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CONGRESSIONAL BUDGETING

THE NEED TO CONTROL AUTOMATIC SPENDING AND UNAUTHORIZED PROGRAMS

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ABSTRACT

The prevalence of automatic spending in the Federal budget threatens to overwhelm fiscal policy and the economy. More than two-thirds of Federal spending (including interest payments) runs on effectively permanent authorizations, and Congress sets no limits on the totals. This form of spending, mostly for the government's entitlement programs, is the sole cause of spending growth as a share of the economy, and the main contributor to the government's mounting debt – which has reached its highest levels since just after World War II, and continues to grow.

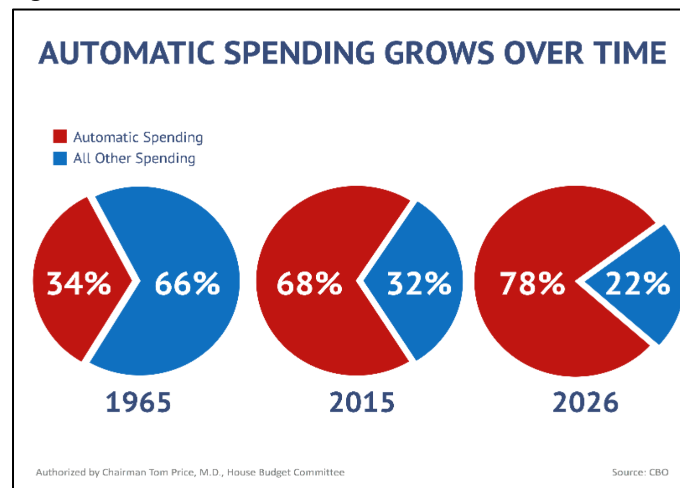
When the Congressional Budget Act was written in 1974, its authors did not anticipate automatic spending and chronic deficits would become so dominant. Over the years, additional measures were developed to gain control of this spending – such as "pay-as-you-go" and sequestration – but have proved inadequate. In addition, numerous Federal programs continue to receive appropriations even though they have never been authorized or their authorizations have expired. Thus, they represent another form of automatic spending, and a further abdication of Congress's fiscal responsibilities.

Washington's entitlement programs have grown cumbersome and costly, and require fundamental reform. Budget procedures can help by creating or enhancing incentives and disciplines that drive reform. A central aim of a new budget process must be to gain control of the government's automatic spending.

THE DOMINANCE OF AUTOMATIC SPENDING

Over the past 50 years, the Federal budget has increasingly become dominated by automatic spending. This form of spending – formally called "direct" or "mandatory"[1] – flows from effectively permanent authorizations, and the totals are not limited by Congress. In 1965, at the dawn of President Johnson's Great Society, Washington's automatic spending, including interest payments (a mandatory payment in the true sense of the word), represented about 34 percent of the budget. By 1974, when the Congressional Budget Act was adopted, it had swollen to nearly 49 percent of total spending (see Figure 1 below). Today, automatic spending including interest has surged to more than two-thirds of the budget,[2] and in just 10 years it will swell to 78 percent.[3] This is the sole source of Federal spending growth as a share of the economy and the main driver of the government's debt.

Figure 1



Programs funded this way – mainly the Federal Government's entitlement programs – pay benefits directly to groups and individuals without an intervening appropriation. They spend without limit. Their totals are determined by numerous factors outside the control of Congress: caseloads, the growth or contraction of gross domestic product [GDP], inflation, and others.

To put it simply, spending on these programs is unrestrained because it is designed to be. Any reform of the congressional budget process must include procedures for reining in this automatic spending. Otherwise fiscal policy will continue to run out of control, overwhelming the budget and the Nation's economy.

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[1] Section 250(C)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended) defines "direct spending" as: "(A) budget authority provided by law other than appropriations acts; (B) entitlement authority; and (C) the Supplemental Nutrition Assistance Program."

[2] Congressional Budget Office, *Updated Budget Projections: 2016 to 2026*, March 2016, Table 1.

