The Budget Act at Forty: Time for Budget Process Reform

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ABSTRACT

The Congressional Budget and Impoundment Control Act was enacted 40 years ago. It was not designed to address the core fiscal challenge of today's economy, which is the rapid rise in spending for federal entitlement programs. Moreover, the current budget process does not provide for the enactment of stable, multiyear budget plans that could then facilitate executive-legislative agreements on other budgetary adjustments. A budget process reform that allowed for joint budget resolutions to be passed by Congress and signed by the president could open up new possibilities for compromise and agreement. The reformed budget process should also include a new focus on long-term spending commitments.

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The Congressional Budget and Impoundment Control Act of 1974 established the modern federal budget process. All signs indicate that the act, now four decades old, is not working. The nation is facing serious fiscal challenges and has been for many years, but on the whole, the nation's elected leaders have ignored the problem and pursued policies that are making the federal government's financial problems worse, not better. The most recent long-term budget projections from the Congressional Budget Office (CBO) indicate that accumulated federal debt will reach 100 percent of the nation's gross domestic product (GDP) in about two decades.[1] This is an unprecedented deterioration in the nation's fiscal position. From 1957 to 2008, federal debt never exceeded 50 percent of GDP, but it now exceeds 70 percent of GDP.[2] Over the next decade alone—from 2015 to 2024—the CBO estimates that the federal government will borrow another $7.2 trillion, and that assumes spending on national security will fall to levels not seen since before World War II.[3]

The fundamental problem with the nation's finances—and thus the problem our budgetary procedures should be oriented toward solving—is the runaway expense of entitlement programs, often described as "mandatory spending."[4]

1. Congressional Budget Office, *The 2014 Long-Term Budget Outlook*, July 2014, available at http://www.cbo.gov/sites/default/files/cbofiles/attachments/45471-Long-TermBudgetOutlook_7-29.pdf.
2. Office of Management and Budget, Historical Tables, The Budget of the United States Government, Fiscal Year 2015, Table 7-1, available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/hist.pdf.
3. Congressional Budget Office, Updated Budget Projections: 2014 to 2024, April 2014, available at http://www.cbo.gov/sites/default/files/cbofiles/attachments/45229-UpdatedBudgetProjections_2.pdf.
4. The term "mandatory spending" is sometimes used because these spending programs do not require an annual appropriation. The spending occurs automatically because Congress has previously enacted permanent spending authority for these programs in the law. In addition, these programs are mainly benefit programs: the participants have, in some cases, a legal right to the benefits the law provides if they meet the criteria for eligibility. Still, there is nothing truly "mandatory" about any program or any federal spending because Congress always has the right to enact a new law overriding previous spending commitments.

In 1962, the federal government spent 4.7 percent of GDP on benefit transfer and other automatic spending programs, such as Social Security, unemployment insurance, and welfare support. By 2013, spending on these mandatory programs had risen to nearly 13 percent of GDP.[5]

The current budget process does not force policymakers to confront fiscal and economic realities. The demographic trends and health care cost pressures that are pushing up entitlement spending have been present for many years, and the projections showing that these trends will push federal finances past the breaking point have been widely understood for decades. The federal government has established several prominent panels to jumpstart political action on the long-term fiscal challenges. One example is the Kerrey-Danforth Commission, established by President Bill Clinton through an executive order in 1993.[6] Like the other panels appointed before and since, it failed to bring about any meaningful change.

Instead of forcing policymakers to confront the problem, the current budget process shifts financial pressures off the welfare state and onto other portions of the federal budget. As spending on entitlement programs has soared since the early 1960s, funding for annually appropriated (or "discretionary") accounts, especially defense, has fallen precipitously, from 12.3 percent of GDP in 1962 to 7.2 percent in 2013.[7]

Sooner or later, and probably sooner, the unsustainable nature of the current state of fiscal affairs will force significant change, likely through the triggering of an economic crisis of some sort. The crisis might be started by an international event that exposes the current defense budget as woefully inadequate to confront the threats to the nation's security. A quick, upward adjustment in defense spending could signal to the world that the United States will be running even larger deficits in the future than had previously been assumed, at which point the federal government might not be able to continue borrowing in the public markets at the preferential rates assumed in current projections.

5. Historical Tables, The Budget of the United States Government, Fiscal Year 2015, Table 8.4, available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/hist.pdf.
6. President Clinton established the commission in August 1993 in the aftermath of the final vote in Congress on the president's high-priority tax and spending bill. See Executive Order 12878, November 5, 1993, available at http://www.presidency.ucsb.edu/ws/index.php?pid=61571&st=12878&st1. Sen. Kerrey reluctantly voted for the president's tax and spending plan, saying it did not do enough to address the nation's looming, long-term fiscal problems. Clinton then appointed him to chair the budget panel.
7. Historical Tables, The Budget of the United States Government, Fiscal Year 2015, Table 8.4, available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/hist.pdf.

It would be far better for the country if elected leaders did not wait for a crisis to act but instead confronted the nation's fiscal problems with more foresight and planning. The changes in programs could be more gradual and more carefully designed.

Fixing the process will not be easy, and cannot be limited to a focus on entitlements. The dysfunction that is apparent today is disrupting all aspects of government. Deferred decisions and endless gridlock is making multiyear planning nearly impossible for the federal government. The Constitution ensures that both the legislative and executive branches of government play large roles in the budget process, but the Constitution does not require the branches cooperate or even agree. Today's budget process provides no ready mechanism for bridging the predictable conflicts that occur between presidents and Congress.

