Budget Process in the FY 2016 Budget Resolutions

April 14, 2015

Introduction

Budget resolutions not only specify spending and revenue levels, they also include changes to the enforcement of budget rules and the budget process more broadly. Despite not having the force of law, these changes can have a meaningful impact on future legislation. In the House, process changes included in the budget resolution dictate the rules governing how they consider legislation through the remainder of that Congress. Because the Senate is an ongoing body, its changes remain in effect until replaced with an explicit rule change, so changes to the budget process in the budget resolution can have lasting effects for years to come. In fact, provisions included in the Fiscal Year 2008 budget resolution adopted in the 110th Congress remain in effect in the Senate today.

In this paper, we examine the various budget process reforms in this year's House and Senate budget resolutions. Based on the framework laid out in our paper, "The Budget Act at 40: Time for a Tune Up?", we classify problems with the budget process as falling into one of three broad categories: lack of accountability, lack of transparency, and lack of long-term focus.

Addressing Lack of Accountability

Limits on Timing Shifts

Background – A common tactic to avoid budget limits is to shift costs or savings into or outside of the ten-year "budget window." For example, legislation may delay spending that would normally occur near the end of the tenth fiscal year until the beginning of the eleventh fiscal year in order to keep spending within the ten-year allocation. Similarly, legislation might accelerate tax payments scheduled to be made early in the eleventh fiscal year to the end of the tenth fiscal year to keep total revenues above the ten-year revenue level in the budget resolution.

Senate – The Senate budget resolution would restrict the use of timing shifts by excluding the effects of these timing shifts from the scores used to determine whether legislation complies with budget rules.

House – The House includes no provision addressing timing shifts.

Our View – CRFB supports efforts to restrict the use of timing shifts to comply with budget rules.

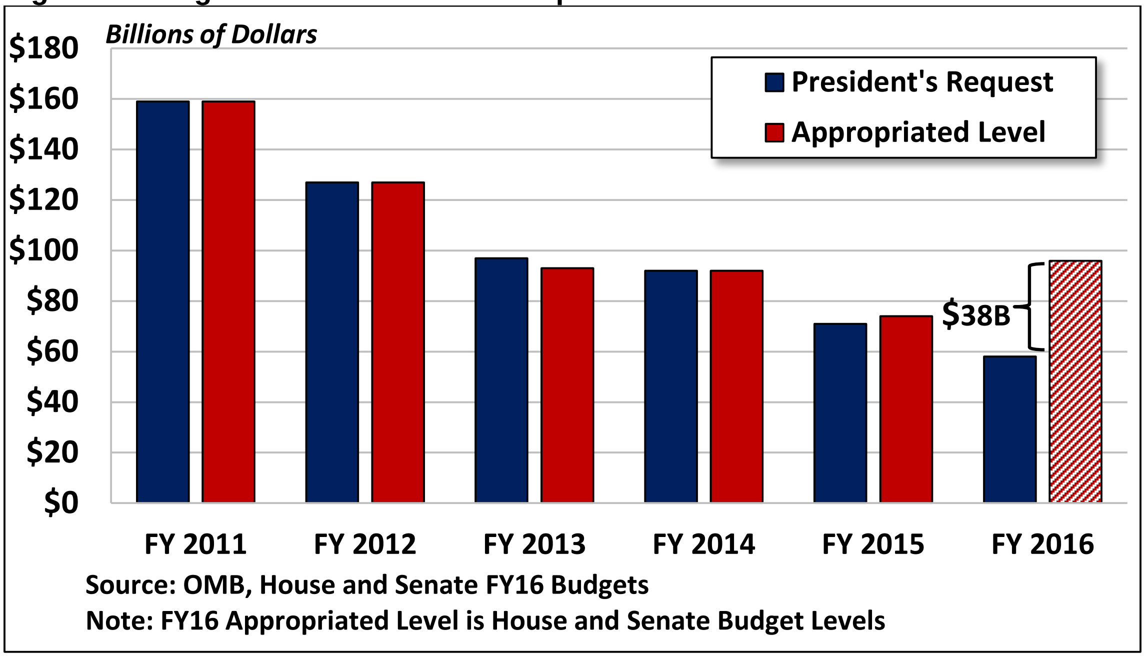
Limits on Overseas Contingency Operations (OCO) Designation

