

The Congressional Budget Process

THE FRAMERS of the Constitution deliberately lodged the power of the purse in Congress because it is the branch of government closest to the people. “This power of the purse,” wrote James Madison in *Federalist* No. 58, “may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.” Or as Senator Robert C. Byrd, D-W.Va., said more than 200 years after Madison, “The greatest power of the Legislative Branch is the power of the purse.”¹ Under Article I of the Constitution, only Congress is empowered to collect taxes, borrow money, and authorize expenditures. And the executive branch can spend money only for the purposes and in the amounts specified by Congress. As Section 9 of Article I proclaims, “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” The House has the constitutional authority to originate revenue measures, which the Senate can amend. If the House believes the Senate has trespassed on its revenue-initiating authority, it will subject the measure to a “blue-slip” rejection: a notification on blue paper to the Senate that it has contravened the constitutional prerogatives of the House. Congress may also “lay and collect” income taxes under the Sixteenth Amendment to the Constitution.

The Constitution did not prescribe a budget system for the legislative branch. Instead, the budget system evolved over time to reflect new demands and pressures, such as the huge increase in the size and cost of government from the Great Depression through today. In the U.S. system of separate institutions sharing power, the president exercises significant fiscal authority through a wide-ranging ability to influence the lawmaking process, the constitutional veto power, and the authority to execute the law. Congress, which also recognizes the value of the president’s role in budgeting, delegated to the president in the Budget and Accounting Act of 1921 statutory responsibility for preparing a comprehensive federal budget each year. Using this responsibility, presidents have been able to spotlight their priorities, frame the budgetary debate, and effectively require Congress to respond to their budgetary proposals. Congress is not bound by the president’s recommendations, but it typically uses them as a starting point for the legislative budget process.

If Madison and the other constitutional framers returned today, they might wonder about the overall effectiveness of the congressional purse strings. After all, about two-thirds of federal expenditures are mandatory under existing law—that is, the government is required to spend money automatically for certain purposes because of laws previously enacted by Congress. This mandatory spending includes largely entitlements (laws that require mandatory payments to all eligible individuals, such as Social Security, Medicare, and government pension programs) and interest payments on the federal debt.

One consequence of mandatory spending is clear. If the 116th Congress (2019–2020) adjourned immediately after convening on its opening day in January 2019, without passing any laws, federal government spending for 2019 would still be almost \$2.7 trillion.² Furthermore, spending each year thereafter would continue—and increase—because many federal programs are indexed to the cost of living. Congress can convert mandatory spending into annual appropriations by changing the basic law that establishes governmental obligations and authorizes automatic funding without regular legislative review.³ But members who want to amend the law and subject certain mandatory spending, especially entitlement programs, to annual budgetary scrutiny can incur serious political risks. Congress chooses to establish programs as mandatory entitlements for a variety of reasons. Stability, certainty, and preferred status are among the values that accrue to such programs. Retirees, for example, would have “to live under a great deal of financial uncertainty” if Congress subjected Social Security to annual review.⁴

The federal budget reflects the president’s and Congress’s choices among competing national priorities and identifies where the nation has been, where it is now, and where the administration and legislative branch plan to make future fiscal as well as policy commitments. Thus, the nation’s budget is both a fiscal and a political document. As a Democrat on the Senate Budget Committee once said:

By their nature, debates on the budget tend to be more partisan than other debates. After all, setting a broad plan for allocating resources necessarily depends on judgments based on established principles we bring with us from our views and priorities influenced by our respective partisan affiliations.⁵

The bitter partisan battles over numerous fiscal issues in recent Congresses underscore the wide gap between the two parties on how to reduce the fiscal deficit and grow the economy. President Donald Trump and most congressional Republicans oppose revenue increases and castigate an oppressive government that hampers business productivity

through burdensome regulations and unnecessary taxes. Most congressional Democrats want to raise taxes on the well-off and enact federal policies that both reduce the deficit gradually and stimulate the economy to create more jobs. Thus, the budget is more than just numbers for both parties and the chief executive. It is “the document through which an administration announces just what sort of polity it envisions, and which fights it is willing to take on to realize that vision.”⁶

In broad terms, federal budgeting is composed of four main phases:

1. Preparation and submission of the budget by the president to Congress
2. Congressional review of the president’s budget and action on required budgetary matters
3. Execution of budget-related laws by federal departments and agencies
4. Review and audit of agency spending

The first and third stages are controlled primarily by the executive branch; the fourth is conducted by the executive branch and the Government Accountability Office (GAO), a legislative support agency of Congress. This chapter focuses on the second stage, the basic elements of Congress’s budgetary process.

The congressional budget process may be summarized as having three key features. First, the process is essentially a collection of separate decisions on legislation that affect federal spending, revenues, and borrowing.⁷ Second, it includes special measures and procedures (the budget resolution and reconciliation) that are intended to facilitate the coordination of these separate decisions. Third, the process places restrictions on the consideration of spending and revenue legislation in terms of their projected budgetary effects.

In addition to these features, the calendar also plays a key role in the congressional budget process. The federal government, like any other organization, budgets by fiscal year, leading to an annual budget cycle that is repeated every year. The beginning and the end of the federal fiscal year—October 1 to September 30 of each year—forces Congress to make budgetary decisions, especially on spending legislation. Congressional action on budgetary legislation therefore is largely guided by the budget cycle. But such action is not driven by only the fiscal calendar. Congress has also imposed deadlines on itself (and the president) by including expiration dates in budgetary legislation signed into law.

Authorization–Appropriations Process

Fundamental to congressional decision making is the long-standing distinction between authorizations and appropriations. As Senate Democratic leader Harry Reid, Nev., explained:

Authorizations allow programs to be created and funded. When we pass an authorizing bill, we hope the authorized level will be looked at in [the] appropriations committee—as I did as a long-time member. But we realize there are competing priorities, and full funding doesn't come very often.⁸

House and Senate rules created this two-step, sequential process. Authorizations establish, continue, or modify agency programs or policies; appropriations fund authorized agency programs and policies. An authorization, in brief, can be viewed as a “hunting license” for an appropriation.⁹ (Congress may also “deauthorize,” or eliminate, programs and agencies.) Both authorizations and appropriations bills must be approved by both houses and presented to the president for signature or veto.

Authorizations

In the first step, Congress passes an **authorization bill** that establishes or continues—a reauthorization—an agency or program and provides it with the legal authority to operate. Authorizations also typically recommend, as guidance to the appropriators, specific funding levels for agency and program activities. That is, these bills include statutory language (such as “hereby authorized to be appropriated”) that permits, or authorizes, the enactment of appropriations to fund agency and program activities. In addition, in some cases, the specific authorization levels have the legal status to prescribe how an agency may spend the appropriations it receives. In current practice, the House and Senate usually consider numerous authorizations pertaining to specific programs and activities, and several agency authorizations, each year. A typical programmatic authorization is presented in Box 2.1. In this example, the Secretary of Agriculture is authorized to purchase pulse crops (e.g., dry beans and lentils) and pulse crop products for use in the federal school lunch and breakfast programs and to conduct an evaluation. For these activities, \$10 million is authorized to be appropriated.

Until the 1950s, most federal programs and entities were permanently authorized. Permanent authorizations (the Library of Congress is an example) remain in effect until changed by Congress and provide continuing statutory authority for ongoing federal programs and agencies. Then, in the 1960s and 1970s, authorizing committees won enactment of laws that converted many permanent authorizations into temporary authorizations.

Two major factors precipitated this change. First, the authorizing committees wanted greater control of and oversight over executive activities, especially in view of the interbranch tensions that stemmed from the Vietnam War and the Watergate scandal of the Nixon administration. Second, short-term authorizations put pressure on the appropriating committees to fund programs at levels recommended by the authorizing panels.

Today, most authorizations are multiyear—with a few exceptions, such as defense, which is authorized annually. As a former Senate Armed Services chair stated, “Every year since 1961 there has been an annual defense authorization bill enacted” into law.¹⁰ This record of success has come close to being broken several times because of major conflicts regarding military policy between the House, the Senate, and the White House. Recent controversial issues such as allowing gays in the military, trying alleged terrorists in military versus civilian courts, or the handling of sexual assaults in the military are examples of the contentious topics that threatened but did not prevent the annual enactment of this legislation.

Box 2.1 Authorizations Language

An Excerpt From the Agricultural Act of 2014 (the “Farm Bill”)

* * * * *

SEC. 4213. PULSE CROP PRODUCTS.

- (a) **PURPOSE**—The purpose of this section is to encourage greater awareness and interest in the number and variety of pulse crop products available to schoolchildren, as recommended by the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).
- (b) **DEFINITIONS**—In this section:
- (1) **ELIGIBLE PULSE CROP**—The term “eligible pulse crop” means dry beans, dry peas, lentils, and chickpeas.
 - (2) **PULSE CROP PRODUCT**—The term “pulse crop product” means a food product derived in whole or in part from an eligible pulse crop.
- (c) **PURCHASE OF PULSE CROPS AND PULSE CROP PRODUCTS**—In addition to the commodities delivered under section 6 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755), subject to the availability

(Continued)

(Continued)

of appropriations, the Secretary shall purchase eligible pulse crops and pulse crop products for use in—

- (1) the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.); and
 - (2) the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).
- (d) EVALUATION—Not later than September 30, 2016, the Secretary shall conduct an evaluation of the activities conducted under subsection (c), including—
- (1) an evaluation of whether children participating in the school lunch and breakfast programs described in subsection (c) increased overall consumption of eligible pulse crops as a result of the activities;
 - (2) an evaluation of which eligible pulse crops and pulse crop products are most acceptable for use in the school lunch and breakfast programs;
 - (3) any recommendations of the Secretary regarding the integration of the use of pulse crop products in carrying out the school lunch and breakfast programs;
 - (4) an evaluation of any change in the nutrient composition in the school lunch and breakfast programs due to the activities; and
 - (5) an evaluation of any other outcomes determined to be appropriate by the Secretary.
- (e) REPORT—As soon as practicable after the completion of the evaluation under subsection (d), the Secretary shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Education and the Workforce of the House of Representative[s] a report describing the results of the evaluation.
- (f) AUTHORIZATION OF APPROPRIATIONS—There is authorized to be appropriated to carry out this section \$10,000,000, to remain available until expended.

* * * * *

Source: Agricultural Act of 2014, P.L. 113-79, February 7, 2014.

Appropriations

Much of the federal government is funded through the annual enactment of 12 regular appropriations bills. The Constitution does not require that appropriations are enacted annually, but the practice since the First Congress

has been to appropriate for a single year at a time. The House originates the appropriations bills based on its long-standing belief that the constitutional authority to initiate revenue-raising measures extends to appropriations.¹¹

Types of Appropriations Bills. **Appropriations bills** are of three main types: (1) annual—also called regular or general; (2) **supplemental appropriations bills**—to address unexpected contingencies, such as emergency funding for natural disasters; and (3) continuing—often called **continuing resolutions**, or CRs—to provide stopgap (or temporary) funding for agencies (on a formula basis, such as the previous year's level) that did not receive an annual appropriation by the start of the fiscal year. The fiscal year runs from October 1 to September 30. Congress enacts about 14 or so appropriations bills every year: the 12 regular bills, one or more supplementals, and one or more continuing appropriations.

A typical appropriation from a regular appropriations act is presented in Box 2.2. In this example, taken from an omnibus act, which combined 11 of the 12 regular appropriations acts, over \$23 billion is appropriated for child nutrition programs, including the school lunch and breakfast programs. Notice the reference to certain authorizing statutes (the Child Nutrition Act, for example) in the spending bill. The appropriations act provides the funding, but authorizing statutes specify the activities on which the money may be spent. Therefore, this particular appropriation was available to purchase pulse crops for the school lunch and breakfast programs, as directed in the authorization language presented in Box 2.1.

Not all appropriations are as explicitly tied to authorizing statutes as this one. There is variation in this respect. Some appropriations, for example, are provided for the “necessary expenses” of an agency or to carry out broadly stated purposes. In practice, appropriations committee reports provide detailed guidance to agencies on how appropriations are intended to be spent or activities carried out.

When Congress is unable to complete action on one or more of the dozen regular appropriations bills by the start of the fiscal year, it provides temporary funding for the affected federal agencies through a CR, also called a continuing appropriation. CRs provide Congress with additional time to resolve funding differences between the two parties and among the House, Senate, and White House. (A record high 21 CRs were passed in the last year of the Clinton administration.) Traditionally, CRs have been employed to keep a few government agencies in operation for short periods, ranging from several days or weeks to a few months. Congress also may pass CRs that extend beyond the November elections and even into the next congressional session. Sometimes CRs have become major policymaking instruments of massive size and scope. In 1986 and 1987, for example, Congress packaged the then-13 regular appropriations bills into CRs.

Box 2.2 Appropriations Language

An Excerpt From the Consolidated Appropriations Act, 2019

* * * * *

SEC. 5. STATEMENT OF APPROPRIATIONS.

The following sums in this Act are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2019.

* * * * *

DIVISION B—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2019

* * * * *

Food and Nutrition Service child nutrition programs (including transfers of funds)

For necessary expenses to carry out the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), except section 21, and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except sections 17 and 21; \$23,140,781,000 to remain available through September 30, 2020, of which such sums as are made available under section 14222(b)(1) of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246), as amended by this Act, shall be merged with and available for the same time period and purposes as provided herein: Provided, That of the total amount available, \$17,004,000 shall be available to carry out section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.): Provided further, That of the total amount available, \$30,000,000 shall be available to provide competitive grants to State agencies for subgrants to local educational agencies and schools to purchase the equipment, with a value of greater than \$1,000, needed to serve healthier meals, improve food safety, and to help support the establishment, maintenance, or expansion of the school breakfast program: Provided further, That of the total amount available, \$28,000,000 shall remain available until expended to carry out section 749(g) of the Agriculture Appropriations Act of 2010 (Public Law 111-80) . . .

* * * * *

Source: Consolidated Appropriations Act, 2019, P.L. 116-6, February 15, 2019.

Packaging all or a number of appropriations bills together creates what are called *omnibus* or *minibus* measures. These bills appropriate money to operate the federal government and make national policy in scores of areas. These omnibus bills grant large powers to a small number of people who put these packages together—party and committee leaders and top executive officials. Omnibus measures usually arouse the ire of the rank-and-file members of Congress because typically little time is available in the final days of a session to debate these massive measures or to know what is in them. Absent enactment of annual appropriations bills or a CR, federal agencies must shut down, furloughing their employees. Moreover, “uncertainty about final appropriations leads many [federal] managers to hoard funds; in some cases, hiring and purchasing stops.”¹²

Authorizing and Appropriating Committees

Whether agencies receive the budget authority they request depends partly on the recommendations of the authorizing and appropriating committees. Each chamber has authorizing committees (Agriculture, Commerce, Small Business, and many others) with responsibilities that differ from those of the two appropriating committees—the House and Senate Appropriations Committees. The authorizing committees are the policymaking centers on Capitol Hill. As the substantive legislative panels, they propose solutions to public problems, create agencies and departments, define administrative policies and priorities, and advocate what they believe to be the necessary level of appropriations for new and existing federal agencies, activities, and programs, specifying either a specific amount of money or an indefinite level of funding (“such sums as may be necessary”).

