

FEDERAL BUDGET PROCESS AND PROCEDURE
A Primer on Appropriations, Budget Reconciliation, and Fiscal Law
Charles S. Konigsberg © 2022

Charles S. Konigsberg JD served as Assistant Director and Senate Liaison at the Office of Management and Budget for three successive White House Budget Directors; General Counsel at the U.S. Senate Finance Committee where he managed \$500 billion budget reconciliation legislation; Minority Chief Counsel at the U.S. Senate Rules & Administration Committee; Director of a blue ribbon bipartisan national budget task force; and Staff Attorney at the U.S. Senate Budget Committee, and is Author of “America’s Priorities: How the U.S. Government Raises and Spends \$3,000,000,000,000 (Trillion) Per Year” (2007, 431pp.). Mr. Konigsberg graduated magna cum laude and Phi Beta Kappa from Kenyon College and from the Case Western Reserve School of Law where he served as an executive editor of the Law Review. The views expressed herein are solely those of the author.

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Introduction

On February 20, 1788, in Federalist No. 58, James Madison explained the centrality and significance of Congress' power over the purse as he advocated for ratification of the Constitution of the United States:

*The House of Representatives cannot only refuse, but they alone can propose, the supplies requisite for the support of the government. They, in a word, hold the purse—that powerful instrument by which we behold in the history of the British constitution, an infant and humble representation of the people gradually enlarging the sphere of its activity and importance, and finally reducing...all the overgrown prerogatives of the other branches of the government. This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.*¹

The Founders embedded this “power of the purse” in Article I, Sections 8 and 9 of the Constitution: “The Congress shall have the Power to lay and collect Taxes... (and) (t)o borrow Money on the credit of the United States.... No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”²

Yet, it was not until 1974 that Congress enacted a law, and a body of procedures, to fully exercise its inherent constitutional prerogatives over the federal budget. Prior to that time, Congress had responded in a largely piecemeal manner to Executive Branch requests for appropriations and revenues. Similarly, Congress had largely deferred to Administration economists to address the macroeconomic effects of total federal spending and revenue-raising.

The situation changed dramatically in the early 1970's when President Nixon initiated unprecedented withholding—or “impoundments”—of congressionally appropriated funds, claiming his actions were necessitated by Congress' ineffectiveness in federal budgeting. In response to the Nixon impoundments, Congress undertook a broad review of Congress' constitutional responsibilities over federal spending, revenues, and fiscal policy.³ The resulting study, released in 1973, enumerated several areas requiring legislative reforms.⁴

First, the Joint Committee highlighted Congress' lack of independent analysis and review of total federal spending and revenues each year. Second, the Committee observed that over half of federal spending at the time—mostly entitlements—operated outside the annual appropriations process, thus making much of the federal budget “relatively uncontrollable.”⁵ Third, the Committee cited Congress' failure to complete annual appropriations prior to the beginning of the fiscal year. The

¹ *The Federalist Papers*, No. 58, James Madison under the pseudonym Publius, in the *Independent Journal*, Wednesday, February 20, 1788.

² U.S. Const., art. I, §8, cl. 1 and 2; and art. I, § 9, cl. 7.

³ Pub. L. No. 92-599, 86 Stat. 1324 (1972) established the “Joint Committee to Review Operation of Budget Ceiling and to Recommend Procedures for Improving Congressional Control Over Budgetary Outlay and Receipt Totals,” commonly known as the Joint Study Committee on Budget Control.

⁴ See Allen Schick, Cong. Rsch. Serv., *The Congressional 1974 Budget Act of 1974: Legislative History and Analysis*, 75-94 S, 13, <https://budgetcounsel.files.wordpress.com/2018/05/added-crs-the-congressional-budget-act-of-1974-p-1-93-344-legislative-history-and-analysis-order-code-75-94-s-february-26-1975.pdf>, “Virtually every component of the 1974 Act is traceable to a perceived shortcoming in the existing process. Thus: impoundment control derives from the large-scale withholding of funds by the Nixon Administration; the Budget Committees from the lack of a congressional mechanism to coordinate tax and spending policies; the Congressional Budget Office from the dependence of Congress on executive agencies for essential budget information; the budget resolutions from the lack of a procedure to determine budget totals and priorities.”

⁵ Now the amount of spending outside the annual appropriations process is about 70 percent.

Joint Committee concluded that Congress was unable to fulfill the "two main . . . purposes of the budget process: to manage the economy and to determine public priorities."⁶

These deficiencies, together with separation of powers concerns arising from the Nixon impoundments, led Congress to enact the Congressional Budget and Impoundment Control Act of 1974 ("1974 Budget Act").⁷ With this Act, Congress adopted a comprehensive new budget process designed to provide a system of impoundment control, establish congressional control over the budget process, and enable more effective deliberations on national budget priorities.

While the 1974 Budget Act established major new institutions and procedures, it was designed to be result-neutral. The Act established House and Senate Budget Committees⁸ empowered to write Concurrent Resolutions on the Budget ("Budget Resolution")⁹ for each fiscal year, and it established a Congressional Budget Office (CBO)¹⁰ of *nonpartisan* technical experts to estimate the budget impact of current laws and proposed legislation. However, none of the institutions and budgetary tools of the 1974 Budget Act were designed to promote a particular fiscal policy.

Unlike the result-neutral Budget Act, subsequent budget laws added new layers of procedures aimed at specific fiscal objectives—spending control and deficit reduction.

In 1985, the Balanced Budget and Emergency Deficit Control Act ("1985 Balanced Budget Act") sought to balance the federal budget by FY 1990 by imposing declining annual maximum deficit amounts and created "budget sequestration" as an enforcement mechanism—automatic across-the-board cuts in all nonexempt spending.¹¹

When the 1985 Act failed to achieve its objective of balancing the budget, in 1990 Congress shifted its deficit control strategy from declining deficit caps, to controlling the *growth* of spending and deficits.

The Budget Enforcement Act of 1990 ("1990 BEA") established annual statutory limits on discretionary spending ("spending caps"). Discretionary spending is the approximately 30% of spending flowing from annual appropriations bills.¹²

The other nearly two-thirds of spending known as "direct spending"—mostly entitlement programs—was subjected to a new Pay-As-You-Go ("PAYGO") requirement. The new PAYGO law effectively required that all legislation providing new direct spending or new revenue reductions must be fully paid for with offsetting spending cuts or revenue increases—the objective being to avoid net deficit increases during a fiscal year. Under the 1990 BEA, any breach of the discretionary

⁶ H.R. Rep. No. 658, 93d Cong., 1st Sess. 21, *reprinted in* 1974 U.S. Code Cong. & Ad. News 3462, 3466.

⁷ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (1974).

⁸ The Budget Committees were established by Title I of the 1974 Budget Act, Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 299.

⁹ The Concurrent Resolution on the Budget was established by section 301 of the 1974 Budget Act, Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 306.

¹⁰ The Congressional Budget Office was established by Title II of the 1974 Budget Act, Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 302.

¹¹ Sequestration is the across-the-board cancellation of nonexempt "budgetary resources"—the collective term for new budget authority and unspent balances of budget authority from prior years. Balanced Budget and Emergency Deficit Control Act of 1985 ("1985 Balanced Budget Act"), Pub. L. No. 99-177, 99 Stat. 1037 (1985).

¹² Budget Enforcement Act of 1990, Pub. L. No. 101-508, Title XIII, 104 Stat. at 1388-573 (1990).

spending caps, or the PAYGO requirement, were enforced using a repurposed sequester mechanism with automatic spending cuts.

With the emergence of budget surpluses in the late 1990s, spending caps and PAYGO were allowed to expire in 2002. By the end of the decade, however, concerns over budget deficits in the wake of the financial crisis and Great Recession¹³ led to enactment of a new, permanent PAYGO statute in 2010 (“Statutory PAYGO”),¹⁴ and sweeping new budget control legislation in 2011. Statutory PAYGO, while technically resurrecting the PAYGO constraints of the 1990 BEA, has had little practical impact, with Congress routinely enacting provisions to avoid PAYGO enforcement. However, the 2011 Budget Control Act¹⁵ (“2011 BCA”) had major implications for discretionary spending for 10 years and impact on direct spending that continue.

The 2011 BCA established new discretionary spending caps for each year through FY 2021, estimated to save nearly \$1 trillion over ten years. The 2011 BCA also established a Joint Select Committee on Deficit Reduction (“Joint Committee”) to negotiate another \$1.5 trillion in budget savings by December of 2011. As a fallback, the 2011 BCA provided that automatic spending reductions would be triggered if Congress did not enact at least \$1.2 trillion of additional savings by January 15, 2012 (“Joint Committee trigger”).

The 2012 deadline was not met and \$1.2 trillion in Joint Committee automatic spending cuts were triggered. The 2011 BCA allocated most of the automatic budget cuts to reductions in the spending caps—often called “sequester caps”—and the remainder of the cuts were applied to annual reductions in nonexempt entitlement and other direct spending programs (“mandatory sequester”).

Subsequent legislation—four Bipartisan Budget Acts¹⁶ (“BBAs”)—have partially or fully rolled back the automatic discretionary spending cap reductions that were to take effect in each year through FY 2021; and Congress has not moved to extend or replace the caps since their 2021 expiration.

Unlike the BCA’s retrenched sequester caps, the annual *mandatory sequester of \$16 - \$25 billion per year has been fully implemented each year*—and extended for an additional 10 years through FY 2031.¹⁷

Does the Budget Process Still Matter?

With the expiration of the 2011 BCA spending caps at the end of FY 2021, one may query whether the Congressional Budget Process still matters? The short answer is *yes*, but not necessarily in the manner the framers of the key budget statutes and congressional rules intended.

¹³ For background on the Great Recession, see Cong. Budget Off., *Blog: CBO Releases Report Examining the Reasons for the Slow Growth of the Economy Since the Recent Recession*, (November 14, 2012), <https://www.cbo.gov/publication/43708>.

¹⁴ Statutory PAYGO Act of 2010, Pub. L. No. 111-139, 124 Stat. 8, 2 U.S.C. §§ 932 et seq.

¹⁵ Budget Control Act of 2011, Pub. L. No. 112–25, 125 Stat. 240 (2011).

¹⁶ Bipartisan Budget Act of 2013, Pub. L. No. 113–67, 127 Stat. 1165 (“2013 BBA”); Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584 (“2015 BBA”); Bipartisan Budget Act of 2018, Pub. L. No. 115-123, 132 Stat. 64 (“2018 BBA”); Bipartisan Budget Act of 2019, Pub. L. No. 116-37, 133 Stat. 1049 (“2019 BBA”).

¹⁷ The 2011 BCA’s direct (mandatory) spending sequester was extended beyond FY 2021 as follows: The Bipartisan Budget Act (BBA) of 2013 extended the mandatory sequester through FY2023; a law modifying the cost-of-living adjustment (COLA) for certain military retirees extended it through FY 2024; BBA-2015 extended it through FY 2025; BBA-2018 extended it through FY 2027; BBA-19 extended it through FY 2029; the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116136) extended it through FY 2030; and the Infrastructure Investment and Jobs Act (P.L. 117-58) extended it through FY 2031.

This primer explains the key budget statutes of 1974, 1985, 1990, 2010, and 2011, as well as key budget rules in the House of Representatives and the Senate. The primer also examines the budgetary mechanisms and constraints that remain in effect post-BCA and explains current Budget Process and Procedure. This explanation includes executive budget preparation; the congressional budget process and budget reconciliation; appropriations law including continuing resolutions, omnibus bills, authorizations, the Antideficiency Act, apportionments, and government shutdowns; the expiration of BCA spending caps and post-2021 budget enforcement; the ongoing annual sequester of direct (mandatory) spending through FY 2031; statutory PAYGO and congressional points of order; the statutory limit on the public debt; presidential impoundment controls on rescissions, and deferrals; and foundational budget concepts set forth in law including baselines, budget authority & outlays, entitlement programs, baselines and scorekeeping, tax expenditures, and the unified budget.

There are four reasons why the ongoing operations of the federal budget process are of particular consequence.

First, the economic effects of Covid-19 have required unprecedented responses in the federal government's fiscal policy. Managing fiscal policy responses of this magnitude requires a budget process that can present fiscal policy options with clarity and enforce fiscal policy choices with effectiveness.

Second, in 2021, the nation embarked on a long-term federal investment in infrastructure¹⁸ to compete in a rapidly changing global economy, and is facing an even larger challenge of how to budget for major long-term investments to ameliorate and respond to the economic, security, and public health challenges of global climate change.

Third, the pillars of the nation's social safety net—the Social Security and Medicare Trust Funds and the Medicaid program—are facing growing solvency and sustainability issues.¹⁹ An effective budget process is essential for evaluating long-term policy options and implementing fiscal measures to achieve solvency and sustainability.

Finally, the Debt-held-by-the-public—money borrowed by selling Treasury securities in the capital markets to foreign investors, mutual funds, state and local governments, commercial banks, and individuals—is nearly 100% of Gross Domestic Product²⁰ and *annual net interest payments* on the debt will reach \$1 trillion per year by the end of this decade.²¹ The budget process is the means by which Congress and the President must assess and address the macroeconomic effects.

¹⁸ Infrastructure Investments and Jobs Act, Pub. L. No. 117-58, 135 Stat. 1341.

¹⁹ For the OASI and Medicare Trust Funds see Cong. Budget Off., *The Budget and Economic Outlook: 2022 to 2032*, Table 1-3 (2022), https://www.cbo.gov/publication/58147#_idTextAnchor254; and for Medicaid expenditures see Table 3-2 from the same report at https://www.cbo.gov/publication/58147#_idTextAnchor123.

²⁰ Cong. Budget Off., *The Budget and Economic Outlook: 2022 to 2032*, Table 1-3 (2022), https://www.cbo.gov/publication/58147#_idTextAnchor024.

²¹ Cong. Budget Off., *The Budget and Economic Outlook: 2022 to 2032*, Table 1-1 (2022), https://www.cbo.gov/publication/58147#_idTextAnchor008.

Foundational Concepts

The road to understanding federal budget process and procedure, begins with a brief explanation of several foundational concepts.

Major Categories of Federal Spending

The Budget divides nearly \$6 trillion in annual federal spending into three broad categories: discretionary spending, direct spending (mostly entitlement programs), and net interest.

Discretionary Spending

Nearly 30 percent of federal spending is called “discretionary spending,” because the amount of spending flows from *annual discretionary funding decisions* by the House and Senate Appropriations Committees. The respective Appropriations Committees write 12 annual appropriations bills that divide total discretionary spending among federal agencies and programs authorized to receive funding by multiyear authorization bills.²²

The 12 annual appropriations bills are negotiated under two subcategories—**defense** discretionary spending, about \$760 billion in FY 2022; and **non-defense** discretionary spending (NDD), about \$962 billion in FY 2022.²³ The annual defense appropriations bill funds the operations of the Department of Defense and various intelligence agencies.

The 11 non-defense discretionary bills fund a multitude of government operations and programs including law enforcement, disease and epidemic control, veterans’ healthcare, homeland security, education, prisons, NASA, highways & bridges, food and drug inspection, disaster relief, airports, health research, housing assistance, international affairs, and many other functions of government.

Direct (Mandatory) Spending and Entitlements

The largest block of federal spending—about two-thirds—is called “direct spending” because the outlays *flow directly from legal obligations* of the federal government established in authorizing legislation. Direct spending is also referred to as “**mandatory spending**” because it is mandated by legal obligations written into law.²⁴

Most direct spending is comprised of “**entitlement programs**”—where eligibility rules, benefit formulas and inflation adjustments, enacted in law, determine annual outlays. Entitlements and other direct spending programs are essentially on “auto-pilot” until underlying laws are changed. This has resulted in the rapid increase of direct spending as a share of the budget from about one-third in FY 1970 to nearly half in FY 1990, and about two-thirds at present.²⁵

²² Each chamber has *authorizing committees* that write multiyear authorizing bills governing agencies and programs, and authorizing appropriations to fund those agencies and programs.

²³ Estimated outlays for defense and non-defense discretionary spending for FY 2022. Cong. Budget Off., *The Budget and Economic Outlook: 2022 to 2032*, Table 3.1 (2022), <https://www.cbo.gov/publication/58147>.

²⁴ Mandatory spending is not defined in law, but is the same as “direct spending” which is defined at section 250(a)(8) of BBEDCA, and refers to budget authority provided in laws other than appropriation acts, and the outlays that result from such budget authority.

²⁵ For mandatory spending levels, see [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2021, Historical Tables, Table 8.1 (2022), <https://www.whitehouse.gov/omb/historical-tables/>. Entitlement authority was first defined in Balanced Budget and Emergency Deficit Control Act of 1985 (“BBEDCA”), Pub. L. No. 99-177, § 201(a)(1), 99 Stat. 1037 (1985).

Entitlements legally obligate the United States to make formula-driven payments to eligible individuals or entities; however, funds must still be appropriated to cover those payments. Some entitlement programs, such as Social Security, are permanently appropriated. Others are annually appropriated and are referred to as “**appropriated entitlements.**” Both permanently appropriated and annually appropriated entitlements share the common characteristic that the cost of the program has been determined *outside of the appropriations process* through the establishment of a formula-driven program. Although annually appropriated entitlements might appear to be subject to annual funding decisions of the Appropriations Committees, in reality the entitlement payments are required by laws under the jurisdiction of authorizing committees.

The largest entitlement programs in FY 2022 are:

- **Social Security:** \$1.2 trillion (21% of the Budget) which pays old-age, survivors, and disability benefits from current payroll tax receipts and general revenues;
- **Medicare:** \$983 billion (17% of the Budget) which is the *national health insurance program*, administered by the federal government, for people 65 and over and disabled adults, and is financed by payroll taxes, general tax revenues, premiums and copayments; and
- **Medicaid:** \$589 billion (10% of the Budget) is the major health and long-term care program for *low-income* children, families, and seniors—*financed jointly by the federal and State governments*—and administered by the States.

Other major direct (mandatory) spending programs include federal civilian retirement, veterans benefits, outlays from the earned income and child tax credits, food stamps (now known as SNAP²⁶), highway and public transit programs, military retirement, Affordable Care Act subsidies, Supplemental Security Income, Temporary Assistance for Needy Families, Unemployment Compensation, Child Nutrition, agriculture support programs, and the Children’s Health Insurance Program (CHIP).

Net Interest Payments

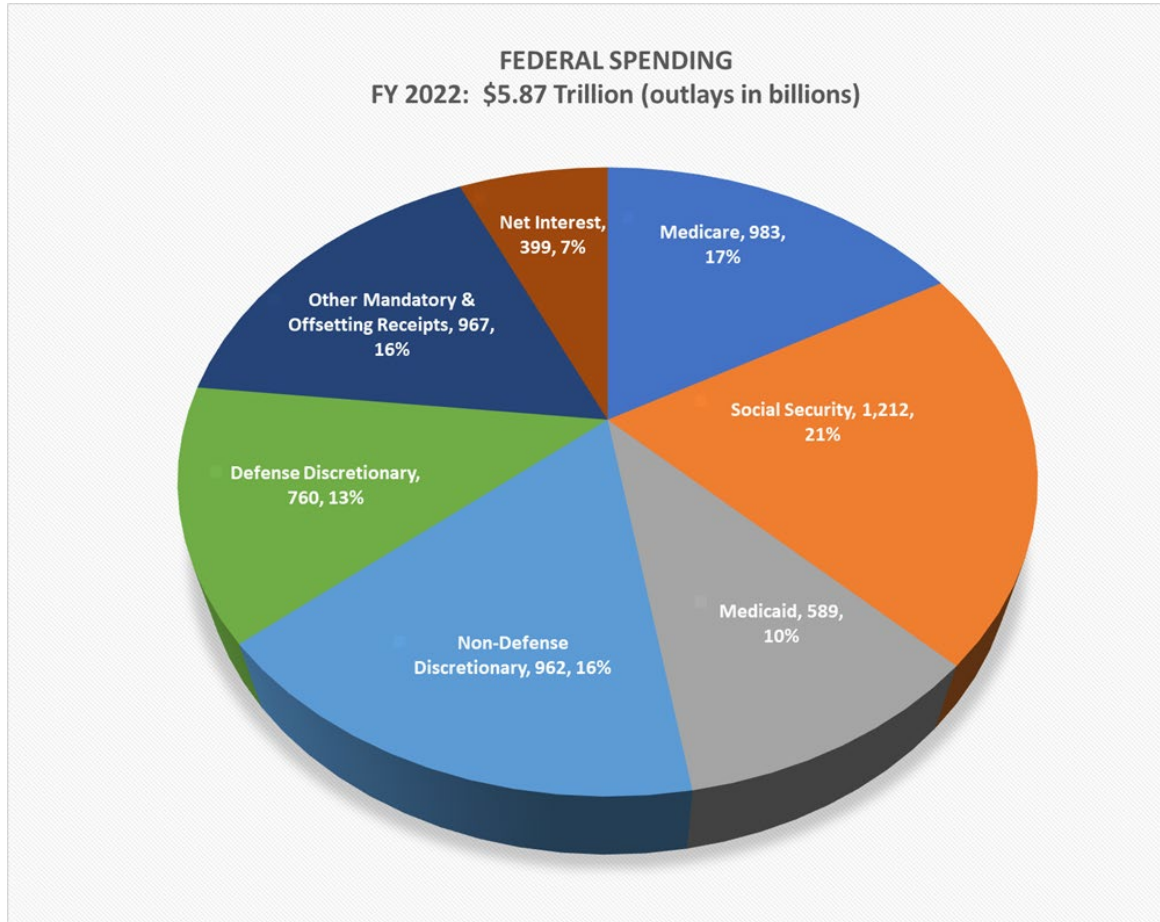
The third category of federal spending is “Net Interest Payments” on the accumulated public debt, which currently stands at about \$400 billion in FY 2022—about 7 percent of federal spending. It consists primarily of the interest paid by the federal government to private and foreign government holders of U.S. Treasury securities.

Figure 1 below displays the major categories of federal spending in FY 2022.²⁷

²⁶ Supplemental Nutrition Assistance Program.

²⁷ Source for numbers: Cong. Budget Off., *The Budget and Economic Outlook: 2022 to 2032*, Table 3.1 (2022), <https://www.cbo.gov/publication/58147>.

Federal Spending by Major Category



Appropriations v. Authorizations

Congressional legislation may be divided into two broad categories: appropriations and authorizations. The separation between appropriations and authorizations dates back to 1837.²⁸

Appropriations laws, drafted by the House and Senate Appropriations Committees (and their 12 subcommittees), provide budget authority for federal agencies to enter into obligations that will result in federal outlays. In general, the agencies and programs receiving appropriations must be authorized by law, although Congress has at times appropriated without prior authorization.

²⁸ “One of the first major changes in the budget process was the distinction made between authorizing and appropriating legislation. While a Member of the House, John Quincy Adams suggested that the House strip these appropriation bills of everything but were legitimate matters of appropriation, and such as were not...[be] made the subject of a separate bill. In the 44th Congress, on September 14, 1837 the House adopted a rule which stated: No appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law. The prohibition against unauthorized appropriations was broadly interpreted, as early as 1842, to prohibit the inclusion of legislative provisions in appropriation bills as well.” House of Representatives, Committee on Rules, Legislating & Appropriating in the House, accessed on August 22, 2022, at https://rules.house.gov/sites/democrats.rules.house.gov/files/documents/Archives/legapp_house.htm.

Authorization laws, drafted by the various House and Senate authorizing committees,²⁹ establish federal agencies and programs and “authorize appropriations” for subsequent Appropriations Committee action. Authorization bills sometimes authorize “such sums as may be necessary,” or may establish upper limits for funding for specific fiscal years. As explained above, in some instances, authorization bills circumvent the appropriations process and establish programs that legally entitle eligible individuals or States to formula-based payments—thereby creating “entitlements.”

Baselines

In order to formulate the President's Budget or a Congressional budget resolution for the upcoming fiscal year, the President's Office of Management and Budget (“OMB”) and the Senate and House Budget Committees, respectively, need to have a starting point. The starting point they most often use is a set of projections showing the levels of spending, revenues, deficits, and debt that would occur for the upcoming fiscal year if existing spending programs and tax laws are continued unchanged—with spending adjusted for projected inflation and program utilization, and revenues adjusted for anticipated economic conditions. These projections, known as a “current services baseline,” are intended to reflect a budget that would maintain current levels of government services and operations.

Current services baselines are produced each year by the Office of Management and Budget and the Congressional Budget Office.³⁰ Construction of the baselines follow a general set of “scorekeeping rules” set forth in section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA).³¹ Key among the scorekeeping rules are the following: (1) discretionary spending programs are assumed to continue into the new fiscal year at inflation-adjusted levels; (2) entitlements and other direct spending programs with outlays greater than \$50 million—if expiring under current law—are assumed to be extended; (3) administrative expenses for Medicare and other trust funds are assumed to increase to cover changes in the beneficiary population; and (4) excise taxes dedicated to a trust, if expiring, are assumed to be extended.³²

When the Administration or Members of Congress propose changes to *direct spending* programs or tax laws, the proposals are “scored”³³ by the Office of Management and Budget and the Congressional Budget Office in comparison to baseline levels of spending and revenues. By contrast, when the Appropriations Committees propose *discretionary spending* levels, they generally compare the proposed levels to the appropriation for the current fiscal year and the amount requested by the President for the upcoming fiscal year.

Budget Authority and Outlays

Spending levels in the federal budget consist of two types of numbers: “budget authority” and “outlays.” Outlays are actual disbursements by the Treasury. When the Treasury issues a check or makes an electronic transfer in FY 2022, that is a fiscal year 2022 outlay. Budget authority, on the

²⁹ For a list of the 17 House and Senate authorizing committees, respectively, see the box on the three-tier legislative process.

³⁰ The OMB baseline is set forth in the *Analytical Perspectives* volume of the President's Budget at: https://www.whitehouse.gov/wp-content/uploads/2022/03/ap_22_current_services_fy2023.pdf; and the CBO baseline is set forth in the annual *Budget and Economic Outlook* at: <https://www.cbo.gov/publication/57950> and is generally updated in the spring as part of CBO's Analysis of the President's Budget at <https://www.cbo.gov/about/products/major-recurring-reports#3>.

³¹ Balanced Budget and Emergency Deficit Control Act of 1985 (“BBEDCA”), Pub. L. No. 99-177, §257, 99 Stat. 1037 (codified as amended at 2 U.S.C. 903). When differences on scorekeeping arise between the Administration, the CBO, and the Budget Committees, section 257 requires consultations among the subject matter experts to resolve the differences.

³² *Id.*

³³ Budget scorekeeping rules are explained in greater detail later in the primer.

other hand, is the *legal authority* for an agency to enter into obligations³⁴ that will result in outlays. When Congress appropriates funds for a particular program, it is enacting budget authority—not outlays.

Analysts sometimes explain budget authority and outlays as similar to deposits into, and withdrawals from, a bank account. When Congress enacts budget authority, it is similar to money going into a bank account, which gives an agency authority to enter into obligations. Outlays occur when the agency writes checks or makes electronic transfers in fulfillment of the obligations.³⁵

Budget authority and outlays often occur in different years. When budget authority is enacted for a particular fiscal year, the outlays that flow from that budget authority can occur in the same fiscal year (for example worker salaries and operating expenses), or over several fiscal years (for example, infrastructure and weapons systems).

The rate at which outlays flow from enacted budget authority is referred to as the “spend-out rate.” Spend-out rates are of particular interest because annual deficits are determined by the excess of *outlays* over government revenues.

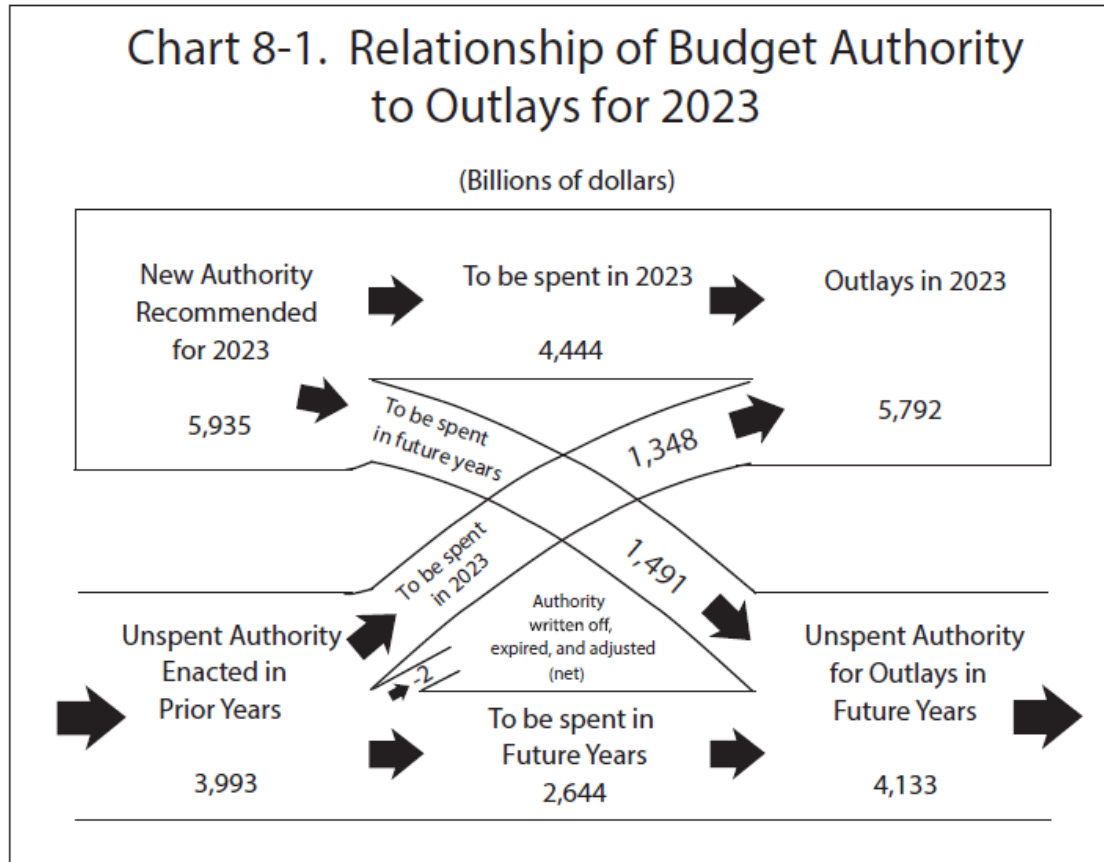
Figure 2 below illustrates the overall relationship of budget authority to outlays. In this diagram taken from the President's FY 2023 budget,³⁶ \$5.935 trillion in new budget authority is requested for fiscal year 2023. It is estimated that this new budget authority during FY 2023 would result in outlays of \$4.444 trillion in FY 2023 and outlays of \$1.491 trillion in future years. The remaining \$1.348 trillion within the \$5.792 trillion in total outlays estimated for FY 2023 comes from budget authority enacted in prior fiscal years.

³⁴ “An agency incurs an obligation, for example, when it places an order, signs a contract, awards a grant, purchases a service, or takes other actions that require the government to make payments to the public or from one government account to another. The standards for the proper reporting of obligations are found in section 1501(a) of title 31 of the United States Code.” U.S. Gov't Accountability Off., GAO-05-734SP, A Glossary of Terms Used in the Federal Budget Process, 70 (2005), <https://www.gao.gov/new.items/d05734sp.pdf>.

³⁵ Robert Keith and Allen Schick, Cong. Rsch. Serv., 98-270, Manual on the Federal Budget Process, (August 28, 1998).

³⁶ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Analytical Perspectives, 105 (2022), https://www.whitehouse.gov/wp-content/uploads/2022/03/ap_8_concepts_fy2023.pdf.

Relationship of Budget Authority to Outlays



The most common form of budget authority is appropriations. Other forms of budget authority are authority to enter into contracts (“contract authority”), authority to borrow funds (“borrowing authority”), and authority to obligate incoming receipts or collections.³⁷

Deficits and Debt

A budget deficit or surplus is calculated *annually* by figuring the difference between outlays and receipts for a given fiscal year. For example, in fiscal year 2022, receipts are estimated to be \$4.836 trillion, and outlays are estimated to be \$5.872 trillion, yielding an estimated budget deficit of \$984 billion.³⁸

In contrast to an annual deficit, the public debt (or gross federal debt) is the *accumulated* debt of the federal government. When the federal government runs a budget deficit, the additional borrowing to finance the deficit adds to the debt.³⁹ By contrast, when the federal government runs a budget

³⁷ U.S. Gov't Accountability Off., GAO-05-734SP, A Glossary of Terms Used in the Federal Budget Process, 24 (2005), <https://www.gao.gov/new.items/d05734sp.pdf>

³⁸ Cong. Budget Off., *The Budget and Economic Outlook: 2022 to 2032*, Table 1-1 (2022), <https://www.cbo.gov/publication/57950.c>

³⁹ Besides annual deficits, other factors that affect the government’s need to borrow from the public include cash flows associated with federal credit programs such as student loans (because only the subsidy costs of those programs are reflected in the budget deficit), as well as changes in the government’s cash balances. Cong. Budget Off., *Federal Debt: A Primer*, Table 3-1, note A, <https://www.cbo.gov/publication/56309> (March 2020).

surplus, the federal debt decreases because the Treasury can use the surplus to redeem outstanding debt. The most recent federal surplus occurred in FY 2001.⁴⁰

Federal law contains a Statutory Limit on the Public Debt (“Debt Limit” or “Debt Ceiling”) explained later in this primer.

Functions

In the President’s Budget and the concurrent resolution on the budget, federal spending (i.e., budget authority and outlays) is divided into 20 conceptual categories known as “budget functions,” as displayed in Appendix C. This is a system of classifying spending according to the national needs being addressed without regard to department or agency. For example, the National Defense function—Function 050—includes expenditures of the Department of Defense, as well as defense-related activities of the Energy Department and other agencies.

The President’s Budget and budget resolution allocate budget authority and outlays among the 20 functions in the federal budget.⁴¹ A function may be divided into two or more subfunctions, depending upon the complexity of the national needs being addressed.

While the “functional” distribution of federal resources may be an interesting display of federal priorities, the budget functions have little practical impact on the annual process of allocating budget authority among federal programs, projects, and activities—decisions which are made by the House and Senate Appropriations Committees and their subcommittees.

Similarly, the budget functions in the President’s Budget and Congress’ budget resolution do not impact the allocation of direct (mandatory) spending—which is determined by laws under the jurisdiction of the House and Senate authorizing committees.

Revenues, Receipts, and Fees

Federal revenues—often used interchangeably in the congressional budget process with “governmental receipts”—consist of money received by the federal government through exercise of its sovereign taxing power.⁴² This includes individual and corporate income taxes, social insurance taxes (social security payroll taxes), excise taxes, estate and gift taxes, and customs duties.

Revenues do *not* include receipts received by the federal government for sale of products or services rendered, for example, sale of timber from federal lands or entrance fees for national parks. Such receipts are *netted against federal spending* and are thus called “offsetting receipts.”⁴³

The distinction between revenues and offsetting receipts is significant for two reasons. First, revenues fall under the jurisdiction of the House and Senate tax-writing committees,⁴⁴ while offsetting receipts fall under the jurisdiction of the authorizing committees that oversee the federal agencies or programs collecting the receipts.

⁴⁰ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Historical Tables, Table 1.1 (2022), https://www.whitehouse.gov/wp-content/uploads/2022/03/hist01z1_fy2023.xlsx.

⁴¹ See, for example, S.Con.Res. 14, Concurrent Resolution on the Budget for Fiscal Year 2022, § 1102, <https://www.congress.gov/bill/117th-congress/senate-concurrent-resolution/14/text>.

⁴² U.S. Gov’t Accountability Off., GAO-05-734SP, A Glossary of Terms Used in the Federal Budget Process, 87 (2005), <https://www.gao.gov/new.items/d05734sp.pdf>.

⁴³ U.S. Gov’t Accountability Off., GAO-05-734SP, A Glossary of Terms Used in the Federal Budget Process, 30 (2005), <https://www.gao.gov/new.items/d05734sp.pdf>.

⁴⁴ The House Committee on Ways and Means; and the Senate Committee on Finance.

Second, *revenues* are subject to budget resolution revenue levels, as well as PAYGO requirements (explained later in this primer), while *offsetting receipts* are scored as negative budget authority on the spending side of the budget—thereby reducing net spending levels. For example, one means of correcting an appropriations bill that exceeds its subcommittee allocation is to increase offsetting receipts to an agency funded in the bill.⁴⁵

⁴⁵ For an explanation of allocations, see the section above on “Appropriation Allocations: Most Important, Least Understood Step in the Process.”

The President's Budget

Budget Preparation and Transmittal to Congress

The Budget and Accounting Act of 1921⁴⁶ established the executive budget process. It created a legal framework for the *Budget of the United States Government* (“Federal budget” or “President’s Budget”), developed by the Administration and submitted to Congress prior to the start of each fiscal year. In addition, the 1921 Act created the Bureau of the Budget—renamed the Office of Management and Budget (OMB) in 1970—to assist the President in carrying out his budget responsibilities.⁴⁷ OMB is part of the Executive Office of the President, and is the President’s instrument for budget preparation, budget execution, regulatory review, and interagency coordination.

Preparation of the President’s Budget begins six to nine months prior to transmittal of the Budget to Congress. For example, preparation of the FY 2023 budget began in August of 2021 with OMB issuing guidance to the various departments and agencies of government to develop budget proposals based on the President’s priorities and policy objectives. Guidance is transmitted in the form of OMB Circular No. A-11 on “Preparation, Submission, and Execution of the Budget.”⁴⁸

For example, OMB guidance might direct each agency to submit a budget proposal that continues spending at current levels, reduces spending by a specified percentage, or allows spending for current programs and government services to grow with inflation or inflation minus a specified percentage. Such guidance might apply consistently across all government departments and agencies, or the White House might permit some agencies to increase spending to accommodate new initiatives, while instructing other agencies to cut spending by a specific percentage. This first decision point in formulation of the President’s Budget is, for all practical purposes, invisible to the public. But it is a critical decision point where the President and senior advisors decide the general outlines and priorities of the forthcoming budget transmittal to Congress.

Following OMB’s guidance, each department and agency prepares detailed budgets for their programs. This budget preparation work is conducted in compliance with Circular A-11, a one thousand page set of instructions and guidance issued annually by OMB.⁴⁹

After examining budget needs and priorities within the parameters of OMB’s guidance, each department and agency, in early fall, submits to OMB their initial budget request. OMB then conducts its “fall review,” analyzing agency budget requests in light of its planning guidance, program performance, and evolving budget objectives and constraints. During the fall review, OMB’s career program analysts raise issues and present options to the OMB Director and senior

⁴⁶ Budget and Accounting Act of 1921, Pub. L. No. 67-13, 42 Stat. 20 (1921).

⁴⁷ *Id.* at § 207. The Bureau of the Budget was originally located in the Treasury Department. The Office of Management and Budget is located in the Executive Office of the President.

⁴⁸ OMB Circulars are tools used by the Executive Office of the President to exercise managerial and policy direction over Federal agencies. Circulars provide policy guidance over a broad range of subjects, ranging from detailed instructions on preparing agency budget requests to principles for determining allowable research costs at universities. Circular A-11 provides guidance on “preparation, submission, and execution of the budget.” See [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, OMB’s System of Circulars and Bulletins, https://obamawhitehouse.archives.gov/omb/gils_gil-circ.

⁴⁹ OMB Circular A-11, in addition to setting forth instructions on budget preparation and submission, also guides execution of the budget. Office of Management and Budget, July 10, 2020, Circular No. A-11, <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>.

political staff for their policy decisions. These policy decisions are incorporated into a complete set of budget proposals.

In November, the OMB Director briefs the President and senior advisors on the draft budget and receives the President’s guidance on key policy issues. After incorporating any changes that emerge from the OMB Director’s meeting with the President, OMB informs departments and agencies about the decisions on their budget requests in what are commonly called “OMB passbacks.”

Based on the OMB passback, departments and agencies then submit all computer data and related materials to OMB for preparation of the budget documents. Simultaneously, in December, department and agency heads may appeal particular issues to the OMB Director, and ultimately the President, to reverse or modify certain decisions in the agency’s passback. The degree of presidential involvement depends, of course, on the nature of the issues being “appealed” as well as the management style of the President.

With final decisions in hand, OMB then makes final adjustments to the budget and “locks down” the numbers by mid-January, in time to print and deliver the multi-volume documents to Congress on the first Monday of February, as required by law – although this is sometimes delayed due to a change in Administration or delayed enactment of appropriations for the current fiscal year.⁵⁰

At the same time, departments and agencies prepare detailed “Budget Justification” materials, which are released concurrently with the President’s Budget and provide in-depth detail on each of the respective department and agency budgets.

After the President has transmitted the Budget, OMB and agency officials explain and justify the budget request to Congress. The President’s OMB Director typically provides testimony, before the House and Senate Budget Committees, regarding the President’s broad budgetary objectives, followed by other cabinet officials testifying before the revenue-raising, appropriations, and authorizing committees of jurisdiction.

The following text box summarizes the budget preparation and transmittal process for FY 2023.

⁵⁰ The President’s Budget is required by law to be submitted by the first Monday in February for the fiscal year beginning October 1 (31 U.S.C. 1105(a)). The timing of the President’s Budget transmittal changes in a year with a transition between outgoing and incoming Administrations.

Budget Preparation and Transmittal Process for FY 2023

- **August 6, 2021:** OMB transmitted FY 2023 budget preparation guidance to the heads of executive departments.⁵¹
- **Fall 2021:** following agency submissions, OMB reviewed agency budget requests and “passed back” preliminary budget levels to the respective agencies, which could then be appealed to the OMB Director, or the President in certain instances.
- **March 28, 2022:** President’s FY 2023 Budget was transmitted to Congress.⁵²
- **March 29, 2022:** OMB Director testified at House Budget Committee.⁵³
- **March 30, 2022:** OMB Director testified at Senate Budget Committee.⁵⁴
- **October 1, 2022:** FY 2023 began.

Content of the President’s Budget

The President’s Budget, though not legally binding, provides Congress with recommended spending levels for all programs, projects, and activities of the federal government, as well as proposed changes to the tax code and other governmental receipts.⁵⁵

The President’s Budget is a massive document comprised of several key volumes. The first volume, *President’s Budget*,⁵⁶ provides an overview of the President’s budget proposals. *Analytical Perspectives*⁵⁷ provides narratives and data on a broad range of fiscal policy matters and trends including economic assumptions, spending and revenues as a percentage of Gross Domestic Product (GDP), long-term budget projections, federal debt, tax proposals and tax expenditures, and cross-cutting issues such as research and development funding, and aid to state and local governments.

⁵¹ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Circular No. A-11 Transmittal Memorandum No. 95, August 6, 2021; https://georgewbush-whitehouse.archives.gov/omb/circulars/a11/current_year/part1.pdf#:~:text=OMB%20Circular%20No.%20A-11%20provides%20guidance%20on%20preparing,required%20by%20the%20Government%20Performance%20and%20Results%20Act. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://georgewbush-whitehouse.archives.gov/omb/circulars/a11/current_year/part1.pdf - :~:text=OMB%20Circular%20No.%20A-11%20provides%20guidance%20on%20preparing,required%20by%20the%20Government%20Performance%20and%20Results%20Act.

⁵² [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, President’s Fiscal Year 2023 Budget, March 28, 2022; <https://www.whitehouse.gov/omb/budget/>. Transmittal of the FY 2023 Budget was delayed beyond the statutory deadline of the first Monday in February due to delayed enactment of appropriations for FY 2022.

⁵³ <https://budget.house.gov/legislation/hearings/president-s-fiscal-year-2023-budget.>

⁵⁴ <https://www.budget.senate.gov/hearings/the-presidents-fiscal-year-2023-budget-proposal.>

⁵⁵ Proposed changes to the tax code and other governmental receipts appears in the Analytical Perspectives volume of the President’s Budget. See, e.g., [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2021, Analytical Perspectives, (2020), https://www.whitehouse.gov/wp-content/uploads/2020/02/ap_11_receipts_FY_21.pdf.

⁵⁶ https://www.whitehouse.gov/wp-content/uploads/2022/03/budget_fy2023.pdf.

⁵⁷ <https://www.whitehouse.gov/omb/analytical-perspectives/>.

The *Budget Appendix*,⁵⁸ the largest volume, provides account by account detail for every federal agency and program including brief synopses of programs and proposed appropriations language. The *Historical Tables*⁵⁹ provide invaluable data for understanding the evolution of U.S. fiscal policy from the 1930s to the present, including projections for the next five years. Finally, the Budget contains numerous *Supplemental Materials*⁶⁰ on federal Credit⁶¹ and other supporting materials. In the summer, the President's Budget is updated with a *Mid-Session Review*.⁶²

⁵⁸ <https://www.whitehouse.gov/omb/appendix/>.

⁵⁹ <https://www.whitehouse.gov/omb/historical-tables/>.

⁶⁰ <https://www.whitehouse.gov/omb/budget/supplemental-materials/>.

⁶¹ https://www.whitehouse.gov/wp-content/uploads/2022/04/cr_supp_fy2023.pdf.

⁶² <https://www.whitehouse.gov/omb/budget/mid-session-review/>.

1974 Congressional Budget Act Launches the Congressional Budget Process

Under the 1974 Budget Act, Congress has a three-tier process for setting priorities and allocating the nearly \$6 trillion of annual spending: (1) Authorizations; (2) Appropriations; and (3) the Concurrent Resolution on the Budget.

The Three-Tier Process: Authorizations, Appropriations, Budget Process

Tier I: Authorizations

Congress' authorization process establishes federal programs in response to national needs. The House and Senate each have 17 authorizing committees respectively (see table below) although the number of committees has varied over the years.

Authorizing committees have several legislative functions. They assess national, regional, and international needs and determine if a federal response is necessary and appropriate through establishment of a federal program, project, or activity, assistance to state and local governments, or providing incentives to, or regulating, private sector activities.

Authorizing legislation frequently authorizes the appropriations committees to provide funding up to specified levels for authorized programs. Authorization language typically provides, "There are authorized to be appropriated for programs in this (bill, title, or section) up to (specified sum) for (one or more specified fiscal years)." Authorization of appropriations language does not provide actual funding; rather, it establishes a desirable level of funding for a particular program. The appropriations committees ultimately determine if funding is available, within overall priorities and constraints, and at what levels funding is to be provided for a particular fiscal year.

Authorizing committees conduct ongoing oversight of federal programs to determine if program objectives are being fulfilled or if changes, adjustments, or elimination are appropriate. (However, detailed agency and program oversight is also conducted by the appropriations subcommittees during annual funding hearings.)

Authorizing committees are also responsible for evaluating the ongoing costs and effectiveness of entitlements and other direct spending programs, where federal expenditures result directly from authorizing statutes. For example, expenditures from the Social Security, Medicare, and Medicaid programs—the largest entitlement programs—result from benefit and payment formulas in the Social Security Act which is under the jurisdiction of the Senate Finance, House Ways & Means, and House Energy and Commerce Committees.

Table 1: Three-Tier Legislative Process

<p align="center">Authorizing Committees (multiyear authorizing bills and entitlement programs)</p>	<p align="center">Appropriations and Revenue-Raising Committees</p>	<p align="center">Budget Process</p>
<p>House of Representative’s 17 authorizing committees: Agriculture; Armed Services; Education and Labor; Energy and Commerce; Financial Services; Foreign Affairs; Homeland Security; House Administration; Judiciary; Natural Resources; Oversight and Reform; Rules; Science, Space, and Technology; Small Business; Transportation and Infrastructure; Veterans’ Affairs; and Ways and Means.</p>	<p>House Appropriations Committee’s 12 subcommittees with jurisdiction over annual appropriations bills: Agriculture-Rural Development-FDA; Commerce-Justice-Science; Defense, Energy-Water; Financial Services and General Government; Homeland Security, Interior-Environment; Labor-Health and Human Services-Education; Legislative Branch; Military Construction-Veterans Affairs; State-Foreign Operations; Transportation-HUD.</p> <p>House Committee on Ways & Means (revenue-raising).⁶³</p>	<p>House Budget Committee with jurisdiction over budget resolution and Reconciliation Bills.</p>
<p>Senate’s 17 authorizing committees: Agriculture, Nutrition and Forestry; Armed Services; Banking, Housing, and Urban Affairs; Commerce, Science, and Transportation; Energy and Natural Resources; Environment and Public Works; Finance; Foreign Relations; Health, Education, Labor, and Pensions; Homeland Security and Governmental Affairs; Indian Affairs; Judiciary; Rules and Administration; Select Committee on Intelligence; Small Business and Entrepreneurship; Special Committee on Aging; and Veterans’ Affairs.</p>	<p>Senate Appropriations Committee’s 12 subcommittees with jurisdiction over annual appropriations bills: Agriculture-Rural Development-FDA; Commerce-Justice-Science; Defense, Energy-Water; Financial Services and General Government; Homeland Security, Interior-Environment; Labor-Health and Human Services-Education; Legislative Branch; Military Construction-Veterans Affairs; State-Foreign Operations; Transportation-HUD.</p> <p>Senate Committee on Finance (revenue-raising).⁶⁴</p>	<p>Senate Budget Committee with jurisdiction over budget resolution and Reconciliation Bills.</p>

⁶³ The House Committee on Ways & Means is also an authorizing committee with jurisdiction over Social Security Act, Medicare, parts of Medicaid, income security programs, and certain international trade functions.

⁶⁴ The Senate Committee on Finance is also an authorizing committee with jurisdiction over Social Security Act, Medicare, all of Medicaid, income security programs, and certain international trade functions.

Tier II. Appropriations and Revenue Raising

The second tier of the legislative process is appropriations and revenue-raising. The two Appropriations Committees—one in the Senate and one in the House—allocate available funds among programs established by the authorizing committees. Most of the detailed work of the House and Senate Appropriations committees are conducted at the subcommittee level, by 12 subcommittees⁶⁵ with jurisdiction over the various departments, agencies, and programs of the federal government.

On the revenue side of the federal budget, the Senate Committee on Finance and House Committee on Ways & Means have jurisdiction over raising revenues through individual, corporate, estate and gift, and excise taxes; customs duties; and various types of fees.

The Blurring of Authorizations and Appropriations

A misconception about Congress' authorizing and appropriations legislation is that bills "authorizing appropriations" for a program, project, or activity actually provide funding. For example, an authorizing bill might establish a program and include language stating: "There are authorized to be appropriated \$100 million to carry out this Act in fiscal year 2021." However, that language, if signed into law, would *not* provide funding. Rather, the "authorization" of \$100 million is simply a *recommendation* by the authorizing committee, to the Appropriations Committees, that funds in that amount should be appropriated for the program's intended purposes to be achieved. It remains for the appropriators to determine what amount of funding, if any, can be provided for the upcoming fiscal year, when prioritizing all programs within the total pot of available funds.

Despite this key historical distinction between the roles of the authorizing and Appropriations committees, in recent decades the distinction has been significantly blurred. While the appropriators historically made most of the funding decisions, authorizing committees in recent decades have increasingly spent money *directly*, in effect *bypassing the appropriators* and enacting into law programs that legally entitle jurisdictions or individuals to specified benefits that are *not* subject to appropriations funding decisions.

As explained above, most of these "direct spending programs" are called entitlements because the government is legally required to pay specified benefits to eligible (entitled) beneficiaries. In recent years, more than twice as much federal spending has flowed from direct spending under the jurisdiction of House and Senate authorizing committees than from the annual discretionary decisions of the appropriations committees.

⁶⁵ The 12 subcommittees are: Agriculture, Rural Development, FDA, and Related Agencies; Commerce, Justice, Science, and Related Agencies; Defense; Energy and Water Development, and Related Agencies; Financial Services and General Government; Homeland Security; Interior, Environment, and Related Agencies; Labor, Health and Human Services, Education, and Related Agencies; Legislative Branch; Military Construction, Veterans Affairs, and Related Agencies; State, Foreign Operations, and Related Programs; Transportation, and Housing and Urban Development, and Related Agencies.

Tier III. Congressional Budget Process and the Budget Resolution

The congressional budget process is the third, and most recent, tier of the legislative process. Under the 1974 Budget Act, the Congress establishes overall fiscal policy by adopting a Concurrent Resolution on the Budget (“budget resolution”).⁶⁶

The budget resolution is an internal congressional framework to guide the work of the appropriations, authorizing, and tax committees; it establishes for the upcoming fiscal year(s) a spending ceiling and revenue floor, a total amount for discretionary appropriations and, in some years, the amount by which entitlement spending or tax revenues should be adjusted. In most recent years, instead of a budget resolution, Congress has several times chosen to enact statutory “Bipartisan Budget Agreements.”⁶⁷

A frequent misconception about the congressional budget process is that the budget resolution contains program-by-program detail; it does not. The budget resolution establishes a non-statutory, internal congressional framework for total spending and revenues, committee spending allocations, and enforcement mechanisms, but does not set funding levels for individual programs.

A second misconception is that the budget resolution is the product of negotiations with the President. The budget resolution is a “concurrent resolution” that Congress, alone, uses as an internal mechanism to guide subsequent congressional action on spending and revenue bills. It is *not* a law and, as a concurrent resolution of the House and Senate, it is *not* presented to the President for signature.

Development of the Budget Resolution

Following transmittal of the President's Budget (usually in February except for the first year of a new Administration), Congress begins its own budget process for making fiscal policy decisions on total spending and revenue levels, spending for individual programs, and changes—if any—to entitlement programs and the Internal Revenue Code.

The Senate and House Budget Committees hold public hearings, after receiving the President's Budget transmittal, at which they receive testimony on the President's Budget proposals from Administration officials, outside experts, advocacy groups, trade associations, Members of Congress, and the public. At the same time, the other committees of Congress review the President's Budget proposals and justifications 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 requests, information from their hearings, the views and estimates from other committees of Congress, and projections from the Congressional Budget Office—draft their respective versions of a Concurrent Resolution on the Budget (“budget resolution”) in a series of working meetings known as committee “mark-ups.” (However, in recent years, the Budget Committees have several times opted not to proceed with a budget resolution due to a series of two-year bipartisan budget laws negotiated between the Administration and Congress.⁶⁸)

⁶⁶ The Concurrent Resolution on the Budget was established by section 301 of the 1974 Budget Act, Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 306.

⁶⁷ See this primer's section, below, on the Budget Control Act of 2011, providing a history of four Bipartisan Budget Acts.

⁶⁸ These four Bipartisan Budget Acts are discussed later in this primer in the section on the Budget Control Act of 2011.

Budget Resolution Contents

The budget resolution, as a blueprint to guide subsequent action on spending and revenue measures, includes the following:⁶⁹

1. Total spending ceilings (budget authority and outlays) and revenue floors⁷⁰ for at least five fiscal years;
2. A nonbinding allocation of new budget authority and outlays among 20 categories known as budget functions;⁷¹
3. Deficit (or surplus) and debt levels projected to result from the spending and revenue totals;
4. Outlays and revenues for the off-budget Social Security insurance programs displayed separately;
5. (*In the Conference Report accompanying the budget resolution*): Enforceable allocations of spending to each committee of the House and Senate, including a lump-sum to the House and Senate Appropriations Committees for all “discretionary” spending;⁷²
6. *Optional*: special procedures to enforce the budget resolution;
7. *Optional*: special provisions called “budget reconciliation instructions” aimed expediting and consolidating into a single bill changes to direct spending programs or tax laws through a *filibuster-proof* budget reconciliation Bill; and
8. *Optional*: budget resolution Reserve Funds to permit adjustments in committee allocations and revenue and spending totals to accommodate specific legislation.

The budget resolution’s spending and revenue totals, functional allocations, committee allocations, and reconciliation instructions (if any), do not mention specific programs or budget accounts, although the numbers are based on specific (though *non-binding*) programmatic assumptions made by the Budget Committees.

The Budget Act aims for adoption of a budget resolution by April 15 of each year,⁷³ though this deadline is often missed. House of Representatives rules permit action on appropriations bills to begin on May 15 even if a budget resolution has not been adopted.

The 1974 Budget Act originally required adoption of a Second Concurrent Resolution on the Budget by September 15 of each year, but that practice ended with FY 1982.⁷⁴ However, the Budget Act, as amended, still permits adoption of revisions to the budget resolution later in the fiscal year.⁷⁵

⁶⁹ The contents of the Concurrent Resolution on the Budget are set forth in section 301 of the Congressional Budget and Impoundment Control Act of 1974, as amended, Pub. L. No. 93-344, § 302, 88 Stat. 297, 308, 2 U.S.C. § 633.

