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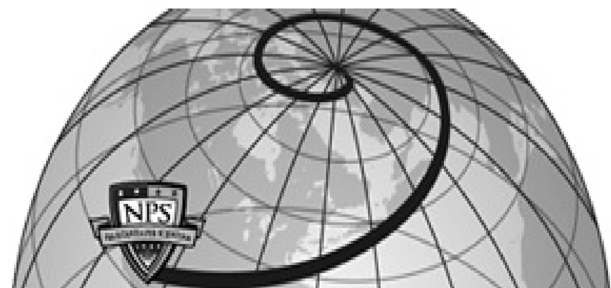

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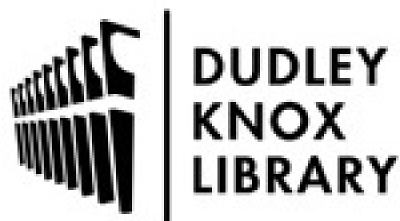

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RICHARD DOYLE and JERRY McCAFFERY

The Budget Enforcement Act of 1990: The Path to No Fault Budgeting

The Budget Enforcement Act of 1990, included in the controversial and comprehensive budget legislation passed by Congress in October, makes a number of significant changes in federal budgeting. It shifts the focus of the budget process from deficit reduction to spending control, provides five-year spending totals and mini-sequesters for defense, international and domestic appropriations, and puts entitlements and revenue expenditures on a pay-as-you-go basis. The Gramm-Rudman-Hollings deficit targets have been raised substantially, Social Security surpluses taken out of the deficit calculation and allowance made for further adjustments for inflation, Operation Desert Shield, and other emergency spending, minimizing the prospect for general sequestration. OMB has been given important new estimating authority and the roles of the congressional committees involved in budgeting have been altered.

At the conclusion of a protracted and frequently bitter session dominated by tax and spending issues, Congress passed legislation which will significantly change the federal budget process. Title 13 of the Omnibus Budget Reconciliation Act of 1990, titled the Budget Enforcement Act of 1990, amends both the Budget Act of 1974 and the Gramm-Rudman-Hollings laws (GRH I and II). The Budget Enforcement Act (BEA) was adopted as a separate amendment to the reconciliation bill in both houses. The Senate adopted it as a leadership amendment (S. 3209) on October 18, by a vote of 54–46; the House had approved its version of the bill (H.R. 5835) two days earlier on a 227–203 vote. The conference report on the budget reform amendment was adopted by both houses on October 27, in the Senate 54–45, and in the House 228–200.[1]

While the Act appears to continue many of the mechanisms of the Gramm-Rudman-Hollings deficit control process, this new budget reform legislation marks a significant departure from recent practice in federal budgeting and moves toward a no fault budget process.

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MAJOR IMPACTS

The Budget Enforcement Act makes distinct changes to recent legislative and executive budget practices. Both the approach to deficit reduction and the means of achieving that reduction have been altered. First, it changes the emphasis in the congressional budget process from controlling the growth of the deficit to limiting spending and puts the federal budget process on the road to no fault budgeting. As a consequence, the deficit will increase, just as occurred under Gramm-Rudman, and increase substantially, just as occurred under Gramm-Rudman. However, by providing for adjustment of deficit targets and creating subordinate targets or envelope limits for congressional guidance and protection, the Budget Enforcement Act will make it more difficult to assign responsibility for the growth in the deficit.

Secondly, the Act appears to minimize the possibility of general sequestration for the next two fiscal years. Mechanisms have been put in place that should prevent nasty surprises from complicating the budget process. The general sequestration targets will be adjusted by the president at least through 1993 at the time of the budget submission to reflect changed economic or other factors. Moreover, the cost of Persian Gulf operations, the savings and loan bailout, and emergency relief do not count against the targets. This also explains why the deficit will increase, even if the spending targets are met. Putting the cost of the savings and loan crisis and Operation Desert Shield outside the deficit calculation and providing for adjustment of the budget to changing economic circumstances with each submission would seem to remove the specter of a general sequestration similar to that which loomed over the budget process all through the summer of 1990.

In effect, there can be no economic surprises, and what is likely to rise out of control is put beyond the deficit calculus. Hence, not only is no general sequester likely, the threat of one has also been removed. Thus the strength of the forcing mechanism of GRH I and II—general sequestration—has been significantly reduced.

Third, the discretionary appropriations portion of the budget has been divided into expanded packages—defense, domestic, and international, with spending targets or caps established for each. These budget categories have been used in various budget documents prior to their adoption as the new budget bargaining categories in this bill. For example, the two-year agreement negotiated after the stock market crash in 1987 stipulated spending for both defense and non-defense discretionary accounts, although international spending was not separately identified within non-defense discretionary. Similarly, last year's summit agreement broke spending for international programs (function 150 in the budget resolution) out of non-defense discretionary, thus providing for appropriations in the same three categories—defense, international, and domestic—used in the BEA. In its annual report on the administration's budget submission, the Congressional Budget Office (CBO) also uses these same three appropriations categories (among others) for analysis.