Each house’s Appropriations Committee and their 12 parallel subcommittees recommend how much federal agencies and programs will receive in relation to available fiscal resources and economic conditions. The full committee and subcommittee chairs of the House and Senate Appropriations Committees are collectively known in their respective chambers as the “College of Cardinals” because of their large influence over spending issues. For decades, these chairs often included earmarks in bill text or, more commonly, in their committee reports or as part of appropriations conference reports (and their accompanying joint explanatory statements) that set aside specific funds for projects or programs in lawmakers’ districts or states. This type of particularistic spending is sometimes called “spending by zip code,” “member projects,” “congressionally directed spending,” or, more negatively, “pork.” By whatever name, earmark requests often come from lawmakers’ constituents who want funds for school construction, highways, sewer grants, flood control programs, and the like. Tax and authorization bills also contain earmarks,

such as tax breaks or transportation projects, but those in appropriation measures usually receive more public and media attention.

Earmarks Under Fire. Earmarks have come under critical review since the early 2000s for three main reasons. First, the scandals associated with the criminal indictments of lobbyist Jack Abramoff and former Rep. Randy “Duke” Cunningham, R-Calif., prompted increased scrutiny of earmarks. Abramoff, who referred to each chamber’s appropriations panel as the “favor factory,” developed ties with influential lawmakers and staff aides by, among other things, “wining and dining” them and presenting them with gifts. He then persuaded his Capitol Hill contacts to quietly insert earmarks into legislation for his clients, who, in turn, would contribute to these lawmakers’ campaigns. Cunningham, who took \$2.4 million in bribes, used his position on the Defense Appropriations Subcommittee to earmark millions of dollars for favored defense contractors. In Cunningham’s case, the lack of transparency—there are both “white” (public) and “black” (secret) aspects to budgeting—enabled him to slip earmarks into the secret intelligence budget without anyone’s knowledge. The classified part of budgeting, said the late Senator John McCain, R-Ariz., a longtime champion of earmark reform, “deserves extra scrutiny now because Duke Cunningham was able to perpetrate some of his egregious crimes through exactly that vehicle.”¹³

Second, there was a dramatic increase in the number and dollar value of earmarks. Senator McCain, citing data compiled by the Congressional Research Service, spotlighted the explosion:

In 1994, there were 4,126 congressional earmarks added to the annual appropriations bills. In 2005, there were 15,877 earmarks, the largest number yet, that’s an increase of nearly 300 percent! The level of funding associated with those earmarks has more than doubled from \$23.2 billion in fiscal year 1994 to \$47.4 billion in fiscal year 2005.¹⁴

A December 2009 update by the Congressional Research Service found that between 2008 and 2009, the “total number of appropriations earmarks decreased 6 percent, from 12,810 to 12,099. However, the total value of earmarks increased 6 percent, from \$28.9 billion to \$30.7 billion.”¹⁵ (To be sure, numerous earmarks are proposed in budgets submitted by presidents.)

Various factors accounted for the surge of earmarks. For example, narrow partisan divisions in the House and Senate prompted party leaders to use earmarks to attract the votes needed to pass priority legislation and to help vulnerable lawmakers “bring home the bacon” to appreciative constituents who would then return the incumbent to office. In addition,

members did not want to relinquish the “power of the purse” to unelected administrators. As a House Appropriations chair stated, “Members know the needs of their districts better than civil servants working in Washington, DC.”¹⁶

Third, aggressive watchdog groups were not reluctant to embarrass Congress by publicizing what they viewed as wasteful spending on bad programs or projects. (Various groups, such as Taxpayers for Common Sense, have websites that permit citizen involvement in monitoring earmarks.) An oft-cited example was the so-called bridge to nowhere—a “mile long, 200-foot-high span [costing \$223 million] that will connect Ketchikan, a town [in Alaska] with fewer than 8,000 people, to an island that has 50 residents and a small airport.”¹⁷ Critics also highlighted the unseemly and sometimes improper connection between earmarks granted to favorite clients who then contributed to lawmakers’ campaign war chests (the so-called pay-to-play syndrome). Some ex-lawmakers who join or form lobbying shops have as clients those for whom they won earmarks when they served in Congress.¹⁸

Earmark Reforms. The proliferation of earmarks and the public controversy associated with egregious examples of wasteful spending on earmarks prompted the House and Senate to adopt a number of reforms in the 110th Congress (2007–2008). These reforms merit review because they are still in the House and Senate rulebooks. Since the beginning of the 112th Congress (2011–2012), however, a moratorium on earmarks has been followed.

The fundamental goals of the reforms are to infuse disclosure and transparency in the earmarking process, which includes limited tax and tariff benefits. House Rule XXI and Senate Rule XLIV define explicitly what constitutes an **earmark** (called a “congressionally directed spending item” by the Senate), **limited tax benefit**, and **limited tariff benefit**. Both chambers adopted somewhat comparable disclosure rules. A lawmaker who requests earmarks or limited tax or tariff provisions must provide a written statement to the committee of jurisdiction that includes these five elements: (1) the name of the requesting member; (2) the name and address of the intended recipient or, if there is no specific recipient, the location of the intended activity; (3) in the case of a limited tax or tariff benefit, the identification of the individual or entities expected to benefit, if known to the member; (4) the purpose of the earmark or limited tax or tariff benefit; and (5) a certification that the lawmaker (or spouse) has no financial interest in the earmark or limited tax or tariff benefit.

To ensure that lawmakers and the public have knowledge of the congressional sponsors of earmarks, both chambers have rules that constrain floor consideration of legislation, amendments, or conference reports unless a list of the earmarks and their sponsors is publicly available in relevant

committee reports, on an appropriate legislative website, or in the *Congressional Record*.¹⁹ Senate Rule XLIV also prohibits what are called “air-dropped” earmarks: provisions included in a conference report (see Chapter 8) that neither chamber included in its version of an appropriations bill committed to conference. This particular rule, like so many others in both chambers, is not self-enforcing (a lawmaker must raise a **point of order** against procedural violations) and can be set aside by a three-fifths vote of the Senate. (House rules can be set aside by House adoption of a special rule issued by the Rules Committee.)

Since 2011, House and Senate leaders have imposed a moratorium on all lawmaker-directed projects. Skyrocketing budget deficits and the election of numerous tea party-backed congressional Republicans who opposed earmarks triggered the prohibition. One consequence was that the majority and minority leaders on the House Appropriations Committee sent a series of “Dear Colleague” letters to lawmakers warning that “earmarks, as defined by . . . the Rules of the House will not be considered.”²⁰ In short, anything that looks like an earmark for a specific recipient and is not open to competitive bids is viewed as an earmark, and generally would not be included in appropriations measures.

Various lawmakers in the House and Senate managed to circumvent the ban, often by less transparent means. As one account noted, lawmakers in both chambers “attempted to pack hundreds of special spending provisions into at least 10 bills” after “congressional leaders declared a moratorium on earmarks.”²¹ They were earmarks by another name. The techniques employed included “lettermarks,” members writing to administrators to urge that home-based projects be funded; “phonemarks,” calling executive officials to request money for projects in their states or districts; and “softmarks,” simply “suggesting” to agency officials that money should be spent on the lawmaker’s project.²² Members also hiked the dollar amounts in broad budgetary accounts—rural development, procurement, and the like—and then strongly suggested to agency officials that some of the money be spent for lawmakers’ projects back home. The political reality, as a lawmaker pointed out, is that “the agency knows who butters their bread, and who appropriates their money. And they’re inclined, particularly when it’s a powerful Member, to go along with the recommendation made.”²³

Some members in both chambers and parties have been unhappy with the informal ban on earmarks, which is why many continue to seek funds for favored projects. As a Senate Appropriations chair candidly stated, “I am going to do everything to reinstate earmarks—or whatever you want to call them—because the Constitution is clear and it was never intended to have the executive branch do all of that.”²⁴

Lawmakers also note that putting earmarks in spending bills is a lubricant that wins votes for measures and boosts members’ reelection chances by bringing home the bacon.²⁵ Without the lubricant of earmarks, finding

the votes to pass certain measures can be problematic. “When it comes to things like the highway bill that used to be very bipartisan, you have to understand it was greased to be bipartisan with 6,371 earmarks,” explained Speaker Boehner. “You take the earmarks away, and guess what? All of a sudden people are beginning to look at the real policy behind it. So each one of these bills will rise or fall on their own merits.”²⁶ Despite their coalition building benefits, “earmarks aren’t coming back on my watch,” the Speaker proclaimed.²⁷

When Democrats reclaimed the House at the beginning of the 116th Congress (2019–2020), Majority Leader Steny Hoyer, D–Md., urged the House and Senate to restore earmarks. As he said, “I am working to restore the Congress’s constitutional duty to exercise the ‘power of the purse’ through congressionally directed spending with reforms to ensure transparency and accountability.” He added, “I am discussing the issue with members on both sides of the aisle and both chambers.”²⁸ However, Rep. Nita Lowey, D–N.Y., the chair of the House Appropriations Committee, said that there was not yet bipartisan and bicameral support for the revival of earmarks. Senator Richard Shelby, R–Ala., agreed with Lowey and said he would follow her lead. However, both stated that there would be continuing discussions in both chambers and parties “about just how to bring earmarks back.”²⁹

Spending Options of Appropriators. For each authorized program and agency subject to the annual appropriations process, the appropriations committees have three main options: (1) provide all the funds recommended in the previously approved authorization bill, (2) propose reductions in the amounts authorized, or (3) refuse to provide any funds. A newspaper headline declaring that Congress has just authorized, for example, a new \$3 billion antidrug program means that the program officially exists on paper. However, the program still lacks money to operate until it receives an appropriation.

Congressional rules—which may not be strictly observed—require authorizations to precede appropriations to ensure that substantive and financial issues are subject to separate and independent analysis. This procedure also permits almost every member and committee to participate in Congress’s constitutional power of the purse. Numerous exceptions are made to this two-step model, despite House and Senate rules that encourage separation of the authorization and appropriations stages.

Constitutional Underpinning

The authorization–appropriation dichotomy is not required by the Constitution. It is a process that has been institutionalized by the rules of the House and Senate and in some cases by statute. Of the two steps, the appropriations stage is on firmer legal ground because it is rooted in the Constitution. An appropriations measure, which provides departments

and agencies with authority to commit funds, may be approved even if the authorization bill has not been enacted. As long as “appropriations are enacted,” wrote a budget scholar, “funds may be obligated by agencies, regardless of whether . . . authorizations have been enacted.”³⁰ Informally, Congress has employed this division of labor since the beginning of the Republic, as did the British Parliament and the colonial legislatures. As U.S. Senator William Plumer of New Hampshire noted in 1806, “Tis a good provision in the constitution of Maryland that prohibits their Legislature from adding anything to an appropriation law.”³¹ Generally called supply bills in the early Congresses, appropriations measures had narrow purposes: to provide specific sums of money for fixed periods and stated objectives. Such bills were not to contain matters of policy (often called “legislation”).

There were exceptions to this informal rule even during the early days, but the practice of adding **riders**, or extraneous policy provisos, to appropriations bills mushroomed in the 1830s. This practice often provoked sharp controversy in Congress and delayed the enactment of supply bills. “By 1835,” wrote a parliamentary expert, the “delays caused by injecting legislation [policy] into these [appropriations] bills had become serious, and [then-Rep.] John Quincy Adams . . . suggested that they be stripped of everything save appropriations.”³² Two years later, the House adopted a rule requiring authorization bills to precede appropriations. The Senate later followed suit.

Separate Policy and Fiscal Decisions

Several major implications flow from Congress’s efforts to separate policy from fiscal decision making—matters that usually are inextricably intertwined. Among the major implications are flexibility, bicameral differences, and committee rivalries.

Flexibility. The authorization–appropriations rules, like almost all congressional rules, are not self-enforcing. Either chamber can choose to waive, ignore, or circumvent them, or establish precedents and practices that obviate distinctions between the two. As one scholar has written,

The real world of the legislative process differs considerably from the idealized model of the two-step authorization–appropriation procedure. Authorization bills contain appropriations, appropriation bills contain authorizations, and the order of their enactment is sometimes reversed. The Appropriations Committees, acting through various kinds of limitations, riders, and nonstatutory controls, are able to establish policy and act in a substantive manner. Authorization Committees have considerable power to force the hand of the Appropriations Committees and, in some cases, even to appropriate.³³

Flexibility in the authorization–appropriations procedure allows it to accommodate stresses and strains. A failure to enact authorization bills does not bring the appropriations process (or an agency or federal program) to a halt. The Congressional Budget Office (CBO) reported that almost \$307 billion of appropriations enacted for 2019 were not authorized.³⁴ Annual appropriations bills often become vehicles for extending or revamping existing laws that did not make it through the authorization process. Moreover, it is not uncommon for authorizers to ask appropriators to include their policy proposals in the annual appropriations bills. They want to hitch a ride on “must pass” appropriation bills heading to the White House. “Ideally, it’s not great to use [appropriation] bills,” remarked a House Financial Services chair. “But they may be the only vehicles we can use [for] some [authorization measures] where we’re facing a veto or we have problems in the Senate.”³⁵

Bicameral Differences. Because the House and Senate are dissimilar, they have different rules governing the authorization–appropriations process. Table 2.1 compares the authorization and appropriations rules of the two houses. These differences reflect each chamber’s fundamental nature: The smaller Senate permits greater procedural flexibility than the larger House.

House	Senate
No unauthorized appropriations are permitted except for public works in progress. However, this rule is commonly waived for a reported appropriations bill because the Appropriations Committee typically does include unauthorized appropriations in its reported bill.	Amendments proposing unauthorized appropriations are not permitted. Exceptions are if the Senate has passed an authorization during that session; if the amendment is offered by the Senate standing committee having jurisdiction over the matter, or by the Appropriations Committee; or if the appropriation is requested in the president’s annual budget.
No legislation is permitted in an appropriations bill.	No legislation is permitted in an appropriations bill unless the Senate determines, by an affirmative vote, that it is germane to legislative language in the House-passed bill.
No appropriation is permitted in an authorization bill. Floor amendments that propose appropriations are not in order in authorization bills.	There is no equivalent rule. (Recall that the House initiates appropriations bills and objects to Senate efforts aimed at circumventing this arrangement.)

The rules affect each chamber's legislative behavior and policy deliberations. The Senate, for example, sometimes gets off to a slower start on appropriations measures because, by tradition, the House originates those bills. Moreover, the multistage process creates numerous opportunities to shape issues. Policy debates may be resurrected repeatedly in different contexts in either chamber.

