

# BACKGROUND

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## Budget Gimmicks Increase Federal Spending and Mask True Costs of Legislation

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### Abstract

*The power of the purse is one of the fundamental responsibilities delegated to Congress by the Constitution. Congress exercises this authority through its budget resolutions, annual appropriations legislation, and a wide variety of other legislation containing authorizations of activities and programs that it considers in a given year. The American people have the right to know the full costs of the activities in which Congress engages. Instead, Congress utilizes a wide variety of gimmicks and accounting tricks to hide those costs. This allows Congress to spend more and more—evading fiscal discipline and adding billions of dollars to the federal debt each year. Congress must take immediate steps to close budget loopholes that have allowed for the continued use of budget gimmicks. Without reforms, debt and deficit levels are likely to continue to rise, pushing the nation closer to the brink of fiscal disaster.*

The power of the purse is one of the fundamental responsibilities delegated to the Congress by the Constitution.<sup>1</sup> Congress exercises this authority through its budget resolutions, annual appropriations legislation, and a wide variety of other legislation containing authorizations of activities and programs that it considers in a given year.

The American people have the right to know the full costs of the activities in which Congress is engaging. Unfortunately, this is often not the case. Instead, Congress utilizes a wide variety of gimmicks and accounting tricks to hide the true costs of legislation. This allows Congress to spend more and more—evading fiscal discipline and adding billions of additional dollars to the federal debt each

### KEY POINTS

- Congress exercises its constitutional power of the purse in the form of budget resolutions, annual appropriations, and a wide variety of authorizing legislation.
- Americans have the right to know the full costs of governing, but instead Congress utilizes a wide variety of gimmicks and accounting tricks to hide those costs.
- By utilizing budget gimmicks, Congress has found a variety of ways to circumvent statutory budget caps and spend more and more, adding to federal debt and deficit levels.
- Inaction by Congress is not the answer to address budget gimmicks and scoring discrepancies.
- Congress should immediately stop the irresponsible use of budget gimmicks and adopt meaningful budget-process reforms to enhance transparency and give taxpayers an accurate accounting of the federal budget.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3234>

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year. Congress should immediately stop the irresponsible use of budget gimmicks and adopt meaningful budget-process reforms to enhance transparency and give taxpayers an accurate accounting of the federal budget.

Among the most often used budget gimmicks are:

**Changes in Mandatory Programs (CHIMPs).**

A CHIMP can be defined as an appropriations provision that alters the level of spending that would have otherwise been provided by its underlying authorizing statute. Generally speaking, the levels of mandatory spending are reduced so that the programs spend less than their originally authorized level.<sup>2</sup>

CHIMPs are the largest and most often used budget gimmick during the appropriations process. There are two types of commonly used CHIMPs. The first are those that create the appearance of savings but have no measurable outlay savings over the long term. By shifting money from the current year to a subsequent year, they merely delay spending into the future. The second type are those that create real and measurable outlay savings and represent legitimate changes in the operations of a specific program.<sup>3</sup> These savings are then used as a tool to increase discretionary spending.

CHIMPs come in the form of a rescission, which is the cancellation of spending authority that had been previously provided by Congress. While all CHIMPs inherently relate to mandatory spending, discretionary funds can also be rescinded and spent in other unrelated budget areas in a similar fashion.

Unfortunately, the vast majority of CHIMPs fall into the category of having no real budgetary savings. The fiscal year (FY) 2017 omnibus appropriations contained \$20.4 billion in CHIMP savings,<sup>4</sup>

with only \$1.3 billion of that having actual outlay savings. Repeatedly, the largest offender has been the Crime Victims Fund CHIMP. This rescission of funds accounted for more than \$8 billion of the phony savings in the 2017 omnibus bill. The next largest CHIMP in the bill was a rescission of \$7.6 billion in unobligated balances from the Children's Health Insurance Fund, which also resulted in no real savings.<sup>5</sup>

In FY 2016, the Senate began to try to rein in CHIMP spending. As part of the annual budget resolution they included a provision that, beginning in 2016, would place a hard cap on the number of CHIMPs that appropriators could use each year—and then phase them out completely by FY 2021.<sup>6</sup> While this is a good first step, Congress should go further and take steps to stop the use of CHIMPs immediately and completely. CHIMPs undermine fiscal accountability and transparency. With the national debt at \$20 trillion, CHIMPs are something that taxpayers can no longer afford.

**Timing Shifts.** Another budget gimmick often used to hide the true costs of legislation is timing shifts. Generally, this involves shifting in what year revenues or expenses may be reported. By shifting an expense outside of the 10-year budget window, it may help to lessen the deficit impact of a piece of legislation, when in fact, no changes have been made to lower actual costs or enact other offsets. The same can be said of shifting revenues. By shifting additional revenues from the 11th year (outside the standard budget window) into the 10th year, it may appear that the legislation is being fully paid for, when in fact no real changes or additional revenues are being generated. Revenue losses could receive the same treat-

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1. U.S. Constitution, Article I, § 9, clause 7.

