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INFORMED BUDGETEER

The previous edition of the *Bulletin* summarized the first pieces of legislation considered by the House and Senate in this 110th Congress and discussed how they would change the treatment of earmarks. This *Bulletin* continues the discussion by comparing how the key pieces of legislation address the issues of pay-go and reconciliation.

UNTANGLING THE PAY-GO KNOT

- Most of the reporting on pay-go has gone along the lines of: Democrats want to renew strengthened pay-as-you-go budget rules that lapsed in 2002; the House has already installed a pay-go rule; the Democratic-controlled Senate is expected to do the same as a result of one of their early bills.

- Is that an accurate account? To understand the pay-go changes proposed to occur in the 110th Congress, one needs to understand the way things were before. From 1991-2002, there was a pay-go law on the books that required OMB to sequester (reduce) spending across the board if Congress enacted direct spending or revenue legislation that increased the deficit. That law is the pay-go discipline that lapsed at the end of FY2002.

- The Senate has had a parallel pay-go point of order in effect since 1993, though its application has evolved in various forms over the last 15 years (see past *Budget Bulletin* http://budget.senate.gov/republican/analysis/2003/bb12-2003.pdf for pay-go point of order history). The Senate's pay-go point of order still exists and continues to be enforced against legislation even today. For example, the Senate's pay-go point of order applies against the small business tax incentive amendment to S. 5, the minimum wage bill, which the Senate is currently considering. And a pay-go point of order was raised and waived in December against H. R. 6111, the Tax Relief and Health Care Act of 2006.

- As for the House, it has never before had any kind of pay-go point of order – not until January 5, 2007, when the House agreed to its rules package (H. Res. 6) for the 110th Congress. Title IV of that package included the pay-go point of order that applies in the House. But H. Res. 6 did not renew the statutory pay-go procedures (enforced by sequestration) that lapsed in 2002 – there is no way that it could have, because a House resolution cannot make new law.

- For the 110th Congress Majority Leader Reid and Budget Committee Chairman Conrad have introduced S. 10, and section 2 of that bill would establish a revised Senate pay-go point of order. But like the new House pay-go point of order, S. 10 does not propose to reinstate the statutory pay-go procedures (enforced by sequestration) that expired in 2002 (though S.10 could have proposed reviving those procedures since S. 10 could eventually become a law). The bill was referred to the Budget Committee. There is no indication of any immediate action on that measure, though components of it may be reprised in the 2008 budget resolution.

- What will happen to legislation that encounters either of these points of order in the House or Senate?

- In the House, each bill that would increase mandatory spending or reduce taxes without an offset now is subject to the pay-go point of order, though the House could waive its pay-go point of order with a simple majority vote, by adopting the rule that accompanies the bill if that rule waives the point of order.

- Under S. 10, legislation increasing mandatory spending or reducing taxes would have to be offset (or the pay-go scorecard would have to have a sufficient savings balance), or would require that 60 Senators vote to waive the point of order (provided a Senator raises the point of order). Currently, as a result of the Senate enforcing the 2006 budget resolution with the existing Senate pay-go point of order, legislation to increase mandatory spending or reduce taxes over the five years covered by that budget resolution needs an offset or else the support of 60 Senators to waive.

- The table below compares important features of the now-existing House pay-go point of order to the proposed Senate pay-go point of order in S. 10.

PAY-GO IN THE 110TH CONGRESS		
	S. 10	*House (H. Res. 6)*
Description	Would create a point of order in the Senate against measures that increase or create an on-budget deficit in the current year, the budget year (1st year), the first 5 years, or the second 5 years (**would not apply if sufficient on-budget surpluses were projected**).	*Makes it out of order to consider legislation that increases the deficit or reduces the surplus for the first 6 years (2007 – 2012) or the first 11 years (2007 – 2017).*
Votes Needed to Waive Point of Order	60 votes	*Simple majority*
Scorecard	Uses a cumulative scorecard, so that savings in earlier enacted bills could offset deficit increases in later bills.	*House point of order applies on a bill-by-bill basis. No scorecard maintained.*
Sequestration	No sequestration enforcement.	*House point of order is not a law and therefore can not include sequestration.*
Expiration date	September 30, 2012.	*House point of order is effective for the 110th Congress only.*
In effect?	Must be enacted to go into effect. (Pay-go provision in S. 10 could be put into effect if written into a new budget resolution that Congress agrees to).	*House point of order is in effect now.*

- As with all of the forms of pay-go discipline that have existed since 1990, neither point of order dealing with pay-go (the one that now applies in the House and the one proposed in the Senate) would apply to legislation that provides for simple extension (with no policy change) of expiring mandatory programs (e.g., food stamps, TANF, SCHIP, farm programs, and veterans compensation) or expiring excise taxes dedicated to trust funds (airport taxes, gasoline and other highway trust fund taxes).

