

CBO TESTIMONY

**Statement of
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Extending the Budget Enforcement Act

**before the
Committee on the Budget
U.S. House of Representatives**

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Chairman Nussle, Congressman Spratt, and Members of the Committee, thank you for the opportunity to testify today on extending the Budget Enforcement Act of 1990 (BEA). The major provisions of the BEA expire at the end of fiscal year 2002. The basic framework of enforcement procedures established by that law—the annual limits on discretionary appropriations and the pay-as-you-go (PAYGO) requirement for new mandatory spending and revenue laws—has generally helped to improve budgetary discipline over the past decade. However, issues and concerns about the law have arisen, especially in recent years.

My testimony today will make the following major points:

- The key budget enforcement provisions of the BEA, which cover the statutory sequestration procedures enforced by the executive branch, will expire on September 30, 2002. In contrast, the Congressional budget process, which centers on the adoption and enforcement of the Congressional budget resolution, generally does not expire (with the exception of certain Senate procedures).
- On the whole, the BEA has been salutary. It promoted budget constraint that helped to produce the surpluses that have emerged since 1998. However, those surpluses and other factors have also put increasing pressure on lawmakers to circumvent the discretionary spending caps and the PAYGO requirement, making them less effective recently.
- Possible improvements in the BEA's framework include enhancing flexibility within the discretionary caps and clarifying how to classify certain budget transactions for the purposes of enforcing the BEA.
- Broader changes, such as those in the Nussle-Cardin budget reform legislation of the 106th Congress (H.R. 853), could help to improve the budget process. Ultimately, however, that process has only a limited influence on the formation of a political consensus; no procedural change can guarantee agreement on budget policies.

A BRIEF OVERVIEW OF THE BEA AND EXPIRING PROVISIONS

The BEA built on an existing framework of budget enforcement procedures. The Balanced Budget and Emergency Deficit Control Act of 1985 established a schedule of fixed, declining deficit targets for each of six fiscal years beginning in 1986, leading to a target of zero in 1991. The Deficit Control Act also created a procedure—known as sequestration—in which spending for many federal programs would be automatically cut if the deficit for a fiscal year was estimated to exceed the target level. A

sequestration, if necessary, would be carried out by an executive order that the President would issue under the terms of a sequestration report from the Comptroller General. That report was to be based on a joint report by the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO).

In 1986, the Supreme Court ruled in *Bowsher v. Synar* that it was unconstitutional for the President's sequestration order, an executive action, to be determined by a report from the Comptroller General, an official accountable to the Congress. Consequently, the Deficit Control Act was modified in 1987 to give OMB the authority to prepare the estimates and calculations used to trigger a sequestration order. As part of that change, CBO was required to issue advisory sequestration reports to OMB.

Although deficits shrank somewhat in the late 1980s, they failed to meet the statutory targets—in some years by substantial margins. As a result of that failure, the BEA was enacted in the fall of 1990 (as an amendment to the Deficit Control Act) to establish new procedures for deficit control. Its controls included annual caps on budget authority and outlays in appropriation acts and a pay-as-you-go procedure to prevent new mandatory spending or revenue laws from increasing the deficit. Both of those controls were to be enforced by sequestration. However, under the BEA, a breach of the discretionary spending caps would lead to reductions only in discretionary programs, and a breach of the PAYGO control would trigger cuts only in certain mandatory programs. The Deficit Control Act's concept of deficit targets was retained, but it essentially became moot.

The BEA's procedures were originally supposed to expire at the end of fiscal year 1995. The Congress has periodically extended their life, most recently in the Balanced Budget Act of 1997. Currently, most of the provisions of the BEA are set to end on September 30, 2002. Those provisions include the discretionary spending limits and related sequestration procedures (set forth in section 251 of the BEA) and the process for tracking the costs of legislation covered by the PAYGO requirement. (A brief description of the provisions that expire at the end of fiscal year 2002 is included in the appendix to this testimony.)

Section 252, which sets out the PAYGO procedure, does not expire at the end of 2002. After that time, however, OMB would no longer be required to track the budgetary effects of new mandatory spending and revenue laws for the purpose of PAYGO enforcement. That tracking—known as the “PAYGO scorecard”—records the five-year budgetary effects of all laws covered by the PAYGO requirement. The termination of that tracking will effectively shut down the PAYGO system for new laws.

