The New Pay-As-You-Go Rule in The House of Representatives

January 12, 2007

On January 5 the House of Representatives adopted a "Pay-As-You-Go" or PAYGO Rule as part of its package of Rules for the 110th Congress.[1] This memorandum briefly describes the rule and includes some "questions and answers" about how it is intended to work.

Summary of the PAYGO Rule. The new House PAYGO rule establishes a point of order in the House of Representatives, effective immediately, against consideration of any entitlement or revenue bill that would, in net, increase projected deficits. In this memorandum, we refer to a bill that does not increase projected deficits, and so does not violate the PAYGO Rule, as being "deficit neutral." The PAYGO rule does not apply to discretionary appropriations, which are controlled instead by the annual targets set in congressional budget plans.[2]

The application of the PAYGO point of order is based on the *net cost* of a bill. If some provisions of a bill increase entitlement costs, then other provisions of that bill must fully offset or *pay for* those increased costs by reducing the costs of other entitlements or increasing revenues. Likewise, if some provisions of a bill cut taxes, then other provisions of that bill must fully offset or *pay for* those revenue losses by raising taxes or reducing the costs of entitlements. This is why the Rule is known as a "pay-as-you-go" rule.

Under the new PAYGO Rule, the House Budget Committee is in charge of estimating the costs of all proposed legislation (as it always has been under the Congressional Budget Act of 1974) but must measure legislation relative to the baseline that the Congressional Budget Office constructs pursuant to projection rules set forth in statute.[3]

Baseline rules generally require CBO to project revenues and entitlement

costs under current law. For example, CBO projects the cost of Medicare for each year by examining how the existing Medicare statute is scheduled to provide benefits and pay for health costs in each year and estimating the federal costs accordingly, consistent with its own internal forecast of the number of beneficiaries, the prices of medical services, and so on. If a bill proposes to change the way that physicians are reimbursed for certain Medicare procedures, CBO will evaluate whether the bill increases or decreases the cost of Medicare relative to its baseline projection, i.e., relative to current law. The Budget Committee's estimate of the costs of such bills must use the CBO baseline as its starting point, and may also (but need not) use CBO's estimate of the amount by which the bill in question would increase or decrease costs relative to that baseline.

The new PAYGO Rule does not require that each bill be deficit neutral in every year. Rather, it requires that each bill be deficit neutral in total over the six-year period consisting of the current year, the budget year, and the next four years *and also* be deficit neutral over the eleven-year period consisting of the current year, the budget year, and the next nine years. The "budget year" is defined as the fiscal year beginning on October 1 of a session of Congress, and the "current year" is defined as the fiscal year that precedes the budget year. Thus, during calendar year 2007 — the first session of the 110th Congress — the budget year is 2008 because fiscal year 2008 starts on October 1, 2007. (Note that this definition is consistent with Executive Branch practice; the budget the president submits in February 2007 and that Congress will be considering during 2007 is the budget for fiscal year 2008.) During this session of Congress, then, tax or entitlement legislation must be deficit neutral over the six-year period covering fiscal year 2007-2012 and the eleven-year period covering fiscal years 2007-2017.[4]

Questions and Answers about the PAYGO Rule

1. When will the new House PAYGO rule go into effect, and how long will it remain in effect?

It is already in effect; it took effect upon House agreement to H. Res. 6. The rule has no sunset, and so is as permanent as any other rule of the House. Note, however, that the House of Representatives adopts its rules anew each time a new Congress convenes in January, and while most rules are maintained from one Congress to the next, there are always some changes.

2. How does the PAYGO point of order work, in a mechanical sense?

If legislation comes to the floor of the House that may violate the PAYGO rule (or if an amendment is offered that may violate the Rule), any Member of the House can raise a point of order against the legislation or amendment. The presiding officer will then ask the Budget Committee Chairman whether the bill or amendment is deficit neutral over both the time-periods covered by the Rule. If the Chairman says no, the presiding officer will sustain the point of order. In the case of an amendment, that ruling will automatically defeat the amendment. In the case of a bill (or conference agreement), that ruling will automatically prevent the House from beginning consideration of the bill or conference agreement, effectively killing it. (The point of order must be raised when the bill is presented to the House floor for consideration, not after consideration begins.)