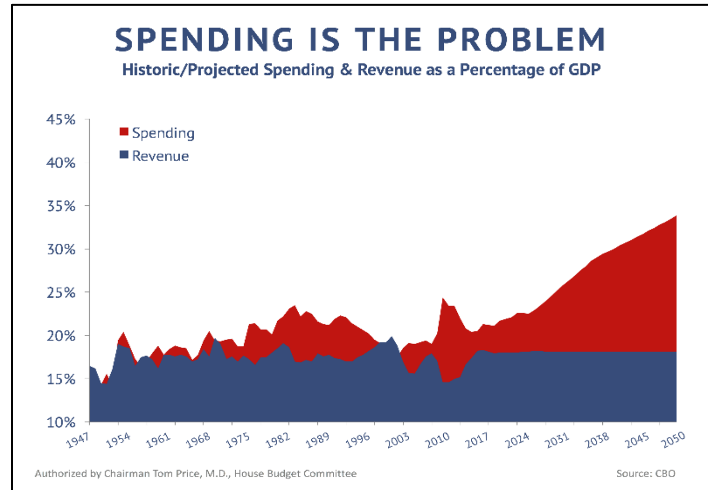
[3] Ibid., Table 1.

SPENDING AND DEBT

Figures by the Congressional Budget Office [CBO] confirm that excessive spending, not a shortage of tax revenues, is the cause of the government's growing debt problem. CBO's latest estimates show Federal tax revenue this year will reach about 18.2 percent of GDP, well above the 17.4-percent average of the past 50 years. Total spending, however, will exceed 21 percent of GDP,[4] and will continue to outpace revenue over the next 30 years and beyond (see Figure 2 below).[5]

CBO projects that while tax revenue will rise to a historically high level of 19.4 percent of GDP in 2046, the government's programmatic spending – excluding interest payments – will reach 22.4 percent of GDP that year. The growing excess of spending over revenue – coupled with projected increases in interest rates – will cause debt service to double over the next decade, and reach 5.8 percent of GDP in 2046. Thus, total spending will exceed 28 percent of GDP in 2046.[6]

Figure 2



Rising interest costs will also crowd out other activities, as increasing shares of government spending go not to support government programs, but simply to pay debt service. Under current trends, by 2026 – just 10 years from now – the government's interest payments will exceed funding for national defense, Medicaid, education, transportation, and many other activities (see Figure 3, next page).

The government's chronic and growing deficits will push debt above its already historically high levels. Gross Federal debt – which includes funds owed to the Social Security Trust Fund and other Federal accounts – has almost doubled in the past eight years, to nearly $19 trillion, and CBO projects it will rise to $29.1 trillion in the next decade. Additionally, the share of debt known as "debt held by the public" – the amount owed to outside investors – is projected to reach $14.0 trillion, or 75.4 percent of GDP, at the end of fiscal year 2016. Over the next 10 years, it will surge to $23.6 trillion, or 85.6

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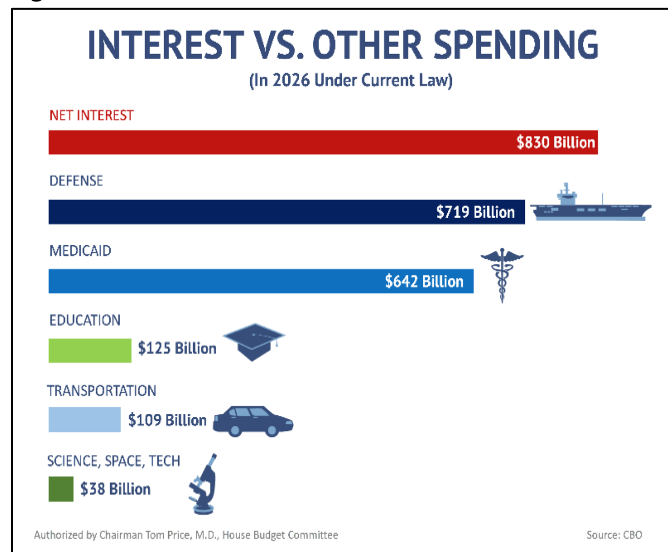
[4] Congressional Budget Office, *Updated Budget Projections: 2016 to 2026*, March 2016, Table 1.
[5] Congressional Budget Office, *The 2016 Long-Term Budget Outlook*, July 2016, Table 1-1.
[6] Ibid., pp. 13 and 20.

percent of GDP – a $9.7-trillion increase – by far the highest level of debt since just after World War II.[7] After that, the debt outlook worsens further. "In 2035, debt [held by the public] would surpass the peak of 106 percent of GDP recorded in 1946. By 2046, federal debt would reach 141 percent of GDP . . . more than three and a half times the average over the past five decades. Moreover, the debt would be on track to grow even larger."[8]

A significant difference from the past, however, is that the previous record debt resulted from large but temporary surges of war spending; future debt is projected to result from permanent government spending programs. "It is clear that our Federal fiscal challenge is so great that unlike after World War II, we will not be able to grow our way out of the problem. It is also clear that we will not be able to reduce our Federal public debt to GDP to a reasonable and sustainable level without addressing mandatory spending programs and engaging in comprehensive tax reform."[9]

Figure 3



To call these fiscal patterns "unsustainable" is to say they will not, *in fact*, be sustained. Unless Congress acts, automatic Federal spending will overwhelm the budget and bury the country in debt. That will force wrenching program changes and spending cuts, or ever-growing levels of taxation, suffocating taxpayers and the economy.

