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Death to "Discretionary" Budgeting

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KEY TAKEAWAYS

Despite the considerable amount of energy and political capital expended on fiscal year 2024 appropriations, the result was nowhere near fiscally responsible.

Several types of discretionary spending have long been exempt from counting toward spending limits—that needs to change.

Congress must move beyond the broken "discretionary" budget system and enact reforms to the federal budget as well as to how the CBO tracks federal spending.

U.S. federal budgeting has two major categories of spending. The one subject to the most scrutiny is "discretionary" spending, which is the basis of the annual appropriations process. This includes national defense, the operational costs of federal agencies, and more. In contrast, the "mandatory" category is primarily made up of benefit programs whose spending is based on statutory formulas, including Social Security, Medicare, Medicaid, and means-tested welfare.

The fiscal year (FY) 2024 appropriations process was marked by a prolonged and heated struggle among House Republicans, Senate Democrats, and the Biden Administration. Yet despite the passage of bipartisan legislation touted as reducing discretionary spending, both discretionary outlays and the federal deficit increased from FY 2023 to FY 2024.[1]

The reason is that Congress has increasingly abandoned responsible budgeting, especially since the onset of the COVID-19 pandemic. Legislators use a growing variety of obscure accounting maneuvers to create massive loopholes for discretionary spending while allowing mandatory spending to grow on autopilot.

With the gross national debt now an astronomical $36.2 trillion,[2] along with multitrillion-dollar deficits likely to become standard within the next few years and the annual appropriation process marked by chronic dysfunction, overhauling the federal budget is imperative. Doing so properly would not only strengthen the nation's economic health but would also make it easier to improve governance by clearing away the accumulation of wasteful and corruptive programs and bureaucracies.

The Intention and Difficulties of Discretionary Budgeting

Any kind of budgeting, whether for a family, business, or government, requires prioritizing how to use available resources. Recognizing constraints and reducing or eliminating low-value activities and "investments" ensures that high-value activities receive the resources they need.

In theory, limits on discretionary spending should cause legislators to regularly scrutinize the immense inventory of federal programs[3] for opportunities to reform and streamline operations.

Prioritization, however, has become anathema in Washington. Almost any attempt to meaningfully reduce spending of a bureau or program creates a dedicated backlash from those who benefit from taxpayer support. However, because any single cut produces a negligible direct benefit at the taxpayer level, there is little public clamor in support of a cut.

In public choice theory this is known as the problem of concentrated benefits and dispersed (or diffused) costs. Since the United States has both a large population spread across a tremendous land mass, it is especially vulnerable to this conundrum. Some legislators take advantage of this phenomenon through "pork barrel" politics, creating programs and projects that direct taxpayer resources from across the country to their own jurisdictions.

The problem of concentrated benefits is exacerbated by the ease with which special interests can now bombard understaffed congressional offices with messages, calls, and negative press releases. Combined with a media environment that refers to deficit hawks as "extreme" and bipartisan deficit spenders as "moderate,"[4] legislators have strong incentives to maintain the panoply of existing spending regardless of fiscal and economic conditions.

None of these incentives changes the moral obligation of officials to properly manage the nation's finances and oversee the federal government. Allowing chronic deficits, ballooning debt, and festering waste and dysfunction is an abdication of responsibility.

The history of mankind is littered with examples of nations failing because leaders avoided what were seen as difficult (or merely inconvenient) choices. For all its greatness, America is vulnerable to the same fate.

