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Emergency Designations: Variations and Uses

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EDITOR'S NOTE: All years are fiscal years unless otherwise stated.

There are currently three separate emergency designations available to senators for budget enforcement purposes in budget law and rules. Each of these designations can exempt the budgetary effects of certain provisions from specific enforcement regimes. Given this ability to exempt, some of the most common questions the Budget Committee receives relate to the proper use and effects of emergency designations.

The first section of this *Budget Bulletin* serves as a primer on the three designations, how and when to use them, and their effects. The second section provides detailed examples of their use.

Three Emergency Designations

1. The Budget Resolution's Section 403

The first emergency designation is found in section 403 of the Concurrent Resolution on the Budget for Fiscal Year 2010, S. Con. Res. 13. As reproduced below, section 403(a) provides the authority to designate provisions of direct spending or receipts legislation (generally produced by one of the authorizing committees) or appropriations for discretionary accounts (produced by legislation from the Appropriations Committee) as an emergency. Section 403(b) provides the effects of the designation. The designation prevents Senate scorekeepers from including the budgetary effects of designated provisions in their calculations for enforcement. This means scorekeepers exclude the budgetary effects when evaluating legislation for violations in order to raise points of order (aggregates, allocations, and Senate Pay-As-You-Go, or Senate PAYGO), making adjustments to budgetary levels using reserve funds and recording the budgetary effects of legislation for current level purposes.

> *Section 403. Emergency Legislation*
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> (a) Authority to Designate- In the Senate, with respect to a provision of direct spending or receipts legislation or appropriations for discretionary accounts that Congress designates as an emergency requirement in such measure, the amounts of new budget authority, outlays, and receipts in all fiscal years resulting from that provision shall be treated as an emergency requirement for the purpose of this section.
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> (b) Exemption of Emergency Provisions- Any new budget authority, outlays, and receipts resulting from any provision designated as an emergency requirement, pursuant to this section, in any bill, joint resolution, amendment, or conference report shall not count for purposes of sections 302 and 311 of the Congressional Budget Act of 1974, section 201 of S. Con. Res. 21 (110th Congress) (relating to pay-as-you-go), section 311 of S. Con. Res. 70 (110th Congress) (relating to long-term deficits), and sections 401 and 404 of this resolution (relating to discretionary spending and short-term deficits). Designated emergency provisions shall not count for the purpose of revising allocations, aggregates, or other levels pursuant to procedures established under section 301(b)(7) of the Congressional Budget Act of 1974 for deficit-neutral reserve funds and revising discretionary spending limits set pursuant to section 301 of this resolution.

Prior to the passage of the Budget Control Act of 2011 (BCA), which imposed limits on discretionary spending from 2012 to 2021, this designation (and its previous iterations in earlier budget resolutions) was routinely used for discretionary spending. With the passage of the BCA and its discretionary caps came an entirely new regime for emergency spending in appropriations bills. While section 403's emergency designation is still technically available for discretionary spending, its use has been largely confined to mandatory spending and revenue legislation because of the existence of the caps.

2. <u>BBEDCA's Section 251</u>

The second type of emergency designation is found in section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA). This designation allows for cap adjustments to statutory discretionary spending limits, with the only requirement being that Congress designate and the president agree. In practice, an appropriations bill that includes one of these designations triggers the chairman of the Budget Committee to file changes to the Appropriations Committee's allocation and budgetary aggregates to accommodate the emergency spending, thus preventing levels-based points of order (314(a) of the Congressional Budget Act of 1974). The inclusion of this designation also gives the Office of Management and Budget (OMB), which determines cap compliance each year, the ability to adjust the statutory caps. OMB has made clear that it will not adjust the caps for emergencies in the absence of this specific designation.

