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THE NEVER-ENDING EMERGENCY: TRENDS IN SUPPLEMENTAL SPENDING

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Introduction

Rarely does a fiscal year pass without some type of emergency requiring a response from the federal government. When disaster strikes, lawmakers need prompt access to emergency federal funds. In some instances, emergency spending is enacted as part of regular appropriations measures. However, in most cases the timing is such that the need for funding cannot wait until the next appropriations cycle. As a result, most supplemental appropriations are enacted as stand-alone legislation. For instance, supplemental bills are often used to cover unexpected costs due to natural disaster or war. It should be noted, however, that these bills are a normal part of the appropriations process and have been used in the federal spending process since the second session of the very first U.S. Congress in 1790.¹

Recently, however, serious concerns have emerged about the nature and size of supplemental appropriations bills and in particular about the abuse of emergency spending. In most cases, supplemental bills, when the spending is labeled emergency, do not count against the budget caps the House and Senate set in place, maintaining the appearance that discretionary spending is under control when it is actually increasing tremendously. As a result, supplemental bills have become the tool of choice for Congress and the presidential administration to avoid caps set by annual budget resolutions, resulting in dramatically increased government spending.

A point of clarification is important here. Many people treat “emergency” and “supplemental” appropriations as synonyms, but they are not.

This paper looks at the use of supplemental spending over the last 25 years. Section 1 examines some of the budget rules to which lawmakers are subject. It explains that, under the

¹ CBO, *Supplemental Appropriations in the 1990s*, March 2001, <http://www.cbo.gov/ftpdocs/27xx/doc2768/EntireReport.pdf>.

Budget Enforcement Act of 1990, emergency spending—most of which takes place through supplemental bills—is given special exceptions from budgetary rules.²

Section 2 looks at trends in supplemental spending, revealing a considerable increase in spending since FY 1998, including a dramatic hike after FY 2002. The spending explosion coincides with the expiration of certain budget rules that had constrained supplemental bills.

Section 3 demonstrates how the White House and Congress—particularly since FY 2002—have abused their powers to request and pass supplemental bills. It exposes many of the tactics used by lawmakers to increase spending, such as trimming defense spending in the regular appropriations process, while allowing the defense budget to be replenished later in the year through supplemental appropriations.

Section 4 offers four different and complementary ways to fix the supplemental spending process.

The paper concludes that in recent years, supplemental bills have been effectively used to hide the cost of programs that do not address emergencies or unexpected circumstances—such as the wars in Iraq and Afghanistan—and to expand spending beyond budget limits.³ In addition, because of a serious lack of congressional oversight, lawmakers riddle supplemental bills with pork and other projects that would not be funded on their own merits.

Section 1: Budget Rules and Supplemental Appropriations

Supplemental appropriations provide additional funding to an agency during the course of a fiscal year for programs and activities considered too urgent to wait until next year's budget.

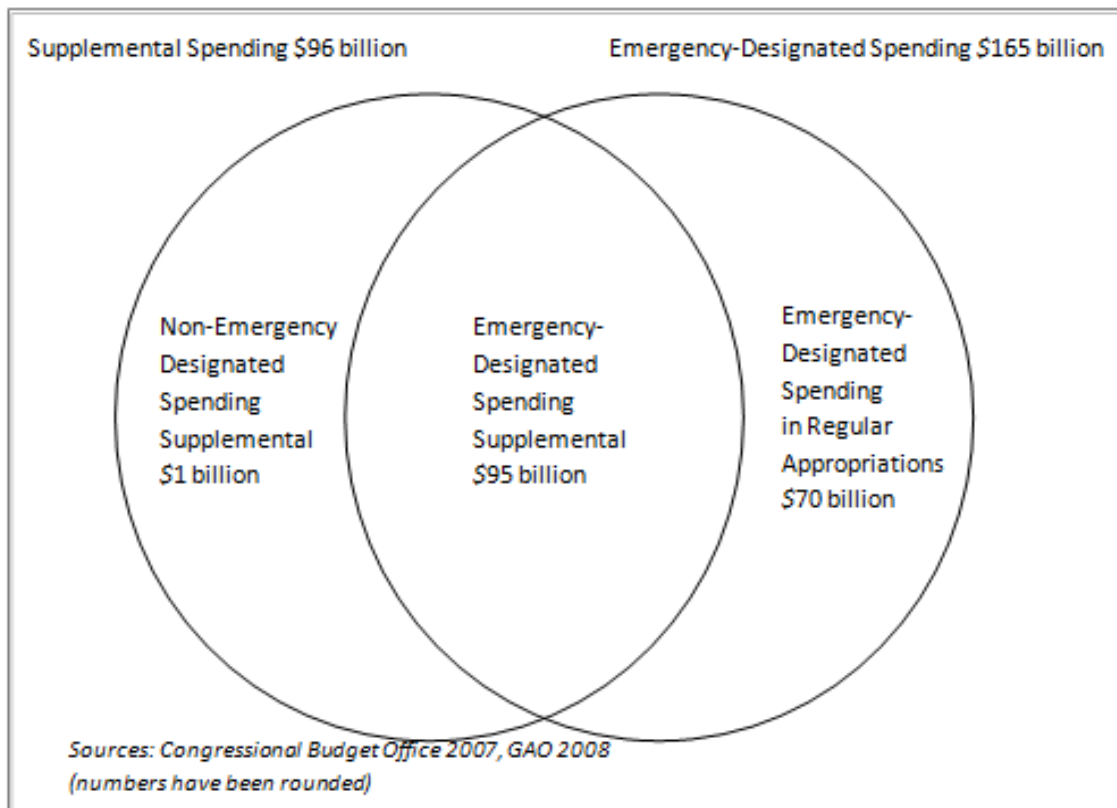
Within a single supplemental appropriations law, some funds may be designated as emergency

² U.S. Congress. House. *Budget Enforcement Act of 1990*, title XIII of PL 101-508; 2 USC 900, H.R. 5835, <http://www1.worldbank.org/publicsector/pe/BudgetLaws/BudgetEnforcementAct1990.doc>.

³ George Krumbhaar, "Supplementals are Climbing! Supplementals are Climbing!" *U.S. Budget Daily News Service* by gallerywatch.com, May 1, 2006.

and others may not. Although some emergency funding is included in the regular appropriations process, a recent study released by the Government Accountability Office (GAO) found that a large portion is not (See Figure 1).⁴

Figure 1: Supplemental Spending versus Emergency Spending FY: 2006



In FY 2009, the total amount of spending funded through the supplemental process was \$196.7 billion.⁵ Of this total, \$192 billion received an emergency designation.⁶ The remaining \$5 billion, even though spent through the supplemental process, did not receive the emergency

⁴ United States Government Accountability Office, *Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls*, GAO-08-314, January 2008, 3, <http://www.gao.gov/new.items/d08314.pdf>.

⁵ CBO, *Data on Supplemental Budget Authority for the 2000s* (Washington, DC: Government Printing Office, 2010), 4, <http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprops.pdf>.

⁶ Congressional Research Service, “Emergency Spending FY 2000-FY 2010,” Memorandum to Senator Tom Coburn (2011), May 2, 2011.

designation. Also in FY 2006, the last year the data is available, a total of \$165 billion in federal spending received an emergency designation.⁷ This means that \$70 billion was allocated for emergencies through the regular appropriations process.

The distinction between emergency and non-emergency funding is important because normal budget controls do not constrain emergency-designated funds. In fact, over the years supplemental appropriations have been subjected to a variety of budgetary rules, mainly out of concerns that they would become magnets for earmarks and other wasteful spending.

The Congressional Budget and Impoundment Control Act of 1974 was the first law to establish a comprehensive process for considering budgetary matters, including mandating the use of a budget resolution. The budget resolution sets out requirements for the fiscal year beginning the following October 1 and for at least four subsequent fiscal years. These requirements include levels of total new budget authority and outlays; total federal revenues, including the amount, if any, by which the level of federal revenues should be increased or decreased by legislative action; the surplus or deficit in the budget; new budget authority and outlays for each major functional category; and the public debt.⁸

The Act requires that once the budget resolution sets aggregate spending levels, the Appropriations Committee in each chamber is given an allocation (known as a Section 302(a) allocation) for spending.⁹ After the Appropriations Committees receive the aggregate allocation, they divide this into sub-allocations (known as Section 302(b) sub-allocations) corresponding to each of the thirteen Appropriations Subcommittees. The two chambers do not need to have the

⁷ Ibid.

⁸ For a comprehensive analysis of the 1974 Act, see Allen Schick and Felix Lostracco, *The Federal Budget: Politics, Policy, Process* (Washington, DC: Brookings Institution Press, 2007), 18.

⁹ Robert Keith, *The Deeming Resolution: A Budget Enforcement Tool* (Washington, DC: Congressional Research Service, RL31443, August 9, 2004), 2, http://assets.opencrs.com/rpts/RL31443_20040809.pdf.

same 302(b) allocations for each subcommittee, but the grand total must meet the agreed-upon 302(a) allocation set by the budget resolution.¹⁰

The purpose of the 302(a) allocation is to serve as an internal Congressional control mechanism, enforceable through points of order and other procedural mechanisms in both the House and Senate. In theory, the Appropriations Committees in the House and Senate cannot exceed the aggregate total in the bills they develop in the annual appropriations process.

Another important aspect of the 1974 law is that, for the first time, it required the president's annual budget request to include an allowance for expected supplemental spending. Congress also tried to mitigate the effects of supplemental spending with offsetting rescissions. Rescissions cancel funding that earlier appropriations laws authorized but that Congress has not yet actually spent.

The Balanced Budget and Emergency Deficit Control Act of 1985, commonly referred to as the Gramm-Rudman-Hollings Act after the authors of the original bill, set maximum amounts for the federal deficit. The idea behind this 1985 act was that each year, deficit targets would decrease until the budget was balanced in FY 1991. If the deficit limits were exceeded, the president was required to cut spending by a uniform percentage across the board to bring the budget back into balance, a process called "sequestration." Depending on the year and the administration, some parts of the budget were exempted from such cuts.

Following the passage of this law, the Office of Management and Budget (OMB) instructed agencies that supplemental requests for discretionary appropriations would require offsetting budget cuts in the current year. Exceptions would be granted only if the agency could provide a "fully justified explanation" for why the cuts were not possible.¹¹

¹⁰ James V. Saturno, *Congress Point of Order* (Washington, DC: Congressional Research Service, June 15, 1999).