TRENDS IN AUTOMATIC SPENDING PROGRAMS

The Congressional Budget Office reports that in fiscal year 2015, total programmatic automatic spending (excluding interest payments) was $2.3 trillion, and will grow to $4.1 trillion by 2026.[10] This is an average annual growth rate of 5.5 percent – faster than both CBO's projection of 2015 nominal (non-inflation-adjusted) economic growth of 3.4

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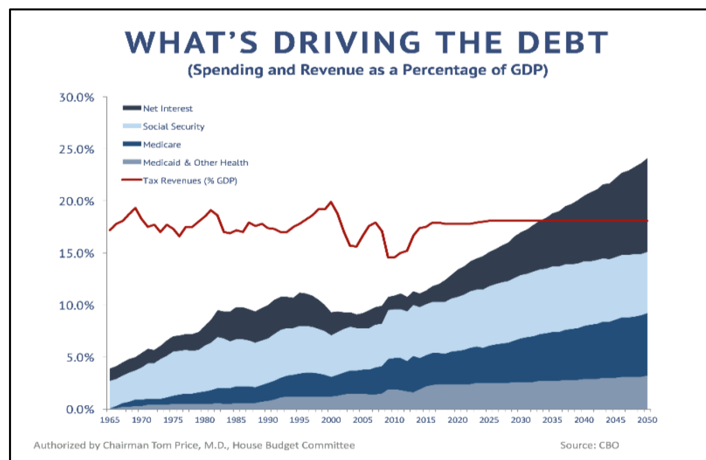
[7] Congressional Budget Office, *Updated Budget Projections: 2016 to 2026*, March 2016, Table 2.
[8] Congressional Budget Office, *The 2016 Long-Term Budget Outlook*, July 2016, p. 8.
[9] The Honorable David M. Walker, *Budget Reforms and Mandatory Spending*, testimony before the Committee on the Budget, U.S. House of Representatives, 9 June 2016.
[10] Congressional Budget Office, *Updated Budget Projections: 2016 to 2026*, March 2016, Table 1.

percent, and the agency's longer-term projection of nominal economic growth of 4.0 percent.[11]

Within overall non-interest automatic spending, Medicare and Social Security are projected to continue growing faster than the economy as a whole, with Social Security increasing from $882 billion in 2015 to $1.6 trillion in 2026, and Medicare rising from $634 billion in 2015 to $1.3 trillion in 2026.[12] These two programs are considered "social insurance," representing a compact across generations. Working people pay payroll taxes to finance the programs for current retirees, and consequently are entitled to such support when they retire. Eligibility for Social Security and Medicare is not related to income. Anyone who reaches retirement age qualifies for these benefits if they have paid payroll taxes for a sufficient amount of time during their working years.

Figure 4



In contrast, most other major entitlement programs are "means-tested" – that is, eligibility depends in part on financial need. The principal aim of these programs is income support, whether through cash payments, nutrition assistance, medical support, or other forms of assistance. Over the next decade, the major means-tested automatic spending programs are expected to grow by 4.3 percent per year – from $744 billion in 2016 to $1.1 trillion in 2026.[13] These programs have seen considerable growth over the past half century. According to the President's fiscal year 2017 budget, means-tested entitlements grew from 0.7 percent of GDP in 1962 to 3.8 percent in 2016.[14] Over just the past 10 years, major means-tested automatic spending programs have grown 7.3 percent per year, from $386 billion in 2007 to $744 billion in 2016.[15]

Several factors contribute to this growth. The Great Recession of 2008-2009 caused significant increases in spending on low-income programs. Spending is projected to

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[11] Congressional Budget Office, *The Budget and Economic Outlook: 2016 to 2026*, January 2016, Table 2-1.
[12] Congressional Budget Office, *Updated Budget Projections: 2016 to 2026*, March 2016, Table 4.
[13] Congressional Budget Office, *Letter to the Honorable Tom Price Regarding Spending for Means-Tested Programs in CBO's Baseline, 2016-2026*, 16 February 2016.
[14] Office of Management and Budget, *The Budget of the United States Government – Fiscal Year 2017: Historical Tables*, Table 8.4.
[15] Congressional Budget Office, *Letter to the Honorable Tom Price Regarding Spending for Means-Tested Programs in CBO's Baseline, 2016-2026*, 16 February 2016.