The BEA approach is like the Canadian envelope[2] budget system in that program areas are separated and capped. It will be possible for sequestration to occur within an envelope if spending exceeds its targets, while the other envelopes remain unaffected. This retains some of the power of across-the-board sequestration, but adds an element of selective choice.

Removal of the threat of general sequestration, and separation of spending into envelope targets for defense and domestic spending, will allow the Senate and House Appropriations Committees to do their work without worrying that it will be undone by a general sequestration driven by economic or technical factors beyond their control or unforeseen at the beginning of the budget process. This will help reduce budgetary turbulence for those two committees so long as they stay within their targets.

The Act also tightens discipline on the Ways and Means and Finance Committees, compared to the freedom they had under GRH I and II, by creating a pay-as-you-go procedure for benefit programs and revenue changes. Benefit programs will be continued at their present level of intensity and benefits paid to those who become eligible for them, but any attempt to make benefits more generous will require either offsetting revenues or decreases in other benefit programs. In essence, entitlement programs have also been put within an envelope and their enrichment curtailed even if they grow as a consequence of a rising clientele or inflation.

Fourth, the Act accommodates large increases in the deficit, in part by altering its calculation to remove the Social Security surplus. Deficits under this legislation are allowed to peak at $327 billion in FY 1991 (compared to the original GRH II target, which includes the surplus from Social Security, of $64 billion), and then to decline to $83 billion by the time the Act expires in FY 1995. If Congress adheres to the spending caps, the deficit as a percent of GNP (including the Social Security surplus) is projected to drop from 4.5 percent in FY 1991 to 0.4 percent by FY 1995.[3] If these deficit estimates are met, it would reverse the dramatic increases that have taken place since 1950, during which time the average deficit as a percent of GNP has doubled every decade.[4]

Fifth, maximum deficit targets are still specified to 1995, but OMB is empowered to revise them, up to three times a year, as economic or technical considerations warrant. Hence the targets become rolling targets. Social Security Trust Funds have been taken out of the deficit target calculation and the surpluses will no longer mask the total annual operating budget deficit.

However, to the extent that those surpluses must still be invested in U.S. government obligations, the trust fund surpluses will continue to reduce the deficit and the actual impact of the deficit on capital markets will be less than that stated in the new budget process. A November report of the National Association of Business Economists referred to federal budget deficits of $258 billion in FY 1991 and $240 billion in FY 1992.[5] The BEA numbers for those two years are $327 billion and $317 billion, respectively. It's difficult to see the impact of this change now, but, at best, analysts

will have two more sets of budget deficit numbers to record. At worst, the deficit targets could become the equivalent of Stockman's magic asterisk, to the conceptual detriment of the federal budget process. It will be hard to argue that this is real reform if no one takes the numbers seriously.

A little noticed aspect of the reconciliation bill was a $950 billion increase in the debt limit. This should mean that Congress may not have to vote on, and the president may avoid signing a debt limit increase until the Spring of 1993. Since debt limit bills were forcing mechanisms in the passage of GRH I and II, this is another step toward a process where the deficit and total national debt are no longer the focus.

In summary, the Budget Enforcement Act changes the impetus of GRH from deficit control to spending control within the context of a rising deficit, frees the Appropriations Committees from the threat of sequester arising from unforeseen economic events, and attempts to shift the focus of the budget process from a macro focus on the deficit number and the sequestration percentage to a more intermediate level.

However, the subordinate envelope structure would seem to intensify the politics of offset process which began to appear in the 1980s.[6] What BEA changes is the size of the arena within which zero-sum budget conflict will take place, as, for example, programs compete for funds within the non-defense discretionary spending cap. BEA would appear to obviate the prospect of conflict between spending categories since it prevents "savings" in one envelope from being used in another. The tradeoffs between guns and butter that have plagued the budget process over the past decade should be minimized for the next few years. Much, of course, will depend upon the manner in which the Act is implemented. As was the case with GRH (which, it might be noted, was also adopted without committee hearings or extended floor debate), intrigue, confusion, and surprises may be anticipated during the trial runs. However, this still may not allow Congress and the president to fashion a smooth budget process.

The decade of the 1980s has seen the budget process bogged down into periods of delay, dissensus, and discord. To some extent the threat of sequestration by the president was a lever the president's party in Congress could use to enhance its power when it was in the minority. That threat is basically removed by the BEA and the minority party power returned to pre-GRH levels. The budget process could fall into an automatic pilot configuration, at least until the next presidential election. Conversely, it could also continue to be marked by dissensus, delay, frustration, omnibus reconciliation bills, and tardy appropriations.

