Improving Transparency and Accountability in Federal Budgeting
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Budgeting is a fundamental act of governing. The federal budget ought to offer a comprehensive and transparent reflection of national priorities as exercised through Congress' power of the purse. It should convey to the public, in intelligible ways, the federal government's fiscal and economic footprint to enable constituencies, journalists, and outside watchdogs like think tanks, to understand how legislators are allocating federal resources and to hold legislators accountable for fiscal decisions.

This report offers reforms for Congress to re-engage in the federal budget process to regularly review federal spending, prioritize among federal programs and activities, and to ensure fiscal sustainability today and into the future. It offers budget process reforms to strengthen the congressional exercise of the power of the purse, improve incentives to follow the budget process, and enhance accountability and transparency in federal budgeting.

The Budget Process

The U.S Constitution specifies in article I, section 9, clause 7, that "no Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."[1]

Congress has established a budget process to provide for lawful appropriations and to convey to the public via various budget documents how their lawmakers are spending their taxpayer dollars. The primary statutes guiding the budget process are the 1967 Budget Concepts Commission,[2] the Congressional Budget and Impoundment Control Act of 1974,[3] and the 1990 Federal Credit Reform Act.[4]

The budget concepts commission's recommendations formed the basis for today's largely cash-based, unified federal budget. The modern federal budget process was established with the enactment of the Congressional Budget and Impoundment Control Act of 1974.[5] The Act created the Congressional Budget Office to provide Congress with independent economic analysis, as a direct counterweight to the Executive's Office of Management and Budget. The Act also created

[1] The Constitution of the United States, Article 1, Section 9, Clause 7, https://www.archives.gov/founding-docs/constitution-transcript.
[2] Joseph Scherer, "The Report of the President's Commission on Budget Concepts: A Review", December 1967, https://www.newyorkfed.org/medialibrary/media/research/monthly_review/1967_pdf/12_3_67.pdf.
[3] The Congressional Budget and Impoundment Control Act of 1974, https://www.congress.gov/bill/93rd-congress/house-bill/7130.
[4] 1990 Federal Credit Reform Act, https://www.congress.gov/bill/101st-congress/senate-bill/584.
[5] The Congressional Budget and Impoundment Control Act of 1974, https://www.congress.gov/bill/93rd-congress/house-bill/7130.

standing budget committees in both the House and the Senate and specified the procedures and timeline for passage of the annual federal budget.

A key feature of the Budget Act is the budget resolution which sets maximum levels of discretionary and mandatory spending and minimum levels of revenues for a multi-year period of at least five years. This budget resolution effectively acts as a fiscal blueprint for all spending and tax bills, guiding the work of authorizing and appropriating committees during that fiscal year. The act of budgeting – choosing priorities and allocating resources – is a core aspect of governing.

The federal budget resolution ought to offer a comprehensive reflection of national priorities as exercised through Congress' power of the purse. It should convey to the public, in intelligible ways, the federal government's fiscal and economic footprint to enable constituencies, journalists, and outside watchdogs like think tanks, to understand how legislators are allocating federal resources and to hold legislators accountable for fiscal decisions.

There is broad and bipartisan agreement that the current budget process does not adequately reflect the country's fiscal condition and that it partially obscures resources being devoted to specific areas and recipients.

Moreover, Congress routinely ignores the law and neglects to pass a budget resolution and appropriations bills in an orderly and timely fashion. In the most recent 21 fiscal years, from 1999 through 2019 Congress completed a budget resolution in only 10 years, or 48 percent of the time. The budget resolution included reconciliation instructions in only 8 of those years, or 38 percent of the time. Of the associated reconciliation bills, 7 were enacted into law.[6]

A better functioning budget process is needed to reestablish fiscal control and to increase public transparency and accountability.

Budget Accounting Reforms

Implement Fair-Value Estimates to Measure the Cost of Federal Credit Programs. Government estimates understate the cost of federal credit programs because they fail to account for market risk. To provide more accurate budgetary information, Congress should adopt fair-value estimates for the cost of federal credit programs.

[6] The budget resolution data for fiscal years 1999 through 2019 is compiled from CRS published historical data for 1999 through 2016 combined with widely available budget resolution data for fiscal years 2017 through 2019. Congressional Research Service, Congressional Budget Resolutions: Historical Information, RL30297, November 16, 2015, available at https://www.everycrsreport.com/files/20151116_RL30297_fdc638de54684334bc7f16b687b37d4ecfe7628a.pdf.