After the Bipartisan Budget Agreement of October 1987, the OMB issued tougher requirements. No supplemental requests would be allowed in 1988 and 1989 “except in dire emergencies.” However, such emergency appropriations would not require offsetting spending cuts.¹² The 1987 Balanced Budget and Emergency Deficit Control Reaffirmation Act also extended the deficit limits through FY 1992.

In 1990, participants in the budget process became aware that the Gramm-Rudman-Hollings deficit targets required extremely painful choices. Because the budget exceeded the deficit limit by nearly \$100 billion and Congress had exempted so much spending from sequestration, the Gramm-Rudman-Hollings framework would have required many spending programs to be cut by about one-third. In response, Congress passed the Budgetary Enforcement Act (BEA) of 1990, which specified two new deficit reduction mechanisms: pay-as-you-go (PAYGO) rules and statutory discretionary spending caps.

PAYGO required across-the-board cuts in non-exempt, mandatory spending if the sum of proposed new spending and revenue measures would increase the deficit. Large categories of spending were exempt from PAYGO—including Social Security—and cuts in Medicare spending were limited to 4 percent. Importantly, the BEA also specified that emergency provisions, including supplemental bills designated as emergency bills, were exempt from PAYGO requirements.

BEA’s spending caps limited budget authority and outlays for discretionary spending from FY 1991 to FY 1993 in three program categories: defense, domestic, and international. For

¹¹ Thomas Hungerford, *Supplemental Appropriations: Trends and Budgetary Impacts Since 1981* (Washington, DC: Congressional Research Service, RL33134, January 2, 2009), 2, http://assets.opencrs.com/rpts/RL33134_20090102.pdf.

¹² *Ibid.*, 3. See also William G. Dauster, “Budget Emergencies,” *Journal of Legislation* 18, no. 2 (1992): 253.

FY 1994 and FY 1995, the caps applied to total discretionary spending. The caps were enforced by presidential sequestration.

In 1993, the PAYGO rules and discretionary caps were extended through FY 1998, and in 1997, reauthorization of the BEA of 1997 extended the budget procedures through FY 2002. These laws, along with other legislation, also added new categories of discretionary spending subject to caps.

Under BEA rules, supplemental spending had to comply with all budget limits. If supplemental spending laws enacted before July 1 violated the caps, the president was required to sequester sufficient funds to offset this amount within 15 days. Supplemental laws enacted after July 1 that exceeded the caps reduced the relevant cap in the following fiscal year by the amount of the violation.

The BEA provided an explicit exception for emergency-designated spending, however. According to William Dauster, during the discussions leading to the adoption of the BEA, OMB negotiators offered the possibility of emergency exceptions as an inducement for Democratic negotiators to accept limits on discretionary spending enforced by sequestration.¹³ The idea that providing an exception for emergency spending would give some flexibility to appropriators to accommodate unforeseen circumstances was also introduced at that time.¹⁴

This meant that from then on, supplemental appropriations designated as emergency spending were not counted toward budget caps, did not trigger sequestrations, and were not required to be offset with rescissions. However, there was a requirement that the emergency label only be applied to “dire emergencies.” In addition, the BEA mandated that all incremental costs

¹³ Dauster, “Budget Emergencies,” 255.

¹⁴ Ibid.

associated with Operation Desert Shield be treated as emergency spending without requiring further action by Congress and the president.¹⁵

Under the BEA, the emergency-spending designation could be initiated by either the president or Congress.¹⁶ Yet, for funds to become available, the Act requires that both the president and Congress agree to the emergency designation. For instance, the president can designate spending as “emergency” in his budget request. Congress must then include the emergency designation in statutory language. Congress can initiate emergency spending as well, with the president’s agreement.

In FY 2002, the president and Congress allowed the BEA to expire.¹⁷ Since then, supplemental appropriations that exceed the budget caps no longer trigger sequestrations and the “dire emergency” rule has been relaxed.

In theory, supplemental bills are still subject to the 302(a) allocation limits unless Congress makes an exception. However, in recent years, it seems that the exception has become the rule. For instance, in the FY 2005 budget resolution, Congress exempted from the limits “supplemental appropriations for fiscal year 2005 for contingency operations related to the “global war on terrorism.” This means that any and all spending related to the global war on terrorism received the functional equivalent of an emergency designation. For FY 2006, Congress made the same exemption but limited the exempted amount to \$50 billion. The FY 2007 budget resolution exempted “appropriations for fiscal year 2007 for contingency operations directly related to the global war on terrorism, and other unanticipated defense-related

¹⁵ Ibid., 257.

¹⁶ James V. Saturno, *Emergency Spending: Congressional and Statutory Rules* (Washington, DC: Congressional Research Service, CR21035, October 3, 2001), 3.

¹⁷ On a year-to-year basis, Congress will sometimes include discretionary caps and PAYGO rules enforceable by point of order. For instance, the FY 2004 budget resolution included these budget enforcement rules for the Senate.

operations.” As in FY 2005, no limits were placed on the amount Congress is allowed to spend above the budget caps in FY 2007.

It is important to note that the expiration of the BEA did not change the treatment of emergency spending. It is still true that if Congress and the president agree that a supplemental bill is necessary for an emergency, they do not have to make offsetting cuts. The only limit on emergency spending is that members of Congress can raise a point of order to protest the emergency designation.¹⁸ If the point of order is made and sustained, it would prohibit the committee from considering the legislation.¹⁹ However, according to the GAO, this has rarely happened, if ever.²⁰ In addition, even if a member raised a point of order turning the spending into “unauthorized appropriations,” this obstacle is easily overcome, as evidenced by the Congressional Budget Office (CBO)’s annual report itemizing unauthorized appropriations that survive year after year. Consequently, in recent years, the emergency designation and the use of the supplemental process has proven questionable. In particular, because supplemental and emergency spending is not included in deficit accounting, many lawmakers and scholars have become concerned that such spending is being used not to respond to unanticipated needs but to evade constraints on spending, avoid budget caps, and reduce the apparent size of budget deficits.

¹⁸ A point of order is a matter raised during consideration of a motion concerning the rules of parliamentary procedure. A point of order may be raised if the rules appear to have been broken. In this particular case, a member would be allowed to raise a point of order if a bill exceeded the 302(b) allocation.

¹⁹ Saturno, *Congress Point of Order*.

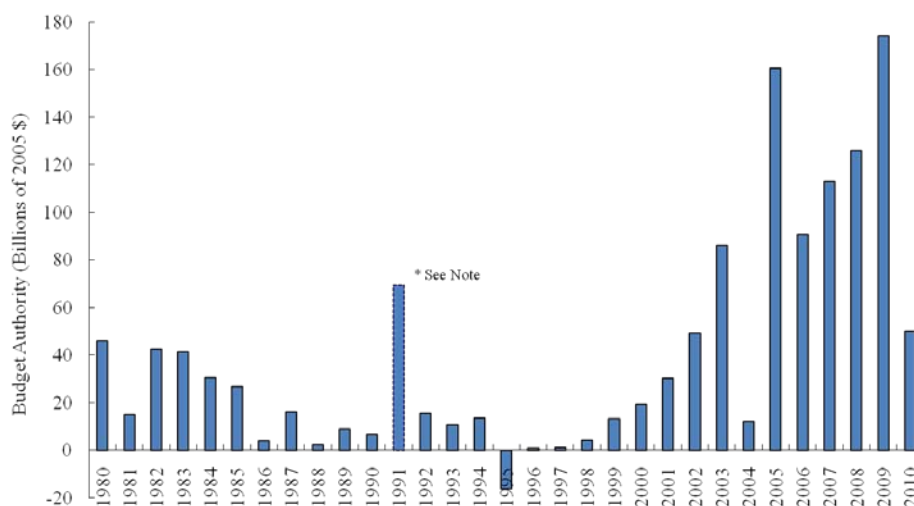
²⁰ GAO, *Supplemental Appropriations*, 9.

Section 2: The General Trend in Supplemental Spending since the 1980s

2.1. Increasing Use of Supplemental Spending

Each year over the past 25 years, Congress and the president have enacted one to eight supplemental spending bills annually. During that period, supplemental bills minus any rescissions have varied in size from a low of \$1.3 billion in FY 1988 to a high of \$197 billion in FY 2009.²¹ The general trend reflects a dramatic increase in the size of supplemental spending since 1998. Figure 2 shows the dollar amount, adjusted for inflation, of supplemental spending net of rescissions between 1980 and 2010. The data shows that supplemental spending increased from \$46 billion in FY 1980 to a high of \$174 billion in FY 2009.

Figure 2: Real Supplemental Appropriations (1980-2010)



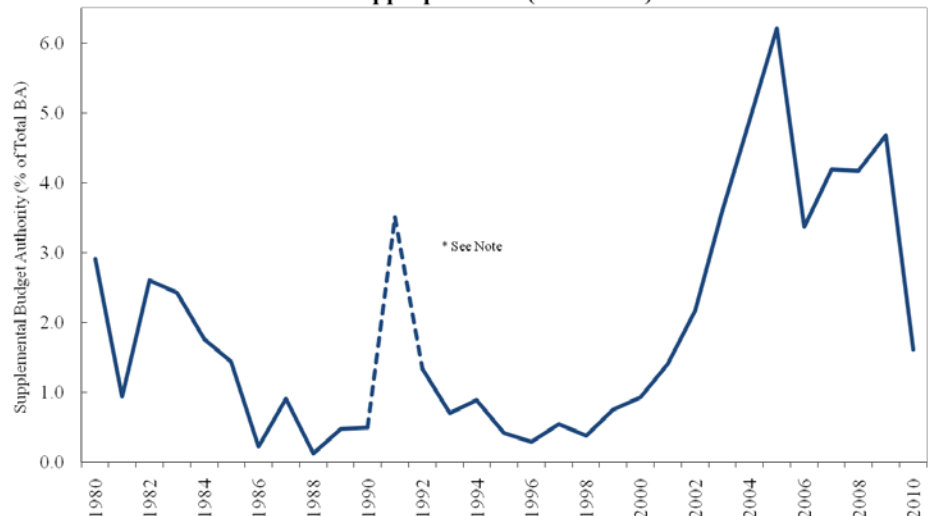
Sources: Author's compilations based on Congressional Budget Office, "Supplemental Appropriations in the 1970s" (1981), "Supplemental Appropriations in the 1980s" (1990), "Supplemental Appropriations in the 1990s" (2001), and "Data on Supplemental Budget Authority for the 2000s" (2010). *Note: uptrend reflects supplemental spending for Desert Storm, the costs for which were repaid through allied burden-sharing.

