

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue cap at the top. The globe in the top bulb is dark blue, while the globe in the bottom bulb is light blue. The text is centered within the hourglass.

WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-RL31479>

February 2, 2009

Congressional Research Service

Report RL31479

*Federal Budget Process Reform: Proposals and Legislative
Actions in the 107th Congress*

Bill Heniff, Jr., Government and Finance Division

Updated October 1, 2002

Abstract. This report identifies and tracks budget process reform proposals introduced, considered, or adopted in the 107th Congress (2001-2002). It provides descriptions of proposals.

WikiLeaks

Report for Congress

Received through the CRS Web

Federal Budget Process Reform: Proposals and Legislative Actions in the 107th Congress

Updated October 1, 2002

Bill Heniff Jr.
Analyst in American National Government
Government and Finance Division

<http://wikileaks.org/wiki/CRS-RL31479>

Federal Budget Process Reform: Proposals and Legislative Actions in the 107th Congress

Summary

The federal budget process is a compilation of procedures derived from constitutional requirements, statutes, administrative directives, and House and Senate rules and practices. Thus, there are several avenues through which Congress and the President can change the various elements of the budget process. Reform proposals reflect this diversity as well.

Congress and the President regularly propose and make changes to the federal budget process. This report identifies and tracks budget process reform proposals introduced, considered, or adopted in the 107th Congress (2001-2002). It provides brief descriptions of proposals but does not address their implications. The report does not discuss budget process reforms instituted by executive order or other administrative means.

In the 107th Congress, over 30 measures proposing to reform the budget process have been introduced. The proposals cover the following budget process topics: Budget Enforcement Act procedures; congressional budget resolution and reconciliation; annual appropriations process; biennial budgeting; lock boxes; constitutional amendments; and budget structure and coverage.

Only one budget process reform proposal has been enacted into law: a provision (Section 1402) in the Supplemental Appropriations Act, 2002 (P.L. 107-206) cancelled the FY2003 revenue-aligned budget authority adjustment to the highway and mass transit spending limit.

Several reform proposals have been adopted, considered, and reported in the House and Senate. First, three attempts have been made in the Senate to extend budget enforcement procedures but all failed on points of order. Second, the FY2002 budget resolution (H.Con.Res. 83) included a limitation on advance appropriations. Third, although a FY2003 budget resolution has not been adopted by Congress, several budget process rules are included in the House-adopted version (H.Con.Res. 353) and the Senate Budget Committee-reported version (S.Con.Res. 100). Fourth, two proposals have been reported by House committees: (1) a biennial budgeting bill (H.R. 981) by the House Rules Committee and (2) a proposal to establish a Commission on Federal Budget Concepts (as an amendment to H.R. 981) by the House Budget Committee. Fifth, a proposal to establish a Social Security and Medicare lock box (H.R. 2) was adopted by the House. Sixth, four proposals to create a Social Security and Medicare lock box were considered in the Senate, but all fell on points of order. Finally, two identical constitutional amendment proposals requiring a two-thirds vote to increase taxes (H.J.Res. 41 and H.J.Res. 96) failed to receive the required two-thirds vote in the House.

This report will be updated as developments warrant.

Contents

Federal Budget Process Reforms	2
Budget Enforcement Act Procedures	2
Congressional Budget Resolution and Reconciliation	6
Annual Appropriations Process	9
Biennial Budgeting	10
Lock Boxes	10
Constitutional Amendments	12
Budget Structure and Coverage	14
Other Proposals Related to the Budget Process	16

List of Tables

Table 1. Balanced Budget Amendment Proposals Introduced in the 107 th Congress	13
Table 2. Off-Budget Status Measures Introduced in the 107 th Congress	15

Federal Budget Process Reform: Proposals in the 107th Congress

The federal budget process is a compilation of procedures derived from constitutional requirements, statutes, administrative directives, and House and Senate rules and practices.¹ Thus, there are several avenues through which Congress and the President can change the various elements of the budget process. Reform proposals reflect this diversity as well.

Congress and the President regularly propose and make changes to the federal budget process. In some years, such as 1921, 1974, 1985, and 1990, the budget process has been significantly changed through statutes enacted by Congress and the President.² In other years, such as 1987, 1993, and 1997, the existing budget process statutes have been modified or extended.³ In every Congress, the House and Senate institute new rules and practices that have an impact on the budget decision-making process.

This report identifies and tracks budget process reform proposals introduced, considered, or adopted in the 107th Congress (2001-2002). It provides brief descriptions of proposals but does not address their implications.⁴ The report does not discuss budget process reforms instituted by executive order or other administrative means.

¹ For a comprehensive overview of the federal budget process, see CRS Report 98-720, *Manual on the Federal Budget Process*, by Robert Keith and Allen Schick.

² The years listed refer to the enactment of the Budget and Accounting Act of 1921 (P.L. 13, 67th Cong., 42 Stat. 20-27), the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344, 88 Stat. 297-339), the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177, 99 Stat. 1038-1101), and the Budget Enforcement Act of 1990 (Title XIII of P.L. 101-508, 104 Stat. 1388-573-1388-630).

³ The years refer to the enactment of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Title I of P.L. 100-119, 99 Stat. 754-788), Title XIV of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66, 107 Stat. 683-685), and the Budget Enforcement Act of 1997 (Title X of P.L. 105-33, 111 Stat. 677-712).

⁴ For a discussion and analysis of several major budget process reform options, see CRS Report RL31478, *Federal Budget Process Reform: Analysis of Five Reform Issues*, by James V. Saturno and Bill Heniff Jr. The report examines five budget process reform options: an extension of the Budget Enforcement Act; a joint budget resolution; an emergency reserve fund; an automatic continuing resolution; and biennial budgeting.