BUDGETING UNDER GRAMM-RUDMAN-HOLLINGS

GRH I and II[7] were simple in outline.[8] They included a timetable to a balanced budget and a new schedule for the budget process. GRH I called for a zero deficit by 1991 and GRH II by 1993. The latter half of each annual budget process was conducted under the threat of an across-the-board cut whose prospective impact was to be seen as so grave as to compel participants in the process to settle their differences. This inducement to settle was further re-enforced by the inclusion of a $10 billion cushion in all

the targets except for the final year when the operating deficit was to be zero. Logically, if conferees were within $11 to $15 billion of the target, the impetus was supposed to be to give up an additional $1 to $5 billion, as opposed to letting sequestration take away the total $11 to $15 billion.

The decade of the 1980s was a period of divided government, with Republican presidents and Democrats in charge of one or both houses of Congress. Serious divisions between the president and his party in Congress also occurred during this period, contributing to the delays and dissensus. The threat of sequestration was considered by most observers to provide the president and congressional Republicans with leverage to be used in bargaining over budget outcomes.

The prospect of sequester loomed large several times since GRH became law, although only two sequesters ever remained in effect and both were partial sequesters. The first, which cancelled $11.7 billion in March of 1986, was part of the arrangement which led to passage of GRH I. The second partial sequester cancelled $4.6 billion in late 1989 as part of the FY 1990 reconciliation bill. After the four-month sequester of 1989, it appeared as if such partial sequesters could become an ordinary part of the budget process. First, selective cuts would be made, than an across-the-board cut would be made through the sequestration process to pick up the rest needed to meet the deficit target.

In 1990, however, the threat of sequestration lost credibility, as the deficit estimate and the size of the required cuts needed to meet the GRH targets grew to unprecedented size.[9] When OMB released its required sequester report last summer, it was forced to threaten what was politically unacceptable to both parties and to both the executive and legislative branches of government, i.e., "a halving of military forces, the closing of many air traffic control installations, the end of meat inspections for five months, a halt in new cleanups of toxic waste sites and cancellations of vaccinations against childhood diseases for one million children."[10]

The threat of sequestration has been further diminished by the Budget Enforcement Act, and the political leverage that it made possible for the minority party has been commensurately reduced. It should also be noted, however, that the Democrats can no longer employ the threat of sequester to achieve cuts in defense. If spending for any category other than defense exceeds its cap, sequestration will be confined to the offending accounts. If defense spending remains within its cap, it will be immune from sequesters against other spending categories.

The BEA is not likely to solve all the budget problems associated with divided government and enormous deficits. It may, however, provide Congress with an opportunity to lay the blame for bad budgeting on the president, as long as Congress adheres to the new rules. At a minimum, it establishes some political space between congressional taxing and spending and the deficit. The president, in turn, has gained an opportunity to adjust the deficit targets each year.

Both branches have achieved some relief from the strictures of the GRH system and its high-risk statutory pursuit of deficit reduction. BEA has created a no-fault, or at least a minimal blame system, under which the deficit will continue to expand and blame will be difficult to assign. The balance that BEA achieves has more to do with

the political strategies of the two parties than with the budget. Wildavsky argued that GRH represented an abdication of power, because it imposed "a formula for replacing the most important congressional power."[11] BEA promises a superior formula and further abdication.

The cuts called for by a sequester under the previous budget regime fell disproportionately on defense and non-defense discretionary spending, with each taking approximately half of the reductions needed to hit the deficit target. This distribution of budget "pain" reflected the strong support for defense shown by the president and his party in 1985, as well as the desire to protect domestic programs manifested by the Democrats in Congress. Both sides would lose too much under sequestration to allow it to happen.

As Congress and the Reagan and Bush administrations went to the brink over budgets—and in the case of the partial sequestrations of 1986 and 1989, slightly over it—some of the subsidiary rules of sequestration were revealed. For example, the president had the option of protecting military personnel from sequester cuts, which increases the reductions taken in other defense accounts. President Reagan took the option in 1986, while President Bush declined it in 1989.

When the 1989 partial sequester took effect and its impact on military personnel became apparent, the Department of Defense spent half the following year attempting to replace the funds taken from military personnel with monies from other accounts. With the notable exception of Congressman Aspin, Chairman of the House Armed Services Committee, most in Congress sympathized with DoD, and eventually the military personnel sequestration cuts were substantially restored through reprogramming.[12]

On the non-defense side, many accounts were totally exempt from sequestration, e.g., interest on the national debt, Social Security, and most health programs. In its 1990 Initial Sequester Report, OMB estimated that 24 percent of total non-defense outlays were subject to sequestration, 11 percent associated with programs with automatic spending increases and with special rule programs, notably Medicare. Cuts in such programs were limited by GRH II. Seventy-six percent of non-defense spending was exempt.[13]

GRH budgeting focused the attention of lawmakers and all others with a stake in the budget on outlays and cash-based transactions. Gimmicks such as the movement of military paydates and the sale of assets were used to meet outlay targets. Yet the deficit appeared to be sticking at the $150 billion level, despite such efforts. Congressional budget actions were characteristically late—the exception occurring in 1988 when all appropriations bills were passed before the fiscal year ended. This happy event and the other felicitous budget activities of that year were the product of the two-year budget agreement struck in 1987.