However, because section 252 itself does not expire, the possibility of a sequestration of mandatory spending would continue through fiscal year 2006 (the year that section 252 and other remaining provisions of Part C of the Deficit Control Act will expire) for PAYGO legislation enacted before the end of fiscal year 2002. Thus, any sequestrations after 2002 would occur solely on the basis of the net costs from legislation enacted before the end of 2002.

In addition to those statutory budget procedures, the Congress has a budget process that centers on the adoption and enforcement of the annual Congressional budget resolution. That process—laid out in the Congressional Budget Act of 1974—generally does not expire. However, certain provisions of the 1974 law that require a three-fifths vote in the Senate to waive various enforcement procedures (points of order) will expire at the end of fiscal year 2002.

EVALUATING THE BEA

The Budget Enforcement Act helped to provide budgetary discipline for most of the 1990s. From 1991 to 1997, the growth of total discretionary outlays was well below the rate of inflation (principally because of significant cuts in defense spending after the end of the Cold War). New mandatory spending and revenue laws enacted during that period were consistent with the deficit-neutral PAYGO requirement. Since the BEA's enactment, only two small sequestrations of discretionary spending have been ordered, both of which occurred in 1991.

Beginning in 1998, however, the fiscal environment changed. The large and growing surpluses that began to emerge in that year eliminated the essential purpose of the BEA disciplines—to reduce and control deficits. In a time of surpluses, the discretionary spending caps and PAYGO requirement (when enforced) generally bar legislative actions that would make projected surpluses smaller. As surpluses have grown to record-setting levels, those procedures, as extended in 1997, have been circumvented.

For example, in 1999 and 2000, lawmakers enacted record levels of emergency appropriations—which are effectively exempt from budget enforcement procedures—and used other funding devices to boost discretionary spending well above the caps set in 1997. For 2001, lawmakers set new, higher statutory caps to accommodate increases in discretionary spending (the new outlay cap is about \$60 billion higher than the one for 2001 set in 1997). They also reset the PAYGO balance for the year at zero. That action prevented the need to offset an estimated \$10.5 billion drop in the surplus caused by new mandatory spending and tax laws enacted during the last session of the

106th Congress. For 2002, the adjusted cap on total discretionary outlays (\$572 billion), which lawmakers have not reset, is about \$100 billion below the baseline level of discretionary outlays projected for that year (\$678 billion). Moreover, OMB's sequestration preview report for 2002 shows a \$16 billion net reduction in the surplus for the year from the estimated costs of mandatory spending and revenue laws enacted in earlier years.¹

Lawmakers' goal of using the off-budget (Social Security) portion of surpluses to reduce public debt has added an informal but important new component to budgetary discipline. In general, paying down federal debt provides economic benefits that would give lawmakers more flexibility to deal with long-term budget problems linked to the aging of the baby-boom generation.² Many lawmakers support establishing a "lockbox" procedure in law that would make the goal of preserving off-budget surpluses a statutory requirement, on a par with the discretionary spending caps and PAYGO discipline. Many would also extend the lockbox concept to the annual surpluses from the Medicare Hospital Insurance trust fund.

In 2000 and 2001, relatively large on-budget surpluses and projections of growing surpluses in the future may have weakened overall budgetary discipline and further intensified the pressures on the discretionary spending limits and PAYGO requirement. If future on-budget surpluses fall below current projections because of shifting economic conditions, the estimated costs of the recently enacted tax cuts, additional new spending or revenue laws, or other factors, the informal commitment to preserve Social Security and Medicare surpluses could impose significant budgetary constraint.

SELECTED ISSUES IN EXTENDING THE BEA

Despite recent experience, the underlying philosophy of the Budget Enforcement Act—that appropriations should be enacted within enforceable limits and that the estimated costs of new mandatory spending and tax legislation should generally be offset—has proved to be effective in the past. Even in an era of surpluses, the discretionary caps and PAYGO requirement could be important components of overall budgetary discipline. However, lawmakers may want to consider certain issues as they decide whether or how to extend those procedures.

