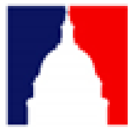

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PRESIDENT

Budget Process in a Nutshell

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The President's Budget

The President's Budget is ordinarily transmitted to Congress each year on the first Monday of February. Preparation of the President's Budget typically begins nine months prior to transmittal. For example, formulation of the President's FY 2020 Budget (which will be transmitted to Congress in February 2019) began in the spring of 2018 when the President's Office of Management and Budget (OMB) issued guidance to the various departments and agencies to develop budget proposals based on the President's priorities and goals.

After several months of examining program needs and priorities, each department and agency submits to OMB its initial budget request in early fall. OMB then conducts a review of agency budget requests and combines them—with OMB modifications—into a complete set of budget proposals.

Following an opportunity for agencies to review the OMB draft budget (called "passback") and to appeal issues of concern to the OMB Director and the President, OMB makes final adjustments to the budget and transmits the multi-volume documents to Congress on the first Monday of February (or later, in the case of new Administrations). Elements of the upcoming President's Budget are often incorporated into the State of the Union address just prior to budget transmittal.

Discretionary v. Mandatory Spending

The Budget divides all spending into two broad categories. About 31% of federal spending is called "**discretionary spending**," because the amount of spending flows from annual funding decisions by Congress' Appropriations Committees. The other 69% of the budget is called "**mandatory spending**," because the amount of outlays flow from legal obligations of the federal government established in law.

Most mandatory spending is comprised of **“entitlement” programs** – such as Social Security (retirement, survivors, and disability insurance), Medicare, and Medicaid – where eligibility formulas determine outlays.

Other types of mandatory spending include interest payments on the public debt, and programs where authorizing statutes mandate that the federal government “shall” make specified payments.

Congressional Budget Resolution

Following the State of the Union and transmittal of the President's Budget, Congress begins its own budget process, including adoption of a spending and revenue framework called a “Budget Resolution,” Appropriations Bills to fund discretionary spending programs, and optional Budget Reconciliation legislation to modify mandatory spending and tax laws.

The Senate and House Budget Committees hold public hearings in February at which they receive testimony on the President's Budget proposals from Administration officials, outside experts, advocacy groups, trade associations, and other interest groups, Members of Congress, and the public. At the same time, the other committees of Congress review the President's Budget proposals and transmit to the Budget Committees their own "views and estimates" on appropriate spending or revenue levels for programs within their respective jurisdictions.

The Senate and House Budget Committees – using the President's Budget request, information from their own hearings, views and estimates from other committees of Congress, and projections from the Congressional Budget Office – draft their respective versions of a “Congressional Budget Resolution” in a series of working meetings known as committee "mark-ups."

It is important to understand that the Budget Resolution does ***not*** become a law and therefore is not presented to the President for signature. Rather, it is a **congressional blueprint** to guide subsequent action on specific spending and revenue measures. The Budget Resolution:
(1) sets **total** federal spending and revenue levels; (2) **allocates** spending to each committee, including a lump-sum to the Appropriations Committees for all “discretionary” spending;
(3) establishes **procedures** to enforce the budget blueprint; and (4) may include ***optional*** special provisions called **“budget reconciliation instructions”** aimed at expediting changes to mandatory spending programs or tax laws through a filibuster-proof Budget Reconciliation Bill.

Budget Reconciliation Instructions to Change Entitlement Programs and Tax Law

Reconciliation instructions direct specified House and Senate authorizing committees to report, by a specified deadline, legislative provisions that achieve changes in mandatory spending levels or revenue levels for programs within the authorizing committee’s jurisdiction. While specific mandatory spending or tax changes are “assumed” by the Budget Committee when the dollar targets are drafted, the authorizing committees need not – and often do not – follow the Budget Committee assumptions.