The cost of most federal activities is recorded in the budget on a cash basis, in accordance with recommendations made by the 1967 Budget Concepts Commission.[7] However, the lifetime costs of federal credit programs, including both direct loans and loan guarantees, are recorded up front on an accrual basis, pursuant to the requirements of the Federal Credit Reform Act of 1990.[8]

Under FCRA, the estimated net subsidy cost of a direct loan or a loan guarantee is recorded at the time of loan origination based on the present value of all future financial flows from the transaction. Present value calculations use discount rates to assign a value in today's terms to a receipt or payment that is scheduled to occur in a future year.[9]

The FCRA requires that the government use Treasury interest rates when discounting the value of future financial flows. The U.S. government pays low interest rates on the money it borrows because investors view these debt obligations as effectively free of default risk. However, a risk-free interest rate is the wrong one to use when discounting the financial flows of federal credit programs.[10]

When the federal government makes loans or loan guarantees, such as to homeowners and students, it is taking on the risk associated with broad macroeconomic shifts that might affect the ability of borrowers to meet their payment obligations. Among other things, a prolonged recession and high unemployment would raise the number of loans in default. This risk – called market risk – is not included in the rates the federal government pays when it borrows in public markets.

Fair-value estimates, an alternative to FCRA estimates, incorporate market risk by using market interest rates to discount the cash flows of federal credit programs. CBO determined that fair-value estimates provide a more comprehensive measure than FCRA estimates of the cost of federal credit programs.[11]

The estimated overall budgetary impact of federal credit programs varies between savings and costs under these two procedures. Under FCRA procedures, CBO estimates that $1.5 trillion in new loans and loan guarantees issued by the federal government in 2019 would generate budgetary savings of $37.4 billion over their lifetime – thereby reducing the deficit. Under fair-

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[7] Joseph Scherer, "The Report of the President's Commission on Budget Concepts: A Review", December 1967, https://www.newyorkfed.org/medialibrary/media/research/monthly_review/1967_pdf/12_3_67.pdf.
[8] Fair Credit Reporting Act, 15 U.S.C.§1681, https://www.ftc.gov/system/files/545a_fair-credit-reporting-act-0918.pdf.
[9] James C. Capretta, "How Congress Can Fix Its Trillion Dollar Accounting Error", American Enterprise Institute, July 11, 2018, http://www.aei.org/publication/how-congress-can-fix-its-trillion-dollar-accounting-error/.
[10] Ibid.
[11] Congressional Budget Office, How CBO Produces Fair-Value Estimates of the Cost of Federal Credit Programs: A Primer, July 12, 2018, p. 2, https://www.cbo.gov/system/files?file=2018-07/53886-FairValuePrimer.pdf.

value procedures, CBO estimates those loans and guarantees would have a lifetime cost of $37.9 billion – thereby adding to the deficit.[12]

This proposal would implement fair value estimates for federal credit programs by amending FCRA to require that market interest rates be used to estimate the net subsidy cost of those programs. Adopting fair value estimates for federal credit programs would provide more accurate information to the Congress and the public on the true cost to taxpayers of federal credit programs.

Add Debt Service in Cost Estimates of Proposed Legislation. Congress should have information on the full cost or savings of proposed legislation at the time of its consideration. Estimates of proposed legislation should include debt service costs.

With ongoing deficits, high levels of debt, and rising interest rates, debt service spending is becoming more important to the federal budget outlook. However, debt service effects of proposed legislation are not currently reflected in the methodology for producing cost estimates. As a result, the Congress is generally not informed of the total cost or savings of legislation at the time of its consideration.

Debt service can have a significant effect on the deficit impact of legislation, particularly in the case of major legislation. In its April 2018 baseline report, CBO estimated that the combined effect of new laws enacted since June 2017 increased the deficit over ten years by $2.7 trillion, including $515 billion related debt service spending.[13]

Adding debt service to cost estimates for proposed legislation, whose fiscal impact is currently measured relatively to the current law baseline, would be straightforward.[14] However, doing this for individual appropriation measures is less straightforward. Debt service effects of proposed individual appropriation bills could be measured relative to the most recently enacted appropriations bill with an adjustment for inflation or relative to the CBO baseline projection of discretionary spending for the applicable year in the case of an omnibus appropriations bill.

