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Statement by Senator Judd Gregg on Pay-Go
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(*submitted for the record*)

A little more than a year ago, offices were being relocated, staffs were being reorganized, and Capitol Hill was readying itself for the change in majority in the House and Senate. The new majority's Leadership and Budget Committee membership immediately set out to put in place pay-as-you-go rules that would fulfill Democrats' promise to return to "tough, old-fashioned pay-go." What does "old-fashioned" or "traditional" pay-go mean?

In November 2005, during debate on a reconciliation bill that became the Deficit Reduction Act of 2005, the now-Chairman of the Senate Budget Committee offered an amendment to change the Senate's pay-go point of order and stated, "Our proposal is to go back to what has worked in the past. It is traditional pay-go." In March 2006, during debate on the FY 2007 Budget Resolution, the same Senator again offered an amendment to change the Senate's pay-go point of order and stated, "This amendment would reestablish the budget discipline that worked so well in previous years, a rule that has been allowed to lapse by our colleagues on the other side of the aisle."

These are just two examples. In fact, Democratic Senators have offered amendments to reinstate in the Senate "tough, old-fashioned pay-go" to every Republican budget resolution debated since 2004. They also proposed pay-go amendments to the 2005 tax reconciliation bill and during the Senate Budget Committee markup of the Stop Over Spending Act of 2006.

The Senate pay-go point of order amendments offered by Democrats when they were in the minority were remarkable in their consistency.

Every time Senate Democrats offered a proposal to reinstate the "tough, old-fashioned pay-go" point of order, the proposal required deficit neutrality in the 1st year of the budget, over the sum of years 1-5 and over the sum of years 6-10. For example, if such a point of order were in place for the 2008 budget resolution, it would require direct spending and revenue legislation to be deficit-neutral in 2008, 2008-2012, and 2013-2017.

Every instance of their proposal also included a cumulative pay-as-you-go scorecard, so that any net savings recorded from an enacted piece of legislation could be used to offset the cost of a future piece of legislation.

Why did Senate Democrats keep returning to the same version of the pay-go point of order? Because the Senate pay-go point of order was based on the original pay-go law, enacted in 1990 in the Budget Enforcement Act. That law put in place a five-year pay-go scorecard that kept track of any accumulated deficit increases from enacted legislation. If, at the end of each year, the net effect of all enacted laws affecting revenues and mandatory spending was to increase the deficit, then the Office of Management and Budget was supposed to issue a sequestration order – an across-the-board cut of certain mandatory spending.

Statutory pay-go, in effect, was the original "first-year" test, enforced by sequestration. In 1993, Senate Democrats created a five-year pay-go point of order, for the Senate only, that was based on and paralleled the pay-go law, but relied on the sanction of a point of order instead of sequestration to encourage compliance.

But some members sought to increase spending after the five-year pay-go window so they would not run afoul of the initial five-year pay-go point of order. So in a 1994 revision to this initial point of order, the Senate added a second five-year test, which covered years six through ten of the "budget window," to have the point of order cover a 10-year period instead of just five years. Given all this activity on pay-go in the 1990s, some assert that the pay-go concept -- without being specific about whether it was the pay-go law, the pay-go point of order, or both -- was responsible for reducing the deficit in the 1990s.

No question about it – Democrats are on record in support of traditional pay-go, and that support was carried through as a major theme of many 2006 Democratic candidates' campaigns. We have heard again on the floor this week the familiar refrain: "If you want to increase spending you have to pay for it. If you want to cut taxes you have to pay for it." And, when Democrats returned to power in the Senate in 2007, their efforts appeared true to their past pay-go efforts and campaign promises – at first.

As one of their "top 10" legislative priorities for the 110th Congress, the new Majority Leader along with the new Budget Committee chairman introduced S. 10, the Restoring Fiscal Discipline Act of 2007.

S. 10 included a provision to install in the Senate the exact same "old-fashioned" pay-go point of order offered so many times over the previous three years, as summarized in Table 1. S. 10 was referred to the Budget Committee on January 4, 2007, but the Chairman has scheduled no further action.

TABLE 1: PROPOSED PAY-GO AT START OF THE 110TH CONGRESS		
	S. 10	***House (H. Res. 6)***
Description	Would create a point of order in the Senate against measures that increase or create an on-budget deficit in the **current year, the budget year (1st year)**, **the first 5 years, or the second 5 years** (would not apply if sufficient on-budget surpluses were projected).	*Makes it out of order to consider legislation that increases the deficit or reduces the surplus for the first 6 years (2007 – 2012) or the first 11 years (2007 – 2017).*
Votes Needed to Waive Point of Order	60 votes	*Simple majority through adoption of a rule that waives the point of order.*
Scorecard	Uses a cumulative scorecard, so that savings in earlier enacted bills could offset deficit increases in later bills.	*House point of order applies on a bill-by-bill basis. No scorecard maintained.*
Sequestration	No sequestration enforcement.	*House point of order is not a law and therefore can not include sequestration.*
Expiration date	September 30, 2012.	*House point of order is effective for the 110th Congress only.*
In effect?	Must be enacted to go into effect. (Pay-go provision in S. 10 could be put into effect if written into a new budget resolution that Congress agrees to).	*House point of order is in effect now.*

Following the pay-go promise set out in S. 10, the 2008 Senate-passed budget resolution did include the same, "old-fashioned" pay-go point of order requiring deficit neutrality in each of the periods covering year 1, years 1-5 and years 6-10.

In contrast, the 2008 House-passed budget resolution did not include pay-go budget enforcement, because a House pay-go rule had already been put in place. The House had never before had any kind of pay-go point of order – not until January 5, 2007, when the House agreed to its rules package in H. Res. 6 for the 110th Congress. Title IV of that package included the first-time-ever pay-go point of order that applies in the House.