For example, the Budget Resolution could direct the Senate Finance and House Ways & Means Committees to report legislative provisions that make changes in programs within their jurisdiction that change spending and/or revenue levels by $____ billion or achieve $____ in deficit reduction over a specified period of time (usually 10 years). The Budget Committees, when drafting the Budget Resolution, base the dollar amounts on specific mandatory spending and tax reforms, but the Finance and Ways & Means Committees can decide to achieve their spending, revenue, or deficit targets through entirely different reforms – and in some cases, can substitute revenue changes for spending changes, or vice versa, if the total deficit impact is achieved.

Adopting the Budget Resolution

When the House and Senate Budget Committees complete committee action on their respective Budget Resolutions – with or without reconciliation instructions – they report the resolutions to the full House and full Senate, respectively. Members of the House and Senate then have an opportunity to alter the work of their respective Budget Committees by offering amendments to the Budget Resolution during debate on the House and Senate Floors.

Senate debate often includes a long series of votes on **non-binding** policy statements – commonly called the "vote-a-rama." Unfortunately, the dominance of non-binding "sense-of-the-Senate" statements in the vote-a-rama often obscures the importance of amendments that have serious impact – for example, changing the caps on spending, changing the revenue floor, or altering reconciliation instructions.

When the Senate and House have both passed their respective versions of the Budget Resolution, they appoint several of their Members to a House-Senate conference committee to resolve differences between the House- and Senate-passed resolutions. When differences have been resolved, each chamber must then vote on the compromise version of the Budget Resolution called a "Conference Report."

Budget Resolutions are not always completed. Congress failed to complete action on a Budget Resolution in nine fiscal years since the Budget Act was adopted in 1974, including fiscal years 2011 through 2015, and 2019.

Discretionary Appropriations

Following adoption of a Budget Resolution Conference Report, the Budget Committees "allocate" total spending among the various committees of the House and Senate based on jurisdiction, with all discretionary spending allocated in one lump sum to the House and Senate Appropriations Committees, respectively. (These are called "302(a) allocations," based on the relevant section of the Congressional Budget Act.)

Because the Budget Resolution determines the total amount of budget authority available to the Appropriations Committees, the Budget Act prohibits Congress from considering Appropriations Bills prior to adoption of the Budget Resolution. (However, recognizing that the House and Senate

may not always come to agreement on a Budget Resolution, the House is permitted to begin consideration of appropriations bills on May 15th even if a Budget Resolution has not been adopted.)

Once the House and Senate Appropriations Committees have received their total spending allocations, they subdivide their allocations among their 12 subcommittees, respectively. The allocations of discretionary spending (more than $1.2 trillion) among the 12 Appropriations subcommittees are called "**302(b) allocations**" and are a **key decision point** in the budget process. The 302(b) allocations determine how much spending is allocated to defense vs. health research vs. food safety vs. law enforcement, etc.

Following 302(b) allocations, the 12 appropriations subcommittees "mark-up" lengthy and detailed appropriations bills for the upcoming fiscal year. The bills then go to the full Appropriations Committees for consideration. Following full committee action, appropriations bills travel to the House and Senate Floors, respectively, for consideration by the full chamber, typically during the summer.

After Floor action, the appropriations bills then go to a House-Senate Conference Committee, generally composed of senior members of the relevant appropriations subcommittees. The task of the conferees is to resolve all differences between the House and Senate versions of the bill, producing a conference report. The major constraints under which the conferees operate is to produce conference reports consistent with the 302(b) subcommittee allocations and produce an agreement that can receive the support of at least 60 Senators (to avoid a filibuster). For additional information on appropriations, see Appropriations.com.

Budget Reconciliation: Floor Consideration and the Byrd Rule

If the Budget Resolution includes "reconciliation instructions" to change mandatory spending or revenue levels, the authorizing committees named in the instructions are required to develop reconciliation legislation at the same time the Appropriations Committees are assembling their appropriations bills.

Reconciliation mark-ups can be lengthy and challenging depending on the authorizing committees' instructions; and because reconciliation bills are difficult to amend on the Floor, reconciliation committee mark-ups are especially significant.

