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# THE ILLUSIONS OF PAY-GO

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**SUMMARY**

When Democrats claimed the congressional Majority in the 110th Congress, the House Leadership promptly installed a "pay-as-you-go" rule they pledged would ensure "no more deficit spending."[1] When President Obama signed a pay-as-you-go statute in February this year, he declared: "Now, Congress will have to pay for what it spends, just like everybody else."[2]

In whatever form, however, pay-as-you-go has failed to prevent an explosion of deficit spending over the past 3½ years; and when enforced, the rule has mainly driven higher taxes to chase higher spending. Here are some of the results:

- Since the start of the Democratic congressional Majorities in January 2007, the deficit has widened nearly 10-fold, from $160 billion to $1.5 trillion this year, and deficits will total $9.8 trillion over the next 10 years, according to the Congressional Budget Office.[3]
- So far during the 111th Congress, the President and Democratic Majority have enacted more than $1.6 trillion in 10-year deficit increases under pay-go, using various methods to hide the red ink and claim they were "paying for" their spending binge.
- They also have increased spending by $1.4 trillion over 10 years, and used pay-as-you-go to raise taxes by $447.3 billion.
- In addition, the House has passed numerous other deficit- or tax-increasing bills that are awaiting further action.

The discussion below describes the essential weaknesses of the current pay-as-you-go [pay-go] concept, and the principal avoidance techniques the Democratic Leadership has used to get around the procedure. It then summarizes major bills enacted, or passed by the House, that cause real deficit increases while still technically complying with pay-go. Also addressed are bills that used pay-go to drive higher taxes. Following the discussion are two appendices: one reflecting a Congressional Budget Office estimate of adjustments made for certain policies exempted from pay-go; and a second describing various changes in pay-go since January 2007.

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[1] From the 2006 Democratic campaign document, *A New Direction for America.*

[2] From the President's weekly address, 13 February 2010.

[3] Congressional Budget Office: *An Analysis of the President's Budgetary Proposals for Fiscal Year 2011*, March 2010.

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## SIDESTEPPING A FLAWED PROCEDURE

Pay-as-you-go does not reduce total budget deficits; it is not designed to. It only maintains existing deficit levels, however high they might be. Neither does pay-go control spending: whether by rule or statute,[4] its practice of offsetting spending increases or tax cuts with commensurate spending reductions or tax hikes seeks only to "pay for" them – which often just leads to higher taxes chasing higher spending. The pay-go system measures everything against a "baseline" deficit, making this standard a proxy for real budgeting; and this year – with the House Majority's unprecedented failure to pass a budget resolution – the fundamentally flawed pay-go procedure has become their excuse and public relations fallback.

Indeed, pay-go has enabled hundreds of billions of dollars in deficit *increases*, mainly due to generous loopholes allowing the Majority to satisfy the procedure's technical requirements, and erect a façade of fiscal responsibility, while increasing deficits by hundreds of billions of dollars. Through these methods, the Majority has been able to show little or no increase in the "scored" pay-go deficit – or even a deficit reduction – while deepening government borrowing and debt by tens or hundreds of billions of dollars.

- *Emergencies.* Legislation designated an "emergency" is not subject to pay-go. Hence the designation is commonly used for bills whose spending the Majority finds too difficult, or too inconvenient, to offset. Further, because the new pay-go statute allows Congress unilaterally to apply the emergency designation, a simple majority in the House and Senate can easily exploit the emergency loophole.

- *Baseline Spending Adjustments*. The Democrats' version of pay-go is supposed to be calculated using the Congressional Budget Office [CBO] baseline, which assumes that current law – including changes in law scheduled to occur – will be followed. This means, for example, that the Medicare Sustained Growth Rate [SGR] formula would hold, leading to large reductions in reimbursements to Medicare physicians. In recent years, Congress has routinely canceled this reduction – through legislation called the "doc fix" – which today increases Medicare spending by more than $200 billion over 10 years. Normally, pay-go would require this huge spending increase to be offset by an equal amount of spending reductions or tax increases – both untenable to the Majority. So the new pay-go statute simply modifies the baseline to *assume* extension of the doc fix.

- *Baseline Revenue Adjustments*. One example is the estate tax. The tax, currently repealed, is scheduled to be reinstated next year at a rate of 55 percent, and the projected revenue increase of more than $250 billion over 10 years is built into the CBO baseline. So by the Majority's original reckoning, extending the repeal, or providing some other form of estate tax relief, would be viewed as an entirely new tax cut, requiring commensurate offsetting tax increases or spending cuts – in sums too large for the Majority to handle. So the Democrats dodge their pay-go rule by simply exempting any change in the estate tax relative to the policy in effect in 2009.

