BUDGET BULLETIN

A WEEKLY BULLETIN PRODUCED WHEN THE SENATE IS IN SESSION.

COMMITTEE ON THE BUDGET Republican Staff

Judd Gregg, Ranking Member
202/224-0642 http://budget.senate.gov/republican

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INFORMED BUDGETEER (PART 1)

got milc? yes!
got paygo? not really…

- The story starts, as they often do, 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 (aka 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."

Huh? To make heads or tails of what this article is trying to get at and to correct the confusion spread by staff requires mini-tutorials on several facets of budget enforcement history and rules.

1990 BEA-What Is Discretionary & What is Mandatory?

- As informed budgeteers still understand 17 years later (though it never hurts to be reminded), the Budget Enforcement Act of 1990 (BEA) 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 (OMB) 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 paygo, which covered all spending provided in all legislation that is not an appropriation bill (aka mandatory spending) and all legislated changes in federal revenues (or taxes). 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.

- 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.

> **RULE #3: DIRECT SPENDING PROGRAMS**:
> 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, it 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 302(b) allocation).

- And if an authorization bill (aka any bill that is not an appropriation bill) makes a change to mandatory spending or previously enacted discretionary appropriations (for example, a rescission), then that authorization bill is scored with the cost or credit, and that bill is measured under paygo. 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 (on next page) some stylized discretionary caps roughly equivalent to the levels enacted for the last five years for which BEA discretionary caps and paygo were in effect. (Those statutory enforcement mechanisms expired at the end of FY 2002; similar, but not equivalent, mechanisms for discretionary caps and paygo that are enforced by points of order rather than sequesters have continued in the Senate since then. This year the House adopted a paygo point of order for the first time. See http://budget.senate.gov/republican/analysis/2007/bb01b-2007.pdf.)

- 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 geeks 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 paygo.

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

- 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 (aka "re-basing" in budget-geek 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 paygo.

What Happened When BEA Expired?

- When BEA and some supermajority budget points of order in the Senate were about to expire late in 2002, many Senators, especially Senators Conrad, Domenici, Gregg, and Feingold, 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 (107th Congress, by unanimous consent on October 16, 2002). For a six-month period (until the next budget resolution could be agreed to), this resolution extended the 60-vote requirement for waiving certain points of order, extended the Senate's paygo point of order, and applied the paygo point of order to appropriation bills.

- Why suddenly apply paygo to spending in appropriation bills? Without a discretionary allocation for 2003 (because there was no budget resolution or deemer for 2003), Senate Appropriations Committee Chairman Byrd 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 paygo.

- If those mandatory programs were enacted in authorizing bills, they would have continued to face a paygo point of order (because S. Res. 304 also extended the expiration date for the paygo 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, Chairman Byrd and Budget Committee Chairman Conrad 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 (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) would be reduced by the amount of the mandatory spending added to the appropriation bills. This saber rattling seemed to do the trick, temporarily (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; see page 3 of this *Bulletin*) 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 are 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 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*" (section 401 of the 2006 budget resolution, H. Con. Res. 95, 109th Congress).

MAKE SURE TO READ ON TO THE PART 2 CONTINUATION OF THIS *BULLETIN* IN NO. 4b

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INFORMED BUDGETEER (PART 2)

got milc?

(Continued)

A PAYGO Loophole So Big…

- 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 includes 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 paygo. 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 paygo 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.

…You Can Drive a MILC Truck Through It

- Finally, also consider the confusing tale of MILC in the article at the beginning of Part 1 of this long *Bulletin*. MILC is a farm-bill program that makes payments to certain dairy farmers. Currently, MILC is intentionally scheduled to expire on August 31, 2007 (unlike most of the other farm bill programs that are essentially scheduled to expire on September 30, 2007, with some variation depending on the type of crop). When Congress enacted the current MILC program, it designed it that way on purpose so MILC would not be continued in the CBO baseline; consequently, MILC is not continued in the current CBO baseline for 2008-2017, while the rest of the farm bill is 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 allow 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 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 paygo 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 at the beginning of this *Bulletin*) 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 has advised CBO not to extend the payments in the baseline after they would expire 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 (costing $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 paygo), ***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 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 paygo. Instead, the Chairman chose to exempt MILC from the paygo discipline.

- The House-passed supplemental also includes an extension of MILC, although it does so without amending the existing MILC law. In contrast to the Senate, the House supplemental simply appropriates 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 article cited at the beginning of this *Bulletin* (Part 1) 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 paygo point of order does not apply to appropriation bills in the House. After the House adopted its paygo rule in January, there was some initial confusion and unsettledness about which legislation its paygo rule would apply to. But now it is clear that the House paygo 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 paygo 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 currently seems committed as a matter of practice (if not as a function of its rules) to preventing its appropriation bills from becoming a huge loophole for avoiding paygo enforcement. However, the Senate has shown no such restraint since it has already added $4.6 billion in mandatory spending increases over the next 10 years for county payments and MILC alone (see adjacent table).

