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CONGRESSIONAL BUDGETING

MAKING BUDGET ENFORCEMENT MORE EFFECTIVE

A HOUSE BUDGET COMMITTEE
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CONTENTS

ABSTRACT

The need for sound enforcement of spending and revenue is inherent in the practice of budgeting. A budget lacking enforcement is not a budget at all, and this dilutes Congress's constitutional "power of the purse." The Congressional Budget Act of 1974 has several enforcement provisions, and Congress has adopted additional rules and statutes over the years to enforce budgetary goals. Most of these have failed, however, due to poor design or because they can easily be waived or circumvented. The result has been a cluster of ineffective budgetary rules that only make the budget process more complicated. The necessity of developing better budget rules is clearly evident. Enforcement regimes can be strengthened by streamlining rules, plugging loopholes, and changing defaults and incentives. A key element in rewriting the Congressional Budget Act, therefore, is to develop successful and effective means of enforcing congressional budgets.

THE IMPORTANCE OF BUDGET ENFORCEMENT

In addition to laying out a formalized budget procedure for the House and Senate, the Congressional Budget Act of 1974 [the Budget Act] provided a series of enforcement measures aimed at ensuring the spending and revenue levels in the budget resolution – the key legislative instrument created by the Budget Act – would be adhered to. In the 42 years since then, those provisions have been revised or expanded numerous times. Congress also has passed additional laws and rules intended to further enhance enforcement of the budget. The result has been a complex web of budget enforcement procedures that have complicated the process and yielded, at best, mixed results. While some provisions may have achieved their purposes, it cannot be said that Congress has the budget and fiscal policy fully under control.

The failure of budget enforcement mechanisms has at least two major consequences. The first is that it significantly reduces the effectiveness of the budget resolution and of congressional budgetary procedures generally; Congress thus loses control of fiscal policy. Second, in the process, Congress sacrifices some of its constitutional "power of the purse," ceding greater authority to the Executive Branch. A budget left unenforced is not an effective budget.

A key element in rewriting the Budget Act, therefore, is to develop successful and effective means of enforcing congressional budgets.

A SHORT HISTORY OF PRE-1974 FEDERAL BUDGETING

Prior to the Congressional Budget Act of 1974, Congress had a somewhat fragmented approach to budget enforcement through various legislation and reforms related to the budget process. Some of the key laws and efforts that laid the foundation for the 1974 Budget Act and today's budget process include the Antideficiency Act of 1870 (amended in 1905 and 1906), the Budget and Accounting Act of 1921, the Legislative Reorganization Act of 1946, the 1967 President's Commission on Budget Concepts, and legislation regarding statutory spending limits and reductions proposed between 1967 and 1973.

The Antideficiency Act is one of the fundamental laws governing Federal expenditures. It prohibits the Federal Government from obligating funds in the absence of available appropriations.[1] Under the act, there are limited exceptions, mainly "for emergencies involving the safety of human life or the protection of property."[2]

The Budget and Accounting Act of 1921 established the executive budget process aimed at producing a better-coordinated system for making fiscal decisions within the

[1] 31 USC §1341-1342, 1511-1519; Clinton T. Brass, Coordinator, *General Management Laws: A Compendium*, Congressional Research Service, Washington: Updated 19 May 2004, pp. 93, 95-96.
[2] 31 USC §1342.

government.[3] The act required an annual budget submission by the President to Congress, but did not alter congressional procedures for consideration of a Federal budget.[4] It created the Bureau of the Budget (now the Office of Management and Budget), originally situated in the Treasury Department. (In 1939, President Roosevelt moved the Budget Bureau to the White House as part of his government reorganization plan.) The law also created the General Accounting Office (now the Government Accountability Office) as an auditing arm of Congress.

The Legislative Reorganization Act of 1946 included the first attempt at creating a formal congressional budget process, though the procedure was a small component of the measure. The legislation made fundamental reforms to congressional committees in addition to requiring Congress, early in a session, to agree to an overall budget plan that would guide consideration of budgetary legislation later in the session.[5] Additionally, the act established a Joint Committee on the Legislative Budget, tasked with reviewing the President's budget submission at the start of each session and reporting an annual legislative budget no later than 15 February that included total spending and revenue levels.[6] Congress attempted to report a legislative budget three times pursuant to this provision. On two occasions, Congress failed to agree to a budget; in a third, lawmakers exceeded the budget they had agreed to.[7] After that, Congress abandoned the practice.

On 3 March 1967, President Johnson appointed a commission of 15 individuals tasked with reviewing the Federal budget and its submission to Congress and the public.[8] In its report, the Commission presented 13 recommendations to make the Federal budget a more understandable and useful fiscal policy document.[9] The Commission's report included recommendations on the use of "a unified summary budget statement," inclusion of all Federal Government and agency programs in the budget, use of accrual accounting methods instead of cash accounting for reporting expenditures and receipts, and inclusion of a "means of financing section based on the budget deficit or surplus."[10]

Between 1967 and 1973, Congress acted five times on legislation limiting Federal spending.[11] These legislative proposals were reductions in obligations and expenditures in the fiscal year 1968 continuing appropriations resolution (Public Law 90-218); the Revenue and Expenditure Control Act of 1968 (Public Law 90-364), which raised taxes and made spending cuts; the Supplemental Appropriations Act for the fiscal year ending on 30 June 1969, which included spending limits (Public Law 91-47); the Second Supplemental Appropriations Act, 1970, which included a spending limit on fiscal year 1970 budget outlays (Public Law 91-305); and a measure providing a temporary increase

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[3] James V. Saturno, Coordinator, *Introduction to the Federal Budget Process*, Congressional Research Service, 3 December 2012, p. 1.
[4] Ibid.
[5] Ibid.
[6] Ibid at pp. 24-25.
[7] Ibid at p. 25.
[8] Statement by the President Announcing the Appointment of a Commission to Study the Federal Budget: http://www.presidency.ucsb.edu/ws/index.php?pid=28677.
[9] *Report of the President's Commission on Budget Concepts*, October 1967.
[10] Ibid at pp. 6-9.
[11] Committee on the Budget, United States Senate, S. Doc. 109-24, p. 28: http://www.budget.senate.gov/imo/media/doc/BudgetCommitteeHistory2.pdf; Allen Schick, *Congress and Money*, The Urban Institute (Washington: 1980), p. 32.

in the public debt along with spending limits (Public Law 92-599).[12] Additionally, Public Law 92-599 included a provision establishing a Joint Study Committee on Budget Control. The committee consisted of bicameral and bipartisan membership and was tasked with reviewing the Federal budget and improving Congress's control over fiscal policy.[13]

BASIC FLAWS IN CURRENT PRACTICES, AND POTENTIAL REMEDIES

Too Many Different Rules

A key problem with the current budget process is its complex array of dozens of budget rules (see Appendix A for a summary). Part of the complexity results from rules being codified in multiple locations in various statutes and protocols. There are six major budget laws dealing with the congressional budget process, and an entire separate title of the U.S. Code dealing with the executive budget process. Second, the House and Senate have adopted their own budget rules that apply to each body separately. Finally, there are the budget resolutions themselves, and often the House and Senate cannot agree on a conference report.

