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# How to Un-Supplement a Tsunami of Fiscal Proportions: An Examination of the Supplemental Appropriations Process

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**HOW TO UN-SUPPLEMENT A TSUNAMI OF FISCAL PROPORTIONS:  
AN EXAMINATION OF THE  
SUPPLEMENTAL APPROPRIATIONS PROCESS**

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## Introduction:

Article I § 9 clause 7 of the United States Constitution makes it clear that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”<sup>1</sup> This single sentence provides Congress with the sole authority to allocate money out of the federal treasury.<sup>2</sup> Throughout the years, Congress has fleshed out this power through legislation governing how the appropriations and budgeting process should occur. Although Congress has been granted the constitutional authority to make appropriations, the President and the executive agencies that receive the funds appropriated by Congress have made themselves influential partners in this process, often through purely political means.<sup>3</sup>

Despite the processes that Congress has put in place, the United States is facing a fiscal tsunami should things continue at their current trajectory.<sup>4</sup> One of these budgetary processes put in place by Congress, the supplemental appropriations process, has resulted in increased outlays that avoid the transparency provided through the normal budget process.<sup>5</sup> This paper suggests that Congress reform the supplemental appropriations process, and proposes a piece of legislation called the Transparency and Accountability in Supplemental Appropriations Act (TASA). TASA would provide increased transparency and political accountability to the supplemental appropriations process. It would do so by creating an Emergency Trust Fund to be included in the regular budget and by requiring that the President’s Budget and the Congressional Budget Resolution include Contingency Allowances representing the level of any supplemental appropriations used to pay for military conflicts during the prior fiscal year. These reforms would allow Congress to lower the impact of the upcoming fiscal tsunami by reducing overall budget costs.<sup>6</sup>

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<sup>1</sup> U.S. Const. art. I, 9, cl. 7.

<sup>2</sup> See generally U.S. Const.

<sup>3</sup> See Congressional Budget and Impoundment Control Act of 1974 (Titles I-IX of P.L. 93-344) § 302(a), codified at 2 U.S.C.A. § 601 *et seq.* (2005).

<sup>4</sup> See U.S. Gov’t Accountability Office, *The Nation’s Long-Term Fiscal Outlook 1* (April 2008), [hereinafter GAO-08-783R].

<sup>5</sup> Discussed in Section II of this paper.

<sup>6</sup> See *infra* note 18 (to close the fiscal gap, and potentially avoid the fiscal tsunami, current federal spending must be immediately reduced by at least 17%).

## **Syllabus:**

Section I of this paper examines what is meant by “fiscal tsunami.” This section examines the causes of the fiscal tsunami and the potential consequences should nothing be done. Section II provides an overview of the regular federal budget process. Following discussion of this process, Section III examines the supplemental appropriations process and how this process relates to the fiscal tsunami. Section IV discusses the historical use of the supplemental appropriations process, primarily looking at its use for funding various war and natural disasters. Section V consists of a reform proposal, entitled TASA, for the supplemental appropriations process and looks at the potential benefits and trade-offs of reform.

### **Section I: The Fiscal Tsunami:**

Currently, the long-term budgeting outlook for the federal government is dim.<sup>7</sup> The nation is facing ballooning deficits in the coming years, much of it due to a combination of increasing discretionary spending and an increasing budgetary burden from mandatory entitlement spending such as Social Security and Medicare.<sup>8</sup> Those Americans who have been paying into these social safety nets all their lives are at risk of finding that when it comes time to collect, the federal government will not be able meet its financial obligation.<sup>9</sup>

A major driver, if not the primary driver, of this problem is America’s aging population.<sup>10</sup> The Social Security and Medicare programs are set up so that current workers pay for the benefits of current recipients.<sup>11</sup> Since the large baby-boomer population is aging, there will be comparatively fewer workers paying into the system for each recipient.<sup>12</sup> In time, this will put a strain on these programs and cause ballooning deficits.<sup>13</sup> The longer that the federal government declines to address this issue, the more likely it is that drastic measures would be required to maintain solvency.<sup>14</sup>

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<sup>7</sup> See GAO-08-783R.

<sup>8</sup> GAO-08-783R, at 2-3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 8.

<sup>14</sup> Compare *id.* at 6 with *id.* at 7.

To put this all into perspective we can look at a 2008 Report by the Government Accountability Office called *The Nation's Long-Term Fiscal Outlook*.<sup>15</sup> Even in the report's more optimistic projections, the federal government would require "federal revenue as a share of GDP ... [to be] increased by [33%] or non-interest federal spending ... [to be] cut by [25%] should it wait until 2040 to tackle the fiscal tsunami and balance the budget."<sup>16</sup> As the report explains, "If changes in federal individual income taxes were the sole means used to balance the budget, these would have to increase by almost 60%."<sup>17</sup> GAO-08-783R estimates that if action were taken today, such action would need to be significantly less drastic than that which would be required in the future. If the federal government acted to close the fiscal gap today, it would need to increase revenue as a share of GDP by 16.9% (16.1% less than the 2040 number) or cut all non-interest federal spending by 17% (8% less than the 2040 number).<sup>18</sup> Under this scenario, the percent increase in federal individual income tax required to get the budget on track would be 37.2% (22.8% less than the 2040 number).<sup>19</sup> These changes, while significant when examined in isolation, are much less severe than those that would be needed in 2040 or later.

Any solution to the fiscal tsunami will likely incorporate a combination of both decreased spending and increased revenue. Reforming the supplemental appropriations process is one potential source of spending reductions. As will be explained in the next section, the current supplemental appropriations process provides Congress, and the President, a method of bypassing the transparency and debate provided through normal budgeting rules. During the past four years, supplemental appropriations have consisted of 6.3% (2005)<sup>20</sup>, 4.5% (2006)<sup>21</sup>, 4.2% (2007)<sup>22</sup>, and 4.4% (2008)<sup>23</sup> of the total budget authority. According to Thomas L. Hungerford in a recent Congressional Research Report, "Had supplemental appropriations been fully offset

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<sup>15</sup> See GAO-08-783R, at 1.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 7.