⁷⁰ A revenue floor is a total revenue level, i.e., any revenue legislation that would push total revenues *below* the floor would be subject to parliamentary objections.

⁷¹ Budget functions are explained above under “foundational concepts.”

⁷² Section 302 of the 1974 Budget Act, as amended, requires that the Joint Statement of Managers in the Conference Report accompanying a budget resolution include allocations of budget authority and outlays to committees of the House and Senate. Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 306.

⁷³ The 1974 Budget Act required adoption of a Second Concurrent Resolution on the Budget by September 15 of each year, but that practice ended with FY 1982. See Appendix G for links to all First and Second Concurrent Resolutions.

⁷⁴ The Second Concurrent Resolution on the Budget was required by section 310 of the 1974 Budget Act, Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 310, 88 Stat. 297, 315.

⁷⁵ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 304, 88 Stat. 297, 310 (codified as amended at 2 U.S.C. § 635).

Reconciliation Instructions: Changes to Entitlements and Tax Provisions

As noted above, a budget resolution may include Reconciliation instructions directing House and Senate authorizing committees to report, by a specified deadline, legislative reforms to direct spending or revenue programs—within their jurisdiction—that achieve specified changes in spending, revenue, or deficit amounts. While specific policy changes are “assumed” by the Budget Committee when the instructions are drafted, the authorizing committees need not—and often do not—follow the Budget Committee assumptions. The authorizing committees have complete discretion in how to achieve their Reconciliation instructions as long as they meet their dollar targets.

For example, the budget resolution could direct an authorizing committee to report legislative provisions that make changes in programs within their jurisdiction that increase or decrease *spending* levels by \$__ billion, increase or decrease *revenue* levels by \$__ billion,⁷⁶ or make policy changes that increase or decrease *deficits* by \$__ billion over a specified period (typically 5 years or 10 years).

Following is an excerpt from the FY 2022 budget resolution⁷⁷ which included instructions to 12 Senate authorizing committees and 13 House authorizing committees to report Reconciliation provisions to their respective Budget Committees by September 15, 2021:

(f) Committee On Finance.—The Committee on Finance of the Senate shall report changes in laws within its jurisdiction that reduce the deficit by not less than \$1,000,000,000 for the period of fiscal years 2022 through 2031...

*(c) Committee On Energy And Commerce.—The Committee on Energy and Commerce of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$486,500,000,000 for the period of fiscal years 2022 through 2031.*⁷⁸

The House and Senate Budget Committees, when drafting these Reconciliation instruction, based the dollar amounts on specific assumptions about changes in entitlement and tax policy. However, the authorizing committees are empowered to achieve their reconciliation targets through entirely different reforms, as long as their respective reconciliation provisions are submitted to their respective Budget Committees by the stated deadline. The Budget Committees then package the submitted provisions—without change—into a Reconciliation Bill for Floor action.

The Finance and Ways & Means Committees have additional flexibility under Reconciliation. In years when those Committees receive spending *and* revenue reconciliation instructions, they are empowered to substitute revenue changes for spending changes, or vice versa (called the “fungibility rule”), as long as the overall budget effect of the instructions is achieved.⁷⁹

Budget Resolution Reserve Funds

Reserve Funds are an optional component of a budget resolution that allow a budget resolution’s 302(a) committee allocations to be adjusted to accommodate additional spending for a specifically defined purpose. Because most reserve funds require that the new legislation be “deficit neutral” (i.e.,

⁷⁶ Revenue instructions would go to the Senate Finance or House Ways & Means Committees.

⁷⁷ S.Con.Res. 14 (117th Congress, 1st Session).

⁷⁸ The entire set of FY 2022 instructions, that led to the Inflation Reduction Act of 2022, Pub. L. No. 117-169, (2022) are set forth in Appendix I.

⁷⁹ The fungibility rule set forth in §310(c) of the 1974 Budget Act, 2 U.S.C. 641, permits up to 20 percent of spending changes to be substituted by revenue changes and vice versa, provided the total instructed changes have been achieved. This flexibility was utilized during development of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993)..

paid for by new spending cuts or tax increases), the use of the term reserve fund is actually a misnomer, since a budget resolution “reserve fund” does not typically provide additional funds.

The scenarios in which a “reserve fund” has a serious purpose (other than to make a political statement) is where a mechanism is needed to allow the adjustment of committee allocations to accommodate a new program that is to be paid for by tax increases or spending cuts in *another committee’s jurisdiction*. (If a new program is paid for by spending cuts within a committee’s own jurisdiction, there is no net increase in the committee’s spending or in total federal spending, so no adjustments to the budget resolution are required, and “reserve fund” authority is unnecessary.)

As an example, following is deficit-neutral reserve fund language included in Title III of the FY 2018 budget resolution (H.Con.Res. 71):

SEC. 3004. Deficit-Neutral Reserve Fund for Extending the State Children’s Health Insurance Program. The Chairman of the Committee on the Budget of the Senate may revise the allocations of a committee or committees, aggregates, and other appropriate levels in this resolution, and make adjustments to the pay-as-you-go ledger, for one or more bills, joint resolutions, amendments, amendments between the Houses, motions, or conference reports relating to an extension of the State Children’s Health Insurance Program, by the amounts provided in such legislation for those purposes, provided that such legislation would not increase the deficit over either the period of the total of fiscal years 2018 through 2022 or the period of the total of fiscal years 2018 through 2027.

Appendix J provides examples of the broad range of policy proposals addressed by reserve funds in a recent budget resolution.

Floor Action on Budget Resolutions

When the House and Senate Budget Committees complete committee action on their respective budget resolutions, with or without Reconciliation instructions, they report the budget 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 on a budget resolution often includes a long series of votes on non-binding policy statements—commonly called the “vote-a-rama.” Unfortunately, the prevalence of non-binding “sense-of-the-Senate” statements in the vote-a-rama can obscure the importance of amendments that have concrete policy impacts, for example, changing the spending ceiling, changing spending allocations to committees, changing the revenue floor, or altering Reconciliation instructions.

When the Senate and House have both completed Floor action and approved 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 set forth in a conference report. Upon adoption of the conference report by both chambers, the budget resolution takes effect (signature by the President *not* being required for concurrent resolutions).

Budget resolutions are not always completed. Congress did not complete action on a budget resolution in 12 fiscal years⁸⁰ since the 1974 Budget Act became law in 1974—primarily during the last decade due to enactment of four 2-year Bipartisan Budget Acts in 2013, 2015, 2018, 2019.

⁸⁰ Fiscal years 1989, 2003, 2007, 2011, 2012, 2013, 2014, 2015, 2019, 2020, 2021, and 2023. See Appendix G for details.

Committee 302(a) Allocations

Following adoption of a budget resolution, the Budget Committees “allocate” total spending among the various committees of the House and Senate based on jurisdiction, with all *discretionary spending*—budget authority and outlays—allocated in one lump sum to the House and Senate Appropriations Committees, respectively; and all *direct spending* allocated to the appropriate authorizing committees.

The Appropriations Committee allocations cover new budget authority and outlays *for the budget year, only*. However, allocations to the authorizing committees for direct spending include budget authority and outlays for at least the budget year, the ensuing 4 fiscal years, and a total for the 5 fiscal years (although allocations may cover 10 years).

The lump sum allocations to the Appropriations Committees reflect Congress’ decision on total discretionary spending to be available for the upcoming fiscal year. The separate allocations to each authorizing committee, generally reflect baseline estimates of how much spending is anticipated in the various entitlement and other mandatory spending programs—adjusted to reflect Budget Resolution changes, if any.

The committee allocations to the Appropriations and authorizing committees are called “302(a) allocations,” based on the applicable section of the 1974 Budget Act.⁸¹ The allocations have usually been set forth in the Joint Explanatory Statement of Managers accompanying the budget resolution,⁸² but are sometimes inserted separately in the *Congressional Record* by the respective Budget Committees. (See Appendix K for examples.)

Because the budget resolution determines the total amount of budget authority available to the Appropriations Committees, the 1974 Budget Act prohibits Congress from considering appropriations bills prior to adoption of the budget resolution.⁸³ However, recognizing that the House and Senate may not always come to agreement on a budget resolution in a timely manner, Budget Act permits the House to begin consideration of appropriations bills on May 15th if a budget resolution has not yet been adopted.⁸⁴

Appropriations 302(b) Subcommittee Allocations: Most Important, Least Understood Step

When the House and Senate Appropriations Committees have received their 302(a) spending allocations, they subdivide their allocations among their 12 subcommittees, respectively.

The House and Senate Appropriations Committees are both organized into 12 subcommittees, with each subcommittee having responsibility for developing one regular annual appropriations bill.

The allocations of discretionary spending—about \$1.7 trillion for FY 2022⁸⁵—among the 12 Appropriations subcommittees are called “302(b) allocations” and are a *key decision point* in the

⁸¹ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 302(a) (1974).

⁸² For example, see the FY 2016 budget resolution conference report, Tables 13-16, at: <https://www.congress.gov/congressional-report/114th-congress/house-report/96/1?overview=closed>.

⁸³ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 303 (1974).

⁸⁴ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 303(b) (1974).

⁸⁵ Cong. Budget Off., *An Analysis of the Discretionary Spending Proposals in the President’s 2023 Budget*, Table 1 (2022), <https://www.cbo.gov/publication/58277>.

Baseline discretionary spending total for FY 2023. CBO Update to the Budget Outlook: 2020 to 2030, Table 1, https://www.cbo.gov/publication/56542#_idTextAnchor011.

budget process.⁸⁶ The 302(b) allocations determine how much spending is allocated, for example, to defense vs. public health vs. law enforcement safety vs. environmental protection. The 302(b) allocations are therefore the point in the Appropriations process where the House and Senate Appropriations Committees make key national priority decisions.

Appropriations: Mark-ups, Floor Action, and Conference

Following 302(b) allocations, the 12 appropriations subcommittees “mark-up” detailed appropriations bills that distribute their respective subcommittee allocations among all of the programs, projects, and activities within their jurisdiction.⁸⁷ The bills then go to the full Appropriations Committees for consideration. Following full committee action, appropriations bills are reported to the House and Senate Floors, respectively, for consideration by the full chambers, during the summer, with the House acting first.

Based on the Constitution’s Revenue Origination Clause,⁸⁸ stating that all revenue bills must originate in the House of Representatives, the House has asserted the authority and established a precedent that Appropriations Bills originate in the House.⁸⁹

After Floor action, the appropriations bills then go to a House-Senate Conference Committee, generally comprised 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, which can receive the support of a majority of House Members and at least 60 Senators (to avoid a filibuster or point of order).

Budget Reconciliation Procedures and the Byrd Rule

If a budget resolution includes “reconciliation instructions” to change direct spending or revenue levels, the authorizing committees named in the instructions are required to develop reconciliation legislation—usually during the same time frame the Appropriations Committees are assembling their appropriations bills.

Reconciliation mark-ups—where authorizing committee chairmen present draft legislative language for committee review and amendment—can be lengthy and challenging depending on the authorizing committees’ instructions. Moreover, because reconciliation bills are difficult to amend on the House or Senate Floor (due to germaneness restrictions), reconciliation mark-ups at the authorizing committees are the best opportunity to offer amendments.⁹⁰

After the authorizing committees mark-up their respective legislative provisions, they are reported to the respective House or Senate Budget Committees where they are packaged, without change, into a single reconciliation bill for House and Senate Floor consideration. The Budget Committees often package the language with a separate title for each authorizing committee. After the respective Budget Committees report their reconciliation bills to the full chamber, the bills are considered under

⁸⁶ The sub-allocations are call “302(b) allocations” because the requirement is set forth in section 302(b) of the 1974 Budget Act, Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 302(a) (1974).

⁸⁷ See Appendix E.

⁸⁸ U.S. Const., art. I, §7, cl. 1.

⁸⁹ “By precedent, appropriations originate in the House.” House of Representatives, Committee on Rules, “*The Appropriations Process*,” accessed on August 22, 2022 at https://archives-democrats-rules.house.gov/Archives/approps_proc.htm.

⁹⁰ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §310, 88 Stat. 297 (1974).

special procedural protections set forth in the 1974 Budget Act, as amended. The special procedures are of particular importance 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 generally protect the right of all Senators to engage in (1) unlimited debate⁹¹ and (2) the unlimited right to offer amendments.⁹²

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.⁹³ In recent years, filibusters have been threatened more frequently—almost routinely—leading to the popular misconception that legislation in the Senate requires the support of 60, not 51 Senators.

The budget reconciliation process effectively short-circuits Senate rules and precedents because the 1974 Budget Act protects reconciliation Bills with (1) a strict (20-hour) time limit on debate⁹⁴ and (2) a germaneness restriction on the type of amendments that can be offered.⁹⁵ The limit on debate means that reconciliation bills cannot be filibustered. (These same significant protections apply to budget resolutions, which likewise cannot be filibustered.⁹⁶)

Consequently, no matter how controversial a reconciliation bill may be, passage in the Senate requires only 51 votes (or 50 when the Vice President votes to break a tie), rather than the 60 votes required to invoke cloture and end debate on non-reconciliation measures. This is why the “50th vote” of Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) became pivotal during consideration of President Joe Biden’s domestic policy legislation that eventually became the Inflation Reduction Act in 2022.⁹⁷

The “germaneness” restriction on amendments to reconciliation Bills is also highly 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.”⁹⁸ 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 dramatically elevates the importance of the committee mark-up where the reconciliation language is developed.

⁹¹ Floyd M. Riddick, *Riddick’s Senate Procedure* (revised and edited by Alan S. Frumin, S.Doc. No. 101-28), 716 (1992).

⁹² *Id.* at 24-26.

⁹³ *Id.* at 282-284.

⁹⁴ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §310, 88 Stat. 297 (1974).

⁹⁵ *Id.* §305.

⁹⁶ *Id.*

⁹⁷ Inflation Reduction Act of 2022, Pub. L. No. 117-169, (2022).

⁹⁸ Floyd M. Riddick, *Riddick’s Senate Procedure* (revised and edited by Alan S. Frumin, S.Doc. No. 101-28), 626-627 (1992).

Because filibuster-proof reconciliation Bills are a radical departure from the way the Senate normally does its business, Senator Robert C. Byrd in 1985 created the “Byrd Rule” to limit what can be included in a reconciliation Bill.⁹⁹

Under the Byrd Rule, all legislation reported pursuant to reconciliation instructions must be budgetary in nature. Any matter that is not budgetary is considered to be “extraneous.” Senators may use a Byrd Rule point of order to strike specific “extraneous” provisions from a reconciliation Bill or conference report.

Byrd Rule

Generally, the Byrd Rule defines as “extraneous” provisions that (1) have no cost or (2) are significant policy changes with “merely incidental” budgetary effects. Senators may challenge a lengthy provision or short provisions down to the subsection level. The Byrd Rule, itself, is highly technical and arcane. In general, the following four-part test may be used in determining if a provision violates the Byrd Rule:

⁹⁹ The Byrd Rule is set forth in section 313 of the 1974 Budget Act; Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 313, 88 Stat. 297 (1974).

Table 2: The Byrd Rule 4-Part Test

<p>I. Does the provision have a budget effect?</p> <p>a. Changes in outlays or revenues brought about by changes in the terms and conditions under which outlays are made or revenues are collected are considered to be budget effects (which has protected many budget reconciliation provisions).¹⁰⁰</p>
<p>II. If a provision has a budget effect, it does <i>not</i> violate the Byrd Rule (and can remain in the reconciliation bill) <i>unless</i>:</p> <p>a. The budget effect is “<i>merely incidental</i>” to the nonbudgetary (policy) components of the provision (for example, if a policy provision does not have a budgetary “score” you cannot save it from the Byrd Rule by piggybacking it on a minor or “incidental” budgetary provision);¹⁰¹ <i>or</i></p> <p>b. The provision decreases revenues (or increases spending), and the reporting committee has <i>failed to achieve its reconciliation instructions</i> (therefore Senate committees are careful to fulfill their reconciliation instructions);¹⁰² <i>or</i></p> <p>c. <i>In a year beyond the budget resolution window</i> the provision would reduce revenues (or increase spending) and that revenue loss (or spending increase) causes the relevant title of the reconciliation bill to become a net deficit increaser in the out-year. This restriction is why tax cuts in reconciliation bills are often drafted to expire after ten years, for example President George W. Bush’s 2001 tax cuts.¹⁰³</p>
<p>III. If the provision has no budget effect, it violates the Byrd Rule. Examples of “no-costers” that violate the Byrd Rule are reporting requirements, technical corrections, authorizations, and no-cost policy changes.</p> <p>a. <i>Exception:</i> Senate-originated provisions which have no budget effect during the budget window do not violate the Byrd Rule, if the Chairman and Ranking Member of the Budget Committee <i>and</i> the authorizing committee certify that one of the following is true:</p> <p>i. the provision mitigates a budgetary provision; or</p> <p>ii. the provision will result in substantial deficit reduction in an outyear (i.e., a year beyond the budget “window” of the reconciliation bill); or</p> <p>iii. budgetary effects are likely to occur in the event of new regulations, court rulings, or statutory triggers; or</p> <p>iv. budgetary effects are likely but cannot currently be estimated.¹⁰⁴</p>
<p>IV. Provisions outside a committee’s jurisdiction¹⁰⁵ and provisions affecting Social Security automatically violate the Byrd Rule.¹⁰⁶</p>
<p><i>Note on Application of Byrd Rule to Conference Reports.</i>¹⁰⁷</p>

¹⁰⁰ *Id.* at §313(b)(1)(A).

¹⁰¹ *Id.* at §313(b)(1)(D). The Senate Parliamentarian’s strict interpretation of provisions that have a “merely incidental” budget effect led to minimum wage, immigration and other provisions being pulled from President Biden’s “Build Back Better” reconciliation bill in 2021.

¹⁰² *Id.* at §313(b)(1)(B).

¹⁰³ *Id.* at §313(b)(1)(E).

¹⁰⁴ *Id.* at §313(b)(2).

¹⁰⁵ *Id.* at §313(b)(1)(C).

¹⁰⁶ *Id.* at §313(b)(1)(F).

¹⁰⁷ House-Senate conference reports are normally immune from amendment; in the absence of such protections, negotiations would never end. However, the Byrd Rule is an exception. If a Byrd Rule point of order is raised and sustained against a provision in a reconciliation conference report, the offending provision is automatically stripped out and the conference report loses its protected conference report status. By losing conference report status, the reconciliation legislation becomes an

1974 Budget Act Points of Order

As explained in the preceding sections of this primer, the 1974 Budget Act sets forth a process by which Congress may adopt a fiscal policy framework in the form of a budget resolution for each fiscal year, including spending and revenue totals and committee allocations. This framework is enforceable through 1974 Budget Act points of order.

A point of order is a procedural objection that a Representative or Senator may raise against a bill, resolution, amendment, or conference report on the House or Senate Floor, respectively. In general, if the Presiding Officer,¹⁰⁸ advised by the Parliamentarian, sustains the point of order (i.e., finds it to be a valid objection), the entire bill, resolution, amendment, or conference report is *removed from consideration by the chamber*.¹⁰⁹

An exception is a “Byrd Rule” point of order, where the *offending provision is automatically stricken* from the reconciliation bill, but consideration of the bill continues.¹¹⁰ Other points of order that strike provisions, without pulling the entire bill from consideration, include emergency spending designations.¹¹¹

Points of order are typically established by a statute or resolution stating that “it shall not be in order” for the House or Senate to consider a bill, amendment, or conference report that is inconsistent with a particular budgetary limitation or requirement.

Points of order can be waived. In the House of Representatives, waivers most often occur as part of “Special Rules,” adopted by the House, which set forth the conditions under which legislation will be considered. Budget waivers in the House may apply to one or more specified points of order or may include a blanket waiver of all budgetary points of order.

In the Senate, points of order are waived by a vote of the chamber. The table in Appendix D details whether particular waivers require a simple majority vote or a supermajority of 60 votes.¹¹² Many of the 60-vote thresholds are scheduled to expire September 30, 2025.¹¹³

Most budget points of order were initially set forth in the 1974 Budget Act, as amended.¹¹⁴ Others are set forth, as noted in Appendix D, in the FY 2010 budget resolution, the FY 2008 budget

“amendment between the Houses,” where it is open to further amendment. Id. at §313(d). This happened in December 2005 when Senators successfully raised Byrd Rule points of order against the Deficit Reduction Act conference report, with the effect of sending the legislation back to the House of Representatives for another vote on February 1, 2006.

¹⁰⁸ In the Senate, the Presiding Officer is a Senator of the Majority Party who is chairing a session of the Senate in the place of the Vice President or the President Pro Tempore. In the House, the Presiding Officer is a Representative of the Majority Party who is chairing the “Committee of the Whole on the State of the Union” which allows the consideration of legislation under relaxed procedural requirements, or a session of the House of Representatives in the place of the Speaker.

¹⁰⁹ In the Senate, under section 312(f) of the 1974 Budget Act, the offending bill or resolution is removed from the Floor and recommitted to the committee of jurisdiction. Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §312(f), 88 Stat. 297 (codified as amended at 2 U.S.C. 643(f)).

¹¹⁰ The “Byrd Rule” is set forth in Section 313 of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (1974).

¹¹¹ (Section 403(e)(1) of S.Con.Res. 13 (111th Congress); Section 314(e) of the 1974 Budget Act; and Section 4(g)(3) of the Statutory Pay-As-You-Go Act of 2010.

¹¹² Senate waivers are provided for in section 904 of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (1974).

¹¹³ Section 3201(a)(1) of S.Con.Res. 11 (114th Congress).

¹¹⁴ The Congressional 1974 Budget Act (Titles I-IX of Pub. L. No. 93-344) has been amended several times since its enactment by: the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. No. 99-177; the Balanced Budget and Emergency

resolution, the Budget Enforcement Act of 1990, the Rules of the House and Senate, and provisions of the Statutory Pay-As-You-Go Act of 2010.¹¹⁵

As summarized below, 1974 Budget Act points of order enforce the aggregate spending ceilings and revenue floor in the budget resolution, the committee spending allocations set forth in the budget resolution conference report, as well as the suballocations to the 12 appropriations subcommittees.

Controlling aggregate spending

The 1974 Budget Act prohibits consideration of any spending legislation—discretionary spending or entitlement spending—that would cause the budget resolution’s aggregate spending levels for budget authority *or* outlays to be exceeded. (Sixty votes are required to waive this point of order in the Senate.)¹¹⁶

Controlling discretionary spending

The 1974 Budget Act prohibits consideration of any appropriations bill that would cause the relevant subcommittee’s 302(b) suballocation to be exceeded. This is one of the most potent budget enforcement mechanisms. By ensuring that each subcommittee remains within its suballocation, this point of order keeps discretionary spending within the total levels established by the budget resolution. (Sixty votes are required to waive this point of order in the Senate.)¹¹⁷

Controlling direct spending

Similarly, the 1974 Budget Act prohibits consideration of direct spending legislation—usually a change to an entitlement program—that would cause the relevant authorizing committee’s direct spending allocation (their 302(a) allocation) under the budget resolution to be exceeded. Consequently, if the budget resolution does not incorporate increased spending in the relevant authorizing committee’s 302(a) allocation, any Senator can object to legislation proposing a new or expanded program (with 60 votes required to waive the point of order in the Senate).¹¹⁸

Breaching the revenue floor

As explained above, the budget resolution sets forth total levels for both spending and revenues. The 1974 Budget Act prohibits consideration of tax cut legislation that would cause federal revenues to drop below the budget resolution’s revenue floor in either the upcoming budget year or over the period of years covered by the budget resolution (with 60 votes required to waive the point of order in the Senate).¹¹⁹

Deficit Control Reaffirmation Act of 1987 (Pub. L. No. 100-119); the Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508); Title XIV of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66); Title X of the Balanced 1974 Budget Act of 1997 (Pub. L. No. 105-33), and the Bipartisan Budget Act of 2013 (Pub. L. No. 113-67).

¹¹⁵ Statutory Pay-As-You-Go Act of 2010, Pub. L. No. 111-139, 124 Stat. 8 (2010).

¹¹⁶ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §311, 88 Stat. 297 (codified as amended at 2 U.S.C. 643(f)).

¹¹⁷ *Id.* at §302.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

Budget Points of Order Generally

Budget Act points of order are more significant in the Senate than in the House of Representatives for two reasons. First, the House majority (i.e., the party in power) strictly controls the procedures for consideration of all major legislation by adopting “Special Rules” that determine whether points of order may be raised (as well as what amendments may be offered and how much time a measure will be debated). In the Senate, by contrast, any Senator can raise a point of order at any time.

Second, most 1974 Budget Act points of order in the Senate can be waived only by a three-fifths supermajority vote of the Senate (i.e., 60 votes). The importance of this supermajority requirement cannot be overemphasized. It is exceedingly difficult to muster 60 votes to overcome a budget point of order, which makes the points of order strong enforcement mechanisms.

It is important to note that 1974 Budget Act “points of order” are designed to provide budget enforcement when Congress has adopted a budget resolution. Since FY 2011, however, Congress has not adopted a budget resolution nine times. (See Appendix G.) Nevertheless, in such years, the House and Senate have typically adopted simple (one-chamber) resolutions *deeming* specified numbers to be budget resolution totals or committee allocations for purposes of 1974 Budget Act points of order.

Deeming Resolutions: Establishing Points of Order without a Budget Resolution

In years when the House and Senate have not reached agreement on a budget resolution, the House and Senate may adopt “deeming resolutions” to serve in place of the annual budget resolution for purposes of establishing enforceable budget levels and committee allocations.

Deeming resolutions are generally simple resolutions¹²⁰ that deem specified levels to be budget resolution spending and revenue aggregates and committee allocations for purposes of 1974 Budget Act points of order.

While deeming provisions are generally adopted by simple resolution, they have also been incorporated in other legislative vehicles such as appropriations bills or, in recent years, Bipartisan Budget Acts.¹²¹

Deeming resolutions are so named, because they have the legal effect of “deeming” specified numbers to be budget resolution levels for purposes of 1974 Budget Act points of order. For example, in the 105th Congress, the House deeming resolution provided, in part:

*Pending the adoption by the Congress of a concurrent resolution on the budget for FY 1999, the following allocations contemplated by section 302(a) of the Congressional 1974 Budget Act of 1974 shall be considered as made to the Committee on Appropriations: (1) New discretionary budget authority: \$531,961,000,000. (2) Discretionary outlays: \$562,277,000,000.*¹²²

Other deeming resolutions have incorporated budgetary levels by reference to a budget resolution adopted by that chamber, but without a conference agreement between the Houses:

¹²⁰ A simple resolution – S.Res. or H.Res. – takes effect when adopted by a single chamber.

¹²¹ Bipartisan Budget Acts are explained later in the section on the Budget Control Act of 2011.

¹²² H.Res. 477, §2 (105th Congress).

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Pending the adoption of a concurrent resolution on the budget for fiscal year 2003, the provisions of House Concurrent Resolution 353, as adopted by the House, shall have force and effect in the House as though Congress has adopted such concurrent resolution.¹²³

Since enactment of the 1974 Budget Act, there have been 12 years in which Congress did not come to agreement on a budget resolution. In most of those years, one or both chambers adopted a deeming resolution, or a bill including deeming provisions, to enable 1974 Budget Act points of order. Appendix G provides a list of deeming resolutions adopted since FY 1999, the first year Congress failed to adopt a budget resolution.

¹²³ H.Res. 428, §2 (107th Congress).

The Impoundment Control Act of 1974

A major 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 established legal procedures to prevent a recurrence of this dispute and is separately referred to as the Impoundment Control Act (ICA).¹²⁴

Under the procedures put in place by the ICA, 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 portion of the budget that is susceptible to rescissions or deferrals is the nearly one-third of the budget that is “discretionary” and subject to annual funding decisions. However, this authority does not apply to the more than two-thirds of the budget consisting of entitlement and other mandatory programs or interest payments on the debt.¹²⁵ Reducing spending for entitlement or other mandatory programs would require changes to the statutes that legally guarantee specific payments to eligible individuals or entities.

Deferrals

The purpose of the deferral mechanism is to permit the President to set money aside until later in a fiscal 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 decisions. 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 immediately released.¹²⁶

Rescissions

Unlike deferrals which take effect unless overturned, a rescission (cancellation) of appropriations proposed by the President, does *not* occur unless Congress affirmatively passes a law approving the cancellation within 45 days. The funds proposed for rescission are withheld during the 45-day-period, but must be released after 45 days unless both chambers have passed, and the President, has signed a rescission measure. Rescission legislation in the Senate is subject to statutory debate limitations and therefore *cannot be filibustered*, and requires only a simple majority for passage.¹²⁷

Apart from the President’s authority to propose rescissions, Congress retains authority to initiate its own rescission legislation to revise earlier appropriations decisions, and has done so on many occasions.

¹²⁴ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 1001 et seq., 88 Stat. 297 (codified as amended at 2 U.S.C. § 681).

¹²⁵ For budgetary totals for discretionary and mandatory spending, and interest payments, see Cong. Budget Off., *The Budget and Economic Outlook: 2022 to 2032*, Table 1-1, (2022), <https://www.cbo.gov/publication/58147>.

¹²⁶ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 1013, (2 U.S.C. § 684).

¹²⁷ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 1012, (2 U.S.C. § 683).

Role of the Comptroller General in Enforcement of the ICA

In drafting the ICA, Congress put teeth in its limitations on presidential impoundment, by empowering the Comptroller General, who heads the Congress' investigative arm, the Government Accountability Office (GAO),¹²⁸ to file suit in federal Court to require the release of appropriated funds that have been illegally deferred or rescinded.¹²⁹ In addition, the Comptroller General analyzes for Congress all deferrals and proposed rescissions for compliance with the ICA's statutory requirements.¹³⁰

The important role of the GAO in enforcing the Impoundment Control Act was underscored in 2020 when they ruled that the Trump Administration in the summer of 2019 had violated the Impoundment Control Act by attempting to use the apportionment process to withhold funds appropriated to the Department of Defense for security assistance to Ukraine.¹³¹

¹²⁸ Previously known as the General Accounting Office when the ICA was enacted in 1974.

¹²⁹ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 1016, (2 U.S.C. § 687).

¹³⁰ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 1015, (2 U.S.C. § 686).

¹³¹ U.S. Gov't Accountability Off. Decision, B-331564, January 16, 2020, <https://www.gao.gov/assets/710/703909.pdf>. See also the section below on "apportionment."

Appropriations and the Budget Process

Congress' annual objective is to complete action on all 12 appropriations bills by October 1, when the new fiscal year begins.¹³² If Congress has not completed action on appropriations for a particular department or agency, a continuing resolution (“CR”) is required to maintain funding until appropriations bills are completed. If Congress has failed to enact regular appropriations or a CR by the start of a fiscal year, the Antideficiency Act requires unfunded departments and agencies to shut down.¹³³

In setting appropriations for the upcoming fiscal year for each program, project, or activity, Members of each of the 12 Appropriations subcommittees will typically consider:

- Funding levels for the current fiscal year;
- The amount requested by the President for the upcoming fiscal year;
- Increases necessary to adjust for inflation or to fund new initiatives;
- Funding requests received from other Members of Congress; and
- Balancing the relative priority of each line item within the respective subcommittee’s 302(b) allocation.¹³⁴

This section of the primer explains all things relating to appropriations—the key characteristics of appropriations, advance appropriations, the Antideficiency Act, government shutdowns, the apportionment and allotment processes, the separation of appropriations and authorizations, changes in mandatory programs via appropriations bills, continuing resolutions, omnibus and minibus bills, and supplemental appropriations.

Appropriations Bills: Four Key Characteristics

As explained in the section on foundational concepts, federal spending consists of two types of numbers: budget authority and outlays.

Budget authority is the legal authority Congress grants to federal departments and agencies to enter into obligations that will result in outlays (i.e., disbursements by the Treasury). Enactment of budget authority is the exercise of Congress’ constitutional authority over appropriations as reflected in the Article I, Section 9 requirement that “no Money shall be drawn from the Treasury, but in consequence of appropriations made by law.”¹³⁵

In contrast to appropriations bills—which enact budget authority—outlays are the disbursements that result from a department or agency obligating the federal government. Congress enacts budget authority; outlays are the projected result.

¹³² The beginning of each fiscal year was moved from July 1 to October 1 by the Congressional Budget and Impoundment Control Act of 1974.

¹³³ Antideficiency Act (enacted in 1870 as part of the legislative appropriations bill), 31 U.S.C. §§ 1341-42; 1511-1519.

¹³⁴ See the explanation of 302(b) Appropriations subcommittee allocations, above.

¹³⁵ U.S. Const., art. I, §9, cl. 7.

Appropriations, as well as other types of budget authority, may be classified by:

- **duration** (1-year, multiple-year, or no-year),
- **timing** (current or permanent),
- **determination of amount** available (definite or indefinite), and
- **availability** for new obligations.¹³⁶

Duration refers to the amount of time during which appropriations or other types of budget authority are available to an agency for obligation. Most often, Congress provides appropriations for one year, but some agencies or programs receive budget authority for multiple fiscal years, or in some cases, for an indefinite period of time (known as “no-year” authority).¹³⁷

While most budget authority coincides with the federal fiscal year, some budget authority may be available on a different schedule, for example, from July 1 of one fiscal year through September 30 of the following fiscal year, or a period of 15 months.¹³⁸ This is often referred to as “forward funding” and is sometimes used for education funding to align with the school year.

When the period for which budget authority is made available expires, unobligated balances of the authority may no longer be used. A “reappropriation” of the unobligated balances is required to make all or part of the expired authority available.¹³⁹

Timing refers to the characteristic of budget authority that renders it “current authority” or “permanent authority.” Current authority is an appropriation, or other budget authority, made available for a specified fiscal year or years. Permanent authority, by contrast, is an appropriation, or other type of budget authority, which is available continuously and without further legislative action. For example, Congress may give an agency permanent authority to spend user fees or other receipts from a particular type of project or activity.¹⁴⁰

Determination of amount refers to whether the amount of budget authority is “definite” or “indefinite” at the time of enactment. Definite authority is stated as a specified sum at the time the budget authority is enacted. Indefinite authority refers to budget authority that, *at the time of enactment*, lacks a specified amount. For example, authorities to spend the proceeds of an asset sale, or assets forfeited in a criminal prosecution, are indefinite because the sale or forfeiture amounts are unknown at the time of enactment. Another example is an appropriation for “such sums as may be necessary,” where Congress wants a goal to be achieved but is unable to determine the required amount of funding at the time of enactment.¹⁴¹

¹³⁶ U.S. Gov't Accountability Off., GAO-05-734SP, A Glossary of Terms Used in the Federal Budget Process, 21-23 (2005), <https://www.gao.gov/new.items/d05734sp.pdf>.

¹³⁷ *Id.* at 22.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 22-23.

¹⁴¹ *Id.* at 23.

Availability for new obligations refers to whether budget authority is expired or unexpired. Unexpired budget authority refers to appropriations or other budget authority that remains available for obligation,¹⁴² whereas expired budget authority is no longer available to incur new obligations.¹⁴³

Advance Appropriations

Advance appropriations refer to budget authority provided in an appropriation act to become available in a fiscal year *beyond* the fiscal year for which the appropriations act is enacted. The amount is included in the budget totals for the fiscal year in which the amount will become available for obligation. For example, a fiscal year 2022 appropriation could provide that certain budget authority for a specified activity is not available for obligation until October 1, 2022 (the start of FY 2023).¹⁴⁴ In this example, the budget authority would be recorded in FY 2023, even though enacted in the FY 2022 bill.

Antideficiency Act and Government Shutdowns

Sometimes, multiple CRs are adopted before final agreement on appropriations for the new fiscal year is reached. Occasionally, political gridlock prevents adoption of a CR, and the federal government is required to shut down.

The Antideficiency Act of 1870 makes it illegal, subject to prosecution, for any government official to make payments or enter into contracts in excess of congressional appropriations.¹⁴⁵ Therefore, when a new fiscal year begins, if Congress has not enacted regular appropriations or a continuing resolution for particular departments or agencies, the unfunded departments and agencies *must* shut down – with specified exceptions. Lengthy government shutdowns occurred in 1995, 2013, and December 2018 through January 2019.¹⁴⁶

The Legal Requirement to Shut Down

Although the Antideficiency Act was enacted in 1870, it was not until 1980 that the Department of Justice issued the first of three legal opinion that interpreted the Act as requiring the government to shut down.

In a 1980 Opinion, Attorney General Benjamin Civiletti, issued an opinion on the “Applicability of the Antideficiency Act Upon a Lapse in an Agency’s Appropriation.”¹⁴⁷ The Opinion provided:

*(I)f, after the expiration of an agency’s appropriation, Congress has not enacted an appropriation for the immediately subsequent period, the agency may obligate no further funds except as necessary to bring about the orderly termination of its functions, and the obligation or expenditure of funds for any purpose not otherwise authorized by law would be a violation of the Antideficiency Act.*¹⁴⁸

¹⁴² *Id.*

¹⁴³ An exception is that expired budget authority remains available for five years for certain limited types of obligation adjustments *See* 31 U.S.C. §§ 1552(a) and 1553(a).

¹⁴⁴ U.S. Gov’t Accountability Off., GAO-05-734SP, A Glossary of Terms Used in the Federal Budget Process, 8 (2005), <https://www.gao.gov/new.items/d05734sp.pdf>.

¹⁴⁵ Antideficiency Act (enacted in 1870 as part of the legislative appropriations bill), 31 U.S.C. § 1341(a).

¹⁴⁶ Cong. Rsch. Serv., R41759, Past Government Shutdowns: Key Resources (2019), <https://crsreports.congress.gov/product/pdf/R/R41759>.

¹⁴⁷ 4A Op. O.L.C. 16 (1980).

¹⁴⁸ *Id.* at 16.

The Attorney General opined that “the manifest purpose of the Antideficiency Act is to insure [sic.] that Congress will determine for what purpose the government’s money is to be spent and how much for each purpose.”¹⁴⁹ In addition, “because no statute generally permits federal agencies to incur obligations without appropriations for the pay of employees, agencies are not, in general, authorized to employ the services of their employees upon a lapse in appropriations.”¹⁵⁰

In a 1981 Opinion on “Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations,” the Attorney General addressed which government functions are permitted to continue during a temporary lapse of appropriations:

*Statutory authority for an agency to incur obligations in advance of appropriations need not be express, but may be implied from the specific duties that have been imposed upon, or of authorities that have been invested in, the agency. The “authorized by law” exception in the Antideficiency Act exempts from that Act’s general prohibition not only those obligations for which there is statutory authority, but also those obligations necessarily incident to initiatives undertaken within the President’s constitutional powers.*¹⁵¹

Therefore, the Opinion concluded, “a government agency may employ personal services in advance of appropriations only when there is a reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property, and when there is some reasonable likelihood that either or both would be compromised in some degree by delay in the performance of the function in question.”¹⁵²

Finally, in a 1995 Memorandum Opinion for the Director of the Office of Management and Budget (“OMB”), the DOJ Office of Legal Counsel, reiterated the “life and property exception” explaining that excepted employees may be required to work during a shutdown, but cannot be paid:”

*A government agency may employ personal services in advance of appropriations only when there is a reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property, and when there is some reasonable likelihood that either or both would be compromised in some significant degree by the delay in the performance of the function in question.*¹⁵³

The Longest Federal Shutdown

The longest federal government shutdown occurred from December 22, 2018, through January 25, 2019. The shutdown began Saturday morning, December 22, 2018, due to an impasse over whether to include \$5.8 billion for a US-Mexico border wall in a stopgap funding measure. The shutdown included 9 out of 15 federal departments and more than two dozen independent agencies. The affected departments and agencies were required to shut down and furlough their employees, although “excepted employees” (i.e., those deemed to have responsibilities related to protection of

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ 5 Op. O.L.C. 1, *Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations* (January 16 1981) accessed on August 24, 2022 at <https://www.justice.gov/olc/file/626816/download>.

¹⁵² *Id.*

¹⁵³ Memorandum Opinion for the Director of the Office of Management and Budget, AAG Walter Dellinger, *Government Operations in the Event of a Lapse in Appropriations*, August 16, 1995, <https://appropriations.com/wp-content/uploads/2018/12/Department-of-Justice-OLC-Opinion-from-AAG-Walter-Dellinger-1995-.pdf>.

life or property) continued to work without pay. Six departments¹⁵⁴ were generally unaffected by the shutdown because their FY 2019 appropriations had already been enacted. On January 25, 2019, the President signed a short-term CR (H.J.Res. 28) through February 15, 2019, ending the shutdown.¹⁵⁵ The longest shutdown prior to FY 2020 was a 21-day shutdown in 1995.¹⁵⁶

Apportionment and Allotment

Following the enactment of appropriations by Congress, appropriations are not immediately available to federal agencies. A preliminary step in making funds available for obligation by departments and agencies is for OMB to release the funds to agencies in a process known as “apportionment.”¹⁵⁷

The purpose of apportionment is for OMB to make funds available to agencies in a measured way, in order to avoid budget authority running out prior to the end of a fiscal year, in other words, to avoid deficiencies, and the resulting necessity to request supplemental funds.

OMB typically apportions budget authority to departments and agencies in one of two ways: (1) by time periods (usually quarterly); or (2) by programs, projects, or activities. After OMB apportions budget authority to an agency, the recipient agency then makes *allotments* to officials or subunits within the agency, allowing them to incur obligations on behalf of the government.¹⁵⁸

An apportionment is legally binding, and any action that would financially obligate the federal government in excess of an apportionment is a violation of the Antideficiency Act (discussed in the previous section).¹⁵⁹ The Antideficiency Act prohibits federal employees from obligating or disbursing amounts in excess of an appropriation, an apportionment, or an allotment.¹⁶⁰

Agencies may, however, request *reapportionments* from OMB when unforeseen events have occurred.¹⁶¹ In addition, Congress may provide agencies with authority to reallocate funds from one appropriations account to another (“transfers”); or from one purpose, to another, within an appropriations account (“reprogramming”).

Apportionment is *not* a means by which the President may withhold funds appropriated by Congress. A President’s failure to make appropriated funds available for their congressionally intended purpose is strictly prohibited, as described above in the section on the Impoundment Control Act of 1974. This prohibition was reinforced on January 16, 2020 when the Government Accountability Office (GAO) ruled that the Trump Administration in the summer of 2019 had violated the Impoundment Control Act by attempting to use the apportionment process to withhold funds appropriated to the

¹⁵⁴ Defense, Education, Energy, HHS (except for Indian Health Service and FDA which are funded in two of the unfinished bills), Labor, and Veterans Affairs.

¹⁵⁵ H.J.Res. 28, Pub. L. No. 11605 (2019), <https://www.congress.gov/bill/116th-congress/house-joint-resolution/28?q=%7B%22search%22%3A%5B%22H.J.Res.+28%22%5D%7D&s=1&r=1>.

¹⁵⁶ Shutdown of the Federal Government: Causes, Processes, and Effects, Cong. Rsch. Serv., RL34680, 3 (2018), <https://crsreports.congress.gov/product/pdf/RL/RL34680>.

¹⁵⁷ An apportionment is an OMB-approved plan to use budgetary resources (31 U.S.C. 1513(b); Executive Order 11541).

¹⁵⁸ Each agency makes allotments pursuant to specific procedures it establishes within the general apportionment requirements stated in OMB Circular No. A-11. U.S. Gov’t Accountability Off., GAO-05-734SP, A Glossary of Terms Used in the Federal Budget Process, 10 (2005), <https://www.gao.gov/new.items/d05734sp.pdf>.

¹⁵⁹ 31 U.S.C. 1517(a)(1), (b)). For further information on the Antideficiency Act, see the section below on “Appropriations Law,” subsection on “Antideficiency Act and Government Shutdowns.”

¹⁶⁰ OMB Circular A-11, Introduction to Apportionments 120.1.

¹⁶¹ *Id.*

Department of Defense for security assistance to Ukraine.¹⁶² As explained in the previous section, a President may defer funds to later in a fiscal year or may propose to Congress a rescission of funds, but the withholding or impoundment of funds is an illegal encroachment on Congress' constitutional power of the purse.

Appropriations v. Authorizations: Enforcing the Separation

As explained above, Congress has a three-tier legislative process: (1) authorizations controlled by 17 authorizing committees in the House and Senate, respectively;¹⁶³ (2) annual appropriations and revenue-raising controlled by House and Senate Appropriations Committees and the two tax-writing committees;¹⁶⁴ and (3) the newest tier—the congressional budget process—which focuses on broad fiscal priorities and the effects of total spending and revenues on the U.S. economy.

Authorizing committees assess national needs and determine if a federal response is necessary and appropriate through authorizing legislation to establish, continue, or modify federal agencies and programs.

Authorizing legislation may also propose levels of funding for subsequent appropriations—which are referred to as *authorizations of appropriations*, for example, “there are authorized to be appropriated \$50 million in fiscal year 2023, \$60 million in fiscal year 2024, and \$70 million fiscal year 2025 to carry out this Act.” Sometimes authorizations are more general, for example, “there are authorized such sums as may be necessary to carry out this Act.” Neither type of authorization provides actual funding; enactment of an *appropriation* is constitutionally required to provide funding.

Authorization bills are generally *multiyear* because they are focused broadly on federal program and agency goals, and overall funding needs, whereas appropriations bills are generally enacted *annually* to enable careful scrutinization of agency operations and spending.¹⁶⁵

Congress has adopted rules aimed at protecting the respective jurisdictions of the 17 House and Senate authorizing committees, and the respective House and Senate Appropriations Committees, by (1) restricting the inclusion of authorizing legislation in appropriations bills or the inclusion of appropriations in authorizing legislation; (2) restricting appropriations in the absence of authorizations; and (3) prohibiting nongermane amendments to appropriations bills.

¹⁶² U.S. Gov't Accountability Off. Decision, B-331564, January 16, 2020, <https://www.gao.gov/assets/710/703909.pdf>.

¹⁶³ *In the House*, the Committees on Agriculture; Armed Services; Education & Labor; Energy & Commerce; Financial Services; Foreign Affairs; Homeland Security; House Administration; Intelligence; Judiciary; Natural Resources; Oversight & Reform; Rules; Science, Space & Technology; Small Business; Transportation and Infrastructure, Veterans' Affairs; and Ways & Means. *In the Senate*, the Committees on Aging; Agriculture, Nutrition & Forestry; Armed Services; Banking, House & Urban Affairs; Commerce, Science & Transportation; Energy & Natural Resources; Environment & Public Works; Finance; Foreign Relations; Health, Education, Labor & Pensions; Homeland Security & Governmental Affairs; Indian Affairs; Intelligence; Judiciary; Rules & Administration; Small Business and Entrepreneurship; Veterans' Affairs.

¹⁶⁴ Revenue-raising is assigned to the Ways & Means Committee in the House and the Finance Committee in the Senate. In addition to revenue raising, both committees have broad authorizing jurisdiction over Social Security, Medicare, Medicaid, and other programs set forth in the Social Security Act.

¹⁶⁵ There are exceptions. The National Defense Authorization Act (NDAA) is enacted annually; and education appropriations are often multiyear.

Prohibiting Authorizations in Appropriations Bills

House Rule XXI provides a parliamentary point of order against including authorizing legislation in regular and supplemental appropriations bills.¹⁶⁶

Conversely, House Rules also contain a prohibition against inclusion of appropriations on legislative bills.¹⁶⁷

Similar to the House Rule, Senate Rule XVI provides a point of order against amendments that constitute legislation on an Appropriations bill.¹⁶⁸

Despite these general restrictions, the prohibitions against legislating on appropriations bills are often waived—in the House, by Special Rules adopted for consideration of appropriations bills, and in the Senate, by leadership agreements to advance time sensitive legislation by including legislative provisions in appropriations bills.

Prohibiting Appropriations without Authorizations

In addition to the general prohibitions on legislation in appropriations bills, House and Senate Rules also seek to protect the jurisdictions of authorizing committees by prohibiting “unauthorized appropriations” — which are funding provisions not preceded by “authorizations of appropriations.”

House Rule XXI prohibits the reporting of appropriations bills “not previously authorized by law.”¹⁶⁹ Similarly, Senate Rule XVI provides a point of order against *amendments* providing new funding “unless it be made to carry out the provisions of some existing law....” However, the Senate’s general prohibition on unauthorized appropriations provides exceptions where the funding has been previously authorized earlier in the legislative session or has been proposed by the Appropriations Committee or the authorizing committee of jurisdiction.”¹⁷⁰

¹⁶⁶ House Rule XXI, cl. 2: “(b) A provision *changing existing law* may not be reported in a general appropriation bill, including a provision making the availability of funds contingent on the receipt or possession of information not required by existing law.... (c) An amendment to a general appropriation bill shall not be in order if *changing existing law*, including an amendment making the availability of funds contingent on the receipt or possession of information not required by existing law....” The House prohibition applies to bills reported by the House Appropriations Committee, amendments, and conference reports; however, the prohibition does not apply to continuing resolutions. House Rule XXI, cl. 2: “(a)(1) An appropriation may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, for an expenditure not previously authorized by law, *except to continue appropriations for public works and objects that are already in progress*” (emphasis added).

¹⁶⁷ House Rule XXI, cl. 4. “A bill or joint resolution carrying an appropriation may not be reported by a committee not having jurisdiction to report appropriations, and an amendment proposing an appropriation shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A point of order against an appropriation in such a bill, joint resolution, or amendment thereto may be raised at any time during pendency of that measure for amendment.”

¹⁶⁸ Senate Rule XVI: “(2) The Committee on Appropriations shall not report an appropriation bill containing amendments to such bill proposing *new or general legislation* or any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law if such restriction is to take effect or cease to be effective upon the happening of a contingency, and if an appropriation bill is reported to the Senate containing amendments to such bill proposing *new or general legislation* or any such restriction, a point of order may be made against the bill, and if the point is sustained, the bill shall be recommitted to the Committee on Appropriations....(4) On a point of order made by any Senator, no amendment offered by any other Senator which proposes *general legislation* shall be received to any general appropriation bill....”

¹⁶⁹ House Rule XXI, cl. 2: “(a)(1) An appropriation may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, for an expenditure not previously authorized by law, *except to continue appropriations for public works and objects that are already in progress.*”

¹⁷⁰ Senate Rule XVI, cl. 1: “On a point of order made by any Senator, no amendments shall be received to any general appropriation bill the effect of which will be to increase an appropriation already contained in the bill, or to add a new item of appropriation, unless it be made to carry out the provisions of some existing law...or act or resolution previously passed by the Senate during that session; or unless the same be moved by direction of the Committee on Appropriations or of a committee of the Senate having legislative jurisdiction of the subject matter....”

Notwithstanding these general rules to avoid unauthorized appropriations, congressional appropriators frequently enact funding provisions without prior authorization. Each year the Congressional Budget Office publishes a report on expired and expiring authorizations. In a recent annual report, CBO identified “1,068 authorizations of appropriations that expired before the beginning of fiscal year 2021 and 119 authorizations that were set to expire before the end of the year. CBO also identified \$432 billion in appropriations for 2021 that could be associated with 402 expired authorizations of appropriations.”¹⁷¹

In addition, the Comptroller General of the United States has determined that unauthorized appropriations, once enacted, have the force of law:

*Where authorizations are not required by law, Congress may, subject to a possible point of order, appropriate funds for a program or object that has not been previously authorized or which exceeds the scope of a prior authorization, in which event the enacted appropriation, in effect, carries its own authorization and is available to the agency for obligation and expenditure.*¹⁷²

Prohibiting Nongermane Amendments to Appropriations Bills

Another means of enforcing the separation of authorization and appropriation measures are the House and Senate “germaneness” requirements aimed at keeping appropriations bills free of legislative or other non-appropriations provisions. Germaneness is generally a stricter limitation than simple relevance.

House Rule XVI sets forth a general prohibition on nongermane amendments.¹⁷³ While the Senate does not have a general germaneness restriction, Senate Rule XVI provides a point of order against any amendment to an appropriations bill that is “not germane or relevant to the subject matter contained in the bill.”¹⁷⁴

Limits on Changes in Mandatory Programs (CHIMPs) in Appropriations Bills

As explained above under “foundational concepts,” federal spending is generally divided into two categories: (1) *discretionary spending* enacted in the 12 annual appropriations bills; and (2) *direct spending* (also referred to as mandatory spending) that includes entitlement programs and other spending controlled directly by Congress’ authorizing committees.

¹⁷¹ See *Expired and Expiring Authorizations of Appropriations: Fiscal Year 2021, At a Glance*, at <https://www.cbo.gov/system/files/2021-05/57023-EEAA.pdf>.

¹⁷² GAO Red Book, at 2-69, citing Matter of: Department Justice - Bureau of Justice Assistance - Project Authorized by Appropriation Act, 67 Comp. Gen. 401 (1988); see also 36 Comp. Gen. 240, 242 (1956) (“It is fundamental ... that one Congress cannot bind a future Congress and that the Congress has full power to make an appropriation in excess of a cost limitation contained in the original authorization act. This authority is exercised as an incident to the power of the Congress to appropriate and regulate expenditures of the public money.”).

¹⁷³ House Rule XVI, cl. 7: “Germaneness.--No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.”

¹⁷⁴ Senate Rule XVI, cl. 4: “On a point of order made by any Senator, no amendment offered by any other Senator which proposes general legislation shall be received to any general appropriation bill, *nor shall any amendment not germane or relevant to the subject matter contained in the bill be received*; nor shall any amendment to any item or clause of such bill be received which does not directly relate thereto; nor shall any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law be received if such restriction is to take effect or cease to be effective upon the happening of a contingency; and all questions of relevancy of amendments under this rule, when raised, shall be submitted to the Senate and be decided without debate; and any such amendment or restriction to a general appropriation bill may be laid on the table without prejudice to the bill.”

Under the 2011 Budget Control Act (explained later in this primer), discretionary spending was controlled for fiscal years 2012-2021 by statutory limits on defense and non-defense discretionary budget authority.¹⁷⁵ A mechanism that was sometimes used to enable enactment of additional discretionary budget authority, without violating the statutory limits, were changes in mandatory programs referred to as “CHIMPs.”

CHIMPs are provisions that make changes in direct (mandatory) spending programs, that score as *negative budget authority*, without reducing outlays.¹⁷⁶ The negative budget authority allows Congress to appropriate additional discretionary funds while remaining within the statutory limits on budget authority for the budget year.

For example, Congress has used annual agriculture appropriations acts to reduce budget authority in direct conservation programs.¹⁷⁷

The utilization of CHIMPs has generated concern from two quarters:

- authorizing committees objecting to appropriations committees making changes to programs that fall within authorizing committee jurisdiction; and
- fiscal analysts who assert that CHIMPs enable the appropriations committees to circumvent the statutory limits on discretionary budget authority with policy changes that need not produce any outlay savings.¹⁷⁸

Consequently, Congress established in the Bipartisan Budget Act of 2019 a point of order in the Senate to limit the use of CHIMPs to \$15 billion for FY 2021, with a 60-vote threshold to waive the point of order.¹⁷⁹

Continuing Resolutions (CRs)

When the new fiscal year begins on October 1st, if Congress has not completed action on the 12 regular appropriations bills—individually, or through minibus or omnibus bills—stop-gap funding is needed to avoid a shutdown. A stop-gap funding measure is called a continuing resolution (“CR”).

¹⁷⁵ The statutory limits under the 2011 Budget Control Act apply only to budget authority (unlike the first round of caps under the 1990 Budget Enforcement Act that applied to both budget authority *and* outlays).

¹⁷⁶ “CHIMP” is defined in section 207 of the [Bipartisan Budget Act of 2019, Pub. L. No. 116-37, 133 Stat. 1049 \(2019\)](#), as “a provision that—(1) would have been estimated as affecting direct spending or receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902)...; and (2) results in a net decrease in budget authority in the budget year, but does not result in a net decrease in outlays over the period of the total of the current year, the budget year, and all fiscal years covered under the most recently adopted concurrent resolution on the budget.”

¹⁷⁷ Megan Stubbs, Cong. Rsch. Serv., R46011, *FY 2020 Appropriations for Agricultural Conservation, Performance Management and Budgeting in the Federal Government: Brief History and Recent Developments*, note 7 (2020), https://www.everycrsreport.com/files/20200121_R46011_fl176c385870d0d71142ae0e248125f30f7982415.pdf.

