



SENATE REPUBLICAN

POLICY COMMITTEE

## Conference Report Highlights

May 21, 2008

### **Highlights of the Conference Report to Accompany S. Con. Res. 70, Concurrent Budget Resolution for Fiscal Year 2009**

*The Conference Report, H. Rept. 110-659, was filed on May 20, 2008. No House or Senate Republican signed the conference report.*

#### **Noteworthy**

**The conference report for S. Con. Res. 70 sets total spending in fiscal year (FY) 2009 at \$3.034 trillion and total revenues at \$2.725 trillion.**

- **Tax Increases:** S. Con. Res. 70 assumes \$1.2 trillion more in taxes over five years. Presumably, a significant portion of this revenue will come from allowing the 2001 and 2003 tax relief to expire.
- **Reconciliation:** S. Con. Res. 70 does not include any reconciliation instructions.
- **Alternative Minimum Tax (AMT):** S. Con. Res. 70 assumes a one-year patch of the AMT, with the cost fully offset.
- **Budget Enforcement:** S. Con. Res. 70 contains one new budget point of order, the short-term deficit point of order. Otherwise, the conference report continues the current points of order that are designed to use tax increases to offset increased spending. The existing pay-as-you-go (PAYGO) rule is unchanged. Only a simple majority is needed to raise taxes.
- **Discretionary Spending:** S. Con. Res. 70 provides \$1.088 trillion in discretionary budget authority for FY 2009 (including the President's request of \$70 billion for the war and \$968 million in program integrity cap adjustments), which is \$21 billion above the President's request and \$3 billion more than the Senate-passed resolution. In addition to that amount, S. Con. Res. 70 provides for \$3.3 billion more in advance appropriations than

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the President's budget. As a result, the conference report allows for \$24 billion more in domestic discretionary spending than requested by the President. The budget does not account for the other supplemental spending currently being considered by Congress.

- **Mandatory Spending:** S. Con. Res. 70 includes no proposals to reduce mandatory spending. The Senate proposal to reduce Medicare spending by \$1.3 billion was dropped in conference. Under the conference report, mandatory spending will increase by \$500 billion from fiscal years 2008-2013.
- **Reserve Funds:** S. Con. Res. 70 creates 64 deficit-neutral reserve funds for the Senate and 18 for the House. The Chairman of the Budget Committee may adjust committee allocations if legislation meets the requirements of the reserve fund and is deficit-neutral. These reserve funds allow for tax increases to offset spending increases.



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## **Highlights**

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### **Budget Enforcement**

Enforcement of the budget resolution is based primarily upon 60-vote budget points of order and reconciliation procedures. The creation of these enforcement tools are not changes to law but are changes to Senate rules. The S. Con. Res. 70 conference report includes one new budget point of order relating to short-term deficits.

The conference report also extends and modifies certain existing points of order as follows:

#### **Long-term Deficits (Section 311)**

S. Con. Res. 70 continues the current 60-vote point of order against long-term deficits. The point of order allows an increase of up to \$5 billion in each of the four ten-year periods during FYs 2019-2058.

#### **Discretionary Spending Limits (Section 312)**

S. Con. Res. 70 continues an enforcement tool to set discretionary spending limits for FY 2008 and FY 2009. The discretionary spending limit is initially set at \$1.050 trillion in budget authority for FY 2008 and \$1.012 trillion for FY 2009. These spending limits may be modified for matters relating to: continuing disability reviews and SSI redeterminations, IRS tax enforcement, health care fraud and abuse, unemployment insurance improper payments, the continued wars in Iraq and Afghanistan, and any supplemental appropriations enacted after adoption of the budget resolution. Unlimited emergency supplemental spending would be exempt from these limits.

### **Advance Appropriations (Section 313)**

S. Con. Res. 70 extends the current advance appropriations point of order. The point of order prohibits the consideration of advance appropriations, except for those provided for FYs 2010-2011 for specified accounts (including the Corporation for Public Broadcasting) which in total cannot exceed \$28.852 billion. This amount is \$3.3 billion above the limit requested in the President's 2009 budget.

### **Changes in Mandatory Programs in Appropriations Bills (Section 314)**

S. Con. Res. 70 continues a 60-vote point of order against appropriations bills making changes in mandatory programs. The point of order can be raised once against several provisions of an appropriations bill, and if successful the challenged provisions will be struck from the bill. However, the point of order exempts any changes in mandatory spending in appropriations legislation that have been enacted in each of the last three fiscal years, effectively grandfathering in most of the mandatory changes that are habitually used.