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[4] From January 2007 through June 2010, the House applied pay-go through a rule, modified several times. On 12 February 2010, the President signed a pay-go procedure into law, and the House "deeming" resolution adopted just before Independence Day conformed the House rule to the statute. The statute made certain adjustments to pay-go, but the essential elements – and most of the weaknesses – remained the same. For further discussion, see Appendix 2 of this document.

- *Budget Resolution Provisions*. The Majority also has used the budget resolution itself to pave the way for pay-go exemptions. In the conference report on the budget resolution for fiscal year 2010 (S. Con. Res. 13), they included provisions allowing the House Budget Committee Chairman to ignore spending or revenue effects of specific legislation they knew they would be unable, or unwilling, to offset.

- *Appropriations*. Although this loophole has been closed under the latest pay-go regime, it was available in the past and the Majority used it. Pay-go does not apply to discretionary spending; nor does it apply to entitlement spending included in appropriations bills. Hence an easy way to expand an entitlement without "paying for it" was to drop it in an appropriations bill.

- *Spending 'Cliffs*.' When spending increases outpace even the Democratic Leadership's ability to raise taxes, they can compensate by terminating a spending increase before the end of 10 years – in other words, boosting a program's spending level and then letting it plunge suddenly – however unrealistic such an assumption may be. This practice gives the illusion of a smaller spending increase over the 10-year pay-go period.

- *Timing Shifts*. Pay-go has two enforcement periods – ostensibly to prevent increases in the Federal deficit over a 5-year and 10-year period. If legislation increases the deficit, one way to avoid the pay-go point of order is to push any spending increase outside the 10-year enforcement period. Other common methods are generating new receipts by extending customs user fees after they are set to expire, and shifting the date in which corporations are required to pay estimated taxes.

- *Using TARP Funds.* Another way pay-go has been evaded has been the use of leftover funds from the Troubled Asset Relief Program [TARP] to offset new spending – a gimmick expressly prohibited by the statute authorizing the program. TARP spending was designated as an emergency, and was not to be used for purposes other than addressing the financial crisis. Nevertheless, the Democrats have used the funds on several occasions to "offset" new spending and claim pay-go compliance.

**THE DEMOCRATS' PAY-GO RECORD, 111th CONGRESS**

The discussion below reflects the true record of the Democrats' pay-go scheme, with descriptions of pay-go evasions on major bills, or cases in which the Democrats chased large spending increases with higher taxes or fees. The analysis is broken into two sections: enacted legislation, and House-passed bills that are awaiting further action.

The summary tables in each section show four key elements of each bill discussed: the net increase in direct spending; the amount of tax increase, if applicable; the deficit increase as estimated under the pay-go regime; and the "adjusted" deficit increase – the increase that occurs when the various avoidance maneuvers are disregarded.

## Enacted Legislation

As noted above, the President has signed into law legislation that increased deficits by an estimated $1.6 trillion over 10 years, when all the exemptions, exceptions, and gimmicks are

removed. The Democrats found ways, within the terms of their own pay-go rule, to give the impression these deficit increases did not occur. (See Table 1 for a summary of the legislation discussed below.)

- *The State Children's Health Insurance Act of 2009 (H.R. 2).* The mechanism of this bill is a prime example of a spending "cliff."

  The legislation, signed on 4 February 2009 (Public Law 111-3), increases direct spending by $73.8 billion over 10 years, chased by $74.8 billion in tax increases. Even then, however, the resulting $1-billion reduction in the deficit, as scored under pay-go, is misleading. To fit within the pay-go scheme, the legislation assumes its spending increases will suddenly terminate after the 5th year, leading to a 65-percent plunge in spending. If this gimmick is not counted, the legislation actually *increases* spending by $115 billion over 10 years, and adds $40.2 billion to the deficit – along with its large increase in taxes.

- *The American Recovery and Reinvestment Act of 2009 (H.R. 1).* Having failed in its promise to boost the economy and create jobs, the "stimulus" bill nevertheless has left one of the largest deficit increases of any single measure passed by this Congress and signed by the President – and all of it was ignored under pay-go through an "emergency" designation.

  Under CBO's most recent estimate, the bill expanded the deficit by $862 billion, from a combination of mandatory and discretionary spending increases ($626 billion) and revenue reductions ($236 billion).[5] Though advertized as "targeted," the bill showered spending on a wide assortment of activities. Every one of the 15 Cabinet Departments, and 11 of the government's independent agencies, received "stimulus" money. Recipients included the National Endowment of the Arts, the National Science Foundation, and the Smithsonian. Some money went to existing Federal programs, and some to newly created ones. Money was spent for policies relating to unemployment compensation, energy, the repair of public housing, and numerous other activities. State and local governments also received some of Washington's largesse.[6]

  But because the entire bill was designated an "emergency," all its spending and revenue provisions were exempt from pay-go, and its pay-go deficit tallied at zero – rather than its real deficit impact of $862 billion. Spending in the measure would have been exempt anyway, because under the pay-go House Rule in force at the time of its consideration and enactment, pay-go did not apply to any spending in an appropriations bill, such as H.R. 1. The bill was signed on 17 February 2009 (Public Law 111-5).