3. Is there a way in which the House can consider legislation that violates the PAYGO Rule?

In the House, the way to waive a PAYGO (or any other) point of order that would otherwise validly lie against consideration of a bill or amendment is for the House to *first* approve a special order, or "rule," that waives the application of the PAYGO Rule. Such special orders can only be reported by the Rules Committee, which by tradition consists of nine members of the majority and four of the minority. In effect, the Rules Committee is the traffic cop for the majority party; consequently, the PAYGO Rule will be waived only if the Majority Leadership wants it to be waived, and even in that case, only if a majority of the House first agrees to a special order containing such a

waiver. Alternatively, the legislation can be placed on the "suspension calendar" by the Majority Leader. Legislation on that calendar is debated under "suspension of the Rules," so no points of order apply. However, legislation on the suspension calendar must pass the House by a two-thirds vote.

4. Can a Member of the House demand a vote to waive the PAYGO point of order, if a member raises the point of order?

No, that is not how House budget rules work — that's how Senate budget rules work. As explained above, the House can waive a PAYGO violation only if the Leadership places the offending bill on the suspension calendar or the Rules Committee reports and the House agrees to a resolution waiver the PAYGO Rule with respect to the offending bill or amendment.

5. Does the House PAYGO rule apply to conference agreements between the House and Senate, or just to original House consideration of legislation?

The House PAYGO rule applies to legislation presented to the House for consideration, amendments offered during House consideration, and conference reports.

6. Can an offsetting saving be used more than once?

Initially yes, ultimately no. The House may pass a bill cutting taxes and pay for it with a specific entitlement cut. Then it may pass another bill containing a different tax cut, yet use the same specific entitlement cut to pay for the second tax cut. And it could use the same specific entitlement cut to pay for some other entitlement increase. The reason this would work is that each bill would be scored as being deficit neutral at the time the House considered it. *But* once one of these bills clears conference and the conference report is agreed to, the specific entitlement saving will be enacted law, and so a second attempt to enact that specific "savings" provision would no longer be scored

as producing any savings. The other bills that had passed the House and were pending in the Senate or in conference would still contain costs but would no longer contain scorable savings, and would therefore violate PAYGO. In short, when it comes to enacting legislation, the House can only use a savings provision once.

7 Suppose a bill that cuts taxes or increases entitlements also contains within it a promise or procedure designed to force Congress to enact offsetting savings in the future. Does such a bill satisfy the PAYGO Rule?

No — promises, even backed up by later fast-track procedures, do not count as savings. Therefore, the bill will violate the PAYGO rule. Only specific entitlement cuts or tax increases contained within the bill in question count as valid offsets.

8. Suppose Congress enacts a law that in net consists of PAYGO savings — that is, a law containing tax or entitlement provisions that reduce projected deficits. Can the House bank those savings, using them to offset the cost of another bill that will be considered later?

No — the House PAYGO rule requires *each* tax or entitlement bill to be deficit neutral.

9. Because each tax or entitlement bill must be deficit neutral, how can a bill reported by a committee *other than* Ways and Means use a revenue increase to pay for an entitlement increase?

There are three ways in which an entitlement increase reported by another committee could be paid for with revenue increases. First, some revenues exist within the jurisdiction of other committees. For example, the Judiciary Committee has jurisdiction over most criminal fines, which are scored as revenues. Second, a bill could be introduced with an entitlement increase

under the jurisdiction of a committee other than the Ways and Means Committee, and an offsetting tax increase. Such a bill would be referred sequentially or jointly to both committees of jurisdiction. Finally, the Leadership could ask the Rules Committee to merge two bills into one, combining a revenue increase from the Ways and Means Committee with an entitlement increase from another committee.

10. If tax and entitlement legislation is paid for, does that mean it is free of any Budget Act violations?

Tax and entitlement bills that do not violate PAYGO nonetheless might violate some other aspect of the Budget Act. One example would be an entitlement increase paid for by a revenue increase. Such a bill would not violate the new PAYGO rule, but it might well violate the Budget Act, because under the Budget Act committees are not permitted to exceed their "§302 allocation" of entitlement spending, allocated pursuant to the most recent congressional budget resolution. Even though the entitlement increase was paid for by a revenue increase, the entitlement increase by itself could violate the committee's §302 allocation. There are two circumstances in which such a bill would not violate the Budget Act.

- The congressional budget resolution might assume and allocate entitlement increases within the jurisdiction of the committee in question.[5]
- The congressional budget resolution might include a special language establishing a deficit neutral "reserve fund," which would permit the consideration of an entitlement increase for a specified purpose provided that the bill as a whole was paid for. Such deficit neutral reserve funds constitute a mechanism by which the Budget Committee automatically adjust the §302 allocations and the revenue and spending levels to accommodate a deficit-neutral bill that meets stated conditions.