The use of "reserve funds" in the budget resolution complicates matters further. These provisions create exceptions to the normal budget rules for certain circumstances. For example, the fiscal year 2016 conference agreement on the budget resolution (S. Con. Res. 11) included 11 reserve funds for the House and 120 for the Senate.

Effective Rules vs. Those Seldom Used

A perception exists that many of the points of order codified in the Budget Act are either dormant or infrequently used; these provisions are frequently waived. The conclusion is difficult to prove, however, because most budget enforcement occurs informally, well in advance of bills reaching the floor.

Nevertheless, certain points of order are more effective than others, if enforced. The most effective are those limiting the amount of new spending in appropriations and authorizing bills (Congressional Budget Act section 302(a) and section 302(f)); establishing a revenue floor and overall total spending limits (Congressional Budget Act section 311); and preventing legislation with budgetary effects from being considered until a budget resolution has been adopted (Congressional Budget Act section 303). Preventing increases in direct spending in the current year, the budget year, and the four and nine subsequent years (House Rule XXI, clause 10, known as Cut-As-You-Go) has proved effective. Nevertheless, some of these provisions are weakened by exceptions or loopholes. For instance, appropriations acts may be considered in the House after the 15th of May even if a budget resolution has not been adopted. Although the Cut-As-You-Go rule has instilled some limited spending discipline in the House, it still allows for near-term spending increases in exchange for future cuts, many of which never materialize.

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[12] Senate Budget Committee, op. cit., p. 28, and Schick op. cit., p. 42.
[13] Senate Budget Committee, op. cit., p. 28; Public Law 92-599.

More recently, the House Leadership has not consistently enforced the Cut-As-You-Go test for all the time periods.

House Rule Waivers

During the 114th Congress, budget rules were waived an estimated 42 times – a rate of more than 25 percent – for bills that were considered under a special rule. The Cut-As-You-Go rule in particular was waived 12 times, a rate of about 7.5 percent.[14] "One of the more troubling aspects of the current budget enforcement environment is how easy it is to waive budget protocols, often with little or no recognition by Members of Congress themselves, that we are agreeing to violate our own rules."[15]

Various ideas have been proposed for making rule waivers more difficult. One possibility is to prohibit Budget Act waivers to be included in blanket waivers in special rules considered by the House; separate votes and debate should be required. Another proposal would require supermajority votes to waive points of order against Budget Act violations. Applying budget rules more surgically rather than against consideration of entire bills would allow budget points of order to strike specific offending provisions rather than defeat entire bills; this could make more Members willing to use them during floor consideration.

Yet another option would be requiring a Congressional Budget Office [CBO] cost estimate of legislation to be considered at the *beginning* of a committee markup. (At present, estimates are produced only after a bill is reported from committee.) This would increase committee members' awareness of the budgetary effects they vote on – which they often do not know during markup – and would likely reduce the amount of legislation favorably reported with budget violations. Another possibility is having the Budget Committee publish a weekly bulletin of the budgetary effects of all legislation scheduled for consideration by the House, including an indication of budget rule violations.[16]

The Byrd Rule

The Byrd Rule (section 313 of the Congressional Budget Act) deals with a narrow set of budget enforcement provisions for reconciliation bills. Generally, it allows the Senate to strike from reconciliation measures provisions that do not have budgetary effects.[17] The rule prevents Congress from considering certain provisions needed to achieve savings, such as limits on appropriations and other budget controls.

Another concern with the rule is that it applies in the Senate only, giving that Chamber important leverage when negotiating with the House on final reconciliation legislation. These determinations are made by the Senate's presiding officer, who relies on the

[14] Figures are estimates by the House Budget Committee majority staff.
[15] Chairman Tom Price, M.D., Committee on the Budget, U.S. House of Representatives, opening statement at the hearing, *Making Budget Enforcement More Effective*, 22 June 2016.
[16] During the tenure of Chairman Jim Nussle (R-Iowa) (2001-2006), the House Budget Committee did produce such a bulletin, called *Budget Week.*
[17] The rule, authored by Senator Robert C. Byrd (D-W.Va.) – a strong advocate for Senate prerogatives – was adopted in 1985 and amended in 1990.

interpretation of the Senate Parliamentarian, a non-elected official. A reformed budget process would permit the inclusion of provisions that indirectly reduce spending, make the application of the rule more objective, and create a more even playing field for negotiating reconciliation bills.

The Failings of Section 401

The rules in section 401 of the Congressional Budget Act were intended to aid Congress in controlling spending through the annual appropriations process. They imposed controls on four types of mandatory, or direct, spending: new entitlement authority, contract authority, credit authority, and borrowing authority. These well-intentioned rules failed for several reasons and have been all but abandoned. Nevertheless, understanding why they failed can offer insights into why some rules do not work.

Congress has passed numerous bills that have increased spending in one or more of the categories of direct spending specified in section 401. These increases in direct spending have included entirely new programs or programmatic expansions in existing programs. The rule against increasing new entitlement authority (section 401(b)) was effectively discarded after it was last waived in the 110th Congress. The rule providing for the referral of entitlement spending to the House Appropriations Committee (section 401(b)(2)) was never fully implemented. The referral authority under this section has not been used since 1991, during the 102nd Congress. In its 42-year history, approximately 10 to 15 bills were referred to the Committee on Appropriations and not once did the Committee actually report the bill with a spending limitation, as the rule envisioned. The Balanced Budget Act of 1997 amended section 401(b) of the Congressional Budget Act to make this referral authority to the Committee on Appropriations permissive rather than mandatory. Since that time, no referrals have been made to the Committee on Appropriations under this authority.

