



Federal Budget and Pay-As-You-Go Rules (“PAYGO”) August 22, 2012

Background

On February 12, 2010, the Statutory Pay-As-You-Go Act of 2010 (“PAYGO”) was signed into law as part of [Public Law 111-139](#). The Act requires that all new legislation that would affect taxes, fees, or mandatory spending must, taken as a whole, be budget neutral. More specifically, any legislation reducing revenues must be fully offset by cuts to mandatory programs or by separate revenue increases. Likewise, any bills increasing mandatory expenditures must be completely paid for by revenue increases or cuts to other mandatory programs. In order to ensure that this requirement is enforced, PAYGO establishes specific scorekeeping rules and scorecards that monitor the net costs and savings of legislation. If Congress enacts legislation that leads to a net increase in costs, an automatic penalty of across-the-board cuts—known as “sequestration”—is triggered for all programs not specifically exempt from sequestration.

Following the enactment of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344), Congress has been required to adopt annual budget resolutions. After more than a decade of failing to meet established deficit targets, the original form of PAYGO was adopted within the Budget Enforcement Act of 1990 (Public Law 101-508). Under the 1990 law, the PAYGO process for direct spending and pre-set limits on discretionary spending were put in place to ensure that deficit targets were met. The threat of sequestration was retained as an additional enforcement mechanism, but its implementation did not become necessary.¹ Budget experts generally agree that PAYGO was extremely successful between 1990 and 1997, and helped lead to budget surpluses in the last four years of the Clinton Administration.² While the surpluses allowed the Administration to focus on reducing the federal debt—which had climbed to almost \$5.5 trillion as of FY1998³—the discipline implied by PAYGO also began to weaken,⁴ and the 1990 law officially expired in 2002.

In response to these first federal budget surpluses in many years, Congress enacted increases in discretionary spending above the statutory limit. While spending remained within the technical definition of the law through the use of creative tactics—advance and supplemental appropriations, delays in making obligations and payments, emergency designations, and

¹ See Section C of Office of Management and Budget, *“The Statutory Pay-As-You-Go Act of 2010: A Description,”* (Washington, OMB).

² See Rudolph G. Penner, “The Budget Process: What is PAYGO?” Tax Policy Center, 12 July 2007 <<http://www.taxpolicycenter.org/briefing-book/background/budget-process/paygo.cfm>>.

³ See Table 7.1 of Office of Management and Budget, *“Fiscal Year 2013 Historical Tables,”* (Washington, OMB).

⁴ See Rudolph G. Penner, “The Budget Process: What is PAYGO?” Tax Policy Center, 12 July 2007

specific directives—spending that otherwise would not have been allowed led to emergency appropriations of \$34 billion and \$44 billion in 1999 and 2000, respectively.⁵

In stark contrast to the budget surpluses from 1998 to 2001, our country’s current financial situation is much more precarious. As of July 2011, the total federal debt has risen to \$14.8 trillion—almost 68 percent of gross domestic product (GDP).⁶ In addition, the President’s proposed fiscal year (FY) 13 Budget projects that the 2012 annual deficit will be \$1.33 trillion (8.5 percent of GDP)—a number that has remained essentially flat since FY2009.⁷ In response to this debilitating federal deficit, Congress passed the Budget Control Act of 2011 ([Public Law 112-25](#)), which is projected to reduce discretionary spending by approximately \$2 trillion over ten years.⁸ (See [HIMSS Fact Sheet, “Super Committee on the Deficit and Potential Implications for Health IT,” October 21, 2012](#)). In addition, the proposed FY13 federal budget contains over \$4 trillion in balanced deficit reduction, with the goal of reducing the deficit to less than 3 percent of GDP by 2018. The most recent implementation of the Statutory Pay-As-You-Go Act of 2010 will be one more tool through which the government can reduce the deficit and move towards balancing the federal budget.

The Statutory Pay-As-You-Go Act of 2010

The Statutory Pay-As-You-Go Act of 2010 requires that all non-exempt legislation must not have a positive budgetary effect. More specifically, the total costs incurred—relative to a baseline calculated by the Office of Management and Budget (OMB)—must be completely offset by savings within the same legislation. While statutory PAYGO does not address deficit increases projected to occur under existing law, it establishes a process that aims to enforce budget neutrality on new revenue and direct spending legislation.

