A CASE FOR ADDING A LONG-TERM BUDGET CONSTRAINT TO THE CONGRESSIONAL BUDGET PROCESS

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INTRODUCTION

The current federal budget process is broken. That judgment is approaching a consensus among informed observers, even though the bases for conclusion vary.[1] Perhaps the most widely-held view is that the current process has failed to produce fiscal policies consistent with the fundamental objective of economic stability. This failing has both long-term and short-term aspects.

First, the government is on a long-term trajectory to default. The government cannot keep all the promises it has made explicitly to creditors and implicitly to beneficiaries and taxpayers.[2] As a matter of arithmetic, resources available to government under current policy are insufficient to meet all of its commitments. Claim holders in the future must receive less than government has encouraged them to expect.[3]

One way of depicting this imbalance is the Congressional Budget Office's (CBO) long-term projection of Treasury debt held by the public as a share of gross domestic product.[4] As indicated by the Alternative Fiscal Scenario, the CBO's name for the scenario most consistent with current policy, the federal debt held by the public increases without limit under current policy.[5] At some point, creditors will lose confidence in government's ability

[1] *See* Michiko Kakutani, *Behind the Scenes, the Bloodiest Beltway Battle*, N.Y. TIMES, Sept. 8, 2012, at C1 (reporting the federal government has difficulty passing budgets); *see also* Robert J. Samuelson, *Why the Economy Flounders*, WASH. POST, June 25, 2012, at A17 (reporting "the economic models on which the United States . . . relie[s] are collapsing."); Lori Montgomery & Rosalind S. Helderman, *Budget Time Bomb Sends Shivers Across Economy*, WASH. POST, May 15, 2012, at A01 (reporting that "[t]he halls of the Capitol are already teeming with people warning of disaster if lawmakers fail to defuse a New Year's budget bomb . . .").

[2] This is shown by the fact that when federal programs expire, people who, under current legislation, would expect to benefit from government entitlement programs will no longer benefit. *See* Sharon Bernstein, Editorial, *Small-Business Loans Drop: The Sharp Reduction Comes in June After a Federal Program Runs Out of Money*, L.A. TIMES, July 13, 2010, at B4 (reporting that "[g]overnment-backed loans to the nation's small businesses dropped sharply . . . after a key federal program ran out of money," leaving small business entrepreneurs with one less means for start-up capital).

[3] *See id.* (stating that claim holders, such as small business owners who may have been expecting government loans no longer have access to such loans, because the legislation was not renewed).

[4] *See infra* Chart One.

[5] We explain below why the Alternative Fiscal Scenario projection, rather than the Extended Baseline projection, corresponds more closely to "current policy."

to repay its debt and "run." At best, creditors will demand a significant risk premium for the credit risks they are assuming.[6] The United States might also have difficulty selling sufficient debt to meet its cash requirements. A sudden loss of access to previously unlimited amounts of credit would force a major, painful retrenchment by government in the form of spending cuts and tax increases. If the required fiscal adjustments are severe enough, policymakers will be tempted to print money.[7] The consequence could be hyperinflation, which imposes enormous losses on society and often leads to major political upheaval—the consequences of which are difficult to predict or contain.[8]

Second, because the public and lawmakers often fail to distinguish the effects of transitory economic shocks on the deficits and debt from the permanent effects of policy changes, short-term policy responses to economic downturns (or booms) may be insufficient to minimize instability. That is, during times of high unemployment and weak economic growth, the budget tends toward deficit, without any change in policy, because taxable incomes are falling, and the number of those qualifying for income support, such as unemployment insurance and other social insurance benefits, is rising.[9] Similarly, during periods of rapid economic expansion, the budget deficit tends to decrease, again without a change in policy.[10] If lawmakers treat temporary

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[6] *See* COMM. FOR ECON. DEV., THIS WAY DOWN TO A DEBT CRISIS 17–18 (2011) (evaluating the market response to the most recent budget crisis); *see also* Joseph Minarik, *Fixing the Budget: What's in it for Us?*, BACK IN THE BLACK BLOG (Aug. 12, 2010), http://backintheblackblog.org/2012/08/10/fixing-the-budget-whats-in-it-for-us/.

[7] CARMEN M. REINHART & KENNETH S. ROGOFF, THIS TIME IS DIFFERENT: EIGHT CENTURIES OF FINANCIAL FOLLY 289 (2009) (finding inflation to be a common response to a debt crisis); *see also* Leonard E. Burman et al., *Catastrophic Budget Failure*, 63 NAT'L TAX J. 561, 574, 578–79 (2010) (evaluating the option to print money in response to a budget crisis).

[8] Burman et al., *supra* note 7, at 578–79; *see, e.g.*, Patricia A. McCoy, *Levers of Law Reform: Public Goods and Russian Banking*, 30 CORNELL INT'L L.J. 45, 108 (1997) (discussing a "constitutional crisis" resulting from the Soviet government approving an inflationary budget during a time when anxieties over inflation were already high).

[9] *See* U.S. DEP'T OF COMMERCE: BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, PART 1, at 123 (1975) (showing a large post-war labor force); *Worst Deficits Since WWII*, WASH. POST, 2010, http://www.washingtonpost.com/wp-srv/special/politics/budget-2010/deficit.gif (showing a general trend toward budget surplus after World War II).

[10] *See* Alan J. Auerbach, American Fiscal Policy in the Post-War Era: An Interpretive History 1–3 (Aug. 2005) (prepared for the second annual Berkeley-Vienna Conference on the U.S. and European Economies in Comparative

cyclical fluctuations in the budget deficit as though they were permanent, by cutting taxes and increasing program benefits in good times and adopting restrictive measures in bad times, those policy responses are likely to add to, rather than reduce, the economy's short-term volatility.[11]

Another indicator of the inadequacies of the current budget process is the persistent failure of many government policies to achieve their program objectives.[12] Those that do succeed in producing intended results, often do so less efficiently than alternative policies.[13] Decades of analyses by the Government Accountability Office (GAO),[14] combined with legislative and Administration efforts to improve micro-performance — including the Government Performance and Results Act, the Bush Administration's Program Assessment Rating Tool and the Obama Administration's Campaign to Cut Waste — have proven insufficient to overcome the chronic ineffectiveness and inefficiency of many federal programs and policies.[15] One

Perspective) (asserting the stability of fiscal policy during the post-war period); *see also* U.S. GOV'T ACCOUNTABILITY OFFICE, FEDERAL DEBT HELD BY THE PUBLIC AS A SHARE OF GDP (1797–2011), http://www.gao.gov/special.pubs/longterm/pdfs/federal-debt-public2011.pdf (showing an increase from 32.5% of debt held by the public as a share of GDP in 2001 to 67.7% in 2011).

[11] For a discussion of the short-run positive effects of increases in government debt on aggregate demand and the long-run negative effects from "crowding out" private investment, *see* Douglas W. Elmendorf & N. Gregory Mankiw, *Government Debt*, *in* 1 HANDBOOK OF MACROECONOMICS 1615,1628–30 (John B. Taylor & Michael Woodford eds., 1999).

[12] *See* Roy T. Meyers, The Mechanisms of Federal Budget Process Reform 1–2 (July 1, 2012) (presented at the annual conference of the Western Economic Association, San Francisco) (explaining how budget policy prevents Congress from achieving its objective of a balanced budget).

[13] MARC LABONTE, CONG. RESEARCH SERV., RL 32162, THE SIZE AND ROLE OF GOVERNMENT: ECONOMIC ISSUES 19 (2010).

[14] *See, e.g.*, U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-318SP, OPPORTUNITIES TO REDUCE POTENTIAL DUPLICATION IN GOVERNMENT PROGRAMS, SAVE TAX DOLLARS, AND ENHANCE REVENUE 1–2 (2011), *available at* http://www.gao.gov/products/GAO-11-318sp.

[15] *Id.* at 2; Mary L. Heen, *Reinventing Tax Expenditure Reform: Improving Program Oversight Under the Government Performance and Results Act*, 35 WAKE FOREST L. REV. 751, 753–54, 775 (2000) (arguing the Government Performance and Results Act has made little progress regarding the performance based budgeting portion of the Act); Matthew S. Schoen, Note, *Good Enough For Government Work?: The Government Performance Results Act of 1993 and Its Impact on Federal Agencies*, 32 SETON HALL LEGIS. J 445, 462 (quoting a senate report that suggests the Government Performance Results Act of 1993 resembles past unsuccessful efforts at comprehensive management reform); Meyers, *supra* note 12, at 4 (arguing that Obama's plan involves inefficient cuts to defense spending).

explanation for poor policy design and execution is that under the current budget process few incentives exist for Congress to adopt the most effective and efficient policies. Indeed, many interests, including "unintended" beneficiaries, contractors, and employees, may benefit from ineffective and inefficient policies as much as or more than from efficiently targeted and carefully designed programs.[16] In the absence of a constraint on spending or the deficit, it is often easier to ignore the failings of a program or to add a new program, than to replace an existing policy and incur the enmity of those who benefit from it.

In addition, the use of centralized financing for local projects and activities with few out-of-district benefits creates incentives for central lawmakers to favor excessive, inefficient district spending (or "pork") up to the point where the last local dollar of cost is equal to the last increment of benefits.[17] The absence of an overall fiscal limit for the central government facilitates the formation of voting coalitions to enact and maintain such inefficient policies.[18]

I. CURRENT FEDERAL BUDGET PROCESS

Despite widespread dissatisfaction by analysts and some lawmakers with the results of federal budgeting, the structure of the current process appears to include most of the necessary elements for effective budgeting. The core statutory authorities provided in the Congressional Budget and Impoundment Control Act of 1974, amended and commented on by other budget process

[16] Thomas A. Garrett & Russell M. Rhine, *On the Size and Growth of Government*, 88 FED. RES. BANK ST. LOUIS REV. 13, 20–21 (2006) (arguing "[t]hrough concentrated lobbying, an interest group can obtain a desired policy that has direct benefits for the interest group but the costs of the policy are spread across millions of taxpayers").

[17] This well-known result has a long history. *See, e.g.*, WALLACE E. OATES, FISCAL FEDERALISM 3–5, 153–55 (1972) (analyzing the use of debt financing for public projects at the local and federal level). For a recent examination, *see* DAVID M. PRIMO, RULES AND RESTRAINT: GOVERNMENT SPENDING AND THE DESIGN OF INSTITUTIONS 43–46 (2007).