- *The Family Smoking Prevention and Tobacco Control Act (H.R. 1256).* Under the guise of reducing tobacco use, this bill employs another spending cliff to meet pay-go

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[5] See Congressional Budget Office: *The Budget and Economic Outlook: Fiscal Years 2010 to 2020*, Appendix A.

[6] Congressional Research Service: *American Recovery and Reinvestment Act of 2009 (P.L. 111-5): Summary and Legislative History*, 20 April 2009.

requirements for an entitlement expansion, and also exploits the time-frames of pay-go calculations to claim deficit reduction that is ephemeral at best.

The fiscal year 2008 defense authorization bill provides for an annual increase in the monthly allowance paid to those recipients of Survivor Benefit Plan payments whose annuities are reduced, dollar-for-dollar, by the amount of Dependency and Indemnity Compensation they receive from the Department of Veterans Affairs. The allowance is scheduled to terminate in May 2016. H.R. 1256 extends and increases the payments – adding $422 million in direct spending – but still abruptly terminates the extended benefit at the end of fiscal year 2017. This gives the appearance of a lower cost for the benefit expansion than if it were extended through 2019 and beyond – as is likely to happen.

The legislation also establishes a Roth contribution program (in which contributions to the retirement accounts would be made on an after-tax basis) for Thrift Savings Plan [TSP] participants. As a result, some participants are expected to contribute after-tax income to their retirement plans, rather than pre-tax amounts. This effect, combined with a revenue loss from tobacco taxes and fees, generates a net revenue increase of $1.5 billion.[7] But over the longer term, future tax revenues are likely to decline, relative to the CBO baseline, because Roth plan withdrawals upon retirement are tax free. This pattern is not captured in the limited 10-year window of pay-go estimates. The bill was signed into law on 22 June 2009 (Public Law 111-31).

- *The Worker, Homeownership, and Business Assistance Act of 2009 (H.R. 3548).* In another example of higher taxes chasing higher spending, this law raises taxes on employers and companies by about $6.7 billion over 10 years to finance a $6.6-billion extension of unemployment benefits. It also employs a timing shift to meet the 5-year enforcement period under the pay-go rule by changing the date on which corporate estimated tax payments are supposed to be made. Without the timing shift, the bill violates pay-go even with its tax increases. The President signed the measure on 6 November 2009 (Public Law 111-92).

- *The Department of Defense Appropriations Act for Fiscal Year 2010 (H.R. 3326).* This was a classic case of dodging pay-go by including entitlement spending in an appropriations bill. Added to the measure, enacted on 19 December 2009 (Public Law 111-118), is $12.2 billion in mandatory spending – for food stamps, unemployment benefits, satellite licensing subsidies, and other items – and $6.4 billion in revenue reductions. By the Majority's usual yardstick – the CBO current-law baseline – these provisions would have added $18.6 billion to the deficit, violating pay-go. But entitlement spending in an appropriations bill is not subject to pay-go. The tax provisions would not have been similarly protected, so the Majority declared both the mandatory spending increases and the tax reductions "emergencies" – making the entire deficit increase vanish for the purposes of pay-go.

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[7] The gross revenue increase totals an estimated $3.3 billion over 10 years; but because income taxes are deferred on regular TSP contributions, the anticipated increase in participants' contributions from automatic enrollment would reduce part of the revenue increase, leaving a net revenue increase of $2.5 billion. In addition, the Congressional Budget Office estimates a $1.04-billion revenue loss due to tobacco excise taxes and fines, which are projected to reduce tobacco use.

- *The Temporary Extension Act of 2010 (H.R. 4691).* This legislation increases the deficit by $10.3 billion through a combination of spending and tax provisions, including another short-term increase in the Medicare physician payment update. But once again the Majority exploited the budget resolution to allow the House Budget Committee Chairman to ignore the deficit impact.[8] Other provisions were declared an "emergency." Hence the measure causes no deficit increase under pay-go – even though in reality it forces the Federal Government to borrow $10.3 billion more. This legislation was enacted on 3 March 2010 (Public Law 111-144).

- *The Health Care and Education Reconciliation Act of 2010 (H.R. 4872) and The Patient Protection and Affordable Care Act (H.R. 3590).* One of the greatest deceptions of the Majority's government health care takeover is the claim that it reduces the deficit. It actually *increases* the deficit by $662 billion when its gimmicks and hidden spending are fully taken into account.