Fiscal Year 2024 Discretionary Legislation: Context and Political Combat

The COVID-19 pandemic set off an unprecedented federal spending spree: 2020 through 2022 saw the passage of trillions in new deficit spending. While some of this spending was predicated on addressing the pandemic during its early crisis stage, most of the spending was an exercise in political opportunism. This was possible because the usual restraints on spending, such as they were, disappeared.[5]

A combination of massive spending and accommodative support from the Federal Reserve fueled the largest surge of inflation since the 1970s.[6] Once it became clear that inflation was not a short-term phenomenon, the Federal Reserve increased interest rates, causing a spike in the cost of financing the swollen federal debt.[7] Coupled with unfunded liabilities for mandatory benefit programs, at the start of the FY 2024 appropriations process the federal government was in its worst fiscal position since the early days of the republic.[8]

The first fiscal fight of the 118th Congress was over increasing the statutory debt limit. The House passed the Limit, Save, Grow Act, which coupled the debt-limit hike with cuts to legislation passed in the previous session, lower discretionary spending levels, pro-growth regulatory reform, and more.[9] Although Democrats initially dismissed the bill, its passage in the House was enough to force bipartisan negotiations on a debt limit deal.[10]

These negotiations led to the Fiscal Responsibility Act (FRA), which established discretionary spending limits for FYs 2024 and 2025, along with limited regulatory reform and other provisions.[11] On paper, the deal would cut discretionary spending, ending a streak of several years of rapid discretionary spending growth.

However, FRA negotiations included "side deal" verbal agreements for budgetary maneuvers to get around the spending caps.[12] As these agreements became widely known, conservatives pressured House appropriators to forego the deal and pushed for additional spending cuts.[13] In contrast, the

Senate's appropriators used budget gimmicks to the fullest extent possible.[14] With the chambers far apart on the proper amount of FY 2024 discretionary spending, four continuing resolutions were necessary to fund the government while legislators continued their debates. The process lasted until March, nearly six months past the start of the fiscal year, before legislators reached a final agreement.

Despite the considerable amount of energy and political capital expended on FY 2024 appropriations, the result was nowhere near fiscally responsible.

How Congress Obscured Hundreds of Billions in FY 2024 Spending

Through appropriations, Congress vests agencies with the power to spend up to a fixed amount, which is known as budgetary authority (BA). When a federal agency uses its BA, the resulting spending is called an outlay (OT).

The "topline" FY 2024 discretionary BA limit was $1.59 trillion, $13 billion less than FY 2023.[15] However, a more complete accounting of discretionary BA for FY 2024 reveals that it was roughly 20 percent higher than the stated amount.

Appropriations Gimmicks and Offsets. While some of the following items are perennial budgetary maneuvers and sleights of hand, others were created through the FRA and its "side deal."

- **Genuine rescissions.** An appropriations bill can rescind previously enacted BA as an offset, allowing additional new BA within spending caps. The FY 2024 appropriations packages included rescissions to spending from the American Rescue Plan Act, along with some of the IRS enforcement spending increase from the Inflation Reduction Act. Combined, these rescissions allowed an additional *$27.61 billion* in BA for FY 2024 appropriations.

- **Fake rescissions.** While most authorized BA eventually becomes OT, some BA remains unused even after many years. Accordingly, rescissions of the latter type of BA are scored as causing a negligible or even nonexistent reduction in OT. When an appropriations bill includes low-OT rescissions, it leads to a net increase in OT (and deficits), because the rescission creates room for new BA that will generate OT. The most egregious example in the FRA was a "nonrecurring expenses fund" created exclusively as a budget gimmick.[16] This fund single-handedly undid nearly all the claimed appropriations savings from

FY 2023 to FY 2024 by allowing Congress to rescind $12.44 billion in phantom BA, which was exchanged for $12.44 billion in real BA. Combined, low-OT rescissions added *$32.19 billion* in BA to FY 2024 appropriations.[17]

- **Fake emergencies.** Spending designated for emergencies does not count toward spending caps. Portions of regular discretionary accounts were labeled as emergency spending in FY 2024. These arbitrary emergency designations, including one for space exploration, were part of the "side deal" that accompanied the FRA.[18] These inappropriate emergency designations added *$12.5 billion* in BA to FY 2024 appropriations. It is worth noting that this was a smaller amount than the initial side agreement, with the reduction being one of the negotiated requests from House Speaker Mike Johnson (R–LA). Legislation produced by the Senate Appropriations Committee initially contained more than $36 billion of inappropriate emergency designations.[19]

