

A Road Map for Fiscal Year 2022 Appropriations

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KEY TAKEAWAYS

Congress has again begun the fiscal year without completing the annual appropriations process, as progressives chose to focus on implementing their socialist agenda.

Spending bills must reject non-defense spending increases, support national defense, reject pro-abortion policy, and eliminate extraneous provisions and earmarks.

Congress should not agree to a full-year appropriations package unless each of these conditions is met.

Each dollar spent by the federal government must first be taken from an American who earned it. The U.S. Constitution, in recognition of this powerful and unavoidable truth, limits federal spending to what is required to fulfill only the federal powers and duties specifically enumerated therein. The congressional budget process envisioned a transparent and open process whereby all Americans could understand how their elected representatives propose to spend their money.

However, once again, Congress has begun the fiscal year (FY) without completing the annual appropriations process—marking almost a generation without that full transparent regular order.¹ To make matters worse, President Joe Biden launched the FY 2022 appropriations process by recklessly calling for

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massive non-defense spending increases on wasteful and extra-constitutional programs and agencies while shortchanging actual priorities, such as national defense.²

Discretionary spending represents about 30 percent of the federal budget and already redirects nearly 7 percent of the nation's economic activity—a sum roughly equal to the annual productive value of all agricultural, construction, fishing, forestry, mining, oil extraction, and plastic and rubber product manufacturing in the United States.³ This is the volume of American productivity already consumed just through existing discretionary programs. Lawmakers should remember that the choices made by politicians have important impacts on the lives and livelihoods of all Americans.

Yet, rather than seriously pursue responsible agreements on the appropriations bills, President Biden and progressives in Congress have spent months attempting to implement a big-government socialist agenda. Their planned transformation of the American economy would expand government control over many aspects of peoples' lives and soak up ever more of the fruits of the labors of the American people, reducing families' opportunities to find and benefit from work.⁴

However, unlike the reconciliation legislation they plan to use to implement this liberal agenda, appropriations bills are subject to a 60-vote threshold in the Senate. This gives Congress an opportunity to restore constitutional values and to protect Americans. The current continuing resolution (CR) has extended discretionary spending through December 3, 2021—at which point Congress will likely consider the next steps of the annual appropriations process.⁵

Both the topline spending levels and the policy details of the appropriations bills are vital for Congress to consider.

The final FY 2022 spending bills must:

1. Reject non-defense spending increases,
2. Support the national defense,
3. Retain existing pro-life and conscience-rights riders,
4. Keep out damaging and divisive extraneous provisions, and
5. Reject earmarks.

Unless each of these conditions is met, Congress should not agree to a full-year appropriations package.

Rejecting Non-Defense Spending Increases

Discretionary spending levels have been a hotly contested area of fiscal policy since the passage of the Budget Control Act (BCA) of 2011,⁶ which placed caps on defense and non-defense spending categories. A series of deals led to increases in both categories, which in turn increased expectations for future years.⁷

In 2012, the Congressional Budget Office (CBO) estimated that FY 2022 non-defense discretionary spending would be \$597 billion.⁸ By 2021, the CBO's non-defense estimate for FY 2022 increased to \$709 billion due to the spending deals, a 19 percent increase.⁹

Despite this already substantial boost, the Biden Administration budget requested an additional \$109 billion, or 16.5 percent, above the FY 2021 enacted level, for a total of \$770 billion of non-defense discretionary spending in FY 2022.¹⁰ The request would provide more discretionary funding to non-defense programs than to national defense, which flagrantly disregards the federal government's core priority.

The House Appropriations Committee has followed President Biden's lead, providing substantial increases to the non-defense funding level.¹¹ Most notably, the subcommittee allocation for Labor, Health and Human Services, and Education would receive a 38 percent increase from FY 2021 levels.