What's needed is a new approach that makes it easy for policymakers to make sensible budgetary decisions, decisions that don't ignore the reality of rapid entitlement growth or the need to provide some level of budgetary certainty for the efficient operation of government.

Of course, no process can make up for a lack of political will. If the majority of elected politicians are unwilling to support change, then nothing will change, no matter how much the process might push them toward reform. But if there is support for fiscal reforms, it is important that the budget process provide a pathway for sensible decision-making.

But before considering how the budget process might be updated for the challenges of this century, it is important to understand what events and forces shaped the process that the United States has today.

A BUDGET PROCESS FOR COEQUAL BRANCHES OF GOVERNMENT

The Congressional Budget and Impoundment Control Act (the "Budget Act") is arguably the most significant piece of budget-process legislation ever enacted in the United States.[8] Passed in the final days of the Nixon administration, the Budget Act focused primarily on reestablishing constitutional balance to budgetary decisions. Congress had chafed under President Nixon's assertiveness in a number of areas, especially with respect to spending. Nixon pushed previous constitutional boundaries by refusing to obligate funds

8. For a concise history of federal budget process changes in US history, see Nooree Lee, "Congressional Budget and Impoundment Control Act of 1974, Reconsidered," Harvard Law School Federal Budget Policy Seminar, updated April 9, 2008, available at http://www.law.harvard.edu /faculty/hjackson/BudgetActRevisited_34.pdf.

“The budget committees were charged with writing a budget plan for Congress . . . that would serve somewhat as a counter, or response, to the president’s annual budget submission.”

for programs he considered low priorities, even though Congress had explicitly appropriated funds for those purposes.[9] More than any other reason, Congress passed the Budget Act to rein in this practice of “impoundment.”

The Constitution stipulates that no funds can be expended by the executive branch without a clear appropriation by Congress. In the Budget Act, Congress wanted to make explicit in statute what it had previously thought was implied in the Constitution: if Congress appropriated funds for a designated purpose, the executive branch had to spend the funds provided, regardless of how it felt about the usefulness of the expenditure, unless it specifically received permission from Congress, in the form of a new law, to cancel the appropriation.

The provisions of the Budget Act regulating impoundments quickly resolved the constitutional crisis, instigated by the Nixon administration, in Congress’s favor. (President Nixon’s resignation on August 9, 1974, also helped move impoundments off of the national stage.) These provisions are now largely irrelevant to current budget policy.

The rest of the Budget Act, however, has proved to be of far more lasting consequence. These provisions were also aimed at bolstering the legislative branch’s role in spending decisions, especially in relation to the executive branch. But, unlike the impoundment provisions, the rest of the Budget Act focused on budget development, not on the execution of already-appropriated funds.

The most important institutional changes in the Budget Act were the creation of the House and Senate budget committees and the Congressional Budget Office (CBO). The budget committees were charged with writing a budget plan for Congress—the congressional budget resolution (CBR)—that would serve somewhat as a counter, or response, to the president’s annual budget submission. And the budget resolutions written by the budget committees

9. Virginia A. McMurtry, “Item Veto and Expanded Impoundment Proposals: History and Current Status,” Congressional Research Services, November 21, 2007, available at http://archives.democrats.rules.house.gov/CRS_Rpt/RL33635.pdf.

would be based on projections and cost estimates produced by the independent and nonpartisan CBO, which—unlike the Office of Management and Budget (OMB)—could not be influenced by the policy preferences of the president.

The CBR is built on allocations of spending and taxing authority to the various congressional committees with jurisdiction over spending and tax laws. For instance, the CBR sets the maximum amount of discretionary budget authority—called the "302(a) allocation" for the section in the Budget Act designating its inclusion in budget resolutions—that the appropriations committees are permitted to spend on the various bills the committees produce each year. If a committee writes an appropriations bill that causes total spending from the committee to exceed its allocation, it is considered a violation of the budget rules and puts the legislation in jeopardy because individual House or Senate members can announce that they object to the further consideration of such bills while they are being debated by the full House and Senate. This is an especially important matter in the Senate, where it takes 60 senators to override an objection that a bill has been found to violate a budgetary allocation provided under the CBR.[10]

THE BUDGETARY ELEPHANT IN THE ROOM

This system of budgetary allocations, and the enforcement of them under the CBR, operates differently for entitlement programs and taxes than for discretionary spending. The committees with jurisdiction over major entitlement programs, like Medicare and Medicaid, receive an allocation that can only be understood relative to a "baseline." These programs run based on complex provisions defining what will be paid, under what circumstances, to deliver the benefits promised in the statute. In practical terms, the CBO looks at what the law requires, historical trends, and other factors such as shifting demographics to estimate what spending will be over the coming decade. A similar approach is used to provide a current-law tax baseline.[11] The relevant comparison for taxes and entitlement is not how this year compares to last year but rather how the proposed policy that is favored for this year will change the spending levels expected to occur under current law and policy.

