EXPLAINER | PROGRESSIVE CAUCUS ACTION FUND

PAYGO Must Go

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Days after the American Rescue Plan passed, House Budget Committee Chair John Yarmuth introduced H.R. 1868 to stop automatic cuts to funds for Medicare, farmers, crime victims, immigration services, flood insurance, and other mandatory programs. Most of these cuts are due to the **Statutory Pay-As-You-Go Act of 2010**, a harmful law based on an outdated view of budget deficits. However, the Senate amended H.R. 1868 to only deal with 2% cuts to Medicare that came into effect on April 1, 2021 leaving the threat of budget cuts looming.

Statutory PAYGO

The Statutory Pay-As-You-Go Act of 2010 (statutory PAYGO) was attached to a debt limit increase[1] in 2010, passed by Democratic majorities and signed by President Obama. It was a misguided attempt to look serious about the budget deficit after a major increase in government spending during the Great Recession.

Statutory PAYGO requires that, **in aggregate, all bills enacted during a one-year session of Congress that change direct spending and revenue must be deficit-neutral or reduce the deficit**.

To enforce statutory PAYGO, the Office of Management and Budget (OMB) tracks the budgetary effects of enacted bills over five-year and ten-year budget windows. It reports on overall deficit effects of the included bills shortly after the end of the congressional session. If OMB finds that the bills enacted result in an overall increase in the deficit, **statutory PAYGO triggers sequestration** (across-the-board spending cuts on certain mandatory programs). Notably, statutory PAYGO **relies entirely on spending cuts, not revenue increases**, to offset budget deficits.

All discretionary spending is exempt from automatic cuts under statutory PAYGO. In addition, **most mandatory programs targeted at low-income households are exempt** from sequestration, including Social Security, Medicaid, Children's Health Insurance Program (CHIP), Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Unemployment Insurance (UI). Automatic **cuts to Medicare are capped at 4%**. The remaining mandatory programs are cut by a sufficient percentage to offset the deficit increase (up to 100%). Given the limited set of programs subject to sequestration, deficit increases that are small in the context of the entire federal budget **can trigger massive cuts to nonexempt programs**.

[1] Public Law 111-139

Waiving Statutory PAYGO

Automatic cuts under statutory PAYGO have never taken effect because the law has a workaround. Congress can **designate an entire bill or certain provisions of a bill as an "emergency requirement"** exempt from statutory PAYGO[2] or include language to **exclude the bill from the OMB's PAYGO scorecard**.[3]

PAYGO waivers come with a catch. Any Senator can raise a point of order against the "emergency requirement" designation, and it **takes a 60-vote majority in the Senate to waive** that point of order. Similarly, legislation excluding a bill from the OMB's PAYGO scorecard needs 60 votes to overcome a Senate filibuster under current Senate rules. In either case, inclusion of a PAYGO waiver gets in the way of passing a budget reconciliation bill (e.g. the American Rescue Plan Act) with a simple majority.

To get around that obstacle for reconciliation bills, **statutory PAYGO can be waived in a separate bill during the same session of Congress**. Congressional Republicans used this approach to avoid automatic cuts triggered by the Tax Cuts and Jobs Act in 2017. After deficit-financed tax cuts for the wealthy passed with 51 votes in the Senate, congressional Republicans attached a PAYGO waiver for those tax cuts to an unrelated, "must-pass" stopgap funding bill that passed with 66 votes in the Senate.

Congressional PAYGO Rules

Statutory PAYGO is distinct from congressional PAYGO rules in the House and Senate. In particular, congressional PAYGO rules are easier to waive. The **House can waive its PAYGO rule on a simple majority vote** when it adopts a special rule for a bill, and a House Rules change in the 117th Congress automatically waives House PAYGO for legislation regarding COVID-19 and climate change.

The Senate usually needs 60 votes to waive its PAYGO rule. However, the **Senate can exempt legislation from its PAYGO rule in the annual budget resolution**, which only takes a simple majority to adopt.[4]

Layered on top of each other, congressional PAYGO rules and statutory PAYGO form a muddle of unsynchronized budget windows, scorecards, and enforcement mechanisms that can slow or stop legislation.

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[2] For example, the CARES Act (Public Law 116-136) included the following in Section 6002: "The amounts provided under this division are 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))."

[3] For example, Section 5002(b) of Public Law 115-96 included the following language exempting the Trump tax cuts from statutory PAYGO: "The budgetary effects of the reconciliation Act shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(d))."

[4] Section 3001 of the FY 2021 budget resolution (S.Con.Res. 5) exempted the American Rescue Plan Act from Senate PAYGO.

Statutory PAYGO and Economic Recovery

The COVID-19 pandemic continues to harm 24 million workers, including 10 million unemployed workers. The American Rescue Plan Act funds vaccine distribution, puts money in pockets of working families, sustains state and local budgets, and helps schools and businesses safely reopen. As far as statutory PAYGO is concerned, though, the American Rescue Plan is $1.9 trillion on the PAYGO scorecard and must be offset with spending cuts.

Statutory PAYGO takes no account of economic conditions and national needs. Currently, there is little risk of the economy overheating and spending-related inflation. With a weak job market and record low interest rates, It makes economic sense to finance federal spending with borrowing rather than increasing taxes or budget cuts elsewhere. Unless Congress acts, **statutory PAYGO will—as the U.S. is recovering from a pandemic—cut 4% from Medicare and completely zero out mandatory funding for farmers, crime victims, immigration services, flood insurance, Social Service Block Grants, and other nonexempt programs**.

The U.S. also needs to tackle its crumbling infrastructure and the climate crisis, but **a Build Back Better package could run into the same issues with statutory PAYGO**.

Reforming PAYGO

PAYGO, in all its forms, is a relic of the flawed austerity framework of the 2000s. It operationalizes the notion that baseless concerns about deficits trump sound economic policy. Indeed, statutory PAYGO was born out of meritless deficit concerns that slowed the nation's recovery from the Great Recession.

In practice, statutory PAYGO is more of **a tool for legislative obstruction** than deficit reduction. It **compounds the problems with the Senate's supermajority 60-vote threshold for overcoming a filibuster**. However, it has **failed to stop legislation that actually damages the nation's long-term finances** because congressional Democrats, in particular, are unwilling to let its automatic spending cuts take effect. Several Senate Democrats joined with Republicans after passage of the Trump tax cuts to waive statutory PAYGO, but there is no guarantee congressional Republicans will be equally accommodating after passage of the American Rescue Plan Act.

Waiving statutory PAYGO is critical to preventing harmful budget cuts while the country recovers from the COVID-19 pandemic. While passage of **H.R. 1868 (as amended by the Senate) addresses the immediate problem of Medicare cuts**, statutory PAYGO remains a threat as long as it remains in effect. Along with reforming the Senate filibuster, **Congress needs to permanently repeal statutory PAYGO or completely overhaul it** by fixing its harmful enforcement mechanism and narrowing its application to economically unsound policies (e.g. deficit-funded tax cuts for the wealthy and corporations).

Medicare and other direct spending should not be needlessly put at risk when Congress is passing legislation essential to economic recovery. **PAYGO must go**.