### **Short-term Deficits (Section 315)**

S. Con. Res. 70 creates a new 60-vote point of order against any legislation that would increase the deficit by more than \$10 billion in any fiscal year covered by the most recently adopted budget resolution unless it is fully offset over the period of all fiscal years covered by the most recently adopted resolution. This will require that any measure with a cost of more than \$10 billion in one year be paid for over the budget window. This is essentially duplicative of the current PAYGO point of order, except in the case of emergency legislation. The current PAYGO rule does not apply to emergency legislation that would increase the deficit, but the new point of order would apply. Emergency designations are already subject to a separate 60-vote point of order.

### **Continuation of Existing Points of Order**

S. Con. Res. 70 is silent on the following points of order, neither adjusting nor repealing them as enacted under last year's budget resolution, S. Con. Res. 21. As a result, the following points of order will remain in place:

#### **Pay-as-you-go (PAYGO)**

S. Con. Res. 70 does not change the current PAYGO rule. The current rule is a 60-vote point of order against legislation that would increase direct spending or reduce revenues (net of offsets) relative to the Congressional Budget Office (CBO) baseline for any of the following time periods: the six-year period from FYs 2008-2013, or the eleven-year period from FYs 2008-2018.

The key difference between current PAYGO and the former (2006) PAYGO is that the 2006 PAYGO allowed for deficits up to the amount assumed in the budget resolution. The current

PAYGO does not allow for any increase in direct spending or reduction in revenues that is not offset.

The practical effect of this change is that Congress cannot protect the extension of tax relief from PAYGO in the budget resolution.

### **Limitation of Reconciliation Legislation**

S. Con. Res. 70 does not change the current 60-vote point of order against reconciliation instructions that would increase the deficit or reduce a surplus. Had such a rule been in existence in 2001 or 2003, the Senate might not have been able to pass the President's 2001 and 2003 tax cuts using reconciliation.

### **Emergency Designation**

S. Con. Res. 70 does not change the current 60-vote point of order against emergency designations. The current rule exempts all emergency spending from PAYGO and limitations set in the budget resolution. Emergency requirements, as designated by Congress, must meet the following five standards: necessary, sudden, urgent, unforeseen, and not permanent.

### **Extension of Existing Points of Order**

S. Con. Res. 70 does not change the expiration date (September 30, 2017) for two existing points of order: 1) the unfunded mandates point of order and 2) the spending, revenue, or debt legislation without a budget resolution point of order. The unfunded mandates point of order prohibits consideration of any committee-reported legislation, except reconciliation bills, unless the CBO federal mandates estimate has been printed in the committee report or the *Congressional Record* and the estimate contains an intergovernmental mandate in excess of the statutory limit (\$50 million per year as adjusted for inflation; \$66 million for FY 2007) for the first fiscal year or any of the following four fiscal years. The spending, revenue, or debt legislation rule prohibits consideration of any spending, revenue, or debt legislation until the budget resolution for the upcoming fiscal year has been agreed to.

### **No Reconciliation Instructions**

S. Con. Res. 70 does not contain any reconciliation instructions.

## Resolution Provisions

### Total Non-Emergency Spending (in Billions):

Function	Title	FY08 Resolution	FY09 President's Request	S. Con. Res. 70
050	National Defense	591	612	612
150	International Affairs	33	38	37
250	General Science, Space, and Technology	27	30	31
270	Energy	4	3	7
300	Natural Resources and Environment	33	36	41
350	Agriculture	22	21	23
370	Commerce and Housing Credit	13	10	11
400	Transportation	80	70	75
450	Community and Regional Development	20	11	15
500	Education, Training, Employment, and Social Services	90	88	94
550	Health	285	303	310
570	Medicare	390	411	420
600	Income Security	390	413	416
650	Social Security	620	653	654
700	Veterans Benefits and Services	86	90	93
750	Administration of Justice	46	46	48
800	General Government	56	24	24
900	Net Interest	234	217	218
920	Allowances	0	-15	-13
950	Undistributed Offsetting Receipts	-99	-81	-81
Total		2,920	2,998	3,034

### Discretionary Spending

The budget provides a binding 302(a) budget authority and outlay allocation to the Appropriations Committee.<sup>1</sup> The 302(a) number is the top level for discretionary spending in a given year. The conference report provides a 302(a) allocation of \$1.088 trillion in budget authority after all cap adjustments. This also includes \$70 billion in funding for the wars in Iraq and Afghanistan, which is the same amount that the President requested. This 302(a) allocation is \$3 billion more than the Senate-passed resolution.