The PAYGO process applies to “direct spending,” which generally funds entitlement programs such as Social Security, Medicare, federal employee retirement, and unemployment compensation, as well as other mandatory non-entitlement programs. However, discretionary spending—which mainly funds the routine operations of federal agencies—and off-budget items such as the Social Security Trust Fund and the Postal Service fund are not subject to PAYGO requirements. In addition, Congress can specifically designate legislative provisions as emergency requirements, as they did in 1999 and 2000, which then excludes any resultant spending and revenue effects from being included in PAYGO calculations. Finally, the costs of legislation associated with four “current policy” areas—Medicare physicians’ payments (Sustainable Growth Rate or SGR), estate and gift taxes, the alternative minimum tax (AMT), and certain 2001 and 2003 income tax cuts—are also excluded from PAYGO requirements.

In order to monitor the net costs and savings of legislation, OMB is required to maintain two publicly-available PAYGO scorecards: a 5-Year Scorecard and a 10-Year Scorecard. For the 5-

⁵ See Appendix A of Congressional Budget Office, *“The Budget and Economic Outlook: Fiscal Years 2004-2013,”* (Washington: CBO, 2003).

⁶ See Government Accountability Office, *“Fiscal Year 2011 Financial Report of the United States Government,”* (Washington: GAO, 2012).

⁷ See Office of Management and Budget, *“Budget of the United States Government, Fiscal Year 2013,”* (Washington: OMB, 2012).

⁸ See HIMSS Fact Sheet, *“Super Committee on the Deficit and Potential Implications for Health IT,”* 2011.

Year Scorecard, OMB calculates the average budgetary effects of each PAYGO-applicable bill over 5 years. For example, if a bill were estimated to cost a total of \$20 billion from 2012 to 2017, the 5-Year Scorecard would register five annual costs of \$4 billion for FY2013-2017. Similarly, the 10-Year Scorecard would record the average budgetary effects over 10 years. If the same hypothetical bill were estimated to cost \$10 billion from 2012-2022, due to costs in earlier years turning into savings, the 10-Year Scorecard would record ten annual costs of \$1 billion for FY2013-2022.⁹

Each year, OMB is required to calculate a sum of the net budgetary effects on both the 5-Year and 10-Year Scorecards to determine whether sequestration is necessary. If either sum for the budget year is positive, sequestration goes into effect automatically to offset the net budget year costs. Once a sequestration is deemed necessary, OMB must determine the total amount of budgetary resources that will be subject to sequestration. Several programs and activities are completely exempt from sequestration—for example, Social Security, federal employee retirement and disability programs, veterans’ programs, Medicaid, the Children’s Health Insurance Program (CHIP), the Supplemental Nutrition Assistance Program (SNAP; food stamps), unemployment benefits, and other low-income programs. Other programs have pre-set reduction limits that effectively safeguard most of their spending from sequestration: Medicare is capped at 4 percent and several small health programs are capped at 2 percent. Taking into account these reduction exemptions and limits, OMB calculates a uniform reduction percentage from all non-exempt entities that will effectively offset the net budgetary costs for that year. As soon as this number is determined, an automatic, temporary sequestration is ordered for the fiscal year.

Congressional PAYGO Rules

In addition to statutory PAYGO requirements, the Senate and the House of Representatives each have their own procedural PAYGO rules. The Senate has revised its procedural PAYGO rules several times since the rule was first established in a 1993 budget resolution. In its current form, the PAYGO rule prohibits the consideration of any legislation that is not deficit-neutral over a 6-year and 11-year period. Contrary to statutory PAYGO requirements, however, the Senate PAYGO rule is enforced by points of order during the consideration of legislation—not through the threat of sequestration. However, since the Senate PAYGO rule may be waived with a 60 percent majority or set aside by unanimous consent, the rule is not self-enforcing. Therefore, it’s possible for the Senate to “pass legislation even if it does not adhere to the limits of the PAYGO rule, and even if no waiver motion is agreed to, as long as a point of order is not raised.”¹⁰

In January 2011, the House of Representatives adopted new “Cut-As-You-Go” (CUTGO) spending rules in place of the PAYGO approach. Under the 2011 House rules, any new mandatory spending can only be offset by cuts to other mandatory spending—increases or decreases in revenue are not factored into the equation. More specifically, the CUTGO rule prohibits the consideration of any legislation that would have a net effect of increasing

⁹ See Section D of Office of Management and Budget, “*The Statutory Pay-As-You-Go Act of 2010: A Description*,” (Washington, OMB) for the original example of this hypothetical bill and scorecard calculations.