An issue of some concern to the House is the committee assignment practices of the Senate. In the House, for both parties, service on the Appropriations Committee is, with few exceptions, an exclusive assignment. Senators, by contrast, may serve simultaneously on both authorizing and appropriating committees. In some instances, the same senator chaired both the authorizing committee (or relevant subcommittee) and the comparable appropriations subcommittee. In the 116th Congress, for example, Senator Lisa Murkowski, R-Alaska, chaired both the Energy and Natural Resources Committee and a related counterpart appropriations subcommittee (Interior, Environment, and Related Agencies). Fundamental bicameral imbalances are created, said a House Science chair, when senators

are permitted to serve on both Committees. Inevitably, members will prefer to legislate in appropriations bills (or the accompanying reports), which by their nature and by the rules of both Houses, are more protected from debate, amendment, and perfection than are corresponding authorization bills.³⁶

Committee Rivalries. Another consequence of the two-step system is that it breeds continuing conflict between the authorizing and appropriating committees. In the judgment of Senator McCain, "It has become standard practice around here to forgo the authorizing process and simply do everything on appropriations. That is wrong and it needs to stop."³⁷ He also pointed out that a handful of appropriators and their unelected staff often contravene the decisions of the authorizers.³⁸ As a House authorizing chair said, "My panel plays second fiddle to the appropriators, which is where power and money is" joined.³⁹ Authorizers understand that if they cannot enact their bills in a timely fashion, they cede their policymaking prerogatives to the appropriators.

Some observers suggest that another fiscal area deserves greater legislative scrutiny: "tax expenditures," which are under the jurisdiction of the tax-writing House Ways and Means and Senate Finance Committees. Tax expenditures are revenue losses to the federal Treasury from various tax write-offs, credits, or deductions to encourage certain kinds of behavior, such as providing tax relief to developers so they have an incentive to build low-cost public housing units. Tax expenditures may be "viewed as spending programs channeled through the tax system."⁴⁰ In 2018, the total value of tax expenditures (\$1.48 trillion) exceeded the amount of discretionary outlays (\$1.27 trillion). The comptroller general of the United States

referred to tax expenditures as a form of backdoor spending. “If you can’t achieve something through a direct spending program,” he noted, “there’s an incentive for people to create a tax incentive to get it off the books [and] outside the budget process, but it really does have an impact on the bottom line.”⁴¹ A former chief of staff to the Joint Taxation Committee observed that lawmakers find tax expenditures “irresistible.” Members can provide voters with “a government benefit *and* get credit for lowering their tax bills,” and “portray themselves as tax cutters rather than big spenders.”⁴²

Worth noting is that committees’ jurisdictional rivalries also involve the House’s tax-writing Ways and Means Committee. The House adopted a rule in 1983 stipulating that no committee except Ways and Means may report tax or tariff proposals. This rule was first used in that year on October 23, when the Ways and Means chair raised a point of order against a proposition in a general appropriations bill that concerned the duty-free entry of certain products from Caribbean countries. The presiding officer sustained the point of order by ruling that the provision was “a tariff in violation” of House rules. Just as authorizing committees may not report appropriations, appropriating and authorizing panels may not report tax and tariff proposals. Twenty years later, at the start of the 108th Congress (2003–2004), the House amended its rulebook to prohibit, for general appropriations bills, tax or tariff floor amendments that limit the administration of a tax or tariff.

Exceptions to the Rules

Legislative (or policy) provisions that change existing laws find their way into appropriations bills notwithstanding the strictures of the rules—for example, if no member raises a point of order against the practice or if either chamber waives its rules. The House, by precedent, also permits legislative riders and unauthorized programs to be included in CRs that provide interim funding for agencies whose general appropriations bills have not been enacted by the start of the fiscal year.

Senate rules, unlike those for the House, grant wide leeway to appropriators to authorize projects, programs, or activities. “I’m not about to start hunkering down and running like a scared rabbit because somebody says it’s got to be authorized,” said a Senate Appropriations chair. “If this committee wants to authorize demonstration grants, it has the authority.”⁴³ As the Senate precedents state, “there is no general prohibition in the Standing Rules of the Senate or the precedents against making appropriations for a project or program in the absence of an authorization.”⁴⁴ Further, legislative amendments in the Senate can be added to a House-passed appropriations bill (see the Germaneness section, below) if the House measure contains legislation.

Limitation Riders. Limitation riders are the chief device legislators use to insert policy in appropriations measures. These riders are provisions in

general appropriations bills or floor amendments to those measures that prohibit the spending of funds for specific purposes. Always phrased in the negative (“None of the funds provided in this Act shall be used for . . .”), limitation riders are based on scores of House and Senate precedents that collectively uphold the position that because either chamber can refuse to appropriate funds for programs that have been authorized, the two bodies can also prohibit the use of funds for any part of a program or activity.

House members and staff aides, for example, devote a great deal of time to carefully drafting provisions that make policy in the guise of limitations. For guidance, they turn to the House rulebook, which is replete with precedents that interpret permissible from impermissible limitations. There are three basic criteria for permissible limitations. Limitations cannot (1) impose additional duties or burdens on executive branch officials, (2) interfere with their discretionary authority, or (3) require officials to make judgments or determinations not required by existing law.

Legislators sometimes add riders to appropriations bills because the riders may not survive as freestanding bills. As “must pass” vehicles headed to the White House, appropriations measures often attract extraneous policy matters, as mentioned earlier. But they become difficult to pass when controversial riders trigger partisan disputes, bicameral controversies, lobbying battles, or veto threats. A good example involved abortion.

The 1977 antiabortion amendment remains a classic example of the important effect a limitation can have on policy. The appropriations bill for the Department of Labor and the Department of Health, Education, and Welfare (HEW, now the Department of Health and Human Services) contained a limitation on the use of funds “to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.” A point of order was raised and sustained against that provision on the ground that it was legislation in an appropriations bill. The limitation required officials in the executive branch to determine when the life of a pregnant woman would be endangered. The language was then amended to read as follows: “None of the funds appropriated by this Act shall be used to pay for abortions or to promote or encourage abortions, except when a physician has certified the abortion is necessary to save the life of the mother.” Again, a point of order was raised that the amendment was legislation in an appropriations bill. And again the chair ruled in favor of the parliamentary objection, this time on the grounds that the federal government employed many physicians and that they would be required to make life-deciding judgments. Finally, the sponsor of the proposal, GOP Rep. Henry Hyde, Ill., said he had no choice but to offer the following language: “None of the funds appropriated under this Act shall be used to pay for abortions or to promote or encourage abortions.” There was no point of order, because the amendment required no judgments by executive officials. The Hyde amendment was then adopted.⁴⁵

When the Labor–HEW bill, containing the Hyde amendment, reached the Senate, Edward W. Brooke, R-Mass., offered an amendment that permitted abortions “where the life of the mother would be endangered if the fetus were carried to term, or where medically necessary, or for the treatment of rape or incest.” Barry Goldwater, R-Ariz., said the amendment was legislation in an appropriations bill and raised a point of order. The Senate has its own procedural devices to obviate such points of order, however, and Senator Brooke used them successfully on the abortion issue. Senator Brooke raised a “defense of germaneness” before the presiding officer had ruled on the Goldwater point of order.

Germaneness. Senate Rule XVI requires that amendments to general appropriations bills be “**germane** or relevant to the subject matter contained in the bill.” If a lawmaker raises a point of order against an amendment on the grounds that it is legislation (or policy) in a general appropriations bill, the member who proposed the challenged amendment can raise—before the chair rules on the point of order—the question, or defense, of germaneness. Under Senate rules, the issue is then submitted to the entire membership for resolution by majority vote and without debate. If the Senate decides that the proposed amendment is germane, the point of order automatically fails and the amendment may be considered. Conversely, if the Senate determines that the amendment is not germane, the amendment fails. In the abortion case, the Senate declared Brooke’s amendment germane by a 74 to 21 vote. In such situations, senators are really voting on the policy issue and not on the procedural question. In short, technical objections can be set aside to achieve preferred policy outcomes.

A 1979 Senate precedent states that the defense of germaneness applies only when the House, which originates appropriations measures, “opens the door” by including legislative language to which a Senate amendment might conceivably be germane. The Senate then has an “inherent right” to amend the House-passed provision. Since the mid-1990s the defense of germaneness, which can be raised for committee or floor amendments, has not always been in play. In some cases, the Senate Appropriations Committee will send its own original appropriations bill to the floor for debate and amendment—that is, it does not report to the Senate the House-passed appropriations bill with recommendations. In those cases, because no House language is before the Senate, the defense of germaneness is no longer available to senators whose amendments are challenged on the floor as being not germane, and thus in violation of Senate rules.

However, even when the Senate takes up a House-passed appropriations bill for amendment purposes, the test for raising the defense of germaneness is low. Senators usually vet their proposed amendments with the parliamentarian, who commonly determines that they pass the threshold test because the House has opened the door. There have been few recent

instances of the defense when the Senate took up a House bill. Especially noteworthy is the defense of germaneness raised on October 4, 2005, when Armed Services Chair John Warner, R-Va., attempted to add the defense authorization measure, crafted as an amendment, to the defense appropriations bill. Senator Ted Stevens, R-Alaska, the chair of the Defense Appropriations Subcommittee, raised a point of order that the authorization violated Senate Rule XVI as legislation on an appropriations bill. Senator Warner immediately raised the defense of germaneness. The next day, the Senate voted 49 to 50 to reject the defense, and the Warner amendment fell.

The Senate and House Rein in Policy Riders on Appropriations Bills. On March 16, 1995, the Senate opened the floodgates on adding policy riders to appropriations bills. It voted to overturn the correct ruling by the presiding officer that an amendment offered by Senator Kay Bailey Hutchison, R-Texas, dealing with the Endangered Species Act, constituted legislation on an appropriations bill and violated Senate Rule XVI. (A precedent established in this manner trumps Senate rules.) Thus was born the Hutchison precedent, and with it came a proliferation of riders to appropriations bills, many of them sponsored to highlight partisan agendas. As a result, it became difficult to enact appropriations bills in a timely manner. Finally, the Senate voted on July 26, 1999, as the Senate majority leader noted, to “reinstate rule XVI which would make a point of order in order against legislation on an appropriations bill.”⁴⁶

The House also experienced a rapid increase in the number of limitation riders—from 43 in 1979 to 74 in 1982. Many of those dealt with social issues—particularly school busing, school prayer, and abortion. When these controversial issues were repeatedly bottled up in the authorizing committees, members who wanted action on them turned increasingly to limitation riders as a vehicle for forcing House consideration. Frustrated by the sharp controversies and long delays these limitations were causing, the House changed its rules in 1983 to restrict the opportunities for members to offer limitation riders to appropriations bills. The change authorized limitation amendments only if the motion to rise (or exit) from the **Committee of the Whole** was either rejected or not offered after the regular amendment process was completed on an appropriations bill. (The Committee of the Whole House on the state of the Union is the special forum into which the House transforms itself to consider the most important measures. It is discussed in Chapter 5.)

When Republicans took control of the House in the mid-1990s, they again changed House rules by allowing the majority leader or a designee to have precedence in offering the motion to rise. “The intent of the rule is to permit the offering of limitation amendments at the end of the reading [for amendment], subject only to a motion to rise offered by the majority

leader or a designee.”⁴⁷ The effect of this change is to enhance the majority leadership’s control over the offering of limitation amendments.

Budget Authority and Outlays. Another budgetary distinction to bear in mind is that between *budget authority* and *outlays*. Appropriations approved by Congress provide **budget authority**, which allows government agencies to make financial commitments, up to a specified amount, that eventually result in **outlays**—that is, the spending of dollars. As one budget analyst explains it:

Congress does not directly control the level of federal spending that will occur in a particular year. Rather, it grants the executive branch authority (referred to as budget authority) to enter into obligations, which are legally binding agreements with suppliers of goods or services or with a beneficiary. When those obligations come due, the Treasury Department issues a payment. The amount of payments, called outlays, over an accounting period called the fiscal year (running from October 1 to September 30) equals federal expenditures for that fiscal year. Federal spending (outlays) in any given year, therefore, results from the spending authority (budget authority) granted by Congress in the current and in prior fiscal years.⁴⁸

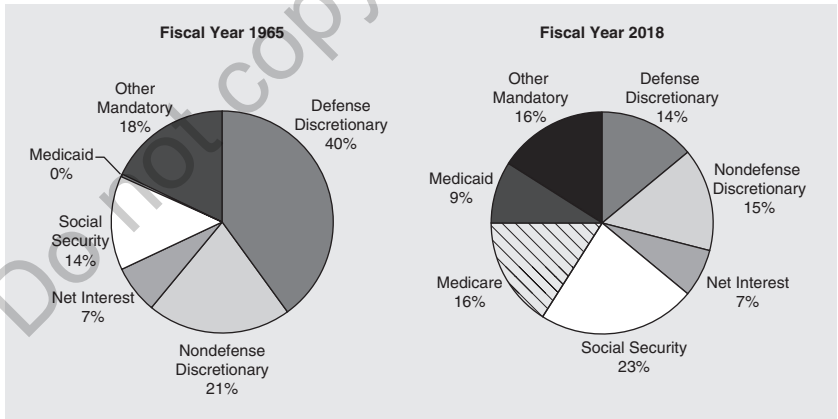
To state it differently, budget authority is like putting money in a checking account, and obligations are like writing a check; when the check is cashed, the dollars (outlays) are dispensed to the appropriate recipient. It is important to note that outlays (not budget authority) are subtracted from federal revenues to calculate each year’s budget deficit (or surplus, although that has been rare).

Spending Outside the Annual Appropriations Process. Most activities or functions that individuals usually associate with the federal government—the Federal Bureau of Investigation (FBI), the Coast Guard, the national park system, interstate highways, defense, space exploration, homeland security, foreign aid, medical research, and so on—are funded through the annual enactment of the 12 regular appropriations bills. The fiscal reality is that the annual appropriations process controls only around a third of all federal spending. This controllable, discretionary spending funds most domestic and defense programs. The other two-thirds or so of federal spending consists largely of automatic payments for entitlements and interest payments on the federal debt.⁴⁹ Almost half of all federal spending is used for just three entitlement programs (Social Security, Medicare, and Medicaid). Such programs generally are funded automatically under the terms of previously enacted statutes.

Reflecting this difference, congressional analysts distinguish between *discretionary spending*, which is controlled through the annual appropriations process, and *direct spending* (often referred to as *mandatory spending*), which is used primarily to fund entitlement programs that are provided for in authorization laws. Direct spending is under the jurisdiction of the authorizing committees, not the appropriating committees.