<sup>1</sup> The Appropriations Committee subsequently breaks the 302(a) number into twelve 302(b) allocations, which are the allocations to the individual Appropriations Subcommittees.

## **Revenues**

The budget assumes \$1.2 trillion more in taxes over five years. Presumably, a significant portion of this revenue will come from allowing the 2001 and 2003 tax relief to expire.

The budget also assumes a one-year patch of the AMT, fully offsetting the cost.

## **Reserve Funds**

In general, a reserve fund permits the Chairman of the Committee on the Budget to increase the section 302(a) allocation and other appropriate levels set out in this resolution once certain conditions have been met. The authority to make these adjustments is solely within the discretion of the Chairman and may be made when the committee of jurisdiction reports a measure that satisfies all of the conditions set out in the reserve fund.

Generally, these funds allow for increased spending as long as the spending is offset with tax increases or spending cuts elsewhere. The conference report includes 64 deficit-neutral reserve funds compared to 23 reserve funds last year. Listed below are the 42 sections in the conference agreement that contain deficit-neutral reserve funds; some may be subdivided to reach the total of 64 separate reserve funds.

### **Reserve Fund for tax relief (Section 221a)**

Section 221a provides a deficit-neutral reserve fund for legislation that would provide tax relief, including extensions of expiring tax relief and refundable tax relief. Because the reserve fund is deficit neutral, the tax relief provided would have to be offset with other tax increases.

### **Reserve Fund for manufacturing (Section 221b)**

Section 221b provides a deficit-neutral reserve fund for legislation that would revitalize the United States' domestic manufacturing sector by increasing federal research and development, expanding the scope and effectiveness of manufacturing programs across the federal government, increasing support for the development of alternative fuels, and establishing tax incentives to encourage the continued production in the United States of advanced technologies and the infrastructure to support such technologies.

### **Reserve Fund for housing assistance (Section 221c)**

Section 221c provides a deficit-neutral reserve fund for legislation that would provide housing assistance or establish an affordable housing fund.

### **Reserve Fund for flood insurance reform (Section 221d)**

Section 221d provides a deficit-neutral reserve fund for legislation that would provide for flood insurance reform and modernization.

### **Reserve Fund for trade (Section 221e)**

Section 221e provides a deficit-neutral reserve fund for legislation relating to trade agreements, preferences, sanctions, enforcement, or customs.

### **Reserve Fund for TANF assistance (Section 221f1)**

Section 221f1 provides a deficit-neutral reserve fund for legislation reauthorizing Temporary Assistance for Needy Families (TANF) supplemental grants.

### **Reserve Fund for child care (Section 221f2)**

Section 221f2 provides a deficit-neutral reserve fund for legislation that would provide up to \$5 billion for the child care entitlement to states.

### **Reserve Fund for food assistance (Section 221f3)**

Section 221f3 provides a deficit-neutral reserve fund for legislation that would provide up to \$40 million for the emergency food assistance program.

### **Reserve Fund for unemployment compensation (Section 221f4)**

Section 221f4 provides a deficit-neutral reserve fund for legislation that improves the unemployment compensation program.

### **Reserve Fund for Trade Adjustment Assistance (Section 221f5)**

Section 221f5 provides a deficit-neutral reserve fund for legislation that reauthorizes the Trade Adjustment Assistance (TAA) programs.

### **Reserve Fund for the Farm Bill (Section 221g1)**

Section 221g1 provides a deficit-neutral reserve fund for legislation that reauthorizes the programs of the Food Security and Rural Investment Act of 2002 at an amount up to \$15 billion.

### **Reserve Fund for County Payments (Section 221g2)**

Section 221g2 provides a deficit-neutral reserve fund for legislation that reauthorizes the Secure Rural Schools and Community Self-Determination Act of 2000.