Federal Budget Process Reforms

The following discussion provides an overview of federal budget process reforms introduced, considered, or adopted during the 107th Congress, categorized by topic area.

Budget Enforcement Act Procedures

Federal budget legislation is constrained by statutory limits on discretionary spending and a “pay-as-you-go” (PAYGO) requirement for direct spending and revenue legislation. Both of these budget constraints were established by the Budget Enforcement Act (BEA) of 1990 (Title XIII of P.L. 101-508), which amended the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177). These statutory budget constraints were extended in 1993 and 1997, but generally expire at the end of FY2002 (i.e., September 30, 2002).⁵

For at least the last 2 years, there has been congressional interest in modifying and extending the BEA procedures beyond FY2002. Many Members of Congress, as well as outside observers, agree that the budget enforcement mechanisms associated with the BEA promoted fiscal discipline throughout the 1990s, and contributed to the federal government achieving a unified budget surplus in FY1998—the first in almost 30 years. Some have argued that such fiscal discipline mechanisms are necessary even in times of surpluses and that the BEA should be extended for this purpose. The return of budget deficits, at least in the short term, has further increased the interest in some form of budget enforcement procedures beyond FY2002.⁶

In the last few years, Congress and the President have made ad hoc modifications to the BEA to avoid a sequester for the upcoming fiscal year or to reduce the likelihood of a sequester in future fiscal years.⁷ Most recently, the Defense Appropriations Act for FY2002 (P.L. 107-117) included provisions increasing certain discretionary spending limits for FY2002 and changing the PAYGO scorecard balance to zero for FY2001 and FY2002.⁸ Such modifications to

⁵ The general discretionary spending limits and the sequestration process that enforces the limits expire at the end of FY2002, even though certain spending limits exist beyond FY2002. In contrast, the sequestration process that enforces the PAYGO requirement continues to cover the net effects through FY2006 of direct spending and revenue legislation enacted before the end of FY2002.

⁶ For the latest budget projections, see Congressional Budget Office, *The Budget and Economic Outlook: An Update* (Washington: CBO, Aug. 2002).

⁷ For detailed information on these modifications, see CRS Report RL31155, *Techniques for Preventing a Budget Sequester*, by Robert Keith.

⁸ The FY2002 budget resolution (H.Con.Res. 83) assumed discretionary spending amounts much higher than the existing caps for FY2002 as well as direct spending and revenue legislation that would have violated the PAYGO requirement. During the 1st session of the 107th Congress, legislation was introduced in the House (H.R. 3084) and Senate (S. 1575)

(continued...)

the discretionary spending limits and PAYGO scorecard effectively prevented an end-of-the-session sequester for FY2002.⁹

In the 107th Congress, three hearings have been held by the House Committee on the Budget on the subject of an extension of the Budget Enforcement Act. The first hearing, held on June 27, 2001, dealt directly with the possible extension of the BEA.¹⁰ The second hearing, held on July 19, 2001, dealt with the general subject of structural reform of the federal budget process, and issues related to the BEA were discussed.¹¹ The third hearing, held on April 25, 2002, once again dealt directly with an extension of the BEA procedures.¹²

Four BEA extension proposals have been introduced in the House. First, H.R. 4593, the Assuring Honesty and Accountability Act of 2002, was introduced by Representative Baron Hill on April 25, 2002.¹³ H.R. 4593 would establish statutory caps on discretionary spending for FY2003-2007 and extend the PAYGO requirement for direct spending and revenue legislation permanently. It also would create points of order against legislation that would alter these enforcement procedures, such as increasing the spending limits or setting the PAYGO scorecard balance to zero.¹⁴ Second, H.R. 4767, the Congressional Act to Prioritize Spending, was introduced by Representative Patrick Toomey on May 16, 2002.¹⁵ H.R. 4767 would establish statutory caps for discretionary spending for FY2003-2007, but would not extend the PAYGO requirement. Third, H.R. 5259, the Budget Fraud

⁸ (...continued)

to revise the discretionary spending caps for FY2002, and in the former to eliminate the existing balance for FY2002 on the PAYGO scorecard as well. The House Budget Committee reported H.R. 3084 favorably on Dec. 13, 2001 (H.Rept. 107-338), but no further action was taken on that legislation or the Senate bill.

⁹ Office of Management and Budget, *OMB Final Sequestration Report to the President and Congress for Fiscal Year 2002* (Washington: OMB, Jan. 2002).

¹⁰ U.S. Congress, House Committee on the Budget, *Forthcoming Extension/Modification of the Budget Enforcement Act*, hearing, 107th Cong., 1st sess., June 27, 2001 (Washington: GPO, 2002).

¹¹ U.S. Congress, House Committee on the Budget, *Federal Budget Process: Structural Reform*, hearing, 107th Cong., 1st sess., July 19, 2001 (Washington: GPO, 2002).

¹² The hearing transcript has not been printed yet, but the statements of the witnesses are available on the House Budget Committee's Web site at [<http://www.house.gov/budget>].

¹³ H.R. 4593 was referred to the Committee on the Budget, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker.

¹⁴ Legislation that includes a similar point of order against legislation altering the BEA procedures was introduced by Rep. Robert Andrews (H.R. 816 and H.R. 1065). These measures also would require the secretary of the Treasury to transfer any on-budget surplus to the Social Security trust funds at the end of each fiscal year. H.R. 816 and H.R. 1065 were referred to the Committees on Ways and Means, Rules, and the Budget.

¹⁵ H.R. 4767 was referred to the Committee on the Budget.