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[12] Congressional Budget Office, "Fair-Value Estimates of the Cost of Federal Credit Programs in 2019", June 29, 2018, p. 2, https://www.cbo.gov/system/files?file=2018-10/54095-2019fairvalueestimates.pdf.

[13] Congressional Budget Office, "The Budget and Economic Outlook: 2018 to 2028", April 9, 2018, Table A-1, p. 94, https://www.cbo.gov/system/files?file=115th-congress-2017-2018/reports/53651-outlook.pdf.

[14] CBO constructs its baseline in accordance with provisions set forth in the Balanced Budget and Emergency Deficit Control Act of 1985, https://www.congress.gov/bill/99th-congress/house-joint-resolution/372, as amended; and the Congressional Budget and Impoundment Control Act of 1974, https://www.congress.gov/bill/93rd-congress/house-bill/7130?q=%7B%22search%22%3A%5B%22Congressional+Budget+and+Impoundment+Control+Act+of+1974%22%5D%7D&r=1, as amended.

Including the costs of debt service in cost estimates would better inform Congress and the public of the total fiscal impact of proposed legislation at the time of its consideration. Adding debt service to cost estimates for proposed legislation would better recognize the full budgetary cost or savings of proposed legislation.

Baseline Integration. Congress should end the long-standing budget gimmick of scoring savings for short-term extensions of certain revenue-generating programs that Congress has no intention of ending.

Under current procedures, certain programs which generate revenue, e.g., customs user fees, are assumed to fall out of the current law baseline when their authorization expires. Congress, which generally has no intention of allowing such programs to expire, has a history of enacting short-term extensions of these programs to generate the appearance of mandatory spending savings relative to the baseline. These scored savings are generally used to offset the cost of new mandatory spending over the ten-year budget window.

Because the Congress has no intention of allowing such programs to expire, short-term extensions of these programs fail to produce actual mandatory spending savings.

This proposal suggests that after a limited number of short-term extensions (say two or three) the baseline would be changed to assume that such programs continue permanently. Once added to the baseline, future enactment of extensions of such programs would no longer generate spending savings. This proposal would increase accountability by ending a long-standing budget gimmick.

Define and Narrow What Counts as Mandatory Spending. Congress should initiate a budget concepts review to properly assess what should count as mandatory spending and establish a legal definition that is sufficiently narrow.

For decades, spending on mandatory programs has been growing more rapidly than programs and agencies funded by annually-appropriated discretionary spending. Appropriations Committees must allocate funding for discretionary programs subject to an overall cap on discretionary spending. In recent years, most discretionary funding has been limited by caps on discretionary spending that were originally specified in the Budget Control Act of 2011 and were modified by subsequent legislation.[15]

As a result, most individual discretionary programs must compete with each other for funding. In contrast, most mandatory spending programs do not have to compete with each other for

[15] Congressional Budget Office, “The Budget and Economic Outlook: 2018 to 2028”, April 2018, p. 54, https://www.cbo.gov/system/files?file=115th-congress-2017-2018/reports/53651-outlook.pdf

funding. They are not generally subject to spending caps. Instead mandatory spending is largely determined by eligibility criteria and funding formulas; some of which were enacted several decades ago.

This special treatment is encouraging Congresses and administrations to designate more and more funding as mandatory, including grant programs that until recently were subject to annual appropriations. This is an abuse of fiscal responsibility to circumvent budget caps. Moreover, the CBO current law baseline, in accordance with statutory requirements, generally assumes that most mandatory spending programs continue after their authorizations lapse, further shielding spending from scrutiny.

This proposal would ask the Office of Management and Budget to define and narrow the designation for mandatory spending programs. Unless a program meets the narrow definition, it would be categorized as a discretionary spending program. This proposal could increase fiscal discipline by taking programs off of autopilot to have to compete for annually-appropriated discretionary funding. Increased competition for funding should result in higher priority programs being funded than would otherwise be the case. Lower priority or less effective programs have a greater chance of being curtailed.