remain at elevated levels for several programs – most notably, the Supplemental Nutrition Assistance Program, or SNAP (formerly known as food stamps). Over the past 10 years, SNAP grew at 8.1 percent annually, ballooning from $35 billion in 2007 to $75 billion in 2016. While this amount is projected to hold steady over the next 10 years, it will remain more than twice as high as pre-recession levels.[16]

Other programs have also seen large increases. Supplemental Security Income [SSI] was created as a needs-based program that provides cash benefits to aged, blind, or disabled persons with limited income and assets. When the program began, the majority of payments went toward the aged. As it matured, however, a much greater percentage of its beneficiaries were under 18 or between the ages of 18 and 64. Over the past decade, spending on SSI has grown by 4.8 percent per year.[17]

The largest means-tested program in the Federal budget is Medicaid, the Federal-State low-income health program. Medicaid spending – and the related State Children's Health Insurance Program [SCHIP] – doubled from $197 billion in 2007 to $394 billion in 2016. CBO projects Federal Medicaid and SCHIP spending to reach $648 billion in fiscal year 2026.[18]

EXISTING CONTROLS ON AUTOMATIC SPENDING

Reconciliation

The most readily available mechanism for driving reform of automatic spending programs is budget reconciliation. It is an optional process, used far too seldom, in which the budget resolution can call for reforms of entitlement programs (and tax laws) by requiring one or more authorizing committees to achieve savings in programs within their respective jurisdictions. A principal advantage of budget reconciliation is that it is not subject to a filibuster in the Senate. Consequently, a reconciliation bill can pass with a simple majority of 51 Senators. In addition, Senate debate on a reconciliation bill is limited to 20 hours (10 hours on conference reports), and amendments must be germane.

A complication of the process, however, is that in the Senate the provisions in a reconciliation bill are restricted to budgetary matters. This requirement, known as the "Byrd Rule" (Section 313 of the Congressional Budget Act of 1974), prohibits "extraneous" provisions from reconciliation bills. Extraneous provisions include any that would cause an estimated deficit increase beyond the 10-year budget window compared to what deficits would have been otherwise. Among other things, the Byrd Rule gives the Senate leverage to strike House provisions the Senate does not favor. In addition, the definition of "extraneous" provisions is highly subject to interpretation by the presiding officer, who relies on the Senate's Parliamentarian.[19]

The use of reconciliation has changed over the years. Originally, under the 1974 Budget Act, Congress was to adopt two budget resolutions a year. The first, in the spring, would

[16] Ibid.
[17] Ibid.
[18] Ibid.
[19] 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.

set advisory levels to guide the work of authorizing and appropriating committees; the second, in September, would establish binding levels. If economic or fiscal conditions had changed by then – or if fiscal outcomes differed from earlier projections (possibly because of new legislation) – the second resolution would contain instructions calling for changes that would reconcile actual spending and revenue with the binding levels of the second budget resolution. In the early 1980s, Congress ceased adopting two resolutions, so reconciliation was used in the "earlier" (and sole) budget resolution in the spring, if at all. The time frame for reconciliation was also extended to cover multiple years.

From 1980 through 1997, reconciliation was used mostly to reduce deficits by restraining direct spending programs – ranging from farm subsidies to student loans to welfare – and increasing revenue. The major policy reforms in President Reagan's first budget were enacted through the Omnibus Budget Reconciliation Act of 1981. (His first round of tax cuts, the Economic Recovery Tax Act of 1981, did not employ reconciliation.) The extension of health coverage benefits occurred through the Consolidated Omnibus Budget Reconciliation Act of 1985. Other reconciliation measures included the Budget Enforcement Act of 1990; the implementation of President Clinton's first budget in 1993; a welfare reform bill in 1996 titled the Personal Responsibility and Work Opportunity Reconciliation Act; and the Balanced Budget Act of 1997.

In 2001 and 2003, Congress and President Bush used reconciliation to enact his tax cuts, overcoming a threatened Senate filibuster. Because of this, however, the Byrd Rule limited the tax reductions to 10 years, leading to automatically scheduled tax increases that were averted in January 2011 and again in January 2013. In the latter case, Congress and the President agreed to extend most of the Bush-era tax policies, but did allow tax increases on certain upper-income taxpayers.