¹⁷⁸ As stated in the President’s Budget for Fiscal Year 2020, “many enacted CHIMPs do not result in actual spending reductions. In some cases, the budget authority reduced in one year may become available again the following year, allowing the same reduction to be taken year after year. In other cases, the reduction comes from a program that never would have spent its funding anyway. In both of these cases, under current scoring rules, reductions in budget authority from such CHIMPs can be used to offset appropriations in other programs, which results in an overall increase in Federal spending. In such cases, CHIMPs are used as a tool to work around the constraints imposed by the discretionary budget enforcement caps.” [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2020, Analytical Perspectives, 136 (2020), <https://www.govinfo.gov/content/pkg/BUDGET-2020-PER/pdf/BUDGET-2020-PER-4-3.pdf>.

¹⁷⁹ Bipartisan Budget Act of 2019, Pub. L. No. 116-37, 133 Stat. 1049, § 207(b)(2), (2019).

Unlike a budget resolution which is a *concurrent* resolution of Congress and does not require the President's signature, a CR is typically enacted as a *joint* resolution—which requires presentment to the President and has the force of law.¹⁸⁰

A CR is an appropriations measure—usually temporary—that gives departments and agencies legal authority to obligate the federal government at a specified level, often the prior year funding level.

Congress has enacted CRs in all, but three, of the fiscal years since October 1 became the start of the federal fiscal year in the 1974 Budget Act.¹⁸¹

Continuing resolutions have several features:

- **Scope:** A CR covers the departments and agencies that have not yet been funded by appropriations acts. A CR can cover all the departments and agencies, if none of the 12 regular appropriations bills have been completed, or a portion of the government if some of the bills have been completed while others are still deadlocked or under negotiation.
- **Duration:** A CR specifies a specific duration of time for funding to continue. This is typically a strategic consideration based upon the current status of negotiations, the election cycle, and the congressional schedule. For example, the first CR for FY 2022 funded the departments and agencies from October 1, 2021, through December 3, 2021.¹⁸² In some years, full-year CRs may be enacted for particular departments and agencies when negotiators are unable to reach agreement on one or more regular appropriations bills.
- **Funding Rate:** A CR provides funds based on a particular funding rate. In recent fiscal years, CRs have continued funding for departments and agencies at the prior fiscal year funding level, although in some years, Congress has provided CR funding at rates set forth in a House-passed or Senate-passed funding bill. In those instances, the funding levels of bills that are yet to be passed are incorporated by reference into a CR.
- **New Activities:** A CR may prohibit the stop-gap funding from being used for new activities that were not funded in the previous fiscal year.
- **Anomalies:** CRs typically include exceptions from the general rules above for specific programs, projects, or activities that require special funding levels. These are referred to informally as “anomalies.”¹⁸³
- **Legislative Provisions:** Finally, CRs have sometimes been used as a legislative vehicle for various types of time-sensitive legislative (i.e., non-appropriations) provisions. For example, the first CR for FY 2021, in addition to providing stopgap funding for 6 weeks, also included various health law and veterans' affairs program extensions.¹⁸⁴

¹⁸⁰ The difference between the two types of resolutions lies in their legal effect. A concurrent resolution is a legislative instrument used by Congress to govern its own internal operations, while a joint resolution intended for presentment to the President has the same legal effect as a bill. However, in certain cases, joint resolutions are not intended for presentment to the President and therefore do not have the force of law.

¹⁸¹ Cong. Rsch. Serv., R46595, Continuing Resolutions: Overview of Components and Practices, Summary Page (2020), <https://crsreports.congress.gov/product/pdf/R/R46595>.

¹⁸² Extending Government Funding and Delivering Emergency Assistance Act, 2022, Pub. L. No. 117-43, 135 Stat. 344 (2021).

¹⁸³ Kate McClanahan, Cong. Rsch. Serv., R42647, Continuing Resolutions: Overview of Components and Practices, 7 (2019).

¹⁸⁴ Continuing Appropriations Act, 2021 and Other Extension Acts, Pub. L. No. 116-159, Div. C and E, 134 Stat. 709 (2020).

Omnibus, Minibus, and “Cromnibus” Appropriations Bills

In recent years, the Appropriations Committees of the House and Senate typically begin the appropriations process with consideration of the 12 regular appropriations bills, producing House and Senate committee reports and legislative language for most or all of the 12 bills, but eventually congressional leadership decides to combine some or all of the bills into an “omnibus” — or “consolidated” — measure.¹⁸⁵

Typically, the leadership will package together bills in a manner that is likely to expedite passage or lead to a resolution of outstanding differences through a comprehensive, leadership-driven negotiation.

A consolidated appropriations bill that includes fewer than all 12 regular appropriations bills is often called a “minibus.”¹⁸⁶ A variation of this is known as a “cromnibus” when it combines several of the 12 regular bills, together with a continuing resolution (“CR”) for the remaining departments and agencies.¹⁸⁷

Supplemental Appropriations

In addition to amounts provided in a regular appropriations measure, the President may request, and Congress may enact, additional funding for a fiscal year in the form of one or more supplemental appropriations measures (“supplementals”). Supplementals are used to provide funding where the need is too urgent to be postponed until enactment of the next regular appropriations bill, often in response to natural disasters, health emergencies, or national security requirements.

For example, several supplemental appropriations measures were enacted in response to the COVID-19¹⁸⁸ pandemic:

- Coronavirus Preparedness and Response Supplemental Appropriations Act, P.L. 116-123, enacted March 6, 2020, provided \$8.3 billion in supplemental funds.¹⁸⁹
- Families First Coronavirus Response Act (FFCRA) P.L. 116-127, enacted March 18, 2020, provided \$192 billion in supplemental funds.¹⁹⁰
- Coronavirus Aid, Relief, and Economic Security Act (CARES) P.L. 116-136, enacted on March 27, 2020, provided \$1.722 trillion in supplemental funds.¹⁹¹

¹⁸⁵ See Jessica Tollestrup, Cong. Rsch. Serv., RL32473, Omnibus Appropriations Acts: Overview of Recent Practices, <https://fas.org/sgp/crs/misc/RL32473.pdf> (2016) <https://crsreports.congress.gov/product/pdf/R/R46595>.

¹⁸⁶ House Appropriations Committee website, “House Passes Six-Bill Appropriations Minibus,” accessed Nov 10, 2020, <https://appropriations.house.gov/news/press-releases/house-passes-six-bill-appropriations-minibus>.

¹⁸⁷ Nolan McCarty, “Grading the Cromnibus,” Dec. 12, 2014, <https://www.washingtonpost.com/news/monkey-cage/wp/2014/12/12/grading-the-cromnibus/>.

¹⁸⁸ In COVID-19, the “CO” stands for “corona,” “VI” for “virus,” “D” for “disease,” and “19” for the year “2019.”

¹⁸⁹ Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub. L. No. 116-123, 134 Stat. 146 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/6074>. For the budget estimate, see U.S. Cong. Budget. [Off.], H.R. 6074, Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, <https://www.cbo.gov/publication/56227>.

¹⁹⁰ Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/6201>. For the budget estimate, see U.S. Cong. Budget. [Off.], Letter to Honorable Nita M. Lowey, Preliminary Estimate of the Effects of H.R. 6201, the Families First Coronavirus Response Act, April 2, 2020, <https://www.cbo.gov/system/files/2020-04/HR6201.pdf>.

¹⁹¹ Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, Pub. L. No. 116-135, 134 Stat. 281 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/748>. For the budget estimate, see U.S. Cong. Budget. [Off.], H.R. 748, CARES Act, April 16, 2020, <https://www.cbo.gov/publication/56334>.

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- Paycheck Protection Program and Health Care Enhancement Act (PPHCEA), P.L. 116-139, enacted April 24, 2020, provided \$484 billion in supplemental funds.¹⁹²
- FY 2021 Omnibus and COVID Relief and Response Act, P.L. 116-260, enacted December 27, 2020, provided \$185 billion in supplemental funds.¹⁹³

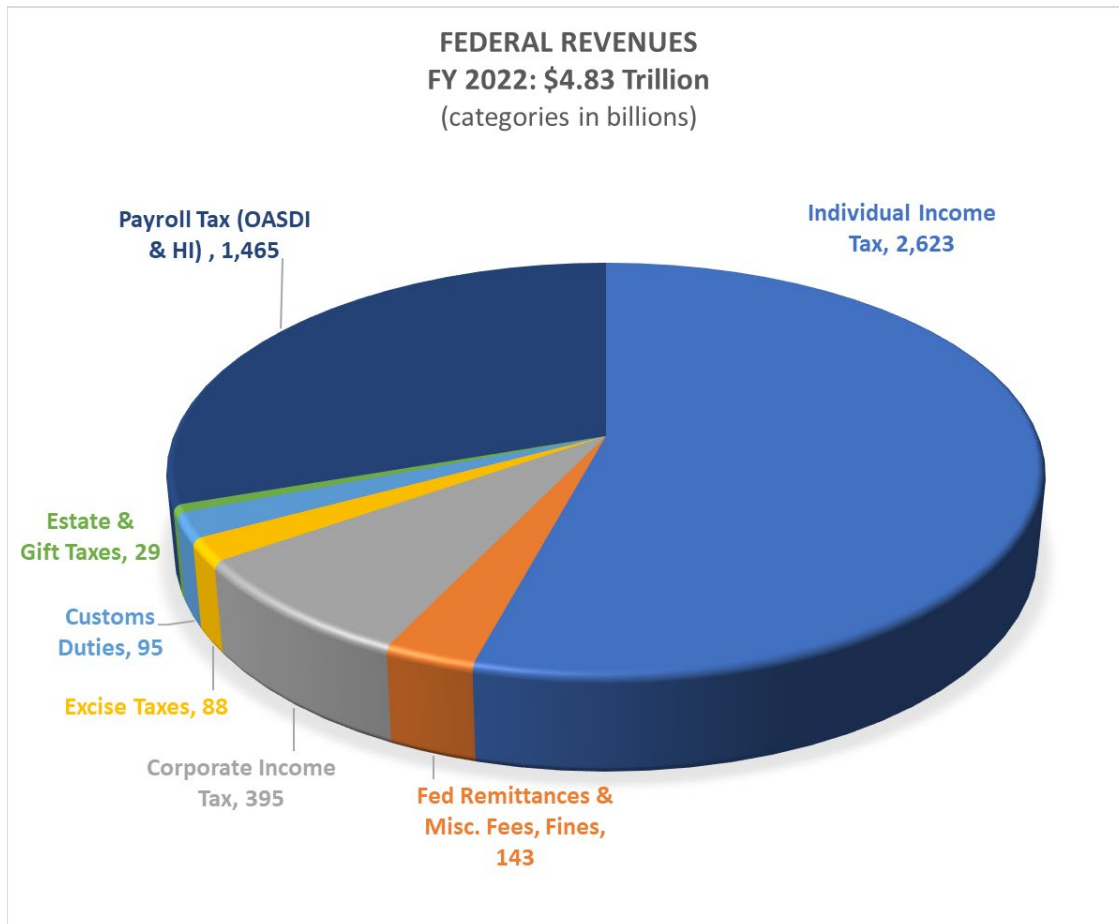
¹⁹² Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620 (2020), <https://www.congress.gov/116/plaws/publ139/PLAW-116publ139.pdf>. For the budget estimate, see CBO Estimate for H.R. 266, the Paycheck Protection Program and Health Care Enhancement Act, <https://www.cbo.gov/system/files/2020-04/hr266.pdf>.

¹⁹³ Consolidated Appropriations Act, 2021, Division N, Pub. L. No. 116-260, 134 Stat. 1182 (2020), <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>. Congressional Budget Office cost estimate: <https://www.cbo.gov/publication/56963>.

Revenues and the Budget Process

As displayed in Figure 3, federal revenues consist of governmental receipts from the individual income tax, payroll taxes, corporate income tax, federal reserve remittances, excise taxes, custom duties, and the estate and gift tax.

Federal Revenues Pie Chart



Federal revenues fall under the jurisdiction of the House Committee on Ways and Means and the Senate Committee on Finance—two of the oldest committees of Congress. Ways and Means was first established in 1789 and became a standing committee of the House in 1802. Finance became a standing committee of the Senate in 1816.¹⁹⁴ Both committees have evolved into the most powerful committees of their respective bodies, with jurisdiction over taxes, tariffs and international trade, and nearly half of all federal spending, including Social Security, Medicare, and Medicaid.¹⁹⁵

The Senate Finance and House Ways & Means Committees established, in the Revenue Act of 1926, the Joint Committee on Taxation (“JCT”).¹⁹⁶ The Joint Committee is overseen by the leadership of

¹⁹⁴ See <https://waysandmeans.house.gov/about/committee-history>; and <https://www.finance.senate.gov/about/history>.

¹⁹⁵ Ways & Means shares jurisdiction over Medicaid with the House Energy and Commerce Committee.

¹⁹⁶ Revenue Act of 1926, House Report 356 (Conference Report), 69th Cong., 1st Sess.(1926); Revenue Act of 1926, Public--No. 20--69th Congress (44 Stat. 127).

the two tax-writing committees,¹⁹⁷ and is staffed by nonpartisan professionals. JCT staff provide revenue estimates for current tax laws and proposed legislation, and develop report language comparing current law and proposed changes for all tax legislation under consideration by the two committees. The Congressional Budget Office, in its projections of revenues and deficits, uses revenue estimates generated by the JCT.

Congress' revenue raising committees interact with the budget process in several important ways.

- The Finance and Ways & Means Committees evaluate all tax proposals contained in the *President's Budget*.
- The *congressional budget resolution* includes a revenue floor. Any legislation that would bring total projected federal revenues below the revenue floor is subject to a parliamentary point of order.
- The budget resolution may include *reconciliation instructions* to the Ways & Means and Finance Committees to report legislation that achieves specified amounts of revenue increases or decreases. However, if revenue decreases are called for, they are constrained by the Senate's Byrd Rule, which prohibits reconciliation bills from increasing deficits beyond the 10-year budget window. The effect of this restriction is to require, in effect, that tax cuts included in reconciliation bills expire after 10 years unless offset by spending cuts or revenue increases.¹⁹⁸
- The *PAYGO process* (established in 1990 and explained below) requires that any new legislation that would reduce revenues, must be offset by spending cuts or revenue increases.

Revenue Bills and the Origination Clause

Article I, section 7 of the U.S. Constitution (otherwise known as the "Origination Clause") provides that "All bills for raising revenues shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." The reason for the Origination Clause is that the House—at the time—was the only body directly elected by the people. Even after the 17th Amendment applied direct election to the Senate,¹⁹⁹ the Origination Clause remained in force.

Although the origination clause requires that revenue vehicles must originate in the House, it does not preclude the Senate from beginning its consideration of tax legislation before a House-originated tax vehicle is transmitted to the Senate. For example, the Senate Finance Committee may consider and report to the Senate a revenue measure in the form of a Senate bill. The Senate may then consider the Senate revenue provisions as an amendment to the House bill and send the amended House revenue vehicle back to the House of Representatives requesting a conference, or the House's concurrence with the Senate amendment.

When the House believes it has received a Senate bill containing revenue provisions in violation of the Origination Clause, it passes a House resolution stating that the Senate provision "in the opinion of the House, contravenes the First Clause of the Seventh Section of the First Article of the Constitution of the United States and is an infringement on the privilege of the House and that such bill be respectfully returned to the Senate with a message communicating this resolution." This practice is referred to as "blue slipping" because the resolution returning the offending bill to the

¹⁹⁷ See <https://www.jct.gov/about-us/committee-members/>.

¹⁹⁸ See the section, above, explaining in detail the Senate's Byrd Rule.

¹⁹⁹ "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote." U.S. Const., amend. XVII.

Senate is printed on blue paper. In such cases, the Senate-originated revenue provisions can proceed only if attached to a House-originated revenue bill.

Tax Expenditures

Tax expenditures are reductions in tax liabilities that result from:

- excluding or exempting items from gross income (“tax exclusions”),
- deducting items from either gross income or adjusted gross income (“tax deductions”),
- granting preferential tax rates for certain items of income (“tax preferences”),
- applying credits to directly reduce taxes owed (“tax credits”), or
- deferring tax liability on certain types of income (“tax deferrals”).

In the context of budgeting, these are collectively referred to as “tax expenditures” because the government *foregoes revenues it would have otherwise collected*. Colloquially, they are often referred to as “tax preferences” and “tax breaks”—or as “tax loopholes” by those who disagree with particular provisions.

In effect, tax expenditures are “spending on the revenue side” of the federal budget because policymakers have written into the Internal Revenue Code²⁰⁰ provisions that reduce federal taxes in order to achieve specific policy outcomes such as encouraging home ownership, employer sponsored health insurance, retirement savings, or capital investments.

In some cases, tax expenditures may also be viewed as the revenue equivalent of spending entitlements. For example, just as Americans 65 and older are legally entitled to Medicare hospital insurance benefits (on the spending side of the federal budget), employees who receive group health insurance from their employers are entitled to exclude employer-paid premiums from their gross income. In both examples, eligible individuals are legally entitled to specific benefits—one on the spending side of the Budget, the other on the revenue (tax) side.

Tax expenditures are as varied in purpose and operation as programs on the spending side of the budget. For a summary of the largest tax expenditures, see Appendix O.

²⁰⁰ Title 26 of the U.S. Code.

1985 Balanced Budget Act (BBEDCA) Establishes Budget Sequestration

When deficits began to grow rapidly in the early 1980s (from \$74 billion in 1980 to \$212 billion in 1985²⁰¹), a group of Senators—Phil Gramm (R-TX), Warren Rudman (R-NH), and Ernest “Fritz” Hollings (D-SC)—drafted new budget procedures designed to force a reduction in federal deficits. The result was the Balanced Budget and Deficit Control Act of 1985²⁰² (“BBEDCA” or “GRH”)²⁰³ which was a procedural overlay on top of the 1974 Budget Act. The new layer of budget procedures sought to balance the budget by 1991 through a series of declining “maximum deficit amounts” enforced by automatic across-the-board spending cuts to be called “sequesters”. Senator Warren Rudman, one of the sponsors the 1985 Act called it “a bad idea whose time has come.”²⁰⁴

To enforce the statutory deficit caps, BBEDCA enacted into law “sequestration” procedures to make automatic uniform percentage reductions in all *nonexempt*²⁰⁵ budget accounts to eliminate any excess deficit amount in any of the covered years. In the event of an overage, half of the excess deficit was to be eliminated by cutting defense programs and the other half from nondefense programs.²⁰⁶

The sequestration mechanism—which *cancel*s budget authority—was applied to all nonexempt “budgetary resources.” Budgetary resources consist of new budget authority—both discretionary and direct spending—as well as unobligated balances of budget authority provided in previous years.

BBEDCA was designed to be a budgetary Sword of Damocles²⁰⁷ hanging over the Congress. There was a substantial concern at the time that this across-the-board “meat axe” approach was an irresponsible way to budget.²⁰⁸ However, the strategic rationale was that Congress—facing the prospect of this blunt instrument slashing programs—would be forced into making difficult policy choices in order to comply with the statutory deficit caps, leading to a balanced budget by FY 1991.²⁰⁹

Two years later, in the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987,²¹⁰ Congress revised the maximum deficit amounts, extending the balanced budget target year to FY 1993—having realized that the cuts required to achieve budgetary balance in FY 1991 were unattainable.

The BBEDCA sequester mechanism triggered across-the-board cuts three times, in 1985 when the law was first enacted, and automatic cuts in FY 1987 and FY 1989, although in the latter two cases

²⁰¹ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2021, Historical Tables, Table 1.1 (2020), <https://www.whitehouse.gov/omb/historical-tables/>.

²⁰² Balanced Budget and Emergency Deficit Control Act of 1985 (“BBEDCA”), Pub. L. No. 99-177, 99 Stat. 1037 (1985)

²⁰³ At the time of enactment, BBEDCA was also referred to as “Gramm-Rudman-Hollings” because it was sponsored by Senators Phil Gramm (R-TX), Warren Rudman (R-NH), and Ernest “Fritz” Hollings (D-SC).

²⁰⁴ George F. Will, Opinion, *Bipartisan Budget Fraud*, Washington Post, Oct. 8, 1989, <https://www.washingtonpost.com/archive/opinions/1989/10/08/bipartisan-budget-fraud/6defebf2-af3b-4e4b-9b38-5da92a3cbf1f/>.

²⁰⁵ Many budget accounts are exempt from sequestration, as provided in section 255 of the Act, Pub. L. No. 99-177, §255, 99 Stat. 1037 (codified as amended at 2 U.S.C. 905).

²⁰⁶ Balanced Budget and Emergency Deficit Control Act of 1985 (“BBEDCA”), Pub. L. No. 99-177, §253, 99 Stat. 1037 (codified as amended at 2 U.S.C. 903).

²⁰⁷ See NPR.org, “Sword of Damocles” Reference Sometimes Misused, <https://www.npr.org/2011/08/19/139799434/sword-of-damocles-reference-sometimes-misused>.

²⁰⁸ Personal observation of the author, serving as Senate Budget Committee Staff Attorney at that time.

²⁰⁹ First-hand observation by the author, who was serving as Staff Attorney at the Senate Budget Committee.

²¹⁰ Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, 101 Stat. 754 (1987).

Congress limited the amount of the cuts since the amounts required to bring deficits down to the statutory cap levels were politically unacceptable.²¹¹

²¹¹ The first sequester was integrated into the GRH law itself in 1985, since a political backlash to growing deficits was the impetus for enactment of GRH. This first sequester cut \$11.7 billion in outlays from the fiscal year 1986 budget by cutting defense accounts across the board by 4.9%, and nonexempt nondefense programs across the board by 4.3%. In 1987, an automatic sequester of 10.5% in defense and 8.5% in nondefense was triggered at the beginning of FY 1988, but the \$20 billion in cuts were political unsustainable and were superseded by a “Budget Summit Agreement” of November 20, 1987. The third, and last, GRH sequester was triggered in 1989 and would have resulted in outlay cuts of \$16.1 billion for FY 1990 but was superseded by the Omnibus Budget Reconciliation Act of 1989 which reduced the sequester to \$4.6 billion. Robert Keith, Cong. Rsch. Serv., RS20398, Budget Sequesters: A Brief Review, 4-5 (2004). See also Robert Keith, Cong. Rsch. Serv., RL31137, Sequestration Procedures Under the 1985 Balance 1974 Budget Act (2001).

1990 BEA Establishes Discretionary Spending Limits and PAYGO

By 1990, it had become clear that BBEDCA had failed to achieve its stated goal of balancing the federal budget. Despite the statutory requirement to balance the budget by FY 1993, the Congressional Budget Office, in their July 1990 *Update*, projected deficits in excess of \$230 billion in FY 1991 and FY 1992.²¹²

Consequently, in the fall of 1990, senior officials from the George H.W. Bush Administration and Congress held a “budget summit” at Andrews Air Force Base outside Washington, D.C. They negotiated a bipartisan deficit reduction agreement, the Omnibus Budget Reconciliation Act of 1990 (“OBRA 1990”),²¹³ that was the first of three major budget laws that decade—the other two in 1993 and 1997—that ultimately led to four consecutive years of budget surpluses beginning in FY 1998.²¹⁴

The 1990 Act, in addition to enacting substantial spending and tax policy reforms, included a major reform of the budget process as one of its titles—designated the Budget Enforcement Act of 1990 (“1990 BEA”).²¹⁵ The 1990 BEA replaced the BBEDCA maximum deficit amounts with two new types of statutory budget controls:

1. **Statutory limits on discretionary spending** (budget authority *and* outlays caps); and a
2. **Pay-as-you-go (“PAYGO”) requirement** that new direct (mandatory) spending and tax legislation would trigger a sequester if they cause deficit increases.

The practical effect of PAYGO, was that changes in direct spending and tax law would have to be *deficit neutral*, i.e., paid for with offsetting direct spending cuts or tax increases.²¹⁶ If not, they would be offset by a *mandatory spending sequester*—automatic across-the-board cuts in nonexempt mandatory spending programs.

Similarly, any appropriations law that caused a breach of the discretionary spending caps, would trigger a *discretionary spending sequester* to eliminate the overage in the relevant spending category. For example, an overage in defense discretionary budget authority would trigger across-the-board cuts in discretionary spending sufficient to bring defense budget authority into compliance with the defense discretionary cap.

Statutory Limits on Discretionary Spending

The objective of the BEA discretionary spending limits was to restrain the growth of the approximately one-third of the budget comprising defense and nondefense discretionary spending. As reflected in Table 3 on the next page, the original BEA caps had the following characteristics and adjustments:

- **Original BEA Caps through FY 1995:** The BEA established caps for defense discretionary spending, domestic discretionary spending, and international spending for fiscal years 1991-93, and provided overall discretionary caps for fiscal years 1994-95.

²¹² U.S. Cong. Budget. [Off.], *The Economic and Budget Outlook: An Update*, July 1990, ix., <https://www.cbo.gov/sites/default/files/101st-congress-1989-1990/reports/199007theeconomicandbudget.pdf>.

²¹³ Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388 (1990).

²¹⁴ *Id.*, Historical Tables, at Table 1.1.

²¹⁵ Budget Enforcement Act of 1990, Pub. L. No. 101-508, Title XIII, 104 Stat. at 1388-573 (1990).

²¹⁶ For further explanation of discretionary v. direct spending, see the section on “budget concepts” later in this primer.

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- **Caps applied to Budget Authority and Outlays:** The caps were applied to both budget authority *and* outlays. Budget authority is the legal authority Congress grants to federal departments and agencies to enter into obligations on behalf of the federal government. Outlays are the estimated cash disbursements for a particular fiscal year.²¹⁷ (As explained later in the Article, the caps imposed by the Budget Control Act of 2011 were over budget authority, only.)
- **Cap Extensions through FY 1998:** Title XIV of the Omnibus Budget Reconciliation Act of 1993—the second major budget process law of the 1990s—extended overall discretionary spending caps through FY 1998.²¹⁸
- **Cap Extensions through FY 2002:** The Bipartisan Budget Act of 1997—the third major budget law of the 1990s—placed separate caps on defense spending and nondefense discretionary spending (“NDD”) for fiscal years 1998-99 and caps on total discretionary spending for fiscal years 2000-02.²¹⁹
- **New Cap Categories Added:** During this period, several other statutes identified in the table placed separate caps on violent crime reduction, certain highway and mass transit spending, and certain conservation spending.
- **Key Cap Adjustments:** The statutes establishing the spending limits required OMB to adjust the caps upward for certain types of spending—*effectively exempting that spending from the caps*. Cap adjustments were provided in various years for emergency spending, inflation, credit reestimates, IRS funding, debt forgiveness, Earned Income Tax Credit outlays, International Monetary Fund contributions, Desert Shield/Desert Storm spending, highway spending, and budget concept adjustments.²²⁰
- **BEA Caps Expiration:** After a period of budget surpluses from fiscal years 1998 through 2001, enforcement of the discretionary caps was effectively allowed to expire at the end of FY 2002.²²¹

²¹⁷ For more in-depth explanation of budget authority and outlays see the “Budget Concepts” section of this primer.

²¹⁸ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title XIV, 107 Stat. 312, 683 (1993).

²¹⁹ Budget Enforcement Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).

²²⁰ Adjusted levels for the respective fiscal years are reported in annual OMB sequester reports. A historical summary of adjustments may be accessed at: Office of Management and Budget, *OMB Sequestration Update Report to the President and Congress for Fiscal Year 2003*, Washington, DC, August 19, 2002, pp. 4-5, <https://www.govinfo.gov/content/pkg/BUDGET-2003-SEQ/pdf/BUDGET-2003-SEQ.pdf>.

²²¹ Caps on highway and mass transit outlays were extended through FY 2003 and the caps on conservation BA and outlays extended through FY 2006, but the sequestration process to enforce the caps expired at the end of FY 2002.

Table 3: BEA Caps on Discretionary Spending: FY 1991 - 2002

(in billions of dollars, including adjustments, and rounded to the nearest billion; BA=Budget Authority; OT=Outlays)												
Cap Categories*	91	92	93	94	95	96	97	98	99	00	01	02
DISC-BA				511	518	519	528			533	542	551
DISC-OT				535	541	547	547			559	564	561
DEF-BA	289	292	292					269	272			
DEF-OT	298	296	293					267	256			
NDD-BA								252	256			
NDD-OT								283	288			
INT-BA	20	21	21									
INT-OT	19	19	20									
DOM-BA	183	191	198									
DOM-OY	198	210	222									
VCR-BA								6	6	5		
VCR-OT					1	2	4	4	5	6		
HWY-OT**									22	24	26	27
MTR-OT**									4	5	5	6
CONS-BA**												2
CONS-OT**												1

* DISC=Total Discretionary Spending; DEF=Defense; INT= International; DOM=Domestic; NDD=Nondefense; VCR=Violent Crime Reduction; HWY=Highway; MTR=Mass Transit; CONS=Conservation

Sources and explanation:
Budget Enforcement Act of 1990 (BEA), P.L. 101–508, established 5-year limits on discretionary spending; for FY 1991-1993 the limits were applied to three spending categories: defense, international, and domestic; total limits on all discretionary spending were established for FY 1994-95.
Omnibus Budget Reconciliation Act (OBRA) of 1993, Title XIV, P.L. 103-66, extended the limits on total discretionary spending through FY 1998.
Violent Crime Control and Law Enforcement Act of 1994, Title 31 established separate outlay caps for FY 1995-1998 to fund a violent crime reduction trust fund, P.L. 103-322; and the Emergency Supplemental Appropriations, 1995, Sec. 2003 adjusted the caps, P.L. 104-19.
Bipartisan Budget Act of 1997, Title X placed separate caps on defense and nondefense discretionary spending for FY 1998-99 and caps on total discretionary spending through FY 2002, P.L. 105-33.
Transportation Equity Act for the 21st Century (TEA-21), Sec. 8101(a) established two new discretionary spending categories, Highway and Mass Transit, and provided for an offsetting adjustment in the existing caps, P.L. 105–178.
Dept. of Interior and Related Agencies Appropriations Act, 2001, Sec. 801 created a new conservation category with limits on budget authority and outlays for 2002–2006, as well as several subcategories, P.L. 106–291.
Foreign Operations and Related Agencies Appropriations Act, 2001, Sec. 701 included revised budget authority and outlay caps for 2001, P.L. 106–429.
Department of Defense Appropriations Act, 2002, Div. C, Sec. 101 included revised budget authority and outlay caps for FY 2002 and provided a budget authority technical estimating difference adjustment allowance of up to 0.12 percent of total appropriations, P.L. 107–117.
****After FY 2002:** Caps on highway and mass transit outlays were extended through FY 2003 and the caps on conservation BA and outlays were extended through FY 2006, but the sequestration process to enforce the caps expired at the end of FY 2002.

The key to the statutory discretionary spending limits was the enforcement mechanism. If OMB determined that an appropriations law exceeded the statutory limits, the President was required by law to execute automatic across-the-board cuts (“sequester”) of the relevant appropriations category to eliminate the overage.²²² As a practical matter, across-the-board cuts were triggered by spending

²²² A sequester of nonexempt discretionary programs would have been triggered by a report issued by the OMB Director within 15 days after the end of a congressional session. If the Director’s report indicated that spending cuts must be made to eliminate a breach of the spending limits, then the President was required to issue a sequestration order directing that the necessary across-the-board cuts be made. A further sequester for a fiscal year was required during the following session of Congress (through June

overages in only one fiscal year—FY 1991.²²³ As deficits turned into surpluses at the end of the 1990s, Congress enacted measures to allow spending to exceed the limits that had been set in the 1997 BEA. Congress allowed spending for FY 2001 to exceed the statutory limits for that year by \$97 billion, and for FY 2002—the last year of the statutory limits—Congress and the Administration agreed to increase the statutory limits on budget authority by \$137 billion.²²⁴

Exemption for “Emergency Requirements”

The triggering of only one discretionary sequester during the 1990s was due, in part, to the existence of multiple “escape valves” in the enforcement mechanism, especially the exemption for emergency spending. Under the BEA, any appropriations declared by both the President and Congress to be an “emergency requirement” were effectively exempted from the discretionary spending limits by triggering an automatic upward adjustment in the spending limits to accommodate the emergency spending.²²⁵

In theory, the “emergency” designation was to be used infrequently. federal law requires that the President’s Budget should each year request “an allowance for unanticipated uncontrollable expenditures.”²²⁶ In other words, the President should ask Congress to set aside money for unexpected emergencies, as many States do.

However, as a practical matter, Administrations and Congress have typically responded to major disasters, on an ad hoc basis, by utilizing the emergency spending designation. This has led to the fairly routine enactment of emergency supplemental appropriations bills, as well as the designation of provisions in regular appropriations bills as “emergency requirements.” For example, during the 1990s, the number of emergency designations in supplemental appropriations bills ranged from a low

30) if the enactment of a supplemental appropriations act caused a breach of the limits (known as a “within-session sequester”). Enactment of a supplemental after June 30, causing an overage, would not have caused a sequester; instead, the spending limits for the following fiscal year were to be reduced. *See* Robert Keith, Cong. Rsch. Serv., RL31137, Sequestration Procedures under the 1985 Balanced 1974 Budget Act, (2001).

²²³ There were two sequesters in FY 1991. On November 9, 1990, \$395 million in budget authority was sequestered (canceled) in the international spending category, leading to estimated outlay savings of \$191 million; however, that sequester was ultimately rescinded the following spring. On April 25, 1991, \$2.4 million in budget authority was sequestered in the domestic category, leading to estimated outlay savings of \$1.4 million. *Id.* at 5.

²²⁴ The Military Construction Appropriations Act for FY 2001 prevented a sequester to eliminate overages of \$2.3 billion in BA and \$6.8 billion in outlays that would have been required because of the inclusion of FY 2000 supplemental appropriations in the bill. *Id.* at 10-11. In November 2000, President Clinton and the Republican leadership in Congress increased the FY 2001 discretionary budget authority limit from \$541 billion (as set forth in the 1997 law) to \$637 billion in H.R. 4811, the Foreign Operations Appropriations Act, P.L. 106-429. *See* Robert Keith, Cong. Rsch. Serv., RL30696, Discretionary Spending Limits for FY 2001: A Procedural Assessment, 4-7 (2001). In December 2001, Congress and the Bush Administration substantially increased the statutory Budget Authority limit for FY 2002 to \$686 billion, \$137 billion above the \$549 billion statutory limit set for that year in the 1997 Budget Enforcement Act. The legislative vehicle for the increase was the FY 2002 Defense Appropriations Act, H.R. 3338, P.L. 107-117. Robert Keith, Cong. Rsch. Serv., RS21084, Budget Enforcement for FY 2002: An Overview of Procedural Developments, 3-5 (2002).

²²⁵ Section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 provided for the automatic adjustment of the statutory discretionary spending limits. Balanced Budget and Emergency Deficit Control Act of 1985 (“BBEDCA”), Pub. L. No. 99-177, §251(b)(2)(A), 99 Stat. 1037 (codified as amended at 2 U.S.C. 901(b)(2)(A)). Section 314(a) of the Congressional 1974 Budget Act provides for adjustment of budget resolution aggregates and committee allocations to reflect spending designated as an “emergency.” Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §314(a), 88 Stat. 297 (codified as amended at 2 U.S.C. 645(a)). The mechanism by which emergency exemptions operate is that the discretionary spending limits, as well as the budget resolution spending totals and committee allocations were adjusted upward to accommodate the emergency spending.

²²⁶ 31 U.S.C. §1105(a)(14).

of 39 in FY 1995 to a high of 111 in FY 1999. In the FY 1999 regular appropriations bills there were 103 emergency designations.²²⁷

As observed in CBO testimony in 1998, policymakers have “acknowledged the need for a budgetary safety valve for true emergency needs as part of recent budget enforcement disciplines. They are concerned, however, that the safety valve has served as an excuse to avoid planning for those needs and has provided a budgetary loophole for excessive spending.”²²⁸

In response to concerns on the part of Members who objected to what they perceived as overuse of the emergency designation, in 1995 the House adopted a rule to prevent nonemergency spending from being added to emergency supplemental bills.²²⁹

In 1999, the Senate took a different approach, adopting a point of order that, in effect, required 60 votes to include any emergency designation in an appropriations bill.²³⁰ However, the largest number of emergency designations of the decade occurred in that year.

As explained later in this primer, when discretionary spending limits were again enacted into law by the Budget Control Act of 2011, additional measures were employed to stretch the spending limits, most notably: (1) a special designation for defense and related spending called “Overseas Contingency Operations/Global War on Terror” (OCO/GWOT) exempted hundreds of billions of dollars from the defense discretionary spending caps; and (2) **Changes In Mandatory Programs** (“CHIMPs”)²³¹ to provide negative offsets for discretionary budget authority.

PAYGO: Paying for New Direct Spending and Tax Cuts

The idea of PAYGO—the other budget enforcement mechanism established by the 1990 BEA—was, literally, to “pay-as-you-go.”

The concept was straightforward: if sponsors of new legislation want to enact new entitlement programs, expand existing entitlements (or other direct spending), or enact new tax cuts, the new legislation should not increase deficits, and sponsors of the legislation should find offsets to “pay for” the cost of the new benefits or tax cuts. Offsets could be reductions in entitlement (or other direct) spending or revenue increases.

Similar to the discretionary spending limits, the teeth in the PAYGO requirement was a sequester mechanism. OMB would be required to execute automatic cuts in Medicare and other nonexempt²³² direct (mandatory) spending programs if the cumulative effects of tax and entitlement legislation for a fiscal year were to increase deficits.

²²⁷ Refers to the number of budget accounts that contain emergency designations. U.S. Cong. Budget. [Off.] Memorandum, December 1998, updated June 8, 1999.

²²⁸ James Blum, Deputy Director, CBO, Testimony on “Budgeting for Emergency Spending” before the Task Force on the Budget Process, House Budget Committee, June 23, 1998, 24.

²²⁹ House Rule XXI, clause 2(e) (104th Cong.).

²³⁰ Sec. 206(b), H.Con.Res. 68 (106th Cong.).

²³¹ For background on CHIMPs see *Changes in Mandatory Programs: An Overspending Tool*, 115th Cong. (June 28, 2018), Budget Bulletin, Chairman Mike Enzi, Senate Committee on the Budget.

²³² Many programs are exempt from the mandatory sequester under Section 255 of BBEDCA (2 U.S.C. §905). Threequarters of all mandatory spending is exempt from the mandatory sequester, including Social Security; veterans’ programs; net interest; refundable income tax credits; civilian and military retirement; federal aid highways; unemployment compensation; and low-income programs including Medicaid, Children’s Health Insurance, Supplemental Security Income, Supplemental Nutrition Assistance, and Temporary Assistance for Needy Families.

Under this new regime of budget discipline, a negative balance on OMB's cumulative "PAYGO scorecard" was something to be carefully avoided since Medicare would take the brunt of a PAYGO sequester. Other nonexempt programs that would be hit by a PAYGO sequester included farm price supports, child support enforcement, and social services block grants.

Even if a deficit increase on the PAYGO scorecard was caused by tax cuts, the remedy under PAYGO is the automatic sequester of direct spending. There are *no automatic tax increases* in the PAYGO mechanism.

In this way, PAYGO borrowed from GRH the "Sword of Damocles" approach to budget discipline: the automatic across-the-board cuts in Medicare and other direct spending programs that would result from violating the PAYGO requirement would be so politically unpalatable that Congress would avoid enacting new entitlement (or other direct) spending or new tax cuts without the required offsets.

Exceptions to the PAYGO Requirement

Similar to the "emergency" exemptions from the discretionary spending caps, the BEA established PAYGO with certain exceptions.

First, legislation designated as "emergencies" are always exempt from PAYGO; they are not placed on the PAYGO scorecards and cannot trigger a sequester.²³³

Second, Congress can exempt any bill from PAYGO by simply including a provision stating that the budgetary effects of a section, a title, or the entire bill shall not be entered on the PAYGO scorecard.

Finally, the automatic sequestration mechanism, itself, has exemptions. When an "across-the-board" sequester of direct spending programs is required, it is not really "across-the-board." Automatic cuts in the Medicare program were limited in the 1990 BEA to 2 percent²³⁴ and many other direct 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 SNAP²³⁵), children's health insurance (CHIP), refundable income tax credits, Temporary Assistance for Needy Families (TANF), and Supplemental Security Income (SSI).²³⁶

PAYGO Rule in the Senate

The 1990 BEA's PAYGO requirement was further augmented beginning in FY 1994 with a new 10-year pay-as-you-go point of order in the Senate. The new point of order, created in the FY 1994 budget resolution, created a parliamentary point of order against any revenue or direct spending legislation that would result in net deficit increases over a 10-year period.²³⁷

²³³ Budget Enforcement Act of 1990, Title XIII of Pub. L. No. 101-508, § 13101 (new section in BBEDCA 252(b)(1)(B)), 104 Stat. at 1388-581 (1990).

²³⁴ Budget Enforcement Act of 1990, Title XIII of Pub. L. No. 101-508, § 13101 (new section in BBEDCA 253(e)(3)(i)), 104 Stat. at 1388-581 (1990).

²³⁵ Supplemental Nutrition Assistance Program.

²³⁶ Balanced Budget and Emergency Deficit Control Act of 1985 as amended, Pub. L. No. 99-177, § 255, 2 U.S.C § 905.

²³⁷ H.Con.Res. 64, § 12, H. Rep. No. 103-46, 103d Cong. (1st Sess. 1993).

The Expiration of PAYGO in FY 2002

In 2001, PAYGO was effectively terminated in order to enact large tax cuts in the Economic Growth and Tax Relief Reconciliation Act of 2001²³⁸ (“EGTRA”) without triggering a PAYGO sequester. Provisions were included in the legislation to circumvent and effectively repeal the PAYGO process.²³⁹ Congress and the George W. Bush Administration subsequently allowed the Budget Enforcement Act, including PAYGO and the statutory discretionary spending limits, to expire.

In addition, the Senate’s PAYGO point of order which, during the 1990s had strengthened the budget enforcement regime by requiring 60 votes to waive PAYGO, was effectively eviscerated by the FY 2000 and FY 2004 budget resolutions.²⁴⁰

The Return of PAYGO as House and Senate Rules

Following the midterm elections of 2006, Congress sought to re-establish the traditional PAYGO regime with automatic cuts as an enforcement mechanism. The Bush Administration, however, was opposed to reenactment of the BEA as it existed in the 1990s, believing it would hinder extension of tax cuts due to expire in 2010.²⁴¹ Instead, the Administration proposed re-enacting PAYGO, but only for new entitlement and other direct spending. Under the Administration’s proposal, new tax cuts would *not* be subject to PAYGO. Only entitlement expansions or other new direct spending would have to be paid for with offsetting spending cuts.²⁴²

Rejecting the Administration proposal, Congress moved ahead on its own and reestablished a PAYGO requirement for new direct spending *and* new tax cuts, as internal rules of the House and Senate enforceable through points of order—not sequestration.

House PAYGO Rule

In January 2007, the House adopted a new PAYGO rule that created a parliamentary point of order against consideration of direct spending or tax legislation that would increase unified budget deficits in either of two time periods (the 6-year or 11-year periods beginning with the current fiscal year).²⁴³ The effect of the House PAYGO Rule was to require that non-emergency legislation increasing

²³⁸ Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. No. 107-16, 115 Stat. 38, (2001).

²³⁹ Section 102 of P.L. 107-117 “zeroed out” the PAYGO scorecard for the effects of the 2001 tax cuts and other direct spending and receipts legislation in FY 2001 and FY 2002, thereby precluding a PAYGO sequester. P.L. 107-312 zeroed out the PAYGO scorecard for additional legislation in FY 2002 and FY 2003, and prospectively eliminated the possibility of a sequester for fiscal years 2004 through 2006 by setting those PAYGO balances at zero. *See* Robert Keith, Cong. Rsch. Serv., RS21378, Termination of the ‘Pay-As-You-Go’ (PAYGO) Requirement for FY 2003 and Later Years, (2002).

²⁴⁰ The Conference Report on the FY 2000 budget resolution (H.Con.Res. 68, 106th Congress) stated that the Senate’s PAYGO point of order was being modified to “permit on-budget (non-Social Security) surpluses to be used for . . . tax reductions or spending increases.” H.R. Rep. No. 106-91 at 72 (1999). This modification remained in effect through FY 2002 and paved the way for the conferees on the FY 2002 budget resolution (H.Con.Res. 83, 107th Congress) to state that the \$1.25 trillion in tax cuts called for in the resolution “would not result in a violation of the Senate pay-as-you-go point or order.” H.R. Rep. No. 107-60 at 91 (2001). Then in the FY 2004 budget resolution (H.Con.Res. 95, 108th Congress), the Senate reinstated a PAYGO point of order, but in name only. The conference report noted that the PAYGO requirement would “apply on a post-budget resolution policy basis,” meaning that any tax cuts or entitlement increases brought to the Floor would only violate the point of order if they had not been contemplated in the budget resolution. H.R. Rep. No. 108-71 at 122 (2003).

²⁴¹ The 2001 tax cuts were enacted with a 2010 expiration date due to the “Byrd Rule” requirement that no budget reconciliation provision could increase outyear deficits. *See* the explanation of the Byrd Rule above.

²⁴² [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2008, Analytical Perspectives, 211 (2007).

²⁴³ Section 405 of H.Res. 6, 110th Congress, added PAYGO language to Clause 10 of House Rule XXI. For more background and current status of the House PAYGO Rule, *see* Cong. Rsch. Serv., R41510, [Budget Enforcement Procedures: House Pay-As-You-Go \(PAYGO\) Rule](https://www.crs.org/congress/budget-procedures/house-pay-as-you-go-paygo-rule) (August 12, 2019), accessed on August 29, 2022 at <https://crsreports.congress.gov/product/pdf/R/R41510>.

direct spending or reducing revenues had to be offset by spending cuts or tax increases, or a combination of the two, over the two pay periods.

In 2011, with a change in the majority party, the House PAYGO Rule was substantially modified, to apply *only* to deficit increases caused by new direct spending—no longer requiring that tax legislation be paid for with offsets. The modified rule was referred to as “cut-as-you-go (CUTGO).”²⁴⁴

In 2019, with another change in the majority party, the original House PAYGO Rule was restored and again applied to *both* direct spending increases and tax cuts.²⁴⁵

House Rules are adopted at the beginning of each Congress, so future changes in the majority party may see further flips between PAYGO and CUTGO.

Senate PAYGO Rule

Following adoption of the House PAYGO Rule in January 2007, in May of that year, the Senate followed suit with adoption of a Senate PAYGO Rule as part of the FY 2008 budget resolution. The Senate PAYGO point of order prohibited consideration of all new spending or tax legislation that would increase deficits in either of two time periods, (the 6-year or 11-year periods beginning with the current fiscal year. Waiver of the Senate PAYGO point of order required a supermajority of 60 votes.²⁴⁶

In the FY 2018 budget resolution,²⁴⁷ the Senate extended and modified its PAYGO rule to add two additional periods, so that a point of order lies against consideration of any direct spending or revenue legislation that would increase on-budget deficits in any of four fiscal-year periods: (1) the current year fiscal year; (2) the upcoming fiscal year (“budget year”); (3) the six years beginning with the current year; or (4) the 11 years beginning with the current year.

²⁴⁴ H.Res. 5 amended House Rule XXI (112th Congress), Congressional Record, daily edition, vol. 157 (January 5, 2011), p. H8.

²⁴⁵ Clause 10 of House Rule XXI (116th Congress).

²⁴⁶ Section 201 of S.Con.Res. 21 (110th Congress). For more background and current status of the Senate PAYGO Rule, see Cong. Rsch. Serv., RL31943, [Budget Enforcement Procedures: Senate Pay-As-You-Go \(PAYGO\) Rule](https://crsreports.congress.gov/product/pdf/RL/RL31943) (November 17, 2021), accessed on August 29, 2022. <https://crsreports.congress.gov/product/pdf/RL/RL31943>. According to the CRS article, since the Senate first established its PAYGO point of order in the FY 1994 budget resolution and through the November 17, 2021, the point of order prevented the consideration of 46 amendments and was waived 18 times. *Id.* at Summary page.

²⁴⁷ Section 4106 of H.Con.Res. 71 (115th Congress).

2010: The Statutory Pay-As-You-Go Act

PAYGO returned in statutory form, with enforcement through budget sequestration, when President Obama signed the Statutory Pay-As-You-Go Act of 2010 (“Statutory PAYGO”). The law has no expiration date.²⁴⁸

Under Statutory PAYGO, the budgetary effects of all newly enacted revenue and direct spending laws are recorded by the Office of Management and Budget (OMB) on two PAYGO scorecards covering five-year and 10-year periods. Each scorecard shows the *average budgetary effect* of the legislation *in each year* over the 5-year and 10-year periods, beginning with the budget year.²⁴⁹

Shortly after a congressional session ends, OMB finalizes the two PAYGO scorecards and determines whether a violation of the PAYGO requirement has occurred (i.e., if a net deficit appears for the budget year on either the 5-year or 10-year scorecards). If so, the President is required to issue a sequestration order that implements largely across-the-board cuts in (nonexempt) direct spending programs sufficient to eliminate the violation.

As was the case under the original 1990 PAYGO statute, there are numerous exemptions and escape valves to the 2010 PAYGO Act:

1. Any costs designated as emergencies are excluded from the PAYGO scorecards;²⁵⁰
2. Many direct spending programs and activities are statutorily exempt from a PAYGO sequester;²⁵¹
3. Congress may exempt any direct spending increases or tax cuts from the PAYGO requirement by including legislative language that excludes the budgetary costs of such legislation from the PAYGO scorecards; or
4. Congress can remove (“zero out”) balances on the two PAYGO scorecards or move the balances to a subsequent year.

Despite Statutory PAYGO remaining in effect under current law, as of the end of FY 2021, there were no PAYGO sequesters due to the numerous exemptions and escape valves.

Most recently, the large direct spending effects of the American Rescue Plan Act of 2021²⁵² required OMB to record large deficit increases on the FY 2022 PAYGO scorecards. However, these PAYGO balances were subsequently *transferred* to the FY 2023 scorecards to avoid an automatic sequester in FY 2022.²⁵³ Based on the history of Statutory PAYGO enforcement, it appears likely that an FY 2023 sequester will be avoided either by “zeroing out” the PAYGO scorecards, or moving the PAYGO balances to a later fiscal year.²⁵⁴

²⁴⁸ Statutory Pay-As-You-Go Act of 2010, Pub. L. No. 111-139, 124 Stat. 8 (codified at 2 U.S.C. § 931 et seq.).

²⁴⁹ Statutory Pay-As-You-Go Act of 2010, Pub. L. No. 111-139, § 4, 124 Stat. 8 (codified at 2 U.S.C. § 933).

²⁵⁰ Statutory Pay-As-You-Go Act of 2010, Pub. L. No. 111-139, § 4, 124 Stat. 8 (codified at 2 U.S.C. § 933).

²⁵¹ Statutory Pay-As-You-Go Act of 2010, Pub. L. No. 111-139, § 11, 124 Stat. 8 (codified at 2 U.S.C. § 905).

²⁵² American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021).

²⁵³ The transfer of PAYGO balances was effectuated by the Protecting Medicare and American Farmers from Sequester Cuts Act, Pub. L. No. 117-71, 135 Stat. 1508, § 7 (2021), which provided that “For the purposes of the annual report issued pursuant to section 5 of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 934) after adjournment of the first session of the 117th Congress, and for determining whether a sequestration order is necessary under such section, the debit for the budget year on the 5-year scorecard, if any, and the 10-year scorecard, if any, shall be deducted from such scorecard in 2022 and added to such scorecard in 2023.”

²⁵⁴ If a Statutory PAYGO sequester were to be triggered in FY 2023, there is no current law guidance on how that sequester would be administered together with the annual Budget Control Act mandatory sequester (explained later in this primer).

2011 Budget Control Act: New Spending Caps; Annual Mandatory Sequester

The Budget Control Act of 2011 (BCA; P.L. 112-25) was the result of negotiations between the President and Congress in response to two developments: (1) concern over annual budget deficits in the wake of the financial crisis and Great Recession of 2007-09; and (2) the impending expiration of the Treasury’s borrowing authority under the statutory limit on the public debt (“debt limit”).

In order to secure agreement to raise the debt limit, the BCA included two tranches of budgetary savings: (1) discretionary spending caps saving an estimated \$917 billion over 10 years;²⁵⁵ and (2) a “Joint Committee process” to achieve another \$1.5 trillion in deficit reduction.²⁵⁶

First Tranche of Cuts: Discretionary Spending Limits through FY 2021

For the initial tranche of \$917 billion in budgetary savings, the BCA placed statutory limits on discretionary spending for FY 2012 through FY 2021.

Unlike the 1990 BEA caps that had placed limits on both budget authority and outlays for FY 1991 through FY 2002, the Budget Control Act of 2011 placed limits on *budget authority alone* for each year through FY 2021.

Similar to the earlier BEA caps, the 2011 BCA spending caps were: (1) adjustable, effectively exempting certain types of spending from the caps; and (2) enforced through sequestration of budgetary resources in excess of the limits.²⁵⁷

Second Tranche of Cuts (“Joint Committee Reductions”)

To accomplish the second tranche of \$1.5 trillion in savings, the 2011 BCA established a bipartisan, bicameral Joint Select Committee on Deficit Reduction (“Joint Committee”). The Joint Committee was charged with negotiating a broad deficit reduction package to reduce deficits by \$1.5 trillion over 10 years. As a fallback, the BCA provided that automatic spending reductions would be triggered if Congress failed to enact at least \$1.2 trillion in budgetary savings by January 15, 2012.

The BCA scheduled the automatic reductions to begin in January of 2013—leaving time for Congress, during 2012, to consider alternatives to the impending automatic reductions.

When alternatives were not forthcoming, the BCA required: across-the-board sequestration of nonexempt discretionary *and* direct spending in FY 2013; and for FY 2014-FY 2021, automatic spending reductions were to be implemented by lowering the discretionary spending caps *and* sequestering nonexempt direct spending.

²⁵⁵ Douglas W. Elmendorf, Director, Congressional Budget Office, Letter to Honorable John A. Boehner, Speaker, and Honorable Harry Reid, Majority Leader, Washington, DC, August 1, 2011, p. 1, <https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/costestimate/budgetcontrolactaug1.pdf>.

²⁵⁶ The BCA did not specify if the savings were to be entirely from spending cuts, or a combination of spending cuts and revenue increases.

²⁵⁷ Budgetary resources are made up of new budget authority (including direct spending authority provided in existing statute and obligation limitations) and unobligated balances of budget authority provided in previous years. U.S. Gov’t Accountability Off., GAO-05-734SP, A Glossary of Terms Used in the Federal Budget Process, 26 (2005), <https://www.gao.gov/new.items/d05734sp.pdf>

The reduced discretionary caps came to be known as “BCA Sequester Caps.” The across-the-board reductions in nonexempt direct spending, are generally known as the “Joint Committee Mandatory Sequester.”²⁵⁸

During fiscal years 2014 through 2021, much of the Joint Committee Reductions in discretionary spending were *rolled back* by subsequent legislation—the Bipartisan Budget Acts explained later in this primer. However, the automatic reductions in direct spending have been fully implemented—and extended—by various laws for an additional ten fiscal years through FY 2031 (and may very well be extended further as offsets for future increases in discretionary spending).

Joint Committee Reductions in Discretionary Spending

For FY 2012 and FY 2013, the BCA established spending caps for “security” and “nonsecurity” categories. The security category included discretionary spending for the Departments of Defense, Homeland Security and Veterans Affairs, the National Nuclear Security Administration, and spending for the Intelligence Community and international affairs.²⁵⁹ All other spending was included in the “nonsecurity” category. For FY 2014 through FY 2021, the BCA originally established only one cap, for all discretionary budget authority.

When Congress missed the January 15, 2012 deadline for enactment of a “Joint Committee” deficit reduction plan, the BCA triggered: (1) revised discretionary spending categories; and (2) automatic spending reductions tied to the new cap structure.

As reflected in Table 4 below, the security category became a narrower “revised security” category consisting solely of defense spending—and was referred to as the “defense” category. The nonsecurity category became a broader “revised nonsecurity” category consisting of all other spending—and was typically referred to as the “nondefense” category.

The BCA’s Joint Committee trigger extended the revised defense and nondefense discretionary categories through FY 2021, requiring that automatic spending reductions be applied equally to defense and nondefense spending.²⁶⁰

²⁵⁸ Direct spending is also known as “mandatory spending.”