¹⁰ See page 3 of Congressional Research Service, “*Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*,” by Bill Heniff Jr., (Washington, CRS, 2010).

mandatory spending over either of the succeeding 6-year or 11-year periods. While the CUTGO rule is similar to the statutory PAYGO requirement in that the net budgetary effects of each bill are considered individually, the CUTGO rule allows for savings from a previously-passed measure to be used to offset costs in new legislation. Since CUTGO spending rules are only applicable to legislation considered on the floor of the House of Representatives, the practical effect of these rules is relatively limited. However, conflicting opinions between the Senate and the House of Representatives could “increase the risk of gridlock at a time when bipartisan cooperation is needed more than ever to deal with [the] mounting debt.”¹¹

Potential Implications for Healthcare and Health Information Technology

While the statutory PAYGO requirements of 2010 apply to legislation regulating mandatory spending for health programs such as Medicare, Medicaid, and CHIP, these federal programs are also safeguarded against severe budgetary cuts. For example, Medicare is capped at a 4 percent limit in the event of a sequestration triggered by noncompliance with statutory PAYGO requirements. (See footnote for clarification about BCA Medicare sequestration limits.¹²) Similarly, relatively small health programs—for example, the Indian Health Services—are generally capped at a maximum 2 percent reduction, while Medicaid, CHIP, SNAP, and several other low-income programs are completely exempt from sequestration.

In regards to the Patient Protection and Affordable Care Act (ACA) signed into law by President Obama in 2010, the Congressional Budget Office (CBO) scored the healthcare reform law to yield a net reduction of \$132 billion—of which \$81 billion is on-budget—to the federal deficit between 2010 and 2019.¹³ Considering the numerous attempts to repeal ACA—most recently through [H.R. 6079](#)—it is necessary to consider the potential implications of statutory PAYGO requirements and congressional PAYGO rules on proposed healthcare reform repeal. According to a CBO estimate, H.R. 6079 was projected to reduce direct spending by \$890 billion while reducing revenues by \$1 trillion between 2013 and 2022—thus, adding \$109 billion to the federal deficit during that time period.¹⁴ While the bill complies with the House of Representatives CUTGO rule—which only considers reductions in mandatory spending while ignoring increases or decreases in revenue—it would violate both the procedural Senate PAYGO rule and the statutory PAYGO requirement, as it leads to an overall net cost.

Of particular importance to health information technology (IT), it is uncertain how statutory PAYGO requirements could apply to the Meaningful Use Electronic Health Records Incentive Funds Program authorized by the Health Information Technology for Economic and Clinical

¹¹ See Committee for a Responsible Federal Budget, “*Understanding the New House Rules*,” (Washington, 2011).

¹² It is important to note that the 2 percent reduction limit for sequestration triggered by the Budget Control Act of 2011 is completely separate from sequestration limits specified in the Statutory Pay-As-You-Go Act of 2010. If sequestration is triggered by noncompliance with BCA, Medicare can only be cut by up to 2 percent. However, if sequestration takes place as the result of a PAYGO violation, Medicare spending can be reduced by up to 4 percent. (See Congressional Research Service, “*Budget “Sequestration” and Selected Program Exemptions and Special Rules*,” by Karen Spar, (Washington, CRS, 2012).

¹³ See Congressional Budget Office, “*Patient Protection and Affordable Care Act, Incorporating the Manager’s Amendment*,” (Washington: CBO, 2009).

¹⁴ See Congressional Budget Office, “*Letter to the Honorable John Boehner providing an estimate for H.R. 6079, the Repeal of Obamacare Act*,” (Washington: CBO, 2012).

Health (HITECH) Act included within the American Recovery and Reinvestment Act (ARRA) of 2009. Whereas the \$2 billion in discretionary funding allocated by HITECH to ONC will not be subject to statutory PAYGO requirements, the separate funding delegated for Meaningful Use incentives may be affected by PAYGO requirements.

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