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Budget Enforcement Procedures and the Postal Service

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Executive Summary

Although the U.S. Postal Service is an independent establishment whose finances are by law separate from the executive branch budget, its financial independence is compromised by budget scoring considerations that prevent enactment of legislative changes needed to avert financial default. The U.S. Postal Service Office of Inspector General (OIG) explored these obstacles in an August 2009 white paper entitled *Federal Budget Treatment of the Postal Service*, pointing out the limited advantages conferred by the existing implementation of the Postal Service's off-budget status and recommending that the Postal Service take further steps to reduce its entanglement with federal budget issues.[1] In the two and a half years since publication of that paper, budget pressures on both the federal government and the Postal Service have become even more acute and budget-related obstacles to legislative relief even more consequential. This report updates the analysis in the 2009 white paper and, with the prospect that the Postal Service will continue to be affected by national budget issues, explains how budget enforcement mechanisms such as scoring work and how they can be addressed.

Federal Budget Treatment of the Postal Service

The 2009 white paper outlines how the Postal Service budget has been treated since the Postal Reorganization Act of 1970 exempted it from general budget and funding laws. In the early years after reorganization the Postal Service was or was not included in the President's budget by administrative decision, often depending on whether it was running a short-term surplus or deficit. In 1989, however, the Postal Service won permanent off-budget status based on a congressional policy decision that because it was fully funded by postage revenues "the Postal Service does not contribute to the Federal deficit problem" and should not be included in deficit reduction plans.[2] Social Security is the only other federal program with off-budget status.

Off-budget status for the Postal Service Fund has proven to be a poor shield against entanglement in budget squabbles. While the Postal Service Fund is by law officially not included in the budget totals the President sends to Congress each year, its receipts and expenditures are indeed part of a broad economic concept called the "unified

[1] U.S. Postal Service Office of Inspector General, *Federal Budget Treatment of the Postal Service,* Report No. ESS-WP-09-001, August 27, 2009, http://www.uspsoig.gov/foia_files/ESS-WP-09-001.pdf.
[2] House Committee on Post Office and Civil Service, *Postal Reorganization Act Amendments of 1989*, H. Rpt. No. 101-177, July 26, 1989, p. 3. At that time, postal rates were set so that the Postal Service would break even.

federal budget" that captures all government transactions with the public.[3] A second complicating factor is that Postal Service contributions toward the pensions and health benefits of its retirees are held in on-budget Treasury accounts, so that any reduction in the contribution levels, even to rectify overpayments, appears to be a reduction in government income and is scored as an increase in the budget deficit. These factors undermine the meaning of the Postal Service's off-budget status. They expose the Postal Service to an inappropriate and illogical application of the scoring process that threatens its ability to reform and heal its financial condition. Scoring and budget enforcement were created for a good purpose, but they are undermined when the scoring process assumes that unlikely or inappropriate inflows to the Treasury must occur.

The 2009 white paper describes how the Postal Service's budget status worked to the disadvantage of the Postal Service and its supporters in Congress as they sought to address the deterioration in Postal Service finances in the past decade. For example, when it was determined in 2002 that the Postal Service was setting aside much more than necessary to meet all of its obligations to its retirees in the Civil Service Retirement System (CSRS), a simple revision to the funding schedule was ruled out by budget scoring considerations. The Postal Service was required by legislation passed in 2003 to keep up its level of payments to the Treasury, first by paying off the debt it had accumulated over 30 years, and then by keeping the excess payments in a Treasury "escrow fund" that could not be spent.[4] In addition, the Postal Service was charged for the CSRS pension obligations earned by its employees for their prior military service, an amount previously paid by the Treasury.

Legislation in 2006 returned the military pension obligation to the Treasury and removed the escrow payment requirement, but substituted comparable required payments to the Treasury in the form of 10 years of annual payments of $5.4 billion to $5.8 billion into a newly created Postal Service Retiree Health Benefits Fund.[5] The numbers were not actuarially based, and the 10-year period of the payment schedule was based on the timeframe of the budget score. Although prefunding was beneficial when funds were available in 2006, these legislatively mandated payments have contributed to the current threatened insolvency.

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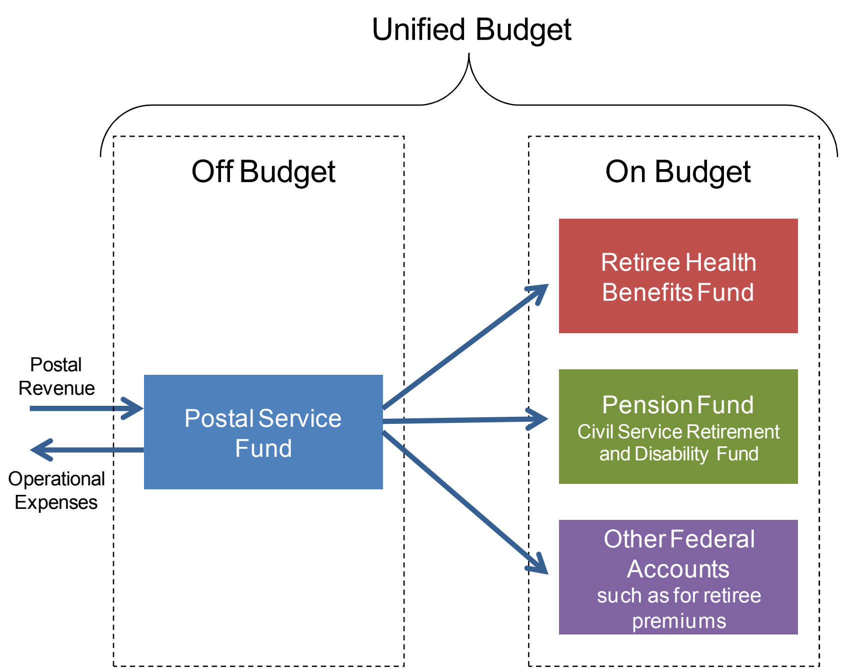
[3] Under 39 U.S.C. § 2009a, "the receipts and disbursements of the Postal Service Fund, including disbursements for administrative expenses incurred in connection with the Fund (1) shall not be included in the totals of (A) the budget of the United States Government as submitted by the President, or (B) the congressional budget (including allocations of budget authority and outlays provided therein)." The President's budget submission, however, includes off-budget and unified budget totals as well as the Postal Service's anticipated revenue and spending for informational purposes.
[4] *Postal Civil Service Retirement System Funding Reform Act of 2003*, Public Law 108-18, April 23, 2003, Sec. 3.
[5] Public Law 109-435, December 20, 2006, Secs. 802 and 803.

It is apparent from this truncated history, recounted much more fully in the 2009 white paper, that the Postal Service has never been able to take advantage of the independence from national deficit reduction struggles that Congress intended by taking the Postal Service Fund off budget in 1989. Even today, budget scoring obstacles are making it difficult to rectify what everyone agrees is a systematic overfunding of Postal Service obligations to the Federal Employees' Retirement System (FERS).

On-Budget versus Off-Budget Effects

A critical problem hampering legislative solutions is the importance of both off-budget and on-budget effects for calculating the consequence of proposals for the federal deficit. The 2009 white paper notes that while some budget enforcement mechanisms operate against legislation increasing the total unified deficit, including both on-budget and off-budget effects, others operate only when on-budget caps would be exceeded. Many recent legislative efforts have involved reducing payments to the Postal Service's on-budget retirement accounts. In these cases, estimates of the on-budget effects can appear much more damaging to the federal deficit than the broader unified estimates. The diagram below shows the off-budget and on-budget accounts most relevant to the Postal Service.

Flow of Funds to On-Budget and Off-Budget Accounts



Source: U.S. Postal Service Office of Inspector General.

The off-budget Postal Service Fund and its companion fund, the Competitive Products Fund, take in revenue from Postal Service products and services. (The Competitive Products Fund is not shown in the diagram for purposes of simplicity.) The Postal Service uses the funds to pay operational expenses.

The Postal Service is also required to make payments from the Postal Service Fund to on-budget governmental accounts. For example, the Postal Service makes pension contributions for FERS to the Civil Service Retirement and Disability Fund. Legislatively reducing these on-budget flows increases the on-budget deficit. A bill that proposes stopping $3 billion in Postal Service FERS payments will increase the on-budget deficit by $3 billion. The Postal Service Fund will be $3 billion better off, but there will be a problem if budget enforcement procedures consider only on-budget consequences. From the standpoint of the unified budget, such a bill is budget neutral — the on-budget deficit increases by $3 billion but off-budget losses decrease by $3 billion — as long as the Postal Service does not do anything to increase its spending or reduce its revenue. Recently, however, the Congressional Budget Office (CBO) has generally been assuming that the Postal Service will change its behavior and relax its cost cutting efforts, spending 50 percent of this on-budget relief. The consequence is an increase in the unified budget deficit. The table below shows the budgetary effects of reducing the Postal Service's FERS payments by $3 billion with and without these behavioral effects.

FERS Example: Budgetary Effects of Reducing Postal Service's FERS Contribution by $3 Billion

Budgetary Effects	Assuming No Behavioral Effects	Assuming Behavioral Effects of 50%
On-Budget Effect	+ $ 3.0 B	+ $ 3.0 B
Off-Budget Effects	- $ 3.0 B	- $ 1.5 B
Unified Budget Effects	$ 0 B	+ $ 1.5 B

Note: + increase to deficit; - reduction of deficit.

One option for dealing with the problem of budget enforcement mechanisms that look only at on-budget effects is for the Postal Service's pension and retiree health care accounts to be separated from the federal accounts and brought off budget. Such a change would make it possible to return overfunding to the Postal Service without an on-budget deficit, although behavioral effects could still be an issue.

The 2009 white paper recommended that the Postal Service investigate bringing its pension and retiree health care accounts off budget among several options to reduce the impact of budget scoring obstacles on its legislative program. The Postal Service made a proposal that would have that effect on August 2, 2011. It proposed "to segregate once and for all" the Postal Service's health and retirement benefit programs from those of the rest of the government, with the Postal Service taking full responsibility for their financing and administration. None of the bills introduced in Congress to address postal financial problems have incorporated this approach.[6]

[6] S. 1789, the 21st Century Postal Service Act of 2011, would allow for the Postal Service to negotiate with its unions to develop a postal-specific health plan for current employees.

Modifications have been proposed for the Postal Service's off-budget status. The deficit reduction plan released by President Barack Obama's Administration in September 2011 would restructure Postal Service retirement and retiree health contributions, allow it to institute 5-day delivery, and immediately institute an exigent rate increase.[7] It also would amend a significant on-budget enforcement mechanism, the Statutory Pay-As-You-Go Act of 2010 (Statutory PAYGO Act), to provide that "off-budget effects of the Postal Service Fund shall be considered as on-budget effects."[8] This seemingly simple change allows the savings that the Postal Service could achieve by reducing delivery days, as well as the revenues from the legislated rate increase, to be included with the reductions in retirement and retiree health payments to the Treasury as on-budget effects. The result is that the net effect of the President's September proposal, according to the Office of Management and Budget (OMB), would be a <u>decrease</u> in the government-wide deficit of nearly $19 billion over the 10-year period 2012 to 2021 rather than a $10.4 billion increase in the on-budget deficit.

A recent proposal by the House Committee on the Budget to reform the budget process went further and would have completely repealed the Postal Service's off-budget status.[9] This provision, however, was not included in the final version of the legislation passed by the House.[10] If such a repeal were enacted, it would have the same effect on scoring as the President's plan, but the Postal Service Fund would not necessarily have the same protections against future spending limits or across-the-board spending cuts — a process known as sequestration — as it does now.[11]

Budget Enforcement Changes Will Profoundly Affect the Postal Service

The Administration's proposal to count the off-budget effects of postal legislation as on-budget effects is controversial and a long way from adoption. Nevertheless, it is evidence that the treatment of Postal Service finances in budget enforcement negotiations remains of paramount importance to the achievement of postal legislative goals. Both the House and Senate Oversight Committees have developed postal legislation (H.R. 2309 and S. 1789), and individual members have introduced other bills as well. All of the legislative proposals will run into the same problem of showing an on-budget deficit if they have the net effect of reducing the flow of Postal Service payments to on-budget accounts.

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[7] The President's 2013 budget released on February 13, 2012, includes similar proposals.