Elimination Act of 2002, was introduced by Representative Paul Ryan on July 26.¹⁶ Although H.R. 5259 would reform several aspects of the federal budget process, Subtitle E of the bill specifically would extend the discretionary spending limits and PAYGO requirement through FY2007.¹⁷ Finally, H.R. 5502, the Restore Budget Discipline Act of 2002, introduced by Representative John Spratt on September 30, would extend the budget enforcement procedures through FY2007.¹⁸

In the Senate, the Senate Budget Committee-reported FY2003 budget resolution (S.Con.Res. 100, S.Rept. 107-141) includes two provisions related to BEA procedures that would apply only in the Senate. Section 203 modifies the Senate “PAYGO” point of order, which augments the statutory PAYGO requirement by providing a point of order against direct spending and revenue legislation that would cause or increase an on-budget deficit (i.e., excluding Social Security and the U.S. Postal Service) in each of three time periods: the first year, the first 5 years, and the second 5 years covered by the budget resolution. Under the modification, the point of order would apply to direct spending and revenue legislation reducing the on-budget surplus, causing an on-budget deficit, or increasing the on-budget deficit in the three time periods under the existing Senate “PAYGO” rule.¹⁹ The modification would make the rule more stringent by requiring that any on-budget surplus be preserved. Section 207 establishes a single spending cap on discretionary spending for FY2003, and provides a super-majority point of order to enforce it.²⁰ If Congress adopts this version of the FY2003 budget resolution, these provisions would modify and extend Senate points of order, but would not cause a sequestration if violated.

In addition, two bills extending several budget enforcement procedures have been introduced in the Senate: (1) S. 2465, the Budget Enforcement Act of 2002, introduced by Senators Judd Gregg and Russell Feingold; and (2) S. 2791, To provide budget discipline and enforcement for FY2003 and beyond, introduced by

¹⁶ H.R. 5259 was referred to the Committee on the Budget until Aug. 31, later extended to Sept. 13, and in addition to the Committees on Ways and Means, Rules, and Government Reform, for a period to be subsequently determined by the Speaker. On September 17, the bill was discharged from the Committee on the Budget, and the other committees were granted an extension for further consideration until Oct. 4.

¹⁷ H.R. 5259 also would exclude the debt held by government accounts from the debt subject to a statutory limit, establish a 2-year budgeting and appropriations cycle, place restrictions on emergency spending, alter the Senate’s Byrd rule, create appropriations lock-boxes, provide the President with enhanced rescission authority, prohibit extraneous appropriations in omnibus appropriations measures, and require accrual funding of Federal retiree costs.

¹⁸ H.R. 5502 was referred to the Committee on the Budget.

¹⁹ For further information on the Senate PAYGO rule, see CRS Report RS21316, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

²⁰ This provision, offered by Sen. Pete Domenici as an amendment to the chairman’s mark, was approved by a 13-9 vote in committee. Another amendment offered by Sens. Judd Gregg and Russell Feingold, establishing discretionary spending caps for 5 fiscal years (FY2003-FY2007) among other things, was rejected by a 11-11 vote.

Senators Pete Domenici and Feingold.²¹ First, S. 2465 would establish statutory caps on discretionary spending for FY2003-2007 and extend the PAYGO requirement for direct spending and revenue legislation through FY2007. Two modifications to the existing procedures are worth noting. First, under a modified PAYGO requirement (Section 3), a sequestration would not be required for any fiscal year in which an on-budget surplus existed, thereby allowing all or a portion of the on-budget surpluses to be used for direct spending increases or tax cuts. Second, the bill would create a new point of order in the Senate (Section 5) against any legislation that would alter the normal operation of the sequestration procedures, such as increasing any discretionary spending limit or setting the PAYGO scorecard balance to zero. A motion to waive this point of order would require a three-fifths vote of the membership (i.e., 60 Senators if no seats are vacant).

The second bill, S. 2791, would establish a statutory discretionary spending limit only for FY2003 and extend the PAYGO requirement through FY2007. The PAYGO requirement under this bill (Section 2) would expire if the Treasury reported an on-budget surplus and require the President to submit a recommendation for PAYGO enforcement procedures appropriate when there is a an on-budget surplus.

During the 107th Congress, several attempts have been made on the Senate floor to extend various budget enforcement procedures, but they were unsuccessful. On June 5, 2002, Senators Gregg and Feingold offered an amendment (S.Amdt. 3687) that contained the text of S. 2465 to H.R. 4775, the FY2002 Supplemental Appropriations Act. The amendment fell on a point of order.²² The next day, June 6, Senate Majority Leader Tom Daschle offered an amendment (S.Amdt. 3764) that would have extended several budget enforcement procedures through FY2007 to H.R. 4775, but it also fell on a point of order.²³ Another attempt to extend budget enforcement procedures was made on June 20, during consideration of S. 2514, the Defense Authorization Act for FY2003. Senator Feingold offered an amendment (S.Amdt. 3915), which was modified by an amendment (S.Amdt. 3916) offered by Senators Harry Reid and Kent Conrad, that also would have established discretionary spending limits for FY2003 and FY2004 and extended several other budget

²¹ Each bill was referred jointly to the Senate Committees on the Budget and Governmental Affairs. Pursuant to a standing order of the Senate dated Aug. 4, 1977, budget process reform legislation is referred to both committees jointly, with instructions that if one committee reports, the other has 30 days to report or be discharged of the bill.

²² The amendment was subject to a point of order under Section 306 of the CBA, which prohibits consideration of any measure within the jurisdiction of the Budget Committee unless it is reported by the Budget Committee, discharged from the committee, or is an amendment to such a measure. A motion to waive the point of order requires a three-fifths vote in the Senate. A motion to waive the point of order raised against the amendment was rejected by a 49-49 vote. See *Congressional Record*, daily edition, vol. 148 (June 5, 2002), pp. S5004-S5015.