²⁵⁹ Budget functions are a system of classifying budget authority, outlays, receipts, and tax expenditures according to the national needs being addressed. Each concurrent resolution on the budget allocates budget authority and outlays among the various functions. Each budget account appears in the single budget function (for example, international affairs – function 150) that best reflects its major purpose.

²⁶⁰ See Office of Management and Budget, *Final Sequestration Report to the President and Congress for Fiscal Year 2012*, Washington, DC, January 18, 2012, p. 8, https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/sequestration/sequestration_final_jan2012.pdf.

Table 4: BCA Caps on Discretionary Spending through FY 2021

Discretionary Budget Authority in billions of dollars, including adjustments, rounded to the nearest billion											
Laws	Category	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
BCA 2011	Security	684	686	1,066	1,086	1,107	1,131	1,156	1,182	1,208	1,234
	Nonsecurity	359	361								
Joint Comm. Trigger 2012	Defense*		641	498	512	523	536	549	562	576	589
	Nondefense*		333	469	483	493	504	516	530	543	558
BBA-13 Dec 2013	Defense			520	521						
	Nondefense			493	492						
BBA-15 Nov 2015	Defense					548	551				
	Nondefense					518	518				
BBA-18 Feb 2018	Defense							629	647		
	Nondefense							579	597		
BBA-19 July 2019	Defense									666.5	671.5
	Nondefense									621.5	626.5

* Defense = Security Revised; *Nondefense = Nonsecurity Revised

Sources and explanation:

Budget Control Act of 2011 (“BCA”), Pub. L. No. 112–25, 125 Stat. 240 (2011) imposed statutory limits on discretionary spending aimed at reducing projected deficits by \$917 billion over 9 years.

Joint Committee Trigger and “Sequester Caps”: The BCA also established a congressional “Joint Committee” to achieve another \$1.5 trillion in long-term deficit reduction through entitlement and tax reforms. However, because the Joint Committee failed to reach agreement within the allotted time, in January of 2012 additional budget cuts of \$1.2 trillion over nine years were triggered into effect in the form of further reductions in the discretionary spending caps for each year through FY 2021 and annual sequestration of direct (mandatory) spending. The reduced discretionary caps were referred to as “Sequester Caps.”

Bipartisan Budget Act of 2013 (“BBA-13”), Pub. L. No. 113–67, 127 Stat. 1165 (2013), often referred to as the “Murray-Ryan Agreement,” increased discretionary spending limits for the defense and nondefense categories by \$22 billion for FY 2014 and \$9 billion for FY 2015.

Bipartisan Budget Act of 2015 (“BBA-15”), Pub. L. No. 114-74, 129 Stat. 584 (2015) increased discretionary spending limits for the defense and nondefense categories by \$25 billion each for FY 2016, and \$15 billion each for FY 2017—levels that were above the Sequester Caps but remained below the original 2011 BCA caps.

Bipartisan Budget Act of 2018 (“BBA-18”), Pub. L. No. 115-123, 132 Stat. 64 (2018) increased the defense and nondefense discretionary caps for FY 2018 and FY 2019 to levels *above the original 2011 BCA caps*. For FY 2018, the defense cap was increased by \$80 billion and the nondefense cap by \$63 billion; and for FY 2019, the defense cap was increased by \$85 billion and the nondefense cap by \$6 billion. The resulting caps were higher than the original 2011 BCA caps but remained below the pre-2011 BCA discretionary baseline.²⁶¹

Bipartisan Budget Act of 2019 (“BBA-19”), Pub. L. No. 116-37, 133 Stat. 1049 (2019) increased the defense and nondefense discretionary caps for FY 2020 and FY 2021. For FY 2020, the defense cap was increased by \$90.3 billion and the nondefense cap by \$78.3 billion; and for FY 2021, the defense cap was increased by \$82.5 billion and the nondefense cap by \$68.5 billion. The resulting caps were higher than the original 2011 BCA caps but remained below the pre-2011 BCA discretionary baseline.²⁶²

Adjustments: Spending Exempted from the BCA Spending Caps

Similar to the 1990 BEA, the 2011 BCA allowed for upward adjustments to the statutory spending caps to accommodate appropriations for certain enumerated purposes—effectively exempting specific types of spending from the caps. While the BCA spending caps expired at the end of FY

²⁶¹ Pre-BCA baseline is what discretionary spending would have been through FY 2021 if the BCA had not been enacted and spending was allowed to grow with inflation. See an explanation of baselines in the section on Foundational Concepts.

²⁶² *Id.*

2021, it is useful to understand the BCA spending cap adjustments since discretionary caps may well be utilized again in the future.

Table 5: Statutory Spending Cap Adjustments

Type of Adjustment	Explanation of Cap Adjustment BEA = 1990 Budget Enforcement Act / BCA = 2011 Budget Control Act
Emergency Requirements	Funding for spending designated in statute and by the President as emergency requirements. BBEDCA in 1985 first allowed emergency funding to be excluded from budget limits; the emergency exemption was continued by the BEA and BCA. ²⁶³
Overseas Contingency Operations	Funding designated in statute and by the President for the wars in Afghanistan and Iraq and related operations, referred to as “OCO” or “OCO/GWOT” for Overseas Contingency Operations / Global War on Terrorism. Established by BCA. ²⁶⁴
Program Integrity Initiatives	Program integrity initiatives aimed at reducing improper benefit payments by the Disability Insurance (DI) program and the Supplemental Security Income (SSI) program, known as continuing disability reviews (CDRs). CDR adjustments are subject to specified limitations. ²⁶⁵
Health Care Fraud and Abuse	Program integrity initiatives to reduce improper healthcare payments from Medicare, Medicaid, or the Children’s Health Insurance Program (Health Care Fraud and Abuse Control, “HCFAC”). HCFAC adjustments are subject to BCA limitations. ²⁶⁶
Disaster Relief	Disaster relief, subject to annual limitations tied to average disaster spending over the previous decade. ²⁶⁷
Reemployment Services	New budget authority for FY 2019-2021 for “reemployment services and eligibility assessments” under section 306 of the Social Security Act, subject to limits. ²⁶⁸
Wildfire Suppression	New budget authority, above specified thresholds, for wildfire suppression operations beginning in FY 2020. ²⁶⁹
Census funding	Appropriations designated for the 2020 census, not to exceed \$2.5 billion. ²⁷⁰
Budget Concepts & Definitions	Cap adjustments by OMB to accommodate changes in budget concepts and definitions, made in consultation with the Budget and Appropriations Committees. ²⁷¹

²⁶³ 2 U.S.C. § 901(b)(2)(A).

²⁶⁴ 2 U.S.C. § 901(b)(2)(A). The availability of the emergency requirement designation, and later the OCO/GWOT designation, allowed Congress and the President to substantially increase defense spending above the BCA cap on defense discretionary spending, without triggering a sequester. For example, between fiscal years 2012 and 2019, more than \$715 billion was designated OCO/GWOT funding, and thereby exempted from the BCA spending caps—more than 90 percent of that amount for the Department of Defense. For additional background on OCO, see Brendan W. McGarry and Emily M. Morgenstern, Cong. Rsch. Serv., R44519, *Overseas Contingency Operations Funding: Background and Status*, (September 6, 2019); and Brendan W. McGarry, Cong. Rsch. Serv., IN11839, *FY 2022 NDAA: Overseas Contingency Operations*, (January 14, 2022).

²⁶⁵ 2 U.S.C. § 901(b)(2)(B)

²⁶⁶ 2 U.S.C. § 901(b)(2)(C).

²⁶⁷ 2 U.S.C. § 901(b)(2)(D).

²⁶⁸ 2 U.S.C. § 901(b)(2)(E).

²⁶⁹ 2 U.S.C. § 901(b)(2)(F).

²⁷⁰ 2 U.S.C. § 901(b)(2)(G).

²⁷¹ 2 U.S.C. § 901(b)(1).

OMB and CBO Reports on Discretionary Spending

In order to enforce the BCA spending caps, the Office of Management and Budget (OMB) was required to issue three regular appropriations reports each year, as well as a report following enactment of each appropriations bill, as follows:

1. The 3 Regular Reports:
 - A. *Sequestration preview reports*—included by OMB in the President’s February budget transmittal—provided the status of discretionary caps for the current year and each year thereafter through FY 2021, based on current law and adjustments.
 - B. *Sequestration update reports*, due by August 20 each year, provided a mid-year status report on enacted appropriations, if any, and cap adjustments.
 - C. *Final sequestration reports*—within 15 days after the end of the congressional session—provided final estimates of enacted appropriations, calculated permissible adjustments to the discretionary caps (as outlined above in Table 5) and—if it was determined by OMB that a breach had occurred in either the defense or nondefense categories—a presidential order implementing an across-the-board sequester in the relevant category to eliminate the overage.
2. *OMB was also required to report on individual appropriations bills and supplemental appropriations* within seven days of enactment, providing estimates of budget authority (BA) and outlays resulting from the legislation and a determination of whether the BA would cause discretionary appropriations to exceed the defense or nondefense “sequester caps.”

CBO was required to issue parallel reports five days prior to release of each OMB report, although only OMB reports could trigger enforcement actions since cancellation of budget authority is an Executive Branch function. Nevertheless, OMB was required to explain any differences between the OMB and CBO estimates.

Enforcement of the Spending Caps: End-of-Session Discretionary Sequester

The BCA discretionary spending caps were enforced through a sequestration process. The BCA would trigger sequestration if the final sequestration report issued by OMB indicated that discretionary appropriations in either the defense or nondefense categories exceeded the spending limit for that category. In the event of an overage, the President was required to issue a sequestration order canceling budgetary resources in that category by the uniform percentage reduction required to bring budget authority within the applicable spending cap.

The statutory requirements for the sequester process are prescribed in BBEDCA, as amended. OMB would determine the total dollar amount of necessary discretionary spending reductions, and the amount of the “sequestrable base,” which is the total amount of nonexempt discretionary spending in the relevant category (defense or nondefense). OMB would then calculate the uniform percentage by which non-exempt budgetary resources must be reduced to bring discretionary budget authority within the relevant statutory cap. Once a uniform percentage reduction was determined, it would be applied to all programs, projects, and activities (PPAs) within a budget account.²⁷²

²⁷² PPAs are delineated in different ways: For accounts included in appropriations acts, PPAs within each budget account are delineated in those acts or accompanying reports, and for accounts not included in appropriations acts, PPAs are delineated in the most recently submitted President’s budget. BBEDCA, Section 256(k)(2).

Supplemental Appropriations: Within-Session Discretionary Sequester

Under the BCA, a within-session sequester would be triggered if a supplemental appropriations bill would cause a spending limit to be breached during a fiscal year. In that instance, sequestration would occur 15 days after the enactment of the supplemental appropriations. However, if such a breach occurred in the last quarter of the fiscal year (i.e., July 1 through September 30), the applicable spending limit for the following fiscal year would be reduced by the amount of the breach.

No Discretionary Sequesters under the BCA Spending Caps

The above sequestration procedures were not triggered during the operation of the BCA; there were no actual sequester orders applied to discretionary spending between FY 2013 and FY 2021. The absence of discretionary sequesters was due to periodic Bipartisan Budget Agreements that raised the caps to accommodate desired spending levels, recounted in greater detail below.

Additional Spending Cap Enforcement through House and Senate Rules

The BCA also provided for enforcement of the discretionary spending limits by House and Senate points of order during consideration of appropriations legislation.²⁷³

In the case of nondefense appropriations bills, the order in which the bills were considered determined whether a particular bill or amendment was vulnerable to a point of order—with the last bill up being the one vulnerable to violating the nondefense cap.

Supplemental appropriations could be vulnerable to a point of order if not covered by an emergency designation or disaster relief adjustment.²⁷⁴

In the Senate, a motion to waive the point of order required an affirmative vote of three-fifths of Senators, duly chosen and sworn (i.e., 60 Senators if there is no more than one vacancy). In the House, a special rule waiving the point of order would require a simple majority vote.

²⁷³ Section 314(f) of the 1974 Budget Act. In addition, the BCA amended section 314 of the 1974 Budget Act to allow the chairs of the Budget Committee of each chamber to make adjustments provided under the new Section 251 of the BBEDCA, as described above.

²⁷⁴ The primary procedural constraint on the level of discretionary spending provided in appropriations acts is the point of order enforcing the Section 302(b) allocations associated with the congressional budget resolution. To the extent the levels of discretionary spending included in the congressional budget resolution for a fiscal year are consistent with the statutory caps for that year, the Section 302(b) allocations are the primary procedural enforcement of discretionary spending levels. For additional information on the suballocations, see CRS Report RS20144, *Allocations and Subdivisions in the Congressional Budget Process*, by Bill Heniff Jr.

Joint Committee Reductions in Direct Spending: Annual Sequester Through FY 2031

When Congress missed the deadline to enact \$1.2 trillion in Joint Committee deficit reductions, the BCA triggered automatic reductions in discretionary and direct spending aimed at achieving the desired budget savings. The reductions were calculated each year by OMB—following a detailed and arcane statutory formula—and the reductions were implemented by presidential order.

The Joint Committee reductions were calculated annually through FY 2021 as follows:

- To achieve the required \$1.2 trillion of deficit reduction, the BCA first subtracted an amount for debt service savings, then divided the remainder over nine years to arrive at an annual required reduction of \$109.3 billion for each fiscal year through FY 2021.²⁷⁵
- That amount was then split equally between defense and nondefense spending, and each half was then to be allocated on a roughly proportional basis between the respective proportions of discretionary and direct spending in the two categories.²⁷⁶
- The resulting reductions in *discretionary spending* were implemented by lowering the BCA discretionary spending caps—although the required cap reductions were largely reversed (and in some cases more than reversed) by four Bipartisan Budget Acts—in 2013, 2015, 2018 and 2019—that raised the sequester caps.
- The required reductions in *direct spending* in the defense and nondefense categories are required²⁷⁷ to be achieved through annual mandatory sequestration (across-the-board cuts)—subject to certain exemptions and special rules. OMB refers to these reductions as "*Joint Committee Sequesters*."

The BCA required the defense and nondefense reductions in *direct spending* to be implemented through sequestration—automatic across-the-board cuts in nonexempt direct (mandatory) spending. Unlike the discretionary cap reductions, which were substantially rolled back, the annual BCA Direct Spending Sequester has been fully implemented each year since FY 2013 and has been extended seven times as detailed below. It is currently in effect for each fiscal year through FY 2031.²⁷⁸

For example, for FY 2023, the automatic reductions in direct spending require an 8.3% sequester of defense direct spending, a 2% sequester of Medicare spending (due to a 2% limit in statute), and a 5.7% sequester of all other nondefense direct spending—*except for programs exempted* from sequestration or subject to special rules.²⁷⁹

By statute, three-quarters of all direct spending programs are exempt from the direct spending sequester, including: Social Security; veterans' programs; net interest; refundable income tax credits; civilian and military retirement; federal aid highways; unemployment compensation; and low-income

²⁷⁵ Although the annual reduction for FY 2013 was later reduced to \$85 billion.

²⁷⁶ However, the 50-50 defense/nondefense split, along with numerous statutory exemptions and special rules, skewed the impact of the reductions towards discretionary spending cuts. While discretionary spending is roughly 30% of the budget, the statutory formula—without subsequent changes—would have derived 82% of the reductions from discretionary spending.

²⁷⁷ This bullet written in the present tense because the annual mandatory sequester has been extended through FY 2031.

²⁷⁸ For a detailed explanation of the direct (mandatory) spending sequester, see CRS Report R45941, *The Annual Sequester of Mandatory Spending through FY2029*, by Charles S. Konigsberg.

²⁷⁹ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, *OMB Report to the Congress on the BBEDCA 251A Sequestration for Fiscal Year 2023*, 4 (March 28, 2022). Although the reductions are across-the-board, one special rule applies the nondefense sequester percentage to student loans as an *increase* in the origination fee. For an in-depth explanation of the mandatory sequester calculations, see CRS Report R45941, *The Annual Sequester of Mandatory Spending through FY2029*, by Charles S. Konigsberg.

programs including Medicaid, Children’s Health Insurance, Supplemental Security Income, Supplemental Nutrition Assistance, and Temporary Assistance for Needy Families.²⁸⁰

Programmatic Impact of the Joint Committee Mandatory Sequester

Medicare is the largest direct spending program subject to sequestration, although special rules limit the sequestration of Medicare benefit payments to 2 percent.²⁸¹ Most Medicare spending—\$983 billion in FY 2022²⁸²—is subject to the sequester, including payments for hospitalizations, physician services, prescription drugs, skilled nursing facility care, home health visits, and hospice care. The reductions apply to fee-for-service payments as well as Medicare Advantage plans.²⁸³

Other special rules that impact the Direct Spending Sequester include a 2 percent limit on reductions to direct spending for community and migrant health centers and the Indian Health Service and a special rule for student loans that achieves the required budgetary savings by increasing origination fees.²⁸⁴

For other direct spending—not exempt or subject to special rules—the Joint Committee reductions impact a broad array of federal programs including Affordable Care Act cost-sharing subsidies and risk adjustment, farm price and income supports, compensation and services for crime victims, citizenship and immigration services, agricultural marketing services and conservation programs, the promotion of safe and stable families, and animal and plant health inspection.

The annual mandatory sequester reductions also impact Federal Deposit Insurance Corporation orderly liquidation operations, vocational rehabilitation services, mineral leasing payments, Centers for Medicare and Medicaid Services program management, social services block grants, Departments of Justice and Treasury law enforcement activities, and student loan origination fees. Also impacted are highway performance grants; school construction bonds; spectrum relocation activities; Trade Adjustment Assistance; Consumer Financial Protection Bureau; Drug Enforcement Administration operations; Tennessee Valley Authority; fish and wildlife restoration and conservation; affordable housing; the maternal, infant, and early childhood home visiting program; and Gulf Coast restoration.

²⁸⁰ Section 255 of BBEDCA, as amended (2 U.S.C. §905)

²⁸¹ The 2% limit on Medicare sequestration under the BCA automatic reductions is provided in Section 251A(6)(A) of BBEDCA, as amended by the BCA, 2 U.S.C. §901a.

²⁸² Cong. Budget Off., *The Budget and Economic Outlook: 2022 to 2032*, Table 3.1 (2022), <https://www.cbo.gov/publication/58147>.

²⁸³ For more detail on Medicare and sequestration, see CRS Report R45106, *Medicare and Budget Sequestration*, by Patricia A. Davis.

²⁸⁴ Sections 256(e) and 256(b), respectively, of BBEDCA as amended by the BCA, 2 U.S.C. §905.

Bipartisan Budget Acts Raise Spending Caps, Extend Mandatory Sequesters

The BCA's \$1.2 trillion in Joint Committee budgetary savings, to be achieved through automatic cap reductions and direct spending sequesters, was modified several times between FY 2013 and FY 2021. The modifications may be summed up as follows:

1. The FY 2013 sequester was reduced from \$109 billion to \$85 billion and postponed for two months by the American Taxpayer Relief Act (ATRA; P.L. 113-67) due to concerns about its economic impact;²⁸⁵
2. The annual discretionary cap reductions for FY 2014 through FY 2021 were partially or fully overturned by spending cap increases enacted by four Bipartisan Budget Acts; and
3. The costs of the discretionary spending cap increases were offset through extensions of the Joint Committee mandatory sequester—with the annual sequester now in place through FY 2031.

Details of these modifications follow.

Bipartisan Budget Act of 2013 Raised Caps, Extended Sequester to FY 2023

The Bipartisan Budget Act of 2013 (BBA-13; P.L. 113-67), often referred to as the “Murray-Ryan Agreement,” increased discretionary spending limits for the defense and nondefense categories by \$22 billion for FY 2014 and \$9 billion for FY 2015.²⁸⁶

In order to “pay for” the discretionary spending cap increases, BBA-13 extended the direct (mandatory) spending sequester beyond its statutory expiration date of FY 2021 by two years. The extension through FY 2023 was intended to offset the costs of raising the discretionary spending caps.²⁸⁷

²⁸⁵ The American Taxpayer Relief Act (ATRA), signed into law on January 2, 2013, adjusted the BCA in response to concerns about the economic consequences of an impending “fiscal cliff.” The fiscal cliff referred to nearly simultaneous tax increases and spending reductions that were to occur at the beginning of calendar year 2013. The Congressional Budget Office estimated the automatic tax increases and spending cuts could have returned the economy to recession. The tax increases were due to occur because of various tax cuts, enacted by the Bush Administration, expiring at the end of 2012, along with expiration of tax incentives that were enacted in response to the recession. At about the same time, automatic spending reductions of \$109.3 billion per year, triggered by the BCA's Joint Committee process, were due to begin with a sequester on January 2, 2013. In response to these fiscal policy concerns, ATRA extended expiring tax cuts, while reducing and postponing the scheduled BCA sequester. Title IX of ATRA reduced the FY 2013 sequester by \$24 billion, from \$109.3 billion down to \$85.3 billion (still equally divided between defense and nondefense) and postponed the effective date of the BCA sequester from January 2, 2013, until March 1, 2013. For further details of the FY2013 sequester, see Office of Management and Budget, *OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013*, Washington, DC, March 1, 2013, https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/fy13ombjsequestrationreport.pdf.

²⁸⁶ Negotiated by Senator Patty Murray and Representative Paul Ryan. Bipartisan Budget Act of 2013, Pub. L. No. 113-67, 127 Stat. 1165 (2013).

²⁸⁷ For additional information, see Cong. Budget Off, *Cost estimate for Bipartisan Budget Act of 2013*, (December 11, 2013), <https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/costestimate/bipartisan-budget-act-20130.pdf>.

Discretionary Cap Changes Resulting from BBA-13 (P.L. 113-67) (budget authority in billions of dollars, rounded)					
Fiscal Year	Category	Original BCA Caps	Sequester Caps	BBA-13 Changes	Post BBA-13
FY 2014	Defense	1,066	498	+22	520
	Nondefense		469	+22	492
FY 2015	Defense	1,086	512	+9	521
	Nondefense		483	+9	492

Sidebar: Calculating the Joint Committee Mandatory Sequesters for the Extension Years

Extension of the Joint Committee mandatory sequester to offset the cost of discretionary cap increases posed a technical challenge. As explained above, the Joint Committee mandatory sequester is calculated based on the statutory requirement to save \$109.3 billion in each fiscal year from FY 2013 through FY 2021, with the savings split between the defense and nondefense categories. The defense and nondefense reductions of \$54.667 billion per year are then apportioned between discretionary and direct spending programs according to the statutory formula—with the direct spending reductions implemented through sequestration.

After FY 2021, however, there was no statutory requirement to achieve \$54.667 billion in budgetary savings in defense and nondefense spending and, consequently, no specific amounts to apportion to direct spending savings. Therefore, the Bipartisan Budget Act of 2013, and subsequent statutes that extended the Joint Committee mandatory sequester, have tied the sequester calculations for the post-2021 “extension years” to the uniform percentage reductions calculated by OMB for FY 2021:

- Annual reductions in nonexempt **defense mandatory spending** accounts of **8.3 percent**; and
- Annual reductions in nonexempt **nondefense mandatory spending** accounts of **5.7 percent**.²⁸⁸

The Medicare reductions are subject to the same statutory 2 percent limitations applied to fiscal years through FY 2021, although some adjustments were made for Fiscal Years 2020 – 2022 to accommodate economic conditions during the COVID pandemic (detailed below).²⁸⁹

²⁸⁸ See 2 U.S.C. §901a(6)(B): “On the dates OMB issues its sequestration preview reports for each of fiscal years 2022 through 2029, pursuant to section 254(c), the President shall order a sequestration, effective upon issuance such that—(i) the percentage reduction for nonexempt direct spending for the defense function is the same percent as the percentage reduction for nonexempt direct spending for the defense function for fiscal year 2021 calculated under paragraph (3)(B); and (ii) the percentage reduction for nonexempt direct spending for nondefense functions is the same percent as the percentage reduction for nonexempt direct spending for nondefense functions for fiscal year 2021 calculated under paragraph (4)(B).” ”

²⁸⁹ See text accompanying footnotes 288-291.

Military Retirement Bill Extended Sequester to FY 2024

In February of 2014, Congress enacted P.L. 113-82, which reversed a controversial military retirement provision that had enacted a reduction of 1 percent in the annual cost-of-living adjustment (COLA) for military retirees.²⁹⁰ The 2014 law made the reduction inapplicable to those who first became members of the Armed Forces before 2014. As an offset for the cost of this reversal, P.L. 113-82 extended the BCA direct spending sequester by one additional year, through FY 2024.²⁹¹

Bipartisan Budget Act of 2015 Raised Caps, Extended Sequester to FY 2025

As reflected in the table below, the Bipartisan Budget Act of 2015 (BBA-15) increased the respective discretionary spending limits for the defense and nondefense categories by \$25 billion each for FY 2016 and \$15 billion for FY 2017. This increased discretionary spending above the sequester cap levels, but it remained below the original BCA cap levels. BBA-15 offset the increased spending by extending the Joint Committee direct spending sequester by one year through FY 2025, as well as drawing down strategic petroleum reserves, and other provisions.²⁹²

The bill also established nonbinding spending targets for Overseas Contingency Operations/Global War on Terrorism (OCO/GWOT) levels for FY 2016 and FY 2017; amended the limits on adjustments for program integrity initiatives; and temporarily suspended the debt limit through March 15, 2017, followed by an adjustment for amount borrowed.

Discretionary Cap Changes Resulting from BBA-15 (P.L. 114-74) (budget authority in billions of dollars, rounded)					
Fiscal Year	Category	Original BCA Caps	Sequester Caps	BBA-13 Changes	Post BBA-13
FY 2016	Defense	1,107	523	+25	548
	Nondefense		493	+25	518
FY 2017	Defense	1,131	536	+15	551
	Nondefense		504	+15	518

Bipartisan Budget Act of 2018 Raised Caps, Extended Sequester to FY 2027

The Bipartisan Budget Act of 2018 (BBA-18) increased the defense and nondefense discretionary caps for FY 2018 and FY 2019 to levels above the original BCA caps—fully reversing the Joint Committee automatic reductions in discretionary spending.²⁹³

For FY 2018, the defense cap was increased by \$80 billion, and the nondefense cap was increased by \$63 billion. For FY 2019, the defense cap was increased by \$85 billion, and the nondefense cap was

²⁹⁰ *An Act to ensure that the reduced annual cost-of-living adjustment to the retired pay of members and former members of the Armed Forces under the age of 62 required by the Bipartisan Budget Act of 2013 will not apply to members or former members who first became members prior to January 1, 2014*, Pub. L. No. 113-82, § 1, 128 Stat. 1009.

²⁹¹ For a CBO cost estimate, see *Legislation Enacted in the 113th Congress that will Affect Mandatory Spending or Revenues*, Washington, DC, March 26, 2015, p. 4, <https://www.cbo.gov/publication/50052>.

²⁹² Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584 (2015). For text of the public law: see <https://www.congress.gov/114/plaws/publ74/PLAW-114publ74.pdf>. For the CBO cost estimate, see <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1314.pdf>.

²⁹³ Bipartisan Budget Act of 2018, Pub. L. No. 115-123, 132 Stat. 64 (2018).

increased by \$68 billion. The resulting caps were higher than the original BCA caps but remained below the pre-BCA discretionary baseline.²⁹⁴

BBA-18 also extended the direct spending sequester by two years, through FY 2027, as an offset for the costs of increasing the caps, in addition to extension of certain fees, a drawdown of the Strategic Petroleum Reserve, and other provisions.

BBA-18 also suspended the debt limit through March 1, 2019, providing for the limit to be increased following the suspension period to accommodate obligations issued during the suspension period.

Discretionary Cap Changes Resulting from BBA-18 (P.L. 115-123) (budget authority in billions of dollars, rounded)					
Fiscal Year	Category	Original BCA Caps	Sequester Caps	BBA-13 Changes	Post BBA-13
FY 2018	Defense	1,156	549	+80	629
	Nondefense		516	+63	579
FY 2019	Defense	1,182	562	+85	647
	Nondefense		530	+68	597

Bipartisan Budget Act of 2019 Raised Caps, Extended Sequester to FY 2029

The Bipartisan Budget Act of 2019 (BBA-19) increased the defense and nondefense discretionary caps for FY 2020 and FY 2021 to levels above the original BCA caps—fully reversing the BCA automatic reductions in discretionary spending.²⁹⁵

For FY 2020, the defense cap was increased by \$90.3 billion and the nondefense cap by \$78.3 billion; and for FY 2021, the defense cap was increased by \$82.5 billion and the nondefense cap by \$68.5 billion. The resulting caps were higher than the original BCA caps but remained below the pre-BCA discretionary baseline.²⁹⁶

BBA-19 extended the direct spending sequester by two years, through FY 2029, as an offset for the costs of increasing the caps, along with extending certain customs user fees through FY 2029.

BBA-19 also:

- suspended the debt limit through July 31, 2021 (providing for the limit to be increased following the suspension period to accommodate obligations issued during the suspension period);
- specified limits for Overseas Contingency Operations (OCO/GWOT) funding;²⁹⁷

²⁹⁴ Pre-BCA baseline is what discretionary spending would have been through FY 2019 if the BCA had not been enacted and spending was allowed to grow with inflation. See an explanation of baselines in the section on Foundational Concepts.

²⁹⁵ Bipartisan Budget Act of 2019, Pub. L. No. 116-37, 133 Stat. 1049 (2019).

²⁹⁶ Pre-BCA baseline is what discretionary spending would have been through FY 2021 if the BCA had not been enacted and spending was allowed to grow with inflation. See an explanation of baselines in the section on Foundational Concepts.

²⁹⁷ Section 101(b) of BBA-19 provides: “In fiscal years 2020 and 2021, the adjustments...for Overseas Contingency Operations/Global War on Terrorism appropriations will be as follows: (1) For the revised nonsecurity category—(A) for fiscal year 2020, \$8,000,000,000; and (B) for fiscal year 2021, \$8,000,000,000.(2) For the revised security category—(A) for fiscal year 2020, \$71,500,000,000; and (B) for fiscal year 2021, \$69,000,000,000.”

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- provided for spending cap adjustments to accommodate funding for the 2020 Census;
- in Title II of the Act, set forth procedures for enforcing spending and revenue levels consistent with the bill as if they had been included in congressional budget resolutions for FY 2020 and FY 2021 (similar to “deeming resolutions,” explained above);
- extended and modified Senate points of order regarding advance appropriations, changes in mandatory programs (CHIMPs), and designations of funds for Overseas Contingency Operations; and
- zeroed out the balances on the Pay-As-You-Go (PAYGO) scorecards established by the Statutory Pay-As-You-Go Act of 2010.

Discretionary Cap Changes Resulting from BBA-19 (P.L. 116-37) (budget authority in billions of dollars, rounded)					
Fiscal Year	Category	Original BCA Caps	Sequester Caps	BBA-13 Changes	Post BBA-13
FY 2020	Defense	1,208	576.2	+90.3	666.5
	Nondefense		543.2	+78.3	621.5
FY 2021	Defense	1,234	589	+82.5	671.5
	Nondefense		558	+68.5	626.5

COVID, Infrastructure Laws Extended Sequester to FY 2031

Subsequent to the four Bipartisan Budget Acts of 2013, 2015, 2018, and 2019, recent laws have enacted several changes in the BCA’s annual sequestration of mandatory spending.

In 2020, the *Coronavirus Aid, Relief, and Economic Security (“CARES Act”)* extended the BCA mandatory sequester through FY 2030 as a partial offset for the cost of the bill. In 2021, the *Infrastructure Investment and Jobs Act*,²⁹⁸ extended the mandatory sequester through FY 2031.

In addition, several adjustments were made to the Medicare sequester to blunt its impact during the COVID pandemic. The CARES Act temporarily *suspended* the sequester of Medicare spending from May 1, 2020 through December 31, 2020.²⁹⁹ The *Consolidated Appropriations Act, 2021* extended the suspension through March 31, 2021;³⁰⁰ and the *Act to Prevent Across-the-Board Direct Spending Cuts* extended the suspension through December 31, 2021.³⁰¹ Most recently, the *Protecting Medicare and American Farmers From Sequester Cuts Act* extended the suspension through March 31, 2022, and limited Medicare sequester reductions from April 1, 2022 through June 30, 2022 to 1 percent,³⁰² with annual reductions to resume at 2 percent thereafter.

²⁹⁸ Infrastructure Investments and Jobs Act, Pub. L. No. 117-58, § 90001, 135 Stat. 1341.

²⁹⁹ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 3709(b), 134 Stat. 422, 2 U.S.C. 901a note.

³⁰⁰ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 102, 134 Stat. 1950, 2 U.S.C. 901a note.

³⁰¹ An Act to Prevent Across-the-Board Direct Spending Cuts, Pub. L. No. 117-7, § 135 Stat. 251. 2 U.S.C. 901a note.

³⁰² The Protecting Medicare and American Farmers from Sequester Cuts Act, Pub. L. No. 117-71, § 2, 135 Stat. 1506. 2 U.S.C. 901a note. The provision also adjusted the Medicare sequestration reductions in FY 2030 to 2.25 percent for the first half of the fiscal year and 3 percent for the second half of the fiscal year.

Presentation and Coverage of the Federal Budget

The Unified Budget and Capital Considerations

Although most States have separate operating and capital (investment) budgets, the federal budget is generally treated as a single "unified budget"—a comprehensive budget in which all receipts and outlays are consolidated.

The unified budget, as conceived by the *President's 1967 Commission on Budget Concepts*, presents the full range of federal activities, enabling evaluation of the full macroeconomic impact of federal spending, revenues, and deficits (or surpluses) on the nation's economy.³⁰³

However, some analysts have argued that lumping *capital and other long-term investments* together with annual *operating* expenses and receipts, fails to properly account for the anticipated long-term returns on capital and other investments. For advocates of a separate capital budget, long-term investments should be viewed in the context of the long-term economic growth, resilience and global competitiveness estimated to result from increased energy, infrastructure, research and other investments—rather than showing long-term investments as entries on annual balance sheets.

There has been periodic discussion of whether federal fiscal policy should be restructured to follow the example of the States, by adopting a *separate capital budget*. This question was studied in great detail in the 1999 *Report of the President's Commission to Study Capital Budgeting*.³⁰⁴

Off-Budget Entities: Social Security Trust Funds and the U.S. Postal Service

While the federal budget continues to be considered under the unified budget framework adopted in 1967, as a legal matter, the spending and revenues of the Social Security Trust Funds, as well as the operations of the U.S. Postal Service, are technically “off-budget.”³⁰⁵ They are displayed separate from “on-budget totals” in both the President’s Budget and the congressional budget resolution.³⁰⁶

The outlays and revenues of the two Social Security Trust Funds (the Old-Age and Survivors Insurance (“OASI”) Trust Funds and the Disability Insurance (“DI”) Trust Fund) have been “off-budget” since 1985—reflecting congressional intent that Social Security benefits should not be reduced as part of general deficit reduction efforts.³⁰⁷

³⁰³ Report of the President’s Commission on Budget Concepts (October 1967), <https://babel.hathitrust.org/cgi/pt?id=uc1.b4446593&view=1up&seq=9>.

³⁰⁴ See *Report of the President's Commission to Study Capital Budgeting* (February 1999), <https://clintonwhitehouse4.archives.gov/media/pdf/report.pdf>.

³⁰⁵ The term “off-budget federal entity” is defined in Balanced Budget and Emergency Deficit Control Act of 1985 (“BBEDCA”), Pub. L. No. 99-177, § 9, 99 Stat. 1037 (1985), 2 U.S.C. § 201(a)(1).

³⁰⁶ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 301, 88 Stat. 297 (codified as amended at 2 U.S.C. § 632) provides, “the concurrent resolution (on the budget) shall not include the outlays and revenue totals of the old-age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.”

³⁰⁷ Balanced Budget and Emergency Deficit Control Act of 1985 (“BBEDCA”), Pub. L. No. 99-177, § 261, 99 Stat. 1093 (1985), amended the Social Security providing that: “(a) The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, and the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1954, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.” For the somewhat complicated and arcane history of Social Security’s inclusion and removal from the federal budget, see Larry DeWitt, Social Security Historian’s

Similarly, the transactions of the United States Postal Service (USPS) have been classified as off-budget since 1990, reflecting congressional intent that the Service should operate independently and be self-sufficient.³⁰⁸

Despite the “off-budget” status of the Social Security Trust Funds and the Postal Service, Administration and congressional budget deliberations typically focus on consolidated budget totals, while continuing to display both on-budget and off-budget numbers in order to fulfill the statutory requirements.³⁰⁹

The Federal Reserve: A non-budget entity

The operations of the Federal Reserve are entirely separate from the Federal budget and is considered to be a “non-budget entity. As such, transfers from the Federal Reserve to the Treasury are recorded as revenues, and payments to it as budget authority and outlays.³¹⁰

Budget Treatment of Government-Sponsored Enterprises (GSEs)

The operations of Government-Sponsored Enterprises (GSEs) are generally not included in the President’s Budget. GSEs are private shareholder-owned companies chartered by the federal government for public purposes—for example, improving the accessibility of credit for housing, agriculture, and community and rural development. Although the GSEs are federally chartered, they are shareholder-owned private companies, and their securities are not backed by the full faith and credit of the federal government.

While GSE operations are not included as budget items in the President’s Budget, recent large infusions of funds from the Treasury in response to the Great Recession of 2007-2009 have been included as items in the Budget. In addition, GSE financial statements are displayed in the *Budget Appendix* for informational purposes.³¹¹

The GSEs include:

- The Federal National Mortgage Association (**Fannie Mae**)³¹² and the federal Home Loan Mortgage Corporation (**Freddie Mac**)³¹³ which provide liquidity in the residential mortgage market and increase the availability of mortgage credit by guaranteeing and investing in mortgages in the secondary mortgage market;

Office, *The Social Security Trust Funds and the Federal Budget*, Updated June 18, 2007, explaining that “Social Security was off-budget from 1935-1968; on-budget from 1969-1985; off-budget from 1986-1990, for all purposes except computing the deficit; and off-budget for all purposes since 1990,” <https://www.ssa.gov/history/BudgetTreatment.html>.

³⁰⁸ Despite this intention, the Service has experienced multi-billion losses in each of the last 15 years, however in 2022, Congress enacted substantial financial reforms in the Postal Service Reform Act aimed at placing the USPS on a more sustainable and stable financial footing, Pub. L. No. 117-108, 136 Stat. 1127.

³⁰⁹ See, for example, Cong. Budget Off., *The Budget and Economic Outlook: 2022 to 2032*, Table 1.1 (2022), <https://www.cbo.gov/publication/58147>, which displays on-budget and off-budget numbers while noting that “the revenues and outlays of the Social Security trust funds and the net cash flow of the Postal Service are classified as off-budget.”

³¹⁰ A *Compendium of Laws and Rules of the Congressional Budget Process*, Committee on the Budget, U.S. House of Representatives, 97 (August 2015).

³¹¹ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Budget Appendix, 1353 (2022), https://www.whitehouse.gov/wp-content/uploads/2022/03/gov_fy2023.pdf.

³¹² *Id.*

³¹³ *Id.* at 1354.

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- The Federal **Home Loan Banks**³¹⁴ which assist thrift institutions, banks, insurance companies, and credit unions in providing financing for housing and community development;
- The **Farm Credit System**,³¹⁵ including the Agricultural Credit Bank and Farm Credit Banks, which provide financing to agriculture; and
- The Federal Agricultural Mortgage Corporation (**Farmer Mac**),³¹⁶ which provides a secondary market for agricultural real estate, rural housing loans, and certain rural utility loans, as well as for farm and business loans.³¹⁷

The housing GSEs are regulated by the Federal Housing Finance Agency,³¹⁸ and the farm & rural GSEs are regulated by the Farm Credit Administration.³¹⁹ Additional background follows.

The Housing, Farm & Rural GSEs

Fannie Mae

The Federal National Mortgage Association (Fannie Mae) was established in 1938 to provide stability and liquidity in the residential mortgage market, and to increase the availability of mortgage credit to low- and moderate-income families. In furtherance of these goals, Fannie Mae guarantees residential mortgage-backed securities and invests in portfolios of residential mortgages.

Fannie Mae was originally a subsidiary of the Reconstruction Finance Corporation. In 1954 it was restructured with part government, part private ownership; and in 1968 Congress directed sale of the government's remaining interest. By 1970 Fannie Mae completed the transition to private shareholder ownership.

During the housing and financial crisis that began in 2008, Congress enacted the Housing and Economic Recovery Act of 2008 (“HERA”), establishing FHFA as a new independent regulator, which placed Fannie Mae under federal conservatorship “in response to the GSE’s declining capital adequacy and to support the safety and soundness of the GSEs.”³²⁰ At the same time, HERA authorized the Treasury Department to purchase obligations of the housing GSEs to support their operations. Treasury entered into a Senior Preferred Stock Purchase Agreement (“PSPA”) with Fannie Mae, and by the end of 2021, Fannie Mae had received nearly \$120 billion under the PSPA and had made more than \$181 billion in dividend payments to Treasury on the preferred stock.³²¹ While the Budget continues to show Fannie Mae as a non-budgetary entity, the assistance provided under the PSPA is shown as on-budget.

³¹⁴ *Id.* at 1354-55.

³¹⁵ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Budget Appendix, 1355-56 (2022), https://www.whitehouse.gov/wp-content/uploads/2022/03/gov_fy2023.pdf.

³¹⁶ *Id.* at 1356-57.

³¹⁷ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Budget Appendix, 1353 (2022), https://www.whitehouse.gov/wp-content/uploads/2022/03/gov_fy2023.pdf.

³¹⁸ <https://www.fhfa.gov/>.

³¹⁹ <https://www.fca.gov/>.

³²⁰ Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 125 Stat. 2654 (2008). See [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Budget Appendix, 1353 (2022), https://www.whitehouse.gov/wp-content/uploads/2022/03/appendix_fy2023.pdf.

³²¹ *Id.*

Freddie Mac

The Federal Home Loan Mortgage Corporation (Freddie Mac) was established under the Emergency Home Finance Act of 1970.³²² Similar to Fannie Mae, Freddie Mac is a federally chartered, shareholder-owned, private company with a mission to increase the liquidity of the residential mortgage market. As described in the Budget, Freddie Mac’s mission is to provide mortgage lenders with “an organized national secondary market enabling them to manage their conventional mortgage portfolio more effectively and gain indirect access to a ready source of additional funds to meet new demands for mortgages. Freddie Mac serves as a conduit facilitating the flow of investment dollars from the capital markets to mortgage lenders, and ultimately, to homebuyers.”³²³ Like Fannie Mae, Freddie Mac is regulated by FHFA.

Similar to Fannie Mae, in response to the housing and financial crisis, HERA authorized the Treasury Department to purchase obligations of Freddie Mac to stabilize the corporation and support its operations and on September 6, 2008, FHFA placed Freddie Mac under federal conservatorship. On the following day, the Treasury Department entered into a PSPA to purchase Freddie Mac stock and as of 2021, Freddie Mac had received \$71.6 billion under the PSPA and had made nearly \$120 billion in dividend payments to Treasury.³²⁴ The Budget continues to show Freddie Mac as a non-budgetary entity, although federal assistance is shown as on-budget.

Federal Home Loan Bank System

The Federal Home Loan Bank System assists banks, insurance companies, and credit unions in providing financing for housing and community development.³²⁵ The Federal Home Loan Banks (“FHLBanks”)³²⁶ were chartered by the Federal Home Loan Bank Board under the Federal Home Loan Bank Act (“1932 Act”).³²⁷ Similar to Fannie Mae and Freddie Mac, the 11 Federal Home Loan Banks operate under the supervision of FHFA.

To accomplish their mission, the FHLBanks make loans and provide other credit products and services to their nearly 7000 member banks, insurance companies, and credit unions.³²⁸ Each FHLBank operates in a geographic district and together FHLBanks cover all states and territories. The principal source of funds for the System’s lending operations are the sale of consolidated obligations to the public; other sources of funds include member deposits and capital.³²⁹ Funds not immediately needed for advances to members are invested. The capital stock of the Federal Home Loan Banks is owned entirely by the members.³³⁰

³²² Emergency Home Finance Act of 1970, Pub. L. No. 91-351, 84 Stat. 450 (1970), <https://uscode.house.gov/statutes/pl/91/351.pdf>.

³²³ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Budget Appendix, 1354 (2022), https://www.whitehouse.gov/wp-content/uploads/2022/03/gov_fy2023.pdf.

³²⁴ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Budget Appendix, 1354 (2022), https://www.whitehouse.gov/wp-content/uploads/2022/03/gov_fy2023.pdf.

³²⁵ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2021, Budget Appendix, 1358 (2020), https://www.whitehouse.gov/wp-content/uploads/2020/02/appendix_fy21.pdf.

³²⁶ <https://fhlbanks.com/>.

³²⁷ Federal Home Loan Bank Act of 1943, Pub. L. No. 72-304, 47 Stat. 725 (1932). *See also* the Federal Home Loan Bank System Modernization Act of 1999, Pub. L. No. 106-102, 113 Stat. 1450 (1999).

³²⁸ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2021, Budget Appendix, 1359 (2020), https://www.whitehouse.gov/wp-content/uploads/2020/02/appendix_fy21.pdf.

³²⁹ *Id.*

³³⁰ Initially the U.S. Government purchased stock of the banks in the amount of \$125 million. The banks had repurchased the Government's investment in full by mid-1951. *Id.*

Amendments to the 1932 Act³³¹ require each FHLBank to operate an affordable housing program (“AHP”). Each FHLBank provides subsidies in the form of direct grants or below-market rate advances for members that use the funds for affordable housing projects. Each of the FHLBanks is required to set aside annually 10 percent of its previous year's net earnings, with a minimum of \$100 million, for the AHP.³³²

Farm Credit System and Farmer Mac

The Farm Credit System (“FCS”), established by the Federal Farm Loan Act of 1916,³³³ is a nationwide financial cooperative providing access to credit for farmers, ranchers, rural homeowners, and harvesters of aquatic products. The Act responded to the lack of affordable credit in rural areas.³³⁴

As a GSE, the Farm Credit System is a federally chartered, privately owned, for-profit lender and receives no federal appropriations or guarantees. FCS is the only GSE that is a direct lender.

The Federal Agricultural Mortgage Corporation (“Farmer Mac”), a separate GSE regulated under the FCS, supports a secondary market for farm loans, agricultural real estate, rural housing loans, and certain rural utility loans.³³⁵

The major components of the FCS are the Agricultural Credit Bank (ACB); the Farm Credit Banks (FCBs); the direct-lender associations; and Farmer Mac. The Farm Credit System banks finance loans primarily from the sale of bonds to the public, backed by an insurance fund administered by the Farm Credit System Insurance Corporation.³³⁶

³³¹ Amendments enacted in 1989.

³³² *Id.*

³³³ Federal Farm Loan Act of 1916, Pub. L. No. 64-158, 39 Stat. 360 (1916), <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/39/STATUTE-39-Pg360.pdf>.

³³⁴ See Jim Monke, Cong. Rsch. Serv., RS21278, Farm Credit System, 1 (May 17, 2016).

³³⁵ See [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2021, Budget Appendix, 1359 (2020), https://www.whitehouse.gov/wp-content/uploads/2020/02/appendix_fy21.pdf.

³³⁶ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2021, Budget Appendix, 1359 (2020), https://www.whitehouse.gov/wp-content/uploads/2020/02/appendix_fy21.pdf.

Additional Laws and Rules Governing the Budget Process

Budget Scorekeeping Rules

Budget scorekeeping (“scoring”) is the process of estimating the spending, revenue, or deficit³³⁷ effects of current laws and proposed legislation.

Scorekeeping guidelines are used by the House and Senate Budget Committees, the Congressional Budget Office, and the Office of Management and Budget (the “scorekeepers”) in measuring compliance with the 1974 Budget Act, the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (“BBEDCA”), and the Statutory Pay-As-You-Go Act of 2010.

Specifically, scorekeeping guidelines are applied to determine whether new discretionary appropriations, new direct spending, or new revenue legislation will trigger: (1) *points of order* under the 1974 Budget Act or other House or Senate rules; or (2) a *sequestration order* to enforce Statutory PAYGO (or to enforce statutory spending caps if they are reinstated in the future).

By statute, the official scorekeepers for Congress are the House and Senate Budget Committees,³³⁸ although they rely in nearly all cases on spending estimates provided by the nonpartisan Congressional Budget Office and revenue estimates provided by the nonpartisan Joint Committee on Taxation.

The Office of Management and Budget is the principal scorekeeper for purposes of determining compliance with the Statutory PAYGO requirement³³⁹ and for execution of the annual Joint Committee mandatory sequesters (through FY 2031).³⁴⁰

OMB and CBO are required by statute³⁴¹ to determine common budget scorekeeping guidelines in consultation with the House and Senate Budget Committees. The current guidelines are set forth in Appendix A of OMB Circular A-11 and are based on guidelines originally set forth in the joint explanatory statement accompanying the conference report on the Bipartisan Budget Act of 1997, with subsequent revisions agreed upon by the scorekeepers.³⁴²

As stated in Circular A-11:

The purpose of the guidelines is to ensure that the scorekeepers measure the effects of legislation on the deficit consistent with established scorekeeping conventions and with the specific requirements in those Acts regarding discretionary spending, direct spending, and receipts. These rules are reviewed periodically by the scorekeepers and revised as necessary to adhere to the purpose. They cannot be changed unless all

³³⁷ Or budget surplus effects.

³³⁸ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 312, 88 Stat. 297 (codified as amended at 2 U.S.C. § 643) provides that “for purposes of this title and title IV, the levels of new budget authority, outlays, direct spending, new entitlement authority, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as applicable.

³³⁹ However, the Congressional Budget Office handles scoring for purposes of the House and Senate PAYGO points of order.

³⁴⁰ A sequester to eliminate a PAYGO or spending cap coverage is an executive action and must therefore be handled by OMB, an executive agency. For example, the Government Accountability Office’s role in the initial version of BBEDCA was struck down by the Supreme Court, finding that the GAO, a legislative branch agency, had been given responsibilities that were executive in nature. See *Bowsher v. Synar*, 478 U.S. 714 (1986).

³⁴¹ Section 252(d)(5) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

³⁴² [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Circular A-11, Appendix A, August 2021, <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>.

*of the scorekeepers agree. New accounts or activities are classified only after consultation among the scorekeepers. Accounts and activities cannot be reclassified unless all of the scorekeepers agree.*³⁴³

The scorekeeping guidelines cover the following areas: classification of appropriations; outlays; direct spending programs; transfer of budget authority from a direct spending account to a discretionary account; transfer authority; reappropriation; advance appropriations; rescissions and transfers of unobligated balances; delay of obligations; contingent legislation; purchases; write-offs; reclassifications; program management expenses; asset sales; and indefinite borrowing authority.³⁴⁴

Earmarks: the Disclosure Requirements and the Return of Spending Earmarks

The term “earmark” colloquially refers to three distinct types of Member-driven benefits placed in bill or report language: (1) congressional spending earmarks; (2) limited tax benefits; and (3) limited tariff benefits.

A *congressional earmark* (in House Rules) or *congressionally directed spending item* (in Senate Rules) refers to a spending provision placed in bill or report language—at the request of a Member or Senator—that provides, authorizes, or recommends spending authority for “an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.”³⁴⁵

A *limited tax benefit*, in the House, refers to a provision that provides tax benefits aimed at 10 or fewer beneficiaries with eligibility criteria that are not applied uniformly, or a provision providing tax transition relief aimed at one beneficiary.³⁴⁶ A similar provision in the Senate applies to tax benefits for “a particular beneficiary or a limited group of beneficiaries” but without the 10-beneficiary threshold in the House Rule.³⁴⁷

A *limited tariff benefit* refers to provisions “modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.”³⁴⁸

House and Senate Rules require *disclosure* of all three types of earmarks, as well as the name of the sponsoring Member or Senator, in the report accompanying the legislation. If there are no earmarks, there must be a statement that the legislation contains no earmarks.³⁴⁹ In the Senate, the information

³⁴³ *Id.* at page 1 of Appendix A.

³⁴⁴ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Circular A-11, Appendix A, August 2021, <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>.

³⁴⁵ The term covers all types of spending authority: “...providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.” Rules of the House of Representatives, 117th Congress, Rule XXI, clause 9 and Standing Rules of the Senate, Rule XLIV, paragraph 5.

³⁴⁶ The term covers all types of tax benefits: “(1) any revenue-losing provision that—(A) provides a Federal tax deduction, credit, exclusion, or preference to 10 or fewer beneficiaries under the Internal Revenue Code of 1986, and (B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or (2) any Federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986.” Rules of the House of Representatives, 117th Congress, Rule XXI, clause 9.

³⁴⁷ In the Senate, limited tax benefit refers to “any revenue provision that (A) provides a Federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986, and (B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision.” Standing Rules of the Senate, Rule XLIV, paragraph 5.

³⁴⁸ Rules of the House of Representatives, 117th Congress, Rule XXI, clause 9; and Standing Rules of the Senate, Rule XLIV, paragraph 5.

³⁴⁹ Rules of the House of Representatives, 117th Congress, Rule XXI, clause 9.

must have been available for at least 48 hours prior to a vote.³⁵⁰ This disclosure requirement applies to bills, amendments, and conference reports, and is enforceable through a parliamentary point of order raised by a Member or Senator.³⁵¹ In the Senate, consideration of a measure may continue upon compliance with the disclosure measure having been achieved.³⁵²

In addition to the earmark disclosure requirements specified in House and Senate Rules, the House and Senate began observing a de facto moratorium on earmarks in the 112th Congress. The moratorium was established by party rules and committee practices.³⁵³

However, after 10 years of the moratorium, Congress reversed course on earmarks when the House Appropriations Committee invited Members of Congress to request funding for projects in their communities.³⁵⁴ The omnibus appropriations bill for FY 2022³⁵⁵ included nearly 5,000 earmarks totaling \$9 billion, disclosed in detail on the Appropriations Committee website.³⁵⁶ The disclosure rules and requirements that Members may not have any financial interest in the earmarks remain in effect, along with new rules for early public disclosure.³⁵⁷ The revival of earmarks with enhanced disclosure is continuing in FY 2023.³⁵⁸

Federal Credit Reform Act of 1990: Transactions v. Subsidy Costs

Along with the Budget Enforcement Act, the 1990 budget agreement between President George H.W. Bush and congressional leaders (“Budget Summit Agreement”) gave birth to another milestone in budget enforcement, the Federal Credit Reform Act of 1990 (“FCRA”).³⁵⁹

FCRA dramatically changed the budget process for federal credit programs. These budget reforms were significant because direct loans and loan guarantees have, for many years, been critical

³⁵⁰ Standing Rules of the Senate, Rule XLIV, paragraph 1(b).

³⁵¹ Rules of the House of Representatives, 117th Congress, Rule XXI, clause 9; and Standing Rules of the Senate, Rule XLIV.

³⁵² Standing Rules of the Senate, Rule XLIV.

³⁵³ Early in the 116th Congress, House Democrats announced they would not allow earmarks and House Republicans put an earmark ban in their party rules.³⁵³ Senate Republicans adopted an earmark ban by resolution of the Senate Republican Conference in 2017. Appropriations Committee Chairwomen Nita Lowey announced early in the 116th Congress that the chamber would not bring back earmarks. *See* Roll Call, March 5, 2019, <https://www.rollcall.com/2019/03/05/senate-to-follow-house-keep-earmarks-out-of-spending-bills/>. The Rules of the House Republican Conference for the 116th Congress include a standing order labeled “Earmark Moratorium” that states, “It is the policy of the House Republican Conference that no Member shall request a congressional earmark, limited tax benefit, or limited tariff benefit, as such terms have been described in the Rules of the House.” Conference Rules of the 116th Congress, House Republican Conference, Standing Order on Earmark Moratorium, <https://www.gop.gov/conference-rules-of-the-116th-congress/>. Senate Republicans adopted an earmark ban by resolution of the Senate Republican Conference in 2017. History, Rules & Precedents of the Senate Republican Conference, 116th Congress, https://www.republican.senate.gov/public/_cache/files/af397c46-72dc-4725-b0f3-20a37eb1a589/9B39486E24E74FC3D4E2B74B10C98B18.updated2.8.19-conferencerules-2.pdf; and Benjamin Wermund, Senate Republicans Permanently Ban Earmarks, Politico (May 24, 2019), <https://www.politico.com/story/2019/05/24/senate-republicans-permanently-ban-earmarks-3323611>.

³⁵⁴ <https://appropriations.house.gov/transparency/fiscal-year-2022>.

