

As discussed earlier this year in regard to section 304, the definition of “concurrent resolution on the budget” in section 3 of the Congressional Budget Act (CBA) refers to a concurrent resolution on the budget under section 301, “... and (B) any other concurrent resolution revising the congressional budget for the United States Government for a fiscal year as *described* in section 304.” (emphasis added). The one sentence section 304 is more of an outline than a description. And the CBA does not define the terms “revise” or “reaffirm.” But the legislative history of 304, while not voluminous, is instructive. The statement of managers on 304 at the drafting of the CBA in 1974 is as follows:

#### SECTION 304. PERMISSIBLE REVISIONS

*The House and Senate versions authorized the adoption of additional budget resolutions. The conference substitute contains the authority to adopt additional budget resolutions during the fiscal year. The managers expect that in addition to the two concurrent resolutions required in May and September, Congress may adopt, at least one additional resolution each year, either in conjunction with its consideration of supplemental appropriations or pursuant to the issuance of updated figures for the current fiscal year in the President's budget. Furthermore, whenever there are sharp revisions in the revenue or spending estimates or major developments in the economy it is expected that Congress would review its latest budget resolution and consider possible revisions.*

Moreover, the discussion about the use of 304 in 1977, and the ways in which it was in fact used in 1980 and 1981, show that those Senators closest to its inception believed 304 to be a flexible tool for Congress to quickly address national emergencies and marked changes in the economy. Members of both parties believed such flexibility was a strength of the new budget process.

When a Democratic Majority used 304 for the first time in 1977, the Chairman of the Senate Budget Committee (Sen. Muskie) wrote in the report to accompany, “the Committee notes that the purpose contained in the Budget Act for such additional resolutions is to meet changed conditions...” The Republican Ranking Member on the Senate Budget Committee (Sen. Bellmon), along with his Republican colleagues (including soon to be Chairman Sen. Domenici) wrote, “[T]his Concurrent Budget Resolution again demonstrates that the Congressional Budget Process is flexible enough to permit adjustment when economic or emergency conditions warrant...” Senator Domenici, in a new Congress in 1981, crafted a resolution using section 304 to propose revisions to the budget resolution from the previous calendar year and to issue reconciliation instructions for the current fiscal year when there had been none in that most recently adopted 301 resolution.

In addition, Congress regularly revises current fiscal year 301 resolutions without fanfare. As stated in the report to accompany H. Con. Res. 290 (106<sup>th</sup> Cong.), “The authority to revise the current year levels is set forth in section 304 of the Congressional Budget and Impoundment Control Act of 1974 [Budget Act]. These revised levels supersede those established and adjusted pursuant to H. Con. Res. 68 for all purposes under the Budget Act, including to enforce sections 302(f) and 311(a) of the Budget Act ...” (H. Rep. No. 106-577, pp. 39-40).

While members of both parties lauded the nimble nature of the 304 revision in 1977, each cautioned against its regular use. On behalf of the committee, Chairman Muskie wrote the following,

“... your Committee notes that the need to assure effective Congressional control of the budget requires that, to the maximum extent possible, Congress foresee all possible needs for the fiscal year when it adopts the Second Budget Resolution so that additional resolutions will be the exception and not the rule.” (S. Rept. No. 95-9, pp. 4-5).

“The purpose contemplated in the Budget Act for such additional resolutions is to meet *changed* conditions, not to take account of matters which might have been considered in connection with the Budget Resolution most recently adopted by the Congress.” (S. Rept. No. 95-9, p. 35, emphasis in original).

Ranking member Bellmon and his colleagues expressed similar views:

“This Concurrent Budget Resolution again demonstrates that the Congressional Budget Process is flexible enough to permit adjustment when economic or emergency conditions warrant but the process should not be viewed as being so flexible as to allow for changes whenever an economic statistic moves in an adverse direction. It is anticipated that this Third Concurrent Resolution will prove to be a unique budgetary event, and that future years will require only the normal First and Second Budget Resolutions.” (S. Rept. No. 95-9 p. 101).

The drafters and early users of 304 uniformly believed that it was to be used in extraordinary circumstances and not for things that should have been or could have been foreseen and handled in a 301 resolution. The potential for abuse was clear in 1974 and is all the more obvious now. Abuse of 304 – overuse and over-reliance on a hyper-fast track procedure in the ordinarily deliberative Senate - will change the culture of the institution to the detriment of the committee and amendment processes and the rights of *all* Senators. Limits on the breadth and frequency of deployment of 304, however, will depend on adherence to the original purpose of the section and the good judgment and restraint of all involved.

With those things in mind, the answers to the 3 questions we have been discussing are set forth below.

