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TERRIBLE, NO GOOD, VERY BAD WAYS OF FUNDING GOVERNMENT: EXPLORING THE COST TO TAXPAYERS OF SPENDING UNCERTAINTY CAUSED BY GOVERNING THROUGH CONTINUING RESOLUTIONS, GIANT OMNIBUS SPENDING BILLS, AND SHUTDOWN CRISES

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL SPENDING OVERSIGHT AND EMERGENCY MANAGEMENT

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

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TUESDAY, FEBRUARY 6, 2018

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SPENDING,
OVERSIGHT AND EMERGENCY MANAGEMENT,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:31 p.m., in room SD–562, Dirksen Senate Office Building, Hon. Rand Paul, Chairman of the Subcommittee, presiding.

Present: Senators Paul, Peters, Harris, and Jones.

OPENING STATEMENT OF SENATOR PAUL[1]

Senator PAUL. I call this hearing of the Federal Spending Oversight Subcommittee to order.

Before we start, I want to express this Subcommittee's deepest sympathy to the family and friends of Ed Lorenzen, who was a senior policy advisor at the Committee for Responsible Federal Budget. Ed and his 4-year-old son tragically passed away 12 days ago in a house fire. Ed was a well-respected member of the budget community and possibly the foremost champion of the PAYGO rule. In fact, his Twitter handle was Captain PAYGO.

By all accounts, Ed was a great guy and a dedicated budgeteer. Literally, the day of his death, Ed was working with my staff in preparation for this very hearing. So this tragedy is close to our hearts, and it is with deep sympathy to his family that I ask everyone to join me in a moment of silence.

[Moment of silence.]

Thank you.

We are here today to discuss continuing resolutions (CR), omnibus appropriations, missed funding deadlines, and shutdowns. This hearing is entitled the "Terrible, No Good, Very Bad Ways of Fund-

[1] The prepared statement of Senator Paul appears in the Appendix on page 27.

ing Government." I cannot think of a better way to describe how dysfunctional Congress is with its power of the purse.

Today, government is open and on its fourth CR of the year. Who knows what will happen Thursday? But what we know is we are already a third of the way through the fiscal year (FY) and still using temporary funding. It just makes no sense.

And this is not a partisan problem either. The last time we passed all appropriation bills on time was 1997, which was only the fourth instance all appropriations were done since 1977, four times in 41 years.

Missing appropriation deadlines have consequences. It causes uncertainty in agencies and delays plans, which may increase cost to the taxpayer. In October, we had a hearing on wasteful end-of-the-year spending. Part of the problem there is caused by the use-it-or-lose-it mentality, but we also heard that delayed appropriations compresses the funding window, meaning even good projects become lower quality as there is just less time to plan and obligate the funds.

Another part of the problem that concerns me is that once Congress goes beyond the funding deadline, our incentive turns to doing an omnibus appropriation, which is maybe only slightly less bad than a continuing resolution. That is where we glue together all the unfunded programs into one single giant bill. How can Congress do proper oversight of spending when we throw everything into one giant trillion-dollar bill, sometimes with only hours to scrutinize and no chance to amend?

As a doctor, I need an ophthalmoscope to look at the back of your eye, but being able to take a closer look helps me to diagnose and fix these problems. That is what we need in the budget process. That is exactly what we need is a closer look.

Instead, we are given one giant bill, with little debate and asked to vote up or down, and rarely allowed to amend the bill.

Of course, we all know about and dread the government shutdowns. In fact, I often say while I do not want to shut down government, I also am not sure I want to keep it open and still borrowing a million dollars a minute. They are both not very good solutions.

Making government less efficient, we have to talk about what we can do to fix it. So I have introduced something called the Shutdown Prevention Act, which says at the end of the fiscal year, anything still not funded would automatically be funded at 99 percent of the previous budget.

What should make this a win-win for everyone is that agencies will have at least a minimum level of certainty. Government will not completely shut down. They will keep spending money, but there will be a penalty. They will spend one percent less, and around here, spending one percent less ought to be enough of a penalty to get everybody to do their job and do the appropriation bills on time.

So I think this is an important and timely hearing, and I thank Senator Peters for working with our office to set this up.

With that, I will recognize the Ranking Member for his opening statement.

OPENING STATEMENT OF SENATOR PETERS[1]

Senator PETERS. Well, thank you, Mr. Chairman, and thank you for providing this forum on this topic today, in a collaborative and bipartisan way and a bipartisan spirit, and I always appreciate that of you, Mr. Chairman.

The conversation that we are having today goes to the heart of how Congress functions as an institution. One of our most fundamental responsibilities is to pass a budget and fund the government. This is our most basic job, and the American people, quite frankly, expect us to get it done.

The way we budget and fund the government is, unfortunately, now dysfunctional. It is a problem that has gone on for far too long, and we have become accustomed to it. It has become the new normal, and the purpose of today's hearing is to say enough is enough. This is no way to govern.

This broken process filled with last-minute deadlines, continuing resolutions, and even government shutdowns is wasteful. It is inefficient and harmful to the American people.

That is why our esteemed panel of witnesses are all here today, and I appreciate your expertise, your experience, and your time. Your testimony today is critical to helping us diagnose the severity of our budgeting problem and how it impacts government services and waste taxpayer dollars. I hope you can help us explore some constructive solutions.

Our broken budget process needlessly shortchanges effectiveness of Federal programs through the never-ending cycle of short-term continuing resolutions and omnibus spending bills, creating budget crisis and keep the government perpetually at the edge of a shutdown. That threat occasionally comes to pass, as we just saw recently.

Though Congress designed a clear budget process in the 1974 Congressional Budget Act to establish our own funding priorities and set a timeline for enacting them into law, we have failed time and time again to live up to our own standards. In fact, Congress has only managed to enact all 12 required appropriation bills on time in four of the past 40 years.

Instead, this body has passed an average of four CRs every year, and the frequency has only increased in recent years. Since 2011, we have passed 34 CRs. Sometimes these CRs fund the government for as little as one day at a time. As a result, the majority of sitting Members of Congress have never seen this body pass a budget through "regular order."

We can and we must do better. I am hopeful that this hearing will offer a candid discussion of the facts and emphasize the true cost and consequences of governing through short-term CRs. We lurch from crisis to crisis, wasting countless hours across the Federal Government, as employees prepare for shutdowns or draft detailed comprehensive yearly budget documents that are completely disregarded.

Most significantly, this dysfunctional pattern needlessly threatens our national and economic security. Without a long-term budget outlook, our military is unable to plan ahead and effectively con-

[1] The prepared statement of Senator Peters appears in the Appendix on page 29.

duct their critical missions to protect the American people and American interests abroad.

Instead of thoroughly evaluating spending priorities or conducting meaningful oversight of government programs, Congress kicks the can down the road and lets taxpayers foot the bill.

In the event of a shutdown, hundreds of thousands of Federal workers are furloughed from their jobs, and Americans of all walks of life lose access to important public services that they count on.

To offer a better sense of the real impact this has on Federal workforce, I ask unanimous consent (UC), Mr. Chairman, to enter into the record a letter that I received today from the American Federation of Government Employees.[1]

Senator PAUL. Without objection.

Senator PETERS. Last week during a hearing in the Commerce Committee, I asked the Director of the National Science Foundation (NSF) about the impact of continuing resolutions and shutdowns on her agency. Not only did the NSF have to cancel a whole slate of important meetings, including with several Nobel Prize laureates, the Director also told me that, "Everybody just basically stops work in order to gear up for a shutdown." That is unacceptable.

That is a lot of time and tax dollars wasted preparing for a shutdown that would not happen if Congress simply did its job.

I look forward to hearing a robust discussion from today's witnesses about potential reforms and solutions that will help us break this harmful cycle and restore regular order to the congressional budget and appropriations process. We must work together in a bipartisan way to reduce our reliance on short-term CRs, mitigate the harmful effects of this uncertainty on Federal agencies, and minimize the cost of this broken process to taxpayers.

I am sure the Chairman would join me in saying that we are very eager to hear your ideas today.

So let us get to work. Thank you very much, and thank you again, Mr. Chairman, for this hearing.

Senator PAUL. Thank you, Senator Peters.

With that, I will begin with our witnesses' opening statements. I will remind the witnesses that their statements have already been submitted, and we would like to try to keep it to five minutes, if possible.

Our first witness is Heather Krause. She is the Director of Strategic Issues for the Government Accountability Office (GAO). Ms. Krause previously testified before this Subcommittee on wasteful end-of-year spending. In that testimony, she pointed out that part of what can cause spending surges at the end of the fiscal year and lead to waste in agency funding being continually delayed, so we wanted to bring Ms. Krause back and continue that discussion to learn more about the cost and inefficiencies created by funding delays and uncertainty.

Ms. Krause has a bachelor's degree in political science from the University of Minnesota Duluth and a master's degree in public policy from the University of Minnesota.

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[1] The letter from the American Federation of Government Employees appears in the Appenidx on page 92.

Ms. Krause, thank you for coming back.

TESTIMONY OF HEATHER KRAUSE,[1] DIRECTOR, STRATEGIC ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. KRAUSE. Thank you, Chairman Paul, Ranking Member Peters, and Members of the Subcommittee. I thank you for the opportunity to discuss our work on how continuing resolutions and other budget uncertainties affect agencies and the services that they provide.

As you know, Congress annually faces difficult decisions on what to fund among competing priorities and often postpones final funding decisions to allow more time for deliberations.

To prevent funding gaps, Congress enacts continuing resolutions, so that agencies can continue to operate government services until Congress and the President reach agreement on regular appropriations.

In all but four of the last 40 years, as was noted in the opening statement, Congress has passed CRs to provide agency funding until agreement is reached. In some years, including the current fiscal year, when new appropriations or a CR have not been enacted, there is a lapse in appropriations or government shutdown. This leads some agencies to halt their activities and furlough employees until appropriations are enacted.

Our prior work on Federal budgeting has shown that operating under a CR, the possibility of a government shutdown, or both, creates uncertainty and management challenges for agencies.

In response to these uncertainties, agency officials have taken various actions and leveraged available authorities to execute their budgets and carry out their missions.

Today, I will focus my statement on, one, the effects of CRs and shutdowns on agency operations and, two, legislative authorities and agency actions that assist in managing these budget uncertainties.

Our prior work has shown that CRs and government shutdowns can increase cost and reduce government services and productivity. For example, in 2009, we reported that agencies delayed contracts, grants, and hiring during a CR because final appropriations could have been less than anticipated.

For example, officials at the Bureau of Prisons (BOP) told us then that delaying one of their contracts had prevented them from obtaining lower prices and resulted in $5.4 million in additional costs.

We also found that the effects of CRs can differ based on their number and duration. Shorter and more numerous CRs can lead to more repetitive work. This includes having to enter into short-term contracts or grants multiple times to reflect the duration of a CR.

On the other hand, longer CRs can allow for better planning in the near term. However, they can lead agencies to rush to obligate funds late in the fiscal year. Agency officials told us that following a lengthy CR, they can end up spending funds on lower-priority items that can be procured quickly if they do not have enough time to spend funds on higher-priority needs.

[1] The prepared statement of Ms. Krause appears in the Appendix on page 32.

Congress and agencies have taken several actions that help manage budget uncertainties and disruptions associated with CRs and shutdowns. For example, CRs include standard provisions that require most agencies to operate similar to the prior year but to spend conservatively and without starting new activities.

Congress may also choose to include other provisions in CRs called legislative anomalies. Such provisions can address specific issues certain agencies face in executing their budgets during a CR.

Further, Congress can provide some agencies with multiyear budget authority. With this authority, there is less pressure to obligate the funds at the end of the year, and agencies may be able to continue some activities during a shutdown.

Agency officials can also take actions to mitigate budget challenges. For example, agencies may have the ability to shift contract and grant cycles to later in the fiscal year when they are less likely to be under a CR. Agencies also establish contingency plans and other guidance to assist in managing CRs and shutdowns.

In close, the Federal budget is an inherently political process in which Congress faces difficult decisions on what to fund among competing priorities. While not ideal, CRs continue to be a common feature of the annual appropriations process. There is no easy way to avoid or completely mitigate the effects of CRs and other budget uncertainties on agency operations.

Agencies must act within their authorities to manage their programs in the face of funding uncertainties and constraints. We believe the experiences identified in our work provide useful insights for Congress.

This concludes my statement. I look forward to answering your questions.

Senator PAUL. Thank you, Ms. Krause.

Our next witness is Clint Brass, who is a Specialist in Government Organization and Management at the Congressional Research Service (CRS). Mr. Brass is here to talk about how the process is supposed to work and what happens when it does not, what goes on at agencies when they are on a CR or worse during shutdowns, and how the process has evolved over time.

Mr. Brass has a bachelor's degree from Cornell, a master of public policy from Michigan's Gerald Ford School, and an MBA from Wharton School at the University of Pennsylvania.

TESTIMONY OF CLINTON T. BRASS,[1] SPECIALIST, GOVERNMENT ORGANIZATION AND MANAGEMENT, CONGRESSIONAL RESEARCH SERVICE

Mr. BRASS. Thank you, Mr. Chairman.

Chairman Paul, Ranking Member Peters, Members of the Subcommittee, thank you for the invitation to testify. As requested, this testimony focuses on interim continuing resolutions, their purposes and effects, and related subjects, including the possibility of a government shutdown.

The written statement goes into more detail, and I would like to acknowledge the work of CRS colleagues from which the statement benefits, so some highlights.

[1] The prepared statement of Mr. Brass appears in the Appendix on page 42.

First, context. The power of the purse is a legislative power. The Constitution provides that funds may be drawn from the Treasury only through appropriations made by law. Nevertheless, the Constitution does not spell everything out. So the budget process has evolved with statutes, chamber rules, and the use of discretion.

As practiced in recent decades, the process entails many subprocesses, and many actors are involved. If problems are perceived with aspects of the overall process, it may be fruitful to look at these aspects but also how they relate to the whole. Notably, changes to the budget process may affect power relationships and influence policy outcomes. Proposals may be controversial, therefore.

During high-stakes negotiations over annual appropriations measures, several options present themselves to Congress and the President. These include coming to agreement on regular appropriations acts by October 1st when the fiscal year begins or using one or more interim CRs to extend temporary funding beyond October 1st until decisions are made on full-year funding or not agreeing on full-year appropriations or interim funding in a CR, resulting in a temporary funding gap and a corresponding shutdown.

As has been noted in practice, CRs are commonplace in the Federal budget process. During the 25 fiscal years covering fiscal year 1952 to 1976, one or more CRs were enacted during all but one fiscal year. From fiscal year 1977 to present, all of the regular appropriations acts were completed before the beginning of the fiscal year in four years out of 42, including this one.

In general, interim CRs are intended to, one, preserve congressional funding prerogatives to make decisions on full-year funding and, two, to prevent the government shutdown during negotiations within Congress and between Congress and the President.

Consequently, interim CRs include significant restrictions on agencies. An interim CR may be structured purposefully as less than optimal in order to retain incentive for negotiators to come to an accord.

If restrictions would cause major disruptions, a CR may include exceptions to the restrictions or so-called anomalies. Anomalies tend to be rare, however.

Thus, apart from preserving prerogatives and preventing a shutdown, CRs may have significant effects. First, the restrictive funding level and pace of an interim CR may affect an agency's activities; for example, agencies may reduce or delay hiring staff or awarding contracts and grants.

Second, an agency may experience uncertainty about what its final funding level and composition of the funding will be. Uncertainty may cause an agency to alter its operations, rates of spending, and spending patterns.

Third, because an interim CR imposes tight restrictions, it may increase an agency's administrative work burden.

Fourth, a CR's prohibition on new projects may delay or disrupt an agency's ability to undertake planned activities and also to be nimble in response to events.

In 2008 and 2009, CRS and GAO each explored potential and reported effects of interim CRs. GAO also identified factors that in-

fluenced how agencies manage during CRs and mitigate uncertainty.

While common themes emerge from analyses like these, the specific reported impacts vary across agencies and from year to year, as one might expect from agencies with varied missions and funding mechanisms.

Looking ahead, CRS takes no position on the advisability of particular options. However, if options for legislation or oversight or further study are of interest, potential strengths and weaknesses may be explored and analyzed.

In the meantime, I would be happy to answer any questions. Thank you.

Senator PAUL. Thank you, Mr. Brass.

Our next witness is Maya MacGuineas, President of the Committee for Responsible Federal Budget and the head of the Campaign to Fix the Debt. Ms. MacGuineas is one of the leading voices on budget policy. She has testified numerous times before committees on the dangers of our fiscal trajectory and has worked on several commissions to reform the process and right the fiscal ship. Her work has caused The Wall Street Journal to dub her an "anti-deficit warrior." That is great.

Ms. MACGUINEAS. Like that?

Senator PAUL. Congratulations. I just wish we are more effective at listening.

Ms. MacGuineas has a bachelor's degree from Northwestern and is a graduate of the Kennedy School at Harvard.

Ms. MacGuineas, you are recognized.

TESTIMONY OF MAYA MACGUINEAS,[1] PRESIDENT, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET

Ms. MACGUINEAS. Thank you so much, and thank you very much for your kind words about Ed Lorenzen, who was an invaluable colleague, and doing a hearing on CRs without him, it just does not feel right.

So thank you to the Committee for having us here today, and I will touch on several main points.

First, budgeting is one of the most basic functions of governing, and we are failing at it.

Second, CRs and omnibuses represent a failure of the budget process, as do obviously shutdowns.

Third, our fiscal situation is approaching dangerous territory, and we seem utterly intent on making it worse.

And finally, there are multiple ways to improve the budget process, though none of them will replace the actual political will that it is going to take to fix this.

So budgeting is central to governing. It is the opportunity to agree to national goals, to contemplate the policies to achieve them, to lay out the means of financing them, and our budget reflects our values, our priorities, our Nation's game plan, and our shared purpose as a Nation. So no business would consider operating without a thoughtfully designed budget, and certainly no country should.

[1] The prepared statement of Ms. MacGuineas appears in the Appendix on page 52.

And yet, the way we budget now represents how broken our process of governing has become, and basically, our budget process is completely different, what we have on paper and what we have in reality.

So the process we engage in suffers from a number of shortcomings, including a lack of transparency, a lack of accountability, a focus on the short term, an abundance of gimmicks which seem to grow with every budget session, auto-pilot spending for both mandatory spending and tax expenditures, and increasingly terrible fiscal outcomes. The fact that shutdowns and defaults are sort of part of the budget terms right now is just utterly alarming.

The breakdown of the budget process has caused policymakers to bounce from one self-imposed crisis to the next. We have already heard a lot of the details about the cost and the specific shortcomings involved in CRs and omnibuses, so I will just say that both of them are both qualitatively and quantitatively problematic. I will focus a little bit on the cost of must-pass legislation, which is something that is becoming incredibly costly and we are experiencing right now.

In the most recent example, just a few weeks ago in the CR which ended the brief shutdown, we actually tacked on $31 billion to our debt to pass that legislation; that is, if it were made permanent, that would be close to $300 billion in borrowing. That was part of that.

And it now appears that we are on the verge of a new budget deal. Rumors have it adding about 300-to $400 billion to the debt, and what is happening now is these financing methods, this borrowing is being added to bills without any discussion. It is as though the issues of deficit and debt have just kind of disappeared, and because of these must-pass bills, there is always an opportunity to tack more things on.

Because I am really pleased that you are doing this hearing in a bipartisan way—it seems that most often things that are bipartisan only get there because both parties get to borrow for the things they want instead of working on bigger budget deals.

This all is happening also while our fiscal picture is already quite alarming. Things were very bad a year ago when the debt was at a near record level, the highest that it has been relative to the economy since World War II.

Since then, as the result of an incredibly costly tax bill, our debt trajectory is much worse than it was before, and now we appear intent on making it even worse with stunningly little resistance as we put more into these CRs and other spending maneuvers.

We are in the midst of what I see as kind of a fiscal free-for-all, and we are soon going to see trillion-dollar deficits that have returned during a time of economic expansion. Last time we saw that, we were in the midst of a huge downturn, but now we are going to have a trillion dollars that are completely self-imposed at the time where we should not be borrowing. We should be getting control of our debt so that we have enough fiscal space to deal with the future crises and downturns.

There are multiple ways that we can think about improving the process, and there are certainly few defenders of the current process that we have right now. But again, I do want to emphasize that

budget process reform will in no way be able to replace the political will to confront the issues that we are trying to fix.

I would group the kinds of fixes into three categories, basically incremental reforms, increasing punishments or stronger enforcement mechanisms, and finally a major overhaul to the budget process.

I put myself in the camp of preferring a major overhaul because I think that is how big of a change we need to meet the challenges of today.

That said, I quite honestly do not think that Congress is ready for the kind of big choices that will be necessary in that. So I am very encouraged by the ideas of some of the incremental steps that would show we can make improvements, work together, and it is really important that they be done in a bipartisan way because budget reform or budget process is about creating rules that people think are fair and, therefore, they will stick to them.

In the incremental reforms camp, I would certainly put the automatic continuing resolutions, which is something that, Senator, you have put forth, and there are a couple of ideas about that. And I think that would go a long way to helping address the issues that we are confronting in the budgeting process right now.

I would also add to that other ideas like biennial budgeting, joint budget resolutions, which would all address some of the problems that are going on.

In terms of stronger incentives or larger punishments, there are a lot of ideas that have been put out there: no budget, no pay; canceling congressional recesses; prohibiting consideration of bills that have fiscal impacts until a budget has been passed; and compelling the Senate to be in session in the chamber if the government has shut down.

Finally, there is the approach of a major overhaul. We find when we study budget process, we find that rules do not actually succeed as well in forcing action as they do in enforcing action that has already been put in place.

The Peterson-Pew Commission and the Better Budget Process Initiative, which Ed Lorenzen ran for us, has come up with a lot of different recommendations, but basically they center around a major overhaul that would focus on picking a fiscal goal, putting in place a multiyear budget that would achieve those fiscal goals, and much stronger enforcement techniques to keep that budget on track.

This would also include budgeting for entitlements and tax expenditures, and I think all of these changes would make coming to agreements in the front end much more difficult, but it would greatly improve the fiscal outcomes.

I know that our country can do better than we are doing currently in terms of budgeting. I think that is one thing we can all agree on, and I am very encouraged about focusing on budget process as a place to begin this process. So thanks so much for having us today.

Senator PAUL. Thank you, Ms. MacGuineas.

Our final witness is well known in budget circles and beyond. Dr. Alice Rivlin is a Senior Fellow at Brookings Institute and a Visiting Professor, Public Policy at George Washington. She has a sto-

ried background in Federal budgeting, going back to the inception of the Congressional Budget Act. She served as the first Congressional Budget Office (CBO) Director from 1975 to 1983, as the Office of Management and Budget (OMB) Director during the Clinton Administration, and has been a big part of various groups whose aim is to reform and improve the budget process.

Dr. Rivlin holds a Ph.D. from Harvard, a bachelor's degree from Bryn Mawr, both in economics.

Dr. Rivlin, thank you for joining us.

TESTIMONY OF ALICE M. RIVLIN, Ph.D.,[1] SENIOR FELLOW IN ECONOMIC STUDIES, THE BROOKINGS INSTITUTION

Ms. RIVLIN. Thank you, Chairman Paul and Ranking Member Peters and Members of the Committee.

I am grateful to this Subcommittee for holding this hearing to call attention to the total breakdown of the Federal budgetary policymaking process. I believe this breakdown is a serious threat to our democracy and to America's future prosperity.

I would like to emphasize three points. First, the major cost of failure to agree on a budget for the current fiscal year is not the short-term cost of uncertainty and inability to plan for efficient spending, although these costs are real, as the GAO and others have pointed out. Rather, preoccupation with short-term budget warfare makes it impossible for the Congress to face up to the long-run challenges ahead and adopt policies to deal with them.

These challenges are daunting. We have an aging population combined with high health costs. We have slow productivity growth and lagging wages. We are facing climate change and rising frequency of natural disasters. We have had huge increases in inequality of wealth and income and rapidly growing national debt combined with rising interest rates. As Maya and others have emphasized, these are very serious problems, especially the debt.

These are tough problems to manage individually and collectively. They require consensus building and bipartisan deliberation. No one party has all the answers, but blaming and bickering over short-run CRs or converting them to omnibus bills has eclipsed serious efforts to craft long-run budget policy and economic policy.

Second, the biggest obstacle to constructive economic policymaking, I think, is extreme partisanship and the rejection of the once-honored art of consensus building and bipartisan negotiation. The Framers of our Constitution bequeathed us a policymaking system that requires compromise and consensus at every stage of legislating. If we forget that and pretend we have a winner-take-all parliamentary system in which the majority party calls all the shots, we will be doomed to gridlock and wild swings in policy.