- **Directed scoring.** Legislation can dictate how scorekeepers, such as the Congressional Budget Office, should weigh certain provisions. Two examples in FY 2024 appropriations included the scoring of offsetting receipts for government housing and the scoring of security fees. These changes added *$3.56 billion* in BA to FY 2024 appropriations.[20]

- **Undisclosed changes.** Not all information about the budgetary effects of provisions in appropriations legislation is made public. In some cases, such as the spending limit on the Crime Victims Fund, the presence of a budget gimmick is known, but not its value. In other cases, the obscure wording of certain provisions coupled with the lack of budgetary disclosure can hide the existence of a gimmick altogether.[21] As such, there was an additional *unknown amount* of BA added to FY 2024 appropriations.

Emergencies, Disasters, and Other Exclusions. Several types of discretionary spending have long been exempt from counting toward spending limits. While the level of spending varies year to year, each of these types of spending designations occur in most years.

- **Genuine emergencies and disasters.** The emergency spending designation can cover a variety of events, including natural disasters, global security crises, disease outbreaks, and more. A global security supplemental package included $96.2 billion in emergency funding, and an additional $16 billion in natural disaster emergency funding, for a total of *$112.2 billion* added to FY 2024 discretionary BA.[22] The disaster designation is more narrowly focused on natural events. Disasters added *$20.4 billion* to discretionary BA in FY 2024.[23]

- **Wildfires.** The federal government's ownership of vast tracks of arid land across the Western states makes it responsible for preventing and fighting wildfires in those areas. Much of this activity is eligible for a designation that removes it from counting against spending limits. Such designations added *$2.65 billion* to discretionary BA in FY 2024.[24]

- **Program integrity.** Activities focused on preventing or uncovering improper payments and fraud can be designated as "program integrity" and are not subject to spending limits. Such designations added *$2.45 billion* to discretionary BA in FY 2024.[25]

Recent Abuses to Make Discretionary Spending Mandatory. Several pieces of authorizing legislation enacted in recent years funded federal activity in FY 2024 that would normally be subject to discretionary spending limits. These included:

- **The Infrastructure Investment and Jobs Act (IIJA) of 2021.** This act included spending on transportation infrastructure, Internet connectivity, water infrastructure, environmental programs, and more. Most of the programs either overlap with activities funded through the appropriations process or directly supplement long-standing programs. While the Highway Trust Fund (HTF) has historically been supported by the federal gas tax and is thus not subject to appropriated spending limits, the IIJA's increases for roads, bridges, and transit relied heavily on deficit financing[26] and amounted to extra appropriations. In FY 2024, a combination of advance appropriations from IIJA (inappropriately designated as emergency spending) and increases to HTF accounts amounted to *$116.62 billion*[27] in BA not subject to appropriations limits.[28]

- **The Honoring Our Promise to Address Comprehensive Toxics (PACT) Act of 2022.** This act covers treatment of certain medical conditions for veterans who were exposed to toxic fumes in Iraq and Afghanistan. The act significantly increased health spending on veterans, which was traditionally funded through the appropriations process. However, some PACT spending was categorized as mandatory without a dedicated funding mechanism. Thus, PACT added *$20.27 billion* in BA not subject to appropriations limits for FY 2024.

- **The Creating Helpful Incentives to Produce Semiconductors and Science (CHIPS) Act of 2022.** The most notable aspect of this package is subsidies for the semiconductor industry. The CHIPS program and an industrial technology account are categorized as mandatory spending but should be part of the appropriations portfolio. The CHIPS Act added *$6.25 billion* in BA not subject to appropriations limits for FY 2024.[29]

- **The Inflation Reduction Act (IRA) of 2022.** The IRA is a sprawling package that includes energy and environmental programs, welfare, IRS tax-compliance-enforcement hiring, and more.[30] While most of the fiscal impact of the IRA comes through revenue changes, it also includes hundreds of appropriations. Most of the formal appropriations in the IRA are lump sums that remain available until 2031 or "until expended," which makes identifying an exact amount of FY 2024 funding impossible. An exception is a spending account funded by the IRA for the Natural Resources Conservation Service, which was placed in the mandatory category. This account supplemented a program that receives discretionary funds. As such, the IRA added at least *$2.88 billion* in BA not subject to appropriations limits for FY 2024.[31] However, this is a mere fraction of the true total. Further, many of the revenue-changing provisions are subsidies that disguise de facto new spending in the tax code.

