CONGRESSIONAL BUDGET OFFICE
U.S. Congress
Washington, DC 20515

Douglas W. Elmendorf, Director

July 22, 2009

Honorable Steny M. Hoyer
Majority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Leader:

This letter responds to your request that we review an amendment in the nature of a substitute to H.R. 2920, the Statutory Pay-As-You-Go Act of 2009 (the amendment), provided to CBO on July 21, 2009. On July 14, 2009, CBO provided an analysis of the version of H.R. 2920 that was introduced on June 17, 2009, which would establish new statutory pay-as-you-go (PAYGO) requirements and authorize the Administration to enforce compliance through a sequestration mechanism. Key issues raised in that analysis and CBO's analysis of the proposed changes to H.R. 2920, are discussed below.

Summary of CBO's Analysis of H.R. 2920 As Introduced
CBO's July 14 letter described the agency's view that H.R. 2920 as introduced includes some features—in particular, the statutory sequestration mechanism—that could enhance overall budget enforcement. CBO's analysis of the introduced bill also noted that:

- Provisions that call for adjustments in PAYGO estimates to allow for extensions of "current policy" with regard to certain expiring tax provisions and Medicare payments for physicians' services would facilitate continuation of such policies without making the resulting deficit increases (relative to current law) subject to sequestration procedures.

- The legislation would shift some control over the budget process from the Congress to the executive branch in ways that could effectively require lawmakers to vote on legislation without a clear indication of the potential impact of their decisions on the triggering of a future sequestration.

- The bill would require that all mandatory programs with current-year outlays greater than $50 million be continued in the baseline after the programs expire. In CBO's estimation, that provision would add at least $25 billion to the baseline over the 2010-2019 period. In keeping with the principle that proposed legislation should be scored with its incremental effect relative to the current budget resolution baseline, CBO believes that this provision should be scored as increasing mandatory spending.

Analysis of the Amendment

You asked CBO to assess how some of the amendment's proposed changes to the introduced bill would affect those conclusions. In particular, you asked us to consider the impact of provisions in the amendment that would:

- Modify proposed rules that would require legislation affecting four specified areas of the budget to be scored for PAYGO purposes relative to "current policy" rather than current law;

- Provide for the use of CBO cost estimates incorporated by reference in enacted legislation for purposes of maintaining the PAYGO scorecard; and

- Remove or modify many of the changes in scorekeeping procedures contained in H.R. 2920—including the provision that would require that all mandatory programs with current-year outlays greater than $50 million be continued in the baseline after their scheduled expiration date.

Overall, combined with the Congress's existing pay-as-you-go rules, a statutory sequestration mechanism such as the one that would be established under H.R. 2920 (as introduced or as amended) could enhance overall budget enforcement. However, if the system envisioned in either version of the bill was used in place of the current Congressional rules or a more stringent statutory PAYGO system, enactment of the legislation could lead to larger future deficits under some circumstances. By eliminating some of the provisions in H.R. 2920 as introduced, the amendment could aid efforts to restrain such deficit increases.

Scoring to Reflect "Current Policy." Both H.R. 2920 as introduced and the amendment would specify unique scoring rules for legislation affecting four areas of the budget:

1. Medicare's "sustainable growth rate" (SGR) mechanism for paying physicians;

2. The estate and gift tax;

3. The alternative minimum tax for individuals; and

4. The income tax cuts enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003.

In each of those areas, current law would lead, over time, to lower deficits than would occur under "current policy" as some might define it; CBO's baseline reflects those current-law reductions in spending and increases in revenues.

The prescribed scoring rules under H.R. 2920 as introduced and the amendment differ in how those rules would be applied, but both would effectively require that legislation affecting those areas of the budget be scored in future years relative to policies in place in 2009, rather than to the policies that would take effect under current law. In effect, both the introduced version of H.R. 2920 and the amendment would allow the Congress to enact legislation that would increase deficits relative to current-law projections without triggering a sequestration. Such deficit increases could occur even in the absence of H.R. 2920; for example, changes in law to avoid revenue increases from the AMT or spending reductions from the SGR mechanism have been enacted repeatedly in recent years.

Use of CBO Estimates for Sequestration Purposes. Both the introduced version of H.R. 2920 and the amendment would require the Office of Management and Budget (OMB) to track increases or decreases in the year-end deficit on PAYGO scorecards for sequestration purposes. Under the introduced version, OMB would record the budgetary effects of each act based on its own estimates, which might not be prepared until after enactment. In contrast, the substitute amendment would direct OMB to use CBO's estimates of budgetary effects that would be printed in the Congressional Record before a final vote on the legislation and incorporated by reference in the enrolled version of each act. In CBO's view, this change might, in some cases, give lawmakers a clearer understanding of an act's implications for a potential sequestration prior to final passage and would shift less control of the PAYGO process to the Administration.

Scorekeeping Procedures. The July 21, 2009, substitute amendment would eliminate many provisions of H.R. 2920 related to the set of scorekeeping rules, concepts, and procedures used to generate baseline budget projections. Most notably, the amendment would remove a provision of the introduced bill that would require that all mandatory programs with current-year outlays greater than $50 million be continued in the baseline after their scheduled expiration date. In our July 14 letter, CBO stated that the latter provision should be scored as increasing mandatory spending over baseline levels by at least $25 billion over the 2010-2019 period. In contrast, CBO estimates that enacting the July 21, 2009, substitute should not be scored with any effects on mandatory spending or revenues because it would not change baseline projections.

I hope this information is helpful to you. If you have follow-up questions, I would be happy to address them.

Sincerely,

for Robert A. Sunshine

Douglas W. Elmendorf
Director

cc: Honorable John A. Boehner
Minority Leader

Honorable John M. Spratt Jr.
Chairman, Committee on the Budget

Honorable Paul Ryan
Ranking Member