Major tax and spending legislation, including health care, that affects millions of people's lives must have bipartisan buy-in to avoid the other party demonizing the policy and trying to reverse it after the next election.

Moreover, differences among us are not as stark as they appear. Crafting tax and spending policy that can command broad public support involves a pragmatic balancing of competing interests and

[1] The prepared statement of Dr. Rivlin appears in the Appendix on page 59.

values, negotiating modest changes along a continuum, and not scaring a public that is generally afraid of radical change.

Bipartisan negotiation and consensus building must become, again, a normal part of congressional decisionmaking, not a desperate response to artificial deadlines if the American democratic process is to regain the confidence of voters and the respect of countries that look to us for leadership.

And finally, although budget process changes are, as all of us have emphasized, not a substitute for bipartisan will to solve problems together, they could help to make the task easier.

The late Senator Pete Domenici and I, under the auspices of the Bipartisan Policy Center, made a proposal in July 2015 that I believe encapsulates the main elements of a more workable budgetary process. The proposal had three main themes. One, the budget process should include all Federal spending and revenues. It should not leave out the huge spending on entitlements and other mandatory programs or spending through the Tax Code that together now dominate the Federal budget.

Second, the budget should be transparent, and the process should contain strong incentives for on-time completion, including, I think, an automatic CR with some penalties, as you proposed, Mr. Chairman.

The budget should also have buy-in from the President and leadership of both houses.

I also believe that Congress would benefit greatly from simplifying the Committee and Subcommittee structure to reduce overlapping jurisdictions. Simplifying the budget itself by drastically reducing the number of budget accounts would also facilitate more timely decisionmaking.

But no process or structural change will help Congress and the Executive Branch make decisions on the budget or resolve other major issues facing the country unless elected officials recognize that the public desperately wants you to get out of partisan attack mode and start working together to find solutions.

Thank you, Mr. Chairman and Members of the Committee.

Senator PAUL. Thank you, Dr. Rivlin.

At this point, we will open it up for questions, and I know Senator Peters has a conflict, and so we are going to let him go first. He may have to leave us for another committee.

Senator PETERS. Thank you, Mr. Chairman. I thank you for the opportunity to ask the first questions. Again, thank you for this hearing.

I also want to recognize Senator Jones, who I think is joining us for the first time, so welcome to the Subcommittee. I am sure you will enjoy it. It is good to have you here.

Well, I certainly appreciate the testimony of all four of you. It clearly highlights the pickle that we find ourselves in and the fact that we have to fix this system.

One way in which Congress has dealt with this issue in addition to CRs are the omnibus spending bills which, as you know, just lump everything all together in one year. And all of us who are not part of that process basically get one vote to fund this incredibly large enterprise called the Federal Government of the United States.

We are looking for some ways to get more involvement, where members have an opportunity to deal with some of the issues that you brought up.

So I am going to bring up a proposal that my colleague, Senator Lankford, has actually raised. He is not with us here today. He had another commitment, but I wanted to bring up his idea, which would give members the opportunity to consider alternative approaches and be involved in the appropriations process. His proposal would have us work on each appropriation bill, as we normally would through the Committee, have that regular order process, and then strike a deal to have not one omnibus but perhaps several omnibus to put some of these budgets together, so three or four separate minibus appropriation bills. Rather than push through a formal change in the rules, we would consider each bill with a set time agreement and number of amendments, so members could actively engage in this process and offer amendments through these smaller, presumably more manageable, minibuses.

It seems to be an alternative idea, but I wanted to hear from Dr. Rivlin. Ms. MacGuineas, maybe if you would not mind commenting on whether you would see that as a positive step forward, or do we need to do something different?

Ms. RIVLIN. I would see it as a positive step forward in the sense that three or four minibuses seems better than one omnibus.

Senator PETERS. Right.

Ms. RIVLIN. It still is going to be a large bill, and the amendment process seems crucial. Also the hearing process, which is in the appropriations committees, which seems to have fallen a bit into disuse, but that seems to me an improvement. But you could go further.

Senator PETERS. Right. Ms. MacGuineas.

Ms. MACGUINEAS. Yes. So I would share that. I think that is an improvement for sure. I do not think it would be the bigger kinds of overhauls that I am kind of drawn to, and when I think about budgeting, I think you want to make sure every step of budgeting, you are going through the basic process of what is the objective, what are the different options for achieving it and what are the pros and cons of those, how are you going to finance it, and how are things working, the evaluation process.

I think a lot of those big-picture things are lost in the appropriations process, but I certainly think this is an improvement because I think bills where you have more of a chance to understand the details and more people are involved in being engaged in that is clearly important because appropriations is just kind of this foreign area to so many people where they do not understand what is going on in there, and so drawing more people into the process at a greater level of detail is definitely a plus.

Senator PETERS. Great. Thank you.

The other issue that I have with CRs is one shared by folks in the military in particular—I serve on the Armed Services Committee and actually have Secretary Mattis testifying before us today on our National Security Strategy—is the fact that it is very difficult for the military to make any long-term plans in a CR process.

Ms. Krause, I would like you to elaborate a little further on how you see continuing resolutions impacting the military and its readiness. That would be helpful for us to understand why relying on CRs is such a bad idea.

Ms. KRAUSE. Sure. We have not done work looking specifically on the military issues in terms of CRs, but certainly, in looking at other agencies that deal with contracting, which Department of Defense (DOD) obviously does, they will delay contracts until they know the amount of money they may have at the end of the year. They will put that off. They delay hiring when dealing with CRs. Compressing those processes can sometimes reduce the quality of the competition of contracts. There are a number of inefficiencies that come from managing within CRs.

Senator PETERS. Anybody want to add anything related to Department of Defense? Mr. Brass.

Mr. BRASS. Just that my colleague at CRS, Lynn Williams, has a couple reports on the subject that I am sure she would be happy to talk with you and your staff about.

Senator PETERS. Great. We would like that.

Ms. MacGuineas, I am interested in your thoughts about the deficit. You are the deficit attorney. Is that what I heard?

Ms. MACGUINEAS. The anti-deficit warrior.

Senator PETERS. Anti-deficit warrior.

Ms. MACGUINEAS. It was not my Halloween costume, though. [Laughter.]

Senator PETERS. You said that is not your Halloween costume? She did.

Ms. MACGUINEAS. Someone else dressed up as the debt.

Senator PETERS. Oh, OK. Well, it is——

Ms. MACGUINEAS. Anti-deficit warrior.

Senator PETERS. I would be curious as to your thoughts on long-term effects. You mentioned some of that in your testimony—and, Dr. Rivlin, you did as well—as to how do we deal with these long-term, fundamental, structural problems that we have with our deficit when we are in the process of using these CRs. It complicates things immensely. Would you just further elaborate on that?

Ms. MACGUINEAS. Yes. It complicates things immensely, and as Alice said, it takes all of the oxygen away from solving the real problems that we need to on the fiscal front.

So the first thing is that budget deficits, balancing the budget, they are not an ends in and of themselves. They are part of a comprehensive economic strategy, which is critical for the country right now, particularly right now, because we have this aging of the population. Growth is going to be slower than it has been before. We need to do everything that we can to help promote growth but share broadly, and a key piece of that is sustainable fiscal policy.

We all know anybody who reads CBO reports or looks at these numbers knows that the big drivers right now are the aging of our population, health care costs, interest payments that are growing faster than the economy writ large, and revenues that are not sufficient to pay for the level of spending that we have decided to spend. If we do not spend our time focusing on that, what it does is it leaves us in a situation where it harms us economically. High levels, excessively high levels of debt slow economic growth. It

means that interest payments are pushing out whether you care about tax cuts or spending increases. If you are spending more on interest payments, it is not going to those things. It leaves us completely vulnerable to the next economic downtown or national disasters when they come along because we are not able to borrow for the things that we would, and at some point, there is a potential that there would be a fiscal crisis.

I do not think, because this country is the safe haven, that is likely to happen soon, but it could. And why are we trying to test the boundaries of when it would?

So you want to have a sound fiscal policy, which means your debt is not growing faster than the economy. We do not have that, and we know there is no way to fix that without dealing with the drivers, meaning entitlement reform and tax reform that is ultimately going to generate more revenue. We just made that more difficult.

We have to really go with the big drivers of the debt and get the debt. It is twice relative to the economy what it has been historically. We have to get it so it is not growing faster than the economy.

Senator PETERS. Well, I want to pick up on what you said, because I think it is important as we are looking at dealing with the deficit to understand that this is probably a three-legged stool. One, you have to grow the economy, but also you have to deal with, two, revenue and, three, cost. We are focusing on the spending side of it right now, but revenue is a piece as well.

And given all of the challenges that you just outlined, which I agree with, and as we continue to be on an unsustainable fiscal course, this Congress just passed a tax cut that is going to add $1.5 trillion to the deficit. How should that have been done differently, perhaps, so that we do not just keep digging a deeper and deeper hole, which we just did a few weeks ago?

Ms. MACGUINEAS. So we desperately needed tax reform. There was no question that our Tax Code was anticompetitive, antigrowth, and we are taxing the wrong things.

Revenue-neutral tax reform or tax reform that ultimately raised more revenue would have been better for us fiscally.

There were arguments out there that the tax cuts will pay for themselves. They will not, just as spending programs will not pay for themselves.

Tax reform that is not debt financed actually grows the economy more than tax reform that is.

So it seemed very unwise to me to add to the debt through tax reform, just as it would through spending increases, and we are going to either need to figure out how to do a lot of the base broadening that we should have done as part of tax reform.

Before this bill, we had $1.6 trillion in tax breaks in the Tax Code a year. The whole point of tax reform is to get rid of as many of them as possible and bring rates down. We did not get rid of basically any of them, so we need to broaden that tax base to generate more revenue, and I think ultimately, we are going to have to consider other revenue increases, but I also do not want to take the eyes off the picture of entitlement reform, which has disappeared completely from the conversation. And there is no way to

get that fiscal situation under control without looking at both those sides of the budget of mandatory spending and revenues.

Senator PETERS. All right. Thank you.

Senator PAUL. In an attempt to reward attendance at Subcommittee Committee meetings, I am going to our newest Senator, Senator Jones.

OPENING STATEMENT OF SENATOR JONES

Senator JONES. Thank you, Mr. Chairman, and thank you, panelists, for being here.

I have to tell you, as the new kid on the block here, I do not know where to begin because I came into this with the same concerns, almost with my hair on fire, with the same concerns that you have expressed.

Ms. MacGuineas, during my campaign, I had the same concerns about the tax bill. I talked more about the fact that we were increasing the deficit by $1.5 trillion. Of course, when I questioned the Treasury Secretary about that the other day, he said, "No, no, no. We disagree with that." I think he is the only one.

But I would like to go back to something you said about the political will because having just come off of the campaign trail, I did not see out there among the public, the same kind of concerns about the deficit that I have.

Having grown up with a Senator, Howell Heflin, who was a balanced budget fiend, I just did not see that. As I get here to the Congress, I am not seeing a whole lot of people who are willing to step out there to be a candidate for the Profiles and Courage Award with regard to deficits.

So one of the questions I have is how do we get this message across. What do we do? Because in order to develop the political will in this climate, so much has to bubble up from people who are actually going to vote, and they have to express concerns. People who are getting these tax cuts, even though they may be very modest tax cuts, they are still important to those folks. So how do we do that?

I would like to hear all of you to talk about how we can engender the public to understand and know what we are going through and what this future holds.

Ms. RIVLIN. I think that is a very good question, Senator, and welcome to Washington.

Senator JONES. Thank you.

Ms. RIVLIN. I think that we have to do several things at once. There is no substitute for leadership, both in the Congress and in the White House.

I am a veteran of the period in which President Bill Clinton and Speaker Newt Gingrich—"worked together" is perhaps not the right word. It was not all that friendly, but it was a negotiation toward the same goal, and both of them were articulating the goal of getting to a balanced budget, and in fact, as a result of that negotiation, we got beyond a balanced budget. We had a surplus at the end of the last century, which was the result of bipartisan cooperation to do some things that neither side really wanted to do, but which got us to a balanced budget.

I think we have to get the leadership of both parties cooperating, and they will not want to get there in the same way. We know that. But if we are going to get to a lower growth in our debt, which is a rather modest objective compared to balancing the budget, we have to get there with both parties being willing to give something and to say, "OK. We do not get everything we want, but we will get part of it," and it will result in slower growth of debt.

Senator JONES. Ms. MacGuineas.

Ms. MACGUINEAS. Yes. Also, welcome to Washington.

Senator JONES. Thank you.

Ms. MACGUINEAS. It is a really important question, and we have spent so much time grappling with this. And the bottom line is this will not be a grassroots issue that starts at the grassroots. There will not be Million People Marches about the debt, as much as I wish there were.

But it is an issue that the grassroots understand when people go and talk to them. So things will change either from the bottom up or top down. This is going to have to start with political leadership. It is going to have to start. The President is going to have to be a part of it, and it is going to have to be bipartisan political leadership for people to believe it.

But then people find that if they go talk to voters, they do understand the issue. You have to talk to them not just about this is a problem and why and because it is so shortsighted and it harms our economic sustainability, but you also have to let them know that the solutions are not easy because the problem is nobody wants higher revenue or lower spending.

In fact, Republicans do not even want to cut spending, and Democrats do not even want to really raise taxes. That is the dirty little secret that nobody wants to do the hard choices on either side.

I think where you start is you talk about a shared fiscal goal. It used to be reaching balance. The sad situation is that our fiscal situation is so bad, we probably cannot reach balance as quickly as we would like to, but we certainly should get the debt back down to sustainable levels.

Then there are ways to take people through the exercise of looking at how you get there. We and other groups have budget simulators. We will go to do town halls with Members of Congress and take them through the budget exercise of the different ways to fix the debt, and that is very educational for voters. We do that a lot. They learn a lot. They start to understand the real parameters.

Ultimately, I think they tend to come to the conclusion you cannot do this without compromising and doing things you would not want to, but that the final goal of achieving something like that is worth it. And so I think it is a big issue of education from the top down, and the coalition of strange bedfellows, doing it with other members who you do not agree with, but you share this goal, helps people believe that it is important.

Senator JONES. All right. Mr. Brass and Ms. Krause, do you want to add in? My time is about running out, but that is fine. If you would like to add something, please do.

Mr. BRASS. I will just add that one suite of options that Congress might consider in this context is how to engage with the public in

sharing information about the tradeoffs that may be implicit and choices. A former colleague of mine, Wendy Ginsberg and I did a paper where we looked at the past century of how Congress has embedded public participation and additional transparency into multiple aspects of how the Federal Government operates, and there might be creative ways to engage the public in those conversations.

Senator JONES. All right. Ms. Krause?

Ms. KRAUSE. Just very briefly, we now do an annual report on the fiscal health of the Federal Government, and that has been a good communication tool in terms of helping explain the issue.

Senator JONES. All right. Great.

I think my time is up. Mr. Chairman, thank you.

Senator PAUL. Thank you.

Well, I think we all can agree, the panel seems to agree, both sides of the aisle seem to agree that continuing resolutions, shutdowns, and even omnibuses are not the idea way to do this, and that they do lead to problems.

The problem becomes, now that we all agree, how come we cannot figure out a solution if we all agree, and so we all agree there is a problem. We tend to all say, well, we ought to pass the 12 appropriations bills, and everybody will say, "This is the last one I am voting for. This is the last CR I am voting for. We are going to fix it," and yet it does not get fixed.

So there has to be something that has to change, and I agree with you that we can have these process changes, which I am for and I proposed some of them, but really it is also political will. People have to have the will to actually do the right thing because in the past, we have tried process changes. We have a PAYGO rule, which is a great idea. I think it was passed actually with the Democrat majority in 2010 the last time, and yet I think we have evaded it 30 times at least at last count. So we set up rules, and then we disobey our own rules.

The sequester turned out to be the best thing to slow down the rate of growth of government in a long time, and it actually worked. We actually did reduce overall spending for a year or two, and we were heading in the right direction. Yet the compromise we have in Washington is both parties want to exceed the sequester caps now. Republicans loudly want more military spending. The Democrats say, "Well, we will give you that as long as you give us ours." Everybody gets a little bit. So we have the reverse of the compromise that is needed. We continue to increase all spending.

And then others will say, well, that is the discretionary spending. It is really the mandatory spending, which is growing at about six percent.

So I think if you want to see how bad the picture is, you can eliminate all the discretionary spending, and you do not balance your budget. So you really do have to look at the growth of mandatory spending, but it becomes more difficult when we look at things that people have expectations for. But you cannot grow at six percent. There is no way, that and the demographics. There is just no way you can continue that. So we look at some of the ways to do it, and I think there has to be some sort of punishment.

Now, we could have continuing resolutions instead of shutdowns, but if we just did that, have we really fixed or helped the problem? It may be better than having a shutdown, but then we would be just stuck with continuing resolutions that would roll on and on, and we would have eliminated one problem, a shutdown.

So really what I have proposed and what I would like to hear sort of each of you comment on is we have proposed a punishment, a hammer, and the hammer is basically spending goes down by one percent. And we know both sides do not want spending to go down. They are all for more spending. So maybe they would say, "Oh, my goodness. All the special interests who want this money will be knocking on our door and yelling and screaming," so then they would do it on time.

I frankly think it is not too much to expect to do 12 appropriation bills. You could have a couple of months, two or three months of committee hearings and then nine months, take a couple of weeks, take three weeks for each bill. Three weeks would be an enormous amount. We rarely spend more than a week on a bill, and we rarely have amendments. Do three weeks for each of the 12 appropriations bills and three months' worth of hearings, and this is our main job, spending the money.

But, anyway, I would like to hear what your thoughts are on my proposal, the Government Shutdown Prevention Act, which would at the end of the fiscal year, after 12 months, if there is not an appropriation bill done, then you get a one percent across-the-board cut every 90 days until Congress does its job.

Why do we not just start with Dr. Rivlin, and we will work our way down.

Ms. RIVLIN. I am for it, Mr. Chairman. I think that would help.

Let me suggest one other thing, which sounded gimmicky to me when I first heard about it, but it would be no recess until you pass a budget resolution. That gives you a framework for the appropriations bills, and I think that might work.

Senator PAUL. Yes. I like the no recess idea, and I think actually it might work. You would be surprised how often people want to either go home or go somewhere else besides Washington, and that might help. Ms. MacGuineas.

Ms. MACGUINEAS. Yes. I also support it. When you are thinking about triggers or defaults, you have two models, either ones that are so awful that you will never let them hit—that is what the sequester was supposed to be, and it turned out we let it hit. And like you said, it actually ended up controlling spending, though I would say on the part of—the less problematic part of the budget—or you have defaults of policies that you would want, and you let them go in place automatically if Congress is not going to do its job.

So I think the automatic CR is an important idea. I think your idea of including things that would incentivize people to come to the table is also very important.

I will share with you that when we did the Peterson-Pew Commission a number of years ago, our Republican members actually said we should not have the triggers be just spending cuts because enough of our colleagues will actually like them. We should also have some revenue increases. So there are different models that

you could think, which is would both sides dislike it enough. I think it is important to have something that would bring everyone to the table and realize that what they need to do is their job.

Senator PAUL. I think you made a good point in the beginning, talking about extending the sequester instead—that people complain just in the discretionary. You are right——

Ms. MACGUINEAS. Yes.

Senator PAUL [continuing]. If we had the sequester across the whole thing, one, it takes pressure off of military spending. It takes pressure off of the other domestic spending, and it spreads it across. You would really fix government actually if you had an automatic sequester.

The other thing is that with the sequester, I have also advocated that people complain that it is every department across the board, that let the departments move their money around a little bit to deal with the sequester, and I think that could have overcome some of the objections. But yes, sequester across the board would have actually fixed government, but they do not want to sequester at all. Just a handful of people are for any restraints or budget caps at all anymore, and you are going to find out this week, they are going to blow through all of the budgetary caps. Mr. Brass.

Mr. BRASS. I have not studied your legislation in depth, but I do have colleagues who focus on the topic of automatic continuing resolutions. As you know, CRS does not take positions on pending legislation, and so as a consequence, we oftentimes go through perceived strengths and weaknesses of different approaches from a variety of points of view. It could be an action-forcing mechanism. It could be a way to avoid disruptions in government operations, but on the other hand, it could create winners and losers in policy terms. So when looking at those various considerations, it becomes a complicated topic to look at, certainly.

Senator PAUL. Ms. Krause.

Ms. KRAUSE. Similarly, ultimately, it is up to Congress to decide whether to alter appropriations process.

I think just through our work one of the considerations that comes up is not only do shutdowns, as we have found, start and stop the work and create inefficiencies. Even if there is not a shutdown and there is a possibility of a shutdown, there is a lot of planning and time that can go into that, so having something like this could address some of those issues.

However, some of the details can be very important. I think some of the other panel members have mentioned the incentive to bring people to the table and be willing to still negotiate and come to a final agreement. Then also Congress sometimes uses anomalies within the CR to address specific issues for agencies, so that is something that may need to be considered.

Also, our work on sequesters gives a little more insight into this issue as well. On the one hand, across the board-cuts give fiscal discipline when we fund with a sequester, but on the other hand, it can equally cut good and bad programs, and so you are not shifting around to what is more effective. These are just some considerations.

Senator PAUL. Yes. I personally think if you had leadership that at the beginning of the year had all 100 Senators sit down in the

chamber and said, "Look, we are going to do all of the appropriation bills, and we are going to spend three weeks on each appropriation bill, and there will be as many amendments as you want. And as a consequence, the only thing I am asking you to do, so we can get to that, is to not filibuster going to these bills.

And even myself, who probably would not like the spending level and might vote no on the spending level, I could agree not to filibuster to simply get to the bill, but no one has ever asked that. No one has ever come forward and said, "We are going to do this, and we are going to get through them." Although the House did, I think, all 12 appropriation bills last year, so it can be done and really is the main thing we should be doing. It is spending the money and deciding how the money is going to be spent.

We talked a little bit about a sort of punishment to try to get it done, decreasing spending or increasing taxes.

The other idea that was mentioned earlier was biennial budgeting. How much of the problem would be fixed by spreading it out so we had a little bit more time, I guess, basically?

And why do we not start with Dr. Rivlin again and go down.

Ms. RIVLIN. I think a biennial budget would be a good idea, and I would not spread it—the danger would be that you would take the whole two years to make a budget. [Laughter.]

The concept of the proposal that I have been part of is you do get the budget done for two years in the first nine months of the year, so you start on the fiscal year on October 1st.

I do not think it is a panacea, but I think it would free up some time to do other things. It would allow agencies to plan better if they could get an appropriation for two years.

Now, admittedly, things happen. You have fires and wars and whatever, and you would have to do a supplemental in the second year, but you would not be reviewing the whole budget. So I think it is a good thing.

Senator PAUL. Yes. And I think from the Constitution, I think Defense would have to be done every year, but the rest of them could be biennial. I think you have to appropriate Defense every year, according to the Constitution.

Ms. RIVLIN. That could be, but the Defense Department actually was the leader in doing a two year appropriation in—I forget when. The Congress did not like it. They liked to do it annually.

Senator PAUL. Even if only one department had to be done every year, it would still be, I think, a good idea. Ms. MacGuineas.

Ms. MACGUINEAS. We support it. We do not think it would make major differences. We do support it for a couple of reasons. One, I think the additional focus on oversight and evaluation is a lot of where the emphasis should be.

Two, there is a lot of support for it, and if we could get something done and some changes, we think success, to get more success, it would be good in that way.

I am a procrastinator. I very much worry that Congress—OK. Congress is a procrastinator.

Senator PAUL. We have a history of that.

Ms. MACGUINEAS. Yes. There is nothing that gets done until your back is against the wall these days, so I definitely worry it is not the moment where this would be a big overhaul that would work.

But I think passing something and changing the budget process right now is really in order. And so I would like to see part of a package.

Senator PAUL. Not pro or con on the legislation, but pros and cons of a single versus a biennial budget. If you have a comment, feel free.

Mr. BRASS. Yes. We have that constraint in how we look at things and discuss things.

My other panelists mentioned some of the potential pros that come along with the biennial budgeting process. It could create extra time for oversight in a second year.

It could also shift power relationships, in particular, between the Legislative Branch and the Executive Branch.

One aspect of the annual budget process that we have is that when appropriations committees put concerns or warnings or exhortations in report language to agencies, agencies know that the following year, folks in Congress are going to be looking at whether agencies complied or listened closely. If budgeting is done every two years, it might decrease by 50 percent the opportunities then for Congress to come in and say, "Well, wait a minute. You guys did not do what you said you were going to do," and so there might be some changes in behavioral incentives with agencies.

