United States Senate Budget Committee

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The Honest Budget Act

No more gimmicks, tricks, or empty promises. America deserves an honest budget.

1. No Budget… No Appropriations
2. No Phony Emergency Designations
3. Strengthen the Credit Reform Act
4. No CHIMPs in Appropriations Bills
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1. NO BUDGET… NO APPROPRIATIONS

Background: Both common sense and the law require Congress to have a budget. During 36 years of Congressional budget history, Congress has agreed to a concurrent budget resolution every year except for five—but four of those five years happened just in the last decade. Not surprisingly, those fiscal years ended with large, spendthrift, omnibus appropriation measures or continuing resolutions. This year, the failure of the Senate to pass its own budget resolution -- for the second year in a row—shows Congress must have stronger incentive to pass a budget before it spends money.

The Gimmick: Section 303(c) of the Congressional Budget Act empowers any Senator to raise a point of order preventing the consideration of appropriation bills without a concurrent budget resolution in place, but the Senate can waive it with a simple majority vote. As a result, the point of order is rarely raised and Congress spends money without a plan or budget restraints.

The Fix: Strengthen the 303(c) point of order by requiring a vote of three-fifths (60) of senators (duly elected and sworn) to waive, enhancing the ability of Members to demand the Senate agree to a concurrent budget resolution before moving appropriation bills.

2. NO PHONY EMERGENCY DESIGNATIONS

Background: Spending that Congress designates as an "emergency" is exempt from many controls designed to enforce budget discipline. By definition, an emergency should be necessary, sudden, urgent, unforeseen or unpredictable, and temporary. It is the opinion of Congress that the federal response to emergencies such as natural disasters and acts of war must be deployed rapidly and not be hamstrung by budget constraints. Attaching the "emergency" designation to a measure is easy—it's simply written into the bill text. A Senator can raise a point of order *against* the designation during floor consideration, but it can be waived with 60 votes.

The Gimmick: Hurricane Katrina, the attacks of September 11th 2001 and the tornadoes that struck Alabama in 2011 are all bona fide examples of emergencies.

But too often Congress has used the emergency designation for non-emergencies to spend more than the Federal budget allows. For example:

- The 2008 Supplemental Appropriation bill included $210 million in "emergency" spending for the 2010 Census even though, since its ratification in 1788, the Constitution has required a census every ten years.
- The FY2011 Appropriation omnibus bill included $159 billion in emergency spending for the Afghan and Iraq wars—wars the US has been fighting for ten years.
- Between 2008 and 2010, "emergency"-designated extensions of unemployment insurance benefits added $177 billion to the deficit.

Overall, in FY 2010 alone, emergency-designated discretionary spending totaled $174 billion.

The Fix: Prohibit any bill, joint resolution or conference report from carrying an emergency requirement unless it is added via an amendment (i.e., the emergency requirement could not appear in the base bill). A supermajority would be required to sustain an appeal of the ruling of the Chair. A new point of order is created against an emergency requirement in an amendment which would require three-fifths to waive.

3. STRENGTHEN THE CREDIT REFORM ACT

Background: The Federal Credit Reform Act of 1990 (FCRA) requires the government budget for the subsidy cost of loan and loan guarantee programs. However, the budget underestimates spending on these programs because FCRA does not require the subsidy cost include the risk of default caused by broader changes in financial markets such as a recession (so-called "market risk"). As a result, the federal budget lowballs future obligations these programs place on taxpayers.

The Gimmick: A Congressional Budget Office analysis showed that current subsidy estimates of loans guaranteed by the Federal Housing Administration indicated the federal government will make a *profit* of $4.4 billion next year. However, if the estimate took into account market risk, these loan guarantees will in fact *cost* the federal government $3.5 billion, a swing of nearly $8.0 billion in only one year.

The Fix: Require government cost estimates of loan and loan guarantee programs to include market risk so that the budget reflects their fair value.

4. NO CHIMPS IN APPROPRIATIONS BILLS

Background: The cost of an appropriations bill is determined based on all legislative language contained in the bill. Accordingly, appropriations bills can claim discretionary savings from changes in mandatory spending programs (ChiMPs). For instance, language that delays $10 billion in mandatory spending for just one year is scored as saving $10 billion. Thus the $10 billion savings can be used to increase spending elsewhere in the bill by $10 billion without affecting the overall cost of the bill.