As can be seen, the PAYGO rule and the Budget Act are separate ways of limiting budgetary costs, and the two together might be even more restrictive

than either operating by itself.

11. If the congressional budget plan provides room for an increase in entitlement spending for a Committee or provides room to cut taxes, will such a bill still have to adhere to the PAYGO rule?

Yes. As just explained, the Budget Act and the PAYGO rule apply independently. A bill must be consistent with the congressional budget resolution to avoid a Budget Act point of order, and must also be deficit neutral to avoid a PAYGO point of order.

12. You say the "new" House PAYGO Rule. Was there a prior House PAYGO Rule?

House Rules have never heretofore contained a PAYGO restriction. In the past, however, Senate rules included a PAYGO point of order against considering tax or entitlement legislation that was not deficit neutral; that rule expired in May 2003 but has been reintroduced this session (see S. 10). [6] In addition, from late 1990 through 2002 a statute required automatic "sequestration" of selected entitlement programs if the PAYGO rule of deficit neutrality were violated. During those years, the House was effectively constrained by Senate PAYGO rules and by the statutory PAYGO rule.

13. How does the House PAYGO Rule differ from the prior Senate PAYGO Rule and the old PAYGO statute?

The three PAYGO rules are substantially the same — they each require that tax and entitlement legislation be deficit neutral in net. The differ, however, in minor ways.

First, the time periods are slightly different. The Senate PAYGO Rule separately addresses four periods: the current year, the budget year, the budget year plus the next four years, and years six through ten. The House PAYGO Rule separately addresses two periods: the current year plus the next

five years, and the current year plus the next ten years. The statute covered the current and budget years combined, and each of the next four years separately.

Second, the statute allowed any tax or entitlement laws (enacted after the PAYGO statute went into effect) that had reduced the deficit to help cover the cost of later bills that increased the deficit. The Senate Rule also allowed savings to be banked, but only for use during the same session of Congress. The new House rule does not allow enacted savings to be banked, and so in effect dedicates them to deficit reduction.

Third, the means of enforcement differ. The House PAYGO Rule can be waived only by House agreement to a special order reported by the Rules Committee. The Senate PAYGO Rule can be waived by unanimous consent at any time and by the vote of 60 Senators *after* a PAYGO point of order is raised. The statute did not establish points order at all; rather, it provided that after Congress had adjourned at the end of each year, OMB would add all the costs and savings for the budget year (which had just begun) resulting from all legislation enacted since the last major budget agreement to which the President was a party. If those costs and savings netted to an increase in the deficit, the President would be required to implement automatic cuts in specific entitlement programs, to remain in effect during the budget year. Those programs included Medicare, farm price supports, veterans' education, and social service grants to states, among others. The constituencies involved were so numerous and powerful that Congress, it was thought, would never dare offend them by passing legislation that ultimately led to a sequestration. That thought proved correct.

14. Would a PAYGO statute be harder or easier to waive than a combination of House and Senate PAYGO Rules?

The ease of waivers depends on the politics of the specific violation. If PAYGO were only a statute, it could be evaded by passage of legislation directing OMB to ignore the costs of a tax cut or entitlement increase that had

just been enacted. This would require the President's concurrence — he would need to sign the offending statute and also sign a statute containing a provision directing OMB to close its eyes (which provision could be included in the offending statute). Moreover, a provision that directs OMB to ignore a cost violates the Budget Act and so needs 60 votes in the Senate and prior approval in the House (via a special order from the Rules Committee, i.e., the majority leadership, and a majority vote of the House).[7]

If in contrast PAYGO were only enforced by House and Senate rules, enactment of a statute violating PAYGO would still require 60 votes in the Senate and the prior approval in the House (via a special order from the Rules Committee, i.e., the majority leadership, and a majority vote of the House). And it would still require the President's signature on the offending legislation.

Thus, as a matter of votes, it appears to make little difference whether PAYGO is established by House and Senate rules or by statute. Either way, violations can occur only with the concurrence of the President, the House majority leadership, *and* 60 Senators.