²³ On June 6, 2002, cloture was invoked on H.R. 4775. Under cloture, a point of order may be raised against non-germane amendments. The chair ruled that Sen. Daschle's amendment was not germane to the FY2002 Supplemental Appropriations Act and the amendment fell. See *Congressional Record*, daily edition, vol. 148, June 5, 2002, pp. S5015-S5018; and *Congressional Record*, daily edition, vol. 148 (June 6, 2002), pp. S5114-S5120.

enforcement procedures through FY2007. Like the previous two attempts, the amendment fell on a point of order.²⁴

Although no overall discretionary spending limit exists beyond FY2002, separate categorical spending limits do exist for highway and mass transit spending through FY2003 and for conservation spending through FY2006. Under the Transportation Equity Act for the 21st Century (P.L. 105-178), as amended, the director of the Office of Management and Budget is required to adjust the highway spending limit each year based on a complex financing mechanism known as revenue-aligned budget authority (RABA).²⁵ The FY2003 adjustment reduced the highway spending limit by more than \$8 billion from the FY2002 level.

The Emergency Supplemental Appropriations Act, 2002 (P.L. 107-206) contained a provision (Section 1402) that effectively cancelled the RABA adjustment for FY2003.²⁶ President Bush signed the supplemental appropriations act into law on August 2, following the adoption of the legislation by the House (July 23) and the Senate (July 24). Prior to the enactment of this legislation, the House and Senate both took action on separate legislation relating to the RABA adjustment. In the House, H.R. 3694, the Highway Funding Restoration Act, which would have cancelled the RABA adjustment for FY2003, was adopted by a 410-5 vote under suspension of the rules on May 14. In the Senate, a related bill (S. 1917) was reported favorably with an amendment in the nature of a substitute (S.Rept. 107-163) by the Senate Committee on the Environment and Public Works on June 17, and the bill was placed on the Senate Legislative Calendar.

Finally, legislation that would add a third sequestration procedure to the existing discretionary spending and PAYGO sequestration procedures has been introduced in the House. On April 4, 2001, Representative Nick Smith introduced H.R. 1521, which would require a sequestration equivalent to the amount by which total outlays exceed 18% of gross domestic product for FY2002-FY2006. The bill was referred to the Committee on the Budget.

Congressional Budget Resolution and Reconciliation

The purpose of the congressional budget resolution is to adopt and enforce an overall budget plan within Congress. The budget resolution sets forth aggregate spending and revenue levels, and spending levels by major functional categories, for at least 5 fiscal years. It is a concurrent resolution and thus is not presented to the

²⁴ The amendment was subject to a point of order under Section 306 of the CBA. A motion to waive the point of order was rejected by a 59-40 vote. See *Congressional Record*, daily edition, vol. 148, June 19, 2002, pp. S5762-S5767; and *Congressional Record*, daily edition, vol. 148 (June 20, 2002), pp. S5808-S5821.

²⁵ For further information on highway and mass transit funding and the adjustment mechanism, see CRS Report 98-749, *The Transportation Equity Act for the 21st Century (TEA21) and the Federal Budget*, by John W. Fischer; and CRS Report RS21164, *Highway Financing: RABA's Double-edged Sword*, by John W. Fischer.

²⁶ The provision is similar to legislation (H.R. 3900) introduced by Rep. C.W. Bill Young on Mar. 7, 2002.

President for his signature and does not become law. Instead, it is an agreement between the House and Senate on an overall congressional budget plan.

The congressional budget resolution provides a framework for subsequent legislative action on the budget during each session. Because the budget resolution does not become law, budget policies are implemented through the enactment of reconciliation bills, revenue and debt-limit legislation, and appropriations and other spending measures. Congress enforces budget resolution policies through points of order on the floor of each chamber and the reconciliation process.

Congress often modifies or augments these enforcement procedures by including provisions in budget resolutions under the authority provided by Section 301(b)(4) of the Congressional Budget Act (CBA) of 1974 (Titles I-IX of P.L. 93-344), as amended. This so-called elastic clause gives Congress the option to include in a budget resolution other matters and procedures consistent with the purposes of the Budget Act. For instance, six points of order included in previous budget resolutions currently limit the consideration of certain budgetary legislation; four of these will not apply or will expire after September 30, 2002.²⁷

The FY2002 budget resolution (H.Con.Res. 83) included points of order (Sections 201 and 202) to limit advance appropriations provided in FY2002 appropriations measures to an amount not to exceed \$23,159,000,000 for certain accounts listed in the conference report to the budget resolution (H.Rept. 107-60), and to the Corporation for Public Broadcasting.

The House and Senate have not agreed on a FY2003 budget resolution, but their respective versions of the budget resolution include budget process provisions. The House-adopted FY2003 budget resolution (H.Con.Res. 353, H.Rept. 107-376) includes a limitation on advance appropriations provided in FY2003 appropriations measures similar to the one adopted in the previous budget resolution, but increases the amount to \$23,178,000,000.²⁸ The Senate Budget Committee-reported FY2003 budget resolution (S.Con.Res. 100, S.Rept. 107-141) includes six budget enforcement provisions: (1) a requirement that future budget resolutions include a plan to balance the budget without counting Social Security trust funds within 5 years; (2) an extension of the super-majority requirement for waivers of certain budget enforcement points of order in the Senate; (3) a modification of the existing Senate PAYGO rule (as mentioned above); (4) a limitation on advance appropriations (similar to the House's, but with an specified amount of \$25.403 billion); (5) a modification to the existing Senate emergency designation restriction; and (6) discretionary spending limits for FY2003 (as mentioned above).

²⁷ See CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

²⁸ Under H.Res. 428, agreed to by the House on May 22 by a 216-209 vote, the House-adopted budget resolution for FY2003 is deemed to have been agreed to by Congress. Therefore, this limitation on advance appropriations applies to FY2003 appropriations measures considered in the House. For further information on "deeming resolutions," see CRS Report RL31443, *The "Deeming Resolution": A Budget Enforcement Tool*, by Robert Keith.