The Gimmick: Over a ten year period the same $10 billion can be delayed one year at a time resulting in total "savings" in the appropriation process of $100 billion ($10 billion X 10 years). However, the actual savings over the ten year period is only $10 billion (the same $10 billion simply got deferred each year). The result is $90 billion in phony savings.

A classic ChiMP example is the Crime Victims Fund obligation limitation, which has been used every year since 2000, and "saved" $4.9 billion in FY 2011. The Crime Victims Fund collects fines and penalties that are distributed to crime victims without further appropriation. The authorizing statute provides that payouts from the fund should equal the amount in the fund. The Commerce, Justice, State appropriations bill limits the payouts in the budget year to an amount less than the fund balance ($705 million in FY 2011), and the difference ($4.919 billion in FY 2011) is credited as budget savings. When the limitation expires, the baseline assumes that the payouts will again equal the fund balance, resulting in no change in spending from the fund over the 2 years. Thus real new spending is financed by a phony offset.

In a typical year, appropriations bills include a total of $8 to $10 billion in ChiMPs to offset increased spending on discretionary appropriations. Appropriations for fiscal year 2011 included $17.5 billion in savings from ChiMPs, but the cash savings over 10 years totaled only $707 million.

The FY 2009 budget resolution established a 60-vote point of order against consideration of appropriations bills that contain ChiMPs, but grandfathered those that had been used in the prior three years, and provided for automatic waiver if the total of all ChiMPs in a bill does not increase net outlays over budget window. Experience with this point of order has shown that the exceptions have made the point of order ineffective.

The Fix: Extend the existing Senate Point of Order against ChiMPS that increase the deficit so that it can be used against all ChiMPs in appropriations bills. This was last done in 2005.

5. DON'T COUNT RESCISSIONS THAT DON'T SAVE MONEY

Background: When an appropriations bill rescinds (takes back) previously-appropriated spending authority, those rescissions can be used to offset increased spending elsewhere in the bill. Rescissions typically lead to savings, but that is not always the case.

The Gimmick: Appropriations bills sometimes intentionally include rescissions of spending authority that, regardless, would not have resulted in more spending. That is, money would not be spent whether it was rescinded or not. Yet the rescission is scored as "savings" that is then used to "pay for" new spending.

Examples:

- The final 2011 appropriations measure rescinded funds left over from the 2010 decennial Census—most of which could not be spent because the Census was already completed. Still, the rescission of these appropriations counted as a $1.8 billion offset to new, and real, spending in the bill. Such phony rescissions drive the deficit up, not down.

- Since enactment of SAFETEA-LU in 2005, Congress has rescinded $20.5 billion in empty contract authority to offset increased spending in various bills unrelated to highways.

Phony rescissions are expected to result in increased spending of approximately $3.4 billion in fiscal year 2011.

The Fix: Adopt a scoring rule that directs the Chairmen of the House and Senate Budget Committees to not count rescissions of budget authority or contract authority that do not produce cash savings.

6. Make the Pay Freeze Real: Stop Step Increases

Background: In November 2010, President Obama announced a freeze on federal pay stating, "The hard truth is that getting this deficit under control is going to require broad sacrifice. And that sacrifice must be shared by the employees of the federal government …. [T]oday I'm proposing a two-year pay freeze for all civilian federal workers." Subsequently Congress passed legislation suspending cost-of-living pay increases for federal employees.

The Gimmick: The suspension of the cost-of-living increases to federal employees did not stop federal employees continuing to receive automatic within-grade step increases. These are increases of 2% to 3% of a worker's pay, and 70 percent of employees receive these increases every one to three years. During the President's "freeze", these pay increases are costing approximately $1 billion a year.

The Fix: Suspend the automatic within-grade pay increases along with the cost-of-living increases to achieve a real freeze.

7. Prevent Abuse of Advance Appropriations

Background: Annual appropriation bills make budget authority available at the start of the fiscal year covered by the act. For example, the FY2012 Labor, Health and Human Services (LHHS) appropriation bill makes funds available on October 1, 2011—the start of FY 2012. Sometimes, however, an appropriation bill will provide funding one or two fiscal years ahead of time. The LHHS bill typically provides budget authority for the Corporation for Public Broadcasting two years in advance because of the long lead time in developing original programming (e.g., the FY 2012 LHHS appropriation bill will provide funding for the Corporation for Public Broadcasting for FY 2014).