These baseline estimates for mandatory spending programs and taxes are critical to the construction of the CBR. If the budget committees want

10. In the House, the Rules Committee can write special procedures for consideration of individual pieces of legislation. If approved by the House (with a simple majority vote), those special procedures take precedence over the rules that would otherwise apply under the Budget Act.
11. The CBO works with the Joint Committee on Taxation to construct the revenue baseline and to estimate the effect legislation will have on revenue collection.

to make no changes to mandatory spending or taxes, they allocate to the respective committees with jurisdiction over these laws (the "authorizing committees") the baseline amounts developed by CBO (along with the Joint Committee on Taxation for revenues). If the allocations are equal to the baseline, the authorizing committees cannot increase spending on their programs (or decrease revenues), but they would also not be forced to make any changes in these programs to cut expenses or raise taxes. In short, if they do nothing, then they would be viewed as staying within the allocations provided in the budget resolution. (They could also approve budget-neutral bills, meaning spending increases would be offset with spending reductions, or tax cuts with tax increases.)

The budget committees can provide spending and tax allocations that differ from CBO's baseline projections. Those allocations are often accompanied by "reconciliation instructions" that direct the committees to produce new authorizing legislation that will "reconcile" the programs within their jurisdiction with the allocations provided to them under the CBR. For instance, a CBR could attempt to achieve $100 billion in Medicare savings over a decade by cutting the Medicare allocation to the three committees with jurisdiction over the program (Ways and Means and Energy and Commerce in the House and Finance in the Senate). With reconciliation, the committees would be expected to produce the legislation bringing spending in line with what is provided in the CBR by a certain date. If multiple committees were part of a reconciliation instruction, their legislation would be pulled together into an omnibus bill for consideration in the House and Senate.

The reconciliation process has played a very large role in the nation's recent economic history, in large part because reconciliation bills enjoy privileged status in the Senate. Debate on them is limited, meaning they cannot be filibustered and, therefore, can pass with a simple majority rather than the 60 votes often necessary to get other major legislation through the chamber. Some of the most significant pieces of legislation signed into law over the past 35 years made their way through Congress because of reconciliation, including President Reagan's first round of spending cuts in 1981; the budget deals of 1990, 1993, and 1997; the welfare reform act of 1996 under President Clinton; and President Bush's tax cuts in 2001 and 2003.[12]

12. The Patient Protection and Affordable Care Act of 2010, popularly known as "Obamacare," was enacted in part through the reconciliation procedure. The main bill was passed first by the Senate and then by the House under regular order. It was accompanied by a second measure, passed under the expedited procedures of reconciliation, which effectively served as the vehicle for forging a House-Senate compromise through agreed-upon amendments to the original Senate-passed bill.

While the reconciliation procedure provides a current-law roadmap for pursuing entitlement and tax changes in Congress under expedited rules, it is important to understand how different the budgetary restraints for entitlement programs are from the restraints for discretionary spending. With appropriated accounts, including defense, the National Institutes of Health, and the National Park Service, the budget resolution can establish a hard upper limit on the total amount of appropriated spending. This upper limit is rather easily enforced (if there is a will to do so in Congress). Budgeting for entitlement spending is far more elusive because it is based entirely on estimates, both for baseline projections and for assessments of what new legislation might do to the baseline forecast. In effect, entitlement spending is never held to a firm budget. If spending rises in the programs because of unexpectedly higher enrollment or higher average benefits per enrollee, there is nothing in the current budget process to force Congress to enact corrective steps. These programs enjoy wide popular support, so Congress is generally reluctant to open them up for amendment anyway. But the budget process makes it very easy for elected leaders to do nothing and allow entitlement spending to rise gradually as more people seek benefits and the rules governing benefits expand based on political and interest-group pressures.[13]

"In effect, entitlement spending is never held to a firm budget."

Although inflation can also be built into projections for discretionary accounts, it has more often been the case that the default option for appropriated accounts is a freeze or a near-freeze in spending in the budget resolution or an adherence to upper limits previously agreed upon by the Congress and the president. In successive rounds of bipartisan budget deals, going back to at least the 1990 budget

13. Upon enactment in 1965, the Medicare program was projected to cost $9 billion in 1990. The actual cost was $63 billion, even after large-scale efforts to trim spending were enacted repeatedly in the 1980s. See "Are Health Care Cost Estimates Reliable," Joint Economic Committee (Senator Sam Brownback, Ranking Republican Member), July 31, 2009, available at http://www.jec.senate.gov/republicans/public/?a=Files.Serve&File_id=5802c84c-e821-4ab3-baeb-793f3ae2e036.

agreement, both major political parties have found it much easier to apply spending restraint (if modest) to the discretionary accounts of government than to entitlement programs. In effect, as budgetary pressures have risen with the growth of entitlement spending since the 1970s, successive Congresses and presidents have found that the path of least resistance for budgetary restraint is to place ever-tighter caps on annually appropriated spending programs. This partially explains why spending on these accounts is now at 6.8 percent of GDP, down from 10.5 percent in 1972.[14]

BUDGETARY MYOPIA

The inclination to restrain appropriated accounts rather than entitlement programs is also related to the mismatch between the timeframes typically contemplated in budgeting and those that are necessary to correct the nation's fiscal imbalances. The fundamental problem is not that the United States may, in any given year, have to borrow a large sum, owing to a temporarily high deficit. The problem is that rapid entitlement spending has created the prospect of a chronic imbalance that can only be corrected with structural reforms of the programs in question or ever-higher rates of taxation. The current budget process is ill-equipped to help policymakers see the real problem or do anything about it.