  The legislation – consisting of two different but interacting bills, signed on separate days – increases direct spending by $938 billion over 10 years, and raises taxes by $569.2 billion.[9] It also reduces Medicare spending, purportedly extending the solvency of the Medicare Program. But the Medicare savings are actually diverted to helping finance the legislation's new health entitlement. If those savings were directed solely toward shoring up Medicare, the result would be a $398-billion increase in the cost of the health bill. In addition, the legislation excludes spending for the Medicare physician reimbursement – the "doc fix" – which would increase spending in the legislation by another $208 billion. The legislation also creates a new long-term care entitlement called the Community Living Assistance Services and Supports [CLASS] Act, which collects $70 billion in the first 10 years, but then – rather than setting this amount aside for CLASS enrollees – spends the money on new health care subsidies, increasing deficits in subsequent decades.[10] Adding all these costs together yields the $662-billion deficit increase.

  H.R. 3590 was enacted on 23 March 2010 (Public Law 111-148); H.R. 4872 was enacted on 30 March 2010 (Public Law 111-152).

- *The Hiring Incentives to Restore Employment [HIRE] Act (H.R.2847).*[11] Throughout its legislative journey, this bill collected various pay-go evasions, some of which were later dropped. As passed by the House, the measure rescinded spending from the TARP, a practice prohibited under the legislation authorizing the program and later removed from

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[8] Section 421 of S. Con. Res. 13.

[9] Ways and Means Committee Republican staff analysis: http://republicans.waysandmeans.house.gov/UploadedFiles/DemTaxIncreases1.pdf.

[10] Congressional Budget Office letter to Representative Ryan of Wisconsin, 19 March 2010: http://www.cbo.gov/ftpdocs/113xx/doc11376/RyanLtrhr4872.pdf

[11] Because the Congressional Budget Office [CBO] has not prepared a cost estimate for the enacted legislation – which had been modified several times during the legislative process – the figures here have been constructed by the House Budget Committee Republican staff based on the best available estimates by CBO and the Joint Committee on Taxation.

this bill. At another point, a timing shift of corporate estimated tax payments was added to sidestep the 5-year pay-go enforcement period.

But in any case, although the final version of the bill contained substantial amounts of direct spending – including extensions of unemployment insurance, an increased Federal matching rate for Medicaid, and health care assistance under the Consolidated Omnibus Budget Reconciliation Act [COBRA] of 1985, among others – it had begun as an appropriations bill,[12] and was therefore not subject to pay-go. The key point is that the bill satisfies pay-go with another major tax increase: it covers $29.2 billion in higher net spending over 10 years with a $29.9-billion boost in taxes.[13] The bill was enacted on 18 March 2010 (Public Law 111-147).

- *The Continuing Extension Act of 2010 (H.R. 4851)*. This legislation contains direct spending increases totaling $15.4 billion over 10 years – including yet another "doc fix" – and tax provisions that reduce revenue by $2.8 billion. By normal arithmetic, those figures increase the deficit by $18.2 billion. But once again, the Majority exploited the budget resolution to disregard the cost of the Medicare physician reimbursement,[14] and designated other provisions an "emergency" – resulting in a pay-go deficit of zero. The legislation was enacted on 15 April 2010 (Public Law 111-157).

- *The Dodd-Frank Wall Street Reform and Consumer Protection Act (H.R. 4173).*The authors of this legislation claim it reduces the deficit by $3.2 billion over 10 years. In reality, however, most of the $26.9-billion cost of the bill is offset by pay-go gimmicks.

  Like one version of the HIRE Act, Dodd-Frank improperly diverts $11 billion in "leftover" TARP bailout funds to finance higher spending – an ironic provision because most of this will pay for *future* bank bailouts made possible through the new "liquidation authority" for the Federal Deposit Insurance Corporation [FDIC]. The legislation also double-counts about $14.5 billion in additional FDIC fees meant to go into the deposit insurance fund by using them to offset the act's cost. The measure was enacted on 21 July 2010 (Public Law 111-203).

- *The Unemployment Compensation Extension Act of 2010 (H.R. 4213).* Along its way, this bill included provisions such as extending the "stimulus" bill's increase in the Federal share of Medicaid spending, and providing another boost in Medicare physicians' reimbursement rates. Those items were removed, however, and in its final incarnation, this bill extends the Emergency Unemployment Compensation program through 30

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[12] Pursuant to H. Res. 976, the House modified the Commerce-Justice-Science Appropriations Act, 2010 (H.R. 2847) substituting the Jobs for Main Street Act, 2010 as Division A of the legislation, and the Statutory Pay-As-You-Go Act of 2009 as Division B. Regular fiscal year 2010 C-J-S discretionary spending was included in the Consolidated Appropriations Act, 2010.

[13] Spending figures are from the Congressional Budget Office Pay-Go Estimate for H.R. 2847, 4 March 2009. The estimate of revenue effects was prepared by the Joint Committee on Taxation [JCT], 4 March 2009. The JCT figures include $11.8 billion in refundable tax credits. The offset figure of $18.0 billion in the estimate has been adjusted by that amount to reflect the revenue-only effects of the estimate.

[14] Section 421 of S. Con. Res. 13.