Figure 2.1 highlights the ratio of discretionary expenditures to entitlement expenditures over time. Discretionary spending has borne the brunt of reductions over the years because politicians have been eager to reduce the size and cost of government. However, the direct spending side of the budget has escalated because Congress cannot easily control mandatory expenditure levels for the entitlement programs (e.g., Medicare and Social Security) established by permanent law. Congress does not set annual expenditures for these programs; instead, their financial costs reflect the eligibility criteria and benefit levels established in the statute. Congress can modify the entitlement statutes, but doing so can be an electorally risky venture. The elderly, who are well organized and who turn out to vote, are not reluctant to tell lawmakers, “Keep your hands off my Medicare and Social Security!” In this sense, popular entitlement programs are considered “the third rail of American politics” because those who touch them may face retribution come election time.

Figure 2.1 Federal Spending by Major Category, Fiscal Years 1965 and 2018



Source: Congressional Budget Office, *The Budget and Economic Outlook: 2019 to 2029*, January 2019, Tables F-3, F-4, and F-5, pp. 154–159.

Note: Excludes offsetting receipts.

Establishing a Congressional Budget Process

Congress's continuing struggle to control expenditures precipitated a comprehensive overhaul of its budgetary process. Titled the Congressional Budget and Impoundment Control Act of 1974, the law came about largely for three reasons. First, the Appropriations Committees gradually lost control of budget expenditures as the legislative, or authorizing, committees turned to backdoor financing techniques to accomplish their policy objectives. Congress thus lacked a central body to coordinate budgetary decisions, relate governmental revenue to expenditures, or calculate the effect of individual budget actions on the federal budget. National fiscal policy reflected whatever emerged from Congress's excessively fragmented budget process. Second, the annual deficit had been on an upward trajectory, and many lawmakers believed that a revamped budgetary process would enable Congress to gain better control of fiscal decisions. Third, presidents sometimes took advantage of Congress's piecemeal process. President Richard Nixon clashed with Congress over national spending priorities and impounded (refused to spend) monies at unprecedented levels for programs initiated by Democrats in Congress. "Far from administrative routine," wrote a budget scholar, "Nixon's impoundments in late 1972 and 1973 were designed to rewrite national policy at the expense of congressional power and intent."⁵⁰

The combination of these three factors, along with growing public concern about the state of the national economy, led to enactment of the landmark 1974 budget law. That act established a congressional budget process that encouraged coordination and centralization and enabled Congress to review the budget as a whole. However, Congress did not institute this fiscal reorganization by abolishing the authorization, appropriations, or revenue processes. Such an attempt would have pitted the most powerful committees and members against one another and jeopardized any chance of realizing substantive budgetary changes. Instead, Congress added another budget layer to those already in place in the House and Senate.

The 1974 Budget Act

Passage of the 1974 Budget Act had a major institutional and procedural effect on the legislative branch. Many of the act's original requirements have been modified in response to new developments. However, four decades later, it is still worthwhile to describe the main features of the act because they remain generally intact—the institutional entities, the concurrent budget resolution (a measure that establishes Congress's framework for considering revenue and spending legislation), enforcement of

the budget resolution, reconciliation and the Senate's "Byrd rule," a timetable for budget decisions, and controls on impoundments. Recent political strains on the budget process will be noted selectively because they exemplify how difficult it has become to adhere to the budgetary framework during a time of spending austerity and partisan polarization. Some lawmakers even assert that the legislative budgetary system is broken, citing such things as missed deadlines, potential and actual government shutdowns, credit downgrades, and overreliance on CRs.

New Institutional Entities

The budget act created three new institutional entities: the House Budget Committee, the Senate Budget Committee, and the Congressional Budget Office (CBO). The two budget committees have essentially the same functions, which include preparing annually a concurrent budget resolution; overseeing the CBO, which reviews (or "scores") the impact of existing or proposed legislation on federal expenditures; monitoring the revenue and spending actions of the House and Senate; assembling, if necessary, a reconciliation bill; and proposing budget process reform legislation.

The two panels, however, are constituted differently. The House Budget Committee is required to have a rotating membership; most members may not serve more than 8 years during a period of six consecutive Congresses. The committee must be composed of members drawn mainly from other **standing committees**, including five each from the Appropriations and Ways and Means Committees, one from the Rules Committee, and a leadership member from each of the two parties. Although the rotation allows many lawmakers to serve over time on this panel, it also has the effect of inhibiting cohesion (members' loyalty is to other committees), making it difficult at times for committee members to reach consensus on issues. Furthermore, the committee's fundamental task remains critical, visible, and often sharply partisan: producing a concurrent budget resolution that reflects differing Democratic and Republican views on the role and priorities of the national government. By contrast, the Senate Budget Committee is like the other standing committees: It has no restrictions on tenure, and its members are not required to come from other designated committees.

The nonpartisan CBO is Congress's official source for the independent information and analysis that it needs to evaluate budget, tax, and spending proposals. Among other things, the roughly 250 staff members of the CBO analyze budget, economic, and policy issues and make fiscal projections for the House and Senate Budget Committees and other congressional panels. The director of the CBO is appointed to a 4-year term. The selection or reappointment of the director alternates between House and Senate leaders.

Because budgetary issues dominate much of the activity on Capitol Hill, the CBO's role in providing "scoring reports" and "cost estimates" to the House and Senate Budget Committees and other panels is especially significant. The CBO scorekeeping unit measures the budgetary effects of the spending and tax plans of appropriators, authorizers, party leaders, and presidents. In doing so, it tracks pending and enacted spending and revenue measures to assist Congress in ensuring that they are within the budgetary limits set by the concurrent budget resolution or other budget laws. CBO evaluates budget proposals against a baseline—an estimate of future spending and revenue projections, assuming no change in existing laws. As a CBO report phrased it:

The baseline is intended to provide a neutral, nonjudgmental foundation for assessing policy options. It is not "realistic," because tax and spending policies will change over time. Neither is it intended to be a forecast of future budgetary outcomes. Rather, the projections . . . reflect CBO's best judgment about how the economy and other factors will affect federal revenues and spending under existing [laws].⁵¹

Baseline estimates, like any budget plan, are only as accurate as the assumptions (inflation, unemployment, or economic growth rates) used in their formulation.

The Budget Resolution

Congress's annual budget process commonly centers on the adoption of a concurrent resolution on the budget (or often referred to as simply the *budget resolution*). This measure is formulated by the House and Senate Budget Committees, which consider the views and estimates of numerous committees and outside witnesses. The resolution includes budget aggregates for at least five years, consisting of five basic parts:

- The total levels of federal spending, expressed in terms of both budget authority and outlays.
- The total levels of spending are subdivided among 20 functional categories, such as national defense, agriculture, and energy.⁵² For each category, the spending levels reflect the anticipated legislative policy changes assumed in the totals.
- The total levels of federal revenue.
- The total levels of the deficit (or surplus).
- The total levels of the public debt (savings bonds, Treasury securities, etc.).⁵³

Various substantive and strategic factors influence the length in years of the budget blueprint. One is the accuracy of the fiscal estimates. Five-year projections are likely to be more reliable than 10-year calculations. Another is avoidance of partisan criticism. If budget baseline projections indicate escalating long-term deficits without any prospect of a budget coming into balance, congressional budget makers may opt for a 5-year rather than a 10-year budget resolution. A 5-year rather than a 10-year tax cut projection could obscure the magnitude of long-term revenue losses while keeping the costs of the tax cuts within the limits set by the budget resolution. Conversely, a 10-year rather than a 5-year budget resolution might highlight significant reductions in the deficit because of revenue gains expected from a growing economy. The number of years covered in the budget resolution may also reflect a period sufficient to reach a budget goal, such as a balanced budget.

The budget resolution sets the overall level of discretionary spending for the upcoming fiscal year. That figure represents the “top line” that the appropriators cannot exceed, although additional spending may be provided for certain purposes such as overseas contingency operations (to combat the terrorist threat) and for emergencies (as determined by Congress). The budget resolution may also include directives to committees, which trigger a process called reconciliation. This reconciliation process, explained in more detail later in the chapter, allows Congress to consider legislative changes to tax policies and entitlement programs under expedited procedures, particularly significant in the Senate. Congress uses the reconciliation process to implement, in whole or in part, the spending and revenue plan set forth in the budget resolution.

The budget resolution, in sum, is a fiscal blueprint that establishes the context of congressional budgeting; guides the budgetary actions of the authorizing, appropriating, and taxing committees; and represents Congress’s tax and spending priorities. Because it is not submitted to the president, it cannot be vetoed and does not carry legal effect. As a senator explained, a budget resolution is

analogous to an architect’s set of plans for constructing a building. It gives the general direction, framework, and prioritization of Federal fiscal policy each year. Those priorities then drive the individual appropriations and tax measures which will support that architectural plan.⁵⁴

House Consideration of Budget Resolutions. Although a budget resolution is “privileged” business in the House, which means it can interrupt other business to be called up as a priority matter, it is long-standing practice to consider the resolution under a rule issued by the Rules Committee. Typically, the Rules Committee limits House consideration only to amendments that propose alternative budget plans (that is, amendments that are

a complete substitute for the Budget Committee's reported product). For example, the Rules Committee may report three major substitute budget plans to the floor: one proposed by the minority party and two others recommended by informal groups in the House, such as the Republican Study Committee or the Congressional Black Caucus. Generally, the Rules chair points out that the order of consideration is important, "because if any one of these pass, then the debate immediately ceases and we go right to final passage."⁵⁵ (Parliamentary principles stipulate that it is not in order to re-amend something that has already been amended. A substitute budget plan, if adopted, would amend the entire text of the concurrent budget resolution, leaving nothing left to further amend.) Unsurprisingly, fiscal alternatives are routinely turned down. The majority's budgetary blueprint prevails on party-line votes because that document reflects the priorities of the party in control.

Senate Consideration of Budget Resolutions. Senate procedure for considering budget resolutions is governed by the requirements of the 1974 act. First, concurrent budget resolutions are privileged, which means they can be taken up by a nondebatable motion to proceed to their consideration. Because of their privileged character, budget resolutions are commonly taken up by unanimous consent.

The chair of the Budget Committee watches for senators offering amendments outside the jurisdiction of the panel. Why the concern? Because if the Senate adopts what are termed "corrosive" amendments by the Senate parliamentarian, the budget resolution (and a related conference report) is at risk of losing its privileged status (meaning its easy access to the floor, limits on debate, and so on). In one instance, a senator offered a detailed amendment to the budget resolution protecting middle-income taxpayers from tax increases. The Senate Budget chair pointed out that his panel lacks "the authority to tell committees of jurisdiction with specificity what they are to do," and if the amendment was adopted it would "put at risk the privileged status of the resolution itself." The presiding officer agreed with the Budget chair, stating, "The Senator is correct."⁵⁶

Second, the 1974 act imposes a germaneness requirement on amendments to budget resolutions. The act permits the germaneness standard to be waived (or set aside), but it requires at least 60 votes, instead of a simple majority, to waive the requirement. (The Senate, unlike the House, has no general germaneness rule. See Chapter 7 on Senate floor procedure.)

Third, budget resolutions carry a 50-hour statutory debate limitation, which means that they cannot be filibustered to death. Although debate is limited, *consideration* of the resolution is not. As a result, amendments can be taken up and voted on after the 50 hours, but without real debate. This circumstance often leads to so-called vote-a-ramas in which senators may

over several days “cast back-to-back votes on a dizzying array of dozens of amendments,” many designed to provide campaign ammunition (so-called gotcha amendments) for the next election.⁵⁷

[One vote-a-rama] began at 11:15 a.m. [on] March 13 and continued until 2 a.m. March 14, with lawmakers on the floor for most of the session. Votes [by informal agreement] were separated by two minutes of “debate,” with the sponsor having one minute to make his or her case and an opponent given one minute to respond.⁵⁸

The number of amendments to budget resolutions has escalated over time from an average of 21 per year during the first 20 years of the 1974 Budget Act to an average of nearly 85 since then, with a peak of 121 in 2009.⁵⁹

In recent years, senators have increasingly offered amendments establishing “deficit-neutral reserve funds.” The deficit-neutral reserve fund amendments could allow authorizing committees with direct spending authority to report legislation that increases funding for various policy areas (transportation, education, and so on), provided the bills do not add to the deficit. The fiscal totals in the budget resolution then are revised to accommodate the budgetary effects of the particular legislation. As a senator explained:

On the speculation that Congress may enact legislation on a particular issue—perhaps “immigration,” “energy,” or “health care”—a reserve fund acts as a “placeholder” to allow the Senate Budget Committee to later revise the spending and revenue levels in the budget so that future deficit-neutral legislation would not be vulnerable to budgetary points of order.⁶⁰

Enforcement of the Budget Resolution

The House and Senate enforce the goals and policies set forth in the budget resolution through devices such as scorekeeping; spending allocations to committees and subcommittees; reconciliation; budgetary information and analysis provided by the CBO and other relevant panels, including the Joint Taxation Committee, which scores revenue measures; the monitoring role of the Budget Committees; and raising points of order (parliamentary objections) on the House or Senate floor. Points of order under the 1974 Budget Act are either substantive or procedural in character. Substantive points of order are raised to ensure compliance with the budget resolution. For example, a lawmaker can challenge a floor amendment that would cause the Appropriations Committee to exceed its allocation of new discretionary spending authority. Procedural points of order are raised to ensure compliance with features of the 1974 Budget Act and

companion legislation. The House and Senate permit waivers of any points of order. The House usually does this in a rule reported by the Rules Committee. The Senate, by contrast, must waive most points of order by a three-fifths vote of all senators. Senators, then, often find themselves in search of the 60 votes needed to set aside some feature of the budget act so they can accomplish a policy objective.

When the House and Senate pass budget resolutions that contain different aggregate and functional totals, which is normal practice, the disagreements usually have to be resolved by a conference committee. The conferees prepare a report that distributes the total agreed-on expenditures for the year among the relevant House and Senate committees with direct and discretionary spending authority. This allocation procedure is called a *budget crosswalk*. The crosswalk is necessary because Congress employs the functional category designations developed by the White House's Office of Management and Budget. These designations do not correspond exactly to many House and Senate committees, with their overlapping jurisdictions.

Two allocation provisions of the 1974 Budget Act are especially important to the House and Senate Appropriations Committees and their dozen subcommittees. Section 302(a) provides the two Appropriations Committees with a spending allocation consistent with the amount recommended in the budget resolution. The two panels may not report appropriation bills that cumulatively exceed their overall aggregate allocations, enforceable through points of order on the floor (which may be waived, however). Under section 302(b), the House and Senate Appropriations Committees each subdivide their spending allocation among their 12 subcommittees. (If the concurrent budget resolution is not passed by the required April 15 date, informal allocations are made but are not enforceable, unless a deeming resolution has been adopted.) The subcommittee allocations are reported by the Appropriations Committees to their respective chambers. These allocations also are enforceable by members raising points of order against spending bills that exceed a subcommittee's assigned dollar amount. (These provisions can be waived in both chambers but require 60 votes to do so in the Senate.)