1. Does an initial budget resolution pursuant to Congressional Budget Act section 301 limit the reconciliation instructions that a revised budget resolution pursuant to Congressional Budget Act section 304 may contain?

The plain language of the statement of managers in 1974 shows that Congress expected to revise 301 resolutions using 304, and Congress did, on several occasions, revise or seek to revise 301 resolutions in various ways – changes in levels and enforcement and even reconciliation. The language of the CBA does not constrain the content of 304 beyond stating that such a resolution may revise or reaffirm the most recently agreed to concurrent resolution on the budget for that fiscal year. It is not reasonable to conclude that Congress would draft a provision, the stated purposes of which was to permit it to

adjust the budget in the face of an emergency or new economic data, while at the same time denying itself the use of all of the tools available in the Congressional Budget Act to achieve those new goals.

In addition, the guidance proscribing more than one reconciliation bill of each category under 310 (or a combination bill) per instruction-per resolution from the Parliamentarian in the late 90s/early 2000s (commonly referred to as a “3 bites at the apple” test) is inapplicable here because that “apple” advice applies to each resolution rather than each fiscal year.

Thus, we do not find that a 304 revision would be restricted in scope due to the contents of a 301 resolution or the execution of reconciliation instructions under a 301 resolution.

2. Does the Congressional Budget Act limit the number of times that Congress may revise a budget resolution pursuant to Congressional Budget Act section 304?

There has been much discussion of the phrase “a concurrent resolution” in 304 and whether it serves to limit the number of 304 resolutions that can be considered in one fiscal year. There has also been some discussion of the header of 304: “Permissible Revisionsu of Concurrent Resolutions on the Budget.” More salient than either of those competing phrases in 304 is the legislative history on the matter which plainly states in several places that multiple 304 resolutions were contemplated. Here, again, is the language from the statement of managers in the report to accompany the 1974 Act in full:

*The House and Senate versions authorized the adoption of additional budget resolutions. The conference substitute contains the authority to adopt additional budget resolutions during the fiscal year. The managers expect that in addition to the two concurrent resolutions required in May and September, Congress may adopt, at least one additional resolution each year either in conjunction with its consideration of supplemental appropriations or pursuant to the issuance of updated figures for the current fiscal year in the President's budget. Furthermore, whenever there are sharp revisions in the revenue or spending estimates or major developments in the economy it is expected that Congress would review its latest budget resolution and consider possible revisions.*

Clearly, multiple resolutions (beyond those that were mandatory in May & September) were considered in order by the drafters. In fact, multiple revisions to the FY81 budget resolution were adopted by the House and Senate over the course of 2 calendar years spanning 2 Congresses, with the Senate agreeing to one additional resolution that contained reconciliation instructions for the then current fiscal year where none had previously existed (the House did not agree to that resolution). And though these examples predate the '85 revision, where the mandatory, multiple budget resolutions were eliminated, 304 was left in place and amended to include, in addition to the existing authority to revise, authority to “reaffirm” the most recent concurrent resolution.

Thus, there is no reason to believe that 304 cannot be used, perhaps serially, as it previously has been, to revise the most recently adopted concurrent resolution.

3. Can the Presiding Officer place a revised budget resolution on the Calendar pursuant to the precedent of April 15, 1983?

The purpose of the auto-discharge, a creation of the Office of the Parliamentarian, was to advance the budget process in accordance with the deadlines for required action under section 300 of the CBA. When the Budget committee fails to report a budget resolution to the Senate, any properly drafted, introduced resolution is placed on the calendar and is subject to a privileged motion to proceed. This does not occur on some random date. It happens any time after April 1, the deadline in the CBA for the Senate Budget Committee to report a concurrent resolution on the budget and continues while the committee is still not in compliance with that requirement.

Unlike the 301 resolution, a section 304 resolution is an optional procedure untethered to the section 300 structure. There is no deadline for its reporting from committee or its completion in the Senate. In fact, 304's requirement with respect to timing is that a 304 resolution come *after* a resolution is agreed to pursuant to 301. Thus, applying auto-discharge to a 304 resolution would mean that to turn off auto-discharge, the Budget Committee would have to report a 304 as soon as there was a budget resolution adopted for a fiscal year. The motion to proceed to that resolution would be privileged. 304 revisions from Committee would be crafted as meaningless, stop-gap measures or shells for future consideration, further eroding the budget process. If the Committee failed to so report, every 304 resolution introduced would be placed on the Calendar and motions to proceed to them would be privileged as soon as the ink was dry on the 301 resolution.

That kind of chaos was not at all what was intended with auto-discharge. Rather, the purpose of auto-discharge is to provide an incentive for committee compliance with the law and to provide a remedy when compliance with and through the mandatory processes of the CBA have not been met. Auto-discharge is not appropriate for a 304 resolution.