After the authorizing committees mark-up their respective reconciliation legislation, the various titles are reported to the Budget Committees where they are packaged into a single Reconciliation Bill for House and Senate Floor consideration. Congress considers Budget Reconciliation Bills under special procedural protections, particularly in the Senate.

To explain the significance of Budget Reconciliation procedures, it is first important to understand how the Senate typically operates. The Standing Rules of the Senate, many of which have been in place since the founding of the Republic, generally protect the right of all Senators to engage in (1) unlimited debate and (2) the unlimited right to offer amendments.

Votes do not occur in the Senate until all debate on a matter is completed and all amendments have been offered. Consequently, opponents of a particular measure can block it by engaging in extended debate or continuing to offer amendments. The "filibuster" is simply the continuation of debate and amendments to prevent a vote.

The only way to stop a filibuster in the Senate is by limiting debate and amendments with a procedure known as "cloture," which requires 60 votes. In recent years, filibusters have been threatened more and more frequently, leading to the presumption that major legislation requires the support of 60, not 51 Senators.

The Budget Reconciliation process effectively short-circuits Senate rules because the Budget Act protects Reconciliation bills with (1) a strict (20-hour) time limit on debate and (2) a germaneness restriction on amendments. The limit on debate means that Reconciliation bills cannot be filibustered. (These same significant protections apply to Congressional Budget Resolutions, which likewise cannot be filibustered.)

Consequently, no matter how controversial a Reconciliation bill may be, passage in the Senate requires 51 votes (or 50 when the Vice President votes to break a tie), rather than the 60 votes ordinarily required to invoke cloture and end debate on a controversial measure.

The "germaneness" restriction on amendments to Reconciliation bills is equally significant (though often overlooked). "Germaneness" is much stricter than mere relevance. An amendment is "germane" only if it strikes a provision, changes a number, limits some new authority provided in the legislation, or expresses the "sense of the Senate." Effectively, this means that **most substantive amendments offered to a Reconciliation bill on the Senate Floor are likely to be nongermane** and can only be considered if the restriction is waived by a vote of 60 Senators. This elevates the importance of the committee mark-ups in the Reconciliation process.

Because Budget Reconciliation is a radical departure from the way the Senate normally does its business, Senator Robert C. Byrd (D-WV) created in 1985 what has become known as the "Byrd Rule," which limits what can be included in a Reconciliation bill. Under the Byrd Rule, all legislation reported in response to Reconciliation instructions must be **"budgetary"** in nature. Anything not budgetary in nature is considered "**extraneous**" and in violation of the Byrd Rule, and can be **stricken from the bill**.

In addition, the Byrd Rule bars reconciliation provisions that would increase deficits beyond the 10-year "budget window." This is **particularly significant for tax cuts**, which violate the Byrd Rule unless they are fully paid for or expire at the end of 10 years. For a detailed explanation of the Byrd Rule, see: https://govbudget.com/reconciliation-germaneness-and-the-byrd-rule/.

The New Fiscal Year and Continuing Resolutions

Congress' annual objective is to complete action on all 12 appropriations bills, as well as Budget Reconciliation legislation by October 1, when the new fiscal year begins. However, due to escalating

disagreements and partisanship on fiscal policy, it is rare for Congress to complete action on all 12 bills by October 1. The last time was 1996.

Instead, Congress often passes stop-gap measures, called "continuing resolutions," to keep agencies operating at a particular level of funding (often the previous year's funding level, with some adjustments, or the lower of House- or Senate-passed bills) while they endeavor to complete appropriations action.

Sometimes, multiple CRs are adopted before final agreement on appropriations is reached. And occasionally, political gridlock prevents adoption of a CR and the federal government shuts down. Lengthy government shutdowns occurred in 1995 and 2013. For more information, see: appropriations.com/government-shutdown.

Unlike appropriations, failure to complete Budget Reconciliation by October 1, does not have any particular consequence. A delay, due to continuing negotiations, simply means that reforms to taxes or mandatory spending have a later effective date, which does not typically interfere with government operations.