The two-year summit technique was not a cure-all; the summit of 1989 did not hold in 1990. When President Bush and congressional leaders made a similar pact in early 1989 there was hope for another year without partisanship and delay. Those hopes were dashed as the Bipartisan Budget Agreement of 1989 came undone. The FY 1990 budget emerged as a hybrid, combining spending cuts with four months of savings achieved by sequestration.

The short history of budgeting under GRH has been marked by summitry and sequestration, either real or politically threatened.[14] The era began, as noted above, with a partial sequester in 1986. In 1987 the original GRH bill was amended, the market crashed, a budget summit was convened, and a two-year agreement on taxes and spending was implemented. After the brief respite of 1988 ensured by the two-year pact in 1987, 1989 was bracketed by another summit and a sequester.

This year brought more of the same, with another summit, unprecedented deficit estimates, threats of sequestration incredible because they were so large, five continuing resolutions, a five-year budget agreement with nearly $500 billion in deficit reduction made up of tax increases, appropriations and entitlement cuts, and an increase in the ceiling on federal borrowing to $4.1 trillion, and finally, the Budget Enforcement Act, another attempt to fix the process.

The fiscal returns on this era are mixed.[15] Supporters of the GRH approach argue that deficits would have been much greater without the discipline of the GRH process. Until 1990, the deficit as a percent of GNP was declining, and even in 1990 was well below historical highs. If the test of GRH is reducing the deficit as a percent of GNP,[16] it can be said to have been partially successful in an era when the president and Congress were in persistent disagreement on taxing and spending.

However, net interest on the debt became the third largest item in the federal budget in the 1980s, following defense and Social Security. Interest payments were the fourth largest item in 1980, at $52.5 billion. In this decade, interest payments have ballooned from 8.9 percent of federal spending in FY 1980 to 14.8 percent for FY 1989. Last year, interest payments exceeded the deficit—$169.1 billion, compared to $150 billion.[17] Gross interest, including interest payments for funds borrowed from Social Security and other federal trust funds, increased by 222 percent from 1980 to 1989, and is now the fastest growing spending category in the federal budget.[18]

SPENDING CONTROL

The enforcement mechanism in GRH was the across-the-board cut: sequestration. GRH I provided that the GAO would pull this trigger, but the Supreme Court held this unconstitutional and GRH II gave the power to OMB. CBO was given reporting and checking responsibilities, but OMB indisputably held the power to decide which were the valid numbers and to order sequestration.

GRH I and II drove the budget process to focus on outlays for one year at a time. This was a major departure for the federal government. The intention of the split between budget authority and outlay was to allow the federal government to create a program which might take multiple years to accomplish. Outlays would then fall as they might while the program was administered. Senior federal budget analysts did not focus on outlays before GRH. Instead they monitored budget authority numbers. GRH transformed their thinking towards the outlays in the year in front of them. In an

environment where federal government responsibilities are continuous and long-term, programs like defense, Medicare or Medicaid, and stabilizing the banking system are not well served if they are split into one-year increments for decision, but that was the impetus of GRH.

SUMMER 1990

In the summer and fall of 1990, the budget process had become so painful, the potential sequestration amount so large ($110 billion), the potential cost of the savings and loan bailout so high ($100 billion for FY 1991) and the gulf between leaders and followers so great, that the old budget process was doomed. New military responsibilities in the Persian Gulf complicated this picture. For example, how could defense be expected to take a sequestration of $55 billion on approximately $290 billion while it was building up a military presence in Saudi Arabia? After a period of intense legislative maneuvering in Congress, including the repudiation of the president's position by his own party in the House, the Budget Enforcement Act of 1990 was passed. Its immediate effect was to change the deficit targets and cancel the $110 billion sequestration. Thus it returned some sort of normalcy to federal government operations, but it was more than another extension of GRH I and II.

DEFICIT TARGETS

The Act extends GRH for five years and revises the maximum deficit amounts:

($ in billions)

	GRH II	BEA
1991	64	327
1992	28	317
1993	0	236
1994	na	102
1995	na	83

OMB is required to revise the targets three times a year for fiscal 1992 and 1993. First, with the president's budget submission, OMB is to adjust for changing economic or technical factors. Second, when OMB releases it initial sequester report on August 20, it may revise the targets for adjustments in discretionary spending limits or caps (for inflation or changes in definitions which may affect spending levels). Third, when OMB releases its final sequester report fifteen days after the end of the congressional session, the targets may be again changed for adjustments to discretionary limits.