November 2010. The measure increases direct spending by $33.04 billion and reduces revenue by $903 million. Because these amounts are designated as an "emergency," under pay-go, the bill is estimated to have no deficit impact, but in reality the measure will increase the deficit by a total of $33.9 billion. Several Senators attempted to offset these amounts by reducing spending elsewhere, but their efforts ultimately were rejected. The bill was enacted on 22 July 2010 (Public Law 111-205).

**Table 1: Spending, Tax, and Deficit Effects of Enacted Pay-Go Legislation, 111th Congress**
(dollars in billions)

| Legislation | Net Increase in Direct Spending | Tax/Fee Change[a] | Scored Pay-Go Deficit Impact | Adjusted Deficit[b] |
|---|---|---|---|---|
| State Children's Health Insurance Program [SCHIP] (enacted 4 Feb. 2009) | 73.8 | 74.8 | -1.0[c] | 40.2 |
| American Recovery and Reinvestment Act ('stimulus') (enacted 17 Feb. 2009)[d] | 318 | -236 | 0 | 862[e] |
| Family Smoking Prevention and Tobacco Control Act (enacted 22 June 2009) | 0.42 | 1.47 | -1.04 | -1.04 |
| Worker, Homeownership, and Business Assistance Act (enacted 6 November 2009) | 6.6 | 6.7 | [f] | [f] |
| Department of Defense Appropriations Act, Fiscal Year 2010 (enacted 19 Dec. 2009) | 12.2 | -6.4 | 0 | 18.6 |
| Temporary Extension Act of 2010 (enacted 3 March 2010) | 8.2 | -2.2 | 0[g] | 10.3 |
| Health Care/Ed. Reconciliation, Patient Protection Act (enacted 23 March 2010) | 938 | 569.2 | -138.0 | 662.0[h] |
| The Hiring Incentives to Restore Employment Act (H.R. 2847) (enacted 18 March 2010)[i] | 29.2 | 29.9 | -0.657 | -0.657 |
| The Continuing Extension Act of 2010 (H.R. 4851)(enacted 15 April 2010) | 15.4 | -2.8 | 0 | 18.2 |
| The Dodd-Frank Wall Street Reform Act (enacted 21 July 2010) | 10.2 | 13.5 | -3.2 | 22.3 |
| The Unemployment Compensation Extension Act (H.R. 4213) (enacted 22 July 2010) | 33 | -0.9 | 0 | 33.9 |
| Totals | 1,445.0 | 447.3 | -143.9 | 1,665.8 |

[a] Tax or fee increases, reflected as positive numbers, should be subtracted from spending totals because they have the effect of reducing deficits; tax or fee reductions (negative numbers) should be added to spending, because they increase deficits.
[b] The "adjusted" figure reflects the deficit impact as measured against the Congressional Budget Office [CBO] current-law baseline, and removes exceptions for emergency designations, gimmicks, and other pay-go maneuvers. Positive numbers indicate deficit increase; negative numbers indicate deficit reduction.
[c] Funding cliff after 5 years. The CBO estimates the spending increase in the legislation as written – which terminates provisions after 5 years – at $73.8 billion. If provisions are continued after 5 years, the spending increase is $115 billion, CBO estimates.
[d] Declared an "emergency," hence no pay-go deficit impact.
[e] Includes $308.3 billion in discretionary spending increases.
[f] Less than $50 million.
[g] Uses provision of S. Con. Res. 13 allowing the House Budget Committee Chairman to ignore physician payment changes scheduled under current law in calculating the deficit impact of this legislation.
[h] Includes the effect of the "doc fix," also shown in House-passed legislation in Table 2.
[i] Figures based on the best available estimates by CBO and the Joint Committee on Taxation.
Figures may not add due to rounding.

### House-Passed Legislation

Apart from the enacted measures described above, the House Majority has sidestepped pay-go, or raised taxes, in several other major bills that have passed the House and are awaiting further action. These measures, which increase spending by more than $1 trillion, would further worsen the deficit increases made "invisible" under pay-go, or add hundreds of billions of dollars to Americans' tax burden – or both. As if 28 July 2010, the major bills are the following (see Table 2 for a summary of the legislation described below).

- *The American Clean Energy and Security Act of 2009 (H.R. 2454).* As passed by the House on 26 June 2009, this cap-and-trade bill is estimated to reduce deficits by $24 billion, under pay-go calculations. But it does so by raising taxes $846 billion, to chase $821 billion in spending increases. Although CBO does not expressly apply the term "tax," its cost estimate classifies cap-and-trade collections as revenue, the same classification used for income, payroll, and excise taxes.[15]

  Further, CBO describes cap-and-trade as effectively functioning as a tax through its effect on the price of energy production: "The higher prices caused by the cap would reduce real wages and real returns on capital, which would be like raising marginal tax rates on those sources of income."[16] Moreover, the costs are compulsory, and they are imposed by government just for doing business that results in $CO_2$ emissions. The legislation is pending in the Senate.