### **Reserve Fund for higher education (Section 222)**

Section 222 provides a deficit-neutral reserve fund for legislation that would make higher education more accessible and more affordable.

### **Reserve Fund for infrastructure (Section 223)**

Section 223 provides a deficit-neutral reserve fund for legislation providing for investment in America's infrastructure, including projects for: transit, public housing, energy, water, highway, bridge, or other infrastructure projects.

### **Reserve Fund for energy legislation (Section 224a)**

Section 224a provides a deficit-neutral reserve fund for legislation that would decrease greenhouse gas emissions, reduce the nation's dependence on foreign sources of energy, produce green jobs, or preserve the national parks. The legislation may include the extension of energy tax incentives.

### **Reserve Fund for settlements (Section 224b)**

Section 224b provides a deficit-neutral reserve fund for legislation that would fulfill the purposes of the San Joaquin River Restoration Settlement Act or the Navajo Nation water rights settlement and other provisions authorized by the Northwest New Mexico Rural Water Projects Act.

### **Reserve Fund for wounded service members (Section 225)**

Section 225 provides a deficit-neutral reserve fund for legislation that improves the medical care of and disability benefits for wounded or disabled military personnel.

### **Reserve Fund for a post-9/11 GI Bill (Section 226)**

Section 226 provides a deficit-neutral reserve fund for legislation that would enhance educational benefits for those who joined the Armed Forces on or after September 11, 2001.

### **Reserve Fund for SCHIP (Section 227a)**

Section 227a provides a deficit-neutral reserve fund for legislation to reauthorize the State Children's Health Insurance Program (SCHIP) at an amount up to \$50 billion. The legislation must maintain coverage for those currently enrolled in SCHIP, continue efforts to reach uninsured children who are currently eligible for SCHIP or Medicaid but not enrolled, and support states in their efforts to cover more children.

### **Reserve Fund for Medicare Physicians Payments (Section 227b1)**

Section 227b1 provides for a deficit-neutral reserve fund for legislation that increases the reimbursement rate for physician services under Section 1848(d) of the Social Security Act. Funds under that section may also be used for financial incentives for physicians to improve care through "consensus-based quality measures."

### **Reserve Fund for Medicare (Section 227b2)**

Section 227b2 provides for a deficit-neutral reserve fund for legislation, in an amount up to \$10 billion, that makes improvements to Medicare, including: reductions in beneficiary cost-sharing for preventive benefits under Medicare Part B, the preservation or promotion of payment provisions that support America's rural health care delivery system, and limits on abusive tactics by private insurers offering Medicare Advantage. The legislation may also include a three-year extension of state background checks or measures to encourage physicians to train in primary care residencies and attract more physicians and other health care providers to states that face a shortage of health care providers.

### **Reserve Fund for Medicare low-income programs (Section 227b3)**

Section 227b3 provides for a deficit-neutral reserve fund for legislation that makes improvements to the Medicare savings program and the Medicare Part D low-income subsidy program, including: an increase in the asset allowance under the Medicare Part D low-income subsidy program, an update in the income and asset allowances under the Medicare Savings Program, and improved outreach.

### **Reserve Fund for comparative effectiveness (Section 227c1)**

Section 227c1 provides a deficit-neutral reserve fund for legislation that establishes a new federal or public-private initiative for comparative effectiveness research.

### **Reserve Fund for improving the health care system (Section 227c2)**

Section 227c2 provides a deficit-neutral reserve fund for legislation that creates a framework for the use of Medicare data for the purpose of conducting research to evaluate health care safety. The legislation must also include provisions to protect privacy.

### **Reserve Fund for health information technology (Section 227c3A)**

Section 227c3A provides a deficit-neutral reserve fund for legislation that provides incentives for adoption of modern information technology to improve quality and protect privacy in health care.

### **Reserve Fund for adherence to best practices (Section 227c3B)**

Section 227c3B provides a deficit-neutral reserve fund for legislation that provides incentives for Medicare providers to comply with clinical protocols identified as best practices.

### **Reserve Fund for Food and Drug Administration (FDA) (Section 227d1)**

Section 227d1 provides a deficit-neutral reserve fund for legislation that authorizes the FDA to regulate products and assess user fees on manufacturers and importers to cover the cost of the FDA regulatory activities.

### **Reserve Fund for prescription drug importation (Section 227d2)**

Section 227d2 provides a deficit-neutral reserve fund for legislation that would permit the safe importation of prescription drugs approved by the FDA from a specified list of countries.