The Budget Act only requires Congress to write budget plans that address the upcoming fiscal year and the four that follow it. In recent years, both the president and Congress have tended to write budgets that cover ten years rather than the required five. Nonetheless, not even a ten-year budget captures the information necessary to illuminate the fundamental fiscal problem or the positive results that genuine structural reforms, which may take years to implement, would produce.

One of the most consequential fiscal corrections of recent decades was enacted entirely apart from the regular budget process. In 1983, President Reagan and Congress agreed on a long-term framework to close the financing shortfall in Social Security. Among other things, the reform increased the age at which beneficiaries could start drawing full benefits without an early retire-

14. For most of the past 24 years, caps on appropriated spending have provided a statutory limitation on discretionary accounts. These caps have served as the "baseline" for the discretionary portion of the budget. Spending above the caps would be eliminated by automatic cuts in spending (a "sequester"). For figures on discretionary spending, see Historical Tables, The Budget of the United States Government, Fiscal Year 2015, Table 8.4, available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/hist.pdf.

ment reduction. This reform was phased in very slowly, starting in 2000, a full 17 years after the law was enacted. The two-year bump in the normal retirement age—from age 65 to 67—will not be fully phased in until 2027, more than four decades after the law was enacted.[15]

Most other significant entitlement reforms won't require a 40-year phase-in schedule. Nonetheless, because of the need to give plenty of notice to beneficiaries about upcoming changes in program rules, it is often not possible to achieve significant savings from serious reforms within the typical 10-year window of today's budget process. Moreover, some reforms require complex implementation adjustments, which also can mean years will pass before any discernible budgetary savings become visible.

Today's budgetary myopia provides a strong bias against reforms like "premium support" in the Medicare program.[16] Premium support would substantially modify current Medicare by harnessing the power of competition and consumer choice to drive quality and efficiency gains in the program. Private insurance plans and the traditional government-administered Medicare benefit would compete against each other by submitting bids for how much they would charge to provide Medicare-covered services. The beneficiaries would get their entitlement in the form of financial support that they would apply to the insurance plans of their choosing.

Restructuring Medicare in this way has the potential to transform the program and greatly improve its long-term financial outlook. But it is a complex reform that will require some time to implement and feel its effects. Moreover, to avoid disrupting the insurance arrangements of current beneficiaries, most proposals to move in this direction provide for a lengthy transition period. The result is that premium support—arguably among the most important steps that could be taken to improve the nation's fiscal position—would show very little savings in the current 10-year budget window.

AN ELUSIVE FEDERAL BUDGET

A key characteristic of a CBR is that it is not a law. Rather, CBRs are concurrent resolutions, which means they are only relevant for Congress. Presidents are in no way bound by them and in fact have often denounced them as containing

15. See "Increase in Retirement Age: A Fact Sheet," Social Security Administration, available at http://www.ssa.gov/pressoffice/IncRetAge.html.
16. For a fuller description of the premium support concept, see "A Premium Support System for Medicare: An Analysis of Illustrative Options," Congressional Budget Office, September 2013, available at https://www.cbo.gov/sites/default/files/09-18-PremiumSupport.pdf.

misplaced priorities, just as opposition parties in Congress regularly criticize the president's budget submissions.

As I mentioned earlier, the parallel budgetary processes of the executive and legislative branches are a reflection of our constitutional structure. The coequal branches of government each have a substantial role in the shape of the federal budget, and there is no legal requirement that they ever fully come to an agreement with each other. Indeed, with some exceptions, it can be said that the federal government never truly operates within a budget because the legislative and executive branches rarely agree on one.[17]

"The full budget is generally not presented in one piece of legislation but in a series of bills."

This structure has practical consequences. It is possible, and happens frequently, that Congress will proceed based on one budgetary framework, defined by a CBR, that differs substantially from the framework the president supports. The differences between the two branches only get addressed, if they do at all, when actual spending or tax legislation that is a product of the CBR framework makes its way all the way through the legislative process and reaches the president's desk. At that point, the president can sign or veto the bill. But even if the president signs some budget-related legislation passed by Congress, that does not mean the president agrees with Congress's entire budget plan. That's because the full budget is generally not presented in one piece of legislation but in a series of bills. For instance, in 1996, President Bill Clinton agreed to welfare-reform legislation (produced under the reconciliation procedures of the Budget Act), even as he continued to fight and oppose other budget cuts pushed by the Republican-controlled Congress of 1995/96.

Usually, if there is an ongoing disagreement, the anticipation of a veto is enough to bring the entire process to a standstill. This is an important reason why there are regular, drawn-out budget fights between Congress and

17. The budget agreements reached in 1990, 1993, and 1997 were partial exceptions to this general rule. The president and Congress agreed on multiyear frameworks that remained mostly in force until the agreements expired.

the president as a new fiscal year approaches (in October). The two branches spend most of the year working from different budgetary plans, and then there is a mad scramble to provide an ad hoc resolution to the disagreement to keep the government operating.

Even if an ad hoc process works temporarily, that is very different from having in place a budget framework that lasts multiple years and provides financial structure and stability to government finances. The current process does not apply any countervailing pressure to offset the institutional and political tendencies toward budget stalemate that are built directly into our constitutional order.