Higher spending levels should be a non-starter. Not only are increases to non-defense spending unwarranted, but legislators should take the opposite approach and reduce non-defense spending.¹² The federal government is riddled with wasteful and inappropriate programs, subsidizing politically favored groups and industries at the expense of the general public. Increasing spending levels will only increase waste and remove incentives for responsible budgeting.

A pernicious aspect of the post-BCA spending deals has been the notion of "parity," or increasing defense and non-defense spending levels by the same amount per year. Initially this concept came from the Left, falsely equating its desire for expansive domestic micromanagement with the vital needs of national defense.¹³ Some legislators who prioritize defense have recently sought to use "parity" as a way of bolstering funding for defense in light of the proposed non-defense spending spree.¹⁴ However, that is a mistake, as it furthers the false equivalence between vital defense needs and the Left's dubious non-defense requests.

Other efforts to increase non-defense spending should also be rejected. For example, waiving enforcement of Statutory Pay-As-You-Go (PAYGO) rules would significantly increase mandatory spending.¹⁵ Congress's fiscal irresponsibility, in particular President Biden's \$1.9 trillion American Rescue Plan stimulus bill, enacted under the guise of COVID-19 response even though less than 10 percent of the spending goes to public health,¹⁶ will trigger Statutory PAYGO automatic spending reductions (known as sequestration) to offset the deficit increase.

The CBO estimates that because of the large amount of spending in the stimulus law, Statutory PAYGO would require a sequestration order to reduce spending by \$381 billion at the end of this session of Congress.¹⁷ This required sequestration exceeds the approximately \$116 billion to \$126 billion worth of mandatory spending that is subject to sequestration because most major programs are exempted or are capped.¹⁸ This means that waiving Statutory PAYGO would increase mandatory spending by more than \$100 billion this fiscal year alone. This would be wildly irresponsible, considering America's mounting federal debt and the looming insolvency of major programs, such as Social Security and Medicare.¹⁹ Congress should reject any attempt to attach a PAYGO waiver to any "must pass" legislation, unless paired with spending reductions of a greater amount.

Total government spending in FY 2021 was 53 percent higher than in 2019.²⁰ Even prior to the COVID-19 pandemic, the federal budget was unsustainable.²¹ This overspending drives inefficiency and waste, which threatens economic growth and would lead to a lower quality of life and less opportunity for American families. The first step on the road to fiscal responsibility is to reject further increases in government spending.

Supporting the National Defense

Appropriators should follow the lead of the authorizers in the National Defense Authorization Act that has passed the House and waits for floor time in the Senate.²² Both the House and the Senate increased the defense budget by \$25 billion compared to the President's request, driven by the correct recognition that the President's budget request for defense was insufficient to meet the threats and challenges posed by China and Russia.²³ An increase would give the Department of Defense the necessary resources to increase the capacity of the armed forces by procuring necessary ships, aerial refuelers, helicopters, and ground vehicles. Further, the increase is aligned with Heritage Foundation analysts' recommendation for the defense budget.²⁴

Additionally, the appropriations should reverse the misguided cut to the sea-launched cruise missile-nuclear (SLCM-N) proposed in the House appropriations bill.²⁵ The SLCM-N is a necessary program that would provide a regionally present, sea-based, survivable option for the U.S. nuclear deterrent.²⁶ It would create a more credible deterrent tool in response to recent developments of regional, non-strategic nuclear capabilities by U.S. adversaries.

Appropriators should reject language repealing the 2001 Authorization for Use of Military Force (AUMF), as repealing the AUMF while the U.S. remains in a state of armed conflict against al-Qaeda, ISIS, and associated forces makes no sense. The ideal course would be to assess and develop a new and comprehensive strategy against those enemies, and then debate and decide whether to update, amend, or otherwise change the 2001 AUMF.²⁷ However, repealing the 2002 AUMF does make sense, as its purpose has been fulfilled.²⁸

Further, appropriators should remove the \$28.5 million of earmarks that were added by the House Appropriations Committee,²⁹ the \$562.5 million of cancer research that has no connection to the mission of the Department of Defense, and \$1.1 billion for 12 F-15EX aircraft not requested by the Air Force.³⁰