- **The Bipartisan Safer Communities Act of 2022.** This supplemental appropriations package was also inappropriately designated as emergency spending. It increased pre-existing discretionary activities and added *$695 million* in BA not subject to appropriations limits for FY 2024.[32]

Carryover Gimmicks. Passed prior to the FY 2024 process, these bills used directed scoring to hide discretionary spending over multiple years.

- **The Coronavirus Aid, Relief, and Economic Security (CARES) Act.** Enacted in 2020, it was partially amended by the FY 2021 appropriations omnibus such that certain funding of the Army Corps of

Engineers was excluded from estimates. As amended, it added *$2.83 billion* in BA not subject to appropriations limits for FY 2024.[33]

- **The 21st Century Cures Act of 2016.** This act primarily funds medical research. A provision in the bill excludes certain spending within it from budgetary estimates and thus added *$457 million* in BA not subject to appropriations limits for FY 2024.[34]

Describing these budgetary procedures does not mean that all the related spending was inappropriate. Instead, it highlights that FY 2024 discretionary BA was functionally more than 20 percent greater than the already generous limit of $1.59 trillion set by the FRA. In the absence of the maneuvers described above, legislators would have needed to expend tremendous effort and political capital toward reducing or foregoing spending to comply with the limits.

The Increasing Pointlessness of Discretionary Spending Limits

Since the spending limit can be sidestepped to such an enormous extent (by more than $300 billion in a single fiscal year) and through so many esoteric methods, it is not a meaningful limit.

However, this concern is minuscule compared to the complete lack of limitation on either mandatory spending or net interest payments on the national debt. Those categories now comprise more than 70 percent of federal spending in a typical year.[35] Further, non-discretionary spending has grown much faster than discretionary for many decades, and this trend shows no sign of abating.[36] While the current gross national debt of $36.2 trillion is troubling, unfunded liabilities for Social Security and Medicare are more than twice as large.[37]

Thus, not only does the focus on "topline" discretionary spending limits obscure the gimmick-inflated total amount, but it also obscures the unsustainable growth of the largest mandatory benefit programs[38] and interest on the debt.

An annual budget process that focuses on only a fraction of spending allows a wide variety of loopholes around constraints, makes no attempt to align spending and revenue, and is notorious for missed deadlines and the regular threat of government shutdowns is hardly a budget process at all. It is certainly not what the Founding Fathers intended when they established a new nation governed by the Constitution, nor does it do justice to an industrious citizenry.

While there are reform proposals (many of which are listed below) that would rein in discretionary budget gimmicks, it is even more urgent for Congress to overhaul the budget process to make it more comprehensive and prevent the gathering threat of national bankruptcy.

Moving Beyond Broken Discretionary Budgeting

The lack of a comprehensive federal budget framework and weak enforcement of rules means that few obstacles can stop opportunistic legislators from adding to the debt burden of future generations for the sake of short-term political gain.

While the fiscal problems facing the nation can seem overwhelming, there are dozens of ways for Congress to improve or overhaul the status quo and end the culture of profligacy that has dominated Washington. The suggestions below are merely a few of the available options.[39]

Broad Federal Budget Reforms. Congress could:

- **Ensure that the Budget Process Includes All Spending and Revenue.** With most spending and taxes lurching forward year to year with only occasional changes, and non-appropriated spending authorizations passed with no fiscal link to anything else, it should be no surprise that the U.S. has amassed a mountainous federal debt. Rather than haggling over a relatively small portion of federal activity (which incentivizes the use of gimmicks to move spending outside those limits), Congress should regularly review the totality of federal outlays and revenue.

