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Emergency Spending: Statutory and Congressional Rules

James V. Saturno, Government and Finance Division

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Abstract. The designation of spending as emergency has had significance in both procedural and budgetary terms. The Budget Enforcement Act (BEA; 1990-2002) placed statutory limits (caps) on the level of federal discretionary spending, enforced by across-the-board spending cuts, known as a sequester. If, however, spending were designated as emergency by both the President and Congress, it would not trigger a sequester, because the caps would be adjusted automatically by an amount equal to the emergency spending. Although the spending caps established under the BEA have expired, additional limitations adopted by the House and Senate in their respective rules concerning the use of emergency designations continue to be in force. In particular, the budget resolution for FY2008 (S.Con.Res. 21, 110th Congress) provides a point of order in the Senate against the use of emergency designations.

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Bill Heniff Jr.
Analyst on the Congress and Legislative Process

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Summary

The designation of spending as emergency currently exempts that spending from certain procedural budget constraints. In particular, emergency-designated spending is not counted against the spending allocations associated with the budget resolution in the House and Senate and the pay-as-you-go (PAYGO) requirement in the Senate. The treatment of emergency-designated spending has its roots in the statutory budget constraints, especially the statutory limits on discretionary spending, established by the Budget Enforcement Act (BEA) of 1990. While the statutory budget constraints established by the BEA expired at the end of FY2002, the House and Senate continue to provide for special treatment and limitations on spending designated as emergency. This report will be updated to reflect any changes in the rules concerning the use of emergency designations.

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

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

No explicit limitations, however, were placed on either branch with regard to their prerogative to request or enact spending for any purpose, including supplemental appropriations. As part of presidential-congressional budget summit agreements in 1987 and 1989, appropriations caps were enacted, and the two branches agreed not to initiate supplemental spending above these amounts "except in the case of a dire emergency." In neither agreement was there a definition for a dire emergency, or a requirement that any supplemental spending be offset.[3]

The Budget Enforcement Act

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

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

There is currently no statutory spending caps for discretionary spending. A similar provision of the act specified that enforcement of PAYGO excluded emergency provisions as well.[7] However,

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

[2] P.L. 93-344, Sec. 604, 88 Stat. 324.

[3] William G. Dauster, "Budget Emergencies," *Journal of Legislation*, vol. 18, no. 2, 1992, pp. 249-315.

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

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

[6] Sec. 251(b)(2)(A). This language was most recently enacted in 1997 in Title X of P.L. 105-33 and appears at 111 Stat. 699.

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

almost all of the spending designated as emergency under the act was for discretionary spending accounts.[8]

The BEA provided that either the President or Congress could initiate the emergency spending designation. The President could initiate emergency spending by designating the spending as emergency in his request, which would then have to be similarly designated by Congress in statutory language. Congress could also initiate emergency spending by making the designation in statutory language. When doing so, it usually made the availability of such funds for obligation contingent on the President designating them as well.

In addition, Section 314(a) of the Congressional Budget Act of 1974 provides for an adjustment of aggregates set forth in the budget resolution, as well as allocations made pursuant to those aggregates, to reflect the amount of spending carrying emergency designations under the BEA. By making this adjustment apply while a bill or amendment was under consideration, it effectively exempted the provision from certain points of order under the Congressional Budget Act.[9]

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

House Rules

In January 1995, the House added a new provision to its rules, House Rule XXI, clause 2(e), to prevent non-emergency spending from being added to an appropriations bill designated as providing emergency spending.[10] The rule provides that

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

Although this provision has continued to be included in House rules, the expiration of statutory spending limits on spending in 2002 has meant that the designation of spending as emergency no longer provides for an automatic adjustment of aggregates set forth in the budget resolution, nor

[8] The emergency designation was used four times for legislation subject to PAYGO: Sec. 6 of P.L. 103-6, Sec. 3309(c) of P.L. 105-206, Sec. 101(b) of P.L. 107-42, and Sec. 502 of P.L. 107-147.

[9] In particular, points of order under Secs. 311 and 302 enforcing the aggregate spending amount and committee allocations, respectively. For more on points of order, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

[10] Rep. Gerald Solomon, remarks in the House, *Congressional Record*, vol. 141, January 4, 1995, p. 475.

for allocations made pursuant to those aggregates. In response, a provision was adopted in Section 502(b) of the FY2004 budget resolution (H.Con.Res. 95, 108th Congress) specifying that

> ... any bill, joint resolution, amendment, or conference report [designated as an emergency requirement] shall not count for purposes of sections 302, 303, 311, and 401 of the Congressional Budget Act of 1974.

A similar provision was adopted in Section 402(a) of the FY2006 budget resolution (H.Con.Res. 95, 109th Congress). In addition, this subsection provided that supplemental appropriations for FY2005 or FY2006 for "contingency operations related to the global war on terrorism" designated as emergency would not count for purposes of Sections 302, 303, 311, and 401 of the Congressional Budget Act.