- *The Medicare Physician Payment Reform Act of 2009 (H.R. 3961).* As passed by the House on 11 November 2009, the legislation increases direct spending by $209.6 billion over 10 years for the "doc fix" – preventing an adjustment in Medicare physician reimbursements under the current-law Sustained Growth Rate [SGR] formula. Because the bill contains no offsets for the spending hike, it also increases the deficit by the same $209.6 billion. But under pay-go it is scored as having no deficit effect due to the special provision in the budget resolution authorizing the House Budget Committee Chairman to alter the estimate, ignoring the measure's spending effects. Thus the deficit has "disappeared." The final version of the bill numbered H.R. 3961 replaced its legislative text with language extending the Patriot Act; but the "doc fix" legislation remains in play.

- *The Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009 (H.R. 4154).* This is a case in which the Majority made a correct decision for hypocritical reasons. The CBO current-law baseline – the Majority's usual measure for pay-go enforcement – assumes the now-repealed estate tax would be reinstated next year, at 55 percent, due to the scheduled expiration of the 2001 tax rates. This bill, which passed the House on 3 December 2009, extends partial relief from the estate tax, reducing revenue *relative to the baseline* by $233 billion.

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[15] CBO cost estimate for H.R. 2454, 5 June 2009: http://www.cbo.gov/ftpdocs/102xx/doc10262/hr2454.pdf

[16] Testimony of Douglas W. Elmendorf, Director of the Congressional Budget Office, to the Committee on Ways and Means, U.S. House of Representatives: *Issues in Designing a Cap-and-Trade Program for Carbon Dioxide Emissions*, 18 September 2008.

But although the Majority customarily (if irrationally) views the legislated extension of current tax rates as a wholly new tax cut, they could not swallow the $233 billion in spending cuts or tax increases that their own pay-go procedure would have required to offset a deficit increase of that size.

So they made it all go away preemptively, through another special budget provision allowing the House Budget Committee Chairman to ignore the bill's revenue estimates for pay-go enforcement.[17] Their budgetary contortions would be unnecessary if the Majority would accept the fact that simply preventing a tax increase – by keeping current tax rates in place – is not a new tax cut. But on their own terms, they have increased the deficit by $233 billion.

- *The Flood Insurance Reform Priorities Act of 2010 (H.R. 5114)*. This bill covers its $2.8-billion spending increase by raising fees, increasing deductibles, and expanding the program. The increase in receipts is needed to cover a shortfall in funds to pay insurance claims under existing law. The measure passed the House on 15 July 2010.

**Table 2: Spending, Tax, and Deficit Effects of Additional House-Passed Pay-Go Legislation, 111th Congress**
(dollars in billions)

| Legislation | Net Increase in Direct Spending | Tax/Fee Change[a] | Scored Pay-Go Deficit Impact | Adjusted Deficit[b] |
|---|---|---|---|---|
| The American Clean Energy and Security Act (H.R. 2454) (passed 26 July 2009) | 821 | 846 | -24 | -24 |
| Medicare Physician Payment Reform Act (passed 11 November 2009) | 209.6 | 0 | 0 | 209.6 |
| Permanent Estate Tax Relief (H.R. 4154) (passed 3 December 2009) | 0 | -233 | 0 | 233[c] |
| The Flood Insurance Reform Priorities Act of 2010 (H.R. 5114) (passed 15 July 2010) | 2.8 | 2.8 | 0 | 0 |
| Totals | 1,033.4 | 615.8 | -24 | 418.6 |

[a] Tax or fee increases, reflected as positive numbers, should be subtracted from spending totals because they have the effect of reducing deficits; tax or fee reductions (negative numbers) should be added to spending, because they increase deficits.
[b] The "adjusted" figure reflects the deficit impact as measured against the Congressional Budget Office current-law baseline, and removes exceptions for emergency designations, gimmicks, and other pay-go maneuvers. Positive numbers indicate deficit increase; negative numbers indicate deficit reduction.
[c] Deficit relative to the Congressional Budget Office current-law baseline.
Figures may not add due to rounding.

**Prepared by . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Paul A. Restuccia, Chief Counsel**
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[17] Section 421 of S. Con. Res. 13.

## APPENDIX 1
## DEFICIT EFFECTS OF CERTAIN PAY-AS-YOU-GO EXEMPTIONS

As noted in the body of this report, one means of avoiding pay-as-you-go is by simply exempting certain policy choices from its offset requirements. The Statutory Pay-As-You-Go Act, signed into law in February 2010 (Public Law 111-139), employs this method for several large policy decisions that will increase the deficit by $1.6 trillion.

The four major policies exempted in the pay-go statute are the following:

- A permanent extension of the 2001 and 2003 tax rates for taxpayers with adjusted gross incomes below $250,000 (joint filers) or $200,000 (single filers).

