4613	7/22/2004	Sec. 14007 of the Defense Appropriations Act for FY2005; became P.L. 108-287.
			Sec. 7035 of the FY2006 Emergency Supplemental; became P.L. 109-234.
2007	H.R. 4939	6/15/2006	Emergency Supplemental; became P.L. 109-234.
Previous House Deemers			
Year	Number	Adopted	Measure
1999	H. Res. 477	6/19/1998	Sec. 2 of rule providing for consideration of FY1999 MilCon Appropriations Act
			Sec. 2(a) of 106th Congress opening-day rules package
2003	H. Res. 428	5/22/2002	Sec. 2 of rule providing for consideration of FY2002 supplemental
2003	H. Res. 5	1/7/2003	Sec. 3(a)(4) of 108th Congress opening-day rules package
2005	H. Res. 649	5/19/2004	Sec. 2 of rule providing for consideration of FY2005 budget resolution
2005	H. Res. 5	1/4/2005	Sec. 3(a)(4) of 109th Congress opening-day rules package
2007	H. Res. 818	5/18/2006	Sec. 2 of rule providing for consideration of FY2007 Interior Appropriations Act
2007	H. Res. 6	1/5/2007	Sec. 511(a)(4) of 110th Congress opening-day rules package

Source: CRS, *The “Deeming Resolution”: A Budget Enforcement Tool*, Sept. 4, 2007

- In 2004, the House adopted the Conference Report on the **FY 2005** Budget, but the Senate never did. When the House

adopted the rule for consideration of that conference report, the rule included deeming language that put the conference report on the Budget Resolution into effect for the House. The Senate did not try to deem an entire “replacement” for the Budget Resolution, and instead settled for deeming a 2005 302(a) allocation for the Senate Appropriations Committee only (through a provision in the Defense Appropriations Act for FY 2005, enacted in August 2004). The Senate Budget Committee continued to use the 2004 Budget Resolution to enforce other budget points of order and other committees’ legislation.

- For **FY 2007**, the House adopted its deeming resolution through a special rule governing consideration of the Interior Appropriations bill for 2007. That deemer put into effect all the budget levels in the House-passed version of the 2007 Budget Resolution. The Senate’s deemer, adopted upon enactment of the 2006 supplemental appropriations bill, was far narrower in scope. A provision in the supplemental set a 302(a) allocation only for the Senate Appropriations Committee for 2007. For everything else, the Senate continued to enforce the 2006 Budget Resolution.

Consequences of No Budget/No Deemer for 2009

- If Congress does not agree to a conference report on the 2009 Budget Resolution, and new enforcement levels and aggregates for discretionary spending, direct spending and revenues are not “deemed” through another method, then the **2008 Budget Resolution would continue to be enforced**. Under the 2008 Budget Resolution, the enforcement periods for authorizing committees and revenues are 2008 (while we are still in 2008) and 2008-2012 (and 2008-2017 for Senate pay-go only).
- Legislation is already being scored by CBO and JCT for the eleven-year period 2008-2018, but without a new Budget Resolution or deemer, there is no mechanism to enforce the 2018 numbers in the Senate. (The **time periods for the House pay-go rule are now different from the Senate’s pay-go rule**; the House is enforcing pay-go for 2008-2013 and 2008-2018.)
- **Appropriations Committee**. The Congressional Budget Act says the House can begin to consider 2009 appropriations bills after May 15, even in the absence of a 2009 Budget Resolution or deemer.
- Although the Budget Act is silent about a specific date, the Senate also may consider 2009 appropriation bills. But in the absence of a Budget Resolution or deemer, those bills would be subject to a 303(c) point of order (which prohibits consideration of 2009 appropriation bills until a 2009 Budget Resolution or 2009 302(a) level has been adopted – but this point of order can be waived by a simple majority vote, so it is relatively meaningless).
- **If the House and Senate proceed with appropriation bills in the absence of a 2009 Budget Resolution or deemer, there is no congressional enforcement limit on the amount that can be appropriated for 2009**. However, the limit of \$25.158 billion on advance appropriations for 2010 (set in the 2008 Budget Resolution) would still apply.
- If the House, and especially the Senate, want to avoid considering appropriation bills for 2009 without an enforceable

limit, then each body would have to adopt a 302(a) allocation for each Appropriations Committee for 2009. This could happen either through separate House and Senate Resolutions or, as has happened in the past, through a combination of a House resolution and a 302(a) allocation for the Senate that is enacted in a law, most likely an appropriation bill.

- In the Senate, an appropriation bill that included a 302(a) allocation for 2009 would be subject to a point of order under section 306 of the Congressional Budget Act because setting such an allocation is within the jurisdiction of the Budget Committee. If a Senator were to raise the 306 point of order against the appropriation bill that included a 302(a) allocation deemer, and the motion to waive the point of order does not garner 60 votes, then **the whole bill would fall under the point of order**.
- **Authorizing Committees in the Senate**. Without a 2009 Budget Resolution, the BA and outlay totals for direct spending legislation would continue to be enforced for 2008 and for the 2008-2012 period. Few Senate committees have room to create new spending without tripping a 302(f) point of order, and no committee can increase the deficit (by increasing spending or reducing revenues without an offset) because of pay-go constraints.
- Reserve funds contained in the 2008 Budget Resolution could still be used to adjust committee allocations (in other words, tax increases could be used to pay for spending increases and avoid the 302(f) and pay-go points of order) if the legislation satisfied the reserve fund criteria (regarding subject matter and 2008-2012 and 2008-2017 deficit neutrality constraints). The Senate-passed 2009 Budget Resolution gave no room to any authorizing committee to do any net new spending.
- **Revenues in the Senate**. Under the 2008 resolution, the revenue aggregate would continue to be enforced for 2008 and for the 2008-2012 period, and there is still room in the revenue aggregates to reduce revenues by \$120 billion over the 2008-2012 period and avoid a 311 point of order (this is the amount left over because no action was taken to make last year’s Baucus amendment “come true”). However, legislation providing a tax cut would still be subject to a pay-go point of order unless it is offset.
- By comparison, the revenue aggregates in the Senate-passed 2009 Budget Resolution would allow \$407 billion of tax cuts over the 2008-2013 period. This amount would be enough to accommodate, without offsets, an AMT patch for 2008 and extension of certain tax policies after 2010 (Baucus amendment – 10% bracket, child credit, marriage penalty relief, some death tax relief). However, pay-go would still apply, and such legislation, if not offset, would be subject to a 60-vote pay-go point of order.
- **Pay-go Scorecard in the Senate**. Prior to enactment of the AMT patch (which was not offset) at the end of calendar 2007, there was a fleeting surplus of about \$1.3 billion on the pay-go scorecard. Now the pay-go scorecard is \$49 billion in the hole. Therefore, in the Senate, any direct spending or revenue legislation that increases the deficit by even a penny must be offset over the 2008-2012 and 2008-2017 periods or else face a pay-go point of order.