Background - Under the Budget Control Act (BCA), statutory caps on defense and non-defense spending are adjusted to accommodate funding designated as spending for Overseas Contingency Operations (OCO, or war spending), effectively exempting spending with the OCO designation from the discretionary spending caps. Recent Congresses have used this OCO designation as a "slush fund" to circumvent the defense spending caps on the margins, although total OCO spending has generally been close to the President's request. This year, both budget resolutions would dramatically expand the use of this practice, providing far more OCO spending than the President requested (see Figure 1).

Senate – Although the Senate budget allows for legislation providing up to $96 billion in OCO funding in FY2016, it also establishes a point of order against legislation designating more than $58 billion. This is the amount the President requested for OCO for FY2016. As a result, any spending in excess of $58 billion for OCO would be subject to the existing spending limits (and a point of order) under the BCA unless there were 60 votes to waive the point of order. This provision, if included in the conference agreement, would make it more difficult for Congress to use the OCO designation for spending above the administration's OCO request.

House – The House budget resolution included a similar restriction on OCO spending, requiring costs above the Fiscal Year 2015 level of $74 billion to be offset. However, that requirement was removed on the House floor before final passage. The House-passed budget contains no restriction on the amount of spending that could be designated as OCO spending in order to increase spending above the statutory caps.

Figure 1: Budget Resolutions Would Expand Use of OCO as Slush Fund



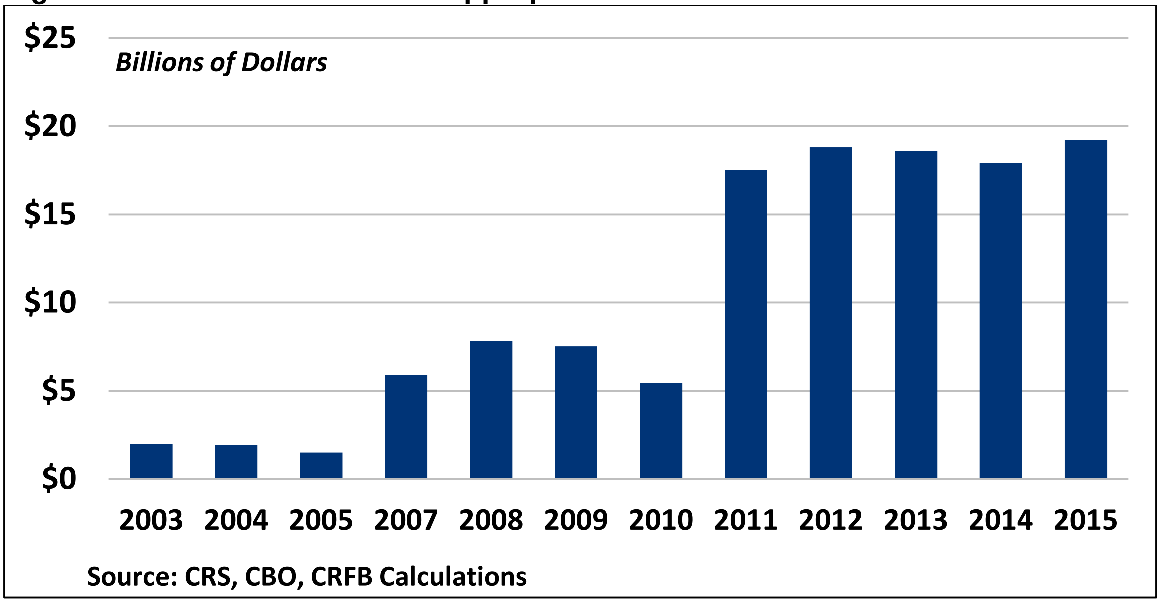
Our View – CRFB supports limits on the amount of spending that can be designated as Overseas Contingency Operations for purposes of the BCA caps at or around $58 billion.