2. Congressional Research Service, "Memorandum to Senator Tom Coburn: Changes in Mandatory Programs (CHIMPs) and the Crime Victims Fund," December 17, 2013, <http://rsc-walker.house.gov/files/uploads/CRS%20CHIMPs%20memo%20to%20Coburn.pdf> (accessed June 23, 2017).

3. Taxpayers for Common Sense, "Impact of Federal Budget Gimmicks: Changes in Mandatory Program Spending (CHIMPs)," October 31, 2016, <http://www.taxpayer.net/library/article/impact-of-federal-budget-gimmicks-changes-in-mandatory-program-spending-chi> (accessed June 12, 2017).

4. *Congressional Record*, June 7, 2017, p. S3321, <https://www.congress.gov/crc/2017/06/07/CREC-2017-06-07-pt1-PgS3321-2.pdf> (accessed June 13, 2017).

5. Committee for a Responsible Federal Budget, "CRFB Explainer: Gimmicks in the FY 17 Omnibus Bill," May 3, 2017, <http://www.crfb.org/blogs/crfb-explainer-gimmicks-fy-17-omnibus-bill> (accessed June 26, 2017).

6. "An Original Concurrent Resolution Setting Forth the Congressional Budget for the United States Government for Fiscal Year 2016 and Setting Forth the Appropriate Budgetary Levels for Fiscal Years 2017 Through 2025," S.Con.Res. 11, 114th Congress (2015), <https://www.congress.gov/bill/114th-congress/senate-concurrent-resolution/11> (accessed June 13, 2017).

ment, being shifted outside the budget window to diminish a bill's deficit impact.<sup>7</sup>

There are numerous examples of timing shifts that have been used by lawmakers to offset the costs of legislation. In January of 2013, Congress passed a so called "doc fix" package, which delayed a looming cut to Medicare physician payments for three months. To pay for a portion of the extension, Congress shifted Medicaid savings achieved through the Bipartisan Budget Act of 2013. As part of that agreement, the automatic Medicare sequestration was extended through FY 2023. However, about \$2.1 billion of these savings carried over into 2024, outside the 10-year budget window. When it came time to pass the "doc fix" though, Congress shifted those savings from 2024 back into 2023 to help pay for the plan.<sup>8</sup>

Another timing gimmick showed up as part of the Fixing America's Surface Transportation Act (FAST). The act assumed over \$53 billion in savings would be generated from capping the Federal Reserve's surplus fund, which acts as a cushion for Federal Reserve operations. FAST capped the fund at \$10 billion and directed that anything over that amount be remitted to the Treasury.<sup>9</sup> According to former Federal Reserve Chairman Ben Bernanke, this leads to no real additional revenues. Rather, while the Treasury may see additional revenues in the short term, they "would be exactly offset by reduced remittances from the Fed in the future." Bernanke went on to say that the additional highway funding would see a corresponding dollar-for-dollar increase in current and future budget deficits.<sup>10</sup>

There have been efforts to minimize the effects of timing shifts. Most notably, the Senate Budget Committee's FY 2016 budget resolution included a provi-

sion that would have prohibited timing shifts from being used in estimating the budgetary effects of legislation.<sup>11</sup> This would have represented progress toward reining in this budget gimmick, but it was ultimately dropped in the conferenced budget resolution that was adopted by the House and Senate.

Congress should take immediate action to enact a prohibition against the use of timing shifts. These are purely mathematical gimmicks that produce no real deficit impact or programmatic changes. They serve only as a means to hide the true costs of legislation and perpetuate the myth that Congress is fully paying for new or additional program spending.

**Pension Smoothing.** Somewhat similar to using timing shifts to pay for legislation is the utilization of pension smoothing. Pension smoothing brings additional money into the Treasury, resulting in lower revenues at a later date. This gimmick works by Congress allowing businesses to delay making mandatory pension payments. Because the pension payments are tax deductible, this delay may result in some companies paying a slightly higher tax bill. Those additional revenues are then used by the federal government to pay for new spending.<sup>12</sup>

The problem with this approach is that while it does increase federal revenues over a short period of time, when those same companies then inject more funds into the pensions years down the road to make up for the reduction, it lowers federal revenues. In other words, the federal government is simply shifting revenues forward at the peril of future budgets and spending. This practice could also lead to further strain on pension programs in the long term. The Congressional Budget Office (CBO) has stated that pension smoothing "would increase the amount of underfunding" of pension plans.<sup>13</sup> This could lead

7. Cheryl D. Block, "Budget Gimmicks," in *Fiscal Challenges: An Interdisciplinary Approach to Budget Policy* (Cambridge: Cambridge University Press, 2007), <https://law.wustl.edu/faculty/workshops/budgetgimmicks.pdf> (accessed July 18, 2017).