<sup>19</sup> *Id.*

<sup>20</sup> Thomas L. Hungerford, *Supplemental Appropriations: Trends and Budgetary Impacts Since 1981*, at 1 Cong. Res. Service, Jan. 2, 2009 (available at <http://openers.com/document/RL33134/2009-01-02>) (last visited May 1, 2009) (citing Cong. Budget Office, CBO data on Supplemental Budget Authority for the 2000s, at <http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprops.pdf>, last visited May 1, 2009).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

since 1981, federal debt held by the public could have been reduced by about 23%.”<sup>24</sup> These are not insignificant numbers. The savings realized from immediately eliminating supplemental appropriations would provide for just under one-third of the non-interest federal spending decrease needed to avoid the fiscal tsunami.<sup>25</sup> Although complete elimination is not realistic,<sup>26</sup> the political pressures created by the introduction of additional transparency and accountability measures into the supplemental appropriations process would have the potential to decrease a portion of the spending done through supplemental appropriations and therefore contribute toward the avoidance or softening of the fiscal tsunami.

## **Section II: The Budget Process**

In order to understand the problems with the supplemental appropriations process, it is important to look at the federal budgeting and appropriations process as a whole. This will provide context to the problem and a background for understanding potential solutions.

In addition to Article I, Section 9 of the Constitution<sup>27</sup>, the budget process is generally guided by a combination of statutes<sup>28</sup> and parliamentary rules<sup>29</sup>.

### ***Key Concepts***

It is important to be familiar with several budgetary and appropriations concepts before delving into the timeline of the budget process. One of these concepts is the distinction between an authorization and an appropriation. Article I § 9 of the Constitution gives Congress the power to make “appropriations.”<sup>30</sup> There is no mention of authorizations.<sup>31</sup> The distinction between these two concepts is a consequence of the evolution of the Congressional Process and how Congress has decided to do business. Generally, the idea is that an authorization act is used to

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<sup>24</sup> Thomas L. Hungerford, *Supplemental Appropriations: Trends and Budgetary Impacts Since 1981*, at 10 Cong. Res. Service, Jan. 2, 2009 [hereinafter Hungerford, CRS].

<sup>25</sup> This figure is determined by using 4.85%, *Supra* note 23, as the amount of total budget authority supplemental appropriations take up (the average from the past four fiscal years) and 17% as the needed reduction in non-interest federal spending *Supra* note 21.

<sup>26</sup> Congress will need at least some flexibility to respond to drastic changes of circumstance requiring additional funding.

<sup>27</sup> U.S. Const. art. I, 9.

<sup>28</sup> See Congressional Budget and Impoundment Control Act of 1974 (Titles I-IX of P.L. 93-344) § 302(a), codified at 2 U.S.C.A. § 633(a) (2005).

<sup>29</sup> ALLEN SCHICK, *THE FEDERAL BUDGET: POLITICS, POLICY, PROCESS*, 22-26 (rev. ed. 2007) [hereinafter SCHICK].

<sup>30</sup> U.S. Const. art. I, 9.

<sup>31</sup> *Id.*

“establish, continue, or modify agencies or programs.”<sup>32</sup> Although a program has been authorized by Congress, it still has not yet received funds. In order to fund the program, an appropriations act providing that program proper budget authority is needed.<sup>33</sup> Furthermore, Congress has delegated these two functions to separate types of committees.<sup>34</sup> The House and Senate both have numerous authorizing committees dealing with various subject matters.<sup>35</sup> Each chamber also has a Committee on Appropriations.<sup>36</sup> Each of these appropriations committees has established several sub-committees dealing with different subject matters.<sup>37</sup> Each of these sub-committees handles the appropriation side of roughly corresponding authorizing committee’s subject matter.<sup>38</sup> Since the establishment and funding of a program generally requires both an authorization and appropriation act,<sup>39</sup> it will need the benefaction of both the authorizing committee and appropriations sub-committee handling that program’s subject matter.<sup>40</sup>

There are several exceptions and quasi-exceptions to this authorization and appropriation requirement. One exception is the supplemental appropriations process that will be later discussed at length. Another, a quasi-exception, is the result of the distinction between mandatory and discretionary spending. Mandatory spending is spending that the federal government must pay to meet a commitment.<sup>41</sup> This primarily arises from entitlement programs like Social Security.<sup>42</sup> Programs like these arise when an authorizing act becomes law and commits federal funding to a recipient as long as the program’s eligibility requirements are fulfilled.<sup>43</sup> A commitment created by such legislation forces the House and Senate Committees on Appropriations to provide sufficient budget authority.<sup>44</sup> Discretionary spending, on the other

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<sup>32</sup> Sandy Streeter, *The Congressional Appropriations Process: An Introduction*, at 24 Cong. Res. Service, Feb. 22, 2007 (available at <http://appropriations.house.gov/pdf/appfacts.pdf>) (last visited May 1, 2009) [hereinafter Streeter, CRS].

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 4, 24.

<sup>37</sup> *Id.* at 10.

<sup>38</sup> See Streeter, CRS, at 2.

<sup>39</sup> *Id.* at 24.

<sup>40</sup> *Id.* at 17.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See Streeter, CRS, at 17.

hand, is spending where there is no commitment.<sup>45</sup> Discretionary spending generally requires the passage of an annual, no year, or multi-year appropriation and relevant Congressional authorization legislation.<sup>46</sup>

### ***Budgetary Timeline***

Armed with some background knowledge, it is now a good time to examine the timeline of the budget.

