CHAPTER THREE

Fiscal Restraint in the Budget Process

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Article I, Section 9 of the U.S. Constitution states that "No money shall be drawn from the Treasury, but in consequence of an appropriation made by Law."[1] These 17 words grant Congress its power of the purse and place the legislative institution at the core of the budget process.

Congress, however, is failing the American people by not exercising its power of the purse in a transparent, timely, responsible, and deliberate manner. Congress should authorize federal funding *only* for activities that meet the federal government's limited constitutional responsibilities and appropriate taxpayer dollars *only* for programs that it regularly authorizes. This means following the steps in the budget process to engage in regular deliberations and to prioritize federal spending in a manner that is consistent with constitutional constraints and responds to actual national needs. Congress also should exercise regular oversight over federal government agencies to ensure that the executive is exercising its responsibilities in accordance with Congress's statutory intent.

The Budget and Accounting Act of 1921 and the Congressional Budget and Impoundment Control Act of 1974 (1974 Budget Act) provide the framework for the budget process and the regular and orderly debate of fiscal issues.[2] The 1974 Budget Act lays out deadlines for production of the President's budget and the Congressional Budget Office (CBO) baseline.

First, the President sends his budget to Congress to present the executive's vision and inform Congress in developing its own budget proposals through the House and Senate Budget Committees. The CBO baseline is important to the process because it serves as the building block upon which the House and Senate budget resolutions base their fiscal estimates.

The 1974 Budget Act provides a timeline to guide completion of the congressional budget process and lays out clear deadlines to ensure that all appropriations bills are enacted before October 1 of each fiscal year. The deadlines are also intended to allow time for thorough debate of broader budget issues as well as individual appropriations bills. The budget process serves as an opportunity for Congress to evaluate priorities carefully and perform critical oversight over how taxpayer dollars are being spent.

However, Congress has no will and little incentive to follow the budget process. The last time that Congress actually followed each step on time was in 1994.[3] Budget deadlines and spending enforcement rules are routinely ignored by both parties. This has led to a cycle of continuing resolutions, omnibus spending bills, and periodic lapses in appropriations. The budget and appropriations process has morphed from what was intended to be an orderly exercise into a continuing series of funding fights as Congress lurches from one crisis to the next.[4] Amid this chaos, any semblance of fiscal restraint has been lost.

Eight years ago, Congress enacted the Budget Control Act of 2011 (BCA).[5] The BCA raised the debt limit by $2.1 trillion, and Congress agreed to cut spending by the same amount in return for this increase. The first $917 billion in cuts came through caps on defense and non-defense discretionary spending. That left an additional $1.2 trillion in cuts that had to be met to match the overall increase in the debt limit.

To achieve those savings, the BCA created the Joint Select Committee on Deficit Reduction. After months of negotiations, the Joint Select Committee failed to reach agreement on how to achieve the remaining spending reductions. This triggered a fall-back plan to ensure that $2.1 trillion in total savings was achieved. To reach the additional savings, the defense and non-defense discretionary spending caps were lowered further, and an annual automatic across-the-board reduction—sequestration—was put in place both to reduce spending on discretionary programs in the event Congress appropriated more than allowed and to reduce spending on non-exempt mandatory programs.

Initially, the Budget Control Act was an effective tool for reducing spending growth, but Congress's addiction to spending soon took control. In fiscal year (FY) 2013, through the American Taxpayer Relief Act of 2012,[6] lawmakers amended the BCA to delay sequestration by two months and decreased the overall spending reductions by $24 billion.[7] Since 2013, Congress has amended the law three times, raising spending in six of the eight years of the BCA's existence. The first two budget deals raised spending by a total of $144 billion over four years. New funding was paid for on paper, but most of the savings still have not materialized—and may well never materialize.

The deals also failed to take into account the added interest costs of a "spend now, save later" approach. The most recent deal, the Bipartisan Budget Act of 2018 (BBA),[8] raised spending by $296 billion over two years—more than double the previous two deals combined and almost completely without offsets.[9] The 10-year debt impact of the 2018 deal could be as high as $2.1 trillion.[10]

Perhaps the one silver lining to be found in the three budget deals is that Congress has extended the BCA's mandatory sequestration provisions through 2027.[11] However, the limited mandatory cuts permitted by the BCA do not come close to paying for the additional spending approved by Congress.