Retaining Existing Pro-Life and Conscience-Rights Riders

Congress should ensure that any spending bill continues to protect pro-life and medical-provider conscience protections. For more than four decades, Congress has prevented taxpayer dollars from funding abortions in federal programs like Medicaid via the Hyde Amendment—a rider to annual appropriations bills. Over the years, Congress has incorporated additional Hyde-like riders—which establish certain conditions, limitations, and requirements for how federal agencies may use taxpayer dollars—that disentangle tax dollars from abortion activity and protect rights of conscience.³¹

But now, some Members of Congress are changing course. House-passed FY 2022 appropriations bills as well as appropriations bills proposed in the Senate eliminate or weaken these important pro-life protections, including:

- The Hyde Amendment, which prohibits the Department of Health and Human Services from spending taxpayer dollars for elective abortions.
- The Helms Amendment, which restricts foreign aid funds from being expended on abortions.

- The Smith Amendment, which prohibits funding elective abortions in the Federal Employee Health Benefits program.
- The Dornan Amendment, which prohibits funding elective abortions within Washington, DC.
- The Weldon Amendment, which protects health care providers from discrimination on the basis of their refusal to provide, pay for, or refer patients for abortions.
- The Kemp–Kasten Amendment, which allows the Administration to withhold funding from an organization that “supports or participates in the management of a program of coercive abortion or involuntary sterilization.” (The House-passed FY 2022 State and Foreign Operations (SFOPS) Appropriations bill weakens the Kemp–Kasten provision, which has been invoked during Republican Administrations since 1985 to withhold funding from the United Nations Population Fund due to its complicity in China’s inhumane family planning practices.)
- The Protecting Life in Global Health Assistance Policy (an expanded Mexico City Policy), which requires foreign nongovernmental organizations to agree not to perform or promote abortion as a condition of receiving U.S. funding. (This policy has been implemented by Republican Administrations since 1985; the House-passed FY 2022 SFOPS prohibits future Administrations from implementing the policy.)

These important guardrails that disentangle tax dollars from abortion activity are good, life-saving policy. For example, the Hyde Amendment is credited with saving 2.4 million lives since its inception in 1976 and has played a key role in the encouraging long-term trend of declining abortion rates across America.³² Conscience protections enable Americans to work and live alongside each other despite deep differences on a number of ethical and moral matters. Conscience protections take nothing away from anyone. Rather, they uphold the traditional American principles of equality, pluralism, and tolerance.³³

Such policies enjoy broad support across the political spectrum. A majority of Americans oppose using taxpayer dollars to fund elective abortions, including 65 percent of independents and 31 percent of Democrats.³⁴ Likewise, a majority of Americans support conscience rights for individuals and entities that object to abortion.³⁵

Two hundred of the 438 Members of the House of Representatives circulated a letter expressing “unified opposition to Congressional Democrats’ efforts to repeal the Hyde Amendment and other current-law, pro-life appropriations provisions,” and vowed “to vote against any government funding bill” that weakens such policies.³⁶ Similarly, 48 Senators circulated a letter vowing united resolve “against any changed to Federal law that would unsettle nearly half a century of bipartisan consensus,” and committed to vote against “any legislation that would eliminate or weaken the Hyde Amendment or any other current-law pro-life protections, or otherwise undermine existing Federal pro-life policy.”³⁷

Congress should not abandon this nearly half-century tradition, and should reject attempts to undo pro-life legislative protections. Members of the House and Senate must make good on their unequivocal commitment and ensure that all existing pro-life and conscience-rights riders are retained in FY 2022 appropriations.

Keeping Out Damaging and Divisive Extraneous Provisions

It may be tempting for congressional leaders to attach provisions to the appropriations bills that are entirely unrelated to funding federal agencies. For example, the Occupational Safety and Health Administration (OSHA) is expected to issue an emergency temporary standard requiring companies with at least 100 workers to mandate that their employees be vaccinated. The agency lacks legal authority to take this action,³⁸ and the standard will be challenged in the courts. Congress should not use the spending bills to empower OSHA to enforce a vaccine mandate.