Reconciliation

Reconciliation, as noted earlier, is an optional procedure that enables Congress to implement its comprehensive fiscal policy (as reflected in the budget resolution) by changing tax and entitlement laws. The two-stage process is designed to reconcile the parts with the whole or, put differently, to bring existing law into conformity with the current budget resolution. In general, reconciliation is used to reduce spending, primarily through entitlement savings, and either to increase revenues or cut taxes. It does not address funding that is established in annual appropriations bills.

The appropriations committees are bound by the discretionary spending limits set forth in the budget resolution. First employed by both chambers in 1980, reconciliation is used more often than not because it has proven to be an effective device for achieving budgetary savings.

The first stage in the reconciliation process calls for congressional approval of a budget resolution that instructs House and Senate committees to report by a certain date legislation that makes changes in laws, within their jurisdiction, that would result in changes to spending or revenues, or deficit reduction (often referred to as “budget targets”). An example of reconciliation directives to Senate committees is presented in Box 2.3. The second stage entails the development and consideration of reconciliation legislation that is projected to achieve the budget targets. If multiple committees are instructed, the legislative changes are submitted to the respective House and Senate Budget Committees. The budget panels then package the recommended changes into an omnibus reconciliation bill, followed by floor action in each chamber. The budget committees cannot make substantive changes in the proposals received from each instructed committee. If only one committee is provided instructions, it reports its legislative recommendations directly to the floor.

The reconciliation process was first initiated in its current form in 1980. But it was 1981 that illustrated its potential. In that year, in a major and dramatic use of reconciliation, President Ronald Reagan persuaded Congress to employ the procedure to achieve significant cuts in domestic programs (totaling about \$130 billion over 3 years). Never before had reconciliation been employed on such a grand scale. The entire process was expedited in a manner that short-circuited regular legislative procedures. A highly charged atmosphere produced a legislative result (enactment of an omnibus reconciliation bill), wrote Howard H. Baker Jr., R-Tenn., then Senate majority leader, “that would have been impossible to achieve if each committee had reported an individual bill on subject matter solely within its own jurisdiction.”⁶¹ Reconciliation forced nearly all House and Senate committees to make unwanted cuts in programs under their jurisdiction. Given their policymaking significance, these bills, not surprisingly, are shepherded through Congress by party leaders and key committee leaders.

The irony is that Congress’s budget process, designed in 1974 to advance and reassert the legislative branch’s power of the purse, was captured by the White House in 1981 and used to achieve President Reagan’s objectives. However, reconciliation can be used by either branch or party provided it has the votes to implement its objectives. In 1995 the GOP-controlled Congress employed reconciliation to try to scale back the size of government, cut taxes, and balance the budget in 7 years. “Its efforts,” observed one onlooker, “led to two historic federal government shutdowns, thirteen stopgap measures, several presidential vetoes, and ultimately failed to produce a meaningful fiscal agreement with the White House.”⁶²

Box 2.3 Senate Reconciliation Directives

This excerpt from the concurrent budget resolution for fiscal year 2017 stipulates reconciliation directives for two Senate committees. These standing committees are the principal Senate panels that deal with health care issues: Finance; and Health, Education, Labor, and Pensions.

SEC. 2001. Reconciliation in the Senate.

- (a) Committee on Finance.—The Committee on Finance of the Senate shall report changes in laws within its jurisdiction to reduce the deficit by not less than \$1,000,000,000 for the period of fiscal years 2017 through 2026.
- (b) Committee on Health, Education, Labor, and Pensions.—The Committee on Health, Education, Labor, and Pensions of the Senate shall report changes in laws within its jurisdiction to reduce the deficit by not less than \$1,000,000,000 for the period of fiscal years 2017 through 2026.
- (c) Submissions.—In the Senate, not later than January 27, 2017, the Committees named in subsections (a) and (b) shall submit their recommendations to the Committee on the Budget of the Senate. Upon receiving all such recommendations, the Committee on the Budget of the Senate shall report to the Senate a reconciliation bill carrying out all such recommendations without any substantive revision.

Source: S.Con.Res. 3, Concurrent Resolution on the Budget for Fiscal Year 2017, agreed to January 13, 2017.

On several occasions, reconciliation directives provided for more than one reconciliation bill. In 2005, for example, reconciliation instructions provided for three measures: a spending bill, involving cuts in mandatory programs as part of the GOP's effort to demonstrate fiscal discipline; a tax bill, concerning \$70 billion in revenue cuts; and a bill to raise the debt limit. These instructions follow the Senate parliamentarian's current guidance that only three reconciliation bills—tax, direct spending, and debt limit—are in order. (The House has no such limitation but observes the Senate's interpretation.)

Reconciliation in the House is considered under the terms of a rule from the Rules Committee. Procedurally, reconciliation bills are focused on the Senate because measures governed by this process are

treated differently than are other bills and amendments under terms outlined in the 1974 Budget Act. They cannot be filibustered (there is a statutory time limit of 20 hours for debate), passage requires a simple majority, and amendments must be germane and deficit neutral (tax cuts or spending increases must be “offset” by equivalent revenue increases or spending reductions). It is not surprising that proposals likely to arouse controversy in the Senate are sometimes attached to filibuster-proof reconciliation bills.

A recent example of reconciliation arousing significant controversy occurred during President Obama’s first 2 years in office.⁶³ A major overhaul of the nation’s health care system was a top domestic priority given the centrality of the issue in the 2008 presidential campaign. Congressional Democratic leaders successfully included reconciliation directives in their budget resolution. The directives specified that the relevant House and Senate committees would have until October 15, 2009, to report a health care reform reconciliation bill, although this deadline is more advisory than absolute.⁶⁴ It is “a date that does not have legislative consequences,” remarked Senate Budget Chair Kent Conrad, D-N.Dak. “You can do reconciliation before October 15. You can do reconciliation after October 15.”⁶⁵

Senate Republicans and several prominent Senate Democrats opposed the use of reconciliation for such major legislation. “If you’re going to talk about reconciliation, you’re talking about something that has nothing to do with bipartisanship,” declared a GOP senator. “You’re talking about the exact opposite of bipartisan. You’re talking about running over the minority, putting them in cement, and throwing them in the Chicago River.”⁶⁶ Senator Robert C. Byrd, D-W.Va., a principal author of the 1974 Budget Act, also expressed dismay that a procedure designed for deficit reduction could be used to enact major legislation. “We have seen one party and then . . . the other party use this process to limit debate and amendments on non-budgetary provisions that otherwise may not have passed under the regular rules.”⁶⁷

Senate Republicans threatened to shut down the Senate through dilatory actions if Democrats employed reconciliation on President Obama’s health care priority. Democrats initially decided not to use reconciliation on health care, but they recognized its leveraging potency. Speaker Nancy Pelosi, D-Calif., stated, “If bipartisanship did not yield health care reform, then we’ll move to reconciliation.”⁶⁸ Following House adoption of its own version of health care reform, Senate Democrats mustered the 60 votes required to complete action on the Senate’s version, the Patient Protection and Affordable Care Act (H.R. 3590).⁶⁹ Seemingly, the landmark health care bill was destined soon to be enacted into law after both chambers resolved their differences on health care reform. However, just a few weeks later, in

a stunning special election upset in Massachusetts, Republican Scott Brown won the Senate seat previously held by Democrat Edward Kennedy. The result was Senate Democrats no longer could muster the 60 votes required to end filibusters solely from their own ranks. The fate of major health care reform quickly turned murky.⁷⁰

After weeks of negotiations among the Democratic leaders of both chambers and the White House, an agreement was reached in mid-March 2010 to use a “two-bill” strategy. The House would agree to the Senate’s version of health care reform (H.R. 3590, the Affordable Care Act) and then immediately pass a second bill—a filibuster-proof reconciliation measure (H.R. 4872)—that would largely amend the Affordable Care Act to address concerns with the Senate’s version. This approach avoided both a bicameral resolution process and any further action on H.R. 3590 in the Senate, where Majority Leader Reid no longer had the 60 votes required to end a filibuster. Moreover, it was the fastest way to get comprehensive health reform to President Obama, who signed H.R. 3590 into law on March 23, 2010. Two days later, both chambers completed action on the reconciliation bill. On March 30, the President signed H.R. 4872 into law. During the health care strategy sessions, lawmakers from both chambers raised the issue of the Byrd rule.

The Byrd Rule

The Byrd rule, named after Senator Byrd, was adopted on a temporary basis in 1985; five years later it became permanent as an amendment to the 1974 Budget Act. The rule states that reconciliation provisions must be consistent with the goals of the reconciliation instructions. Reconciliation requires committees with policymaking responsibilities—the tax-writing and authorizing committees—to change either revenues or mandatory spending. Prior to the Byrd rule, these panels sometimes reported policy provisions that had no effect on the budget. Such provisions were inserted in reconciliation bills partly “because the budget committees are specifically prohibited from making substantive changes in the recommendations they receive from each committee.”⁷¹ Significantly, committees included nonbudgetary policy provisions in reconciliation bills because such bills are considered under expedited procedures to facilitate passage.

The objective of the Byrd rule is to exclude extraneous matter in reconciliation measures. Maximizing its potency, the rule can be waived only by a three-fifths vote of the Senate. Similarly, 60 votes are required to overturn a ruling of the Senate’s presiding officer that a provision in a reconciliation bill (or a floor amendment to it) is extraneous.

What is extraneous, however, is not always easy to determine.

The Byrd rule itself provides six definitions of what is extraneous. The rule stipulates, for example, that a provision is extraneous if it does not produce a change in outlays or revenues or is outside the jurisdiction of the committee that recommended the provision for inclusion in the reconciliation measure. To apply such definitions in practical cases can be complex:

The application of the [Byrd] rule can be tortuous. Take food stamps, for example. [In 1993, t]he House approved \$7.3 billion in extra spending for food stamps in its reconciliation bill; the Senate did not. Conferees . . . agreed to include up to the House amount in the conference report, but [Senate] Republicans hope to strip it out, arguing that it violates the Byrd rule because it would force the [Senate Agriculture] committee to miss its deficit-cutting target. The Senate Agriculture Committee's target was \$3.2 billion. [Senate] Democrats argued behind the scenes that it was impossible to apply the Byrd rule to a conference report. What was the relevant "committee"? House Agriculture? Senate Agriculture? The conference committee? The House's Committee of the Whole?⁷²

The Senate parliamentarian agreed that the Byrd rule could not be applied to this case. In doing so, he cleared the way for the food stamps provision to remain in the conference report. The Senate parliamentarian—an unelected congressional official—comes under enormous pressure from senators in both parties as she gives reconciliation bills a “Byrd bath,” determining which provisions are extraneous and which are not.⁷³

Because the Byrd rule also applies to House–Senate conference reports, it is sometimes a source of conflict between the chambers. House committee chairs charge that the Byrd rule, “by allowing Senators to rise on points of order and strike extraneous provisions [from conference reports], gives the Senate the power to dictate House actions.”⁷⁴

The constraints of the Byrd rule gave some pause to Democratic leaders who decided to use reconciliation on Obama's health care overhaul plan. The Democratic leaders were worried that GOP senators might challenge numerous health care provisions and successfully remove them as “Byrd droppings.” A former staff director of the Senate Budget Committee explained:

On something as massive as health care reform, there will be a number of provisions that don't have direct budgetary consequences . . . Those Byrd violations [points of order] would be made and you'd end up making Swiss cheese out of the legislation.⁷⁵

In the end, but to no avail, opponents of the health care reconciliation bill employed a number of other procedures (points of order, motions to return the health plan to committee, and the like) and offered numerous

amendments in an attempt to torpedo the bill. But they were not able to use the Byrd rule against any of the health care provisions in the reconciliation bill. Noteworthy is that the nonbudgetary aspects of health care reform, such as the insurance market requirements and the individual mandate, were included in the Affordable Care Act (H.R. 3590), which passed the Senate by a 60 to 39 vote after cloture was invoked. Therefore, in crafting the reconciliation bill, Democratic leaders were able to focus on the budgetary aspects of health care reform, avoiding the pitfalls of the Byrd rule. However, the procedural challenges of using the reconciliation process to address health care reform, especially in a comprehensive way, would return as opponents attempted to repeal and replace the Affordable Care Act.

For example, when the GOP took control of both chambers in the 114th Congress (2015–2016), they used the reconciliation process “for the sole purpose of repealing the . . . health care law.”⁷⁶ The constraints of the Byrd rule, however, led congressional Republican leaders to craft a more limited repeal of the Affordable Care Act. The repeal of the individual and employer mandates, for example, were not able to overcome the Senate’s Byrd rule. Both were determined by the Senate Parliamentarian to violate the rule and were stripped from the reconciliation legislation in the Senate. Overcoming the Byrd rule constraints, the Senate and House passed a limited repeal of the Affordable Act through the reconciliation process by simple majorities. The health care repeal reconciliation legislation (H.R. 3762) was considered for a total of 5 days on the House and Senate floor, and passed, largely along party lines, by votes of 240 to 189 and 52 to 47, respectively.⁷⁷ As expected, President Obama vetoed the bill.

Timetable for Budget Decisions

To promote order and coordination in the budget process, Congress established a budgetary schedule. But the timetable, set out in Box 2.4, is periodically subject to change, and Congress commonly misses some of the target dates. For example, Congress is supposed to enact its budget resolution on or before April 15 of each year, but that does not always happen.

Different budget priorities and serious policy disagreements among the chambers, parties, and branches account, in addition to other factors, for the missed deadlines. In 1998, the House and Senate failed for the first time to agree on a budget resolution for the fiscal year 1999. Each chamber passed dramatically different resolutions that year, and the GOP leaders of each chamber could not agree on how to allocate funding. Four years later, also for the first time ever, the Senate did not even consider a budget resolution on the floor this time because of partisan clashes and the one-seat majority the Democrats had in 2002.⁷⁸ In 2004, for only the third time in 30 years, Congress again could not adopt a budget resolution, partly because of policy disputes over tax

Box 2.4 Congressional Budget Process Timetable

Target Date	Action to Be Completed
First Monday in February	President submits budget to Congress.
February 15	Congressional Budget Office submits economic and budget outlook report to Budget Committees.
Six weeks after president submits budget	Committees submit views and estimates to Budget Committees.
April 1	Senate Budget Committee reports budget resolution.
April 15	Congress completes action on budget resolution.
May 15	Annual appropriations bills may be considered in the House, even if action on budget resolution has not been completed.
June 10	House Appropriations Committee reports last regular appropriations bill.
June 15	Congress completes action on reconciliation legislation (if required by budget resolution).
June 30	House completes action on annual appropriations bills.
July 15	President submits midsession review of budget to Congress.
October 1	Fiscal year begins.