1. See *Budget of the United States Government, Fiscal Year 2002: Analytical Perspectives*, p. 251.

2. For a discussion of the long-term benefits of paying down the debt, see Congressional Budget Office, *Budget Options* (February 2001), Chapter 1.

The most glaring difficulties with the BEA's framework have centered on enforcement of the discretionary spending limits. In 1999 and 2000, lawmakers were criticized for enacting record amounts of emergency spending and for excessively using advance appropriations, obligation delays, and timing shifts to appropriate more funds than the caps for those years permitted. The root of the problem, however, was the base levels of discretionary appropriations allowed under those caps. Those levels were not supported by a consensus of lawmakers.

In addition, at whatever level lawmakers decide to set discretionary caps, it is important that they retain flexibility to adjust spending priorities within those caps. The discretionary spending limits have often included sublimits for certain categories of spending. Currently, there are sublimits for spending on highways, mass transit, and conservation. At various times in the past, separate limits have existed for defense, domestic, international, and crime-fighting appropriations.

Separate sublimits within overall caps may serve important policy goals. But lawmakers give up flexibility to meet other needs within those caps when they carve out separate limits for certain programs, especially if the sublimits also act as floors on spending. In addition, spending priorities may shift from year to year. If the overall caps are extended for a five-year period—as they have been in the past—establishing subcaps might make it difficult to shift priorities or, conversely, might prompt lawmakers to again employ the spending devices for which they have been criticized in recent years.

Another issue that lawmakers may want to consider as they review the BEA is budgetary classifications under the law. In the conference report accompanying the BEA and its subsequent extensions, the Congress included scorekeeping guidelines that help OMB, CBO, and the House and Senate Budget Committees treat the budgetary effects of legislation consistently. However, the treatment of certain policy actions needs to be clarified. For example, CBO and OMB treat governmental receipts that result from provisions in appropriation laws differently: CBO places those receipts on the PAYGO ledger, whereas OMB counts them under the discretionary spending caps. That difference creates confusion in budget scorekeeping and can complicate final Congressional action on annual appropriation acts.

BROADER CHANGES IN THE BUDGET PROCESS

Because the context for the coming debate about extending the BEA is likely to be quite different from the context in earlier years, it may prompt a wider look at the

budget process and related issues. Indeed, last year, the House considered legislation that would have changed the budget process in ways that could help to improve budgetary decisionmaking. That legislation (H.R. 853) was developed by the Task Force on Budget Process (the Nussle-Cardin task force) of the House Budget and Rules Committees.

The subject of budget accounting may well receive greater examination in coming years. One major accounting issue is the role and status of trust funds and other earmarking devices in the federal budget and whether they ease or complicate lawmakers' efforts to set overall budget priorities each year. Another important issue is determining the optimal accounting procedures for the federal government's long-term liabilities. One proposal, which was included in H.R. 853, would phase in present-value credit accounting for federal insurance programs and certain other long-term liabilities. Such accounting might improve the information available to lawmakers and help to control costs, but the conversion from cash accounting to present-value accounting for insurance programs would be difficult, time-consuming, and potentially confusing (at least initially). If the Congress decides to make such a change, it may want to do so carefully and incrementally.

Another area of concern to some observers is the annual budget process. A number of lawmakers worry that the process is too complex and confusing; they would like to make it simpler, easier to understand, and more efficient. For example, some lawmakers contend that excessive complexity in the budget process and other factors have led to delays in enacting budget legislation—especially appropriation laws. To help ease those delays, they favor converting the annual budget cycle to a two-year timetable, providing for automatic continuing appropriations, and turning the Congressional budget resolution into a joint resolution signed by the President (proposals that were considered during the debate on H.R. 853).

Regardless of such changes, the budget process tends to function more smoothly when a political consensus exists on spending and revenue policies. In particular, during a period of divided government, no modification to the budget process can guarantee timely agreement on budget legislation.

CONCLUSIONS

Lawmakers are considering whether to extend the BEA in a vastly different budgetary and fiscal environment than the time of high deficits that existed when the law was put

in place. The current period of large surpluses is unprecedented and has led some people to question the need for a BEA-type framework of budget constraints.

