CHAPTER THREE

Fix the Broken Budget Process

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BUDGET PROCESS REFORMS

The budget process provides the framework for the regular and orderly debate of fiscal issues with the goal of guiding legislative action. It determines the steps that are necessary for adopting a budget and for adopting or changing legislation. A properly functioning budget process should encourage debate on fiscal issues and set in motion negotiations over the trade-offs and considerations involved in congressional spending and taxing.

Regular order is the key to a properly functioning budget process. It provides a critically important procedure to ensure time for thorough debate and oversight of government priorities. Regular order follows a clear timeline laid out by the Congressional Budget and Impoundment Control Act of 1974 (1974 Budget Act). By the first Monday in February of each year, the President is to submit his budget to Congress. By February 15, the Congressional Budget Office (CBO) issues its *Budget and Economic Outlook* report for the upcoming decade, and the budget committees then rely on this report as a starting point for crafting the House and Senate budget resolutions. These resolutions then begin to move in the House and Senate, and Congress is required to complete consideration of the budget by April 15.

Once both chambers of Congress have agreed on the budget, appropriations activities officially begin. The budget is important to this process because it sets the topline spending figures for the upcoming fiscal year. Under regular order, the House is expected to have completed all floor action on appropriations bills by June 30. That leaves three months for the Senate to complete action and for the bills to be reconciled and then signed by the President before the beginning of the fiscal year.

Throughout the year, Congress should also be actively engaged in authorization legislation. Most federal programs are authorized initially for a limited number of years, and it is up to Congress to reauthorize them if it determines that they should continue to be federal priorities. The authorization process provides another opportunity for debate and oversight and is a key component of regular order.

That is how the process is *supposed* to work. However, the budget process is broken. Instead of engaging in open debate and the timely processing of legislation, Congress has ignored budget rules and deadlines, morphing the budget process into ad hoc funding decisions in response to self-imposed crises. This has led to an ongoing cycle of continuing resolutions and omnibus appropriations bills that lack accountability and fail to provide sufficient oversight of agency budgets and activities. This allows for unchecked spending and encourages the unfettered growth of federal government programs.

Moreover, for too many years, congressional budgets have served as party platforms without implementing legislation, rendering legislative goals to balance the budget mere wishful thinking that does not ultimately translate into action. Lawmakers will claim credit for passing a budget that balances but will not follow through with legislation to bring actual spending in line with the budget resolution. The budget resolution has become all but a sham.

The budget process should serve its original intent of driving congressional decision-making toward the achievement of fiscal sustainability. Congress should adopt several key reforms both to enhance budget discipline and to increase transparency and accountability in congressional budgeting. Specifically, Congress should:

Enact a statutory spending cap enforced by sequestration. Congress should enforce fiscal discipline with spending caps. Spending caps motivate Congress to prioritize among competing demands for resources. Designed properly, spending caps can help to curb excessive long-term spending growth. Congress should adopt a statutory spending cap that encompasses all non-interest outlays and achieves budget balance—given current projections about the economy, revenues, and interest costs—by the end of the decade or before.

Spending-cap enforcement by sequestration promises to spur negotiations to avoid automatic spending reductions in favor of a more deliberate approach. In the absence of legislative agreement, sequestration ensures that reductions in spending take place regardless of the adoption of targeted reforms. This process should spur fiscal reforms to limit the growth of government and achieve budget balance.

Once the budget balances, spending should be capped at a level that maintains balance, allowing for certain annual adjustments. In the long run, during periods of normal economic activity and absent exigent national security demands, the spending cap should grow no faster than the U.S. population and inflation. The cap should bind more stringently when debt or deficits exceed specific targets.

Move toward a balanced budget amendment. One limitation of the value of a statutory law imposing an aggregate cap on non-interest spending is that a future Congress can amend the law. Deficit spending almost always favors the current generation over future generations, who must pay for the deficit spending of today. Ultimately, therefore, a balanced budget amendment will be necessary to constrain future attempts to eliminate the spending cap and abandon fiscal discipline.

The balanced budget amendment is not a mechanism for achieving balance and should not be viewed by Congress either as a substitute for necessary reforms in federal programs or as an excuse to avoid the tough decisions that are necessary to balance the budget. Rather, a balanced budget amendment should be used to guarantee that the hard work of reforming programs cannot be easily undone in the future.