These rules and procedures have failed to control direct spending and were effectively sidelined for several reasons. First, the rules were so strict that Congress was unwilling to enforce them and waived them repeatedly over the years. Section 401 prohibited the creation of certain types of new entitlement programs, even if the spending was within the limits established by the budget resolution and was for a pre-existing program. Second, the focus on separate categories of mandatory spending became obsolete with the enactment of the Budget Enforcement Act [BEA] of 1990. The BEA effectively replaced these separate categories of mandatory spending with the concept of *direct* spending, which refers to all forms of spending not subject to annual appropriations. Third, the failure of these rules to prevent increases in mandatory spending may be attributed to how they are enforced. In the House, these rules are waived as part of a resolution (the "rule") providing for the consideration of a bill. The vote on a rule is seen as a test of the majority party's discipline and, as a result, the rule usually passes on a party-line vote.

The referral process under section 401(b)(2) has also proved ineffective in combatting increases in entitlement programs. It is not entirely clear why the Committee on Appropriations has neither sought referrals of mandatory spending bills nor reported the few that have been referred to it. The Committee does have a disincentive to mark up these bills because it would have to stretch limited spending authority across more programs or face the enmity of proponents of those programs.

A more mundane reason bills have not been referred to the Appropriations Committee is that it would impose untenable timing delays. The Leadership sometimes schedules bills for consideration on the House floor shortly after they are reported by a committee. A 15-day referral to the Committee on Appropriations would slow the legislative process, and the Leadership would have to build these time delays into the House's legislative schedule.

The regimen for handling new entitlement authority needs to be re-evaluated, beginning with reassessing the appropriate level at which the rule under section 401 of the Congressional Budget Act should apply. One option would be to apply the existing rules at the programmatic level. This would preclude entirely new programs but allow existing programs to be expanded or reformed if they are within the limits established by the budget resolution, or are offset by reductions in entitlement spending. An obstacle to enforcing the rule at the programmatic level, however, is that there is no clear definition of what constitutes a "program." As a result, agencies aggregate programs, projects, and activities under different standards.

At a minimum, these rules and procedures need to be updated to encompass all mandatory spending programs rather than just the four obsolete categories for new entitlement authority, contract authority, credit authority, and borrowing authority.

Statutory Budget Enforcement Rules

Arguably the most successful budget enforcement rules are those with binding statutory requirements that cannot be waived except through a new statute and are enforced by automatic spending cuts through a process known as sequestration (see Appendix B for a summary of statutory enforcement provisions). A current and well-known example of this type of rule is the limitation on discretionary spending codified in the Budget Control Act of 2011. These limits are enforced through a statutory requirement to sequester spending that exceeds the limits rather than by points of order against consideration in the House and Senate.

Sequestration is a blunt tool for enforcing budget rules, and a wide swath of programs – mainly direct spending entitlements, the main source of today's spending problems – are exempt. As a result, the process deepens the cuts in non-exempt programs, while failing to address the most significant budgetary challenges. In addition, most fee-funded programs are sequestered even though no taxpayer dollars are used to finance them. Users of these programs often mention the fundamental unfairness of cutting programs that are completely user-funded and that do not contribute to the deficit.

Efforts to reform the budget process should examine how to improve sequestration by exempting fewer programs, targeting programs that actually cause deficit spending, and providing better handling of user-financed programs.

OTHER ENFORCEMENT MODELS

The Base Realignment and Closure Commission

Many have recommended translating this model, widely considered successful, into a means of adopting policy reforms and budget disciplines. The independent Defense Base Realignment and Closure Commission [BRAC] was authorized to make recommendations as to which defense bases to close. The recommendations take effect, absent any further legislation, unless Congress passes, and the President signs, a joint resolution *disapproving* the recommendations. The joint resolution is considered under expedited procedures in both the House and Senate. The procedures prohibit amendments to the disapproval resolution.

Enacting a budget resolution in accordance with the BRAC system could eliminate the partisan politics that persist today. "In order to make the budget resolution meaningful and implementable, we must move from the party platform mentality to a governing platform."[18] By not voting on a bill except in the case of disapproval, Congress would, in effect, make the shift from partisan politics to a more effective governing style. There have been 10 rounds of base closures under BRAC. Congress has considered seven disproval recommendations between 1989 and 2005 and none was enacted. On four occasions the full Appropriations Committee did not report the disapproval bill.

The most important elements of this process are the creation of a commission to make the recommendations; congressional consideration of a disapproval joint resolution under expedited procedures; a prohibition on Congress amending the resolution; and automation application of the recommendations unless Congress passes and the President signs a disapproval bill.

Super Committee and Sequestration

The Budget Control Act of 2011 established statutory deficit reduction targets. It created a Joint Select Committee on Deficit Reduction (colloquially called the "super committee") to make recommendations as to how these targets were to be achieved. The Leadership agreed to consider any package of policies to achieve the required level of deficit reduction. A sequester was triggered in the event the super committee did not agree to a package of recommendations and absent any other legislative action. The sequester would achieve half the savings in defense programs and half in non-defense programs. The Joint Select Committee failed to agree on policy recommendations to meet the targets. Consequently, a sequester was triggered in 2013, and the discretionary limits for fiscal years 2014 through 2021 were lowered. Thus, the process did achieve a degree of spending restraint.

The key features of this model are that budget targets are enacted into law; a special bicameral committee considers a one-time package of proposals to meet those targets; the Leadership commits to bringing this legislation to the floor for consideration; and a

[18] G. William Hoagland, *Fulfilling the Budget Resolution and Enhancing Budget Enforcement*, statement before the Committee on the Budget, U.S. House of Representatives, 22 June 2016.

sequester is triggered if the committee fails to agree on recommendations or if the Congress and the President fail to agree on legislation to meet the targets.

Expedited Rescission

The House has previously considered legislation to provide a fast-track process for considering a President's proposed rescissions of previously appropriated budget authority. It was developed as an alternative to the Line-Item Veto Act of 1996, which the Supreme Court found to be unconstitutional. Under an expedited rescission process, the President would submit to Congress a package of proposed rescissions each time an appropriations bill was enacted. The Congress then would be required to consider the proposed rescissions *en bloc*, or an alternative package of rescissions in the same amount and from the same law as proposed by the President. Interest in expedited rescissions waned as Congress adopted its own rules to control congressional earmarks.