### **Reserve Fund for Medicaid rules or administrative actions (Section 227e1)**

Section 227e1 provides a deficit-neutral reserve fund for legislation that includes provisions regarding the final rule published on May 29, 2007 (72 Fed. Reg. 29748) related to Medicaid payments and financing that would, among other things, limit payments to government providers for their cost of providing Medicaid services. The reserve fund also applies to any other rule or administrative action that would affect the Medicaid program or SCHIP in a similar manner, or place restrictions on coverage of or payment for graduate medical education, or several other services. This reserve fund would also apply to the administrative guidance issued by the Centers for Medicare and Medicaid Services (CMS) in the August 17, 2007 letter from Dennis Smith, Director of the Center for Medicaid and State Operations, which restricted funds to expand SCHIP unless states had first taken steps to cover lower-income children.

### **Reserve Fund for Transitional Medical Assistance (Section 227e2)**

Section 227e2 provides a deficit-neutral reserve fund for legislation that extends the Transitional Medical Assistance program.

### **Reserve Fund for other improvements in health (Section 227f)**

Section 227f provides a deficit-neutral reserve fund for legislation that makes health insurance coverage more affordable to small businesses; improves health care and provides quality health insurance for the uninsured and underinsured; reauthorizes the special diabetes program for Indians and the special diabetes programs for Type 1 diabetes; improves long-term care; enhances the safety and dignity of patients; encourages appropriate use of institutional and non-institutional care; promotes quality care; and provides for the cost-effective use of public resources or provides parity between insurance coverage for mental health benefits and benefits for medical and surgical services.

### **Reserve Fund for pediatric dental care (Section 227g)**

Section 227g provides a deficit-neutral reserve fund for legislation that provides improved access to pediatric dental care for children from low-income families.

### **Reserve Fund for reform of the Alternative Minimum Tax (Section 228)**

Section 228 provides a deficit-neutral reserve fund for legislation that would provide reform of the IRS Code of 1986 by reducing the tax burden of the alternative minimum tax on the middle class.

### **Reserve Fund for judicial pay and judgeships (Section 229)**

Section 229 provides a deficit-neutral reserve fund for legislation that would authorize salary adjustments for justices and judges of the United States or increase the number of federal judgeships.

### **Reserve Fund for immigration enforcement (Section 230)**

Section 230 provides a deficit-neutral reserve fund for legislation that would provide for greater border security and enforcement of immigration laws.

### **Reserve Fund for science parks (Section 231)**

Section 231 provides a deficit-neutral reserve fund for legislation that would provide for grants and loan guarantees for the development and construction of science parks.

### **Reserve Fund to terminate deductions from mineral revenue payments to states (Section 232)**

Section 232 provides a deficit-neutral reserve fund for legislation that would terminate the authority to deduct certain amounts from mineral revenues payable to states.

### **Reserve Fund for increased use of recovery audits (Section 233)**

Section 233 provides a deficit-neutral reserve fund for legislation that would achieve savings by requiring that agencies increase their use of recovery audits.

### **Reserve Fund for food safety (Section 234)**

Section 234 provides a deficit-neutral reserve fund for legislation that would expand the level of FDA and Department of Agriculture food safety inspection services.

### **Reserve Fund for demonstration project regarding Medicaid coverage of low-income HIV-infected individuals (Section 235)**

Section 235 provides a deficit-neutral reserve fund for legislation that would provide for a demonstration project under which a state may apply under section 1115 of the Social Security Act to provide medical assistance a state Medicaid program to HIV-infected individuals who are not eligible for medical assistance under section 1902 of the Social Security Act.

### **Reserve Fund for reducing the income threshold for the refundable child tax credit, and other selected tax relief policies (Section 236)**

Section 236 provides a deficit-neutral reserve fund for legislation that would reduce the threshold for the refundable child tax credit to \$10,000 for taxable years 2009 and 2010, extend enhanced

charitable giving, or incentivize increased use of accumulated alternative minimum tax and research and development credits.

**Reserve Fund for a 9/11 health program (Section 237)**

Section 237 provides a deficit-neutral reserve fund for legislation that would establish a program including medical monitoring and treatment addressing the adverse health impacts of the September 11, 2001 attacks.