Senator PAUL. Ms. Krause, do you have a comment?

Ms. KRAUSE. Sure. The only other consideration, as we have already talked about the opportunity for increased oversight, is also—it increases the planning timeline for agencies, so it increases up to 30 months when you are trying to look out that far. So sometimes with forecasting, that can be very challenging.

Senator PAUL. I think one of the ironies of the way we spend money is you will find, Senator Jones, that a lot of your day is occupied by people who come up here advocating for something they want money for, but the interesting thing is I have never, ever voted for any specific project or even for a group of projects because I have never voted for anything other than everything all at once or not.

So somebody comes up here and they want more money for legal aid or they want more money for this, I never have a vote on that. I do not even have a vote remotely close to that. So we have all these people advocating for stuff that we are not even paying any attention to.

On the one side, we are not paying attention to what we fund or how much. We are not paying attention to whether it works or does not work, and then we are never ferreting out misappropriated funds or funds that are going toward wasteful things.

To me, it is sort of a sad state of affairs, and that is why I think the accumulation of waste, we do not ever ferret any of it out, so it just keeps accumulating year after year after year because we just keep voting on continuing spending.

But I think if you think about it this way, if we were to vote—let us say we only passed five appropriations bills. That is five-twelfths of government that would not close down when we have a shutdown sort of debate, and so if you passed 11 out of 12, one, it gets rid of the leverage of shutting the government down too. So you really do not have much leverage, and I think it would get us

away from using the leverage of shutting down the government if we had already passed several of the appropriation bills.

So I think we have to do something, but I think ultimately, it is political will. It means electing people who care, and frankly, neither side cares, and that is a problem. Whether or not the public cares, I think they actually do. I think if you were to do a large survey of the American people and ask them should the government operate the way your family budget does, should you spend what comes in, I think, largely, they would. When you ask the public whether they are for a balanced budget amendment, 75 or 80 percent. But there is a lot of issues like that where 80 percent of the public is for something, and then 80 percent of Washington is on the opposite side of things. There is a disconnect in how we represent our people.

But I do appreciate you all coming.

Senator Jones, did you have any other questions you would like to ask?

Senator JONES. Just one, very brief. One, Mr. Chairman, I am intrigued by the one percent penalty, so to speak. I think that is a great idea.

I will say, Dr. Rivlin, for somebody from Alabama to shutdown, not have any recess during college football season is a little harsh for me. [Laughter.]

OK. I just wanted to get that on the record.

Briefly, Ms. MacGuineas, you mentioned entitlement reform. Could you give me just a brief idea of the type? I mean, my State gets a lot of dollars from what is referred to as entitlement. Can you give me a brief idea, not take a whole lot of time, but some of the ideas that you had on an entitlement reform?

Ms. MACGUINEAS. Sure. So first off, the term that I have learned, that a lot of people do not like entitlement reform—"entitlement," the term. I mean as mandatory spending, which is the part of the budget that is on automatic pilot. It does not go through the appropriations process, and so if you qualify for something, you get it.

We know that the growth of mandatory programs is what is driving the increase in spending, and like I said before, the biggest pieces of it are from the aging of the population and health care. It seems to me that if we start with the biggest programs, which are Social Security, Medicare, and Medicaid, and figure out how to make them solvent, that will go a long way to strengthening those programs and alleviating a lot of the pressure that is on the budget.

Just as an example, Social Security. When it started, the retirement age was 65, and life expectancy was 62. Today, the age is gradually going up to 67, and we are living much longer. We are not able to have reasonable discussions about reforming these programs. It is very political. If you start talking about it, you will see that you get a lot of pushback.

But there is no avoiding these issues. My personal belief is that we have to look at all parts. Take some of that Social Security. You have to look at the retirement age. You have to look at slowing the growth of benefits for people who do not depend on the program so that we can protect it for people who do. You have to look at the payroll tax gap. You have to look at it all. There is about five or

six levers that you move, but the sooner that we do it, the easier it is because right now baby boomers are moving into retirement every single day. That means it is becoming much more costly. These delays are costly.

Figuring out health care cost is much more difficult. Alice is one of the leading experts in the country on how to control health care cost, that is a part of Medicare Medicaid.

But what we do is we demagogue these issues, and we pretend we do not have to fix them. By not fixing them, they were making the people who depend on them increasingly vulnerable. And bearing our head in the stand is just not the right approach.

Senator JONES. Well, thank you very much, and thank you, Mr. Chairman. I am looking forward to working with you on this.

Senator PAUL. I think you hit the name on the head. We demagogue these issues. One part is going to push grandma off the cliff. One part does not care about old people, and really these are actuarial problems. We are living longer, and you are right. When Social Security was started, there was no need for pensions hardly because most people were not surviving beyond the retirement age.

But you can fix them. You can gradually raise the retirement age. You can means test. If we do nothing, though, when the cliff comes and when we run out of money, then it is everybody. Can you imagine somebody who lives on $600 a month who gets a 25 percent cut in their Social Security? That is not going to be tenable.

If we were to look at it now, the wealthier among us, including most Members of Congress, could agree to take some less in Social Security and be done gradually, and it really would not even be the whole check.

When we looked at this a couple of years ago, we looked at gradually raising the age to 70 over, I think, a 20-year period, a couple of months every year, and then means testing the benefits. Really, the means testing was not that draconian. A lot of people had to go through it, but really those who made—I think the top is $2,200 a month for Social Security. We took them to $1,900, and those are for people who made over $100,000 a year, but it had to come pretty far down. You had to means test all the way down to people who had a salary, maybe 50,000 or $60,000 a year, but you could do that through means testing, a little bit less Social Security and raising the age. You can fix them.

Health care is harder. When we looked at health care, raising the age and means testing it fixed about a third of the problem, and so health care is an enormous problem. From my mind, what you have to have is you really have to have competition, but a lot of people do not realize that health care in our country, over 50 percent of it is non-market based, really probably more than that because even most private insurance in a way is not market based in the sense that the price is not mobile, and you do not have different people offering a different price. That is what capitalism is. You have to have a mobile price and different people offering a different price.

But I do cataract surgery. Every surgeon in the country gets paid the same by Medicare, so there is no price competition in cataract surgery. Even in private practice with private insurance, Blue Cross pays all the doctors in my community the same. Aetna pays

them the same. United pays them the same. So nobody chooses their doctor based on price, and because that happens, there really is no competition and no capitalism really in health care.

So you would have to reinstitute that, but you have two sides up here in the debate. We have one side that really just thinks maybe government should be more involved, but if you do, then you have fixed prices, fixed distribution, and you will have to ration it and tell people they cannot get certain thing done. And they do that in other countries, but what we had before was not capitalism either and did not work either. So the old system of health care did not work. The new system does not work, and we still had this question of which direction to go, but Medicare is not easy to fix.

Thank you all for your testimony. Thank you for coming to this hearing, and thank you for your participation.

Ms. MACGUINEAS. Thank you.

Ms. RIVLIN. Thank you.

[Whereupon, at 3:41 p.m., the Subcommittee was adjourned.]

APPENDIX

I call this hearing of the Federal Spending Oversight Subcommittee to order.

Before we start I want to express this subcommittee's deepest sympathy to the family and friends of Ed Lorenzen, who was a Senior Policy Advisor at the Committee for a Responsible Federal Budget. Ed and his four year old son tragically passed away 12 days ago in a house fire. Ed was a well-respected member of the budget community and possibly the foremost champion of the pay-go rule; his twitter handle was "captain pay-go." By all accounts Ed was a great guy and dedicated budgeteer. Literally the day of his death, Ed was talking with my staff in preparation for this very hearing. So this tragedy is close to our hearts and it is with deep sympathy to his family that I ask everyone to join me in a moment of silence.

(Moment of Silence)

Thank you. We are here today to discuss continuing resolutions, omnibus appropriations, missed funding deadlines, and of course shutdowns.

This hearing is titled; *Terrible, No Good, Very Bad Ways of Funding Government.* I can't think of a better way to describe how dysfunctional Congress is with its power of the purse.

I often tell people, "I don't want to shut down the government but I'm not sure I want to keep it open unless we reform it."

If we are going to keep it open and continue to borrow a million dollars per minute then maybe it's time to have a real debate about deficit spending.

Today government is open and on its third CR. We are already 1/3rd of the way through the fiscal year and still on a "temporary" funding.

The last time we passed all appropriation bills on time was 1997 which was only the 4th instance all appropriations were done on time since 1977. Four times in 41 years, that is ridiculous.

Missing appropriation deadlines causes uncertainty in agencies and delays plans, which may increase costs to the taxpayer.

Delayed appropriations compress the funding window, meaning even good projects become lower quality as there is just less time to plan and obligate funds.

Another part of the problem that concerns me is that once we've gone beyond the funding deadline our incentive turns to doing an omnibus appropriation. That is where we glue together all the unfunded programs into one single, giant bill. The bill is passed and typically, no amendments are allowed.

How can Congress do proper oversight of spending when we throw everything into one giant trillion dollar bill?

Congress is supposed to take a close look at 12 appropriations bills, funding specific areas of government and debate and amend them.

Until Congress does its job, wasteful, deficit spending will continue and government shutdowns will continue to threaten us.

Nobody likes a government shutdown, but what amazes me is that even though about 85 percent of federal spending continues in a shutdown, it is less efficiently spent than under normal conditions – which results in more cost.

To prevent shutdowns, I have introduced the Shutdown Prevention Act, which says at the end of the fiscal year, anything still not funded will automatically be funded at 99% of its previous budget.

What should make this a win-win for everyone is that agencies will have at least a minimum level of certainty about their full year funding, something they don't have hopping from CR to CR. And these modest cuts will incentivize Congress, to avoid them by doing their our job on time.

So I think this is an important and timely hearing; and I thank Senator Peters for working with our office to set this up. With that, I'll recognize the Ranking Member for his opening statement.

U.S. Senate Homeland Security and Governmental Affairs Committee

Subcommittee on Federal Spending Oversight and Emergency Management

"Terrible, No Good, Very Bad Ways of Funding Government: Exploring the Cost to Taxpayers of Spending Uncertainty Caused by Governing through Continuing Resolutions, Giant Omnibus Spending Bills, and Shutdown Crises"

February 6, 2018

Senator Gary C. Peters, Ranking Member

Opening Statement

I'd like to extend a sincere thank you to Chairman Paul for providing a forum to engage on this topic today in a collaborative, bipartisan manner.

The conversation we are having today goes to the heart of how Congress functions as an institution. One of our most fundamental responsibilities is to pass a budget and fund the government. This is our most basic job, and the American people expect us to get it done.

The way we budget and fund the government is dysfunctional. It's a problem that has gone on for so long that we have become accustomed to it. It's become the new normal. The purpose of today's hearing is to say enough—this is no way to govern.

This broken process, filled with last-minute deadlines, continuing resolutions, and even government shutdowns, is wasteful, inefficient, and harmful to the American people.

That is why our esteemed panel of witnesses is here today. We appreciate your expertise, your experience, and your time. Your testimony today is critical to helping us diagnose the severity of our budgeting problem, and how it impacts government services and wastes tax dollars. I hope you can help us explore potential constructive solutions.

Our broken budget process needlessly shortchanges the effectiveness of federal programs through a never-ending cycle of short-term continuing resolutions and

omnibus spending bills that create budget crises and keep the government perpetually at the edge of a shutdown. That threat occasionally comes to pass, as we saw just a few weeks ago.

Though Congress designed a clear budget process in the 1974 Congressional Budget Act to establish our own funding priorities and a set timeline for enacting them into law, we have failed time and time again to live up to our own standards. In fact, Congress has only managed to enact all twelve required appropriations bills on time in four out of the past forty years.

Instead, this body has passed an average of four CRs every year. And the frequency has only increased in recent years – since 2011, we've passed 34 separate CRs.

Sometimes these CRs fund the government for as little as one day at a time. As a result, the majority of sitting members of Congress have never seen this body pass a budget through "regular order."

We can and we must do better. First, I'm hopeful that this hearing will offer a candid discussion of the facts and emphasize the true costs and consequences of governing through short-term CRs. We lurch from crisis to crisis, wasting countless hours across the federal government as employees prepare for shutdowns or draft detailed, comprehensive yearly budget documents that are completely disregarded.

Most significantly, this dysfunctional pattern needlessly threatens our national and economic security. Without a long-term budget outlook, our military is unable to plan ahead and effectively conduct their critical mission to protect the American people and American interests abroad.

Instead of thoroughly evaluating spending priorities or conducting meaningful oversight of government programs, Congress kicks the can down the road and lets taxpayers foot the bill.

And in the event of a shutdown, hundreds of thousands of federal workers are furloughed from their jobs and Americans of all walks of life lose access to important public services they count on.

To offer a better sense of the real impact this has on the federal workforce, I ask unanimous consent to enter into the record a letter I received today from the American Federation of Government Employees.

Last week during a hearing in the Commerce Committee, I asked the Director of the National Science Foundation about the impact of continuing resolutions and shutdowns on her agency. Not only did the NSF have to cancel a whole slate of important meetings, including with several Nobel Prize laureates, the Director also told me, quote, that "everybody just basically stops work in order to gear up" for a shutdown.

That's a lot of time and tax dollars wasted preparing for a shutdown that wouldn't happen if Congress simply did its job.

I look forward to hearing a robust discussion from today's witnesses about potential reforms and solutions that will help break this harmful cycle and restore regular order to the congressional budget and appropriations process.

We must work together in a bipartisan way to reduce our reliance on short-term CRs, mitigate the harmful effects of this uncertainty on federal agencies, and minimize the costs of this broken process to taxpayers. I'm sure the Chairman would join me in saying that we are eager to hear your ideas.

So let's get to work. Thank you very much, and I look forward to today's testimony.

United States Government Accountability Office

Testimony Before the Subcommittee on Federal Spending Oversight and Emergency Management, Committee on Homeland Security and Government Affairs, U.S. Senate

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BUDGET ISSUES

Continuing Resolutions and Other Budget Uncertainties Present Management Challenges

Statement of Heather Krause, Director, Strategic Issues

GAO-18-368T

GAO Highlights

Highlights of GAO-18-368T, a testimony before the Subcommittee on Federal Spending Oversight and Emergency Management, Committee on Homeland Security and Governmental Affairs, U.S. Senate

February 2018

BUDGET ISSUES

Continuing Resolutions and Other Budget Uncertainties Present Management Challenges

Why GAO Did This Study

Congress annually faces difficult decisions on what to fund among competing priorities and interests, and often postpones final funding decisions to allow additional time for deliberations. In all but four of the last 40 years, Congress has passed CRs to keep government services in operation until agreement is reached on final appropriations. In some years, including the current fiscal year, when new appropriations or a CR have not been enacted on time, this lapse in appropriations—or funding gap—caused the government to partially shut down, which halted some activities at federal agencies until appropriations were passed. Operating under a CR or the possibility of a shutdown, or both, creates uncertainty, complicates agency operations, and leads to inefficiencies.

This statement is based primarily on GAO's prior reports examining the effects of CRs and the 2013 shutdown, including their effects on selected agency operations. It addresses (1) the effects of CRs and shutdowns; and (2) legislative authorities and agency actions that assist in managing such budget uncertainty and disruptions.

View GAO-18-368T. For more information, contact Heather Krause at (202) 512-6806 or krauseh@gao.gov

What GAO Found

Continuing resolutions (CR) and lapses in appropriations leading to government shutdowns create inefficiencies and other management challenges for agencies. In 2009 and 2014, GAO identified instances of reduced government services and productivity and increased costs resulting from CRs and shutdowns, including:

- Delayed contracts and grants: Some agency officials reported delaying contracts and application times for grants while under a CR, which could reduce the level of services agencies provide, increase costs, and adversely affect the quality of grant submissions. For example, in 2009, officials at the Bureau of Prisons estimated that delaying a contract for a prison facility had prevented them from locking in lower prices and resulted in about $5.4 million in additional costs. The 2013 shutdown, which lasted 16 calendar days, also disrupted some activities, including clinical trials, at the agencies GAO examined due such things as furloughed staff.
- Delayed hiring: Officials at the agencies GAO examined reported delaying hiring due to CRs. For example, in 2009, a Food and Drug Administration official reported that deferring hiring and training of staff during a CR had affected the agency's ability to carry out certain inspections. Agency officials also noted that because the agency may not have enough time to spend its funding on high-priority needs such as hiring new staff, it may spend funds on lower-priority items that can be procured quickly.
- Additional work: Agency officials reported that managing within the constraints of a CR had created additional work, which potentially reduced productivity. In particular, shorter and more numerous CRs can lead to more repetitive work, including entering into shorter- term contracts or grants multiple times to reflect the duration of the CR.

GAO also reported that the Bureau of Economic Analysis estimated that the 2013 shutdown reduced real gross domestic product growth by 0.3 percentage points in the fourth quarter of 2013 due to lost productivity of furloughed workers. Economic forecasters GAO interviewed estimated minimal economic effects at the economy-wide level over the long term.

Legislative authorities and agency actions may mitigate challenges associated with managing during CRs and shutdowns. These include:

- Legislative authorities: Congress may include in CRs specific provisions called legislative anomalies that provide some agencies or programs funding or direction different than those specified in the standard provisions that require agencies to spend more conservatively, among other things. In addition, multiyear budget authority may be helpful for managing through both CRs and shutdowns because there is less pressure to obligate the funds by the end of the year and it may allow agencies to continue some activities during a shutdown.
- Agency actions: Agencies can also take actions to mitigate budget challenges. For example, agencies may have the ability to shift contract and grant cycles to later in the fiscal year when they are less likely to be under a CR. Shifting these cycles can help minimize disruption of services.

Chairman Paul, Ranking Member Peters, and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on the effects of and agency responses to budget uncertainties and disruptions. As you know, Congress annually faces difficult decisions on what to fund among competing priorities and interests, and often postpones final funding decisions to allow additional time for deliberations. In all but 4 of the last 40 fiscal years—including this year—Congress has enacted continuing resolutions (CRs) allowing agencies to continue operating until agreement is reached on their final appropriation bills. When regular appropriations or CRs are not passed, the resulting lapse in appropriations—a funding gap—causes the government to shut down. Last month the government partially shut down for three days after the CR in place expired. Other shutdowns have lasted longer—16 calendar days in October 2013 and 21 calendar days in December 1995 through January 1996.

Budget uncertainty and disruptions create management challenges for agencies. For example, under a CR, agencies can continue to operate, but the funding expires on a certain date and therefore creates uncertainty about both when final appropriations will be enacted and the level of funding that will ultimately be available. In addition, when there is a possibility of a funding gap, agencies must prepare for an orderly shutdown of government operations, even if a shutdown is ultimately averted. In response to these uncertainties, our prior work has found that agency officials have taken a variety of actions and leveraged available authorities to execute their budgets and carry out their missions.

This statement will focus on (1) the effects of CRs and shutdowns, and (2) legislative authorities and agency actions that assist in managing such budget uncertainty and disruptions. This statement is based primarily on our prior reports examining the effects of CRs and the 2013 government shutdown, including their effects on selected agency operations.[1] The examples we use in this statement illustrate the types of management challenges agencies may encounter under these conditions even today. We used multiple methodologies to develop the findings and conclusions

[1]GAO, *2013 Government Shutdown: Three Departments Reported Varying Degrees of Impacts on Operations, Grants, and Contracts*, GAO-15-86 (Washington, D.C.: Oct. 15, 2014) and *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, GAO-09-879 (Washington, D.C.: Sept. 24, 2009).

for these prior products. A more detailed discussion of the prior reports' objectives, scope, and methodologies, including our assessment of data reliability, is available in the reports cited throughout this statement.

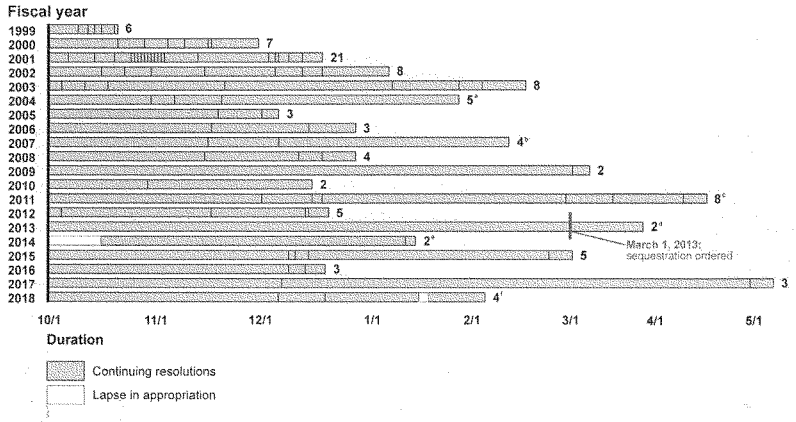
This testimony is based on work we conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Continuing Resolutions and Government Shutdowns Create Inefficiencies and Other Management Challenges for Agencies

Since fiscal year 1999, CRs have varied greatly in their number and duration. As shown in figure 1, the duration of CRs has ranged from 1 to 187 days. The number of CRs enacted in each year also varied considerably, ranging from 2 to 21.[2]

[2]As of the date of this testimony, there have been four CRs in fiscal year 2018. Final appropriation decisions have not been determined.

Figure 1: Duration and Number of Continuing Resolutions (Fiscal Year 1999 – January 2018)



Source: GAO analysis of Congressional Research Service data. | GAO-18-368T

Notes: Modified from GAO-17-807T.

[a]The fifth CR, P.L. 108-185, amended the original CR with substantive provisions but did not extend the CR period.

[b]In February 2007, Congress enacted a 227-day CR that provided funding for the remainder of the fiscal year; this CR is not included in the figure.

[c]In April 2011, Congress enacted a 168-day CR that provided funding for the remainder of the fiscal year. This CR is not included in the figure.

[d]In March 2013, Congress enacted a 189-day CR that provided funding for the remainder of the fiscal year; this CR is not included in the figure.

[e]In October 2013, the federal government partially shut down for 16 days because of a lapse in appropriations.

[f]In January 2018, the federal government partially shut down for 3 days because of a lapse in appropriations.

In 2009, we reported that agency officials operating under a CR reported that they often limited or delayed their spending earlier in the fiscal year because final appropriations may be less than anticipated.[3] For example:

- **Delayed contracts and grants**. Some agency officials reported delaying contracts during the CR period, which could reduce the level of services agencies provide. Officials said that longer CRs resulted in contracting delays that affected their ability to fully compete and award contracts in the limited time remaining in the fiscal year after the agency had received its regular appropriation. These contracting delays resulted in increased costs from agencies' inability to lock in lower prices for contracts, as well as those related to additional time and resources involved in having to solicit bids a second time or have environmental and other analyses redone. For example, in 2009, officials at the Bureau of Prisons (BOP) reported delaying contract awards for new BOP prisons and renovations to existing facilities prevented the agency from locking in prices and resulted in higher construction costs. BOP estimated a delay in awarding a contract for a prison facility resulted in about $5.4 million in additional costs. Officials at two agencies reported that longer CRs compressed the application time available for discretionary grants, and one agency said that this compressed time period had adversely affected the quality of submitted applications.
- **Delayed hiring.** Officials at the agencies we examined said that they had delayed hiring due to CRs. They told us that, had they not been operating under a CR, they would have hired staff sooner for government services such as grant processing and oversight, food and drug inspections, and intelligence analysis. Hiring delays may affect agency services. For example, in 2009, a Food and Drug Administration (FDA) official told us that deferring the hiring and training of staff during a CR affected the agency's ability to conduct the targeted number of inspections negotiated with FDA's product centers in areas such as food and medical devices. In addition, agency officials said it was particularly difficult to fill positions by the end of the fiscal year after a longer CR period. Consequently, agency

[3]GAO-09-879. For this report we examined six federal agencies within three cabinet-level departments selected based on factors such as the length of time spent managing under CRs and the types of services they provided. The agencies were the Administration for Children and Families and the Food and Drug Administration, within the Department of Health and Human Services; the Veterans Health Administration and Veterans Benefits Administration within the Department of Veterans Affairs; and the Bureau of Prisons and Federal Bureau of Investigation within the Department of Justice.

officials said that if the agency does not have enough time to spend its funding on high-priority needs (such as hiring new staff) because of a lengthy CR, the agency ultimately may spend funds on lower-priority items that can be procured quickly.