An expedited rescission model could be extended beyond a process for reconsidering pork barrel discretionary spending to considering entirely new deficit reduction proposals that meet previously enacted targets. The model also could be extended to direct spending and conceivably certain targeted tax preferences. A major objection to this approach is that it relies on the President to initiate the rescission process and is therefore considered a serious abrogation of congressional power. Also, even if the Congress could substitute its own legislative proposals for those of the President, the House Leadership could simply override the expedited procedures for considering the bill with a simple rule passed by the majority of the House.

Automatic Continuing Resolution

The notion of an automatic continuing resolution [CR] is predicated on continuing resolutions that are annually enacted when Congress and the President fail to enact the 12 regular appropriations bills necessary to fund the Federal Government by the start of the fiscal year. The flat level of funding that typically would occur under a CR is supposed to provide an incentive for the Congress to pass regular appropriations bills at higher levels. CRs are usually set at either the prior year's level or the lower of the House and Senate levels for the budget year. CRs can also be set at alternative levels. Under an automatic CR, if appropriations were not enacted at the beginning of a fiscal year, appropriations would automatically occur at a default level. Unlike a regular CR, legislation would not have to be enacted each time appropriations bills are not passed by the beginning of the fiscal year. As with a regular CR, the levels could be provided at the prior year's level, the lower of the House or Senate level, or at a level automatically reduced over time or until regular appropriations are enacted.

One reason for an automatic CR would be to prevent the shutdown of government agencies whose appropriations are not enacted by the start of the fiscal year (excluding agencies and activities considered "essential"). Such shutdowns are typically unproductive and destabilizing. On the other hand, a risk of such a measure is that it eases the pressure on lawmakers to finish their budget work on time. This might be addressed by building into the CR automatic, phased-in spending reductions that would squeeze programs and agencies and thereby encourage legislators to complete unfinished spending bills swiftly.

An automatic CR could not easily be adapted to mandatory programs because, unlike programs funded through discretionary appropriations, the appropriation is already in law and hence a lower funding level could not be triggered in the absence of legislative action. One approach might be to provide for a reduction in mandatory spending if programs are not reauthorized according to a predetermined schedule.

The Medicare Payment Advisory Commission

The Medicare Payment Advisory Commission [MedPAC] was established by the Balanced Budget Act of 1997 to advise Members on both payments to private health care plans under Medicare and providers in the fee-for-services program. The Commission consists of 17 members appointed by the Comptroller General of the United States. The Commission issues two reports a year and advises on proposed regulations issued by the Secretary of the Department of Health and Human Services. Any reports and recommendations issued by MedPAC are strictly advisory; there is no requirement for Congress to consider them. Hence the Commission does not undermine congressional prerogatives. Congress has not adopted expedited procedures to consider MedPAC's recommendations. The Commission is subject to annual appropriations and therefore to oversight through the annual appropriations process.

Congress could establish a MedPAC-style commission to report to the Congress on potential policies to reduce the deficit, similar to what the Simpson-Bowles Commission did without a legal mandate. The commission could make recommendations to the Congress, upon which the Congress would have to act if they were to become law. Congress could determine whether the authorizing legislation would include expedited procedures for considering any of the commission's recommendations.

Centers for Medicare and Medicaid Services Innovation

The Affordable Care Act [ACA] created the Centers for Medicare and Medicaid Services Innovation [CMMI], with a mandatory appropriation of $10 billion once every 10 years to test physician payment models for reducing program expenditures. The ACA established broad criteria for determining which models should be selected, including approaches that addressed populations with poor clinical outcomes in addition to reducing what was determined to be avoidable expenditures.

CMMI is an Executive Branch-driven approach to cost control. It selects both the models to be tested and conducts the demonstration projects. The ACA limited Congress's role in developing the broad criteria by which the CMMI selects the models. Nevertheless, for any of the projects to be implemented program-wide would require a further act of Congress. The ACA did not require the Congress to consider legislation to implement what CMMI deems to be successful projects. With $10 billion in mandatory appropriations to conduct the demonstration projects, the CMMI is largely immune to congressional oversight.

The extension of the CMMI model to other issues would be highly controversial because it would be viewed as an abrogation of congressional prerogatives. Even if these objections could be overcome, the utility of the model would be limited to areas where demonstration projects would be useful to assess potential cost savings from changes in the delivery of public services and in the provision of benefits to the eligible population.

The Independent Payment Advisory Board

The Independent Payment Advisory Board [IPAB] was authorized under the ACA to develop proposals for meeting a savings target developed by the Chief Actuary of the Centers for Medicare and Medicaid Services [CMS] if the projected five-year average growth in per-capita Medicare spending exceeds a specified level. The proposals are automatically implemented if the Congress does not pass a disapproval resolution or fails to enact alternative policies that achieve the same amount of savings.

Expedited procedures were included in the ACA to ensure timely consideration of alternative savings or the disapproval resolution. Unlike BRAC, the expedited procedures allow Congress to consider alternative policies that achieve at least an equivalent amount of savings. As of October 2015, the Board had not been constituted because the CMS Actuary found the projected growth rate did not exceed the Medicare per-capita target growth rate.

IPAB's creation was controversial, in part because it granted the Board vast authority to unilaterally restructure key elements of the Medicare Program. This was viewed as usurping Congress's prerogative to make changes in the program through legislation. It is unlikely that the present Congress would want to expand on this model by authorizing a board to make deficit-reduction recommendations if projected budgetary levels were to exceed previously specified targets.

The Sustainable Growth Rate

The Balanced Budget Act of 1997 established the sustainable growth rate [SGR] targets for physician services under Medicare as a means of controlling growth in these expenditures. If actual expenditures exceeded the targets, the fee schedule for reimbursing physician services was adjusted by a sufficient amount to bring expenditures in line with the targets. Adjustments in the fees were authorized to occur automatically, without further legislative action. There were no expedited procedures for Congress to consider changing the updates or imposing additional policies to meet the targets.

The SGR is generally viewed as having failed to constrain Medicare costs. Congress routinely passed, and the President signed, legislation pre-empting the negative updates (a practice known as the "Doc Fix"). The legislation generally offset the foregone savings with specific changes in physician payments and in other health-related programs. The SGR and the automatic adjustments in physician payments were repealed in April 2015, under the Medicare Access and CHIP Reauthorization Act of 2015.