#### ***Step 1: Submission of the President's Budget***

The first step of the budget process is the President's submission of an annual budget to Congress, as required by 31 U.S.C. § 1105(a).<sup>47</sup> According to statutory requirements, the submission is supposed to occur on or before the first Monday in February.<sup>48</sup> The President's Budget requests funding for the following fiscal year<sup>49</sup> for each of the programs and agencies of the federal government.<sup>50</sup> Additionally, the President's budget includes materials from each agency justifying each agency's requested funding levels.<sup>51</sup>

#### ***Step 2: Congressional Adoption of a Budget Resolution***

2 U.S.C. §§ 631-645 requires Congress to adopt a Budget Resolution following submission of the President's budget.<sup>52</sup> The Senate and House Budget Committees craft the Budget Resolution which "sets new budget authority and outlay levels for each fiscal year covered by the resolution"<sup>53</sup> and splits spending into twenty functional categories.<sup>54</sup> If all goes as planned, each chamber's Budget Committee submits their version of the Budget Resolution for consideration within their particular chamber. Following House and Senate passage, any

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<sup>45</sup> *Id.* at 24.

<sup>46</sup> *Id.*

<sup>47</sup> "On or after the first Monday in January but not later than the first Monday in February of each year, the President shall submit a budget of the United States Government for the following fiscal year." 31 U.S.C. § 1105(a).

<sup>48</sup> *Id.*

<sup>49</sup> Federal government fiscal years begin on the October 1 of a year and end the following September 30.

<sup>50</sup> See SCHICK at 84-85.

<sup>51</sup> *Id.* at 98, 233, 270.

<sup>52</sup> 2 U.S.C. §§ 631-645 (2005).

<sup>53</sup> Streeter, CRS, at 4.

<sup>54</sup> See Streeter, CRS, at 4; See also SCHICK at 124-125.



differences between the two versions of the resolution are settled in Conference Committee.<sup>55</sup> Although never signed by the President and made into law<sup>56</sup>, the Budget Resolution can be influential nonetheless because it sets spending ceilings, referred to as § 302(a) allocations, for the House and Senate Committees on Appropriations.<sup>57</sup> These ceilings, and the Budget Resolution as a whole, are enforced by points of order provided in the Congressional Budget and Impoundment Control Act of 1974.<sup>58</sup> It is possible to bypass these rules with an act of Congress,<sup>59</sup> and also possible for Congress to fail to pass a Budget Resolution.<sup>60</sup> Although this is not uncommon, a Budget Resolution does usually get passed.<sup>61</sup>

### ***Step 3: The Appropriations Committees:***

If the Budget Resolution is passed as anticipated, the House and Senate Committees on Appropriations then begin working on the twelve appropriations bills that compromise the federal budget.<sup>62</sup> Each of the appropriations bills are handled by the various appropriation sub-committees.<sup>63</sup> The spending ceilings, called § 302(b) allocations, in the Budget Resolution are further divided up among these sub-committees.<sup>64</sup> The sub-committees generally hold hearings for each bill where agency directors and other interested parties are called to testify in order to provide input.<sup>65</sup> Traditionally, the House Committee on Appropriations is the first to consider each appropriation bill.<sup>66</sup> Following passage from the house, the Senate generally amends the House bill to come up with its own version.<sup>67</sup> Each bill is now put into conference committee

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<sup>55</sup> See SCHICK at 136-138.

<sup>56</sup> *Id.* at 118.

<sup>57</sup> SCHICK at 149-151; Congressional Budget and Impoundment Control Act of 1974 (Titles I-IX of P.L. 93-344) § 302(a), codified at 2 U.S.C.A. § 633(a) (2005).

<sup>58</sup> The Congressional Budget and Impoundment Control Act of 1974 Act (Titles I-IX of P.L. 93-344) §§ 302(f), 311(a). codified at 2 U.S.C.A. §§ 633(f), 642(a) (2005).

<sup>59</sup> 36 Comp. Gen. 240, 242 (1956) (“One Congress cannot bind a future Congress and ... Congress has full power to make an appropriation in excess of a cost limitation contained in the original authorization act.”); House Rules XXI, XXII; Senate Rule XVI.

<sup>60</sup> “Congress failed to complete action on a budget resolution four of the nine years between 1998 and 2006.” SCHICK at 141.

<sup>61</sup> Prior to 1998, the budget resolution was commonly passed, though not always on schedule. Even after 1998, a budget resolution has been passed more often than not.

<sup>62</sup> Streeter, CRS, at 2, 10.

<sup>63</sup> *Id.*

<sup>64</sup> Congressional Budget and Impoundment Control Act of 1974 (Titles I-IX of P.L. 93-344) § 302(b), codified at 2 U.S.C.A. § 633(b) (2005).

<sup>65</sup> See SCHICK at 233-236.

<sup>66</sup> See SCHICK at 232; See Streeter, CRS, at 5.

<sup>67</sup> See SCHICK at 232; See Streeter, CRS, at 5.

where a compromise is worked out.<sup>68</sup> Following conference committee and passage from both chambers, each of these bills is finally presented to the President for signing into law.<sup>69</sup> Throughout this process, authorization committees may be involved should a particular agency or project need to be reauthorized or should a new project or agency need initial authorization.<sup>70</sup>

The above description provides a basic framework of the regular budget process. The process incorporates checks and balances between the President and Congress, between House and Senate, and between appropriations and authorization (and budget) committees. This process often becomes quite convoluted in practice and rarely goes quite as planned,<sup>71</sup> but it incorporates a good deal of input from various parts governmental players and outside constituencies.<sup>72</sup>

### ***The Reconciliation Process and Continuing Resolutions***

The Reconciliation Process and passage of Continuing Resolutions are two budget mechanisms worth briefly mentioning. These mechanisms are not ‘regular’ parts of the budget process, but are used when the situation warrants.