- A 2-year extension, through 31 December 2011 of current Alternative Minimum Tax [AMT] tax brackets such that the number of taxpayers subject to AMT does not exceed the number of taxpayers subject to AMT in tax year 2008.

- A 5-year extension, through 31 December 2014, of current physician Medicare reimbursement rates under the Sustained Growth Rate formula (otherwise known as the "doc fix").

- A 2-year extension, through 31 December 2011, of the Estate and Gift Tax provisions in effect during 2009.

The Congressional Budget Office measured these spending and revenue provisions against its current-law baseline, the yardstick typically used by the Majority for its pay-go calculations. Table A-1 below shows the amount by which each of these provisions would increase the pay-go deficit, relative to the current-law baseline, if they were not exempted.

**Table A-1: Impact of Exempted Spending Under Statutory Pay-Go**
(dollars in billions)

| Pay-Go Exemption | Deficit Impact 2011-20 |
|---|---|
| Permanent Extension of Most 2001/2003 Tax Rates | 1,369 |
| 2-Year Indexing of 2008 AMT Parameters | 137 |
| 5-Year Patch for Medicare Sustained Growth Rate ('doc fix') | 74 |
| 2-Year Extension of 2009 Estate and Gift Tax Parameters | 14 |
| **Total Deficit Impact** | **1,594** |

## APPENDIX 2
## CHANGES IN THE PAY-GO PROCEDURE

The pay-as-you-go [pay-go] procedure currently used in the U.S. House of Representatives has been modified on numerous occasions – sometimes in highly technical ways – since its inception at the beginning of the 110th Congress. The discussion below describes the labyrinthine path of these alterations and the legislative vehicles in which they were adopted.

- *H. Res. 6.* This measure was the rules package organizing the House for the 110th Congress. Its consideration began on 4 January 2007, and the resolution was adopted the following day.

  Section 405 amended the standing Rules of the House by adding a new clause 10 of Rule XXI – requiring that each bill brought to the floor of the House be deficit neutral over 6 years and 11 years, beginning in the current fiscal year.[18] Deficit effects were to be measured relative to the baseline prepared by the Congressional Budget Office [CBO] and determined by estimating the outlay increases or decreases, and the revenue increases or decreases, of any given bill. The test, as opposed to previous statutory enforcement, was on a bill-by-bill basis, rather than assessed on a cumulative effect over a session of Congress.

  The new clause in Rule XXI established the pay-as-you-go principle for the 110th Congress, because it effectively required that any spending increase or tax reduction in legislation reported to the House had to be offset by a commensurate amount in spending reductions, tax increases, or both.

- *H. Res. 5.* For the 111th Congress, the pay-go rule was amended by section 2(j) of the organizing resolution for that Congress (H. Res. 5), considered on 6 January 2009. The provision changed the standing pay-go rule in two major ways:

  - 1) An emergency designation was included, allowing a bill to escape the pay-as-you-go point of order if outlay or revenue provisions, or the entire bill, were designated as an emergency. In such a case, the effects of those provisions were exempt from the deficit test.

  - 2) The resolution also amended the rule to allow for a bill previously passed by the House to be used as an offset to spending or tax provisions in another bill – in effect, "banking" pay-go savings for later use. Specifically, if a bill created a net decrease in the deficit – through tax or fee increases, or outlay reductions, or a mixture of the two – deficit-increasing legislation considered *subsequently* could include language requiring the two bills to be effectively merged; and if the combination resulted in no deficit increase in either of the two applicable time periods, the second bill would escape the pay-go point of order. Another

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[18] From clause 10 of Rule XXI in the 110th Congress: " . . . the period comprising the current fiscal year and the five fiscal years beginning with the fiscal year that ends in the following calendar year or the period comprising the current fiscal year and the ten fiscal years beginning with the fiscal year that ends in the following calendar year."

requirement in this process was that "banked" savings could be used only from House-passed bills: once signed into law, an offset bill could no longer be used to cover a deficit increase caused by a subsequently considered bill.

- *The Fiscal Year 2010 Budget Resolution.* During the first session of the 111th Congress, the House passed H. Con. Res. 85 – its version of the Concurrent Resolution on the Budget for Fiscal Year 2010 – on 2 April 2009. That resolution included four sections that effectively amended the pay-go rule by allowing certain legislation to increase the deficit notwithstanding the pay-go rule up to a certain level:

  - Section 314 allowed for certain increases in reimbursements to physicians in the Medicare Program (commonly called the "doc fix").
  - Section 315 allowed for the extension of "middle class" tax policies.[19]
  - Section 316 provided for the reform of the Alternative Minimum Tax to prevent its application to a greater number of taxpayers.
  - Section 317 allowed a bill to extend the Estate and Gift Tax relief at 2009 levels.