The House pay-go rule makes it out of order to consider direct spending or revenue legislation that increases the deficit or reduces the surplus over years 1-6 or over years 1-11. So in the case of legislation considered during 2007, the relevant periods were 2007-2012 and 2007-2017; for 2008, the relevant periods in the House are now 2008-2013 and 2008-2018. Each measure is considered on a bill-by-bill basis; savings from one bill cannot be "banked" and used to satisfy the pay-go requirement for future legislation.

When it came time to arrive at a conference agreement on the 2008 Budget Resolution, there were two good reasons to think that the agreement would include the Senate pay-go point of order in the exact same form as was included in the Senate-passed budget resolution, which was the old-fashioned pay-go they advocated for years.

First, the pay-go point of order in the Senate-passed 2008 budget resolution applied only in the Senate. The House-passed budget resolution did not include any pay-go point of order for the Senate or the House because the House already had adopted one. So there was no reason for the conference agreement to compromise or deviate from the version in the Senate-passed budget resolution.

Further, Senate supporters of "old-fashioned" pay-go had repeatedly insisted over recent years and throughout the 2006 campaign on the same version of pay-go contained in the Senate-passed 2008 budget resolution and had pledged to return to it if they were in the majority.

Apparently, 15 years of Senate Democrats' support for "old-fashioned" pay-go was expendable when their conferees on the 2008 budget resolution decided that the new, less-stringent time periods for deficit neutrality in the House rule weren't so bad after all. Currently, in the Senate's enforcement under the conference agreement on the 2008 budget resolution, the relevant time periods for measuring pay-go compliance are 2008-2012 (the first five years) and 2008-2017 (the 10 year-period). The year 2007 is no longer included in the sum because 2007 is over.

But there is no test for the first-year, which currently is 2008, and there is no test for just the "second" five-years, which are 2013-2017, aka the five years after the first five years.

The rationale or excuse of the Chairman of the Senate Budget Committee for this divergence from the pay-go rule that he had long promised was that the Senate wanted to be the same as the House. Of course that is nonsense.

Why does the House get to dictate the form of a point of order for the Senate? The Senate had a pay-go point of order for 13 years when the House never had one. If the Senate wanted to be like the House for all those years, the Senate never would have had a pay-go point of order in the first place.

The Senate has had, and currently has, plenty of points of order that the House does not have or that are different from the House's version of the point of order. If the Senate wanted to retain its old, tough first year test that it had from 1994-2006, it simply could have kept it, and all legislation would have had to clear that hurdle before it could be enacted, even if it was tougher than the House rule. This dynamic essentially describes the difference between the House and Senate anyway, where things can pass the House by simple majority and things almost always need 60 votes to pass the Senate.

And if the Senate really wanted to be the same as the House on the pay-go rule, then why does the Senate point of order not include some of the tougher features the House included in the House's new pay-go rule as shown in Table 2.

TABLE 2: PAY-GO IN EFFECT IN THE 110TH CONGRESS		
	Senate (Sec. 201 of S. Con. Res. 21, 2008 Budget Resolution Conference Agreement	***House (H. Res. 6)***
Description	Point of order against direct spending or revenue legislation that increases or creates an on-budget deficit.	*Makes it out of order to consider direct spending or revenue legislation that increases the deficit or reduces the surplus.*
Period covered[a]	Must be deficit-neutral for the first 6 years (2007 – 2012) and the first 11 years (2007 – 2017). **No first-year test and no test for years 6-10.**	*Must be deficit-neutral for the first 6 years (2007 – 2012) and the first 11 years (2007 – 2017).* **No first-year test and no test for years 6-10.**
Application	Would not apply if sufficient on-budget surpluses were projected.	*Applies regardless of whether on-budget surpluses are projected.*
Votes Needed to Waive Point of Order	60 votes	*Simple majority – via adoption of a rule that waives the point of order.*
Scorecard	Uses a cumulative scorecard, so that savings in earlier enacted bills could offset deficit increases in later bills.	*House point of order applies on a bill-by-bill basis. No scorecard maintained.*
Expiration date	September 30, 2017 or until changed by a subsequent resolution.	*House point of order is effective for the 110th Congress only.*
In effect?	Current pay-go point of order became effective on adoption of the conference agreement on S.Con.Res 21 (May 17, 2007).	*House point of order has been in effect since January 5, 2007.*

a. In the House these were the periods covered for the first session of the 110th Congress. With the start of the 2nd session, the House pay-go rule required the enforcement periods to change to 2008-2013 for the first six years and 2008-2018 for the 11 years.

For example, the pay-go point of order that applies only in the Senate as adopted via the 2008 Budget Resolution conference agreement measures any deficit effect of each bill against a pay-go scorecard. If the scorecard has a zero or negative balance on it, the legislation would have a pay-go point of order against it, unless the deficit increases are offset in the same measure. If the Senate pay-go scorecard has a sufficient positive balance on it, which represents a projected on-budget surplus or net decreases in the deficit accumulated from previously enacted legislation, then no pay-go point of order would apply against the measure.

In the House, there is no pay-go scorecard. Instead, each bill is independently evaluated by whether it increases the deficit, on net, over six and 11 years.

In addition, the House pay-go rule prohibits legislation that increases the on-budget deficit or reduces the surplus; the Senate rule only prohibits legislation that increases the on-budget deficit.

Despite their rhetoric about returning to good, old-fashioned pay-go enforcement, the Democrats' 2008 budget resolution changed their promised, long-sought Senate pay-go point of order to a much easier test that is now in place. Legislation cannot increase the deficit over the sum of five years or over 10 years. But, for the first time since pay-go began back in 1990, legislation no longer has to be deficit neutral in the first year.

By throwing the first-year test overboard and swapping the old test for years 6-10 for a new 10-year sum, the Democrats' new pay-go point of order has encouraged timing shifts to make legislation look like it is paid for over the near-term, even if it isn't.

Consider a simple example starting with Table 3A to see how this has worked. Under good, old-fashioned pay-go, let's say you wanted to increase spending or cut taxes by $9 billion in 2008 with no budgetary effect thereafter. To avoid an old-fashioned, traditional pay-go point of order, you would have had to come up with a $9 billion offset in 2008 so that there would be no net increase in the deficit, which would satisfy the first-year test and the first-five-years test.