In the fiscal year 2010 budget resolution (S. Con. Res. 13), Democratic majorities in the House and Senate made a significant change in the use of reconciliation. Instead of employing the procedure for deficit reduction, the resolution called for token savings of $1 billion from each of several committees, allowing them to use reconciliation to adopt their major health coverage overhaul. This step became necessary in the end, because the two Chambers could not agree on a single health insurance measure. Consequently they adopted two laws, one modifying the other, to constitute the Affordable Care Act [ACA], or Obamacare.[20] Republican majorities used a similar technique in the fiscal year 2016 budget resolution conference report (S. Con. Res. 11) to employ reconciliation for repealing the Affordable Care Act (H.R. 3762, the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015).

Pay-As-You-Go

For most of the Nation's history, the concept of pay-as-you-go meant balancing the budget – that is, limiting spending to what the government collected in revenue. In 1990, however, policymakers converted pay-as-you-go into a rationalization for maintaining or managing deficit spending, rather than reducing or preventing it. This new interpretation of "pay-as-you-go" was adopted in the Budget Enforcement Act [BEA] of 1990 (Title

[20] The Affordable Care Act consists of two measures: the Patient Protection and Affordable Care Act (Public Law 111-148), and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

XIII of Public Law 101-508), which sought to rescue Congress and the President from a pending fiscal crisis due to the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of Public Law 99-177). The law required Congress to meet specific, declining deficit targets each year, with the aim of achieving a balanced budget by 1991. Congress and the President could not meet the target for fiscal year 1991, and consequently faced automatic, across-the-board spending cuts under a process called "sequestration." To avoid that outcome, they agreed to a compromise package of spending restraints and tax increases, backed by a new set of budget disciplines, including pay-as-you-go.[21]

The new version of pay-as-you-go (typically called paygo or PAYGO) is not to reduce or eliminate deficits, but simply to prevent them from getting larger. "PAYGO is budget-speak for 'do no harm' or 'don't make deficits worse.'"[22] The practice requires that the estimated costs of any new direct (or mandatory) spending program be offset by direct spending reductions elsewhere, or tax increases, or a combination of the two. These costs are measured against whatever the estimated baseline deficit is at the time, no matter how large. Any costs or savings from new direct spending or tax legislation are tallied on a "scorecard" that estimates their effects over five years and 10 years. If all the legislation in a given session of Congress causes a net deficit increase, the Office of Management and Budget imposes sequestration to make up the difference.

The statutory pay-as-you-go provision under the BEA ran through 1997, and then was extended through the end of fiscal year 2002. It officially terminated on 2 December 2002 with the enactment of Public Law 107-312, which fixed the remaining balances on the pay-as-you-go scorecard at zero. From time to time after that, attempts were made to restore pay-as-you-go in law, but they proved unsuccessful – although the principle remained in House and Senate rules. Pay-as-you-go was restored by the Statutory Pay-As-You-Go Act of 2010, enacted on 12 February 2010 (Public Law 111-139).[23]

Proponents contend pay-as-you-go has provided an important restraint on deficit spending, and in many cases prevented new legislation from being considered because its authors could not identify sufficient offsets for new spending: "[S]tatutory PAYGO proved a highly effective deterrent to deficit-increasing legislation in the 1990s – at least until the surplus was achieved in 1998. The effects of PAYGO were not visible to the public or the press because they involved spending and tax proposals that never saw the light of day."[24] "Clearly, PAYGO will not by itself balance the budget or address our long-term fiscal challenges, but it will help to bring discipline back to the budgeting process. PAYGO puts the brakes on policies that increase the deficit and it provides hurdles Congress has to clear before enacting new mandatory spending or tax cut policies."[25]

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[21] Robert Keith, *The Statutory Pay-As-You-Go Act of 2010*, Congressional Research Service, 2 April 2010, p. 1.
[22] Alice M. Rivlin, *Statutory PAYGO: An Important First Step Toward Fiscal Responsibility*, testimony to the Committee on the Budget, U.S. House of Representatives, 25 June 2009.
[23] Keith, op. cit., pp. 1-3.
[24] Rivlin, op. cit.
[25] Maya C. MacGuineas, President, Committee for a Responsible Federal Budget, testimony before the Committee on the Budget, U.S. House of Representatives, 25 July 2007.

