
TITLE IV ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

BILLS PROVIDING NEW SPENDING AUTHORITY

§ 401(a) **SEC. 401.**⁶¹⁷ (a) **CONTROLS ON LEGISLATION PROVIDING SPENDING AUTHORITY.**⁶¹⁸ — It shall not be in order⁶¹⁹ in either the House of Representatives or the Senate to consider any bill, joint resolution, amendment,⁶²⁰ motion,⁶²¹ or conference report,⁶²² as reported⁶²³ to its House which provides



⁶¹⁷ Section 401 is codified as amended at 2 U.S.C. § 651 (1988 & Supp. IV 1992).

⁶¹⁸ Note that section 401(d) provides significant exceptions to these controls. *See infra* pp. 254-259.

⁶¹⁹ Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 293 (regarding section 303(a)).

⁶²⁰ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 295 (regarding section 303).

⁶²¹ Section 13207(a) of the Budget Enforcement Act added the word "motion" here. *See infra* p. 723. For a discussion of the motivation for the addition, *see supra* note 235.

⁶²² Section 13207(a)(1)(F)(i) of the Budget Enforcement Act struck the words "bill, resolution, or conference report" here and inserted "bill, joint resolution, amendment, motion, or conference report." *See infra* p. 724.

new spending authority⁶²⁴ described in subsection (c)(2) (A)⁶²⁵ or (B),⁶²⁶ unless that bill, resolution, conference report, or amendment also provides that such new spending authority as described in subsection (c)(2) (A)⁶²⁷ or (B)⁶²⁸ is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.⁶²⁹

§ 401(b)

(b) LEGISLATION PROVIDING ENTITLEMENT AUTHORITY.⁶³⁰ —



⁶²² (...continued)

⁶²³ Cf. *supra* note 514 (by virtue of the word "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

⁶²⁴ The Congressional Budget Act makes no exception for violations of negligible amounts. Cf. *supra* note 520 (regarding section 311(a)).

⁶²⁵ See *infra* p. 251.

⁶²⁶ See *infra* p. 251.

Section 13207(a)(1)(F)(ii) of the Budget Enforcement Act struck the parenthetical "(or any amendment which provides such new spending authority)" that used to appear here. See *infra* p. 724.

⁶²⁷ See *infra* p. 251.

⁶²⁸ See *infra* p. 251.

⁶²⁹ See, e.g., 132 CONG. REC. S10,693 (daily ed. Aug. 7, 1986) (bill providing spending authority within the jurisdiction of the Committee on Armed Services subject to section 401(a)).

On whether something is "provided in appropriation Acts," see generally *infra* note 652.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. See *supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 36.

⁶³⁰ Section 3(9) (see *supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (see *infra* p. 252). For a discussion of language that ensures that authority will not constitute entitlement authority, see *infra* note 652.

Note that section 401(d) provides significant exceptions to this subsection. See *infra* pp. 254-259.

§ 401(b)(1) **(1) It shall not be in order⁶³¹ in either the House of Representatives or the Senate to consider any bill, joint resolution, amendment,⁶³² motion,⁶³³ or conference report, as reported⁶³⁴ to its House⁶³⁵ which provides new spending authority⁶³⁶ described in subsection (c)(2)(C)⁶³⁷ which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.**

§ 401(b)(2) **(2) If any committee of the House of Representatives or the Senate reports any bill or resolution which provides new spending authority described in subsection**

⁶³¹ Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 293 (regarding section 303(a)).

⁶³² An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 295 (regarding section 303).

⁶³³ Section 13207(a) of the Budget Enforcement Act added the word "motion" here. *See infra* p. 723. For a discussion of the motivation for the addition, see *supra* note 235.

⁶³⁴ *Cf. supra* note 514 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

⁶³⁵ Section 13207(a)(1)(G)(i) of the Budget Enforcement Act struck the words "bill or resolution" here and inserted "bill, joint resolution, amendment, motion, or conference report, as reported to its House." *See infra* p. 724.