ELEVATING A REAL, ENFORCEABLE BUDGET

A possible, partial antidote for budgetary drift, rising entitlement spending, and endless inertia in our federal budgeting practices is the concept of a joint budget resolution (JBR). Unlike a CBR, a joint resolution must be agreed to by the president and is therefore law. As such, it has the potential to facilitate, and perhaps even to pressure, the legislative and executive branches to agree on key budgetary provisions that would govern decisions made by both branches later in the budget process.

There are numerous ways to provide for the consideration of JBRs, but the most straightforward option would be to build upon the current process. This could be accomplished by amending the current Budget Act rules to allow an optional JBR "spin-off" from any CBR agreed to by both the House and Senate. Congress would not have to pursue a JBR, but if it did, the legislation would automatically be sent to the president upon adoption of a CBR, and the JBR would reflect the key budgetary aggregates: total discretionary spending, total mandatory spending, revenues, deficits, and debt. The president could then either approve or veto the bill.

If the president vetoed the JBR, the process would revert back to the process that is in place today under the Budget Act. Congress could proceed under the terms of the budget resolution and engagement with the executive branch would be postponed until later in the year, when the spending and tax bills flowing from that budget are transmitted to the president. If, however, the president agreed to the JBR and signed it into law, the budget framework contained within it would have the force of law, and both branches would be bound by it.

It is critically important that a JBR would have the capacity to place an upper limit on mandatory program spending, along with caps on discretionary

spending and a floor for revenues. This would ensure that Congress and the president truly engage in budgetary decision-making. There would be clear tradeoffs between the key budget categories as well as the projected deficit spending and debt. Congress and the president could choose to put more pressure on mandatory spending programs and thus perhaps ease the pressure on discretionary accounts (or vice versa). In addition, proposals that cut deficit spending with tax hikes would be clearly identified in the budget plan.

A JBR would not make the political disagreements that often divide the two branches of government disappear, so this revised process is not a guarantee of budgetary stability. But neither Congress nor the president wants to be seen as fiscally irresponsible, so there would be some political pressure to participate forthrightly in a process aimed at producing an agreement on a budget framework. A JBR would also force the two branches to begin early in the process with reconciling the differing estimates from CBO and OMB to come up with an agreeable joint plan.

THE ALL-IMPORTANT ENFORCEMENT DESIGN

The purpose of establishing an enforceable budgetary framework in a JBR is to set in motion additional legislation in Congress to bring programs and taxes in line with the budget totals. In other words, the JBR would be a catalyst for a genuine reform agenda, because inaction would no longer be without consequence. Presumably, large changes in entitlement spending and taxes contained in a JBR would be assigned to the authorizing committees in the form of reconciliation instructions. This would allow fast-track consideration of the reforms implied in the JBR's top-line numbers.

Congress will only feel the pressure to act on tough legislative reforms if the JBR's budget limits are enforced, even without additional legislation from Congress. That means making the caps on spending binding, including on entitlement spending, once the JBR is agreed to by Congress and the president.

Indeed, the primary advantage of a JBR over a CBR is that budgetary limits can be enforced if enacted with automatic spending cuts. That's not possible in a CBR because implementation of across-the-board spending reductions are an executive function that can only be set in motion by a law, not an internal legislative resolution.[18]

18. In *Bowsher v. Synar*, the Supreme Court held that enforcement of spending limits could not be carried out by the General Accounting Office (now called the Government Accountability Office), which is a legislative branch agency.

Over the past three decades, the two branches have settled on an acceptable and well-understood process for establishing caps on discretionary spending. These caps, first adopted in the 1990 budget agreement, place a hard upper limit on spending for programs with annual, discretionary appropriations. If these limits are breached, the executive branch is required to impose across-the-board cuts (called a "sequester") in all programs covered by the caps (with some exceptions) to ensure total spending stays within the agreed-upon amount.

These caps have been effective at holding discretionary spending at or near the agreed-upon levels, albeit with some leakage owing to the occasional loose enforcement, by Congress and administrations of both parties, of what constitutes a real "emergency" and thus justifies spending beyond the statutory upper limit. Still, it is clear that, since discretionary spending caps were first instituted in the 1990 budget agreement, discretionary spending has fallen well below the historical norm, except for the years associated with the deep financial crisis of 2007–2009.[19]

What would be necessary, and new, is a sensible corollary enforcement system for mandatory spending and tax collection. The JBR would have the ability to impose caps on total mandatory spending, much like the caps on discretionary accounts. But the existing sequester mechanism for mandatory programs, enacted in the Budget Control Act of 2011, is woefully inadequate.[20] For starters, too much mandatory spending is exempt from the sequester altogether, including the entirety of Social Security and Medicaid. Medicare, for instance, is subject to across-the-board cuts (up to 4 percent of program spending each year) that were

"It is clear that, since discretionary spending caps were first instituted in the 1990 budget agreement, discretionary spending has fallen well below the historical norm."

19. See David Reich, "Non-defense Discretionary Programs Have Seen Large Cuts and Face More Cuts in 2015," Center for Budget and Policy Priorities, November 18, 2014, available at http://www.cbpp.org/files/11-18-14bud3.pdf.