On the other hand, critics contend pay-as-you-go has little benefit because it does not cut into the government's already unsustainable path of spending. "Paygo does not place any constraint on the natural (and inexorable) growth of entitlement spending that occurs under current law. Rather, it puts a big hurdle in the way of across-the-board tax cutting that might be promoted in a pro-growth economic agenda. . . . Paygo is the embodiment of the view that fiscal responsibility entails 'paying for' newly enacted spending commitments. That's very different from the view that sound fiscal policy focuses on spending control to allow private actors to keep and use as many of their own resources as possible."[26]

Put another way, instead of reinforcing the clear fiscal goal of balanced budgets, pay-as-you-go actually *ratifies* existing deficits, however large, as the measure of budget "discipline." Under this notion, Congress and President Obama in 2010 could justify trillions of dollars in new spending for the Affordable Care Act because it was offset on paper by estimated savings in other programs (including Medicare) and tax hikes (many of which were of questionable credibility). This was termed "fiscally responsible" because it did not increase deficits that *already exceeded $1 trillion a year.* Interestingly, once the ACA was enacted, the Congressional Budget Office noted it could no longer track the deficit-reduction components of the legislation because they occurred in existing programs. "In cases where the new [ACA] laws affected an existing flow of spending or revenues – such as Medicare outlays or income tax receipts – their effects will not be separately identifiable. Therefore, comparing all elements of the laws' ultimate impact with the amounts estimated at the time of their enactment will not be possible."[27] CBO later explained this is a problem with all alleged deficit-reducing measures: "[T]he problem is common to all legislation that changes existing federal programs or tax provisions with results that cannot be clearly distinguished from what would have occurred under previous law."[28]

Other Procedural Restraints on Automatic Spending

Many other procedural restraints on automatic spending exist. Section 302(f) of the Congressional Budget Act limits new direct spending to the amounts allocated by the budget resolution to a given authorizing committee. It is enforced by a point of order, though the enforcement is usually waived by the rule for consideration of the legislation.

Section 401(a) of the Budget Act prohibits the consideration of legislation creating contract authority and borrowing authority unless it is explicitly subject to appropriations; this is technically enforced by a point of order, but the provision is dormant. There is also Section 401(b)(1) of the Congressional Budget Act, which prohibits the consideration of legislation that increases entitlement authority in the current fiscal year. It, too, is technically enforced by a point of order, but the provision is dormant as well. Section 401(b)(2) of the Congressional Budget Act refers to the Appropriations Committee authorizing legislation that increases direct spending above the respective 302(a) allocation. As with the other examples above, its point-of-order enforcement is dormant.

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[26] James C. Capretta, *The Budget Act at Forty: Time for Budget Process Reform*, the Mercatus Center at George Mason University, March 2015.
[27] Congressional Budget Office, *The Budget and Economic Outlook: An Update*, August 2010, Box 1-1.
[28] Congressional Budget Office, "Answers to Questions for the Record Following a Hearing on the Budget and Economic Outlook for 2014 to 2024 Conducted by the Senate Committee on the Budget," 10 June 2014.

The Cut-As-You-Go rule (Clause 10 of House Rule XXI) is a more focused version of pay-as-you-go. It requires that any legislation increasing direct spending be offset by commensurate reductions in direct spending only (not revenue); it is enforced by a point of order. Finally, the Long-Term Direct Spending rule (Section 3101 of S. Con. Res. 11, the Concurrent Resolution on the Budget for Fiscal Year 2016) prohibits the consideration of legislation that would increase direct spending by $5 billion or more in any of four consecutive 10-year periods following the initial 10-year budget window. It is also enforced by a point of order.

PROPOSED ADDITIONAL CONTROLS ON AUTOMATIC SPENDING

The budget process cannot by itself bring about the fundamental reform of entitlement programs needed to put them on a sustainable fiscal course. Nevertheless, budget procedures can provide tools and incentives that can drive entitlement reform. Among proposals discussed are the following.

Caps on Direct Spending

One possible means of controlling automatic spending is to place ceilings on total direct spending amounts, similar to caps on annually appropriated (discretionary) spending. Theoretically, the caps might allow entitlement programs to continue paying out benefits, as they do now, but then impose sequestration if the ceiling were breached. Because of the potentially wrenching impact of such abrupt funding reductions, the cap would presumably create an incentive for Congress to develop more gradual program adjustments and spending restraints.

The ceilings could be designed in several different ways. For instance, there could be one cap on all direct spending. Alternatively, different caps could be applied to groups of direct spending programs: the major health programs, income security, and so on. Ceilings could be imposed on certain large entitlement programs, such as Medicare or Medicaid. Another option would be to design limits such that Federal spending would increase at a rate slower than the growth of gross domestic product. Because tax revenue tends to grow slightly faster than the economy, this would mean revenue would outpace spending, reducing deficits and eventually leading to balanced budgets.