[8] Office of Management and Budget, *The President's Plan for Economic Growth and Deficit Reduction: Legislative Language and Analysis*, September 23, 2011, pp. 35-36. See also the discussion at Democratic Members, House Committee on Oversight and Government Reform, *Recommendations to the Joint Select Committee on Deficit Reduction*, October 18, 2011, http://democrats.oversight.house.gov/images/stories/JSC_Recommendations_101211.pdf, pp. 18-19.
U.S. House of Representatives

[9] House Committee on the Budget, "Budget Process Reform," http://budget.house.gov/BudgetProcessReform/.

[10] H.R. 3581, the Budget and Accounting Transparency Act of 2011, as introduced on December 7, 2011, would have repealed 39 U.S.C. § 2009a and § 2011(f). The provision was removed when the bill was reported.

[11] H.R. 3581 as introduced would remove the Postal Service Fund's protection from statutory budget limits on expenditures (39 U.S.C. § 2009a(2)). While the Statutory PAYGO Act separately exempts the Postal Service Fund from its sequestration provisions, future budget legislation might not.

As the 2009 paper points out, the Postal Service, because of its off-budget status, has tended to remain aloof from budget process and enforcement issues. It deferred to the OMB and the CBO on the budget implications of its legislative program and regarded budget issues as beyond its purview or control. A case can be made, however, that it is more important than ever for the Postal Service to take early initiative and engage with more foresight in the debate over its treatment in the federal budget. It is far from clear that either the Obama Administration's proposal or the effort to bring the Postal Service on budget will ultimately succeed, but it would be beneficial for the Postal Service to have a view on whether either option is a good alternative.

Beyond proposals to adjust the Postal Service's off-budget status, there have been several significant changes to the budget enforcement process since the 2009 paper:

- The Statutory PAYGO Act is one new feature. It became law on February 12, 2010 and marks the return to statutory controls enforcing budget neutrality.[12] After 2002, legislation requiring budget neutrality had expired leaving House and Senate rules as the primary means of enforcement. The Statutory PAYGO Act considers on-budget legislative effects only and preserves the off-budget status of the Postal Service Fund.

- In January 2011 the new Republican majority in the House replaced the House PAYGO rule, which dated from 1997, with a Cut-As-You-Go (CUTGO) rule.[13] The CUTGO rule bars the consideration of legislation that has the net effect of increasing mandatory spending even if it is offset by increased tax revenue. Like the PAYGO rule it replaced, it covers off-budget as well as on-budget transactions.

- The Budget Control Act enacted in August 2011 has placed spending caps on total appropriations and raised the possibility that large automatic cuts may be triggered on defense and other spending.[14] While the Postal Service's own funds should not be affected by these spending cuts, the resulting environment may make passing any legislation that appears to increase the deficit more difficult.

All of these changes could influence the success of postal legislation. Another new element in the equation is the imminent end of the Social Security Trust Fund surplus. The presence of a net inflow into the Social Security trust fund created a political incentive to use the unified budget as the best deficit measure. The excess contributions coming into the Social Security Trust Fund offset on-budget deficits. When Social Security payments start exceeding contributions, the political incentive to use the unified budget will disappear. The Postal Service Fund, as the only other off-budget entity, is likely to be affected by any changes in the budget treatment of the Social Security Trust Fund.

[12] Public Law 111-139.
[13] U.S. House of Representatives, Rule XXI, Clause 10, http://www.rules.house.gov/singlepages.aspx?NewsID=142&rsbd=165.
[14] Public Law 112-25.

If the Postal Service is to engage more actively and with more foresight in the debate over its treatment in the federal budget, it is important that the relevant postal employees and stakeholders have a sophisticated and comprehensive understanding of the process by which budgetary decisions are made and negotiated. An in-depth description of ways that budgets are formulated in the executive and legislative branches may be of use. The OIG is not aware of any document that focuses on the application of budget process requirements as they affect the Postal Service. To fill the gap, this white paper was prepared in consultation with experts in the budget process. It reviews budget enforcement procedures with particular attention to their application to legislative initiatives of the Postal Service. As a complement to the 2009 paper, it provides rules and strategies for operating within this environment. The paper describes statutes, precedents, differing rules of the House and the Senate, and waiver provisions that defy simplification. Navigating this maze is critical for achieving legislative goals.

The OIG argued in its 2009 white paper that the Postal Service as a self-financing entity should be entirely off budget and its legislative agenda should not be stymied by budget scoring. Such a treatment is in keeping with the Postal Reorganization Act's intention to make the Postal Service's finances independent from the federal government's. Until such an outcome can be achieved, however, the second best solution is for the Postal Service and its stakeholders to understand the current landscape better so that they can be more effective in pursuing a constructive legislative agenda.

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Budget Enforcement Procedures and the Postal Service

Introduction

Budget enforcement procedures are an important element in determining how public policy is developed and implemented by the federal government. Congress and the President employ budget enforcement procedures to shape legislation and, under certain circumstances, determine how it is executed by departments and agencies.

The influence of budget enforcement procedures on the passage of legislation can vary. In situations where fiscal responsibility is a paramount concern, budget enforcement procedures may be used to defeat the passage of legislation that violates current budget policies, or to deter Congress from considering such legislation altogether. When political or policy dictates override concerns about fiscal restraint, budget enforcement procedures may be set aside, often by means of "safety valves" included within the procedures themselves, to allow legislation to be passed.

This paper examines budget enforcement procedures, principally as they are employed by the House and Senate in the legislative process. Following a general discussion that identifies budget enforcement procedures and explains how they operate, the paper reviews their application to U.S. Postal Service legislation, including an illustration drawn from actions occurring in the 111th Congress. In addition, the paper briefly discusses several approaches for addressing potential budget enforcement impediments to the consideration of legislation improving the Postal Service's financial position.

Overview of Budget Enforcement

What Is Budget Enforcement?

In the largest sense, budget enforcement encompasses rules and procedures governing actions by both Congress and the President. Budget enforcement is intended to promote the consideration, enactment, and implementation of legislation that is consistent with the current budget plan or other budgetary objectives. In most years, the current budget plan is the most recent concurrent resolution on the budget ("budget resolution") agreed to by the House and Senate. Other budgetary objectives beyond those established in the budget resolution may be enforced as well, such as the statutory requirement that legislation affecting revenues, mandatory spending, or both comply with "pay-as-you-

Budget enforcement is intended to promote legislation consistent with budget objectives.

go" (PAYGO) rules. Under these rules, even if Congress fails to agree to a spending plan, enforcement mechanisms designed to keep spending from growing are still in place.

In reaching agreement on a budget resolution, the House and Senate make a judgment regarding the appropriate budgetary policies to be pursued in terms of total spending, total revenues, the resulting deficit (or surplus), and other elements over a multiyear timeframe. Implementing the budget resolution relies on the subsequent consideration and passage of dozens of individual spending and revenue measures, with nearly every House and Senate committee exercising jurisdiction over some of them. As particular legislative proposals are considered, especially those to expand popular programs, it is easy for members of Congress to lose sight of their commitment to budget discipline. Budget enforcement procedures return the focus to these commitments and allow the House and Senate to consider the individual measures in a coordinated fashion, assessing the cost of each measure and evaluating its impact on the overall plan.

Budget enforcement procedures return members' focus to their commitment to budget discipline.

Who Is Involved in the Budget Enforcement Process?

In Congress, the chief budget enforcement agents are the House and Senate Budget Committees, which exercise jurisdiction over the annual budget resolution and monitor compliance with its overall budget policies. The two committees, however, do not operate in a vacuum. Their enforcement activities must be integrated with the political and legislative agendas set by the leadership, and the resolution of individual enforcement issues usually involves negotiation with the affected revenue and spending committees. As the enforcers of budget discipline, the Budget Committees sometimes are unpopular and viewed by other participants as obstacles to be overcome in the pursuit of their legislative goals. The Budget Committees are assisted in their tasks by several support entities, primarily the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT).

The President also plays an important role in budget enforcement, although it is mainly an informal one during the consideration of legislation by the House and Senate. The President's key agent in budget enforcement, the Office of Management and Budget (OMB), is an important participant as well.

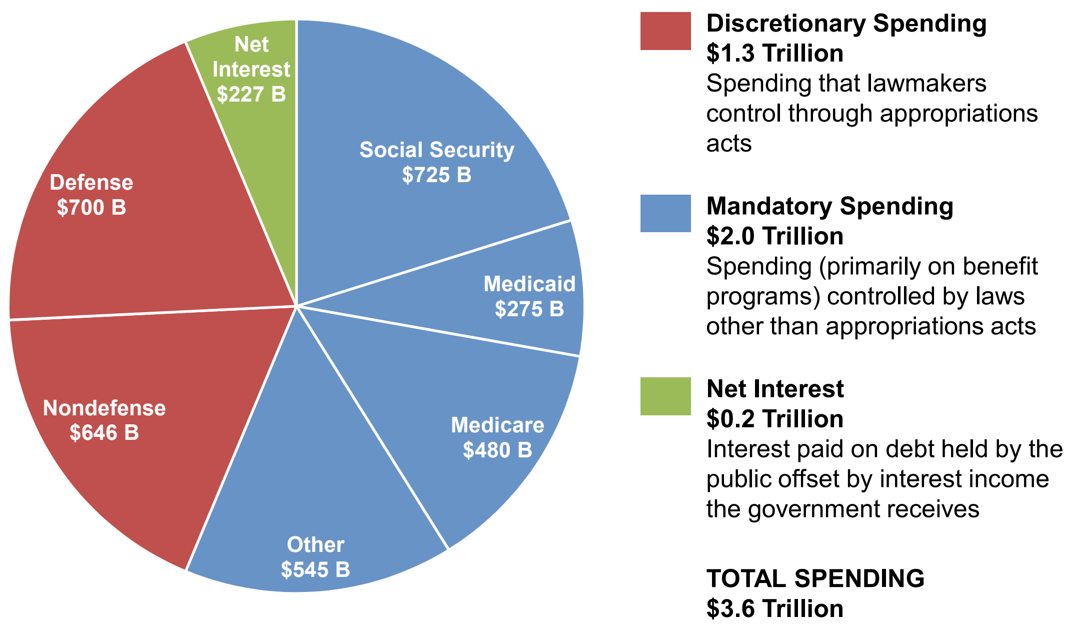
What Processes Are Used to Enforce the Budget?

Budget enforcement is more than a single set of procedures, because budget enforcement procedures must be able to accommodate legislation involving different types of budgetary transactions and a complex scheme of House and Senate committee jurisdiction. At the most basic level, for example, total federal spending is divided into two categories: (1) *discretionary spending*, which is controlled by and provided in annual appropriations acts under the jurisdiction of the House and

Budget enforcement is more than a single set of procedures.

Senate Appropriations Committees; and (2) *mandatory spending*, which is controlled by (and usually provided in) substantive laws under the jurisdiction of the legislative committees, (such as the Energy and Commerce Committee in the House or the Homeland Security and Governmental Affairs Committee in the Senate).[15] Figure 1 shows U.S. government spending for fiscal year (FY) 2011 broken out by category.[16]

Figure 1: U.S. Government Spending in FY 2011 Including On-Budget and Off-Budget Transactions



Note: Amounts do not total due to rounding.

Source: Congressional Budget Office chart modified by OIG.

Discretionary spending, which amounted to $1.3 trillion in 2011 or roughly one-third of total spending, largely funds the routine operations of federal agencies, while mandatory spending, which amounted to $2.0 trillion or nearly two-thirds of total spending, largely funds entitlement programs.[17] Except for a relatively small appropriation to the Postal Service Fund provided in annual appropriations acts, to provide free mail for the blind and overseas voters, Postal Service spending is mandatory and financed by Postal Service revenue from postage and fees. This revenue is not included as part of

[15] While many mandatory spending programs, such as Social Security and Medicare, have their own funding sources, other mandatory spending programs, such as Medicaid, do not. In these cases, funding for the program is provided in annual appropriations acts, but funding levels effectively are determined and controlled by the legislative committees.
[16] Congressional Budget Office, The U.S. Federal Budget Infographic, December 12, 2011, http://www.cbo.gov/doc.cfm?index=12577&type=1.
[17] U.S. government revenue totaled $2.3 trillion and included personal income taxes, corporate income taxes, payroll taxes such as Social Security and Medicare, and other taxes. Although some programs such as Social Security have dedicated trust funds, outflows from these funds to pay beneficiaries are included in U.S. government total spending and inflows (for example, from payroll taxes) are included as government revenue.