Section 251(b)(2)(A)(i) of BBEDCA

(2) SEQUESTRATION REPORTS.—When OMB submits a sequestration report under section 254(e), (f), or (g) for a fiscal year, OMB shall calculate, and the sequestration report and subsequent budgets submitted by the President under section 1105(a) of title 31, United States Code, shall include adjustments to discretionary spending limits (and those limits as adjusted) for the fiscal year and each succeeding year, as follows:

(A) EMERGENCY APPROPRIATIONS; OVERSEAS CONTINGENCY OPERATIONS/GLOBAL WAR ON TERRORISM.—If, for any fiscal year, appropriations for discretionary accounts are enacted that—

(i) the Congress designates as emergency requirements in statute on an account by account basis and the President subsequently so designates, or

(ii) the Congress designates for Overseas Contingency Operations/Global War on Terrorism in statute on an account by account basis and the President subsequently so designates, the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements or for Overseas Contingency Operations/Global War on Terrorism, as applicable.

Since this designation is solely applied to adjust the discretionary caps, if it is used in legislation from one of the authorizing committees, it has no effect and the budgetary effects are recorded as regular spending.

3. Statutory PAYGO's Section 4(g)

The third type of emergency designation is found in section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (different from the Senate's PAYGO rule, found in section 201 of the 2008 budget resolution). Under statutory PAYGO, legislation that affects direct spending or revenues is considered to be a PAYGO bill, and OMB records its budgetary effects on its own scorecards. Usually, these PAYGO effects come from bills generated by authorizing committees, but there are some cases in which appropriations bills contain certain Changes in Mandatory Programs (CHIMPS) with post-budget-year spending that can be recorded for PAYGO purposes. In the event that Congress adjourns and one of OMB's scorecards shows a debit for the budget year, a sequestration order is issued.

Section 4(g) of Statutory PAYGO

(g) EMERGENCY LEGISLATION.—

(1) DESIGNATION IN STATUTE.—If a provision of direct spending or revenue legislation in a PAYGO Act is enacted as an emergency requirement that the Congress so designates in statute pursuant to this section, the amounts of new budget authority, outlays, and revenue in all fiscal years resulting from that provision shall be treated as an emergency requirement for the purposes of this Act. . . .

(4) EFFECT OF DESIGNATION ON SCORING.—If a provision is designated as an emergency requirement under this Act, CBO or OMB, as applicable, shall not include the budgetary effects of such a provision in its estimate of the budgetary effects of that PAYGO legislation.

There are certain special rules for what OMB will record on its scorecard, one of which is related to emergency-designated spending. Under section 4(g)(1), Congress can designate any provision of a PAYGO bill as an emergency. The effect of this designation is that the budgetary effects of designated provisions are excluded from the scorecard and do not contribute to any potential requirement for a sequester (section 4(g)(4)).

Points of Order:

All three emergency designations give rise to a budget point of order. In each case, a senator may raise a surgical emergency-designation point of order, which would strike the designation and cause the spending in the bill to be counted as regular spending. Each such point of order, if raised on the floor, requires 60 votes to waive.

It is important to note that once funding is provided as an emergency, it cannot be used later as an offset for future regular spending. Any attempt to pay for new regular spending with rescissions of previously provided funds designated as an emergency would likely result in a violation of enforceable budgetary levels and the triggering of levels-based points of order.

Examples of Designations in Use

1. Designating Emergency in Authorizing Bill – This first example comes from the Veterans Access, Choice and Accountability Act of 2014 (H.R. 3230, which became P.L.113-146). This bill created the Veterans Choice Program, authorized certain Veterans Administration medical facilities leases, and contained other provisions related to veterans' matters. The Congressional Budget Office estimated that over 10 years this bill would increase deficits by more than $10 billion. This funding was not recorded on any enforcement scorecards or enforceable levels because the bill drafters included the appropriate emergency designations. The drafters included the following:

> *Section 803. Emergency Designations*
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> (a) In General.--This Act is designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(g)).
> (b) Designation in Senate.--In the Senate, this Act is designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress) the concurrent resolution on the budget for fiscal year 2010.