TABLE 3A:
TOUGH FIRST-YEAR OFFSET REQUIREMENT UNDER OLD-FASHIONED PAY-GO

($ billions)	1st year 2008	2009	1st 5 years 2008-12	2nd 5 years 2013-17
Increase in Spending	9	0	9	0
Needed Offset (tax increase or spending decrease)	-9	0	-9	0
Net Deficit Effect[1]	**0**		**0**	**0**

1. Old Pay-go test would have been satisfied since each of these three periods is zero or less

But let's face it – under old pay-go, coming up with an immediate reduction in spending of $9 billion this year or increasing taxes by $9 billion this year would be supremely tough. So maybe you defer your spending to 2009 instead. Then you don't need an offset in 2008, and you could come up with an offset that reduces the deficit by $9 billion over the next four years -- say by $2.25 billion in each of the years 2009-2012 -- and still not have a pay-go point of order, as shown in Table 3B.

TABLE 3B:
UNDER OLD PAY-GO, OFFSETS EASIER TO ACHIEVE OVER 5 YEARS BY SHIFTING COST PAST FIRST YEAR

($ billions)	1st year 2008	2009	1st 5 years 2008-12	2nd 5 years 2013-17
Increase in Spending	0	9	9	0
Needed Offset (tax increase or spending decrease)	0	-2.25	-9	0
Net Deficit Effect[1]	**0**		**0**	**0**

1. Old Pay-go test would have been satisfied since each of these three periods is zero or less

But maybe you don't even have an offset that is palatable over the next several years. Maybe the only offset you can come up with is to extend customs user fees past 2015, when they are currently slated to expire. For this example, Table 3C shows that doing so would yield about $3 billion in customs fees in each year 2015-2017, for a total of $9 billion. Customs user fees have been around since 1985 and will likely continue to be extended forever since they are a favorite offset.

TABLE 3C:
UNDER OLD PAY-GO, OFFSETS IN YEARS 6-10 COULD NOT PAY FOR NEAR-TERM SPENDING

($ billions)	1st year 2008	2009	1st 5 years 2008-12	2nd 5 years 2013-17
Increase in Spending	0	9	9	0
Needed Offset - Customs Fees	0	0	0	-9
Net Deficit Effect (+ =deficit increase/minus=deficit decrease)[1]	**0**		**+9**	**-9**

1. Old Pay-go test would have not been met because deficit increases in 2008-2012

So under tough old pay-go, customs user fees would not save you from a pay-go point of order because extending them does not provide an offset when you need it – in the first five years. Good thing that Senate Democrats threw out old pay-go for a new version that would allow them to skip a first-year test and use offsets far in the future, like customs user fees, to pay for near-term spending as shown in Table 3D. While this example shows the increase in spending in 2009, note that, because there is no first-year test, this approach would work just as well if you want to do your spending in 2008 instead of 2009.

TABLE 3D:
NEW PAY-GO NEEDS MORE THAN LONG-TERM OFFSET TO PAY FOR SPENDING TODAY

($ billions)	1st year 2008	2009	1st 5 years 2008-12	2nd 5 years 2013-17	all 10 years 2008-17
Increase in Spending	0	9	9	0	9
Needed Offset-Cust. Fees	0	0	0	-9	-9
Net Deficit Effect[1]	0		**9**		**0**

1. New Pay-go test would not be met because deficit increases over 5 years (note that over 10 years this example is budget neutral)

But the trick of using customs user fees -- which won't be collected until seven years from now -- to pay for spending today requires one more tweak. While customs user fees will satisfy the 10-year test of deficit neutrality, extending these in 2015 still would not satisfy the first five-years test, as shown in Table 3D.

So what to do? Do what many bills have already done in the 110th Congress – do a timing shift as shown in table 3E. Specifically, tell corporations with assets of at least $1 billion to increase their corporate estimated tax payment due in the last quarter of FY 2012 by a certain percentage. Also tell corporations that their first payment due in FY 2013 should be decreased by the same percentage.

This progression of examples demonstrates that new pay-go is essentially only a 10-year test of deficit neutrality. The stricter tests of deficit neutrality in the first year and over the first five years have been dropped or emasculated, respectively. The corporate tax timing shift is the linchpin for meeting new pay-go's significantly weakened tests in the 110th Congress because it makes it possible to satisfy the first five-year test when the only real offsets occur near the end of the 10-year period.

TABLE 3E:
NEW PAY-GO, ALONG WITH CORPORATE TAX TIMING SHIFT, ALLOWS SPENDING TODAY WITH OFFSETS FAR IN THE FUTURE

($ billions)	1st year 2008	2009	1st 5 years '08-12	2nd 5 years '13-17	all 10 years '08-17
Increase in Spending	0	9	9	0	9
Needed Offset-Customs Fees	0	0	0	-9	-9
Needed Timing Shift Corporate est. tax payments			-9	9	0
Net Deficit Effect[1]	0		**0**		**0**

1. New Pay-go test is met because deficit does not increase over 5 years or 10 years

Table 4 shows that in the first session of the 110th Congress, six bills were enacted that include the corporate estimated tax shift. The Internal Revenue Code now says that corporations must send in $6.8 billion more to the federal Treasury in 2012. Congress apparently thinks that corporations are OK with that, since corporations will send in $6.8 billion less in 2013.