U.S. government revenue; rather, it is considered offsetting collections that count against total Postal Service spending.[18] As a result, the Postal Service's share of the Other Mandatory Spending category in Figure 1 is only $800 million.[19] This is the Postal Service's net cash flow in FY 2011 as measured by federal budgetary accounting.[20]

Different processes for budget enforcement exist to accommodate budget complexity. One set of budget procedures has been developed to enforce discretionary spending policies, while another set has been developed to enforce mandatory spending policies. In this manner, the Appropriations Committees, which control discretionary spending, and the legislative committees, which control mandatory spending, are insulated to some degree from the consequences of action (or inaction) by each other. Although within each process one enforcement mechanism may be particularly important (such as PAYGO requirements for mandatory spending bills), the full processes entail several different constraints that may come into play when legislation is considered.

Table 1 summarizes some of the major budget enforcement procedures currently in effect. (See Appendix A for a history of budget enforcement procedures during recent decades.) The Senate PAYGO rule prohibits consideration of direct spending or revenue legislation that would increase or cause an on-budget deficit over the applicable timeframes. The PAYGO rule for administrative actions was set out in a 2005 OMB memorandum.[21] Agencies that have discretion over mandatory spending must make a proposal to OMB to increase that spending.

The Statutory Pay-As-You-Go Act of 2010 (Statutory PAYGO Act) and the House Cut-As-You-Go (CUTGO) rule are discussed in more detail below following a review of the congressional budget process and the enforcement rules associated with it. The recent changes to discretionary spending implemented by the Budget Control Act of 2011 are also covered.

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[18] Funds for the Postal Regulatory Commission and the U.S. Postal Service Office of Inspector General also come from this revenue, although the spending is appropriated.
[19] Congressional Budget Office, *Budget and Economic Outlook: Fiscal Years 2012 to 2022*, January 2012, http://www.cbo.gov/sites/default/files/cbofiles/attachments/01-31-2012_Outlook.pdf, p. 132.
[20] According to the corporate accounting the Postal Service uses for its own financial statements, the Postal Service had a $5.1 billion loss in FY 2011.
[21] Office of Management and Budget, Memorandum No. M-05-13 from Joshua B. Bolten, *Budget Discipline for Agency Administrative Actions*, May 23, 2005, http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-13.pdf.

Table 1: Current Budget Enforcement Procedures

Procedure	Enforcement Mechanism(s)	Principal Enforcer(s)	Spending Affected	Basis of Procedure	Duration
Congressional budget process	Points of order and reconciliation process	House and Senate Budget Committees	On-budget spending: Discretionary and mandatory	Congressional Budget Act of 1974	1975-present
Senate PAYGO rule	Point of order	Senate Budget Committee	On-budget spending: Mandatory	Provisions in annual budget resolutions	1993-present
PAYGO rule for administrative actions	Review of agency budget requests	OMB	On-budget spending: Mandatory	OMB guidance (Memorandum M-05-13)	2005-present
PAYGO requirement	Sequestration	President and OMB	On-budget spending: Mandatory	Statutory Pay-As-You-Go Act of 2010	2010-present
House CUTGO rule	Point of order	House Budget Committee	On-budget and off-budget spending: Mandatory	House Rule XXI, Clause 10	2011-present
Discretionary spending caps and targets for spending cuts	Sequestration	President and OMB	On-budget spending: Discretionary and mandatory	Budget Control Act of 2011	2011-present

Characteristics of the Budget Enforcement Process

Several major characteristics of budget enforcement procedures may be noted.

First, many different participants take part in the budget enforcement process. Budget enforcement requires coordination across numerous House and Senate Committees and with the Administration.

Second, budget enforcement is a complex activity, relying on multiple, distinct processes that are oriented toward different goals, are based on different authorities, and feature different participants. This complexity can cause confusion. When legislative proposals are developed, it is not uncommon for so much attention to be focused on avoiding complications under one particular budget enforcement procedure that equally important procedures are overlooked.

Budget enforcement complexity can cause confusion.

Third, change is a constant feature of the budget enforcement environment. Even within the relatively short duration of an annual budget cycle, budget proposals may be buffeted by unexpected developments (e.g., military conflicts and natural disasters), severe fluctuations in the economy, and unforeseen demographic and political trends, causing revenue and spending levels to deviate sharply from initial estimates. As part of their response to such developments, Congress and the President not only change budget policies, but often change budget enforcement procedures as well.

The roles and responsibilities of Congress and the President in the federal budget process, including budget enforcement procedures, are rooted in various legal sources, ranging from the Constitution, to federal statutes, to House and Senate rules and practices, and to administrative directives. Thus, there are several avenues through which budget process changes can occur. For example, either the House or Senate may focus on changing its rules. Such a change, which requires no agreement beyond the chamber itself, minimizes the time needed and the scale of potential conflict, but at the same time it may reduce 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.

There are several avenues through which budget process changes can occur.

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 Gramm-Rudman-Hollings Act), acts implementing reconciliation instructions (e.g., the Budget Enforcement Act of 1990), or acts providing annual appropriations (e.g., “deeming resolution” provisions making revisions in the Senate’s cap on discretionary appropriations). Budget process changes also may be included in annual budget resolutions or in simple House or Senate resolutions.

Fourth, a great deal of activity is compressed into the annual budget cycle. The number of legislative proposals vying for space on the legislative agenda typically far exceeds the available openings. Oftentimes, there is not sufficient opportunity to thoroughly resolve complicated or controversial enforcement issues, so short-term fixes may be employed, causing larger problems to carry over unresolved into subsequent years. This fate is particularly likely to befall issues where political support is disorganized or weak.

Fifth, control over the budget may be only one of several competing values when significant enforcement issues are confronted. Spending may be increased or revenues reduced, thereby increasing the deficit and debt levels well beyond what otherwise would be acceptable, when it is necessary to take strong action for other motivations (such as to stimulate the economy out of a recession, mitigate the human suffering that arises from a natural disaster or economic downturn, or engage in military conflict to protect the nation).

Sixth, and finally, the operation of budget enforcement procedures is inundated by political considerations. For example, the ability to take advantage of "safety valves" in such procedures, in order to allow consideration of a measure that violates the budget plan, often is determined by the political support behind the measure. Budget rules may be waived to allow the consideration of a stimulus measure costing hundreds of billions of dollars, while at the same time they may be invoked to prevent the consideration of a measure costing only millions of dollars. The difference may be that the former is viewed by solid majorities in each chamber as a crucial response to severe economic recession that enjoys wide public support, while the latter suffers from a distinct lack of support.

In the arena of budget enforcement, the most successful participants are those that recognize it is a competitive, political environment. Instead of viewing themselves as a "special case" and expecting preferential treatment as a matter of course, they develop a legislative strategy, organize political support, and engage the key participants in the process.

The most successful participants develop a legislative strategy, organize political support, and engage the key participants in the process.

Enforcement Procedures under the Congressional Budget Act of 1974

The Congressional Budget and Impoundment Control Act of 1974 established the congressional budget process, which is used to develop and enforce an annual budget plan.[22] A timeline of the schedule called for in the Act appears in Table 2, and a simplified diagram of the process appears in Figure 2.[23] The process starts with the President's budget submission. For Congress, it centers in large part on the budget resolution.

[22] The enforcement procedures addressed stem largely from Title III (The Congressional Budget Process) of the Congressional Budget Act of 1974, Public Law 93-344 (July 12, 1974; 2 U.S.C. § 601 et seq.). Titles I-IX are referred to separately as the Congressional Budget Act of 1974, and Title X is referred to separately as the Impoundment Control Act of 1974.
[23] Table 2 is from Congressional Research Service, *The Congressional Budget Process Timetable*, by Bill Heniff, Jr., Report No. 98-472, March 20, 2008, accessed at http://www.senate.gov/reference/resources/pdf/98-472.pdf, p. 1. The table is ultimately from Section 300 of the Congressional Budget Act of 1974 as amended (2 U.S.C. § 631). Figure 2 is modified from Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, Report No. GAO-05-734SP, September 2005, http://www.gao.gov/new.items/d05734sp.pdf, pp. 118-119.

Table 2: Timeline for Budget Process

Due Date	Event
First Monday in February	President submits budget to Congress.
February 15	CBO submits economic and budget outlook report (baseline) to Budget Committees.
Six weeks after President submits budget	Committees submit views and estimates to Budget Committees.
April 1	Senate Budget Committee reports budget resolution.
April 15	Congress completes action on budget resolution. (In the conference report of the budget resolution, Congress is required to allocate spending to each committee. The Appropriations Committees must further allocate these amounts to their subcommittees.)
May 15	Annual appropriations bills may be considered in the House, even if action on the budget resolution has not been completed.
June 10	House Appropriations Committee reports last annual appropriations bill.
June 15	House completes action on annual appropriations bills.
June 15	Congress completes action on reconciliation legislation (if required by budget resolution).
July 15	President submits mid-session review of his budget to Congress.
October 1	Fiscal year begins.

Source: Congressional Research Service, *The Congressional Budget Process Timetable*.

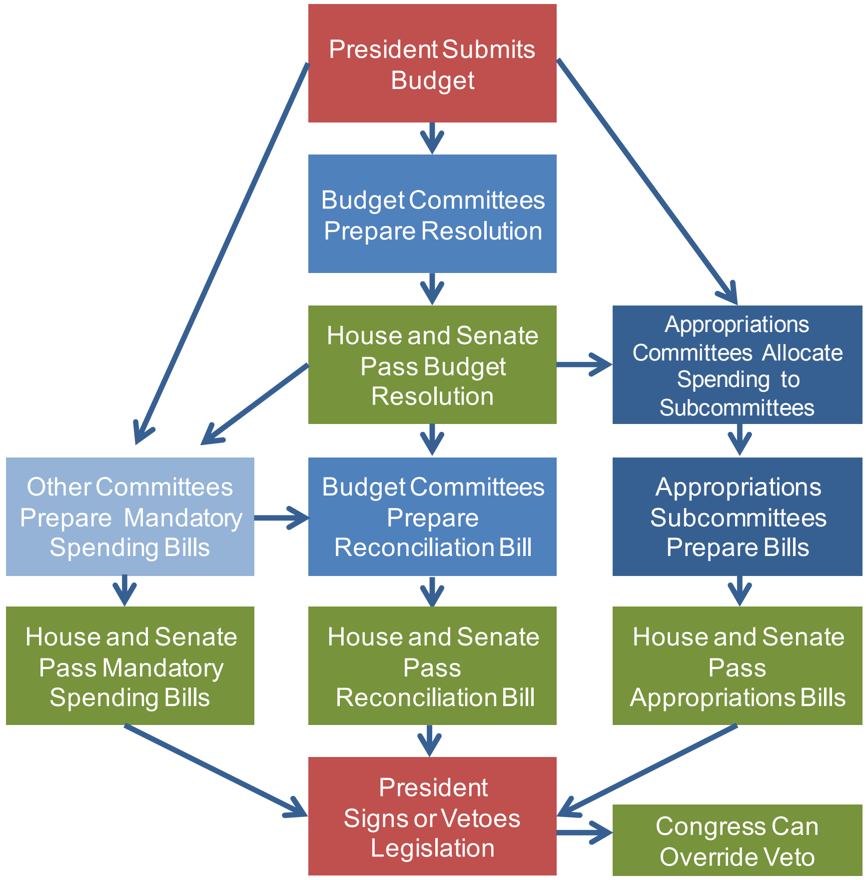
The Budget Resolution

Under the 1974 Act, the House and Senate are required to reach agreement each year on a budget plan in the form of a concurrent resolution on the budget, referred to informally as a "budget resolution." As a concurrent resolution, the budget resolution is not sent to the President for his approval and thus cannot become law.

The budget resolution serves as an internal blueprint for Congress regarding budget policy.

The budget resolution sets forth the appropriate fiscal and budgetary policy in broad terms for a multiyear period, beginning with the upcoming fiscal year (that starts on October 1 during the congressional session). It serves as an internal blueprint for Congress regarding overall budget policy, coordinating and guiding the subsequent consideration of revenue, spending, and debt-limit legislation produced by the other House and Senate committees. Unlike a budget resolution, these measures become law upon approval by the President or fail upon his veto (unless overridden by Congress).