8. Committee for a Responsible Federal Budget, "3-Month SGR Fix Proposed," December 11, 2013, <http://www.crfb.org/blogs/3-month-sgr-fix-proposed> (accessed June 14, 2017).

9. Michael Sargent, "Going Nowhere FAST: Highway Bill Exacerbates Major Transportation Funding Problems," *Heritage Foundation Issue Brief* No. 4494, December 3, 2015, [http://www.heritage.org/transportation/report/going-nowhere-fast-highway-bill-exacerbates-major-transportation-funding#\\_ftn3](http://www.heritage.org/transportation/report/going-nowhere-fast-highway-bill-exacerbates-major-transportation-funding#_ftn3).

10. Ben S. Bernanke, "Budgetary Sleight-of-Hand," Brookings Institution, November 9, 2015, <http://www.brookings.edu/blogs/ben-bernanke/posts/2015/11/09-budgetary-sleight-of-hand> (accessed June 14, 2017).

11. "An Original Concurrent Resolution," S.Con.Res. 11, 114th Congress.

12. Vipal Monga, "Welcome to the World of 'Pension Smoothing': New Bill Extends Provision That Allows Firms to Delay Making Pension Contributions," *The Wall Street Journal*, August 11, 2014, <https://www.wsj.com/articles/welcome-to-the-world-of-pension-smoothing-1407800119> (accessed June 28, 2017).

to a higher rate of default on obligations to employees. The former director of the Pension Benefit Guaranty Corporation stated that using the “federal pension insurance program to pay for wholly unrelated initiatives is just bad policy,” and said that it would have adverse implications to funding for corporate pension plans.<sup>14</sup> Pension smoothing does not reduce companies’ obligations to retirees; rather, it artificially lowers the present value of future liabilities by allowing companies to assume a higher interest rate when determining their contribution.<sup>15</sup>

The Highway and Transportation Funding Act of 2014 is a recent example of pension smoothing. The bill allowed for single-employer defined benefit plans to assume higher interest rates on future liabilities for the 2013–2020 plan years. According to the CBO, using higher rates “would reduce the minimum contributions that employers are required to make to such plans, leading to increases in offsetting receipts, direct spending, and revenues.”<sup>16</sup> Other instances of pension smoothing include using these funds to pay for a separate transportation funding package in 2012; cutting tax rates; eliminating the Affordable Care Act (ACA) taxes on medical devices; providing benefits to coal miners; and reversing cuts to military pensions.

Like timing shifts, pension smoothing is pure budget gimmickry. It produces no real additional revenues in the long run and may in fact do more to harm pensions than help them—which could lead to future government intervention. Congress should stop using the pension smoothing gimmick to pay for additional spending and instead focus on tangible reforms that produce meaningful long-term savings.

**Using Disaster and Emergency Spending to Circumvent Budget Caps.** The Budget Control Act of 2011 (BCA) established discretionary spending caps for total spending and defense and non-defense spending categories for FY 2012 through FY 2021. While much of discretionary spending falls under those caps, the legislation allows for certain adjustments to be made that are not subject to the limitations of the BCA. These include funding for Overseas Contingency Operations, disaster and emergency designated spending, and funds used for program integrity initiatives.

Disaster and emergency spending is far too often used as a gimmick with the sole purpose of increasing discretionary spending in other areas without running afoul of the budget caps. The FY 2017 Consolidated Appropriations Act that was passed in May of this year contained over \$12.2 billion in combined disaster and emergency funding.<sup>17</sup>

The number of disaster designations has soared over the past 30 years. During President Ronald Reagan’s tenure, the Federal Emergency Management Agency (FEMA) declared an average of 28 disasters each year. Under Presidents George W. Bush and Barack Obama, that average rose to around 130 declarations per year.<sup>18</sup> Under normal circumstances, states are responsible for paying disaster-response costs. However, when the President declares an incident as a major disaster, 75 percent or more of the costs are paid by the federal government. The average annual cap adjustment for disaster relief appropriations has been over \$8 billion annually the past five years.<sup>19</sup> In FY 2017, FEMA’s disaster relief fund received over \$6.7 billion in additional exempt appropriations from major disaster declarations, and yet

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13. Congressional Budget Office, “H.R. 5021: Highway and Transportation Funding Act of 2014,” Cost Estimate, <http://www.cbo.gov/sites/default/files/45522-hr5021a.pdf> (accessed June 23, 2017).

14. Vipal Monga, “Welcome to the World of ‘Pension Smoothing.’”

15. *Ibid.*

16. *Ibid.*

17. Congressional Budget Office, “CBO Estimate for Divisions A-L of House Rules Committee, Print 115-16: The Consolidated Appropriations Act, 2017,” May 1, 2017, <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/consolidatedappropriationsact2017.pdf> (accessed June 20, 2017).