TABLE 4:
CORPORATE ESTIMATED TAX SHIFT
USED IN LEGISLATION IN THE 110TH CONGRESS

	Public Law	($ billions) 2012	2013
Enacted legislation:			
2007 Supplemental (incl. minimum wage increase)	110- 28	+5.0	-5.0
Andean Trade Preference Act extension	110- 42	+0.2	-0.2
Burmese Freedom and Democracy Act	110- 52	+0.2	-0.2
Trade Adjustment Assistance extension	110- 89	+0.2	-0.2
US-Peru Free Trade Agreement	110-138	+0.5	-0.5
Mortgage Forgiveness Debt Relief Act	110-142	+0.9	-0.9
Total enacted tax shift		**+6.8**	**-6.8**
Pending legislation:			
H.R. 2419, Farm Bill, as passed by the Senate (in conference)		+4.2	-4.2
Possible agreement on energy tax provisions (not included in HR 6)		+3.8	-3.8
Total tax shift in pending legislation		**+8.0**	**-8.0**
Tax shift in passed, but not enacted, legislation (HR 4351, House-passed 2007 AMT patch)		+31.7	-31.7

Details do not add to totals due to rounding.
Source: CBO/JCT cost estimates

In addition, there is $8 billion more in corporate tax shifts still in the wind, depending on the conference outcomes of the farm bill and energy tax provisions. Is there a point at which corporations say “Whoa!”? Perhaps. If the House-passed “paid for” AMT patch for 2007 had become law, corporations may have had a hard time shifting nearly $32 billion in tax payments from 2013 into 2012.

In the past, these timing gimmicks have been occasionally used to fill in budget enforcement holes here and there by both Republicans and Democrats. However, in the 110th Congress, it seems like the corporate estimated tax payment shift is a required element in every direct spending or revenue measure.

I am surprised that timing shifts have become so prevalent, especially considering the criticism that the current chairmen of the Budget and Finance Committees have both raised in the past.

The Senator from North Dakota has argued that timing shifts don't pay for anything. During Senate floor debate on the 2004 highway bill he said: "I believe that the spending in this bill, which occurs over six years, should be fully paid for over the same six year period. However, I do not believe that the shift in corporate estimated tax payments is the most appropriate way to achieve the goal of fully funding this bill over six years. The provision proposed by the Chairman shifts a hole in general revenues from one year to another." He continued: "I am counting on them [the Finance Committee Chairman and Ranking Member] to keep that commitment that in this Chamber, before this bill leaves the floor, that it will be paid for – and not by any timing changes; not by moving corporate receipts from 2010 to 2009, or any funny-money financing, but really paid for."

The Senator from Montana levied similar criticism. During Senate Finance Committee debate on the 2004 highway bill, he said: "The shift in corporate income in one year actually has moved forward, and then it is canceled out the next year. This is something that we can work [on]. To be honest, it is not something I am very comfortable with."

Indeed, isn't pay-go supposed to be about "paying" for something? How does moving money three months forward pay for anything?

Supporters of the new pay-go who have bragged on its success throughout 2007 neglect to tell you about an important feature of their new, though not improved, rule. As the examples above demonstrate, because it no longer has a first-year test, new pay-go allows Congress to spend new money immediately, or cut taxes immediately, without an immediate offset.

Everything else being equal under our current federal budget deficits, where does the Treasury go to get the money to pay for the new spending? To the credit markets, of course! Treasury has to go out and borrow the money to pay for the new spending or tax cuts today for as long as it takes for the offsets to kick in.

In the case of the example in Table 3E, the offsets for the $9 billion in spending in 2008 do not start coming in until 2015-2017. The corporate tax timing shift only moves corporate payments forward by one month, which does not significantly affect Treasury's borrowing needs over the next 10 years. The Treasury won't be able to pay off all the principal amount of $9 billion until the end of 2017. By then, however, it will have cost Treasury $4 billion in interest to borrow that $9 billion for 8-10 years.

Does the new pay-go require that the $4 billion in interest costs be offset to satisfy the point of order? No.

Pay-go pretends that the Treasury does not have to borrow money in the near-term. But in fact, Treasury has no choice but to add to the debt, at least for many years, to provide for the new spending. If the "debt is the threat," then why is it so virtuous that new pay-go requires the Treasury to borrow the $9 billion today and pay $4 billion in interest financing costs? This adds to the national debt forever the $4 billion in interest costs, which will never be offset under new pay-go.

By throwing away the discipline of a first-year test that had characterized all previous versions of pay-go from 1991-2006, the Democrats' current pay-go is now Wimpy's pay-go: "I'll gladly pay you Tuesday for a hamburger today." What is a first-year test? -- any spending increase or revenue reduction in the first year of a budget period had to be deficit neutral and therefore matched in that same year with an offsetting spending cut or revenue increase. But instead of a hamburger, Congress wants more spending today. And instead of next Tuesday, Congress has decided to wait at least five or six years before starting to pay for the spending today.

Here are some specific examples from the first session of the 110th Congress to use in evaluating the actual experience with pay-go.

The U.S.-Peru Free Trade Promotion Agreement Implementation Act was signed into law on December 14, 2007. Over the next five years, the free trade agreement part of the legislation increased outlays by exempting certain goods from customs merchandise processing fees by $27 million and reduced revenues through tariff phase-outs by $173 million, for a total 5-year deficit increase of $200 million. How was the deficit increase paid for? It wasn't paid for in 2008 or 2009 or 2010 or even 2011. $465 million of corporate taxes were shifted into 2012 from 2013. Is it paid for yet? Well, the test for deficit neutrality in the first five years was satisfied, but the shift created a hole in the second five years. How was this hole filled? By our old friend, of course – customs user fees.

Under the law that existed at the beginning of the 110th Congress, customs user fees were set to expire on September 30, 2014. So far this Congress, five bills have been enacted that have extended these fees for one week, two weeks, and two months. The U.S.-Peru Free Trade Agreement increased the fees for two months through December 13, 2014, resulting in $485 million additional fee collections in 2015. Subsequently, the Andean Trade Preference Extension Act extended the fees through December 27, 2014.

Table 5 illustrates that the only real offset for the new spending that happens in years 2008 through 2015 is the customs user fee extension in 2015.