Officials from the selected agencies reviewed also said that managing within the constraints of a CR had created additional work—potentially resulting in lost productivity. Shorter and more numerous CRs can lead to more repetitive work. The most common type of additional work agencies cited was having to enter into shorter term contracts or grants multiple times to reflect the duration of the CR. Agencies often made contract or grant awards monthly or in direct proportion to the amount and timing of funds provided by the CR. Officials at all agencies also reported having to perform a variety of administrative tasks multiple times, including issuing guidance to various programs and offices and creating, disseminating, and revising spending plans.

In 2009 we also reported that management challenges caused by CRs continued even after the agencies we reviewed had received their full year appropriations. In general, we found that longer CRs can make it more difficult for agencies to implement unexpected changes in their regular appropriations, because agencies have a limited time to do so. In addition, longer CRs can contribute to distortions in agencies' rates of spending as agencies rush to obligate funds late in the fiscal year.

In addition to CRs, lapses in agency appropriations leading to a government shutdown also create management challenges. Our examination of the 2013 shutdown found that it had affected some operations and services at the three departments we reviewed.[4] For example, the three departments faced delays and disruptions in activities such as clinical trials due to furloughed staff and lack of access to information technology systems, among other things. Whether or not a federal contract was allowed to continue during the shutdown depended on a number of variables, including the availability of funds and the extent to which contract employees required supervision by federal employees or access to federal facilities to conduct their work.

Government shutdowns can also have an effect on the country's economy due to the furloughing of federal workers and their lost

[4]The departments we examined were Energy, Health and Human Services, and Transportation. See GAO-15-86.

productivity. For the 2013 shutdown, we reported on the effects of the shutdown on economic growth, as determined by the Bureau of Economic Analysis (BEA). BEA, the agency who national economic statistics provide a comprehensive view of the U.S. economy in the form of summary measures such as gross domestic product (GDP), estimated the direct effect of the shutdown on the real GDP growth in the fourth quarter of 2013—the time of the shutdown—to be a reduction of 0.3 percentage points. BEA estimates that this decline in real GDP growth is based on the lost productivity of the furloughed workers during the time of the 2013 shutdown. Economic forecasters we interviewed for our report on the 2013 shutdown believed the other economic effects from the shutdown to be minimal at the economy-wide level.

Legislative Authorities and Agency Actions May Mitigate Challenges Associated with Managing Budget Uncertainty Related to CRs and Shutdowns

Agency officials we interviewed for our prior work identified certain authorities that can help mitigate the challenges associated with managing during a CR period and a government shutdown. These include:

- **Legislative anomalies.** Congress generally includes standard provisions in CRs that require most agencies to operate similarly to the prior year, but to spend conservatively and without starting new activities. Congress may include specific exceptions, called "legislative anomalies," that provide different funding or direction under a CR. Programs that have previously received a specific or additional amount of funding under a CR have included wildfire management, veterans healthcare and benefits, and disaster relief. CRs also have extended the authority to collect and obligate fees, such as for mining, or to collect certain copayments from veterans for medications.
- **Multiyear funding.** Officials at the agencies we reviewed as part of our 2009 report on CRs told us that having multiyear budget authority—funds that are available for more than one fiscal year—was helpful for managing funds in the compressed time period after regular appropriations were enacted.[5] For example, having the authority to carry over funds into the next fiscal year can be useful in years with lengthy CRs because there is less pressure to obligate funds at the end of the year, thus reducing the incentive to spend funds on lower priority items that can be procured more quickly.

[5]GAO-09-879.

Similarly, having multiyear or no-year appropriations may also be useful in managing through a shutdown, as these funds may be available to agencies to continue some activities.[6]

Agencies can take actions to mitigate challenges associated with CRs and shutdowns. For example:

- **Adjusting contract and grant cycles:** To reduce the amount of additional work required to modify contracts and award grants in multiple installments, two of the six agencies we examined for our 2009 report on CRs reported shifting contract and grant cycles to later in the fiscal year when they are less likely to be under a CR.[7] An agency's ability to shift its contract cycle depends on a number of factors, including the type of services being acquired. For example, over the last 30 years, Congress has enacted laws that authorize federal agencies to enter into 1-year contracts for services that are recurring in nature, such as janitorial services, and that cross fiscal years, so long as the contract does not exceed 1 year and agencies have sufficient funds to enter into the annual contract. Using this contract flexibility, an agency can shift its contract cycle so that annual contracts for these services are executed in the third and fourth quarters of the fiscal year when agencies are less likely to be under a CR.
- **Agency guidance and communication.** Agencies' contingency plans provide guidance on how agencies are to manage shutdown activities. Agency officials we interviewed as part of our examination of the 2013 shutdown told us that employees were familiar with contingency plans and other guidance and procedures from previous potential shutdown preparations and from planning for operating under a CR and in other periods of budgetary uncertainty.[8] Additionally, agency officials commented that communication within their departments and with the Office of Management and Budget (OMB) and the Office of Personnel Management was very important for preparing for and implementing the shutdown.

In our report on the effects of the 2013 shutdown we recommended that OMB instruct agencies to document lessons learned in planning for and implementing a shutdown, as well as resuming activities following a

[6]No-year appropriations are ones available without fiscal year limitation.

[7]GAO-09-879.

[8]GAO-15-86.

shutdown, should a funding gap last longer than five days. OMB implemented this recommendation by revising its *Circular A-11* guidance to direct agencies, in updating their contingency plans, to note any changes made to their plans in light of their experiences during any recent lapses in appropriations. Having such information in agency contingency plans may help inform planning and implementation efforts in the event of future shutdowns.

Additionally, OMB has also helped agencies manage during CRs by providing more than the automatic apportionment in some circumstances.[9] OMB recognizes that some programs may need more of their apportionment at the beginning of the fiscal year during a CR.

Chairman Paul, Ranking Member Peters, and members of the Subcommittee, this concludes my prepared remarks. I look forward to answering any questions you may have.

GAO Contact and Staff Acknowledgments

For questions about this statement, please contact me at (202) 512-6806 or krauseh@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony were Janice Latimer and Carol Henn, Assistant Directors, Alexandra Edwards, Kathleen Padulchick, Lauren Sherman, and Erik Shive.

[9]Under an automatic apportionment OMB determines the apportionment rate based on the lower of two calculations: (1) the percentage of the year covered by the CR (e.g., a 36-day CR would represent 10 percent of the year) or (2) the historical seasonal rate of obligations for the period of the year covered by the CR (e.g. combatting wildfires receives a seasonal apportionment because of the higher incidence of wildfires during the summer).

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TESTIMONY

Statement of

Clinton T. Brass
Specialist in Government Organization and Management

Before

Committee on Homeland Security and Governmental Affairs
Subcommittee on Federal Spending Oversight and Emergency Management
U.S. Senate

Hearing on

"Terrible, No Good, Very Bad Ways of Funding Government: Exploring the Cost to Taxpayers of Spending Uncertainty Caused by Governing Through Continuing Resolutions, Giant Omnibus Spending Bills, and Shutdown Crises"

February 6, 2018

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CRS TESTIMONY
Prepared for Congress

Introduction

Chairman Paul, Ranking Member Peters, and distinguished members of the subcommittee, my name is Clint Brass. I am a Specialist in Government Organization and Management at the Congressional Research Service (CRS). Thank you for inviting CRS to testify on the topic of "Terrible, No Good, Very Bad Ways of Funding Government: Exploring the Cost to Taxpayers of Spending Uncertainty Caused by Governing Through Continuing Resolutions, Giant Omnibus Spending Bills, and Shutdown Crises."

As requested, this statement focuses on the subjects of interim continuing resolutions (CRs), their purposes and potential effects, and related subjects, including the possibility and potential effects of shutdowns of the federal government. I would like to acknowledge the work of multiple current and former CRS colleagues in producing related analysis and research for Congress, from which this statement benefits.

In serving Congress with nonpartisan and objective analysis and research, CRS does not make recommendations or take positions on the advisability of particular options. Rather, CRS is available to assist the subcommittee in its evaluation of these topics and the strengths and weaknesses of related options for legislation, oversight, and study.

Background

The Federal Budget Process

As discussed in another CRS product,[1] the "power of the purse" is a legislative power. The Constitution lists the power to lay and collect taxes and the power to borrow as powers of Congress. Further, the Constitution provides that funds may be drawn from the Treasury only pursuant to appropriations made by law. The Constitution does not state how these legislative powers are to be exercised, nor does it expressly provide for the President to have a role in the management of the nation's finances.

Over time, the process of federal budgeting has evolved considerably through actions taken by Congress, the President, and agencies, as they responded to pressures and priorities. The federal budget process as practiced in recent decades is highly complex.

- The process entails many sub-processes and procedures under the Constitution, statutory provisions, House and Senate rules, and the use of discretion within these constraints.
- Many actors are involved, including Members of Congress, appropriations and authorizing committees, congressional leaders, the President, the Office of Management and Budget (OMB) in the Executive Office of the President, agency political appointees, and agency career civil servants, not to mention stakeholders in the public who pursue their right to "petition the Government for a redress of grievances."[2]

If problems are perceived to reside with specific aspects of the overall budget process, it may be fruitful to look not only at the specific aspects, but also how they relate to the whole of the budget process. An observer may evaluate how the part and the whole fit together in law and practice. Notably, changes to the federal budget process may affect power relationships and influence policy outcomes. Proposals for

[1] This paragraph draws on CRS Report 98-721, *Introduction to the Federal Budget Process*, coordinated by James V. Saturno.

[2] U.S. Constitution, Amendment I, available at http://www.crs.gov/conan/constitutionannotated.

change or for retaining current processes may therefore become controversial if different observers perceive different problems or support differing priorities.

Annual Budget Negotiations and Choices[3]

The federal fiscal year begins on October 1. For agencies and programs that rely on discretionary funding through annual appropriations acts, Congress and the President must enact interim or full-year appropriations by this date if many governmental activities are to continue operating in the absence of such acts.[4] Yet, it has been said that "conflict is endemic to budgeting."[5] If conflict within Congress or between Congress and the President impedes the timely enactment of annual appropriations acts or enactment of temporary, stopgap funding through a CR, a government shutdown may occur.

Along these lines, several options may present themselves to Congress and the President during high-stakes negotiations over annual appropriations measures.[6] The options include

- coming to agreement on regular appropriations acts by October 1, the beginning of a new fiscal year;
- using one or more interim CRs to extend temporary funding beyond the beginning of a fiscal year for those regular appropriations bills that are not enacted,[7] until a point in time when negotiators make final decisions about full-year funding levels; or
- not agreeing on one or more full-year appropriations acts or interim funding in a CR, resulting in a temporary funding gap and a corresponding shutdown of affected federal government activities.[8]

If Congress and the President pursue the second or third options, they may agree on full-year appropriations after the beginning of the fiscal year. These agreements on full-year funding may provide funds through regular appropriations acts—singly or combined together in omnibus legislation[9]—or less commonly, through a full-year CR.

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[3] This section draws on CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[4] Discretionary funding refers to budget authority (i.e., authority to incur financial obligations that result in government expenditures) that is provided in and controlled by annual appropriations acts. By contrast, mandatory funding refers to budget authority that is provided in and controlled by laws other than annual appropriations acts. Some budget authority provided in annual appropriations acts for certain programs is treated as mandatory, however, because the relevant authorizing legislation entitles beneficiaries to receive payment or otherwise obligates the government to make payment. See U.S. Government Accountability Office (hereinafter GAO), *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, pp. 46, 66; and CRS Report RS20129, *Entitlements and Appropriated Entitlements in the Federal Budget Process*, by Bill Heniff Jr.

[5] Irene S. Rubin, "Understanding the Role of Conflict in Budgeting," in Roy T. Meyers, ed., *Handbook of Government Budgeting* (San Francisco, CA: Jossey-Bass, 1999), p. 30.

[6] For discussion of the annual appropriations process, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, coordinated by James V. Saturno.

[7] For discussion of the potential functions and impacts of interim CRs, see CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by James V. Saturno; and CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

[8] For discussion of funding gaps, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by James V. Saturno. For discussion of shutdowns, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[9] For discussion of omnibus appropriations acts and selected issues, see CRS Report RL32473, *Omnibus Appropriations Acts: Overview of Recent Practices*, by James V. Saturno.

Congress and the President frequently agree on full-year or interim funding without coming to an impasse. On other occasions, however, Congress and the President may not come to an accommodation in time to prevent a temporary funding gap. If a funding gap begins and funding does not appear likely to resume during the first, full calendar day of the gap, the federal government generally begins a "shutdown" of affected activities. The criteria for determining which activities are affected by a shutdown are complex.

To elaborate on these matters, the sections below highlight selected aspects of CRs and shutdowns.

Components of an Interim CR and Potential Effects

CRs are commonplace in the modern federal budget process.[10] During the 25 fiscal years covering FY1952-FY1976, one or more CRs were enacted for all but one fiscal year (FY1953).[11] From FY1977 to present, all of the regular appropriations acts were completed before the start of the fiscal year in four instances—FY1977, FY1989, FY1995, and FY1997.[12] The sections below focus on the details of more recent practice in the past 20 years.[13]

Main Components of an Interim CR

Congress has used interim CRs to protect its prerogative to set full-year funding levels by restricting and guiding agency activities in multiple ways. In recent practice, CRs typically include as many as six main components.[14]

- **Coverage.** CRs provide funding for certain activities, which are typically specified with reference to the prior or current fiscal year's appropriations acts. This may be referred to as the CR's *coverage*.
- **Duration.** CRs provide budget authority for a specified *duration* of time.[15] For an "interim CR," this duration may be as short as a single day or as long as several weeks or months. If a CR extends for the full remainder of the fiscal year (i.e., until September 30), it may be referred to as a "full-year CR."
- **Funding rate.** CRs usually fund activities under a formula-type approach that provides budget authority at a restricted pace over time but not a specified amount. This method of providing budget authority is commonly referred to as the *funding rate*, also known as a *rate for operations*. Under a funding rate, the amount of budget authority for most

[10] It may be no coincidence that CRs have been pursued with such frequency. In high-stakes negotiations on matters of strong underlying disagreement, a frequently employed technique is to use time as a source of leverage. See, e.g., G. Richard Shell, *Bargaining for Advantage: Negotiation Strategies for Reasonable People* (New York: Penguin, 1999), pp. 89-114.

[11] The structure and mechanics of CRs have evolved over time. For related discussion, see CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by James V. Saturno.

[12] Ibid.

[13] For recent history, see the CRS Appropriations Status Table, at http://www.crs.gov/AppropriationsStatusTable/Index.

[14] This enumeration draws in part on CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by James V. Saturno; and CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

[15] As noted earlier, appropriations bills provide agencies with *budget authority*, which is defined as authority provided by federal law to enter into contracts or other financial *obligations*. The obligations, in turn, will result in immediate or future expenditures (or *outlays*) involving federal government funds. See GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, pp. 20-21. For the purposes of this testimony, the terms *budget authority* and *funding* are used interchangeably.

accounts[16] is calculated as the total amount of budget authority annually available—based on a reference level (usually a dollar amount or calculation)—multiplied by the fraction of the fiscal year for which the funds are made available in the CR.[17] This is in contrast to regular and supplemental appropriations acts, which generally provide specific amounts for each account.

- **Prohibition on new activities.** The budget authority provided in a CR typically is prohibited for use in *new activities*. Specifically, an interim CR may prohibit an agency from initiating or resuming any project or activity for which funds were not available in the previous fiscal year. Alternatively stated, the CR may prohibit what are sometimes called "new starts."[18]
- **Anomalies.** The duration and amount of funds in the CR, and the purposes for which they may be used for specified activities, may be adjusted through so-called *anomalies*. Congress, the President, and agencies sometimes negotiate for the inclusion of these anomalies, or exceptions, to the formulas and restrictions in a CR, to accommodate what they perceive as needed exceptions for an agency, program, or policy. Anomalies typically are included to prevent what some or all stakeholders and parties to CR negotiations perceive as major programmatic, operational, or management problems that would be caused if an otherwise "cookie cutter" approach were used to provide funding at a uniform rate and with uniform restrictions. However, when measured against the typical coverage of interim CRs, anomalies tend to be rare.
- **Legislative provisions.** CRs do not necessarily provide only stopgap or full-year funding. Some interim and full-year CRs have included "substantive" *legislative provisions*—that is, provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees—covering a wide range of subjects. These provisions may create, amend, or extend other laws. CRs may become attractive vehicles for such provisions, because they are considered must-pass legislation on which Congress and the President eventually will reach agreement.[19]

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[16] Regular appropriations bills contain a series of unnumbered paragraphs with headings, generally reflecting a unique budget "account." Elements within budget accounts are divided by "program, project or activity" based upon the table "Comparative Statement of New Budget Authority" in the back of the report accompanying the appropriations bill.

[17] A frequently asked question concerns what happens when an interim CR is superseded by a full-year appropriation. In this situation, an appropriations account may receive a full-year amount of budget authority. At that point in time, the interim CR's funding rate is no longer relevant. For purposes of accounting, any spending that previously occurred under the interim CR's rate would be treated as if the spending had occurred under the full-year amount. To illustrate, suppose an agency's appropriations account received $365 million for the prior fiscal year. Further suppose that an interim CR provides the prior-year level as the current year's funding rate. Therefore, the rate for operations for the account would be $365 million. Further suppose that the interim CR has a 30-day duration. If the interim CR continued to be in effect until its expiration, the agency generally would be expected to obligate up to a total of around $30 million over the 30-day duration of the CR, because the interim CR authorized the agency to obligate funds at that pace. Further suppose the interim CR is superseded immediately upon its expiration with a full-year appropriation of $350 million, $15 million less than the previous year. In that case, the agency's total obligations under the interim CR would be applied to the full-year amount. For example, if the agency obligated $30 million during the 30-day interim CR, the agency would have $320 million available for obligation going forward, after the expiration of the CR (i.e., $350 million full-year appropriation minus $30 million obligated under the CR equals $320 million available for obligation from that point forward).

[18] For example, see Section 104 of P.L. 110-92 (121 Stat. 990).

[19] House Standing Rules XXI, clause 2, and XXII, clause 5, prohibit legislative provisions or unauthorized appropriations in general appropriations measures, but these restrictions do not apply to continuing resolutions. The House typically adopts special rules restricting amendments to continuing resolutions. Comparable Senate restrictions on legislative provisions and unauthorized appropriations, located in Senate Rule XVI, apply in the case of continuing resolutions. For further discussion of related legislative procedures, see CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by (continued...)

An interim CR that does not contain any anomalies or substantive legislative provisions is sometimes referred to as a "clean" CR. Typically, CRs of short duration (e.g., a few days) are less likely to include anomalies and more likely to be viewed as clean. However, an observer may describe a CR as clean if the CR includes a limited number of such provisions that the observer views as acceptable. The level of cleanliness of a CR, therefore, is typically in the eye of the beholder.

Potential Purposes and Effects

Interim CRs may be considered and enacted in the context of ongoing and high-stakes budget negotiations within Congress and between Congress and the President. In general, interim CRs typically are intended to simultaneously (1) preserve congressional prerogatives to make final decisions on full-year funding levels and (2) prevent a funding gap and corresponding government shutdown during negotiations within Congress and between Congress and the President.[20] Consequently, interim CRs provide relatively restrictive funding levels for agencies.

Moreover, an interim CR may be structured purposefully as less than optimal from the perspective of many stakeholders, in order to retain sufficient incentive for negotiating parties to come to an accord for final decisions.[21] Participants in a negotiation also may find it necessary to compromise, purposefully accepting what they perceive as some undesirable impacts in an interim CR (e.g., temporary constraints on funding) in order to achieve what they perceive as more important, desirable objectives (e.g., achievement of budget policy goals or avoidance of a government shutdown).[22] In other words, some effects of interim CRs may be a product of intentional concessions and compromises in negotiations, in order to achieve other impacts.

After enactment of an interim CR, OMB provides detailed directions to executive agencies on the availability of funds and how to proceed with budget execution, typically in a bulletin.[23] The bulletin includes an announcement of an "automatic apportionment" of funds that will be made available for obligation, as a percentage of the annualized amount provided by the CR.[24] In an interim CR, Congress also may provide authority for OMB to mitigate furloughs of federal employees by apportioning funds for

(...continued)

James V. Saturno.

[20] CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

[21] According to one observer, interim CRs might be seen as devices that set "spending levels ... high enough to let agencies function but not so high that they removed the incentive for Congress and the president to agree on regular authorization and appropriations bills." Joe White, "The Continuing Resolution: A Crazy Way to Govern?" *Brookings Review*, vol. 6 (summer 1988), p. 30. GAO also has discussed how incentives for policymakers "to negotiate seriously and reach agreement" may be affected by proposals for budget process changes like an automatic continuing resolution. See GAO, *Budget Process: Considerations for Updating the Budget Enforcement Act*, GAO-01-991T, July 19, 2001, p. 12; and CRS Report R41948, *Automatic Continuing Resolutions: Background and Overview of Recent Proposals* (James V. Saturno is available to answer questions about this report).

[22] For related discussion, see G. Richard Shell, *Bargaining for Advantage*, pp. 156-175.

[23] For example, see U.S. Executive Office of the President, Office of Management and Budget (hereinafter "OMB"), OMB Bulletin No. 17-02, "Apportionment of the Continuing Resolution(s) for Fiscal Year 2018," September 28, 2017, at https://www.whitehouse.gov/omb/bulletins/. This bulletin directed agencies how to operate during the interim CR for the period October 1, 2017, through December 8, 2017, as provided for by P.L. 115-56. For further discussion, see CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

[24] The Antideficiency Act (31 U.S.C. §§1341-1342, 1511-1519) requires the President to "apportion," in writing, an executive agency's appropriation by specific time periods, activity, or a combination of time periods and activities, in order to prevent the agency from spending at a rate that would exhaust the appropriated funds before the end of the fiscal year. OMB implements the requirement on the President's behalf. During an interim CR, Congress may provide some flexibility on the timing requirements in apportioning funds. For example, see Section 108 of P.L. 110-92 (121 Stat. 990).

personnel compensation and benefits at a higher rate for operations, albeit with some restrictions.[25] An interim CR typically also directs that for programs that would otherwise have high rates of operation at the beginning of a fiscal year (e.g., distributions of funding to states, foreign countries, grantees, etc.), such high initial rates of operation shall not be made that would impinge on final funding prerogatives.[26]

Apart from preserving congressional prerogatives and preventing shutdowns, CRs may have other significant effects. If impacts were viewed in general categories, an interim CR might be characterized as having several, general types of potential impacts on the operations of agencies.

- First, the *restrictive funding level* of an interim CR may have an impact upon an agency's activities, compared to receiving full-year appropriations. For example, agency personnel may reduce or delay a variety of actions, including hiring, awarding contracts and grants, and authorizing travel.
- Second, an agency funded by an interim CR may experience some *uncertainty* about what its final funding level will be. Uncertainty may cause an agency to alter its operations, rates of spending, and spending patterns over time, with potential ripple effects for internal management of the agency and its programmatic activities. This also may affect, for example, an agency's hiring, the awarding of contracts and grants, and authorizing travel. For agencies that expect increased appropriations (e.g., the Census Bureau when gearing up for the decennial census), uncertainty and restricted funding levels may affect planning and future operations.[27]
- Third, because an interim CR imposes tight restrictions on the obligation of funds for its entire duration, an interim CR may have an impact on an agency's *administrative work burden*. As one study of the potential impacts of interim CRs on the Department of Defense (DOD) summarized, "[t]he most visible effect" of a short-term CR is its impact on the time and paperwork necessary to manage the distribution of funds.[28]
- Fourth, a *prohibition on new projects and activities* may delay or disrupt an agency's ability to undertake planned activities or be nimble in responding to changed circumstances. For agencies with little need to engage in "new starts," this prohibition might not be significant in its implications. For agencies that typically engage in new projects or change their funding priorities from year to year, however, the prohibition might have more significant impacts on operations.

In 2008-2009, CRS and the Government Accountability Office (GAO) each explored specific examples of the potential and reported effects of interim CRs on agencies.[29] GAO also identified factors that may influence how agencies manage during CRs and what steps agencies take to mitigate the effects of uncertainty. While some common themes emerged across these analyses, the specific, reported impacts

[25] For example, see Section 112 of P.L. 110-92 (121 Stat. 991) and OMB Bulletin No. 07-05, p. 4 (attachment, Section 6). OMB might apportion funds at, essentially, greater than a daily rate, as the period of time covered by an interim CR elapses. However, Congress may require that the "authority provided under this section shall not be used until after the department or agency has taken all necessary actions to reduce or defer non-personnel-related administrative expenses" (Section 112 of P.L. 110-92).