⁶³⁶ The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. supra* note 520 (regarding section 311(a)).

⁶³⁷ *See infra* pp. 252-253. Section 3(9) refers to section 401(c)(2)(C) to define the term "entitlement authority." *See supra* p. 18.

Section 13207(a)(1)(G)(ii) of the Budget Enforcement Act struck the parenthetical "(or any amendment which provides such new spending authority)" that used to appear here. *See infra* p. 724.

(c)(2)(C)⁶³⁸ which is to become effective during a fiscal year and the amount of new budget authority⁶³⁹ which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported under section 302(b)⁶⁴⁰ in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations of that House with instructions to report it, with the committee's recommendations, within 15 calendar days (not counting any day on which that House is not in session) beginning with the day following the day on which it is so referred. If the Committee on Appropriations of either House fails to report a bill or resolution referred to it under this paragraph within such 15-day period, the committee shall automatically be discharged from further consideration of such bill or resolution and such bill or resolution shall be placed on the appropriate calendar.

§ 401(b)(3) (3) The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under paragraph (2)⁶⁴¹ with an amendment which limits the total amount of new spending authority provided in such bill or resolution.

§ 401(c) (c) DEFINITIONS. —

§ 401(c)(1) (1) For purposes of this section, the term "new spending authority" means spending authority not provid-

⁶³⁸ See *infra* pp. 252-253. Section 3(9) refers to section 401(c)(2)(C) to define the term "entitlement authority." See *supra* p. 18.

⁶³⁹ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁶⁴⁰ See *supra* pp. 90-91.

⁶⁴¹ See *supra* pp. 249-250.

ed by law on the effective date of this Act,⁶⁴² including any increase in or addition to spending authority provided by law on such date.

§ 401(c)(2)

(2) For purposes of paragraph (1), the term "spending authority"⁶⁴³ means authority (whether temporary or permanent) —

§ 401(c)(2)(A)

(A) to enter into contracts under which the United States is obligated to make outlays,⁶⁴⁴ the budget authority⁶⁴⁵ for which is not provided in advance by appropriation Acts;⁶⁴⁶

§ 401(c)(2)(B)

(B) to incur indebtedness (other than indebtedness incurred under chapter 31⁶⁴⁷ of title 31 of the United States Code) for the repayment of which

⁶⁴² Section 211 of Gramm-Rudman-Hollings changed this word from "section" to "Act." See *infra* p. 415. As originally written, the reference was clear: section 905(c) indicates that the effective date for section 401 was January 19, 1976. See *infra* p. 369 & note 984. As amended, however, the intent is ambiguous. Section 905(a) provides that the effective date of the Act was the date of enactment, July 12, 1974, except as provided in section 905, which has the specific reference to (among other sections) section 401. See *infra* p. 369. Note that the drafters of Gramm-Rudman-Hollings made clear when they meant the date of enactment of Gramm-Rudman-Hollings instead of the date of enactment of the Congressional Budget Act. See section 401(d)(3)(A)(ii) *infra* p. 257.

⁶⁴³ Note that section 406(a), regarding off-budget agencies, programs, and activities (see *infra* p. 270), requires that certain items be included in spending authority.

⁶⁴⁴ Section 3(1) defines "outlays." See *supra* p. 11.

⁶⁴⁵ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁶⁴⁶ For a discussion of whether something is "provided in advance by appropriation Acts," see generally *infra* note 652.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. See *supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 36.

⁶⁴⁷ Chapter 31 comprises 31 U.S.C. §§ 3101-3129 (1988 & Supp. III 1991).

the United States is liable, the budget authority⁶⁴⁸ for which is not provided in advance by appropriation Acts;⁶⁴⁹

§ 401(c)(2)(C)

(C)⁶⁵⁰ to make payments (including loans and grants), the budget authority⁶⁵¹ for which is not provided for in advance by appropriations Acts,⁶⁵²

⁶⁴⁸ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

⁶⁴⁹ For a discussion of whether something is "provided in advance by appropriation Acts," see generally *infra* note 652.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 36.