18. The Stafford Act of 1988 amended the Disaster Relief Act of 1974 by linking the presidential declaration of an emergency or disaster to a response of the Federal Emergency Management Agency. David Inserra, “FEMA Reform Needed: Congress Must Act,” Heritage Foundation Issue Brief No. 4342, February 4, 2015, <http://www.heritage.org/homeland-security/report/fema-reform-needed-congress-must-act>.

19. See Congressional Budget Office, “Status of Appropriations,” FY 2013–2017, <https://www.cbo.gov/taxonomy/term/25/latest> (accessed June 20, 2017).

its base budget for the fund remained at less than one-tenth of that amount.<sup>20</sup>

In addition to disaster funding, Congress also sometimes appropriates supplemental funds for emergencies—events that fall outside “normal” non-catastrophic disasters. In some cases these funds are used to provide recovery funds for natural disasters, such as Hurricane Sandy in 2012. However, it is not limited to only natural disasters as is required for FEMA’s Disaster Relief Fund and has been used for purposes such as fighting the Ebola outbreak in 2014 and increasing border security in the southwestern United States, among other things. Emergency spending can be initiated by either Congress or the President and is not subject to Congressional budget rules.<sup>21</sup>

Congress should stop allowing cap adjustments for most disasters and emergencies and instead should budget for these situations within agencies’ base budgets. FEMA received the exact same cap adjustment in FY 2017 as it did in FY 2016. Clearly, the same expenses (or expenses of a similar magnitude) are recurring on an annual basis—and in at least a somewhat predictable fashion. But instead of prioritizing appropriate levels of base funding to FEMA to pay for this, Congress instead provides a cap adjustment so that it does not have to make cuts to other areas of the discretionary budget. To better control spending, Congress should reduce the federal cost share for all FEMA disaster declarations. It should also consider reforms to the Stafford Act, which would establish clear requirements limiting the circumstances in which FEMA can issue disaster declarations.<sup>22</sup>

Disaster and emergency declarations and additional funding should instead be reserved for cases of widespread natural disasters or other unforeseen events, not normal natural occurrences with a high

degree of predictability. When these declarations are appropriate, Congress should take steps to ensure that the funds are being spent appropriately and reaching those who need them the most.

#### **Relying on Overseas Contingency Operations Funding to Pay for Base Defense Requirements.**

Like disaster and emergency spending, Overseas Contingency Operations (OCO) funds are a category of spending that was explicitly exempted from being subject to the BCA caps. This category has been around much longer than that, however, having been established in 1997 as a way for the Pentagon to fund unplanned needs. OCO first gained notoriety when these funds were tapped into to provide America’s response to the 9/11 terrorist attacks and the ensuing “Global War on Terror.”<sup>23</sup>

Since 2001, an estimated \$1.8 trillion has been appropriated to the Department of Defense, State Department, and U.S. Agency for International Development (USAID) for activities and operations in response to the 9/11 attacks and the continuing war on terrorism.<sup>24</sup> There is no statutory limit to the amount of OCO funds that can be appropriated in a given year; rather, it is driven by the President’s budget request and the Congressional budget and appropriations process.

Unfortunately, rather than fulfilling their intended purpose, more and more OCO funds are being used to prop up the base budgets of the Department of Defense, the State Department, and USAID. Since 2014, the Pentagon has been shifting funding from base accounts into the OCO account. This provides a mechanism to increase base defense spending without violating the BCA caps.<sup>25</sup>

The FY 2017 National Defense Authorization Act that was passed by the House contained \$18 billion in base-funding requirements within the OCO authorization. Ultimately, the conference agreement con-

20. Department of Homeland Security, “Disaster Relief Fund: Monthly Report as of May 31, 2017,” June 6, 2017, <https://www.fema.gov/media-library-data/1496871387960-ebcc872fec88778c0fe20629e9fa1455/May2017DisasterReliefFundReport.pdf> (accessed June 20, 2017).

21. Justin Bogie, “A Primer on Disaster and Emergency Appropriations,” Heritage Foundation *Issue Brief* No. 4524, March 2, 2016, <http://www.heritage.org/budget-and-spending/report/primer-disaster-and-emergency-appropriations>.

22. David Inserra, “FEMA Reform Needed: Congress Must Act.”

23. Danny Vinik, “Can Trump End Washington’s Biggest Budget Gimmick?” *Politico*, December 29, 2016, <http://www.politico.com/agenda/story/2016/12/can-trump-end-washingtons-biggest-budget-gimmick-000263> (accessed June 21, 2017).

24. Lynn M. Williams and Susan B. Epstein, “Overseas Contingency Operations Funding: Background and Status,” Congressional Research Service, February 7, 2017, <https://fas.org/sgp/crs/natsec/R44519.pdf> (accessed June 21, 2017).