Codify the Definition of Disaster and Emergency Spending. Lawmakers have shown a greater tendency in recent years to abuse disaster and emergency spending designations to circumvent fiscal restraints like the Budget Control Act spending caps. Emergency and disaster spending is intended to be used to respond to major, unpredictable, sudden, and urgent crisis situations that call for a national response In total, the U.S. Congress drove up deficit spending by an additional trillion dollars over the past five years by declaring spending to be for emergency purposes.[16]

One driving force behind this abuse of the emergency designation is that there is no clear definition of what is allowable. This leaves Congress and the President with too much latitude regarding what qualifies as an emergency.[17]

To enhance accountability and transparency in emergency spending, Congress should define by statute what qualifies as an emergency. To ensure that Congress cannot simply waive the statute, as is done with many budget enforcement rules, it should enforce the statute through a point of order that requires a two-thirds majority vote to waive.

In 1991 the OMB issued guidance on emergency spending that included one possible definition. The definition stated that to qualify as emergency spending, a provision must meet five criteria: a

[16] Boccia, Bogie, & Winfree, "How Emergency Spending Has Exploded in Recent Years", Sep.19, 2018, https://www.heritage.org/debt/commentary/how-emergency-spending-has-exploded-recent-years.
[17] Justin Bogie, "Congress Must Stop the Abuse of Disaster and Emergency Spending", February 4, 2019, https://www.heritage.org/budget-and-spending/report/congress-must-stop-the-abuse-disaster-and-emergency-spending.

necessary expenditure that is sudden, urgent, unforeseen and temporary in nature.[18] Codifying this definition in statute would help to ensure that emergency funding is used for legitimate purposes. Disaster responses should be appropriate, targeted, and cost-effective.

Adopt a transparent spending baseline. Congress should adopt a transparent spending baseline to clearly distinguish a spending increase from a spending cut or freeze.

The government has a responsibility to present its budget to the people in an intelligible manner that enables average Americans to easily determine whether their representatives are increasing, decreasing or keeping spending flat.

One key way that people have lost trust in their elected representatives is by playing so-called baseline games that obscure fiscal developments and nurture perceptions that "only in Washington is a spending increase considered a spending cut."

To restore public trust in federal accounting, federal budget reports should clearly identify all the sources of change in outlays between one year and the next. A fully transparent baseline would begin with the current fiscal year's spending levels and clearly indicate all sources of increases or decreases, be they adjustments for inflation, population, or current law. Proposed legislative changes should then be estimated against this new baseline.

This change would allow the press, interested citizens, and other independent watchdogs to assess the consequences of fiscal action and inaction, equipping the public with relevant, straightforward information to hold their representatives responsible.

Strengthen Enforcement

Sunset Unauthorized Programs. Congress should sunset programs that have not been authorized to increase the transparency and oversight of federal programs and activities.

Historically, Congress has passed enabling legislation – known as authorizations of appropriations – that authorize the appropriation of funds (generally providing discretionary funding) to carry out a program or function established in an enabling statute. The Appropriations Committees rarely provided appropriations for unauthorized programs or functions.

[18] Keith Bea, Congressional Research Service Report for Congress, "Federal Emergency Management Agency Funding for Homeland Security and Other Activities", April 9, 2002, p. 24, https://www.everycrsreport.com/files/20020409_RL31359_0fa9608b592008054d787c5b502b3f59e0c9e1eb.pdf; Committee for a Responsible Federal Budget, "What's An Emergency?" June 22, 2010, http://www.crfb.org/blogs/whats-emergency.

In recent years, appropriations have become more common for programs which were never provided explicit authorizations of appropriations or whose authorizations have expired. Senate rules explicitly prohibit unauthorized appropriations, but the point of order against them is usually waived. In the latter category, CBO has most recently identified 1,035 authorizations of appropriations that expired before the beginning of fiscal year 2018. CBO estimates that $318 billion was appropriated in fiscal year 2018 for those agencies, programs, or functions.[19]

Unauthorized appropriations lack transparency and oversight. Funding programs and activities that are not regularly evaluated through the authorization process allows them to grow unchecked whether or not they are serving a legitimate purpose or accomplishing their goals effectively.