²¹ The dollar amounts are in nominal dollars. Also, since this study focuses on supplemental bills, it does not include any emergency-designated funding included in regular appropriations laws. For example, the FY 2006 and 2007 data do not include the \$50 billion and \$70 billion, respectively, in so-called bridge funding that was provided to the Department of Defense through a separate title in its regular appropriations.

Unless otherwise specified, this paper will always give supplemental appropriations "net of rescissions." For supplemental spending, the supplemental total equals the amount Congress enacted in supplemental spending minus the amount it decided to rescind from the rest of the budget. The budget total is the budget requested and approved minus any cancelled appropriations, rescissions, etc. However, according to the GAO, "it can be argued that budget authority before rescissions is a more meaningful measure of the effect of supplemental bills on the obligational authority provided by agencies." See GAO, *Supplemental Appropriations*, 6, footnote 9.

More significantly, the amount of money appropriated through supplemental bills as a share of total new budget authority has also increased drastically between 1980 and 2010. Figure 3 shows that the percentage of new spending appropriated through supplemental bills decreased throughout the 1980s. After 1981, it decreased from almost 3 percent of total budget authority to 0.1 percent in 1988. The early 1980s were characterized by high inflation and then a severe recession. The recession of 1981 and 1982 increased outlays for unemployment compensation and means-tested transfers to the unemployed. Some of this unexpected spending was funded through supplemental appropriations.²² As the economy recovered after 1982, the main reason for unanticipated outlays disappeared and supplemental appropriations fell.

Figure 3: Supplemental Appropriations as a Percentage of Total Appropriations (1981-2010)



Sources: Author's calculations based on Office of Management and Budget, Budget of the United States Government, Fiscal Year 2012, Historical Tables 5.4 and 5.2, "Supplemental Appropriations in the 1970s" (1981), "Supplemental Appropriations in the 1980s" (1990), "Supplemental Appropriations in the 1990s" (2001), and "Data on Supplemental Budget Authority for the 2000s" (2010). Note: uptrend reflects supplemental spending for Desert Storm, the costs for which were repaid through allied burden-sharing.

That being said, according to the Congressional Budget Office (CBO), there is no doubt that the provisions in the Congressional Budget Act of 1974 also contributed to the reduction in

²² Hungerford, *Supplemental Appropriations*, 4.

supplemental appropriations in the late 1970s and early 1980s.²³ This phenomenon was reinforced throughout the 1980s as Congress and President Ronald Reagan agreed that supplemental appropriations should not be considered except for dire emergencies. And during his 8 years in the White House, President Reagan often made credible threats to use his veto powers if non-emergency spending was included in supplemental bills.

Except for a sharp spike in 1991 to fund the first Gulf War, supplemental appropriations remained below 1 percent of total budget authority throughout most of the 1990s. According to the Congressional Research Service, most of the cost for the first Gulf War operations was eventually offset over the 1990s by burden-sharing contributions from allied nations.²⁴ Once adjusted for these payments, supplemental appropriations remained at less than 1 percent of total budget authority in the 1990s.

After 1998, supplemental appropriations began to rise, and after 2002, they started increasing at an even faster rate to meet the funding needs of the wars in Iraq and Afghanistan and the war on terrorism. By 2009, supplemental appropriations reached almost 5 percent of budget authority—a slight decline from the high of 6.2 percent in FY 2005.²⁵ It is important to note that during the second Gulf War, the United States cannot offset any of its war spending with allies' contributions.

Another interesting trend in supplemental spending over the past 25 years is that the major purposes have changed drastically. Figure 4 distinguishes between discretionary and mandatory supplemental spending. In the 1980s, almost half of supplemental appropriations were for mandatory programs such as unemployment compensation, and the rest were for

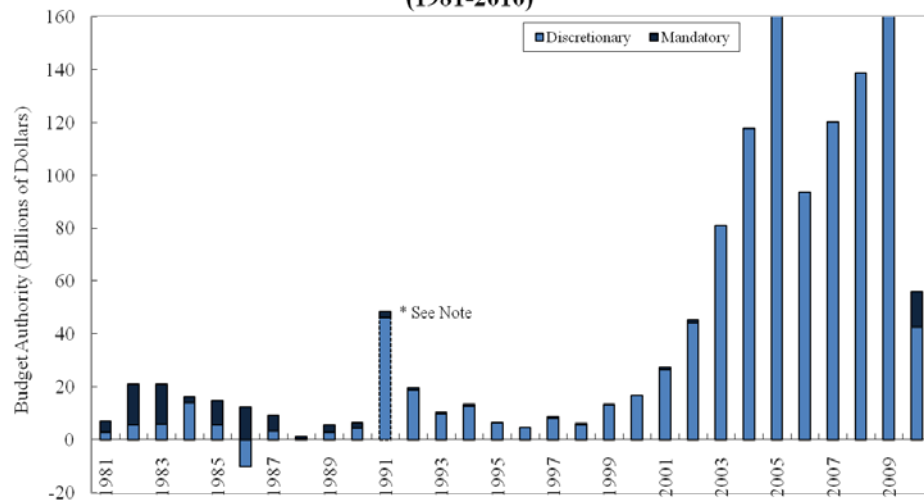
²³ CBO, *Supplemental Appropriations in the 1990s*, 2.

²⁴ Hungerford, *Supplemental Appropriations*, 5.

²⁵ One reason for the decline is the increased use of the emergency designation in regular appropriations.

discretionary spending. One large discretionary item in supplemental appropriations during this time was civilian pay raises.

Figure 4: Discretionary versus Mandatory Supplemental Appropriations (1981-2010)



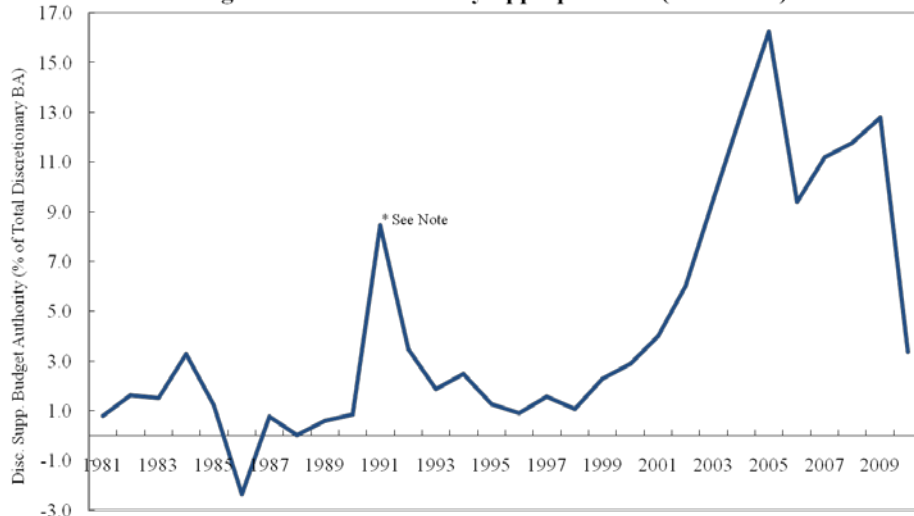
Sources: Author's calculations based on Congressional Budget Office, "Supplemental Appropriations in the 1980s" (1990), "Supplemental Appropriations in the 1990s" (2001), and "Data on Supplemental Budget Authority for the 2000s" (2010). *Note: uptrend reflects supplemental spending for Desert Storm, the costs for which were repaid through allied burden-sharing.

With the end of the recession and high inflation in the 1980s, and once agencies were required to absorb the full amounts of pay raises, the major purpose of supplemental spending shifted to funding natural disaster relief.²⁶ After 1990, close to 100 percent of supplemental bills were for discretionary spending (Figure 4).

As a result, the true measure of the increase in supplemental spending is best observed by looking at supplemental spending as a share of new discretionary spending. Figure 5 shows that the use of supplemental bills as a share of discretionary spending exploded after 1998. In FY 2009, almost 13 percent of new discretionary spending was appropriated through the supplemental process, a drastic increase from the 0.9 percent level of FY 1990.

²⁶ CBO, *Supplemental Appropriations in the 1990s*, 10.

Figure 5: Discretionary Supplemental Appropriations as a Percentage of Total Discretionary Appropriations (1981-2010)



Sources: Author's calculations based on Office of Management and Budget, Budget of the United States Government, Fiscal Year 2012, Historical Tables; Congressional Budget Office, "Supplemental Appropriations in the 1970s" (1981), "Supplemental Appropriations in the 1980s" (1990), "Supplemental Appropriations in the 1990s" (2001), and "Data on Supplemental Budget Authority for the 2000s" (2010.) *Note: uptrend reflects supplemental spending for Desert Storm, the costs for which were repaid through allied burden-sharing.

This increase should also be considered in the context of a lack of offsets of supplemental spending since the end of the 1990s. Figure 6 compares total supplemental spending with supplemental spending minus rescissions. The data shows that the level of rescissions in supplemental appropriations has varied from year to year, with particularly large rescissions in FY 1981, FY 1986, and FY 1995. In FY 1995, enacted rescissions totaled \$18.9 billion, while supplemental bills amounted to \$6.4 billion. Since 2000, however, and with the exception of FY 2006, very little spending was rescinded to offset supplemental spending. In FY 2006, enacted rescissions totaled \$34.8 billion, but supplemental spending net of rescissions still totaled near \$94 billion.²⁷

²⁷ CBO, *Data on Supplemental Budget Authority for the 2000s* (Washington, DC: Government Printing Office, 2010), 4, <http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprops.pdf>.