[18] PRIMO, *supra* note 17, at 46 (explaining that centralized spending leads to legislators forming coalitions and, within the coalitions, individual legislators voting to approve budgets that allocate centralized spending to decentralized projects, because the expectation is that legislators reciprocate voting to approve funding projects for individual districts). Also, with centralized financing of local projects, costs are widely dispersed, while benefits are concentrated. This asymmetry provides stronger incentives for those favoring the project than for those opposing.

legislation, including the Balanced Budget and Emergency Deficit Control Act of 1985, the Budget Enforcement Act of 1990, and the Statutory Pay-As-You-Go Act of 2010 (PAYGO), establish procedures for setting overall constraints for revenues, outlays, and the deficit, as well as for making choices about the allocation of limited resources.[19] The Act also assigns responsibility for decision making, creates a logical timetable for sequential action, and specifies procedural rules for enforcing decisions.[20]

A. Overview

The development of the United States' budget for the fiscal year, which begins October 1st, starts about 18 months earlier when the Office of Management and Budget (OMB) begins work on the Executive's proposed budget, which is to be delivered by the President to the Congress no later than February.[21] The release of the President's budget and the CBO's current law baseline in January marks the opening of the annual financial planning cycle by the Congress that is intended to be completed before the beginning of the next fiscal year.[22]

The House and Senate Committees on the Budget begin work on a concurrent resolution in January.[23] The resolution specifies total revenues, spending, and the budget deficit or surplus for the budget year and the distribution of planned spending by functional categories.[24] Projections for future fiscal years based on a continuation of current law or policy are also included.[25] In framing the budget resolution, the budget committees have the support of the CBO in assessing the implications of the President's proposed budget and alternative budgets for the

[19] 2 U.S.C. § 621 (2006).

[20] *Id.*; *see also* Roy T. Meyers & Philip G. Joyce, *Congressional Budgeting at Age 30: Is It Worth Saving?*, PUB. BUDGETING & FIN., Dec. 2005, at 68, 68–82 (providing a historical overview of economic and political factors giving rise to the Congressional Budget Act, and causing its metamorphosis throughout the past thirty years).

[21] 31 U.S.C. § 1105 (2006).

[22] *See* JAMES V. SATURNO, CONG. RESEARCH SERV., RS20095, THE CONGRESSIONAL BUDGET PROCESS: A BRIEF OVERVIEW 2 (2004) (explaining the federal budget process from beginning to end).

[23] *Id.*; 2 U.S.C. § 631 (2006) (showing the timetable for the annual budget process).

[24] 2 U.S.C. § 632 (2006).

[25] 2 U.S.C. § 639(c) (2006).

deficit and the macro-economy.[26] The Budget Act requires the budget committees to consult with and take account of the plans and priorities of legislative committees and implicitly with the congressional leadership.[27] Once approved by the Congress, the resolution is enforced under the rules of the House and Senate, which can constrain subsequent fiscal action by the Congress.[28] For discretionary spending, for which Congress enacts appropriations bills one year at a time to provide budget authority (authority to enter into obligations that will result in outlays), the budget resolution sets a limit on the total amount of budget authority assigned to the appropriations committees.[29] For much mandatory spending, the provision of budget authority will occur without annual action by the Congress, and is often based on the number of eligible beneficiaries and the level of benefits specified in current law.[30] Changes in spending for mandatory programs therefore must be controlled by changing the terms of the authorizing laws that specify eligibility and benefits, rather than by annual appropriation bills.[31] A budget resolution can simply assume lower levels of mandatory spending.[32] However, a budget resolution can go one step further, and in fact does from time to time, to include instructions to authorizing committees to produce legislation that changes current law to realize the savings assumed in the budget resolution.[33] Those instructions and the subsequent legislation "reconcile" policy in the law with the spending limits in the resolution and are referred to as reconciliation provisions.[34] Reconciliation can also be used to make changes in tax law in order to adjust projected revenues and the deficit to the targets

[26] 2 U.S.C. § 639(a).

[27] 2 U.S.C. § 632(h).

[28] 2 U.S.C. § 632(a)(2), (c).

[29] 2 U.S.C. § 633(a)(1)(a) (2006).

[30] 2 U.S.C. § 633(a)(3)(B)(i) (dividing amounts allocated between mandatory and discretionary amounts or programs).

[31] 2 U.S.C. § 651(b) (2006) (providing the process for reconciling entitlements with the current budget).

[32] Higher levels are also an option, as occurred in the case of the payment provision of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. 42 U.S.C. § 1395w–115(d)(1) (2006) (allowing for payments based on the "best estimate of amounts that will be payable after obtaining all of the information").

[33] 2 U.S.C. § 641(a)(1) (2006).

[34] *See, e.g.*, STAFF OF THE JOINT COMM. ON TAX'N, 105TH CONG., DESCRIPTION OF CHAIRMAN'S MARK RELATING TO REVENUE RECONCILIATION PROVISIONS (Comm. Print 1997).

specified in the resolution.[35]

Budget resolutions are not law. Rather, they are part of the rules of procedure of the House of Representatives and the United States Senate. Any member may raise a point of order against the consideration of legislation that violates the budget resolution.[36] To waive the rules and prevent an affected bill from going back to committee requires a majority vote on the rule accompanying the legislation in the House and a super-majority of sixty votes in the Senate.[37]

By limiting subsequent legislative action consistent with the budget plan, as determined in large part by the CBO cost estimates attached to all bills reported out of committee, the budget process appears to be sufficient for effective public budgeting.[38] In addition, the possibility of a Presidential veto adds a "check and balance" against poor fiscal decisions.[39]

B. Reconciling Sound Process Elements and Poor Performance

What has gone wrong with a process that appears designed to meet the objectives of public budgeting, but has failed to do so for the goals of fiscal stability and program efficiency? We maintain that the current budget process gives insufficient attention to both the incentives the Congress faces to *enact* budget reforms and policies consistent with fiscal discipline, and the stronger incentives to evade those restrictions and limits when they become politically painful.[40] Both incentives are evident in the actions of the Congress over the past forty years, including the enactment and spotty fiscal results of the Congressional Budget and Impoundment Control Act of 1974, the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings), the Budget Enforcement Act of 1990, and the Budget

[35] *Id.*

[36] *See, e.g.*, 2 U.S.C. § 643(b)(1) (2006) (giving Senators this point of order objection).

[37] JAMES V. SATURNO, CONG. RESEARCH SERV., 97-865, POINTS OF ORDER IN THE CONGRESSIONAL BUDGET PROCESS 3–4 (2011).

[38] 2 U.S.C. § 631 (2006) (establishing a time-table that does not include presidential approval); *see also* 2 U.S.C. § 621 (2006) (ensuring "congressional control over the budgetary process").

[39] U.S. CONST. art. I, § 7, cl. 2 (establishing presidential veto power of "every bill").

[40] PRIMO, *supra* note 17, at 128; Meyers, *supra* note 12, at 20.

Control Act of 2011.[41]

In budgeting, Congress is attempting to deal with the universal phenomenon of scarcity. Given the power to tax, create money, and thereby to borrow at lower cost than other institutions, the consequences of violating the effective budget constraint are less evident for governments, at least in the near and intermediate term, than for individuals. As a consequence, borrowing against future resources often seems less costly to elected officials than denying benefits to constituents or raising taxes.[42] Even so, most lawmakers profess fiscal responsibility even as they vote to spend in excess of current revenues, because they recognize the dangers inherent in the short-term expedient of borrowing to the point that future resources are insufficient to meet all present and future commitments.[43]

Wildavsky and Caiden famously observed that the tension between the inconsistent objectives of fiscal discipline and political commitments to provide benefits to constituents at less than their cost often causes government to "resemble[] a contortionist."[44] Others, including Primo, note that the preferences of members of Congress for balanced budgets, more spending, and lower taxes "reflect the inconsistent preferences of their constituents."[45]

The question remains: why do more spending or lower taxes so often trump fiscal discipline and the long-term budget constraint? Primo argues that both the sequencing of decisions, and the abstract and delayed effects of deficits versus the immediate tangible human cost of constituent benefits denied, play important roles.[46] He explains:

> Before bargaining over specifics begins, it may be the case that all legislators prefer budgets to be balanced. In the abstract, a balanced budget is a wildly popular policy, though not one without its critics. In reality, the temptation of short-term gain often wins out. For example, suppose that the budget is currently in balance, but a new spending proposal will benefit a majority of legislators while leaving taxes unchanged, thereby implying deficit spending. If those benefits are sufficiently large relative to the costs of higher

[41] PRIMO, *supra* note 17, at 106, 113; Meyers, *supra* note 12, at 3–4.

[42] PRIMO, *supra* note 17, at 110.

[43] Meyers, *supra* note 12, at 1.

[44] AARON WILDAVSKY & NAOMI CAIDEN, THE NEW POLITICS OF THE BUDGETARY PROCESS 22 (5th ed. 2004).

[45] PRIMO, *supra* note 17, at 9.

[46] *Id.* at 10.

> deficits, which have to be paid off in the future and are therefore discounted, then a majority of legislators will vote for the new spending. This logic applies to budget cuts as well. A government running a deficit will not balance its books if the cuts required to do so would confer tangible harms on key constituencies. Deficits are amorphous, their consequences not easily captured by a television news story. The consequences of cuts, in contrast, lend themselves to vivid portrayals of struggle and heartache for identifiable beneficiaries of a government program. Even if a package of large-scale cuts were agreed to, the agreement would be unstable. The next day, programs comprising a portion of the large-scale cuts, benefiting a majority but with cost spread out across the population, presumably could still be enacted by the legislature.[47]

Policymakers, thus, both embrace budget process reforms that appear to assure a regime of fiscal discipline and responsibility, and simultaneously, pursue strategies to meet their constituents' demands for increased benefits from more government spending and lower taxes without seeming to violate the bounds of the budget and other fiscal constraints.

Early in the modern reform era, following the enactment of the 1974 Budget Act, Congress used a variety of fairly simple strategies to comply with annual budget limits, which are largely measured using a cash-basis of accounting, without sacrificing the ability to provide additional benefits to constituents.[48] For example, spending limits were met by shifting payment dates from the end of one fiscal year to the beginning of the next, selling assets for cash, issuing promissory notes to claimants rather than cash, substituting loan guarantees with up-front fees for direct loans, acquiring assets through leases and public-private partnerships rather than through direct purchase, shifting costs to special purpose entities such as government-sponsored enterprises or to the states, and by other means of increasing current period cash inflows and deferring cash outflows beyond the one, five, or ten year budget windows.

