ISSUE BRIEF

No. 4935 | JANUARY 28, 2019

PAYGO: A Bipartisan Failure in Need of Replacement

David Ditch

As the 116th session of Congress began in January, Democratic leadership wanted to expand the pay-as-you-go (PAYGO) budget enforcement mechanism to include revenue reductions. Some newly elected House Members preferred to have no deficit-focused restraints whatsoever.

This debate was resolved the way most fiscal disputes in Washington, DC, are resolved: by deciding that deficit control measures should be ignored for the sake of political expediency.

There is bipartisan support for PAYGO in theory, but also a strong bipartisan history of skirting the rule when it would actually force tough choices. After three full decades of on-again, off-again use, PAYGO has utterly failed to prevent the national debt from ballooning, and Congress should replace it with a more robust enforcement mechanism.

PAYGO Explained

There are two versions of PAYGO, both of which are designed to make it more difficult for Congress to increase the deficit.

The first version is statutory, in place from 1990 through 2002, and from 2010 to the present. It requires that when newly enacted legislation cause changes in "mandatory" spending or in revenue, these changes be tallied on a "scorecard" by the Office of Management and Budget (OMB). If the scorecard shows that the sum of the changes has increased the deficit at the end of the year, the OMB imposes a commensurate spending cut through the process of sequestration. Not all spending, however, is subject to these cuts.[1]

This current PAYGO law was passed in response to the massive deficits generated during the Great Recession. Legislative action on reviving PAYGO did not start until after passage of the 2009 stimulus package, and the legislation did not patch holes that existed in the original PAYGO rules.[2]

The second version of PAYGO is part of the standing rules of the House and Senate. These rules, called points of order, are designed to make it more difficult for Members to pass deficit-increasing legislation in the first place.

In the Senate, a cited violation of the PAYGO point of order prevents legislation from moving forward. Waiving the point of order requires 60 votes. Under Republican control in the House, the point of order (dubbed CUTGO) applied to new mandatory spending but not to revenue reduction. With Democrats regaining the House in the 116th Congress, the rule once again covers taxes. In the House, waiving the point of order only requires a majority vote, meaning that PAYGO has almost no ability to stop deficit-increasing legislation from passing.

Some newly elected Democrats were worried by even that gossamer a fiscal barrier. The Democratic caucus had a brief round of internal debates over whether to include PAYGO.[3] Democratic leadership resolved the scuffle with assurances that the rules could be waived for anything deemed important enough.[4]

This paper, in its entirety, can be found at
http://report.heritage.org/ib4935

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

Such a blatant example of disregard for taxpayers and future generations should have been a shock to the public. Sadly, Republicans and Democrats alike have spent years making a mockery of PAYGO rules.

Why PAYGO Was Flawed From Day One

The PAYGO law itself is not even close to comprehensive when it comes to catching deficit increases,[5] and it has other problems as well.

First, the rules are nearly impossible for all but the most dedicated fiscal policy experts to understand. This makes it extremely difficult for citizens to hold their representatives accountable on the issue. Policy analysts and the news media are severely challenged in trying to provide comprehensible PAYGO information to the public, and often make little effort to do so as a result.

Second, PAYGO ignores escalating costs for existing entitlement programs, even when those programs provide increasing benefits in real terms. Even though previous sessions of Congress passed the programs, the decision to not rein in surging costs is still a choice, and PAYGO is designed to hold Members accountable for their choices. More important, PAYGO's entire existence is based on deficit control, and the exploding cost of mandatory programs has driven deficit growth.[6]

Third, several exemptions limit PAYGO-related sequestration, which concentrates the effect of a potential sequestration on a smaller portion of accounts and leaves nearly all mandatory spending untouched.[7]

Fourth, emergency, disaster, and Overseas Contingency Operations spending are not subject to PAYGO. The lack of fiscal discipline on such spending has been a significant factor in deficits.[8]

Fifth, PAYGO is tied to the Congressional Budget Office baseline, which itself has a number of flaws. For example, spending from trust funds is given considerably more generous treatment than tax cuts. This can lead to situations where new spending to bolster trust funds does not run afoul of PAYGO. In contrast, legislation designed to prevent tax increases can be prohibitively expensive relative to the baseline,[9] as was the case for the American Taxpayer Relief Act of 2012.[10]

Procedural PAYGO rules in the House and Senate have had an additional flaw: low vote thresholds for avoiding or zeroing-out the scorecard. In the House, the Rules Committee can easily brush aside PAYGO. In the Senate, 60 votes are sufficient to discard all fiscal discipline on a bill, including PAYGO. With most politicians having no tolerance for difficult choices, there is always sufficient support for violating the letter and spirit of PAYGO, at least when the bar is relatively low.

PAYGO's weaknesses do not excuse the misdeeds of Congress over the course of the decade, but the weaknesses should not be ignored.

How Congress Mocks PAYGO

A trio of techniques have been used over the years to skirt the consequences of the statutory PAYGO law.

1 Robert Keith, "The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History," Congressional Research Service, April 2, 2010, https://democrats-budget.house.gov/sites/democrats.budget.house.gov/files/documents/CRS-stat-paygo.pdf (accessed January 24, 2019).

2 Brian Riedl, "Obama's PAYGO Law Would Not Slow Spending or Budget Deficits," Heritage Foundation *Web Memo* No. 2312, February 26, 2009, https://www.heritage.org/budget-and-spending/report/obamas-paygo-law-would-not-slow-spending-or-budget-deficits.

3 Rachel Bade and Heather Caygle, "House Dems Feuding Before New Congress Even Begins," *Politico*, January 2, 2019, https://www.politico.com/story/2019/01/02/house-democrats-feuding-1077467 (accessed January 24, 2019).