Similarly, negotiations between factions of congressional Democrats over the partisan budget reconciliation bill have long been stalled. Should the negotiations break down completely, there may be an effort to attach some of that bill’s provisions to the appropriations bills. In health care policy, these provisions could include price controls on prescription drugs, expansion of Affordable Care Act (ACA) premium subsidies, federal Medicaid expansions, an ACA reinsurance program, and other misguided policies.³⁹ In welfare, they include making permanent or extending two transformative and counterproductive expansions of the welfare state via the earned income tax credit (EITC)⁴⁰ and the child tax credit (CTC),⁴¹ which were included as “temporary” provisions in the March-enacted American Rescue Plan (ARP).

The appropriations bills should not become a vehicle for these provisions, which are beyond the scope of a funding bill and outside the jurisdiction of the appropriations committees.

Rejecting Earmarks

Congress should reject earmarks in any government funding package. Under the euphemistic term “community project funding,” the House Appropriations Committee included thousands of earmarks in its bills.⁴² Regardless of how they are branded, earmarks are a redistribution of wealth from the American people to politically connected special interests. No matter how well-intentioned they may sound, earmarks stunt economic growth, spawn corruption, and encourage further waste of taxpayer money.⁴³

Earmarks are a form of central planning, redistributing investment using the force of government for the benefit of politically connected special interests at the expense of everyone else. Before the politicians can spend these funds, they first have to extract them from the American people.⁴⁴ Lawmakers should remember that the financing of all federal spending necessarily reduces the purchasing power of all Americans.

The government did not make the concrete, steel, or any number of other goods and services required to actually follow through on the earmark project. These resources must be redirected from somewhere else—and from someone else. Earmarks are not a new investment—they are a redirection of existing investment. Earmarks, along with all central planning tools, sacrifice economic growth for bureaucratic micromanagement. At a minimum, the burden of earmarks is felt through reduced economic opportunity for all Americans.

Proponents of earmarks argue that they help Congress to carry out its Article I power of the purse; this is a myth.⁴⁵ The Constitution does not give Congress a blank check backed by the finances and work of American people.

In fact, federal spending is constitutionally required to satisfy a limited set of circumstances. Federal spending must carry out an enumerated power and, as the general welfare clause requires, as pointed out in Heritage Foundation Constitutional Guidance for Lawmakers, “be for the ‘general’ (that is, national) welfare and not for purely local or regional benefit.”⁴⁶

Essentially all earmarks fail this constitutional test. Even the common argument for earmarks—that individual Members of Congress have a unique understanding of their districts and states, allowing them to best direct funds to benefit their local communities—is a denial of the notion that earmarks are intended for the general, national welfare.⁴⁷

Moreover, this argument includes an additional egregious oversight: The people that know their districts and states best are the numerous people of those communities—the very people whose productive work would be

taxed and suppressed to transfer resources to the government to be doled out through earmarks. Changing the scale of the central planning does not change the fact that it is central planning.

Although the House of Representatives has fully resumed the practice of earmarking after a decade-long ban, the Senate has not followed suit to the same degree. The Rules of the Senate Republican Conference continues to include a provision prohibiting its Members from requesting earmarks.⁴⁸ While some Senate Republicans have advocated earmarking, the fact that the ban remains a part of the Conference Rules is a strong indicator that earmarks remain controversial.

The final spending bills must not include these taxpayer-funded special interest giveaways.

Road Map for FY 2022 Appropriations

To complete action on the appropriations bills, Congress must (1) reject non-defense spending increases; (2) support national security; (3) retain existing pro-life and conscience rights riders; (4) keep out damaging and divisive extraneous provisions; and (5) reject earmarks.

Unless each of these conditions is met, Congress should not agree to a full-year appropriations package.