[26] For example, see P.L. 115-56, Division D, Section 109 (131 Stat. 1141).

[27] For discussion, see CRS Report R44788, *The Decennial Census: Issues for 2020*, by Jennifer D. Williams.

[28] CRS Report 89-579, *Short-Term Continuing Resolutions: The Department of Defense Experience*, by Alice C. Maroni (archived and available upon request).

[29] CRS Congressional Distribution Memorandum, *Potential Impacts of Interim Continuing Resolutions (CRs) on Agency Operations and the Functioning of the Federal Government*, July 8, 2008, coordinated by Clinton T. Brass (available on request); and GAO, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, GAO-09-879, September 2009. The CRS memorandum was later condensed into a CRS report in October 2008 and subsequently updated (CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*).

varied considerably among agencies and from year to year, as one might expect from agencies with highly varied missions, activities, and funding mechanisms. Elsewhere, Professor Philip Joyce drew on interviews and journalistic accounts to provide additional perspectives on effects of CRs,[30] and Thomas Alexander Jacobs examined how interim CRs may influence expenditure patterns of federal agencies.[31]

Processes and Potential Effects of a Funding Gap and Government Shutdown

When federal agencies and programs lack funding after the expiration of interim or full-year appropriations, the agencies and programs experience a funding gap. If funding is not expected to resume in time to continue operations (i.e., during the first, full calendar day of the gap), then, under relevant law and guidance, an agency must cease operations, except in certain situations where law authorizes continued activity. The criteria that flow from law for determining which activities are "excepted" from shutting down and which personnel are "excepted" from furlough are complex, and the potential effects of a shutdown vary considerably among agencies and programs.

Selected Processes

The Constitution, statutory provisions, court opinions, and Department of Justice (DOJ) opinions provide the legal framework for how funding gaps and shutdowns have occurred in recent decades.[32] Article I, Section 9 of the Constitution states that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Federal employees and contractors cannot be paid, for example, if appropriations in the first place have not been enacted. Nevertheless, it would appear possible under the Constitution for the federal government to award contracts or make other obligations if it lacked funds to pay for these commitments.[33] The Antideficiency Act generally prevents this, however. The act prohibits federal officials from obligating funds before an appropriations measure has been enacted, except as authorized by law.[34] The act also prohibits acceptance of voluntary services and employment of personal services exceeding what has been authorized by law.[35] Therefore, the Antideficiency Act generally prohibits agencies from continued operation in the absence of appropriations. Failure to comply with the act may result in criminal sanctions, fines, and removal. The act permits exceptions for "emergencies involving the safety of human life or the protection of property."

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[30] Philip G. Joyce, *The Costs of Budget Uncertainty: Analyzing the Impact of Late Appropriations* (Washington, DC: IBM Center for the Business of Government, 2012), at http://www.businessofgovernment.org/report/costs-budget-uncertainty-analyzing-impact-late-appropriations.

[31] Thomas Alexander Jacobs, "Continuing Resolutions: The Influence of Temporary Spending Restrictions on Monthly Expenditure Patterns of Federal Agencies" (Ph.D. diss., University of Kentucky, 2014), at https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1012&context=msppa_etds.

[32] For legal analysis of funding gaps, see GAO, *Principles of Federal Appropriations Law*, 3rd ed., vol. II, GAO-06-382SP, February 2006, chapter 6, pp. 6-146 – 6-159.

[33] For discussion, see prepared statement of Walter Dellinger, Assistant Attorney General, in U.S. Congress, Senate Committee on the Budget and House Committee on the Budget, *Effects of Potential Government Shutdown*, hearing, 104th Cong., 1st sess., September 19, 1995, S.Hrg. 104-175 (Washington: GPO, 1995), p. 18. Some commentators, however, have expressed a contrary view. See Jim Schweiter and Herb Fenster, *Government Contract Funding under Continuing Resolutions*, 95 Fed. Cont. Rep. 180, note 17 (February 15, 2011).

[34] 31 U.S.C. §1341. The Antideficiency Act (31 U.S.C. §§1341-1342, 1511-1519) is discussed in CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al., pp. 93-97. GAO provides information on the act, at http://www.gao.gov/legal/lawresources/antideficiencybackground.html.

[35] 31 U.S.C. §1342; see also §1515.

For years leading up to 1980, many federal agencies continued to operate during a funding gap, "minimizing all nonessential operations and obligations, believing that Congress did not intend that agencies close down," while waiting for the enactment of annual appropriations acts or continuing resolutions.[36] In 1980 and 1981, however, U.S. Attorney General Benjamin R. Civiletti issued two opinions that more strictly interpreted the Antideficiency Act, along with the law's exceptions, in the context of a funding gap.[37] The Attorney General's opinions stated that, with some exceptions, the head of an agency could avoid violating the Antideficiency Act only by suspending the agency's operations until the enactment of an appropriation. Generally speaking, the Civilletti opinions guided subsequent developments and marked a significant change in the potential effects of shutdowns and the effect of CRs in preventing shutdowns.

Potential Effects of a Shutdown

Effects of a shutdown may occur at various times, including in anticipation of a potential funding gap (e.g., planning), during an actual gap (e.g., furlough and curtailed operations), and afterwards (e.g., addressing backlogs of work). The longest such shutdown lasted 21 full days during FY1996, from December 16, 1995, to January 6, 1996, after a shorter shutdown in November 1995. More recently, a funding gap commenced on October 1, 2013, the first day of FY2014, after funding for the previous fiscal year expired. Because funding did not resume on October 1, affected agencies began to cease operations and furlough personnel that day. A 16-full-day shutdown ensued, the first to occur in over 17 years. Another funding gap commenced during FY2018, on January 20, 2018, after the expiration of an interim CR.[38] Funding resumed on January 22, 2018, after a two-full-day funding gap and three-day shutdown.[39]

Insights into the effects of the most recent FY2018 shutdown are still emerging. That said, the experiences of FY1996 and FY2014 illustrate what may occur with respect to employee furloughs and government operations during a shutdown of relatively long duration.[40] More extensive information is available in a CRS report, which summarizes many of the effects.[41] Nonetheless, the shutdowns in those years involved the furloughs of hundreds of thousands of federal employees and the curtailing of many agencies activities. Immediately before the FY2014 shutdown, the Pay Our Military Act (P.L. 113-39) was enacted on September 30, 2013, in an effort to mitigate some effects of a shutdown on certain personnel and operations of the U.S. Armed Forces. This legislation was structured as an automatic continuing resolution (ACR) to provide funding for FY2014 pay and allowances for several categories of personnel. Notably, the process of legally determining which employees were authorized to be paid took several days, and the Departments of Defense and Homeland Security did not avoid furloughs for the first few days of the shutdown. Even with these staff present at work and being paid, their work was constrained to activities excepted under the Antideficiency Act. In the aftermath of the FY1996 and

[36] GAO, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981, pp. i, 2, at http://archive.gao.gov/f0102/114835.pdf.

[37] 43 Op. Att'y Gen. 224 (Apr. 25, 1980), 43 Op. Att'y Gen. 293 (January 16, 1981). The Civiletti opinions are included in a GAO report as Appendices IV and VIII. See GAO, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981, at http://archive.gao.gov/f0102/114835.pdf. For a detailed discussion of exceptions to the Antideficiency Act, see U.S. GAO, *Principles of Federal Appropriations Law*, vol. II, pp. 6-146 – 6-159.

[38] OMB, "Status of Agency Operations," memorandum M-18-06 Revised, January 20, 2018, at https://www.whitehouse.gov/omb/memoranda/.

[39] OMB, "Reopening Departments and Agencies," memorandum M-18-07, January 22, 2018. Appropriations resumed in the evening of Monday, January 22, 2018, after most federal agencies would have closed for the day. Therefore, although funding technically was available that day, most agencies' non-excepted activities were effectively shut down for the day.

[40] Between the issuance of the Civiletti opinions in 1980-1981 and 1995, funding gaps were limited to three or fewer full days of duration. Consequently, they were of relatively short duration compared to those of FY1996 and FY2014.

[41] CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

FY2014 shutdowns, OMB issued statements about the impacts of the shutdowns in categories that ranged from effects on federal employees to effects on government services, individuals in the public, and the U.S. economy.[42]

Potential Issues

Looking across these subjects, several illustrative questions and potential issues for Congress might be identified.

- **Congressional access to information.** In anticipation of a CR, especially one that may be in effect for an extended period of weeks or months, agencies typically send proposed anomalies to OMB, which the President may or may not propose to Congress for inclusion in legislation. To what extent may this be an issue for Congress and committees of jurisdiction in the annual appropriations process?
- **Agency planning for, and operations during, CRs and shutdowns.** When CRs or a shutdown appear to be possible or likely, how well are agencies planning for these circumstances? Is there a role for legislation in helping agencies structure their programs and operations to accommodate interim CRs, through anomalies in CRs or through changes in authorizing statutes? Is there a role for oversight in bringing attention to these issues?
- **Budget process changes.** Would budget process changes address root causes for CRs and shutdowns? To what extent are the root causes procedural rather than political and policy-based? Would changes in the budget process affect power relationships within Congress or between Congress and the President?

This concludes my statement. Thank you again for the opportunity to testify, and I will be pleased to respond to any questions the subcommittee may have.

[42] For discussion and citations, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass, section titled "Effects on Government Operations and Services to the Public," at http://www.crs.gov/Reports/RL34680?source=search&guid=574186a4c1194eacb5f308129f5c8d44&index=0#_Toc499824066.

COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET

Testimony of Maya MacGuineas
Committee for a Responsible Federal Budget
Hearing before the Senate Subcommittee on Federal Spending Oversight and Emergency Management:

Terrible, No Good, Very Bad Ways of Funding Government: Exploring the Cost to Taxpayers of Spending Uncertainty caused by Governing through Continuing Resolutions, Giant Omnibus Spending Bills, and Shutdown Crises

February 6, 2018

Chairman Paul, Ranking Member Peters, and Members of the Subcommittee, thank you so much for inviting me here today to discuss the challenges in the current ways we fund the government and govern through continuing resolutions (CRs) and omnibuses. The way we budget, in practice, is very broken, and some form of budget process reform is necessary and long overdue.

I am Maya MacGuineas, President of the Committee for a Responsible Federal Budget. The Committee for a Responsible Federal Budget is a non-partisan organization dedicated to educating the public about and working with policymakers on fiscal policy issues. Our co-chairs are Purdue University President and former OMB Director Mitch Daniels, former Secretary of Defense and former OMB Director Leon Panetta, and former Congressman Tim Penny. Our board includes past directors and chairs of the Office of Management and Budget, the Congressional Budget Office, the Federal Reserve System, the Treasury Department, and the Budget Committees. Our partner organization, Fix the Debt, is a non-partisan coalition that supports a "grand bargain" to help deal with the debt. The group is chaired by Senator Judd Gregg and Governor Ed Rendell.

I will touch on several main points today:

1. Budgeting is one of the most basic functions of governing, and we are failing.
2. CRs and omnibuses represent a failure of the budget process.
3. Our fiscal situation is approaching dangerous territory, and we are not only failing to address it, we are making it worse.
4. There are multiple ways to improve the budget process. None can replace political will.

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Budgeting is one of the most basic functions of governing, and we are failing

Budgeting is central to governing. It is the opportunity to agree to national goals, contemplate the policies to achieve them, and lay out the means of financing them. Our budget reflects our values, our priorities, and our game plan, not to mention our shared purpose. No business would consider operating without a thoughtfully-designed budget. Neither should a country.

And yet, the way we budget now represents how broken our process of governing has become. We have one budget process on paper and another in reality. The process suffers from a **lack of transparency** (including confusing baselines, overlapping budget categories, spending through the tax code, increases that are called cuts, etc.); a **lack of accountability** (missed deadlines, budget resolutions that aren't followed, circumvented enforcement mechanisms); a **focus on the short-term**; an abundance of **gimmicks** (no more pension smoothing and Roth IRAs please!); **auto-pilot spending and auto-pilot tax expenditures;** and **increasingly terrible fiscal outcomes.** The fact that shutdowns and defaults have become budget terms (with many people not knowing there is a difference) is utterly alarming.

Where has all this gotten us? Deficits approaching $1 trillion during an expanding economy and a virtual fiscal free-for-all.

CRs and omnibuses represent a failure of the budget process

The breakdown of the budget process has caused policymakers to bounce from one self-imposed crisis to the next, keeping the government open (if at all) through the use of continuing resolutions and massive omnibus spending bills. This is most certainly a symptom of how broken our budget process is.

CRs generally maintain program funding at existing levels. While appropriators sometimes include slight adjustments to spending in CRs, the type of funding changes that reflect shifting priorities within agencies are much less likely to result from a CR than from the regular, full-year appropriations process.

Almost every fiscal year has begun with at least a partial CR.

The last year where no CR was necessary because all appropriations bills were passed before the fiscal year began was over two decades ago in FY 1997. But even then the bills weren't passed individually as intended.

More commonly, appropriations bills are packaged together in lengthy omnibus legislation. The last year that began with all appropriations bills passed separately and on time was FY 1995. Congress has enacted omnibus appropriations legislation during nine of the past 10 fiscal years. Omnibus laws do not have to include all 12 bills, and full-year funding for certain programs can

get paired with CRs. In FY 2017, for example, appropriators attached a full-year spending bill for military construction and Veterans Affairs to a short-term CR at the beginning of the fiscal year.

Problematically, CRs and omnibuses waste resources and can end up increasing the government's costs.

Under a continuing resolution, agencies are generally limited to operational expenditures and prohibited from beginning new projects, undermining long-term planning. For instance, the Pentagon identified more than 70 programs hobbled by a CR, including 56 programs that would have been started and 26 that needed to be increased.

The thousands of hours agencies spend on budget planning are wasted when Congress simply bypasses the regular appropriations process and uses a CR. Operating under a CR also means that projects that have been identified as wasteful or unnecessary or that have been scheduled to be shuttered are instead continued. These and other costs of relying on CRs are significant. According to Navy Secretary Richard Spencer, inefficiencies arising from continuing resolutions have caused the Navy to waste $4 billion since 2011.

By not passing appropriations bills on time and relying on CRs to fund the government, lawmakers set up must-pass legislation later in the year. These situations have often led to bad fiscal outcomes since they often use deficit-increasing policies to grease the wheels for passage. If lawmakers completed appropriations bills well ahead of the funding deadline, it would eliminate the scramble for votes.

Scrambling for votes often creates "Christmas tree" legislation in order to attract the votes for passage. This is especially likely if a funding deadline coincides with other policy deadlines like reauthorizations or sunsets.

The most recent example came just a few weeks ago in the CR ending the brief shutdown. That bill contained a two-year delay of the Cadillac tax, a one-year suspension of the health insurer tax, and a two-year suspension of the medical device tax. These delays cost $31 billion over ten years, a cost that could balloon to over $300 billion if they are repealed permanently.

Fig. 1: Ten-Year Cost of the Tax Cuts in the Continuing Resolution

Policy	Temporary Cost	Permanent Cost
Two-year delay of Cadillac tax	$15 billion	$105 billion
One-year delay of health insurer tax	$13 billion	$185 billion
Two-year delay of medical device tax	$4 billion	$20 billion
Total	**$31 billion**	**$310 billion**

Sources: Joint Committee on Taxation, Congressional Budget Office, and CRFB calculations.

Generally, omnibuses are better for governing than a CR because they at least allow Congress to update spending levels for new priorities and the totals for the current fiscal year. However, bundling appropriations measures (and on occasion other, totally unrelated legislation) together

into one must-pass bill obscures important tradeoffs inherent in budgeting. Instead of reviewing individual bills in committee and then on the floor, with the opportunity to hold hearings and propose amendments, Members are given little time to review massive bills and remove extraneous or wasteful provisions.

Yet for all the faults of CRs and omnibuses, government shutdowns are worse. There have been 13 lapses in appropriations since 1980. Three of the funding lapses (in 1995, 1996, and 2013) were "true" shutdowns, and lasted several days. The other 10 lapses in appropriations were three days or less, and mostly spanned weekends, similar to the shutdown that just ended.

These shutdowns not only undermine public confidence in our leaders, but they can be costly and inefficient. While estimates vary, most evidence suggests that shutdowns tend to cost, not save, money. For one, putting contingency plans in place has a real cost. The uncertainty of whether or not the government will be funded can also cause federal contractors to include risk premiums in their bids to account for the possibility of not being paid. User fees and other charges often go uncollected during a shutdown, and while many federal employees are forced to be idle, they have historically received back pay.

Our fiscal situation is approaching dangerous territory and we are not only failing to address it, we are making it worse

Year after year after year of failing to budget responsibly, make choices, and confront tradeoffs has left our fiscal situation in very bad shape.

Our national debt held by the public was already at a post-World War record of 77 percent of GDP. It now appears that deficits may reach $1 trillion next fiscal year – an inauspicious benchmark that is the result of poor policy choices rather than an economic downturn.

What is even more troubling is where we are headed in the longer term. The debt was already projected to reach 91 percent of GDP in a decade in CBO's June projection, but it now is likely to reach 98 percent due to the tax cuts and other recent legislation, and possibly as much as 100 percent if the sunsets and other gimmicks in the tax bill are done away with.

Despite recent fights over appropriations, discretionary spending is not the main driver of our debt problem. Mandatory spending and interest will account for 89 percent of nominal spending growth through 2027. The aging population and growing medical costs will cause Social Security and major health programs to each grow by roughly 75 percent by 2027 while interest payments on the debt are the fastest-growing part of the budget.

This situation should cause concern for a number of reasons. Excessively high debt slows economic growth. Since growing our economy should be one of the nation's primary economic objectives, continuing to allow the debt to grow on an unsustainable path stands in the way of

that objective. Adding to debt – as the tax bill did and as Congress is on course to in the coming weeks – makes the challenges to getting faster sustained growth even worse.

It also leaves us vulnerable to the next economic downturn or emergency. Before the last recession, debt was half of where it is today relative to the economy. Now it seems we borrow in bad times *and* we borrow in good times, increasingly risking our ability to effectively borrow in bad times. We need to be smarter about following the model of pairing borrowing for downturns and emergencies with measures to get the debt under control in the medium and longer term.

Just as the broken appropriations process worsens our fiscal situation by encouraging deficit-increasing policies, lawmakers' continued unwillingness to deal with our fiscal situation only amplifies the dysfunction of the appropriations process. The deep "sequester" cuts that have been the center of recent budget battles were put into place because the 2011 "Super Committee" could not agree to a balanced package of entitlement reforms and tax increases. The growing costs of mandatory programs and interest payments threaten to put even more pressure on the discretionary side of the budget.

To enact enough savings to replace the sequester and make long-term debt sustainable, lawmakers will need to look for savings across the budget. This means reforming entitlement programs like Social Security and Medicare that are the true drivers of debt, raising revenue through base-broadening or new forms of revenue. It also means working to grow the economy in a sustained manner, which is *not* achieved through debt-financed policies.

There are multiple ways to improve the budget process. None can replace political will

There are few defenders of how the current budget process is working, and there are a variety of approaches for improvement.

First, we have to recognize smart reforms have potential to improve the way we make decisions, but they are not a panacea and cannot replace the political will to make responsible choices.

I would break possible reforms into three basic categories: incremental reforms, stronger incentives and/or punishments, and major overhauls.

My preference is for a major overhaul, but given how hard it is to make progress on pretty much anything these days -- these changes should most definitely be bipartisan since they are about setting up fair rules of the game – starting smaller may make more sense.

1. **Incremental reforms:**

Automatic Continuing Resolutions – We could avoid shutdowns all together if default funding went into place when the appropriations process broke down. Some type of auto-CR has the important benefit of avoiding a shutdown or even the threat of one – and the subsequent must-pass legislation – though it would still have the general shortcomings of CRs. Chairman Paul recently proposed a bill of this kind, and Senator Portman (R-OH) has had a bill of this type for many years. I support this type of approach but any automatic changes (such as spending cuts) should be chosen carefully to either promote sound policies or to discourage the use of the auto-CR. I tend to like including small policy changes that neither side would favor but which would improve the overall fiscal situation.

Biennial budgeting – We could expand the budget to a two-year process to allow more time to consider and pass appropriations. This would also allow more time to evaluate the effectiveness of policies, which doesn't currently get as much consideration as it could. I think there are potential benefits to this change, though if Congress continues to wait until the last minute as it has in recent years, the change might not be meaningful and instead result in longer periods of procrastination.

Make the budget resolution into a law – We could change to using a joint budget resolution. This would make the upfront decisions between Congress and the President potentially much more difficult but would strengthen the process by making the budget an enforceable law.

2. **Stronger incentives:**

Punishments for failure to meet deadline – We could employ punishments for failing to meet budget deadlines. A number of suggestions have been developed including No Budget, No Pay; prohibiting paying Members on Congress during a shutdown (Ranking Member Peters' has co-sponsored a bill); canceling August recess if appropriations are not yet completed; or compelling the Senate to be in session in the chamber if the government has shutdown (Senators Bennet (D-CO) and Gardner (R-CO) have such a proposal).

3. **Real overhaul**

Fiscal goals and longer-term budgets - The Better Budget Process Initiative at the Committee for a Responsible Federal Budget suggested an option to divide the budget resolution into two parts: fiscal goals and an enforceable legislative framework. A pie-in-the-sky budget is not always effective. Separating the governing documents from the incredibly important work of setting a fiscal goal could reduce partisanship in the appropriations process.

The Peterson-Pew Commission on Budget Reform recommended we:

- Create a multi-year budget with annual fiscal targets that Congress would need to meet;
- Use multi-year budgets that would remain in place until the next budget is passed, which could be every year but might not happen for many years at a time;
- Create a medium-term trigger for enforcement of the multi-year budget that includes both spending and revenues if Congress falls short of the fiscal goals;
- Include in the process budgeting for entitlements and tax expenditures. This would make coming to an agreement much *more* difficult but would likely improve the fiscal situation.

Finally, I am a member of Convergence's *Building a Better Budget Process*, a multi-stakeholder group that has reached consensus on a package of budget reform recommendations it will be releasing in the next few weeks, many of which will be helpful in addressing these challenges.

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Lurching from shutdown to shutdown is a terrible way to govern. While it is good to avoid shutdowns, it is not much better to rely on continuing resolutions to fund the government for months, then finally set spending levels months into the fiscal year. Omnibuses are better but still represent an abdication of oversight that often leave individual Members without the opportunity for meaningful comment.

Budget process reforms are no substitute for the tough choices needed to restrain spending or increase revenues in order to reduce the debt. That said, properly structured reforms to the CR process can be a valuable to end the cycle of waste created by continual shutdown planning, rebuild public confidence in Congress being able to fulfill its most basic function, and end the cycle of lurching from crisis to crisis.

I thank the committee for holding this hearing today and would be delighted to work with you on any of these issues. Thank you.

"The High Cost of Budgetary Paralysis"

Testimony of Alice M. Rivlin[1]

Subcommittee on Federal Spending Oversight and Emergency Management

Senate Committee on Homeland Security and Government Affairs

Tuesday, February 6, 2018

Mr. Chairman, Ranking Member Peters, and members of the Subcommittee: I am grateful to the Subcommittee for holding this hearing to call attention to the total breakdown of federal budgetary policy-making. I believe this breakdown is a serious threat to our democracy and America's future prosperity.

Budget Paralysis is Costly

It is both frightening and embarrassing that the world's most experienced democracy is currently unable to carry out even the basic responsibility of funding the services that Americans are expecting from their government in the current fiscal year. Limping from one short-term continuing resolution to another, combining individual appropriations bills into unwieldy omnibus bills that no one is able to study or even read, and threatening to close the government (or default on the debt) if certain conditions are not met are all symptoms of a deeply broken decision-making process.

The costs of budgetary dysfunction are high and rising, although not easy to quantify. Federal agencies, including the Department of Defense, cannot make plans that enable them to spend money efficiently. Recipients of federal funding—states and localities, contractors, universities, non-profits and other service providers—cannot hire needed workers or plan their activities effectively. The morale of the workers we count on to serve the public is understandably eroding and confidence in Congress and the executive is at a low ebb.

The most worrisome cost of the Congress's seemingly-endless wrangling over near-term federal funding is that it crowds out serious discussions of the daunting longer-term challenges that face the nation's economy. If policy-makers want to protect American prosperity in the long term and ensure that future gains are broadly shared, they must confront serious obstacles, including an aging population with rising health costs, lagging wages and productivity growth, extreme increases in inequality of income and wealth, climate change and costly natural

[1] Alice M. Rivlin is a Senior Fellow in Economic Studies at the Brookings Institution, former Director of the Office of Management and Budget, and the Founding Director of the Congressional Budget Office. The views expressed are my own and do not necessarily reflect those of staff members, officers, or trustees of the Brookings Institution.

disasters, and rapid projected increases in national debt. These are all manageable challenges—problems that proven policies could at least mitigate—but economic policy-makers in Congress and the executive are currently so obsessed with sniping at each other over short-term government funding that they are not engaging in the hard work of crafting solutions to these serious problems that loom ahead.