Limits on Phony "CHIMP" Offsets for Discretionary Spending

Background – In order to circumvent *non-defense* discretionary caps, lawmakers often rely on something called CHIMPs (changes in mandatory programs) to offset spending above the caps. The idea behind CHIMPs is to allow policymakers to offset higher discretionary spending with reduced mandatory spending, but in reality, lawmakers have often found *fake* CHIMP cuts in order to fund *real* discretionary spending. For example, appropriations bills often delay mandatory spending for one year, producing savings in one year that are lost (but not accounted for) in the next. Often, they continuously delay the same spending in order to take credit for the cut over and over again. Other CHIMPs rescind mandatory budget authority that would have never been spent otherwise such as state allotments for mandatory spending that states did not draw down. In both instances, the phony savings are used to offset actual spending increases through appropriations.

Because discretionary caps apply to budget authority (net of CHIMPs), and limits on budget authority in the budget resolution are more binding than outlay limits, the use of CHIMP offsets results in discretionary spending rises above what is intended under the BCA caps and budget resolution levels. Not surprisingly, the use of CHIMPs has increased dramatically since 2010, coinciding with statutory limits on total discretionary spending.

Figure 2. Amount of CHIMPs in Appropriations Bills Increase After 2010



Senate – The Senate budget would crack down on the use of this gimmick by limiting and gradually phasing out the use of phony CHIMPs that do not produce net reductions in outlays. Specifically, it would limit total CHIMPs that could be included in appropriations bills to $19 billion in fiscal year 2016 and gradually reduce that limit until they are completely prohibited in 2021. This gradual phase out would avoid major disruptions in appropriations bills while reversing the dramatic increase in CHIMPs in recent years.

House – The House budget includes no limit on CHIMPs.

Our View – CRFB supports restrictions on the use of phony CHIMPs as an offset for discretionary spending.

Limits Unfunded General Revenue Transfers to the Highway Trust Fund (HTF)

Background – Currently, the HTF raises too little money from dedicated taxes to cover its costs, and its trust fund is projected to run out later this year. Rather than identifying a permanent solution to bring spending and revenue in line, policymakers have addressed this problem recently through general revenue transfers into the HTF. Because highway spending cannot exceed trust fund assets, these transfers have effectively *increased* spending above what is allowed under current law; however, they do not appear to do so under CBO's current law baseline, which assumes spending continues at current levels even after the trust fund is depleted. No law prevents this spending increase, creating a loophole that allows Congress to cover shortfalls in the HTF without paying for the costs.

Senate – The Senate budget includes a long-term scoring requirement for any bill that contains a general revenue transfer to the HTF. This could help expose some tax tricks that have been used in recent years to pay for general revenue transfers to the HTF.

House – The House budget includes a special scoring rule providing that transfers from the general fund to the HTF must count as a cost. This rule does not ban general revenue transfers but instead effectively requires that they be offset with spending cuts or revenue increases elsewhere in the budget.

Our View – CRFB supports a scoring rule to ensure that general revenue transfers to the Highway Trust Fund are accounted for and paid for, as well as efforts to highlight the long-term budgetary effects of legislation providing a general revenue transfer.

Social Security Disability Insurance (SSDI) Reallocation Point of Order

***Background* –** Like the HTF, revenue dedicated to the SSDI program currently falls short of the program's costs, and by late 2016, its trust fund will run out of money to pay disability benefits. Also like the HTF, CBO would not score either a general revenue transfer or a reallocation of revenue currently dedicated to the Social Security old age program as a cost – even though it would increase spending allowed under current law. The House passed a rule at the beginning of the year that effectively required that any reallocation be accompanied by measures to improve Social Security's overall financial state. To learn about SSDI, including the House rule on reallocation, read our blog: Dispelling Common Myths in the SSDI Debate.

Senate – The Senate includes no provisions addressing SSDI reallocation.

***House* --** The House budget incorporates the rule that the House enacted at the beginning of the 114th Congress which prohibits the consideration of legislation that reduces the balance of the Social Security Old Age and Survivors' Insurance (OASI) trust fund by at least 0.01 percent of payroll unless the legislation improves the combined Social Security trust fund's balance. The practical effect of the rule is to apply to consideration of legislation shifting payroll tax revenue from OASI to the Disability Insurance (DI) trust fund to avert the latter fund's pending insolvency in late 2016 unless it is accompanied by reforms to improve solvency of the combined Social Security trust fund.