The Reconciliation Process is sometimes used following the passage of a Congressional Budget Resolution.<sup>73</sup> The Reconciliation Process allows Congress and the President “to bring revenue and direct spending under existing laws into conformity with the levels set in the budget resolution.”<sup>74</sup> This optional process requires passage and signing of a reconciliation bill.<sup>75</sup> It is often used as a way for Congress and the President to enact sweeping revenue and tax changes.

Continuing Resolutions occur when the appropriations process drags out through the start of a fiscal year.<sup>76</sup> At this point agencies and programs that have yet received funding are at risk

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<sup>68</sup> See SCHICK at 232; See Streeter, CRS, at 6, 9.

<sup>69</sup> See Streeter, CRS, at 10.

<sup>70</sup> But see SCHICK at 200 (“In most cases, unauthorized appropriations are fully available for obligation and expenditure).

<sup>71</sup> The frequent failure of Congress to pass a Budget Resolution is an example of this. *Supra* note 61.

<sup>72</sup> See SCHICK at 233-236.

<sup>73</sup> SCHICK at 142.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 260-263.

of shutting down.<sup>77</sup> In such situations, Congress commonly passes a Continuing Resolution that provides funding at the level of the previous fiscal year or at reduced levels.<sup>78</sup>

#### **Section IV: The Supplemental Appropriations Process**

The supplemental appropriation process provides a means for Congress to provide additional funding during the fiscal year. Since 1981, the use of supplemental appropriations has increased the public national debt by \$1,332 billion.<sup>79</sup> From 2004 to 2008, the use of supplemental appropriations has increased each year's fiscal budget by 4-6%.<sup>80</sup> You may wonder how this occurs. The following section will explain *how* it occurs. *Why* it may occur will be examined further in Section IV and V, but it is likely due to a combination of political convenience and actual necessity.

During the course of the fiscal year, some federal agencies realize they need more money. This could be due to an unforeseen disaster, a recently decided military operation, or other change of circumstance resulting in an agency's current funds being insufficient. In response to this, a supplemental appropriations process has developed. Supplemental appropriations are intended to provide additional funding to an agency or program during the current fiscal year in order to protect against budgetary shortfalls.<sup>81</sup> Sometimes, supplemental appropriations provide funding for authorizations that occur after the regular budget process, other times the proper authorization has been in place for quite some time.<sup>82</sup> As found in 31 U.S.C. § 1107,<sup>83</sup> the President can "submit to Congress proposed deficiency and supplemental appropriations the President decides are necessary because of laws enacted after submission of the budget or that are in the public interest."<sup>84</sup> The President's Office of Management and Budget (OMB) generally discourages agencies from engaging in actions that may lead to the need for

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Hungerford, CRS, at 7.

<sup>80</sup> *Id.* at 1 (citing Congressional Budget Office, CBO data on Supplemental Budget Authority for the 2000s, at <http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprops.pdf>, last visited May 1, 2009).

<sup>81</sup> See SCHICK at 215.

<sup>82</sup> See Hungerford, CRS, at 2.

<sup>83</sup> 31 U.S.C. § 1107.

<sup>84</sup> *Id.*

supplemental appropriations.<sup>85</sup> In fact, according to the OMB, “it will only consider requests for supplemental and amendments when:

- Existing law requires payments within the fiscal year (e.g., pensions and entitlements);
- An unforeseen emergency situation occurs (e.g., natural disaster requiring expenditures for the preservation of life or property);
- New legislation enacted after the submission of the annual budget requires additional funds within the fiscal year;
- Increased workload is uncontrollable except by statutory change; or
- Liability accrues under the law and it is in the Government’s interest to liquidate the liability as soon as possible (e.g., claims on which interest is payable).”<sup>86</sup>

Despite this, it is common for the President to request several supplemental appropriations during the fiscal year.<sup>87</sup> During the 1970s and 1980s, supplemental appropriations were often used to cover shortfalls in mandatory spending. Since 1990, 90% of supplemental appropriations were for discretionary spending.<sup>88</sup>

Once a supplemental appropriations request is made, it is referred to the House and Senate Appropriations Committees.<sup>89</sup> The President commonly flags supplemental appropriations with an emergency designation.<sup>90</sup> This typically allows supplemental appropriations to receive less scrutiny. As Thomas Hungerford point out, “spending determined to be for an emergency by both the President and Congress has been effectively exempt from the deficit targets, budget caps, and PAYGO requirements.”<sup>91</sup> Additionally, the President is not required to include the usual budget justification material prepared in support of these requests. Although emergency designations are subject to a point of order where a Member of Congress

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<sup>85</sup> See Hungerford, CRS, at 2 (citing Office of Management and Budget, Circular A-11 (June 2008), p. 1, § 110).

<sup>86</sup> *Id.*

<sup>87</sup> “Over the past 25 years, Congress and the President have enacted one to eight supplemental appropriations or rescissions each year.” *Id.*

<sup>88</sup> Hungerford, CRS, at 2.

<sup>89</sup> See SCHICK at 256.

<sup>90</sup> See Hungerford, CRS, at 3.