Some Members of Congress, as well as the President, have argued that the concurrent resolution on the budget would be more effective in guiding and enforcing budget policy by transforming it into a joint resolution and thus requiring the President's signature. A joint budget resolution would formally and directly involve the President in congressional deliberations on the budget early in the process. President Bush proposed a joint budget resolution in his FY2002 and FY2003 budget submissions to Congress. However, no legislation has been introduced in the 107th Congress proposing to transform the concurrent resolution on the budget into a joint resolution.

The reconciliation process, under Section 310 of the CBA, provides Congress with the option of including instructions in a budget resolution instructing House and Senate committees to recommend changes in direct spending and revenue laws to comply with the budget policies in the budget resolution. The resultant reconciliation legislation is considered under expedited procedures, which limit debate and place restrictions on its content.

The House considers reconciliation legislation pursuant to the provisions of a special rule that limits debate and amendments. In contrast, the Senate considers reconciliation legislation under the procedures set out in the CBA, which limit debate to 20 hours. In 2001, the Senate amended the House version of the FY2002 budget resolution (H.Con.Res. 83) to increase debate time on reconciliation legislation to 50 hours.²⁹ However, this provision was eliminated during conference between the two chambers.³⁰

Among other restrictions on the content of reconciliation measures, Section 313 of the CBA, referred to as the Byrd rule, prohibits the inclusion of extraneous matter in reconciliation legislation. Under the Byrd rule, a Senator may raise a point of order against a provision that meets any of the six definitions of extraneous matter specified in the CBA.³¹ A motion to waive the Byrd rule requires a three-fifths affirmative vote of the membership (60 Senators if no seats are vacant). Some in Congress, especially in the House, have criticized the Byrd rule, arguing that it leads to awkward drafting of reconciliation bills and provides an unfair advantage to the Senate over the House during conference negotiations on reconciliation bills.³² In the

²⁹ The provision also applied to budget resolutions and placed restrictions on the timing of certain amendments. See *Congressional Record*, daily edition, vol. 147 (Apr. 5, 2001), p. S3524.

³⁰ See the remarks of Sen. Robert C. Byrd in the *Congressional Record*, daily edition, vol. 147 (May 17, 2001), p. S5029.

³¹ For an explanation of the six definitions of extraneous matter and more information on the Byrd rule, see CRS Report RL30862, *Budget Reconciliation Procedures: The Senate's "Byrd Rule,"* by Robert Keith.

³² For example, see the explanations of the modifications to the Byrd rule proposed by H.R. 853, the Comprehensive Budget Process Reform Act of 1999, which was introduced and defeated in the 106th Congress: U.S. Congress, House Committee on the Budget, *Comprehensive Budget Process Reform Act of 1999*, report to accompany H.R. 853, 106th Cong., 1st sess., H.Rept. 106-198, part 2, Aug. 5, 1999 (Washington: GPO, 1999), pp. 68-72;

(continued...)

107th Congress, the Byrd rule has come under increased criticism because many attribute the sunset provision in the tax-cut reconciliation legislation enacted in 2001 (H.R. 1836; P.L. 107-16) to it.³³ Without the sunset provision, the tax cuts would have reduced the surplus for the fiscal years beyond those covered by the reconciliation measure, which only covered FY2001-FY2011. This would have violated the Byrd rule.

Annual Appropriations Process

Congress provides discretionary budget authority, as well as appropriated entitlements, to agencies and programs through the annual appropriations process. The House and Senate Appropriations Committees, each with 13 subcommittees, have jurisdiction over appropriations measures. The 13 subcommittees of the House and Senate Appropriations Committees are each responsible for one of the 13 regular appropriations acts. The regular appropriations acts provide budget authority for the next fiscal year, beginning October 1. Congress usually adopts one or more supplemental appropriations acts to provide additional funding for unexpected needs while the fiscal year is in progress. If one or more regular appropriations acts are not completed by October 1, Congress typically adopts a continuing appropriations act, commonly referred to as a continuing resolution, to provide temporary funding for agencies and programs until they receive a regular appropriation.

Without a regular appropriation or a continuing resolution, an agency does not have the legal authority to incur obligations in order to function.³⁴ In such cases, the agency must shut down. To prevent a government shutdown, and the threat of one, due to the expiration of funding, some Members have proposed establishing an automatic continuing resolution. An automatic continuing resolution would provide an automatic source of funding for discretionary activities in the event one or more regular appropriations acts are not enacted by the start of a new fiscal year.

In the House, two measures that would establish an automatic continuing resolution have been introduced in the 107th Congress. On January 2, 2001, Representative George Gekas introduced H.R. 29, the Government Shutdown Prevention Act, which would have provided for an automatic continuing resolution for FY2002 appropriations only. On February 13, 2002, Representative Gekas introduced H.R. 3744, also titled the Government Shutdown Prevention Act, which would establish an automatic continuing resolution beginning with FY2004 and

³² (...continued)

and U.S. Congress, House Committee on the Rules, *Comprehensive Budget Process Reform Act of 1999*, report to accompany H.R. 853, 106th Cong., 1st sess., H.Rept. 106-198, part 3, Aug. 5, 1999 (Washington: GPO, 1999), pp. 97-98.

³³ For example, see the remarks of various Members during House consideration of legislation (H.R. 586) making the tax cuts enacted in 2001 (P.L. 107-16) permanent in the *Congressional Record*, daily edition, vol. 148 (Apr. 18, 2002), pp. H1418-H1452.

³⁴ For a more comprehensive discussion of this issue, see CRS Report RL30339, *Preventing Federal Government Shutdowns: Proposals for an Automatic Continuing Resolution*, by Robert Keith.

sunset 5 years after enactment. Both bills were referred to the House Appropriations Committee.