20. For a description of these procedures, see Richard Kogan, "How the Across-the-Board Cuts in the Budget Control Act Will Work," Center on Budget and Policy Priorities, April 27, 2012, available at http://www.cbpp.org/files/12-2-11bud2.pdf.

irrationally designed and exacerbate some of the worst features of the current program. It is a heavily price-regulated program, and the cuts simply lower the prices paid to all providers of services to Medicare's beneficiaries. Instead of promoting real reform of the program through competition and market incentives, these cuts further cement the failed approach of cost-cutting in Medicare with ever more stringent payment regulation. The result is not cost-efficient health care but greater distortions in the marketplace.

A better enforcement mechanism on mandatory programs would not be a substitute for reform of the programs, nor would it reflect a bias toward the protection of the status quo. In allowing for a JBR, the budget process should be amended so that the sequester of mandatory spending reflects a few key considerations.

Some programs for very-low-income Americans, such as Supplemental Security Income, should be exempted from the cuts, but it is not unreasonable to include some income-support programs in the enforcement of spending control. For instance, if spending breached the upper limit, Food Stamp eligibility might be lowered modestly for the highest-income participants. Similar adjustments could be made to other programs.

Medicaid should be explicitly included in the enforcement mechanism. The federal matching payments to the states should be reduced commensurate with the reduction in spending necessary to stay within the mandatory spending cap. States will rightly complain that this move will burden their budgets, so they would need to be given relief from existing federal Medicaid mandates to provide them with the budgetary flexibility necessary to accommodate the federal cut.

The automatic cuts in Medicare should be designed to promote reform rather than hinder it, which means promoting a more cost-conscious consumption of services. For starters, higher-income beneficiaries should be required to pay much more for their services. Further, all beneficiaries should be required to pay something when they get care. Achieving this will require adjustments to the rules for supplemental insurance plans (e.g., Medigap) and perhaps providing pro-rata adjustments in deductible and co-insurance payments.

The sequester process should be recalibrated periodically so that actual spending is brought in line with the JBR levels based on revised estimates. In addition, the sequester should leave room to allow the necessary savings to be achieved over several years, perhaps as many as five, to avoid abrupt year-by-year adjustments.

If mandatory spending was expected to come in below the JBR cap, there would be no automatic process to increase spending. Congress would need to

pass new legislation to make the desired changes and achieve the increased spending called for in the budget plan.

Opponents of this approach will argue that designing the enforcement mechanism this way would tilt the playing field toward reforms favored more by the political right than left, thus giving Republicans more leverage in budget battles. But that is unlikely to be true. These automatic cuts would be indiscriminate and blunt and would not constitute the kind of fundamental entitlement reform that most conservative-leaning politicians favor. Participants in the federal programs will be unhappy with the automatic cuts (and will be pushed to voice their opposition by all manner of consumer and beneficiary groups), and that will mean that politicians from both major political parties will be dissatisfied with the cuts as well. Although bipartisan agreement is never easy around these issues, the prospect of an unpleasant sequester process should produce political conditions where some members from both parties see an advantage in an alternative, bipartisan reform plan to replace an unpopular across-the-board cutting mechanism.

A more difficult problem for conservatives will be how to handle enforcement of the tax numbers in a JBR. It will be difficult to reach broad agreement on the JBR concept if strict enforcement is applied only to the spending side but not to taxes. Still, applying a parallel enforcement mechanism to tax collection should be strongly resisted. For starters, the long-term fiscal problem is a spending problem, not a tax problem. Entitlement spending will push federal expenditures up well above the historical rate in the coming years, according to the CBO.[21] Revenue, on the other hand, is already expected to exceed the post–World War II norm owing to tax hikes enacted in recent years.

In addition, revenue estimation is so imprecise that small misjudgments on assumptions can produce big swings in actual tax collection compared to projections. Automatic enforcement of tax levels could produce very large pro-rata tax hikes. Entitlement spending can be volatile too, but, unlike revenues, the total is divided up among a large number of programs, so the likelihood of a systematic misjudgment is reduced.

21. Congressional Budget Office, The 2014 Long-Term Budget Outlook, July 2014, available at http://www.cbo.gov/sites/default/files/cbofiles/attachments/45471-Long-TermBudgetOutlook_7-29.pdf.

THE JBR AND POLITICAL POLARIZATION

The federal budget is a statement of priorities, and therefore of values, which is why the two major political parties often sharply disagree about what form the federal budget should take. A JBR is not a panacea for overcoming political polarization.

What a JBR provides is a pathway toward agreement where one does not exist today. In some cases, that may mean allowing one party with control over both the executive and legislative branches to more easily pass a budget plan reflective of that party's priorities. But even in times of divided government, a JBR would allow for engagement between the branches that might, under some circumstances, facilitate compromise and agreement. After all, like any other legislation that must be signed by a president to become effective, a JBR would surface the real differences dividing the branches while it was under consideration in Congress. Presidents could signal why they support or oppose them, and Congress could choose to accommodate or reject a president's requests for modifications. If either side saw some advantage from pursuing agreement rather than confrontation, a JBR might find its way into law. Today's process allows for ad hoc negotiations on multiyear budgets, but there is no expectation of regular legislative-executive engagement on a budget framework, which is one reason why it occurs so infrequently.

TOWARD A LONG-TERM BUDGET

While a JBR with sensible enforcement would be a significant improvement over the current budget process, it will not, by itself, solve the problem of inattention to the long-term fiscal challenges the country now faces. An important first step toward addressing that problem would be to get agreement on how to measure the long-term fiscal obligations of the government. That information could then be used to inform current legislative debates and eventually to spur legislative action.