³⁵⁵ H.R. 2471, 117th Cong. (2022).

³⁵⁶ <https://appropriations.house.gov/transparency/fiscal-year-2022>. For additional background see Luke Broadwater, Emily Cochrane and Alicia Parlapiano, *As Earmarks Return to Congress, Lawmakers Rush to Steer Money Home*, N.Y. Times, April 1, 2022, at <https://www.nytimes.com/2022/04/01/us/politics/congress-earmarks.html>.

³⁵⁷ https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/documents/Community%20Project%20Fundin%20-%20Fact%20Sheet%20on%20Reforms_0.pdf

³⁵⁸ <https://appropriations.house.gov/transparency/fiscal-year-2023>.

³⁵⁹ FCRA became the new Title V of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §312(f), 88 Stat. 297 (codified at 2 U.S.C. 661 – 661f).

components of federal education, housing, agriculture, small business, disaster assistance, and trade programs.

Prior to credit reform, all credit transactions were recorded, on a cash basis, in the fiscal year in which they occurred. Direct loans were recorded as outlays in the year the loan was made; direct loan repayments were recorded as receipts in the year paid; loan guarantee claim payments were recorded as outlays in the year disbursed; and any fees charged for direct loans or loan guarantees were recorded as receipts in the year received. However, this cash approach did not accurately estimate the overall budgetary impact of creating or modifying credit programs.

For example, because the federal government did not have to show any outlays for loan guarantees until lenders filed claims on defaulted loans, the granting of new loan guarantees appeared to have no cost when enacted, while direct loans—which were treated like grants in the year they were issued—appeared to be overly expensive. This created a misleading bias in favor of loan guarantees over direct loans.

Congress enacted FCRA to address these flaws. FCRA changed the budget rules for credit programs by requiring Congress to appropriate budget authority up front to cover projected delinquencies, defaults, and interest rate subsidies over the life of credit programs. By requiring the up-front appropriation of budget authority to cover the projected future costs of credit programs, FCRA allowed Congress to compare in an apples-to-apples way the budgetary costs of direct loans, loan guarantees, and more traditional grant programs.

For example, the President’s Budget proposes direct loan levels in FY 2023 of \$211 billion. If Congress approves the proposed direct loan levels, FCRA requires that Congress appropriate \$15 billion for FY 2023 in new subsidy budget authority to cover interest subsidies and estimated uncollectible principal and interest.³⁶⁰ This requirement of FCRA enables Congress to compare the up-front costs of the proposed direct loans with other program options.

On the loan guarantee side, the President’s Budget proposes loan guarantees for Veterans’ Housing in FY 2023 of \$315 billion.³⁶¹ If Congress approves the proposed loan guarantee levels, FCRA requires that Congress appropriates for FY 2023, \$246 million in new subsidy budget authority to cover projected liability for loan defaults. Prior to the enactment of FCRA, the authorization of these new loan guarantee commitments in FY 2023 may have shown up as costing nothing at the time of enactment.

The magnitude of the federal government’s credit programs underscores the importance of FCRA’s budgetary controls. In FY 2021, the most recent year for which actual numbers are available, the federal government had \$1.894 trillion in total outstanding direct loans, with an estimated total future cost of \$369 billion due to subsidy costs and uncollectible principal and interest. The largest direct

³⁶⁰ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Analytical Perspectives – Credit and Insurance, Table 19-2, 271 (2023), https://www.whitehouse.gov/wp-content/uploads/2022/03/ap_19_credit_fy2023.pdf.

³⁶¹ Total proposed loan guarantees for FY 2023 is \$721 billion. This example focuses on the Veterans Housing Benefit Program Fund, the largest part of proposed loan guarantees for FY 2023. [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Analytical Perspectives – Credit and Insurance, Table 19-3, 273 (2023), https://www.whitehouse.gov/wp-content/uploads/2022/03/ap_19_credit_fy2023.pdf.

loan programs are direct student loans, disaster assistance loans, and farm and rural development loans.³⁶²

On the loan guarantee side, the federal government had \$3.093 trillion in outstanding loan guarantees in FY 2021, with an estimated future cost of \$231 billion attributable to projected liability for loan defaults. The largest loan guarantee programs are for Federal Housing Administration mortgage guarantees, veterans' mortgage guarantees, small business loan guarantees, farm and rural development guarantees, and legacy student loan guarantees.³⁶³

Nearly two decades after enactment of FCRA, considerable debate remains among Administration and congressional budget estimators about the best methodologies for estimating the future costs of direct loans, loan guarantees and other credit programs. But importantly, that debate is now taking place, and policymakers are now comparing the efficacy and actual costs of direct loans and loan guarantees with other program options.

GPRAs and Results-Based Budgeting

Since World War II, Administrations have undertaken several performance-based budgeting initiatives. The concept has generally been to “promote greater efficiency, effectiveness, and accountability in federal spending” by linking budget levels to results.³⁶⁴ The most recent iteration of performance-based budgeting is the Government Performance and Results Act of 1993 (GPRAs)³⁶⁵ as amended by the GPRAs Modernization Act of 2010 (GPRAMA).³⁶⁶

The objective of GPRAs is to shift the focus of program reviews from expenditures and activities to mission objectives and results. GPRAs requires agencies to submit 5-year Strategic Plans and Annual Performance Plans with their budget requests to Congress. GPRAMA amended GPRAs to require federal agencies to collect and report performance data for use in funding decisions and program management.³⁶⁷

Various attempts to establish performance-based budgeting occurred in the decades prior to GPRAs and GPRAMA. In 1949, the Commission on the Organization of the Executive Branch (Hoover Commission), which led to the Reorganization Act of 1949,³⁶⁸ made the first formal recommendation that performance budgeting be incorporated in the federal budget process.

In the 1960s, the Planning-Programming-Budgeting-System (“PPBS”), was an attempt to apply cost-benefit analysis to the federal government.³⁶⁹

³⁶² [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Analytical Perspectives – Credit and Insurance, Table 19-1, 270 (2023), https://www.whitehouse.gov/wp-content/uploads/2022/03/ap_19_credit_fy2023.pdf.

³⁶³ *Id.*

³⁶⁴ Virginia McMurtry, Cong. Rsch. Serv., RL32164, *Performance Management and Budgeting in the Federal Government: Brief History and Recent Developments*, Summ. (March 16, 2005).

³⁶⁵ Government Performance and Results Act, Pub. L. No. 103-62, 107 Stat. 285, 31 U.S.C. 1101 note (1993).

³⁶⁶ GPRAs Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866, 31 U.S.C. 1101 note (2011).

³⁶⁷ *Id.*

³⁶⁸ Reorganization Act of 1949, Pub. L. No. 81-109, 63 Stat. 203, 5 U.S.C. 133 et seq.

³⁶⁹ See for example, U.S. Gov't Accountability Off., OACG-84-5, *Report of the Accounting and Financial Management Division Program and Budget Information Group*, April 1984, accessed on 06.07.2022 at <https://www.gao.gov/products/oacg-84-5>.

In 1973, the Nixon Administration’s proposed replacement for PPBS was “Management by Objectives,” which focused on holding agency managers accountable for achieving outcomes set forth in budget requests.³⁷⁰

In 1977, the Carter Administration initiated “Zero-Based Budgeting.” As explained by the GAO, “Zero-Base Budgeting (ZBB) was an executive branch budget formulation process introduced into the federal government in 1977. Its main focus was on optimizing outputs available at alternative budgetary levels. Under ZBB agencies were expected to set priorities based on the program results that could be achieved at alternative spending levels, one of which was to be below current funding.”³⁷¹

Since the enactment of GPRA in 1993, additional efforts were made at performance-based budgeting, notably the National Performance Review (NPR) during the Clinton Administration and the Program Assessment Rating Tool (PART) during the George W. Bush Administration.³⁷²

Highway Funding: Direct Spending with Appropriation Obligation Limitations

As explained earlier in this primer, federal spending may refer to budget authority (BA) or outlays. Budget authority is legal authority for an agency to enter into obligations; outlays are disbursements by the Treasury Department that result from obligations.

Budget authority is characterized as either discretionary spending or direct (mandatory) spending. Budget authority is *discretionary* when it is enacted in one of the annual appropriations bills under the jurisdiction of the *House and Senate Appropriations Committees*.

Budget authority is characterized as *direct (mandatory) spending* when it flows from entitlement programs or contract authority under the jurisdiction of *authorizing committees*. Contract authority is a type of BA that provides legal authority for recipients to enter into contracts financially obligating the federal government in advance of appropriations.³⁷³ While appropriators must eventually provide liquidating authority³⁷⁴ to pay the obligations, the budget authority is allocated by the budget resolution to the authorizing committees when the contract authority is created.

³⁷⁰ See Chester A. Newland, *Policy/Program Objectives and Federal Management: The Search for Government Effectiveness*, *Public Administration Review*, Jan.-Feb., 1976, at 20.

³⁷¹ U.S. Gov’t Accountability Off., *Performance Budgeting: Past Initiatives Offer Insights for GPRA Implementation*, GAO/AIMD-97-46, 6 (March 1997). See also *Hearings before the Task Force on Budget Process of the Committee on the Budget, House of Representatives, Second Session, June 30, July 27 and 28, 1976*, 45-60.

³⁷² See *A Brief History of the National Performance Review*, accessed on 06.07.2022; Cong. Rsch. Serv., RL32663, *The Bush Administration’s Program Assessment Rating Tool (PART)* (November 5, 2004); and U.S. Gov’t Accountability Off., GAO-04-174, *Performance Budgeting: Observations on the Use of OMB’s Program Assessment Rating Tool for the FY 2004 Budget*, 1 (January 30, 2004).

³⁷³ Obligation of contract authority legally commits the federal government to reimburse the state or other grantee for the federal share of a project. With contract authority this is done prior to a liquidating appropriation. For example, in the case of federal highway programs, “a state Department of Transportation or other grantee lets bids, supervises construction, and receives bills from private contractors for work completed. It then pays those bills according to its own procedures and submits vouchers for reimbursement to the Federal Highway Administration (FHWA). FHWA certifies each claim for payment and notifies the Department of the Treasury, which disburses money electronically, often on the same day it receives the voucher.” Robert S. Kirk, Cong. Rsch. Serv., R47022, *Federal Highway Programs: In Brief*, 2 (February 7, 2022) citing Federal Highway Administration (FHWA), *Funding Federal-Aid Highways*, FHWA-PL-17-011, January 2017, pp. 37-39, at https://www.fhwa.dot.gov/policy/olsp/fundingfederalaid/FFAH_2017.pdf.

³⁷⁴ Liquidating authority is “an appropriation to pay obligations incurred pursuant to substantive legislation, usually contract authority. A liquidating appropriation is not recorded as budget authority.” U.S. Gov’t Accountability Off., GAO-05-734SP, *A Glossary of Terms Used in the Federal Budget Process*, 65 (2005), <https://www.gao.gov/new.items/d05734sp.pdf>.

Generally, both the BA and outlays associated with direct spending fall under the jurisdiction of the respective authorizing committees. For example, the BA and outlays of the Social Security program are allocated by the budget resolution to the House Ways and Means and Senate Finance Committees.

Highway spending, however, is an unusual budgetary hybrid that falls under the jurisdiction of authorizing *and* appropriations committees. Federal assistance for highway construction has consisted primarily of *contract authority* to State and local governments.³⁷⁵ The contract authority is provided in laws under the jurisdiction of the House Transportation & Infrastructure Committee and the Senate Environment & Public Works Committee in multiyear surface transportation authorization bills often referred to by the shorthand “highway bills.”³⁷⁶ However, the multiyear contract authority—which is the legal authority to obligate the federal government for highway construction—is subject to annual “obligation limitations” (ObLim) set by the House and Senate Appropriations Committees.³⁷⁷ The ObLims set limits on the total amount of contract authority that can be obligated in each fiscal year—in effect controlling the annual outlays from the program.

In other words, jurisdiction over federal spending on highways is *split* between the authorizing committees that enact the contract authority and the appropriations committees that impose annual obligation limitations that eventually determine annual outlays. Consequently, the annual budget resolution, which allocates all spending authority among the committees of Congress, *assigns highway construction BA to the authorizing committees and highway construction outlays to the appropriations committees.*³⁷⁸

A consequence of this unusual split jurisdiction over highway BA and outlays is that neither the PAYGO requirements that constrain direct spending, nor the BCA spending caps that constrained discretionary spending through FY 2021, apply to highway construction spending. This peculiar

³⁷⁵ Under the most recent highway bill, the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58, 2021), average annual funding consists of 83 percent contract authority. Under the previous highway bill, the Fixing America’s Surface Transportation Act (FAST; P.L. 114-94, 2015), 99.5 percent of funding was contract authority. Robert S. Kirk, Cong. Rsch. Serv., R47022, *Federal Highway Programs: In Brief*, 3 (February 7, 2022).

³⁷⁶ Multiyear surface transportation reauthorization bills fund federal highway and public transportation programs, as well as transportation research, intercity passenger rail, and other programs. Recent Highway Bills are: Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58) which authorized \$356.5 billion for FY2022-FY2026, providing a major increase in highway spending from the HTF, but also providing additional funds through multiyear advance appropriations from the Treasury general fund, making the IIJA both a reauthorization act and a multiyear appropriations act; Fixing America’s Surface Transportation Act (FAST; P.L. 114-94, 2015), which authorized federal spending for highways and public transportation for FY 2016 – FY 2020; Moving Ahead for Progress in the 21st Century Act, (MAP-21; P.L. 112-141, 2012); Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU; P.L. 109-59, 2005); Transportation Equity Act for the 21st Century (TEA-21; P.L. 105-178, 1998); The National Highway System Designation Act (NHS; P.L. 104-59, 1995); Intermodal Surface Transportation Efficiency Act (ISTEA; P.L. 102-240, 1991); Surface Transportation and Uniform Relocation Assistance Act (STURRA; P.L. 100-17, 1987); Pre-1987: Federal Aid to Roads and Highways Since the 18th Century and Federal Highway Administration, America’s Highways: 1776-1976, see pp. 546-547.

³⁷⁷ The obligation limitations appear in the annual Transportation-HUD appropriations bills.

³⁷⁸ Adding to this complexity, the revenue levels for the Highway Trust Fund—the source for highway contract authority—are determined by the House Ways & Means and Senate Finance Committees which have jurisdiction over federal motor fuel taxes. In recent years, motor fuel taxes have been insufficient to pay for authorized levels of highway and transit funding because tax rates have not increased at the federal level since 1993. Congress has responded by requiring Treasury to transfer additional funds from the General Fund to the Highway Trust Fund including \$70 billion in 2016 as required by the Fixing America’s Surface Transportation (FAST) Act in order to support highway and mass transit programs over the five-year life of the Act. For additional information, see Robert S. Kirk and William J. Mallett, Cong. Rsch. Serv., R45350, *Funding and Financing Highways and Public Transportation*, (May 11, 2020).

result occurs because PAYGO requirements are tied to the deficit impact of legislation,³⁷⁹ but highway bills that enact contract authority are not scored with outlays and therefore do not have a scoreable deficit impact. At the same time, the BCA spending caps applied only to discretionary BA, not outlays, and therefore did not apply to highway spending.³⁸⁰

Overseas Contingency Operations Exemption from Spending Caps

Discretionary spending designated as an “emergency requirement” by the President and Congress is effectively exempt from the statutory limits on discretionary spending. An emergency designation for discretionary spending triggers an upward adjustment in the discretionary spending limits by the amount of the emergency designation effectively exempting the spending from the spending caps.

Following the September 11, 2001 (“9/11”) attacks, military, and other operations in response to the attacks were referred to as the “Global War on Terror” (GWOT) and were designated as emergency funding.

In February 2009, the Obama administration released a budget blueprint “A New Era of Responsibility: Renewing America’s Promise,” that introduced the term “Overseas Contingency Operation” (OCO) in referring to ongoing military operations in Iraq and Afghanistan.³⁸¹

Congress similarly transitioned to the OCO label in the National Defense Authorization Act (NDAA) for FY 2010, with Title XV of the bill designated as “Authorization of Additional Appropriations for Overseas Contingency Operations.”³⁸²

The 2011 BCA merged the two references and established “Overseas Contingency Operations/Global War on Terrorism” (OCO/GWOT) as a new category of exemption from the discretionary caps by amending section 251 of the 1985 BBEDCA.³⁸³ This provided Congress and the President with an alternate means of exempting defense, foreign affairs, and related funding from the BCA caps without using the “emergency” designation. The OCO/GWOT designation was first in effect for FY 2012 appropriations and was used through FY 2021 when the BCA limits on discretionary spending expired.³⁸⁴

In order to utilize the designation, Congress designated funding in appropriations acts as OCO/GWOT on an account-by-account basis; and the President designated it as such after it was appropriated, to make it available for expenditure.

The availability of the emergency requirement designation, and later the OCO/GWOT designation, was to permit Congress and the President to increase substantially defense, foreign affairs, and other

³⁷⁹ See the section above explaining the Statutory PAYGO Act of 2010.

³⁸⁰ For additional information on highway funding, see Robert S. Kirk, Cong. Rsch. Serv., R47022, *Federal Highway Programs: In Brief*, (February 7, 2022).

³⁸¹ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, A New Era of Responsibility: Renewing America’s Promise, 53 (Feb. 2009), <https://www.govinfo.gov/content/pkg/BUDGET-2010-BUD/pdf/BUDGET-2010-BUD.pdf>.

³⁸² National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, §§ 1501-20, Authorization of Additional Appropriations for Overseas Contingency Operations, 123 Stat. 2190, 2563 (2009), “SEC. 1501. PURPOSE. The purpose of this title is to authorize appropriations for the Department of Defense for fiscal year 2010 to provide additional funds for overseas contingency operations being carried out by the Armed Forces.”

³⁸³ Budget Control Act of 2011, Pub. L. No. 112-25, § 101 (amending BBEDCA § 251, 125 Stat. 243 (2011)).

³⁸⁴ While the OCO/GWOT designation expired with the BCA discretionary spending caps in FY 2021, it is included in this primer as essential to understanding the budget process framework of the 2010s. Moreover, just as the 1990 BEA discretionary spending caps were reincarnated with enactment of the 2011 BCA, it would not be surprising to see the OCO mechanism reemerge in the future.

spending above the BCA cap on defense discretionary spending, without triggering a sequester. For example, between fiscal years 2012 and 2019, more than \$715 billion was designated OCO/GWOT funding, and was thereby exempted from the BCA spending caps, with more than 90 percent of that amount going to the Department of Defense.³⁸⁵

The Bipartisan Budget Act of 2019 established OCO/GWOT targets for FY 2020 and FY 2021. Defense OCO/GWOT targets were set at \$71.5 billion for FY 2020 and \$69 billion for FY 2021. Nondefense OCO/GWOT targets were set at \$8 billion for both FY 2020 and FY 2021.³⁸⁶

The extensive use of the emergency and OCO/GWOT exemptions from the discretionary spending caps was controversial with some arguing it provided a necessary safety valve for special national security operations, and others arguing it served as a slush fund or loophole for the Department of Defense to avoid the statutory spending caps.³⁸⁷

Public Debt and the Statutory Limit

A budget deficit (or surplus) is the difference between outlays and revenues for a given fiscal year. In contrast to an annual deficit, the federal debt is the *accumulated* debt of the federal government. Whenever the federal government runs a budget deficit, the additional borrowing to finance that deficit adds to the federal debt. By contrast, whenever the federal government runs a budget surplus, as it did during fiscal years 1998 through 2001, the federal debt *may decrease* because the Treasury uses the surplus to redeem outstanding debt, rather than borrowing additional funds to redeem the debt (known as “rolling over the debt”).

The Constitution, in Article I, Section 8 grants Congress the power to “borrow Money on the credit of the United States,” thus mandating that Congress exercise control over the public debt.³⁸⁸ Since ratification of the Constitution, Congress has placed restrictions of various types on federal borrowing, for example, in the Second Liberty Bond Act of 1917.³⁸⁹ In 1939, Congress enacted the first aggregate limit covering nearly all federal debt, and commonly referred to as the “debt limit” or “debt ceiling.”³⁹⁰ Since that time, when the activities of the federal government require a higher limit, Congress enacts a law to raise the debt limit.

The debt limit roughly approximates gross (total) public debt, which includes:

- *Debt-held-by-the-public* (debt held by individuals, corporations, state or local governments, the Federal Reserve System, foreign governments and central banks); *plus*
- *Debt held by federal government accounts* (also known as intragovernmental debt), for example, debt held by the Social Security, Medicare, and retirement trust funds.

³⁸⁵ Brendan McGarry and Emily Morgenstern, Cong. Rsch. Serv., R44519, *Overseas Contingency Operations Funding: Background and Status*, 10-11 (Sept. 2019), <https://crsreports.congress.gov/product/pdf/R/R44519>.

³⁸⁶ Bipartisan Budget Act of 2019, Pub. L. No. 116-37, § 101, 133 Stat. 1049 (2019).

³⁸⁷ For further information on OCO funding, see Brendan W. McGarry, Cong. Rsch. Serv., IN 11839, *FY 2022 NDAA Overseas Contingency Operations* (Jan. 2022), and Emily M. Morgenstern, Cong. Rsch. Serv., IF 10143, *Foreign Affairs Overseas Contingency Operations (OC) Funding: Background and Current Status* (Aug. 2021).

³⁸⁸ U.S. Const., art. I, §8, cl. 2.

³⁸⁹ Second Liberty Bond Act of 1917, 49 Stat. 21. See D. Andrew Austin, Cong. Rsch. Serv., RL31967, *The Debt Limit: History and Recent Increases*, Summ. (November 2, 2015), accessed at <https://crsreports.congress.gov/product/pdf/RL/RL31967/139>; and D. Andrew Austin, Cong. Rsch. Serv., R43389, *The Debt Limit Since 2011* (April 1, 2021), accessed at: <https://crsreports.congress.gov/product/pdf/R/R43389/63>.

³⁹⁰ A Bill to Amend the Second Liberty Bond Act, Pub. L. No. 76-201, 53 Stat. 1071, codified at 31 USC 3101, accessed at: <https://uscode.house.gov/statviewer.htm?volume=53&page=1071>.

An important distinction is the difference between total public debt and debt-held-by-the-public. As reflected in the table below, while total public debt at the end of FY 2022 was nearly \$31 trillion, debt-held-by-the-public was closer to \$24 trillion.³⁹¹ As currently constructed, the statutory limit on the public debt applies to nearly all of the total public debt.³⁹²

Table 7: Total Public Debt v. Debt-Held-By-The-Public

Trillions of Dollars (rounded) as of September 15, 2022	
Total Public Debt (includes the <i>sum of</i> debt-held-by-the public and intragovernmental holdings).	\$30.89 trillion
Debt-Held-by-the-Public (debt held by foreign investors, mutual funds, state and local governments, commercial banks, insurance companies and individuals).	\$24.27 trillion
Intragovernmental Holdings (debt held by the Social Security, federal retirement, and other government trust funds).	\$6.62 trillion

The debt limit requires increases for two reasons. First, total public debt grows because of deficits that occur when Congress approves federal spending in excess of revenues. When the federal government’s total spending in a fiscal year exceeds total revenues, the Treasury finances the difference by borrowing, which increases debt-held-by-the-public. Second, total public debt grows when government trust funds have surpluses which are required to be invested in Treasury securities.³⁹³

One might assume that a mechanism called “the statutory limit on the public debt” serves as a form of budgetary or fiscal restraint. However, in reality, the debt limit provides no restraint on deficits and debt because raising the debt limit is merely a *consequence* of prior decisions on spending and revenues—not a decision point.

Once Congress has provided budget authority for agencies to enter into spending obligations that exceed revenues, the Treasury must raise the necessary cash to fulfill those legal obligations. Failing to give Treasury the authority it requires to fulfill *existing legal obligations*—including timely redemption of U.S. bonds, Social Security payments, and national defense—would not rescind those obligations; rather, it would undermine Treasury’s financial credibility in U.S. and global markets with devastating consequences.

³⁹¹ Current totals are available at the U.S. Treasury Department’s webpage Debt to the Penny: <https://fiscaldata.treasury.gov/datasets/debt-to-the-penny/debt-to-the-penny>.

³⁹² The debt limit applies to virtually all gross federal debt other than securities issued by the Tennessee Valley Authority or other federal agencies that are permitted to issue debt directly to the public. It also excludes debt issued by the Federal Financing Bank (FFB). The FFB was created in 1973 to reduce the costs of certain Federal and federally-assisted borrowing and to ensure the coordination of such borrowing from the public in a manner least disruptive to private financial markets and institutions. With the implementation of the Federal Credit Reform Act of 1990 agencies finance such loan programs through direct loan financing accounts that borrow directly from the Treasury. The FFB finances these Federal direct loans to the public which are fully guaranteed by a Federal agency. FFB loans are also used to finance activities of the U.S. Postal Service.” [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Budget Appendix, 1012 (2022), https://www.whitehouse.gov/wp-content/uploads/2022/03/tre_fy2023.pdf.

³⁹³ See Cong. Budget Off., *The Outlook for Major Federal Trust Funds: 2020 to 2030*, Table 1 (September 2020), <https://www.cbo.gov/publication/56541>.

So why have a debt limit? First, Members of Congress who are concerned about annual deficits and increases in the accumulated debt have historically only been willing to increase the debt in relatively small increments to be certain that every time the debt limit is reached, a high visibility fiscal policy debate will take place. Second, increasing the debt limit is “must-pass” legislation and an attractive legislative vehicle to which Members of Congress can attach legislation.

Yet, for those concerned about the size of the public debt relative to the economy, threatening to default on existing obligations accomplishes nothing and risks everything. The hard reality is that debt increases will abate only when annual deficits shrink—and that happens only when lawmakers use the budget process to make and enforce difficult decisions on spending and revenues.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (UMRA)³⁹⁴ was enacted in 1995 in response to concerns that the federal government was enacting legislation that imposed new and costly responsibilities on State and local governments without providing funding to fulfill those responsibilities. Similar concerns were raised about new mandates imposed on the private sector.

The legislation was enacted as part of the House Republicans’ “Contract with America” and was supported by the Clinton Administration. At the time of its enactment, supporters of the legislation viewed it as part of a “new federalism” agenda designed to free up the resources of State and local governments for locally determined priorities. Opponents viewed it as a potential obstacle to national mandates on health, safety, and environmental concerns.³⁹⁵

Two Types of Unfunded Mandates

UMRA addresses two types of mandates. A federal *Intergovernmental Mandate* refers to provisions in federal authorizing legislation that impose enforceable duties on State or local governments, make existing duties more stringent, reduce funds available to cover the costs of existing duties, or preempt State or local revenue-raising authority. UMRA requires congressional committees and the Congressional Budget Office (CBO) to prepare detailed analyses of intergovernmental mandates in legislation that amount to more than \$50 million per year adjusted for inflation (\$92 million for FY 2022).³⁹⁶

Private Sector Mandates refer to similar types of provisions applied to private sector entities. UMRA requires congressional committees and CBO to prepare detailed analyses of private sector mandates in legislation that amount to more than \$100 million per year adjusted for inflation (\$184 million for FY 2022).³⁹⁷

UMRA applies to provisions in legislation that would impose an enforceable duty upon state and local governments or the private sector. However, it does *not* apply to legislative provisions pertaining to individual constitutional rights, discrimination, emergency assistance, grant accounting

³⁹⁴ Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. No. 104-4, 109 Stat. 50 (1995).

³⁹⁵ For additional history, see Natalie Keegan, Cong. Rsch. Serv., R40957, *Unfunded Mandates Reform Act: History, Impact, and Issues*, Appendix A, <https://crsreports.congress.gov/product/pdf/R/R40957> (February 23, 2021).

³⁹⁶ Cong. Budget Off., Cost Estimate for *H.R. 6181, A bill to reaffirm that certain land has been taken into trust for the benefit of the Samish Indian Nation, and for other purposes*, accessed on September 14, 2022.

³⁹⁷ Cong. Budget Off., *Cost Estimate for H.R. 4275, as ordered reported by the House Committee on Energy and Commerce*, accessed on September 14, 2022.

and auditing procedures, national security, treaty obligations, and certain elements of Social Security.³⁹⁸

UMRA's Requirements and Enforcement

The objective of UMRA is to provide policymakers and affected parties information about requirements in proposed legislation that would establish new federal mandates that are “unfunded.” UMRA requires congressional authorizing committees to include in committee reports a statement identifying intergovernmental (state and local) and private sector mandates exceeding inflation-adjusted thresholds, and a CBO estimate of the mandates’ estimated costs to state and local governments and the private sector. The thresholds are \$92 million for FY 2022 for intergovernmental mandates and \$184 million for FY 2022 for private sector mandates.

UMRA enforces this informational requirement by allowing any Representative or Senator to raise a procedural objection against legislation that fails to include the required unfunded mandates statement in its committee report *unless* the legislation “authorizes appropriations” or provides direct funding to cover the costs. UMRA does not apply to requirements pertaining to individual constitutional rights, discrimination, emergency assistance, grant accounting and auditing procedures, national security, treaty obligations, and certain elements of Social Security. The reporting requirement can be waived by a simple majority in the House or Senate.

UMRA attempts to put teeth in the reporting requirement by providing that an authorization of appropriations to fund the mandate is adequate only if the legislation requires the administering agency to monitor whether the mandate in the legislation is actually funded in each year. The authorizing legislation must also require that, in the event funds are not actually appropriated, the administering agency must submit legislation to Congress to reduce the cost of or eliminate the mandate. This is the Achilles’ heel of the enforcement mechanism because a requirement that the Administration request funding in no way assures that federal funding will be provided.

UMRA's Outcome

According to CBO, since UMRA’s enactment in 1995 and through FY 2019, 21 intergovernmental mandates, with costs above the threshold, have become law including: a reduction in federal funding for the food stamp program, a preemption of state taxes on premiums for prescription drugs, a temporary preemption of states’ authority to tax Internet services and transactions, a requirement that state and local governments meet certain standards for drivers’ licenses, and the elimination of federal matching payments for child support enforcement.³⁹⁹

CBO has also estimated that about 12 percent of the laws enacted between 2001 and 2011 imposed private sector mandates, for example, legislation including an increase in the minimum wage, revenue-raising provisions, mandates that impact health insurance, and mandates that affect specific industries including mining, telecommunications, food processing, and chemical facilities.⁴⁰⁰

³⁹⁸ Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. No. 104-4, 109 Stat. 50, § 4, 2 U.S.C. 1503.

³⁹⁹ Cong. Budget Off., *Laws Enacted Intergovernmental Mandates With Estimated Costs That Exceed the Statutory Threshold, 1996 to 2019* (accessed on June 5, 2022 at <https://www.cbo.gov/system/files/2020-12/51335-table1-2019.xlsx>).

⁴⁰⁰ Cong. Budget Off., *Private-Sector Mandates in Federal Legislation* (accessed on June 5, 2022 at <https://www.cbo.gov/publication/43840>).

Conclusion: The Budget Process Post-BCA

While the 2011 BCA spending caps, as amended, expired in FY 2021, numerous budget controls remain in place. The BCA’s annual mandatory sequester has been extended through FY 2031. In addition, as outlined below, budget controls remain in place under the 1974 Budget Act, as amended, the Statutory PAYGO Act of 2010, as well as numerous House and Senate rules and unexpired budget resolution provisions. Each of the budget controls described below have been explained in detail in the preceding sections of this primer.

Controls on Discretionary Spending

Although the 2011 BCA statutory spending caps, as amended by the Bipartisan Budget Acts, expired after FY 2021, the following discretionary spending controls will continue to be in effect:

Appropriations Committee Allocations: The conference report on the annual Concurrent Resolution on the Budget (“budget resolution”) includes “302(a) allocations” of discretionary spending (budget authority and outlays) to the House and Senate Appropriations Committees. The respective committees then subdivide those amounts as “302(b) allocations” to the 12 appropriations subcommittees. In both the House and Senate, there is a point of order against any appropriations bill, amendment, or conference report that would violate the 302(b) subcommittee allocations; and in the House there is also a point of order against violations of the 302(a) allocation to the full committee.⁴⁰¹

Total Spending: A budget resolution includes levels for aggregate (total) budget authority and outlays for the budget year. In the House and Senate there is a point of order against legislation that would cause the budget resolution totals for new budget authority or outlays in the budget year to be exceeded (60-vote waiver in the Senate).⁴⁰²

Controls on Direct (Mandatory) Spending

The following direct spending control measures continue to be in effect after the expiration of the Budget Control Act at the end of FY 2021.

Annual Direct Spending Sequester extended through FY 2031: The annual Joint Committee Direct Spending Sequester—triggered on January 15, 2012, by the 2011 BCA—will continue to be implemented on October 1st of each fiscal year through FY 2031. The budgetary savings from the Direct Spending Sequester is less than one percent of total direct spending.

Total Spending: In the House and Senate there is a point of order against legislation that would cause the budget resolution aggregate levels for new budget authority or outlays in the budget year to be exceeded (60-vote waiver in the Senate).⁴⁰³

Authorizing Committee Allocations: The conference report on the annual budget resolution includes “302(a) allocations” of budget authority and outlays to the authorizing committees covering the direct spending programs under their respective jurisdictions. The allocations may be set at baseline

⁴⁰¹ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §302, 88 Stat. 297 (2 U.S.C. § 633).

⁴⁰² Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §311, 88 Stat. 297 (2 U.S.C. § 642).

⁴⁰³ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §311, 88 Stat. 297 (2 U.S.C. § 642).

levels if no legislative changes are contemplated by the budget resolution, or the allocations can make room for certain changes. In both the House and Senate, there is a point of order against any legislation that would violate the 302(a) allocation to the committee of jurisdiction. A waiver in the Senate requires 60 votes.⁴⁰⁴

Budget Reconciliation: A budget resolution enables Congress to fast-track legislation from multiple committees making changes in direct spending programs. In the Senate, reconciliation legislation cannot be filibustered (due to limits on debate); floor amendments must be germane; and all provisions must be budgetary in nature.⁴⁰⁵

Statutory Pay-As-You-Go (PAYGO) Requirement: OMB maintains 5-year and 10-year “scorecards” of the average annual budgetary effects from all new direct spending and tax legislation enacted by Congress. At the end of a session of Congress, new direct spending or tax cut legislation that results in a net deficit increase for the first year of either scorecard would trigger a PAYGO sequester (across-the-board cuts in all nonexempt direct spending) to eliminate the deficit increase. However, there have been no PAYGO sequesters due to provisions excluding the budgetary effects of legislation from the scorecards, or separate provisions that “zero out” the scorecards.⁴⁰⁶

House and Senate PAYGO Rules: Unlike Statutory PAYGO which looks at the net deficit effect—averaged over 5 years and 10 years—of all direct spending and revenue legislation enacted during a session of Congress, the House and Senate PAYGO rules allow a parliamentary point of order to be raised against individual bills, amendments, or conference reports projected to increase direct spending or reduce revenues unless the legislation includes offsets that prevent a deficit increase. Both rules prohibit deficit increases over a 6-year or 11-year period, beginning with the current fiscal year; and the Senate rule also prohibits deficit increases in the current year or the budget year, individually. A waiver of the PAYGO rule in the Senate requires a 60-vote supermajority. In the House, the point of order may be waived by a simple majority.⁴⁰⁷

Point of order against “backdoor spending”: Section 401(a) of the 1974 Budget Act provides a point of order against legislation creating new contract authority, borrowing authority or credit authority, unless it is subject to appropriations.⁴⁰⁸

In addition, as explained in the section on the Federal Credit Reform Act, any legislation providing new direct loans or loan guarantees must include budget authority up front to cover projected delinquencies, defaults, and interest rate subsidies over the life of the credit programs.⁴⁰⁹

Point of order against new entitlement authority effective in the current year: Section 401(b) provides a point of order against legislation creating new entitlement authority that would become effective during the current fiscal year.

⁴⁰⁴ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §302, 88 Stat. 297 (2 U.S.C. § 633).

⁴⁰⁵ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §310, 88 Stat. 297 (2 U.S.C. § 641).

⁴⁰⁶ Statutory Pay-As-You-Go Act of 2010, Pub. L. No. 111-139, 124 Stat. 8 (codified at 2 U.S.C. § 932 et seq.).

⁴⁰⁷ See Section 405 of H.Res. 6, 110th Congress, added PAYGO language to Clause 10 of House Rule XXI; and Section 201 of S.Con.Res. 21 (110th Congress).

⁴⁰⁸ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 401, 88 Stat. 297 (2 U.S.C. § 651).

⁴⁰⁹ FCRA became the new Title V of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §312(f), 88 Stat. 297 (codified at 2 U.S.C. 661 – 661f).

Controls on Revenues

The following revenue control measures will continue to be in effect after FY 2021:

Budget Resolution Floor for Total Revenues: In the House and Senate there is a point of order against legislation that would cause revenues to fall below the budget resolution revenue floor for the budget year or the total of all years covered by the resolution (60-vote waiver in the Senate).

Budget Reconciliation: A budget resolution enables Congress to fast-track legislation from multiple committees making changes in revenue (tax) laws. In the Senate, reconciliation legislation cannot be filibustered (due to limits on debate); floor amendments must be germane; and all provisions must be budgetary in nature.⁴¹⁰

Statutory Pay-As-You-Go (PAYGO) Requirement: Statutory PAYGO: OMB maintains 5-year and 10-year “scorecards” of the average annual budgetary effects from all new direct spending and tax legislation enacted by Congress. At the end of a session of Congress, new direct spending or tax cut legislation that results in a net deficit increase for the first year of either scorecard would trigger a PAYGO sequester (across-the-board cuts in all nonexempt direct spending) to eliminate the deficit increase. However, there have been no PAYGO sequesters due to provisions excluding the budgetary effects of legislation from the scorecards, or separate provisions that “zero out” the scorecards.⁴¹¹

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Controls on Deficits and Debt

Budget Reconciliation: The annual budget resolution may include optional “Reconciliation instructions” requiring authorizing committees to report legislation making changes in direct spending programs or tax laws. When committees report reconciliation legislation in response to budget resolution instructions, the legislation is packaged into an omnibus reconciliation bill by the Budget Committees, and then considered under expedited procedures. In the Senate, reconciliation bills are filibuster-proof, and all amendments must be strictly germane. From FY 1980 through FY 1997, the first 13 budget reconciliation acts were utilized to reduce budget deficits, including deficit

⁴¹⁰ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, §310, 88 Stat. 297 (codified as amended at 2 U.S.C. § 641).

⁴¹¹ Statutory Pay-As-You-Go Act of 2010, Pub. L. No. 111-139, 124 Stat. 8 (codified at 2 U.S.C. § 932 et seq.).

⁴¹² See Section 405 of H.Res. 6, 110th Congress, added PAYGO language to Clause 10 of House Rule XXI; and Section 201 of S.Con.Res. 21 (110th Congress).

reduction packages in 1990, 1993, and 1997 that were followed by four years of federal budget surpluses.⁴¹³

Byrd Rule Point of Order against Outyear Deficits in a Reconciliation Bill: The Byrd Rule places boundaries on the types of legislation eligible to be considered under the filibuster-proof reconciliation procedures, including a prohibition on provisions that would increase outyear deficits (i.e., deficits in years beyond the budget resolution window). For example, in instances when reconciliation procedures have been used to expedite tax cuts, the Byrd Rule has required the tax cuts to expire after 10 years so as not to cause deficits beyond the 10-year budget resolution window.⁴¹⁴

Long-Term Deficit Points of Order: In the Senate, a rule adopted in the FY 2016 budget resolution—and still in effect—prohibits the consideration of legislation that would cause a net increase in deficits of more than \$5 billion in any of the four consecutive 10-year periods beginning with the first fiscal year that is 10 years after the budget year in the most recently agreed to budget resolution. Waiver of the rule requires 60 votes.⁴¹⁵

Statutory Pay-As-You-Go (PAYGO) Requirement: Statutory PAYGO: OMB maintains 5-year and 10-year “scorecards” of the average annual budgetary effects from all new direct spending and tax legislation enacted by Congress. At the end of a session of Congress, new direct spending or tax cut legislation that results in a net deficit increase for the first year of either scorecard would trigger a PAYGO sequester (across-the-board cuts in all nonexempt direct spending) to eliminate the deficit increase. However, there have been no PAYGO sequesters due to provisions excluding the budgetary effects of legislation from the scorecards, or separate provisions that “zero out” the scorecards.⁴¹⁶

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Should Congress Extend the Budget Control Act?

Should Congress extend the Budget Control Act beyond its FY 2021 expiration? In a word, no.

The 1974 Budget Act established the mechanisms Congress needed to assert its constitutional authority and fulfill its responsibilities over federal spending and revenues; it established Budget

⁴¹³ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 310, 88 Stat. 297 (codified as amended at 2 U.S.C. § 641).

⁴¹⁴ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 313, 88 Stat. 297 (codified as amended at 2 U.S.C. § 644).

⁴¹⁵ S.Con.Res. 11, 114th Congress, § 3101(b)(1).

⁴¹⁶ Statutory Pay-As-You-Go Act of 2010, Pub. L. No. 111-139, 124 Stat. 8 (codified at 2 U.S.C. § 932 et seq.).

⁴¹⁷ See Section 405 of H.Res. 6, 110th Congress, added PAYGO language to Clause 10 of House Rule XXI; and Section 201 of S.Con.Res. 21 (110th Congress).

Committees and budget resolutions to enable Congress to assess and manage fiscal policy, and a robust Congressional Budget Office to provide regular nonpartisan estimates for legislation and economic projections. Wisely, the framers of the 1974 Budget Act, made the process result-neutral; it provided tools without mandating a result. Sound budget policy requires deliberations and sound judgment—not something that any set of procedures can provide.

Nevertheless, beginning in 1985, Congress attempted to use automatic procedures to achieve various fiscal objectives, each time failing. The 1985 BBEDCA and its automatic budget sequester failed to achieve a balanced budget, instead irrationally applying across-the-board budget cuts without any policy deliberations on which programs deserved cuts, increases, elimination, or steady funding.

The 1990 BEA launched discretionary spending caps and PAYGO constraints on new entitlement spending and revenues—recently renewed in the 2010 Statutory PAYGO Act and the 2011 BCA.

The spending caps, however, were easily evaded through emergency designations, cap adjustments, and Bipartisan Budget Agreements; and increases in the caps has also led to repeated extensions of the arbitrary and irrational annual sequester of Medicare and other direct spending programs.

The PAYGO constraints, launched by the 1990 BEA and extended by the 2010 PAYGO Act, while initially providing some fiscal discipline in the 1990s, have been routinely ignored and statutorily evaded since enactment of the 2001 tax cuts through present day.⁴¹⁸

The essential tools of fiscal policymaking remain embedded in the 1974 Budget Act, with its annual review of economic and fiscal projections, adoption of an annual budget resolution, and enforcement through points of order and budget reconciliation. However, certain improvements in the 1974 Budget Act may enhance its viability and effectiveness.

Three Process Reforms to Consider

Streamline the Budget Resolution to Better Control Major Budget Categories

First, budget resolutions could be modified to replace the 20 budget functions with the seven major categories of federal spending: (1) defense discretionary, (2) nondefense discretionary, (3) Social Security, (4) Medicare, (5) Medicaid, (6) other mandatory spending, and (7) net interest. Currently, the multitude of budget resolution amendments that shift funding from one budget function to another are mere distractions with no practical effect, since the setting of discretionary funding levels and priorities is determined by the Appropriations Committees—not the budget resolutions.

Refocusing budget resolution debate on the seven major categories of federal spending could streamline and add renewed relevance to the annual budget resolution debate. Under this reform, the budget resolution would determine the split between defense and nondefense spending,⁴¹⁹ and would focus Congress' attention on whether the fiscal soundness and sustainability of the major entitlements and other mandatory spending programs require budget reconciliation instructions to the authorizing committees.

⁴¹⁸ Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. No. 107-16, 115 Stat. 38 (2001).

⁴¹⁹ This would require amending section 302 of the 1974 Budget Act to permit the budget resolution to establish a 302(b) allocation for the defense appropriations bill. The Appropriations Committees would allocate the remainder of their 302(a) allocations among the other 11 nondefense subcommittees.

Capital Budget to Accommodate Long-Term Investments

Second, Congress could appoint a Joint Committee to develop a plan to transition from a unified budget to separate operating and capital budgets. The unified budget was intended to focus congressional attention on the macroeconomic effects of total federal spending, revenues, deficits, and debt. However, the practical effect of commingling *annual* operations spending, with *long-term* capital and investment spending, has led to insufficient federal government investments that can pay for themselves over the long-term.

For example, the requirement to consider long-term infrastructure and climate change investments, within the fiscal straitjacket of annual unified budgets, has led to insufficient federal investments to ameliorate the rapidly accelerating risks of climate change to the nation's economy, national security, and public health and, for many years, delayed investments in infrastructure to boost America's competitiveness in the global economy. Climate change investments, in particular, are long-term critical investments in the future of the nation that will pay for themselves many times over if viewed over decades and generations, and not in the context of annual operating budgets.

Eliminate Debt Limit Crises

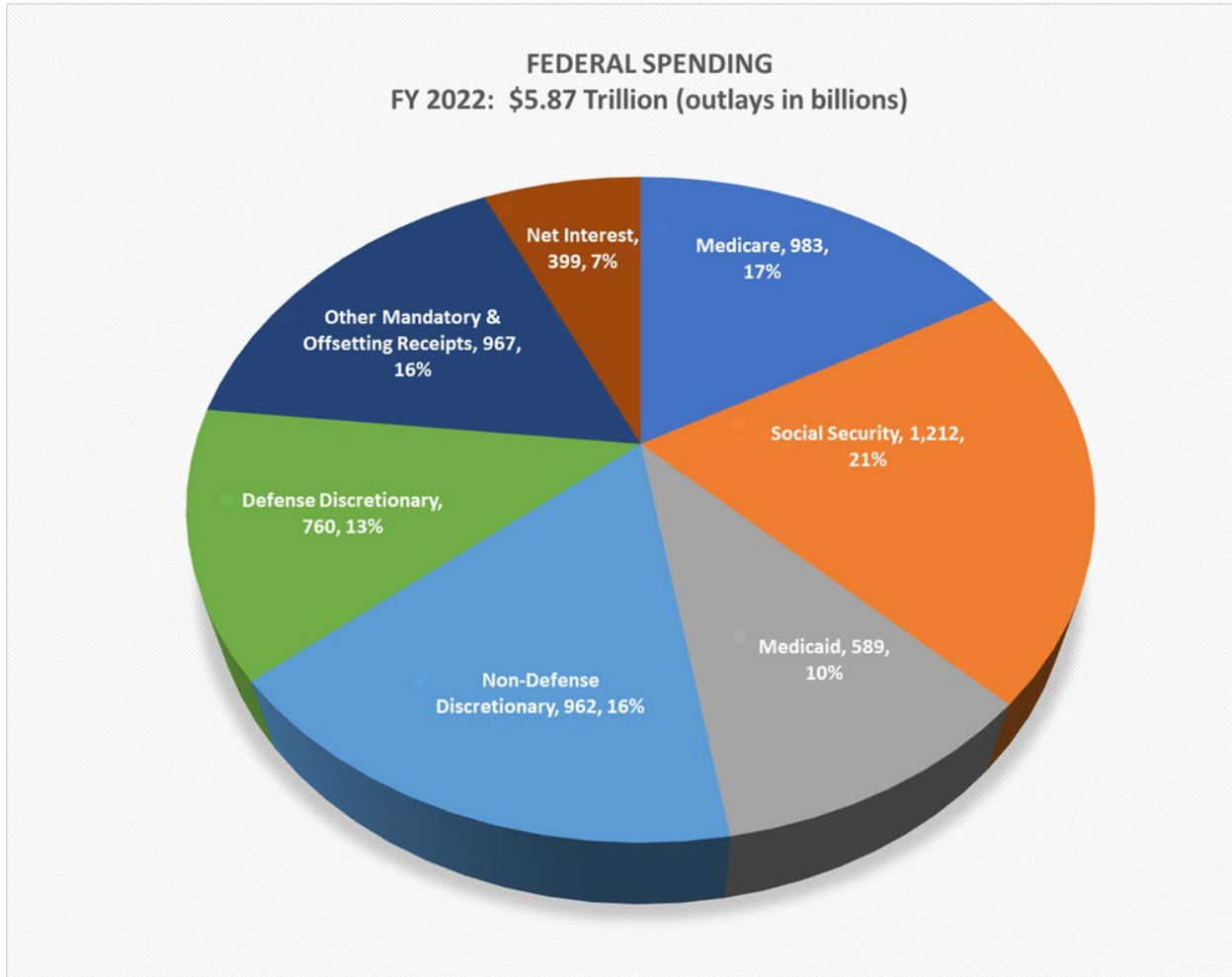
Third, current law could be amended to make increases in the statutory limit on the public debt automatic. The recurring "debates" on whether to raise the debt ceiling have no practical effect whatever, since *prior decisions on federal spending and revenues determine current debt levels*. Denying the Treasury authority to raise the cash needed to pay the holders of U.S. Treasury bonds and notes, and fulfill other legal obligations of the federal government, would be a fiscal calamity for the nation.

Yet, artificial debt ceiling crises remain—risking the nation's creditworthiness and the stability of the global economy. This recurring dance with fiscal oblivion can be avoided by repealing the statutory limit on the public debt or amending the 1974 Budget Act to make increases in the debt ceiling fully automatic. At a minimum, the Senate could adopt a precedent permitting a *simple* majority of Senators to end filibusters on debt ceiling increases and spare the nation from further fiscal chaos.

These three reforms—updating budget resolution categories, establishing a separate capital budget, and eliminating debt ceiling crises—could add much-needed stability and rationality to fiscal deliberations, while preserving the solid foundations of the 1974 Budget Act.

APPENDICES

Appendix A: Federal Budget Overview: Spending and Revenues



Congressional Budget Office (CBO) May 2022 baseline

Outlays in FY 2022:

Social Security: \$1,212 billion. Old-Age, Survivors and Disability Insurance.

Medicare: \$983 billion. Medicare is national health insurance administered by the federal government for people 65 and over and disabled Americans. It is financed by payroll taxes, general tax revenues, premiums, and copayments. The above number is total Medicare outlays.

Medicaid: \$589 billion. Medicaid, financed jointly by the federal and state governments, is administered by the states. It is the major health program for low-income Americans. A large portion of Medicaid pays for long-term care for low-income elderly.

Other Direct/Mandatory (mostly entitlement) spending: \$967 billion (net of offsetting receipts). “Direct spending,” as the words imply, is not discretionary. Program are considered direct spending when Congress does not make annual funding decisions on how much to appropriate. Most direct spending is comprised of “entitlement programs,” the annual costs of which are driven by benefit formulas written into permanent law. Spending from entitlement programs can only be changed by amending the

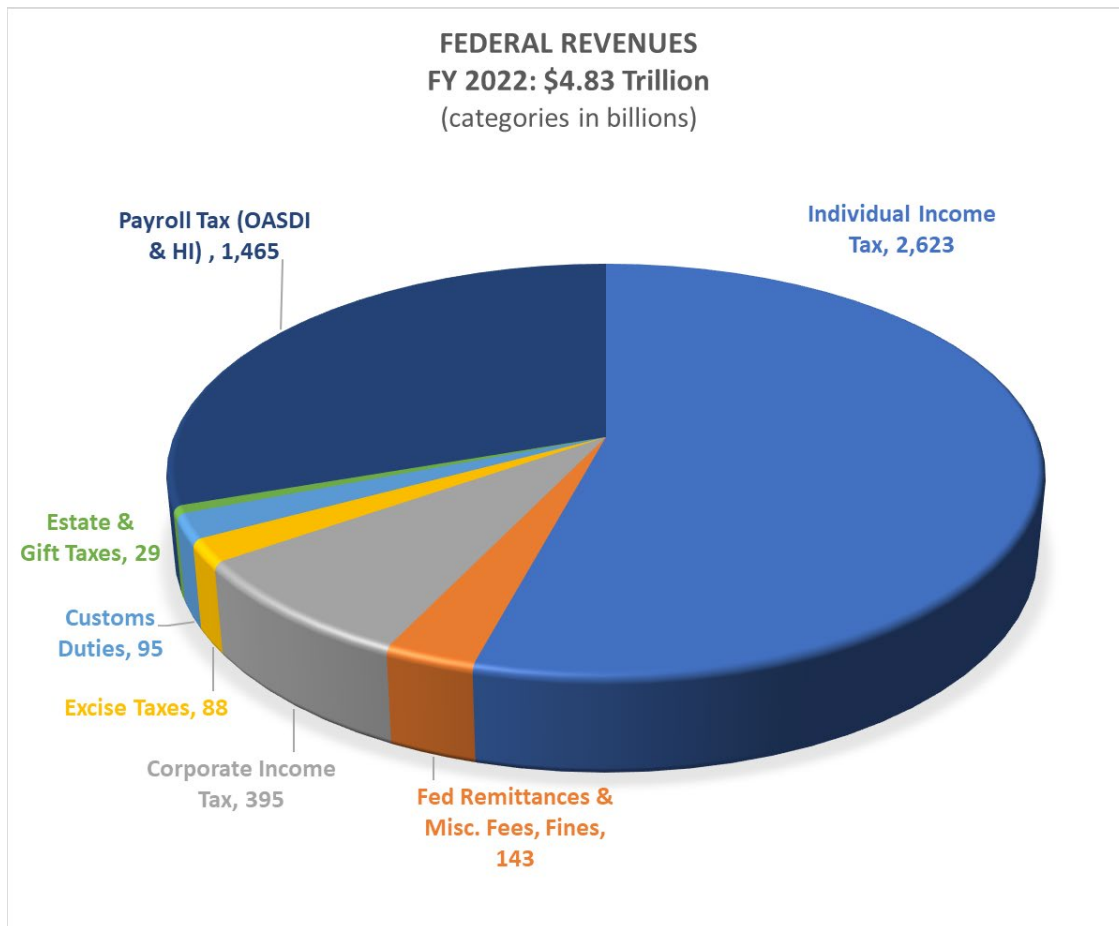
underlying laws that established the programs. Social Security, Medicare and Medicaid are the largest direct spending programs comprising nearly half of the budget, as displayed in the pie chart above.

Net Interest on the Debt: \$399 billion.

Defense Discretionary Spending: \$760 billion.

Non-defense Discretionary: \$962 billion.

Annual appropriations for a multitude of government operations and programs are known as non-defense discretionary (NDD) spending, including items such as law enforcement, veterans' health care, homeland security, education, prisons, NASA, disease and epidemic control, highways & bridges, food and drug inspection, disaster relief, airports, health research, housing assistance, and many other functions of government.



Based on Congressional Budget Office (CBO) May 2022 baseline.

Revenues in FY 2022:

- **Individual Income Tax:** \$2,623 billion.
- **Payroll Tax (Social Security and Hospital Insurance):** \$1,465 billion.
- **Corporate Income Tax:** \$395 billion.
- **Federal Reserve Remittances & Misc. Receipts:** \$143 billion.
- **Excise Taxes:** \$88 billion.
- **Customs Duties:** \$95 billion.
- **Estate & Gift Tax:** \$29 billion.

Appendix B: [Links](#) and Summaries of Major Budget Laws

Budget law is codified in Title 2 and Title 31 of the United States Code. While Title 1 (General Provisions) and Title 31 (Money and Finance) are “positive law” titles, Title 2 (The Congress) is a “non-positive law” title. A positive law title of the Code is itself a federal statute. A non-positive law title, e.g., Title 2, is an editorial compilation of federal statutes.⁴²⁰ Therefore, most amendments to federal budget law, amend either the *Congressional Budget and Impoundment Control Act of 1974* (1974 Budget Act) or the *Balanced Budget and Emergency Deficit Control Act of 1985* (BBEDCA). Following are links to, and brief descriptions of major budget laws.

[Article I, Section 7, clause 1](#)

The Origination Clause provides that “all bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.”

[Article I, Section 8, clause 1](#)

This clause empowers the Congress to “lay and collect Taxes, Duties, Imposts⁴²¹ and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.”

[Article I, Section 8, clause 2](#)

This clause empowers the Congress to “To borrow Money on the credit of the United States.”

[Article I, Section 9, clause 7 of the Constitution](#)

“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.”