Budget Enforcement: Points of Order, PAYGO, and Sequestration

Senators and Representatives can raise parliamentary objections on the Senate or House Floors to block consideration of legislation that would cause a breach of the total spending levels or revenue floor, or a breach of the subcommittee spending allocations established under that year's Budget Resolution. These parliamentary "points of order" are used most often to ensure that the 12 annual appropriations bills (containing the 31% of the budget that is "discretionary spending") remain within their subcommittee allocations.

(In years when the House and Senate have not reached agreement on a Budget Resolution, the House and Senate have sometimes adopted "deeming resolutions" to serve in place of an annual budget resolution for the purposes of establishing enforceable budget levels for the upcoming fiscal year.)

A different type of enforcement tool was established for mandatory spending legislation and tax legislation and is currently set forth in the **Statutory Pay-As-You-Go Act of 2010** (usually known by the abbreviation "PAYGO"). The 2010 Act is the most recent incarnation of a PAYGO law, first adopted in 1990, aimed at enforcing a rule of **budget neutrality** for **new** mandatory spending and revenue legislation.

The objective of PAYGO is to prevent **new** mandatory spending and revenue legislation from **increasing** deficits. This is accomplished by effectively requiring that new legislation contain budget offsets to "pay for" new tax cuts or new mandatory spending increases. Budgetary offsets can be provisions that increase revenues or cut mandatory spending, or a combination of the two.

Under the PAYGO statute, the Office of Management and Budget maintains two *cumulative* "scorecards" of budgetary effects from newly-enacted mandatory spending and revenue legislation.

OMB records on the scorecards the estimated effects of new legislation over the first 5 years following enactment of the new legislation, as well as 10 years from enactment.

After a congressional session ends, OMB finalizes the cumulative effect of revenue and mandatory spending legislation on the 5-year and 10-year scorecards; and determines whether a net deficit increase is estimated on either scorecard for the current budget year. If the cumulative effect of legislation is estimated to cause a net deficit in the current budget year, the President is required to issue a "sequestration order" that implements automatic across-the-board cuts in mandatory spending programs sufficient to fully offset the estimated deficit increase in the current budget year.

Note that even if a deficit increase is caused by tax cuts, the remedy is automatic mandatory spending cuts; there are no automatic tax increases. For an example of how a sequestration order operates, see OMB: The Statutory Pay-As-You-Go Act of 2010 – A Description.

There are **exceptions** to the PAYGO statute. **First,** legislation designated as **emergencies** are always exempt from PAYGO; they are not placed on either scorecard and cannot trigger a sequester**.**

Second, Congress can exempt any bill from PAYGO by simply including a provision stating that "the budgetary effects of this section (or bill) shall not be entered on the PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010."

Finally, the automatic sequestration mechanism, itself, has exemptions. When an "across-the-board" sequester of mandatory spending programs is required, it is not really "across-the-board." Automatic cuts in the Medicare program are **limited to 4%** and many other mandatory spending programs are **entirely exempted** from sequestration including: Social Security, federal retirement, interest payments, most unemployment benefits, veterans' programs, and low-income programs including Medicaid, food stamps (now called SNAP), children's health insurance (CHIP), refundable income tax credits, Temporary Assistance for Needy Families (TANF), and Supplemental Security Income (SSI).

Because Medicare cuts are limited, and other programs are fully exempted from sequestration, a sequester order can hit the remaining non-exempt mandatory spending programs with severity to wipe out the cumulative PAYGO deficit in the budget year. The affected mandatory spending programs subject to across-the-board sequestration cuts include farm price supports, vocational rehabilitation basic state grants, mineral leasing payments to States, the Social Services block grant, and many smaller programs.

In addition to the statutory PAYGO mechanism, the Senate has its own **PAYGO rule** which allows parliamentary objections to block consideration of bills or amendments that would cause deficit increases in the upcoming budget year, over a 6-year period, or over an 11-year period. The rule was first established by a Budget Resolution in 1993 and has been modified and extended by subsequent resolutions. Waiver of the Senate's PAYGO rule requires **60 votes** and, like the statute, sections of bills or entire bills can be excluded from the Senate's PAYGO scorecard by including an exemption provision.