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2007-2012	2007-2017
Table 5 (fiscal years, $ millions)												
U.S.-Peru Free Trade Agreement (H.R. 3688, P.L. 110-138)												
Changes in Revenues												
Free Trade Agreement	-20	-35	-37	-39	-41	-44	-47	-50	-53	-56	-173	-423
Payment of corporate estimated tax	-	-	-	-	465	-465	-	-	-	-	465	0
Changes in Direct Spending												
Free Trade Agreement	4	5	6	6	6	7	7	1	-	-	27	42
Customs user fees extension	-	-	-	-	-	-	-	-485	-	-	0	-485
Deficit Impact 1/	**24**	**40**	**43**	**45**	**-418**	**516**	**54**	**-434**	**53**	**56**	**-265**	**-20**

1/ Positive number indicates an increase in the deficit.
Details may not add to totals due to rounding.

The Senator from North Dakota is fond of saying that prior to enactment of the 2007 AMT patch in December 2007, there was a "surplus" on the pay-as-you-go scorecard.

Consider in Table 6 all of the bills with pay-go effects, except the AMT patch, that were enacted during the 1st session of the 110th Congress. The first line summarizes the pay-go effects of the six enacted bills that used the corporate tax timing shift. You can see that bills with the shift increased the deficit in each and every year until 2012. In 2012, the six bills reduced the deficit on net by $8.7 billion, then increased the deficit by $5.3 billion in 2013.

The second line of Table 6 summarizes the pay-go effects of all the other bills enacted during the first session. You can see that these bills increased the deficit in 2008, 2009, and 2010, and only begin to reduce the deficit in 2010.

Table 6: Deficit Impact of Pay-go Legislation

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2007-2012	2007-2017
Subtotal, bills that included the corporate estimated tax shift	190	573	802	3,918	2,362	-8,682	5,296	-1,267	-1,792	-897	-688	-838	-192
Other enacted pay-go bills	3	4,320	2,478	-1,572	-3,561	-2,817	2,524	882	-921	-1,350	-1,107	-1,150	-1,119
Total deficit impact	193	4,893	3,280	2,346	-1,199	-11,499	7,820	-385	-2,713	-2,247	-1,795	-1,988	-1,311

NOTE: Positive numbers indicate increase in deficit and negative numbers indicate decrease in deficit

The total line shows that in 2007-2010, all of these bills increased the deficit by a total of $10.7 billion. Then how can there be a "surplus" on the pay-go scorecard? Because of the big, bumpy deficit reduction that takes place in 2012, thanks mostly to the corporate tax payment shifts. If the interest impacts of spend now, pay later were taken into account, there would be only a very small surplus on the scorecard in the first six years, and a deficit of $1.5 billion over eleven years.

Nonetheless, the chairman of the Senate Budget Committee is fond of saying, as he did during Senate floor debate on the Food and Energy Security Act of 2007 on November 16, 2007, that "pay-go is not full of holes . . .[but] don't take my word for it. We can look to the nonpartisan Congressional Budget Office."

Actually, when you look at the cost estimates that the nonpartisan Congressional Budget Office has prepared during the 110th Congress, you will not find one word about pay-go. CBO's job is straightforward: it prepares estimates of the budgetary effects of legislation and displays them in each year for a 10-year period. A CBO cost estimate has never ever evaluated whether a House or Senate point of order applies against legislation or determined whether a piece of legislation complies with the budget resolution. That is the job of the chairmen of the House and Senate Budget Committees, most often using CBO estimates to inform those determinations, but sometimes using alternate estimates.

For example, last year, the House Budget Committee Chairman overrode a scorekeeping rule and <u>directed</u> CBO to score savings for a particular provision in the House farm bill -- without this directed scoring, the House farm bill would have violated pay-go. It was the House Budget chairman who decided whether the House pay-go point of order applied against the House farm bill. CBO did not decide. In addition, it was CBO's estimate of the farm bill that let Congress know that some of the cost of the Senate farm bill was deferred to after the period of pay-go enforcement. So the Senate was dodging pay-go by hiding new spending from the enforcement period. CBO did not say that the Senate complied with pay-go, nor did it say that the Senate dodged pay-go. But any user of CBO's estimates would come to the conclusion that pushing spending outside the enforcement window is avoiding pay-go.

In addition, CBO does not evaluate the merits of "policy" in its cost estimates. CBO estimates the budgetary incidence of early sunsets and payment shifts exactly as written in legislation, gimmicks though they are. CBO's job is to simply provide the estimates of budgetary effects year by year. It is the budget chairmen who then say "CBO estimates this bill reduces the deficit" while abdicating themselves from responsibility for the gimmicks.

Finally, the Senate Budget Committee chairman likes to point to the bottom line of Table 6 to illustrate how well pay-go has worked because there was a pay-go scorecard surplus for a brief period in the fall. But was there really a surplus? Over the 2008-2012 and 2008-2017 periods, respectively, the pay-go surplus was $1.988 billion and $1.311 billion.

But what the scorecard omits is a cost of spending now and paying later that the Treasury does not have the luxury of ignoring. Because of enactment of all of these bills, the deficit is now increasing by $10.7 billion over 2007-2010. The Treasury has no choice but to go out right now to the credit markets and borrow $10.7 billion, and will have to pay $2.8 billion in interest costs over the next 10 years until all the offsets in these bills finally come in and allow the Treasury to pay off that borrowing. Not only does that unrecognized interest cost get added permanently to the debt, but it is also so large that it more than wipes out the supposed and ephemeral pay-go scorecard surplus of just over $1 billion.

But another bill wiped out the surplus on the pay-go scorecard first. The enacted AMT patch increased the deficit by $50.6 billion in 2008, because it was not offset and it did not comply with pay-go. Before it passed both the Senate and the House without an offset, the House passed a "paid for" AMT patch with the deficit increase in 2008 and actual offsets in later years. The House bill only satisfied the 2008-2012 deficit-neutrality test for pay-go by using a corporate estimated tax shift of $32 billion from 2013 into 2013.

Finally, let me address some of the protestations of the Budget Committee Chairman about my criticisms about the spotty enforcement of his vaunted pay-go rule after this past year.