Antideficiency Act ([originally enacted in 1884, recodified in 1982 at 96 Stat. 877](#)) ([links below](#))

Provides that no department or government official can make payments, or obligate the U.S. government by contract, in excess of congressional appropriations (with criminal penalties for violations). The Act enforces Congress’ constitutional authority over the public purse. Under the Antideficiency Act, the President, acting through the Office of Management and Budget (OMB), apportions appropriations by time period, function, or a combination of the two, ensuring that the agency receiving the appropriation does not use it at a rate that would require another appropriation later in the same fiscal year. The Act also triggers government shutdowns when Congress fails to appropriate funds for departments or programs by the beginning of a new fiscal year. The law was initially enacted in 1870 ([16 Stat. 251](#)) to staunch the practice of creating “coercive deficiencies” where agencies would intentionally run out of money to force Congress to provide additional funds to avoid breaching contracts. The law was amended in 1950 ([64 Stat. 765](#)) and 1982 ([96 Stat. 923](#)). It is codified in the U.S. Code sections below. The Act is also known as [Section 3679 of the Revised Statutes](#), as amended.

31 USC § 1341	Limitations on Expending and Obligating Amounts
31 USC § 1342	Limitation on Voluntary Services
31 USC § 1349	Adverse Personnel Actions

⁴²⁰ See Office of the Law Revision Counsel, United States Code, Positive Law Codification: “The distinction is legally significant. Non-positive law titles are prima facie evidence of the law, but positive law titles constitute legal evidence of the law in all Federal and State courts (1 U.S.C. 204) (B)oth types of titles contain statutory text that can be presented to a Federal or State court as evidence of the wording of the law. The difference between ‘prima facie’ and ‘legal’ is a matter of authoritative-ness,” <https://uscode.house.gov/codification/legislation.shtml>

⁴²¹ The glossary from the U.S. Treasury Department’s International Trade Data System <http://www.itds.treas.gov/printglossaryfrm.html> defines imposts as “a tax, especially an import duty.”

31 USC § 1350	Criminal Penalty
31 USC § 1351	Reports on Violations
31 USC § 1511	Definition and Application
31 USC § 1512	Apportionment and Reserves
31 USC § 1513	Officials Controlling Apportionments
31 USC § 1514	Administrative Division of Apportionments
31 USC § 1515	Authorized Apportionments Necessitating Deficiency or Supplemental Appropriations
31 USC § 1516	Exemptions
31 USC § 1517	Prohibited Obligations and Expenditures
31 USC § 1518	Adverse Personnel Actions
31 USC § 1519	Criminal Penalty

Budget and Accounting Act of 1921, Pub. L. No. 67-13, 42 Stat. 20 (1921)

Required the President to submit a national budget each year and restricted the authority of the agencies to present their own proposals. (See 31 U.S.C. §§ [1104](#), [1105](#).) With this centralization of authority for the formulation of the executive branch budget in the President and the newly established Bureau of the Budget (now the Office of Management and Budget (OMB)), Congress also took steps to strengthen its oversight of fiscal matters by establishing the General Accounting Office, renamed the Government Accountability Office (GAO) in 2004.⁴²² Links to additional code sections relating to the executive branch budget process follow.

31 USC § 1101	Definitions
31 USC § 1102	Fiscal Year
31 USC § 1103	Budget Ceiling
31 USC § 1104	Budget and Appropriations Authority of the President
31 USC § 1105	Budget Contents and Submission to Congress
31 USC § 1106	Supplemental Budget Estimates and Changes
31 USC § 1107	Deficiency and Supplemental Appropriations
31 USC § 1108	Preparation and Submission of Appropriations Requests to the President
31 USC § 1109	Current Programs and Activities Estimates
31 USC § 1110	Year-Ahead Requests for Authorizing Legislation
31 USC § 1111	Improving Economy and Efficiency
31 USC § 1112	Fiscal, Budget, and Program Information
31 USC § 1113	Congressional Information

The Statutory Limit on the Public Debt: Second Liberty Bond Act of 1917, Pub. L. No. 65-43, 40 Stat. 288, codified as amended in the following U.S. Code sections.

31 USC § 3101	Public Debt Limit
31 USC § 3101A	A Presidential Modification of the Debt Ceiling
31 USC § 3123	Payment of Obligations and Interest on the Public Debt

Budget and Accounting Procedures Act of 1950, Pub. L. No. 81-784, 64 Stat. 832 (1950)

Authorized the GAO to audit the financial transactions of most executive, legislative, and judicial agencies and to prescribe accounting standards, in consultation with the President and the Secretary of the Treasury.

Congressional Budget and Impoundment Control Act of 1974 (“1974 Act”), Pub. L. No. 93-344, 88 Stat. 297 (1974), 2 USC 601 and 631 et. seq.

Established the congressional budget process, including annual adoption of a budget resolution to guide consideration of revenue and spending bills; established House and Senate Budget Committees to draft and apply the budget resolution and a nonpartisan Congressional Budget Office to estimate spending and

⁴²² Excerpted from the GAO Glossary of budget terms.

revenue effects of current law and proposed legislation; and new rescission and deferral procedures to limit presidential impoundment authority.

2 USC 622	Definitions
2 USC 601	Congressional Budget Office
2 USC 631 et seq	Congressional Budget Process
2 USC 651-656	Backdoor Spending not subject to Appropriations
2 USC 658	Unfunded Federal Mandates
2 USC 661	Federal Credit Reform
31 USC 1112-13	Fiscal and Budgetary Information
2 USC 621	Exercise of Rulemaking Authority and Budget Waivers
2 USC 681 et seq	Impoundment Control Act: Rescissions and Deferrals

[Balanced Budget and Emergency Deficit Control Act of 1985 \(“BBEDCA” or “GRH”\),⁴²³ Pub. L. No. 99-177, 99 Stat. 1037 \(1985\)](#)

Title II established declining maximum deficit amounts (intended to lead to a balanced budget in FY 1991) and the “budget sequestration” process (automatic across-the-board spending cuts) as enforcement.

[Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, 101 Stat. 754 \(1987\)](#)

Moved the sequester trigger from GAO to OMB (due to a constitutional challenge) and revised and extended the deficit targets, aiming at a balanced budget in FY 1993. See *Bowsher v. Synar*, 478 U.S. 714 (1986).

[“Budget Enforcement Act of 1990 \(BEA\)” and the “Federal Credit Reform Act of 1990 \(FCRA\),” Pub. L. No. 101-508, Title XIII, 104 Stat. 1388 \(1990\)](#)

Title XIII of the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) enacted the Budget Enforcement Act of 1990 which replaced the G-R-H maximum deficit amounts with: (1) statutory discretionary spending limits enforced by sequestration (across-the-board cuts of discretionary programs); and (2) a pay-as-you-go (PAYGO) requirement that new direct spending and tax cuts had to be fully offset with spending cuts or tax increases enforced by sequestration (across-the-board cuts of nonexempt direct spending programs).

Title XIII of OBRA-90 also enacted the Federal Credit Reform Act of 1990. FCRA changed the budget rules for credit programs by requiring Congress to appropriate budget authority up front to cover projected delinquencies, defaults, and interest rate subsidies over the life of credit programs. By requiring the up-front appropriation of budget authority to cover the projected future costs of credit programs, FCRA allowed Congress to compare in an apples-to-apples way the budgetary costs of direct loans, loan guarantees, and more traditional grant programs.

[Chief Financial Officers Act of 1990, Pub. L. No. 101-576, 104 Stat. 2838 \(1990\)](#)

The Chief Financial Officers (CFO) Act of 1990 outlined standards of financial performance and disclosure, vested financial management functions at covered departments in chief financial officers, and gave the Office of Management and Budget (OMB) greater authority over federal financial management.

[Government Performance and Results Act \(GPRA\) Pub. L. No. 103-62, 107 Stat. 285 \(1993\); and the GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 \(2011\).](#)

The 1993 Act requires agencies to submit to Congress multiyear strategic plans, annual performance plans, and annual performance reports. The GPRA Modernization Act of 2010 (GPRAMA) substantially modified the Government Performance and Results Act of 1993 (GPRA). Key provisions of GPRAMA

⁴²³ BBEDCA is sometimes referred to as GRH, a reference to the three sponsors of the legislation, Senators Phil Gramm (R-TX), Warren Rudman (R-NH), and Ernest “Fritz” Hollings (D-SC).

establish a multi-step process in which the President and the Office of Management and Budget (OMB) may propose to Congress that certain plans and reports be eliminated or consolidated. As a step in this process, GPRAMA requires an agency to consult with congressional committees to determine whether reports are useful or could be eliminated or consolidated. Links to code sections relating to the GPRA and GPRAMA follow.

31 USC § 1115	Federal Government and Agency Performance Plans
31 USC § 1116	Agency Performance Reporting
31 USC § 1117	Exemptions
31 USC § 1118	Pilot Projects for Performance Goals
31 USC § 1119	Pilot Projects for Performance Budgeting
31 USC § 1120	Federal Government and Agency Priority Goals
31 USC § 1121	Quarterly Priority Progress Reviews and Use of Performance Information
31 USC § 1122	Transparency of Programs, Priority Goals, and Results
31 USC § 1123	Chief Operating Officers
31 USC § 1124	Performance Improvement Officers and the Performance Improvement Council
31 USC § 1125	Elimination of Unnecessary Agency Reporting

[Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title XIV, 107 Stat. 312, 683](#)

Title XIV extended the discretionary spending limits and PAYGO process through FY 1998.

[Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796](#)

Title XXXI created a Violent Crime Reduction Trust Fund from transferred funds, with special budgetary treatment for fiscal years 1995-1999 as follows: expenditures from the Fund to be excluded from budget resolution aggregates for purposes of Budget Act points of order; budget resolution committee allocations to separate out new budget authority and outlays from the Trust Fund; and a separate sequester mechanism to apply to spending from the Trust Fund. This provision reflects the first instance of using budget procedures to establish budgetary “floors” for specific spending, rather than the previous practice of imposing caps on spending.

[Unfunded Mandates Reform Act of 1995 \(UMRA\), Pub. L. No. 104-4, 109 Stat. 50 \(1995\)](#)

The objective of UMRA is to provide policymakers and affected parties information about requirements in proposed legislation that would establish new federal mandates that are “unfunded.” UMRA requires congressional authorizing committees to include in reports a statement identifying intergovernmental (state and local) and private sector mandates (exceeding certain thresholds), and a CBO estimate of the mandates’ estimated costs to state and local governments and the private sector. UMRA enforces this informational requirement by allowing any Representative or Senator to raise a procedural objection to legislation that fails to include the required unfunded mandates statement in its committee report *unless* the legislation either “authorizes appropriations” or provides direct funding to cover the costs. This requirement can be waived by a simple majority in the Congress.

[Line-Item Veto Act of 1996, Pub. L. No. 104-130, 110 Stat. 1200.](#) [Ruled unconstitutional.]

Granted the President authority to cancel individual items of discretionary spending, new direct spending, and limited tax benefits in legislation. Ruled unconstitutional in [Clinton v. City of New York, 524 U.S. 417 \(1998\)](#) where the majority held that the cancellation procedures set forth in the Act violate the Presentment Clause, Art. I, § 7, cl. 2, of the Constitution because it impermissibly gave the power to unilaterally amend or repeal parts of statutes that had been duly passed by the United States Congress. The decision of the Court, in a six-to-three majority, was delivered by Justice John Paul Stevens.

[Budget Enforcement Act of 1997, Pub. L. No. 105-33, Title X, 111 Stat. 677](#)

Title X of the Balanced Budget Act of 1997 extended the statutory limits on discretionary spending, and the PAYGO requirements for direct spending and revenues, through FY 2002.

[Transportation Equity Act for the 21st Century \(TEA-21\), Pub. L. No. 105-178, 112 Stat. 107 \(June 9, 1998\); amended by Pub. L. No. 105-206, 112 Stat. 685 \(July 22, 1998\)](#)

Title VIII (“Transportation Discretionary Spending Guarantee and Budget Offsets”) established two additional discretionary spending categories for highway spending and mass transit spending through FY 2003, with offsets in other discretionary spending. The spending allowed under the new caps for transportation programs exceeded the reduction in the amounts allowed for other discretionary spending. The purpose of the new categories was to guarantee increased spending levels for highway and mass transit spending. Title VIII contains a provision (section 8102) exempting that title and section 1102 from pay-as-you-go procedures. Technical corrections were subsequently made by H.R. 2676, Pub. L. No. 105-206 on July 22, 1998. See the [CBO cost estimate](#) for further details.

[FY 2001 Interior Appropriations Act, P.L. 106-291, 114 Stat. 922 \(2000\)](#)

Section 801 of the FY 2001 Interior Appropriations Act established categories under the discretionary spending limits for conservation spending through 2006 (including acquisition, conservation, and maintenance of federal and non-Federal lands and resources as well as payments in lieu of taxes). The purpose of the new category was to guarantee spending levels for conservation spending.

[A bill to eliminate preexisting PAYGO balances, Pub. L. No. 107-312, 116 Stat. 2456 \(2002\)](#)

Required the Director of the Office of Management and Budget to reduce to zero any PAYGO balances of direct spending and receipts legislation for all fiscal years under the Balanced Budget and Emergency Deficit Control Act of 1985 in order to avoid a sequester.

[Statutory Pay-As-You-Go Act of 2010 \(Statutory PAYGO\), Pub. L. No. 111-139, 124 Stat. 8](#)

PAYGO returned in statutory form, with enforcement through budget sequestration, when President Obama signed the Statutory Pay-As-You-Go Act of 2010 (“Statutory PAYGO”). The law has no expiration date. Under Statutory PAYGO, the budgetary effects of all newly enacted revenue and direct spending laws are recorded by the Office of Management and Budget (OMB) on two PAYGO scorecards covering five-year and 10-year periods. Each scorecard shows the average budgetary effect of the legislation in each year over the 5-year and 10-year periods, beginning with the budget year. Shortly after a congressional session ends, OMB finalizes the two PAYGO scorecards and determines whether a violation of the PAYGO requirement has occurred (i.e., if a net deficit appears for the budget year on either the 5-year or 10-year scorecards). If so, the President is required to issue a sequestration order that implements largely across-the-board cuts in (nonexempt) direct spending programs sufficient to eliminate the violation. As was the case under the original 1990 PAYGO statute, there are numerous exemptions and escape valves to the 2010 PAYGO Act: costs designated as emergencies; many direct spending programs and activities are statutorily exempt from a PAYGO sequester; Congress may exempt any direct spending increases or tax cuts from the PAYGO requirement by including legislative language that excludes the budgetary costs of such legislation from the PAYGO scorecards; or Congress can remove (“zero out”) balances on the two PAYGO scorecards or move the balances to a subsequent year. For additional details, see *2010: The Statutory Pay-As-You-Go Act* in this primer.

[Budget Control Act of 2011 \(BCA\), Pub. L. No. 112–25, 125 Stat. 240](#)

Negotiated during a lengthy political impasse over raising the debt ceiling, the BCA imposed statutory spending limits on defense and non-defense discretionary spending (budget authority) for each year through FY 2021 in order to reduce deficits by more than \$900 billion over 9 years.⁴²⁴ The spending limits are enforced by automatic across-the-board spending cuts (“sequestration”) to eliminate any budget authority overage in the affected category. The BCA also established a congressional “Joint Committee” to achieve another \$1.2 trillion in long-term deficit reduction through entitlement and tax reforms. When the Joint Committee failed to agree on a long-term deficit reduction package in the allotted time,

⁴²⁴ Including interest savings.

automatic additional spending cuts of \$1.2 trillion over nine years went into effect through further reductions in the annual discretionary spending limits (“sequester caps”) and annual sequestration of nonexempt direct spending programs (“Joint Committee mandatory sequester”) sufficient to achieve the required savings. Subsequently, the sequester caps were partially or fully rolled back by a series of Bipartisan Budget Acts, although the annual sequestration of nonexempt mandatory spending has been fully implemented and extended through FY 2031 to “offset” the rollback of discretionary reductions.

[American Taxpayer Relief Act of 2012 \(ATRA\), Pub. L. No. 112-240, 126 Stat. 2313](#)

In response to concerns that impending tax increases and automatic spending cuts would throw the economy back into recession, ATRA extended expiring tax cuts, while reducing and postponing the spending cuts. Title IX of ATRA reduced the FY 2013 sequester by \$24 billion, from \$109.3 billion down to \$85.3 billion (equally divided between defense and nondefense), and postponed the effective date of the 2011 BCA sequester from January 2, 2013 to March 1, 2013.⁴²⁵

[Bipartisan Budget Act of 2013 \(BBA-13\), Pub. L. No. 113–67, 127 Stat. 1165](#)

Division A of this joint resolution (H.J.Res. 59, 113th Congress), designated the “Bipartisan Budget Act of 2013,” increased the 2010 BCA discretionary spending limits for the defense and nondefense categories by \$22 billion in FY 2014 and \$9 billion in FY 2015. BBA-13 also extended the direct spending sequester beyond its statutory expiration date of FY 2021 for two additional years. The extension through FY 2023 was intended as an offset for the costs of raising the discretionary spending caps.⁴²⁶

[Military Retired Pay Restoration Act, Pub. L. No. 113-82, 128 Stat. 1009 \(2013\)](#)

Section 1 of this statute extended the BCA’s annual mandatory sequester by one year, through FY 2024, as an offset for the cost of reversing a previous reduction in the cost-of-living adjustments for military retirees.

[Protecting Access to Medicare Act of 2014, Pub. L. No. 113-93, 128 Stat. 1077 \(2014\)](#)

Section 222 amended the Balanced Budget and Emergency Deficit Control Act of 1985 to adjust the two percent maximum reduction for specified Medicare programs for FY2024 under any presidential sequestration order to make it four percent for the first 6 months of FY2024 and zero for the last 6 months. Section 225 excluded the budgetary effects of this Act from the PAYGO scorecard under the Statutory PAYGO as well as from the Senate PAYGO scorecard.

[Bipartisan Budget Act of 2015 \(BBA-15\), Pub. L. No. 114-74, 129 Stat. 584](#)

The Bipartisan Budget Act of 2015 increased the discretionary spending limits for the defense and nondefense categories, each by \$25 billion for FY 2016 and \$15 billion for FY 2017; and offset the increased discretionary spending by extending the annual mandatory sequester by one year through FY 2025 (among other offsets). The bill also established nonbinding spending targets for Overseas Contingency Operations/Global War on Terrorism (OCO/GWOT) levels for FY 2016 and FY 2017; and temporarily suspended the debt limit through March 15, 2017, followed by an adjustment for amount borrowed.

[Bipartisan Budget Act of 2018 \(BBA-18\), Pub. L. No. 115-123, 132 Stat. 64](#)

The Bipartisan Budget Act of 2018 increased the discretionary spending limits for the defense and nondefense categories for FY 2018 and FY 2019. For FY 2018, the defense cap was increased by \$80

⁴²⁵ For details of the FY2013 sequester, see Office of Management and Budget, *OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013*, Washington, DC, March 1, 2013, https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/fy13ombjsequestrationreport.pdf.

⁴²⁶ For additional information, see Congressional Budget Office, *Cost estimate for Bipartisan Budget Act of 2013*, Washington, DC, December 11, 2013, <https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/costestimate/bipartisan-budget-act-20130.pdf>.

billion and the nondefense cap by \$63 billion; and for FY 2019, the defense cap was increased by \$85 billion and the nondefense cap by \$68 billion. The resulting limits were higher than the original 2011 BCA caps, but remained below the pre-BCA discretionary baseline.⁴²⁷ BBA-18 also extended the direct spending sequester by two years, through FY 2027 as an offset for the costs of increasing the limits.

[Bipartisan Budget Act of 2019 \(BBA-19\), Pub. L. No. 116-37, 133 Stat. 1049](#)

The Bipartisan Budget Act of 2019 increased the discretionary spending limits for the defense and nondefense categories for FY 2020 and FY 2021. For FY 2020, the defense cap was increased by \$90 billion and the nondefense cap by \$78 billion; and for FY 2021, the defense cap was increased by \$82 billion and the nondefense cap by \$68 billion (rounded). The resulting limits were higher than the original 2011 BCA caps, but remained below the pre-BCA discretionary baseline.⁴²⁸ BBA-19 extended the annual mandatory sequester by two years, through FY 2029, as an offset for the costs of increasing the limits.

[Coronavirus Aid, Relief, and Economic Security Act \(“CARES Act”\), Pub. L. No. 116-136, 134 Stat. 281 \(2020\)](#)

CARES § 3709 temporarily *suspended* the sequester of Medicare spending from May 1, 2020 through December 31, 2020 and extended the BCA mandatory spending sequester through FY 2030; and § 23008 exempts the budgetary effects of the legislation’s spending for coronavirus health response and agency operations from the Statutory Pay-As-You-Go Act of 2010 (PAYGO) and the Senate PAYGO rule (H.Con.Res. 71, 115th Congress).

[Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1950](#)

Section 102 extended the temporary suspension of the Medicare sequester through March 31, 2021.

[An Act to Prevent Across-the-Board Direct Spending Cuts, Pub. L. No. 117-7, 135 Stat. 251](#)

Section 135 extended the temporary suspension of the Medicare sequester through December 31, 2021, modified Medicare sequestration for FY 2030, and extended Medicare sequestration for FY 2031.

[Infrastructure Investments and Jobs Act, Pub. L. No. 117-58, 135 Stat. 1341](#)

Section 900001 extended the mandatory sequester through FY 2031 as a partial offset for the infrastructure bill.

[Protecting Medicare and American Farmers from Sequester Cuts Act, Pub. L. No. 117-71, 135 Stat. 1506](#)

Extended the temporary suspension of the Medicare sequester through March 31, 2022, and limited Medicare sequester reductions from April 1, 2022 through June 30, 2022 to 1 percent, with reductions to resume at 2 percent thereafter through FY 2031.

⁴²⁷ Pre-BCA discretionary baseline refers to the projected levels for discretionary spending if the BCA had not been enacted and discretionary spending had been allowed to keep pace with inflation each year.

⁴²⁸ *Id.*

Appendix C: Budget Functions

Federal spending (i.e., budget authority and outlays) is divided into 20 conceptual categories known as “budget functions.” This is a system of classifying spending according to the national needs being addressed. The President’s Budget and Congress’ annual budget resolution allocate budget authority and outlays among the various functions in the federal budget. While the budget functions are a useful display of federal spending priorities, they have little practical impact on the annual process of allocating funds among programs. Amendments to a budget resolution that move discretionary funds from one budget function to another have no practical effect, because the allocation of discretionary spending among agencies and programs is not determined until the House and Senate Appropriations Committees allocate total discretionary funds among their 12 respective subcommittees. Following is a list of budget functions and subfunctions.⁴²⁹

050 NATIONAL DEFENSE

- 051 Department of Defense-Military
- 053 Atomic energy defense activities
- 054 Defense-related activities

150 INTERNATIONAL AFFAIRS

- 151 International development and humanitarian assistance
- 152 International security assistance
- 153 Conduct of foreign affairs
- 154 Foreign information and exchange activities
- 155 International financial programs

250 GENERAL SCIENCE, SPACE, AND TECHNOLOGY

- 251 General science and basic research
- 252 Space flight, research, and supporting activities

270 ENERGY

- 271 Energy supply
- 272 Energy conservation
- 274 Emergency energy preparedness
- 276 Energy information, policy, and regulation

300 NATURAL RESOURCES AND ENVIRONMENT

- 301 Water resources
- 302 Conservation and land management
- 303 Recreational resources
- 304 Pollution control and abatement
- 306 Other natural resources

350 AGRICULTURE

- 351 Farm income stabilization
- 352 Agricultural research and services

370 COMMERCE AND HOUSING CREDIT

⁴²⁹ OMB Circular A-11, Exhibit 79A.

- 371 Mortgage credit
- 372 Postal Service
- 373 Deposit insurance
- 376 Other advancement of commerce

400 TRANSPORTATION

- 401 Ground transportation
- 402 Air transportation
- 403 Water transportation
- 407 Other transportation

450 COMMUNITY AND REGIONAL DEVELOPMENT

- 451 Community development
- 452 Area and regional development
- 453 Disaster relief and insurance

500 EDUCATION, TRAINING, EMPLOYMENT, AND SOCIAL SERVICES

- 501 Elementary, secondary, and vocational education
- 502 Higher Education
- 503 Research and general education aids
- 504 Training and employment
- 505 Other labor services
- 506 Social services

550 HEALTH

- 551 Health care services
- 552 Health research and training
- 554 Consumer and occupational health and safety

570 MEDICARE

- 571 Medicare

600 INCOME SECURITY

- 601 General retirement and disability insurance (excluding social security)
- 602 federal employee retirement and disability
- 603 Unemployment compensation
- 604 Housing assistance
- 605 Food and nutrition assistance
- 609 Other income security

650 SOCIAL SECURITY

- 651 Social security

700 VETERANS BENEFITS AND SERVICES

- 701 Income security for veterans
- 702 Veterans education, training, and rehabilitation
- 703 Hospital and medical care for veterans
- 704 Veterans housing
- 705 Other veterans benefits and services

750 ADMINISTRATION OF JUSTICE

- 751 federal law enforcement activities
- 752 federal litigative and judicial activities
- 753 federal correctional activities
- 754 Criminal justice assistance

800 GENERAL GOVERNMENT

- 801 Legislative functions
- 802 Executive direction and management
- 803 Central fiscal operations
- 804 General property and records management
- 805 Central personnel management
- 806 General purpose fiscal assistance
- 808 Other general government
- 809 Deductions for offsetting receipts

900 NET INTEREST

- 901 Interest on Treasury debt securities (gross)
- 902 Interest received by on-budget trust funds
- 903 Interest received by off-budget trust funds
- 908 Other interest
- 909 Other investment income

920 ALLOWANCES

- 921–929 Allowances [Assigned by OMB]

950 UNDISTRIBUTED OFFSETTING RECEIPTS

- 951 Employer share, employee retirement (on-budget)
- 952 Employer share, employee retirement (off-budget)
- 953 Rents and royalties on the Outer Continental Shelf
- 954 Sale of major assets
- 959 Other undistributed offsetting receipts.

Appendix D: Budget Points of Order in the Senate and House

A “point of order” is a procedural objection that a Representative or Senator may raise against a bill, resolution, amendment, or conference report on the House or Senate Floor, respectively. In general, if the Presiding Officer, advised by the Parliamentarian, sustains the point of order (i.e., finds it to be a valid objection), the offending bill, resolution, amendment, or conference report “falls” (i.e., it is removed from consideration by the House or Senate).

The principal exception is a “Byrd Rule” point of order, explained in this primer’s section on budget reconciliation, where the *offending provision of the bill is automatically stricken* from the measure.⁴³⁰

Another point of order that strikes an offending provision relates to emergency spending designations.⁴³¹

Points of order are typically established in statute or resolution in the form of a provision stating that “it shall not be in order” for the House or Senate to consider a bill, joint resolution, amendment, or conference report that is inconsistent with a particular budgetary limitation or requirement.

Points of order can be waived. In the House of Representatives, waivers most often occur as part of “Special Rules,” adopted by the House, which set forth the procedural conditions under which particular legislation will be considered. Budget waivers in the House may apply to one or more specified points of order, or may include a blanket waiver of all budgetary points of order.

In the Senate, points of order may be waived by either a simple majority, or a supermajority pursuant to subsections 904(b) and (c) of the 1974 Budget Act, as amended.⁴³² Supermajorities of three-fifths of the Members of the Senate “duly chosen and sworn” are required to waive certain points of order (or to overturn a ruling of the Chair) in order to strengthen certain budgetary requirements. The supermajority requirements are indicated in the table below by the “60 votes” designation. The 60 vote requirements are either permanent, or temporary with an expiration date of September 30, 2025 indicated by an asterisk.⁴³³

Most points of order are set forth in the Congressional Budget and Impoundment Control Act of 1974,⁴³⁴ as amended. Others are set forth in the Balanced Budget and Emergency Deficit Control Act of 1985 as amended, the Budget Enforcement Act of 1990, the Statutory Pay-As-You-Go Act of 2010, the Rules of the House or Senate, or in particular budget resolutions (with no expiration date). For example, the FY 2022 budget resolution includes points of order relating to advance appropriations in the House and advance appropriations in the Senate.

⁴³⁰ The “Byrd Rule” is set forth in Section 313 of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (1974).

⁴³¹ (Section 403(e)(1) of S.Con.Res. 13 (111th Congress); Section 314(e) of the 1974 Budget Act; and Section 4(g)(3) of the Statutory Pay-As-You-Go Act of 2010.

⁴³² 2 USC § 621 note.

⁴³³ Section 904(e) of the 1974 Budget Act, as amended, provides for the expiration of temporary Senate supermajority requirements, and the appeals thereof, on September 30, 2002. Section 3201 of S. Con. Res. 11 (114th Cong.) extended the date to September 30, 2025. “Notwithstanding any provision of the Congressional Budget Act of 1974 (2 U.S.C. 621 et seq.), subsections (c)(2) and (d)(3) of section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) shall remain in effect for purposes of Senate enforcement through September 30, 2025.”

⁴³⁴ The Congressional 1974 Budget Act (Titles I-IX of Pub. L. No. 93-344) has been amended several times since its enactment by: the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. No. 99-177); the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Pub. L. No. 100-119); the Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508); Title XIV of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66); Title X of the Balanced 1974 Budget Act of 1997 (Pub. L. No. 105-33); and the Bipartisan Budget Act of 2013 (Pub. L. No. 113-67).

Table 8: Budget Points of Order in the House and Senate (hyperlinked to sources)

Point of Order Section USC cite	Description	HSE	SEN	Senate Waiver Requirement
<p>“leg.” = bills, resolutions, motions, amendments, and conference reports; “BR” = budget resolution // “BA” = Budget Authority // “OT” = outlays. “1974 CBA” = Congressional Budget and Impoundment Control Act of 1974, as amended “PAYGO” = Statutory PAYGO Act of 2010 “1990 BEA” = Budget Enforcement Act of 1990 “Sen Rule” = Standing Rules of the Senate (remain in effect unless changed) “Hse Rule” = Rules of the House of Representatives (adopted for each Congress) *Asterisk indicates the Senate 60-vote waiver requirement is temporary, with an expiration date of September 30, 2025.</p>				
Points of Order Relating to Spending Legislation				
§ 303(a) 1974 CBA 2 USC 634(a)	No Spending, Revenue, or Debt Legislation in the House before Adoption of BR: In the House, prohibits consideration of leg. that provides (<i>for the budget year</i>) new BA, an increase or decrease in revenues, or an increase or decrease in the debt limit, <i>until</i> a BR has been agreed to. Exception—does not apply to appropriations in the House after May 15.	X		
§ 303(a) 1974 CBA 2 USC 634(a)	No Spending, Revenue, or Debt Legislation in the Senate before Adoption of BR: In the Senate, prohibits consideration of leg. that provides (<i>for any fiscal year covered by the BR</i>) new BA or entitlement authority, an increase or decrease in OT, an increase or decrease in revenues or the debt limit, <i>until</i> a BR has been agreed to, except for appropriation measures providing advance appropriations.		X	Simple Majority
§ 311(a) 1974 CBA 2 USC 642(a)	Exceeding Spending Aggregates: After a BR has been agreed to, it is not in order to consider leg. that would cause the BR’s aggregate spending levels for BA or OT to be exceeded for the first year covered by the BR. <i>Exceptions in the House:</i> Declaration of War and hold harmless for appropriation bills that comply with 302(a) allocation.	X	X	60 votes*
§ 302(c) 1974 CBA 2 USC 633(c)	No Action on Appropriations until after Suballocations are Filed: After the Appropriations Committee has received its 302(a) allocations of BA and OT for the budget year, it is not in order for the House or Senate to consider an appropriations bill until the Committee makes its 302(b) suballocations.	X	X	60 votes*
§ 302(f)(1) 1974 CBA 2 USC 633(f)	House—Enforcing BA Committee Allocations and Appropriations Suballocations: After a BR has been agreed to, it is not in order in the House to consider appropriations leg. that would cause the full appropriations committee <i>or</i> any subcommittee to breach its BA allocation for the budget year; <i>and</i> it is not in order to consider direct spending leg. that would cause an authorizing committee to exceed its 302(a) committee allocation of BA in either the budget year or the total of fiscal years covered by the BR.	X		
§ 302(f)(2) 1974 CBA 2 USC 633(f)	Senate—Enforcing BA and Outlay Committee Allocations and Appropriations Suballocation: After a BR has been agreed to, it is not in order to consider appropriations leg. that would cause an appropriations subcommittee to breach its 302(b) suballocation of BA or OT for the budget year; <i>and</i> it is not in order to consider direct spending leg. that would cause an authorizing committee to exceed its 302(a) committee allocations of BA or OT in either the budget year or the total of fiscal years covered by the BR.		X	60 votes*

Point of Order Section USC cite	Description	HSE	SEN	Senate Waiver Requirement
*Asterisk indicates the Senate 60-vote waiver requirement is temporary, with an expiration date of September 30, 2025.				
Points of Order relating to Discretionary Spending				
§ 302(c) 1974 CBA 2 USC 633(c)	No Action on Appropriations Before Suballocations: After the Approps Committee has received its 302(a) allocations of BA and OT for the budget year, it is not in order for the House or Senate to consider an appropriations bill until the Committee makes its 302(b) suballocations.	X	X	60 votes*
§ 302(f)(1) 1974 CBA 2 USC 633(f)	House—Enforcing BA Allocations and Suballocations for Budget Year: After a BR has been agreed to, it is not in order to consider appropriations leg. that would cause the full appropriations committee or a subcommittee to breach its BA allocation for the budget year.	X		
§ 302(f)(2) 1974 CBA 2 USC 633(f)	Senate—Enforcing BA and Outlay Suballocations for Budget Year: After a BR has been agreed to, it is not in order to consider appropriations leg. that would cause an appropriations subcommittee to breach its 302(b) suballocation of BA or OT for the budget year.		X	60 votes*
§ 312(b) 1974 CBA 2 USC 643(b)	Exceeding Spending Caps in the Senate: In the Senate, prohibits the consideration of legislation that would cause any of the BCA discretionary spending limits to be exceeded (except when declaration of war or a recession waiver is in effect). <i>[No longer effective with expiration of BCA at end of FY'21]</i>		X	60 votes*
§ 209 FY 2008 BR S.Con.Res.21	CHIMPS in the Senate: Senators can raise a point of order against provisions in appropriations bills that constitute Changes in Mandatory Programs (CHIMPS) producing net costs, <i>except</i> a provision that has been enacted in each of 3 fiscal years prior to the budget year; provisions meeting the criteria are stricken from the bill and, in the case of a conference report, it becomes an amendment between the Houses.		X	60 votes per §209(d)
§§ 4002-03 of FY 2022 BR S.Con.Res. 14	Limits on Advance Appropriations: ⁴³⁵ Recent Budget Resolutions have included general points of order, in the House and in the Senate, against advance appropriations <i>unless</i> specifically permitted in the Budget Resolution or Joint Explanatory Statement of Managers. It is advisable to check the current Budget Resolution for these or other points of order when reviewing bills and amendments for potential procedural issues. (The citation in the left column is an example of advance appropriations points of order that were in place for FY 2022.)	X	X	60 votes
§ 314(e) 1974 CBA 2 USC 645(e)	Limit on Emergency Designations in the Senate: This subsection effectively requires a 60-vote requirement for “emergency” designations that exempt such spending from the statutory caps. <i>[No longer effective with expiration of BCA at end of FY'21.]</i>		X	60 votes*
§ 314(f) 1974 CBA 2 USC 645(f)	Exceeding Spending Caps in House or Senate: Prohibits consideration in the House or Senate of legislation that would cause the Budget Control Act discretionary spending limits through FY 2021 to be exceeded. <i>[No longer effective with expiration of BCA at end of FY'21]</i>	X	X	60 votes*
§ 309 1974 CBA 2 USC 640	No House Adjournment Before Completion of Approps: In the House, prohibits adjourning for more than 3 days (e.g., July 4 recess) until the House has approved all regular appropriations bills.	X		

⁴³⁵ Budget authority provided in an appropriation act that becomes available one or more fiscal years after the fiscal year for which the appropriation act was enacted.

Point of Order Section USC cite	Description	HSE	SEN	Senate Waiver Requirement
*Asterisk indicates the Senate 60-vote waiver requirement is temporary, with an expiration date of September 30, 2025.				
Points of Order Relating to Direct Spending				
§ 302(f)(1) 1974 CBA 2 USC 633(f)	House—Enforcing BA Allocations: After a BR has been agreed to, it is not in order to consider direct spending leg. in the House that would cause an authorizing committee to exceed its 302(a) committee allocation of BA in either the budget year or the total of fiscal years covered by the BR.	X		
§ 302(f)(2) 1974 CBA 2 USC 633(f)	Senate—Enforcing BA and Outlay Allocations: After a BR has been agreed to, it is not in order to consider direct spending leg. that would cause an authorizing committee to exceed its 302(a) committee allocations of BA or OT in either the budget year or the total of fiscal years covered by the BR.		X	60 votes*
§ 3101(b)(2) FY 2016 BR S.Con.Res. 11	House PAYGO Point of Order: In the House, prohibits consideration of a measure that would cause a net increase in direct spending in excess of \$5 billion in any of the four consecutive 10-year periods beginning with the first fiscal year that is 10 years after the budget year in the most recently agreed to budget resolution.	X		
Hse Rule XXI	House PAYGO Rule: Prohibits consideration of direct spending (entitlement) legislation that would increase the deficit or reduce the surplus for either of two budget periods.	X		
§ 4106 FY 2018 BR H.Con.Res. 71 115th Congress	Senate PAYGO Rule: In the Senate, prohibits consideration of any direct spending or revenue legislation that would increase or cause an on-budget deficit in: (1) the current year; (2) the budget year; (3) the period of the current fiscal year, the budget year, and the ensuing 4 fiscal years (6 years); <i>or</i> (4) the period of the current fiscal year, the budget year, and the ensuing 9 fiscal years (11 years).		X	60 votes
§ 4(g)(3) STATUTORY PAYGO	Emergency Designation and PAYGO: In the Senate, for direct spending and revenue legislation, if a point of order is raised against an emergency designation, the provision shall be stricken (effectively requires 60 votes to retain an emergency designation).		X	60 votes
§ 401(b) 1974 CBA 2 USC 651	Prohibiting Current Year Entitlement Expansions: Prohibits consideration of entitlement leg. that is to become effective during the current fiscal year. <i>(This prohibition has little impact since it can be waived by a simple majority.)</i>	X	X	Simple Majority
Points of Order Relating to Revenue Legislation				
§ 303(a) 1974 CBA 2 USC 634	No Tax Legislation Before BR: Prohibits consideration of leg. providing an increase or decrease in revenues for a fiscal year until a BR for that fiscal year has been agreed to.	X	X	Simple Majority
§ 311(a) 1974 CBA 2 USC 642	Prohibits Breaching the Revenue Floor: Prohibits consideration of leg. would cause the BR’s revenue floors for the budget year, or the total for all years covered by the BR, to be breached.	X	X	60 votes*
§ 201 FY 2008 BR S.Con.Res.21	Senate PAYGO Point of Order: Prohibits consideration of tax cuts that would increase or cause a non–Social Security deficit in either of two budget periods: (1) the period of the current fiscal year, the budget year, and the ensuing 4 fiscal years; or (2) the period of the current fiscal year, the budget year, and the ensuing 9 fiscal years.		X	60 votes
Hse Rule XXI	House PAYGO Point of Order: Prohibits consideration of tax cuts that would increase the deficit or reduce the surplus for either of the same two budget periods noted above in the Senate’s PAYGO rule.	X	X	

Point of Order Section USC cite	Description	HSE	SEN	Senate Waiver Requirement
*Asterisk indicates the Senate 60-vote waiver requirement is temporary, with an expiration date of September 30, 2025.				
Procedures Relating to Consideration of the Budget Resolution				
§ 305(b)(2) 1974 CBA 2 USC 636	Germaneness Requirement for Amendments to BR: Prohibits consideration of nongermane amendments to Budget Resolution.		X	60 votes
§ 305(c)(4) 1974 CBA 2 USC 636	Germaneness Requirement for Amendments Between the Houses: Prohibits consideration of nongermane amendments to Budget Resolution “amendments in disagreement” between the House and Senate.		X	60 votes
§ 305(d) 1974 CBA 2 USC 636	Mathematical Consistency Requirement: Prohibits a vote on a BR unless the figures contained in the resolution are mathematically consistent.		X	Simple Majority
Procedures Relating to Consideration of Reconciliation Legislation				
§ 310(d)(1) 1974 CBA 2 USC 641	Deficit Neutrality for Amendments to Reconciliation in the House: Prohibits amendments to reconciliation Bills in the House that would cause a net increase in the deficit for the fiscal years covered, <i>except</i> that a motion to strike new spending authority is always in order and the Rules Committee can make in order amendments to achieve reconciliation instructions that have not been fulfilled by a committee.	X		
§ 310(d)(2) 1974 CBA 2 USC 641	Deficit Neutrality for Amendments to Reconciliation in the Senate: Prohibits amendments to reconciliation Bills in the Senate that would cause a net increase in the deficit for the fiscal years covered, except that a motion to strike a provision is always in order.		X	60 votes
§ 310(e) 1974 CBA 2 USC 641	Germaneness Requirement for Amendments to Reconciliation in the Senate: In the Senate, for consideration of reconciliation bills, incorporates by reference the 305(b)(2) germaneness requirement that limits amendments to: striking a provision, changing a number, stating the sense of the Senate, or limiting a provision in the bill. A point of order lies against amendments that do not fall into one of the 4 categories.		X	60 votes
§ 310(f) 1974 CBA 2 USC 641	No Adjournment Until Completion of Reconciliation: In the House, prohibits consideration of an adjournment resolution of more than 3 calendar days during July until the House has completed action on any required reconciliation legislation. (<i>This is routinely waived.</i>)	X		
§ 313 1974 CBA “Byrd Rule” 2 USC 644	Byrd Rule Prohibition on Non-Budgetary Provisions in the Senate: Prohibits consideration of “extraneous,” (i.e., non-budgetary) leg., or leg. causing outyear deficit increases, in a reconciliation bill. Offending provisions are stripped out of the reconciliation bill if the point of order is sustained. For a detailed explanation of provisions considered to be “extraneous” see this primer’s explanation of the Byrd Rule.		X	60 votes
§ 202 of FY 08 BR S.Con.Res.21	Limiting Reconciliation to Deficit Reduction: Prohibits consideration of reconciliation legislation that would increase deficits or reduce surpluses in either of two budget periods: (1) the period of the current fiscal year, the budget year, and the ensuing 4 fiscal years; or (2) the period of the current fiscal year, the budget year, and the ensuing 9 fiscal years. (However, reconciliation bills routinely increase deficits through tax cuts or spending increases.)		X	60 votes
§ 310(g) 1974 CBA 2 USC 641	No Reconciliation Provisions Impacting Social Security: Prohibits consideration of reconciliation bills, amendments, or conference reports that contain “recommendations with respect to Social Security (OASDI).”	X	X	60 votes*

Point of Order Section USC cite	Description	HSE	SEN	Senate Waiver Requirement
*Asterisk indicates the Senate 60-vote waiver requirement is temporary, with an expiration date of September 30, 2025.				
Points of Order Relating to Deficit and Debt Increases				
§ 311(b) 1974 CBA 2 USC 642	Legislation Increasing Long-Term Deficits: Prohibits consideration of leg. that would cause a net increase in deficits in excess of \$5 billion in any of the four 10-year periods beginning in 2019 and ending in 2058.		X	60 votes
§ 404(a) FY 2010 BR S.Con.Res.13	PAYGO point of order in the Senate: In the Senate, prohibits the consideration of direct spending or revenue legislation that would cause a net increase in the deficit in excess of \$10 billion in any fiscal year provided for in the most recently adopted budget resolution <i>unless</i> it is fully offset over the period of all fiscal years provided for in the most recently adopted budget resolution.		X	60 votes
§ 4(g)(3) STATUTORY PAYGO	60-votes for Emergency Designation in PAYGO Legislation: In the Senate, for direct spending and revenue legislation, if a point of order is raised against an emergency designation, the provision shall be stricken (effectively requires 60 votes to retain an emergency designation).		X	60 votes
§ 3101(b)(1) FY 2016 BR S.Con.Res. 11 (114th Congress)	Prohibits Outyear Budget Deficits in the Senate [the “4 10s”]: In the Senate, prohibits the consideration of a measure that would cause a net increase in on-budget deficits in excess of \$5 billion in <i>any</i> of the four consecutive 10-year periods beginning with the first fiscal year that is 10 years after the budget year in the most recently agreed to budget resolution.		X	60 votes
§ 312(c) 1974 CBA 2 USC 643(c)	Prohibits BR Exceeding Maximum Deficit Amounts in the Senate: In the Senate, prohibits the consideration of a BR that would breach a maximum deficit amount as set forth in BBEDCA, if any (except when declaration of war or a recession waiver is in effect). <i>[No longer effective.]</i>		X	60 votes*
Restrictions on Federal Credit				
§ 504(b) 1974 CBA 2 USC 661c	Requires Advance Appropriations for Credit Legislation (with Exceptions): Requires that new direct loan obligations and new loan guarantees may be incurred only to the extent that new budget authority to cover their costs is provided in advance in an appropriations act. Does <i>not</i> apply to entitlements such as student loans or veterans’ home loans, or agriculture loans under the CCC.	X	X	Majority
Disclosure Requirements for Earmarks				
House Rule XXI	House Earmark Disclosure Rule: Requires disclosure of earmark sponsors, as well as justifications for earmarks, and written certification that earmarks will not benefit their House sponsor.	X		N/A
Sen Rule XLIV	Senate Earmark Disclosure Rule: An earmark is defined as “a congressionally directed spending item, limited tax benefit, and limited tariff benefit.” Rule 44 prohibits consideration of leg. unless the committee chair or majority leader certifies that all earmarks in legislative or report language have been identified by sponsor and are publicly available on the Internet for 48 hours. Senators must provide to the committee the name and location of the earmark beneficiary, and they must certify no financial interest. Prohibits “air-dropping,” i.e., inserting new earmarks into conference reports.		X	60 votes

Point of Order Section USC cite	Description	HSE	SEN	Senate Waiver Requirement
*Asterisk indicates the Senate 60-vote waiver requirement is temporary, with an expiration date of September 30, 2025.				
Protections for Social Security				
§ 301(i) 1974 CBA 2 USC 632	No BRs that Decrease Social Security Surplus: In the Senate, prohibits consideration of a BR that would decrease the Social Security surplus in any of the years covered by the Resolution. <i>(This is an anachronism because Social Security is no longer running large annual surpluses, as was the case when this provision was written.)</i>		X	60 votes*
§ 310(g) 1974 CBA 2 USC 641	No Reconciliation Provisions Impacting Social Security: Prohibits consideration of reconciliation bills, amendments, or conference reports that contain “recommendations with respect to Social Security (OASDI).”	X	X	60 votes*
§ 311(a)(3) 1974 CBA 2 USC 642	No Senate Legislation that Would Worsen Social Security Position: In the Senate, prohibits consideration of leg. that would cause a decrease in Social Security surpluses or an increase in Social Security deficits in the first fiscal year or the total of all fiscal years covered by the BR.		X	60 votes* (temporary)
§ 3301(a) FY 2016 BR S.Con.Res. 11	No House Legislation that Would Worsen Social Security Position: In the House, prohibits consideration of legislation that would reduce the actuarial balance of the present value of future taxable payroll by at least 0.01% of the federal Old Age and Survivors Insurance Trust Fund for the 75-year period utilized in the most recent report of the Board of Trustees.	X		
§ 13302(a) 1990 BEA 2 USC 632 note	No House Legislation that Would Worsen Social Security Position: In the House, prohibits consideration of legislation that would provide for a net increase in Social Security benefits or decrease in Social Security taxes in excess of 0.02% of the present value of future taxable payroll for a 75-year period, or in excess of \$250,000,000 for the first five-year period after it becomes effective.	X		
Protecting the Budget Process				
§ 301(g) 1974 CBA 2 USC 632	No More than One Set of Economics: In the Senate, prohibits consideration of a BR using more than one set of economic assumptions.		X	Simple Majority
§ 306 1974 CBA 2 USC 637	Protecting Budget Committee Jurisdiction: Prohibits consideration of leg. within the jurisdiction of the Budget Committee—such as directed scoring provisions—unless reported by, or discharged from, the Budget Committee.	X	X	60 votes
§ 3205(a) FY 2016 BR S.Con.Res. 11	Requires Cost Estimates for Direct Spending Legislation: In the Senate, prohibits voting on passage of any matter that requires a cost estimate under Section 402 of the 1974 Budget Act (i.e., measures reported by a committee other than the Appropriations Committee), unless that cost estimate was made publicly available not later than 28 hours before the vote.		X	60 votes
§ 401(a) 1974 CBA 2 USC 651	General Limitation on Backdoor Spending: Subject to certain exceptions, prohibits consideration of leg. providing new authority to enter into contracts or to borrow funds or to lend funds unless limited to amounts provided in appropriations acts. <i>(This prohibition has little impact since it can be waived by a simple majority.)</i>	X	X	Simple Majority
Protecting Jurisdiction of Transportation Committees				
§ 405(a) FY 2010 BR S.Con.Res.13	Prohibits Bills Funding Transportation Outside of Highway Trust Fund: In the Senate, prohibits consideration of any measure or provision that extends or reauthorizes surface transportation programs that appropriates budget authority from sources other than the Highway Trust Fund.		X	60 votes

Point of Order Section USC cite	Description	HSE	SEN	Senate Waiver Requirement
*Asterisk indicates the Senate 60-vote waiver requirement is temporary, with an expiration date of September 30, 2025.				
Unfunded Mandates Reform Act				
§ 425(a)(1) 1974 CBA 2 USC 658d	Requires CBO Report on Unfunded Mandates in Committee Reports: Prohibits consideration of legislation reported by a committee unless the committee has published a CBO report on direct costs of federal mandates in the legislation.	X	X	60 votes
§ 425(a)(2) 1974 CBA 2 USC 658d	Prohibits Legislation Including Mandates Exceeding Thresholds: Prohibits consideration of legislation that would increase the direct costs of federal intergovernmental mandates by an amount greater than the thresholds specified as in Section 424(a).	X	X	60 votes
§ 426 1974 CBA 2 USC 658e	Prohibits a House Rule waving Mandates Requirement: Prohibits consideration of a “Rule” in the House that would waive section 425.	X		
Points of Order under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended <i>The following points of order were enacted in BBEDCA in relation to presidential sequestration orders triggered by violation of maximum deficit amounts (MDAs) While MDAs are no longer in effect, the points of order and their Senate waiver requirements are listed below as they could become relevant if Congress re-enacts MDAs in the future (as occurred with the reemergence of PAYGO and spending caps in 2010 and 2011).</i>				
258(a)(4)(C) BBEDCA 2 USC 907a	In the Senate, point of order lies against any amendments to a joint resolution suspending maximum deficit amount sequestration and enforcement of BR aggregates and committee allocations, due to a finding of low growth. <i>[Maximum deficit amounts are no longer in effect.]</i>		X	60 votes*
258A(b)(3)(C)(i) BBEDCA 2 USC 907b	In the Senate, point of order lies against amendments to a joint resolution modifying a presidential sequestration order triggered by violation of maximum deficit amounts. <i>[Maximum deficit amounts are no longer in effect.]</i>		X	60 votes*
258B(f)(1) BBEDCA 2 USC 907c	In the Senate, point of order lies against amendments proposed in the Committee on Appropriations (other than germane or relevant amendments) to a joint resolution exercising flexibility among defense programs, projects, and activities in a sequestration order triggered by violation of maximum deficit amounts. <i>[Maximum deficit amounts are no longer in effect.]</i>		X	60 votes*
258B(h)(1) BBEDCA 2 USC 907c	In the Senate, point of order lies against any Floor amendment to a joint resolution exercising flexibility among defense programs, projects, and activities in a sequestration order triggered by violation of maximum deficit amounts, unless such amendment is germane or relevant. <i>[Maximum deficit amounts are no longer in effect.]</i>		X	60 votes*
258B(h)(3) BBEDCA 2 USC 907c	In the Senate, point of order lies against any Floor amendment to a joint resolution exercising flexibility among defense programs, projects, and activities in a sequestration order triggered by violation of maximum deficit amounts. unless such amendment is outlay-neutral <i>[Maximum deficit amounts are no longer in effect.]</i>		X	60 votes*
258C(a)(5) BBEDCA 2 USC 907d	In the Senate, point of order lies against any special reconciliation bill or resolution to replace a presidential sequester order triggered by violation of maximum deficit amounts if such bill or resolution would cause maximum deficit amounts to be exceeded. <i>[Maximum deficit amounts are no longer in effect.]</i>		X	60 votes*
258C(b)(1) BBEDCA 2 USC 907d	In the Senate, points of order normally available for consideration of Reconciliation bills also apply to any special reconciliation bill or resolution to replace a presidential sequester order triggered by violation of maximum deficit amounts. <i>[Maximum deficit amounts are no longer in effect.]</i>		X	60 votes*

Appendix E: The 12 Appropriations Subcommittees

The House and Senate Appropriations Committees are both organized into 12 subcommittees, with each subcommittee having similar—though not always identical—jurisdictions over one regular annual appropriations bill (which is often rolled into a consolidated or omnibus measure following committee or Floor action).

1. **Agriculture, Rural Development, Food and Drug Administration, and Related Agencies**, which oversees funding for the USDA (except the Forest Service) and other agencies.
2. **Commerce, Justice, Science, and Related Agencies**, which oversees funding for the Department of Commerce, the Department of Justice, NASA, and other agencies.
3. **Defense**, which oversees funding for the military, the intelligence community, and other national defense related agencies.
4. **Energy and Water Development**, which oversees funding for the Department of Energy, the U.S. Army Corps of Engineers, and other agencies.
5. **Financial Services and General Government**, which oversees funding for the Department of the Treasury, the Executive Office of the President, and other government functions.
6. **Homeland Security**, which oversees funding for the Department of Homeland Security.
7. **Interior, Environment, and Related Agencies**, which oversees funding for the Department of the Interior, the EPA, the U.S. Forest Service, and a number of independent agencies.
8. **Labor, Health and Human Services, Education, and Related Agencies**, which oversees funding for the Department of Education, the Department of Health and Human Services, the Department of Labor, and other agencies.
9. **Legislative Branch**, which oversees funding for the House of Representatives and Senate, the U.S. Capitol, the Library of Congress, the GAO, and other legislative branch functions.
10. **Military Construction, Veterans Affairs, and Related Agencies**, which oversees funding for military construction (including military housing), the Department of Veterans Affairs, and related agencies.
11. **State, Foreign Operations, and Related Programs**, which oversees funding for the U.S. State Department, USAID, and related programs.
12. **Transportation, Housing and Urban Development, and Related Agencies**, which oversees funding for the Department of Transportation, HUD, and related agencies.

Appendix F: Appropriations Law and the GAO Red Book

*Principles of federal Appropriations Law*⁴³⁶, published by the Government Accountability Office (GAO)—also known as the Red Book—is a multi-volume treatise concerning federal fiscal law. The Red Book provides text discussion with specific legal authorities to illustrate appropriations principles, their application, and exceptions. The references (hyperlinked) below include GAO decisions and opinions, judicial decisions, statutory provisions, and other relevant sources.

The Red Book currently (as of June 2022) consists of Chapters 1-3 (of the 4th Edition) and Chapters 5-15 (of the 3rd Edition).

Updates can be accessed at: <https://www.gao.gov/legal/appropriations-law/red-book/>.

Chapters	Titles	Links
4th Edition, Chapter 1	Introduction	4th Edition, Chapter 1
4th Edition, Chapter 2	The Legal Framework	4th Edition, Chapter 2
4th Edition, Chapter 3	Availability of Appropriations: Purpose	4th Edition, Chapter 3
4th Edition, Chapter 4	Coming soon	
3rd Edition, Chapter 5	Availability of Appropriations: Time	3rd Edition, Volume 1; Annual Update
3rd Edition, Chapter 6	Availability of Appropriations: Amount	3rd Edition, Volume 2
3rd Edition, Chapter 7	Obligation of Appropriations	Annual Update
3rd Edition, Chapter 8	Continuing Resolutions	
3rd Edition, Chapter 9	Liability and Relief of Accountable Officers	
3rd Edition, Chapter 10	Federal Assistance: Grants and Cooperative Agreements	
3rd Edition, Chapter 11	Federal Assistance: Guaranteed and Insured Loans	
3rd Edition, Chapter 12	Acquisition of Goods and Services	3rd Edition Volume 3
3rd Edition, Chapter 13	Real Property	Annual Update
3rd Edition, Chapter 14	Claims Against and By the Government	
3rd Edition, Chapter 15	Miscellaneous Topics	

⁴³⁶ U.S. Gov't Accountability Off., The Red Book (June 9, 2022, 3:30 PM), <https://www.gao.gov/legal/appropriations-law/red-book>.