<sup>91</sup> Hungerford, CRS, at 3.

raises a motion to strike the emergency designation,<sup>92</sup> as GAO-08-314 states, “this step is rarely taken.”<sup>93</sup>

Even when supplemental appropriation requests are made without emergency designation, the urgent nature of many of the President’s requests have left Congress with little time to act before a particular agency or project runs out of money.<sup>94</sup> This forces House and Senate into a compressed decision making process where they must quickly decide whether to designate the supplemental appropriation as emergency themselves,<sup>95</sup> raise the funding limits set in the original budget resolution,<sup>96</sup> refuse or reduce the supplemental request,<sup>97</sup> or use rescissions on other parts of the budget.<sup>98</sup> In the past, Congressional use of rescissions to balance expenditures from supplemental appropriations was common,<sup>99</sup> but this practice has died out.<sup>100</sup> Between 2003 and 2008 only about 5% of supplemental appropriations were balanced with a corresponding rescission.<sup>101</sup> Another concern is the common inclusion of unrelated Congressional earmarks into supplemental appropriations.<sup>102</sup>

Perhaps the most important aspect of supplemental appropriations is the fact that the costs associated with these appropriations are not fully contemplated during the regular budget process. This allows supplemental appropriations to avoid bartering that occur during the regular budget process. Additionally, due to the likely future consideration of supplemental appropriation requests, the President’s Budget and the Congressional Budget Resolution give an incomplete picture.<sup>103</sup>

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<sup>92</sup> See U.S. Gov’t Accountability Office, *SUPPLEMENTAL APPROPRIATIONS Opportunities Exist to Increase Transparency and Provide Additional Controls* 22 (Jan. 2008), (available at <http://www.gao.gov/new.items/d08314.pdf>) (last visited May 1, 2009) [hereinafter GAO-08-314].

<sup>93</sup> *Id.*

<sup>94</sup> See SCHICK at 256-260.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> “For the FY1981-FY1985 period, 22% (25% in present value terms) of supplemental appropriations were offset through rescissions.15 Over the period covered by the deficit targets (FY1986-FY1990), over 40% of the supplemental appropriations were offset.” Hungerford, CRS 5.

<sup>100</sup> *Infra* note 97.

<sup>101</sup> Hungerford, CRS, at 5.

<sup>102</sup> ALLEN SCHICK, *THE FEDERAL BUDGET: POLITICS, POLICY, PROCESS*, 259 (rev. ed. 2007).

<sup>103</sup> *Supra* note 82.

## Section IV: The Historic Use of Supplemental Appropriations

The goal of the supplemental appropriations process is to provide a means for dealing with unexpected turn of events, most commonly, disaster and war.<sup>104</sup> GAO-08-314 indicates the breakdown of supplemental appropriations from fiscal year 1997 through fiscal year 2006:

[A]n analysis of the type of emergency prompting the need for the supplemental shows that defense-related emergencies received over 50 percent of the emergency-designated funds. In comparison, 28 percent was to respond to natural or economic disasters and 16 percent went to antiterror, security, and post-9/11 activities. International humanitarian assistance, pandemic influenza, and other activities comprised 3 percent of the total emergency-designated supplemental funds provided over the 10-year period.<sup>105</sup>

### *Disaster*

Disaster, almost by definition, is unexpected and often unavoidable. Therefore, Congress has used supplemental appropriations, usually at the President's request, as a means to provide assistance. In these circumstances, one would imagine that the emergency designation of the bill is not up for debate and that Congressional action is relatively timely.

From the start of fiscal year 1989 through the February of fiscal year 2009, Congress has appropriated roughly \$271 billion toward non-agriculture disaster assistance.<sup>106</sup> This funding was in response to hurricanes, floods, tornadoes, wild-fires, and the 9/11 terrorist attacks.<sup>107</sup> Since 1997, disaster response has been the second largest cause of supplemental appropriations behind those made in response to military operations.<sup>108</sup>

### *Agricultural Assistance*

The need for agriculture assistance is another common cause of supplemental appropriations. According to a Congressional Research Service report release November 26, 2008, between fiscal year 1989 through the February of fiscal year 2009, "36 appropriations, authorization, or farm disaster acts added approximately \$61.8 billion in supplemental funding

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<sup>104</sup> Hungerford, CRS, at 5.

<sup>105</sup> GAO-08-314, at 3.

<sup>106</sup> Justin Murray, *Emergency Supplemental Appropriations Legislation for Disaster Assistance: Summary Data*, at 1 Cong. Res. Service, Oct. 31, 2008 (available at <http://openocrs.com/document/RL33226> (last visited May 1, 2009)).

<sup>107</sup> *Id.* at 1-2.

<sup>108</sup> GAO-08-314, at 3.

for U.S. Department of Agriculture (USDA) programs.”<sup>109</sup> This funding primarily provides assistance to farmers facing hardship from tough economic conditions and/or crop disaster.<sup>110</sup> The CRS report provides an overview:

Since FY1989, a large portion (\$43.7 billion) of the total supplemental funding has been paid directly to farmers, primarily through two mechanisms: “market loss payments” (\$21.4 billion, all from FY1999 to FY2001) to compensate for low farm commodity prices, and crop disaster payments (\$22.34 billion) paid to any producer who experienced a major crop loss caused by a natural disaster. The remaining \$18.1 billion has funded a wide array of other USDA programs, including livestock feed assistance programs, farm conservation programs, specialty crop assistance, farm loans, and non-farm USDA programs such as overseas food aid, food and nutrition programs, and rural development and housing assistance.<sup>111</sup>

### ***Changing Economic Conditions***

A third cause of supplemental appropriations is a change of economic conditions. This can cause increased federal spending commitment under mandatory spending programs. This has historically been a major driver of supplemental requests.