For example, I have criticized the gimmick of enacting a one-month extension of MILC in the 2007 supplemental in order to get mandatory MILC spending in the baseline and avoid pay-go enforcement to the tune of $2.4 billion over 10 years. My summary of this gimmick is as follows:

The story starts with confusion about how budget rules work. Consider a recent example, fueled by misinformation from Congressional sources, from a daily Capitol Hill publication dealing with a provision to extend subsidies to certain dairy farmers -- known as the Milk Income Loss Contract program, or MILC -- in the House- and Senate-passed versions of the 2007 supplemental:

"CBO has not included MILC in the baseline for the new farm bill because [MILC] was scheduled to [expire at the end of August 2007], but [Senator] Kohl said in a release that the extension to the end of…fiscal year [2007] 'will also build the cost of the dairy program into the baseline budget for the next farm bill.' The [House-passed] version [of the 2007 supplemental]…extends the MILC program for 13 months at a cost of $283 million, but the extension is as a discretionary program, which means CBO would not include it in the baseline. A Democratic House aide said the House did not include it as a mandatory program because under budget rules the bill had to account for the full 10-year cost of the program, which CBO estimated at $4.2 billion. But the Senate did not have that problem because it does not have similar budget rules."

To understand why this is a confused statement requires mini-tutorials on several facets of budget enforcement history and rules.

The Budget Enforcement Act of 1990 established a two-sided budget enforcement system designed to measure the budgetary effects of every piece of legislation enacted by Congress and compare those effects against a standard of enforcement.

One "side" of enforcement was defined as discretionary spending – that is, spending provided in annual appropriation bills. The enforcement standard was discretionary caps or limits set out in law for a period of five years. If appropriations for a year exceeded the discretionary cap for that year, then the Office of Management and Budget would order a sequester -- an across-the-board reduction of appropriations of a sufficient magnitude so that the remaining appropriations could fit within the cap.

The other "side" of enforcement was pay-as-you-go, or pay-go, which covered all spending provided in all legislation that is not an appropriation bill, aka mandatory spending, and all legislated changes in federal revenues. If, at the end of a year, all the mandatory spending and revenue legislation enacted by Congress cumulatively increased the deficit relative to the OMB baseline, then OMB would order a sequester of mandatory spending. All mandatory spending that was not exempted would be cut across-the-board to achieve savings corresponding to the amount of deficit increase enacted by Congress that year.

That sounds easy since there are only two kinds of enforcement discipline to worry about. To make things even easier, the joint explanatory statement of managers in the conference report on BEA included a list of all accounts at that time that were to be considered mandatory. Of course, the universe of spending accounts in the budget never remains static. So to anticipate future changes, as well as the likelihood that Congress may occasionally decide to make changes in mandatory spending programs in appropriation bills, or vice-versa, the statement of managers also included the following Scorekeeping Rule #3 in a larger set of scorekeeping guidelines:

> Entitlements and other mandatory programs, including offsetting receipts, will be scored at current law levels as defined in section 257 of the Balanced Budget and Emergency Deficit Control Act, unless Congressional action modifies the authorization legislation. Substantive changes to or restrictions on entitlement law or other mandatory spending law in appropriations laws will be scored against the Appropriations Committee section 302(b) allocations in the House and the Senate.

Put another way, Rule #3 means that if an appropriation bill makes a change in what has in the past been a mandatory program, then the appropriation bill is the bill that gets charged with the cost or gets credit for the savings. That change is counted against the bill's discretionary limit, aka the 302(b) allocation.

And if an authorization bill, which is any bill that is not an appropriation bill, makes a change to mandatory spending or previously enacted discretionary appropriations, then that authorization bill is scored with the cost or credit, and that bill is measured under pay-go. Scorekeeping Rule 3 has often been colloquially paraphrased in the following way: "he who does the deed gets charged with the cost or the credit."

So how did this work in practice? Consider in the following table some stylized discretionary caps roughly equivalent to the levels enacted for the last five years for which BEA discretionary caps and pay-go were in effect. Those statutory enforcement mechanisms expired at the end of FY 2002; similar, but not equivalent, mechanisms for discretionary caps and pay-go that are enforced by points of order rather than sequesters have continued in the Senate since then. Last year the House adopted a pay-go point of order for the first time.

ILLUSTRATION OF HOW CHANGES IN MANDATORY SPENDING ENACTED IN AN APPROPRIATION BILL COUNT FOR BUDGET ENFORCEMENT

(budget authority in $ billions)

	1998	1999	2000	2001	2002
Illustrative Statutory Discretionary Caps	530	535	540	545	550
5-year Increase in Mandatory Spending Program Enacted in a 1998 Appropriation Bill Counts against 1998 Discretionary Cap		2	2	2	2
- and -					
Outyear Statutory Discretionary Caps Reduced to Reflect Mandatory Increase		533	538	543	548

Assume all the appropriation bills for 1998 provided in aggregate the exact level of discretionary spending allowed for that year – $530 billion. Since the enacted level for all appropriation bills did not exceed the cap, there would be no sequester.

Out of this total, what if the Agriculture appropriation bill for 1998 included a $2 billion annual increase in a mandatory program that had been created by the Agriculture authorizing committee in the 1996 farm bill? Budget experts will recognize this concept as a CHIMP, or Change In Mandatory Program.) For purposes of scoring the 1998 Agriculture appropriations bill, the $2 billion increase would be considered discretionary spending in every year, even though it was for an existing mandatory program, because it was enacted in an appropriations bill, not an authorizing bill. This $2 billion increase in a mandatory program would not count against pay-go.

So where would it count? For 1998, the answer is straightforward – the $2 billion cost of increasing the mandatory program in 1998 would count against the discretionary cap of $530 billion for that year.

But what about subsequent years? Since the appropriation bill for 1998 is only measured against the 1998 discretionary cap, how would the “do-er” get charged for the “deed” of increasing the cost of a mandatory program by $2 billion in 1999 and each year thereafter? By reducing the amount that the appropriations committee would be able to spend in future years under their discretionary caps.