The Act does not provide for interim adjustment of targets. This means that while the targets will change from fiscal year to fiscal year, and toward the end of budget

TIMETABLE

DATE	ACTION
5 days before budget	CBO sequester preview report
1st Monday in February (Feb. 4th in 1991)	President submits budget and revises GRH targets and caps
February 15	CBO annual report to Budget Committees
Within 6 weeks of president's budget	Committees submit views and estimates to the Budget Committees
April 1	Senate Budget Committee reports budget resolution.
April 15	Congress completes budget resolution. If not, Chairman of House Budget Committee files 302(a) allocations; Ways and Means is free to proceed with pay-as-you-go measures
May 15	Appropriation bills may be considered in the House
June 10	House Appropriations report last bill
End of previous session to June 30	If an appropriations bill violates caps, OMB sequesters 15 days after enactment
June 30	House completes action on annual appropriation bills
July 15	President submits mid-session review
August 10	President's notification on military personnel exemption
August 15	CBO sequester update report
August 20	OMB sequester update report (with adjustments to caps and GRH targets)
October 1	Fiscal year begins
10 days after end of session	CBO final sequester report
15 days after end of session	OMB final sequester report (with adjustments to caps and GRH targets)
30 days after end of session	GAO compliance report

deliberations in August, scorekeeping will still mainly be done against the targets set with the submission of the president's budget, until the sequestration process begins. This could result in a tendency to hold appropriations bills until after August 20 to see if they fit within the adjusted target.

The Act eliminates the current $10 billion cushion for FY 1991–93. For FY 1994–95, the current GRH sequestration process will go back into effect, with a $15 billion cushion and fixed-deficit targets rather than the rolling targets of FY 1992–93. The president does have an option to adjust deficit targets for economic and technical re-estimates in FY 1994 and 1995, but he must choose to do so. With a deficit target of $83 billion in 1995, the Act does not envision reducing the deficit to zero.[19]

Timing of the sequester is changed from October 15 to fifteen days after the end of the congressional session. The heat on Congress may be reduced under this arrangement, or, lobbying may be intensified by participants fearing that Congress will adjourn and allow sequestration to take effect.

While the law provides for a general sequester, the adjustments for economic, technical, and definitional matters probably preclude the possibility of a general sequester for FY 1992 or FY 1993.[20] In FY 1991, FY 1992, and FY 1993, if the deficit exceeds the targets because tax revenues are overestimated, or program costs are underestimated due to inflation or clientele growth, or the economic assumptions turn out to be incorrect, there is no requirement for Congress or the president to take action;

instead the deficit targets are simply readjusted. In FY 1994 and 1995, the president may attempt to hold to the targets or he may choose to adjust them.[21]

SEQUESTRATION

In essence, there are three sequestration provisions in the new law:

1. A general sequester if the maximum deficit target amounts are not met, with adjusted targets through FY 1993 and GRH II procedures in FY 1994–95.
2. A mini-sequester on each of the discretionary spending envelopes—defense, international, and domestic spending for fiscal years 1991 through 1995. Due to a drafting error, spending for foreign operations for FY 1991 was $395 million above the cap. OMB and CBO issued the required sequestration reports and a sequester order cutting international discretionary spending by 1.9 percent was issued by the president.[22]
3. A mini-sequester of entitlements covered by GRH to make up for any new entitlement spending or tax cuts that are not paid for.

DISCRETIONARY SPENDING LIMITS

A total discretionary spending cap is set for the FY 1991 to 1995 period. For FY 1991 through FY 1993, this is further subdivided between defense, international affairs, and domestic spending.

($ in millions)

		FY1991	FY1992	FY1993	FY1994	FY1995
Defense	BA	288,918	291,643	291,785		
	O	297,660	295,744	292,686		
International	BA	20,100	20,500	21,400		
	O	18,600	19,100	19,600		
Domestic	BA	182,700	191,300	198,300		
	O	198,100	210,100	221,700		
Total Discretionary						
	BA	491,718	503,443	511,485	510,800	517,700
	O	514,360	524,944	533,986	534,800	540,800

Outlay targets (0) exceed budget authority targets (BA) due to the fact that a significant portion of each federal budget creates outlays for future years. For FY 1989, about 30 percent of the budget is to be spent in future years.[23] Total discretionary spending increases about 2.3 percent between FY 1991 and FY 1992. Defense has minimal increases in budget authority, 0.9 percent between FY 1991 and FY 1992, while domestic increases at a 4.7 percent rate.

The defense spending caps continue the negative real growth pattern that began in 1985. Compared to the baseline, defense spending will be reduced by $182 billion over five years, a 20 percent reduction in inflation-adjusted growth. More than a third (36 percent) of the total savings in the five-year budget agreement will come from defense.[24] With the notable exception of the off-budget funding for Desert Shield, these defense cuts represent the "Peace Dividend." After the next presidential election, a reapportionment of defense and non-defense spending is to occur under the Act.

The Act requires OMB to adjust the category limits (caps) when the president releases the budget. These adjustments may be made for changes in concepts and definitions, changes in inflation, and, in 1993 or 1994, changes in estimates due to credit reform. The president must order across-the-board cuts within a category if spending for that category would exceed its cap. The order comes fifteen days after the end of the congressional session.