The BCA discretionary caps remain in effect through FY 2021, but the short-term future of the spending caps, to say nothing of what might happen beyond 2021, is unclear. Congress's irresponsible BBA spending increases created a large funding cliff between FY 2019 and FY 2020. Under current law, funding will fall by $125 billion in FY 2020, and $71 billion of the cut would hit national defense.[12] Some lawmakers will likely push for another massive two-year spending deal or, even worse, could even call for outright repeal of the Budget Control Act.

Taxpayers cannot afford another irresponsible budget deal or a Congress that is unshackled from any fiscal restraints. Instead of abandoning the BCA, Congress should modify it by adopting one aggregate cap on all defense and non-defense discretionary spending. One overall cap would provide more flexibility and should encourage Congress to prioritize resources based on the federal government's constitutional mandate and reduce wasteful spending on programs that fail to meet actual national needs.

If Congress insists on raising discretionary spending levels, it must not make the nation's fiscal situation any worse with hundreds of billions of dollars in additional deficit spending. Any discretionary spending increase should be fully offset by spending reductions in mandatory programs, including associated interest costs.

Past budget deals have included offsets such as the extension of federal user fees and the sale of assets. User fees should be used only as authorized by law. If fees (like customs user fees, for example) are no longer needed to support their original intent, then they should be allowed to expire, not reauthorized to pay for new spending. Selling unneeded federal assets, such as Strategic Petroleum Reserves and spectrum pipeline, is generally good policy, but proceeds should be used to pay down the national debt, not to facilitate still more wasteful spending.[13]

Requiring mandatory spending cuts in exchange for higher discretionary spending will have the side effect of putting more spending under the process of an annual review by Congress while reducing long-term liabilities. Congress should take spending off of autopilot and determine exactly what types of spending are consistent with truly federal spending priorities.

The current budget system also has weak rules in place to enforce deficit and debt levels. Pay-as-you-go (PAYGO) was designed to make it more difficult for Congress to increase the deficit. PAYGO requires that changes in "mandatory" spending or in revenue be tallied on a "scorecard" by the Office of Management and Budget (OMB). If the scorecard shows that the sum of the changes has increased the deficit at the end of the year, the OMB imposes a commensurate spending cut through the process of sequestration. There also are separate PAYGO rules in the House and Senate that use budget points of order to make it more difficult to pass legislation that increases deficits. Instead of living within the PAYGO statute and rules, however, Congress often exempts legislation from the OMB scorecard and waives the budget points of orders, rendering PAYGO almost useless.[14]

The debt limit, a mechanism designed to make Congress confront the impact of its spending decisions, is another budget provision that is routinely waived. Since 2013, Congress has abandoned adopting a numerical debt limit and instead has suspended the debt limit five times. A suspension means that the U.S. Department of the Treasury may borrow without limit to pay out federal obligations for the period of the suspension.[15] *Congress should impose a real debt limit and adopt spending reforms that fundamentally alter the debt trajectory before raising the debt limit again.* The nation's deteriorating fiscal future is too important to the well-being and financial security of Americans to be ignored by lawmakers.

Congress should act now to ensure that strong fiscal restraints are in place before the Budget Control Act expires. One approach would be to expand on the Budget Control Act by addressing its major flaw: failure to target mandatory spending sufficiently. Programs such as Social Security, Medicaid, the Children's Health Insurance Programs, Temporary Assistance for Needy Families, and the Supplemental Nutrition Assistance Program, among others, are exempt from sequestration. The BCA also limited cuts in Medicare to just 2 percent annually.

Social Security, Medicaid, and Medicare are driving the largest portion of the federal government's long-term spending growth. Limiting cuts in Medicare and exempting Social Security and Medicaid altogether made certain that the Budget Control Act would fail to change the long-term course of federal spending.