Yet even during a time of surpluses, budget constraint is important. Budgeting is a process for setting priorities and allocating resources. Large surpluses do not make those tasks unnecessary. Moreover, baseline projections of surpluses depend largely on continued economic growth and assumptions of continued fiscal constraint, which may or may not come to pass. In addition, long-term budget problems linked to the aging and retirement of the baby-boom generation loom just beyond the current 10-year budget horizon. Even substantial surpluses over the next several years cannot eliminate the budgetary tensions that those coming demographic changes and other factors will bring.

Despite recent problems, the BEA framework of discretionary spending limits and PAYGO enforcement has generally promoted budgetary discipline. It can continue to be an important component of budgetary policymaking and help lawmakers to confront future budgetary pressures.

APPENDIX: BUDGET PROVISIONS EXPIRING ON SEPTEMBER 30, 2002

Part I. Section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by section 10212(b) of the Balanced Budget Act of 1997, provides that:

“Sections 251, 253, 258B [2 U.S.C. §§901, 903, and 907C], and section 271(b) [2 U.S.C. §900 note] of this Act, and sections 1105(f) and 1106(c) of title 31, United States Code, shall expire September 30, 2002. The remaining sections of part C of this title [2 U.S.C. §§900-909] shall expire September 30, 2006.”

The majority of those expiring provisions constitute the enforcement provisions of the Deficit Control Act of 1985.

- Section 251 sets forth the discretionary spending limits and provides the procedures to enforce those limits through sequestration of existing funding for discretionary programs.
- Section 253 provides for sequestration of funding for federal programs to enforce “maximum deficit amounts.” However, no such amounts have been defined since 1995. In addition, the amounts defined for fiscal years 1992 through 1995, as adjusted under law, were consistent with the discretionary spending limits and pay-as-you-go requirement and provided no additional constraint.
- Section 258B authorizes the President to propose changes in which discretionary defense programs are affected by a sequestration order. The section also contains expedited legislative procedures for Congressional consideration of a joint resolution affirming the President’s proposed changes.
- Section 271(b) constitutes a rule of the Senate requiring a three-fifths vote to waive (or sustain on appeal) several sections of the Congressional Budget Act of 1974 [sections 301(i), 302(c), 302(f), 304(b), 310(d), 310(g), and 311(a)].
- The expiring provisions of title 31 of the U.S. Code concern the President’s obligation to submit budgets and supplemental budget estimates (and changes thereto) in a manner consistent with the requirements of the Deficit Control Act (and the Budget Enforcement Act).

Section 252 of the Deficit Control Act does not expire on September 30, 2002. However, the language of the section requires tracking of the budgetary effects of direct spending and revenue laws enacted before October 1, 2002. No tracking would occur for legislation enacted after that date. By operation of this section, the budgetary effects of direct spending and receipt legislation enacted before October 1, 2002, could trigger a sequestration in any fiscal year through 2006, when the remaining provisions of Part C of the Deficit Control Act expire.

Part II. Section 904(e) of the Congressional Budget and Impoundment Control Act of 1974, as amended by section 10119 of the Balanced Budget Act of 1997, provides that “Subsections (c)(2) and (d)(3) shall expire on September 30, 2002.”

Those provisions constitute a rule of the Senate requiring a three-fifths vote to waive (or to sustain an appeal of a ruling of the Chair on) a point of order raised under the sections of the Congressional Budget Act and the Deficit Control Act of 1985 listed below.

Congressional Budget Act:

- Section 301(i)—Social Security surplus reduction in budget resolution
- Section 302(c)—consideration of appropriations before suballocation
- Section 302(f)—legislation exceeds allocation level
- Section 310(g)—Social Security change in reconciliation
- Section 311(a)—legislation exceeds aggregate level
- Section 312(b)—legislation exceeds discretionary spending level
- Section 312(c)—maximum deficit amount exceeded

Deficit Control Act:

- Section 258(a)(4)(C)—amendments to joint resolution suspending certain provisions in case of war or low-growth report
- Section 258A(b)(3)(C)(i)—amendment to joint resolution modifying the sequestration order
- Sections 258B(f)(1), 258B(h)(1), and 258(h)(3)—amendments regarding joint resolution approving President’s decision on defense programs
- Section 258C(a)(5)—special reconciliation bill exceeds maximum deficit amount
- Section 258C(b)(1)—restrictions during consideration of special reconciliation bill