Between then and July 1, the president may issue a new sequester order for that category if Congress authorizes additional spending which would break the limit. If legislation is passed after July 1, the cap for the next year is lowered, so that the excess is added to the sequester unless appropriations are cut to make up for the excess. In this way supplemental appropriations are to be caught in the net of spending discipline. One of the criticisms of the GRH process was that the deficit reduction number had only to be correct on the day the "budget" was passed. As economic circumstances or other appropriations drove spending past the target, no discipline was enforced since the GRH number was a prospective target. The only discipline was an increase in the degree of difficulty in hitting the next GRH target. This within-session sequester provision is a significant step toward a more disciplined budget system.

The international and domestic spending envelopes have special budget authority and outlay allowances for FY 1992 and FY 1993. These are generally quite small ($1 billion or less), and are intended to buffer the impact on the legislative process of estimating differences. Defense has no budget authority allowance, but if spending is within the BA caps, a special allowance of as much as $2.5 billion can be provided above the outlay caps.

The total outlay allowance for all three functions is $6.5 billion for FY 1991–93 and another $6.5 billion for FY 1994–95 less any of the $6.5 billion that was used in FY 1991–93. These allowances are meant to reduce conflict over outlay rates, that is, the number of dollars that will outlay the first year that budget authority is provided. Normally this is clearly predictable, but there are circumstances where the mix of accounts and the assumptions made will lead two estimators to two different numbers, off perhaps a fraction of a percent, but a billion dollars, nonetheless. (For example, 1 percent of the defense budget is $2.8 billion). This special allowance procedure protects legislators from having to agree on the exactly correct number, while keeping them within the agreed upon cap.[25] This is restraint at the macro level but freedom from the trivial detail.

THE PAY-AS-YOU-GO SEQUESTER

The Act creates a new entitlement and tax cut sequester which requires across the board cuts in entitlement programs subject to GRH if new entitlement spending or tax cuts increase the deficit. Deposit insurance guarantees, which will be needed for the savings and loan bailout, are exempt from this provision. The procedures used are essentially the same as those under the discretionary spending sequesters and both of these "mini-sequesters" take effect at the same time. There is also a provision to allow for emergency direct spending or tax legislation, just as there is for discretionary appropriations. The president has the authority to exempt legislation or parts of legislation from the pay-as-you-go requirement. This is a sensible provision, but it may also be seen as a reverse item veto—an item preference power for the president.

Changes can be made in benefit levels or revenues if they are offset by compensating changes, but a legislated increase in mandatory expenditures that is not offset will invoke a sequester on all entitlement accounts under the jurisdiction of GRH. In the Senate, the offset has to be reported before the benefit increase can be reported. This is apparently intended to prevent magic asterisks that promise to find funding later for spending now. Certain programs have been guaranteed preferential treatment as a reflection of congressional priorities, as they were under GRH I and II. For example, Medicare is protected from a mini-sequester greater than 4 percent, just as it is protected in a general sequester at the 2 percent level.

The new procedures involve both CBO and OMB, with OMB being required to explain the differences between its estimates and CBO's. It is, however, OMB's estimates which are used to figure the appropriate sequesters. This is a result of the decision in Bowsher v. Synar[26] which the conferees on the bill could not ignore, although they urged Congress to scrutinize closely the scorekeeping efforts of OMB. The Statement of Managers accompanying the Act notes that if OMB "abused" its scorekeeping authority, Congress should consider legislating CBO estimates.[27]

Some change in the focus of the budget committees appears to be occurring here. They will not have to decide on the size of defense or domestic shares, or how much to trim the budget to meet the deficit; they may instead turn to setting priorities within the spending caps, a practice that has had little success in the past. This may narrow their focus, and perhaps put them into conflict with the authorizing committees. However, if a budget resolution is not passed on time, as frequently occurs, the budget committees are given power to distribute committee allocations. Much of the time and energy of these committees may be spent interpreting and enforcing the many new rules in the Act, including the new points of order which are to be its teeth.

ADDITIONAL CHANGES

Social Security is even further off-budget than it was under GRH, since the Act prohibits Social Security receipts and disbursements from being included in the deficit calculation for purposes of sequestration. Various points of order are available in both houses to protect against reducing trust fund balances.

Procedures have been instituted to more accurately reflect the cost of government loan and credit activity. BEA will also make it more difficult to insert extraneous material into reconciliation bills by codifying and modifying the Byrd Rule.

The president's budget may be submitted later in 1991—February 4—but subsequently it must be sent to Congress the first Monday after January 3 to provide an orderly and timely budget process.

CONCLUSIONS AND SPECULATIONS

The bill is almost as important for what it excludes as for what it includes, and some of the most talked-about changes are absent. The Act does not include a line-item veto, enhanced rescission powers for the president, biennial budgeting, or a joint resolution signed by the president. Neither does it establish a technical committee of experts to provide a single set of economic estimates. How then should we evaluate the reforms which are promised here?

In discussing the Budget Act of 1974, then-Congressman Dick Bolling laid out some guidelines for the budget process. These were recapitulated by the House Appropriations Committee in its February 1, 1990, Views and Estimates letter repudiating the GRH process:[28]

1. The process must be workable.
2. It must not become an instrument for preventing Congress from expressing its will on spending policy or take away its power to act.
3. It must not be used to concentrate the spending power in a few hands . . . Budget Committees must not be given extraordinary power in the making of budget policies.
4. It must not override the appropriations process.

