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Emergency Spending: Statutory and Congressional Rules

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Summary

Under the Budget Enforcement Act (BEA), there are statutory limits (caps) on the level of federal discretionary spending, enforced by across-the-board spending cuts, known as a sequester. If, however, spending is designated as emergency by both the President and Congress, it will not trigger a sequester, because the caps are adjusted automatically by an amount equal to the emergency spending. Since the BEA was first enacted in 1990, both the House and Senate have supplemented its provisions with additional limitations in their respective rules concerning the use of emergency designations. This report will be updated to reflect any changes in the rules concerning the use of emergency designations.

Control of the process for initiating, considering, and enacting appropriations for unanticipated or emergency purposes has been a longstanding concern within the federal budget process. For example, the Congressional Budget and Impoundment Control Act of 1974 included a requirement that the budget resolution include an allowance for “contingencies”¹; similarly, the President’s budget was required to include:

an allowance for additional estimated expenditures and proposed appropriations for the ensuing fiscal year, and an allowance for unanticipated uncontrollable expenditures for the ensuing fiscal year.²

No explicit limitations, however, were placed on either branch with regard to their prerogative to request or enact spending for any purpose, including supplemental appropriations. As part of presidential-congressional budget summit agreements in 1987 and 1989, appropriations caps were enacted, and the two branches agreed not to initiate supplemental spending above these amounts “except in the case of a dire emergency.” In

¹ P.L. 93-344, Section 301(a)(2), 88 Stat. 306.

² P.L. 93-344, Section 604, 88 Stat. 324.

neither agreement was there a definition for a dire emergency, or a requirement that any supplemental spending be offset.³

The Budget Enforcement Act

With the Budget Enforcement Act of 1990,⁴ the process for enacting emergency spending became more formalized. The Act generally shifted the focus of budgetary control mechanisms from the projected deficit to the spending or revenue effect of current legislation, by providing for the direct enforcement of statutory discretionary spending limits and a limitation on changes to entitlement spending and revenues known as “pay-as-you-go” or PAYGO.⁵ In addition to specifying the spending limit, the Act also provided for several required adjustments, including emergency appropriations. The Act provides that:

If, for any fiscal year, appropriations for discretionary accounts are enacted that the President designates as emergency requirements and that the Congress so designates in statute, the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements and outlays flowing in all fiscal years from such appropriations.⁶

Enforcement of the spending caps for discretionary spending currently is provided through FY2002. A separate spending cap for highway and mass transit spending remains in place for FY2003, and spending caps for conservation programs in six subcategories remain in effect through FY2006, but there is no mechanism in law at this time to enforce them.

A similar provision specifies that enforcement of PAYGO exclude emergency provisions.⁷ However, almost all of the spending designated as emergency since 1991 has been for discretionary accounts.⁸ Enforcement of the PAYGO process currently applies to legislation enacted prior to October 1, 2002.

Either the President or Congress may initiate the emergency spending designation. The President may initiate emergency spending by designating the spending as emergency in his request, which would then have to be similarly designated by Congress in statutory

³ William G. Dauster, “Budget Emergencies,” *Journal of Legislation*, Vol. 18, no. 2, 1992, pp. 249-315.

⁴ Title XIII of P.L. 101-508, 104 Stat. 1388-573-1388-630. This act amended the Balanced Budget and Emergency Deficit Control Act of 1985, P.L. 100-119.

⁵ For more on the federal budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith and Allen Schick.

⁶ Section 251(b)(2)(A). The current language was enacted in 1997 in Title X of P.L. 105-33 and appears at 111 Stat. 699.

⁷ Section 252(d)(4)(B) excludes from the PAYGO process estimates of amounts for emergency provisions, as designated under Section 252(e). The current language was enacted in 1997 in Title X of P.L. 105-33 and appears at 111 Stat. 703.

⁸ To date, only two emergencies have been designated under the PAYGO process, Section 6 of P.L. 103-6, and Section 3309(c) of P.L. 105-206.

language. Congress may also initiate emergency spending by making the designation in statutory language. When it does so, it usually makes the availability of those funds for obligation contingent on the President designating them as well.

The Act does not define or place limits on the use of the emergency designation, other than the requirement that it be so designated by both the President and Congress. This has provided a maximum degree of flexibility, but has also led to criticism from some Members of Congress that the emergency designation could be applied to non-emergency spending, and thus be used as a means for circumventing budgetary discipline. This has resulted in additional rules concerning the consideration of emergency spending legislation in both the House and the Senate.

House Rules

In January 1995, the House added a new provision to its rules, House Rule XXI, Clause 2(e), to prevent non-emergency spending from being added to an appropriations bill designated as providing emergency spending.⁹ The rule provides that:

A provision other than an appropriation designated as an emergency under section 251(b)(2) or section 252(e) of the Balanced Budget and Emergency Deficit Control Act, a rescission of budget authority, or a reduction in direct spending an amount for a designated emergency may not be reported in an appropriation bill or joint resolution containing an emergency designation under section 252(b)(2) or section 252(e) of such Act and may not be in order as an amendment thereto.

Senate Rules

The Senate has taken a different approach to limiting the use of emergency designations. In 1999, the Senate first adopted a point of order to prohibit consideration of legislation containing an emergency designation.¹⁰ This mechanism was designed so that a point of order could be raised against any emergency designation in a measure, which would then be stricken from the measure without further action. The point of order could be waived, however, by a vote of three-fifths of the Senate. The result of this was effectively to require that any emergency designation be supported by three-fifths of the Senate, in order to insure that it would remain as part of the measure. If a waiver was not granted, the emergency designation would be stricken, but the spending could remain in the measure subject to any other applicable budgetary limits. This provision also included language providing guidelines for justifying an emergency designation, but these guidelines were not binding. This provision was readopted in modified form in 2000, and currently provides that:

When the Senate is considering a bill, resolution, amendment, motion, or conference report, a point of order may be made by a Senator against an emergency designation in that measure and if the Presiding Officer sustains that point of order, that provision

⁹ Representative Gerald Solomon, remarks in the House, *Congressional Record*, Vol. 141, January 4, 1995, p. 475.

¹⁰ Section 206(b) of H.Con.Res. 68 (106th Congress).

making such a designation shall be stricken from that measure and may not be offered as an amendment from the floor.¹¹

In 2000, the Senate also adopted a provision establishing that the point of order does not apply against an emergency designation for a provision making discretionary appropriations for defense spending.¹²

¹¹ Section 205(b) of H.Con.Res. 290 (106th Congress).

¹² Section 205(g) of H.Con.Res. 290 (106th Congress).