Biennial Budgeting

Biennial budgeting proposals would change the budget cycle from one to 2 years.³⁵ Such proposals involve multiyear authorizations, 2-year budget resolutions, 2-year appropriations, or some combination of the three. Biennial budgeting proposals are intended to reduce the amount of time Congress spends on budgetary legislation, to enhance congressional oversight of federal agencies and programs, and generally to provide for more efficient budget decision making.

On March 13, 2001, Representative Charles Bass introduced H.R. 981, the Budget Responsibility and Efficiency Act of 2001, which would establish a 2-year budgeting and appropriations cycle.³⁶ The bill was referred to the Committee on the Budget, with a time limit, and to the Committees on Rules and Government Reform, with time limits to be determined subsequently by the Speaker.³⁷ On September 5, 2001, the Budget Committee reported the bill (H.Rept. 107-200, part 1) with a substitute amendment establishing a “Commission on Federal Budget Concepts” (see further discussion below, “Budget Structure and Coverage” section). On November 14, 2001, the Rules Committee reported the bill (H.Rept. 107-200, part 2) favorably with a technical amendment.³⁸ On the same day, the bill was discharged from the Government Reform Committee and placed on the Union Calendar.

H.R. 5259, the Budget Fraud Elimination Act of 2002, (discussed above) also contains provisions to establish a 2-year budgeting and appropriations cycle. No legislative action has been taken on this bill.

Lock Boxes

In previous years, “lock-box” procedures were proposed primarily for deficit reduction.³⁹ In recent years, lock-box procedures have been proposed for the purposes of protecting the Social Security and Medicare Hospital Insurance (HI) trust

³⁵ For a more comprehensive analysis of biennial budgeting, see CRS Report RL30550, *Biennial Budgeting: Issues and Options*, by James V. Saturno.

³⁶ Rep. Bill Luther also introduced a biennial budgeting proposal (H.R. 129) in the 107th Congress, but no action has been taken on that bill.

³⁷ The Budget Committee initially was given until Apr. 13, 2001, to take action on the bill, and then received an extension until Sept. 5, 2001. The referrals to the Rules and Government Reform Committees subsequently were extended as well.

³⁸ The Rules Committee held a hearing on biennial budgeting on July 25, 2001. The hearing transcript has not been printed yet, but written testimony and a transcript of the hearing is available on the Rules Committee Web site at [www.house.gov/rules/rules_hear13.htm].

³⁹ See CRS Report 97-815, *Deficit-Reduction Lockbox Proposals: Summary and Legislative History*, by Robert Keith and Bill Heniff Jr.

fund surpluses.⁴⁰ These lock-box proposals generally would create points of order against legislation that would cause the budget surplus to be less than the combined surpluses of the Social Security and Medicare HI trust funds. The House and Senate have considered a number of such lock-box proposals during the 107th Congress.

On February 13, 2001, the House adopted H.R. 2, the Social Security and Medicare Lock-Box Act of 2001 (introduced by Representative Wally Herger), under suspension of the rules by a 407-2 vote.⁴¹ The bill would create points of order against any budget resolution setting forth a surplus for any fiscal year, and any legislation that would cause the on-budget surplus for any fiscal year covered by the most recently adopted budget resolution, to be less than the Medicare HI trust fund surplus.⁴² An exception is provided for Social Security or Medicare reform legislation. A motion to waive these points of order would require a three-fifths vote in the Senate. On February 15, 2001, the House-adopted bill was referred to the Senate Committees on the Budget and Governmental Affairs.⁴³

In the Senate, lock-box proposals have been considered as amendments to other legislation. On March 13, 2001, Senators Kent Conrad and Jeff Sessions offered competing Social Security and Medicare HI lock-box proposals as amendments (S.Amdt. 29 and S.Amdt. 32, respectively) to S. 420, the Bankruptcy Reform Act of 2001. Both amendments fell on points of order.⁴⁴ Subsequently, on July 10, 2001, Senators George Voinovich and Conrad offered competing Social Security and Medicare HI lock-box proposals as amendments (S.Amdt. 865 and S.Amdt. 866 to

⁴⁰ For further information on Social Security and Medicare lock boxes, see CRS Report RS20165, *Social Security and Medicare "Lock Boxes,"* by David Koitz, Geoffrey Kollmann, and Dawn Nuschler; and CRS Report RS20676, *Fact Sheet on the Debt Relief Lock-box Reconciliation Act for Fiscal Year 2001 (H.R. 5173),* by Philip D. Winters.

⁴¹ Other bills (H.R. 120, H.R. 373, and H.R. 560) that would create lock-box procedures for Social Security and Medicare HI trust fund surpluses have been introduced in the House, but no action has been taken on them.

⁴² The congressional budget resolution does not include the outlays and receipts of the Social Security trust funds, as well as the federal payment to the U.S. Postal Service, in the surplus or deficit amount. Therefore, H.R. 2 is intended to protect both the Social Security and Medicare HI trust fund surpluses.

⁴³ The bill was received and referred to the Senate Finance Committee on Feb. 14, 2001, but was discharged from that committee by unanimous consent the next day. Pursuant to a standing order of the Senate dated Aug. 4, 1977, budget process reform legislation is referred to the Committees on the Budget and Governmental Affairs jointly, with instructions that if one committee reports, the other has 30 days to report or be discharged of the bill.

⁴⁴ The amendments were subject to a point of order under Section 306 of the CBA, which prohibits consideration of any measure within the jurisdiction of the Budget Committee unless it is reported by the Budget Committee, discharged from the committee, or is an amendment to such a measure. A motion to waive the point of order requires a three-fifths vote in the Senate. Motions to waive the points of order raised against the two amendments were rejected by votes of 53-47 and 52-48, respectively. For the debate and vote on the Senate floor, see *Congressional Record*, daily edition, vol. 147 (Mar. 13, 2001), pp. S2184-S2188.