OMB would simply reduce the discretionary cap in each of those subsequent years by $2 billion. In 1999, the $2 billion in higher spending on farm bill programs would appear back on the mandatory side of the budget, which is known as “re-basing” in budget-speak, but its effects would not have escaped enforcement because the 1999 discretionary cap would be reduced from $535 billion to $533 billion, and so on for as many subsequent years as there are statutory caps. Under this system, no one could get away with free mandatory spending by hiding it in a different legislative vehicle to avoid pay-go.

When BEA and some supermajority budget points of order in the Senate were about to expire late in 2002, many Senators were concerned that there would no longer be any budget enforcement, especially since there was no budget resolution for 2003.

After several failed attempts to extend the statutory enforcement of BEA, the Senate settled for adopting S. Res. 304 by unanimous consent on October 16, 2002. For a six-month period, until the next budget resolution could be agreed to, S. Res. 304 extended the 60-vote requirement for waiving certain points of order, extended the Senate’s pay-go point of order, and applied the pay-go point of order to appropriation bills.

Why suddenly apply pay-go to spending in appropriation bills? Because there was no budget resolution or deemer for 2003, the Chairman of the Senate Appropriations Committee did not have a discretionary allocation for 2003 and was concerned that members would want to load up new mandatory-type, permanent, automatic spending programs or increases in existing mandatory programs on his appropriation bills to avoid pay-go.

If those mandatory programs were enacted in authorizing bills, they would have continued to face a pay-go point of order because S. Res. 304 also extended the expiration date for the pay-go point of order. But since there was no discretionary allocation for appropriation bills for 2003, there was no budget enforcement for appropriation bills. Mandatory spending programs attached to appropriation bills would not have to be counted against anything. There would have been no 60-vote point of order to thwart them.

In addition to persuading the Senate to adopt S. Res. 304 to discourage such behavior, the chairmen of the Appropriations Committee and the Budget Committee went so far as to issue a warning to members: If a provision to increase a mandatory program for later years was somehow enacted on an appropriation bill, those two chairmen promised to see to it that whatever allocation that would have occurred for future years would be reduced by the amount of the mandatory spending added to the appropriation bills. But remember, there were no longer discretionary caps set out in law in advance for future years; instead, discretionary allocations were set on a year to year basis. This saber rattling seemed to do the trick, but only temporarily since S. Res. 304 expired on April 15, 2003.

For the next four years, 2003-2006, the only supermajority point-of-order tool available to prevent increases in mandatory spending programs from hitching a ride on appropriation bills was the advance appropriation point of order. Remember that until very recently, since enactment of BEA in 1990, when changes to a mandatory spending program are added to an appropriation bill, even if the changes seem mandatory-like, they have been considered as discretionary spending for purposes of budget enforcement on that bill.

Therefore, budget authority for mandatory spending activities provided for future years in an appropriation bill is considered a discretionary appropriation. The advance appropriation point of order in section 401 of the 2006 budget resolution, H. Con. Res. 95, 109th Congress, has included a definition of the term that captures this scoring practice: "the term 'advance appropriation' means any new budget authority provided in a bill…making general appropriations…for fiscal year 2007, that first becomes available for any fiscal year after 2007."

With the advent of the 110th Congress and a new chairman of the Senate Budget Committee, however, the Senate parliamentarians -- contrary to precedent in the 108th and 109th Congresses -- have decided that this definition of advance appropriation somehow no longer applies to budget authority in appropriation bills when that budget authority results from changes in mandatory programs. As a result, folks in the Senate have flocked to the 2007 supplemental appropriations bill to augment their favorite mandatory programs for free.

For example, the Senate-passed version of the supplemental included the Wyden amendment, adopted on the Senate floor, that would extend "county payments" under the Secure Rural Schools and Community Self Determination Act from 2008-2012, at a cost of $2.2 billion. Proponents of this program, which was initially enacted as a temporary, transitional program in 2000, have fretted for the past several years about the imminent expiration of the program and how they could find sufficient offsets to pay for its extension.

The proponents were not able to convince the authors of the 2008 budget resolution to include a sufficient allocation to the Energy Committee to cover authorizing legislation to extend the program. But adding the extension to the supplemental means they did not have to pay for it under pay-go. The sponsors of the county-payments amendment claimed that they "offset" the cost by increasing various revenues, but the revenue provisions add up to only $0.2 billion over 2008-2012, which is $2.0 billion short of offsetting the cost of the amendment.

The amendment did include other provisions that pretended to raise revenues, but those provisions -- amounting to $1.4 billion over 2008-2012 -- had already been incorporated by unanimous consent into the supplemental through the minimum wage amendment, and you cannot use the same offsets twice in one piece of legislation. Regardless of the amount of the supposed revenue offsets, any revenue increases enacted in the supplemental will go on the Senate's pay-go scorecard to be available to be spent on some other authorizing legislation in the future. Revenues cannot be used to offset spending in an appropriation bill.

Finally, also consider the confusing tale of MILC. MILC is a farm-bill program that makes payments to certain dairy farmers. MILC was intentionally scheduled to expire on August 31, 2007, unlike most of the other farm bill programs that were scheduled to expire on September 30, 2007, with some variation depending on the type of crop. When Congress first enacted the MILC program, it designed it that way on purpose so MILC would not be continued in the CBO baseline; consequently, MILC was not continued in the CBO baseline for 2008-2017, while the rest of the farm bill was by and large continued in the baseline.

In an authorization bill reported from the Agriculture Committee, an extension of MILC for one month -- making it expire at the same time as the rest of the farm bill -- would have allowed the program to receive the same continuing-in-the-baseline treatment as the rest of the farm bill. But then that authorization bill and the Agriculture Committee would have had to pay for the extension with an offset for the last month of 2007 as well as for the subsequent 10 years or else be subject to the 60-vote scrutiny of the pay-go point of order. Proponents of MILC were not able to convince the authors of the 2008 budget resolution to include a sufficient allocation to the Agriculture Committee to cover authorizing legislation to extend the MILC program. But with the option of the 2007 supplemental, it appears they did not need to.