15. How vital is adherence to PAYGO?

PAYGO violations increase deficits and debt relative to the baseline. The Center on Budget and Policy Priorities believes that PAYGO is valuable because it reaffirms the notion that deficits matter; it reaffirms that tax cuts increase deficits just as surely as entitlement increases; and it establishes a general rule that any tax cut or entitlement increase that is worth enacting is worth paying for. Moreover, we estimate that adherence to PAYGO would reduce the long-term fiscal gap — the overall budgetary problem though 2050 — by roughly half. This suggests both that adherence to PAYGO is very important, and also that adherence by itself is not sufficient; substantial additional deficit reduction will be required.

Yet it is plausible that some needs are so critical and immediate that it is

worth meeting those needs even if the costs are not paid for. An example would be temporary emergency unemployment benefits, to apply only during a recession. In general, a recession is the wrong

Table 1: Net costs of tax cuts and entitlement increase enacted by the 107th - 109th Congresses (in billions of dollars; excluding interest)	
2001	$83
2002	95
2003	230
2004	314
2005	261
2006	271
2007	306
2008	266
2009	258
2010	275
2011	195
TOTAL, 2001-2011	**2,553**

In judging how faithfully the 110th Congress adheres to PAYGO, it is well to keep in mind the record of the last three Congresses on tax and entitlement legislation. As the table shows, tax and entitlement legislation enacted by the last three Congresses (i.e., since January 2001) have cost almost $2.6 trillion through 2011, or an average of $232 billion per year. (Moreover, these figures do not include $730 billion in extra interest costs that will be paid over this period on the $2.6 trillion in legislation.) Of the $2.6 trillion in costs there were not paid for, more than $2.0 trillion were tax cuts. Moreover, these estimates are the costs of provisions enacted to date; if those tax cuts scheduled to expire before 2011 were extended without being paid for, costs just through 2011 would increase by another $250 billion.

End Notes:

[1] By agreeing to H. Res. 6, the Rules of the 109th Congress were re-adopted by the 110th Congress, with modifications. Section 405 of H. Res. 6 is the new PAYGO Rule. See http://www.rules.house.gov/110/text/110_Hres6.pdf.

[2] For simplicity, we use common terms rather than more technical terms throughout this memorandum. First, we refer to "entitlements" even though the PAYGO rule covers all types of spending other than for discretionary programs (those programs whose costs are determined by annual appropriations). Thus, the PAYGO rule covers programs that are well understood to be entitlements, such as Medicare, Medicaid, Veterans Compensation and Pensions, and Food Stamps. And the rule also covers legislation affecting other forms of mandatory spending, such as direct appropriations by committees other than the Appropriations Committee or "offsetting receipts" (negative spending) such as the royalties paid by oil companies for drilling on public land.

Second, we discuss tax and entitlement bills that would increase projected deficits, but the rule applies to bills that would increase deficits or reduce surpluses. That is, the rule applies to any bill increasing entitlement costs or decreasing revenues, whether the budget is projected to be in surplus or in deficit.

Third, we refer to tax and entitlement legislation that adheres to the PAYGO Rule as being "deficit neutral," but in fact such legislation might reduce deficits; the PAYGO rule prohibits increasing the deficit but not reducing it.

[3] Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 as amended lays out rules for projecting baselines.

[4] Most legislation enacted during a session does not produce budgetary effects during the current year; the effects generally start in the budget year or even later. For example, most tax or entitlement bills enacted in this

session of Congress will first produce costs or savings in fiscal 2008. These bills will have to be deficit neutral over the five-year period 2008-2012 and the ten-year period 2008-2017. This is why some people say that the PAYGO Rule covers five years and ten years rather than six years and eleven years.

[5] Presumably in such a case the congressional budget resolution would have assumed offsetting entitlement cuts within the jurisdiction of a different committee, or offsetting revenue increases. There is no reason to believe that a budget resolution would contemplate a deliberate violation of the PAYGO rule.

[6] The Senate currently has in place a rule that it calls a PAYGO Rule. We do not attach any real significance to that rule, however, because that rule permits the Senate to consider tax and entitlement legislation that is not paid for, to the extent that a budget resolution assumes such legislation. Clearly, this existing rule provides little or no extra budgetary discipline beyond that in a budget resolution, and a budget resolution may call for costly tax cuts and entitlement increases to any extent it wishes.

[7] This is type of evasion is not merely hypothetical; Congress circumvented the previous statutory PAYGO rule in fiscal 1999, 2000, 2001, and 2002 by exactly this method (after 2002, the PAYGO statute expired). The 2001Bush tax cut, for example, constituted a huge violation of the then-existing statutory PAYGO Rule.