Instead of having a BCA-type spending cap with limited scope and weak enforcement mechanisms that fail to control deficit spending and debt accrual, Congress should establish a cap on all non-interest spending, with enforcement through sequestration. One promising approach would cap all federal non-interest spending based on the average annual revenue collected in the previous three years, with adjustments for inflation and population. It would then be up to Congress to determine how to achieve the savings determined by the outlay cap. Notably, both Switzerland and Sweden have succeeded in lowering debt-to-GDP ratios by implementing spending caps.[16]

Such a spending cap should encourage lawmakers to prioritize funding among competing programs and confront the growing unsustainability of federal entitlement programs, especially major health care spending growth in excess of GDP growth. Reforming Social Security, Medicare, and Medicaid is the key to controlling the growth of the national debt and reducing the overall size and scope of the federal government.

Establishing a cap on all non-interest federal spending will take a strong commitment to fiscal responsibility from both Congress and the President. Such a bipartisan commitment is needed to put the budget on a path to sustainability and fiscal health.

Over the long term, it is unlikely that any statutory spending cap will be enough. As the BCA has shown, statutes are only as good as lawmakers' willingness to follow them. To lock in a commitment to protecting younger and future generations from undue debt burdens, Congress should adopt a business-cycle balanced budget amendment. Only a constitutional constraint will curb Congress's proclivity to spend on the backs of those that are underrepresented in the political process. *Every generation should aim to pave the way for a more prosperous future for the next generation to enjoy. At the very least, we must not make the next generation worse off than we are.*

Congress should also take other incremental steps to decrease spending and improve transparency, accuracy, and accountability within the existing budget process.

RECOMMENDATIONS FOR ACTION

Eliminate the use of CHIMPs in appropriations budgeting. Changes in mandatory programs (CHIMPs) are the largest and most frequently used gimmick in the appropriations process. Essentially, a CHIMP is a rescission of mandatory funding that is then used to pay for unrelated discretionary spending. A CHIMP typically occurs when an agency has been granted spending authority but, because the program has few recipients, the money is not spent. The problem is that the vast majority of CHIMPs are rescissions of funds that were never going to be spent in the first place. Thus, the "savings" exist only on paper and do not actually cover the costs of the programs to which they are being shifted.[17]

The FY 2018 Omnibus Appropriations Act included $17.5 billion in CHIMPs, $17 billion of which produced no actual savings.[18] CHIMPs undermine fiscal accountability and transparency. Ending the use of these false savings would go a long way toward improving accountability in the appropriations process.

Stop appropriations for unauthorized programs. By statute, before any agency receives an appropriation, that appropriation must be authorized by Congress. Authorizations lay out how much money can be provided to an agency or programs and how that money is to be spent.[19] However, the budget rules against unauthorized appropriations are weak and ignored by Congress. In 2018, Congress provided over $318 billion to programs with expired authorizations or that had never been authorized at all.[20]

Authorizations are a key component of the budget process. They provide Congress with an opportunity to review and evaluate programs and determine whether they should continue to be a priority.[21]

Congress should act immediately to end unauthorized appropriations. One approach could be to withhold all appropriations for unauthorized activities. Once Congress reauthorizes a program, then the program could be given 90 percent of its original appropriations. This not only would incentivize Congress to authorize agencies and programs, but also could generate budget savings when Congress fails to do so.

An alternative to this approach would be to put unauthorized appropriations on a three-year path to sunset, as proposed in the Unauthorized Spending Accountability Act of 2017, introduced in the 115th Congress by Representative Cathy McMorris Rogers (R–WA).[22] Under this plan, unauthorized programs would be reduced by 10 percent the first year, reduced by 15 percent the second year, and sunset in the third year if Congress failed to reauthorize them. The bill would also establish a full authorization schedule for discretionary programs and review mandatory programs in an effort to find potential cost savings.