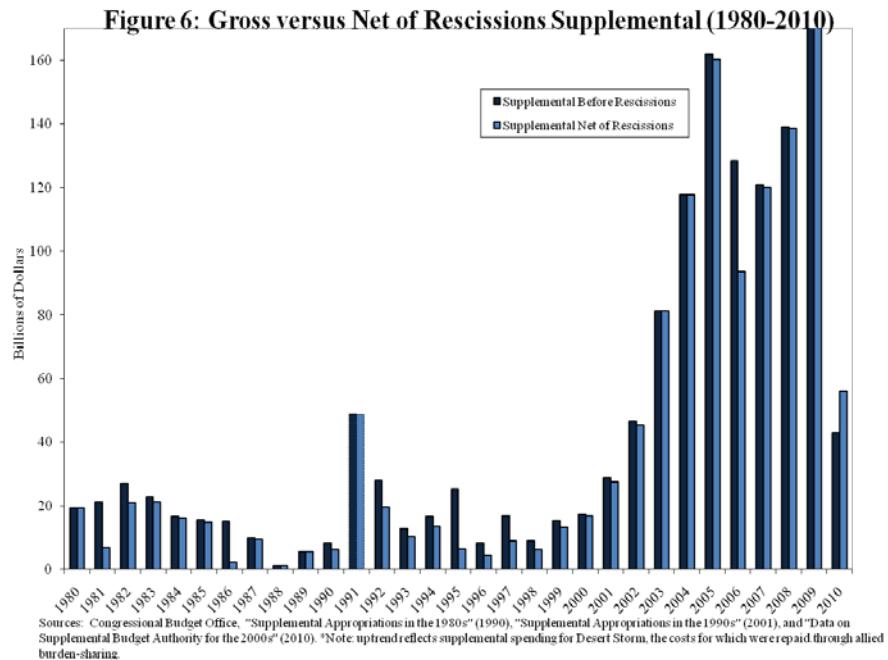


Table 1 confirms that after the expiration of the BEA of 1990, the amount of supplemental appropriations offset by rescissions dropped significantly.²⁸ For FY 2002-08, only 5 percent of supplemental appropriations were offset through rescissions.²⁹ That number dropped to a meager 2.6 percent for FY 2009-10.³⁰

Even though it has been argued that a focus on rescissions is misguided—considering that the offsetting rescissions are merely write-offs of budget authority that would likely never have been used and thus offsetting rescissions does not denote any great fiscal responsibility on the part of Congress—the lack of offsets has had a significant budgetary impact. In 2009, the Congressional Research Service noted that “had supplemental appropriations been fully offset since 1981, federal debt held by the public could have been reduced by 23 percent or \$1,332

²⁸ Hungerford, *Supplemental Appropriations*, 5.

²⁹ Hungerford, *Supplemental Appropriations*, i.

³⁰ CBO, *Data on Supplemental Budget Authority for the 2000s*.

billion.”³¹ The CRS report adds that if just 25 percent of the supplemental appropriations in FY 2003 through FY 2008 had been offset (the average offset for previous years), the federal debt held by the public would have been reduced by almost 3 percent or almost \$170 billion.³² This is no small change.

Table 1: Trend in Supplemental Appropriations and Rescissions Since 1981

Fiscal Years	Total Supplemental Appropriations (\$)	Total Rescissions (\$)	% of Supplemental Appropriation Rescinded (nominal)
1981-1985	103.3	23.2	22.4
1986-1990	38.6	15.7	40.7
1991-2002	206.6	55.2	26.7
2003-2008	749.2	37.7	5.0
2003-2008	239.8	6.2	2.6

Source: Congressional Research Service, “Supplemental Appropriations: Trends and Budgetary Impacts Since 1981,” RL33134, 2 January 2009, Congressional Budget Office, Data on Supplemental Budget Authority for the 2000s.

³¹ Hungerford, *Supplemental Appropriations*, i.

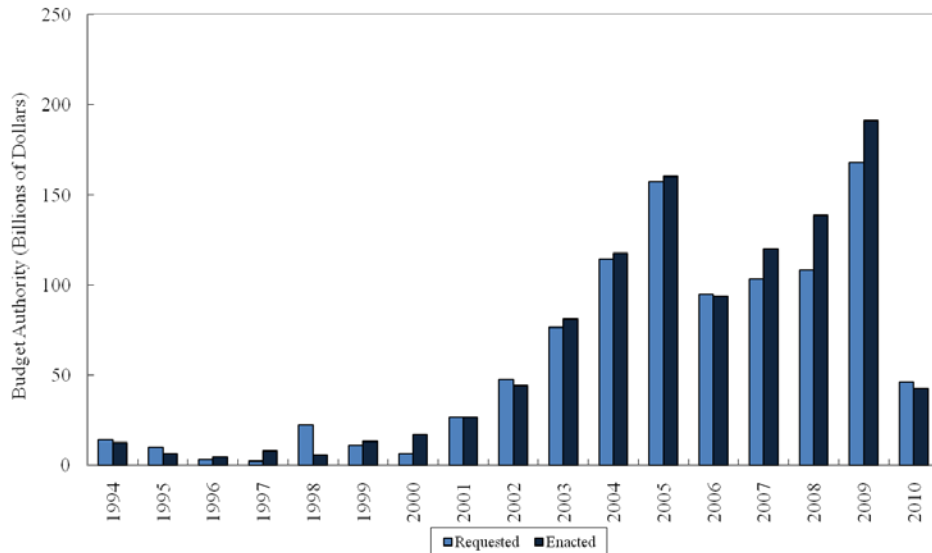
³² Hungerford, *Supplemental Appropriations*, i.

2.2. Responsibility for the Increase in the Use of Emergency Supplemental Appropriations

The Bush and Obama administrations are certainly profligate, but the increased use of supplemental bills began during the final Clinton years. An interesting question is whether it was Congress or the White House that was responsible for the increase in supplemental spending.

One way to assess responsibility for supplemental spending increases is to compare presidential requests for discretionary supplemental spending to spending actually approved by Congress (See Figure 7). Note that between FY 1994 and FY 2001, President Bill Clinton was in the White House and the Republicans controlled Congress, while between FY 2002 and FY 2006, Republicans controlled both Congress and the White House. In FY 2007, Republicans lost Congress, and in FY 2009 Democrats also took control of the White House.

Figure 7: Requested versus Enacted Discretionary Supplemental Appropriations (1994-2010)



Sources: Author's calculations based on Congressional Budget Office, "Supplemental Appropriations in the 1990s" (2001) and "Data on Supplemental Budget Authority for the 2000s" (2010).

Two-thirds of the time, Congress has enacted more supplemental spending than the president has requested. For example, the supplemental bill signed into law by President Obama in June 2009 was almost \$14 billion bigger than his original request. Much of that money qualified as earmarks and most of it was unrelated to either the wars in Iraq and Afghanistan or to hurricane relief. Between FY 1994 (President Clinton's first budget request) and FY 2001, supplemental spending remained relatively small even though it started increasing in size after 1998. Beginning in FY 2002 (President Bush's first budget request), a different pattern emerged. President Bush proposed significantly larger supplemental bills, and with the exception of FY 2002 and FY 2006, Congress enacted even larger ones. Between FY 1994 and FY 2001, actual spending approved by Congress was \$700 million less than the spending proposed by President Clinton. By contrast, between FY 2002 and FY 2009, enacted discretionary supplemental spending was \$77 billion higher than the spending requested by President Bush.

These trends suggest that both the president and Congress are responsible for the recent increases in supplemental spending. For example, in FY 2009, executive requests for several supplemental bills totaled \$168 billion—a 55 percent increase in supplemental requests over the previous year—and actual spending was \$191 billion. In June 2008, President Bush asked Congress for \$108 billion in a single supplemental bill—the largest supplemental ever—and signed a final bill that was \$116 billion.³³

³³ CBO, *Data on Supplemental Budget Authority for the 2000s*, 4. In the CBO data, the supplemental bill of June 2008 is counted under both FY 2008 and FY 2009, because funds in it applied to each fiscal year. The \$108 billion figure is the FY 2008 number. The FY 2009 number from the same bill is \$75 billion.

Section 3: Supplemental Bills Are Enabling a Spending Explosion

The increase in the use of supplemental appropriations in recent years is part of a significant boost in the overall size of the U.S. government. Since FY 2002, the Bush and Obama administrations, aided by a willing Congress, have been responsible for a massive expansion in the federal budget. As a result, total outlays have risen from 18.2 percent of gross domestic product in FY 2001 to 25.4 percent in FY 2010.³⁴ Recent annual increases in federal spending have been much higher than during the 1990s—sometimes as much as three times higher. In FY 2011, under President Obama, total outlays will be up a remarkable \$1.96 trillion from FY 2001 when President Bush came into office.³⁵

A close look at the data and the trends in supplemental spending reveals how it has enabled lawmakers to increase overall spending.

3.1. The Emergency Loophole

At the heart of the problem is the concept of an “emergency.” As explained earlier, under the BEA, emergency bills are given special exceptions from budgetary rules designed to restrain spending. Under the BEA, an emergency appropriation causes an increase in the relevant discretionary spending limits to accommodate the additional spending. However, the term “emergency” has never been specifically defined, let alone codified, for budgetary purposes. In 1991, the OMB attempted to develop a neutral definition of “emergency” by stating that such expenditure must meet five criteria: necessary, sudden, urgent, unforeseen, and temporary.

So far, proposals to incorporate these criteria into law have not been successful. In practice, this general language is typically included in the annual budget resolutions and requires

³⁴ OMB, Historical Table 1.2, <http://www.whitehouse.gov/omb/budget/Historicals/>.

³⁵ OMB, Budget of the United States Government, Fiscal Year 2012, Historical Table 1.1, <http://www.whitehouse.gov/omb/budget/Historicals/>.

that committees explain how any proposed emergency legislation meets the criteria to become exempt. The Republican staff of the Senate Budget Committee notes, however, that “[t]o date, this requirement has been ignored.”³⁶

Indeed, the emergency designation does not depend on this requirement being fulfilled, nor does it depend on any evaluation of whether the criteria are met.³⁷ The only enforcement is a point of order rule, which is rarely invoked. In addition, in the last four years, Congress has provided exemptions for all appropriations related to overseas contingency operations for the global war on terror, thus introducing a gigantic loophole where budget rules are not applied.³⁸

As a result, in recent years, lawmakers have increasingly abused their power in funding emergency spending bills. According to the Congressional Research Service, Congress designated \$979.5 billion as “emergency” in appropriation acts from FY 2000-10, including \$671.13 for defense (69 percent) and \$308.4 billion for non-defense (31 percent).³⁹

A point of clarification is important here. Many people treat “emergency” and “supplemental” appropriations as synonyms, but they are not (See Figure 1). Usually, a disaster leads to a request for emergency spending. That emergency spending will often lead to a supplemental appropriations bill. As a result, most supplemental appropriations are enacted as stand-alone legislation. However, in some instances, emergency spending is enacted as part of regular appropriations measures.

For instance, on September 7, 2005, the administration requested \$51.8 billion for Hurricane Katrina relief. The entirety of that emergency spending was appropriated through a supplemental appropriations bill. Later that year, in December, an additional \$50 billion in

³⁶ U.S. Congress, Senate Budget Committee, Republican staff, *Budget Bulletin*, 109th Cong., 1st sess., No. 1, May 10, 2005, <http://budget.senate.gov/republican/analysis/2005/bb01-2005.pdf>.

³⁷ *Ibid.*

³⁸ GAO, *Supplemental Appropriations*, 9.

³⁹ Congressional Research Service, Memorandum to Senator Tom Coburn (2011).