Many of those loopholes or evasion strategies were eventually closed either by legislation or changes in technical scoring rules approved by the Committees on the Budget.[49] The Federal Credit

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[47] *Id.*

[48] Cheryl D. Block, *Congress and Accounting Scandals: Is the Pot Calling the Kettle Black?*, 82 NEB. L. REV. 365, 418–19 (2003).

[49] *See* STAFF OF S. COMM. ON THE BUDGET, 105TH CONG., THE CONGRESSIONAL BUDGET PROCESS 8–10 (Comm. Print 1998) (discussing changes to the

Reform Act of 1990, for example, changed the budgetary treatment of direct loans and guarantees to an accrual basis of accounting to recognize the long-term cost of direct loans and loan guarantees up front when the loans were disbursed.[50] This change rendered the budget cost of loans and explicit guarantees more comparable; ideally under the new accounting, a direct loan and a guaranteed loan made on the same terms to a borrower had the same budget cost.[51] New rules for the budgetary treatment of lease-purchases also made those transactions more comparable with the cash cost of purchases, while the accounting for asset sales was revised to include as a cost, the approximate economic value of the assets given in exchange for cash.[52]

Despite changes in process, the Congress has retained escape routes from the budgetary limits. A frequently used means of managing the scored cost of tax reductions is to make those changes "temporary" for a fixed period and then to extend them just before they expire.[53] If the extension is for a single year, the scored one-year cost will be only a fraction of the long-term cost for a permanent reduction. Expiring provisions of the tax code have become so prevalent that they are now typically combined into a single "extenders" bill.[54] In early August 2012, for example, the Senate Finance Committee approved more than fifty expiring provisions in the "Family and Business Tax Cut Certainty Act of 2012" for the current tax year and 2013.[55] In

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Congressional Budget and Impoundment Control Act of 1974 since its enactment).

[50] JAMES M. BICKLEY, CONG. RESEARCH SERV., R42632, BUDGETARY TREATMENT OF FEDERAL CREDIT (DIRECT LOANS AND LOAN GUARANTEES): CONCEPTS, HISTORY, AND ISSUES FOR THE 112TH CONGRESS 1 (2012).

[51] 2 U.S.C. § 661a (2006).

[52] DEBORAH CLAY-MENDEZ ET AL., CONG. BUDGET OFFICE, THE BUDGETARY TREATMENT OF LEASES AND PUBLIC/PRIVATE VENTURES 1, 7 (2003).

[53] *See, e.g.*, Temporary Payroll Tax Cut Continuation Act of 2011, Pub. L. No. 112-78, 125 Stat. 1280 (2011).

[54] *See, e.g.*, Family and Business Tax Cut Certainty Act of 2012, S. 3521, 112th Cong. (2012).

[55] MINDY R. LEVIT ET AL., CONG. RESEARCH SERV., R 42654, MAJOR FISCAL ISSUES BEFORE CONGRESS IN FY2013, at 6 (2012). The bill includes the extensions of Alternative Minimum Tax relief, "[d]eduction[s] for certain expenses of elementary and secondary school teachers", exclusions for mortgage debt forgiveness, employer-provided mass transit assistance, deductions for mortgage insurance premiums and state and local sales taxes, credits for research and development, American Samoa economic development, and "[a]ccelerated depreciation for business property on an Indian reservation", and an advantageous recovery period for motorsport facilities. S. REP. NO. 112–208, at 1–3 (2012) (for a list of items and details). *See also* Press Release, U.S.

something of a departure from past practice, the Committee did not extend about twenty provisions.[56] The estimated cost of the Act is $200 billion.[57]

Similarly, if Congress today enacts legislation that would reduce federal spending or increase taxes in the future, Congress can subsequently enact legislation that repeals or defers those changes before they take effect. For example, Congress routinely defers the legislated scheduled reduction in payments to physicians under Medicare, or the "doc fix."[58] Even a sequester (an across-the-board cancellation of the authority to obligate funds), the ostensible "doomsday" enforcement mechanism for assuring that the Congress meets its fiscal targets, can be defused before it causes serious political damage to incumbents.[59] Since the adoption of the Balanced Budget and Emergency Deficit Control Act (Gramm-Rudman-Hollings), which introduced sequesters to the budget process, and the Budget Enforcement Act of 1990, which created separate sequesters for mandatory and discretionary programs, only one sequester has been permitted to occur.[60] That rare event took place in 1991 when discretionary federal spending was reduced by a total of $2.4 *million*.[61] No PAYGO sequester of mandatory programs has been permitted to take effect. Instead, whenever a violation of the fiscal targets has threatened to trigger a sequester, Congress and the President have taken steps to avoid the cuts, almost always (one exception

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Senate Comm. on Fin., Summary of Family and Bus. Tax Cut Certainty Act of 2012 as Approved by the Fin. Comm. (Aug. 2, 2012), *available at* http://www.finance.senate.gov/newsroom/chairman/release/?id=e3290a69-8fa4-4a6d-8c3a-756ea03a4224.

[56] Michael Cohn, *Senate Panel Passes Bipartisan Tax Extenders Bill*, ACCT. TODAY (Aug. 2, 2012), http://www.accountingtoday.com/news/senate-passes-bipartisn-tax-extenders-bill-63492-1.html.

[57] Steven Sloan & Kelsey Snell, *Tax Extenders Withering on the Vine*, POLITICO (Sept. 11, 2012, 05:14 PM), http://www.politico.com/news/stories/0912/81061.html?hp=r5.

[58] Mary Agnes Carey, *FAQ: The 'Doc Fix' Dilemma*, KAISER HEALTH NEWS (Feb. 17, 2012), http://www.kaiserhealthnews.org/stories/2011/december/15/faq-doc-fix.aspx.

[59] *See, e.g.*, MINDY R. LEVIT, CONG. RESEARCH SERV., R 42675, THE BUDGET CONTROL ACT OF 2011: BUDGETARY EFFECTS OF PROPOSALS TO REPLACE THE FY2013 SEQUESTER 5 (2012).

[60] ROBERT KEITH, CONG. RESEARCH SERV., RL 31137, SEQUESTRATION PROCEDURES UNDER THE 1985 BALANCED BUDGET ACT 2–3, 11 (2001).

[61] *Id.* at 11; *see also* James J. Hearn, An Analysis of the Effects of the Budget Control Act of 2011 (July 1, 2012) (presented at the annual meetings of the Western Economic Association International, San Francisco) (on file with James J. Hearn at jamesjhearn@gmail.com).

occurred under Gramm-Rudman-Hollings)[62] without the policy changes the sequester was intended to force.[63] As Roy Meyers has observed, sequesters don't give the budget process teeth; sequesters provide "removable dentures."[64]

In response to this pattern of behavior, the CBO has developed two sets of budget projections for use in fiscal planning and analysis: the Baseline Budget Projection and an Alternative Fiscal Scenario.[65] Both projections are shown in Chart One and each depicts a fundamentally different fiscal future for the United States. The Baseline Projection, which assumes that current law remains unchanged, including those provisions placed there in the name of fiscal rectitude, shows the United States budget to be on track toward surpluses and a declining ratio of debt to national income.[66]

[62] MEGAN SUZANNE LYNCH, CONG. RESEARCH SERV., R 41938, STATUTORY LIMITS ON TOTAL SPENDING AS A METHOD OF BUDGET CONTROL 6–7 (2011).

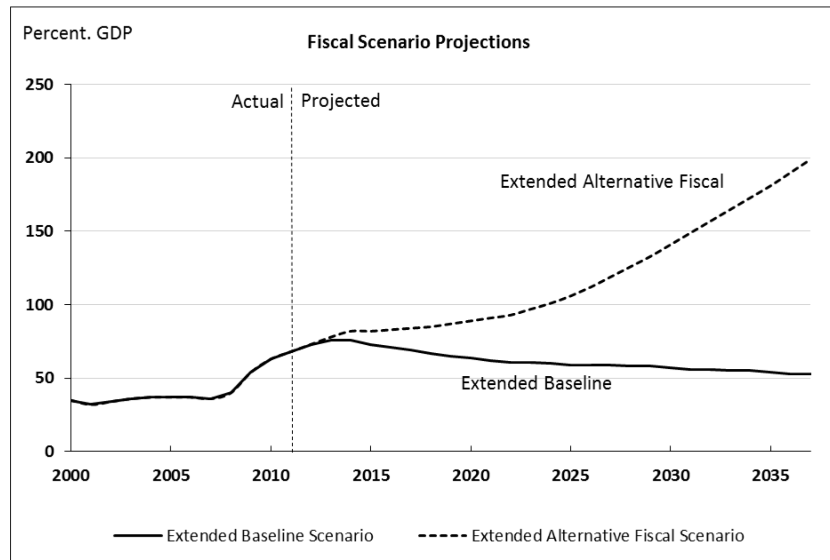
[63] ROBERT KEITH, CONG. RESEARCH SERV., RS 20398, BUDGET SEQUESTERS: A BRIEF REVIEW 1 (2004).

[64] Meyers, *supra* note 12, at 19.

[65] MARC LABONTE, CONG. RESEARCH SERV., R 41778, REDUCING THE BUDGET DEFICIT: POLICY ISSUES 3–4 (2012).

[66] *Id.* at 3.

Chart One: Federal Debt Held by the Public (2000–2037)[67]



The Extended Baseline projection of budget balance depends on the following assumptions about adherence to current law:

- *none* of the expiring tax provisions, (except for the current reduction in the payroll tax) including those income tax reductions enacted in 2001 and 2003 (the "Bush tax cuts") are extended beyond their scheduled expiration;[68]
- the "alternative minimum tax" is no longer adjusted to avoid its application to more taxpayers because of rising nominal incomes, and the "temporary" adjustments since 2001 are allowed to lapse (the "AMT patch");[69]
- medicare payments for physicians' services are reduced by 27% as scheduled under current law in January 2013 and further reductions occur in later years (the "doc fix");[70] and
- sequesters required by the Budget Control Act of 2011 occur as scheduled and are not undone by subsequent

[67] CONG. BUDGET OFFICE, UPDATED BUDGET PROJECTIONS: FISCAL YEARS 2012 TO 2022, at 2 (2012).