Part of this bill creates a relatively static picture until after the next presidential election. This is the ''budget peace and budget certainty'' given to Congress as noted by a member of the Senate Budget Committee.[29] Such order may make the process more workable than it has been in the last several years. The subsidiary budget envelopes and the mini-sequesters must be seen as Congress simultaneously empowering and constraining itself. Entitlements and tax expenditures are controlled on a pay-as-you-go basis. The Social Security Trust Funds are protected, in the sense that their off-budget status is reaffirmed and all transactions affecting them are removed from both deficit calculations and sequestration. Limits are placed upon cuts in Medicare. Thus Congress has fixed priorities.

It's difficult to argue that the Act concentrates spending power in a few hands. The budget committees have more to do, especially the Chairman of the Senate Budget Committee, in providing five-year binding targets in the budget resolution. Certainly the monitoring and enforcing of new legislation as complex as this will put a burden on the budget committees. However, the most important task of these committees, the development of a blueprint for total spending and taxing, may have been mooted by the BEA. The appropriations committees have apparently been freed from the fear of economic eruptions wrecking their carefully laid plans. The committees with jurisdic-

tion over revenues and direct spending (e.g., entitlements) will now be required to operate within the parameters of a pay-as-you-go system, although spending growth caused by caseload growth in benefit programs is outside these parameters. All the powerful participants have been afforded some protection.

Summits have become more frequent during the 1980s, and more risky, culminating in the high-stakes election year events of 1990. The summiteers frequently stated[30] throughout the four-and-one-half months of negotiations that there was a chance that Congress would not follow its leadership on issues of this political magnitude. Despite a major setback,[31] a major agreement was enacted. But the prospects for returning to this mode of budgeting in the near future are quite small.

The Budget Enforcement Act may rearrange some of the budget power in the institutions of Congress and between Congress and the Executive Branch. By virtue of its authority to estimate targets and to continuously track and score tax and spending legislation as it moves through Congress, OMB's power has been enhanced: "What [OMB] really had before was the ability to beat Congress over the head with a telephone pole"—a powerful though awkward instrument . . . "Now it can beat parts of Congress over the head with a baseball bat."[32] The challenge for Congress is to maintain oversight on this function at the same time that it works out its new role.

It may be thought of as an improvement in the traditional sense that information can be the ally of reformation. Increases in the debt as a measure of the deficit will now be displayed in budget documents to remind participants of the problem. The major pothole—the deficit—grows deeper, while some smaller ones—spending—are patched up. Meanwhile bigger and better signs have been erected warning of the hazards ahead.

In conclusion, the Budget Enforcement Act is a move away from deficit control and toward no-fault budgeting, where process compromises have been made to ameliorate divisions among budget participants in the White House and Congress who wanted dramatically different policies.

NOTES

1. Edward Davis and Robert Keith, "Budget Enforcement Act of 1990: A Legislative History," Congressional Research Service, Nov. 5, 1990.
2. Jerry McCaffery, "Canada's Envelope Budget: A Strategic Management System," *Public Administration Review* 44 (July/Aug. 1984): 316–323; and Larry Jones and McCaffery, *Government Response to Financial Constraints: Budgetary Control in Canada* (Westport, Conn.: Greenwood Press, 1989), chapter 9.
3. Congressional Budget Office, *The 1990 Budget Agreement: An Interim Assessment*, Dec. 1990, 4.
4. The federal deficit averaged approximately 0.5 percent of GNP during the 1950s, 1 percent during the 1960s, 2 percent in the 1970s, and more than 4 percent during the 1980s. General Accounting Office, *The Budget Deficit, Outlook, Implications and Choices*, (Sept. 1990), 2–3.
5. Karen Padley, "A Brief, Mild Recession in U.S. Foreseen by Business Economists," *Investor's Daily*: (Nov. 28, 1990): 33.
6. As described by Aaron Wildavsky in *The New Politics of the Budgetary Process* (Glenview, Ill.: Scott, Foresman and Company, 1988) at pages 253–258, the politics of offsets meant that budget

contestants could not simply extract what they wanted from a growing budget pie, but had to extract from some other program money they wanted for their program; e.g., the director of AARP is quoted as saying: ''If we don't want $5 billion cut from Medicare, we have to say there should be a slowdown of that size in defense.''