Caps are a blunt instrument when applied to entitlement programs, because they may force indiscriminate cuts in benefits to eligible individuals or groups. As noted previously, the spending totals for entitlement programs are simply whatever results from all these payments; Congress does not set lump sum amounts or limits on the totals, as it does with discretionary spending. On the other hand, that is precisely the problem with entitlements: they spend without limit, which is why entitlement spending is spinning out of control. Entitlement caps could reverse that problem. The biggest challenge would lie in determining what happens if a ceiling is reached, and how to execute the enforcement of the cap or caps.

Sunset Provisions

Another way of addressing entitlements is to eliminate the effectively permanent nature of their authorizations, ensuring they expire periodically. Presumably, the reauthorization

procedure would force Congress to reconsider these programs from time to time, to conduct oversight, and perhaps promote reforms and limit their funding.

It is uncertain how much actual reform and savings would result from such a practice, but at least it would cause Congress to re-evaluate these programs on a regular basis.

Long-Term Budgets for Major Entitlements

The Brookings-Heritage Fiscal Seminar in 2008 advocated long-term budgets for the three major entitlement programs, Social Security, Medicare, and Medicaid. The argument for this approach was that because many people rely heavily on entitlements and plan their lives around them, the programs should not undergo frequent changes. "The three major entitlement programs should be budgeted for longer periods (for example, 30 years) but be subjected to review every five years. These five-year reviews would allow reconsideration of the trade-offs between entitlement spending and other purposes and might cause adjustments in benefits, premiums, taxes, or all three."[29]

The long-term budget could be made the default spending plan, allowing Congress and the President to make modifications if they agreed to do so. In any case, the approach would encourage policymakers to make decisions, "rather than allowing some programs to have automatic status" with which they "steadily crowd out other priorities."[30] Although many support applying a long-term perspective to entitlement programs, budgeting for the long term may be difficult because of the inherent difficulties with estimating economic and fiscal conditions over several decades.

Triggers

The Fiscal Seminar also proposed triggers for the major entitlements that would force action – automatic benefit cuts or revenue increases – when projected spending exceeded budgeted amounts. The trigger "could only be over-ridden by an explicit vote or enactment of alternative policies that would achieve budget outcomes similar to the automatic adjustments."[31]

An alternative would be a trigger leading to the formation of a commission that would make recommendations for adjusting the entitlement spending path, and holding an up-or-down vote on the recommendations. "The trigger process that forces an explicit vote when the long-run budget for any of these programs is exceeded will dramatize the importance of modernizing these entitlement programs to reflect increasing longevity, higher incomes, and the rising cost of medical care."[32]

Recent experience with such mechanisms, however, has not been encouraging. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 required the

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[29] The Brookings-Heritage Fiscal Seminar, *Taking Back Our Fiscal Future*, April 2008. In addition to the Brookings Institution and the Heritage Foundation, participation in the Seminar included representatives from various other research and policy organizations, including the American Enterprise Institute, the Concord Coalition, the Urban Institute, and the Progressive Policy Institute.
[30] Stuart M. Butler, testimony before the Committee on the Budget, U.S. House of Representatives, 9 June 2016.
[31] The Brookings-Heritage Fiscal Seminar, op. cit.
[32] Ibid.

Medicare trustees to report annually whether general revenue funding for Medicare would exceed 45 percent of program outlays in the current fiscal year or any of the subsequent six fiscal years. If such a determination occurred in two consecutive years, the President was required to submit a legislative proposal to lower the ratio to 45 percent.

The trustees issued such funding warnings in every one of their annual reports from 2006 through 2013, yet only once did a President submit corrective legislation. That was from President Bush in 2008, and his proposal was not acted on by the Democratic majority in Congress. President Obama has never submitted such a proposal.[33]

UNAUTHORIZED SPENDING

According to the Congressional Research Service [CRS], Congress from early on made a distinction between funding bills – appropriations – and other kinds of legislation. Although not required by the Constitution, the distinction "was reflected in the designation of measures containing budget authority for more than one purpose as 'supply bills,' highlighting their purpose as supplying funds to carry out government operations already established in law."[34] The distinction can be generally explained as follows. An *authorization* may be described as "a statutory provision that defines the authority of the government to act," whereas an *appropriation* can be described as "a statutory provision that permits a federal agency to incur obligations and make payments from the Treasury for specified purposes, usually during a specified period of time."[35]

In 1837, CRS notes, the House promulgated formal rules prohibiting any appropriations for "any expenditure not previously authorized by law." "These rules were motivated, at least in part, by concern over the increasing delays in enacting appropriations due to the inclusion of 'debatable matters of another character.'"[36] Just after the Civil War, and running through the end of the 19th century, the distinction became embraced in the structure of House and Senate Committees. Up to that point, budgetary matters fell to the Committee on Ways and Means in the House and the Committee on Finance in the Senate. After the war, the two Chambers separated spending and revenue authority, giving the former to newly created Appropriations Committees. Then, starting in the 1870s, the authorizing committees seized control of roughly half of government spending, further reinforcing the two-step process of authorizing and appropriating.