  Ideally, this review would involve a binding framework, like how most state budgets and some countries operate. For example, Switzerland's "debt brake" sets spending and revenue levels in relation to one another and seeks to balance them over a multiyear cycle. In the Swiss system, any attempt to change one side of the ledger in a way that creates deficits requires changing the other side, either immediately or in the near future, to prevent structural deficits.[40] The Responsible Budget Targets Act (S. 772) is an example of applying this approach to the U.S. budget. A more comprehensive process would require input from more committees, as opposed to the highly centralized status quo. The Comprehensive Congressional Budget Act (H.R. 6953) would divide responsibilities between authorizing committees and appropriators.[41]

- **Replace Pay As You Go (PAYGO) with Cut As You Go (CUTGO) and Strengthen Enforcement of the Rule.** The reliance on budget gimmicks, which reached exaggerated levels in FY 2024, is largely a consequence of inadequate rules to prevent deficit spending. Legislation related to spending and tax authorizations is subject to the PAYGO system, which creates a "balance" if legislation adds to deficits. A session of Congress must address the balance to prevent automatic spending cuts known as sequestration. The PAYGO system has profound flaws, including a short reach (most federal spending is exempt from sequestration), the regular use of exemptions to place deficit spending outside the rule, treating tax hikes as doing more good than harm, unnecessary complexity, and even the ability of legislation to erase the standing PAYGO balance altogether.

  Congress could replace PAYGO with a CUTGO system, which focuses on addressing deficits by maintaining or reducing spending rather than increasing taxes.[42] Further, Congress should expand the reach of sequestration cuts, increase the vote threshold needed to waive enforcement, include trust fund deficits on the scorecard, and make appropriations spending subject to the rule. These measures would incentivize members to address wasteful, dysfunctional, and unnecessary programs to reduce CUTGO balances and prevent automatic cuts to more popular or sensitive programs.[43]

  Combining a comprehensive budgetary framework with CUTGO-style enforcement would make the system default toward not just deficit reduction but also toward reducing the burden of government on the American public. Automatic mechanisms such as these are more effective at generating fiscally responsible outcomes than ones requiring that legislators be fiscally responsible with every individual spending bill or provision. Further, such a system would make it possible for Congress to enact an automatic continuing resolution as a backup for failing to pass a budget on time for a given fiscal year, since a potential budgetary imbalance would be addressed by automatic spending cuts.[44]

- **Create Emergency and Disaster Accounts.** Currently, emergency and disaster spending are exempted from budget rules and treated as though the spending does not count. However, there are sure to be real natural disasters every year in a country as large as the United

States. Further, deficit spending adds to the national debt regardless of whether it receives special treatment, and various types of emergency spending are responsible for $12 trillion in spending over the past 30 years.[45] Congress can address the deficit burden by creating notional accounts for any emergency or disaster spending. Congress would then have a set period, ideally three years to five years, to offset the balance of the notional account. If the offset fails to happen, automatic spending reductions based on the CUTGO system would occur.[46] This combination of reforms would not only reduce deficits but would also incentivize Congress to limit emergency and disaster spending to what is necessary.

- **Narrow the Definition of Emergency and Disaster Designations.** The Office of Management and Budget (OMB) has a five-part test to determine whether spending can properly be considered an emergency measure, including suddenness, urgency, and being genuinely unforeseen.[47] There is no analogous system used to determine what can be done legislatively through emergency declarations. Applying an approach like that of the OMB to spending legislation would prevent abuses seen in the FY 2024 appropriations process. It should also be possible for any Member of Congress to challenge an emergency or disaster designation under a budgetary point of order, with a high threshold required for the designation to survive (at least two-thirds, and ideally three-quarters, of those voting).