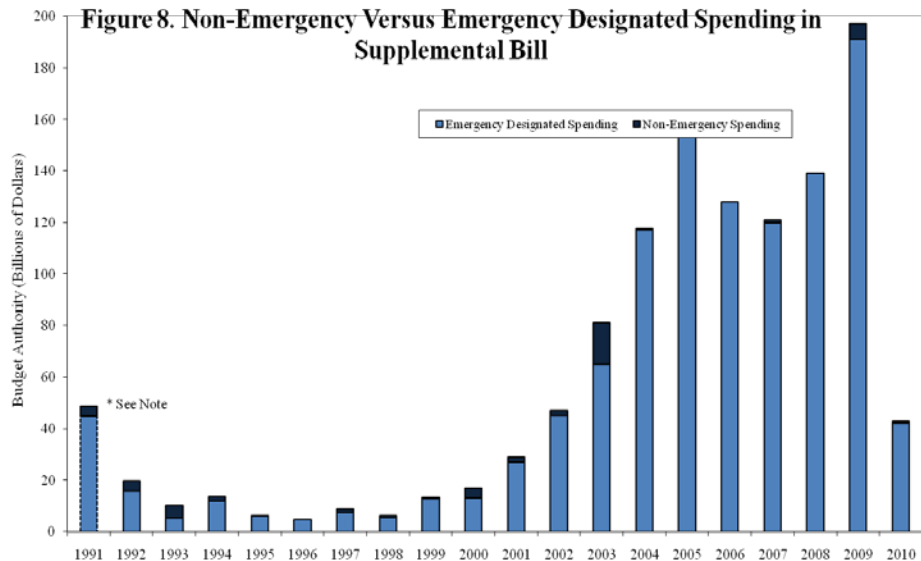
emergency funds for Hurricane Katrina relief was attached to the regular defense appropriations bill. That is, the spending was designated as emergency but was appropriated through the regular process.

Following that trend, there has been an increase in the amount of emergency-designated spending attached to regular appropriations bills. For instance, in December 2006, \$70 billion in emergency war funding was attached to the FY 2007 defense authorization measure (PL 109-364).⁴⁰ And in December of 2007, another \$70 billion in emergency war spending was attached to the FY 2008 omnibus spending bill signed by President Bush in January of 2008.

Furthermore, not all supplemental appropriations consist of designated emergency spending—even though a large portion does. Figure 8 shows the trend in emergency-designated spending in supplemental appropriations since 1991. We can see that each year a great majority of supplemental appropriations has received the emergency designation. FY 2003 in particular stands out, with a large proportion of funds in the supplemental bill that were not emergency designated. According to the GAO, the lack of emergency designation for these funds was likely the result of the close timing between the supplemental request and the introduction of the FY 2004 budget resolution.⁴¹

⁴⁰ David Clarke and Liriel Higa, “Omnibus Clears with War Funding,” CQ Weekly: Weekly Report Appropriations, December 24, 2007, 2.

⁴¹ GAO, *Supplemental Appropriations*, 3.



Sources: Author's calculations based on Congressional Budget Office, "Supplemental Appropriations in the 1980's" (1990), "Supplemental Appropriations in the 1990's" (2001), "Data on Supplemental Budget Authority for the 2000's" (2010), Congressional Research Service, Memorandum to Senator Tom Coburn (2011), "Emergency Spending FY2000-FY2010" (2010). *Note: uptrend reflects supplemental spending for Desert Storm, the costs for which were repaid through allied burden-sharing.

The recent increased use of emergency supplemental spending has allowed lawmakers to exempt a growing amount of money from budget limits. Supplemental bills are the main vehicle for this growth in emergency spending.

Increasingly relying on supplemental funds for emergencies instead of on regular appropriations is problematic. Supplemental budget requests include much less detail about how the money will be spent than the regular presidential budget requests. While some flexibility is important to be able to respond to unpredictable emergency needs, there is, as analyst Christopher Hellman notes, "a fine line between flexibility and carte blanche."⁴² Too much flexibility effectively gives the departments and agencies of the Executive Branch a blank check.

Another difference between supplemental and regular appropriations is that supplemental bills tend to move through Congress more quickly. The argument is that the money needs to be made available as soon as possible, but on the other hand, the expedited process, combined with

⁴² Christopher Hellman, "Facts About Supplemental Spending for Non-Emergency Pentagon Programs," Center for Arms Control and Non-Proliferation, February 14, 2005, http://armscontrolcenter.org/policy/securityspending/articles/non_emergency_spending/.

the lack of detail in supplemental budget requests, leaves little room for Congressional review. As Senator John McCain has complained, the emergency supplemental process “removes from [Congress’s] oversight responsibilities the scrutiny that these programs deserve.”⁴³

The political effect of the word “emergency” is to increase public pressure for quick passage of the bill. In this charged atmosphere, effective oversight is even more important, yet the “emergency” label actually weakens congressional oversight. No member wants to vote against emergency aid money aimed at supporting U.S. troops in Iraq or helping victims of Hurricane Katrina.

3.2. Using Supplemental Bills to Increase Spending Across the Board

Supplemental spending is more and more often used to circumvent budget caps to increase overall spending. For instance, by transferring some defense spending from the regular Department of Defense (DOD) budget into an emergency-designated supplemental bill, lawmakers free some space under the spending caps, which in turn allows them to increase defense and/or non-defense spending in the regular budget.

Defense Spending

In the last few years, many have criticized the use of emergency supplemental bills instead of the regular appropriations process to fund U.S. operations in Iraq and Afghanistan.⁴⁴ For instance, the FY 2007 defense budget request submitted by President Bush in February 2006 did not include funding for military operations and covered only the DOD’s normal peacetime funding requirements (the budget request was \$439 billion).⁴⁵ Just a few weeks later, the administration submitted a \$68.7 billion supplemental FY 2006 budget request to Congress for

⁴³ Ibid.

⁴⁴ John Bennett, “Mullen Wants Supplemental Spending Rolled Into Annual Baseline Budgets,” *Defense News*, January 27, 2008.

⁴⁵ OMB, *The Budget of the United States Government, Fiscal Year 2007, Summary Tables* (Washington, DC: Government Printing Office, February 2006), Table S-2.

Operation Iraqi Freedom and Operation Enduring Freedom.⁴⁶ In June, Congress agreed to provide \$68.2 billion in emergency supplemental appropriations for military operations in FY 2006.⁴⁷

Figure 7 shows the percentage of defense spending appropriated via emergency supplemental bills since 1981. It shows that in spite of the Cold War in the 1980s, most defense spending went through the regular appropriations process, not the supplemental one. Once we account for the offsetting contributions from American allies during the first Gulf War, it is clear that very little defense spending came from supplemental bills.

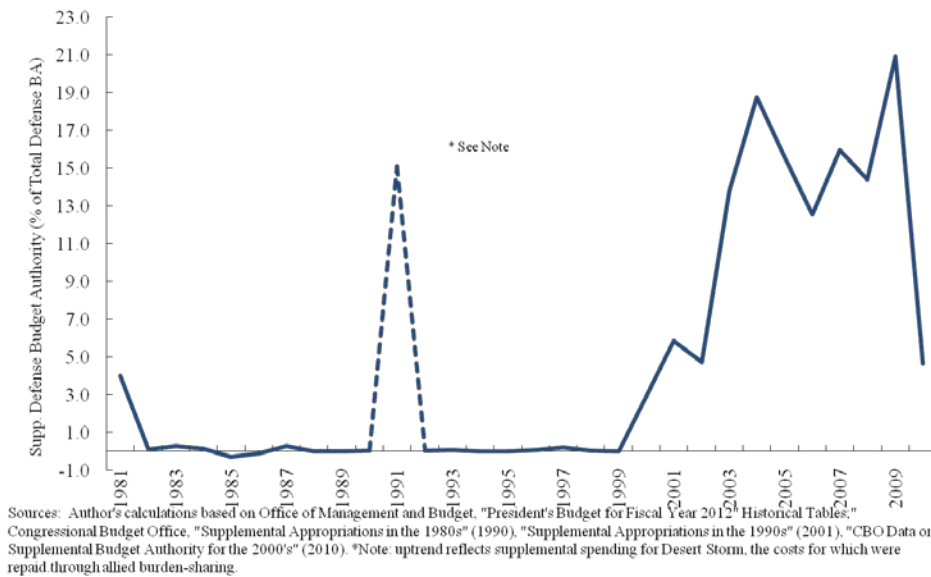
According to Stephen Daggett at the Congressional Research Service, one explanation might be that in the 1990s the decision to provide emergency funds for the DOD was always controversial.⁴⁸ As a result, Congress would impose cuts in other parts of the budget to offset some or all of the supplemental funding. This would create a strong incentive not to abuse the process.

⁴⁶ CBO, *Data on Supplemental Budget Authority for the 2000s*, 4, <http://www.cbo.gov/ftpdocs/66xx/doc6630/3-16-SuppApprop.pdf>.

⁴⁷ *Ibid.*, 3.

⁴⁸ Stephen Daggett, "Emergency Appropriations for the Department of Defense," Memorandum (Washington, DC: Congressional Research Service, August 18, 1998), 1.

**Figure 9: Supplemental Defense Appropriations
as a Percentage of Total Defense Appropriations (1981-2007)**



In 1998, however, things started to change. The share of new defense spending appropriated through supplemental bills increased from 1 percent in FY 1998 to 17.5 percent in FY 2007.⁴⁹ In December 2006, Congress included \$70 billion in emergency war spending for Iraq and Afghanistan in the DOD's regular FY 2007 appropriations act to cover the cost of the war for the months between the beginning of the fiscal year (October 2006) and the passage of a supplemental bill in May 2007. On May 25, 2007, Congress provided an additional \$99.8 billion through supplemental spending to the DOD to cover the cost of the war for the remaining months of the year.⁵⁰

⁴⁹ Author's calculations based on CBO, *Data on Supplemental Budget Authority for the 2000's*, <http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprops.pdf>, and Amy Belasco, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11* (Washington, DC: Congressional Research Service, Report for Congress, RL33110, updated November 9, 2007), Tables 1 and 2.

⁵⁰ For additional information about the FY 2007 supplemental bills, see Stephen Daggett, et al., *FY2007 Supplemental Appropriations for Defense, Foreign Affairs, and Other Purposes* (Washington, DC: Congressional Research Service, Report for Congress, RL33900, July 2, 2007), <http://www.fas.org/sgp/crs/natsec/RL33900.pdf>. See also Department of Defense Press Release, *President Bush's FY 2008 Defense Submission*, February 5, 2007.