Our View – CRFB supports the House rule requiring that any legislation reallocating payroll taxes or otherwise reducing the OASI balance be accompanied by provisions improving solvency of the combined OASDI trust fund.

Addressing Lack of Transparency

Require CBO Cost Estimates Before Consideration of Legislation

Background – In some cases, Congress has considered legislation before even knowing the impact it would have on the deficit. This could have costly consequences. As one example, just last year, the Senate began consideration of a Veterans Affairs bill only to find out that it had the potential cost $50 billion per year.

Senate – The Senate budget would establish a point of order against consideration of legislation that hasn't been scored by CBO.

House – The House budget includes no provision related to consideration of legislation without a CBO score.

Our View: CRFB supports a requirement for CBO to produce cost estimates before the House or Senate consider legislation.

Fair-Value Accounting

Background – Currently, most loan programs and other financial transactions administered by the federal government are scored on a present value basis meant to show the ultimate expected cost to the federal government, rather than cash flows in a given year. Some experts argue the current method of estimating this cost – based on the Federal Credit Reform Act of 1990 – fails to appropriately account for the cost of market risk. An alternative measure, fair-value accounting, aims to assign such a cost by effectively measuring future costs using a market-level interest rate as opposed to the interest rate on Treasury bonds. CBO has suggested that "adopting a fair value approach would provide a more comprehensive way to measure the costs of federal credit programs and would permit more level comparisons between those costs and the costs of other forms of federal assistance."[1] On the other hand, many argue that fair-value accounting is a poor measure of the actual impact of legislation on the federal budget since the federal government does not face market risk. Significant debate still remains over the best way to measure the cost of loan programs and other financial transactions.

Senate – The Senate budget directs CBO to produce a fair-value estimate in addition to its regular estimate of government credit programs. This would serve as supplemental analysis to the official score.

[1] Congressional Budget Office, "Fair-Value Accounting for Federal Credit Programs," March 2012.

House – The House budget includes a special scoring rule providing for use of fair-value estimates of government credit programs. Specifically, it provides for supplemental analysis from CBO at the request of the Chair or Ranking Member of the Budget Committee and allows the Chair to use this as the official score for budget enforcement.

Our View – CRFB supports supplemental estimates using Fair Value Accounting where appropriate. CRFB also believes Congress should continue to discuss whether such estimates should be used as an official score; however, we do not believe the Budget Chair should decide when to use this method on a case-by-case basis.

Dynamic Scoring

Background – Official scores used for purposes of budget enforcement do not take into account the macroeconomic effect of legislation. Supporters argue that doing so will result in more accurate numbers, but detractors raise legitimate concerns about the significant uncertainty of such scores as well as issues with the assumptions used in generating them. Previously, House rules required dynamic estimates as supplemental analysis for certain bills, but not "dynamic scoring." Earlier this year, the House introduced rules requiring dynamic scoring to be used for official estimates of major legislation. To learn more about dynamic scoring, read Understanding Dynamic Scoring.

Senate –-- The Senate budget requires dynamic estimates for any legislation with an effect of at least $15 billion in any one year. This estimate would serve as a supplement to traditional (and official) cost estimates, which do not incorporate macroeconomic effects.

House – The House budget incorporates the House rule requiring CBO and the Joint Committee on Taxation (JCT) "to the extent practicable, incorporate the macroeconomic effects of 'major legislation' into the official cost estimates used for enforcing the budget resolution and the other rules of the House. Legislation would qualify if it included a gross budgetary impact of greater than 0.25 percent of GDP in a given year within the ten-year window – equal to $43 billion in FY 2014. The rule also provides for a qualitative assessment of the impact of major legislation on the long-term budget and macroeconomic outlook.

Our View – CRFB believes CBO and JCT should provide lawmakers with dynamic estimates of major legislation incorporating macro-economic feedback as supplemental information for members to consider in evaluating legislation.

Other Changes

Senate – The Senate budget requires JCT to produce distributional estimates showing how major legislation (an effect of at least $15 billion in any year) would impact different income groups. It also requires CBO to publish historical and projected estimates of tax expenditures as part of its annual Budget and Economic Outlook.