BCA of 2011, Spending Caps, and Bipartisan Budget Acts of 2013, 2015, and 2018

The **Budget Control Act of 2011 ("BCA") --** negotiated during a lengthy political impasse over raising the debt ceiling – added a new layer of measures in the budget process aimed at reducing projected deficits. Tight **statutory spending caps** were imposed on total defense *and* non-defense discretionary spending for **each year through FY 2021** to reduce deficits by more than $900 billion over 9 years (including interest reductions). The caps are enforced by automatic across-the-board budget cuts ("sequestration") in appropriations bills if the caps are breached in any year.

In addition, the BCA established a congressional "Super Committee" to achieve another $1.2 trillion in long-term deficit reduction through *mandatory spending and tax reforms*. However, because the Super Committee failed to agree on a long-term entitlement and tax reform package in the allotted time, additional budget cuts of $1.2 trillion over nine years went into effect in the form of further reductions in the annual discretionary spending caps for *each year through FY 2021* (known as the "sequester cuts").

Subsequently, however, the automatic spending cuts for FY 2013 were delayed for two months and modestly reduced by the January 1, 2013 "Fiscal Cliff Agreement," which also extended most of the expiring Bush tax cuts. (The anticipated expiration of the Bush tax cuts along with the January 2013 sequester had been dubbed a "fiscal cliff" that could cause another recession and generated a great deal of economic angst – eventually leading to the Fiscal Cliff Agreement.) Under the Fiscal Cliff Agreement, the modestly reduced FY13 spending cuts went into effect in the sequester of March 2013.

The $1.2 trillion in additional discretionary spending cuts over nine years -- triggered by the Super Committee's failure – have been criticized because nearly the entire burden of this additional deficit reduction (more than 80%) was placed on discretionary spending – which is less than one-third of the budget.

The additional layer of cuts resulted in even tighter defense *and* nondefense discretionary caps for each year through 2021 – with levels that, in the view of many policymakers, did not adequately accommodate national security needs, annual inflation, a growing and aging population, necessary infrastructure growth and repairs, or rapidly growing veterans' healthcare costs (which are funded by discretionary appropriations).

Consequently, in late 2013, after political gridlock had led to a government shutdown in October, Congress and the White House agreed in the "Bipartisan Budget Act of 2013" to a two-year deal to increase the spending caps for FY 2014 and FY 2015.

Two years later, in the fall of 2015, Congress and the Administration faced a nearly identical budget stand-off and again came to a similar agreement to increase the spending caps for FY 2016 and FY 2017 in the "Bipartisan Budget Act of 2015" (HR 1314, Public Law 114-74). The 2015 budget agreement increased total discretionary spending by $80 billion over the two-year period, plus an additional $32 billion in war funding. The budget law also avoided a debt crisis by suspending the federal debt ceiling through March 15, 2017.

In early 2018, Congress passed the "Bipartisan Budget Act of 2018" that raised the statutory caps on discretionary spending by a total of $296 billion over FY 2018 and FY 2019 -- increasing defense by 15% in each year and increasing non-defense spending by 12% in FY 2018 and 13% in FY 2019. The Act also suspended the debt ceiling through March 1, 2019.

It is likely that Congress and the Administration will negotiate another Bipartisan Budget Act for Fiscal Years 2020 and 2021 -- the last two years of the BCA's spending caps.

Deficits, Public Debt, and the Debt Ceiling

The nation's public debt – which is the *accumulated* debt of the nation – increases when Congress enacts total spending for a fiscal year that exceeds total revenues; in other words, when the nation runs an *annual deficit*. When Congress passes spending and tax laws that result in an annual deficit, the U.S. Treasury must borrow sufficient funds to cover the deficit, and the accumulated public debt increases.

Total public debt also increases when the Social Security Trust Funds, and other government trust funds, invest cash surpluses in Treasury securities for safekeeping, as required by law.