Although the House and Senate did not come to agreement on the budget resolution for FY2007, the House did adopt a resolution (H.Res. 818, 109th Congress) deeming the provisions of the House-passed version of the budget resolution (H.Con.Res. 376, 109th Congress) to apply in the House, including Section 402 exempting from procedural limits imposed under Titles III and IV of the Congressional Budget Act appropriations for contingency operations directly related to the global war on terrorism, and other unanticipated defense-related operations. In addition, Section 501 provided for a reserve fund of $6.45 billion to allow for adjustment of the allocations and aggregates in the budget resolution for amounts designated as emergency spending. The resolution further required in Section 504 that committees include an explanation of how a provision designated as an emergency requirement met the criteria for that designation enumerated in Section 502.

Currently, Section 301(b) of S.Con.Res. 70 (110th Congress), the budget resolution for FY2009, provides for an adjustment of certain spending amounts for FY2008 and FY2009 for overseas deployments and related activities.[11] In addition, it provides that any additional amounts provided for such purposes, as well as any spending designated as "necessary to meet emergency needs," shall not be counted against the spending constraints associated with the budget resolution under the Budget Act.

Senate Rules

The Senate has taken a different approach to limiting the use of emergency designations. In 1999, the Senate first adopted a point of order to prohibit consideration of legislation containing an emergency designation.[12] This mechanism was designed so that a point of order could be raised against any emergency designation in a measure, which could then be stricken from the measure without further action. The point of order could be waived, however, by a vote of three-fifths of the Senate. The result of this was effectively to require that any emergency designation be supported by three-fifths of the Senate, in order to insure that it would remain as part of the measure. If a waiver was not granted, the emergency designation would be stricken, although the spending could remain in the measure subject to any other applicable budgetary limits. This provision also included language providing guidelines for justifying an emergency designation,

[11] Sec. 104(21) of S.Con.Res. 70 (110th Cong.) provides $108.1 billion in budget authority for FY2008 and $70.0 billion in budget authority for FY2009 under function 970 for Overseas Deployments and Other Activities.

[12] Sec. 206(b) of H.Con.Res. 68 (106th Cong.).

but these guidelines were not binding. This point of order was readopted in modified form in 2000,[13] including a provision establishing that it does not apply against an emergency designation for a provision making discretionary appropriations for defense spending.[14]

In the 108th Congress, the Senate included an updated version of this point of order.[15] Under this section:

> When the Senate is considering a bill, resolution, amendment, motion, or conference report, if a point of order is made by a Senator against an emergency designation in that measure, that provision making such a designation shall be stricken from the measure and may not be offered as an amendment from the floor.

As in the House, Section 502(c) of the FY2004 budget resolution (H.Con.Res. 95; 108th Congress) provided that in the Senate any spending with an emergency designation shall not count for purposes of enforcing Sections 302, 303, 311, and 401 of the Congressional Budget Act, nor for other applicable enforcement provisions in the budget resolution. As with previous versions of this point of order, it did not apply to discretionary spending for defense accounts, and it could be waived by a vote of three-fifths of the Senate.

This point of order was reiterated in the FY2005 Department of Defense Appropriations Act,[16] and Section 402(b) of the FY2006 budget resolution (H.Con.Res. 95, 109th Congress).

Because the House and Senate did not come to an agreement on a budget resolution for FY2007, the Senate included a provision in Section 7035 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (P.L. 109-234) providing for a limit on discretionary spending, but allowing adjustments to those limits pursuant to Section 402 of S.Con.Res. 83 (109th Congress) as passed by the Senate. In addition to reiterating the Senate's point of order against designating spending as emergency spending (subject to the waiver provision in the resolution), this section provided for a limit on total exemptions for emergency spending.

Currently, Section 204(a) of S.Con.Res. 21 (110th Congress), the budget resolution for FY2008, provides that spending designated as an emergency requirement shall not count for purposes of Sections 302 and 311 of the Congressional Budget Act and Section 201of the budget resolution (relating to PAYGO). This most recent emergency exemption provision retains the point of order against any emergency designation (subject to the waiver provision). In addition, as in the House, the budget resolution for FY2009 (S.Con.Res. 70, 110th Congress) provides for an adjustment of certain spending amounts for FY2008 and FY2009 for overseas deployments and related activities.

[13] Sec. 205(b) of H.Con.Res. 290 (106th Cong.).

[14] Sec. 205(g) of H.Con.Res. 290 (106th Cong.).

[15] Sec. 502(c) of H.Con.Res. 95 (108th Cong.).

[16] P.L. 108-287, Sec. 14007(b)(2) incorporates by reference the language pertaining to emergency designations in Sec. 402 of S.Con.Res. 95 (108th Cong.), the FY2005 budget resolution, for which the conference report was not adopted by the Senate.

Author Contact Information

Bill Heniff Jr.
Analyst on the Congress and Legislative Process
wheniff@crs.loc.gov, 7-8646

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This report was originally written by James V. Saturno, specialist on the Congress and Legislative Process.