Figure 2: Budget Process



Note: The other legislative committees also authorize discretionary spending by setting out the programs federal agencies should undertake and the amount of money authorized to pay for them. The final amount appropriated, however, is determined through the appropriations process.

Source: Government Accountability Office, *Budget Glossary,* chart modified by the OIG.

The 1974 Act established the House and Senate Budget Committees, with jurisdiction over budget resolutions, and created the nonpartisan Congressional Budget Office (CBO), charged with providing the House and Senate with objective budgetary information and analysis.

This year, which centers on the budget cycle for FY 2013, marks the 38th year that the congressional budget process has been in effect.[24] The process, however, is not always completed successfully. The House and the Senate did not agree on a budget resolution for FY 2011 or FY 2012. Appropriations were made through a series of continuing resolutions for all of FY 2011. In FY 2012, after several continuing

[24] The procedures under the 1974 Act were implemented on a "dry run" basis in 1975 for FY 1976 and were fully implemented in 1976 for FY 1977.

resolutions, the appropriations bills were consolidated into larger bills and successfully passed.

Content of the Budget Resolution

How budget enforcement procedures operate is determined in part by the content of the budget resolution. The budget resolution is required to include the following elements:[25]

- Total spending as both new budget authority and outlays (budget authority describes how much Congress permits an agency to commit, and outlays describe how much is actually expected to be spent in a year),
- Total revenues and the amount that revenues should be changed by legislative action,
- The deficit or surplus, and
- The level of debt subject to limit.

In addition, total spending is distributed by 20 or so major functional categories, such as National Defense (050), International Affairs (150), Energy (270), Transportation (400), and Health (550), but these allocations are not used for budget enforcement purposes.

Optional elements in a budget resolution may include reconciliation directives (see discussion below), procedural provisions, informational elements, and various other matters. Procedural provisions and informational elements may be included under the so-called elastic clause of the 1974 Act, which states that the budget resolution may "set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act."[26] While the elastic clause does not grant unlimited flexibility, it has been used over the years to include a variety of enforcement procedures and other matters. For example, language in the budget resolution has allowed Congress to use reconciliation procedures earlier in the process than called for by the 1974 Act.

As a general matter, budget resolutions have become lengthier and more complex measures over the years, evolving from one or two pages to measures that are well over 50 pages long and are divided into separate titles. Much of the additional length is attributable to policy statements, provisions included under the elastic clause, such as reserve funds to set aside funds that can be released to committees if needed, and precatory statements, which express the sense of the House, the Senate, or Congress on a matter.

Budget resolutions have become lengthier and more complex over the years.

Budget levels set forth in the text of the budget resolution exclude the revenues and spending of the off-budget entities, the Postal Service Fund, and the two Social Security

[25] Section 301 (2 U.S.C. § 632) of the 1974 Act sets forth the required and optional contents of a budget resolution.
[26] Section 301(b)(4).

trust funds (the Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund). However, the committee reports accompanying the budget resolution, and discussions regarding the budget resolution, generally adhere to the "unified budget" approach in which off-budget transactions are included.[27]

While the aggregate budgetary levels specified in the budget resolution are important, they do not provide a sufficient basis for enforcing spending policies. Accordingly, the 1974 Act requires that spending allocations for each House and Senate committee be included in the joint explanatory statement accompanying the conference report on a budget resolution.[28] It further requires that the House and Senate Appropriations Committees subdivide their spending allocations by subcommittee. Enforcement actions thus extend to the committee level, and in the case of discretionary spending, to the subcommittee level.

The Mechanisms of Enforcement: Points of Order and the Reconciliation Process

Budget resolutions are enforced by two mechanisms — points of order and the reconciliation process. Points of order are established by various provisions of the 1974 Act, mainly in Title III. They may apply to any legislation that meets the criteria established in the point-of-order provisions. The reconciliation process, on the other hand, is an optional procedure. It is invoked whenever a budget resolution includes reconciliation directives to House and Senate committees.

Points of Order

A point of order generally is a parliamentary objection that an action violates a rule of the House or the Senate.

In the legislative process, a point of order generally is a parliamentary objection raised by a member of Congress to an action, such as the consideration of a bill or the offering of an amendment, on the ground that such action violates a rule of the chamber. When a point of order is raised in the House or Senate, the presiding officer (the "Chair") of that chamber either sustains or overrules it. If the point of order is sustained, the action is judged to have violated a rule and a sanction is applied. (For example, a bill is not allowed to be considered or an amendment offered to a bill falls.) If the point of order is overruled, then the action may proceed. The ruling of the Chair may be appealed by any member to the entire chamber; if the appeal is successful, the Chair's ruling is overturned.

[27] For a discussion of the significance of the unified budget measure, see U.S. Postal Service Office of Inspector General, *Federal Budget Treatment of the Postal Service*, Report Number ESS-WP-09-001, August 27, 2009, http://www.uspsoig.gov/foia_files/ESS-WP-09-001.pdf
[28] Section 302 (2 U.S.C. § 633).

Table 3: Selected Points of Order in the Congressional Budget Process

Subject	Source	Description
Appropriations Committee spending subdivisions	Sec. 302(f)(B)(2) of the 1974 Act	In the Senate, after a budget resolution has been agreed to, prohibits consideration of legislation from the Appropriations Committee that would cause the applicable suballocation of new budget authority or outlays made pursuant to Section 302(b) to be exceeded.
Requirement for prior adoption of budget resolution	Sec. 303(a) of the 1974 Act	Prohibits consideration of legislation providing new budget authority, an increase or decrease in revenues, an increase or decrease in the public debt limit, new entitlement authority (in the Senate only), or an increase or decrease in outlays (in the Senate only) for a fiscal year until a concurrent resolution for that fiscal year has been agreed to.
Budget Committee jurisdiction	Sec. 306 of the 1974 Act	Prohibits consideration of matters within the jurisdiction of the House or Senate Budget Committee except when the committee has reported the measure or the committee has been discharged from further consideration of the measure unless the item under consideration is an amendment to a measure already reported or discharged
Spending ceilings and revenue floors	Sec. 311(a)(1) of the 1974 Act	In the House, prohibits consideration of legislation that would cause new budget authority or outlays to exceed or revenues to fall below the levels set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to Section 302(a).
Senate's "Byrd Rule"	Sec. 313 of the 1974 Act	In the Senate, prohibits consideration of extraneous provisions in reconciliation legislation.
Unfunded mandates	Sec. 425(a)(1) of the 1974 Act	Prohibits consideration of legislation reported by a committee unless the committee has published a statement by CBO on the direct costs of federal mandates.
Emergency designations	Sec. 403(e) of the FY 2010 budget resolution	In the Senate, provides for a point of order against the use of an emergency designation as allowed under Section 403(a) of this budget resolution to provide for exemption in the Senate from budget enforcement mechanisms specified in Section 403(b).
Advance appropriations	Sec. 424(a) of the FY 2010 budget resolution	In the House, prohibits the consideration of appropriations for a future year, except as specified in this budget resolution.
Senate PAYGO rule	Sec. 201(a) of the FY 2008 budget resolution	In the Senate, prohibits consideration of any direct spending or revenue legislation that would increase or cause an on-budget deficit for the period of the current fiscal year and the 5 ensuing fiscal years or the period of the current fiscal year and the 10 ensuing fiscal years.

Source: Adapted from the Congressional Research Service, *Points of Order in the Congressional Budget Process.*

The 1974 Act provides for points of order on many different grounds, which may pertain to substantive, timing, or procedural issues. In addition, other point-of-order provisions usually are included in the annual budget resolution. Table 3 illustrates the diversity of point-of-order provisions by listing some from both sources.[29] The House CUTGO rule explained below is not included as it is part of the House rules and not tied to the 1974 Act or the budget resolution. As described below, a point of order was raised against the legislation that reduced the Postal Service's payment to the retiree health benefits fund by $4 billion, but the point of order was subsequently waived.

Substantive points of order are intended to enforce the budget policies underlying the budget resolution, dealing with such items as the total levels of spending and revenues, the allocations of spending to committees, and other matters. A timing point of order is aimed at preventing the consideration of revenue and spending measures for a fiscal year until the budget resolution for that fiscal year has been adopted. Finally, other points of order enforce certain procedural matters, such as a prohibition on the consideration of legislation that includes changes in the congressional budget process unless it has been reported by the House or Senate Budget Committee, as appropriate (thus protecting that element of the Committees' jurisdiction).

Enforcement by point of order is not automatic. A point of order must be raised by a member in order to come into play and must be sustained to have an effect on legislative proceedings. A point of order, or multiple points of order, can be waived by an appropriate majority of members. In the Senate (but not the House), most points of order for budget enforcement purposes require an extraordinary majority to be waived (and for the Chair's ruling to be overturned on appeal); the threshold in these cases is three-fifths of the entire membership, which is 60 senators, if no seats are vacant.

A point of order must be raised by a member and sustained to have an effect on proceedings.

The Reconciliation Process

The budget reconciliation process is an optional procedure that operates as an adjunct to the budget resolution process established by the Congressional Budget Act of 1974. (See Appendix B for more information.) It allows consideration of a bill with limited debate. The chief purpose of the reconciliation process is to enhance Congress's ability to change current law in order to bring revenue, spending, and debt-limit levels into conformity with the policies of the annual budget resolution. With regard to spending, reconciliation is used almost exclusively to change mandatory spending levels, not discretionary spending levels.

The chief purpose of the reconciliation process is to enhance Congress's ability to bring revenue, spending, and debt-limit levels into conformity with the budget resolution.

[29] The table is adapted from Congressional Research Service, *Points of Order in the Congressional Budget Process*, by James V. Saturno, Report No. 97-865, March 7, 2011.

The purpose for which the reconciliation process can be used has been a controversial matter over the years. At first (during the 1980s), the process was used as a deficit-reduction tool. Toward the late 1990s, Congress began to use reconciliation procedures as a means of thwarting possible Senate filibusters against tax-cut legislation. Most recently, reconciliation procedures were used to make budgetary and other adjustments in pending health care and education reform legislation, in part to avoid the need for further Senate action on the reform measure it had passed previously.

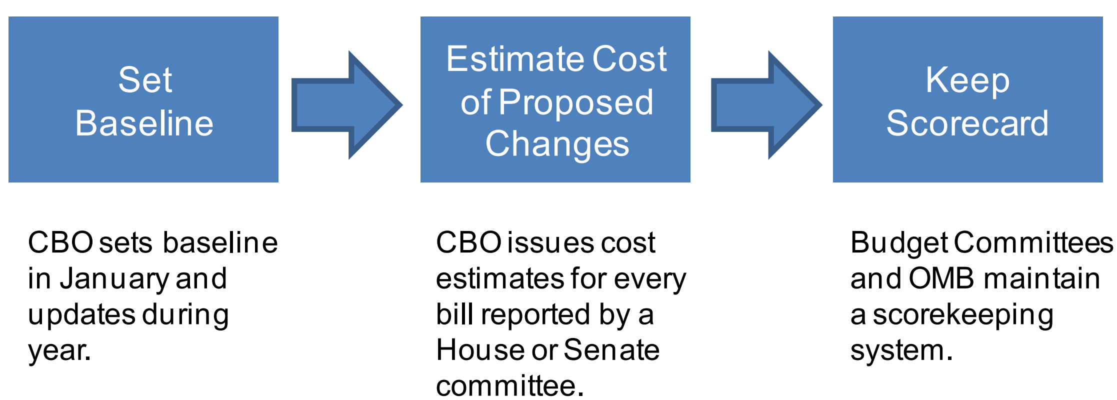
Several features of the reconciliation process, including its expedited procedures for considering legislation, its ability to coordinate the legislative actions of various House and Senate committees through the mechanism of an omnibus bill, and the "political cover" that the exercise affords members, have resulted in some reconciliation measures being the signature budgetary legislation of the year and the vehicle for implementing budget summit agreements between Congress and the President.

Although reconciliation more often than not has had a significant deficit-reduction character, the "bottom-line" approach to gauging its budgetary effects has allowed many "sweetener" provisions (i.e., provisions entailing costs) to be included among the many provisions producing savings while retaining the overall deficit-reduction impact of the legislation.