25. *Ibid.*

tained \$8.3 billion in base funding that was financed through OCO. In FY 2016 Congress provided \$7.7 billion in OCO above President Obama's budget request and expressly stated that the funds were to be used "in support of base budget requirements as requested by the President for fiscal year 2016."<sup>26</sup>

In 2013, then-Senator Harry Reid of Nevada further abused the OCO designation when he attempted to use reductions in OCO to pay for a proposed sequester relief package. Reid proposed placing a cap on the amount of OCO that could be used over a three-year period. CBO projections assume that OCO spending will rise, even though real-world conditions at the time suggested that the need for OCO was decreasing, and the projected level of spending would not be reached. This new level would have been lower than CBO baseline projections, creating "savings" for scorekeeping purposes and allowing those funds to be spent elsewhere without running afoul of budget rules.<sup>27</sup> Former Congressman Mick Mulvaney, now Director of the Office of Management and Budget, has referred to OCO funding as a "slush fund" and made numerous failed attempts to eliminate it and restrict its uses while he was a Member of Congress.<sup>28</sup> Based on the actions of Senator Reid and others, it is clearly time to renew those efforts.

Changes must be made to the way that Congress and the President utilize OCO funding. First, they should stop using it to prop up base agency budgets and should reserve the funds for their intended purpose. Moreover, Congress and the President should work together to phase out the use of OCO funding entirely. Instead, they should fund national defense through the base budget at the level fully needed to protect the nation from increasing threats across the globe and save additional spending for true emergencies and unforeseen threats. Any increases

to defense spending should be fully offset through reforms to ineffective and duplicative domestic programs or in combination with meaningful mandatory reforms. With the country's debt at an all-time high, Congress must choose its priorities carefully and, in some cases, make tough choices about what should or should not be funded.

**Double Counting Federal Trust Fund Savings.** Another budget gimmick that is commonly used to offset the costs of legislation is double counting. Double counting is usually associated with spending from federal programs financed by trust funds because, compared to other parts of the budget, they are scored by unique conventions. Under current scorekeeping rules, it is assumed that benefits derived from federal trust funds, notably Social Security and Medicare Part A, will continue to be paid as scheduled, regardless of the actual ability of the trust funds to do so.<sup>29</sup>

Currently, both the Medicare and Social Security trust funds are projected to face insolvency within the next 20 years. However, if Congress chooses to bail out the programs (through a general fund transfer) and continue to provide benefits at the projected rates, it would not lead to any recorded increase in the federal debt or deficit because of this scorekeeping practice.<sup>30</sup>

Congress has taken advantage of this scoring oddity on several occasions, most notably to aid the passage of the Affordable Care Act in 2010. At the time, the CBO estimated that the legislation would reduce budget deficits by \$143 billion between 2010 and 2019.<sup>31</sup> The Centers for Medicare and Medicaid Services estimated that over \$575 billion in cost savings came from a reduction to payments in Medicare Part A and B payment levels.<sup>32</sup>

26. Danny Vinik, "Can Trump End Washington's Biggest Budget Gimmick?"

27. Romina Boccia, "Reid Suggests Exploiting Budget Gimmicks for Sequestration," *The Daily Signal*, April 25, 2013, <http://dailysignal.com/2013/04/25/reid-suggests-exploiting-budget-gimmicks-for-sequestration/> (accessed June 28, 2017).

28. Danny Vinik, "Can Trump End Washington's Biggest Budget Gimmick?"

29. Romina Boccia et al., "Blueprint for Balance: A Federal Budget for Fiscal Year 2018," *Heritage Foundation Special Report*, March 28, 2017, <http://www.heritage.org/budget-and-spending/report/blueprint-balance-federal-budget-fiscal-year-2018>.

30. *Ibid.*

31. Congressional Budget Office, letter to Speaker Nancy Pelosi, March 20, 2010, <https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/costestimate/amendreconprop.pdf> (accessed June 22, 2017).

32. Richard S. Foster, "Estimated Financial Effects of the Patient Protection and Affordable Care Act, as Amended," Memorandum, April 22, 2010, [https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/downloads/ppaca\\_2010-04-22.pdf](https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/downloads/ppaca_2010-04-22.pdf) (accessed June 22, 2017).

If not for the use of these “savings,” the legislation would have been scored as increasing the deficit and would have run afoul of the Senate Byrd Rule,<sup>33</sup> making it much more difficult to pass. On top of being used to offset the cost of expanded coverage under the ACA, the savings were also scored as extending the life of the Medicare Hospital Insurance Trust Fund by an additional 12 years. The same savings were being used simultaneously to pay for a new entitlement program as well as to increase the lifespan of the Medicare program and thus were being double counted.<sup>34</sup>

The double-counting gimmick has also been used numerous times to bail out the Highway Trust Fund. Under current scoring practices, the CBO assumes that Highway Trust Fund expenditures will continue at current levels, regardless of whether or not the Trust Fund has sufficient funds to do so. Since the CBO has already accounted for this future spending that would not likely occur under real-world conditions, transfers of general funds into the Highway Trust Fund are not scored as a net cost to the federal government even though it allows for additional spending that would not be possible without the transfer.<sup>35</sup>

Congress must work to amend current scoring conventions and close the trust fund loophole. Current practices do not offer an accurate assessment of the true costs of providing benefits and maintaining government programs. Whenever Congress bails out trust funds, the scorekeeping rules should reflect the full costs of doing so, and those costs should have to be completely offset.