[68] *Id.*

[69] *Id.*

[70] *Id.* at 3–4; Charles Fiegl, *Medicare Previews Pay Increases and Cuts for 2013*, AM. MED. NEWS (July 16, 2012), http://www.ama-assn.org/amednews/2012/07/16/gvsa0716.htm.

legislation.[71]

The Alternative Fiscal Scenario, also shown in Chart One, projects continued federal deficits and a rapidly rising debt to Gross Domestic Product (GDP) for as far as the CBO projection is extended.[72] It arrives at this dire result, consistent with past legislative actions, by reversing the key assumptions used in making the Baseline projection.[73] Specifically it assumes:

- tax increases specified in current law (except for the payroll tax) are deferred indefinitely;[74]
- alternative Minimum Tax is permanently indexed for inflation;[75]
- scheduled cuts in Medicare payments to physicians are repealed;[76] and
- sequesters required under current law never occur (nor are those cuts made through other legislative action).[77]

Thus, the Alternative Fiscal Scenario is arguably a more realistic projection than the mostly current law Baseline projection, because it assumes that Congressional policy behavior will continue unchanged, despite the growing risk of a debt-induced financial crisis.

Readers concerned that the Alternative Scenario is too pessimistic should note that not all of its assumptions are worst-case outcomes. For example, the CBO's long-term projections ignore the crowding out of private investment and slower growth that would result from high and rising ratios of government debt to GDP. Instead, the CBO assumes that the economy continues to expand at its historical rate.[78] The long-term projections also ignore the possibility of extreme, unfavorable events such as financial crises, severe recessions, natural disasters, and major wars; all of which have a non-zero probability of occurring during the projection period. The alternative projections also assume

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[71] MARC LABONTE, CONG. RESEARCH SERV., R 41778, REDUCING THE BUDGET DEFICIT: POLICY ISSUES 4 (2012); *10 Essential Fiscal Charts*, PEW CHARITABLE TRUSTS 6 (2011), http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Fiscal_Analysis/Essential_Federal_Fiscal_Charts.pdf.

[72] MARC LABONTE, CONG. RESEARCH SERV., R 41778, REDUCING THE BUDGET DEFICIT: POLICY ISSUES 4 (2012).

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] CONG. BUDGET OFFICE, UPDATED BUDGET PROJECTIONS: FISCAL YEARS 2012 TO 2022, at 1 (2012).

that federal revenues will rise to 18.5% of GDP by 2037 because of the interaction between continued economic growth and the progressive income tax system.[79]

C. From Evasion to Disregard

The Congress has failed to adopt a budget resolution for the last three years, and six out of the last fifteen years.[80] Even when Congress did enact a resolution, or "deemed" one to be in effect, points of order were routinely waived in the House, often as a part of the rule for consideration of legislation as passed by the Rules Committee.[81] In addition, lawmakers could avoid any binding process constraints by declaring their action to be a required response to an "emergency." Under the provisions of the Budget Enforcement Act of 1990, emergency spending is accommodated by raising the caps to permit additional spending without making offsetting cuts elsewhere or by raising taxes.[82] As the budget resolution lost its ability to constrain subsequent legislation, the political effort required to develop and pass a resolution often seemed greater than the political benefit for many members of Congress. Consequently, enactment of a budget resolution has become "optional." For similar reasons, the Congress has not used reconciliation to effect a net reduction in the deficit since 1997.[83] In fact, reconciliation has been used in

[79] CONG. BUDGET OFFICE, THE 2012 LONG-TERM BUDGET OUTLOOK (2012) [hereinafter CBO 2012].

[80] BILL HENIFF, JR. & JUSTIN MURRAY, CONG. RESEARCH SERV., RL 30297, CONGRESSIONAL BUDGET RESOLUTIONS: HISTORICAL INFORMATION 2 (2012). For FY 2013 Congress adopted a continuing resolution on July 31, 2012 which will fund the government through March 2013. Jennifer Steinhauer, *Leaders Reach Tentative Deal on Spending to Avoid Fight Before Election Day*, N.Y. TIMES, Aug. 1, 2012, at A11, http://www.nytimes.com/2012/08/01/us/politics/congressional-leaders-reach-tentative-deal-on-spending.html?_r=1.

[81] For examples of rules and waivers, *see Functions/Features of a Special rule: C. Setting Aside House Rules*, COMMITTEE ON RULES LEGISLATIVE PROCESS PROGRAM, 110TH CONG., 2–3, *available at* http://democrats.rules.house.gov/POP/specialrule_func.htm.

[82] Congress has applied the emergency designation to funding relief efforts for natural disasters, unexpected overseas military operations, and economic stabilization as well as ongoing military operations and various administrative costs, including the costs of the decennial census. For details, *see* PETERSON-PEW COMM'N ON BUDGET REFORM, BUDGETING FOR EMERGENCIES (2011), http://budgetreform.org/sites/default/files/budgeting_for_emergencies.pdf.

[83] ROBERT KEITH, CONG. RESEARCH SERV., RS 22098, DEFICIT IMPACT OF RECONCILIATION LEGISLATION ENACTED IN 1990, 1993, AND 1997, at 1 (2005), http://www.policyarchive.org/handle/10207/bitstreams/4090.pdf.

some recent years to reduce taxes and occasionally to make room for increased spending by claiming dubious savings from exploiting weaknesses in the budgetary accounting system.[84]

Accordingly, the fiscal condition of the federal government has deteriorated, with an increasing share of the budget consumed by mandatory and defense spending.[85] Between 2002 and 2011, the budget deficit rose from about $160 billion to $1.3 trillion.[86] Much of the increase was due to the automatic response of the budget revenues and outlays to the recession that began in 2008, and the effects of increases in discretionary spending intended to stabilize the economy.[87] However, even with a return to full employment, which the CBO projects to occur in 2018, and using the CBO *current law baseline*, the annual deficit is projected to remain at about $200 billion.[88]

Chart Two: Federal Debt[89]

[84] An example was the substitution of new direct student loans for new guaranteed student loans in 2007. This policy change used the understated cost of direct loans in the budget to pay for increased entitlement spending. For a comprehensive examination of the cost of student loan programs, *see* Deborah Lucas & Damien Moore, *Guaranteed versus Direct Lending: The Case of Student Loans, in* MEASURING AND MANAGING FEDERAL FINANCIAL RISK 163 (Deborah Lucas ed., 2010).

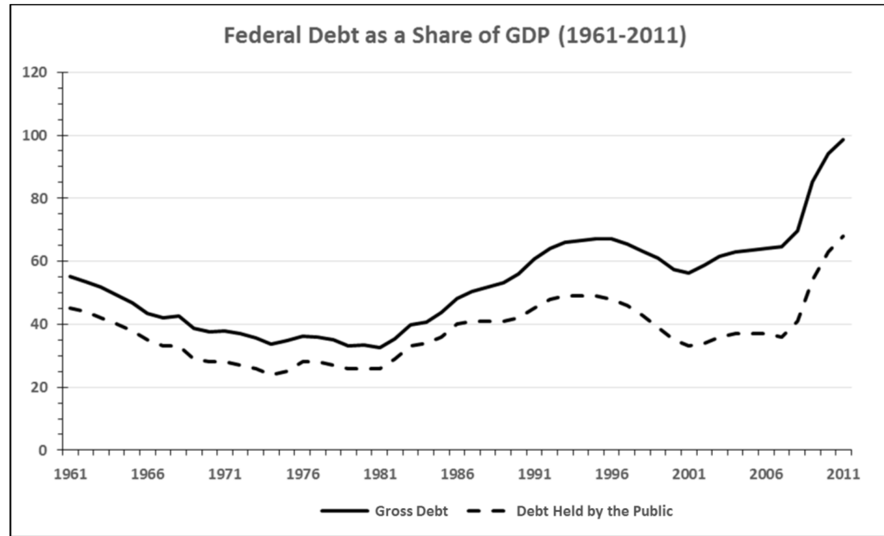
[85] OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2013: HISTORICAL TABLES 5 (2010).

[86] *Id.* at 5–6.

[87] *Id.* at 6.

[88] CONG. BUDGET OFFICE, THE BUDGET AND ECONOMIC OUTLOOK: FISCAL YEARS 2012 TO 2022, at 10 (2012), http://www.cbo.gov/sites/default/files/cbofiles/attachments/01-31-2012_Outlook.pdf [hereinafter CBO: 2012–2022].

[89] *See* CONG. BUDGET OFFICE, *supra* note 69.



From 2002 to 2011, the debt held by the public as a share of GDP rose to 68% from 34% and is projected under the Alternative Fiscal Scenario to exceed 90% by 2021.[90] Gross Treasury debt, including that held by government trust fund accounts, which primarily consists of earmarked tax collections that have not yet been spent for the earmarked purpose such as Social Security benefits, rose from about 60% of GDP to close to100% in 2011.[91]

From 2002 to 2011, mandatory spending rose from 10.5% to 13.5% of GDP, while discretionary spending increased from 7% to 9%: much of this growth was accounted for by the increase in defense spending which grew from 3.3% to 4.7% of GDP.[92] Tax receipts fell from 17.6% of income to 15.4%.[93] Tax expenditures, the provision of subsidies through tax exemptions, deductions, credits, deferrals or other special provisions, also appear to have been unrestrained by the budget process during this period. However, the measurement of that form of spending is difficult to monitor under current budgetary accounting.[94]

[90] *See supra* Chart One.

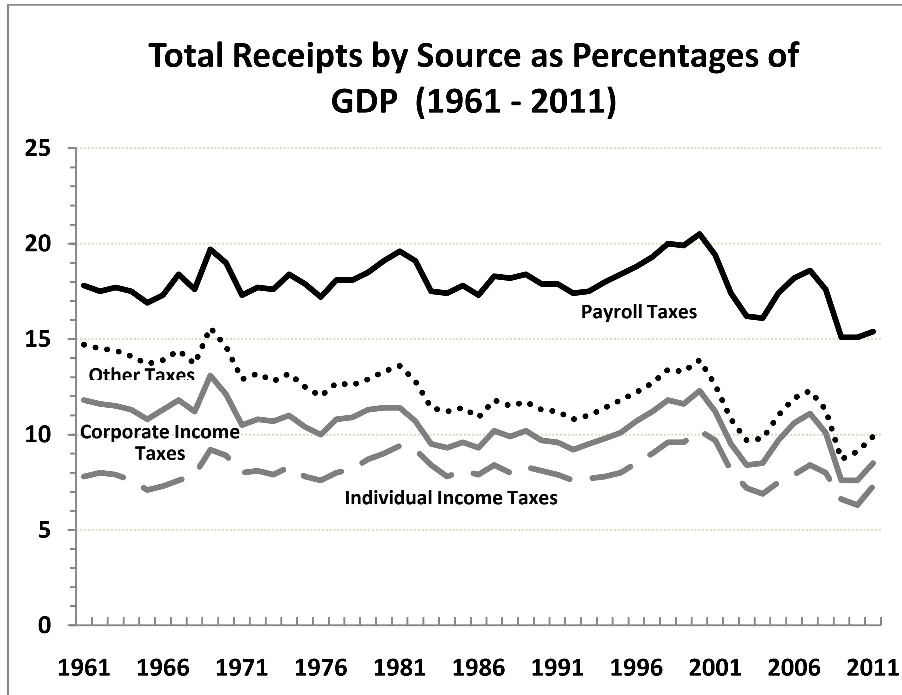
[91] OFFICE MGMT. & BUDGET, *supra* note 86, at 140; *see supra* Chart Two.