- **Eliminate Fake Rescissions.** Congress should limit the amount of new BA derived from a rescission to the expected reduction in OT, rather than the amount of unused BA. This would bring an end to a long-standing budget gimmick.[48]

- **Refuse Net Spending Increases Through Budget Reconciliation.** Congress initially used the reconciliation process (which makes it easier for legislation to pass through the Senate) for deficit reduction packages. However, in recent years Congress has repeatedly abused reconciliation to expand the federal government on a partisan basis. With spending already set to grow to an unsustainable degree, it should be more difficult to add further spending.[49]

Discretionary-Only Reforms. Congress could:

- **Ensure that Appropriations Always Count Toward Discretionary Caps.** The prevalence of discretionary spending outside the appropriations process would be lessened if it reduced the amount of funds available to appropriators, who are typically high-status Members. Congress should couple this reform with the ban on spending increases in reconciliation, which would prevent abusing the reconciliation process for passing partisan appropriations bills.

While the following reforms are not directly related to problems identified earlier in this *Backgrounder*, they would improve the health of the appropriations process. Congress could:

- **Restore the Ban on Earmark Spending.** Congress banned earmarks in 2011 in the wake of public backlash against both corruption and egregiously wasteful projects. However, earmarking privileges returned for the FY 2022 appropriations process and currently have bipartisan backing in both chambers. Earmarks can have political salience for Members, but since most pertain to hyper-local projects, they have little policy justification, especially at a time of high debt and deficits. Retaining earmarks will make it difficult to trim spending on the handful of programs they flow from.[50]

- **Require Authorization for Appropriations.** Current prohibitions against unauthorized spending are weak, with $516 billion (nearly one-third of the discretionary spending limit) going to such programs and bureaus in FY 2024. Further, many important parts of the federal government have had lapsed authorizations for decades.[51] One reason for the growth of lapsed authorizations is the steady expansion of the federal government, which makes it difficult for authorizing committees to reauthorize the full slate of activities on a regular basis. However, that is not an excuse for allowing so much spending and so much federal power to operate with minimal legislative input or oversight for years and decades at a time. The current practice also leads to the diminishing of authorizing committees and the centralization of power with appropriators.

  Establishing firmer prohibitions against unauthorized appropriations would spur more activity from authorizing committees, provide more opportunities for legislators to do serious legislating, and ensure greater scrutiny of outdated programs. A potential approach would be to automatically cut unauthorized appropriations relative to the previous year, exemplified by H.R. 1518, the Unauthorized Spending Accountability Act.

Congressional Budget Office (CBO) Reforms. Congress could:

- **Publish Full Scores of Appropriations Legislation.** Currently, the CBO only provides detailed appropriations scoring to a handful of offices. This not only hides gimmicks and unclear fiscal effects from the public, but even from most Members, who are supposed to make informed decisions when voting on legislation.[52]

- **Reform the CBO's Biased Baseline.** There are many ways in which the CBO baseline creates bias in favor of more spending. For example, emergency spending meant to address a specific problem can cause a long-term increase to the CBO baseline, as will one-off discretionary spending increases made outside the appropriations process. In contrast, time-limited changes to the tax code are typically assumed to go away in the baseline after their statutory expiration. With many budgetary rules based on how legislative changes would affect the baseline, bias in the CBO's baseline has real-world effects rather than simply being a concern for budget wonks.[53] H.R. 8979, the No Bias in the Baseline Act, seeks to address this problem.

Conclusion

Washington has managed to shirk its duty to perform responsible budgeting for decades thanks to the trend of declining interest rates and low inflation. Those times are gone.[54] An enduring rise in the cost of financing the national debt coupled with large structural deficits and public concerns about the cost of living will make it increasingly difficult for officials to continue treating fiscal problems as an inconvenience.

Finding a solution to this looming crisis is a leadership opportunity both for individual legislators and for Congress as a whole, which badly needs to earn back the confidence of the American public.

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Endnotes

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