Source: Adapted from Section 300 of the Congressional Budget Act (2 U.S.C. 631).

policy. This trend has continued in recent years. In 2006 and from 2010 to 2014, the House and Senate have been unable to agree on a budget resolution, either because of choice, bicameral conflicts, or other factors. On occasion, there is debate about whether a budget resolution is even necessary, especially if it does not contain reconciliation directives (see the previous Reconciliation section). “My sense is that it’s not of overwhelming importance,” remarked a House member, because the significant budget

battles are joined “when the appropriations bills hit the floors.”⁷⁹ There is no legal penalty if Congress fails to adopt a budget resolution. Politically, however, the opposition party often criticizes the majority for being incapable of fulfilling a fundamental governing responsibility.

Among several reasons that account for House–Senate difficulties in agreeing on a budget resolution, two merit mention. First, the two parties have substantial disagreements about how to address the budget deficits (nearly \$780 billion in 2018), which hinders their ability to agree even on a budgetary framework. Democrats favor a mix of spending cuts and tax hikes to shrink the deficit. Republicans support tax cuts, not revenue hikes, and endorse deep spending cuts in entitlement and other programs favored by many Democrats. Forging majority consensus on how to reduce the deficit has been so controversial that it has led to budgetary gridlock. “There’s no serious effort on either the Republican or Democratic side to address [deficit reduction], and the president’s not for it,” exclaimed Senator Lamar Alexander (R-Tenn.).⁸⁰

Second, budget resolutions reflect the priorities of the majority party. Commonly, minority party lawmakers unanimously oppose adoption of the budget resolutions, which means that votes for passage must come from the majority side. Vulnerable lawmakers up for reelection are unlikely to vote for a budget resolution that would cause them electoral grief back home, such as proposing cuts to Medicare. The “political thinking is,” declared Senator Tom Coburn, R-Ok., “we don’t want any of our members to have to be recorded on things that might affect the next election.”⁸¹ Thus, there are occasions when the budget resolution for a fiscal year is not even considered.

When the House or Senate are late in passing, or cannot produce, a budget resolution, either chamber may adopt what is called a *deeming resolution*, which may be a simple House (H.Res.) or Senate (S.Res.) resolution. Its functional equivalent may also be provided in other forms. For example, such provisions have been included in rules reported by the Rules Committee for the House, in an annual defense appropriations bill for the Senate, and in other legislation implementing a budget agreement for both chambers, such as the Bipartisan Budget Act of 2013.⁸² Absent a deeming resolution, the multiyear budget levels adopted in the prior year’s budget resolution remain in effect (except for discretionary spending levels for the upcoming fiscal year), but they may be “badly out of date, thereby undermining their value as a realistic basis for enforcement of present policies.”⁸³

The 1974 Budget Act prohibits the House and Senate from taking up budgetary measures before adopting the budget resolution for the upcoming fiscal year. However, the House permits appropriations bills to be taken up after May 15 even if legislators still have not agreed on a budget resolution. The House can set aside the requirement by unanimous consent or majority vote; the Senate may also set aside this mandate by majority vote. In short, the budget timetable is often more aspiration than attainment.

Controls on Impoundments

Title X of the 1974 Budget Act permits Congress to review executive impoundments of appropriated funds. The act divides impoundments into two categories—deferrals (a temporary delay in the expenditure of funds to achieve savings made possible through greater efficiencies or to provide for contingencies) and rescissions (the permanent cancellation of budget authority)—which are considered under separate procedures. Presidents are obligated to inform Congress of their proposed deferrals and rescissions and to set forth the reasons for them. The GAO is authorized to review these special messages to ensure that impoundments are not classified improperly.

To rescind budget authority, the president submits a message to Congress indicating the reasons for the rescission. Over the next 45 days of continuous session (days when Congress is in session, not calendar days), Congress may then pass a rescission bill that cancels all, part, or none of the amount requested by the president. If both houses fail to pass a rescission bill before the expiration of the 45-day period, the president must make the funds available for obligation. In short, inaction produces action: the release of appropriated funds. (The rescission procedure is seldom followed because the Appropriations Committees, after informal consultations with executive agencies, include the agreed-on rescissions in general appropriations bills.)

The Debt Limit

The Constitution (Article I, Section 8) grants Congress the power “to borrow Money on the credit of the United States.” The Treasury Department is assigned responsibility to conduct the sale of debt instruments (interest-bearing bonds, for example) when the government needs to borrow money to pay its bills for such things as building the Panama Canal, fighting world wars, stimulating the economy, or funding its legal obligations and policy priorities. “Raising the debt ceiling doesn’t approve more spending by the government. Instead, it allows the government to borrow to pay debts it has already incurred.”⁸⁴ (In 2019, the debt ceiling—the accumulation of annual deficits over time—exceeded \$22 trillion, an amount nearly equivalent to the nation’s gross domestic product, or the total value of its goods and services.)

Controversy has often surrounded consideration of debt ceiling measures, but they were nonetheless regularly enacted into law. From 1975 to 2011, debt ceiling bills became law more than 60 times, with seven occurring in 1990 alone.⁸⁵ Rarely during this era was there ever a serious threat to allow the government to default on its debts, which would roil the financial markets, affect the value of the dollar, and produce other

adverse domestic and global economic consequences. However, in the 112th Congress (2011–2012), many GOP lawmakers were willing to take that risk of default to compel the Obama administration to accept their agenda of limited government, with its tax and spending cuts.

Voting to raise the debt ceiling is difficult for many lawmakers, especially in a polarized era. Minority members lay off voting for increases in the debt ceiling, forcing the majority members to bear the burden of passing the legislation. Those voting to hike the debt ceiling understand that the other party will attack them in the next election as “big and irresponsible spenders.” For instance, a GOP challenger ousted a Democratic incumbent with a series of attack ads that said, “[The Democrat] promised to cut wasteful spending, but voted for \$14 trillion in debt.”⁸⁶ To insulate members from such criticism, the House devised a creative procedure for approving raises in the debt ceiling without voting directly on such legislation. Called the *Gephardt Rule* after Rep. Richard Gephardt, D-Mo., who originated the rule in 1979, it stated that after successful adoption of the budget resolution, the House would be “deemed” to have also passed legislation increasing the statutory debt ceiling. The Senate requires its members to cast a direct vote on debt ceiling legislation.

The GOP-controlled 112th House, however, believed a stand-alone debt ceiling bill would give them leverage to cut spending. GOP lawmakers invoked the logrolling strategy: In exchange for their votes to raise the debt ceiling, the president must support deep spending reductions in federal programs and agencies. In sum, if the debt ceiling were to be raised so the government could borrow more money to pay its debts, the terms would be set by congressional Republicans. When Treasury Secretary Timothy Geithner provided Congress with a firm deadline (August 2, 2011) for lifting the debt ceiling, the stage was set for another round of deadline brinksmanship.

President Obama and House Democrats urged Speaker John Boehner, R-Ohio, to schedule floor action on a “clean” debt ceiling bill—a \$2.4 trillion increase in borrowing authority—with no other provisions embedded in the measure. For their part, House Republicans insisted that there must be a dollar in spending cuts for every dollar authorized for borrowing. To hammer home their leverage in raising the debt ceiling, Boehner complied with President Obama’s request, and that of congressional Democrats, for a clean vote on raising the debt ceiling by \$2.4 trillion. The vote occurred on May 31, 2011, in unusual circumstances. First, it was brought up under a procedure (suspension of the rules; see Chapter 4) that guaranteed its defeat; suspension procedure requires a two-thirds vote for passage. Second, GOP leaders urged their party colleagues to defeat the bill they introduced. Every Republican voted for rejection. Some GOP lawmakers seemed to relish a government default to dramatize the need for spending discipline. Third, Democrats who urged such a vote “assailed Republicans

for bringing it up,” calling their action a political stunt and warning that the measure’s “certain defeat might unnerve the financial markets.”⁸⁷ The vote for rejection was 318 to 97.

To break the impasse over raising the debt ceiling and to diminish the increasing fear of a default, Senate GOP leader Mitch McConnell, R-Ky., in early July, offered a creative and complex procedure that, among other budget reforms, was incorporated in what became the Budget Control Act of 2011 (BCA). President Obama signed the BCA into law (P.L. 112-25) on August 2, just a few hours before the Treasury Department would lose its authority to borrow. Senator McConnell’s creative procedure was to give “Obama the authority to order necessary additions to the debt ceiling over the next year and a half and [let] Congress off the hook by not requiring congressional approval of any increase.”⁸⁸ Congress, however, could enact a measure—a joint resolution of disapproval—rejecting the debt increase, which the president could veto. On August 1, the House passed (269–161) the BCA legislation (H.R. 365) that raised the debt ceiling; the Senate followed suit the next day (74–26). However, the weeks of partisan debate and gridlock aroused public dismay and fueled citizen disgust with the legislative branch. Its approval ratings fell to the low teens and even single digits. Moreover, Standard & Poor’s, a well-known financial rating agency, reduced the Triple A rating for Treasury bonds because “the deficit deal fell short of what was needed and that ‘political brinkmanship’ boded ill for the future.”⁸⁹

Under the BCA, a three-stage procedure—designed partly to keep deficit reduction in the public eye—was established to raise the debt ceiling and reduce spending by an amount between \$2.1 trillion and \$2.4 trillion. The first stage occurred upon enactment of the law: The Obama administration automatically received \$400 billion in additional borrowing authority. As part of the default-avoidance law, the president was obligated for each of the three stages to issue a certification that the government was within \$100 billion of exceeding its borrowing authority. The second stage was another automatic boost of \$500 billion in the debt ceiling, unless both legislative chambers enacted a joint resolution of disapproval to prevent the increase. The GOP House, on September 14, 2011, did adopt (232–186) a disapproval resolution. The Senate, however, turned down (45–52) a comparable disapproval resolution.

With the debt limit hiked by \$900 billion, the third stage involving a \$1.2 trillion increase in the debt ceiling was to occur in one of three ways: (1) congressional approval of a joint resolution of disapproval, subject to either chamber’s unlikelihood of overriding President Obama’s veto; (2) enactment of legislation reported by a Joint Committee on Deficit Reduction (see “The Budget Control Act of 2011” section later in the chapter) that would increase the debt ceiling and also reduce spending by an equivalent \$1.2 trillion; and (3) legislative adoption of a constitutional balanced budget amendment. Of the three, only the first approach proved viable.

Evolution of Statutory Budget Procedures

Congressional procedures and politics are forever changing, and the congressional budget process is no exception. In the mid-1980s and later, Congress enacted significant statutory changes in its budget process. These changes emerged from a new political climate: the politics of deficit reduction. After President Reagan took office in 1981, the annual deficits soared. Reagan's objectives were clear and principally threefold: slash domestic spending, increase defense expenditures, and cut taxes. However, the revenue losses caused by the tax cuts, combined with rising defense expenditures and insufficient reductions in other areas, soon produced triple-digit deficits in the \$200 billion to \$300 billion range. Never before had the nation seen such huge deficits during peacetime and during an economic expansion—that is, the one that followed the 1982 economic recession. Congress acted to stem the river of red ink through legislation.

The 1985 Balanced Budget and Emergency Deficit Control Act (Gramm-Rudman-Hollings)

As annual deficits escalated after 1981, numerous proposals were put forth to gain control of the federal budget. One notable initiative was put forth in the mid-1980s by Senators Phil Gramm, R-Tex., Warren Rudman, R-N.H., and Ernest Hollings, D-S.C., and enacted into law. Its core feature was the establishment of annual statutory deficit reduction targets that, if achieved, would over time lead to a balanced budget. If Congress did not meet the targets, the president would have to sequester funds—that is, impose automatic across-the-board spending cuts evenly divided between defense and domestic programs. (The BCA of 2011 borrowed the idea of sequestration from this law, as discussed below.) The dire prospect of a “fiscal train wreck” was supposed to create an incentive for Congress and the president to decide how best to achieve deficit reduction. But, in the end, the plan did not work, and deficits continued to climb. Congress exempted 70 percent of the budget from sequestration, and budgetary gimmicks were employed to meet the statutory targets, at least on paper. In response, Congress enacted another major budgetary reform—the Budget Enforcement Act (BEA) of 1990, which was amended several times before it expired on October 1, 2002.

The Budget Enforcement Act of 1990

This act once again changed the fiscal procedures of Congress. The law was intended to shift Congress's attention from deficit reduction to spending control. Thus, it removed the threat of automatic, across-the-board reductions

(“sequestration”) if conditions beyond Congress’s control—inflation, a worsening economy, or emergency funding for crises or disasters—pushed the deficit upward.

The Budget Enforcement Act (BEA) replaced the deficit targets with two enforcement mechanisms. First, it set spending caps, or limits, for discretionary spending. The spending caps could be changed, but Congress and the president would have to agree to the modification. If Congress exceeded the spending limits, the law provided for across-the-board reductions to bring spending in line with the caps. However, a loophole in the law enabled Congress and the president to escape tight spending caps. If Congress and the president designated spending above the cap as an “emergency” (a flexible term that implies something unforeseen or unpredictable), they were exempt from the limits imposed by the BEA. When this law was negotiated in 1990 between congressional leaders and President George H. W. Bush, “some questioned the lack of flexibility to accommodate unforeseen natural or man-made disasters.” To satisfy those concerns, decision makers agreed to the safety valve of “emergency” spending. However, some have argued that Congress and the president often viewed emergency spending as “free money” because “it is not controlled or offset vis-à-vis other federal spending.”⁹⁰ For example, Congress used the emergency designation to finance the constitutionally required 2000 decennial census.

Second, the BEA subjected tax and entitlement programs to a new *pay-as-you-go* (PAYGO) requirement. Any tax reductions or any increases in direct spending (entitlement) programs had to be offset by tax hikes or reductions in other direct spending programs. The enforcement threat was across-the-board cuts in direct spending programs not exempt under the BEA. As the chief counsel of the Senate Budget Committee explained, “The ‘pay-as-you-go’ label implies that Congress and the President may cut taxes or create new [direct spending] programs—that is ‘go’—if they also agree to provide offsetting increased revenues or spending reductions—that is ‘pay’.”⁹¹ In short, lawmakers had to find “payfors” or offsets if they wanted to cut taxes or devise a new—or increase an existing—entitlement program.

The relative success of these reforms, however, led to their downfall. The onset of a 10-year projected \$5.6 trillion surplus in the early 2000s uncapped a pent-up desire among many lawmakers to spend money on various programs and activities and cut taxes.⁹² Here was a case of fiscal projections driving policymaking, even though the money was not yet in the bank. The requirements of the BEA were either waived or ignored as the psychology of plenty took hold in Congress. Many lawmakers viewed the budgetary restraints embedded in the BEA as an out-of-date device for dealing with budget surpluses. As a result, in 2002 the law was allowed to expire.

However, under a so-called elastic clause provision [Section 301(b)(4)] in the 1974 Budget Act, the budget resolution may “require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act.” Utilizing this elastic clause, the Senate created its own PAYGO rule in 1993, which remains in effect today with various modifications. And in 2007, the House created its own PAYGO rule by adopting an amendment to its Standing Rules. As a complement to the PAYGO rules of each chamber, President Obama successfully urged Congress in 2010 to reinstate a modified version of the earlier statutory PAYGO requirement (Statutory Pay-As-You-Go Act of 2010, P.L. 111-25).