⁶⁵⁰ Section 3(9) refers to this subparagraph to define the term "entitlement authority." *See supra* p. 18. Note that section 250(c)(18) of Gramm-Rudman-Hollings defines certain mandatory appropriated accounts as entitlements for purposes of Gramm-Rudman-Hollings. *See infra* p. 447.

⁶⁵¹ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

⁶⁵² In determining whether "budget authority . . . is . . . provided for in advance by appropriations Acts," the Parliamentarian's office will examine the likely real world consequences of legislation on a case-by-case basis, and will not rely exclusively on the form of language in the legislation.

In one case, the Presiding Officer advised that even if an amendment creates benefits for qualifying individuals, it will not create entitlement authority within the meaning of section 401(c)(2)(C) if it also provides that "no payments shall be made except subject to appropriations." 130 CONG. REC. S7070-71, S7108, S7110 (1984) (parliamentary inquiry of Sen. Cohen); Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database). This is so even if the language creating the benefits says "an individual shall be entitled." *Id.*

The Parliamentarian's office has advised that the following language would ensure that a program would be subject to appropriations, and therefore not an entitlement under section 401(c)(2)(C):

In any fiscal year the administrator of this program shall limit the value of any benefits conferred by this program to an amount not in excess of the appropriation for such fiscal year and if the requirements of this program exceed the limitations set herein the benefits shall be reduced to the extent necessary to comply with the provisions of this subsection.

(continued...)

to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law;

§ 401(e)(2)(D)

(D) to forgo the collection by the United States of proprietary offsetting receipts, the budget authority⁶⁵³ for which is not provided in advance by appropriation Acts⁶⁵⁴ to offset such forgone receipts;

⁶⁵³(...continued)

Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database). For an example of an application of language similar to this, see, e.g., National and Community Service Act of 1989, § 250(a), S. 1430, 101st Cong. 2d Sess., 136 CONG. REC. S1672, S1684 (daily ed. Feb. 27, 1990) (§ 432A(c) of the material proposed to be inserted).

To avoid a point of order caused by the creation of new entitlement authority, however, it is not necessarily sufficient to include language that the payments must come out of an appropriated account; the language must make the payments themselves subject to appropriations. See 130 CONG. REC. S7107, S7109-10 (daily ed. June 13, 1984) (parliamentary inquiry and statement of Sen. Domenici, ruling of the Vice President). Some thus refer to "appropriated entitlements" that fall within the meaning of section 401(c)(2)(C). (See, e.g., *infra* note 1245 (listing "APPROPRIATED ENTITLEMENTS AND MANDATORIES".)) Even though the Government pays such appropriated entitlements out of appropriated funds, annual appropriations do not truly control them. That the entitlement is paid from appropriated funds cannot, without more, remove the entitlement from the definition of section 401(c)(2)(C), for, as the Constitution requires, "No Money shall be drawn from the Treasury, but in consequence of Appropriations made by Law." U.S. CONST. art. I, § 9, cl. 7. Thus, all entitlements provide for appropriations, either implicitly or explicitly.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. See *supra* p. 16. The text of 1 U.S.C. § 105 (1988) (see *supra* note 36) deals with regular appropriations bills. Section 401(c)(2)(C) thus refers to authority that regular appropriations acts do not control.

⁶⁵³ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁶⁵⁴ For a discussion of whether something is "provided in advance by appropriation Acts," see generally *supra* note 652.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. See *supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 36.

and

§ 401(e)(2)(E)

(E) to make payments by the United States (including loans, grants, and payments from revolving funds) other than those covered by subparagraph (A),⁶⁵⁵ (B),⁶⁵⁶ (C),⁶⁵⁷ or (D),⁶⁵⁸ the budget authority⁶⁵⁹ for which is not provided in advance by appropriation Acts.⁶⁶⁰

Such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.