**Extending Customs User Fees to Pay for Unrelated Spending.** Customs user fees were first

established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). The legislation authorized the U.S. Customs Service to collect fees for a variety of services that it renders. The act included the establishment of processing fees for air and sea passengers, commercial vehicles, rail cars, private vessels, dutiable mail packages, and customs broker permits. The purpose of the user fee was to offset the costs of inspections that had previously been funded by the Treasury General Fund.<sup>36</sup>

COBRA specified that the new fees created by COBRA were only to be collected through the end of FY 1989. However, the bill has instead been extended numerous times with the length of extension ranging anywhere from one to four years.<sup>37</sup> While the money was initially used to offset inspection services, in recent years it has turned into a favorite means for Congress to increase spending in other areas of the discretionary budget.

One recent example of using customs user fees as an offset to increase discretionary spending is the FY 2017 Omnibus Appropriations Act. The bill provided a \$1.3 billion bailout to the United Mine Workers of America’s underfunded pension plan for coal miners.<sup>38</sup> The bailout was paid for by extending customs user fees into January of 2026, about three-and-a-half months past the previous expiration date. This \$1.4 billion in additional revenue was more than enough to cover the cost of the coal miners’ bailout.<sup>39</sup> Customs user fees were also used to increase other domestic spending in the 2015 FAST Act (\$5.2 billion),<sup>40</sup> which extended federal high-

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33. The Byrd Rule prohibits the consideration of extraneous matter (as defined by the Congressional Budget and Impoundment Control Act of 1974) as part of a reconciliation bill or resolution or conference report thereon in the Senate. The Byrd Rule is enforced by a point of order that can be raised by any Senator. If the point of order is sustained, the offending provision is stricken from the bill unless a three-fifths majority can be raised to waive the rule.
  34. Charles Blahous, “The Fiscal Consequences of the Affordable Care Act,” Mercatus Center, April 10, 2012, [https://www.mercatus.org/system/files/The-Fiscal-Consequences-of-the-Affordable-Care-Act\\_1.pdf](https://www.mercatus.org/system/files/The-Fiscal-Consequences-of-the-Affordable-Care-Act_1.pdf) (accessed June 22, 2017).
  35. Michael Sargent, “Highway Trust Fund Basics: A Primer on Federal Surface Transportation Spending,” Heritage Foundation *Background* No. 3014, May 11, 2015, [http://thf\\_media.s3.amazonaws.com/2015/pdf/BG3014.pdf](http://thf_media.s3.amazonaws.com/2015/pdf/BG3014.pdf).
  36. U.S. Customs and Border Protection, “User Fee, Transponder, and Decal Information,” <https://www.cbp.gov/trade/basic-import-export/ufdt-info> (accessed June 26, 2017).
  37. U.S. House of Representatives, Committee on Ways and Means, “Overview and Compilation of U.S. Trade Statutes: Part I of II,” December 2010, <https://www.gpo.gov/fdsys/pkg/CPRT-111WPRT63130/pdf/CPRT-111WPRT63130.pdf> (accessed July 18, 2017).
  38. Justin Bogie and Rachel Greszler, “Massive Spending Bill Fails to Meet Conservative Priorities,” Heritage Foundation *Commentary*, May 1, 2017, <http://www.heritage.org/budget-and-spending/commentary/massive-spending-bill-fails-meet-conservative-priorities>.
  39. Congressional Budget Office, “CBO Estimate for Divisions A-L of House Rules Committee.”
  40. Congressional Budget Office, “Cost Estimate for the Conference Agreement on H.R. 22, the FAST Act, as Posted on the Website of the House Committee on Rules on December 1, 2015,” letter to Representative Bill Schuster, December 2, 2015, [https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr22\\_1.pdf](https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr22_1.pdf) (accessed June 26, 2017).

way funding, and the Bipartisan Budget Act of 2013 (\$6.8 billion).<sup>41</sup>

User fees that were originally intended to offset the cost of performing customs inspection duties should not be used to increase unrelated spending. If these fees are no longer necessary, then those savings should be passed on to travelers. If Congress increases domestic spending, they should fully offset it with corresponding spending cuts.