One approach would be to establish a uniform definition of the federal government's long-term unfunded liabilities. In general, this would mean calculating the present value of expected future tax receipts and expected future spending commitments. (The INFORM Act, promoted by Boston University economist Laurence Kotlikoff, is one version of this kind of approach.)[22]

22. For a discussion of the method Kotlikoff uses to calculate the federal government's long-term fiscal shortfall (called the "fiscal gap"), see Laurence Kotlikoff, "Assessing Fiscal Sustainability" (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, December 2013), http://mercatus.org/publication/assessing-fiscal-sustainability.

Long-term forecasts are already done annually for both Social Security and Medicare, and so a large portion of the federal budget can be assessed on this basis with current information. (The latest projections, from the Boards of Trustees for these programs, indicate the combined unfunded liabilities for Social Security and Medicare equal $39 trillion, in present value terms, when income and outgo are assessed over a 75-year period.)[23] These forecasts could be supplemented with assessments of other parts of the budget, especially those that create long-term obligations on behalf of the government, such as pension programs (civil and military retirement benefits, the Pension Benefit Guarantee Corporation, and health benefits).

Some disputes will inevitably arise over what constitutes an “unfunded” federal commitment. One part of Medicare, for instance, is financed mainly from the government’s general revenues and not from a dedicated payroll tax. But drawing on “general revenues” can mean running a deficit and borrowing the funds from the public to pay the bills. In most cases, references to Medicare’s unfunded liability omit “general revenue” contributions and look solely at revenue generated from taxes and premiums compared to the program’s expected spending. Similar judgments would need to be made for other programs.

Once a common measure is established, it could be used to assess legislation in Congress and perhaps incorporated into a JBR. For instance, the budget process could be amended to require CBO assessments of the degree to which significant new budgetary legislation would alter the unfunded liabilities calculation. In this context, what legislation is “significant” would be determined by CBO based on the likelihood that the legislation would alter the present value of expected revenue or expected outlays by more than a threshold amount (perhaps $10 billion). Bills that would increase the net unfunded liabilities of the federal government could be ruled out of order and thus pulled from consideration unless a supermajority of the members chose to override the rule.

In addition, a CBR or JBR could “reconcile” the committees with jurisdiction over the major programs with large unfunded liabilities and thus set in motion privileged legislation to narrow the fiscal gap with corrective legislation.

23. See The 2014 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, Table VI.F1, p. 192, July 2014, available at http://www.ssa.gov/OACT/TR/2014/tr2014.pdf, and 2014 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medicare Insurance Trust Funds, Tables V.G1, V.G3, and V.G5, pp. 233, 235, and 237, respectively, July 2014, available at http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/downloads/tr2014.pdf.

This kind of legislation would not need to show deficit reduction over a 10-year period but over some longer time frame, such as 25 or 50 years.

It might be tempting to attach an enforcement to the long-term budget process just as a revised sequester would enforce spending limits over a shorter period. But that would be a mistake. Long-term projections are an untested feature of the budget process. It would be better to use the information in a systematic and sustained way to inform decisions and encourage legislative action. Once accepted as standard procedure, legislators could consider how to enforce limits to prevent unfunded commitments from materializing under any circumstances.

ADDITIONAL REFORMS TO CLEAN UP THE CURRENT PROCESS

The JBR concept and a new emphasis on long-term challenges would reorient the current budget process in significant ways by providing a mechanism for legislative-executive agreement on a budget framework (including entitlement spending) and by highlighting the longer-term consequences of budgetary decisions.

There are other, less structural adjustments to the current budget process that should also be addressed. These changes can be pursued independently of the JBR and a new, long-term focus and are intended to correct flaws in the current process that have become more apparent with experience and perspective.

Repeal Pay-As-You-Go

Since 1990, Congresses and presidents have operated under a separate budgetary procedure known as pay-as-you-go, or "paygo." Before 2010, paygo was a temporary provision in law, with a sequester enforcement mechanism similar to the Budget Control Act model. It was also part of the congressional budget procedures and governed the consideration of tax and spending legislation. In 2010, Congress passed a permanent paygo law into statute.

The paygo concept was designed to force new entitlement or tax legislation to be "budget neutral"—that is, any expansion in entitlement spending, or tax cuts, is supposed to be accompanied by other tax and entitlement changes to ensure no increase in the deficit (over some number of years). The real aim of paygo, however, was to stop tax cutting. Paygo does not place any constraint on the natural (and inexorable) growth of entitlement spending that occurs under current law. Rather, it puts a big hurdle in the way of across-the-board tax cutting that might be promoted in a pro-growth economic agenda. For instance,

President Reagan's tax cuts in 1981 would have been impossible to achieve if paygo had had to be satisfied.

Paygo is the embodiment of the view that fiscal responsibility entails "paying for" newly enacted spending commitments. That's very different from the view that sound fiscal policy focuses on spending control to allow private actors to keep and use as many of their own resources as possible.

Allow Expedited Consideration of Social Security Reform

Social Security is off-budget because of its self-financed structure. Congress believes that the program should be addressed on its own terms and not for its implications for overall government finances.