Partisan Warfare is the Problem

The principal obstacle to budget action and constructive economic policy-making is the extreme partisan warfare that has paralyzed Washington. Instead of working together to solve problems, each party is blaming and demonizing the other in hopes of winning the next election, while respectful deliberation over alternative policies has ground to a halt.

All group decision-making takes negotiation and compromise, especially in a big, diverse country like the United States, with a wide spectrum of views about what the federal government should do and how to pay for it. The framers of the Constitution understood that national policy making would be extremely difficult in such a diverse country and bequeathed us a framework for federal decision-making that requires negotiation and compromise at every stage of legislation—within the House and the Senate, between the two chambers, between the congress and the president, and sometimes with the courts.

But the art of political compromise and consensus building, once deemed an essential element of governance, has fallen into disrepute. Concepts like "compromise," "consensus," and "bipartisanship" are seen as evidence of a weak will or even worse—weak principles. Partisan leaders are acting as though the United States had a parliamentary system in which a cohesive majority party can simply write all the rules until rejected by the voters. This style of governance is incompatible with our constitutional system. In fact, when one party chooses to impose its will on the other in an attempt to avoid compromise, it all but guarantees gridlock, destructive swings in policy, or both.

I believe Congress and the executive cannot function effectively to make national policy until they begin working together again across partisan, ideological and geographic divides and restore political compromise to a place of honor in the list of skills needed for retaining public trust.

Moreover, I perceive that finding common ground may not be as difficult in tax and spending matters as in some other arenas. Although partisan rhetoric would lead you to believe there are stark differences in the economic philosophies of the two parties (Republicans for minimal government, free markets, and personal responsibility; Democrats for active government, regulated markets, and public responsibility), in practice the differences are not so sharp. Crafting pragmatic solutions that command broad public support involves negotiating modest changes along a continuum, balancing competing interests, and not scaring a public that is generally afraid of radical change. Forging consensus policy takes patience and hard work. As long as the parties prefer blaming each other for dysfunctional outcomes to working together

on constructive solutions, though, consensus policies will continue to elude us and Americans will suffer as a result.

I believe the first step in restoring a functional budget process is to find a way to deescalate warfare between the parties. Currently, small groups of moderates in both parties are working hard to craft solutions to tough problems, including immigration policy, that can command broad consensus in Congress and the public. They deserve gratitude and support. Bipartisan negotiation and consensus-building must become a normal part of congressional decision-making again—not a desperate response to an artificial dead-line—if the American democratic process is to regain the confidence of voters and the respect of countries that look to us for leadership.

Budget Process Reform Could Help

Structural changes to the budget process can also help. The current budget process is totally broken—as evidenced by the chaotic reliance on CRs and omnibus bills that occasioned this hearing. However, a nostalgic return to "regular order" is not the answer if it means trying to restore the complex, multi-layered budget process that evolved under the 1974 Budget Act. That process was always cumbersome and over-focused on discretionary spending at the expense of mandatory spending and spending through the tax code, which have come to dominate the modern federal budget. Reform of the budget process must reflect these current budget realities.

There are many of proposals for budget process reform and many experts and organizations eager to offer advice. The late Senator Pete Domenici and I, under the auspices of the Bipartisan Policy Center, made a proposal in July 2015 that I believe encapsulates the main elements of a more workable budget process.[2] The proposal had three major themes:

"1) The budget process should include all federal spending and revenues. It should not leave entitlement spending or tax expenditures on automatic pilot, as they are now, but should allow Congress and the president to agree on all spending and revenues and review their decisions on a regular schedule.

2) The process should be transparent and completed on time. The current complexity should be reduced and incentives put in place to finish the budget before the start of the fiscal year.

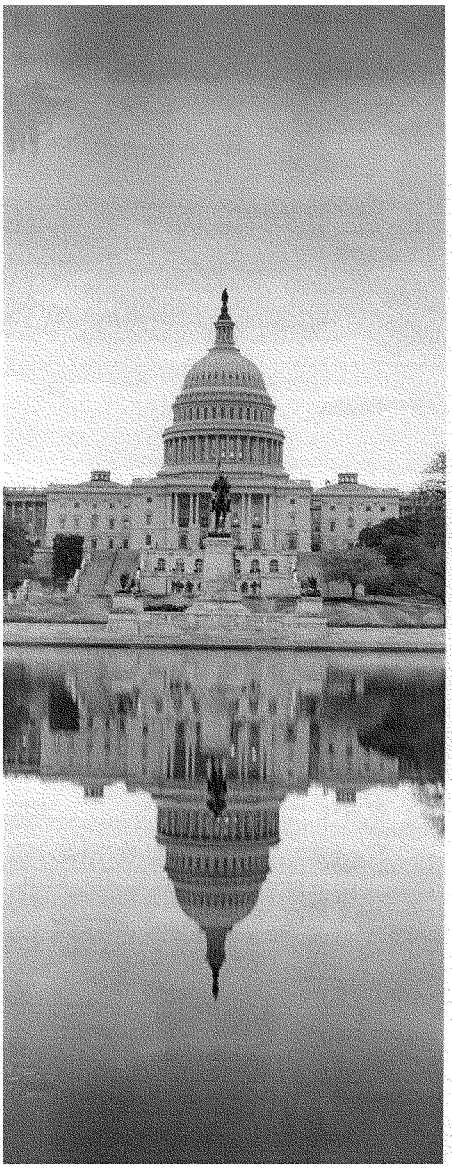
3) The budget should have buy-in from the president and the leadership of both houses of Congress. The budget process is the forum in which differences between the branches on fiscal priorities must be addressed, debated, and resolved. It requires the active participation of executive and legislative leadership."

[2] https://www.brookings.edu/wp-content/uploads/2016/06/Economy-proposal-for-improving-the-congressional-budget-process.pdf

We offered ten specific recommendations designed to reinforce these themes, which are detailed in the attached report.

Budget process reform could help Congress deal more easily with budget decisions and, indeed, is long overdue. I also believe that Congress would benefit greatly from simplifying the committee and subcommittee structure to reduce overlapping jurisdictions. Simplifying the budget itself and drastically reducing the number of budget accounts would also facilitate more timely decision-making. But no process or structural change will help Congress and the executive branch make decisions on the budget or resolve other major issues facing the country unless elected officials recognize that the public desperately wants you to get out of partisan attack mode and start working together to find common ground.

Thank you for this opportunity to share these thoughts.



Proposal for Improving the Congressional Budget Process

July 2015

Written by: **Alice M. Rivlin** and **Pete Domenici**

BIPARTISAN POLICY CENTER

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ACKNOWLEDGMENTS

This report would not have been possible without the insights and hard work of BPC Senior Vice President G. William Hoagland. Bill's knowledge and experience with the budget process are legendary. We are both deeply grateful for Bill's loyalty, wisdom, and friendship over many years, as well as his major contributions to this report." — Alice M. Rivlin and Pete Domenici

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Executive Summary

The Congressional Budget Act of 1974 was a major reform designed to enhance legislative power by giving Congress an orderly process for deciding on the government's spending priorities and how to pay for them. The Budget Act established the House and Senate Budget Committees, the Congressional Budget Office, and a demanding set of procedures for deciding on spending, revenues, and deficits.

After more than 40 years, the process has broken down and urgently needs repair. Indeed, the process specified in the Act—which calls for agreement on a budget resolution early in each congressional session, followed by passage of individual appropriations bills to be signed by the president before the fiscal year begins—has rarely been followed in recent years. In the face of increasing partisan polarization and frequent gridlock, Congress and the executive branch have lurched from one budget crisis to another and kept the government running by means of continuing resolutions and massive omnibus appropriations bills. They have sought to force themselves to make decisions by resorting to special, sometimes bizarre devices, including the super committee, the fiscal cliff, and sequestration.

The current Congress should be commended for having recently adopted a conference agreement for the upcoming 2016 budget year—the first time since April 2009. However, in recent years—and this Congress is no exception—both the White House and congressional budget blueprints have been increasingly used as a political-messaging device. In a political town, there is nothing wrong with messaging tools, but authors of the Budget Act envisioned that a congressional budget would be more than a party-platform statement. They believed the process would

heighten debate of the fiscal challenges confronting the nation and set in motion real negotiations, trade-offs and fundamental legislative reforms toward the goal of fiscal sustainability.

Leaders in both parties also call for a return to "regular order," but the parameters of the federal budget have changed so dramatically since 1974 that the old "regular order" is no longer appropriate. Mandatory spending for the major entitlement programs, such as Medicare and Social Security, has grown rapidly and is now far larger than annual appropriations. Spending through the tax code has escalated. The national debt has soared in relation to the size of the economy and is projected to rise further in the future. It is time to rethink the objectives of the budget process and redesign "regular order" to deal with the budget situation Congress faces now and in the future.

The two of us have held leadership roles in the federal budget process over four decades. We have seen the strengths and weaknesses of the process from multiple angles and thought hard about how to improve it. We belong to different political parties, but we share a commitment to orderly budget process and fiscal responsibility. We are saddened by the demise of the process from its original goals. Out of our shared experience, we offer a set of proposals that we hope will help Congress shape a new budget process—one that will advance its original goals and assist elected officials in dealing with inherently tough choices on spending, taxing, and borrowing.

We are under no illusion that improving the federal budget process will transform the political and legislative atmosphere or erase current tensions. Reforming the budget process will not by itself eliminate partisan polarization, establish collegiality, or restore civil discourse. Difficult political decisions, such as controlling entitlement spending and balancing desired spending with adequate revenues, require more than new budget tools. They require the political will to apply current available and new tools to achieve agreed-on fiscal goals. Nevertheless, we believe improving the budget process can help.

Three themes dominate our proposals:

1) The budget process should include all federal spending and revenues. It should not leave entitlement spending or tax expenditures on automatic pilot, as they are now, but should allow Congress and the president to agree on all spending and revenues and review their decisions on a regular schedule.

2) The process should be transparent and completed on time. The current complexity should be reduced and incentives put in place to finish the budget before the start of the fiscal year.

3) The budget should have buy-in from the president and the leadership of both houses of Congress. The budget process is the forum in which differences between the branches on fiscal priorities must be addressed, debated, and resolved. It requires the active participation of executive and legislative leadership.

On the following pages we offer ten specific recommendations that reflect these themes. Some will find our proposals too drastic to be feasible and others will find them too incremental. We have tried to pick a middle ground that builds on the strengths of the existing budget process and that proposes the changes we deem most needed to deal with current challenges.

10 Recommendations for Reforming the Federal Budget Process:

Recommendation 1: The budget resolution should set caps on discretionary spending, as it does now. Program expenditures currently defined as outside the discretionary caps (60 percent of spending) should be subject to intense review and, as appropriate, placed under the discretionary spending caps. Adjustments for emergencies, disasters, and national security risks should continue, but Congress and the administration should review federal disaster-mitigation programs to reduce federal and private-sector exposure to disaster risks.

Recommendation 2: Enact explicit long-term budgets for Medicare, Medicaid, and Social Security as well as other mandatory programs that have not been put under the discretionary caps. For each of these programs set limits on automatic spending growth. Enforce spending limits by reestablishing and simplifying pay-as-you-go rules for these mandatory spending programs. Establish similar treatment for expiring mandatory and tax revenue provisions in statutory baseline projections. In other words, expansions or extensions of mandatory spending or tax revenue provisions would be required to be paid for with either reductions in other mandatory spending or increases in revenues.

Recommendation 3: Establish a periodic review of federal tax expenditures either (a) by creating a baseline projection of tax expenditures and an automatic review of all tax expenditures when baseline projections are exceeded, or (b) by requiring all tax expenditures to sunset and be subject to an independent review on an eight-year rotating cycle.

Recommendation 4: In combination with the first three recommendations, establish in law a specified debt-held-by-the-public goal to be achieved by a fixed date to guide policy decisions.

Recommendation 5: Enact legislation to establish a biennial budgeting cycle that would ensure that Congress adopts a budget and all appropriation bills in the first session (odd-numbered years) and frees up time in the second session for authorization. Supplemental and emergency appropriations could occur as needed in either session. General oversight by authorizing committees would not be limited to any period.

Recommendation 6: Upon the adoption of a biennial budget resolution that reflects the estimated debt that is subject to limit at the end of the second biennial year, Congress will then be deemed to have enacted and sent to the president for approval (or veto) an increase in the statutory debt limit that is consistent with the assumptions in the adopted biennial budget.

Recommendation 7: Failure to adopt a conference agreement on a biennial budget resolution in the first session of Congress by April 15 would require the cancelation of all planned congressional recesses until a conference agreement is adopted.

Recommendation 8: Failure to adopt a biennial appropriation bill (one or all) before the beginning of the first session of the biennial budget cycle would result in automatic funding of government programs and agencies at the previous year's level.

Recommendation 9: (a) Modify membership of budget committees to include chairs and ranking members of the major fiscal, tax, and economic committees (or their designees); (b) adjust term limits on the House Budget Committee; (c) collapse the Joint Committee on Taxation into the Tax Analysis Division of the Congressional Budget Office; (d) establish clear procedures for appointing a Congressional Budget Office director; (e) eliminate "vote-a-rama"; (f) place nomination of the director and deputy director of the Office of Management and Budget solely within the jurisdiction of the Senate Budget Committee rather than today's joint jurisdiction with Homeland Security and Governmental Affairs; (g) make out-of-order the consideration of both deficit-neutral and spending-neutral reserve funds in drafting budget resolutions; and (h) eliminate restriction on consideration of Social Security changes when considering a budget resolution or reconciliation legislation.

Recommendation 10: Establish a presidential/congressional commission on budget concepts, which will report to the Office of Management and Budget and to the Congress on recommended accounting and budget-concepts changes, including (but not limited to):

- Federal credit program accounting adjustments (e.g., fair-value, expected-returns).
- Review current distinctions between on- and off-budget entities (e.g., Postal Service and Social Security).
- Macroeconomic scoring of tax and investment policies (e.g., "dynamic scoring").
- Reexamine and readjust functional budget categories.
- Equitable treatment of expiring mandatory spending and tax provisions in baseline projections.
- Treatment of offsetting receipts as revenues.
- Regulatory cost analysis, executive and legislative branch procedures.
- Capital budgeting.
- Preventive health care investments.

Proposal for Improving the Congressional Budget

"Through the thicket of budget provisions, piled helter skelter atop one another, from the Budget Act of 1974 to Gramm-Rudman to the Omnibus Budget Reconciliation Act of 1990 (OBRA), there comes the recognizable outline of old disputes that have pitted institutions in the budgetary process against each other as far back as anyone can remember."

—Aaron Wildavsky, Public Administration, November/December 1992

Perspectives on the 1974 Act

While the U.S. Constitution gives the power of the purse to the legislature, Congress did not have an orderly process for exercising that power before 1974. It acted on spending and taxing bills separately, but never on the budget as a whole. It never voted to approve total spending or the size of the deficit or surplus. This fragmented congressional process effectively ceded power to the executive branch, which had evolved a centralized process for preparing and defending the president's budget proposal and which controlled most budget information and analysis. The Act laid out a sequence of decisions for agreeing on a budget framework and then filling in the details. For the first time, Congress was called on to vote on a budget resolution specifying total spending by major categories, total revenues, and the resulting deficit or surplus. The Act also created budget committees to guide the process and keep it on track and a Congressional Budget Office (CBO) to give Congress its own source of budget information and analysis. The Act also attempted to ensure that budget actions would be completed before the fiscal year by shifting the start of the fiscal year from July 1 to October 1.

As one of his last actions before returning to California, President

Richard Nixon signed the legislation into law on July 12, 1974. Scholars will debate its legacy: had the president not been weakened by Watergate, would he have signed the legislation knowing that it was designed to arrest the power of the executive branch and return Congress to co-equal status in setting federal fiscal policy?

Senator Sam Ervin, who chaired the Committee on Government Operations, which played the key role in bringing the Act to fruition, wrote in December of that year: "I have no doubt the Congressional Budget and Impoundment Control Act of 1974 will stand as a monument to the 93rd Congress and its devotion to our constitutional system of government."[1] Twenty Congresses later, many members of Congress, the public, and policy analysts would seriously question whether the Act lived up to the chairman's high expectations.

The most obvious objective of the Act was to restore congressional authority over the budget—a goal shared across the political spectrum. In this respect, the Act succeeded. There is no longer doubt that Congress controls fiscal decisions (subject to negotiation with the executive and presidential veto, of course) and has substantial capacity for fiscal analysis. CBO and the budget committee staffs have given Congress its own budgetary expertise and reduced congressional dependence on the executive branch for budget information and projections. With respect to finishing budget actions in a timely manner, however, the Act has failed. Although the Act allowed three additional months for budget deliberations, the complexity of the process and the fierce contentiousness of budget decisions continue to defeat efforts to make a budget before the beginning of the fiscal year.

With respect to fiscal goals, the record is mixed. The original legislation was neutral with respect to the size of spending, deficits, and debt. It was designed to give Congress the ability to vote explicitly on these magnitudes, not to predetermine fiscal policy. But mounting deficits in the 1980s spurred bipartisan efforts to bring deficits under control. The Gramm-Rudman-Hollings Act of 1986, which introduced sequestration, was a largely unsuccessful effort to rein in deficits. But the Budget Enforcement Act of 1990 (BEA), which introduced caps on discretionary spending and pay-as-you-go rules to mandate offsetting the deficit impact of mandatory spending increases and tax cuts, was more successful. President Bill Clinton and both Democratic and Republican congresses (aided by a strong economy) used BEA tools to bring the budget into substantial surplus by the end of the 1990s.

More recently, Congress has used spending caps aggressively to reduce discretionary spending. Those programs that require annual appropriations—including national security—as a share of the economy (GDP) have declined over the last 40 years, from 9.3 percent in 1974 to less than 7 percent today, and are projected to fall farther. Domestic discretionary spending, which constitutes much of what Americans think of when they think of government programs—research, education, training, science, transportation, border security, etc.—is on a path to being at its lowest level as a share of GDP in decades. One can question whether these reductions in domestic discretionary spending are wise or sustainable, but there is no question the tools of the Budget Act have enabled Congress to cut this form of spending.

By contrast, those programs often referred to as "mandatory" have nearly doubled—from 7.4 percent in 1974 to 13.5 percent today—and, if current policies are not altered, are projected to expand to nearly 21 percent of GDP by 2039. Although Chairman Ervin expressed the hope that the Act would provide for the control of "backdoor spending" (an unfortunate term; today such spending is referred to as "mandatory spending"), it has never been actively applied to mandatory spending. Such spending does not require annual appropriations—spending continues until Congress acts to change the statute that authorizes it. Mandatory spending is the most difficult for elected officials to address because of the direct benefits provided to their constituents in the form of Social Security, Medicare, Medicaid, unemployment insurance, veterans' support, food assistance, and other direct transfers.

Since most mandatory spending reflects benefits for older people, such spending has increased as the population aged and is on track to rise faster as the large baby-boom generation retires and becomes eligible for benefits. Rapid increases in per-capita health spending reinforce the upward trajectory of entitlement spending. Although the increase in per-capita cost of federal health programs has slowed recently, this slowing may not be sustainable, and, in any case, the number of aging "capitas" will continue to increase.

Revenues are about the same percentage of GDP that they were when the Budget Act was passed—about 18 percent in 1974 (a recession year) and about 17 percent in 2014, although there have been some variations in between. Revenues are reduced by the large number of exemptions, exclusions, and special provisions in the tax code, many of which are essentially spending programs run through the tax code. These tax expenditures, like entitlement spending, are essentially on autopilot. They are not reviewed as part of the budget process.

The most dramatic change in the budget situation in recent years is the rise in federal debt in relation to the size of the economy. Under the impact of the Great Recession and the fiscal measures taken to help the economy recover, debt held by the public has doubled as a percent of GDP. Public debt, which was just 23 percent of the annual U.S. economy in 1974 and was 35 percent as recently as 2007, has risen to more than 74 percent in 2014, and it is projected to rise to more than 106 percent in just 25 years (2039),[2] reaching levels not seen since the end of World War II. The increase in debt highlights the importance of bringing mandatory spending and tax expenditures into the budget process so that Congress can consider all the options available to put the budget back on a sustainable track and reduce the ratio of debt-to-GDP.

Limitations of Process Reform

Reforming the federal budget process will not by itself reprise the past or address current failings of the legislative process. Reforming the budget process will not by itself eliminate partisan polarization, establish collegiality, or restore civil discourse. But reforms to the budget process should also not make the perfect the enemy of the good. The failure to control entitlement spending or to balance current spending with current revenues lies not with the Act itself, but with the lack of political will to apply available tools to achieve agreed-on fiscal goals.

This lack of political will comes from both parties' inability to work toward bipartisan goals and is reflected in the Act's long history. Over four decades, Congress has failed nine times to do its most basic responsibility: to adopt a budget. Governing requires budgeting, and budgeting is governing. This has occurred three times when Republicans controlled both chambers, and one time when Democrats were in control of Congress. However, five of those nine times have occurred the last five years straight, when Congress was divided with Republicans in control of the House of Representatives and Democrats in control of the Senate. (See Appendix.) The breakdown in the process has also been reflected in the appropriation process. Only two times in the last 40 years have all 13 (now 12) individual appropriation bills been completed on time, the last being in 1994.[i] Further, for the last five years (2010 to 2015), no regular appropriation bill has been enacted before the beginning of the new fiscal year.

Proposals to change the Act by adopting the recommendations of this paper are critical and worthy of full debate. But much as the process needs a good tune-up after 40 years, no such process changes can reinstate the Madisonian concept embedded in the Constitution—compromise—when no will exists to do so.

Chairman Ervin believed that for 40 years before the passage of the Budget Act, Congress had contributed to and acquiesced in the growth of the power of the executive branch. Forty years on under the Budget Act, can it get over its midlife crisis, find compromise, and return to its basic function of governing and budgeting?

[i] In 1996, for fiscal year 1997, 13 regular appropriation bills were enacted before October 1 (the beginning of the fiscal year), but this was accomplished by combining six regular acts to form an omnibus appropriations act and then enacting the other seven bills individually.

Three Key Elements of Reform

An overhaul of the budget process should have at least three elements.

First Element: The process should include all federal spending and revenues. As envisioned in the original Act, the budget should be "comprehensive," tabulating all expenditures and all revenues and receipts. However, in practice, the budget process has focusing primarily on "discretionary" annually appropriated spending. Such a focus leaves out the nearly two-thirds of all spending that is running on autopilot. Congress has the power to review this spending but does not do so on any regularly scheduled timetable. Further, Congress does not regularly review the huge volume of tax expenditures that permeate the tax code and that by any other accounting could easily be considered mandatory spending. It is impossible for Congress to achieve the stated goal of the budget process—setting spending and revenue priorities—under such circumstances.

Second Element: The budget process should be easy to understand and completed on time. The understanding should not be limited only to members of Congress and their staffs, but to the general public also. To be sure, the 1974 Act was a much-needed step forward in creating a more open and transparent system of budgeting and accounting. Unfortunately, the new process, with two new committees, was layered on top of an already complex and dizzying array of authorizing and appropriations committees, with yet more layers of subcommittees beneath them. The result was a process too complicated to execute in a timely fashion even when partisan hostility was lower than now.

Indeed, within a few years of its passage, the requirement that there be a first and second concurrent resolution—with the option of the second resolution establishing reconciliation procedures—was dropped as too time-consuming and confusing. Further, procedural restrictions brought about by innumerable points-of-order have blossomed over the course of the Act's history. Some points-of-order are found in the original legislative language of the Act; others followed amendments to the Act. In addition to the legislated points-of-order, others result from the rule-making authority of each chamber's adoption of, or deeming of, a concurrent budget resolution. In the Senate, some of the points-of-orders can be waived with a simple majority vote; others require a supermajority (60 votes).