Other Elements of Enforcement: The Baseline, Cost Estimates, and Scorekeeping

In order for budget enforcement to occur when legislation is considered, three interconnected sets of activities must take place. These activities involve constructing the budget baseline, preparing cost estimates, and scorekeeping. They continue to operate even if Congress fails to pass a budget resolution or a budget. Each of these three sets of activities is discussed in more detail below.

Figure 3: Elements of Scorekeeping



The Baseline

The first step taken in the annual budget cycle is the preparation of baseline budget projections (the "baseline") by CBO, which are included in a report, *The Budget and Economic Outlook*, usually issued in January. CBO revises the baseline in March as the Budget Committees begin to formulate the budget resolution for the upcoming fiscal year. Finally, CBO revises the baseline again during the summer to account for changed economic and technical assumptions and legislation enacted in the interim. Figure 4 shows the summary table from the most recent budget baseline released by CBO.[30] The off-budget totals include the net inflows to the Social Security trust funds and the net cash flow of the Postal Service. An off-budget surplus is projected until 2019.

Figure 4: Budget Baseline for FY 2012 to FY 2022

CBO's Baseline Budget Outlook

	Actual, 2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total 2013-2017	Total 2013-2022
							In Billions of Dollars							
Revenues	2,302	2,523	2,988	3,313	3,568	3,784	4,039	4,243	4,456	4,680	4,926	5,181	17,692	41,179
Outlays	3,598	3,601	3,573	3,658	3,836	4,086	4,259	4,439	4,714	4,960	5,205	5,520	19,413	44,251
Deficit (-) or Surplus	**-1,296**	**-1,079**	**-585**	**-345**	**-269**	**-302**	**-220**	**-196**	**-258**	**-280**	**-279**	**-339**	**-1,721**	**-3,072**
On-budget	-1,363	-1,130	-619	-363	-282	-318	-235	-206	-258	-265	-245	-283	-1,818	-3,074
Off-budget[a]	67	52	34	19	13	16	15	10	*	-16	-34	-55	97	2
Debt Held by the Public at the End of the Year	10,128	11,242	11,945	12,401	12,783	13,188	13,509	13,801	14,148	14,512	14,872	15,291	n.a.	n.a.
							As a Percentage of Gross Domestic Product							
Revenues	15.4	16.3	18.8	20.0	20.2	20.2	20.5	20.5	20.6	20.7	20.9	21.0	20.0	20.4
Outlays	24.1	23.2	22.5	22.1	21.8	21.8	21.6	21.5	21.8	21.9	22.0	22.4	21.9	21.9
Deficit	**-8.7**	**-7.0**	**-3.7**	**-2.1**	**-1.5**	**-1.6**	**-1.1**	**-0.9**	**-1.2**	**-1.2**	**-1.2**	**-1.4**	**-1.9**	**-1.5**
Debt Held by the Public at the End of the Year	67.7	72.5	75.1	74.8	72.6	70.5	68.5	66.8	65.5	64.2	63.0	62.0	n.a.	n.a.

Source: Congressional Budget Office.

Note: * = between -$500 million and zero; n.a. = not applicable.

a. Off-budget surpluses or deficits comprise surpluses or deficits in the Social Security trust funds and the net cash flow of the Postal Service.

Source: Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2012 to 2022*.

The baseline is a projection of current revenue and spending levels based upon existing law and policy. As such, it offers members an understanding of the status quo and what future budgets would look like without any policy changes, and a neutral benchmark against which policy proposals can be measured.

[30] Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2012 to 2022,* January 2011, http://www.cbo.gov/sites/default/files/cbofiles/attachments/01-31-2012_Outlook.pdf, p. XII.

The baseline offers a neutral benchmark against which policy proposals can be measured.

CBO constructs the baseline by carefully adhering to a prescribed methodology based upon a blend of long-standing conventions and specific legal requirements. The report of the 1967 President's Commission on Budget Concepts is a foundational document. In addition, CBO follows methodologies specifically prescribed in law and derived from other sources. Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended), for example, sets forth rules for the construction of the baseline that was used in the sequestration process, which enforced the statutory discretionary spending limits and PAYGO requirement in effect through 2002.[31] During that period, CBO employed these methodologies for the construction of its baseline generally, and it continues to use them for that purpose on the ground that they are the most recent expression of congressional intent. Modifications to the baseline approach generally involve a collaborative approach in which the interests of various stakeholders, including CBO, the House and Senate Budget Committees, and others are represented.

Baseline projections also rely on economic and technical assumptions such as the rate of growth in Gross Domestic Product and the number of new beneficiaries in the Medicare program. In this area, CBO exercises its independence and provides its own judgments.

The end result of this process is intended to be a baseline that reflects objectivity and nonpartisanship but also meets the needs of policymakers and facilitates informed and effective budgeting. As laudable as CBO's endeavors in this area may be, the agency is criticized by some for deficiencies in its baseline projections. CBO is quick to acknowledge the criticisms, but points out that certain deficiencies are forced on the agency by the rigid requirement that it adhere to particular legal specifications regarding the methodological approach. Absent a clear consensus in the House and Senate about how to modify an approach, CBO maintains that it has no choice but to follow the existing law or its most recent expression. CBO attempts to mitigate the concerns by including in its reports "alternative scenarios" in which baseline methodologies are modified in various ways, consistent with assumptions favored by large numbers of members.

Cost Estimates

CBO prepares multiyear cost estimates for every public bill and joint resolution reported by a House or Senate committee.

In order to enforce the budget resolution when individual revenue and spending bills are considered, the budgetary impact of the legislation must be known. CBO assists this effort by preparing multiyear cost estimates for every public bill and joint resolution reported by a House or Senate committee. For legislation affecting revenues, CBO is required by Section 201(f) of the 1974 Act to use the estimates of revenue effects made by the Joint

[31] 2 U.S.C. § 907.

Committee on Taxation.[32] The preparation of a cost estimate for a measure is colloquially referred to as "scoring" the bill and the cost estimate itself is referred to as the "score." Figure 5 shows the summary table from a recent CBO cost estimate for S. 1789.[33]

Figure 5: CBO Cost Estimate for S. 1789

	By Fiscal Year, in Millions of Dollars												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-2017	2012-2022
OFF-BUDGET CHANGES IN DIRECT SPENDING													
Estimated Budget Authority	-5,299	-1,730	-2,123	-2,364	-3,022	-1,932	-1,900	-1,865	-1,830	-1,796	-1,764	-16,469	-25,624
Estimated Outlays	-5,299	-1,750	-2,123	-2,364	-3,022	-1,932	-1,900	-1,865	-1,830	-1,796	-1,764	-16,469	-25,624
ON-BUDGET CHANGES IN DIRECT SPENDING													
Estimated Budget Authority	10,945	3,139	3,311	3,350	3,477	1,272	1,284	1,281	1,280	1,278	1,274	25,494	31,891
Estimated Outlays	10,945	3,139	3,311	3,350	3,477	1,272	1,284	1,281	1,280	1,278	1,274	25,494	31,891
UNIFIED BUDGET CHANGES IN DIRECT SPENDING													
Estimated Budget Authority	5,647	1,410	1,189	986	455	-660	-616	-584	-550	-518	-490	9,026	6,268
Estimated Outlays	5,647	1,410	1,189	986	455	-660	-616	-584	-550	-518	-490	9,026	6,268
CHANGES IN REVENUES													
Estimated Revenues	-4	-5	-5	-1	0	0	0	0	0	0	0	-15	-15
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Estimated Authorization Level	0	31	26	27	5	-24	-51	-66	-95	-119	-146	65	-412
Estimated Outlays	0	27	26	27	4	-23	-51	-67	-94	-119	-146	62	-415

Note: Components may not sum to totals because of rounding. For spending, positive numbers indicate increases in costs; negative numbers indicate reductions in costs. For revenues, negative numbers indicate reductions in revenue collections.

Source: Congressional Budget Office, Cost Estimate for S. 1789, 21st Century Postal Service Act of 2011.

The cost estimate includes both the on-budget and off-budget effects of the proposed legislation on direct or mandatory spending. The on-budget effects reflect changes in the flow of funds to on-budget accounts such as the transfer of the Federal Employees' Retirement System (FERS) surplus from the on-budget Civil Service Retirement and Disability Fund to the Postal Service and a reduction in required payments for retiree health benefits. Detailed tables within the cost estimate break out the individual effects. Over 11 years CBO has estimated that S. 1789 will increase the on-budget deficit by $31.9 billion.

[32] 2 U.S.C. § 601(f).
[33] Congressional Budget Office, Cost Estimate for S. 1789, 21st Century Postal Service Act of 2011, January 26, 2011, http://www.cbo.gov/sites/default/files/cbofiles/attachments/s1789a.pdf, p. 1.

In contrast, the off-budget effects are positive, showing a decrease in off-budget spending of $25.6 billion. They include both the savings from paying less to on-budget accounts and the effect of cost reductions such as 5-day delivery on the Postal Service's net cash flow.

The bill also has minor effects on appropriated spending and federal revenue. The revenue changes do not refer to postal revenue, which is not categorized as federal revenue, but rather to the loss of on-budget federal revenue from reduced contributions for employee pensions.

An important element of scoring legislation is timing. For years, CBO was required to prepare estimates covering 5 fiscal years (the upcoming fiscal year, referred to as the "budget year," and the ensuing 4 fiscal years, referred to as "outyears"), which matches the minimum period that budget resolutions must cover. As the interest in longer-term budget control increased, and as the time horizon for some budget resolutions and associated enforcement procedures lengthened, CBO moved to 10-year estimates. In many instances, revised estimates for the fiscal year already underway (the "current year") are provided as well, thus resulting in 11-year estimates like the one shown above.

Another aspect of timing that is taken into account in cost estimates is the assumption regarding the effective date of legislation. As the first fiscal year in which the legislation takes effect draws to a close, the budgetary impacts potentially become much smaller. There is little time to change revenue or spending plans.

Behavioral assumptions affect cost estimates.

In addition to scoring the direct budgetary effects of a measure, CBO also will calculate the indirect budgetary effects caused by behavioral changes. As a general rule, CBO relies on "evidence-based" assumptions about behavior, although evidence for behavioral changes may not always be available. In its costs estimate for S. 1789, for example, CBO assumed that reducing the Postal Service's prefunding payments for retiree health and returning its FERS surplus would cause the agency's cost-cutting efforts to slacken off of by about half. CBO consequently reduced its off-budget estimate of savings from those changes by 50 percent. CBO also used assumptions of the Postal Service's behavior to reduce the cost savings from adopting 5-day delivery in the later years of the scoring period. CBO assumed the Postal Service would not allow large surpluses to develop during this period but instead would use some of the 5-day delivery savings to fund spending or delay rate increases.

How a revenue or spending program is treated in the baseline may have a significant impact on how it is scored.

How a revenue or spending program is treated in the baseline may have a significant impact on how it is scored. The baseline methodology prescribed in Section 257 of the 1985 Act, for example, requires that certain mandatory spending programs with outlays greater than $50 million in the current year be assumed to continue, even if the law includes an expiration date. Although the score for a measure extending a program past its scheduled expiration date typically would show costs for the years for which the program was extended, under this special baseline rule, the score for such legislation would not show any cost in those years (assuming that the legislation extends the program at baseline levels).

The Postal Service is required to pay $11.1 billion in FY 2012 to the Postal Service Retiree Health Benefits Fund; however, since CBO does not expect the Postal Service to be able to pay more than $2.1 billion, the baseline spending assumption is set at this amount. As a result, legislation reducing the payment as low as $2.1 billion will not score as affecting FY 2012 spending. The Postal Service's inability to pay the full $11.1 billion is already incorporated in the baseline.

Scorekeeping

The final element necessary to enforce the policies of the budget resolution is a scorekeeping system that keeps a tally of the cumulative budgetary effects of all of the legislation passed by the House and Senate during a budget cycle (which extends over two consecutive sessions of Congress). The House and Senate Budget Committees each maintain a scorekeeping system for their own chamber. From time to time during a session, as the pace of legislative activity dictates, the chairmen of the Budget Committees insert scorekeeping reports into the *Congressional Record*. (OMB also maintains scorecards under the Statutory Pay-as-You-Go Act as described below.)

The final element necessary to enforce the policies of the budget resolution is a scorekeeping system.