While a one-month extension of MILC was added to the Senate supplemental, it is not automatic -- contrary to the suggestion in Senator Kohl's press release cited earlier -- that CBO will "build the cost of the dairy program into the baseline budget for the next farm bill."

What happens instead is that CBO consults the Chairman of the Senate Budget Committee on whether the Budget Committee wants CBO to continue an expiring mandatory program in the baseline. Note that in the case of county payments mentioned above, the current Budget Chairman had advised CBO not to extend the payments in the baseline after they would have expired under the supplemental at the end of 2012.

But in the case of the one-month extension of MILC in the Senate-passed supplemental, the current Chairman of the Senate Budget Committee has instructed CBO to parlay that one-month extension, which cost $31 million, into a $1.2 billion increase in the five-year allocation to the Agriculture Committee, or $2.4 billion over the 10-year enforcement period under pay-go, all without any offset or any 60-vote budget enforcement opportunity.

The Chairman could have just as easily directed CBO not to assume continuation of MILC in the baseline, which is what Budget Committee chairmen have advised CBO to do about MILC in the past and what the current Chairman did in the case of county payments. That would have prevented a $2.4 billion dodge around pay-go. Instead, the Chairman chose to exempt MILC from the pay-go discipline.

The House-passed supplemental also included an extension of MILC, although it did so without amending the existing MILC law. In contrast to the Senate, the House supplemental simply appropriated money to USDA to make MILC-like payments to dairy farmers as if MILC were still in effect for the 13 months after August 31, 2007.

Even so, the distinction made in the news article cited earlier about the House extending MILC as a discretionary program and the Senate extending it as a mandatory program is misleading. MILC is by definition a mandatory program because it was created by an authorizing committee. However, any changes made to the MILC program in an appropriation bill are considered discretionary for purposes of evaluating that appropriation bill for budget enforcement, regardless of whether MILC is extended by tweaking language in existing law or by creating parallel new language.

Further, the Democratic House aide cited in that article is not correct that "under [House] budget rules that [House supplemental] bill had to account [with an offset] for the full 10-year cost of the [MILC] program" if the MILC program were going to be extended for that long. Note that the House supplemental did not "pay for" the $283 million cost of extending MILC through 2008; it just designated it as an emergency to avoid budget enforcement.

Why was the House aide incorrect? Because the House pay-go point of order does not apply to appropriation bills in the House. After the House adopted its pay-go rule in January 2007, there was some initial confusion and unsettledness about which legislation its pay-go rule would apply to. But now it is clear that the House pay-go rule applies to authorization bills only.

The House appropriators, however, do not want their bills to become the vehicle of choice to carry increases in mandatory spending programs that cannot find offsets in authorization bills to fit under the House pay-go rule. So, it is only the persuasive jawboning by interested parties, such as the Chairman of the House Appropriations Committee, that has thus far been able to keep House appropriation bills nearly free and clear of multi-year changes in mandatory spending.

At least the House seems committed as a matter of practice, even if not as a result of its rules, to preventing its appropriation bills from becoming a huge loophole for avoiding pay-go enforcement. However, the Senate has shown no such restraint since it added $4.6 billion in mandatory spending increases over the next 10 years for county payments and MILC alone to its version of the 2007 supplemental.

There is a way to close this pay-go loophole. One way would be to reinstate the enforcement of pay-go for appropriation bills that the Chairman of the Appropriations Committee succeeded in providing for six months in 2002-2003 through S. Res. 304. The Appropriations chairman, however, now opposes that approach.

Another way would be if the conference report on the 2008 budget resolution had included an amendment offered by the chairman of the Budget Committee and myself, which was adopted by UC during Senate debate on that budget resolution. The amendment would have created a 60-vote point of order against net increases in spending for mandatory spending programs on an appropriation bill.

In fact, the conference report did include a weakened version of the Gregg-Conrad point of order that the Senate passed. But that weakened point of order exempted the 2007 supplemental. So there was no 60-vote point of order available to strip the MILC provision out of the supplemental. The Budget Committee chairman’s excuse is that he did not want to change the rules in the middle of the game while the supplemental was being considered at the same time as the 2008 budget resolution.

But this is nonsense. If the MILC provision had instead been in an authorizing bill at that time, the pay-go point of order that was already in place in the Senate would have made it possible to subject the MILC provision to 60-vote scrutiny. That was the rule already in place at the time. By hiding the MILC provision in the supplemental and getting the parliamentarian to change the precedent on what constituted an advance appropriation, that was changing the rules in the middle of the game in order to protect the MILC provision, and even more importantly, to stock the farm bill baseline with $2.4 billion more in spending that would never be subject to pay-go.

Some other things that the Budget Chairman has wrong about pay-go are as follows.

He said this week that pay-go matters only when bills are enacted. This is exactly the opposite of the truth. Pay-go is a point of order. A Senator cannot raise a point of order after a bill has been enacted into law. The pay-go point of order is only worth anything when the Senate considers a bill before sending it on to conference; seldom do conference reports get blown up by a point of order.

The chairman also said pay-go has been defended 9 times since the 2008 budget resolution was put in place and that it was never waived, so that is an indication of how successful and wonderful it has been. But I count only 8 times that a pay-go point of order was raised since adoption of the 2008 budget resolution conference report and in each and every instance it was raised against amendments offered to bills brought to the floor. The pay-go point of order has not yet been raised in its current incarnation against any of the several bills brought to the floor that by themselves violated pay-go.

The Budget Chairman is defensive about pay-go. He should be. The pay-go he defends is not the pay-go that he promised for years that we would have if only his party were in charge. Now that he is in charge, pay-go is watered down and incredibly easy to gimmick or avoid.