More interestingly, throughout 2007, President Bush requested up to \$196 billion in emergency supplemental bills to cover the cost of the wars in FY 2008.⁵¹ The first request was made in February 2007 and the second one was made in October 2007. These requests were unusual since, in theory, supplemental spending bills provide additional budget authority during the current fiscal year—not for the following fiscal year.

The same pattern holds true for FY 2009. In February 2008, President Bush once again did not include the cost of war in the all-time-high \$515 billion defense budget for FY 2009.⁵² Instead, the budget included a placeholder for yet another \$70 billion emergency war supplemental bill.

Pressed by Democrats during the annual defense budget hearings in February, Defense Secretary Robert M. Gates confirmed that the \$70 billion was only a fraction of the total expected war cost for the year. Pressed further, Gates estimated that military operations in Iraq and Afghanistan would cost at least \$170 billion in 2009. But, he immediately added, “I have no confidence in that figure.”

A key issue is whether, eight years into the Iraq war, Congress should continue to fund military operations in Iraq and Afghanistan primarily with supplemental spending. While the recent costs of the war may have been necessary and not permanent, they are by no means sudden or unforeseen. The war in Afghanistan started in October 2001, and the war in Iraq commenced in March 2003.

The Bush administration argued that supplemental bills have the advantage of being prepared closer to the time when the funds will be used, allowing for a more accurate assessment

⁵¹ OMB, *The Budget of the United States Government, Fiscal Year 2008, Summary Tables* (Washington, DC: Government Printing Office, February 2007) 162, table S-2; Belasco, *The Cost of Iraq, Afghanistan*, Tables 1 and 2.

⁵² OMB, *Budget of the United States, FY 2009, Summary Tables*, 140 (Washington, DC: Government Printing Office, February 2008).

of needs and quicker access to the funds. In addition, to ensure that the increased defense spending doesn't become a permanent feature of the budget, the cost of the wars needs to be kept out of the regular appropriations process.⁵³

However, critics of the supplemental funding strategy argue that the monthly cost of the wars can easily be predicted and planned for. In particular, Thomas Donnelly, a resident fellow in defense and security policy studies at the American Enterprise Institute, points out that one of the largest expenditures in supplemental bills is the salaries and benefits of Army National Guard personnel and reservists called to active duty, costs that are by no means unpredictable and sudden.⁵⁴ Therefore, they belong in the regular defense budget—not in an emergency supplemental bill.

A well-documented Congressional Research Service study by Stephen Daggett concluded that emergency supplemental bills have been the most frequent means of financing the initial stages of military operations during World War II, the Korean War, the Vietnam War, and the first Gulf War.⁵⁵ In general though, past administrations have requested, and Congress has provided, funding for ongoing military operations in regular appropriations bills as soon as even limited and partial projections of the cost could be made.

For instance, in 1951, 72 percent—or \$32.8 billion—of the kick-off cost for the Korean War was funded through supplemental bills, while \$13 billion went through regular appropriations.⁵⁶ But by the second year, Congress appropriated 98 percent—or \$55.2 billion—of the war funding through the regular defense budget. Only \$1.4 billion went through the

⁵³ Stephen Daggett, *Defense: FY2006 Authorization and Appropriations* (Washington, DC: Congressional Research Service, RL32924, January 20, 2006), 15–16.

⁵⁴ Thomas Donnelly, *The Military We Need: The Defense Requirements of the Bush Doctrine* (Washington, DC: American Enterprise Institute Press, 2005), 81–86.

⁵⁵ Stephen Daggett, *Military Operations: Precedents for Funding Contingency Operations in Regular or Supplemental Appropriations Bills* (Washington, DC: Congressional Research Service, RS22455, June 13, 2006).

⁵⁶ *Ibid.*, 3.

supplemental process. By 1953, the president did not request any funding for the Korean War outside of the regular defense budget.⁵⁷

The 10-year-long Vietnam War followed a slightly different pattern. In the first year of the war, Congress provided all of the funding in supplemental spending bills. In the second year, the administration requested a little less than 50 percent of the war funding in regular defense appropriations.⁵⁸ By the fourth year, all of the war funding was going through the regular defense budget process. As Daggett explains, the Johnson administration requested—and Congress provided—funding for the war in regular defense appropriations bills even though troop levels were in flux and the duration of the conflict could not be foreseen.⁵⁹

More recently, the Republican Congress decided in FY 1996 to include all funding for operations in Southwest Asia in regular appropriations bills rather than supplemental ones. In addition, it directed the Clinton administration to request funding for ongoing military operations in the regular defense budget.⁶⁰ In the FY 1997 defense budget and in later requests, President Clinton complied with Congress's directive, and military operations in Southwest Asia, Bosnia, and Kosovo received funding in the regular appropriations process without an emergency designation.⁶¹

Today, the most likely explanation for funding the cost of the wars in Iraq and Afghanistan through supplemental bills rather than regular appropriations has little to do with military strategy. Rather, it is because supplemental spending is not included in calculations of the federal budget deficit. When President Bush made his FY 2009 budget request in February

⁵⁷ Ibid., 4.

⁵⁸ Ibid., 5.

⁵⁹ Ibid.

⁶⁰ Daggett, *Defense*, 15–16.

⁶¹ Ibid., 16.

2008, he indicated the deficit was going to be \$407 billion.⁶² A year later, as we factored in supplemental appropriations throughout the year, we found that the 2009 deficit was actually \$459 billion.⁶³

The supplemental appropriations gimmick creates an accounting illusion that allows the administration and Congress to hide short-term massive increases in spending. In particular, the use of supplementals to fund the war must be placed within the context of the exponential growth in regular military appropriations since President Bush took office in 2001. In FY 2005 constant dollars, requested outlays for national defense for FY 2012 are 74 percent greater than defense costs when President Clinton left office in FY 2001.⁶⁴ As for war funding, in an attempt at greater transparency President Obama included an “Overseas Contingency Operations”⁶⁵ request in his FY 2012 budget for Department of Defense, Department of State, and USAID funding related to the ongoing wars rather than depending on supplemental appropriations for such funds.

President Bush would likely have had a hard time getting his large defense spending increases approved if he had included the cost of the wars in his regular defense budget requests. For instance, in FY 2008 he requested a budget for the DOD of \$481.4 billion.⁶⁶ This amount did not include any money for the wars, which ended up totaling at least \$198 billion (\$89.4 billion in emergency war spending requested and enacted in December 2007 and \$108.1 billion requested but not yet enacted).⁶⁷ In other words, without the supplemental gimmick, President Bush would have had to request \$679 billion instead of \$481 billion for the DOD budget.

⁶² *Budget of the United States Government, FY 2009*, Table S-1.

⁶³ *Budget of the United States Government, FY 2010*, Table S-1.

⁶⁴ OMB, *Budget of the United States, FY 2012*, Historical Table 6.1.

⁶⁵ See page 137 of President Obama’s FY 2012 budget for a breakdown of funds.

⁶⁶ *Budget of the United States Government, FY 2008*, 153, Table S-3.

⁶⁷ *Budget of the United States Government, FY 2009*, 140, Table S-2.

As a *Defense News* editorial speculated during the Bush years, “[T]he White House [is] using the supplemental as a thinly veiled political attempt to keep the public from lapsing into sticker shock, and so, losing support for the war.”⁶⁸ In other words, supplemental spending was a successful funding mechanism for long and painful wars.

Unfortunately, in recent years, war supplemental bills have also been increasingly used to fund non-emergency defense items that are not even related to ongoing conflicts. Winslow Wheeler, the director of the Strauss Military Reform Project of the Center for Defense Information, tracked down those items and concluded that the “transfer” is readily apparent in the DOD’s procurement accounts.⁶⁹ For example, in the account for “Aircraft Procurement, Army” on page 249 of the regular 2006 Pentagon budget, one can find the notation “Transfer to Title IX” for \$11.2 million deducted from the president’s regular annual request to purchase “aircraft survivability equipment.” The money is added back in on page 477 in Title IX, where the money becomes war “emergency” spending.

Some might argue that aircraft survivability is a legitimate requirement in Iraq and Afghanistan. That may be true, but the point is that Congress took spending the president requested for normal peacetime procurement costs and moved it to the emergency account. In this account alone, Wheeler counted 17 transfers from the peacetime procurement account to the emergency war spending account, for a total of \$654 million. He also counted in the small print an additional \$107 million in spending shifted to the war emergency part of the bill. That makes

⁶⁸ “Budget Tricks,” *Defense News*, February 14, 2005.

⁶⁹ Winslow Wheeler, *Defense Budget Tutorial #2: The Smoke and Mirrors in Congress’ Defense Appropriations Bills: You’ll Need a Rosetta Stone* (Washington, DC: Center for Defense Information, Strauss Military Reform Project, January 2006), <http://www.cdi.org/program/issue/document.cfm?DocumentID=3270&IssueID=100&StartRow=21&ListRows=10&appendURL=&Orderby=DateLastUpdated&ProgramID=37&issueID=100>.

a total of \$762 million that Congress moved from spending accounts where funding requests are subject to budget caps to accounts where the requests are not counted and not capped.

Another advantage of the maneuver is that the transfer freed some space under the Pentagon's budget baseline to buy "one F-15E fighter-bomber (\$65 million), two 'Littoral Combat Ships' (\$440 million), and a host of other much smaller purchases, numbering in the hundreds," adds Wheeler. Because this gimmick is used in most of the accounts of the peacetime parts of the bill, experts say that the transfer to the war emergency bill adds up to tens of billions of dollars, allowing the Pentagon to boost other parts of its regular budget by billions of dollars.

But the Pentagon is not the only entity using the emergency gimmick. According to a document released by the Senate Committee on Budget, many items requested by President Bush in his FY 2008 war emergency request were not emergencies.⁷⁰ For instance, the committee wrote, "an increase (\$1.7 billion) for anything called a permanent change in military force structure should be funded in the regular, annual defense budget, not in an 'emergency' supplemental." In addition, the bill requested up to \$4.2 billion for items that were not even for the wars in Iraq and Afghanistan, such as \$500 million for six electronic warfare planes—neither the insurgents in Iraq nor Al Qaeda have an air force or radars—and \$400 million for two developmental aircrafts that will not see service until 2013.