The **statutory limit on the public debt**, often called the "debt ceiling," is an artificial legal limit on the Treasury's ability to borrow the funds necessary to finance **already incurred obligations** of the United States. If Congress passes spending measures that exceed incoming revenues, but prevents the Treasury from borrowing funds to cover the deficit, the nation would **default** on its legal obligations to lenders, Social Security beneficiaries, veterans, Medicare providers and any others to whom payments are legally owed. See: https://govbudget.com/debt-ceiling/.

A U.S. default has never occurred and would have **catastrophic effects** on: (1) the ability of the U.S. Treasury to issue bonds in the future; as well as (2) the stability of global financial markets.

Important Note: The debt ceiling roughly approximates *total public debt* – which includes:

- **Debt Held by the Public** (money borrowed by selling Treasury securities to various buyers including foreign investors, mutual funds, state and local governments, commercial banks, insurance companies and individuals); **plus**
- **Debt Held by Federal Government Accounts**, such as the Social Security Trust Funds and various federal retirement trust funds.

While a lot of political attention is paid to the debt ceiling due to its symbolism, most experts view Debt Held by the Public as more significant than Total Public Debt, because Debt Held by the Public reflects the total amount the Federal Government is borrowing from private credit markets – with all the implications that has for available credit. As of November 2018, debt held by the public was $15.9 trillion, while total public debt was $21.8 trillion. See https://govbudget.com/economy-real-time-numbers/ for up-to-the-minute data on federal debt, foreign holders of U.S. debt, and other real-time economic data.

Presidential Impoundment

One impetus for development of the congressional budget process was an executive-legislative power struggle that erupted during the Nixon Administration over presidential authority to *impound* funds appropriated by Congress. In response to President Nixon's attempt to withhold congressionally appropriated funds, Title X of the Congressional Budget and Impoundment Control Act of 1974 as amended established legal procedures to prevent a recurrence of this dispute and is separately referred to as the "Impoundment Control Act" (ICA).

Under the procedures put in place by the Impoundment Control Act, the President may (1) "defer" (delay) using an amount of appropriated budget authority until later in a fiscal year or (2) propose to "rescind" (cancel) an amount of budget authority.

The authority of the President to defer budget authority and propose rescissions of budget authority does not apply to the more than two-thirds of the budget that consists of mandatory spending and interest payments. The portion of the budget that is susceptible to rescissions or deferrals is the nearly one-third portion of the budget that is "discretionary" and subject to annual funding decisions.

Deferrals. The purpose of the deferral mechanism is to permit the Executive Branch to set money aside until later in the year to provide for a contingency, or to save money due to changes in operations. The President may not propose a deferral simply because he disagrees with Congress' appropriations decision. A further restriction is that funds may not be deferred for a period that is too long to allow the agency to obligate the funds prudently by the end of the fiscal year. A deferral proposed by the President takes effect unless Congress passes, and the President signs, a law disapproving the deferral in which case the funds must be released.

Rescissions. Conversely, a rescission (cancellation) of appropriations, proposed by the President, does not occur *unless* Congress affirmatively passes a law approving the cancellation within 45 days (of continuous session). Consequently, if either the House or Senate fails to enact the President's proposed rescission of budget authority in a timely manner, the President has no choice but to release the budget authority to the agency after expiration of the 45-day period. Rescission legislation in the Senate is subject to statutory debate limitations and therefore *cannot be filibustered*, requiring only a simple majority (51) for passage.

Congress has unfettered authority to initiate its own rescission legislation to revise earlier appropriations decisions and has increasingly made use of this authority.

Both the President and the Congress have used rescissions primarily as a mechanism to shift priorities, rather than to reduce overall spending. In drafting the 1974 Impoundment Control Act, Congress put teeth in its limitations on presidential impoundment by empowering the Comptroller General (who heads the Congress' investigative arm, the GAO) to file suit in Federal Court to require the release of appropriated funds that have been illegally deferred or rescinded. See https://govbudget.com/rescissions/.