**Using Strategic Petroleum Reserve (SPR) Sales to Pay for Additional Spending.** The federal SPR was created in the mid 1970s in response to the oil embargo that lasted from 1973–1974. The reserves now serve as the world’s largest man-made supply of emergency crude oil. Under the authority of the Energy Policy and Conservation Act, the President may take action to release a portion of the supply into the U.S. oil market.<sup>42</sup>

Over time, the size of the reserves has grown and now sits at nearly 700 million barrels. Reserves have only been drawn down by Presidential order on three occasions.<sup>43</sup> With a large amount of reserves and infrequent decisions to tap into them, Congress has turned to them as yet another way to pay for increased spending. As part of the Bipartisan Budget Act of 2015, Congress sold off more than \$5.5 billion worth of the SPR to help pay for increases to discretionary spending.<sup>44</sup> To make matters worse, the bill assumed unrealistically high prices for crude oil, meaning that in reality the sales would generate less revenue than anticipated and not fully offset the bill’s share of the spending increase.<sup>45</sup> The reserves have also been used to increase infrastructure and health care spending over the past few years.<sup>46</sup>

Congress should stop using the SPR as a piggy bank for higher spending. If the reserves are no longer needed, they should be sold off and used to lower the nation’s ever-growing debt level. Doing so would save taxpayers an estimated \$27.6 billion in FY 2018.<sup>47</sup>

**Not Accounting for Interest Costs in Legislative Cost Estimates.** Each year, the CBO produces hundreds of cost estimates for virtually every bill approved by congressional committees. The estimates project how each bill would affect spending and revenue and, in some cases, may project other broader impacts that a bill may have on the economy as a whole.

One budget element that these estimates fail to capture, however, is the impact that changes in federal spending and revenues may have on interest spending. By failing to account for changes in interest costs, current scorekeeping conventions are creating a discrepancy between the true costs of legislation and what is being reported in CBO estimates. This could result in Members of Congress having an incomplete picture of the costs of a bill, which may distort decision making in favor of greater spending and debt accumulation than might otherwise be the case.<sup>48</sup> It also encourages the use of other budget gimmicks that spend more immediately by relying on savings that materialize over the 10-year budget window, without accounting for the interest costs of the immediate spending.

Going forward, Congress should require that any costs estimates produced by the CBO or the Joint Committee on Taxation include estimates of the debt-service impact. This is a simple change that could be implemented merely at the request

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41. Congressional Budget Office, “Bipartisan Budget Act of 2013,” December 11, 2013, <https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/costestimate/bipartisan-budget-act-20130.pdf> (accessed June 26, 2017).
  42. U.S. Department of Energy, “Strategic Petroleum Reserve,” Office of Fossil Energy, <https://energy.gov/fe/services/petroleum-reserves/strategic-petroleum-reserve> (accessed June 26, 2017).
  43. Ibid.
  44. Congressional Budget Office, “Estimate of the Budgetary Effects of H.R. 1314, the Bipartisan Budget Act of 2015,” October 28, 2015, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1314.pdf> (accessed June 26, 2017).
  45. Robert Moffit et al., “Analysis of the Bipartisan Budget Act of 2015,” Heritage Foundation *Issue Brief* No. 4477, October 28, 2015, <http://www.heritage.org/budget-and-spending/report/analysis-the-bipartisan-budget-act-2015>.
  46. “Oil Reserve Protects Americans,” *USA Today*, May 30, 2017, <https://www.usatoday.com/story/opinion/2017/05/30/strategic-petroleum-reserve-political-piggy-bank-editorials-debates/102311758/> (accessed June 26, 2017).
  47. Romina Boccia et al., “Blueprint for Balance.”
  48. Romina Boccia, “Improving Accuracy in Congressional Scorekeeping,” Heritage Foundation *Backgrounder* No. 3153, September 8, 2016, <http://www.heritage.org/budget-and-spending/report/improving-accuracy-congressional-scorekeeping> (accessed June 26, 2017).



of the congressional budget committees. Congress could also go a step further and make interest-cost estimates a statutory requirement. In 2015, Congressman Dave Brat introduced the Cost Estimates Reform Act, which would make the requirement permanent. Not including the interest costs of legislation being considered before Congress diminishes the magnitude of the fiscal impact at stake and presents an inaccurate accounting of the true costs.

**Using Unspecified Savings to Balance the Budget.** The use of unspecified budget savings has become a common tool when Congress and the President seek to present a “balanced budget.” Generally, the President’s budget submission provides volumes of detail on specific tax and spending policies. Congressional budgets are more general, but do lay out illustrative proposals detailing the spending and revenue policies needed to support their budget totals.