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41. The CTC is normally another “work bonus” program, a refundable tax credit—or cash grant—specifically for families with children. The ARP temporarily ended the long-standing work requirement for recipients of the CTC and converted the annual tax credit into an unconditional monthly cash payment. While parents used to have to work to receive the credit, under the ARP they no longer have to do so. The omnibus bill should not extend this CTC expansion. The ARP increased the CTC from an annual \$2,000 credit to a \$250 to \$300 monthly advance cash payment. The Biden Administration has sold the child allowance as an example of “tax cuts for America’s families and workers,” asserting that its plan would offer “key tax cuts...that benefit lower- and middle-income workers and families.” See The White House, “The American Families Plan,” April 2021, pp. 2 and 11, <https://www.whitehouse.gov/wp-content/uploads/2021/04/American-Families-Plan-Fact-Sheet-FINAL.pdf> (accessed July 5, 2021). In reality, the Biden “child allowance” plan would offer no long-term tax relief to families with children. Some 74 percent of aid would go to cash grants for families who owe no income tax; only 26 percent would temporarily be designated for tax relief. Robert Rector and Jamie Hall, “Biden ‘Child Allowance’ Is a Bait and Switch That Offers Zero Long-Term Tax Relief: Instead, It Permanently Eliminates Work Requirements,” Heritage Foundation *Backgrounder* No. 3636, July 8, 2020, <https://www.heritage.org/welfare/report/biden-child-allowance-bait-and-switch-offers-zero-long-term-tax-relief-instead-it>. The debate on the transformation of the work-related CTC into an unconditional child allowance boils down to the question whether work—or even preparing to work through education and training—matters for the long-term success of individuals and families who depend on the safety net. The evidence from the past 25 years of federal cash-assistance policy confirms the significance of work in improving outcomes for low-income parents and their children. See, for instance, Leslie Ford, “Why Work Matters and How the Safety Net Should Encourage It,” Heritage Foundation *Backgrounder* No. 3659, October 8, 2021, <https://www.heritage.org/welfare/report/why-work-matters-and-how-the-safety-net-should-encourage-it>.
42. House Committee on Appropriations, “Transparency,” <https://appropriations.house.gov/transparency> (accessed October 11, 2021).
43. Matthew D. Dickerson, “Return of the Swamp: Earmarks Would Be a Costly Mistake,” Heritage Foundation *Backgrounder* No. 3602, March 30, 2021, <https://www.heritage.org/budget-and-spending/report/return-the-swamp-earmarks-would-be-costly-mistake>.
44. Richard Stern, “Earmarks, a Favorite Tool of Central Planners, Are Making a Comeback Under Biden,” The Daily Signal, August 18, 2021, <https://www.dailysignal.com/2021/08/18/earmarks-a-favorite-tool-of-central-planners-are-making-a-comeback-under-biden>.
45. Dickerson, “Return of the Swamp: Earmarks Would Be a Costly Mistake.”
46. John C. Eastman, “Enough Is Enough: Why General Welfare Limits Spending,” Heritage Foundation *First Principles Series, Constitutional Guidance for Lawmakers* No. 4, January 13, 2011, <https://www.heritage.org/the-constitution/report/enough-enough-why-general-welfare-limits-spending>.
47. Matthew D. Dickerson, “Nothing Is More Emblematic of the ‘Swamp’ Than Earmarks,” Heritage Foundation *Commentary*, April 9, 2021, <https://www.heritage.org/budget-and-spending/commentary/nothing-more-emblematic-the-swamp-earmarks>.
48. John Barrasso, “History, Rules, and Precedents of the Senate Republican Conference,” 117th Congress, p. 10, https://www.republican.senate.gov/public/_cache/files/112f6afb-a1f0-4c3f-8e78-788ac85c344e/4AD00AC45F860D42FAD37C556CB6A01F.-117th-congress-rules-and-precedents.pdf (accessed October 11, 2021).