Executive Order on Entitlement Targets

In August 1993, President Clinton signed Executive Order 12857, which established entitlement targets and a process for monitoring them. The order established direct spending targets for fiscal years 1994 through 1997. The targets covered all direct spending other than interest and deposit insurance. If projected or actual direct spending exceeded or was projected to exceed the direct spending targets, the President was required to submit a special message to the Congress. The message would identify the overage and recommend increasing the targets, increasing taxes, reducing outlays to offset the overage, or taking no action to address it.

Limits on mandatory spending have often been considered, because uncapped entitlement programs are the principal contributor to the government's growing spending and debt. "Medicare, Medicaid, and Social Security . . . are the three that are forcing growth. Capping those, in some sense, would force the kind of political decisions that need to be made."[19]

President Clinton's aforementioned 1993 Executive Order was widely perceived as part of an effort by the administration to provide cover for Members who voted for the Omnibus Budget Reconciliation Act [OBRA] of 1993. OBRA was criticized at the time for disproportionately increasing taxes to achieve deficit reduction goals. The order was generally viewed as toothless because it was not enforced by sequestration and it explicitly stated the administration could increase the targets or recommend that the Congress take no action to reduce the overage.

The Unfunded Mandate Reform Act

The Unfunded Mandate Reform Act [UMRA] of 1995 established a series of reporting requirements for legislation that would establish either an intergovernmental or private-sector mandate. The CBO was required to include in its regular cost estimates an estimate of unfunded mandates and a statement as to whether the mandate exceeded a specified threshold. In the House, it also established a point of order against bills that exceeded this threshold.

This model could be adapted to a regulatory budget. An additional unit could be established at the CBO to include in its cost estimates for all reported bills an estimate of the amount the bill would affect regulatory costs. These estimates could be purely advisory or could be part of a budgetary requirement that would require any legislation that increases regulatory costs to be coupled with the elimination of an existing regulatory requirement.

Alternatively, this model could be used to enforce a regulatory budget, which would impose limits on regulatory costs. Any legislation that exceeded limits set forth in the budget resolution or some other legislative vehicle could be subject to a point of order, as are certain unfunded mandates under the UMRA.

CONCLUSION

The Federal budget's high spending levels are not sustainable, and no matter how vigorously any budget plan strives to gain control of spending, it is inconsequential

[19] Barry B. Anderson, testimony before the Committee on the Budget, U.S. House of Representatives, 22 June 2016.

without functional enforcement regimens. Several measures have been adopted in the past, some more successful than others, but the need for more effective budget enforcement procedures remains. Various models, including the Base Realignment and Closure system, independent commissions, and sequestration or expedited rescissions, could prove to be useful alternatives. In any event, without sound enforcement, Congress loses control of spending and relinquishes its constitutional power of the purse.

Appendix A
CURRENT CONGRESSIONAL ENFORCEMENT PROVISIONS

House and Senate Provisions

THE CONCURRENT RESOLUTION ON THE BUDGET

- The concurrent resolution on the budget is established pursuant to the Congressional Budget Act of 1974, which includes various requirements as to its content and enforcement. While a budget resolution sets levels of spending, revenue, deficits, and debt, it may also include special procedures in order to enforce congressional budgetary decisions.

- The budget resolution establishes allocations of spending authority and aggregate levels of both spending authority and revenues that are binding on Congress when it considers subsequent spending and tax legislation. Any legislation that would breach the levels set forth in the budget resolution is subject to points of order on the floor of the House of Representatives.

- The levels established in the budget resolution are not self-enforcing. Members of the House must raise points of order against legislation that breaches the allocations and aggregate levels established in the budget resolution. If a point of order is sustained, the House is precluded from further consideration of the measure. It has been the practice of the House to waive all points of order in the resolution (the "rule") providing for House consideration of a bill.

PROVISIONS OF THE CONGRESSIONAL BUDGET ACT of 1974

- *Section 302(c)*. Prohibits the consideration of legislation within the jurisdiction of the House or Senate Appropriations Committee that provides new budget authority for a fiscal year until the committee has suballocated its total allocation of funding (provided under section 302(a) pursuant to section 302(b).

- *Section 302(f)*. Prohibits the consideration of legislation that exceeds a committee's allocation of budget authority.

  - For authorizing committees, this section applies to the fiscal year for which a concurrent resolution on the budget is agreed to and the period of fiscal years covered by the budget resolution in force.

  - For appropriations bills, the test measures the budget effects in the first fiscal year.

- *Section 303.* Prohibits the consideration of spending and revenue legislation before the House and Senate have agreed to a concurrent resolution on the budget for a fiscal year.

  - Legislation that first changes revenue or increases budget authority in a fiscal year for which a budget resolution has not been agreed to violates section 303(a).

- Section 303(a) does not apply to budget authority and revenue provisions first effective in a year following the first fiscal year to which a budget resolution would apply; to appropriations bills in the House after 15 May; or to advance appropriations.

- *Section 306*. Prohibits the consideration of matters within the jurisdiction of the Committee on the Budget unless that Committee has reported such a measure or has been discharged from consideration of it.

- *Section 311.* Prohibits the House from considering legislation that would exceed the aggregate spending limits of budget authority and outlays, or that would cause revenue levels to fall below the revenue floor, established by the concurrent resolution on the budget in force.

  - If a measure would cause budget authority or outlays to be greater than the ceiling established for the first fiscal year of a budget resolution, a section 311 violation occurs.

  - Additionally, if a measure would cause revenue to be lower than the revenue floor in the first fiscal year or the period of fiscal years covered by the budget resolution, a section 311 violation occurs.

  - Section 311 does not apply to measures that provide budget authority but do not exceed a committee's 302(a) allocations.

- *Section 314(f)*. Prohibits the consideration of any bill, joint resolution, amendment, or conference report that would cause the statutory discretionary spending limits established in section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (as adjusted by procedures set out in section 251A of that act) to be exceeded.

- *Section 401(a)*. Prohibits the consideration of any bill, joint resolution, amendment, or conference report that provides: (1) new authority to enter into contracts under which the Federal Government is obligated to make outlays; (2) new authority to incur indebtedness; or (3) new credit authority unless such measure is subject to the availability of appropriations. A bill violates the rule even if the budget resolution specifically assumed the increase in mandatory spending.