When a mandatory spending bill is considered in the House or Senate, for example, the cost of the measure is provided in the CBO cost estimate. The scorekeeping system allows the Budget Committee in that chamber to advise the membership on how the cost of the bill adds to or subtracts from the spending total that has accrued at that point in the session for all of the pertinent spending bills previously passed by the chamber. In this manner, the membership knows how much room still is available, if any, under the spending ceilings established in the budget resolution, or if they already have been exceeded. In addition, the scorekeeping systems apprise the membership of how much room may be available under the committee's spending allocation that was provided in the joint explanatory statement.

The information generated by the cost estimate and the scorekeeping system alerts the membership to which points of order, if any, may apply during the consideration of the measure. Committees routinely consult the Budget Committees in their chamber as legislation is being developed in order to avoid budgetary violations, if possible, in the reported bills.

The information generated by the cost estimate and scorekeeping system alerts the membership to which points of order may apply.

Budget resolutions may provide for subsequent adjustments in its budgetary levels, amounting to several billion dollars or more, through such mechanisms as reserve funds and program integrity adjustments. A reserve fund, for example, may authorize a committee's spending allocation to be increased to accommodate a legislative initiative reported by that committee, so long as the legislation contains offsets that result in deficit neutrality. As any authorized adjustments in budget resolution levels are made, they are incorporated into the scorekeeping system.

Enforcement Procedures under Other Authorities

The House and Senate have augmented the enforcement procedures under the Congressional Budget Act of 1974 from time to time with additional enforcement procedures established under other authorities. Some enforcement procedures currently in effect include the Statutory PAYGO Act of 2010, House CUTGO rule, and the Budget Control Act of 2011.

Statutory PAYGO Act of 2010

At the present time, the Statutory PAYGO Act is perhaps the most significant source of additional enforcement procedures (see Appendix C). In general, the 2010 Act imposes a deficit-neutrality requirement with respect to the enactment of revenue and mandatory spending legislation.

Under the Statutory PAYGO only the on-budget effects of legislation are counted.

Under the Statutory PAYGO Act, the budgetary effects of revenue and mandatory spending provisions enacted into law, including both costs and savings, are recorded by the OMB on two PAYGO scorecards covering rolling 5-year and 10-year periods. For the most part, the budgetary effects are determined by CBO cost estimates. Only the on-budget effects of legislation are counted, but this can significantly affect the Postal Service if its contributions to the on-budget retirement and retiree health benefit funds are affected.

Shortly after the end of a congressional session, the OMB director finalizes the PAYGO scorecards. If he determines that a PAYGO violation has occurred (by virtue of the existence of a cost, referred to as a “debit,” on either scorecard), then the President issues a sequestration order that implements largely across-the-board cuts in nonexempt mandatory spending programs sufficient to remedy the violation by eliminating the debit. Many mandatory spending programs and activities are exempt from sequestration including the Postal Service Fund and its pension and retiree health accounts. If no PAYGO violation is found, no further action occurs and the process is repeated during the next session.

The current statutory PAYGO process represents the reinstitution, with significant changes, of the statutory PAYGO process established under the Budget Enforcement Act of 1990 that operated until late 2002.[34] As with the earlier statutory process, the new statutory process shifts considerable responsibility for budget enforcement to the

[34] Public Law 101-508, November 5, 1990.

President and OMB director. Congress has retained greater control over the new process, however, in large measure by providing for the use of CBO cost estimates.

House CUTGO Rule

The Senate established a PAYGO rule in 1993 (as a provision in the FY1994 budget resolution) to supplement the statutory PAYGO process then in effect. The Senate rule, which has been implemented as part of the budget resolution, remains in effect but has been revised several times. The House established its own PAYGO rule in 2007, but chose to incorporate it into its standing rules rather than to include it in a budget resolution. At that time, the House and Senate PAYGO rules, both established by Democratic majorities, were similar in design, except that the Senate rule covered only on-budget transactions while the House rule covered off-budget transactions as well. Both rules covered two timeframes, a 5-year and a 10-year period, plus the current year.

At the beginning of 2011, the new Republican majority in the House replaced the PAYGO rule with a "Cut-As-You-Go" rule.[35] The CUTGO rule effectively establishes a PAYGO approach only for mandatory spending, by barring the consideration of legislation that has the net effect of increasing mandatory spending over the time periods previously used in the PAYGO rule. Legislation that has the net effect of reducing revenues from taxation over these time periods would not violate the CUTGO rule.

The CUTGO rule establishes a PAYGO approach only for mandatory spending. Legislation reducing revenues would not violate the CUTGO rule.

Under the CUTGO Rule, increased mandatory spending cannot be offset by increased revenues from taxation. Like the PAYGO rule that it replaced, the CUTGO rule covers off-budget as well as on-budget transactions. Accordingly, the rule would apply to any budgetary legislation affecting the Postal Service, even if it had only off-budget effects. For example, legislation that required the Postal Service to increase its level of service could show as increasing the off-budget deficit and would be vulnerable to the CUTGO rule.

Budget Control Act of 2011

In 2011 concern about the national debt level led to heated debate about budgetary issues such as extending spending authority to the government and raising the national debt ceiling. On August 2, 2011, Congress enacted the Budget Control Act (BCA) of 2011 as a result of negotiations to lift the debt ceiling.[36] The BCA imposes caps on

[35] Clause 10 of Rule XXI.
[36] Public Law 112-25.

discretionary spending through 2021. The CBO has estimated that these caps will reduce spending by approximately $900 billion over the entire period.[37]

The law also empowered a new committee officially called the Congressional Joint Select Committee on Deficit Reduction but known informally as the Supercommittee to find $1.5 trillion in deficit cuts from FY 2012 through FY 2021. Under the BCA, unless $1.2 trillion in cuts were enacted by January 15, 2012, automatic spending cuts enforced through sequestration would be triggered in both discretionary and mandatory spending starting in FY 2013. The automatic cuts were structured to fall equally on defense and nondefense spending in order to encourage negotiations on alternatives. Since the Supercommittee failed to reach agreement on a deficit proposal and no cuts were enacted by the January 15, 2012, deadline, the automatic spending cuts are scheduled to take effect unless new legislation intervenes. The Postal Service is not directly affected by the BCA. Any accounts exempt from sequestration in the Statutory PAYGO Act, including the Postal Service Fund, are exempt. The threat of the looming cuts, however, will be a significant congressional concern in 2012 and could make the budgetary environment more challenging for postal legislation.

Excluding Legislation from Budget Controls

Budget controls can be avoided — that is, set aside or modified so that they do not have effect — under certain circumstances during the consideration of legislation by the House or Senate or during the implementation of statutory controls by the President. The exclusion of some matters is contemplated and provided for by budget enforcement procedures. In other cases, the exemption of some matters from enforcement occurs by virtue of an intervention in the established procedures.

Budget controls can be set aside or modified.

Before the issue of exclusion on a case-by-case basis is explored, it should be noted that some areas of the budget are excluded from enforcement procedures by design. Transactions of the Postal Service Fund and the Social Security trust funds, as off-budget entities, generally are not covered under the budget enforcement procedures of the Congressional Budget Act of 1974 or the Statutory PAYGO Act of 2010. Also, legislation dealing with particular policy areas, such as the extension of expiring tax cuts under 2001 and 2003 reconciliation acts, short-term “patches” to coverage under the Alternative Minimum Tax, and adjustments to Medicare reimbursement fees to physicians ("Doc Fix”) have been excluded from enforcement procedures under these two acts, within specified constraints.

Transactions of the Postal Service Fund and Social Security trust funds as off-budget entities are not covered under the Congressional Budget Act of 1974 or the Statutory PAYGO Act of 2010.

[37] Congressional Budget Office, *Estimated Impact of Automatic Budget Enforcement Procedures Specified in the Budget Control Act*, September 12, 2012, http://www.cbo.gov/sites/default/files/cbofiles/attachments/09-12-BudgetControlAct.pdf.

In the case of enforcement based on points of order, as stated previously, enforcement does not occur unless a member raises the applicable point of order. In order for a potential violation to be stopped, a member must successfully raise a point of order and it must be sustained if challenged. The membership of a chamber can decide collectively not to activate budget enforcement procedures during the consideration of a measure potentially in violation of them by all agreeing not to raise a point of order. Understandably, this situation usually occurs when there is little, if any, controversy associated with the legislation, often owing to its negligible or minor budgetary effects.

The Congressional Budget Act of 1974 provides explicitly for the waiver in the Senate of any of its various point-of-order provisions. The principal means of doing so is a waiver motion, authorized under Section 904 of the Act, that any member can offer.[38] As noted before, most waiver motions (and appeals of the Chair's rulings) under the 1974 Act require 60 votes to be successful in the Senate.

The 1974 Budget Act provides explicitly for a waiver in the Senate of any point-of-order provisions.

Further, like any other rules of the House and Senate, points of order tied to budget enforcement rules may be waived in other ways. In the House, for example, the House Rules Committee serves as the legislative "traffic cop" for the leadership by reporting "special rules," which are simple House resolutions that set the terms of consideration for selected measures. Special rules often waive points of order that could be raised under the Congressional Budget Act of 1974 or other enforcement procedures. Minor legislation often is considered under the "suspension procedure," under which all rules of the House are waived so long as the measure secures an affirmative vote of at least two-thirds of the membership. Both the House and Senate sometimes effectively waive their rules when they consider legislation by unanimous consent.

Special rules often waive points of order.

Another device that has been used to exclude items from budget enforcement under both the Congressional Budget Act of 1974 and the Statutory PAYGO Act of 2010 is the inclusion of emergency designations in legislation. Under both acts, the budgetary effects of provisions designated in legislation to be emergency requirements are not counted, and therefore cannot be used to trigger a point of order against the legislation when it is considered, or to affect the balances on the PAYGO scorecards when it is enacted.

Another device is the inclusion of emergency designations in legislation.

Separate House and Senate procedures dealing with emergency designations have been carried over the years in annual budget resolutions, and they have allowed emergency designations to be removed from legislation by points of order. When a successful point of order removes an emergency designation, the budgetary effects of the provisions that had been so designated are then counted, and the provisions become vulnerable to further points of order.

[38] 2 U.S.C. § 621 note.

Section 4 of the Statutory PAYGO Act also sets forth separate House and Senate procedures for dealing with the issue of designating provisions as emergency requirements. In the House, the chair must "put the question of consideration" prior to the chamber taking any action on a measure including an emergency PAYGO designation. If the House votes affirmatively on the question, then it may proceed to consider the measure.

In the Senate, an emergency PAYGO designation may be stricken from a measure by a point of order. To waive the point of order, or to sustain the appeal of the ruling of the chair on a point of order, the affirmative vote of 60 Senators must be obtained. In this case, the point of order can be applied in a manner so that if successful, the offending provision is stricken but the consideration of the measure (or the conference report thereon) is not defeated.

Exemptions from enforcement have occurred through extraordinary intervention.

Finally, exemptions from enforcement have occurred through extraordinary intervention in the established procedures. The use of sequestration procedures in the enforcement of the statutory deficit targets, discretionary spending limits, and PAYGO requirement, for example, was prevented in several instances from the late 1980s through 2002 by "directed scorekeeping" provisions or revised limits in legislation, or was modified after the fact by legislation that reduced the amounts of funds sequestered. Directed scorekeeping involves directing the scorekeeper (in these cases, the OMB director) to score legislation or an action in a manner that is different from how it would have been scored under existing procedures. Legislation required the scorekeeper to use a particular score for certain provisions or to reduce the scorecard. In 2002 the scorecard was reduced to zero for FY 2002 through FY 2006 preventing the threat of sequestration.

Application of Budget Enforcement Procedures to Postal Service Legislation

Overview

To a considerable degree, the financial operations of the Postal Service are not subject to budget enforcement procedures that affect other federal agencies because of the self-sustaining nature of its operations and the off-budget status of the Postal Service Fund. The enforcement by various points of order under the Congressional Budget Act of 1974 and annual budget resolutions generally does not apply to legislation that involves only changes in off-budget revenues and spending.[39] Further, off-budget transactions are excluded from the scoring procedures used under the Statutory

[39] The budget resolution includes, in a separate section, Social Security revenue and spending levels solely for the purpose of enforcing a Senate point of order aimed at preventing legislation that would reduce surpluses or increase deficits in the trust funds. The House established an enforcement procedure with the same purpose as a freestanding provision (Section 13302) in the Budget Enforcement Act of 1990.