Throughout the 1970s, supplemental appropriations as a portion of total appropriations generally hovered around 4-8%.<sup>112</sup> During a recession from 1975 through 1977, this figure ballooned to an average of 12.2%.<sup>113</sup> Half of these supplemental appropriations were made to address changing economic conditions.<sup>114</sup> These increases were primarily a result of the unemployment and food stamp programs and heightened economic inflation.<sup>115</sup> As a 1981 Congressional Budget Office Working Paper points out, “these were automatic increases following the rise in the number of eligible recipients caused by higher than expected

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<sup>109</sup> Ralph M. Chite, *Emergency Funding for Agriculture: A Brief History of Supplemental Appropriations, FY1989-FY2009*, at Summary Page Cong. Res. Service, Nov. 26, 2008 (available at <http://opencrs.com/document/RL31095>) (last visited May 1, 2009).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Cong. Budget Office, SUPPLEMENTAL APPROPRIATIONS IN THE 1970s (July 1981), (available at <http://www.cbo.gov/doc.cfm?index=5206&type=0>) (last visited May 1, 2009).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

unemployment.”<sup>116</sup> Inflation played a role by driving up entitlements based on cost of living indexes.<sup>117</sup>

In the early 1980s, changing economic conditions still played a role and supplemental appropriations were needed to once again cover increasing federal commitments based on unemployment.<sup>118</sup> Despite this, supplemental appropriations were much smaller during the 1980s and “the amount of new budget authority contained in supplemental appropriations bills fell after 1981 from over 3% of total budget authority to 0.1% in 1988.”<sup>119</sup>

Throughout the 1990s, the level of supplemental appropriations remained low.<sup>120</sup> The appropriations that did occur were less a result of changing economic conditions and more a result of war and disaster (as discussed below).<sup>121</sup> Since 2000, the amount of supplemental appropriations has skyrocketed compared to the level during 1990s.<sup>122</sup> Most of this increase occurred not because of changing economic conditions (though the global recession of 2009<sup>123</sup> may change this), but due to heightened use of supplemental appropriations as a source of funding for military operations.<sup>124</sup>

Although a historically significant cause of supplemental appropriations, reforming supplemental appropriations made in response to changing economic conditions is beyond the scope of this paper. These appropriations are usually mandatory due to unexpected increases in entitlement commitments. Proper reform in this area would, therefore, require an in-depth look at entitlement programs and mandatory spending.

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<sup>116</sup> Cong. Budget Office, SUPPLEMENTAL APPROPRIATIONS IN THE 1970s (July 1981), (*available at* <http://www.cbo.gov/doc.cfm?index=5206&type=0>) (*last visited* May 1, 2009).

<sup>117</sup> *Id.*

<sup>118</sup> Hungerford, CRS, at 3.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 4.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> See Neil Irwin, Recession Deepening Across Regions, Industries, Fed Says, WASH. POST, Mar. 5, 2009, at D01 (*available at* [http://www.washingtonpost.com/wp-dyn/content/article/2009/03/04/AR2009030402338\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2009/03/04/AR2009030402338_pf.html)) (*last visited* May 1, 2009).

<sup>124</sup> Hungerford, CRS, at 4.



## ***Military Operations***

The President and Congress have commonly funded military operations through supplemental appropriations, at least during a military operation's initial years.<sup>125</sup> This is not surprising as most military actions are relatively unexpected -- in the sense that although there may be contingency plans in place, it is usually uncertain that they will need to be acted on until shortly beforehand.

At the start of the Korean War, Congress initially provided funds for fiscal year 1951 in the form of supplemental appropriations of \$32.8 billion to the Department of Defense (DoD) out of a total DoD appropriation of \$45.8 billion.<sup>126</sup> Following the initial outbreak, the President and Congress shifted gears and used the normal appropriations process to provide funding.<sup>127</sup> In fiscal year 1952, supplemental appropriations only made up \$1.4 billion of a \$56.6 billion total DoD appropriation, and in fiscal year 1953 all \$44.3 billion in appropriations were done through the regular process.<sup>128</sup>

The Vietnam War followed a roughly similar pattern. Initially, during fiscal year 1965 through fiscal year 1966, military operations were funded almost entirely through supplemental appropriations.<sup>129</sup> Between fiscal year 1967 through fiscal year 1969, the regular appropriations process was the dominant source of funding, although supplemental appropriations were sometimes used when initial funding ran out.<sup>130</sup> From fiscal year 1970 through the end of the war in fiscal year 1975, the sole source of funding was the regular appropriations process.<sup>131</sup>

The next major example of supplemental appropriations funding military operations was the Persian Gulf War during 1990 through 1991. This operation was paid for almost exclusively by a \$42 billion supplemental appropriation for fiscal year 1991.<sup>132</sup> Combat operations declined

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<sup>125</sup> See Stephen Daggett, *Military Operations: Precedents for Funding Contingency Operations in Regular or in Supplemental Appropriations Bills*, 1 Cong. Res. Service, June 13, 2006 (available at <http://www.fas.org/sgp/crs/natsec/RS22455.pdf>) (last visited May 1, 2009) [hereinafter Daggett, CRS].

<sup>126</sup> Daggett, CRS, at 3-4.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* 4-6.

<sup>130</sup> Daggett, CRS, at 4-6.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 6.

quickly and ended soon after. Neither additional regular nor additional supplemental funding was needed.<sup>133</sup>

Throughout the 1990s, operations in Somalia, Southwest Asia, Haiti, Kosovo, and Bosnia were all initially funded through supplemental appropriations, but all eventually received funding through regular defense appropriation bills.<sup>134</sup>

More recently, the war on terror and military operations in Iraq and Afghanistan are examples of the heavy use of supplemental appropriations. Total supplemental appropriations for fiscal year 2001 to 2008 were roughly \$743.7 billion.<sup>135</sup> On May 7, 2009, President Obama proposed shifting some these costs into the regular appropriations process.<sup>136</sup> Despite this, on April 9, 2009, President Obama submitted to Congress “a supplemental appropriations request totaling \$83.4 billion [for] ongoing military, diplomatic, and intelligence operations.”<sup>137</sup> It remains to be seen whether President Obama will limit future supplemental appropriations.