S.Amdt 865, respectively) to S. 1077, the FY2001 Emergency Supplemental Appropriations Act. Once again, both amendments fell on points of order.⁴⁵

In addition to these amendments, Senate Majority Leader Tom Daschle introduced a Social Security and Medicare HI lock-box proposal (S. 21) on January 22, 2001. After being referred to and discharged from the Senate Finance Committee, the bill was referred to the Senate Committees on the Budget and Governmental Affairs on January 30, 2001.

Constitutional Amendments

Some Members of Congress have proposed constitutional amendments to change the federal budget process. Proposals for a balanced budget amendment, an item veto amendment, and a tax limitation amendment have been introduced in the 107th Congress.

Balanced budget amendment proposals generally would require that total federal spending not exceed total federal revenues.⁴⁶ Eight balanced budget amendment proposals have been introduced in the 107th Congress (see **Table 1**). All of the proposals allow for a budget deficit only if approved by a three-fifths vote of each chamber (i.e., 261 votes in the House and 60 votes in the Senate, if there are no vacancies). Social Security receipts and expenditures would not be counted under H.J.Res. 85 and H.J.Res. 90, and any Social Security surplus would not be counted under S.J.Res. 2. All the proposals except H.J.Res. 8 and S.J.Res. 3 also would require a three-fifths vote of each chamber to increase the public debt limit. Lastly, S.J.Res. 3 also would prohibit total federal expenditures from exceeding an amount equal to 20% of the Gross National Product.

The House proposals were referred to the House Committee on the Judiciary, and the Senate proposals were referred to the Senate Committee on the Judiciary.

⁴⁵ Motions to waive the points of order were rejected by votes of 43-54 and 42-54, respectively. For the debate and vote on the Senate floor, see *Congressional Record*, daily edition, vol. 147 (July 10, 2001), pp. S7363-S7376.

⁴⁶ For a more comprehensive discussion of balanced budget constitutional amendment proposals, see CRS Report 98-671, *A Balanced Budget Constitutional Amendment: Procedural Issues and Legislative History*, by James V. Saturno; and James V. Saturno and Richard G. Forgette, "The Balanced Budget Amendment: How Would It Be Enforced?" *Public Budgeting and Finance*, vol 18, no. 1 (Spring 1998), pp. 33-53.

**Table 1. Balanced Budget Amendment
Proposals Introduced in the 107th Congress**

Measure	Sponsor	Date Introduced
H.R. 78	Emerson	January 3, 2001
H.J.Res. 8	Jenkins	January 31, 2001
H.J.Res. 9	Emerson	February 7, 2001
H.J.Res. 85	Berry	March 12, 2002
H.J.Res. 86	Istook	April 11, 2002
H.J.Res. 90	Berry	April 25, 2002
S.J.Res. 2	Gramm	January 22, 2001
S.J.Res. 3	Shelby	January 31, 2001

Another proposed constitutional amendment (H.J.Res. 53) would not require a balanced budget, but instead require a two-thirds vote in each chamber to pass legislation that would result in a deficit. H.J.Res. 53 was introduced by Representative John Tanner on June 20, 2001, and referred to the House Judiciary Committee.

Item veto amendment proposals would provide the President the constitutional authority to disapprove items contained in budgetary legislation signed into law. In 1996, Congress and the President enacted the Line Item Veto Act, which provided the President statutory authority to cancel any dollar amount of discretionary budget authority, any item of new direct spending, or any limited tax benefit. In 1998, however, the U.S. Supreme Court found that this statutory authority was unconstitutional.⁴⁷

In the House, two item veto amendment proposals have been introduced in the 107th Congress. Representative Phil English introduced H.J.Res. 23, on February 28, 2001, and Representative Robert Andrews introduced H.J.Res. 24, on March 1, 2001. The constitutional amendment proposed by H.J.Res 23 would provide the President with authority to disapprove any item of appropriation in any bill. The amendment proposed by H.J.Res. 24 would provide the President with the authority to disapprove any dollar amount of discretionary budget authority, any item of direct spending, or any tax benefit. Both amendment proposals were referred to the House Committee on the Judiciary.

⁴⁷ For further information on the Line Item Veto Act, see CRS Issue Brief IB89148, *Item Veto and Expanded Impoundment Proposals*, by Virginia A. McMurtry.

Tax limitation amendment proposals would require a super-majority vote in each chamber to pass legislation that would increase revenues.⁴⁸ Three amendment proposals have been introduced in the 107th Congress. In the Senate, S.J.Res. 11 was introduced by Senator Jeff Sessions and was referred to the Senate Judiciary Committee on March 28, 2001. The amendment would require a two-thirds vote in each chamber for bills increasing taxes. In the House, H.J.Res. 41 and H.J.Res. 96 were introduced by Representative Pete Sessions and were referred to the House Judiciary Committee on March 22, 2001, and June 6, 2002, respectively. The two identical proposed amendments would require a two-thirds vote for bills increasing revenues “by more than a de minimis amount.”⁴⁹ Both proposals failed to received the necessary two-thirds vote for constitutional amendments. On April 25, 2001, the House considered and defeated H.J.Res. 41 by a 232-189 vote.⁵⁰ On June 12, 2002, the House considered and defeated H.J.Res. 96 by a 227-178 vote.⁵¹

Budget Structure and Coverage

The federal budget is an amalgam of numerous concepts and conventions, variably established by statute, administrative action, and practices over time. Generally, these concepts and conventions determine the budgetary treatment of certain federal expenditures and receipts, and can have an impact on the decision-making process on the budget. Consequently, budget process reforms periodically are proposed to modify certain budgetary concepts and their application.