PAYGO Act of 2010, and the Postal Service Fund (as well as the off-budget Social Security trust funds) would not be subject to any sequestration implemented under the Act.

The inclusion of off-budget transactions is informational but may have important political ramifications.

Even though off-budget revenues and spending are not formally part of the President's annual budget to Congress, they are presented in the unified budget totals presented in the budget submission. They are widely discussed during consideration of the annual budget resolution, and they are reflected in the reports of the Budget Committees accompanying the budget resolution, and incorporated into cost estimates prepared by CBO and the JCT. Their widespread appearance, however, does not make them subject to enforcement procedures. The inclusion of off-budget transactions in unified budget levels, in these cases, is purely informational but may have important political ramifications. While these practices may influence perceptions significantly, they do not form the basis for a point of order.

There is one important exception regarding the application of budget enforcement procedures to off-budget transactions — the new House CUTGO rule. Like the House PAYGO rule, which it replaced earlier in 2011, the House CUTGO rule does not fall within the framework of the Congressional Budget Act of 1974, which generally excludes off-budget transactions from enforcement. It also does not contain an exemption for off-budget transactions. Accordingly, any legislation proposing a net increase in off-budget (as well as on-budget) mandatory spending over the 6-year and 11-year time periods specified in the rule could be subject to a point of order, unless otherwise protected. As mentioned previously, the CUTGO rule applies fully to any budgetary legislation affecting the Postal Service.

The House CUTGO rule does not contain an exemption for off-budget transactions.

A significant budget enforcement problem also exists with respect to Postal Service legislation because sizeable Postal Service budgetary transactions are connected to on-budget accounts. Payments are made from the off-budget Postal Service Fund to on-budget accounts such as the two accounts administered by the Office of Personnel Management — the Civil Service Retirement and Disability Fund and the Postal Service Retiree Health Benefits Fund — to cover certain liabilities associated with employee retirement and retiree health care.

A significant budget enforcement problem does exist with respect to Postal Service legislation.

As the financial situation of the Postal Service has become more pressing in recent years, modifications have been proposed to the levels of these payments for various reasons (e.g., to reduce overpayments). The proposed modifications also have been viewed as a means of providing short-term "relief" and improving the Postal Service's immediate financial condition. To the extent that legislation dealing with these matters would affect the flow of funds between the accounts in a way that would lead to on-budget costs, then the procedures of the Congressional Budget Act of 1974, the

Statutory PAYGO Act of 2010, and other enforcement mechanisms would apply to the legislation.

2009 Illustration of Enforcement Problem

An illustration of the budget enforcement problem facing the Postal Service, and the methods used to deal with it, can be drawn by reviewing House and Senate action on Postal Service legislation in 2009, during the 111th Congress. The illustration also demonstrates the confusion and uncertainty regarding budget enforcement procedures that often surrounds the consideration of legislation (e.g., do such procedures apply, and if so, which ones?). As FY 2009 drew to a close, it was apparent that the Postal Service was operating with a "cash shortage" in the Postal Service Fund while facing a mandated $5.4 billion payment due on September 30, 2009.[40]

An illustration of the budget enforcement problem facing the Postal Service demonstrates the confusion and uncertainty regarding budget enforcement.

In anticipation of the need to provide budgetary relief to the Postal Service, the House Oversight and Government Reform Committee reported H.R. 22, the United States Postal Service Financial Relief Act of 2009, on July 21, 2009. According to the committee:

> The legislation would provide temporary financial relief to the Postal Service, saving over $2 billion in operating funds each fiscal year between 2009 and 2011. In short, the bill is intended to provide the Postal Service with relief from its current financial crisis.[41]

The CBO cost estimate on the reported bill, issued on July 20, scored it as having on-budget costs of about $5 billion over 11 years. Figure 6 shows the estimate.[42]

[40] Congressional Research Service, *The U.S. Postal Service's Financial Condition: Overview and Issues for Congress*, by Kevin R. Kosar, Report No. R41024, May 18, 2011, p. 6.
[41] House Committee on Government Reform, *United States Postal Service Financial Relief Act of 2009*, H. Rpt. No. 111-216, July 21, 2009, http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt216/pdf/CRPT-111hrpt216.pdf, p. 3.
[42] Congressional Budget Office, Cost Estimate for H.R. 22, United States Postal Service Financial Relief Act of 2009, July 20, 2009, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/104xx/doc10465/hr22.pdf, p. 2.

Figure 6: CBO Cost Estimate for 2009 Reduction of Prefunding Payment

	By Fiscal Year, in Millions of Dollars												
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2009-2014	2009-2019
CHANGES IN DIRECT SPENDING													
On-budget Effects (PSRHBF)													
Estimated Budget Authority	2,000	2,200	2,500	0	0	0	0	0	-550	-550	-550	6,700	5,050
Estimated Outlays	2,000	2,200	2,500	0	0	0	0	0	-550	-550	-550	6,700	5,050
Off-budget Effects (Postal Service Fund)													
Estimated Budget Authority	-1,800	-1,100	-1,250	0	0	0	0	0	550	550	550	-4,150	-2,500
Estimated Outlays	-1,800	-1,100	-1,250	0	0	0	0	0	550	550	550	-4,150	-2,500
Total Unified Budget Effects													
Estimated Budget Authority	200	1,100	1,250	0	0	0	0	0	0	0	0	2,550	2,550
Estimated Outlays	200	1,100	1,250	0	0	0	0	0	0	0	0	2,550	2,550

Note: PSRHBF = Postal Service Retiree Health Benefit Fund.
Budgetary effects in 2017 through 2019 reflect Postal Service amortization payments to the PSRHBF.

Source: Congressional Budget Office, Cost Estimate for H.R. 22, United States Postal Service Financial Relief Act of 2009.

The off-budget and on-budget effects would have mirrored each other except that CBO assumed that Postal Service would use some of the reduction in its prefunding payments to reduce its cost cutting. (The behavioral effect in 2009 was small because the year was more than three quarters over.) Since current law calls for the amortization of unfunded retiree health liability starting in 2017, larger costs in the first 3 years were partially offset by savings in the later years due to increased amortization payments:

> CBO estimates that enacting the bill would result in on-budget costs of about $5 billion and off-budget savings of $2.5 billion over the 2009-2019 period. (Cash flows of the Postal Service are classified as off-budget, while the PSRHBF [Postal Service Retiree Health Benefits Fund] is an on-budget account.) Combining those effects, CBO estimates that the net cost to the unified budget of enacting H.R. 22 would be about $2.5 billion over the 2010-2019 period. All of those effects reflect changes in direct spending. H.R. 22 would not affect revenues.[43]

While the CBO cost estimate also noted the off-budget and unified budget effects of the bill, these levels were irrelevant for the budget enforcement procedures in effect at the time, except for the House PAYGO rule. Consequently, H.R. 22 was vulnerable to several different points of order including a point of order under the House PAYGO rule,

[43] Ibid., p. 1.

because the off-budget savings to the Postal Service were not sufficient to offset the on-budget costs to the PSRHBF.

Concerns about the cost of the bill led to its modification by an amendment restricting the payment reduction to only a single year (FY 2009) and providing some offsetting savings in later years, thereby bringing the total on-budget cost over 11 years down from about $5 billion to $2.8 billion.[44] Off-budget savings that fully offset the on-budget costs year-by-year allowed the sponsors of the measure to claim (accurately) that there was no net cost on a unified budget basis.

The House considered the bill on September 15. Although the bill as modified by the amendment was more acceptable politically because of its "zero score" on a unified budget basis, it still was vulnerable to multiple points of order because of its on-budget costs. To deal with the points of order, the House chose to waive them all in a single motion by considering the bill under the "suspension procedure." The bill was passed by more than the two-thirds margin needed under the procedure, securing an affirmative vote of 388-32. (As an alternative, the House could have considered the bill under the terms of a "special rule," reported by the House Rules Committee, waiving applicable points of order.)

Although the bill was more acceptable politically because of its "zero score" on a unified basis, it was still vulnerable to multiple points of order.

In the Senate, the Homeland Security and Governmental Affairs Committee also began developing Postal Service relief legislation at about the same time, S. 1507, the Postal Service Retiree Health Benefits Funding Reform Act of 2009. Because of the on-budget costs involved with the initial version of the bill, it potentially was subject to various points of order that would have required 60 affirmative votes to waive.

Before the Senate committee could report the bill, however, a short-term fix for the Postal Service's budget problem emerged in the conference report on H.R. 2918, the Legislative Branch Appropriations Act for FY 2010, which also included continuing appropriations for the rest of the federal government for a short period. The bill became Public Law 111-68 on October 1, 2009.[45] Section 164 of the Act reduced the Postal Service's required payment to the PSRHB Fund, due on September 30, 2009, by $4 billion (effectively deferring, not cancelling, its payment).

The House and Senate had different opinions as to whether the conference report was subject to points of order under budget enforcement procedures.

The House and Senate apparently had different opinions as to whether the conference report on H.R. 2918 was subject to any points of order under budget enforcement procedures.

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[44] See the revised cost estimate Congressional Budget Office, Cost Estimate for H.R. 22, United States Postal Service Financial Relief Act of 2009, September 22, 2009, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/106xx/doc10626/hr22.pdf, p. 2.
[45] *Continuing Appropriations Resolution, 2010* (123 Stat. 2053).

The House considered and agreed to the conference report on September 25. The measure was considered pursuant to a special rule (H.Res. 772) that waived all points of order. In its report accompanying the special rule, the House Rules Committee stated that despite the waiver, it knew of no points of order that would apply to the measure.

On September 30, during Senate consideration of the conference report, Senator Judd Gregg, the Ranking Minority member on the Senate Budget Committee, raised a point of order against the bill (pursuant to Section 311(a)(2) of the 1974 Act) on the ground that the $4 billion Postal Service provision pushed the cost of the bill above the spending ceiling set in the FY 2009 budget resolution. He indicated that two other points of order under the 1974 Act could apply as well, but he did not specify or raise them. Senator Bill Nelson moved pursuant to Section 904 of the 1974 Act to waive all pertinent points of order. The waiver motion was agreed to by a vote of 61-39 (one vote over the required 60-vote margin).

In 2010, the Senate Homeland Security and Governmental Affairs Committee reported S. 1507, oriented toward providing the Postal Service budget relief over several fiscal years, as did H.R. 22 before it was amended.[46] The Senate took no further action on the bill before the 111th Congress came to an end.

Options for Dealing with Future Budget Enforcement Issues

In his FY 2012 budget, President Barack Obama proposed further financial relief for the Postal Service in a manner that again would incur on-budget costs. Bills have also been proposed in the House and Senate. In deciding whether to pursue legislation embodying the President's proposal or other approaches, the House and Senate have several options regarding how to deal with potential budget enforcement issues arising from on-budget costs.

The basic choice is among (1) using options available under existing budget enforcement procedures, an approach that might be called the "regular order";
(2) pursuing an "extraordinary intervention" in the procedures (but not revising them); or
(3) fundamentally restructuring the procedures altogether.

The basic choice for dealing with potential budget enforcement issues is among using the regular order, extraordinary intervention, or fundamental restructuring.

Using the regular order to accommodate Postal Service legislation that would incur on-budget costs (or even off-budget costs, under the House CUTGO rule) has proven successful in the past, as shown in the 2009 illustration. In situations involving conflict, the principal tools in the House have been waivers granted in special rules reported by the House Rules Committee and by means of the suspension procedure, which requires a two-thirds vote; in the Senate, the chief tool has been the

[46] Senate Committee on Homeland Security and Governmental Affairs, *Postal Service Retiree Health Benefits Funding Reform Act of 2009*, S. Rpt. No. 111-203, June 9, 2010, http://www.gpo.gov/fdsys/pkg/CRPT-111srpt203/pdf/CRPT-111srpt203.pdf.

waiver motion under Section 904 of the 1974 Act. The main drawback to using the regular order is that it usually does not provide a permanent or long-term resolution of an issue, and must be followed year after year.

Other elements of the existing enforcement system are less likely to afford opportunities to ease budget controls. Baseline methodology is relatively fixed by statute and convention, and meaningful changes typically occur only through a collaborative process. Within the existing framework, there seems to be little room for changes in this area. While procedures for the preparation of cost estimates also are well established, CBO's use of behavioral assumptions and reliance on evidence-based considerations may offer more flexibility. For example, CBO's practice of assuming that Postal Service cost-cutting efforts will slacken off if relief for retirement or health care payments is granted can be challenged if evidence can be presented that this did not occur in previous instances.