- *Section 401(b)(1)*. Prohibits the consideration of any bill, joint resolution, amendment, or conference report that provides new entitlement authority first effective in the current fiscal year. This point of order prevents Congress from prematurely increasing new entitlement authority before Congress has agreed to a budget resolution for the forthcoming fiscal year.

- *Section 401(b)(2)*. Requires referral to the Committee on Appropriations of any reported authorization bill that increases entitlement spending in the forthcoming fiscal year if it exceeds the reporting Committee's 302(a) allocation. Under this section, the Committee on Appropriations is empowered to limit the total amount of new entitlement authority provided by that bill.

- *Section 425*. Prohibits the consideration of any legislation absent a statement by the Director of the Congressional Budget Office on the direct costs of any Federal mandates in the legislation.

HOUSE AND SENATE PROVISIONS OF S. CON. RES. 11
THE FISCAL YEAR 2016 BUDGET RESOLUTION

- *Section 3101(b)*. Prohibits the consideration of a measure that would cause a net increase in on-budget deficits in the Senate or direct spending in the House exceeding $5 billion in any of the four 10-year periods after the budget window.

- *Section 3103(b)*. Prohibits the consideration of a full-year appropriations measure that includes certain changes in mandatory programs [CHIMPs] that would cause the absolute value of total budget authority of such CHIMPs to exceed $19.1 billion in fiscal year 2017.

- *Sections 3202(a)(1) and 3304*. Prohibits the consideration of advance appropriations for fiscal year 2018 in measures providing appropriations for fiscal year 2017 except under certain circumstances as provided in section 3202(b) of S. Con. Res. 11.

- *Section 3205(a)*. Prohibits a Senate vote on passage of any matter that requires a cost estimate under section 402 of the Congressional Budget Act, unless that estimate was made publicly available not later than 28 hours before the vote.

Other Budget-Related Provisions in the House

- *Rule XIII, Clause 8*. Requires the Congressional Budget Office and Joint Committee on Taxation to incorporate the macroeconomic effects of major legislation into official cost estimates used for budget enforcement and other rules of the House. The operation of this rule has been superseded by section 3112 of S. Con. Res. 11.

- *Rule XXI, Clause 7*. Prohibits the consideration of a concurrent resolution on the budget containing reconciliation directives (under section 310 of the Congressional Budget Act of 1974) that would cause a net increase in direct spending for the period covered by the budget resolution.

- *Rule XXI, Clause 10*. Prohibits the consideration of legislation that increases direct spending over the current year, the budget year, and the four and nine ensuing fiscal years. If such spending is increased in either of these time periods, it must be offset by corresponding decreases in direct spending. If an amendment is offered to a measure that increases direct spending in either of these periods, the amendment must also decrease net direct spending by at least the same amount. This rule is commonly referred to as Cut-As-You-Go.

- *Rule XXIX, Clause 4*. Specifies that the Chair of the Committee on the Budget is responsible for providing authoritative guidance concerning the impact of a legislative proposition related to the levels of new budget authority, outlays, direct spending, new entitlement authority and revenues.

- *Separate Orders of House Resolution 5 of the 114th Congress, Section 3*. Adopts the rules from the 113th Congress and incorporates additional provisions related to the budget process.

  - Section 3(d) maintains the requirement, from the 112th and 113th Congresses, that each general appropriations bill include a "spending reduction" account. This provides a recitation of the amount by which, through the amendment process, the House has reduced spending in other portions of the bill and indicates that those savings be counted toward spending reduction. It also provides that any amendment increasing spending relative to the underlying bill must include an offset of an equal or greater amount.

  - Section 3(h) maintains the requirement from the 113th Congress that a concurrent resolution on the budget include a section related to "Means-Tested and Non-Means-Tested Direct Spending" programs. Additionally, the Chair of the Committee on the Budget must submit for printing in the *Congressional Record* a statement defining these terms prior to the consideration of such concurrent resolution. This requirement also applies to any amendments to or conference reports on a concurrent resolution on the budget.

  - Section 3(q) prohibits the consideration of any legislation that reduces the actuarial balance of the Federal Old-Age and Survivors Insurance Trust Fund unless such legislation improves the overall financial health of the combined Social Security Trust Funds.

Senate-Specific Provisions

THE CONGRESSIONAL BUDGET ACT

- *Section 301(g)*. Prohibits the consideration of a budget resolution using more than one set of economic assumptions.

- *Section 301(i).* Prohibits the consideration of a budget resolution that would reduce the Social Security surplus in any fiscal year covered by the resolution.

- *Section 305(b)(2)*. Prohibits the consideration of non-germane amendments to a budget resolution.

- *Section 305(c)(4)*. Prohibits the consideration of non-germane amendments to amendments in disagreement with a budget resolution.

- *Section 305(d)*. Prohibits a vote on a budget resolution unless the figures contained in the resolution are mathematically consistent.

- *Section 310(e)*. Prohibits the consideration of non-germane amendments to reconciliation legislation or non-germane amendments in disagreement to reconciliation.

- *Section 310(g)*. Prohibits the consideration of reconciliation legislation that contains recommendations concerning the Social Security Program.

- *Section 311(a)(3)*. Prohibits the consideration of legislation that would cause a reduction in Social Security surpluses, or an increase in Social Security deficits, relative to enforceable levels for fiscal year 2016, fiscal year 2017, the total for fiscal years 2017-2021, or the total for fiscal years 2017-2026.

- *Section 312(b)*. Prohibits the consideration of legislation that would cause any of the discretionary spending limits to be exceeded.

- *Section 313*. Prohibits the consideration of extraneous provisions in reconciliation (the Byrd Rule).

- *Section 314(e)*. Provides for a point of order against the use of an emergency designation in an appropriations bill.

SENATE PROVISIONS OF S. CON. RES. 13
THE FISCAL YEAR 2010 BUDGET RESOLUTION

- *Section 403(e)*. Provides for a point of order against the use of an emergency designation for a specific legislative provision.

- *Section 404(a).* Prohibits the consideration of direct spending or revenue legislation that would cause a net increase in the deficit of more than $10 billion in any fiscal year provided for in the most recently adopted budget resolution, unless it is fully offset over the period of all fiscal years provided for in that budget resolution.