Appendix G: Budget Resolutions and Deeming Resolutions*(hyperlinked to reports, resolutions, and bill language where documents are online)***Table 9: Links to all Budget Resolutions, Reports and Deeming Resolutions**

Fiscal Year	House Reports	Senate Reports	Conference Reports	Budget Resolution (adopted)	Deeming Resolutions ⁴³⁷
2023	[none]	[none}	[none]	[none] ⁴³⁸	H.Res. 1151 ⁴³⁹
2022	House action	S.Prt. 117-6	⁴⁴⁰	S.Con.Res. 14	n/a
2021	H.Con.Res. 11	[none]	⁴⁴¹	S.Con.Res. 5	n/a
2020	[none]	S.Prt. 116-13	[none]	[none]	H.Res. 293 H.R. 3877, §201 H.R. 3877, §204
2019	H.Rept.115-816	[none]	[none]	[none]	HR 1892, §30104 HR 1892, §30103
2018	H.Rept. 115-240	S.Prt. 115-20	[none]	H.Con.Res.71	n/a
2017	H.Rept. 114-470	S.Con.Res. 3	[none]	S.Con.Res.3	n/a
2016	H. Rept. 114-47	S.Prt. 114-14	H. Rept. 114-96	S.Con.Res. 11	n/a
2015	H.Rept. 113-403	[none]	[none]	[none]	H.J.Res 59, §115
2014	H.Rept. 113-17	S.Prt. 113-12, Part 1	[none]	[none]	H.Res. 243 H.J.Res.59, §111
2013	H.Rept. 112-421	Senate actions	[none]	[none]	H.Res. 614 H.Res. 643 S. 365, §106
2012	H.Rept. 112-58	Senate actions	[none]	[none]	H.Res. 287 S. 365, §106
2011	[none]	S.Prt. 111-45	[none]	[none]	H.Res. 1493 [no Sen Res]
2010	H. Rept. 111-60	S.Prt. 111-16	H.Rept. 111-89	S.Con.Res.13	n/a
2009	H.Rept. 110-543	S.Prt 110-39	H.Rept. 110-659	S.Con.Res.70	n/a
2008	H.Rept.110-69	S.Prt. 110-019	H. Rept. 110-153	S.Con.Res.21	n/a
2007	H.Rept. 109-402	S.Prt. 109-057	[none]	[none]	H.Res. 818 H.R. 4939, §7035
2006	H.Rept. 109-17	S.Prt. 109-18	H. Rept. 109-62	H.Con.Res.95	n/a
2005	H.Rept. 108-441	S.Prt. 108-365	H.Rept. 108-498	S.Con.Res. 95	H.Res. 649 H.R. 4613, §14007
2004	H.Rept. 108-37	S.Prt. 108-19	H.Rept.108-71	H.Con.Res.95	n/a
2003	H.Rept.107-376	S.Rept.107-141	[none]	[none]	H.Res. 428 [no Sen Res]
2002	H.Rept. 107-26	S.Con.Res. 20	H.Rept. 107-55 H.Rept. 107-60	H.Con.Res.83	n/a
2001	H.Rept.106-530	S.Rept. 106-251	H.Rept.106-577	H.Con.Res.290	n/a

Continued on next page....

⁴³⁷ This column displays “deeming” resolutions (or similar provisions in bills) that are adopted for fiscal years in which Congress did not complete action on a concurrent resolution on the budget, or in which the budget resolution was late. For an in-depth analysis, see Cong. Rsch. Serv., R44296, Deeming Resolutions: Budget Enforcement in the Absence of a budget resolution, (June 8, 2022), <https://crsreports.congress.gov/product/pdf/R/R44296>.

⁴³⁸ As of September 7, 2022.

⁴³⁹ For background, see: <https://budget.house.gov/publications/report/fy23-deeming-resolution-supporting-appropriations-process#:~:text=The%20deeming%20resolution%2C%20or%20%20E2%80%9Cdeemer%2C%20E2%80%9D%20supports%20President%20Biden%E2%80%99s,a%209%20percent%20increase%20from%20FY22%20enacted%20levels>.

⁴⁴⁰ See budget resolution note at: <https://crsreports.congress.gov/AppropriationsStatusTable?id=2022>.

⁴⁴¹ See budget resolution note at: <https://crsreports.congress.gov/AppropriationsStatusTable?id=2021>.

Fiscal Year	House Reports	Senate Reports	Conference Reports	Budget Resolution (adopted)	Deeming Resolutions
2000	H.Rept. 106-73	S. Rept. 106-27	H.Rept. 106-91	H.Con.Res.68	n/a
1999	H.Rept. 105-555	S.Rept. 105-170	[none]	[none]	H.Res. 477 S.Res. 209 S.Res. 312
1998	H.Rept. 105-100	S.Con.Res. 17	H.Rept. 105-116	H.Con.Res.84	n/a
1997	H. Rept. 104-575	S. Rept. 104-271	H.Rept. 104-612	H.Con.Res. 178	n/a
1996	H. Rept. 104-120	S. Rept. 104-82	H.Rept. 104-159	H.Con.Res. 67	n/a
1995	H.Rept. 103-428*	S.Rept. 103-238*	H.Rept. 103-490*	H.Con.Res. 218	n/a
1994	H.Rept. 103-31*	S.Rept. 103-19*	H.Rept. 103-48*	H.Con.Res. 64	n/a
1993	H.Rept. 102-450*	S.Con.Res. 104*	H.Rept. 102-529*	H.Con.Res. 287	n/a
1992	H.Rept. 102-32*	S.Rept. 102-40*	H.Rept. 102-69*	H.Con.Res. 121	n/a
1991	H.Rept. 101-455*	S.Con.Res. 110*	H.Rept. 101-820*	H.Con.Res. 310	n/a
1990	H.Rept. 101-42*	S.Rept. 101-20*	H.Rept. 101-50*	H.Con.Res. 106	n/a
1989	H.Rept. 100-523*	S.Rept. 100-311*	H.Rept. 100-658*	H.Con.Res. 268	n/a
1988	H.Rept. 100-175*	S.Con.Res. 49	S.Rept. 100-76*	H.Con.Res. 93	n/a
1987	H.Rept. 99-598*	S.Rept. 99-264*	H.Rept. 99-664*	S.Con.Res. 120	n/a
1986	H.Rept. 99-133*	S.Rept. 99-15*	H.Rept. 99-249*	S.Con.Res. 32	n/a
1985	H.Res. 476	S.Rept. 98-399*	H.Rept. 98-1079*	H.Con.Res. 280	n/a
1984	H.Rept. 98-41 Pt 1* H.Rept. 98-41 Pt 2*	S.Rept. 98-155*	H.Rept. 98-248*	H.Con.Res. 91	n/a
1983	H.Rept. 97-597*	S.Rept. 97-385*	H.Rept. 97-614* S.Rept. 97-478*	S.Con.Res. 92	n/a
For the fiscal years below, there were two budget resolutions as originally required by the 1974 Budget Act.					
1982	H.Rept. 97-23*	S.Rept. 97-49*	H.Rept. 97-46* S.Rept. 97-86*	5/21: H.Con.Res. 115 12/10: S.Con.Res. 50	n/a
1981	H.Rept. 96-857*	S.Rept. 96-654*	H.Rept. 96-1051* S.Rept. 96-792*	6/12: H.Con.Res. 307 11/20: H.Con.Res.448	n/a
1980	H.Rept. 96-95*	S.Rept. 96-68*	H.Rept. 96-211* S.Rept. 96-192*	5/24: H.Con.Res. 107 11/28: S.Con.Res. 53	n/a
1979	H.Rept. 95-1055*	S.Rept. 95-739*	H.Rept. 95-1173* S.Rept. 95-866*	5/17: S.Con.Res. 80 9/23: H.Con.Res. 683	n/a
1978	H.Rept. 95-239*	S.Rept. 95-90*	H.Rept. 95-291* S.Rept. 95-134*	5/17: S.Con.Res. 19 9/15: H.Con.Res. 341	n/a
1977	H.Rept. 94-1030*	S.Rept. 94-731*	H.Rept. 94-1108* S.Rept. 94-805*	5/13: S.Con.Res. 109 9/16: S.Con.Res. 139	n/a
1976	H.Rept. 94-145*	S.Rept. 94-77*	H.Rept. 94-198* S.Rept. 94-113*	5/14: H.Con.Res. 218 12/12: H.Con.Res. 466	n/a

*If this document has not yet been uploaded to Congress.gov, you will find it at <https://congressional.proquest.com/congressional> or you may find it at the following public sites: <https://govinfo.gov> or https://books.google.com/advanced_book_search?hl=en.

Appendix H: Budget Reconciliation Acts Since Enactment of the 1974 Budget Act

Note: The reconciliation bill titles below refer to the calendar year of enactment, not the fiscal year of the budget resolution that launched the reconciliation process. For example, the Tax Cuts and Jobs Act of 2017 was enacted pursuant to budget reconciliation instructions in the FY 2018 budget resolution. This occurs because budget resolutions focus on the upcoming fiscal year, while bill titles refer to the calendar year of enactment. Occasionally, the reconciliation process is prolonged, and the years coincide, as with the Inflation Reduction Act of 2022, which was launched in calendar 2021 with the FY 2022 budget resolution, but was not completed until August 16, 2022.

Table 10: Budget Reconciliation Bills and Associated Budget Resolutions

Links to Budget Reconciliation Acts (and vetoed Reconciliation Bills)	Budget Resolution Reconciliation Instructions
1. Omnibus Reconciliation Act of 1980, Pub. L. No. 96-499, 94 Stat. 2599 (1980).	H.Con.Res. 307
2. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357-933 (1981).	H.Con.Res. 115
3. Omnibus Budget Reconciliation Act of 1982, Pub. L. No. 97-253, 96 Stat. 763 (1982).	S.Con.Res. 92 (included instructions for two Reconciliation Bills)
4. Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, 96 Stat. 324 (1982).	
5. Omnibus Budget Reconciliation Act of 1983, Pub. L. No. 98-270, 98 Stat. 157 (1984).	H.Con.Res. 91
6. Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), P.L. 99-272, 100 Stat. 82 (1986).	S.Con.Res. 32
7. Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, 100 Stat. 1874 (1986).	S.Con.Res. 120
8. Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330, (1987).	H.Con.Res. 92
9. Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, 103 Stat. 2106 (1989).	H.Con.Res. 106
10. Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388 (1990).	H.Con.Res. 310
11. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993).	H.Con.Res. 64
[H.R. 2491, 104th Cong., (1995), vetoed.]	H.Con.Res. 67
12. Personal Responsibility and Budget Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).	H.Con.Res. 178
13. Bipartisan Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).	H.Con.Res.84 (included instructions for two Reconciliation Bills)
14. Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (1997).	
[H.R. 2488, 105th Cong., (1999), vetoed.]	H.Con.Res.68
[H.R. 4810, 105th Cong., (2000), vetoed.]	H.Con.Res.290

Links to Budget Reconciliation Acts (and vetoed Reconciliation Bills)	Budget Resolution Reconciliation Instructions
15. Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) , Pub. L. No. 107-16, 115 Stat. 38 (2001).	H.Con.Res.83
16. Jobs and Growth Tax Relief Reconciliation Act of 2003 , Pub. L. No. 108-27, 117 Stat. 752 (2003).	H.Con.Res.95
17. Deficit Reduction Act of 2005 , Pub. L. No. 109-171, 120 Stat. 4 (2006).	H.Con.Res.95 (included
18. Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) , Pub. L. No. 109-222, 120 Stat. 345 (2006).	instructions for two reconciliation bills)
19. College Cost Reduction and Access Act of 2007 , Pub. L. No. 110-84, 121 Stat. 784 (2007).	S.Con.Res.21
20. Health Care and Education Reconciliation Act of 2010 , Pub. L. No. 111-152, 124 Stat. 1029 (2010).	S.Con.Res.13
[H.R. 3762 , 114th Cong., (2016), vetoed .]	S.Con.Res. 11
21. Tax Cuts and Jobs Act of 2017 (TCJA) , Pub. L. No. 115-97, 131 Stat. 2054 (2017).	H.Con.Res.71
22. American Rescue Plan Act of 2021 , Pub. L. No. 117-2, 135 Stat. 4 (2021).	S.Con.Res. 5
23. Inflation Reduction Act of 2022 , Pub. L. No. 117-169 (2022)	S.Con.Res. 14

Appendix I: Example of Budget Reconciliation Instructions

Following are the budget reconciliation instructions contained in the FY 2022 budget resolution,⁴⁴² which generated the Build Back Better legislation passed by the House of Representatives and was eventually scaled back, becoming the Inflation Reduction Act.

SEC. 2001. RECONCILIATION IN THE SENATE.

- (a) Committee On Agriculture, Nutrition, And Forestry.—The Committee on Agriculture, Nutrition, and Forestry of the Senate shall report changes in laws within its jurisdiction that increase the deficit by not more than \$135,000,000,000 for the period of fiscal years 2022 through 2031.
- (b) Committee On Banking, Housing, And Urban Affairs.—The Committee on Banking, Housing, and Urban Affairs of the Senate shall report changes in laws within its jurisdiction that increase the deficit by not more than \$332,000,000,000 for the period of fiscal years 2022 through 2031.
- (c) Committee On Commerce, Science, And Transportation.—The Committee on Commerce, Science, and Transportation of the Senate shall report changes in laws within its jurisdiction that increase the deficit by not more than \$83,076,000,000 for the period of fiscal years 2022 through 2031.
- (d) Committee On Energy And Natural Resources.—The Committee on Energy and Natural Resources of the Senate shall report changes in laws within its jurisdiction that increase the deficit by not more than \$198,000,000,000 for the period of fiscal years 2022 through 2031.
- (e) Committee On Environment And Public Works.—The Committee on Environment and Public Works of the Senate shall report changes in laws within its jurisdiction that increase the deficit by not more than \$67,264,000,000 for the period of fiscal years 2022 through 2031.
- (f) Committee On Finance.—The Committee on Finance of the Senate shall report changes in laws within its jurisdiction that reduce the deficit by not less than \$1,000,000,000 for the period of fiscal years 2022 through 2031.
- (g) Committee On Health, Education, Labor, And Pensions.—The Committee on Health, Education, Labor, and Pensions of the Senate shall report changes in laws within its jurisdiction that increase the deficit by not more than \$726,380,000,000 for the period of fiscal years 2022 through 2031.
- (h) Committee On Homeland Security And Governmental Affairs.—The Committee on Homeland Security and Governmental Affairs of the Senate shall report changes in laws within its jurisdiction that increase the deficit by not more than \$37,000,000,000 for the period of fiscal years 2022 through 2031.
- (i) Committee On Indian Affairs.—The Committee on Indian Affairs of the Senate shall report changes in laws within its jurisdiction that increase the deficit by not more than \$20,500,000,000 for the period of fiscal years 2022 through 2031.
- (j) Committee On The Judiciary.—The Committee on the Judiciary of the Senate shall report changes in laws within its jurisdiction that increase the deficit by not more than \$107,500,000,000 for the period of fiscal years 2022 through 2031.
- (k) Committee On Small Business And Entrepreneurship.—The Committee on Small Business and Entrepreneurship of the Senate shall report changes in laws within its jurisdiction that increase the deficit by not more than \$25,000,000,000 for the period of fiscal years 2022 through 2031.

⁴⁴² S.Con.Res. 14 (117th Congress, 1st Session), <https://www.congress.gov/bill/117th-congress/senate-concurrent-resolution/14/text>.

(l) Committee On Veterans' Affairs.—The Committee on Veterans' Affairs of the Senate shall report changes in laws within its jurisdiction that increase the deficit by not more than \$18,000,000,000 for the period of fiscal years 2022 through 2031.

(m) Submissions.—In the Senate, not later than September 15, 2021, the Committees named in the subsections of this section shall submit their recommendations to the Committee on the Budget of the Senate. Upon receiving all such recommendations, the Committee on the Budget of the Senate shall report to the Senate a reconciliation bill carrying out all such recommendations without any substantive revision.

SEC. 2002. RECONCILIATION IN THE HOUSE OF REPRESENTATIVES.

(a) Committee On Agriculture.—The Committee on Agriculture of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$89,100,000,000 for the period of fiscal years 2022 through 2031.

(b) Committee On Education And Labor.—The Committee on Education and Labor of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$779,500,000,000 for the period of fiscal years 2022 through 2031.

(c) Committee On Energy And Commerce.—The Committee on Energy and Commerce of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$486,500,000,000 for the period of fiscal years 2022 through 2031.

(d) Committee On Financial Services.—The Committee on Financial Services of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$339,000,000,000 for the period of fiscal years 2022 through 2031.

(e) Committee On Homeland Security.—The Committee on Homeland Security of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$500,000,000 for the period of fiscal years 2022 through 2031.

(f) Committee On The Judiciary.—The Committee on the Judiciary of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$107,500,000,000 for the period of fiscal years 2022 through 2031.

(g) Committee On Natural Resources.—The Committee on Natural Resources of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$25,600,000,000 for the period of fiscal years 2022 through 2031.

(h) Committee On Oversight And Reform.—The Committee on Oversight and Reform of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$7,500,000,000 for the period of fiscal years 2022 through 2031.

(i) Committee On Science, Space, And Technology.—The Committee on Science, Space, and Technology of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$45,510,000,000 for the period of fiscal years 2022 through 2031.

(j) Committee On Small Business.—The Committee on Small Business of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$17,500,000,000 for the period of fiscal years 2022 through 2031.

(k) Committee On Transportation And Infrastructure.—The Committee on Transportation and Infrastructure of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$60,000,000,000 for the period of fiscal years 2022 through 2031.

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(l) Committee On Veterans' Affairs.—The Committee on Veterans' Affairs of the House of Representatives shall report changes in laws within its jurisdiction that increase the deficit by not more than \$18,000,000,000 for the period of fiscal years 2022 through 2031.

(m) Committee On Ways And Means.—The Committee on Ways and Means of the House of Representatives shall report changes in laws within its jurisdiction that reduce the deficit by not less than \$1,000,000,000 for the period of fiscal years 2022 through 2031.

(n) Submissions.—In the House of Representatives, not later than September 15, 2021, the committees named in the subsections of this section shall submit their recommendations to the Committee on the Budget of the House of Representatives to carry out this section.

Appendix J: Example of Budget Resolution Reserve Funds

Example of Reserve Fund language in Title III of H.Con.Res. 71 (FY 2018 budget resolution):

SEC. 3004. Deficit-Neutral Reserve Fund for Extending the State Children's Health Insurance Program. The Chairman of the Committee on the Budget of the Senate may revise the allocations of a committee or committees, aggregates, and other appropriate levels in this resolution, and make adjustments to the pay-as-you-go ledger, for one or more bills, joint resolutions, amendments, amendments between the Houses, motions, or conference reports relating to an extension of the State Children's Health Insurance Program, by the amounts provided in such legislation for those purposes, provided that such legislation would not increase the deficit over either the period of the total of fiscal years 2018 through 2022 or the period of the total of fiscal years 2018 through 2027.

Examples of other Reserve Funds in H.Con.Res. 71 (FY 2018 budget resolution):

Sec. 3001. Deficit-neutral reserve fund to protect flexible and affordable health care for all.

Sec. 3002. Revenue-neutral reserve fund to reform the American tax system.

Sec. 3003. Reserve fund for reconciliation legislation.

Sec. 3004. Deficit-neutral reserve fund for extending the State Children's Health Insurance Program.

Sec. 3005. Deficit-neutral reserve fund to strengthen American families.

Sec. 3006. Deficit-neutral reserve fund to promote innovative educational and nutritional models and systems for American students.

Sec. 3007. Deficit-neutral reserve fund to improve the American banking system.

Sec. 3008. Deficit-neutral reserve fund to promote American agriculture, energy, transportation, and infrastructure improvements.

Sec. 3009. Deficit-neutral reserve fund to restore American military power.

Sec. 3010. Deficit-neutral reserve fund for veterans and service members.

Sec. 3011. Deficit-neutral reserve fund for public lands and the environment.

Sec. 3012. Deficit-neutral reserve fund to secure the American border.

Sec. 3013. Deficit-neutral reserve fund to promote economic growth, the private sector, and to enhance job creation.

Sec. 3014. Deficit-neutral reserve fund for legislation modifying statutory budgetary controls.

Sec. 3015. Deficit-neutral reserve fund to prevent the taxpayer bailout of pension plans.

Sec. 3016. Deficit-neutral reserve fund relating to implementing work requirements in all means-tested federal welfare programs.

Sec. 3017. Deficit-neutral reserve fund to protect Medicare and repeal the Independent Payment Advisory Board.

Sec. 3018. Deficit-neutral reserve fund relating to affordable child and dependent care.

Sec. 3019. Deficit-neutral reserve fund relating to worker training programs.

Sec. 3020. Reserve fund for legislation to provide disaster funds for relief and recovery efforts to areas devastated by hurricanes and flooding in 2017.

Sec. 3021. Deficit-neutral reserve fund relating to protecting Medicare and Medicaid.

Sec. 3022. Deficit-neutral reserve fund relating to the provision of tax relief for families with children.

Sec. 3023. Deficit-neutral reserve fund relating to the provision of tax relief for small businesses.

Sec. 3024. Deficit-neutral reserve fund relating to tax relief for hard-working middle-class Americans.

Sec. 3025. Deficit-neutral reserve fund relating to making the American tax system simpler and fairer for all Americans.

Sec. 3026. Deficit-neutral reserve fund relating to tax cuts for working American families.

Sec. 3027. Deficit-neutral reserve fund relating to the provision of incentives for businesses to invest in America and create jobs in America.

Sec. 3028. Deficit-neutral reserve fund relating to eliminating tax breaks for companies that ship jobs to foreign countries.

Sec. 3029. Deficit-neutral reserve fund relating to providing full, permanent, and direct funding for the payment in lieu of taxes program.

Sec. 3030. Deficit-neutral reserve fund relating to tax reform which maintains the progressivity of the tax system.

Sec. 3031. Deficit-neutral reserve fund relating to significantly improving the budget process.

Appendix K: Example of 302(a) Committee Allocations

As required under section 302 of the 1974 Budget Act,⁴⁴³ the joint statement of managers in the House-Senate Conference Report includes allocations of budget authority and outlays to (1) the Committees on Appropriations of the House and Senate and (2) each of the authorizing committees for direct spending programs within their respective jurisdictions. For example, Social Security, Medicare, and Medicaid are “direct spending” under the jurisdiction of the Senate Finance Committee and, therefore, the Finance Committee receives allocations of budget authority and outlays for those programs.

The following excerpts, from the joint statement of managers for the FY 2016 budget resolution, allocates to the Committees on Appropriations of the House and Senate lump sums for discretionary budget authority and outlays for the budget year (as well as amounts for “appropriated entitlements”).⁴⁴⁴

The excerpts also display allocations to one of the House authorizing committees and several Senate authorizing committees for FY 2016.

TABLE 13.—ALLOCATION OF SPENDING AUTHORITY TO HOUSE COMMITTEE ON APPROPRIATIONS [In millions of dollars]

Table with 2 columns: Category and 2016. Rows include Base Discretionary Action (BA, OT), Global War on Terrorism (BA, OT), and Current Law Mandatory (BA, OT) with corresponding values in millions of dollars.

TABLE 14.—ALLOCATION BY HOUSE AUTHORIZING COMMITTEE [On-budget amounts in millions of dollars]

Table with 3 columns: Category, 2016, and 2016-2025. Rows include Agriculture (Current Law, Resolution Change) and Total (BA, OT) with corresponding values in millions of dollars.

[The entirety of Table 14 may be found on pp. 205-208 of the conference report at this link: https://www.govinfo.gov/content/pkg/CRPT-114hrpt96/pdf/CRPT-114hrpt96.pdf]

443 Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (1974)

444 For an explanation of appropriated entitlements see the section on “Foundational Concepts.”

**TABLE 15.—ALLOCATION OF SPENDING AUTHORITY
SENATE COMMITTEE ON APPROPRIATIONS**

[Fiscal year 2016, \$ billions]

Appropriations	Budget authority	Outlays
Revised Security Category Discretionary Budget Authority ¹	523.091	n/a
Revised Nonsecurity Category Discretionary Budget Authority ¹	493.491	n/a
General Purpose Outlays ¹	n/a	1,156.644
Memorandum:		
Subtotal	1,016.582	1,156.644
On-budget	1,011.307	1,151.295
Off-budget	5.275	5.349
Overseas Contingency Operations/Global War on Terrorism ²	96.287	48.798
Mandatory	964.049	956.128

**TABLE 16.—ALLOCATION OF SPENDING AUTHORITY
SENATE COMMITTEES OTHER THAN APPROPRIATIONS**

[Fiscal year 2016, \$ billions]

	2016	2016–2020	2016–2025
Agriculture, Nutrition, and Forestry:			
Budget Authority	128.680	654.944	1,322.686
Outlays	121.723	606.817	1,228.931
Armed Services:			
Budget Authority	159.207	848.760	1,851.710
Outlays	163.446	848.187	1,849.802
Banking, Housing and Urban Affairs:			
Budget Authority	24.680	116.744	214.389
Outlays	3.848	– 7.666	– 42.938
Commerce, Science, and Transportation:			
Budget Authority	17.905	100.960	205.334
Outlays	14.188	77.987	154.802
Energy and Natural Resources:			
Budget Authority	4.454	24.474	48.985
Outlays	4.465	24.478	49.211
Environment and Public Works:			
Budget Authority	41.672	211.645	420.414
Outlays	2.543	13.680	30.750
Finance:			
Budget Authority	2,179.304	12,340.566	29,433.590
Outlays	2,169.584	12,321.005	29,408.581

[The entirety of Table 16 may be found on p. 209 of the conference report at this link:
<https://www.govinfo.gov/content/pkg/CRPT-114hrpt96/pdf/CRPT-114hrpt96.pdf>]

Appendix L: Example of 302(b) Appropriations Sub-allocations

Following adoption of a Concurrent Resolution on the Budget, the House and Senate Budget Committees allocate spending among the various committees of the House and Senate, with all discretionary spending allocated in one lump sum to the House and Senate Appropriations Committees, respectively. These allocations to the full committees are called “302(a) allocations.” The Appropriations Committees then proceed to subdivide their allocations among their respective 12 subcommittees, 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. For example, following is the House Appropriations Committee 302(b) suballocations for FY 2021 ([H. Rept. 116-443](#)).

SUBALLOCATION OF BUDGET ALLOCATIONS FISCAL YEAR 2021 BUDGET AUTHORITY AND OUTLAYS
[In millions of dollars]

Subcommittee	Discretionary	Direct	Total
Agriculture:			
Budget authority	23,980	112,486	136,466
Outlays	24,150	92,902	117,052
Commerce, Justice, Science:			
Budget authority	71,473	342	71,815
Outlays	74,000	340	74,340
Defense:			
Budget authority	626,190	514	626,704
Outlays	646,172	514	646,686
Energy and Water:			
Budget authority	49,607		49,607
Outlays	49,000		49,000
Financial Services and General Government:			
Budget authority	24,636	23,024	47,660
Outlays	24,800	23,016	47,816
Homeland Security:			
Budget authority	50,718	1,870	52,588
Outlays	61,000	1,863	62,863
Interior, Environment:			
Budget authority	36,760	64	36,824
Outlays	36,750	65	36,815
Labor, Health and Human Services, Education:			
Budget authority	182,914	907,880	1,090,794
Outlays	196,200	907,266	1,103,466
Legislative Branch:			
All except Senate:			
Budget authority	4,198	123	4,321
Senate items:			
Budget authority	1,102	32	1,134
Total Legislative:			
Budget authority	5,300	155	5,455
Outlays	5,300	155	5,455
Military Construction, Veterans Affairs:			
Budget authority	102,648	126,202	228,850
Outlays	102,800	126,202	229,002
State, Foreign Operations:			
Budget authority	47,850	159	48,009
Outlays	50,500	159	50,659
Transportation, HUD:			
Budget authority	75,924		75,924
Outlays	139,500		139,500
Total:			
Budget authority	1,298,000	1,172,696	2,470,696
Outlays	1,410,172	1,152,482	2,562,654

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NOTE.—The amounts in this report do not include spending recommended in fiscal year 2021 appropriation bills that is eligible for adjustment to committee’s allocations under section 302 of the Congressional 1974 Budget Act of 1974. Those amounts will be included after the Committee reports legislation with eligible amounts. Amounts designated as being for an emergency requirement pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Deficit Control Act) and amounts provided pursuant to the 21st Century Cures Act (Public Law 114–255) do not count against the Committee’s allocations in the House of Representatives, consistent with the Congressional 1974 Budget Act of 1974.

Appendix M: Example of CBO Estimate on Unfunded Mandates

**Excerpt from CBO Cost Estimate on H.R. 5815
Department of Homeland Security Authorization Act for FY 2007
October 17, 2006**

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 5814 contains intergovernmental mandates as defined in UMRA because it would require certain public transportation agencies to conduct vulnerability assessments and to create and implement security plans. While CBO cannot estimate the aggregate costs of those mandates, based on information from industry and government sources, we estimate that the costs to state, local, and tribal governments would exceed the threshold (\$64 million in 2006, adjusted annually for inflation) in at least one of the first five years after enactment. The bill would authorize appropriations of funds to cover those costs.

Mandates on Public Transit Entities

H.R. 5814 would require certain public transportation agencies to conduct vulnerability

Assessments....

...CBO estimates that the aggregate costs to transit and ferry systems likely would exceed the threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation) in at least one of the first five years after enactment. The bill would authorize the appropriation of \$400 million in fiscal year 2007 to cover these costs.

Other Impacts

Other provisions of the bill would make several changes to existing grant programs for state, local, and tribal governments.... On balance, state, local, and tribal governments would benefit from provisions that require DHS to create, with input from local first responders and trade representatives, essential capabilities and voluntary standards for equipment and training.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 5814 would impose several private-sector mandates, as defined in UMRA, on rail carriers, transportation systems, and certain individuals. CBO estimates that the direct cost of complying with most of those mandates would be small and fall well below the annual threshold for private-sector mandates established by UMRA (\$128 million in 2006, adjusted annually for inflation). However, because the cost of one of the mandates would depend on regulations that have not yet been issued, CBO cannot determine whether the aggregate cost of all the private-sector mandates in the bill would exceed the annual threshold.

Vulnerability Assessments and Security Plans

Section 901 would require the Secretary of the Department of Homeland Security to establish by regulation standards, protocols, and procedures for vulnerability assessments and security plans for rail or public transportation systems....

Security Screening Inspection Claims

Section 914 would impose a new private-sector mandate on certain individuals filing claims for civil damages as a result of a security screening inspection....

Recurrent Aircraft Training

Section 916 would impose a new mandate on individuals applying for recurrent training to operate aircraft having maximum take-off weight of more than 12,500 pounds by requiring them to pay a fee for threat assessment as determined by DHS....

Prohibited Items on Passenger Aircraft...

For a complete text of this CBO report, see <http://www.cbo.gov/ftpdocs/76xx/doc7674/hr5814b.pdf>.

Appendix N: OMB Circular A-11 – Scope and Purpose

OMB Circulars and Bulletins are tools used by the Executive Office of the President to exercise managerial and policy direction over federal agencies. Circulars and Bulletins are generally intended to advance the priorities of the Administration and promote effective functioning of the government by providing uniform, detailed guidance to agencies. They provide policy guidance or processes over a broad range of subjects, ranging from detailed instructions on preparing agency budget requests to principles for determining allowable research costs at universities.⁴⁴⁵ Circular A-11 for FY 2023 was transmitted on August 6, 2021, by the OMB Acting Director to the heads of executive departments.⁴⁴⁶ The Circular's 1,028 pages is organized as follows:

PART 1—GENERAL INFORMATION

- Overview of the budget process
- Basic budget laws
- Terms and concepts
- Overview of scoring legislation
- Communications with the Congress and the public and clearance requirements

PART 2—PREPARATION AND SUBMISSION OF BUDGET ESTIMATES

- General Policies and Requirements
 - Summary of requirements
 - Policies, laws, and other general requirements for budget estimates
 - Personnel compensation, benefits, and related costs
- The Budget Submission
 - Basic justification materials
 - Rental payments for space and land
 - Information technology investments
- MAX Data and Other Materials Required after Passback
 - The budget data system
 - Development of baseline estimates
 - Policy and baseline estimates for budget authority, outlays, and receipts
 - Combined Schedule X (for data entry)
 - Object classification
 - Estimating employment levels
 - Budget Appendix
 - Sequestration

PART 3—Selected Actions Following Transmittal of the Budget

- Supplementals and Amendments
- Deferrals and Presidential proposals to rescind or cancel funds
- Investment transactions

PART 4—Instructions on Budget Execution

- Apportionment
 - Apportionment process
 - Apportionments under continuing resolutions
 - Agency operations in the absence of appropriations
- Budget Execution Reports

⁴⁴⁵ https://obamawhitehouse.archives.gov/omb/gils_gil-circ.

⁴⁴⁶ <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>.

- Other Reports
 - Procedures for monitoring federal outlays
 - Reports on unvouchered expenditures
 - Requirements for reporting Antideficiency Act violations
 - Administrative control of funds

PART 5—Federal Credit

PART 6—The federal Performance Framework for Improving Program and Service Delivery

- Overview of the federal Performance Framework
- Public Reporting
- The President’s Management Agenda, Cross-Agency Priority Goals and federal Performance Plan
- Agency Strategic Planning
- Annual Performance Planning and Reporting
- Agency Priority Goals
- Performance and Strategic Reviews
- Program and Project Management
- Managing Customer Experience and Improving Service Delivery
- Evaluation and Evidence-Building Activities

PART 7—Appendices

- Scorekeeping Guidelines
- Budgetary Treatment of Lease-Purchases and Leases of Capital Assets
- Crosswalk between Antideficiency Act and Title 31 of the U.S. Code
- Principles of Budgeting for Capital Asset Acquisitions

Appendix O: Largest Individual and Corporate Tax Expenditures

As explained above in the section on *Budget Concepts*, Tax Expenditures are reductions in tax liabilities that result from: excluding or exempting items from gross income (“tax exclusions”); deducting items from either gross income or adjusted gross income (“tax deductions”); granting preferential tax rates for certain items of income (“tax preferences”); applying credits to directly reduce taxes owed (“tax credits”); or deferring tax liability on certain types of income (“tax deferrals”).

Major Tax Expenditures (JCT Estimates for FY 2022)⁴⁴⁷

- Exclusion of Pension Contributions and Earnings, *Defined Contribution* Plans: \$199 billion
- Exclusion of Employer Contributions for Healthcare and Long-Term Care: \$190 billion
- Reduced Tax Rate on Dividends and Long-term Capital Gains: \$145 billion
- Exclusion of Pension Contributions and Earnings, *Defined Benefit* Plans: \$131 billion
- Credit for Children and Other Dependents: \$116 billion
- Earned Income Tax Credit: \$71 billion
- Reduced Rate on Active Income of Controlled-Foreign Corporations: \$63 billion
- Subsidies for insurance purchased through health benefit exchanges: \$53 billion
- 20-percent deduction for qualified business income: \$48 billion
- Exclusion of Capital Gains at Death: \$43 billion
- Deduction for Charitable Contributions: \$42 billion
- Exclusion of Untaxed Social Security and Railroad Retirement Benefits: \$42 billion
- Exclusion of Capital Gains on Sales of Principal Residences: \$40 billion
- Depreciation of Equipment in Excess of ADR: \$30 billion
- Deduction for Foreign-Derived Intangible Income for Business w/in the US: \$26 billion
- Deduction for Mortgage Interest, Owner-Occupied Residences: \$24 billion
- Credit for Increasing Research Activities: \$14 billion
- Credit for Low-Income Housing: \$10 billion

⁴⁴⁷ FY 2022 estimates, rounded. Jt. Comm. On Taxation., *Estimates of Federal Tax Expenditures for Fiscal Years 2020-2024*, Table 1 (2020), <https://www.jct.gov/publications/2020/jcx-23-20/>. See also Off. of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, *Analytical Perspectives – Tax Expenditures*, (2022), https://www.whitehouse.gov/wp-content/uploads/2022/03/ap_13_expenditures_fy2023.pdf; Cong. Budget Off., *The Distribution of Major Tax Expenditures in 2019* (October 27, 2021), <https://www.cbo.gov/publication/57413#data>; and Dept. of the Treasury, *Tax Expenditures*, accessed June 19, 2022: <https://home.treasury.gov/policy-issues/tax-policy/tax-expenditures>.

Appendix P: Glossary of Terms Frequently Used in the Budget Process

Following is list of terms frequently used in the budget process **excerpted (with updates, clarifications, and edits) from the following sources:** major budget process laws listed in Appendix B; the [GAO Glossary of Terms Used in the Federal Budget Process \(2005\)](#); and the [CBO Glossary \(2016\)](#).

A

Accounts: An Appropriation Account is the basic unit of an appropriation generally reflecting each unnumbered paragraph in an appropriation act. An appropriation account typically encompasses a number of activities or projects. The Office of Management and Budget (OMB), in consultation with the Department of the Treasury (Treasury), assigns account identification codes reflecting appropriations as enacted in appropriations laws.

Advance Appropriations: Budget authority provided in an appropriation act that becomes available one or more fiscal years after the fiscal year for which the appropriation act was enacted. The amount of the advance appropriation is included in the budget totals for the year in which it will become available. For example, a FY 2022 appropriation could provide that the budget authority for a specified activity would not become available until FY 2023, or later. The budget authority would be recorded in FY 2023.

Advance Funding: Budget authority provided in an appropriation act to obligate and disburse, in the current fiscal year, funds from a *succeeding year's appropriation*. Advance funding is a means to avoid making supplemental requests late in the fiscal year for entitlement programs in cases where the appropriations for the current year prove to be insufficient. When such budget authority is used (i.e., funds obligated), the budget records an increase in the budget authority for the fiscal year in which it is used and a reduction in the budget authority for the following fiscal year.

Allocation:

For purposes of section **302(a)** of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. § 633(a)), an allocation is the distribution of spending authority and outlays to relevant *committees* based on the levels contained in a concurrent resolution on the budget.

For purposes of section **302(b)** of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. § 633(b)), an allocation is the distribution of spending authority and outlays to relevant *subcommittees* based on the levels contained in the concurrent resolution on the budget.

For **OMB funds control** purposes, an allocation is a further subdivision of an apportionment.

Allotment: An authorization by either the agency head or another authorized employee to his/her subordinates to incur obligations within a specified amount. Each agency makes allotments pursuant to specific procedures it establishes within the general apportionment requirements stated in OMB Circular No. A-11. The amount allotted by an agency cannot exceed the amount apportioned by the Office of Management and Budget (OMB).

Allowance:

As used by Congress in the concurrent resolutions on the budget, an allowance represents a special functional classification designed to include an amount to cover possible requirements. An allowance remains undistributed until the contingency on which it is based occurs; then it is distributed to the appropriate functional classification.

For agency budgetary accounting and fund control purposes, an allowance is a subdivision of an allotment.

Antideficiency Act: A federal law that: prohibits the making of expenditures or the incurring of obligations in advance of an appropriation; prohibits the incurring of obligations or the making of expenditures in excess of amounts available in appropriations unless specifically authorized by law (31 U.S.C. § 1341(a)); prohibits the acceptance of voluntary or personal services unless authorized by law (31 U.S.C. § 1342); requires the Office of Management and Budget (OMB), via delegation from the President, to apportion appropriated funds and other budgetary resources for all executive branch agencies (31 U.S.C. § 1512); requires a system of administrative controls within each agency (see 31 U.S.C. § 1514 for the administrative divisions established); prohibits incurring any obligation or making any expenditure in excess of an apportionment or reapportionment or in excess of other subdivisions established pursuant to sections 1513 and 1514 of title 31 of the United States Code (31 U.S.C. § 1517); and specifies penalties for deficiencies. (GAO) For more background, see the section of this primer on “*Antideficiency Act and Shutdowns*” under “Appropriations and the Budget Process.”

Apportionment: The action by which the Office of Management and Budget (OMB) distributes amounts available for obligation in an appropriation or fund account. An apportionment divides amounts available for obligation by specific time periods (usually quarters), activities, projects, objects, or a combination thereof. The amounts so apportioned limit the amount of obligations that may be incurred. An apportionment may be further subdivided by an agency into allotments, sub-allotments, and allocations. In apportioning any account, some funds may be reserved to provide for contingencies or to effect savings. The apportionment process is intended to (1) prevent the obligation of amounts available within an appropriation or fund account in a manner that would require supplemental appropriations and (2) achieve the most effective and economical use of amounts made available for obligation.

Appropriated Entitlement: The largest block of federal spending (about two-thirds) is called “direct spending” because the outlays flow directly from legal obligations of the federal government established in authorizing legislation. Most direct spending is comprised of “entitlement programs” that legally obligate the United States to make *formula-driven payments to eligible individuals or entities*; however, funds must still be appropriated to cover those payments as required by Article I, Section 9 of the Constitution. Some entitlement programs, such as Social Security, are permanently appropriated. Others, including Medicaid and certain veterans’ programs, are annually appropriated—comprising more than a third of annual appropriations acts⁴⁴⁸—and are referred to as “appropriated entitlements” Both permanently appropriated and annually appropriated entitlements share the common characteristic that the annual outlays of the program have been determined *outside of the appropriations process* through the establishment of payment formulas, eligibility criteria, and a federal legal obligation set forth in authorizing legislation.

Appropriation Act: A statute, under the jurisdiction of the House and Senate Committees on Appropriations, which provides budget authority (legal authority) for federal agencies to enter into obligations that result in outlays. The 12 Appropriations subcommittees in each chamber, each draft an annual appropriations bills providing budget authority to the agencies and programs under their jurisdiction.

The 12 annual bills are (1) Agriculture-Rural Development-FDA; (2) Commerce-Justice-Science; (3)

⁴⁴⁸ [Entitlements and Appropriated Entitlements in the Federal Budget Process](#), Cong. Rsch. Serv., RS20129, 1 (November 26, 2012).

Defense; (4) Energy-Water; (5) Financial Services and General Government; (6) Homeland Security; (7) Interior-Environment; (8) Labor-Health and Human Services-Education; (9) Legislative Branch; (10) Military Construction-Veterans Affairs; (11) State-Foreign Operations; and (12) Transportation-HUD. Following subcommittee and full committee action on the individual appropriation bills, *several* may be packaged into a “minibus” for Floor consideration, or *all* the bills may be packaged into an “omnibus” appropriation act.

An appropriation act fulfills the requirement of Article I, Section 9, of the U.S. Constitution, which provides that “no money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” All expenditures must eventually be appropriated, including entitlement authority and contract authority which may be permanently appropriated or annually appropriated (see Appropriated Entitlements).

Major types of appropriation acts are regular, supplemental, and continuing. Regular appropriation acts are the 12 annual bills. Supplemental appropriations provide additional budget authority for the current fiscal year. When action on regular appropriation bills is not completed before the beginning of the new fiscal year, a continuing resolution (often referred to as a “CR”) may be enacted in a bill or joint resolution to continue funding—at a specified rate—for the affected agencies up to a specified date or sometimes for the full fiscal year.

Appropriations Rider: Sometimes used to refer to (1) a provision that is not related to the appropriation to which it is attached or (2) a limitation or requirement in an appropriation act.

Asset Sale: The sale of a physical or financial asset owned in whole or in part by the federal government to the public. Asset sales are typically large-dollar transactions (\$50 million or more) for which advance notification must be provided to the Department of the Treasury. Revenue from the sale of assets is accounted for in the budget as offsetting receipts or collections. In general, asset sales increase current cash payments received by the government at the expense of a stream of future income that the government would otherwise receive.

Authorizing Committees / Authorizing Legislation: A standing committee of the House or Senate with legislative jurisdiction over the establishment, continuation, and operations of federal programs or agencies. The House and Senate each have 17 authorizing committees (see Table 1). The jurisdiction of such committees extends to *authorization of appropriations* legislation (which requests specified or general levels of funding from the Appropriations Committees), and also extends to *creation of direct spending authority*—including entitlement programs and contract authority. **Direct spending** permits authorizing committees to “spend directly,” i.e., outside the annual appropriations process, by providing entitlement authority, contract authority, or other spending authority to agencies to enter into obligations that will result in federal outlays. (Although authorizing committees control the levels of direct spending obligations, payments to discharge these obligations must nevertheless be appropriated permanently, through multiyear appropriations, or annually (in appropriated entitlements).

Automatic stabilizers: Changes in federal revenues and outlays attributable to cyclical movements in the economy. During economic slowdowns, revenues fall, and outlays rise for unemployment insurance, nutrition assistance and other safety net programs. These changes help support the economy by cushioning the fall in after-tax income.

B

Backdoor Authority/Backdoor Spending: A colloquial phrase for budget authority provided in laws other than appropriations acts, including contract authority and borrowing authority, as well as entitlement authority and the outlays that result from that budget authority.

Balanced Budget: A budget in which receipts equals outlays for a fiscal year.

Baseline: A benchmark for measuring the budgetary effects of proposed changes in federal revenues or spending. The baseline is the projection of current-year levels of spending and revenues into future years, assuming the continuation of current laws and policies, and adjusting for inflation and other factors. The baseline is described in the Congressional Budget Office’s (CBO) annual report for the House and Senate Budget Committees, *The Budget and Economic Outlook*, which is typically published in January. In most years, the CBO baseline is revised in conjunction with CBO’s analysis of the President’s budget, which is usually issued in March, and again during the summer. The “March” baseline is generally the benchmark for measuring the budgetary effects of proposed legislation under consideration by Congress.

BBEDCA: Balanced Budget and Emergency Deficit Control Act of 1985. Also known as the Deficit Control Act, originally known as Gramm-Rudman-Hollings. Among other changes to the budget process, the law established “maximum deficit amounts” and a sequestration procedure to reduce spending if those targets were exceeded. The Deficit Control Act has been amended and extended several times— most significantly by the Budget Enforcement Act (BEA) of 1990 and the Budget Control Act of 2011 (BCA).

BEA: Budget Enforcement Act, first enacted as Title XIII of the Omnibus Budget Reconciliation Act of 1990. The BEA amended the Balanced Budget and Emergency Deficit Control Act of 1985 and related amendments (Gramm-Rudman-Hollings) and the Congressional Budget and Impoundment Control Act of 1974. The BEA modified procedures and definitions for sequestration and deficit reduction, reformed budgetary credit accounting, maintained the off-budget status of the Old-Age and Survivors Insurance and Disability Insurance Trust Funds, and removed Social Security trust fund receipts and outlays from deficit and sequestration calculations through fiscal year 1995. Public Law 103–66 (1993) extended the discretionary spending limits, pay-as-you-go (PAYGO) rules, and sequestration procedures through fiscal year 1998. The BEA of 1997, enacted as part of the Balanced Budget Act of 1997, further extended these budget enforcement mechanisms through fiscal year 2002. The BEA of 1997 also added new categories of discretionary spending and made technical and conforming changes to correct drafting errors in the BEA of 1990.

Biennial Budget: A budget covering a period of two years. The federal government has an annual budget, but there have frequently been proposals to shift to a biennial budget. The two-year period could apply to the budget presented to Congress by the President, to the budget resolution adopted by Congress, or to the frequency and period covered by appropriations acts.

Borrowing Authority: Budget authority enacted to permit an agency to borrow money and then to obligate against amounts borrowed.

Budget: A detailed statement of anticipated revenues and expenditures during an accounting period. For the federal government, the term “budget” often refers to the President’s budget submission to Congress early each calendar year in accordance with the Budget and Accounting Act of 1921, as amended, and represents proposals for congressional consideration.

Budget Act: The common name of the Congressional Budget and Impoundment Control Act of 1974.

Budget Amendment: A revision to a pending budget request that the President submits to Congress before Congress completes appropriations action.

Budget Authority: “Budget authority,” (usually referred to as “BA”) is authority provided by federal law to enter into financial obligations that will result in immediate or future outlays. The basic forms of budget authority include (1) appropriations, (2) contract authority, (3) borrowing authority, and (4) authority to obligate and expend offsetting receipts and collections. Budget authority includes the credit subsidy cost for direct loan and loan guarantee programs, but does not include the underlying authority to insure or guarantee the repayment of indebtedness incurred by another person or government. Budget authority may be classified by its duration (1-year, multiple-year, or no-year), by the timing provided in the legislation (current or permanent), by the manner of determining the amount available (definite or indefinite), or by its availability for new obligations.

Budget Functions: In the President’s Budget and the concurrent resolution on the budget, federal spending (i.e., budget authority and outlays) is divided into 20 conceptual categories known as “budget functions,” as displayed in Appendix C. This is a system of classifying spending according to the national needs being addressed without regard to department or agency. For example, the National Defense function—Function 050—includes expenditures of the Department of Defense, as well as defense-related activities of the Energy Department and other agencies. The President’s Budget and budget resolution allocate budget authority and outlays among the 20 functions in the federal budget for analytical purposes. A function may be divided into two or more subfunctions, depending upon the complexity of the national needs being addressed.

Budget Reconciliation: Under section 310 of the Congressional Budget Act of 1974 (2 U.S.C. § 641), a budget resolution *may* contain reconciliation instructions, which direct congressional authorizing committees to make changes in laws under their jurisdictions that affect revenues or direct spending to achieve a specified budgetary result—raising or decreasing spending, revenues or deficits. Reconciliation instructions prescribe dollar amounts, without reference to particular programs. Legislation reported by authorizing committees in fulfilling their reconciliation instructions is packaged by the respective House and Senate Budget Committees, without change, into a reconciliation bill for House and Senate consideration. Reconciliation bills, similar to budget resolutions, are protected by expedited procedures and may not be filibustered in the Senate. The Senate prohibits *non-budgetary* provisions in reconciliation bills, enforced by the Byrd Rule point of order. See section in this primer on *Reconciliation Instructions: Changes to Entitlements and Tax Provisions*.

Budget Resolution: See **Concurrent Resolution on the Budget**.

Budget Sequestration: See **Sequestration**.

Budgetary Resources: Refers to new budget authority (including direct spending authority provided in existing law and obligation limitations) and unobligated balances of budget authority provided in previous years.

Budget Update: A revised estimate of budget authority, receipts, and outlays issued subsequent to the issuance of the President’s budget. The President is required by provisions of the Congressional Budget and Impoundment Control Act of 1974 (see provisions of 31 U.S.C. §§ 1105(d), 1106) to transmit such statements to Congress by July 15 of each year; however, the President may also submit budget updates at other times during the fiscal year.

Byrd Bath: A colloquial term referring to a “scrub” of a budget reconciliation bill for “extraneous,” i.e., non-budgetary provisions, which violate the Byrd Rule.

Byrd Rule: A rule of the Senate that allows a senator to strike “extraneous,” i.e., non-budgetary material in, or proposed to be in, reconciliation legislation or the related conference report. The rule defines six types of provisions that are “extraneous,” including a provision that does not produce a change in outlays or revenues and a provision that produces changes in outlays or revenues that are merely incidental to the nonbudgetary components of the provision. (See the section of this primer for a complete explanation of the Byrd Rule.) The Byrd Rule was first enacted as section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 and later transferred in 1990 to section 313 of the Congressional Budget Act (2 U.S.C. § 644). The rule is named after its primary sponsor, Senator Robert C. Byrd of West Virginia.

C

Capital Budget: A budget that segregates capital investments from the operating budget’s expenditures. In such a budget, the capital investments that are excluded from the operating budget do not count toward calculating the operating budget’s surplus or deficit at the time the investment is made. States that use capital budgets usually include only part of their capital expenditures in that budget and normally finance the capital investment from borrowing and then charge amortization (interest and debt repayment) to the operating budget. (GAO)

Collections: Amounts received by the federal government during the fiscal year. Collections are classified into three major categories: (1) governmental receipts (also called budget receipts or federal receipts), (2) offsetting collections, and (3) offsetting receipts. Governmental receipts (including taxes) result from the exercise of the government’s sovereign powers. Offsetting collections and receipts result from businesslike transactions with the public or transactions between appropriated activities. Offsetting collections and offsetting receipts are recorded as *offsets to spending*. They are offsetting collections when the collections are authorized by law to be credited to expenditure accounts. Otherwise, they are deposited in receipt accounts and called offsetting receipts.

Committee Allocation: See “Allocation.”

Concurrent Resolution on the Budget: The Concurrent Resolution on the Budget, established by the 1974 Budget Act, is a congressional blueprint to guide subsequent congressional action on spending and revenue measures. As a concurrent resolution of Congress it is *not* presented to the President and does *not* become law.

It *must* include: Total spending ceilings (budget authority and outlays) and revenue floors for at least five fiscal years; a nonbinding allocation of new budget authority and outlays among 20 categories known as budget functions; deficit (or surplus) and debt levels projected to result from the spending and revenue totals; outlays and revenues for the off-budget Social Security insurance programs displayed separately; and (in its report language) enforceable allocations of spending to each committee of the House and Senate, including a lump-sum to the Appropriations Committees for all discretionary spending.

It *may* include: special procedures to enforce the budget resolution; special provisions called “budget reconciliation instructions” aimed at expediting changes to direct spending programs or tax laws through a filibuster-proof budget reconciliation bill; and budget resolution reserve funds to permit adjustments in committee allocations and revenue and spending totals to accommodate specific legislation.

The budget resolution's spending and revenue totals, functional allocations, committee allocations, and reconciliation instructions (if any), do not mention specific programs or budget accounts, although the numbers are based on specific (though non-binding) programmatic assumptions made by the Budget Committees.

Congressional Budget Act: Titles I–IX of the Congressional Budget and Impoundment Control Act of 1974, as amended (2 U.S.C. §§ 601–661), are commonly referred to as the Congressional Budget Act. (Title X is the Impoundment Control Act.)

Consolidated Budget: See Unified Budget.

Consumer Price Index (CPI): A measure of inflation that affects annual spending and revenues, including Social Security payments and tax brackets. Measures for two population groups are currently published, CPI-U and CPI-W. CPI-U is based on a market basket determined by expenditure patterns of all urban households, while the market basket for CPI-W is determined by expenditure patterns of only urban wage-earner and clerical-worker families. Both indexes are published monthly by the Bureau of Labor Statistics.

Continuing Resolution: An appropriation act that provides budget authority for federal agencies to continue in operation when Congress and the President have not completed action on the regular appropriation acts by the beginning of the fiscal year. Enacted in the form of a joint resolution, a continuing resolution is passed by both houses of Congress and signed into law by the President. A continuing resolution may be enacted for the full year, up to a specified date, or until regular appropriations are enacted. A continuing resolution usually specifies a maximum rate at which the obligations may be incurred. For example, the resolution may state that obligations may not exceed the *current rate* (see below) or must be the lower of the amounts provided in the appropriation bills passed in the House or Senate.

The *current rate* is the total amount of budget authority that was available for obligation for a particular activity during the fiscal year immediately prior to the one for which a continuing resolution is enacted. Congress often uses the “current rate” as part of a formula to indicate a level of spending that it desires for a program for the duration of the continuing resolution. Current rate funding does not allow agencies to fund new initiatives or programs for the new fiscal year unless Congress specifically authorizes them to be funded.

Contract Authority: Budget authority that permits an agency to incur obligations in advance of appropriations. Contract authority is unfunded, and a subsequent appropriation or offsetting collection is needed to liquidate the obligations.

Cost Estimates: Under the Congressional Budget Act of 1974, estimates of the impact legislation under consideration by Congress would have on the federal budget if the legislation became law. Cost estimates are provided by the Congressional Budget Office (CBO) on all legislation reported by a congressional committee and are, typically, published in the report accompanying that legislation.

Countercyclical Policy: Fiscal (budgetary) and monetary policy aimed at reducing the size and duration of swings in economic activity in order to keep economic growth closer to a pace consistent with low inflation and high employment. It includes monetary and fiscal policies affecting the level of interest rates, money supply, taxes, and government spending.

Credit Authority: Authority to incur direct loan obligations or to incur primary loan guarantee commitments.⁴⁴⁹

Credit Subsidy: The estimated long-term cost to the federal government of a direct loan or loan guarantee. For direct loans, the subsidy cost is the net present value of loan disbursements minus repayments of interest and principal, adjusted for estimated defaults, prepayments, fees, penalties, and other recoveries. For loan guarantees, the subsidy cost is the net present value of estimated payments by the government to cover defaults and delinquencies, interest subsidies, or other payments, offset by any payments to the government, including origination and other fees, penalties, and recoveries.