That sentiment can be preserved while still allowing Social Security reform to proceed more readily. Under current rules, Social Security changes cannot be included in reconciliation measures. This means that Social Security, which has an unfunded liability totaling $10.6 trillion over the next 75 years, gets less favorable consideration under the current budget rules than small changes to much less financially significant programs.[24]

It is possible to preserve Social Security's off-budget status while still allowing serious reform to proceed under procedures similar to reconciliation. One approach would be to provide expedited consideration of Social Security legislation that achieves elimination of the program's unfunded liability, as certified by cost estimates produced by the Office of the Actuary at the Social Security Administration. Under such an approach, Social Security reform legislation that brings long-term financial stability to the program would be considered in the Senate under terms similar to reconciliation legislation. The only difference would be that the Social Security reform legislation would be required to be considered as a standalone bill, and the savings generated by it could not be used to meet deficit-reduction goals established in a CBR or JBR.

Automatically Continue Government Operations

Since 1977, there have only been four instances when all 12 appropriations bills have passed by the start of the fiscal year.[25] Instead, continuing resolutions

24. The 2014 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, July 2014, Table VI.F1, available at http://www.ssa.gov/OACT/tr/2014/tr2014.pdf.
25. Jessica Tollestrup, "The Congressional Appropriations Process: An Introduction," Congressional Research Service, February 23, 2012, available at http://fas.org/sgp/crs/misc/R42388.pdf.

(CRs) are passed to temporarily fund programs that need an annual appropriation. On occasion, when Congress and the president could not agree to individual spending bills, a CR has been used to fund programs for a full fiscal year. (This happened in fiscal year 2009 for nine bills and fiscal year 2011 for eleven bills.)

The prospect of an impending government shutdown has been used in recent years to stoke partisan tensions and extract concessions that otherwise might not have been provided in the budget process. It is apparent from recent budget battles that the prospect of a shutdown generally works to the favor of those opposed to applying additional spending discipline.

A better approach to these situations would be to provide for automatic continuation of government services, but under rules that still provide both branches of government with an incentive to reach agreement on full-year funding levels.

Senator Rob Portman has introduced S. 334 in the current Congress to provide for this kind of "automatic CR."[26] If no appropriation measure or CR were in place by the start of the fiscal year, S. 29 would provide automatic funding until a full-year appropriation bill could be approved. For the first 120 days of the fiscal year, programs governed by S. 29 would receive 100 percent of the previous fiscal year's funding. For each subsequent 90-day period, the funding would decrease by 1 percentage point below what was provided in the preceding 90-day period.

Recent budget showdowns have made it apparent that government agencies will eventually get funded and that shutting down operations for a time produces very little leverage for those pushing for more significant change. It would be better to ensure the government remains open with an automatic CR but at a level that is not too comfortable for the agencies. That would ensure continued pressure for agreement on a larger, full-year budget plan.

CONCLUSION

The United States is entering a new era of economic and fiscal policy. Rapid demographic changes and rising entitlement costs are creating significant pressures that must be addressed soon to avoid the risk of substantial economic dislocation. Reform is coming for the welfare state in one form or another.

26. See S. 334, The "End Government Shutdowns Act," Sen. Rob Portman, February 2, 2015, available at https://www.congress.gov/bill/114th-congress/senate-bill/334/text.

A better federal budget process can help steer elected leaders toward the changes that are necessary. But no one should be under the illusion that reform of the federal budget process is, by itself, a solution or a substitute for the serious programmatic changes that are necessary.

It should also be clear that there are powerful forces resistant to change, and a better budget process might help break the logjam. What makes change so difficult is the natural tendency of elected leaders in advanced democracies to protect incumbent benefit programs at the expense of longer-term economic growth and future generations of voters. James Buchanan's public choice theory helps explain why this is a predictable consequence of this system of government.[27] Elected leaders are acting rationally, in a political sense, when they cater to the financial concerns of their current constituents rather than to the needs of future citizens. After all, it is current citizens who can vote to keep a politician in office. Moreover, the sharing of budgetary responsibility by two coequal branches of government makes large-scale and painful change particularly difficult to achieve in the United States.

These are realities that a budget process cannot, by itself, ever fully overcome. If a majority of elected leaders are determined to avoid significant changes to the welfare state at all costs, then it is likely that only a large-scale crisis of some sort will force the needed corrections. It is ironic that a carefully considered reform plan, put in place before a crisis hits, is more likely to preserve and strengthen the nation's safety net than a plan hastily enacted in the shadow of an impending economic crisis.

The difficulty of proceeding with serious reform of the welfare state is not a reason to assume a better budget process won't help. The task is difficult but not hopeless. In recent years, a number of political leaders have stepped forward to offer serious reform plans for the nation's entitlement programs that would begin to address the fundamental problems in the federal budget.[28] A better budget process could help these leaders by lowering some of the political and legislative obstacles to reform, even if it cannot remove them altogether.

27. See Jeffrey H. Templeman, "James M. Buchanan on Public-Debt Finance," *Independent Review* 11, no. 3 (Winter 2007), http://www.jerrytempelman.com/support-files/Tempelman-Buchanan-Government-Debt-Finance-paper.pdf.

28. One example is Senator Marco Rubio's recent proposal to reform retirement programs. See "A Secure Retirement for 21st Century Seniors," Speech at the National Press Club, May 13, 2014, available at http://www.rubio.senate.gov/public/index.cfm/press-releases?ID=9a5e63c8-ded6-4b61-820a-f6f90a30dc00.

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