[92] OFFICE MGMT. & BUDGET, *supra* note 86, at 151.

[93] *Id.* at 342; *see infra* Chart Three.

[94] *See* Leonard E. Burman & Marvin Phaup, *Tax Expenditures, the Size and Efficiency of Government, and Implications for Budget Reform*, *in* 26 TAX POLICY AND THE ECONOMY 93, 95 (Jeffrey R. Brown ed., 2012).

Chart Three: Receipt by Source[95]



Under current budget policy, the capacity of the federal government to provide benefits to constituents has acquired some of the properties of a common pool resource, such as a fishery or aquifer. The value of the resource pool can be maintained only if its overuse can be avoided. For that to happen, elected officials and potential beneficiaries need to deny themselves some short-term benefits from exhaustive extraction in order to obtain long-term value from the resource. In the current case of overuse of the ability of the government to commit fiscal resources, a self-denying rule could smooth the availability of benefits and raise their value for all claimants compared with the feast and famine path implied by current practice.

[95] *See* CONG. BUDGET OFFICE, *supra* note 69.

II. IN SEARCH OF A FEASIBLE, EFFECTIVE, ENFORCEABLE RULE

At some level, Congress and voters know that enjoying the benefits of more government spending than we are willing to pay in taxes is likely to be a Faustian bargain, especially because we are issuing debt to finance high levels of current consumption. Every dollar of spending has to be paid for eventually, and living beyond our means now reduces the resources available in the future. While it makes sense to incur debt for investments that will pay future returns—such as capital investments or borrowing to escape a deep recession—issuing debt to pay for every increase in spending is inconsistent with long-term economic security and prosperity. Budgeting is essential for a government that aspires to increase social well-being and maintain its long-term legitimacy. But, budgeting without recognition of the effective resource constraint is not budgeting.

The major deficiency of the current process is its failure to set ceilings on total federal spending and floors on taxes consistent with long–term fiscal balance. From one perspective, it is unnecessary to add those constraints to the budget process. The effective budget constraint, like scarcity, is real and inescapable. Either lawmakers will choose to re-align the use of resources with their limited availability or they will be forced to do so by a debt-driven crisis. As Stein's Law reminds us, that which cannot continue will stop.[96] But the policy adjustment decisions made in the urgent aftermath of a sudden stop are unlikely to be as aligned with social preferences for efficiency and equity as those chosen more deliberately.

In the face of the current fiscal imbalance, most reform efforts have been aimed at developing a package of policy changes that would put the government back on a stable course and that can win the support of a sufficient majority to be enacted into law.[97] This approach has been taken by federal and public interest

[96] Herbert Stein, American economist, 1916–1999. Michael M. Weinstein, *Herbert Stein, Nixon Adviser and Economist, Is Dead at 83*, N.Y. TIMES, Sept. 9, 1999, http://www.nytimes.com/1999/09/09/us/herbert-stein-nixon-adviser-and-economist-is-dead-at-83.html?src=pm (stating Stein's frequent reminder that "if a thing cannot go on forever, it will stop").

[97] For more on the topic of political compromise leading to flawed reform and the problematic necessity of acquiring majority approval for policy changes, *see* PRIMO, *supra* note 17, at 105.

study groups,[98] as well as academics.[99] Yet, as of this writing, the Congress has been unable to manage a vote on any package of proposals.[100] Judging by past experience and recent research, it is unlikely that Congress will be able to address the current fiscal danger without external assistance.[101] Even if the Congress and the President are able to emulate the courageous, successful efforts of some past United States and foreign governments in enacting a fiscal correction (the international term is "fiscal consolidation),[102] in the United States' context, neglect of long-term fiscal balance is almost certain to recur.[103]

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[98] *See* NAT'L RESEARCH COUNSEL & NAT'L ACAD. OF PUB. ADMIN.: COMM. ON THE FISCAL FUTURE OF THE U.S., CHOOSING THE NATION'S FISCAL FUTURE 6 (2010); NAT'L COMM'N ON FISCAL RESPONSIBILITY & REFORM, THE MOMENT OF TRUTH 7 (2010) [hereinafter THE MOMENT OF TRUTH]; PETE DOMENICI & ALICE RIVLIN, BIPARTISAN POLICY CTR.: DEBT REDUCTION TASK FORCE, RESTORING AMERICA'S FUTURE: REVIVING THE ECONOMY, CUTTING SPENDING AND DEBT, AND CREATING A SIMPLE, PRO-GROWTH TAX SYSTEM 8–9 (2010); PETERSON-PEW COMM'N ON BUDGET REFORM, GETTING BACK IN THE BLACK 3 (2010).

[99] *See, e.g.*, JOHN B. TAYLOR, FIRST PRINCIPLES: FIVE KEYS TO RESTORING AMERICA'S PROSPERITY 112–17 (2012). Taylor proposes a sequence of steps beginning with setting a target for federal spending of 19.5% of GDP, approximately the share of spending by the federal government in 2007 before the recent recession, and balancing the budget at that share of GDP by 2021. He argues that this plan would require neither an increase in tax rates nor an absolute cut in federal spending, which would decline only as a share of GDP. Under current tax policy, that plan would leave room for tax reform without an increase in tax rates. He proposes that the caps on discretionary spending and the lower trajectories for growth of spending on mandatory programs, consistent with balance by 2021, be set at the limits already agreed to in the Budget Control Act of 2011. He suggests that a constitutional amendment requiring annual budget balance at that share of GDP might be enacted more easily *after* the target has been achieved rather than as a means of reaching that result. *Id.*

[100] *See, e.g.*, Stephen Dinan, *Democrats Punt on Senate Budget Bill for Third Year*, WASH. TIMES, April 17, 2012, http://www.washingtontimes.com/news/2012/apr/17/democrats-punt-on-senate-budget-bill-for-3rd-year/.

[101] *See* PRIMO, *supra* note 17, at 123.

[102] *See* Paul L. Posner & Matthew K. Sommerfeld, *The Politics of Fiscal Austerity: Implications for the United States*, 32 PUB. BUDGETING & FIN. 32, 32 (2012).

[103] Even if the Congress acts before it is forced to do so by a financial crisis, the current uncertainty and risk of promised benefits will have imposed significant costs, or an "excess burden," on beneficiaries. *See* ERZO F. P. LUTTMER & ANDREW A. SAMWICK, THE COSTS AND CONSEQUENCES OF PERCEIVED POLITICAL UNCERTAINTY IN SOCIAL SECURITY (2011), http://www.nber.org/programs/ag/rrc/NB11-11%20Luttmer,%20Samwick%20FINAL.pdf; Francisco J. Gomes et al., *The Excess Burden of Government Indecision* 1 (Nat'l Bureau of Econ. Research, Working Paper No. 12859, 2007); *see also* Robert J. Barro*, Rare Disasters, Asset Prices, and Welfare Costs* (Nat'l Bureau of Econ. Research, Working Paper No. 13690, 2007), http://www.nber.org/papers/w13690.pdf?new_window=1.

Our approach differs. Rather than offer another specific package of policy changes to restore balance, we propose three new fiscal rules or constraints, any one of which could increase fiscal discipline and contribute to fiscal stability, if effectively enforced. We take this approach, because we doubt we can improve on the efficiency, equity, or voter appeal of the proposals already on the table. In addition, we are motivated by the view that process reforms are easier to enact than policy changes, and indeed are often political substitutes for substantive policy change.[104]

Even though the legislative preference for process change over substantive program reform may be biased by opportunity to insert loopholes in any statute and to repeal those rules before they bind behavior, we aim to raise the cost of future evasions by tying enforcement to other constraints, which the Congress may be less willing to change. We do not claim that process changes can override the self-interest incentives faced by elected officials to maximize net benefits from the central government to the home district; but some enforcement mechanisms can alter those relative incentives. Our effort is aimed at tilting incentives so that the goal of long-term fiscal discipline is assigned an importance closer to that of "bringing home the bacon." To that end we offer a single enforcement procedure for use with any of the three considered budget rules.

We are aware of the support for imposing and enforcing the budget constraint through an amendment to the United States Constitution to require an annually balanced budget, but we do not propose that option here in part because of the equally strong opposition to such a change and because of our concerns discussed below that such a rule would not be effective in a budget process that primarily uses a cash-basis of accounting. Ultimately, a constitutional amendment may be adopted, but enactment seems likely only following a severe fiscal crisis, or as Taylor suggests, following realization of fiscal balance without such an amendment. Instead, we propose a regime of external constituent-enforcement based on the issuance by the Federal Accounting Standards Advisory Board of Generally Accepted Accounting Principles (GAAP) for the federal government that

[104] *See* MEYERS, *supra* note 12, at 22.

require specific and detailed public reporting of the government's compliance with and violations of the enacted rule.

We consider three types of budget limits:

- annually balanced budget;
- intermediate term (10-year) debt/GDP targets; and
- twenty-five year fiscal gap target.

Which we evaluate by the criteria of:

- feasibility of enactment
- effectiveness
- enforceability
- transition costs
- effect on fiscal flexibility
- complexity/transparency.