  This House-passed budget resolution went to conference with the Senate, which had passed its own budget resolution, S. Con. Res. 13, on 2 April 2009. The conference reported the concurrent resolution on the budget as S. Con. Res. 13 and it was passed in the House on 22 April 2009, and in the Senate on 29 April 2009. Section 421 of this conference report included the same four adjustments for the policies laid out in the House-passed budget resolution, though at different levels. These deficit policy exclusions, however, were available only if the House had previously passed a statutory pay-as-you-go regimen similar to the law that expired in 2002, or if the legislation containing the exempted provision imposed such a requirement.[20]

- *H. Res. 665.* This resolution, passed on 21 July 2009, was a special rule providing for the consideration of H.R. 2920, the Statutory Pay-As-You-Go Act of 2009. Section 2 of this special rule amended section 421(a) and © of S. Con. Res. 13 by replacing those provisions with section 314 and section 316 of H. Con. Res. 85. This had the effect of replacing the special exemption amounts for the reimbursements to physicians under Medicare and for the Alternative Minimum Tax with those included in the House-passed budget resolution.

- *H. J. Res. 45*. This joint resolution, originally raising the Federal debt limit, was amended in the Senate by the addition of the Statutory Pay-As-You-Go Act of 2010, with text similar to that of H.R. 2920. With this addition, the joint resolution was signed into law on 2 February 2010 (Public Law 111-139). This statutory pay-as-you-go enforcement

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[19] "Middle-class" tax policies include provisions such as the 10-percent tax bracket, marriage penalty tax relief, education incentives, the $1,000-per-child tax credit, and other general income tax policies.

[20] From S. Con. Res. 13: "[The adjustments] shall apply only if the House of Representatives has previously passed a bill to impose statutory pay-as-you-go requirements or the measure containing the provision being evaluated by the chairman of the House Committee on the Budget imposes such requirements and such bill is designated as providing statutory pay-as-you-go-requirements under this subsection."

regimen is a completely separate version of pay-go from the House rule, but it too includes the policy exemptions contained in the budget resolution – though again, at different levels for each of the policies.

- *H. Res. 1500*. On 2 July 2010, the House passed this special rule providing for the consideration of H.R. 4899, a bill making supplemental appropriations for fiscal year 2010. Section 4 of H. Res. 1500 "deemed" that with the adoption of the special rule, a so-called "budget enforcement" measure, H. Res. 1493, would be considered as passed by the House. H. Res. 1493 had the effect of setting certain budgetary levels in the absence of a formal concurrent resolution on the budget for fiscal year 2011. In addition to providing the House Appropriations Committee with an allocation for fiscal year 2011, the resolution also made certain changes to S. Con. Res. 13, the fiscal year 2010 budget resolution, related to pay-go. Subsection (b)(1) of H. Res. 1493 repealed section 421 of S. Con. Res. 13, the section providing the House Budget Committee Chairman the authority to make the exemptions from pay-go (as amended by H. Res. 665). Subsection (b)(2) replaced the exemption authority of the Chairman and directed him to use the levels found in the Statutory Pay-A-You-Go Act of 2010 in determining what amounts may be excluded from an analysis of a bill for the House Rule.

  Section 5 of H. Res. 1500 amended the standing House pay-go rule (clause 10 of Rule XXI) by changing the two time periods applicable for the pay-go rule. The 6-year and 11-year time frames still apply, but changed the definition of what constitutes the "current year" and the "budget year." Section 5 also amended the pay-go rule by changing its application from a bill's effect on the "unified" budget deficit – that is, including Social Security and the Postal Service – to the "on-budget" effect, excluding Social Security and the Postal Service.

  H. Res. 1500 also amended the House Rule by applying the point of order to certain direct spending in appropriation acts. Under the original pay-go rule in the 110th and 111th Congresses, any direct spending included in appropriations bills was exempt from the point of order, even though if they appeared in a non-appropriations bill, the deficit effects would be counted. The resolution amended the rule to subject to the point of order the deficit effects of direct spending falling in the years following the budget year, defined as "modifications to substantive law." Those effects would not be counted if the total direct spending effects net to zero over the 6-year period, though apparently not the 11-year period.

  H. Res. 1500 addresses certain "timing shifts" as well. Any revenue or outlay effects that are shifted from inside the 11-year window out, or outside the window in, will not be counted for purposes of assessing a pay-go point of order. Timing shifts relative to the 6-year period are not included in this prohibition.

  The amendments made by H. Res. 1493 and by H. Res. 1500 to the budget resolution and the standing Rules of the House were designed to conform the Rule as much as possible to the pay-go that is in statute. House pay-go, though, continues to be applied on a bill-by-bill basis, whereas Statutory Pay-Go is applied cumulatively to all bills enacted during a session of Congress. This cumulative total is used to determine whether a sequester is required to eliminate any increase in the deficit caused by those bills.