A balanced budget amendment to the U.S. Constitution is important because it can help to enshrine fiscal responsibility over the long term and secure America's fiscal future. Lawmakers should not raise taxes to continue overspending, because tax hikes shrink the economy, expand government, and reduce people's ability to spend their own money as they see fit. Lawmakers should not borrow more to continue overspending, because borrowing puts an enormous financial burden on younger generations and encourages the unchecked expansion of the federal government's size and scope. Americans need their government to spend *less* because less government spending will advance the interests of the American people by encouraging limited government, individual freedom, civil society, and free enterprise.

A balanced budget amendment should control spending, taxation, and borrowing; ensure the defense of America; and enforce the requirement to balance the budget. The ratification process may take time: The fastest ratification took less than four months (the Twenty-Sixth Amendment on the voting age of 18), and the slowest took 202 years (the Twenty-Seventh Amendment on congressional pay raises). Thus, House and Senate passage of a balanced budget amendment must be in addition to, not an excuse to avoid, current hard work to cap and cut federal spending, balance the federal budget through fiscal discipline, and avoid excessive taxation.

Eliminate the use of CHIMPs to evade discretionary spending limits. In an effort to circumvent discretionary spending limits, appropriations bills often include provisions that reduce mandatory budget authority without actually reducing spending. These provisions are called changes in mandatory programs (CHIMPs). They typically affect situations in which an agency has been granted spending authority, but because there are few recipients for the program, no spending would take place. Including these provisions in appropriations bills allows Congress to redistribute the spending authority to programs that will spend money, thereby increasing actual spending. When used in this way, these provisions are budget gimmicks that allow Congress to evade limits on discretionary spending.

Claiming false savings reduces accountability and transparency in congressional budgeting and drives up deficit spending. The fiscal year (FY) 2017

Omnibus Appropriations Act contained over $20 billion in CHIMP savings, only about $1 billion of which generated actual outlay savings. The FY 2016 Conference Budget Resolution took a first step in limiting false CHIMP savings by placing a limit on the amount that could be used through 2019 and then phasing out such CHIMPs entirely. However, budget resolutions are not binding, and instead of sticking to the proposal laid out in the 2016 resolution, the FY 2018 Conferenced Budget Resolution simply extended the cap for an additional year.

Regardless of whether a cap is in place, Congress can waive a CHIMP budget point of order through a simple majority vote in the House and a three-fifths vote in the Senate. Congress and the Administration should enact legislation immediately that permanently eliminates the use of CHIMPS that generate no real budgetary savings. Such CHIMPs are budget gimmicks that allow unchecked growth in government spending.

Discontinue spending on unauthorized appropriations. House and Senate rules require that an authorization for a federal activity must precede the appropriation that allows agencies to obligate federal funds for that activity. When appropriation bills provide new budget authority for activities whose statutory authorization (the legal authority for the program to continue) has expired, or that were never previously authorized, this is known as an unauthorized appropriation. In FY 2016, lawmakers appropriated about $310 billion for programs and activities whose authorizations of appropriations had expired.[1] For FY 2018, the CBO estimates that $713 billion in appropriations has already expired or will expire before the end of the year.[2] This practice is a violation of congressional rules and evades prudent deliberation of federal funding priorities.

Lawmakers should discontinue funding for unauthorized appropriations, as such funding evades the careful congressional scrutiny and oversight of programs required by the authorization process. Congress should authorize only programs that represent federal constitutional priorities and should eliminate funding for activities that the federal government should not undertake. The authorization process helps Congress to identify the programs that deserve renewed federal funding and those that should be eliminated or reformed.

In an effort to return to authorizing federal activities on a regular schedule, Congress should reduce the discretionary spending limits provided by the Budget Control Act of 2011 by the amount of current unauthorized appropriations. Congress should then provide for a cap adjustment of up to 90 percent of the previous year's funding level if the program is reauthorized. Instead of cutting reauthorizations across the board, Congress may prioritize among reauthorizations as it deems appropriate. If adopted, this policy would discourage Congress from appropriating money for unauthorized programs, since Congress would be forced to cut funding for authorized programs to provide an appropriation for an unauthorized program.

Modify scorekeeping rules for trust funds. Under current scorekeeping rules, it is assumed that benefits that derive their spending authority from federal trust funds, such as Social Security and Medicare Part A, will continue to be paid at the scheduled rate, regardless of the ability of the trust funds to pay them. This practice is inconsistent with most other areas of the federal budget, where budget rules show what will happen when current policies expire. Instead, for trust funds, the baseline assumes that lawmakers will make changes (that is, transfer additional funds to shore up insolvent programs) so that future benefits can be paid in full. Current scorekeeping practices allow these transfers into trust funds to be made without being scored as a spending increase.