Current Level Estimate: An estimate of the amounts of new budget authority, outlays, and revenues for a full fiscal year, in *enacted* legislation. Current level estimates include a tabulation comparing the estimates with the aggregates approved in the most recent budget resolution. Section 308(b) of the Congressional Budget and Impoundment Control Act of 1974, as amended (2 U.S.C. § 639(b)), requires the House and Senate Budget Committees to make this tabulation at least once a month. The Congressional Budget Office (CBO) assists these committees by regularly submitting reports of the budgetary impact of congressional actions.

Current Services Estimates: Estimates submitted by the President of the levels of budget authority and outlays for the budget year based on the continuation of existing levels of service. These estimates reflect the anticipated costs of continuing federal programs and activities at present levels without policy changes. Such estimates ignore all new presidential or congressional initiatives, including reductions or increases that are not yet law. With the proposed budget each year, the President must transmit current services estimates and the economic assumptions upon which they are based. Updated current services estimates for mandatory programs are also included in the Mid-Session Review of the President’s budget. The Congressional Budget Office (CBO) also prepares similar estimates included in the Budget and Economic Outlook in January.⁴⁵⁰

D

Debt and Deficits: A budget deficit (or surplus) is the difference between outlays and revenues for a given fiscal year. In contrast to an annual deficit, the federal *debt* is the *accumulated* debt of the federal government. Whenever the federal government runs a budget deficit, the additional borrowing to finance that deficit adds to the federal debt. By contrast, whenever the federal government runs a budget surplus, as it did during Fiscal Years 1998 through 2001, the federal debt may decrease because the Treasury uses the surplus to redeem outstanding debt, rather than borrowing additional funds to redeem the debt (known as “rolling over the debt”).

- **Gross or Total Public Debt:** Gross or total public debt includes the sum of: (1) *debt-held-by-the-public* (debt held by individuals, corporations, state or local governments, the Federal Reserve System, foreign governments and central banks); plus (2) *debt held by government accounts* (or “intragovernmental debt”), for example, debt held by the Social Security, Medicare, and retirement trust funds.

⁴⁴⁹ Balanced Budget and Emergency Deficit Control Act of 1985 (“BBEDCA”), Pub. L. No. 99-177, § 201(a)(1), 99 Stat. 1037 (1985).

⁴⁵⁰ See CBO Budget and Economic Outlook at: <https://www.cbo.gov/about/products/major-recurring-reports>.

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- ***Debt-held-by-the-public***: One of the two large components of gross federal debt, the other being intragovernmental debt. Debt-held-by-the-public is the portion of gross federal debt held outside the federal government. This includes federal debt held by individuals, corporations, state or local governments, the Federal Reserve System, foreign governments and central banks. Debt held by government accounts (intragovernmental debt) is excluded from debt-held-by-the-public. Important note: Debt-held-by-the-public is different from public debt, the latter being a colloquialism for gross federal debt.
- ***Debt Held by Government Accounts (Intragovernmental Debt)***: One of the two large components of gross federal debt, the other being debt-held-by-the-public. Debt held by government accounts is debt owed by the federal government to itself; therefore, it does not compete with the private sector for available funds in the credit market. Most of intragovernmental debt is held by trust funds, such as Social Security, Medicare and federal retirement trust funds.
- ***Debt Subject to Statutory Debt Limit***: The Constitution, in Article I, Section 8 grants Congress the power to “borrow Money on the credit of the United States,” thus mandating that Congress exercise control over the public debt.⁴⁵¹ Since ratification of the Constitution, Congress has placed restrictions of various types on federal borrowing, for example, in the Second Liberty Bond Act of 1917.⁴⁵² In 1939, Congress enacted the first aggregate limit covering nearly all federal debt, and commonly referred to as the “debt limit” or “debt ceiling.”⁴⁵³ Since that time, when the activities of the federal government require a higher limit, Congress enacts a law to raise the debt limit.

The debt limit roughly approximates gross (total) public debt, which includes: *Debt-held-by-the-public* (debt held by individuals, corporations, state or local governments, the Federal Reserve System, foreign governments and central banks); plus, *Debt held by federal government accounts* (also known as intragovernmental debt), for example, debt held by the Social Security, Medicare, and retirement trust funds.

The debt limit requires increases for two reasons. First, total public debt grows because of deficits that occur when Congress approves federal spending in excess of revenues. When the federal government’s total spending in a fiscal year exceeds total revenues, the Treasury finances the difference by borrowing, which increases debt-held-by-the-public. Second, total public debt grows when government trust funds have surpluses which are required to be invested in Treasury securities.⁴⁵⁴ (See the section of this primer on *Federal Debt and the Statutory Limit*.)

⁴⁵¹ U.S. Const., art. I, §8, cl. 2.

⁴⁵² Second Liberty Bond Act of 1917, 49 Stat. 21. See D. Andrew Austin, Cong. Rsch. Serv., RL31967, *The Debt Limit: History and Recent Increases*, Summ. (November 2, 2015), accessed at <https://crsreports.congress.gov/product/pdf/RL/RL31967/139>; and D. Andrew Austin, Cong. Rsch. Serv., R43389, *The Debt Limit Since 2011* (April 1, 2021), accessed at: <https://crsreports.congress.gov/product/pdf/R/R43389/63>.

⁴⁵³ A Bill to Amend the Second Liberty Bond Act, Pub. L. No. 76-201, 53 Stat. 1071, codified at 31 USC 3101, accessed at: <https://uscode.house.gov/statviewer.htm?volume=53&page=1071>.

⁴⁵⁴ See Cong. Budget Off., *The Outlook for Major Federal Trust Funds: 2020 to 2030*, Table 1 (September 2020), <https://www.cbo.gov/publication/56541>.

- **Debt Service:** Payment of interest on, and repayment of principal on, borrowed funds. The term may also be used to refer to payment of interest alone.

Deeming Resolution: An informal term that refers to a resolution or bill passed by one or both houses of Congress that in the absence of a concurrent resolution on the budget, serves for the chamber passing it as an annual budget resolution for purposes of establishing enforceable budget levels. At a minimum, deeming resolutions provide new spending allocations to the appropriations committees, but they also may set new aggregate budget levels, and provide revised spending allocations to other House and Senate committees. A deeming resolution may declare that a budget resolution (in its entirety), passed earlier in the session by one house is deemed to have the force and effect as if adopted by both houses.

Deferral of Budget Authority: Temporary withholding or delaying of the obligation of budget authority until later in a fiscal year. Under the Impoundment Control Act of 1974 (2 U.S.C. § 684), budget authority may only be deferred to provide for contingencies, to achieve savings or greater efficiency in the operations of the government, or as otherwise specifically provided by law. Budget authority may not be deferred for policy reasons. Deferrals may be proposed by agencies but must be communicated to Congress by the President in a special message. Deferred budget authority may be withheld without further action by Congress. Congress may disapprove a deferral by law. A deferral may not extend beyond the end of the fiscal year of the budget authority’s availability. However, for multiyear funds, the President may re-report the deferral the next fiscal year. Deferred budget authority that is disapproved by Congress must be made available immediately. Agencies must release all other deferred budget authority with sufficient time remaining in the fiscal year to prudently obligate that budget authority before the end of the fiscal year.

Deficiency Apportionment: The head of an executive branch agency may request a deficiency apportionment if (1) a new law is enacted requiring unanticipated expenditures beyond administrative control or (2) an emergency arises involving the safety of human life or the protection of property. Approval for requests for such an apportionment does not authorize agencies to exceed available resources within an account.

Direct Spending: Budget authority provided by authorizing laws outside the annual appropriations process. As defined by the Balanced Budget and Emergency Deficit Control Act of 1985, direct spending includes entitlement authority, Food Stamp Program (now called SNAP),⁴⁵⁵ and budget authority provided by law other than appropriations acts. Under the Statutory Pay-As-You-GO Act of 2010, new direct spending is subject to pay-as-you-go (PAYGO) requirements.

Disbursements: Amounts paid by federal agencies, by cash or cash equivalent, during a fiscal year to liquidate government obligations. “Disbursement” is used interchangeably with the term “outlay.”

Discretionary spending: The budget authority that is provided and controlled by appropriation acts and the outlays that result from that budget authority. Contrast with **entitlements**, the spending for which is determined by automatic spending formulas set forth in authorizing statutes.

Discretionary Spending Limits (or Caps): Statutory ceilings imposed for a fiscal year on total discretionary spending, or on subcategories of discretionary spending, and enforced by automatic across-the-board cuts (sequestration) to eliminate any overages. Spending limits were first imposed by the Budget Enforcement Act of 1990 (BEA), were applied to budget authority *and* outlays, and were eventually extended through FY 2002. *See the section of this primer on the BEA.* Spending limits were

⁴⁵⁵ Supplemental Nutrition Assistance Program (replacing the Food Stamp Program).

again imposed by the Budget Control Act of 2011 (BCA) for each year through FY 2021, but applied to budget authority only. The BCA spending caps were automatically reduced by a “Joint Committee trigger” in 2012 and were subsequently referred to as “sequester caps.” However, the sequester caps were, in large part, rolled back by a series of four Bipartisan Budget Acts. *See the section of this primer on the BCA.* The spending caps expired in FY 2021.

E

Earmarks: The term “earmark” colloquially refers to three distinct types of Member-driven benefits placed in bill or report language: (1) congressional spending earmarks; (2) limited tax benefits; and (3) limited tariff benefits.

- **Congressional earmark** (in House Rules) or congressionally directed spending item (in Senate Rules) refers to a spending provision placed in bill or report language—at the request of a Member or Senator—that provides, authorizes, or recommends spending authority for “an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.”
- **Limited tax benefit**, in the House, refers to a provision that provides tax benefits aimed at 10 or fewer beneficiaries with eligibility criteria that are not applied uniformly, or a provision providing tax transition relief aimed at one beneficiary. A similar provision in the Senate applies to tax benefits for “a particular beneficiary or a limited group of beneficiaries” but without the 10-beneficiary threshold in the House Rule.
- **Limited tariff benefit** refers to provisions “modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.”

For current rules regarding earmarks, see the section of this primer: *Earmarks: the Disclosure Requirements and the Return of Spending Earmarks.*

Emergency: A term that usually modifies “appropriation,” “legislation,” or “supplemental.” Under procedures typically prescribed in concurrent resolutions on the budget, the House or the Senate, or their respective committees of jurisdiction, may designate proposed appropriations or other legislation as “emergency legislation” and thereby exempt any new budget authority, outlays, or receipts resulting from such legislation from specified enforcement provisions in the Congressional Budget Act, the concurrent resolution on the budget, or the 2010 statutory PAYGO law.

Enhanced Rescission: Legislative proposals that would allow the President to withhold funds from obligation upon proposing a rescission and to continue withholding the funds unless and until Congress acts to disapprove the presidential proposal to rescind funds. The President could then veto the disapproval bill, forcing each house to muster a two-thirds majority to override the veto. This would be a reversal of current Impoundment Control Act procedures that require funds proposed for rescission to be released after 45 days *unless* Congress approves, by law, all or part of the amount proposed to be rescinded by the President. In 1996, Congress enacted the Line Item Veto Act, similar to enhanced rescission, which authorized the President, after signing a bill into law, to cancel in whole any dollar amount of discretionary budget authority, any item of new direct spending, or any limited tax benefit if the President made certain determinations. The act provided that the cancellation was effective unless Congress enacted a disapproval bill into law to void the cancellation (effectively requiring a veto proof majority in both chambers). In 1998, the United States Supreme Court in *Clinton v. City of New York*, 524

U.S. 417 (1998), held that the Line Item Veto Act violated the Presentment Clause, Article 1, Section 7, of the U.S. Constitution. Compare with **Line Item Veto**.

Entitlement Authority: Benefit programs established by authorizing legislation, such as Social Security, Medicare and Medicaid, legally obligating the federal government to pay specified benefits to eligible individuals. From a budgetary perspective, the fundamental characteristic of an entitlement is the absence of annual, discretionary decisions on funding levels. Instead, *payment formulas* and *eligibility rules* included in laws establishing the entitlement programs determine how much money the federal government is legally obligated to pay.⁴⁵⁶

F

Federal Credit: Defined by the Federal Credit Reform Act of 1990 (FCRA) as federal direct loans and federal loan guarantees.

- **Credit Reform:** The method of controlling and accounting for credit programs in the federal budget after FY 1991. FCRA added title V to the Congressional Budget Act of 1974. It requires that the credit subsidy cost be financed from new budget authority and be recorded as budget outlays at the time the direct or guaranteed loans are disbursed. Agencies must have appropriations for the subsidy cost before they can enter into direct loan obligations or loan guarantee commitments.
- **Credit Subsidy Cost:** The estimated long-term cost to the government of a direct loan or loan guarantee, calculated on a net present value basis⁴⁵⁷ and excluding administrative costs.
- **Direct Loan Subsidy Cost:** The estimated long-term cost to the government of a direct loan, excluding administrative costs. Specifically, the subsidy cost of a direct loan is the net present value, at the time when the direct loan is disbursed from the financing account, of the estimated loan disbursements, repayments of principal, payments of interest, recoveries or proceeds of asset sales, and other payments by or to the government over the life of the loan. These estimated cash flows include the effects of estimated defaults, prepayments, fees, penalties, and expected actions by the government and the borrower within the terms of the loan contract.
- **Guaranteed Loan Subsidy Cost:** The estimated long-term cost to the government of a loan guarantee, excluding administrative costs. The Federal Credit Reform Act of 1990 (FCRA) specifies that the credit subsidy cost of a loan guarantee is the net present value, at the time a guaranteed loan is disbursed by the lender, of the following cash flows: (1) estimated payments

⁴⁵⁶ The term “entitlement authority” was first defined in the Balanced Budget and Emergency Deficit Control Act of 1985 (“BBEDCA”), Pub. L. No. 99-177, § 201(a)(1), 99 Stat. 1037 (1985). That definition incorporated by reference section 401(c)(2)(C) of the 1974 Budget Act which described “spending authority... to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law.” Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 401(c)(2)(C), 88 Stat. 297, 317-18.

⁴⁵⁷ See U.S. Gov't Accountability Off., GAO-05-734SP, A Glossary of Terms Used in the Federal Budget Process, 51-52 (2005), <https://www.gao.gov/new.items/d05734sp.pdf>.

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by the government to cover defaults, delinquencies, interest subsidies, or other payments and (2) the estimated payments to the government, including origination and other fees, penalties, and recoveries.

- **Direct Loan:** A disbursement of funds by the government to a nonfederal borrower under a contract that requires the repayment of such funds either with or without interest. Under credit reform, the budget records the credit subsidy cost of direct loans as outlays.
- **Direct Loan Obligation:** A binding agreement by a federal agency to make a direct loan when the borrower fulfills specified conditions. Under credit reform, direct loan obligations are composed of obligations for both the credit subsidy cost and the unsubsidized amounts of the loan. Only the credit subsidy cost is recorded as a budgetary obligation.
- **Guaranteed Loan:** A nonfederal loan to which a federal guarantee is attached. The loan principal is recorded as a guaranteed loan regardless of whether the federal guarantee is full or partial. For the purposes of the Federal Credit Reform Act of 1990 (FCRA), a loan guarantee is defined as any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a nonfederal borrower to a nonfederal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions. Under credit reform, the budget records the credit subsidy cost of guaranteed loans as outlays.
- **Loan Guarantee Commitment:** A binding agreement by a federal agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

Federal Financing Bank: A government corporation created by the Federal Financing Bank Act of 1973 under the general supervision of the Secretary of the Treasury. FFB was established to (1) finance federal and federally assisted borrowings in ways that least disrupt private markets, (2) coordinate such borrowing programs with the government’s overall fiscal policy, and (3) reduce the costs of such borrowing from the public. FFB provides financial assistance to or on behalf of federal agencies by (1) making direct loans to federal agencies to help them fund their programs, (2) purchasing loan assets from federal agencies, and (3) making direct loans to nonfederal borrowers (including foreign governments) that are secured by federal agency guarantees against risk of default by borrowers on loan principal and interest payments. FFB obtains funds by borrowing from the Department of the Treasury.⁴⁵⁸

Federal Reserve System: The central bank of the United States. The federal Reserve is responsible for conducting the nation’s monetary policy and overseeing credit conditions.

Fiscal policy: The government’s tax and spending policies, which influence the amount and maturity of government debt as well as the level, composition, and distribution of national output and income. Contrast with **monetary policy**.

Fiscal Year: In order to keep track of its revenues and expenditures in an orderly way, the federal government has established a 12-month period known as the “fiscal year” (FY). The fiscal year for the federal government begins on October 1 of each year and ends on September 30 of the following year; it

⁴⁵⁸ See [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Budget of the United States Government, Fiscal Year 2023, Budget Appendix, 1012 (2022), https://www.whitehouse.gov/wp-content/uploads/2022/03/tre_fy2023.pdf.

is designated by the calendar year in which it ends. The October 1, 2022 to September 30, 2023 fiscal period is FY 2023.

- **Budget Year:** Refers to the upcoming fiscal year for which the budget is being considered. The budget process in calendar 2022 is focused on budget year FY 2023.
- **Current Year:** Refers to the current fiscal year.
- **Prior Year:** The fiscal year immediately preceding the current year.
- **Program Year:** Describes the authorized operating period of a particular program. The term is usually used to distinguish the program’s operating period from the federal government’s fiscal year.
- **Outyear:** In the Concurrent Resolution on the Budget, or in the President’s budget submission, any fiscal year (or years) beyond the budget year for which projections are made. In the context of the Byrd Rule, the outyears may refer to fiscal years beyond the 5- or 10-years covered by the budget resolution.

Forward Funding: Budget authority that is made available for obligation beginning in the last quarter of the fiscal year for the financing of ongoing activities during the next fiscal year. This funding is used mostly for education programs, so that obligations for grants can be made prior to the beginning of the next school year. For example, the authority may be available from July 1 of one fiscal year through September 30 of the following fiscal year, a period of 15 months.

Functional Classification: See Budget Functions.

Full Funding: The provision of budgetary resources to cover the total estimated cost of a program or project at the time it is undertaken. Full funding generally pertains to the acquisition of capital assets, such as the construction of Navy ships or buildings to house federal agencies. The term full funding can sometimes refer to the appropriation of the total amount authorized by law. A program is said to be “fully funded” when the appropriation equals the authorized level or when appropriations are sufficient to cover services for all eligible persons or organizations.

G

Government Performance and Results Act (GPRA): The most recent iteration of performance-based budgeting is the Government Performance and Results Act of 1993 (GPRA)⁴⁵⁹ as amended by the GPRA Modernization Act of 2010 (GPRAMA).⁴⁶⁰ The objective of GPRA is to shift the focus of program reviews from expenditures and activities to mission objectives and results. GPRA requires agencies to submit 5-year Strategic Plans and Annual Performance Plans with their budget requests to Congress. GPRAMA amended GPRA to require federal agencies to collect and report performance data for use in funding decisions and program management.⁴⁶¹

Government Sponsored Enterprise (GSE): A privately owned and operated federally chartered financial institution that facilitates the flow of investment funds to specific economic sectors. GSEs,

⁴⁵⁹ Government Performance and Results Act, Pub. L. No. 103-62, 107 Stat. 285, 31 U.S.C. 1101 note (1993).

⁴⁶⁰ GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866, 31 U.S.C. 1101 note (2011).

⁴⁶¹ *Id.*

acting as financial intermediaries, provide these sectors access to national capital markets. The activities of GSEs are not included in the federal budget's totals because they are classified as private entities. However, because of their relationship to the government, detailed statements of financial operations and conditions are presented as supplementary information in the budget document. (See the section of this primer on "*Budget Treatment of Government-Sponsored Enterprises.*")

Governmental Receipts: Collections from the public based on the government's exercise of its sovereign powers, including individual and corporate income taxes and social insurance taxes, excise taxes, duties, court fines, compulsory licenses, and deposits of earnings by the Federal Reserve System. Gifts and contributions are also counted as governmental receipts. Total governmental receipts are compared with total outlays in calculating the budget surplus or deficit.

Gramm-Rudman-Hollings: The popular name of the Balanced Budget and Emergency Deficit Control Act of 1985, so named for the Senate sponsors: Senators Phil Gramm, Warren Rudman, and Ernest F. Hollings.

Grants: A federal financial assistance award making payment in cash or in kind for a specified purpose. *Block grants* are given to governmental units in accordance with a statutory formula. *Formula grants* allocate federal funds to states or their subdivisions in accordance with a distribution formula prescribed by law or administrative regulation. *Project grants* provide federal funding for fixed periods for specific projects or the delivery of specific services or products.

Gross Domestic Product (GDP): The total market value of goods and services produced domestically during a given period. The components of GDP are consumption (both household and government), gross investment (both private and government), and net exports. For analytical purposes, budget categories and programs are sometime displayed as percentages of GDP. (Gross National Product, GNP, differs from GDP in that GNP includes net receipts of income from the rest of the world while GDP excludes them.)

Gross Federal Debt: Gross federal debt is the sum of debt-held-by-the-public and debt held by government accounts (intragovernmental debt).

I

Identification Code: Each appropriation or fund account in the President's budget carries an 11-digit code that identifies (1) the agency, (2) the account, (3) the nature or timing of the transmittal to Congress (for example, regular budget cycle or supplemental), (4) the type of fund, and (5) the account's functional and subfunctional classifications.

Impoundment: Any action or inaction by an officer or employee of the federal government that precludes obligation of budget authority. See definitions for the two types of impoundments: **deferrals** and **rescissions**. Deferrals and proposed rescissions are strictly controlled by the Impoundment Control Act of 1974.

Indefinite Authority: Budget authority that, at time of enactment, is for an unspecified amount. Indefinite budget authority may be appropriated as all or part of the amount of proceeds from the sale of financial assets, the amount necessary to cover obligations associated with payments, the receipts from specified sources—the exact amount of which is determinable only at some future date—or it may be appropriated as "such sums as may be necessary" for a given purpose.

Intragovernmental Transfers: Collections from other federal government accounts, often as payment for goods or services provided. Most offsetting receipts from intragovernmental transfers are offset against budget authority and outlays of the agency or subfunction that produced the goods or services.

J

Joint Resolution: A form of legislation (H.J.Res. and S.J.Res.) often used for **continuing resolutions**. Typically, there is no effective difference between a bill and a joint resolution; both require bicameral majority votes for passage and signature of the President.

Justification: The documents an agency submits to the appropriations committees in support of its budget request. The Office of Management and Budget (OMB) prescribes detailed justification materials, which explain changes between the current appropriation and the amounts requested for the next fiscal year.

L

Limitation: A restriction on the amount, purpose, or period of availability of budget authority. While limitations are most often established through appropriations acts, they may also be established through authorization legislation. Limitations may be placed on the availability of funds for program levels, administrative expenses, direct loan obligations, loan guarantee commitments, or other purposes.

Line Item: In appropriation acts, refers to an individual account or part of an account for which a specific amount is available.

Line Item Veto: An executive power to veto or “cross out” only certain parts of legislation while allowing the rest of the legislation to become law. In 1996, the Line Item Veto Act was enacted authorizing the President, after signing a bill into law, to cancel in whole any dollar amount of discretionary budget authority, any item of new direct spending, or any limited tax benefit if the President made certain determinations. In 1998, the United States Supreme Court in *Clinton v. City of New York*, 524 U.S. 417 (1998), held that the Line Item Veto Act violated the Presentment Clause, Article 1, Section 7, of the U.S. Constitution.

Liquidating Appropriations: An appropriation to pay obligations incurred pursuant to substantive legislation, usually contract authority. A liquidating appropriation is not recorded as budget authority because the BA is attributed to the contract authority.

Lockbox: In the budget context, any of several legislative mechanisms that attempt—usually unsuccessfully—to isolate, or “lock away,” funds of the federal government for purposes such as reducing federal spending, preserving surpluses, or protecting the solvency of trust funds.

M

Mandatory Spending: Mandatory spending is not defined in law, but is the same as “direct spending” which is defined at section 250(a)(8) of BBEDCA, and refers to budget authority provided in laws other than appropriation acts, and the outlays that result from such budget authority. Mandatory spending includes entitlement programs, payment of interest on the public debt, and non-entitlements such as payments to states from Forest Service receipts. By defining eligibility and setting the benefit or payment rules in authorizing legislation, budget authority for mandatory programs is allocated to authorizing committees. See **Entitlement Authority**.

Mark-Up: Meetings where congressional committees work on language of bills or resolutions. For example, at Budget Committee mark-ups, the House and Senate Budget Committees work on the language and numbers contained in budget resolutions and legislation affecting the congressional budget process.

Maximum Deficit Amount: Dollar amounts set forth in the Balanced Budget and Emergency Deficit Control Act of 1985 (“BBEDCA”), Pub. L. No. 99-177, aimed at placing the federal budget on a trajectory to a balanced budget over 5 years.⁴⁶²

Mid-Session Review: A update of the President’s Budget, required to be issued by July 15 of each year,⁴⁶³ containing revised estimates of budget receipts, outlays, and budget authority and other summary information.

Monetary Policy: A policy affecting the money supply, interest rates, and credit availability that is intended to achieve maximum sustainable output and employment and to promote stable prices. Monetary policy is directed by the Federal Reserve System. An “easy” monetary policy attempts to reduce interest rates to increase aggregate demand, but it may lead to higher inflation. A “tight” monetary policy attempts to raise interest rates in the near term to reduce inflationary pressure by lowering aggregate demand.

Monthly Treasury Statements (MTS): Summary statements prepared from agency accounting reports and issued by the Department of the Treasury (Treasury). The MTS presents the receipts, outlays, resulting budget surplus or deficit, and federal debt for the month and the fiscal year to date and a comparison of those figures to those of the same period in the previous year. Treasury also issues the Daily Treasury Statement (DTS), which is published every working day of the federal government. It provides data on Treasury’s cash and debt operations.

Multiyear Authority: Budget authority available for a fixed period of time in excess of one fiscal year. This authority generally takes the form of 2-year, 3-year, etc. availability but may cover periods that do not coincide with the start or end of a fiscal year. For example, the authority may be available from July 1 of one fiscal year through September 30 of the following fiscal year, a period of 15 months. This latter type of multiyear authority is sometimes referred to as “forward funding.”

N

Net interest: In the federal budget, net interest comprises the government’s interest payments on debt-held-by-the-public.

No-Year Authority: Budget authority that remains available for obligation for an indefinite period of time. A no-year appropriation is usually identified by language such as “to remain available until expended.”

O

Object Classification: A uniform classification identifying the obligations of the federal government by the types of goods or services purchased (such as personnel compensation, supplies and materials, and equipment) without regard to the agency involved or the purpose of the programs for which they are used. If the obligations are in a single object classification category, the classification is

⁴⁶² Balanced Budget and Emergency Deficit Control Act of 1985 (“BBEDCA”), Pub. L. No. 99-177, § 201(a)(1), 99 Stat. 1037 (1985).

⁴⁶³ 31 USC 1106.

identified in the Program and Financing Schedule in the President’s budget. For the activities distributed among two or more object classification categories, the budget has a separate object classification schedule to show the distribution of the obligations by object classification.

Obligation: A legally binding commitment by the federal government that will result in outlays, immediately or in the future. An agency incurs an obligation, for example, when it places an order, signs a contract, awards a grant, purchases a service, or takes other actions that require the government to make payments to the public or from one government account to another.

Obligation Limitation (ObLim): A restriction on the amount, purpose, or period of availability of budget authority. Typically, an obligation limitation is included in an appropriation act. The limitation may affect budget authority provided in that act, but more often it affects direct spending that has been provided in an authorization act, such as ObLims on highway construction contract authority. See section of this primer on “*Highway Funding: Direct Spending with Appropriation Obligation Limitations.*”

Obligational Authority: The sum of (1) budget authority enacted for a given fiscal year, (2) unobligated balances of amounts that have not expired brought forward from prior years, (3) amounts of offsetting collections to be credited and available to specific funds or accounts during that year, and (4) budget authority transferred from other funds or accounts.

Off-budget: Spending or revenues excluded from the budget totals by law. The revenues and outlays of the two Social Security trust funds (the Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund) and the transactions of the Postal Service are off-budget.⁴⁶⁴ The budget documents routinely report the on-budget and off-budget amounts separately and then add them together to arrive at the consolidated government totals.

Offsetting Collections: Collections authorized by law to be credited to appropriation or fund expenditure accounts. They result from (1) businesslike transactions or market-oriented activities with the public, (2) intragovernmental transfers, and (3) collections from the public that are governmental in nature but required by law to be classified as offsetting. Collections resulting from businesslike transactions with the public and other government accounts are also known as reimbursements. Laws authorizing offsetting collections make them available for obligation to meet the account’s purpose without further legislative action. However, it is not uncommon for annual appropriation acts to include limitations on the obligations to be financed by these collections. The authority to obligate and spend offsetting collections is a form of budget authority. The Congressional Budget Act of 1974, as amended by the Budget Enforcement Act (BEA) of 1990, defines offsetting collections as negative budget authority and the reductions to it as positive budget authority.

Offsetting Receipts: Collections that are offset against gross outlays but are *not authorized to be credited to expenditure accounts*. Unlike offsetting collections, offsetting receipts cannot be used without being appropriated. (However, Trust fund offsetting receipts are permanently appropriated and, therefore, can be used without subsequent annual appropriation legislation.) Offsetting receipts are deposited in receipt accounts. Like offsetting collections, they result from (1) businesslike transactions or market oriented activities with the public, (2) intragovernmental transfers, and (3) collections from the public that are governmental in nature but required by law to be classified as offsetting receipts.

⁴⁶⁴ Defined in the Balanced Budget and Emergency Deficit Control Act of 1985 (“BBEDCA”), Pub. L. No. 99-177, § 201(a)(1), 99 Stat. 1037 (1985).

OMB Circular A-11: Document that provides detailed guidance to executive departments and agencies by the Office of Management and Budget (OMB) for preparing and submitting the President’s budget and executing the budget.

On-Budget: All budgetary accounts other than those designated by law as off-budget. (See also Off-Budget.)

Outlays: The issuance of checks, disbursement of cash, or electronic transfer of funds made to liquidate a federal obligation. Outlays may pay for obligations incurred in a prior fiscal year or in the current year; hence, they flow partly from unexpended balances of prior-year budget authority and partly from budget authority provided for the current year. For most categories of spending, outlays are recorded on a cash accounting basis. However, outlays for interest on debt held by the public are recorded on an accrual accounting basis, as are outlays for direct loans and loan guarantees, which reflect estimated subsidy costs instead of cash transactions. Outlays are stated both gross and net of offsetting collections.

Oversight Committee: The congressional committee charged with general oversight of an agency’s or program’s operations. In most cases, the oversight committee for an agency or program is also its authorizing committee. However, a substantial part of an agency’s oversight effectively occurs during Appropriations Subcommittee hearings.

P

Pay-As-You-Go (PAYGO): A budgetary enforcement mechanism originally set forth in the Budget Enforcement Act (BEA) intended to ensure that laws affecting direct spending or revenues are deficit neutral over a designated period—effectively requiring budgetary offsets for new direct spending and tax cuts. In the absence of offsets, net deficit increases for a fiscal year trigger sequestration—automatic across-the-board reductions in nonexempt direct spending programs sufficient to eliminate the deficit. PAYGO effectively expired at the end of FY 2002, but a similar procedure was resurrected in the Statutory Pay-As-You-Go Act of 2010—although the President and Congress have routinely blocked sequestration reductions to enforce the law. PAYGO may also refer to the Senate rule (first established in 1993) or the House rule (first established in 2007) that prohibits consideration of direct spending or revenue legislation that is not deficit neutral within certain periods.

Performance Budgeting: Generally understood to refer to the infusion of performance information into the resource allocation process used to develop budget proposals or to execute an agreed-upon budget. Also known as results-based budgeting. See the section of the primer on “GPRA and Results-Based Budgeting.”

Performance Plan: A plan that covers each program activity set forth in an agency’s budget. It establishes performance goals to define the level of performance to be achieved by a program activity; expresses goals in an objective, quantifiable, and measurable form; briefly describes the operational processes, skills, technology, and resources required to meet the performance goals; establishes performance indicators to be used in measuring the relevant outputs, service levels, and outcomes of each program activity; provides a basis for comparing actual program results with the established performance goals; and describes the means to be used to verify and validate measured values.

Strategic Plan: Federal agency plan containing the organization’s comprehensive mission statement, general goals and objectives, description of how the goals and objectives are to be achieved, description of how performance goals are related to the general goals and objectives, identification of key external factors, and description of program evaluations used to establish the general goals and objectives.

Strategic plans must cover a period of not less than 5 years and must be updated and revised at least every 3 years.

Permanent Authority: Budget authority that is available as the result of previously enacted legislation and is available without further legislative action. For example, authority to retain and use offsetting receipts tends to be permanent authority. Such budget authority can be the result of substantive legislation or appropriation acts.

Points of Order: An objection raised on the House or Senate floor to an action being taken as contrary to that body's rules. In the House, for example, a point of order may be raised under Rule XXI objecting to an appropriation in an appropriation bill that was not previously authorized by law. Many of the rules established in the Congressional Budget Act, or set forth in budget resolutions, preclude the consideration of legislation that would violate budget resolution spending or revenue totals, committee or subcommittee allocations, PAYGO requirements, or certain deficit constraints. Points of order may be waived by a majority vote in the House, but many points of order in the Senate require a supermajority three-fifths vote. See Appendix D, *Budget Points of Order in the Senate and House*.

President's Budget: The document sent to Congress by the President in February of each year (or later after a change in Administration), as required by law (31 U.S.C. § 1105), requesting new budget authority for federal programs and estimating federal revenues and outlays for the upcoming fiscal year and 4 subsequent outyears. Although the title of the document is *Budget of the U.S. Government*, it represents proposals for congressional consideration.

Program, Project, or Activity (PPA): An element within a budget account. For annually appropriated accounts, the Office of Management and Budget (OMB) and agencies identify PPAs by reference to committee reports and budget justifications; for permanent appropriations, OMB and agencies identify PPAs by the program and financing schedules that the President provides in the "Detailed Budget Estimates" in the budget submission for the relevant fiscal year. Program activity structures are intended to provide a meaningful representation of the operations financed by a specific budget account—usually by project, activity, or organization.

Projections: Estimates of budget authority, outlays, receipts, or other budget amounts extending several years into the future. Projections are generally intended to indicate the budgetary implications of existing or proposed programs and legislation. The statutory basis for preparing and submitting projections is spelled out (1) for the President in section 201(a) of the Budget and Accounting Act (31 U.S.C. § 1105) and (2) for Congress and the Congressional Budget Office (CBO) in sections 202, 308, and 402 of the Congressional Budget and Impoundment Control Act (2 U.S.C. §§ 601, 639, and 653).

R

Reappropriation: Legislation permitting an agency to obligate, whether for the same or different purposes, all or part of the unobligated portion of budget authority that has expired or would otherwise expire if not reappropriated.

Reapportionment: A revision of a previous apportionment of budgetary resources for an appropriation or fund account.

Reauthorization: Legislation that renews an expiring or expired authorization that was in effect for a fixed period, with or without substantive change. See also **Authorizing Committees / Authorizing Legislation**.

Receipts: See **Governmental Receipts**.

Recession: A significant decline in economic activity spread across the economy, lasting more than a few months, and normally visible in production, employment, real income, and other indicators. The National Bureau of Economic Research identifies recessions on the basis of several indicators. As a rule of thumb, recessions are commonly identified by a decline in real GDP for at least two consecutive quarters.

Reconciliation: See **Budget Reconciliation**.

Reprogramming: Shifting funds *within* an appropriation or fund account to use them for purposes other than those contemplated at the time of appropriation. Reprogramming shifts funds from one object class to another (see **Object Classification**) within an appropriation or from one program activity to another. (This is distinct from a transfer of funds that involves shifting funds from one account to another.),

Unlike transfers, agencies may technically reprogram (shift funds within an appropriation or fund account as part of their duty to manage their funds) without additional statutory authority. However, appropriations report language often advises that reprogramming requires prior notification to the relevant congressional appropriations subcommittees.

Rescission: Legislation enacted by Congress that cancels the availability of budget authority previously enacted before the authority would otherwise expire. The Impoundment Control Act of 1974 (2 U.S.C. § 683) permits the President to *propose* rescissions whenever the President determines that all or part of any budget authority will not be needed to carry out the full objectives or scope of programs for which the authority was provided. Rescissions of budget authority may be proposed for fiscal policy or other reasons. All funds proposed for rescission must be reported to Congress in a special message. Amounts proposed for rescission may be withheld for up to 45 calendar days of continuous session while Congress considers the proposals. If both houses have not completed action on a rescission bill rescinding all or part of the amount proposed by the President for rescission in his special message within 45 calendar days of continuous session, any funds being withheld must be made available for obligation. Congress may also initiate rescissions. See the section of this primer on *The Impoundment Control Act of 1974*.

Results-Based Budgeting: See **Performance Budgeting**.

Revenues: Funds collected from the public that arise from the government's exercise of its sovereign or governmental powers. Article I, Section 7, of the U.S. Constitution requires that revenue bills originate in the House of Representatives. Revenues come from a variety of sources, including individual and corporate income taxes, excise taxes, customs duties, estate and gift taxes, payroll taxes for social insurance programs, and miscellaneous receipts (primarily remittances of the Federal Reserve System, fees, and fines). Federal revenues are also known as **governmental receipts**.

Revolving Fund: A fund established by Congress to finance a cycle of businesslike operations through amounts received by the fund. A revolving fund charges for the sale of products or services and uses the proceeds to finance its spending, usually on a self-sustaining basis. Instead of recording the collections in receipt accounts, the budget records the collections and the outlays of revolving funds in the same account. A revolving fund is a form of permanent appropriation.

Rollover: Instead of paying off a loan when due, the principal and sometimes accrued interest outstanding of a borrower is refinanced (rolled over) as a new loan with a new maturity date.

S

Scorekeeping / Scorekeeping Guidelines: Budget scorekeeping (“scoring”) is the process of estimating the spending, revenue, or deficit⁴⁶⁵ effects of current laws and proposed legislation. Scorekeeping guidelines are used by the House and Senate Budget Committees, the Congressional Budget Office, and the Office of Management and Budget (the “scorekeepers”) in measuring compliance with the 1974 Budget Act, the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (“BBEDCA”), and the Statutory Pay-As-You-Go Act of 2010. Scorekeeping guidelines are applied to determine whether new discretionary appropriations, new direct spending, or new revenue legislation will trigger: (1) *points of order* under the 1974 Budget Act or other House or Senate rules; or (2) a *sequestration order* to enforce Statutory PAYGO (or to enforce statutory spending caps if they are reinstated in the future). By statute, the official scorekeepers for Congress are the House and Senate Budget Committees,⁴⁶⁶ although they rely in nearly all cases on spending estimates provided by the nonpartisan Congressional Budget Office and revenue estimates provided by the nonpartisan Joint Committee on Taxation. The Office of Management and Budget is the principal scorekeeper for purposes of determining compliance with the Statutory PAYGO requirement⁴⁶⁷ and for execution of the annual Joint Committee mandatory sequesters (through FY 2031).⁴⁶⁸

OMB and CBO are required by statute⁴⁶⁹ to determine common budget scorekeeping guidelines in consultation with the House and Senate Budget Committees. The current guidelines are set forth in Appendix A of OMB Circular A-11 and are based on guidelines originally set forth in the joint explanatory statement accompanying the conference report on the Bipartisan Budget Act of 1997, with subsequent revisions agreed upon by the scorekeepers.⁴⁷⁰

The scorekeeping guidelines cover the following areas: classification of appropriations; outlays; direct spending programs; transfer of budget authority from a direct spending account to a discretionary account; transfer authority; reappropriation; advance appropriations; rescissions and transfers of unobligated balances; delay of obligations; contingent legislation; purchases; write-offs; reclassifications; program management expenses; asset sales; and indefinite borrowing authority.⁴⁷¹

Sequestration: A budget enforcement mechanism requiring across-the-board *cancellation* of nonexempt federal spending by presidential sequester order, utilized by the **1985 Balanced Budget and Emergency Deficit Control Act** (BBEDCA) to enforce maximum deficit amounts; the **Budget Enforcement Act of 1990** (BEA) to enforce discretionary spending caps and the Pay-as-You-Go (PAYGO) requirement for direct spending and revenue legislation; the **Statutory PAYGO Act of 2010**; and the **Budget Control Act of 2011** to enforce discretionary spending caps and implement annual Joint Committee mandatory

⁴⁶⁵ Or budget surplus effects.

⁴⁶⁶ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 312, 88 Stat. 297 (codified as amended at 2 U.S.C. § 643) provides that “for purposes of this title and title IV, the levels of new budget authority, outlays, direct spending, new entitlement authority, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as applicable.

⁴⁶⁷ However, the Congressional Budget Office handles scoring for purposes of the House and Senate PAYGO points of order.

⁴⁶⁸ A sequester to eliminate a PAYGO or spending cap overage is an executive action and must therefore be handled by OMB, an executive agency. For example, the Government Accountability Office’s role in the initial version of BBEDCA was struck down by the Supreme Court, finding that the GAO, a legislative branch agency, had been given responsibilities that were executive in nature. See *Bowsher v. Synar*, 478 U.S. 714 (1986).

⁴⁶⁹ Section 252(d)(5) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

⁴⁷⁰ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Circular A-11, Appendix A, August 2021, <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>.

⁴⁷¹ [Off.] of Mgmt. & Budget, Exec. [Off.] of the President, Circular A-11, Appendix A, August 2021, <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>.

sequesters (that remain in effect through FY 2031). See further details in the sections of this primer on each of the respective statutes.

Sequestration applies to nonexempt discretionary spending categories when used to enforce discretionary spending caps; and applies to nonexempt direct spending programs when enforcing the PAYGO statute or implementing the Joint Committee annual reductions.

When an “across-the-board” sequester of direct spending programs is required, it is not really “across-the-board.” Automatic cuts in the Medicare program were limited in the 1990 BEA to 2 percent⁴⁷² and many other direct 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 SNAP⁴⁷³), children’s health insurance (CHIP), refundable income tax credits, Temporary Assistance for Needy Families (TANF), and Supplemental Security Income (SSI).⁴⁷⁴

Short-term interest rate: The interest rate earned by a debt instrument (such as a Treasury bill) that will mature within one year.

Spending Limits / Spending Caps: See **Discretionary Spending Limits**.

Spendout Rate / Outlay Rate: The rate at which budget authority leads to outlays in a fiscal year. It is usually presented as an annual percentage. The rate directly impacts total outlays and deficit estimates.

Subcommittee Allocation: See “Allocation.”

Subfunction: A subdivision of a budget function. For example, health care services and health research are subfunctions of the health budget function.

Supplemental Appropriation: An act appropriating funds in addition to those already enacted in an annual appropriation act. Supplemental appropriations provide additional budget authority usually in cases where the need for funds is too urgent to be postponed until enactment of the next regular appropriation bill.

Surplus: The amount by which the federal government’s total revenues exceed its total outlays in a given period, typically a fiscal year.

T

Tax: A sum that legislation imposes upon persons (broadly defined to include individuals, trusts, estates, partnerships, associations, companies, and corporations), property, or activities to pay for government operations. The power to lay and collect federal taxes is given to Congress in Article I, Section 8, of the U.S. Constitution and was extended to taxation of income in the 16th Amendment. Collections that arise from the sovereign powers of the federal government constitute the bulk of governmental receipts, which are compared with budget outlays in calculating the budget surplus or deficit. See also **Governmental Receipts**.

⁴⁷² Budget Enforcement Act of 1990, Title XIII of Pub. L. No. 101-508, § 13101 (new section in BBEDCA 253(e)(3)(i)), 104 Stat. at 1388-581 (1990).

⁴⁷³ Supplemental Nutrition Assistance Program.

⁴⁷⁴ Balanced Budget and Emergency Deficit Control Act of 1985 as amended, Pub. L. No. 99-177, § 255, 2 U.S.C § 905.

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- **Tax Credit / Refundable Tax Credit:** An amount that offsets or reduces tax liability. When the allowable tax credit amount exceeds the tax liability and the difference is **paid to the taxpayer**, the credit is considered **refundable** and is considered an increase in outlays in the federal budget. See also **Tax Expenditure**.
- **Tax Deduction:** An amount that is subtracted from taxable income before tax liability is calculated.
- **Adjusted Gross Income (AGI):** Income that is subject to taxation under the individual income tax after “above-the-line” deductions are taken into account. (Such deductions include alimony payments and some business expenses, for instance, and certain contributions to individual retirement accounts.) Personal exemptions and the standard or itemized deductions are subtracted from AGI to determine **taxable income**.

Tax Expenditures: The term "tax expenditures" means those revenue losses attributable to provisions of the federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability.⁴⁷⁵

Technical and Economic Assumptions: Assumptions about factors affecting estimations of future outlays and receipts that are not a direct function of legislation. Economic assumptions involve such factors as future inflation, growth and interest rates. Technical assumptions involve all other nonpolicy factors. For example, in the Medicare program, estimations regarding demography, hospitalization versus outpatient treatment, and morbidity all affect estimations of future outlays.

Transfer / Transfer Authority: Shifting of all or part of the budget authority in one appropriation or fund account to another. Agencies may transfer budget authority only as specifically authorized by law (transfer authority). For accounting purposes, the nature of the transfer determines whether the transaction is treated as an expenditure or a non-expenditure transfer. Contrast with **Reprogramming**.

Treasury Security: A debt instrument of the U.S. Treasury issued to finance the operations of the government or refinance the government’s debt. A **Treasury Bill** is the shortest term federal debt instrument or security. Treasury bills mature within 1 year after the date of issue. A **Treasury Note** is a federal debt instrument with a maturity of at least 1 year but not more than 10 years. A **Treasury Bond** is a federal debt instrument with a maturity of more than 10 years.

Trust Funds: In the federal accounting structure, an account designated by law as a trust fund. A trust fund records the revenues, offsetting receipts, or offsetting collections earmarked for the purpose of the fund, as well as budget authority and outlays of the fund that are financed by those revenues or receipts. The largest and best known trust funds finance major benefit programs (such as the Social Security and Medicare trust funds) or infrastructure spending (such as the Highway Trust Fund and the Airport and Airway Trust Fund).

U

Undistributed Offsetting Receipts: Offsetting receipts that are deducted from totals for the government as a whole, rather than from a single agency or subfunction in order to avoid distortion of agency or

⁴⁷⁵ The term "tax expenditures" is defined in section 3 of the 1974 Budget Act, Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 3, 88 Stat. 297, 299 (codified as amended at 2 U.S.C. § 1302).

subfunction totals. Examples of offsetting receipts that are undistributed in both agency and functional tables are: collections of employer share of employee retirement payments; rents and royalties on the Outer Continental Shelf; and the sales of major assets.

Unexpired Budget Authority: Budget authority that is available for incurring new obligations.

Unfunded Mandates / UMRA: The Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. No. 104–4 (2 U.S.C. §§ 658658g) was enacted in 1995 in response to concerns that the federal government was enacting legislation that imposed new and costly responsibilities on State, local or tribal governments (intergovernmental mandates) and on the private sector (private sector mandates) without providing funding to fulfill those responsibilities. UMRA seeks to make new mandates transparent by requiring that congressional authorizing committees include in their legislative reports a statement identifying all intergovernmental and private sector mandates if the costs are estimated by CBO to exceed inflation adjusted thresholds (\$92 million for FY 2022 for intergovernmental mandates and \$184 million for FY 2022 for private sector mandates). UMRA enforces this informational requirement by allowing any Representative or Senator to raise a procedural objection against legislation that fails to include the required unfunded mandates statement in its committee report *unless* the legislation “authorizes appropriations” or provides direct funding to cover the costs. UMRA does not apply to requirements pertaining to individual constitutional rights, discrimination, emergency assistance, grant accounting and auditing procedures, national security, treaty obligations, and certain elements of Social Security. See the section of this primer on *The Unfunded Mandates Reform Act of 1995* and an example of a CBO estimate in Appendix M.

Unified Budget: Although most States have separate operating and capital (investment) budgets, the federal budget is generally treated as a single “unified budget”—a comprehensive budget in which all receipts and outlays are consolidated. The unified budget, as conceived by the *President’s 1967 Commission on Budget Concepts*,⁴⁷⁶ presents the full range of federal activities, enabling evaluation of the full macroeconomic impact of federal spending, revenues, and deficits (or surpluses) on the nation’s economy. Despite general adherence to the unified approach, two programs—Social Security and the operations of the Postal Service—were moved “off-budget” by statute. Consequently, the budget authority, outlays, and receipts of Social Security and the Postal Service are displayed separately as “off-budget,” although consolidated totals including both on-budget and off-budget spending and receipts continue to be included in most budget documents. There has been periodic discussion of whether the unified budget approach should be restructured to follow the example of the States, by adopting a separate capital budget. This question was studied in detail in the 1999 *Report of the President’s Commission to Study Capital Budgeting*.⁴⁷⁷ See the section of this primer on *Presentation and Coverage of the Budget*.

Unobligated Balances: The portion of obligational authority that has not yet been obligated. For an appropriation account that is available for a fixed period, the budget authority expires after the period of availability ends (but its unobligated balance remains available for five additional fiscal years for purposes of recording and adjusting obligations properly chargeable to the appropriations period of availability). For example, an expired, unobligated balance remains available until the account is closed to record previously unrecorded obligations or to make upward adjustments in previously under-recorded obligations, such as contract modifications properly within scope of the original contract. At the end of

⁴⁷⁶ Report of the President’s Commission on Budget Concepts (October 1967), <https://babel.hathitrust.org/cgi/pt?id=uc1.b4446593&view=1up&seq=9>.

⁴⁷⁷ See *Report of the President’s Commission to Study Capital Budgeting* (February 1999), <https://clintonwhitehouse4.archives.gov/media/pdf/report.pdf>.

the fifth fiscal year, the account is closed, and any remaining balance is canceled. For a no-year account, the unobligated balance is carried forward indefinitely until (1) specifically rescinded by law or (2) the head of the agency or the President determines that the purposes for which the appropriation was made have been carried out and disbursements have not been made from the appropriation for two consecutive years.

User Fees: Money that the federal government charges for services, or for the sale or use of federal goods or resources, that generally provide benefits to the recipients beyond those that may accrue to the general public. The amount of a user fee is typically related to the cost of the service provided or the value of the good or resource used. In the federal budget, user fees can be classified as offsetting collections, offsetting receipts, or revenues. See **offsetting receipts, offsetting collections** and **governmental receipts**.

V

Views and Estimates: A report that the Congressional Budget Act of 1974 requires each House and Senate committee with jurisdiction over federal programs to submit to its respective budget committees each year within 6 weeks of the submission of the President's budget, in advance of the House and Senate Budget Committees' drafting of a concurrent resolution on the budget. Each report contains a committee's comments or recommendations on budgetary matters within its jurisdiction.

Appendix Q: Budget Process Timetable

Following is the budget process timetable set forth in Section 300 of the 1974 Budget Act,⁴⁷⁸ as amended. With the exception of the President’s Budget transmittal and the October 1 start of the fiscal year, the target dates set forth below are an exercise of Congress’ constitutional rulemaking authority and therefore subject to change by Congress. There are no legal sanctions for missing the target dates.

On or before:	Action to be completed:
First Monday in February	President submits his budget. ⁴⁷⁹
February 15	Congressional Budget Office submits report to Budget Committees.
Not later than 6 weeks after President submits budget	Committees submit views and estimates to Budget Committees.
April 1	Senate Budget Committee reports concurrent resolution on the budget.
April 15	Congress completes action on concurrent resolution on the budget. ⁴⁸⁰
May 15	Annual appropriation bills may be considered in the House. ⁴⁸¹
June 10	House Appropriations Committee reports last annual appropriation bill.
June 15	Congress completes action on reconciliation legislation. ⁴⁸²
June 30	House completes action on annual appropriation bills. ⁴⁸³
October 1	Fiscal year begins. ⁴⁸⁴

⁴⁷⁸ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 300, 88 Stat. 297 (codified as amended at 2 U.S.C. § 631).

⁴⁷⁹ The President’s Budget is required by law to be submitted by the first Monday in February for the fiscal year beginning October 1 (31 U.S.C. 1105(a)). The timing of the President’s Budget transmittal changes in a year with a transition between outgoing and incoming Administrations.

⁴⁸⁰ There is no sanction if this date is missed. However, section 303(a) of the 1974 Budget Act prohibits consideration of legislation providing new budget authority, an increase or decrease in revenues, an increase or decrease in the public debt limit, new entitlement authority (in the Senate only), or an increase or decrease in outlays (in the Senate only) for a fiscal year until a budget resolution for that fiscal year has been agreed to. This point of order can be waived by a simple majority.

⁴⁸¹ This was designed as a “safety valve” so that work on the annual appropriations bills could proceed in the House in the absence of a budget resolution.

⁴⁸² This budget reconciliation target date has never been followed. Instead, each set of budget resolution reconciliation instructions contains firm dates for the submission of reconciliation language, by the authorizing committees, to the House and Senate Budget Committees. See Appendix H, Table 10 for links to all Budget reconciliation instructions.

⁴⁸³ Typically, the House aims to complete Floor action on annual appropriations bills in July.

⁴⁸⁴ The start of the new fiscal year was moved from July 1 to October 1 by section 501 of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 501, 88 Stat. 297, 321 (codified as amended at 2 U.S.C. § 1020).

Appendix R: The Indispensable Role of the Congressional Budget Office

The nonpartisan Congressional Budget Office (CBO),⁴⁸⁵ established by Title II of the 1974 Budget Act,⁴⁸⁶ is indispensable to the functioning of the congressional budget process at numerous decision points:

- **Budget Resolution:** Development of the Concurrent Resolution on the Budget by the House and Senate Budget Committees is based on CBO's annual *Budget and Economic Outlook*, CBO's *Baseline Budget Projections*, CBO's *Projections of federal Debt and the Statutory Limit*, CBO's *Analysis of the President's Budget*, CBO's periodic reports on *Budget Options*, CBO's *Estimates of the Cost of federal Credit Programs*, and CBO's *Monthly Budget Review and Long-Term Budget Outlook*.⁴⁸⁷
- **Budget Resolution Committee Allocations:** The Joint Explanatory Statement accompanying budget resolution Conference Reports include spending allocations to each committee of the House and Senate based on CBO estimates for programs within their respective jurisdictions. The section 302(a) committee allocations determine whether budget points of order lie against committee reported legislation (see Appendix D).
- **Budget Reconciliation Instructions:** When a budget resolution contains reconciliation instructions, CBO provides the spending and revenue estimates for programmatic assumptions on which the reconciliation instructions are based.
- **Budget Reconciliation Bills:** CBO scoring is integral to the negotiation of reconciliation bills. When Committees are instructed to report reconciliation language to their respective Budget Committees, CBO scores the evolving draft language and determines if the respective committees are meeting their reconciliation instructions.
- **Non-Reconciliation Spending and Revenue Bills:** CBO provides spending and revenue estimates for *all* legislation reported by authorizing and appropriations committees to the House and Senate. The House and Senate Budget Committees and their Chambers' respective Parliamentarians rely on these estimates to determine if reported legislation is subject to budget points of order.
- **Sequestration:** Budget Sequestration remains in effect as the enforcement mechanism for the Statutory PAYGO Act of 2010. While OMB scoring of direct spending and revenue legislation is determinative for execution of sequestration, Congress relies on CBO scoring during deliberations on draft legislation. In addition, OMB is required to explain any differences they may have with CBO scoring of direct spending and revenue legislation. CBO has a similar role when sequestration is in effect to enforce statutory limits on discretionary spending.⁴⁸⁸

⁴⁸⁵ See also a History of CBO at: <https://www.cbo.gov/about/history>.

⁴⁸⁶ Congressional Budget and Impoundment Control Act of 1974, as amended, Pub. L. No. 93-344, §§ 201-203, 88 Stat. 297, 302 (codified as amended at 2 U.S.C. §§ 601-603).

⁴⁸⁷ See links to these CBO reports at: <https://www.cbo.gov/about/products/major-recurring-reports>.

⁴⁸⁸ See CBO sequester reports at: <https://www.cbo.gov/about/products/major-recurring-reports>.