Another possibility may arise under regular order if the budget reconciliation process is activated. Provisions incurring Postal Service costs could be folded into an omnibus reconciliation act, in effect being "paid for" by savings made in other policy areas, or part of a large compromise, in which the score of a particular provision is less important than the overall success of the legislation.

The other two approaches, extraordinary interventions and fundamental restructuring, potentially offer greater rewards but are more difficult to accomplish and may entail more political risks. Procedural restructuring is more likely to occur as a procedural provision included in the annual budget resolution rather than as a separate bill, largely because enacting a bill is more difficult and complicated than reaching internal congressional agreement on a concurrent resolution.

Extraordinary intervention and fundamental restructuring offer greater rewards but are more difficult to accomplish and may entail more political risks.

President Obama's restructuring proposal announced in September 2011 provides for changing the Statutory PAYGO Act so that the off-budget effects of the Postal Service Fund are considered as on-budget effects. Such a change could be categorized as an extraordinary intervention. The proposal has met with some criticism, and it is uncertain whether it would succeed.

Regardless of the approach to dealing with budget enforcement that is chosen, it is of paramount importance that the political objective be defined clearly and that strong political support be marshaled behind the effort. Once political agreement is attained, the procedures to implement it often readily fall into place.

Once political agreement is attained, the procedures to implement it often readily fall into place.

Finally, it must be observed that any party interested in pursuing legislative initiatives in Congress must be ever-vigilant regarding the revision of existing budget enforcement procedures or the imposition of new ones. While this report has addressed some long-standing enforcement procedures, it also has examined three new ones (the Statutory PAYGO

Act, the House CUTGO rule, and the Budget Control Act) that were adopted only within the past 2 years.

Appendices

Appendix A Recent History of Budget Enforcement

Significantly different budget enforcement procedures have existed over the past several decades as Table 4 shows. Beginning in 1975, the House and Senate focused on the enforcement of their own annual budget plan, the budget resolution, under the Congressional Budget Act of 1974, relying on points of order and the reconciliation process.

Table 4: Summary of Selected Budget Enforcement Procedures

Procedure	Enforcement Mechanism(s)	Principal Enforcer(s)	Basis of Procedure	Duration
Congressional budget process	Points of order and reconciliation process	House and Senate Budget Committees	Congressional Budget Act of 1974	1975-present
Deficit targets	Sequestration	President and OMB	Gramm-Rudman-Hollings Act (1985)	1985-1990
Discretionary spending caps and PAYGO requirement	Sequestration	President and OMB	Budget Enforcement Act of 1990	1990-2002
Senate PAYGO rule	Point of order	Senate Budget Committee	Provisions in annual budget resolutions	1993-present
PAYGO rule for administrative actions	Review of agency budget requests	OMB	OMB guidance (Memorandum 05-13)	2005-present
House PAYGO rule	Point of order	House Budget Committee	House Rule XXI, Clause 10	2007-2010
PAYGO requirement	Sequestration	President and OMB	Statutory Pay-As-You-Go Act of 2010	2010-present
House CUTGO rule	Point of order	House Budget Committee	House Rule XXI, Clause 10	2011-present
Discretionary spending caps and targets for spending cuts	Sequestration	President and OMB	Budget Control Act of 2011	2011-present

In 1985, after a decade of experience with this process, and facing unprecedented deficits, Congress and the President sought to strengthen enforcement by adding statutory deficit targets enforced by sequestration under the so-called Gramm-Rudman-

Hollings (GRH) Act, officially named the Balanced Budget and Emergency Deficit Control Act of 1985.[47] (Sequestration involves the automatic triggering of largely across-the-board spending cuts in nonexempt programs if the deficit targets are not met.) This change shifted considerable power over budgetary enforcement to the President and the OMB director.

The GRH deficit targets were not successful. Although they remained in law until the mid-1990s, they effectively were superseded in 1990 by discretionary spending limits and a PAYGO requirement established in the Budget Enforcement Act (BEA) of 1990. Sequestration was retained as the enforcement mechanism for the two sets of procedures.

To buttress the PAYGO requirement, the Senate established an internal PAYGO rule in 1993. After several unsuccessful attempts, the House established its own PAYGO rule in 2007. In the meantime, the statutory PAYGO process established under the BEA of 1990 (and extended by later laws) was terminated in late 2002, a few months after the statutory limits on discretionary spending expired. A revised statutory PAYGO process was reinstituted in 2010. The next year, the House replaced its PAYGO rule with a “Cut-As-You-Go” (CUTGO) rule. In August 2011, the Budget Control Act of 2011 was enacted. It provides for discretionary spending caps until FY 2021 and triggers at least $1.2 billion in mandatory and discretionary spending cuts if a proposal by the Supercommittee fails to be enacted.

[47] The 1985 Act is Title II of Public Law 99-177 (2 U.S.C. §§ 900 et seq.).

Appendix B The Budget Reconciliation Process

The budget reconciliation process is an optional procedure that operates as an adjunct to the budget resolution process. Reconciliation procedures are set forth in Section 310 (2 U.S.C. 641) of Congressional Budget Act of 1974. The chief purpose of the reconciliation process is to enhance Congress's ability to change current law in order to bring revenue, spending, and debt-limit levels into conformity with the policies of the annual budget resolution. With regard to spending, reconciliation is used almost exclusively to change mandatory spending levels, not discretionary spending levels.

Reconciliation is a two-step process. First, reconciliation directives are included in the budget resolution, instructing the appropriate committees to develop legislation achieving the desired budgetary outcomes. Reconciliation directives instruct specified committees to develop legislation changing existing law in order to alter revenue, spending, or debt-limit levels to conform to budget resolution policies. Over the years, compliance with reconciliation directives has been determined on the basis of the net revenue or spending effects of all changes in the legislation. A particular reconciliation measure, therefore, may have included changes that raised spending as well as changes that reduced spending, changes that raised revenue as well as changes that reduced revenue, or both, and still adhered to the overall budgetary goals. (In 2007, the House and Senate changed their rules to require that reconciliation be used only to reduce the deficit, but in 2011 the House again revised its rules to allow reconciliation to be used to reduce revenues.)

If the budget resolution instructs more than one committee in a chamber, then the instructed committees submit their legislative recommendations to their respective Budget Committees by the deadline prescribed in the budget resolution. The Budget Committees incorporate them into an omnibus budget reconciliation bill without making any substantive revisions. In cases where only one committee has been instructed, the process allows that committee to report its reconciliation legislation directly to its parent chamber, thus bypassing the Budget Committee.

The second step involves consideration of the resultant reconciliation legislation by the House and Senate under expedited procedures. Among other things, debate in the Senate on any reconciliation measure is limited to 20 hours (and 10 hours on a conference report) and amendments must be germane and not include extraneous matter. These procedures effectively insulate a reconciliation measure from a filibuster. In the House, the Rules Committee typically recommends a special rule for the consideration of a reconciliation measure that places restrictions on debate time and the offering of amendments.

One factor that potentially inhibits the use of the reconciliation process to make sweeping changes in policy is the Senate's "Byrd Rule" (Section 313 of the 1974 Act; 2 U.S.C. 644), named after its sponsor, the late Senator Robert C. Byrd. The rule bars the inclusion of extraneous matter in a reconciliation measure and serves to restrict the content of the measure to solely those provisions that are necessary to achieve the budgetary goals identified in the reconciliation directives. When the consideration of a reconciliation measure is expected to be contentious, the Byrd Rule operates as a powerful deterrent to the inclusion of many potentially extraneous provisions.

If the House and Senate do not reach final agreement on a budget resolution, then the reconciliation process is not triggered. During the 36 years prior to the FY 2013 cycle, the House and Senate did not reach agreement on a budget resolution in five instances — in1998 (for FY 1999), 2002 (for FY 2003), 2004 (for FY 2005), 2006 (for FY 2007), 2010 (for FY 2011), and 2011 (for FY 2012).

As an optional procedure, reconciliation has not been used in every year that the congressional budget process has been in effect. Reconciliation was not used during the first several years of the congressional budget process and, more recently, was not used in years immediately following successful action on a budget summit agreement. In 1990, for example, the George H. W. Bush Administration successfully negotiated a budget summit agreement with Congress that was reflected in the FY 1991 budget resolution. Pursuant to reconciliation directives in that resolution, Congress and the President enacted the Omnibus Budget Reconciliation Act of 1990. Reconciliation was not used in the following two years, involving budget resolutions for FY 1992 and FY 1993.

Beginning with the first use of reconciliation by both the House and Senate in 1980, reconciliation has been used in most years. Congress has sent the President 23 reconciliation acts over the years; 20 were signed into law and three were vetoed by President Bill Clinton (and the vetoes not overridden).

Appendix C The Statutory PAYGO Act of 2010

On February 12, 2010, the Statutory Pay-As-You-Go Act of 2010 (Title I of Public Law 111-139) was enacted into law as part of a measure increasing the statutory limit on the public debt.

The Statutory Pay-As-You-Go Act of 2010 (Statutory PAYGO Act) establishes a process intended, as Section 2 of the Act states, “to enforce a rule of budget neutrality on new revenue and direct spending legislation.” (“Direct spending” is a synonym for “mandatory spending.”) The budgetary effects of revenue and mandatory spending provisions enacted into law, including both costs and savings, are recorded by the Office of Management and Budget (OMB) on two PAYGO scorecards covering rolling five-year and 10-year periods (i.e., in each new session, the periods covered by the scorecards roll forward one fiscal year).

The budgetary effects of PAYGO measures are determined by statements inserted into the Congressional Record by the chairmen of the House and Senate Budget Committees and referenced in the measures. As a general matter, the statements are expected to reflect cost estimates prepared by the Congressional Budget Office. If this procedure is not followed for a PAYGO measure, then the budgetary effects of the measure are determined by OMB. The statutory PAYGO process addresses only those budgetary effects that are on budget; pursuant to Section 3(4)(B) of the Act, the budgetary effects of off-budget entities are not counted.

Shortly after a congressional session ends, OMB finalizes the two PAYGO scorecards and determines whether a violation of the PAYGO requirement has occurred (i.e., if a debit has been recorded for the budget year on either scorecard). If so, the President issues a sequestration order that implements largely across-the-board cuts in nonexempt mandatory spending programs sufficient to remedy the violation by eliminating the debit. Many mandatory spending programs and activities are exempt from sequestration. If no PAYGO violation is found, no further action occurs and the process is repeated during the next session.

The new statutory PAYGO process was created on a permanent basis; there are no expiration dates in the Act. The process became effective upon enactment.

As a budget enforcement tool, the new statutory PAYGO process is aimed at preventing, or at least discouraging, net deficit increases arising from the enactment of mandatory spending and revenue legislation. Any costs designated as emergencies are excluded from the scorecards, and significant costs associated with four specified categories of legislation may be excluded as well. In addition, significant savings stemming from the Community Living Assistance Services and Supports (CLASS) Act, establishing an insurance program for long-term care, are excluded from the scorecards. Finally, debt service costs are excluded as well.

The statutory PAYGO process does not address deficit increases arising from changes in mandatory spending levels or revenue levels that are projected to occur under existing law. Other budget enforcement procedures, such as the reconciliation process under the Congressional Budget Act of 1974 (see Appendix B), may be used to reduce deficit levels stemming from current law. Further, the statutory PAYGO process does not apply to discretionary spending, which is provided in annual appropriations acts.

On January 24, 2012, OMB issued the 2011 PAYGO Report, as required by the Act.[48] The report indicated that 33 laws subject to the PAYGO procedures were enacted in 2011. In addition, one law, the Temporary Payroll Tax Cut Continuation Act of 2011, contained a provision explicitly excluding it from the scorecard.[49] According to OMB, the 5-year scorecard reflected an average annual balance of more than $9 billion in savings, and the 10-year scorecard reflected an average annual balance of more than $7 billion in savings. Consequently, OMB determined that no sequestration order was necessary.

[48] Office of Management and Budget, *2011 Statutory Pay-as-You-Go Act Annual Report,* January 24, 2012, http://www.whitehouse.gov/sites/default/files/omb/assets/paygo/2011_paygo_report_new.pdf.
[49] Public Law 112-78, December 23, 2011.