### ***Historical Analysis***

Supplemental appropriations represent a significant cost not accounted for through the regular appropriations process. Historically, the primary driver of these costs has been a combination of changing economic conditions and military operations.<sup>138</sup> Recently, the primary driver has been military operations. It is likely that much of the cost from military operations is unavoidable and difficult to estimate, but past precedent does provide examples of the President and Congress successfully using the regular budget process to pay for these operations.<sup>139</sup> Additionally, a look at historical trends may provide a means of addressing and incorporating

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<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> See Daggett, CRS, at 1; See Hungerford, CRS, at 1; See Cong. Budget Office, CBO data on Supplemental Budget Authority for the 2000s, at <http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprops.pdf>, last visited May 1, 2009).

<sup>136</sup> The White House – Press Office, Budget Fact Sheet and Link, [http://www.whitehouse.gov/the\\_press\\_office/Budget-Fact-Sheet-and-Link/](http://www.whitehouse.gov/the_press_office/Budget-Fact-Sheet-and-Link/) (last visited May 1, 2009) (“His Budget includes an historic down payment on health care reform, the key to our long-term fiscal future, and was constructed without commonly used budget gimmicks that, for instance, hide the true costs of war and natural disasters.”).

<sup>137</sup> The White House – Press Office, Text of Letter from the President to the Speaker of the House of Representatives, [http://www.whitehouse.gov/the\\_press\\_office/Text-of-Letter-from-the-President-to-the-Speaker-of-the-House-of-Representatives/](http://www.whitehouse.gov/the_press_office/Text-of-Letter-from-the-President-to-the-Speaker-of-the-House-of-Representatives/) (last visited May 1, 2009).

<sup>138</sup> See Hungerford, CRS, at 3-4.

<sup>139</sup> Daggett, CRS, at 3-6.

into the regular budget process the likely funding needed to address disaster – natural disaster, agricultural disaster, and otherwise.

## **Section V: Reform Proposal: The Transparency and Accountability in Supplemental Appropriations Act (TASA)**

This paper proposes that in order to create transparency and accountability in the supplemental appropriations process, Congress should implement two reforms: first, the creation of an Emergency Trust Fund that will be included in the regular budget; and second, a requirement that the President’s Budget and any Congressional Budget Resolution include Contingency Allowances representing the level of any supplemental appropriations used to pay for military conflicts during the prior fiscal year.<sup>140</sup> These reforms should be made statutory in nature, and introduced in a piece of legislation this paper titles the Transparency and Accountability in Supplemental Appropriations Act (TASA).

Finding a solution to the fiscal tsunami will require reform on multiple fronts. Reform of the supplemental appropriations process is one of these fronts. The complete elimination of supplemental appropriations would provide a great deal of savings, but such a response is neither realistic nor practical. The federal government needs some sort of mechanism to provide funding during emergencies. That said, the current system encourages waste and overreaching by not incorporating the checks and balances used during regular budgeting. GAO-08-314 highlights these issues and questions whether some supplemental appropriations would have been more appropriately included through the regular budget process:

We [The GAO] found \$710 million in emergency-designated provisions that appeared to be unrelated to the event/issue(s) that may have prompted the supplemental. In addition, we found that 35 accounts received supplemental appropriations in at least 6 of the 10 years studied, totaling over \$375 billion. Twenty-one of these accounts were in DOD and the gross budget authority granted to these 21 accounts (\$258 billion) comprised over 40 percent of the total gross budget authority in the supplemental appropriations enacted over the studied period. Finally, over one-

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<sup>140</sup> These proposals are a combination of original ideas and ideas found in GAO-08-314. The proposal especially draws upon the section of GAO-08-314 dealing with allowances. GAO-08-314, at 26.

third of the supplemental appropriations enacted were available until expended (“no-year” funds).<sup>141</sup>

This report suggests that some appropriations that could not survive the regular appropriations process are being pushed through using the supplemental appropriations process. TASA would address these problems in two ways. By creating the Emergency Trust Fund by which the future cost of supplemental appropriations is accounted for during the regular budget process, TASA would potentially provide savings by allowing the full cost of the budget to be considered at one time. TASA’s creation of Contingency Allowances would allow the President’s Budget and any Congressional Budget Resolutions to more fully account for the costs of on-going military operations, therefore “inform[ing] budgetary tradeoffs and decisions by highlighting the fact that there is uncertainty and that emergency calls on federal resources are likely.”<sup>142</sup>

### **Emergency Trust Fund:**

TASA’s Emergency Trust Fund would set up as a means to pay for emergency disasters – including natural and agricultural disasters. The fund would be required to maintain a balance equal to the average budget authority provided for combating natural disasters during the preceding twenty fiscal years. If passed today, this would require a funding balance of \$13.6 billion.<sup>143</sup> Should the emergency trust fund dip below this funding level at any time, it would be required that it be replenished in the following fiscal year. In other words, Congress would be required to appropriate additional funds to the fund during the next regular budget process.

In order to use funds from Emergency Trust Fund, a requesting agency would require ‘withdrawal’ approval. To receive this approval, the agency, through the President, would make a request to Congress. Depending on the subject matter of the request, the request would go to an appropriate House and Senate authorizing committee, *not* the House and Senate appropriation

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<sup>141</sup> GAO-08-314, at 4.

<sup>142</sup> GAO-08-314, at 27.