However, as economic growth has slowed, it has become more and more difficult to balance the budget without significant spending cuts to domestic programs and entitlement reforms. Presenting a balanced budget has been a guiding principle and a priority for a majority of Republicans in Congress since recapturing the House in the 2010 election cycle.<sup>49</sup>

To bridge the balance gap, congressional budgets have relied more and more on unspecified savings instead of defined policies. Unlike the President’s budget, which divides funding at the agency and programmatic level, congressional budgets divide funds at the functional level. Budget function 920 represents “allowances,” which traditionally refers to savings that reach across many areas of the government.<sup>50</sup> Lately though, it has become the place to store unspecified savings. The FY 2017 budget resolution marked up by the House Budget Committee in March of 2016 contained over \$530 billion in savings

from allowances.<sup>51</sup> The FY 2016 (the most recent year available) Senate budget resolution contained over \$840 billion in unspecified savings.<sup>52</sup> The President’s FY 2018 budget resolution contained around \$730 billion in savings that fell under the broad and unspecified category of allowances.<sup>53</sup>

While some policies do impact many areas of the federal government, on the whole, Congress and the President should stop relying on unspecified savings as a significant part of their deficit-reduction plans. Instead they should focus on concrete policy ideas that can be brought forward and vigorously debated based on their merits. This will lead to a more open discussion of ideas that could positively impact the nation’s fiscal path.

### Next Steps

This paper’s discussion of budget gimmicks is not all encompassing but rather focuses on some of the most common and notorious tricks employed to conceal the true costs of the ever-expanding federal bureaucracy. Unfortunately, Congress is always looking for new ways to feed its spending addiction. Just last year, a new gimmick appeared in the 21st Century Cures Act passed by Congress. The act created several new discretionary spending accounts funded by over \$6 billion in transfers from the Treasury. These new accounts were explicitly excluded from being subject to the BCA spending caps, adding billions to the federal debt with no budgetary restrictions.<sup>54</sup>

Congress must take immediate steps to close budget loopholes that have allowed for the continued use and growth of budget gimmicks. Both the House and Senate Budget committees have shown interest in taking on both small-scale and large-scale budget process reforms over the past few years, proving that Members of Congress recognize there are problems

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49. “Should Balancing the Federal Budget Be a Top Priority?” *U.S. News & World Report*, March 14, 2013, <https://www.usnews.com/debate-club/should-balancing-the-federal-budget-be-a-top-policy-priority> (accessed June 23, 2017).

50. Committee for a Responsible Federal Budget, “Eight Gimmicks to Look Out for This Budget Season,” May 16, 2017, <http://www.crfb.org/papers/eight-gimmicks-look-out-budget-season> (accessed June 23, 2017).

51. U.S. House of Representatives, Committee on the Budget, “Concurrent Resolution on the Budget: Fiscal Year 2017,” March 23, 2016, [https://budget.house.gov/uploadedfiles/fy2017\\_budget\\_resolution.pdf](https://budget.house.gov/uploadedfiles/fy2017_budget_resolution.pdf) (accessed June 23, 2017).

52. “An Original Concurrent Resolution,” S.Con.Res. 11, 114th Congress.

53. Committee for a Responsible Federal Budget, “All the President’s Budget Gimmicks,” June 7, 2017, <http://www.crfb.org/papers/all-presidents-budget-gimmicks> (accessed June 23, 2017).

54. Congressional Budget Office, “H.R. 34, 21st Century Cures Act,” November 28, 2016, <https://www.cbo.gov/publication/52297> (accessed June 23, 2017).

with the current system and are willing to put forth solutions. Doing so would lead to greater fiscal discipline and responsibility. With the federal debt projected to rise by an additional \$10 trillion in the next decade, this is needed now more than ever.<sup>55</sup>

Americans deserve transparency and should demand that Congress pass fiscally responsible legislation and enact budget process reforms that produce a more accurate accounting of the costs of our government. A good place to start would be to revive elements of the Honest Budget Act, which has been introduced in both the House and Senate in the past. The bill sought to permanently eradicate many of these common budget gimmicks.<sup>56</sup> The House Budget Committee also introduced a comprehensive budget process reform package in 2016 that would have cracked down on emergency spending and required that interest costs be accounted for in cost estimates, among other positive reforms.<sup>57</sup>

## Conclusion

Continued inaction by Congress is not the answer to address budget gimmicks and scoring discrepancies. Without reforms, debt and deficit levels are likely to continue to rise, pushing the nation closer to the brink of fiscal disaster.

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55. Congressional Budget Office, *The Budget and Economic Outlook: 2017 to 2027*, January 24, 2017, <https://www.cbo.gov/publication/52370> (accessed June 28, 2017).

56. Ernest Istook, "Sessions-Snowe 'Honest Budget Act' a Good Start," *Heritage Foundation Commentary*, October 6, 2011, <http://www.heritage.org/budget-and-spending/commentary/sessions-snowe-honest-budget-act-good-start> (accessed June 26, 2017).

57. Tom Price, "Proposed Rewrite of the Congressional Budget Process, Discussion Draft: Description and Rationale," U.S. House of Representatives, Committee on the Budget, November 30, 2016, <https://budget.house.gov/uploadedfiles/bpr-longsummary-30nov2016.pdf> (accessed June 26, 2017).