The drafters used two designations because the bill was being scored to the Senate Committee on Veterans' Affairs, an authorizing committee. They used the statutory PAYGO designation, which prevented OMB from recording it on its PAYGO scorecards, as well as the designation found in the budget resolution, which prevented levels-based points of order from being raised.

2. Designating Emergency in Appropriations Bill – Senator Roy Blunt (R-MO), in his 2016 amendment (3900), designated his proposal to provide additional federal funding to combat the Zika virus as an emergency. Senator Blunt's amendment, filed to Senator Susan Collins's (R-ME) substitute amendment containing the text of the 2017 Transportation and Housing and Urban Development, and Military Construction and Veterans Affairs appropriations bills, contained numerous provisions designated as emergencies, as shown in the following excerpt:

> *National Institute of Allergy and Infectious Diseases*
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> For an additional amount for 2016 for ``National Institute of Allergy and Infectious Diseases'', $200,000,000, to remain available until September 30, 2017, to prevent, prepare for, and respond to Zika virus, other vector-borne diseases, and related health outcomes, domestically and internationally, including expenses related to carrying out section 301 and title IV of the PHS Act: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

By recognizing that the bill was an appropriations bill and using the appropriate section 251 emergency designation, Senator Blunt included language that allowed the chairman of the Budget Committee to adjust enforcement levels for floor consideration and to allow OMB to make adjustments to statutory caps for enforcement purposes.

3. Improper Usage of Emergency Designation and Its Effects – On several occasions, amendments that would increase spending have employed the incorrect emergency designation. The most recent example is provided by Senator Jeanne Shaheen's (D-NH) amendment (3345), which was filed to the substitute amendment for the Comprehensive Addiction and Recovery Act of 2016 and was scored to the Senate Committee on the Judiciary (an authorizing committee). Senator Shaheen's amendment would have provided an additional $600 million in un-offset funds to federal agencies to combat the nation's opioid epidemic. As shown in the following excerpt, when designating these funds on an authorizing bill, Senator Shaheen used the section 251 designation, which is only meant for appropriations and to adjust the caps:

> (b) *Centers for Disease Control and Prevention*.--
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> (1) IN GENERAL.--In addition to any amounts otherwise made available, there is appropriated, out of any money in the Treasury not otherwise appropriated, for fiscal year 2016, $50,000,000, to remain available until expended, to the Centers for Disease Control and Prevention of the Department of Health and Human Services, for prescription drug monitoring programs, community health system interventions, and rapid response projects.
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> (2) EMERGENCY REQUIREMENT.--The amount appropriated under paragraph (1) shall be designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)(i)).

As a result of using the incorrect emergency designation, the spending in the amendment was not exempted from budget discipline and eventually fell to a section 311(a)(2)(A) spending aggregate point of order (Record Vote 30, March 2, 2016).

BudgetSpeak

A Tale of Two PAYGOs

Currently, two distinct PAYGO (Pay-As-You-Go) budget enforcement mechanisms help control the growth of federal spending by promoting budget neutrality in new laws:

1. **Senate PAYGO**, established by the fiscal year 2008 budget resolution (S. Con. Res. 21, section 201). Designed to prevent passage of legislation imposing new short- or long-term deficits, the Senate PAYGO point of order is enforced using a 60-vote threshold during Senate consideration of a measure with direct (mandatory) spending or revenue effects. The Budget Committee chairman is responsible for the scorecard of Senate PAYGO and determines any breaches.

2. **Statutory PAYGO**, created by the Statutory Pay-As-You-Go Act of 2010, or S-PAYGO (P.L. 111-139). S-PAYGO is tracked and enforced solely by the Office of Management and Budget (OMB) as a post-enactment remedy for new laws that would increase the deficit. At the end of each session of Congress, OMB evaluates the cumulative budgetary effects of all new laws with direct spending and revenue effects. If its scorecards show a breach has occurred, OMB orders a sequestration of certain mandatory spending.