When the 112th Congress convened in January 2011, the GOP-controlled House adopted rules that replaced PAYGO with a new *cut-as-you-go* (CUTGO) rule. This rule, like PAYGO, applied to direct (mandatory) spending (the purview of the authorizing committees) but not to discretionary spending, which is governed by the appropriations process. However, unlike PAYGO, which allows spending increases for mandatory programs to be offset (finding other budget savings) from spending cuts or revenue increases, CUTGO required offsets for increases in mandatory programs to come from spending cuts only, not revenue increases. Thus, legislation cutting taxes—a key GOP principle—was not subject to the CUTGO rule even though the budget deficit would likely increase.

Not surprisingly, when Democrats took control of the House at the beginning of the 116th Congress (2019-2020), they terminated CUTGO and restored the PAYGO rule.

The Budget Control Act of 2011

This act reinstated the 1990s-era BEA statutory limits on discretionary spending—this time for each year from 2012 through 2021. The BCA allowed for additional spending above the cap levels for certain purposes, such as for overseas contingency operations and emergencies, if agreed to by both the president and Congress. The discretionary spending limits are enforceable by sequestration—automatic, largely across-the-board spending cuts—if appropriations are enacted into law above the limits.

The BCA also established a 12-member bipartisan, bicameral Joint Select Deficit Reduction Committee. It had broad authority to deal with budgetary matters (revenue and spending) with the goal of producing a deficit reduction proposal over 10 years of at least \$1.2 trillion, if not more. The panel’s formation, dubbed a “supercommittee” by pundits, underscored the inability of the regular legislative process to produce significant deficit reduction. The panel’s product was to be considered under expedited procedures that restricted debate and amendment in both chambers. Its work was to be completed by November 23; a final

report, with recommendations, was to be issued by December 2; and the House and Senate were required to vote on those recommendations by December 23, 2011.

On November 21, the co-chairs of the joint committee announced the panel's inability to achieve its goals. Various reasons were offered for the joint panel's dismal result, but one in particular concerned the GOP's reluctance to increase taxes and Democratic resistance to entitlement reforms. As Rep. Jeb Hensarling, R-Tex., the joint panel's cochair, suggested, "We could not bridge the gap between two dramatically competing visions of the role [of] government."⁹³

This failure triggered a fallback process, built into the BCA, to produce the deficit reduction the joint committee could not—automatic spending cuts of \$1.2 trillion over 10 years, equally split between defense and non-defense spending. The spending cuts would be achieved by a combination of sequestration and the lowering of revised statutory discretionary spending limits through 2021.⁹⁴ The process generally requires spending reductions each year of about \$109 billion, equally divided between defense and nondefense, and proportionally divided between mandatory and discretionary spending, beginning in 2013 and continuing each year through 2021.

In the first year of the fallback process (2013), all reductions in both discretionary and mandatory spending were achieved through sequestration.⁹⁵ In each of the remaining 8 years (2014–2021), reductions in mandatory spending continue to occur through sequestration, while reductions in discretionary spending are achieved through the statutory caps in two main ways. First, the original statutory limits for 2014–2021 were replaced with new and separate limits on defense and nondefense discretionary spending, with the total amount of discretionary spending remaining the same as originally agreed to in the BCA.⁹⁶ Second, these revised limits are lowered each year based on a formula prescribed by the BCA. The revised limits continue to be enforceable by sequestration.⁹⁷

Notably, after the required sequestration reductions in 2013, Congress and the president have not adhered to the prescribed reductions to the discretionary spending limits. So far, through the 115th Congress (2017–2018), they have replaced the reductions for each year (2014–2019) with new discretionary spending limits that could garner congressional support and presidential signatures. The new discretionary spending limits (two years at a time) have been enacted as part of broader agreements on other policy changes.⁹⁸ In the first two-year deals, the agreements included policy changes to offset the increases in the discretionary spending limits. But in the most recent agreement (in 2018), the increase in the discretionary spending limits was only partially offset.

Case Study: The Government Shutdown of 2013

During the 112th and 113th Congresses (2011–2014), with divided party control of Congress and an assertive block of small-government conservatives in the House, last-minute funding deals were common. The brinkmanship that has characterized budgetary politics is no better illustrated than the actions leading up to and during the 2013 government shutdown. In October 2013, Congress was unable to agree on any of the regular appropriations bills, or even temporary funding through enactment of a CR, for FY2014, and the government shut down on October 1 and remained shuttered until October 17.

Consideration and passage of appropriations legislation was delayed, even before the standoff, largely because of disagreement between the Republican-controlled House and the Democratic-controlled Senate on overall spending levels for the upcoming fiscal year (2014). Although they had no agreement, the House and Senate moved forward separately on the annual appropriations bills for FY2014. The House Appropriations Committee reported 10 of the 12 annual appropriations acts, and the House passed 4. The Senate Appropriations Committee completed action on 11 of the 12 appropriations bills. The Senate began consideration of one, but was not able to complete it. As the end of the fiscal year approached, House and Senate leaders seemed willing to agree to extend the overall funding level from 2013 into 2014, at least temporarily.⁹⁹ Finalizing an agreement on a CR was complicated, however, by a desire of some Republicans to enact policy changes in the appropriations bill. They wanted to use the threat of a government shutdown to force the Senate and the president to agree to repeal the Affordable Care Act (ACA), President Obama's signature health care law.¹⁰⁰ October 1, besides being the first day of a new fiscal year, was also the date that citizens could begin to purchase insurance coverage through the health care exchanges created by the new law. Some members saw this convergence as a prime opportunity to repeal the health care law, or at least gain major concessions from Democrats. Senator Ted Cruz, R-Tex., a leading voice for the shutdown threat strategy to repeal the health care law, argued that "now is the single best time to stop ObamaCare. If it doesn't happen now, it's never going to happen."¹⁰¹

Speaker John Boehner, sensing the political danger in this strategy, initially floated the idea to his caucus of passing a "clean CR" to continue to fund the government at its current level, but only if the Senate held a vote to repeal the health care law. Unable to sell this idea to his conference, he succumbed to their demands and proposed a CR with two controversial so-called policy riders: one to prevent implementation of the ACA; and another to require the Treasury Secretary to prioritize "the financial

obligations to bondholders ahead of other claims” so as to avoid a default on the public debt.¹⁰² The House passed the measure (H.J.R. 59), 230 to 189, on September 20, 2013.

The Democratic-controlled Senate was not likely to accept the policy riders. As Senate Majority Leader Harry Reid, D-Nev., declared, “In case there is any shred of doubt in the minds of our House counterparts, I want to be absolutely crystal clear. Any bill that defunds Obamacare is dead. Dead.”¹⁰³ Some Senate Republicans fought to consider the House bill that included the controversial provisions, and at one point Senator Cruz staged a protest, speaking for 21 straight hours on the Senate floor, the second-longest speech in Senate history.¹⁰⁴ Even so, Senator Reid offered a clean CR as an amendment to the House bill, and with Democratic support only, the Senate agreed to the amendment and the bill, 54 to 44. As a result of procedural actions necessary to end the filibuster, consideration in the Senate consumed an entire week, and the clean CR was not returned to the House until September 27.

House Republicans were not prepared to accept the Senate’s clean CR, and instead made a counteroffer. The House attached language to the CR (1) to repeal the medical device tax contained in the health care law that was unpopular with senators of both parties and (2) to delay ACA implementation for one year.¹⁰⁵ The House returned the legislation with its second offer to the Senate, where it was rejected the following day. A third proposal was sent to the Senate by the House, this time to delay just the ACA’s individual mandate and to require members of Congress, their staffs, and political appointees, to enroll in the health care exchanges without the employer subsidy provided by the federal government. The Senate rejected this offer too. A final salvo occurred when the House proposed a conference committee (see Chapter 8) at 1 a.m. on October 1, but the Senate did not go along, and the government shut down.

At that point, federal agencies stopped nonessential activities, including closing national parks, and the two parties engaged in public relations to win the hearts and minds of the public.¹⁰⁶ A CBS poll “found that 72 percent disapprove of partially shutting down the government because of differences over the Affordable Care Act, including 59 percent of respondents who do not like the health care law.”¹⁰⁷ Public opinion during this time seemed to shift decisively in favor of ending the government shutdown with no strings attached.

Two weeks into the government shutdown, and with the federal government’s borrowing authority due to run out on October 17, both Senate leaders put together legislation to open the government at the spending levels previously agreed to and suspend the debt ceiling until February 2015.¹⁰⁸ The deal also included a minor adjustment to the health care law to tighten the process for determining eligibility. The Senate agreed to this

proposal (81–18) on October 16. As the House took up the bill hours later, the House Appropriations Chair Harold Rogers, R-Ky., expressed the sentiments of many supporters of the bill: “After two long weeks, it’s time to end the government shutdown. It’s time to take the threat of default off the table. It’s time to restore some sanity to this place.”¹⁰⁹ The House passed the bill (285–144), with 87 Republicans joining all House Democrats. The president signed the legislation into law (P.L. 113–46) the next day.

The experience of a government shutdown illustrates why Congress, since the mid-19th century, has attempted to separate policy decisions from spending ones. Attempting to leverage government funding with policy questions on which there is strong disagreement risks a shutdown and does not necessarily lead to capitulation on the policy questions. As Rep. Kevin Brady, R-Tex., put it, “a government shutdown was pretty poor leverage.” And Senator Jeff Flake, R-Ariz., commented, “People tend to forget that you don’t get much out of [a shutdown]. Those of us who needed to learn that learned it. Some of us never wanted to go there, but I think that’s the main takeaway. You don’t get leverage having the government shut down.”¹¹⁰

Such sentiments, however, are far from universal, and the strategy of leveraging the annual appropriations acts for policy change remains a viable option for some. In the 115th Congress, for instance, the strategy of coupling policy changes with must-pass funding bills was used by both parties. Notably, neither strategy appeared to achieve its objective. First, early in 2018, Senate Democrats withheld support for an extension of the existing CR in the hope of pressuring President Trump and Congressional Republicans to provide more legal certainty to “so-called Dreamers, or young adults brought to the U.S. illegally as children.”¹¹¹ A partial government ensued but, this time, only for three days, over a weekend, limiting the effect on most of the federal government workforce. Once again, the apparent intended policy change was not achieved. Funding was continued but no legislative changes were made to address the Dreamers.¹¹²

Then, at the end of 2018, it was President Trump with the support of the lame-duck House Republicans (after losing the House majority in the 2018 midterm elections). President Trump demanded that, for his signature, any further appropriations for the current year (2019) would require additional resources for a “border wall.”¹¹³ After a 35-day partial shutdown, straddling the GOP-controlled House in the 115th Congress and the new Democratic-controlled House in the 116th Congress, an agreement was reached to end the shutdown but without any new funding for a border wall, as President Trump demanded.¹¹⁴ The strategy to use the annual appropriations process to make major policy changes appears to be a failed strategy.

NOTES

1. Quoted in *Roll Call*, July 29, 2002, 4.
2. In January 2015, the Congressional Budget Office (CBO) projected that, with no legislative changes, mandatory spending would total \$2.5 trillion in fiscal year (FY) 2015. CBO, *The Budget and Economic Outlook, FY2015–FY2025*, January 2015, 13.
3. Interest payments on the federal debt are largely beyond Congress's control.
4. House Committee on the Budget, *Congressional Control of Expenditures*, January 1977, 6. The study was prepared by Allen Schick.
5. *Congressional Record*, April 4, 2000, S2055.
6. Michael Tomasky, "Washington: Will the Lobbyists Win?" *New York Review of Books*, April 9, 2009, 18.
7. There is no single "federal budget" bill. Instead, the federal budget consists of the enactment of numerous budgetary measures, such as revenue and appropriations (spending) legislation. Collectively, these discrete bills constitute the annual federal budget.
8. *Congressional Record*, September 22, 2008, S9173.
9. *Congressional Record*, April 9, 1987, 8689.
10. *Congressional Record*, September 29, 2006, S10634.
11. The Senate disputes this interpretation of the so-called origination clause but has been willing to acquiesce to the practice. See, for example, *The Authority of the Senate to Originate Appropriation Bills*, 88th Congress, 1st sess., 1963, S.Doc. 88–17.
12. David Ignatius, "Life in Budget Limbo," *The Washington Post*, November 1, 2007, A21.
13. Eamon Javers, "Dirty Secrets of the 'Black Budget,'" *Business Week*, February 27, 2006, 41.
14. *Congressional Record*, February 9, 2006, S980.
15. Paul Singer, "CRS Finds Fewer Earmarks, Higher Cost," *Roll Call*, December 12, 2009, online edition.
16. Reid Wilson, "In Pitch for Bigger Tent, Barbour Calls on GOP to Accept Centrists," *The Hill*, May 21, 2009, 6.
17. *Congressional Record*, May 6, 2009, H5279. See also Susan Crabtree, "Flake Threatens New Assault on Earmarks," *The Hill*, July 16, 2009, 6.

18. Eric Lichtblau, "Lobbyist Helps a Project He Financed in Congress," *The New York Times*, January 22, 2012, 18. See also T. W. Farnam, "Report: Ex-Lawmakers Lobbied for Groups That Got Earmarks," *The Washington Post*, January 28, 2012, A16.
19. For example, see *Congressional Record*, December 8, 2009, H13755–H13827. The House earmark disclosure rule (Rule XXI, Clause 9) also requires a statement from the appropriate committee that legislative matters do not contain a list of any congressional earmarks, limited tax benefits, or limited tariff benefits. For example, see *Congressional Record*, February 26, 2015, H1373.
20. John Stanton, "Panel Lays Down Law: Earmarks Are Over," *Roll Call*, May 2, 2011, online edition.
21. Kimberly Kindy, "Lawmakers Try to Slip in Hundreds of Earmarks," *The Washington Post*, November 30, 2011, A1.
22. See Scott A. Frisch and Sean Q. Kelly, *Cheese Factories on the Moon: Why Earmarks Are Good for America* (Boulder, CO: Paradigm, 2011); and Ron Nixon, "Special Funds in Budget Called New Earmarks," *The New York Times*, February 6, 2012, A13.
23. *Congressional Record*, July 9, 2009, H7909.
24. Humberto Sanchez, "Inouye Decries Partisan Fighting," *Roll Call*, October 4, 2011, 37.
25. Billy House, "The Case for Pork," *National Journal*, October 29, 2011, 46. See also Diana Evans, *Greasing the Wheels: Using Pork Barrel Projects to Build Majority Coalitions in Congress* (New York: Cambridge University Press, 2004).
26. Jennifer Steinhauer, "The Formerly Routine Is Now the Tendentious," *The New York Times*, March 24, 2012, A12.
27. Emma Dumain and Nathan Hurst, "House GOP Touts Water Bill as a Sign of Thriving, Post-Earmark World," *CQ News*, May 16, 2014, online edition.
28. Kate Ackley, "Dollar Bills?," *CQ Weekly*, February 11, 2019, 14–19.
29. See Jennifer Shutt, "Earmarks Won't Be Back This Year, at Least in the House," *CQ News*, March 1, 2019, online edition; and Jennifer Shutt, "Senate to Follow House, Keep Earmarks Out of Spending Bills," *CQ News*, March 4, 2019, online edition.
30. Richard Munson, *The Cardinals of Capitol Hill* (New York: Grove Press, 1993), 6.