The House and Senate have had rules restricting the consideration of appropriations for programs that have never been authorized or whose authorizations have expired. That arrangement, however, has broken down. According to the CBO: "Lawmakers appropriated about $310 billion for fiscal year 2016 for programs and activities whose authorizations of appropriations have expired and whose appropriations could be identified." This reflects 256 laws that have not been reauthorized, says CBO.[37]

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[33] Patricia A. Davis, Todd Garvey, Christopher M. Davis, *Medicare Trigger*, Congressional Research Service, 10 March 2014.
[34] Jessica S. Tollestrup, Congressional Research Service, *Spending on Unauthorized Programs*, testimony to the Committee on the Budget, U.S. Senate, 3 February 2016.
[35] Ibid.
[36] Ibid., citing Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States* (Washington: Government Printing Office, 1907-1908), vol 4, §3578.
[37] Congressional Budget Office, *Unauthorized Appropriations and Expiring Authorizations*, 15 January 2016.

Table 1: Summary of Fiscal Year 2016 Appropriations with Expired Authorizations, by House Authorizing Committee

House Committee	Number of Laws	Amounts Appropriated (in millions of dollars)
Agriculture	1	250
Education and the Workforce	23	20,638
Energy and Commerce	53	49.271
Financial Services	20	35,629
Foreign Affairs	23	49,974
Homeland Security	5	6,420
House Administration	4	89
Judiciary	33	30325
Natural Resources	58	2,578
Oversight and Government Reform	8	479
Science, Space, and Technology	14	38,004
Small Business	3	763
Transportation and Infrastructure	26	14,372
Veterans Affairs	11	61,394
Ways and Means	6	177
Total	256	310,365

Source: Congressional Budget Office, *Unauthorized Appropriations and Expiring Authorizations*, 15 January 2016, Table 1.

Table 2: Summary of Fiscal Year 2016 Appropriations with Expired Authorizations, by Senate Authorizing Committee

Senate Committee	Number of Laws	Amounts Appropriated (in millions of dollars)
Agriculture, Nutrition, and Forestry	4	254
Banking, Housing, and Urban Affairs	19	34,133
Commerce, Science, and Transportation	41	45,022
Energy and Natural Resources	32	13,633
Environment and Public Works	37	4,435
Finance	7	1,752
Foreign Relations	22	49,974
Health, Education, Labor, and Pensions	42	60,548
Homeland Security and Government Affairs	14	7,614
Human Resources	1	0
Indian Affairs	13	83
Judiciary	34	30,671
Rules and Administration	4	89
Small Business and Entrepreneurship	3	763
Veterans Affairs	11	61,394
Total	256	310,365

Source: Congressional Budget Office, *Unauthorized Appropriations and Expiring Authorizations*, 15 January 2016, Table 2.

In failing to authorize these programs, Congress misses a key opportunity to conduct oversight of existing programs and Executive Branch agencies. Further, even if this two-step process may lengthen the time needed to fund agencies and programs, there are presumably sound reasons for distinguishing between authorizations and appropriations, and Congress should follow its own regular order of budgeting. The practice of funding unauthorized programs also has the effect of converting a range of discretionary programs into another form of automatic spending.

One proposal for addressing the problem is the Unauthorized Spending Accountability Act of 2016, introduced by Representative Cathy McMorris Rogers (R-WA), Chair of the House Republican Conference. The legislation would put all unauthorized programs on a path to sunset in three years, and require any new authorizations to include a sunset clause.

CONCLUSION

The Federal debt is rising to historically high levels. It is driven to such perilous heights largely by automatic spending, mainly for government entitlement programs. The 1974 Congressional Budget Act did not anticipate the immense problem entitlement spending would become. Therefore, an imperative for budget process reform is to develop means of controlling automatic spending. To that end, Congress should explore various options, including the possibility of imposing caps, instituting sunset provisions, creating long-term budgets for the programs, imposing trigger consequences, and curbing unauthorized spending. Controlling automatic spending must be a central feature of a new congressional budget process.

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