- *Section 405(a)*. Prohibits the consideration of any measure extending or reauthorizing surface transportation programs that appropriates budget authority from sources other than the Highway Trust Fund, including the Mass Transit Account.

SENATE PROVISION OF S. CON. RES. 21
THE FISCAL YEAR 2008 BUDGET RESOLUTION

- *Section 201(a)*. Prohibits the consideration of any direct spending or revenue legislation that would increase or cause an on-budget deficit for the total of fiscal years 2016-2021 or the total of fiscal years 2016-2026.

Appendix B
STATUTORY BUDGET CONTROL PROVISIONS

The Balanced Budget and Emergency Deficit Control Act of 1985

- This measure, typically called the Deficit Control Act,[20] initially was intended to reduce deficits by establishing annual deficit targets.

- These limits were enforced through "sequestration," which involved automatic, across-the-board spending reductions required by Presidential order if the deficit targets were exceeded. Under the Deficit Control Act, a Presidential sequestration order must occur within 15 days after the end of a session of Congress.

- Sequestration remained in force for laws enacted through the end of fiscal year 2002.

The Budget Enforcement Act of 1990

- The Budget Enforcement Act [BEA] of 1990 replaced the maximum deficit limits originally in the Deficit Control Act with annual limits on discretionary spending and controls over increases in the deficit, calculated by adding together, for each fiscal year, increases in direct spending and decreases in revenues – a process termed "pay-as-you-go."

- The BEA established separate limits for discretionary appropriations, divided into three categories: domestic, defense, and international affairs. These discretionary categories were applied through fiscal year 1993, and then combined into a single limit on all appropriations for fiscal years 1994 and 1995.

- Under pay-as-you-go, if the cumulative effect of legislation enacted through the end of a session of Congress increased the deficit, the amount of that deficit increase for the fiscal year following that session would cause a sequestration of direct spending by that amount.

- As with the deficit targets before it, most spending defined as "direct" was exempt from any reductions. Other spending programs had limitations on the reductions. For example, spending decreases in the Medicare program, under pay-as-you-go, was limited to 4 percent of the program costs.

The Omnibus Budget Reconciliation Act of 1993

- The Omnibus Budget Reconciliation Act [OBRA] of 1993 extended a single limit on discretionary spending through fiscal year 1998. Any breach of the limit would cause a sequestration (again, an across-the-board cut in all nonexempt discretionary programs).

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[20] The measure sometimes is referred to as "Gramm-Rudman-Hollings" for its authors, Senators W. Philip "Phil" Gramm (R-TX), Warren B. Rudman (R-NH), and Ernest F. "Fritz" Hollings (D-SC).

- Programs under these spending limits were held harmless for changes in inflation, emergencies, estimating differences, and changes in concepts and definitions. OBRA 1993 also extended the pay-as-you-go enforcement procedures for legislation enacted through fiscal year 1998.

The Balanced Budget Act of 1997

- This legislation [BBA 1997] again revised and extended the levels of the discretionary spending limits. As amended by OBRA 1993, these limits would have expired at the end of fiscal year 1998. BBA 1997 modified the discretionary spending limits for fiscal year 1998 and extended them through fiscal year 2002.

- Similarly, the pay-as-you-go requirements were extended for legislation enacted through the end of fiscal year 2002. The sequestration enforcement mechanism lasted through the end of fiscal year 2006 for such legislation, but it was turned off by Public Law 107-312, enacted 2 December 2002.

- BBA 1997 also made numerous technical changes in both the congressional budget process and sequestration procedures that enforce the discretionary spending limits and pay-as-you-go requirements.

  - BBA 1997 established separate limits on defense and non-defense discretionary spending for fiscal years 1998 and 1999. These limits were combined into a single limit on discretionary spending in fiscal years 2000, 2001, and 2002. Separate discretionary spending limits were designed to prevent Congress and the President from using savings in one category to offset an increase in another category.

  - BBA 1997 repealed automatic adjustments in the spending limits for changes in inflation and estimating differences between the administration's Office of Management and Budget and the Congressional Budget Office on budget outlays. It retained adjustments for emergencies, estimating differences in budget authority, continuing disability reviews and added adjustments for the International Monetary Fund, international arrearages, and an Earned Income Tax Credit compliance initiative. The adjustments are made in the President's final sequestration report issued 15 days after the end of a session of Congress.

  - Subsequently, additional spending categories for certain transportation and conservation spending were added, and specific spending amounts were provided for these programs. While the transportation spending limit was ostensibly a limit on funding, it also served the purpose of calculating the levels of spending that flowed from the Highway Trust Fund.

The Statutory Pay-As-You-Go Act of 2010

- No further legislation was enacted to re-establish statutory controls on spending and revenue until 2010, when on 10 February of that year, the Statutory Pay-As-You-Go Act of 2010 was signed as part of Public Law 111-139, which raised the statutory limit on the public debt. The measure amended sections of the Deficit Control Act, including the sequester base, but it did not establish new discretionary spending limits.

The Budget Control Act Of 2011

- The Budget Control Act [BCA], enacted on 2 August 2011, temporarily resolved a confrontation between the House of Representatives and the President over whether, and by how much, to raise the statutory debt limit, which was about to be breached.

- The legislation set statutory controls on spending, primarily making the Deficit Control Act permanent in its entirety, and it re-established discretionary spending limits for fiscal years 2012 through 2021. These discretionary spending limits for fiscal years 2012 and 2013 were divided into "security" and "non-security" categories."[21] The remaining years were set as a single discretionary general category. The BCA also authorized an increase in the public debt limit.

- The BCA included additional procedures that had the effect of altering the discretionary spending limits under section 251(c) of the Deficit Control Act, in particular by extending the security/non-security categories through the end of the period. The Congressional Budget Office estimated the discretionary spending limits under the BCA would reduce the deficit, including savings from debt service, by $917 billion over the 10-fiscal-year period covering 2012 through 2021.

- The BCA also established a Joint Select Committee on Deficit Reduction tasked with reporting legislation to reduce the Federal deficit by an additional $1.5 trillion over a 10-year period ending in fiscal year 2021, which would have been considered under procedures limiting amendment and debate.