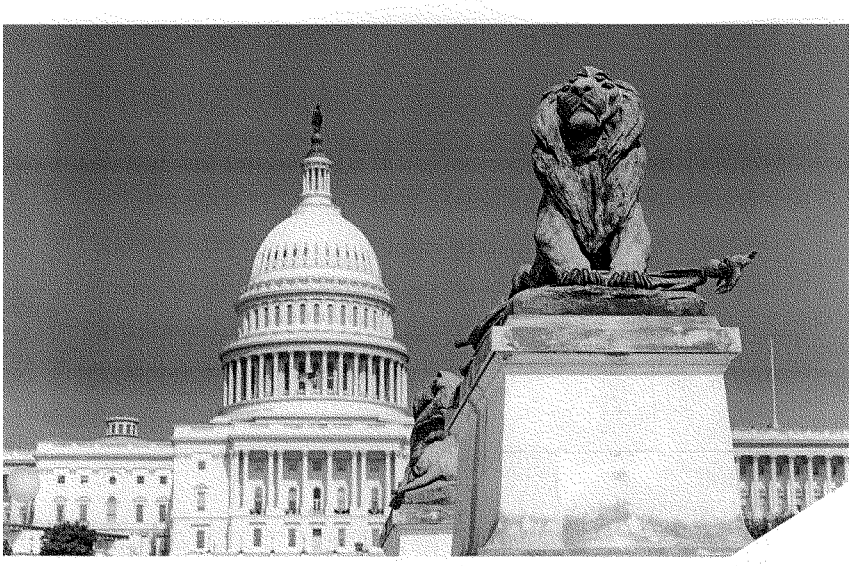
Besides creating confusion and time-consuming votes to either waive or affirm a point-of-order, some existing restrictions do not reflect the long-term fiscal challenges facing the country. As an example, a supermajority point-of-order prohibits the consideration of reconciliation legislation that contains any changes to the Social Security program. Finally, while some well-intended points-of-order provide the tools for enforcing agreed-on budget decisions, the effects of others result in a gridlock of the legislative and fiscal decision-making processes. Most dangerously, the public observes these complex proceedings without comprehension and concludes that their government is dysfunctional.

Third Element: Budget decisions should have the active participation of the congressional leadership and the president. Too often, the budget deliberation process has become a simple extension of a political party's platform agenda or an individual's campaign promises, with "gotcha" votes having no substantive impact on the final actual spending or revenue decisions. Removing the "campaign" element of the budget process from the system, and focusing on governing, will require modifying the membership structure of the two budget committees to better incorporate the top leadership of the major spending and taxing committees. Such changes to an individual committee's makeup would require the concurrence of party caucus committee rules. Addressing broadly the congressional committee structure is beyond the scope of this paper. However, simplifying the committee and subcommittee structure could be an integral part of improving both budgeting and governing in the U.S. Congress.

While reform of the congressional budget process is the focus of the recommendations to follow, leadership in the executive budget process is also essential. The president should be an active and direct participant in the congressional budget deliberations, making the administration's views clear through Statements of Administration Positions and in meetings with congressional leadership. Providing presidential leadership while respecting the prerogatives of the Congress and maintaining the balance of powers between the two branches of government takes political skill at both ends of Pennsylvania Avenue.

The congressional budget process begins with the executive submitting a budget to the Congress for consideration. Making the president's budget submission timely and transparent is the first step in executive involvement. While congressional oversight is necessary, the executive is bound to know in more detail the operational nature of individual agencies and programs. Therefore, consolidating and streamlining executive agencies and programs within an agency to increase both their effectiveness and efficiency is a priority that should be respected by the Congress. But executive agencies must also establish clear, accountable, and measureable goals and results for funding requests to fully inform congressional budget decision-makers. Incorporating more directly the impact of executive rule-making decisions and their budgetary impacts into the congressional funding procedures would increase the accuracy and credibility of aggregate spending and revenue estimates.

Filling in the Details



Element #1: All Spending and Revenues

Spending subject to annual appropriations—discretionary caps

Recommendation 1:

The Budget Resolution should set caps on discretionary spending as it does now. Program expenditures currently defined as outside the discretionary caps (60 percent of spending) should be subject to intense review and, as appropriate, placed under the discretionary spending caps. Adjustments for emergencies, disasters, and national security risks should continue, but Congress and the administration should review federal disaster-mitigation programs to reduce federal and private-sector exposure to disaster risks.

Discretionary spending caps were first created in 1987 and have become an integral component in maintaining fiscal discipline in this segment of federal spending. The BEA established in law discretionary spending limits, placing limits on annual on appropriations. For 1991 through 1993, BEA established separate budget authority *and outlay limits* for defense, international, and domestic spending. Subsequent amendments collapsed all discretionary spending into one cap and applied the cap only to budget authority. Spending in excess of the caps results in across-the-board spending reductions (sequestration) to bring spending back in line with the statutory cap.

Today budget-authority spending caps established in 2011 (as amended) apply only to defense and nondefense spending through 2022. Confusingly, in 2013, spending caps were defined to apply

to "security" and "non-security" funding.

Further, over the years, adjustments to the spending limits have been provided for emergencies, disaster relief, program-integrity initiatives, wildfire-suppression operations, and overseas contingency operations. In 2014, these adjustments increased spending authority by nearly $100 billion (with $86 billion for overseas contingency operations).

Total discretionary spending, including adjustments outside the statutory caps, represented approximately 33 percent of all federal spending in 2014. Should discretionary spending adhere to the adjusted caps through their expiration in 2021, that spending will increase by less than 1.4 percent annually or, when adjusted for inflation, a negative 0.5 percent. Meanwhile, non-discretionary, non-interest expenditures are expected to increase at an annual rate of 6.1 percent. Current estimates over this same period expect inflation to exceed 2.2 percent annually. These differential growth rates suggest an urgent need to include all spending in the budget process, as originally intended.

Major mandatory program spending limits.

Recommendation 2:

Enact explicit long-term budgets for Medicare, Medicaid, and Social Security as well as other mandatory programs that have not been put under the discretionary caps. For each of these programs, set limits on automatic spending growth. Enforce spending limits by reestablishing and simplifying pay-as-you-go rules for these mandatory spending programs. Establish similar treatment for expiring mandatory and tax revenue provisions in statutory baseline projections.

Over the next decade, the three major direct-spending programs—Medicare, Medicaid, and Social Security—will expend nearly $23 trillion and represent 80 percent of all expected mandatory spending over this period. Expenditures will grow at an annual rate for all three programs (~6.0 percent), exceeding the estimated growth in the overall economy over the period (4.4 percent).

Limits on Discretionary Budget Authority, FY 2014 to 2021 (Billions of Dollars).

Caps	2014	2015	2016	2021	Annual Rate of Increase 2014 - 2021
Defense	$520.5	$521.3	$523.1	$590.1	$1.8%
Nondefense	$491.8	$492.4	$492.4	$555.9	$1.8%
Total	$1,012.2	$1,013.6	$1,016.0	$1,146.0	$1.8%
Adjusted for Inflation 2014 = 100	$1,012.2	$994.7	$976.0	$980.3	-$0.5%

Source: Fiscal Sequestrian Report for FY 2014. Congressional Budget Office, January 2015.

Importantly, an aging population drives these programs' growth. While reversing the aging cycle is not possible, with the programs' growth exceeding the economy's growth, other public expenditures necessary for national security and long-term economic growth could be restricted.

By establishing clear spending targets for these three programs and an annual review to ensure targets are met, Congress can begin to budget more directly for them in the future. Those targets could be the current growth rates or rates agreed to be desirable. However, should targets be exceeded, the first line of control would be to offset the breach by requiring the enforcement of past pay-as-you-go rules. Similarly, should target growth rates be adjusted upward from current estimates, increases would also have to be offset.

Finally, many major mandatory spending programs whose authorizations are set to expire are nevertheless currently assumed to be continuing in the congressional baseline estimates (Section 257, BBA 1985). However, non-trust-fund revenue provisions that expire under current law are assumed to expire in the baseline. This disparate treatment is one of the primary arguments against pay-as-you-go rules, since expiring tax cuts are disadvantaged relative to major mandatory spending programs.

The budget baseline rules should be amended to treat spending and revenue equally and to assume their continuation in the baseline regardless of statutory expiration.

Tax expenditure review.

Recommendation 3:

Establish a periodic review of federal tax expenditures either (a) by creating a baseline projection of tax expenditures and an automatic review of all tax expenditures when baseline projections are exceeded, or (b) by requiring all tax expenditures to sunset and be subject to an independent review on an eight-year rotating cycle.

The Budget Act defines tax expenditures as "those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability."[3] Tax expenditures are not examined or scrutinized on a consistent or regular basis.

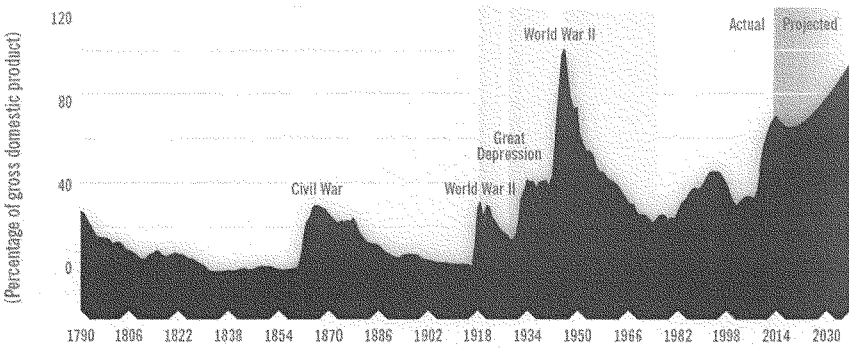
Any periodic review of tax expenditures triggered by estimates exceeding a baseline projection would require the administration and congressional experts to provide decision-makers with information on the incidence and efficiency of the tax expenditures compared with alternative direct-spending policies.

On the basis of estimates prepared by the CBO and the Joint Committee on Taxation (JCT), there are more than 200 tax expenditures in the individual and corporate tax system that in 2014 totaled nearly $1.4 trillion. The majority of tax expenditures are more similar to mandatory spending programs than to discretionary spending programs. Modifying, adjusting, or repealing individual tax expenditures would not have a direct dollar-for-dollar impact on revenues due to the interaction of the provision with other components of the tax system. Therefore, a simple cap on tax expenditures is methodologically difficult to construct.

One suggested approach to developing a workable tax expenditure cap would be to first define a tax base (e.g., Haig-Simmons, Fisher[4]) and then to compare this base with actual revenues (separated between corporate and individual) to arrive at an aggregate tax expenditure. The difference would then serve as the basis for determining a "tax expenditure baseline." Increases above the baseline, determined retroactively, would require automatic review of either corporate or individual tax rates to offset the increase, revise the baseline, or target legislative action to offset the breach of the cap.

An alternative approach to reviewing tax expenditures proposed by the Minnesota Department of Revenue in 2011 could be applied

The Accumulation of Public Debt (Exceeds 100% of Economy in 2038).



at the federal level.[5] This approach would require that all tax expenditures have a set expiration date. Barring legislation to the contrary, any tax expenditure that sunset would be offset by an automatic decrease in tax rates to maintain revenue neutrality (e.g., corporate/business rates for business tax expenditures and individual rates for individual tax expenditures). In addition, an independent commission would complete a comprehensive evaluation of all tax expenditures on a rotating eight-year cycle. The rotation of expenditures reviewed would be coordinated with the following recommendation (Recommendation #5) to establish a biennial budget and appropriation process.

Set debt-held-by-public target.

Recommendation 4:

In combination with the first three recommendations, establish in law a specified debt-held-by-the-public goal to be achieved by a fixed date to guide policy decisions.

By establishing clear long-term goals for the level of discretionary spending, major mandatory spending, tax revenues, and tax expenditures, policymakers can establish the level of national debt and debt held by the public to be incurred.

Current projections estimate that the country's gross federal debt will increase steadily over the next decade, reaching more than $26 trillion by 2024, 100 percent of GDP in that year. Economists, however, tend to focus only on that portion of the national debt that is held by the public, excluding intergovernmental debt held in federal trust-funded programs. On that score, debt held by the public is also expected to increase steadily throughout the next decade—to $20.6 trillion, or 77 percent of GDP.

At the end of 2008, federal debt held by the public was 39 percent of GDP, close to the average of the preceding several decades. The Great Recession and measures designed to mitigate it carried the debt well over 70 percent of GDP—ratios not seen since shortly after the end of World War II. Over the next decade, debt is estimated to grow faster than that of the economy. Further, by maintaining current revenue and spending paths, CBO estimates this level of debt to exceed 106 percent of GDP by 2039. As this occurs, investors may question the government's willingness to honor its obligations without receiving a higher rate of return on their investments. To service higher-interest expenses, policymakers would need to increase revenues or reduce spending,

or a combination of the two, in order to avoid the spiraling of debt into the future.

Setting a clear goal now that lowers the estimated debt level from its current unsustainable path should be a fundamental goal of any budget-process reform legislation. Past reform proposals have established a goal of debt-to-GDP at 60 percent. The appropriate level can be debated, but at a minimum, fiscal policy should seek to keep the debt level steady over the long-term horizon.

Element #2: Transparency and Timeliness

Enact a biennial budget and appropriation process.

Recommendation 5:

Enact legislation to establish a biennial budgeting cycle that would ensure that Congress adopts a budget and all appropriation bills in the first session (odd-numbered years) and frees up time in the second session for authorization. Supplemental and emergency appropriations could occur as needed in either session. General oversight by authorizing committees would not be limited to any period.

This widely supported bipartisan proposal has been advanced over the years, allowing Congress to prioritize its work, to devote more time to program oversight and reauthorizations, to establish more certainty in the budget and appropriation process, and to increase the performance of the federal government. Most recently, the Bipartisan Policy Center's Commission on Political Reform advanced this recommendation as a responsible way of managing the nation's finances and improving the efficiency of government-run programs.[6]

Congressman Leon Panetta authored the first biennial reform bill introduced in 1977. Later, as secretary of defense in 2012, he again expressed his support for a biennial budget and appropriation process as a basis for better government planning and execution. The biennial budget has been supported by the Ronald Regan, George H.W. Bush, Bill Clinton, and George W. Bush administrations. The recommendation builds on Congress's recent enactment of the Bipartisan Budget Act of 2013 (P.L. 113-67), which provided a budget framework for two fiscal years. Finally, as of 2011, 19 states now operate on a biennial budget system.

No government default: automatic increase in statutory debt.

Recommendation 6:

Upon the adoption of a biennial budget resolution that reflects the estimated debt that is subject to limit at the end of the second biennial year, Congress will then be deemed to have enacted and sent to the president for approval (or veto) an increase in the statutory debt limit that is consistent with the assumptions in the adopted biennial budget.

The Congressional Budget Act (CBA) requires that the content of a budget resolution include, among other items, for at least five years, a public-debt estimate for each year covered by the resolution.[7] The House of Representatives, from 1979 until 1995, operated under the "Gephardt Rule" to address raising the statutory debt limit. Upon adoption of the budget resolution (conference agreement) during those periods, the House was deemed to have also passed a debt-limit bill consistent with the adopted budget resolution's calculated debt limit. The U.S. Senate, without the benefit of such a rule, therefore, was required to take two votes—one on the conference agreement and one on the debt-limit bill. Frustration by some senators that the House had to take only one vote (the passage of the conference agreement) often led to the House debt-limit bill being amended so as to guarantee a second vote in the House.

In recent years, some members of Congress have leveraged the debt-limit bill, bringing the country to near default. For a third time

in a short 12 months in 2013 and 2014, the country was brought back from the brink of default with the president's signature on legislation, most recently on February 15, 2014, with the enactment of the Temporary Debt Limit Extension Act, which included an extension through March 2015.

Failure to adopt a biennial budget would still require action on a separate debt-limit bill as needed.

Recommendation 7:

Failure to adopt a conference agreement on a biennial budget resolution in the first session of Congress by April 15 would require the cancelation of all planned congressional recesses until a conference agreement is adopted.

One of the basic functions of a government is to establish a budget. Members of Congress are elected; they have a contract with the American public to carry out the laws of the country. In the private sector, non-performance of a contract results in non-payment for work not performed. Failure by elected officials to adopt a budget breaks that contract with the American public. The American taxpayer has the right to demand that their elected officials perform the duties to which they are elected and to require them to remain on their jobs until completed.

Consistent with the existing statute that makes it out of order to consider any resolution in the House of Representatives that provides for an adjournment period of more than three calendar days (during the month of July) unless they have completed action on a directed reconciliation bill for the upcoming fiscal year, a similar prohibition for all months could apply to both the Senate and the House for failure to adopt a conference agreement on a biennial budget resolution.

No government shutdowns: automatic continuing resolution.

Recommendation 8:

Failure to adopt a biennial appropriation bill (one or all) before the beginning of the first session of the biennial budget cycle, would result in automatic funding of government programs and agencies at the previous year's level.

As described earlier, only two times in the last 40 years have all 13 (now 12) individual appropriation bills been completed on time, the last being in 1994. During those 40 years, a budget resolution conference agreement was reached in all but nine years. Further, for the last five years (2010 to 2014) no regular appropriation bill has been enacted before the beginning of the new fiscal year. No budget resolution conference agreement was reached in four of those five years. A total of 116 days of government shutdowns has occurred over the life of the Budget Act.

Congress passed the Consolidated and Further Continuing Appropriations Act in December 2014 just hours before expiration of the existing continuing resolution. This bill, also known as the "Cromnibus," was composed of 11 FY 2015 appropriations bills—a total of $1.014 trillion in discretionary budget authority—and a continuing resolution that set up another political showdown around Homeland Security funding in early 2015.

This recommendation would avoid the threat of government shutdowns for failure to adopt biennial appropriation bills by the beginning of the first fiscal year, or the threat of a presidential veto of a biennial appropriation bill at the beginning of the fiscal year. It would establish an automatic funding of all programs at the lower of the previous year's appropriated level or at the annualized level provided in the most recent automatic continuing resolution if the regular bill did not become law. The automatic continuing resolution would be for the full two biennial years.

Element # 3 Leadership

Organizational restructuring and streamlining—budget committees, CBO, JCT, and budget resolution consideration.

Recommendation 9:

(a) Modify membership of budget committees to include chairs and ranking members of the major fiscal, tax, and economic committees (or their designees); (b) adjust term limits on the House Budget Committee; (c) collapse the Joint Committee on Taxation into the Tax Analysis Division of the Congressional Budget Office; (d) establish clear procedures for appointing a Congressional Budget Office director; (e) eliminate "vote-a-rama"; (f) place nomination of the director and deputy director of the Office of Management and Budget solely within the jurisdiction of the Senate Budget Committee rather than today's joint jurisdiction with Homeland Security and Governmental Affairs; (g) make out-of-order the consideration of both deficit-neutral and spending- neutral reserve funds in drafting budget resolutions; and (h) eliminate restriction on consideration of Social Security changes when considering a budget resolution or reconciliation legislation.

A. **Membership.** In 1972, the Joint Study Committee on Budget Control reported its recommendations, which later became the CBA of 1974. Of the 32 members of the Joint Study Committee, all but four of them served either on the appropriation or tax-writing committee. Analysts have concluded that owing to the membership of this committee, Congress intentionally created the budget committees such that they would have difficulty exercising control over the long-standing money committees.[8]

The current membership on the budget committees is established by the individual rules of each chamber—but primarily by leadership's decisions. Rules of the House require that five members of the House Ways and Means Committee and five members of the House Appropriations Committee serve on the Budget Committee (currently, comprising three majority and two minority representatives from each committee). In addition, one member of the House Rules Committee and one member appointed as the speaker's designee serve on the committee. The chairman of the Budget Committee is limited to three sessions of Congress (six years).

While the House's rules have strengthened the committee's working relationship with other key fiscal House committees, similar rules in the Senate are lacking.

In the Senate, Senate Rule XXV and party conference rules address committee assignments. The Budget Committee is considered a "B" committee, along with the Rules, Small Business, Veterans Affairs, Aging, and Joint Economic committees. A senator can serve on no more than two "A" committees (such as Appropriations, Armed Services, Finance, Banking, etc.) but only one "B" committee. Further restrictions are placed on membership by party caucus rules. As an example, Democratic members are prohibited from serving on more than one of the "Super A" or "Big Four" committees.[ii]

The Senate should reclassify the Budget Committee as an "A" committee and adjust party caucus rules. Rules then would require membership on the Budget Committee of either the chair or ranking member (or their designee) of the key "A" fiscal committees, with a rotating committee representative in the year of a major authorization (e.g., Agriculture). This would increase the authority of the Budget Committee and provide linkage between any budget policies developed by the Congress and the major committees responsible for implementation of those policies.

B. **Term Limits.** In the House of Representatives, only three committees have term limits: Budget, Intelligence, and Ethics. The restriction set out under House Rules (Clause 5, Rule X) requires that members rotate off the committees once they

[ii] Appropriations, Armed Services, Finance, and Foreign Relations.

have served in four out of six successive sessions of Congress. The result of this rule is that members' loyalty to the committee is limited and the benefit of expertise developed by members on complex budget and accounting procedures is sacrificed.

Term limits exist in the Senate only as established by party caucus rules on the chairmanship.

C. **JCT/CBO.** The CBA specifies that for purposes of revenue legislation, considered or enacted in any session of Congress, the CBO shall exclusively use revenue estimates provided to it by the JCT. Improved use of limited staff resources, increased efficiency in revenue estimating, and improved tax-policy analysis could be achieved by streamlining this process. It is recommended that the staff of the JCT and its functions be subsumed directly into the CBO's Tax Analysis Division. The JCT would not be eliminated, but independent tax analysis would be within the CBO's jurisdiction.

D. **CBO Director.** The CBA simply states that, after considering recommendations received from the two Budget Committees, the speaker of the House of Representatives and the president pro tempore of the Senate shall appoint the director of the CBO. Once appointed, the director serves a four-year term that expires on January 3 of the year preceding each presidential election. No restrictions apply to the number of terms a director can serve. Of the seven directors who have served over the CBO's history, three have served two four-year terms and the remainder served one term.[iii]

Over the organization's history, this somewhat informal process has resulted in highly qualified and outstanding public servants serving as directors. This informality, however, has evolved into an unwritten agreement of rotation of the appointment between the House and the Senate leaders. When the two chambers are under different party control this can result in a stalemate and a delay of the needed appointment. Greater clarity and specificity in the appointment process should be established in law.

E. **Eliminate "Vote-a-rama."** In the Senate, in theory, at the end of the statutory time limit on debate of a budget resolution (50 hours) or budget reconciliation bill (20 hours), a vote should occur on the adoption of the budget resolution or the reconciliation bill. However, the time limits set in the CBA, whether intentionally or by oversight, limit only the time in debate and not overall consideration. As a result, beginning in the 1990s, a practice developed known as "vote-a-rama"—whereby senators could continue to offer amendments after the time for debate had expired but not debate the amendment. The result was a long series of amendments and effectively no end to the process, except for exhaustion.

Reform to this process could be achieved by establishing a cloture-like filing deadline for amendments and a time-certain for final vote.

F. **Nomination of OMB Director/Deputy Director.** Not until 2006 did the Senate Budget Committee have any involvement in the nomination or confirmation process of the director and deputy director of the Office of Management and Budget (OMB). As a legacy of jurisdiction prior to the enactment of the Budget Act, the Senate Governmental Affairs Committee had sole jurisdiction over this appointment. And even today, the Budget Committee and (renamed) Homeland Security and Governmental Affairs Committee jointly oversee consideration of those nominations.

In order to streamline the nomination process and to reflect a clearer line of oversight to the Budget Committee, the law establishing the joint jurisdiction should be amended and that responsibility be placed solely within the Senate Budget Committee for the consideration of these nominations.

[iii] Those serving two terms: Alice Rivlin, Robert Reischauer, and Douglas Elmendorf. Those serving one term: Rudolph Penner, June O'Neill, Dan Crippen, and Douglas Holtz-Eakin.

G. **Eliminate Deficit-Neutral/Spending-Neutral Reserve Funds.** During the consideration of the 2016 budget resolution, more than 183 deficit-neutral or spending-neutral reserve funds were adopted in the Senate-passed resolution. Reserve funds first were adopted on a very limited scale beginning in 1987 when two reserve funds were created. They have grown over the years but never to the scale reached in the 2016 budget debate. Reserve funds are effectively "Sense of the Congress" resolutions that allow for the chairman of the Budget Committee to adjust spending or revenue allocations should Congress adopt measures consistent with the stated policies of the adopted reserve fund. As such, they allow members of Congress to be for a politically popular program or activity without addressing how to fund the activity. Budgets should force decision-makers to address trade-offs and highlight their priorities, and not circumvent the hard, necessary, and real decisions of budgeting.

H. **Social Security Restrictions.** Under current law and rules established through previous budget resolutions, it is not in order to consider any changes to the Social Security program in a budget resolution, amendments to the resolution, conference reports on the resolution, or a reconciliation bill (Title II of Social Security). This restriction in current law (CBA Section 301(i) and Section 310(g)) and other unnecessary restrictions on the budget process should be eliminated.