Include interest costs in legislative cost estimates. Congress should require the CBO to include interest costs in all legislative cost estimates. Current scorekeeping rules fail to account for the interest costs that would be incurred from legislation that increases the deficit. This distorts decision-making in favor of greater spending and debt accumulation and encourages the use of timing-shift budget gimmicks. It allows legislators, for example, to authorize more spending immediately while delaying any offsetting savings without accounting for the interest costs incurred from the immediate deficit spending.[23]

The FY 2019 House budget resolution included a provision allowing the chairman of the Committee on the Budget to request interest costs estimates from the CBO for non-appropriations legislation.[24] Congress should go a step further and require interest cost estimates on all legislation scored by the CBO.

Remove bias toward higher discretionary spending from the baseline. Under current scorekeeping practices, the CBO baseline used to score discretionary spending proposals assumes that spending will increase at the rate of inflation each year.[25] This creates two problems.

First, it creates a bias toward higher spending levels. The CBO assumes that spending will increase based arbitrarily on inflation, not on actual agency needs or proposals.[26]

Second, it allows Congress to claim spending cuts relative to the baseline when spending is actually increasing when compared to non-inflation–adjusted levels.[27] In other words, Congress may still be increasing spending, just not at the same pace as inflation would otherwise have increased it.

Congress should reverse the bias toward higher spending and direct the CBO to remove the assumption that discretionary spending will increase with inflation from its baseline. As the country enters what is projected to be an extended period of trillion-dollar-plus deficits, spending increases should not be assumed. Federal agencies should have to justify any additional funding requests, and Congress should ensure that any increased resources are directed to necessary constitutional priorities. Removing inflation from the discretionary baseline would also eliminate one accounting gimmick from the budget process and make the process more forthright and transparent.

The Baseline Reform Act of 2015, introduced by Representative Rob Woodall (R–GA) during the 114th Congress, would have implemented changes aimed at eliminating the baseline's higher spending bias.[28]

Establish incentives for Congress to follow the budget process. Some lawmakers conclude that Congress's budget dysfunction is due to the process's being irrevocably broken. In reality, the Congressional Budget and Impoundment Control Act of 1974 lays out a step-by-step process, with timelines, to complete the budget and appropriations process before October 1 of each year. The problem with the current budget process is that Congress ignores it, and the rules to enforce the process are weak and all but ignored.[29]

Instead of simply ignoring the budget process, Congress should enact reforms to ensure that the current process is followed. One incentive to get lawmakers to engage in budgeting could be to establish a "no budget, no pay" law. Under the No Budget, No Pay Act introduced by Senator Mike Braun (R–IN) in January 2019, for example, if Congress failed to enact a concurrent budget resolution by October 1, Members would not be paid until a budget is adopted.[30] Similarly, the No Budget, No Recess Act introduced by Senator Joni Ernst (R–IA) would require Congress to stay in session if milestones such as the adoption of a concurrent budget resolution and passage of all regular appropriations bills are not met by specified dates.[31]

These proposals by themselves may not be enough to change the broader budget challenges facing the country, but they could help to enforce the budget process.

Provide fair-value estimates. Congress should incorporate market risk in subsidy cost estimates for federal credit and loan guarantee programs. In accordance with the Federal Credit Reform Act of 1990,[32] only 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, are accounted for in the budget baseline and for scorekeeping purposes.

Currently, the government assumes that federal credit and loan guarantee programs are just as safe and reliable as U.S. Treasury bonds. This underestimates the real market risk associated with certain government loan programs and consequently underestimates the liabilities with which the U.S. taxpayer is burdened.[33] Taxpayers should not be on the hook for private borrowing, but as long as they are, the federal government should at least recognize such borrowing with cost estimates that correspond to the value of those loans or guarantees to buyers in the private market so that legislators can make informed cost-benefit decisions.

Define tax expenditures against a consumption baseline. The current baseline for measuring tax expenditures rests on an inconsistent definition of income, and this renders tax expenditure analysis both subjective and unreliable. The calculation of tax expenditures is misleading because it attempts to describe two separate phenomena: Some tax expenditures work to decrease harmful economic distortions by limiting some forms of double taxation that are built into the income tax system, and 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 Joint Committee on Taxation (JCT) and Office of Management and Budget can also begin to report 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. The President's FY 2020 budget includes a second list of tax expenditures using a consumption baseline. The JCT should report a similar list.