A. An Annually Balanced Budget Rule

A search for an effective rule for the national government naturally begins with the experience of state governments, where the most common fiscal rule is the requirement for an annually balanced budget.[105] Every state except Vermont has such a requirement, most have had them for decades, and, importantly, most apply to the operating budget, which is separate from special purpose funds, including capital investment and employee pension funds.[106] However, state balanced budget rules come in a variety of forms. Most commonly they are embedded in the state constitution, but some are prescribed by statute;[107] enforcement of constitutional provisions is a judicial function, whereas statutes generally lack a means of enforcement that cannot be voided by legislative action.[108] Where state constitutions permit an override of the requirement for balance, this usually requires a two-thirds vote of the legislature or voter approval.[109] Overriding a statutory requirement in the states for a balanced budget

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[105] *See, e.g.*, Henning Bohn & Robert P. Inman, *Balanced Budget Rules and Public Deficits: Evidence from the U.S. States* (Nat'l Bureau of Econ. Research, Working Paper No. 5533, 1996), http://www.nber.org/papers/w5533.pdf?new_window=1.

[106] *Id.* at 3; *see* Dale G. Bails, *The Effectiveness of Tax-Expenditure Limitations: A Re-evaluation*, 49 AM. J. ECON. & SOC. 223, 223–24 (1990) (showing how tax and expenditure limitations have been used for decades "to limit either the size or the rate of growth of the government budget[s]").

[107] Bohn & Inman, *supra* note 105, at 7, tbls.2 & 3.

[108] *Id.* at 5–6.

[109] *Id.* at 5.

generally requires only a simple majority.[110] Enforcement is generally accomplished by automatic spending cuts.[111] The rule may apply only to the *ex ante* proposed budget, or to the end-of-year budget results. Seven states have balanced budget rules that permit deficits to be carried over to the subsequent fiscal year.[112] Thirty-six states explicitly prohibit carry-over, and require annual balance.[113]

Research by Bohn and Inman finds that an end-of-year, no carry-over constitutional balanced budget requirement increases a state's general fund surplus by about $100 per capita and reduces the average probability of a deficit from 26% to 11%.[114] They also find that enforcement "by a popularly elected state supreme court [is] associated with significantly larger general fund surpluses than those enforced by a governor-appointed or legislatively elected state supreme court."[115] Softer rules have small or insignificant effects. Bohn and Inman also find that states subject to the tightest balanced budget requirements tend to reduce spending rather than increase taxes, and to save more in "rainy day" or budget reserve funds as a precaution against adverse contingencies.[116] Similarly, they find some evidence that "stringent balanced [budget] requirement[s] reduce[] the cyclical sensitivity of state general fund [balances] by about one-half," presumably because of the availability of funds from the budget reserve funds.[117]

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[110] *Id.*

[111] *Id.* at 8–9.

[112] *Id.* at 8.

[113] *Id.* at 8–9, tbl.2 & 3. Some states have also adopted tax and expenditure limits. Evidence from state experience suggests that these have been largely ineffective. *See* Bails, *supra* note 106, at 237; James Cox & David Lowery, *The Impact of the Tax Revolt Era State Fiscal Caps*, 71 SOC. SCI. Q. 492, 506–07 (1990). *See also* PRIMO, *supra* note 17, at 41.

[114] Bohn & Inman, *supra* note 105, at 5. *See also* Shaghil Ahmed, *Balanced-Budget Rules and Public Deficits: Evidence from the U.S. States: A Comment*, 45 CARNEGIE-ROCHESTER CONF. SERIES ON PUB. POL'Y 77, 77–87 (1996) (analyzing the empirical study and findings by Henning Bohn and Bob Inman to suggest the best "constitutional and statutory limitations . . . [to] curtail[] deficit financing").

[115] Bohn & Inman, *supra* note 105, at 6.

[116] *Id.* at 7.

[117] *Id.* at 6. Those results are obtained using state personal income as a measure of cyclicality. Use of state unemployment as a cyclical indicator produces a smaller, often insignificant effect of balanced budget rules on the cyclicality of state budgets. *Id.*

The empirical work of Primo largely confirms the conclusions of Bohn and Inman regarding the effectiveness of balanced budget rules in reducing spending.[118] His more recent analysis indicates that without deficit carryover, but with enforcement by popularly elected judges rather than those appointed by the executive or the legislature, balanced budget rules reduce spending by about $150 per capita.[119] He also finds that tax and expenditure limitations generally are not effective.[120]

The major advantages of a balanced budget rule are its intuitive appeal and its simplicity. Voter support is high for requiring governments to subject themselves to the same budget constraint that binds households over time.[121] Just as households borrow to purchase long-lived assets, such as housing and real estate and durable goods, most state balanced budget rules apply only to the operating budget, meaning that capital funds which finance long-lived assets are able to issue debt for that purpose.[122]

One of the traditional arguments raised against an annual budget balance rule for the federal government is its inconsistency with the federal goals of economic stabilization and avoiding frequent short-term changes in tax rates ("tax smoothing").[123] That is, when the economy weakens, the federal budget tends to move into a deficit because of the effects of automatic stabilizers such as reduced tax collections, increased spending for unemployment and nutrition programs. Deficits also increase due to the enactment of new discretionary stimulus spending on infra-structure, education and other public purposes. Requiring the government to raise taxes and cut spending to reach a balanced budget as the economy weakens would likely further slow the pace of economic activity in the short term. Further, the federal budget is also subject to shocks that affect budget spending and balance from defense emergencies and natural and accidental disasters.[124] Responding to those shocks

[118] PRIMO, *supra* note 17, at 93–104.

[119] *Id.* at 93.

[120] *Id.* at 41.

[121] *Id.* at 58.

[122] The justification for excluding pension costs from the operating budget and pension funds from a balanced budget rule is less apparent. This latter exclusion is one of the ways that state governments have skirted the balanced budget rules.

[123] Bohn & Inman, *supra* note 105, at 6.

[124] *See, e.g.*, Marvin Phaup & Charlotte Kirschner, *Budgeting for Disasters: Focusing on the Good Times*, OECD J. ON BUDGETING, Oct. 2010, at 1–2.

in the short term with required tax increases, rather than an increase in federal borrowing, would raise the economic distortions and costs of the tax system. An annually balanced budget therefore could limit the government's ability to stabilize macroeconomic activity and smooth tax rates over time.

The experience of state governments, however, suggests that this disadvantage may have been overstated, at least after the transition to such a rule has been completed.[125] Faced with a requirement for budget balance in good times and bad, states have adopted policies to accumulate precautionary saving of fiscal resources during good or normal years for use during bad times.[126] An annually balanced budget that includes outlays for budget reserve funds ("rainy day funds") sufficient to meet expected future fiscal contingencies could also preserve fiscal flexibility for national governments.[127]

Applying a balanced budget rule to the federal government would be problematic nonetheless, because unless a number of complicating budget accounting changes are made in advance of the new rule, an annually balanced budget would be unnecessarily restrictive for some federal activities, and would leave others virtually unconstrained. For example, with a balanced budget rule, outstanding federal debt securities would be capped at the current level and refinanced with new issues as the existing debt matured.[128] Publicly-held Treasury debt would decline as a share of GDP.[129] Yet a continuous decline in the ratio of debt to GDP is not necessary for either long-term financial

[125] *See* PRIMO, *supra* note 17, at 103; Yilin Hou & William Duncombe, *State Saving Behavior: Effects of Two Fiscal and Budgetary Institutions*, 28 PUB. BUDGET & FIN. 48, 66–67.

[126] *See, e.g.*, Phaup & Kirschner, *supra* note 124, at 2.

[127] *Id.* at 2 (arguing that budgeting for contingencies *ex ante*, in advance of loss, has political and economic advantages over budgeting for these costs after the loss has occurred). The accounting mechanics for *ex ante* budgeting for fiscal shocks are discussed in Marvin Phaup & David F. Torregrosa, *Budgeting for Contingent Losses*, *in* HANDBOOK OF GOVERNMENT BUDGETING 699 (Roy T. Meyers ed., 1999). *See also* Leonard E. Burman & Marvin Phaup, (Not) Budgeting for Emergencies: Symptom of a Larger Failing? 3 (June 28, 2012) (unpublished manuscript) (on file with author) (discussing the "[m]echanics of [b]udgeting for the [e]xpected cost of [e]mergencies").

[128] *See generally* PRIMO, *supra* note 17, 105–40 (showing examples of ways the federal government can bypass balanced budget rules).

[129] *See* MINDY R. LEVIT, CONG. RESEARCH SERV., RL 34712, THE FEDERAL DEBT: AN ANALYSIS OF MOVEMENTS FROM WORLD WAR II TO THE PRESENT (2010) (providing more on the interrelation between public debt and the GDP).

stability or equity if future generations are expected to enjoy higher incomes than do current generations.

Further, unless the state model is followed by adopting a separate capital budget, a balanced budget rule would require new purchases of capital assets to be paid for by current taxpayers even if the assets were expected to provide benefits to future generations.[130] Avoiding this result could be accomplished through a separate capital budget, but doing so would have to overcome widespread opposition to such a change. Two national commissions have explicitly recommended against adopting a capital budget, primarily because it would create incentives for legislators to redefine "capital" expansively to move it outside the balanced budget limit. This incentive, in turn, might be offset by requiring the separate capital fund to maintain balance between assets and liabilities by charging capital rental fees to operating budget accounts sufficient to cover depreciation and other carrying cost of capital assets. These changes would add complexity to the budget and require changes that lawmakers are likely to resist.

An annually balanced budget that uses a mostly cash basis of accounting also provides a weak limit on many of the major activities of modern governments, such as committing to provide retirement income support and medical care to current federal employees as well as future Social Security and Medicare benefits to all, and to insure against future physical disasters.[131] Thus an annually balanced, mostly-cash budget would not effectively limit increases in benefits granted now but to be paid in the future, including commitments to provide federal insurance for private pensions, deposits in financial institutions, and the liabilities of systemically important institutions. Even if insurance premiums and fees were set at actuarially fair rates—a feature not usually found in federal insurance—premium income would count toward deficit reduction when collected, without providing resources for the payment of future claims.[132] The budgetary accounting for

[130] While an annually balanced budget would excessively restrain new capital purchases, it would provide no limit on spending for deferred federal employee pension benefits and other post-employment benefits which are also accounted for on a cash-basis, i.e. they are recognized when paid, not when incurred.

[131] *See, e.g.*, DAVID A. MOSS, WHEN ALL ELSE FAILS: GOVERNMENT AS THE ULTIMATE RISK MANAGER 1 (2002) (positing that "risk management constitutes a potent and pervasive form of public policy in the United States").