Who Will Step in Front of the Truck?

- There is a way to close this paygo loophole. One way would be to reinstate the enforcement of paygo for appropriation bills that Chairman Byrd succeeded in providing for six months in 2002-2003 through S. Res. 304. (Chairman Byrd, however, now opposes that approach.)

- Another way would be for the conference report on the 2008 budget resolution to include an amendment offered by Senators Gregg and Conrad (and adopted by UC) during Senate debate on that budget resolution. The amendment would create a 60-vote point of order against net increases in spending for mandatory spending programs on an appropriation bill. Such a point of order, if established, would likely be available too late to have any effect on consideration of the 2007 supplemental, but it could make a significant difference for subsequent appropriation bills.

2007 SUPPLEMENTAL APPROPRIATION BILLS PASS HOUSE AND SENATE

- Before the Easter recess, the House and Senate each passed a version of a supplemental appropriation bill for 2007. The President had requested $100 billion for activities his budget says are associated with the Global War on Terror and another $3 billion for hurricane response. Both the Senate and House added significantly more spending than the President requested for activities above and beyond the Global War on Terror and hurricanes. The House bill would appropriate $124.3 billion for 2007, while the Senate version would provide $122.7 billion, or about $1.6 billion less than the House version.

- But the larger difference between the two bills is what they do after 2007. The Senate bill would spend another net $4.7 billion over the next 10 years, mostly as the result of just two provisions. The House bill would provide next to nothing for any year after 2007.

- In addition, the Senate bill includes revenue provisions (to accompany its minimum wage provision) that would increase revenues by $1.0 billion in 2007 and by $0.1 billion over 2008-2017. The House bill does not include any revenue provisions with its minimum wage language.

Comparison of Senate- and House-Passed Bills
2007 Supplemental Appropriations (H.R. 1591)
(discretionary budget authority in billions of $)

By Title & Purpose in Senate-Passed Bill	2007 Senate	2007 House	2008-2017 Senate	2008-2017 House
I - Global War on Terror (GWOT)	**104.0**	**105.0**		
Military Personnel	13.4	13.6		
Operations & Maintenance	46.2	46.6		
Procurement	28.4	29.7		
R&D	1.2	1.0		
Military Construction	1.6	1.8		
Revolving & Management Funds	1.3	1.3		
Defense Health Programs	2.5	2.8		
State Dept. Other GWOT	9.2	8.1	0.1	
II - Hurricane Recovery, Veterans Care, & Other Purposes	**14.5**	**15.4**		
Disaster Relief Fund[a]	4.6	4.6		
BRAC	3.1	3.1		
Veterans Care	1.8	3.1		
Corps of Engineers[a]	1.7	1.3		
Pandemic Flu	0.9	1.0		
LIHEAP	0.6	0.4		
Wildfire Suppression	0.5	0.5		
SCHIP	0.4	0.4		
Secure Rural Schools (aka county payments)	0.0	0.4	2.2	
NOAA[a]	0.2	0.2		
State & Local Law Enforcement (Byrne) Grants[a]	0.2	0.0		
Emergency Forestry Conservation Reserve Program[a]	0.1	0.0	0.3	
Payment in Lieu of Taxes	0.0	0.0	1.8	
Prohibit Medicaid Regulation[b]	0.0	0.0	0.6	
Increase Brand-Name Drug Rebate[b]	0.0	0.0	-3.8	
Other Hurricane Recovery	0.3	0.2		
III - Other Matters	*	**0.2**		
Judges Pay Raise	*	0.0	0.1	*
Other (net)	*	0.2		
IV - Emergency Farm Relief	**4.2**	**3.7**		
Ag Disaster Aid Package	4.2	3.4		
MILC Extension	0.0	0.3	2.4	
V - Fair Minimum Wage & Tax Relief	*	**0.0**	**1.0**	
Total Appropriations	**122.7**	**124.3**	**4.7**	*
MEMO: Revenue Increase	**1.0**	**0.0**	**0.1**	**0.0**

SOURCE: CBO NOTE: Details may not add to totals because of rounding.
a. Hurricane Recovery
b. The Durbin amendment adopted during Committee markup of the Senate supplemental would temporarily prohibit the Centers for Medicare and Medicaid Services from implementing a regulation that would limit Medicaid payments, thereby costing $640 million over 2008-2009. To offset the cost of this provision, the amendment also included a provision that would permanently increase the minimum rebate that Medicaid collects on brand-name drugs, costing $90 million over 2008-2009, but saving $870 million over 2008-2012 and saving $3.8 billion over 2008-2017.
* = Less than $50 million