A frequent reform proposal would provide off-budget status to certain trust funds and other special funds, in which revenues are collected for specified purposes. These proposals generally would prohibit receipts and disbursements of the funds from being counted for purposes of the President’s budget, the congressional budget resolution, or the enforcement procedures under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.⁵² Currently, there are only three funds off

⁴⁸ For further information on tax limitation constitutional amendments, see CRS Report 98-368, *A Tax Limitation Constitutional Amendment: Issues and Options Concerning a Super-Majority Requirement*, by James V. Saturno.

⁴⁹ Under the amendment proposal, the phrase “a de minimis amount” would be determined in subsequent implementing legislation adopted by Congress and signed by the President. The committee report to accompany H.J.Res. 41 noted a possible “de minimis amount” as 0.1% of federal tax revenues over 5 years. See U.S. Congress, House Committee on the Judiciary, *Proposing a Tax Limitation Amendment to the Constitution of the United States*, report to accompany H.J.Res. 41, 107th Cong., 1st sess., H.Rept. 107-43, Apr. 20, 2001 (Washington: GPO, 2001), pp. 3-4.

⁵⁰ The House Judiciary Committee reported (amended) the proposed constitutional amendment favorably on Apr. 20, 2001 (H.Rept. 107-43). For the debate and vote on the House floor, see *Congressional Record*, daily edition, vol. 147 (Apr. 25, 2001), pp. H1563-H1582.

⁵¹ For the debate and vote on the House floor, see *Congressional Record*, daily edition, vol. 148 (June 12, 2002), pp. H3472-H3486.

⁵² For further information on off-budget status and proposals introduced in the 106th Congress, see CRS Report RS20350, *Off-Budget Status of Federal Entities: Background and* (continued...)

budget: the Federal Old-Age and Survivors Insurance Trust Fund (Social Security retirement), the Federal Disability Insurance Trust Fund (Social Security disability), and the Postal Service Fund.

In the 107th Congress, at least five bills and one constitutional amendment proposal providing off-budget status to certain funds have been introduced. **Table 2** lists these proposals and the corresponding fund(s). No action has been taken on these measures.

**Table 2. Off-Budget Status Measures
Introduced in the 107th Congress**

Measure	Sponsor	Date introduced and Committee(s) of Referral	Fund(s)
H.R. 181	Shuster, Bud	January 4, 2001 Transportation and Infrastructure, Budget	Inland Waterways Trust Fund Harbor Maintenance Trust Fund
H.R. 572	Bilirakis	February 12, 2001 Budget, Government Reform	Civil Service Retirement and Disability Fund
H.R. 1204	Smith (WA)	April 4, 2001 Budget, Ways and Means	Federal Hospital Insurance Trust Fund (Medicare Part A)
H.R. 1207	Bartlett	April 4, 2001 Budget, Ways and Means	Federal Hospital Insurance Trust Fund (Medicare Part A)
H.J.Res. 26	Taylor (MS)	March 1, 2001 Judiciary	Federal Old-Age and Survivors Insurance Trust Fund (Social Security retirement) Federal Disability Insurance Trust Fund (Social Security disability) Federal Hospital Insurance Trust Fund (Medicare Part A) Federal Supplementary Medical Insurance Trust Fund (Medicare Part B) Civil Service Retirement and Disability Fund Department of Defense Retirement Fund
S. 1908	Bunning	February 4, 2002 Budget, Governmental Affairs	Abandoned Mine Reclamation Fund

⁵² (...continued)

Current Proposals, by Bill Heniff Jr.

Some inside and outside Congress have suggested a more comprehensive approach to evaluate and possibly reform the various federal budget concepts and conventions, proposing to create a new commission modeled after the 1967 President's Commission on Budget Concepts.⁵³ On September 5, 2001, the House Budget Committee reported H.R. 981 (see section "Biennial Budgeting," above) with a substitute amendment establishing a Commission on Federal Budget Concepts (H.Rept. 107-200, part 1). This commission would be charged with reviewing, evaluating, and making recommendations relating to the budget concepts underlying the federal budget.⁵⁴ The bill, with the proposed substitute amendment, was placed on the Union Calendar on November 14, 2001.

Other Proposals Related to the Budget Process

Other proposals that relate to the federal budget process but do not fall under the above topics have been introduced in the 107th Congress as well. Two such proposals (H.R. 4594 and H.R. 4758) would raise the public-debt limit and place restrictions on any further increase unless the budget is projected to be in balance, or a plan is adopted that would produce a balance, without counting the Social Security trust funds surplus by FY2007. The H.R. 4594 restrictions would apply only in the House, while the H.R. 4758 restrictions would apply in both chambers. Both proposals were introduced by Representative Dennis Moore on April 25, 2002, and May 16, 2002, respectively.

<http://wikileaks.org/wiki/CRS-RL31479>

⁵³ The Congressional Budget Office especially has suggested convening a new commission. For example, see U.S. Congress, House Committee on the Budget, *H.R. 853, The Comprehensive Budget Process Reform Act of 1999*, hearing, 106th Cong., 1st sess., May 20, 1999 (Washington: GPO, 1999), p. 64; U.S. Congress, House Committee on the Budget, *Forthcoming Extension/Modification of the Budget Enforcement Act*, hearing, 107th Cong., 1st sess., June 27, 2001 (Washington: GPO, 2002), p. 44; and U.S. Congress, House Committee on the Budget, *Federal Budget Process: Structural Reform*, hearing, 107th Cong., 1st sess., July 19, 2001 (Washington: GPO, 2002), pp. 78-84.

⁵⁴ The commission proposal is similar to a bill (H.R. 2037) introduced by Rep. George Radanovich, which was referred to the House Budget Committee on June 25, 2001. Under the substitute amendment proposal, the commission also would be charged with reviewing the feasibility of biennial budgeting.