4 Daniel Marans, "Progressive Caucus Stands Down on 'Pay-Go' Battle," *Huffington Post*, January 3, 2019, https://www.huffingtonpost.com/entry/progressive-caucus-pay-go_us_5c2e9784e4b0407e9089e7c3 (accessed January 24, 2019).

5 Brian Riedl, "What's Wrong with the Federal Budget Process," Heritage Foundation *Backgrounder* No. 1816, January 25, 2005, https://www.heritage.org/budget-and-spending/report/whats-wrong-the-federal-budget-process.

6 Paul Winfree, "Causes of the Federal Government's Unsustainable Spending," Heritage Foundation *Backgrounder* No. 3133, July 7, 2016, https://www.heritage.org/budget-and-spending/report/causes-the-federal-governments-unsustainable-spending.

7 Peterson Foundation, "What Is PAYGO?", June 26, 2018, https://www.pgpf.org/budget-basics/understanding-complex-budget-terms-and-processes-and-why-they-matter/what-is-paygo.

8 David Inserra et al., "After the Storms: Lessons from Hurricane Response and Recovery in 2017," Heritage Foundation *Special Report* No. 201, April 16, 2018, https://www.heritage.org/sites/default/files/2018-04/SR-201.pdf.

9 Romina Boccia and Adam Michel, "How the Senate's Baseline Budget Could Make or Break Tax Reform," T*he Hill*, August 24, 2017, https://thehill.com/blogs/pundits-blog/economy-budget/347672-how-the-senates-baseline-budget-could-make-or-break-tax.

10 Congressional Budget Office, "H.R. 8, American Taxpayer Relief Act of 2012," January 1, 2013, https://www.cbo.gov/publication/43829 (accessed January 24, 2019).

The first and most common one is straightforward: to exclude the legislation's PAYGO effects from the scorecard. Lawmakers used this technique for several bills they signed into law in 2018, including for the VA MISSION Act, the FAA Reauthorization Act, and the SUPPORT Act. All three bills passed both chambers with overwhelming support from both parties.

The fact that Congress addressed veterans' benefits, aviation, and the opioid crisis is something that most Americans expect. Americans should also expect legislators to find ways to pay for national priorities instead of pretending that costs do not exist. Although there is no shortage of ways to reform programs and eliminate waste,[11] most politicians would rather avoid those debates.

A second, far more devious, technique is to shield a law from the scorecard retroactively, after it has been passed. An example of this took place in December 2017.

The Tax Cuts and Jobs Act (TCJA) was estimated to cause a static revenue loss of nearly $1.5 trillion over 10 years.[12] Although the TCJA contained a number of important pro-growth tax changes, the tax cuts would be more sustainable had they been paired with spending reductions. The Further Additional Continuing Appropriations Act, which passed shortly after the TCJA, included a provision that excluded the TCJA from the scorecard.

Here, the PAYGO statute's potential impact is clearly shown. If the roughly $1.5 trillion fiscal impact was kept on the scorecard, the OMB would have imposed a massive amount of spending reduction to offset the static deficit increase from the TCJA. Congressional Republicans, along with a handful of Democrats, voted to allow spending to continue to outstrip revenue collection.

The final, and most abusive, technique for brushing off PAYGO responsibility is to wipe the scorecard clean altogether. The Bipartisan Budget Act of 2018 zeroed-out the PAYGO balance as of the date of enactment in addition to boosting discretionary spending limits by hundreds of billions of dollars.

Congress Should Replace PAYGO

America can no longer afford flimsy fiscal guardrails. With the total federal debt soon to surpass $22 trillion,[13] and with massive unfunded liabilities looming from Social Security and Medicaid,[14] it is long past time for robust rules.

Simply strengthening the PAYGO statute would be nearly meaningless. Congress should replace PAYGO with a comprehensive and reasonably straightforward set of fiscal restraints. These should include spending caps that cover both discretionary and mandatory programs, mechanisms for addressing the costs of disasters and emergencies, and the requirement to balance over the course of business cycles.[15] This would provide sufficient flexibility to deal with truly unforeseen circumstances while avoiding the complexity and technicality that make it easier for legislators to game PAYGO.

Political leaders have ignored fiscal rules and pretended that deficits do not matter. That irresponsibility must end, and political convenience must take a backseat to the long-term financial health of the nation.

*—**David Ditch** is Research Assistant in the Grover M. Hermann Center for the Federal Budget, of the Institute for Economic Freedom, at The Heritage Foundation.*

11 The Heritage Foundation, "Blueprint for Balance: A Federal Budget for Fiscal Year 2019," May 2018, https://www.heritage.org/sites/default/files/2018-06/BlueprintforBalance_2018.pdf.

12 Congressional Budget Office, "Cost Estimate for the Conference Agreement on H.R. 1," December 15, 2017, https://www.cbo.gov/publication/53415 (accessed January 24, 2019).

13 U.S. Department of the Treasury, "Debt to the Penny and Who Holds It," total debt as of January 14, 2019, https://www.treasurydirect.gov/govt/reports/pd/pd_debttothepenny.htm (accessed January 24, 2019).

14 Congressional Budget Office, *The 2018 Long-Term Budget Outlook*, June 26, 2018, https://www.cbo.gov/publication/53919 (accessed January 24, 2019).

15 Romina Boccia, "Needed: An Effective Fiscal Framework to Restrain Spending and Control Debt in the United States," Heritage Foundation *Backgrounder* No. 3374, December 19, 2018, https://www.heritage.org/budget-and-spending/report/needed-effective-fiscal-framework-restrain-spending-and-control-debt-the.