§ 401(d)

(d) EXCEPTIONS. —

§ 401(d)(1)

(1) Subsections (a)⁶⁶¹ and (b)⁶⁶² shall not apply to new spending authority⁶⁶³ if the budget authority⁶⁶⁴ for

⁶⁵⁵ See *supra* p. 251.

⁶⁵⁶ See *supra* p. 251.

⁶⁵⁷ See *supra* p. 252-253.

⁶⁵⁸ See *supra* p. 253.

⁶⁵⁹ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁶⁶⁰ For a discussion of whether something is "provided in advance by appropriation Acts," see generally *supra* note 652.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. See *supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 36.

⁶⁶¹ See *supra* pp. 247-248.

⁶⁶² See *supra* pp. 248-250.

⁶⁶³ Section 401(c) defines "new spending authority." See *supra* pp. 250-254.

⁶⁶⁴ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

outlays⁶⁶⁵ which will result from such new spending authority is derived —

§ 401(d)(1)(A)

(A) from a trust fund⁶⁶⁶ established by the Social Security Act⁶⁶⁷ (as in effect on the date of the enactment of this Act⁶⁶⁸); or

§ 401(d)(1)(B)

(B) from any other trust fund,⁶⁶⁹ 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays⁶⁷⁰ are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954.⁶⁷¹

§ 401(d)(2)

(2) Subsections (a)⁶⁷² And (b)⁶⁷³ shall not apply to

⁶⁶⁵ Section 3(1) defines "outlays." *See supra* p. 11.

⁶⁶⁶ That is.

- the Federal Old-Age and Survivors Insurance Trust Fund,
- the Federal Disability Insurance Trust Fund,
- the Unemployment Trust Fund,
- the Federal Hospital Insurance Trust Fund, and
- the Federal Supplementary Medical Insurance Trust Fund.

⁶⁶⁷ The Social Security Act is codified as amended at 42 U.S.C. §§ 301-1397e (1988 & Supp. III 1991).

⁶⁶⁸ That date is July 12, 1974, the date of enactment of the Congressional Budget Act. Note that the drafters of Gramm-Rudman-Hollings made clear when they meant the date of enactment of Gramm-Rudman-Hollings instead of the date of enactment of the Congressional Budget Act. *See* section 401(d)(3)(A)(ii) *infra* p. 257.

⁶⁶⁹ For example, the Highway Trust Fund.

⁶⁷⁰ Section 3(1) defines "outlays." *See supra* p. 11.

⁶⁷¹ The Internal Revenue Code of 1954 is codified as amended at 26 U.S.C. §§ 1-9602 (1988 & Supp. III 1991).

⁶⁷² *See supra* pp. 247-248.

new spending authority⁶⁷⁴ which is an amendment to or extension of the State and Local Fiscal Assistance Act of 1972,⁶⁷⁵ or a continuation of the program of fiscal assistance to State and local governments provided by that Act, to the extent so provided in the bill or resolution providing such authority.

§ 401(d)(3) **(3) Subsections (a)⁶⁷⁶ and (b)⁶⁷⁷ shall not apply to new spending authority⁶⁷⁸ to the extent that —**

§ 401(d)(3)(A) **(A) the outlays⁶⁷⁹ resulting therefrom are made by an organization which is**

§ 401(d)(3)(A)(i) **(i) a mixed-ownership Government corporation (as defined in section 201 of the Government Corporation Control Act⁶⁸⁰), or**

⁶⁷²(...continued)

⁶⁷³ See *supra* pp. 248-250.

⁶⁷⁴ Section 401(c) defines "new spending authority." See *supra* pp. 250-254.

⁶⁷⁵ The State and Local Fiscal Assistance Act of 1972, or revenue sharing, was codified as amended at 31 U.S.C. §§ 6701-6724 (repealed 1986). The Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 14001(a)(1), 100 Stat. 82, 327 (1986), repealed the State and Local Fiscal Assistance Act.