The main benefit of this practice is that it allows the Pentagon a larger budget than it would otherwise be granted. According to Christopher Hellman, even the military admits that it is funding non-emergency programs through supplemental Bills.⁷¹ Army Chief of Staff General Peter Schoomaker testified before the Senate that the Army preferred to fund 30,000 additional troops through supplemental spending because if it included the necessary funds in the annual

⁷⁰ U.S. Congress, Senate Committee on the Budget, Republican staff, *Informed Budgeteer*, 110th Cong., 1st sess., No. 3 (March 9, 2007), <http://budget.senate.gov/republican/analysis/2007/bb03-2007.pdf>.

⁷¹ Hellman, "Facts about Supplemental Spending."

budget request, it “would have to displace other things that are too important to us as we transform, such as equipment and other readiness issues. So the department has elected to do it with emergency and supplemental funding since we have the options to do so.”⁷²

What’s more, Congress has also used defense supplemental appropriations to boost non-defense spending in the regular appropriations process. For instance, by trimming the administration’s defense spending request and instead relying on supplemental bills, Congress frees up those amounts for non-defense appropriations. Brian Riedl, a budget analyst at the Heritage Foundation, explains that, “The common usage of defense supplemental bills has increased non-defense spending as well. Lawmakers now try to shift budget resolution funds from defense to domestic programs, knowing that these defense funds can be replenished by adding to the next supplemental bill.”⁷³

For instance, in early May 2006, House Appropriations Chairman Jerry Lewis asked that \$6 billion from proposed defense increases be shifted to boost domestic programs.⁷⁴ The money was used in part to erase almost \$4 billion in cuts proposed for programs funded in the FY 2007 Labor-Health and Human Services measure, which brought funding back to its FY 2006 level.⁷⁵ Many more examples like this one can be found.

Unfortunately, these appropriations practices do more than just add spending to an already bloated budget. Donnelly argues that “[r]elying so heavily on supplemental funding distorts the Defense Department’s priorities and perverts proper planning.” Shifting some of the annual emergency appropriations to the DOD’s regular budget would “reduce much of the

⁷² Ibid.

⁷³ Brian Reidl, interview with the author, May 1, 2006.

⁷⁴ Peter Cohn, “Lewis Eyes \$6 Billion Shift to Boost Domestic Programs,” *Congress Daily*, May 3, 2006.

⁷⁵ Ibid.

uncertainty that now plagues the Pentagon” and would facilitate modernization and transformation.⁷⁶

Non-defense Spending

The same supplemental spending issues apply almost equally to non-defense spending. In recent years, an ever larger share of non-defense spending has been funded through the supplemental process. According to George Krumbhaar, “Although non-defense supplemental spending has been irregular, the numbers for FY 2005 plot out in a similar fashion as the defense sector: At \$81.2 billion in 2005, non-defense discretionary supplementals stood at 16.1 percent of total non-defense discretionary appropriations.”⁷⁷ In recent years, the numbers are not as dramatic with non-defense supplemental appropriations as a percentage of total non-defense discretionary budget authority for FY 2009 being 5.6 percent.

Because most supplemental bills do not count against House and Senate budget limits, Congress has used them to get around requests that the growth in non-defense, non-Homeland Security budget authority be seriously limited. An increasing number of non-emergency, non-defense programs find their way to supplemental appropriations bills. This tendency leads to a higher overall spending level.

The best example of Congress’s propensity to stuff supplemental bills with non-defense, non-emergency items can be found in the emergency supplemental bill passed by the Senate to fund the war in Iraq and Hurricane Katrina relief in May 2006. This \$109 billion bill contained, among other things:

- \$4 billion for a farm subsidy bailout
- \$594 million for national highway projects

⁷⁶ Donnelly, *The Military We Need*, 81–86.

⁷⁷ Krumbhaar, “Supplementals are Climbing!”

- \$1.1 billion for fishery assistance
- \$2.3 billion for combating avian flu

By June 2006, House and Senate negotiators had struck a deal and agreed to \$94.5 billion for a FY 2006 supplemental spending bill. The final version of the bill was in line with the amount requested by the president earlier that year in March, and \$65.8 billion of that amount went to the DOD. The rest accounted for a large share of FY 2006 non-defense supplemental spending. The bill contained \$19.8 billion for disaster relief efforts, including \$3.7 billion for the Army Corps of Engineers' flood control and levee repair projects, \$6 billion for the Federal Emergency Management Agency's Disaster Relief Fund, \$5.2 billion for the Community Development Block Grant program, \$550 million for a veterans' medical facility in Louisiana, and \$500 million for agriculture assistance (a \$3.5 billion decrease from the Senate-passed supplemental bill).⁷⁸ It also included \$4 billion for the State Department and foreign aid, and \$2.3 billion for pandemic flu preparations.⁷⁹ The bill also endorsed the president's request of \$1.9 billion for border security initiatives, with \$1.2 billion going to Homeland Security and \$708 million going to the National Guard.⁸⁰

Finally, the most recent supplemental bill signed by the president in June 2007 included \$24 billion in non-emergency spending.⁸¹ These expenditures include \$120 million for the shrimp and menhaden fishing industries, \$283 million for the Milk Income Loss Contract Program, \$60.4 million for salmon fisheries, \$100 million for California citrus growers, \$50 million for asbestos mitigation at the U.S. Capitol Plant, \$1 billion for avian flu prevention, and \$1 billion for NASA.

⁷⁸ Chuck Conlon and David Clark, "Budget Tracker," *Congressional Quarterly*, June 12, 2006.

⁷⁹ *Ibid.*

⁸⁰ Chuck Conlon and David Clark, "Budget Tracker: Supplemental Deal Sealed," *Congressional Quarterly*, June 9, 2006.

⁸¹ Senate Committee on the Budget, *Informed Budgeteer*.

Most of these earmarked items should not qualify as emergency spending and should have been funded through the regular appropriations process. In fact, most hurricane relief efforts could be funded through the regular appropriations process. To be sure, a federal response through the supplemental appropriations process is appropriate for disasters of the largest magnitude—such as Hurricanes Katrina and Rita, which led to unexpected levels of devastation. However, as unpredictable as natural disasters are, hurricane season is a predictable event. It happens every year at the same time and devastation costs can be at least partially anticipated.

3.3. No Earmarks Left Behind

Supplemental and emergency appropriations are not subject to the same kind of budget discipline as other appropriations. Because of a serious lack of congressional oversight and the fact that supplemental bills will almost always be signed by the president, they attract earmarks and other projects that would not be funded on their own merits. With more oversight, most of these items would never receive an emergency designation.

For instance, in April 2003 Congress passed the \$78.5 billion War Supplemental Appropriations Act. It included 29 unrelated projects totaling \$348 million, such as \$110 million for the National Animal Disease Center in Ames, Iowa. Also, the \$82 billion Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief 2005 (H.R. 1268) was supposedly passed to help the countries affected by the Asian tsunami and to help with the war on terror. According to Citizens Against Government Waste (a taxpayer watchdog group), Congress added \$1.13 billion for projects that had nothing to do with either objective, including \$55 million for wastewater treatment in De Soto County, Mississippi, and \$25 million for the Fort Peck Fish Hatchery in Montana.⁸²

⁸² Brandon Gustafson, “The No Pork Pledge,” *Citizens Against Government Waste*, September 30, 2005.

The first two emergency supplemental bills passed by Congress and signed into law in the immediate aftermath of Katrina were free of earmarks. Unfortunately, that has not been the case in subsequent supplemental bills. The June 8, 2005, agreement reached by lawmakers on supplemental spending for the war and for hurricane relief included numerous earmarks.⁸³ For instance, it provided \$30.4 million for Sacramento levee repairs and \$176 million for the construction of a new Armed Forces retirement home in Mississippi.⁸⁴ The bill's final figure was \$702 million, up from the \$594 million contained in the original Senate bill.⁸⁵

Below is a short and non-exhaustive list of some of the most egregious pork items found in some of the supplemental bills from recent years:

- \$9.7 million for a tree assistance program to compensate eligible orchardists for tree losses
- \$1 million for the Geisinger Health System to establish centers for excellence for the treatment of autism in Harrisburg, Pennsylvania
- \$500,000 for the Ohio Alliance Community Center for the Deaf in Worthington, Ohio
- \$5 million for the State and Tribal Wildlife Grants program
- \$19.3 million for education and human resources for the National Science Foundation
- \$22.7 million for a Capitol power plant
- \$15 million for the Equal Employment Opportunity Commission
- \$9 million for the operation of the National Park Service system
- Another \$2 million for the State and Tribal Wildlife Grants program
- \$40.1 million for Capitol police buildings and grounds
- \$3.3 million for the European Communities music listening dispute

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

- \$231,000 for DAIKON Lutheran Social Ministries of Allentown, Pennsylvania, for abstinence education and related services
- \$35 million for grants to address drinking water and infrastructure needs in rural and native Alaskan communities
- \$104.5 million for the Emergency Watershed Protection Program
- \$35 million for wastewater infrastructure in De Soto County, Mississippi
- \$5 million for the Fort Peck Fish Hatchery in Montana
- \$27.6 million for the Architect of the Capitol to deal with recent problems related to steam tunnels and asbestos exposure
- \$140 million for infrastructure improvements for Gulf Coast shipyards

Section 4: How to Fix the Supplemental Spending Process

As demonstrated, the use of the supplemental process is susceptible to serious abuse that weakens overall budgetary discipline and leads to massive increases in overall spending. The abuse is directly linked to the use of the emergency designation as a large loophole that avoids constraining budget caps and various rules. According to the Congressional Budget Office, some critics also argue that the use of excessive emergency aid discourages the purchase of adequate insurance and weakens incentives to take actions that would mitigate the cost of natural disasters.⁸⁶

There are several options to fix the current process and stop the abuse. The best option would be to stop exempting emergency spending from budget rules. That means that supplemental spending—whether an emergency or not—should be offset with funding cuts in low-priority programs and should also be included in deficit accounting. If that preferred option

⁸⁶ CBO, *Emergency Spending Under the Budget Enforcement Act*, CBO Memorandum, December 1998.

is not available, another option would retain the emergency exemption but establish specific criteria for designating spending as “emergency.” A third option would also retain the emergency exemption while requiring a supermajority vote of Congress to approve emergency spending. And finally, the last option would create a reserve fund for emergency spending. These options are not mutually exclusive, of course, and some of them could be combined to form a more exhaustive method to curtail emergency spending. For instance, lawmakers could stop exempting emergency spending from the budget rules and create a reserve fund for emergency spending. Or lawmakers could retain the exemption, establish some specific criteria for what constitutes an emergency, but also require a supermajority vote to approve emergency spending.