The current scorekeeping rules reduce the perceived severity of the impending insolvencies that the Social Security and Medicare trust funds are facing. By assuming that these benefits will continue to be paid in full, current rules ignore the fact that at some point in the not-too-distant future, these trust funds will face an imbalance that will require cuts in benefit payments or tax increases or both.

Moreover, current scorekeeping conventions allow Congress to double-count savings. For example, when the Affordable Care Act was passed in 2010, it was estimated that a reduction of payment levels to Medicare Part A and Part B would save over $575 billion and help offset the costs of the bill. However, under current scorekeeping practices, these savings were also scored as extending the life of the Medicare Hospital Insurance Trust Fund by an additional 12 years. The same savings were being used simultaneously to pay for a new entitlement program (Obamacare) and to increase the life span of the Medicare program and thus were being double-counted.

If Congress wishes to infuse additional funds into the trust funds, the scorekeeping rules should reflect the full costs of doing so, and Congress should fully pay for those costs by making other spending cuts to prevent further increasing the already ballooning federal debt. Congress should act immediately to repair this scorekeeping convention.

Modify scorekeeping rules to account for the interest costs of legislation. Congress should update current scorekeeping rules so that interest costs are incorporated into CBO analysis of all legislation. Under current practices, these costs are not reported unless a Member of Congress submits a separate request to the CBO.

By failing to account for changes in interest costs, current scorekeeping conventions are creating a discrepancy between the true costs of legislation and what is being reported in CBO estimates. This could result in Members of Congress having an incomplete picture of the costs of a bill, which in turn could distort decision-making in favor of greater spending and debt accumulation than might otherwise be the case.[3] It also encourages the use of other budget gimmicks that spend more immediately by relying on savings that materialize over the 10-year budget window without accounting for the interest costs of the immediate spending.

Congress should require that any cost estimates produced by the CBO or the Joint Committee on Taxation (JCT) must include estimates of the debt-service impact. Not including the interest costs of legislation being considered by Congress diminishes the magnitude of the fiscal impact at stake and presents an inaccurate accounting of the true costs.

Put the GSEs on budget—toward their elimination. Until their elimination, putting government-sponsored enterprises (GSEs) on budget immediately to account for the risks that taxpayers face—and bailouts that they fund—from Fannie Mae's and Freddie Mac's involvement in the mortgage market is an important first step. The federal budget should reflect the net impacts of the programs administered by Fannie Mae and Freddie Mac.

The President's Office of Management and Budget (OMB) treats the GSEs as off-budget entities because it considers them separate private entities under *temporary* federal conservatorship. According to the 1967 Commission on Budget Concepts, inclusion of an entity's assets and liabilities in the federal budget depends on three basic factors: ownership, control, and permanence. The Treasury has largely owned and controlled the GSEs since taking Fannie Mae and Freddie Mac under conservatorship in 2008 after the market crash. This arrangement will continue for the indefinite future, as the agreement lacks an exit clause beyond the vague guidance that "[t]he conservatorship will end when the [Federal Housing Finance Agency] finds that a safe and solvent condition has been restored."[4]

The most likely scenario suggests that Fannie and Freddie will remain under government control until Congress changes their status. Therefore, the arrangement between Treasury and the GSEs should be considered permanent for budgetary purposes.

Putting the GSEs on budget would enhance budgetary accountability and transparency by eliminating the billions of dollars in seeming windfall payments that the Treasury is receiving from Fannie Mae and Freddie Mac and by confronting Congress with the risks of default of GSE-backed loans. Given the GSEs' current treatment, any profits are counted as offsetting receipts and reduce the reported budget deficit, while any estimated losses are ignored. This encourages higher spending. Establishing the GSEs as on-budget entities would subject them to the Federal Credit Reform Act of 1990, as is the case with most other federal credit programs.

Use fair-value accounting for federal credit programs. Congress should update the budgetary accounting for federal credit programs, governed by the Federal Credit Reform Act (FCRA) of 1990, to incorporate market risk. The FCRA specifies that the estimated net costs of federal credit programs on an accrual basis, rather than the annual cash flows that happen during the period of a loan term, must be used for scorekeeping purposes. For loans for which the government expects to incur a loss, scorekeepers calculate a subsidy cost to identify the budgetary impact. Conversely, programs that are expected to incur a gain for the government offset other spending.