[132] *See, e.g.*, Phaup & Kirschner, *supra* note 124, at 8.

social insurance, retirement benefits, and insurance programs could be changed to an accrual basis of accounting so that annual balance would provide effective limits on those programs, but doing so would be a major reform in itself and could result in reduced budget transparency.[133]

Any attempt to move to a balanced budget rule now could also have high transition costs given the current fragile state of the national and international economies. One option would be to adopt such a rule immediately, but delay its effective date until the economy has recovered from the current recession. Such a rule is unlikely to be credible, though, and would lend itself to repeated deferrals by lawmakers.

B. Intermediate Debt/GDP Targets

No commensurate state experience informs the strengths and weaknesses of a fiscal rule to limit the ratio of debt to GDP over a period of ten years or so.[134] Rather, proposals to adopt this rule have been developed by budget analysts and reformers who have observed that the current policy threat to macro fiscal stability is that public debt is growing faster than national income, and is projected to continue to do so.[135] Caps on the ratio of debt to national income were also used as a condition of Membership in the European Union as a means of assuring a commitment to fiscal discipline and stability for all members.[136] If government limits the growth of debt, initially, to the rate of growth of income, it will stop the deterioration in fiscal balance and create an opportunity to reduce the ratio, thus providing government with the flexibility to respond to future shocks by increased borrowing, without endangering fiscal stability.

The principal advantages of the use of debt targets as a budget constraint is that the concept of limiting debt to a proportion of income is intuitive and appears to be straightforward. In addition, the path to stabilization can be gradual and adjusted to

[133] Barry B. Anderson, Deputy Dir., Cong. Budget Office, Statement to the Conference on Budget Process Reform Committee for a Responsible Federal Budget 4–5 (Sept. 24, 1999).

[134] *See generally* Andrea Schaechter et al., *Fiscal Rules in Response to the Crisis—Toward the "Next-Generation" Rules: A New Dataset* 25 (Int'l Monetary Fund, Working Paper No. 187, 2012).

[135] Donald B. Marron, *America in the Red*, 3 NAT'L AFF. 3, 9 (2010).

[136] *Id.* at 10–11.

almost any phase of the budget cycle. For the United States, this means that policies could be enacted now that would move the budget toward fiscal balance as the economy recovers. This approach to fiscal discipline has been endorsed by several public interest and federal study groups, including the Peterson-Pew Commission and the National Commission on Deficit Reduction and Fiscal Responsibility.[137]

The primary disadvantage of this approach is that the debt/GDP ratio, like the cash basis budget deficit, can be an incomplete, lagging measure of financial commitments in excess of fiscal resources. Consider, for example, the various measures of debt that could be candidates for use in the ratio. Perhaps the most commonly used, and the measure projected by the CBO, is debt securities issued by the United States Treasury and held by the public, which includes the holdings of Treasury debt by the Federal Reserve.[138] At the end of fiscal year 2011, this outstanding debt was about 68% of GDP.[139] This measure is incomplete in that it does not include debt held by federal trust funds that correspond to taxes collected for earmarked purposes such as paying social security benefits, retiree pensions, or health care but have not yet been spent.[140] Gross debt, which adds Treasury debt held by government accounts to public debt, had surpassed 90% of GDP in 2011.[141] Gross debt only measures public debt plus those tax revenues credited to accounts but unspent for promised benefit payments.[142] Most of these accounts or trust funds, however, are underfunded in the sense that current commitments exceed the value of collected fund balances.[143] If all program commitments, such as estimates of future benefits that the Social Security Administration periodically sends to those who are still working, are included in

[137] *See* PETERSON-PEW COMM'N ON BUDGET REFORM, TIED TO THE MAST: FISCAL RULES AND THEIR USES 21–22 (2011); THE MOMENT OF TRUTH, *supra* note 98, at 56.

[138] CBO: 2012–2022, *supra* note 89, at 11.

[139] *Id.* at 2.

[140] *Id.* at 2, 123.

[141] *Id.* at 2.

[142] David Mosso, Keeping Score: Accountability Beyond the Spotlight of the Federal Budget, (July 12, 2012) (presented at George Mason University: Academy for Government Accountability, Financial and Budget Reporting for an Age of Austerity) (calling for transparency and full reporting of all assets and liabilities).

[143] *Id.*

federal debt, the ratio of debt to GDP rises to over 450% of GDP.[144] Clearly the effectiveness of a debt target will be strongly influenced by the definition and measurement of debt that is adopted.

Another weakness of debt targets is that, while they relate a measure of debt to national income, they ignore the claims to resources, or assets, held by the government that provides the means to pay those claims, including the expected inflow of tax revenues that would be available to finance payments or otherwise provide services for which voters would be willing to pay.[145]

C. Twenty-Five Year Fiscal Gap Targets

From a conceptual perspective, a budget limit specified in terms of a target value of the "fiscal gap" may be the most relevant and comprehensive means of constraining federal budget commitments to available fiscal resources. If enforced, this rule would produce a budget balance over a planning horizon that is relevant both to what governments do and the differential effects of those policies across generations. It may be used in conjunction with a debt target, while also accounting for financial assets, and other claims that can be used to service debt.

Fiscal gap, based on early work by Willem Buiter, is the present value of the difference between projected government revenues and projected government outlays (other than interest) for all governmental programs under current policy for the planning horizon, usually twenty-five, fifty, or seventy-five years, expressed as a share of GDP.[146] The fiscal gap measure can be adjusted for a target ratio of debt to GDP at the end of the planning period. That is, the gap can be calculated under the assumption that debt to GDP will be reduced, increased, or held

[144] *Id.*

[145] Concern about "omitted assets" prompted President Obama's Office of Management and Budget to propose that public debt be measured net of the value of marketable financial assets acquired with the proceeds of debt issues. The argument in the text suggests that the recoverable value of all marketable capital assets that have been financed by debt issues is a suitable offset for netting against debt securities held by the public.

[146] *See generally* Willem H. Buiter, *Measurement of the Public Sector Deficit and Its Implications for Policy Evaluation and Design,* 30 IMF STAFF PAPERS 306, 309 (1983).

unchanged over the projection period.[147] The twenty-five year gap, for example, answers the question: how much must taxes be raised or spending cut immediately and permanently to stabilize the debt/GDP ratio at its current (or some alternate target) level at the end of 2038? The inclusion of the time value of money in the gap concept by discounting also provides an incentive to address imbalance sooner rather than later, because delaying action increases the fiscal gap and the size of the adjustment required to hit the gap target.

The principal advantage of the fiscal gap over an annually balanced budget rule or a debt to GDP target, is that the gap is comprehensive of all federal programs that are expected to spend money or generate revenues within the projection period. It excludes only the costs of mandates and regulation, which are paid by entities other than the federal government.[148] For example, social and financial insurance programs that generate revenues now and outlays in the future are included as contributors of both cash inflows and outflows, and those cash flows are converted to comparable values by discounting for the time value of money.[149] Fiscal gap, therefore, provides much of the same budget cost information about programs in aggregate that could be obtained for budget planning by converting the budgetary accounting for each program to an accrual-basis from a cash-basis of accounting.

To make this measure more tangible, consider that calculating the fiscal gap requires analysts to project all cash flows in and out of the government for each fiscal year in the planning period.[150] The CBO uses both the Extended Baseline projection and the Extended Alternative Fiscal Scenario projection as the source of those cash flows. Cash flows are then converted into present values by discounting future dollars to their equivalent value now (how much would you accept today to give up a larger sum in the future?) using the average expected real rate of interest on Treasury securities held by the public.[151] For the *2012 Long-Term Budget Outlook*, the CBO used a discount rate of 2.7%.[152] The present values of future revenues, outlays, and the deficit are

[147] *Id.*
[148] CBO 2012, *supra* note 80, at 20 n.17 (2012).
[149] *Id.*
[150] *Id.*
[151] *Id.* at 23.
[152] *Id.*

then scaled to a percent of GDP.[153] In 2012, the CBO estimated that the fiscal gap over the next twenty-five years was 4.6% of GDP.[154] This estimate was based on the Alternative Fiscal Scenario and the goal of holding the debt to GDP ratio unchanged from its value at the end of 2011.[155] The estimated gap of 4.6% of GDP is the difference between the present value of projected revenues plus funds raised from the growth in the dollar value of the debt, 20.6% of GDP, and the present value of projected outlays, 25.2% of GDP.[156]

Use of the fiscal gap as a budget constraint is consistent with the federal goals of long-term and short-term fiscal stability and increased efficiency in micro program policies. Fiscal gap gives lawmakers opportunities to vigorously pursue short-term economic stabilization policies without raising concerns about long-term stability so long as those efforts are paid for in the twenty-five year planning period.[157] Moreover, the sooner in the period the pay-for polices become effective, the smaller the offsets will be, because they will have larger present values. It is also consistent with the use of more efficient policies to achieve social objectives because the present value of savings can pay for an expansion of benefits.

A disadvantage of the fiscal gap is that it is, or at least is perceived as, more uncertain than other measures, such as annual balanced budget or an intermediate debt target.[158] It is scarcely more uncertain than the budget deficit projections on which it is based. Further, the uncertainty of long-term budget projections corresponds to the uncertainty of the underlying policies that lawmakers adopt. That is, commitments to provide future medical benefits, or income support to the aged or financial insurance against the insolvency of private pension funds or deposit insurance are affected by many unpredictable economic and social factors, other than eligibility and benefits specified in law.[159] Yet the authorizing laws creating those commitments are on the books and are affecting people's expectations and behavior.

[153] *Id.* at 20.

[154] *Id.* at 20–21.

[155] *Id.* at 20.

[156] *Id.* at 21.

[157] *See id.* at 20; *see also* CONG. BUDGET OFFICE, CBO'S 2011 LONG-TERM BUDGET OUTLOOK 13 (2011) [hereinafter CBO: 2011].

[158] CBO: 2011, *supra* note 157, at 16.

[159] *Id.* at 18.

Planning to keep the promises it has made requires the government to recognize the uncertainty of its commitments and to use appropriate measures of financial adequacy.

Government can take some steps to minimize the unavoidable uncertainty of costs, and to avoid policy over-reaction to big and sudden changes in fiscal gap. For example, lawmakers can adopt targets for the twenty-five year gap rather than for the more uncertain fifty year, seventy-five year or infinite budget horizons. The adjustment to a change in the measured gap could be limited to a fixed percent per year. The methodology used to estimate fiscal gap should be disclosed so that the estimates may be replicated by others and subjected to audit. Ultimately, if uncertainty in estimates of federal fiscal performance measures is unacceptable to lawmakers, redress may need to be sought in modifying substantive policies to make their costs more predictable.