  - Under the BCA, if legislation reported by the Joint Committee reducing the deficit by at least $1.2 trillion was not enacted, then a sequestration would be ordered, adjusting the discretionary spending limits downward and calculating an amount of reductions in direct spending necessary to achieve this amount (or a portion thereof if legislation from the Joint Committee achieving some deficit reduction was enacted).

  - The Joint Committee failed to report any proposals reducing the deficit by any amount, and no legislation to that purpose was enacted by the required 15 January 2012 deadline. As a result, the Joint Committee ceased to exist, and the automatic spending reduction process was triggered.

- This process established new discretionary spending limits and definitions of security and nonsecurity (now effectively defense and non-defense, though the previous terms

[21] Section 102 of the act defines the "security" category as comprising discretionary appropriations for the Department of Defense, the Department of Homeland Security, the Department of Veterans Affairs, the National Nuclear Security Administration, the intelligence community management account, and all budget accounts in Function 150, International Affairs. All other discretionary appropriations were grouped together in the non-security category. These were replaced with "revised" security and nonsecurity limits on spending for programs which fall inside Function 050, National Defense, and outside that function.

are still used) and replaced the statutory discretionary spending limits. These categories have replaced the discretionary general category through 2021.

- This process had two components: sequestration and reduction of the discretionary spending limits. To achieve the $1.2 trillion in deficit reduction, spending reductions, calculated by the Office of Management and Budget, were scheduled to occur absent a change in law.

- Because the Joint Committee did not achieve any deficit reduction, the calculation began with a spending reduction of the full $1.2 trillion from fiscal year 2013 through fiscal year 2021. According to the BCA formula, this number was then reduced by 18 percent to account for the reduced cost of debt service attributable to the lower level of spending. The remaining amount was then divided by nine to account for each of fiscal years 2013 through 2021. This amount is then divided by two to evenly distribute reductions between defense and nondefense accounts.

- The spending reductions were then further divided between direct spending and discretionary spending within the defense and non-defense accounts.

- The implementation of the spending reductions was distinct from the calculation of the amounts. Once the amount was calculated, the BCA required reductions through sequestration and reductions to the revised discretionary spending limits.

- The sequestration order affected both discretionary and mandatory spending for fiscal year 2013.

  - As a result, discretionary amounts appropriated for fiscal year 2013 were sequestered by the calculated amount without regard for the amount appropriated – i.e., it was not sequestered as a function of the discretionary spending limit for that fiscal year. In addition, for fiscal years 2013 through 2021, a direct spending sequester of non-exempt accounts was ordered.

  - This was distinct from the spending reductions for the discretionary spending limits for fiscal years 2014 through 2021: these reductions occurred through downward revisions of the spending limits for each of those fiscal years.

The American Taxpayer Relief Act of 2012

- As part of an agreement to make permanent most tax policies first enacted in 2001 and 2003 but scheduled to expire at the end of 2012,[22] the American Taxpayer Relief Act [ATRA] of 2012 included certain budget process provisions.

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[22] These tax policies were temporary because they were enacted under the budget reconciliation process. Section 313 of the Congressional Budget Act – known as the "Byrd Rule" – prohibits spending and tax legislation enacted in reconciliation from increasing the projected deficit outside the 10-year budget window compared to what it would have been without those tax policies. Consequently, those tax relief policies were required to expire.

- ATRA reduced the BCA fiscal year 2013 sequester by $24 billion – from $109.33 billion to $85.33 billion for that fiscal year.

- It postponed the BCA sequester (under section 251A of the Deficit Control Act) by two months, from 2 January 2013 to 1 March 2013. It also postponed the Deficit Control Act sequester (a separate sequestration under section 251(a), which normally occurs 15 days after the end of a session of Congress) until 17 March 2013. This Deficit Control Act sequester enforces the spending limit categories rather than requiring a sequester of a nominal amount for fiscal year 2013 as under the BCA – and applied regardless of where spending is relative to the spending limits. It also reset discretionary spending limit categories for fiscal years 2013 and 2014, lowering the total by $4 billion and $8 billion, respectively.

- The President ordered the fiscal year 2013 BCA sequester, as required by law, on 1 March 2013.

The Bipartisan Budget Act of 2013

- As a result of the budget conference negotiations between House Budget Committee Chairman Ryan and Senate Budget Committee Chairman Murray, the Bipartisan Budget Act [BBA] of 2013 increased the discretionary spending limits for fiscal years 2014 and 2015 by amending section 251 of the Deficit Control Act.

  - The BBA 2013 agreement provided $63 billion in sequester relief over two years, split evenly between defense and non-defense programs. BBA 2013 set defense discretionary spending at $520.5 billion and non-defense discretionary spending at $491.8 billion for fiscal year 2014.

  - For fiscal year 2015, defense discretionary spending was set at $521.3 billion, and non-defense discretionary spending was set at $492.4 billion.

- The sequester relief was fully offset by reductions in direct spending elsewhere in the budget. BBA 2013 included dozens of specific deficit-reduction provisions with mandatory savings and non-tax revenue totaling approximately $85 billion. This included $28 billion in reductions stemming from a provision requiring the President to sequester the same percentage of mandatory budgetary resources in 2022 and 2023 as will be sequestered in 2021 under current law.

The Bipartisan Budget Act of 2015

- The Bipartisan Budget Act [BBA] of 2015 amended section 251 of the Deficit Control Act to increase the fiscal year 2016 and 2017 discretionary spending limits by $50 billion and $30 billion, respectively, equally divided between defense and non-defense spending each year.

  - These increases in the spending categories were offset through reforms reducing direct spending spread over a decade elsewhere in the budget. These reforms included the following: establishing an overall rate of return for insurance providers under the Standard Reinsurance Agreement; authorizing the sale of 58 million barrels of oil from the Strategic Petroleum Reserve; raising premium rates for single employer pension plans; accelerating the due date for pension premiums; maintaining the 2016 Medicare Part B premium; and rescinding and permanently cancelling $746 million from the Department of Justice's Asset Forfeiture Fund among other provisions.

- Additionally, BBA 2015 increased program integrity adjustments for Social Security continuing disability reviews by $484 million through fiscal year 2021. In the Senate only, it provided for allocations, aggregates, and other spending levels to have the force and effect of the fiscal year 2017 concurrent resolution on the budget for purposes of the Congressional Budget Act of 1974. BBA 2015 also temporarily suspended the debt limit through 15 March 2017.

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