Our View – CRFB believes that requiring publication of additional information regarding distributional effects of legislation as well as the costs of tax expenditures would provide lawmakers with useful information.

Addressing Lack of Focus on the Long-Term

Long-Term Points of Order

Background –The Senate currently has a rule prohibiting the consideration of legislation that increases the long-term deficit. In our recent paper Improving Focus on the Long Term, we recommended strengthening these limits.

Senate – The Senate budget updates the existing 60-vote point of order against legislation that CBO estimates would increase the deficit by more than $5 billion in any of the four decades after the budget window. The Senate budget would exempt legislation repealing or otherwise amending the Affordable Care Act from the long-term deficit point of order.

House – Instead of a long-term deficit point of order, the House prohibits legislation that would increase *mandatory spending* by more than $5 billion in any of the four decades after the budget window. In other words, the House budget would allow legislation that causes the long-term deficit to increase as a result of lower revenue levels and would disallow increases in mandatory spending which are offset by increased revenues.

Our View – CRFB believes the conference report should establish a point of order in the House and Senate against legislation that would increase the deficit by more than $5 billion in any of the four decades beyond the ten-year window that applies to all legislation affecting mandatory spending and revenues, with no exceptions.

Long-Term Estimates and Reports on Long-Term Outlook

Background – The budget process is far too focused on the short term at a time when the long-term fiscal situation represents a serious threat to our economic viability.

Senate -- The Senate budget directs CBO to prepare, to the extent practicable, an estimate of outlay changes during the second and third decade after enactment for any spending legislation with an impact of at least 0.25 percent of GDP during the first decade or in the tenth year; or when solicited by the Chairman of the House or Senate Budget Committee.

The Senate resolution also requires CBO, in its annual Budget and Economic Outlook, to provide a projection of Federal revenues, outlays, and deficits for the next 30 years.

House – The House budget includes no provisions related to long-term scoring.

Our View – CRFB supports efforts to increase focus on the long-term fiscal situation, including long-term projections and long-term estimates for potentially costly legislation.

Other Provisions

Repeal of Conrad Rule

One Senate provision that weakens fiscal discipline repeals the requirement that budget reconciliation legislation reduce the deficit. Specifically, the Senate budget repeals Section 202 of S. Con. Res. 21 (110th Congress), known as the "Conrad rule," which established a 60-vote point of order against consideration of reconciliation legislation that would increase a deficit or reduce a surplus within the ten-year window. Reconciliation should not be used to increase the debt, and we hope this change is dropped in conference.

Our View – CRFB believes the conference report should retain the Conrad rule and prohibit the consideration of reconciliation legislation that increases the deficit.

House Policy Statement on Budget Process Reform

In addition to the changes in enforcement, the House budget contains a policy statement advocating for budget process reform. This statement has no binding impact on the budget process but lays out priorities for budget process reform in the House including: reasserting Congress's "power of the purse"; creating incentives for lawmakers to abide by the existing budget process; encouraging control over spending; increasing oversight through tools like zero-based budgeting, which would require a department or agency to justify its budget each year as if it were a new expenditure; and caps on direct spending to enhance oversight of mandatory spending. While generally promising, the budget process policy statement advocates one change in budget rules that could reduce fiscal discipline: legislation extending expiring tax breaks should not be scored with a cost requiring offsets. Under existing scoring rules and conventions, the CBO assumes that temporary tax provisions will expire as scheduled under current law and scores legislation extending those provisions as deficit increasing. Because legislation creating a temporary tax break is not scored with any costs after the tax break is scheduled to expire, assuming continuation of the tax break in the baseline would cause those costs to "disappear" from the budget process.[2]

[2] For a more detailed discussion, see our blog, Understanding the Difference Between Temporary and Permanent in Budget Scoring.

Conclusion

Both the House and Senate budgets contain many provisions that could improve the budget process and set the stage for broader reforms. The budget conferees should maintain provisions improving accountability and transparency of the budget process and increasing the focus on the long term. In addition, they should apply the rules in both chambers where appropriate. Then, Congress should build on the steps in the budget resolutions that improve budget enforcement with comprehensive budget process reform. For additional resources on budget process reform, go to our Better Budget Process Initiative page.