Codify and enforce a definition for emergency spending. Emergency spending has been on a steep rise since enactment of the Budget Control Act as Congress has taken to abusing this designation as a loophole to fund non-emergency programs. Congress and the President have too much latitude in deciding what qualifies as an emergency today. Lack of a clear definition has helped to fuel the growth of emergency spending and has provided an all-too-easy way for lawmakers to evade spending restraints.

To enhance accountability and transparency in emergency spending, Congress should clearly 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, the law should be enforced through a point of order that requires a two-thirds majority vote to waive.

Budget for recurring disaster assistance. The Budget Control Act of 2011 provided that adjustments to the law's spending caps could be made for such purposes as emergencies, war funding, and disaster assistance. Since 2014, $34 billion in cap adjustments has been provided for disaster relief, an average of nearly $7 billion per year.[34]

Money designated for disaster relief is used to fund the disaster response efforts of the Federal Emergency Management Agency (FEMA). Funds deposited in FEMA's Disaster Relief Fund are to be used for "normal," non-catastrophic disasters that cost no more than $500 million per occurrence. In FY

2018, the Disaster Relief Fund received a base appropriation of $535 million.[35]

FEMA's base disaster response budget is perpetually underfunded. While natural disasters are unpredictable, it is almost certain that there will be storms, flooding, wildfires, and similar occurrences in America every year. This is proven by the fact that FEMA consistently receives an average of $7 billion in additional disaster relief funding each year. Instead of providing funding outside the budget caps, Congress should ensure that FEMA's Disaster Relief Fund is appropriately funded within its base budget. This would keep disaster declarations from being used as a means to evade the budget caps.

Stop indefinite emergency appropriations. Currently, disaster and emergency funds are appropriated as "no-year" money. This means that the money is "available for obligation for an indefinite period."[36] The point of emergency spending should be to provide immediate and direct response to save lives and help communities begin the recovery process. Allowing money to be spent over an indefinite period of time undermines that goal.

Of the $50 billion in emergency appropriations approved by Congress after Hurricane Sandy, only $17 billion was allocated to "meet immediate and critical needs."[37] The remaining $33 billion was for long-term recovery and infrastructure improvements to help prevent damage caused by future disasters.[38] While mitigation efforts are important, they do not meet the five criteria laid out by OMB's 1991 guidance to qualify as emergency spending[39] and should be paid for within base agency budgets.

An emergency is defined as an event that requires immediate action. More than six years after the storm, there is still emergency funding that has not been spent. Congress should adopt time limits and more specific limitations for how the funds can be used. If money is left unspent, it should automatically be rescinded by the OMB and returned to the Treasury. This would help to ensure that the funds are being used for true emergencies.

CONGRESS SHOULD RECOMMIT TO FISCAL RESTRAINT

Congressional neglect has led to a continuing cycle of funding by crisis and the passage of fiscally reckless policies. The looming end of the Budget Control Act caps could usher in more unchecked spending. The national debt exceeds $22 trillion and is projected to grow significantly over the next 10 years. Automatic and new spending on entitlement programs threatens to overwhelm the federal budget and the U.S. economy.

America needs a fundamental reform of the budget process that puts spending and debt levels on a sustainable path for the long term. Congress must adopt effective fiscal restraints to protect and unleash opportunity and prosperity for current and future generations, and Members must exercise their power of the purse responsibly. This means:

- **Adopting** an overall spending cap on all non-interest spending, enforced by sequestration;
- **Pursuing adoption** of a smart balanced budget amendment in line with the business cycle;
- **Eliminating** CHIMPs and other budget gimmicks;
- **Ending** unauthorized appropriations;
- **Including** interest costs in legislative cost estimates;
- **Removing** the assumption of discretionary spending inflation from the CBO scoring baseline;
- **Providing** incentives for Congress to follow the budget process;
- **Adopting** better accounting for federal credit programs;
- **Defining** tax expenditures using a consumption baseline; and
- **Reforming** disaster-related and emergency-related spending.

ENDNOTES

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