4.1. Eliminate the Exemption for Designated Emergencies

One approach for controlling the use of supplemental spending would be to eliminate the exemption for designated emergencies under the BEA. There is no doubt that supplemental spending can serve a very valuable role. In an emergency, it allows Congress to make funds available immediately without having to wait until the completion of the budget cycle, which could take up to ten months. Supplemental bills make money available when it is needed and serve as a safety valve. However, the emergency exemption also enables a dangerous budget gimmick. It allows Congress and the president to spend federal funds above budget caps and go around budget rules that safeguard fiscal discipline.

If the emergency exemption were eliminated, Congress would still be allowed to make funds available when needed after an emergency through a supplemental bill. However, the emergency funds would be counted under the discretionary limits or would be included in the PAYGO estimates calculations. Under these rules, emergency spending provided in supplemental spending acts during the fiscal year would have to be offset with spending cuts in

other areas. It would also have to be accounted for in deficit projections, thus making the whole system more transparent.

Some critics claim that eliminating the emergency exemption could make the process less flexible.⁸⁷ Without the exemption, a major domestic disaster or a massive overseas troop deployment could require several billion dollars in additional spending that would force large offsets in other programs. Furthermore, if some parts of the budget or specific programs are sheltered from cuts, then the burden of the offset will rest on an even smaller share of the budget. In that case, it is unlikely that policy makers would agree to make the necessary cuts, which would result in the failure of the offsetting solution. That is what happened in the 1980s and what led to the emergency exemption.⁸⁸

There is no doubt that eliminating the emergency exemption would force hard choices on Congress and the administration. However, this option would create the incentive for lawmakers to use the supplemental process only in the case of a true emergency while also enacting leaner and cleaner supplemental bills. As mentioned earlier, during the 1990s, Congress routinely included offsets for certain emergency supplemental spending, which triggered healthy policy debates about the qualitative and quantitative value of the emergency appropriations.⁸⁹

According to Stephen Daggett, in the 1990s the offset requirement raised a large number of congressional debates revolving around related policy issues such as the existence of alternative means of financing military contingency operations or where to make the offsets if Congress required them. For instance, should a defense emergency be offset with defense budget cuts or could it be offset with non-defense cuts?

⁸⁷ Ibid.

⁸⁸ Dauster, "Budget Emergencies," 251.

⁸⁹ Daggett, "Emergency Appropriations for the Defense Department."

Daggett explained that the response to these questions varied based on who was in office at the time. For instance, the George H. W. Bush administration frequently proposed rescissions of funds in the defense department, which would often be perceived as a challenge to congressional prerogatives and lead to conflicts. The Clinton administration, on the other hand, generally tried to avoid conflict with Congress over specific cuts and left it up to Congress to find the needed cuts.

4.2. Establish Criteria for Emergency Spending

As explained earlier, while the BEA gives emergency bills special exemptions from budgetary rules designed to restrain spending, it does not set forth any criteria for policy makers to use in designating spending as “emergency.” Establishing specific standards that would have to be met before spending could be declared “emergency” would make decisions about emergencies less subjective, would guard against abuses of the emergency designation, and would strengthen budgetary discipline and control.

Page 217 of the *Analytical Perspectives* volume of the president’s FY 2008 budget described the president’s proposal to enact into law a “definition of ‘emergency requirement’ that will ensure high standards are met before an event is deemed an ‘emergency’ and therefore exempt” from procedures that enforce statutory budget discipline, as follows:⁹⁰

- **necessary expenditure:** an essential or vital expenditure, not one that is merely useful or beneficial
- **sudden:** quickly coming into being, not building up over time
- **urgent:** pressing and compelling, requiring immediate action

⁹⁰ OMB, *Budget of the United States, FY 2008, Analytical Perspectives* (Washington, DC: Government Printing Office, February 2007), 217.

- **unforeseen:** not predictable or seen beforehand as a coming need (an emergency that is part of the average annual level of disaster assistance funding would not be “unforeseen”)
- **not permanent:** the need is temporary in nature

The budget document states that “the definition codifies the criteria . . . that have been the standard for a number of years” and that an item would have to meet all these criteria to be treated as an emergency.⁹¹ This proposal lists the same resolutions that have created points of order to control the use of the emergency designation.⁹² Even if it is unlikely that any set of criteria would completely remove the subjective element from policy makers’ decisions about emergency spending, it would help fight abuses.

4.3. Require a Supermajority Vote for Emergencies

Another approach would be to retain the emergency exemption but require a supermajority vote to approve any emergency spending instead of today’s majority vote. According to the CBO, a three-fifths voting requirement would probably be effective.⁹³ Besides, the CBO adds, “it shouldn’t be too difficult to implement considering that the Senate already employs a series of three-fifths voting requirements to waive various enforcement provisions under the Congressional Budget Act.”⁹⁴ This approach is likely to be easy to implement since it would only require a change in Congressional procedure and would not need the president’s agreement. A true emergency would easily collect the necessary three-fifths majority.

⁹¹ Ibid.

⁹² Senate Committee on the Budget, *Informed Budgeteer*.

⁹³ CBO, *Emergency Spending Under the Budget Enforcement Act*, Memorandum, 15.

⁹⁴ Ibid., 15.

4.4. Establish a Reserve Fund for Emergencies

While it is impossible to predict the catastrophic events or unexpected developments that lead to genuine emergency spending, experience informs us that emergencies will indeed occur and on a fairly regular basis. According to James Blum, a former CBO deputy director, there are two options at the federal level for “prepaying” for disaster relief instead of systematically funding it after the fact through supplemental bills.⁹⁵ The first option would be to appropriate the average or expected need for each disaster program via the regular appropriations process. The second option would make annual payments to a reserve account, or “rainy day fund.” For instance, Citizens Against Government Waste has suggested that Congress require federal agencies to set aside one percent of their annual budgets for emergencies.⁹⁶

Almost all states have budget stabilization funds, also known as “rainy day funds.” When times are good, states deposit tax revenues into these funds. When the economy takes a downturn, states can then withdraw funds for short-term fiscal relief. In some cases, states allow the rainy-day funds to be tapped for disaster relief.⁹⁷ In addition, most states maintain separate emergency accounts specifically for natural disasters. These accounts are funded by annual appropriations, and in an emergency, the money is directed to relief. The intent is simply to have some money to start recovery efforts immediately. Generally, if more money is necessary, state legislatures will pass supplemental appropriations or count on federal assistance.

⁹⁵ U.S. Congress, Senate, James Blum, *Budgeting for Federal Disaster Assistance*, testimony before the Subcommittee on VA-HUD and Independent Agencies Committee on Appropriations (Washington, DC: CBO, March 16, 1995), <http://www.cbo.gov/ftpdocs/47xx/doc4786/1995doc26.pdf>.

⁹⁶ Gustafson, “The No Pork Pledge.”

⁹⁷ Theresa A. Gullo, “How States Budget and Plan for Emergencies,” CBO Testimony before the Budget Committee of the U.S. House of Representatives, <http://www.cbo.gov/showdoc.cfm?index=590&sequence=0> and National Association of State Budget Officers, “Budget Process in the States,” 2002, <http://nasbo.org/LinkClick.aspx?fileticket=t2nKFo8b%2b2M%3d&tabid=80> and National Conference of State Legislatures, “States and FEMA Deal with Disasters” (Washington DC: NCSL, 2001).

At the federal level, a reserve fund would consolidate most or all emergency spending into a single fund or budget account.⁹⁸ One benefit of this approach would be increased transparency and oversight. The money appropriated would have to go through the general budget process and be subject to the usual checks and balances. Also, concentrating the funding in one single account would allow better monitoring of that money and reduce some of the waste and abuse of the current system. However, considering the impact of the word “emergency,” it would be wise to require a supermajority vote to approve any emergency spending (as laid out in the previous subsection). Employing a clear definition of “emergency,” as laid out in Subsection 4.2, will also be key in preventing further abuses. Going back to Subsection 4.1, establishing a rainy day fund would not answer the question of whether emergency spending should be exempt from BEA requirements. If policy makers establish a rainy day fund and eliminate the emergency exemption, they will have to find ways to accommodate or pay for emergency needs under the discretionary spending limits and the PAYGO requirements.

An added benefit of using a separate account for emergencies is that it would highlight overall emergency needs more effectively and enable policy makers to draw a more direct connection between emergency spending and any offset needed to pay for this spending. A better understanding of emergency spending needs and historical evidence of disaster costs would, in theory, help policy makers better allocate emergency funds in the long run.

Finally, according to the CBO, an emergency reserve fund could be used to encourage efforts to avoid or mitigate disasters as well as to highlight potential alternatives to federal actions, such as state or local initiatives or private insurance.⁹⁹

⁹⁸ CBO, *Emergency Spending Under the Budget Enforcement Act* (Washington, DC: Government Printing Office, 1998), 1.

⁹⁹ CBO, *Emergency Spending Under the Budget Enforcement Act*, 16.

Section 5: Conclusion

Supplemental bills are funding somewhat predictable hurricane and war costs. Non-emergency spending is being channeled through supplemental spending. These techniques are enabling Congress to avoid complying with budget limits and have increased spending significantly.

A close look at the data and trends in supplemental spending reveals how these budget-cap exempt bills have enabled lawmakers to explode overall spending especially since FY 2002. The data shows that while supplemental appropriations remained at less than 1 percent of discretionary appropriations in 1990, they began to rise after 1998, reaching an all-time high of 16.2 percent in FY 2005. Since then, supplemental appropriations have continued to make up a significant amount of overall discretionary spending. There seems to be no end in sight to the abuse of a process that was meant as a safety valve, not as a way to avoid budget caps and fiscal responsibility.

Supplemental bills have become the tool of choice for Congress and the administration to avoid caps set by annual budget resolutions and to increase spending across the board. In addition, because these funds are not subject to the same kind of budget discipline as other appropriations and because of a serious lack of congressional oversight, they have become more than just a loophole, they have become a budget gimmick that enables the president and Congress to spend dramatically more than they would otherwise be allowed to spend. As it is currently practiced, supplemental spending is a shell game, with the president as the operator, Congress as the shells, and the taxpayers as the marks. Like all shell games, the game is rigged in favor of the operators and the shells: the marks will always lose.

Taxpayers cannot afford to play the game any longer. The supplemental spending shell game that Capitol Hill and the White House have been playing for years must end. The American people should demand that Congress carry out reforms to achieve this goal. The reforms should set firm, clear criteria for what constitutes an emergency or require a supermajority vote for emergencies. Also the reforms should create a federal rainy day fund for true emergencies, following the example of several states that have successfully adopted such a system. If such reforms are passed, the never-ending emergency may finally come to an end.