- Why? Because the Budget Act has required since 1990 that the baseline assume continuation of those expiring mandatory programs and expiring excise taxes. So legislation that would extend those expiring laws is scored as having no budgetary effect relative to the baseline and would not affect the deficit relative to the baseline (even though those programs do have a cost and are part of the annual deficit calculation). If the baseline did assume these programs would expire, then legislation to reauthorize them would trip pay-go.

- The situation, however, is different for legislation that reduces taxes over the next 10 years. Both the Senate point of order under S. 10 and the House pay-go point of order would apply to extending the 2001 and 2003 tax cuts, extensions of other expiring tax provisions, and any new tax cuts. Both points of order would apply to legislation that continues to provide relief from the Alternative Minimum Tax as well.

RECONCILIATION - BIG WORD, BIG POTENTIAL CHANGE, BUT HARDLY NOTICED

- There's been a lot of buzz about the new majority's action on pay-go. What has attracted little attention is something that could potentially be more significant – a change to the rules for reconciliation legislation.

- Reconciliation is an optional component of the annual Congressional budget process. The budget resolution can direct committees to produce legislation that complies with the fiscal assumptions in the budget resolution. Reconciliation legislation is considered under privileged procedures (limited amendments; time limit for consideration; may not be filibustered) and may be passed by a simple majority vote in the Senate.

Reconciliation

	S. 10	*House (H. Res. 6)*
Budget Resolution	Would create a point of order in the Senate against consideration of a budget resolution that contains reconciliation directive(s) that reduce the surplus or increase the deficit in the budget year (1st year), the first 5 years, or the second 5 years.	*Makes it out of order to consider a budget resolution that contains reconciliation directive(s) that reduce the surplus or increase the deficit for the first 6 years (2007 – 2012) or the first 11 years (2007 – 2017).*
Votes Needed to Waive Point of Order	60 votes	*Simple majority*
Reconciliation legislation	Would create a 60-vote point of order in the Senate against consideration of reconciliation legislation that reduces the surplus or increases the deficit in the budget year (1st year), the first 5 years, or the second 5 years.	*No similar point of order.*
Expiration date	No expiration date.	*House order is effective for the 110th Congress only.*
In effect?	Must be enacted to go into effect. (Reconciliation provision in S. 10 could be put into effect if written into a new budget resolution that Congress agrees to).	*House point of order is in effect now.*

- In the past, reconciliation has been used to implement the fiscal policy goals embodied in a budget resolution – be it spending reductions, tax increases or tax relief. The newly adopted House rules (H. Res. 6), as well the new reconciliation point of order proposed in S. 10, would limit the use of reconciliation to deficit reduction measures only.

- The change to the reconciliation rules would be significant, especially in the Senate. As described in the accompanying article, the pay-go point of order proposed in S. 10 would not lie against legislation that expands an entitlement or gives tax relief (even if that legislation is not offset) as long as the budget resolution baseline projects an on-budget surplus that is large enough to cover the cost of the new benefit or tax relief.

- However, such legislation could not be reconciliation legislation (because the new S. 10 reconciliation point of order would apply even in times of surplus). Instead, the legislation would have to be considered under regular order and would be subject to filibuster – and possibly a 60-vote hurdle for cloture.

- To illustrate: in 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act. The bill was a reconciliation bill and was therefore considered under expedited procedures in the Senate and could not be filibustered. The bill was not subject to the Senate pay-go point of order, because the CBO baseline projected surpluses sufficient to cover the cost of EGTRRA. In short, the legislation needed a simple majority to clear the Senate.

- If the proposed points of order in S. 10 that would limit the contents of future budget resolutions and future reconciliation bills had been in effect in 2001, the EGTRRA legislation could not have been a reconciliation bill. The Senate would have had to consider it under regular order, and while it would not have been subject to the pay-go point of order in S. 10, it would have needed 60 votes to overcome a filibuster.