How the government estimates whether it will incur a loss or a gain from a certain federal credit program matters. Currently, the government assumes that federal credit programs are just as safe and reliable as the payout on U.S. Treasury bonds. This underestimates the real market risk associated with certain loans, which is especially true and worrying during economic downturns. The fact that private firms and individuals seek loans and loan guarantees from the government demonstrates that they face higher capital costs in private markets due to the risk involved in some of their endeavors. Taxpayers should not be on the hook for private borrowing, but as long as they are, the federal government should at least account for such borrowing accurately.

Congress should adopt fair-value accounting to increase transparency and accountability in the congressional budget. Fair-value accounting more accurately confronts Congress with the risks it assumes and the subsidies it provides through credit programs. This information is crucial for lawmakers when considering whether a certain program is in the public's interest. Since incorporating market risk in estimates of federal credit programs' budgetary impact would increase reported spending, Congress may adjust the Budget Control Act's discretionary spending cap to reflect the cost of federal credit programs to taxpayers more accurately without necessitating additional cuts in spending.

Exempt conference reports from the Byrd Rule. The basic premise of the Byrd Rule is that it protects the minority party by making it harder to add items that are not budget-related to reconciliation legislation that requires only a simple majority vote for passage. Under current Senate rules, both reconciliation legislation bills originating in the Senate and conference reports (the final legislation produced during the merging of the individual House and Senate-passed bills by the conference committee) are subject to the provisions of the Byrd Rule. This was not always the case. From the time of its creation in 1985 up until 1993, the rule was generally applied only to Senate reconciliation bills and not to conference reports between the two chambers. The Byrd Rule was modified significantly by the Omnibus Reconciliation Act of 1990, and the Senate leadership initiated strict application of the Byrd Rule to conference reports in 1993. This led to the striking of more than 150 provisions from the Omnibus Budget and Reconciliation Act of 1993.[5]

The application of the Byrd Rule to conference reports has led to much frustration, especially among House members. While the rule is important in protecting the Senate's super-majoritarian norms and deliberate nature,[6] it should not limit the legislative scope and ability of the House. Excluding conference reports from the Byrd Rule might also alleviate pressure for the Senate to invoke the so-called nuclear option that would eliminate the filibuster altogether and allow any legislation to pass with a simple majority.

Redefine tax expenditures. The current baseline for measuring tax expenditures rests on an inconsistent definition of income, rendering tax expenditure analysis both subjective and unreliable. The calculation of tax expenditures is misleading because it attempts to describe two separate phenomena. First, some tax expenditures work to decrease harmful economic distortions by limiting some forms of double taxation that are built into the income tax system. Second, many tax expenditures are true special-interest carve-outs, granting privileges to some at the expense of others. To remedy this problem, the Congressional Budget and Impoundment Control Act of 1974 should be amended to use a consistent, consumption tax base rather than gross income in the calculation of tax expenditures.

The JCT and OMB can also begin reporting a second list of tax expenditures using a consumption baseline without legislative action. The 1974 act does not preclude producing an additional, parallel accounting of expenditures. Under President George W. Bush, the OMB set a precedent for such analysis by publishing a second list of tax expenditures and a discussion of the difference between official lists and those measured from a comprehensive consumption base.[7] Both the JCT and the OMB should refresh this analysis to provide a more comprehensive look at true privileges in the tax code.

A FIRST STEP

The nearly complete breakdown of regular order in congressional budgeting at a time when fiscal discipline should be more important than ever and as automatic spending on entitlement programs threatens to overwhelm the federal budget and the U.S. economy shows the need for a fundamental reform of the budget process. Congress can begin this important journey toward a regular and deliberate budgetary order and greater fiscal discipline by implementing a few key reforms right away:

- A spending cap limiting the federal budget, enforced by sequestration;
- A balanced budget amendment;
- Elimination of unauthorized appropriations;
- Elimination of changes in mandatory programs as budget gimmicks;
- Revision of current scorekeeping rules to account for the true costs of trust fund transfers and interest costs of legislation;

- Adoption of more accurate accounting for federal credit programs, including for student loans and the operations of Fannie Mae and Freddie Mac;
- Exemption of conference reports from the Senate Byrd rule; and
- Redefinition of tax expenditures using a consumption baseline.

ENDNOTES

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