⁶⁷⁶ See *supra* pp. 247-248.

⁶⁷⁷ See *supra* pp. 248-250.

⁶⁷⁸ Section 401(c) defines "new spending authority." See *supra* pp. 250-254.

⁶⁷⁹ Section 3(1) defines "outlays." See *supra* p. 11.

⁶⁸⁰ Section 201 of the Government Corporation Control Act is codified as amended at 31 U.S.C. § 9101(2) (1988 & Supp. III 1991), which states:

§ 9101. Definitions

In this chapter —

(continued...)

§ 401(d)(3)(A)(H)

(ii) a wholly owned Government corporation (as defined in section 101 of such Act⁶⁰¹)

⁶⁰⁰(...continued)

(2) "mixed-ownership Government corporation" means —

- (A) Amtrak.
- (B) the Central Bank for Cooperatives.
- (C) the Federal Deposit Insurance Corporation.
- (D) the Federal Home Loan Banks.
- (E) the Federal Intermediate Credit Banks.
- (F) the Federal Land Banks.
- (G) the National Credit Union Administration Central Liquidity Facility.
- (H) the Regional Banks for Cooperatives.
- (I) the Rural Telephone Bank when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).
- (J) the United States Railway Association.
- (K) [t]he Financing Corporation.
- (L) the Resolution Trust Corporation.
- (M) the Resolution Funding Corporation.

31 U.S.C. § 9101(2) (1988 & Supp. III 1991).

Of these mixed-ownership Government corporations, only the Rural Telephone Bank, the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, and the Federal Land Banks are "specifically exempted by law from compliance with any or all of the provisions of" the Government Corporation Control Act. See 31 U.S.C. § 9108(d)(2) (1988).

⁶⁰¹ Section 101 of the Government Corporation Control Act is codified as amended at 31 U.S.C. § 9101(3) (1988), which states:

(continued...)

^{am}(...continued)

§ 9101. Definitions

In this chapter —

...
(3) "wholly owned Government corporation" means —

- (A) the Commodity Credit Corporation.
- (B) the Export-Import Bank of the United States.
- (C) the Federal Crop Insurance Corporation.
- (D) Federal Prison Industries, Incorporated.
- [(E) repealed]
- (F) the Government National Mortgage Association.

- (G) the Overseas Private Investment Corporation.
- (H) the Pennsylvania Avenue Development Corporation.

- (I) the Pension Benefit Guaranty Corporation.

- (J) the Rural Telephone Bank until the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).

- (K) the Saint Lawrence Seaway Development Corporation.

- (L) the Secretary of Housing and Urban Development when carrying out duties and powers related to the Federal Housing Administration Fund.

- (M) the Tennessee Valley Authority.

31 U.S.C. § 9101(3) (1988 & Supp. III 1991).

Of these wholly-owned Government corporations, only the Rural Telephone Bank
(continued...)

which is specifically exempted by law from compliance with any or all of the provisions of that Act,⁶⁸² as of the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985;⁶⁸³ or

§ 401(d)(3)(B)

(B) the outlays⁶⁸⁴ resulting therefrom consist exclusively of the proceeds of gifts or bequests made to the United States for a specific purpose.

⁶⁸¹(...continued)

"is specifically exempted by law from compliance with any or all of the provisions of" the Government Corporation Control Act. See 31 U.S.C. § 9108(d)(2) (1988).

⁶⁸² Of the Government corporations cited, only the Rural Telephone Bank, the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, and the Federal Land Banks are "specifically exempted by law from compliance with any or all of the provisions of" the Government Corporation Control Act. See 31 U.S.C. § 9108(d)(2) (1988).

⁶⁸³ That is, December 12, 1985. Section 211 of Gramm-Rudman-Hollings added the words ", as of the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985" to clarify which corporations section 401 covered.

⁶⁸⁴ Section 3(1) defines "outlays." See *supra* p. 11.