Another disadvantage of using the fiscal gap to specify a constraint for the federal budget process is that it is somewhat more complex, and requires more time to explain than "Balance the Budget, Now!" However, this disadvantage can be exaggerated and would diminish over time. The CBO, OMB, GAO, and the Budget Committees have all become familiar with the fiscal gap in recent years.[160] Although the concept is not used often in the popular media, the concept has appeared in a surprising place: The Federal Accounting Standards Advisory Board (FASAB), which establishes GAAP for the federal government.[161] FASAB issued the Statement of Federal Financial Accounting Standards 36 (SFFAS 36) in September 2009.[162] The Standard requires the Consolidated Financial Statements of the Federal Government to include as basic financial information a statement showing the present value of future receipts and the present value of future outlays, excluding interest over the projection period expressed as a share of GDP.[163]

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[160] *See, e.g.*, OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, FISCAL YEAR 2013: ANALYTICAL PERSPECTIVES BUDGET OF THE U.S. GOVERNMENT 63–64 (2012); U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-12-521SP, THE FEDERAL GOVERNMENT'S LONG-TERM FISCAL OUTLOOK 7 (2012); CBO: 2011, *supra* note 157, at 20.

[161] FED. ACCOUNTING STANDARDS ADVISORY BD., FASAB HANDBOOK OF FEDERAL ACCOUNTING STANDARDS AND OTHER PRONOUNCEMENTS, AS AMENDED SFFAS 36–38 (2011).

[162] *Id.* at 1.

[163] *Id.*

It also requires that the difference between the two present values, or fiscal gap, be shown along with the change from the previous year.[164] The causes of the change in the gap must be explained.[165]

III. ENFORCEMENT

Even highly appropriate budget rules will be effective only if they are enforced. Primo finds that enforcement is more likely if provided by an independent entity outside the legislative process.[166] Moreover, he suggests that evasion is less likely if the rules are linked to institutional practices that are highly favored by lawmakers.[167] He also argues, consistent with Hearn, that the enforcement mechanism must not be so harsh that it can never be permitted to occur and is thus not credible.[168] We use those findings to develop an enforcement mechanism, other than a constitutional amendment, and one that does not employ a sequester or other automatic tax increases and across the board spending cuts. Specifically, we propose to significantly reduce the cost to the media and others outside of government of monitoring adherence by legislators and the president to an enacted fiscal limit through changes in the federal financial accounting and reporting process. In this way, we intend to align more closely the incentives of individual members of Congress to observe and enforce the fiscal rule with their objective of winning re-election.

Our proposed mechanism requires the following changes in law:

- a statutory rule that restricts Congressional and Presidential discretion in setting annual budget limits;
- a requirement that the CBO cost estimates for reported legislation include a detailed description of the fiscal effect of the legislation on compliance with the fiscal rule; and
- statutory authorization for FASAB to set federal accounting standards generally, and specifically to issue a new standard on reporting the financial condition of the

[164] *Id.* at 14.
[165] *Id.* at 2.
[166] PRIMO, *supra* note 17, at 34, 86.
[167] *Id.* at 63.
[168] *Id.* at 29.

United States Government and the sustainability of existing fiscal policies.

We leave the exact nature of the fiscal rule open. The new rule might impose a requirement for an annually balanced budget, a target debt/GDP ratio, or a target fiscal gap. We interpret existing research and practice as favoring a fiscal gap target,[169] but we welcome further discussion of and experimentation with alternative fiscal rules.

We also propose that the independence of FASAB be established in statute. FASAB currently exists solely on the basis of a Memorandum of Understanding agreed to by the GAO, the OMB, and the Treasury.[170] Those FASAB "sponsors" retain the authority to review and approve FASAB's standards before they become effective.[171] This arrangement appears to have constrained the standard setter's independence and should be modified by the new statute.[172]

The new FASAB standard on financial conditions should require more specific disclosures than currently required by SFFAS 36, especially those that could be used to assess the performance of elected officials vis-a-vis the statutory rule. The standard should require, for example, disclosure of negative and affirmative votes on material policy actions by the Congress and the President that affected adherence to or violations of the fiscal rule. Deferrals of legislated spending reductions, and extensions of expiring tax cuts should be reported prominently, unless those are fully paid for in the same year that spending would have been reduced or taxes increased. The required level of detail, including votes cast by individual members, would be unwieldy if presented in the annual financial statements of the United States Government, but could be provided to the media and the public via an easily accessible, searchable website. The GAO or a new independent agency should be required to audit the new Statement of Fiscal Performance and all its note disclosures.

Finally, we propose that the existing scorekeeping processes used by the CBO and the OMB be modified to emphasize the

[169] *See supra* Chart One.

[170] FED. ACCOUNTING STANDARDS ADVISORY BD., *supra* note 161, at app.C–1.

[171] *Id.* at app.C – 1–3.

[172] James Patton & David Mosso, *Is the Federal Accounting Standards Advisory Board Independent? Can the Federal Accounting Standards Advisory Board Be More Independent*?, 58 J. GOV'T FIN. MGMT. 61, 61, 63 (2009).

consistency or conflict of all new legislation with the statutory fiscal rule.

Enactment of this enforcement mechanism is more likely than adoption of a constitutional amendment because it is a smaller step from current practice. It meets the more feasible requirement of changing the process rather than the policy. It also relies on more "independent" actors for enforcement, and will be difficult for the Congress to reverse or evade because transparency and "open government" have strong political support. The new requirement would not strictly constrain Congressional fiscal behavior, but it would create additional incentives for members to explain and justify votes cast to depart from the agreed fiscal limit.

Adding effective limits to the budget process also requires adhering to the concept of a *comprehensive* budget—arguably the single most widely endorsed element of effective budgeting, although not so widely practiced in the case of the federal budget.[173] However, while it is critically important that budgets include all costs, it is not necessary—and frequently it is counterproductive—to include the accounts from which payments are made to final recipients within the unified consolidated budget.[174] For example, a cash-basis unified budget that includes an on-budget fund for pensions and other post-employment benefits will only record a budget cost in outlays and the deficit when those benefits are paid to recipients. By contrast, an off-budget retirement fund that is fully and continuously funded by on-budget expense accounts will record those costs in the budget aggregates as those benefits are earned. The constrained budget must be comprehensive of costs across activities and time, but not of the cash flows which liquidate existing, already-recognized obligations.

CONCLUSION

The United States Government is behaving as though it is exempt from the universal phenomenon of scarcity. It does not recognize an externally imposed budget limit. It spends and

[173] A single comprehensive budget is a key recommendation of the 1967 *Report* of the President's (Johnson) Commission on Budget Concepts, which remains an authoritative source for budget accounting principles. For a catalogue of some major violations of this rule, *see* Mosso, *supra* note 142.

[174] *Id.*

commits to spend in excess of the amounts that taxpayers are likely willing to pay.[175] It borrows without a plan to pay the costs of its debt, except to borrow the amounts owed when due.[176] It operates ineffectively and inefficiently as though resources were available in unlimited supply. Furthermore, it does so with the tacit approval of voters, who must know that there are no free lunches, retirement income, or health care, even if they are provided by government.[177] "'We [h]ave [m]et the [e]nemy and [h]e [i]s [u]s.'"[178]

"Just do it" does not seem to be a feasible option.[179] We need to internalize the consequences of our chosen course through informed public conversation, debate, and public voice. The proposals in this paper aim to increase the salience of long-term fiscal balance and stability in daily fiscal decisions made by Congress and the President. To do so, we rely on the ability of the government to inform the media and voters about the often neglected fiscal consequences of current policies by framing decisions as affecting costs as well as benefits. We would match the recognition of benefits and their costs, not just in financial statements, but in the budget decision and election processes.

The current broken process has much that is salvageable and useful. The budget committees are potentially a major strength of the any process. Specifically, their knowledge and understanding of Congressional decision processes and the interaction of the budget with the economy are extraordinary. Their authority to establish discretionary spending limits and to

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[175] U.S. GOV'T ACCOUNTABILITY OFFICE, THE FEDERAL GOVERNMENT'S FINANCIAL HEALTH: A CITIZEN'S GUIDE TO THE 2007 FINANCIAL REPORT OF THE UNITED STATES GOVERNMENT 2 (2007).

[176] Press Release, U.S. Dep't. of the Treasury, Get the Facts: Raising the Debt Limit (Aug. 3, 2011), *available at* http://www.treasury.gov/press-center/news/Pages/debt-limit.aspx.

[177] Robert J. Shiller, *Bubbles Without Markets*, PROJECT SYNDICATE (July 23, 2012), http://www.project-syndicate.org/commentary/bubbles-without-markets (discussing the phenomenon of bubbles unsupported by financial markets, which he refers to as part of a larger class of "social epidemics"). Voter support for, or at least acquiescence in, current fiscal policies has a number of features common to Shiller's description of social epidemics. For a related but alternative view, *see* BRYAN CAPLAN, THE MYTH OF THE RATIONAL VOTER: WHY DEMOCRACIES CHOOSE BAD POLICIES 2 (2007).

[178] KERRY D. SOPER, WE GO POGO: WALT KELLY, POLITICS, AND AMERICAN SATIRE 48, 237 (2012) (discusses Walt Kelly's satirical works including his famous comic strip "We Have Met the Enemy and He Is Us").

[179] Posner & Sommerfeld, *supra* note 102, at 2 (summarizing that many countries, including the United States, face a debt-driven financial crises).

control mandatory spending and taxes through reconciliation are necessary to this reform. But they require re-vitalization and the support of the leadership, both of which could be effected by a new statutory mandate to carry out the new fiscal rule.

The FASAB also has the potential to become an important player in returning the government to a stable fiscal path. During the two decades since the Board came into existence, it has established its commitment to and expertise in improved federal financial reporting and performance. In adopting SFFAS 36, however, the Board may have reached the current limits of its independence. It is an institution worthy of permanent legal status and enhanced independence.

We acknowledge that we may be unable to persuaded lawmakers to enact our proposal, and that, even if enacted, the reform might not produce the intended results. But we are certain that current policy cannot be sustained, and that the United States has few alternatives for correcting our fiscal trajectory toward financial default. Yet we believe a majority of the electorate would choose to avoid the political upheaval that is almost certain to occur if we do not succeed in making this change. The country may need to choose quickly the least unattractive of its alternatives to avoid having another forced upon us.