Congress should put unauthorized appropriations on a gradual sunset path, beginning with a five percent spending reduction the first year, growing to a ten percent reduction the second year, and ending all funding if Congress fails to reauthorize the program for a third year. This proposal would encourage a review of the large array of unauthorized programs that continue to receive annual appropriations. This would likely lead to a reduction in spending on programs that are wasteful or redundant.

Time Limit Emergency Designated Funding. Currently, disaster and emergency funds are appropriated as "no-year" money. This means that the money is "available for obligation for an indefinite period."[20]

For emergency spending to respond effectively to sudden, urgent, and temporary needs, it must provide an immediate and direct response to crisis situations. Once the crisis is abated, money designated for immediate emergency response should be withdrawn.

Allowing agencies to spend emergency money over an indefinite period of time encourages abuse. Emergency appropriations that provide for multi-year or no-year funding can result in large unobligated balances that can persist for years, creating opportunity for such funds to be used for purposes beyond their original intent, causing spending to be higher than would otherwise be the case

Restrict Floor Action on Spending and Tax Bills until a Budget Resolution Is Adopted

This proposal requires that each chamber of Congress pass the budget resolution – establishing its blueprint for fiscal policy – before it considers individual spending and tax bills.

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[19] Congressional Budget Office, "Expired and Expiring Authorizations of Appropriations: Fiscal Year 2018", Revised, July 3, 2018, p. 2, https://www.cbo.gov/system/files?file=2018-07/54126-eeaa-approps_2.pdf

[20] Government Accountability Office, "Principles of Federal Appropriations Law", 3d Ed., Vol. I, January 2004, https://www.gao.gov/special.pubs/d04261sp.pdf. (accessed November 1, 2018).

Section 303 of the Budget Act generally prohibits House or Senate floor consideration of spending or tax legislation until a chamber has approved the budget resolution.[21] For example, Senators Ben Cardin (D-MD) and Kelly Ayotte (R-NH) have co-sponsored an amendment that would make it out of order in the House or Senate to consider any legislation after April 15 unless Congress adopted the concurrent resolution on the budget for the forthcoming fiscal year.[22]

The rationale is that the budget resolution is intended to establish broad fiscal policy and that without it Congress has no context to guide individual spending and tax bills. Section 303 of the Budget Act, however, contains major exceptions to this general prohibition and it is one of the few budget rules that the Senate can waive with a simple majority vote. These features greatly weaken the provision. This proposal would strengthen Section 303 of the Budget Act to more significantly restrict floor action on spending and tax legislation until a budget resolution is adopted.

This proposal would provide both the House and the Senate with more incentive to pass a budget resolution compared to the current budget process.

A related, less targeted proposal is the No Budget, No Pay Act, introduced by Senator Braun (R-IN) which would discontinue paying lawmakers' salaries after Oct. 1 if they fail to pass a budget resolution and spending bills by that deadline. This is a promising proposal in that it would give lawmakers more of a stake in completing a successful budget process cycle. The last time lawmakers passed all 12 spending bills on time was in 1996. The policy would take effect after Feb. 21, 2021, in compliance with the 27th Amendment to the Constitution, which limits Congress from changing compensation during a current session of Congress.[23]

Transparent, Accountable Budgeting

Budgeting is a fundamental act of governing. Congress must re-engage in the federal budget process to regularly review federal spending, prioritize among federal programs and activities, and to ensure fiscal sustainability today and into the future. Congress must also ensure that the federal budget is presented to the public in a way that is transparent and intelligible to enable constituents, journalists, and outside watchdogs to hold legislators accountable for fiscal action and inaction. Budget process reforms should focus on ways to strengthen the congressional

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[21] The Congressional Budget and Impoundment Control Act of 1974, https://www.congress.gov/bill/93rd-congress/house-bill/7130

[22] S. 1681, 112th Congress (2011-2012), https://www.congress.gov/bill/112th-congress/senate-bill/1681?q=%7B%22search%22%3A%5B%22s.+1681%22%5D%7D&s=9&r=1

[23] Romina Boccia, "Sen. Braun to Congress: No Budget? No Pay for You," Heritage Foundation, Commentary, February 14, 2019, https://www.dailysignal.com/2019/02/14/sen-braun-to-congress-no-budget-no-pay-for-you/.

exercise of the power of the purse, improve incentives to follow the budget process, and enhance accountability and transparency in federal budgeting.