The Gimmick: Appropriations generally are scored in the fiscal year the funds *first* become available. Using the LHHS example above, the FY2014 advance appropriation for the Corporation for Public Broadcasting (CPB) in the FY12 LHHS bill would not count against the FY 2012 spending caps or the FY 2012 allocations in the budget resolution. Rather, the CPB funding would count against the FY 2014 limits because it isn't available until then. Lawmakers use this approach to defer increased spending to future years in order to make room for more immediate needs in the current year—and then argue that the spending limits in subsequent years should be raised to accommodate the deferred spending.

For this reason, since 2000 the Senate has placed a limit on advance appropriations (enforced by a point of order) and specifically identified those accounts that may be funded in this manner. However, the most recent limitation applied only to FY 2011 appropriation bills and was not extended in the FY 2012 budget resolution (deemed in the Budget Control Act of 2011). Consequently there are no limits on advance appropriations for FY 2012 and beyond.

The Fix: The Honest Budget Act would reinstate the point of order prohibiting advance appropriations (section 402(a) of S.Con.Res.13, the FY 2010 Budget Resolution). It would extend the traditional exceptions for the Corporation for Public Broadcasting and Veterans medical accounts, and other specific accounts.

8. PROHIBIT TIMING SHIFTS

Background: There are budget rules in place that enforce spending, revenue, and deficit levels over certain time frames. Sometimes legislation includes provisions that serve no purpose other than to move outlays or revenues between fiscal years (into or out of these time frames) in order to skirt budget rules.

The Gimmick: Congress has used timing shifts most often to satisfy the requirement that legislation not increase the deficit over five years and over 10 years. For example, in order to satisfy the PAYGO requirement for deficit-neutrality in years 1—5, tax legislation often contains changes to the amount of corporate estimated tax that is due in years 5 and 6. A provision of tax legislation may require a large corporation to pay more of their total estimated tax liability in the third quarter of a calendar year (the last quarter of a fiscal year) and less of their tax liability in the fourth calendar quarter. The overall calendar year tax liability of the company is unchanged, while at the same time the requirement for deficit-neutrality over a certain time frame is satisfied. The frequency of these changes increases uncertainty within the corporate tax system.

Specific examples of timing shifts include:

- The Consolidated Appropriations Act of 2000 (enacted November 1999) shifted $843 million from FY 2000 into FY 2001 by delaying the pay date for employees of nondefense agencies. President Clinton's FY 2001 budget (submitted February 2000) proposed reversing the pay date delay, shifting funds from FY 2001 back into FY 2000.

- The Senate's FY 2006 Labor-HHS appropriation bill shifted the date that Supplemental Security Income (SSI) payments would be made, moving $3.3 billion from FY 2006 into FY 2007.

All told, since 2009, Congress has enacted legislation requiring about $42 billion of corporate estimated tax payments to be moved from FY 2015 into FY 2014 in order to satisfy the deficit neutrality test for 2010-2014 under the Senate PAYGO point of order.

<u>The Fix</u>: Put in place a scoring rule that prohibits the spending and revenue impacts of timing shifts from counting for budget enforcement purposes.

9. Score General Fund Transfers to the Highway Trust Fund

<u>Background</u>: Highway Trust fund (HTF) revenue from gasoline taxes has dropped significantly since 2005, causing the HTF to come up far short of authorized spending levels. Congress decided to transfer general fund revenue to the HTF to cover the shortfall.

<u>The Gimmick</u>: Under current scoring rules, transfers from the General Fund to the HTF are considered budget neutral, not costing the government a dime. This is because as a general matter the Congressional Budget Office (CBO) can only score outlays (spending) once. CBO must score the actual outlays paid from the HTF to the states, this precludes CBO from scoring the transfer of general funds into the HTF. Thus the transfer appears as "free" spending despite the fact the transfers result in real outlays and increase the federal deficit.

Since 2008, Congress has made three transfers totaling $35 billion dollars to the HTF from the General Fund to maintain the solvency of the HTF. As a result, Congress will spend $35 billion it didn't have by the end of 2012 and not have it count against the budget.

<u>The Fix</u>: Require general fund transfers or loans between the General Fund and HTF to be counted as new spending.