Recommendation 10:

Establish a presidential/congressional commission on budget concepts, which will report to the Office of Management and Budget and to the Congress on recommended accounting and budget-concepts changes, including (but not limited to):

- Federal credit program accounting adjustments (e.g., fair-value, expected-returns).
- Review current distinctions between on- and off-budget entities (e.g., Postal Service and Social Security).
- Macroeconomic scoring of tax and investment policies (e.g., "dynamic scoring").
- Reexamine and readjust functional budget categories.
- Equitable treatment of expiring mandatory spending and tax provisions in baseline projections.
- Treatment of offsetting receipts as revenues.
- Regulatory cost analysis, executive and legislative branch procedures.
- Capital budgeting.
- Preventive health care investments.

Nearly half a century ago, in 1967, a commission of highly regarded experts presented the president of the United States with a report outlining fundamental reforms to the federal budget.[9] Those reforms focused on the presentation of the federal budget, its concepts, and its practices to increase its "usefulness for decision-making, public policy determination, and financial planning." The commission's central recommendation was the creation of a unified budget statement, eliminating in large part the three other budget concepts at that time: administrative budget, consolidated cash budget, and a national income accounts budget. The president's budget submitted to Congress in 1969 reflected many of the commission's recommendations, which have continued unchanged to this day.

Forty-seven years later, we recommend that a similar high-level presidential and congressional commission be established to revisit concepts and procedures used today in deliberations surrounding the current federal budget process. This would not only focus on the congressional process, as we have done here, but also on the roles of the executive branch, independent regulatory agencies, the judicial branch, and—increasingly important in the 21st century but also controversial—the Federal Reserve on impacting fiscal policy.

One focus of this commission should be an appropriate accounting for federal credit programs and activities creating unfunded long-term liabilities for the federal government.

Federal Credit Accounting. As an example, CBO recently estimated that nearly $3.8 trillion in new obligations or credit commitments would be made over the next decade. Federal credit programs provide support for housing, commerce, agriculture, education, and more. Current federal accounting of these loan programs collapses the fiscal effects of these loan programs into one number (the net present value of the loan). The Federal Credit Reform Act of 1990 (FICRA) measures the lifetime cost of a loan (called its subsidy cost) as the discounted future cash flows of the loan to a present value at the date the loan is disbursed. Under FICRA rules, the discounting factor is the rate on U.S. Treasury securities with similar terms to maturity.

An alternative accounting mechanism called "fair-value," similarly collapses the fiscal effects of a loan into one number, but fair-value uses a discounting rate based on market values, which is believed to more fully account for the cost of the risk the government takes in making the loan.

The difference in accounting for similar loans is different not only in magnitude, but also in sign. It is estimated under FICRA procedures that the $3.8 trillion in new obligations or commitments over the next decade will have a negative subsidy cost of more than $200 billion—the government makes money on the loans. However, accounting for market risks under fair-value, there would be a cost to the government of more than $120 billion.

In addition to the differences in costs resulting from different discounting assumptions, neither FICRA nor fair-value accounting that results in "one number" can fully capture the budget effect over the budget window, over the loan's life, or as a subsidy to the borrowers[iv] An alternative accounting structure for federal credit programs should be developed to better capture the risks to the government in making loans while increasing the transparency to decision-makers to also capture the impact of the loan over the budget window.

The growth of federal credit programs over recent years and increased regulatory activities outside the normal congressional budget process necessitate a more fundamental review of these programs and of their accounting than what might be achieved by the reforms suggested herein.

On-Budget/Off-Budget Accounting. In 1967, the President's Commission on Budget Concepts called for the budget to include the financial transactions of all the federal government's programs and agencies. Despite the commission's strong recommendation, at least one federal program or agency has been presented as off-budget as a requirement of law. Although there is a legal distinction between on-budget and off-budget activities, for all practical purposes there is no difference between the two. The federal activities of these off-budget programs are funded by the government and administered by the government the same as if they were on-budget.

Largely due to the lobbying efforts of Senator Ernest Hollings, the 1985 Gramm-Rudman-Hollings law made the Social Security programs off-budget (except for purposes of calculating the deficit and sequestration). Previous activities that had been declared off-budget by law before 1985 have been reclassified as on-budget.

But in 1990, the Postal Service was declared off-budget by law. The Postal Service has an unfunded liability totaling nearly $100 billion today, primarily in unfunded retiree health care benefits. Postal Service retirees are federal retirees, and their benefits are paid out of the U.S. Treasury. This fact alone suggests that the Postal Service should not be considered off-budget. Social Security programs and the Postal Service programs include accounts further divided into mandatory and discretionary funding, adding to confusion and unnecessary record-keeping.

[iv] For a discussion of an alternative credit-scoring procedure, see: "A Better Way to Budget for Federal Lending Programs," Donald Marron, September 2014.

Other Accounting Issues. Questions also should be asked and answered as to whether a reconsideration of a capital budget, alternative financing mechanisms that might tap the strengths of the private-sector investment community, or an investment budget would better provide decision-makers with the tools to address the challenges of an aging physical infrastructure. How can future liabilities be better reflected and addressed in the budget decision-making process? Further, is a cash-based accounting system the best approach for decision-making when the human capital investment may not provide returns to the public until beyond the traditional budget window?

Conclusion

Since the Congressional Budget Act was passed more than four decades ago, Congress has failed nine times to do its most basic responsibility: to adopt a budget. We believe that's unacceptable.

Governing requires budgeting, and budgeting is governing. Because of our shared commitment to an orderly budget process and fiscal responsibility, we have offered ten recommendations for reforming this process.

These recommendations build on three main themes: (1) the budget process should include all federal spending and revenues; (2) the process should be transparent and completed on time; and (3) the budget should have buy-in from the president and the leadership of both houses of Congress. We know that reforming the process will not eliminate partisan polarization, establish collegiality, or restore civil discourse, but it's a good start. Difficult political decisions demand more than new budget tools. They require the political will to apply available tools to achieve agreed-on fiscal goals. We believe the proposals in this report are critical and worthy of debate.

Appendix

Historical Record of the Congressional Budget Process, 1976 - 2013

Fiscal Year	Administration	Budget Resolution Conference Agreement	Government Shutdown (number of days)	House	Senate	Government
1976	Ford	Yes	-	D	D	Split
1977	Carter	Yes	10	D	D	D
1978	Carter	Yes	28			
1979	Carter	Yes	18	D	D	D
1980	Carter	Yes	11			
1981	Reagan	Yes	-	D	R	Split
1982	Reagan	Yes	2			
1983	Reagan	Yes	4	D	R	Split
1984	Reagan	Yes	3			
1985	Reagan	Yes	3	D	R	Split
1986	Reagan	Yes	-			
1987	Reagan	Yes	1	D	D	Split
1988	Reagan	Yes	1			
1989	Bush - 41	Yes	-	D	D	Split
1990	Bush - 41	Yes	-			
1991	Bush - 41	Yes	3	D	D	Split
1992	Bush - 41	Yes	-			

Continued

Fiscal Year	Administration	Budget Resolution Conference Agreement	Government Shutdown (number of days)	House	Senate	Government
1993	Clinton	Yes	-	D	D	D
1994	Clinton	Yes	-			
1995	Clinton	Yes	-	R	R	Split
1996	Clinton	Yes	5			
1997	Clinton	Yes	21	R	R	Split
1998	Clinton	Yes	-			
1999	Clinton	No	-	R	R	Split
2000	Clinton	Yes	-			
2001	Bush - 43	Yes	-	R	=	R
2002	Bush - 43	Yes	-			
2003	Bush - 43	No	-	R	R	R
2004	Bush - 43	Yes	-			
2005	Bush - 43	No	-	R	R	R
2006	Bush - 43	Yes	-			
2007	Bush - 43	No	-	D	D	Split
2008	Bush - 43	Yes	-			
2009	Obama	Yes	-	D	D	D
2010	Obama	Yes	-			
2011	Obama	No	-	R	D	Split
2012	Obama	No	-			
2013	Obama	No	-	R	D	Split
2014	Obama	No	16			
2015	Obama	No	-	R	D	Split

End Notes

[1] Preface to the Congressional Budget and Impoundment Control Act of 1974, Legislative History, Committee on Government Operations, U.S. Senate, December 1974.

[2] The 2014 Long-Term Budget Outlook, Congressional Budget Office, July 2014.

[3] Congressional Budget Act of 1974, Sec. 3 [2 U.S.C. 622], (3).

[4] Available at: En.wikipedia.org/wiki/Haig%E2%80%93Simons.

[5] Tax Expenditure Review Report: Bringing Tax Expenditures into the Budget Process, Minnesota Department of Revenues, February 2011.

[6] Governing in a Polarized America: A Bipartisan Blueprint to Strengthen our Democracy, Bipartisan Policy Center, 2014.

[7] Congressional Budget Act of 1974, Title II, Section 301(5).

[8] Philip G. Joyce, Strengthening the Budget Committees: Institutional Reforms to Promote Fiscally Responsible Budgeting in Congress, paper prepared for the Federal Budget Reform Initiative, Pew Charitable Trusts, January 2011.

[9] Report of the President's Commission on Budget Concepts, Washington, D.C., October 1967.

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AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Joseph P. Flynn
National Secretary-Treasurer

J. David Cox, Sr.
National President

Augusta Y. Thomas
NVP for Women & Fair Practices

February 5, 2018

The Honorable Rand Paul
Chairman
Federal Spending Oversight and
Emergency Management Subcommittee,
Homeland Security and
Governmental Affairs Committee
U.S. Senate
Washington, DC 20510

The Honorable Gary Peters
Ranking Member
Federal Spending Oversight and
Emergency Management Subcommittee,
Homeland Security and
Governmental Affairs Committee
U.S. Senate
Washington, DC 20510

Dear Chairman Paul and Ranking Member Peters:

On behalf of the American Federation of Government Employees, AFL-CIO, which represents over 700,000 federal employees across the nation, I am writing to express our strong opposition to a federal government shutdown, given the terrible costs that shutdowns have on federal employees and the American taxpayers.

As you know, the Trump Administration and Congress are hurtling toward a February 8, 2018, spending deadline, when the fourth continuous resolution of FY 2018 expires, with little demonstrable progress towards avoiding a federal government shutdown.

With the prospect of a federal government shutdown becoming more and more possible, President Trump and Members of Congress would do well to read *"Impacts and Costs of the October 2013 Federal Government Shutdown,"* which the Office of Management and Budget released in November 2013. This OMB report explains in detail how the 16-day federal government shutdown in October 2013 adversely impacted federal employees, federal government finances, the millions of Americans who rely on critical federal programs and services, and the nation's economy.

(1) <u>Federal employee furloughs</u>

Federal employees were furloughed for a combined total of 6.6 million work days during the 16-day government shutdown in October 2013. About 850,000 federal employees per day were furloughed in the immediate aftermath of the lapse in appropriations, or roughly 40 percent of the entire federal civilian workforce.

Those employees that were not furloughed were retained either because they were performing activities that were "excepted" under the applicable legal requirements, such as activities necessary to maintain the safety of life or the protection of property, or because funding remained available to pay their salaries and expenses during the lapse from sources other than annual appropriations.

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(2) Fiscal costs of federal government shutdown

The 16-day shutdown cost the federal government billions of dollars. The payroll cost of furloughed employee salaries alone – that is, the lost productivity of furloughed workers – was $2.0 billion. The total pay and benefits costs were about 30 percent larger – about $2.5 billion.

Beyond this, the federal government also incurred other direct costs as a result of the government shutdown. These included:

- *Uncollected fees.* – The National Park Service estimated that it was unable to collect about $450,000 per day in revenue from entrance, campground, tours, and special use fees, for a total cost of $7 million in lost revenue. In addition, the closing of the Smithsonian Institution resulted in an additional $4 million in lost revenues – from lost museum-based revenue from stores and theaters, lost revenues from the National Zoo shops and concessions, and lost revenue from special events.

- *Suspended program integrity activities.* – The shutdown halted most Internal Revenue Service (IRS) enforcement activities, which collect an average of $1 billion per week. In addition, the Social Security Administration (SSA) was delayed in completing over 1,600 medical disability reviews and over 10,000 Supplemental Security Income (SSI) redeterminations each day. Medical disability reviews assess whether beneficiaries are still medically eligible for disability benefits, while SSI redeterminations review whether beneficiaries meet SSI's non-medical eligibility factors, such as income and asset limits, and ensure that beneficiaries are paid the correct amounts.

- *Interest due on late payments.* - The federal government is required to pay interest on payments due to third parties when it fails to pay these bills on time, according to the Prompt Payment Act and the Cash Management Improvement Act. The federal government had to pay interest on billions of dollars of payments not made on time during the shutdown, ranging from IRS refunds to contractor payments.

(3) Adverse impacts on critical programs and services

The 16-day government shutdown adversely impacted millions of Americans who rely on critical federal programs and services. For example, the shutdown affected:

- *Direct Services for Veterans.* – The shutdown stalled the Department of Veterans Affairs' weekly progress in reducing the veterans' disability claims backlog, which had previously been progressing at a rate of almost 20,000 claims per week; halted or curtailed important services that help veterans understand their benefits, including the education call center, hotlines, and all regional offices' outreach activities; and delayed access for 1,400 military service members to workshops designed to help them transition to civilian life and employment.

- *Public Health and Research.* – The shutdown cut back the Center for Disease Control and Prevention's (CDC's) flu season surveillance and monitoring; put on hold most federal government support for new basic research due to the furloughs of 98 percent of National Science Foundation (NSF) employees, nearly three quarters of National Institute of Health employees, and two thirds of CDC employees; forced the transition of the NSF's U.S. Antarctic

Program into caretaker status, resulting in the cancellation of some research activities for the entire 2013-2014 season; and prevented access to the National Institute of Standards and Technology's Center for Neutron Research, impacting researchers from academia and industry who had scheduled experiments months in advance.

- *Environmental Protection and Product Safety.* – The shutdown halted the Environmental Protection Agency's non-emergency inspections at about 1,200 hazardous waste facilities, and drinking water systems; discontinued evaluations of potential health impacts of new industrial chemicals; and stopped reviews of pesticides for adverse impacts to health and the environment. In addition, the shutdown stopped Consumer Product Safety Commission work related to recalls of products that could cause injuries.

- *Worker Rights and Safety.* – The shutdown suspended almost 1,400 Occupational Safety and Health Administration (OSHA) inspections to prevent workplace fatalities and injuries; stopped the OSHA Consultation Program from providing free on-site safety and health assistance to almost 500 small businesses; stopped nearly all investigations by the Labor Department's Wage and Hour Division to enforce minimum wage, overtime, child labor bans, and other workplace protections; and halted the Chemical Safety Board investigation of the West Texas fertilizer plant explosion from April 2013.

(4) Economic costs of federal government shutdown

Leading independent forecasters (Standard and Poor's, Macroeconomic Advisers, Goldman Sachs, and Mark Zandi at Moody's) estimated that the 16-day government shutdown would lower 2013's fourth quarter real GDP growth by 0.2 – 0.6 percentage points, or $2 - $6 billion in lost output. However, most of these estimates of the shutdown's economic costs were model-based projections that only took into account how the shutdown affected the direct flow of government spending into the economy. As a result, they did not fully capture the direct economic disruptions that resulted from the shutdown of government services important to the functioning of the private sector.

For example, the federal government shutdown:

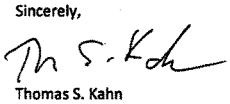
- *Halted permitting and environmental reviews, delaying job-creating transportation and energy projects.* The Bureau of Land Management was unable to process about 200 Applications for Permit to Drill, delaying energy development on federal lands in North Dakota, Wyoming, Utah and other states.

- *Disrupted private sector lending to individuals and small businesses.* During the shutdown, banks and other lenders could not access IRS income and SSA number verification services. Two weeks into the shutdown, the IRS had an inventory of 1.2 million verification requests that could not be processed, potentially delaying approval of mortgages and loans.

- *Halted federal loans to small businesses, homeowners, and housing and health facility developers.* The Small Business Administration was unable to process about 700 applications for $140 million in small business loans, and the Federal Housing Administration was unable to process over 500 applications for loans to develop, rehabilitate, or refinance around 80,000 multifamily rental units.

Thank you for your consideration of our views. Would it be possible for our letter to be included in the hearing record of your important hearing on *Terrible, No Good, Very Bad Ways of Funding Government: Exploring the Cost to Taxpayers of Spending Uncertainty Caused by Governing Through Continuing Resolutions, Giant Omnibus Spending Bills, and Shutdown Crises.*?

Sincerely,



Thomas S. Kahn
Director, Legislative Department

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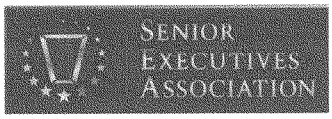

The voice of career federal executives since 1980

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February 6, 2018

Senator Rand Paul, Chairman
Senator Gary Peters, Ranking Member
Subcommittee on Federal Spending Oversight and Emergency Management
Washington, DC 20510

Dear Chairman Paul, Ranking Member Peters, and Members of the Subcommittee:

On behalf of the Senior Executives Association (SEA) – which represents the interests of career federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions – I write to thank you for holding this important hearing on governing by Continuing Resolutions (CRs), budget crises and giant spending bills. Congressional introspection about its own failures occurs far too infrequently and I hope the recent shutdown and what will be the fifth CR of this fiscal year will finally spur changes in lawmaker behavior.

Lawmakers and citizens alike frequently express the desire to have an "effective and efficient" government. Federal employees, too, want a prudent federal government. The ability of federal executives and leaders to deliver effective and efficient government is constantly cut down at the knees by the inability of lawmakers to fulfil their most basic and fundamental constitutional duty – managing the power of the purse through timely authorization and appropriation of funding.

We do have an accountability problem in Washington – Congress has only managed to approve all appropriations bills, under rules set for itself by itself, by the start of a fiscal year four (4) times in over 45 years. Congress now averages almost six CRs a year[1] making every year 'CR hell' inside the government and for those who rely upon it[2].

During the recent government shutdown, many lawmakers and commentators acted as if the shutdown wasn't a big deal because it occurred over a weekend and so not much work would be wasted or the impact would be limited. The complete disregard for taxpayer dollars associated with this thinking is appalling.

Outside of agencies, American small businesses are especially affected by government shutdowns and funding unpredictability.[3] More importantly, economic markets are riled by political instability and gamesmanship. The 2013 government shutdown dramatically hindered the ability of federal agencies to

[1] Congressional Research Service (2016). *Continuing Resolutions: Overview of Components and Recent Practices* https://fas.org/sgp/crs/misc/R42647.pdf.
[2] Samuelsohn, Darren. Welcome to CR Hell, *POLITICO*, October 21, 2015. https://www.politico.com/agenda/story/2015/10/congress-federal-budget-continuing-resolution-000270
[3] Burr, Jessie. Continuing resolutions jack up government costs, *Federal Times*, February 2, 2018. https://www.federaltimes.com/management/budget/2018/02/02/continuing-resolutions-jack-up-government-costs/.

deliver their services and imposed total economic costs of over $24 billion and shaved quarterly GDP by between 0.2 and 0.6 percentage points[4].

Shutdown or not, not having budgets and constantly coming to the brink of shutdowns imposes both hard and soft costs on the government[5]. While operating under CRs, maintenance is forgone, federal agencies cannot recruit or hire new staff, new programs cannot begin, acquisitions are halted, grants are delayed, and much more. A Bloomberg analysis found over 70 Pentagon programs hindered by stopgap funding[6]. Navy Secretary Richard Spencer said in December that the service had wasted $4 billion on CRs since 2011[7]. CRs yield inefficiency and wasted opportunity costs of countless man-hours not devoted to mission[8].

A survey of SEA members yielded several anecdotes about the impact of CRs and shutdown crises on agency operations:

Can't hire staff which puts a strain on our ability to conduct oversight. Also travel and training funds are held tightly until we receive a budget. This also creates added pressure once the funds are released we not only need to complete our oversight work but our staff also need to obtain their professional certification hours during the same time period.

Many of our sustainability contract options are priced for annual or multi-year... we simply cannot exercise those options when allotments are given in 4 week blocks. Not exercising these options adversely effects our nation's preparedness posture and negates over a decade of careful partnership building with the pharmaceutical industry.

Most recently is the challenge with the ability to hire people fast enough...the Human Resource Professionals have to stop focusing on hiring and assisting hiring managers with getting the right talent on board and prepare furlough letters and update lists of exempt employees and communicate with leaders and staff on what to do. Impacts readiness, morale, and timeliness and effective public sector operations.

We had personnel ready to fly out of the country on assignment. Due to the shutdown, they were not able to use those flights, and when the government reopened we had to buy new flights at the last minute at much higher costs. This was a complete waste.

I organized and am supposed to chair a meeting of senior officials from dozens of countries to work on top risks facing [our profession]. I planned the agenda, arranged for the speakers, and coordinated everything to make this a productive meeting. How embarrassing it will be for the US to not even be able to attend a meeting that it organized with other countries because our government is shutdown. It will be a sad reflection on the state of affairs in the United States.

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[4] Office of Management and Budget. Impacts and Costs of the October 2013 Federal Government Shutdown. (2013). https://obamawhitehouse.archives.gov/sites/default/files/omb/reports/impacts-and-costs-of-october-2013-federal-government-shutdown-report.pdf.

[5] Mazmanian, Adam. 6 hidden costs of continuing resolutions, *FCW*, August 19, 2015. https://fcw.com/articles/2015/08/19/hidden-cost-resolutions.aspx.

[6] Tiron, Roxana. More than 70 programs likely hobbled by stopgap bill: Pentagon, *Bloomberg*, December 22, 2017. https://about.bgov.com/blog/70-programs-likely-hobbled-stopgap-bill-pentagon.

[7] Serbu, Jared. Navy says it's wasted $4 billion on continuing resolutions since 2011, *Federal News Radio*, December 5, 2017. https://federalnewsradio.com/defense-main/2017/12/navy-says-its-wasted-4-billion-on-continuing-resolutions-since-2011/.

[8] Joyce, Philip. The Costs of Budget Uncertainty: Analyzing the Impact of Late Appropriations. IBM Center for the Business of Government (2012). http://www.businessofgovernment.org/report/costs-budget-uncertainty-analyzing-impact-late-appropriations.

While agencies have become adept at managing Congress' budgeting ineptitude, the status quo should not be acceptable and steps must be taken to develop a more stable and predictable budgeting schedule to inform agency operations.

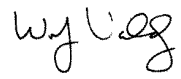
The provision of additional data for the debate may be useful. A nearly decade-old GAO report utilized case studies to assess the impacts of budgetary uncertainty on agency operations[9]. It would add to the public record for GAO to reexamine this issue. Specifically, Congress could request a study to inform the development of models that determine the hard and soft costs associated with several management inefficiencies created by budgetary uncertainty. These models could be combined to develop a day-day cost estimation model for taxpayer resources wasted through opportunity cost when governing by CR. Examples for major categories would include employee staff time misdirected from mission, contracting inefficiencies, delayed construction and incurred interest, to name a few.

Congress should also provide agencies with additional flexibilities to help manage uncertainty. These options have been discussed for many years. Options include no-year or multi-year budgeting authority, which some agencies and programs already use to good effect. Combinations of evaluation and oversight can ensure effective use of taxpayer dollars over those time periods. Budget process reform on Capitol Hill should also continue to be pursued, with biennial budgeting presenting a promising option to ensure an appropriate balance of authorization, appropriation, and oversight of execution.

Federal executives are being asked to lead, innovate, and drive change in their agencies to better serve the public with the best use of taxpayer resources. Unfortunately, career federal leaders often do not feel supported nor empowered to drive these changes[10], and chronic budgetary uncertainty continues to be a top challenge for federal leaders[11]. Congress must do its job so federal career leaders can do theirs for the American people.

Thank you for your consideration of SEA's perspective. Please have your staff contact SEA Executive Director Jason Briefel (briefel@seniorexecs.org; 202-971-3300) for further information.

Sincerely,



Bill Valdez
President
Senior Executives Association

[9] Government Accountability Office. (2009) Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies. https://www.gao.gov/products/GAO-09-879.
[10] Senior Executives Association & Deloitte (2017) State of Federal Career Senior Leadership. https://seniorexecs.org/989-survey-of-federal-government-executives.
[11] Association of Government Accountants (2018). Annual CFO Survey: Navigating Disruption. https://www.flipsnack.com/FCAA7CF569B/cfo-survey-navigating-disruption.html.