7. GRH I was officially titled The Balanced Budget and Emergency Deficit Control Act of 1985, enacted December 1985. GRH II was officially titled the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, enacted in September 1987.
8. For more on GRH I and II, see Lance T. LeLoup, Barbara Luck Graham, and Stacy Barwick, ''Deficit Politics and Constitutional Government: The Impact of Gramm-Rudman-Hollings,'' *Public Budgeting & Finance* 7 (Spring 1987): 83–103; and Raphael Thelwell, ''Gramm-Rudman-Hollings Four Years Later: A Dangerous Illusion,'' *Public Administration Review* 50 (March/April 1990): 190–197.
9. The OMB Initial Sequester Report of August 20, 1990, using economic assumptions from the July 26th Mid-Session Review, put the sequester at $85.4 billion; making ''some reasonable assumptions'' regarding anticipated spending legislation would increase the sequester to $105.7 billion.
10. *New York Times* (July 16, 1990).
11. Wildavsky, *The New Politics of the Budgetary Process*, 1988, 236.
12. Aspin argued that allowing DoD to reprogram funds into military personnel to cushion the shock of sequestration would transform sequestration ''into a single-edged sword that the Republicans could use against the Democrats.'' Pat Towel, ''Bush Team, Hill Go to War Over How to Make Cuts,'' *Congressional Quarterly* (March 3, 1990): 683.
13. Office of Management and Budget, *Initial OMB Sequester Report to the President and Congress For Fiscal Year 1991* (Aug. 20, 1990), 6.
14. See, for example, Allen Shick, *The Capacity to Budget* (Washington, D.C.: Urban Institute Press 1990), 185–89; and Jackie Calmes, ''Graham-Rudman-Hollings: Has its Time Passed?'' *Congressional Quarterly* (Oct. 14, 1989): 2684–87.
15. In 1985, the deficit was $221 billion, in 1986, $238 billion, in 1987, $169 billion, in 1988, $194 billion, and for 1989, $205 billion. *Budget of the US Government, FY 1991*, A–281.
16. Measured as a percent of GNP, the deficit declined from 5.4 percent in 1985 to 2.9 percent. *Budget of the US Government, FY 1991*, A–283. By contrast, the federal debt as a percentage of GNP grew from 34 percent in 1980 to 56 percent in 1989. *Budget of the US Government*, FY 1991, A–304.
17. Jackie Calmes, ''The Voracious National Debt,'' *Congressional Quarterly* (March 24, 1990): 896.
18. GAO, *The Budget Deficit*, 5.
19. From 1940 to 1990, the normal order of business for the federal government has been a deficit. Recent surpluses have occurred in 1947, 1948, 1949, 1951, 1956, 1957, 1960, and 1969. *Budget of the US Government*, FY 1991, A–283.
20. In 1989, the administration predicted the deficit for fiscal 1990 at $99.7 billion. The actual shortfall was $220.4 billion. Only about $2 billion of the difference was due to increased Congressional spending. The rest was due to higher than expected costs on the savings and loan bailout and a slower than expected economy, according to John Yang, ''Gramm-Rudman-Hollings Redux,'' *Washington Post* (Oct. 30, 1990).
21. Dan Morgan and Walter Pincus, ''The Budget Deficit Problem is under Control, Isn't It?'' *Washington Post National Weekly Edition* (Nov. 26, 1990): 23.
22. Congressional Budget Office, *The 1990 Budget Agreement*, 3.
23. For example, for FY 1989, $348 billion of the projected $1.094 trillion in federal budget outlays came from budget authority created in previous years (31.8 percent). *The Congressional Budget Process*, U.S. Senate, Committee on the Budget (March 1988): 14.
24. Senator Sam Nunn, *Congressional Record*, Oct. 26, 1990, S17006.
25. Thelwell cites an estimating difference of some significance in the domestic area. The president's budget contained a ratio of budget authority to outlays for a set of low income programs of $1.54 to $1; the House Budget Committee estimated the same programs at a ratio of $3.13 to $1. (Supra note

8, 198). The BEA has no enforcement mechanism to cure estimation differences of this magnitude, other than the power of open discussion. Moreover it appears that the official estimator is OMB. However, since the general deficit cap can rise due to economic factors, neither OMB nor Congress may have the same incentive to fit numbers inside a fixed target as under GRH I and II.

26. Bowsher v. Synar, 478 U. S. 714 (1986). See also CRS Report 86-788 A, July 1986: Fosenberg and Ehlke, *Gramm-Rudman-Hollings Deficit Reduction Act Case*.
27. "Joint Explanatory Statement of the Committee of Conference," *Budget Enforcement Act of 1991*.
28. House of Representatives, Committee on Appropriations, *Views and Estimates on the Budget Proposed for Fiscal Year 1991* (March 7, 1990), 3.
29. John Cranford, "Giving Up the Gramm-Rudman Ax," *Congressional Quarterly* (Oct. 20, 1990): 3482.
30. See Janet Hook, "The Selling of a Budget Deal: Trial by Fire for Leaders," *Congressional Quarterly* (Sept. 15, 1990): 2893–94.
31. Despite a televised address by the president and midnight pleas by leaders of both parties, the House of Representatives defeated the first budget plan on Oct. 5 by a vote of 254–179. *Congressional Quarterly* (Nov. 3, 1990): 3686.
32. Lawrence Haas, "New Rules of the Game," *National Journal* (Nov. 17, 1990): 2794–95.