31. Everett Somerville Brown, ed., *William Plumer's Memorandum of Proceedings in the United States Senate, 1803–1807* (New York: Macmillan, 1923), 490.
32. Robert Luce, *Legislative Problems* (Boston: Houghton Mifflin, 1935), 425–426.
33. Louis Fisher, “The Authorization–Appropriations Process in Congress: Formal Rules and Informal Practices,” *Catholic University Law Review* (Fall 1979): 53.
34. Congressional Budget Office, “Expired and Expiring Authorizations of Appropriations: Fiscal Year,” March 2019.
35. Quoted in Alan Ota, “Spending Bills May Be Democrats’ Plan B,” *CQ Today*, April 27, 2007, 8.
36. *Budget Process*, hearing before the Joint Committee on the Organization of Congress, 103d Cong., 1st sess., March 16, 1993, 52.
37. *Congressional Record*, July 29, 2005, S9368.
38. *Congressional Record*, September 21, 2011, S5798.
39. Corine Hegland, “Hyde-Bound It Isn’t,” *National Journal*, June 28, 2003, 2106.
40. See Senate Committee on the Budget, *Tax Expenditures: Compendium of Background Material on Individual Provisions* (Washington, DC: U.S. Government Printing Office, 2018). This committee print is prepared by the Congressional Research Service for the Senate Committee on the Budget (S.Prt. 115-28).
41. Heidi Glenn, “Tax Expenditures Transparency Vital, Says Comptroller General,” *Tax Notes*, March 6, 2006, 1038.
42. Lori Montgomery, “Tax Breaks Pile Up, Grow Most Costly,” *The Washington Post*, September 18, 2011, A14 (italics in the original). See also Jonathan Nicholson, “Do Tax Expenditures Really Work? Experts Say Not Enough Data to Tell,” *Daily Report for Executives*, October 25, 2010, 1–6.
43. Jon Healey, “Lautenberg Moves to Reduce Transportation Earmarks,” *Congressional Quarterly Weekly Report*, October 2, 1993, 2625.
44. Floyd Riddick and Alan Frumin, *Senate Procedure: Precedents and Practices* (Washington, DC: U.S. Government Printing Office, 1992), 150.
45. Fisher, “Authorization–Appropriation Process in Congress,” 74–75. The House considered the issue on June 17, 1977, and the Senate considered it on June 29, 1977. See also Roger H. Davidson, “Procedure and Politics in Congress,” in Gilbert Steiner, ed., *The Abortion Debate and the American System* (Washington, DC: Brookings Institution Press, 1982), 30–46.
46. *Congressional Record*, July 26, 1999, S9171.

47. *Congressional Record*, January 4, 1995, H37.
48. John William Ellwood, ed., *Reductions in U.S. Domestic Spending* (New Brunswick, NJ: Transaction Books, 1982), 21.
49. Such spending authority, provided and controlled by laws other than appropriations acts, have been referred to as “backdoor spending” because they avoid the appropriator’s “front door” by authorizing expenditures without the annual review of the appropriations process. In addition, other forms of such backdoor spending include (1) borrowing authority (a federal agency, for instance, is authorized by law to borrow specific sums of money from the Treasury or the public), (2) contract authority (for example, a federal agency is statutorily permitted to enter into contractual agreements with private companies for the construction of municipal sewage treatment plants, but appropriations must be provided in the future to honor these commitments), and (3) the authority to spend offsetting receipts and collections (for example, the authority to spend certain fees for processing customs and immigration applications).
50. Allen Schick, *Congress and Money* (Washington, DC: Urban Press Institute, 1980), 46.
51. Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2002–2011*, January 2001, 7, as quoted in CRS Report RL31414, *Baseline Budget Projections: A Discussion of Issues*, February 3, 2006, 1.
52. The functional categories are not divided by the type of spending (discretionary or mandatory) or by agency. The national defense function, for example, “is not the same as the Department of Defense [DOD]; the function also includes programs administered by the Department of Energy. In addition, some DOD-administered programs are listed in other functions because their primary purpose is something other than defending the country.” *Congressional Record*, March 2, 2000, S1050.
53. The public debt represents the accumulation of deficits (more spending than revenues) over time. See The Debt Limit section, later in the chapter.
54. *Congressional Record*, March 2, 2000, S1050.
55. *Congressional Record*, May 17, 1995, H5107.
56. *Congressional Record*, April 1, 2009, S4114-S4117. In the end, Senator Conrad supported the politically attractive amendment. Presumably, he was persuaded by the presiding officer indicating that if the amendment was dropped in conference with the House, it would not affect the privileged status of the budget resolution. As Senator Conrad declared, “There is no way [that the tax-related amendment] is coming back from conference committee” (*Congressional Record*, April 1, 2009, S4117).

57. Mark Preston, "‘Vote-a-Rama’ Keeps Wearing Senate Down," *Roll Call*, March 26, 2003, 1.
58. John Stanton, "Specter Seeks to Tame ‘Bedlam,’” *Roll Call*, April 2, 2008, 20. For data on the number of amendments offered after the expiration of debate time, see *Senate Procedures for Consideration of the Budget Resolution/Reconciliation*, hearing before the Senate Committee on the Budget, S.Hrg. 111–106, 42–62.
59. CRS Report RL30297, *Congressional Budget Resolutions: Historical Information*, February 7, 2014, Table 11, 27–29.
60. Senator Arlen Specter, testimony, *Senate Procedures for Consideration of the Budget Resolution/Reconciliation*, hearing before the Senate Committee on the Budget, S.Hrg. 111–106, 21.
61. Howard H. Baker, Jr., "An Introduction to the Politics of Reconciliation," *Harvard Journal on Legislation* (Winter 1983), 3.
62. Anita Krishnakumar, "Reconciliation and the Fiscal Constitution: The Anatomy of the 1995–96 Budget Train Wreck," *Harvard Journal on Legislation* (Summer 1998), 589.
63. As an optional part of the congressional budget process, reconciliation has not been used every time the House and Senate have agreed to a budget resolution. But, it is not uncommon either. Since its first use by both chambers in 1980 (through 2018, covering 39 years), reconciliation has been used in 23 budget resolutions, resulting in the House and Senate considering 26 reconciliation acts. All but one of these were passed by both chambers; of these 25 reconciliation acts, 21 were signed into law and four were vetoed.
64. Paul Krawzak and Bart Jansen, "Reconciliation Deadline Not So Drop-Dead After All," *CQ Today*, September 23, 2009, 1.
65. Steven T. Dennis and Tory Newmyer, "Another Day, Another Deadline Missed," *Roll Call*, October 14, 2009, 1.
66. Jonathan Nicholson, "Budget Chairmen Both Leery of Using Reconciliation for Cap-and-Trade Legislation," *Daily Report for Executives*, March 18, 2009, A-24.
67. Senator Robert C. Byrd, testimony, *Senate Procedures for Consideration of the Budget Resolution/Reconciliation*, hearing before the Senate Committee on the Budget, S.Hrg. 111–106, 8.
68. David Clarke and Paul Krawzak, "Negotiators Face Post-Recess Quandary on How Aggressively to Move," *CQ Today*, April 3, 2009, 3.
69. To comply with the origination clause of the Constitution (Article I, Section 7), which requires that revenue bills originate in the House, the Senate amended an unrelated House-passed revenue bill (H.R. 3590) in its entirety.

70. Alex Wayne, "Health Care Plans Stuck in Legislative Limbo," *CQ Today*, February 8, 2010, 1.
71. Stanley E. Collender, *The Guide to the Federal Budget: Fiscal 1998* (Washington, DC: Northeast-Midwest Institute, 1998), 60.
72. George Hager, "The Byrd Rule: Not an Easy Call," *Congressional Quarterly Weekly Report*, July 31, 1993, 2027.
73. Walter Alarkon, "Healthcare Reform's Fate Lies in the Hands of Parliamentarian," *The Hill*, April 23, 2009, 3.
74. Karen Foerstel, "Byrd Rule War Erupts Once Again," *Roll Call*, February 24, 1994, 13.
75. Peter Cohn, "Hill Veteran Sees Pitfalls in Using Budget Reconciliation," *CongressDailyPM*, March 6, 2009, 3.
76. See H.Rept. 114-96, conference report to accompany the Concurrent Resolution on the Budget for Fiscal Year 2016, pp. 159–161.
77. Moreover, the Senate considered fewer amendments and other motions during the consideration of the 2015 repeal reconciliation bill (H.R. 3762) than during the consideration of the 2010 health care reconciliation bill (H.R. 4872). The Senate considered a total 22 amendments and other motions during the consideration of H.R. 3762, in contrast to a total of 41 amendments and other motions during the consideration of H.R. 4872.
78. See Daniel J. Parks, "Conrad's Budget Plan Approved in Committee But Faces Tough Fight on Senate Floor," *CQ Weekly*, March 23, 2002, 809; and Daniel J. Parks, "Absent a Budget, Singular Spending Target an Increasingly Appealing Fallback," *CQ Weekly*, April 6, 2002, 904.
79. David Baumann, "Does a Budget Really Matter?" *National Journal*, April 15, 2006, 39.
80. Damian Paletta and Erica Werner, "Deficit Binge Paves Way for Next One," *The Washington Post*, April 17, 2018, A15.
81. *Congressional Record*, May 26, 2011, S3408.
82. See Subtitle B, Title I, Division A of Public Law 113-67.
83. Stan Collender, "Budget Battles: The Future Is Now," *NationalJournal.com*, January 21, 2003, 2–3.
84. Nick Timiraos and Kristina Peterson, "Debt Limit Drama Returns to Political Stage," *Wall Street Journal*, March 14, 2015, A4.
85. See *Fiscal Year 2015 Historical Tables* (Washington, DC: U.S. Government Printing Office, 2014), 147–149.

86. Gregory Korte, "Paying Price of Debt-Limit Votes," *USA Today*, July 18, 2011, 4A.
87. Jackie Calmes, "Pressing Obama, House Bars Rise for Debt Ceiling," *The New York Times*, June 1, 2011, A1.
88. John Cranford and Joseph J Schatz, "In Whose Hands?" *CQ Weekly*, July 18, 2011, 1546.
89. Janet Austin, "2011 Legislative Summary: Debt Limit Increase," *CQ Weekly*, January 9, 2012, 29.
90. Judd Gregg, "The Safety Valve Has Become a Fire Hose," *The Wall Street Journal*, April 18, 2006, A18.
91. William G. Dauster, "Budget Process Issues for 1993," *Journal of Law and Politics* (Fall 1992): 26.
92. For the 10-year surplus projections, see CBO, *The Budget and Economic Outlook, FY2002–FY2011*, January 2001, xiii–xiv.
93. "The Last Best Hope," *The Economist*, November 26, 2011, 39.
94. A portion of this total spending reduction is intended to be achieved through debt service savings (18 percent, or \$216 billion, of the \$1.2 trillion) resulting from the spending reductions required each year, from FY2013 to FY2021.
95. The FY2013 reductions were reduced to \$85 billion by the American Taxpayer Relief Act of 2012 (P.L. 112-240), signed into law on January 2, 2013. President Obama issued the sequestration order on March 1, 2013. For more on the sequester, see *OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013*, March 1, 2013.
96. For each fiscal year covering 2014 to 2021, the BCA originally established limits on total discretionary spending (i.e., all discretionary spending in all budget accounts); the annual limit was specified in terms of a single "discretionary" category.
97. Congress can still provide additional spending above these revised statutory limits for overseas contingencies operations, emergencies, and other certain purposes.
98. See (1) Bipartisan Budget Act of 2013 (P.L. 113-67); (2) Bipartisan Budget Act of 2015 (P.L. 114-74); and (3) Bipartisan Budget Act of 2018 (P.L. 115-123).
99. Kerry Young, "GOP Leaders Seek Vote to Separate CR, Health Law Showdown," *CQ News*, September 9, 2013, online edition.
100. Melissa Attias, "Conservatives to Rally for Defunding Health Care Law, But GOP Leaders Are Wary," *CQ News*, September 9, 2013, online edition.

101. Russell Berman, "Cruz: Political 'Tsunami' Needed to Win Fight to Defund ObamaCare," *The Hill*, August 25, 2013, online edition.
102. Jonathan Nicholson, Heather Caygle, and Cheryl Bolen, "House Republicans Outline Fiscal Plans; Obama Warns of 'Ideological Fight,'" *Daily Report for Executives*, September 18, 2013, A-33.
103. Seung Min Kim, "Harry Reid: 'Any Bill That Defunds Obamacare Is Dead,'" *Politico*, September 19, 2013, online edition.
104. In 1957, Senator Strom Thurmond, D-S.C., spoke for 24 hours and 18 minutes in opposition to the Civil Rights Act. The speech remains the longest in the history of the Senate.
105. Cristina Marcos, "Shutdown More Likely as House Sends Amended CR to Senate," *CQ News*, September 29, 2013, online edition.
106. Julian Hattem, "Parks Take Center Stage in Shutdown Fight," *The Hill*, October 10, 2013, online edition.
107. Dalia Sussman, "Majority Disapprove of Shutting Down Government Over Health Law," *The New York Times*, October 3, 2013, online edition.
108. Cristina Marcos and Paul M. Krawzak, "Battle Over, but 'War' Continues," *CQ Weekly*, Oct. 21, 2013, 1756.
109. *Congressional Record*, October 16, 2013, H6620, as quoted in Marcos and Krawzak, "Battle Over, but 'War' Continues," 1756.
110. Humberto Sanchez, "Some Republicans Regret Shutdown, but Others Say It Had Value," *CQ News*, Oct. 16, 2013, online version.
111. Joe Williams and Paul Krawzak, "Shutdown Underway, Senators Weighing Shorter-Term Stopgap," *CQ News*, Jan. 20, 2018, online edition.
112. Jennifer Shutt and Paul Krawzak, "Shutdown's End Bears Bitter Fruit, as February Reckoning Awaits," *CQ News*, Jan. 23, 2018.
113. Kellie Mejdrich and Jennifer Shutt, "Trump Tells House Republicans He Won't Sign Current Stopgap," *CQ News*, Dec. 20, 2018.
114. Camila DeChalus and Lindsey McPherson, "Trump Signs Stopgap, Reopening Government for Three Weeks," *CQ News*, Jan. 25, 2019.