<sup>143</sup> See Murray, CRS, at 1 (“The median annual funding in constant dollars during the 20 year period FY1989 through the present was \$3.8 billion; the mean annual funding in constant dollars was \$13.6 billion.). A funding level of \$13.6 billion would appear to adequately cover the funding needs of most years. See *id.* at 4-8. Hurricane Katrina has required funding needs far beyond this level. Historically, an event like Hurricane Katrina appears to be an isolated occurrence. Regardless, the House and Senate Committee on Appropriation’s ability to make Emergency Trust Fund deposits should be able to provide a mechanism for Congressional response to any potential extraordinary disasters on par with Hurricane Katrina.

committees. At this point, the request would then need to be passed through both the House and Senate much like the current supplemental appropriation process.<sup>144</sup>

The advantage to this process would be two fold. First, by requiring the Emergency Trust Fund to maintain a particular funding level at the start of each fiscal year, TASA would allow Congress to account for the full cost of the budget during the regular budgeting process. Second, by requiring that authorizing committees handle withdrawals from the Emergency Trust Fund, TASA would ensure that an authorizing committee's policy expertise provide heightened insight into whether a withdrawal request is appropriate.<sup>145</sup>

If the Emergency Trust Fund runs out of money before the end of the fiscal year, it will be Congress's decision whether to replenish it early. In order to replenish the Emergency Trust Fund, Congress must make an appropriation to the fund; much like it currently makes supplemental appropriations. An agency seeking emergency disaster funds would require a Presidential Replenishment and Withdrawal request, requiring Congressional Withdrawal approval from the appropriate House and Senate authorizing committees and Congressional Replenishment from the House and Senate Committees on Appropriations, followed by proper passage from Congress and signature into law by the President. In such a situation, the President would make an Emergency Trust Fund replenishment request and Withdrawal request at the same time. This division of power, by adding more players capable of saying no, should make it more difficult for wasteful requests to receive final passage. When compared to the current supplemental appropriations process, TASA's Emergency Trust Fund would only add a layer of authorizing committee oversight to the emergency supplemental appropriations process. Such oversight should not cause too much delay if expedited funding is truly needed, as a majority of the Members of Congress would likely consider it appropriate to act quickly.

### **Contingency Allowances and Military Operations**

The nature of on-going military operations involves a deal of uncertainty. It is not always known exactly how much a particular military operation will cost, and it is not always known how long a particular military operation will last. Army Major Michael Davidson, currently

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<sup>144</sup> See SCHICK at 256-260.

<sup>145</sup> "Most committees are authorizing committees. They consider legislation establishing or changing federal programs and agencies, prescribing the terms and conditions under which these operate, and overseeing their performance." SCHICK at 56.

assigned (as of May 1, 2009) as the Military Fellow for Congressman Sanford Bishop, points out that, “the importance of supplementals is that they get necessary equipment to a warfighter in combat more quickly than would otherwise be possible.”<sup>146</sup> Furthermore, unlike disasters, large scale military operations needing significant funding do not occur on a regularly enough to make a trust fund practical.<sup>147</sup> Therefore, TASA acknowledges that supplemental appropriations would still be necessary as a source of funding for at least the start of military operations.

What TASA would do is require that the President’s Budget and that Congressional Budget Resolutions include a Contingency Allowance within the fiscal year budget following the use of a supplemental appropriation to fund a military operation. This Contingency Allowance would be in an amount equal to the prior year’s supplemental appropriation used to fund an on-going military operation. Contingency Allowances would not actually consist of any budgetary appropriations or authorizations requests and would, therefore, not, by itself, provide any funding.<sup>148</sup> Despite this, TASA would provide a “way to inform budgetary tradeoffs and decisions by highlighting the fact that there is uncertainty and that emergency calls on federal resources are likely.”<sup>149</sup> This use of Contingency Allowances would also allow the public to receive a more informed view of the President and Congress’s spending plans for the fiscal year and encourage accountability among Members of Congress to their constituents.

Should a military operation end up requiring and receiving a supplemental appropriation higher than the current fiscal year’s Contingency Allowance, the following fiscal year’s Contingency Allowance would increase to represent that funding level. Should a military operation require a lesser amount of funding, and not receive and make use of the full amount of appropriations represented in the Contingency Allowance, the following fiscal year’s Contingency Allowance would decrease to represent that lesser use of funding. The idea behind this is for the Contingency Allowance to track the on-going cost of a military operation. Should

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<sup>146</sup> Interview with Major Michael Davidson, U.S. Army, Military Fellow in the Office of Congressman Sanford Bishop, in D.C. (May 4, 2009) (Major Davidson handles Defense Appropriations for Congressman Sanford Bishop.).

<sup>147</sup> Over the past 40 years, there have been five major military operations requiring extensive military operations, Korea, Vietnam, the Gulf War, Afghanistan, and Iraq. There was no consistent degree of spacing between such operations. At times, decades passed before supplemental appropriations were used as a major source of DoD funding. A trust fund would therefore be wasteful as a result. It would likely sit unused for long periods of time, and when used, it is doubtful it would be sufficiently large enough to pay for any major operations.

<sup>148</sup> Contingency Allowances would provide a means for Congress to contemplate likely costs. In order to provide actual funding, the current supplemental appropriation system would be allowable (for military operations contexts).

<sup>149</sup> GAO-08-314, at 27.

costs increase, so would the Contingency Allowance; should costs decrease, the Contingency Allowance will follow suit. Since the Contingency Allowance would only track supplemental appropriations, the use of the regular budget process to fund military operations would also result in a decreased Contingency Allowance.<sup>150</sup> This makes sense because the Contingency Allowance is intended to inform the regular budget process of potential military operation costs. If these costs are already being addressed by the regular budget process, then there is no need for the costs to be represented again as a Contingency Allowance.

The chart in the Appendix provides an example of how Contingency Allowances would work in practice.

### **Political Considerations**

At first glance, as a piece of legislation that drastically reforms one of Congress's most sacred powers, that of appropriation, TASA may seem difficult to pass.<sup>151</sup> With further investigation, this is not necessarily the case. TASA would potentially appeal to wide range of political leaders and constituencies.

TASA restricts Congress and the President's ability to freely make supplemental appropriations. It does this by potentially increasing the initial size of the President's Budget and any Congressional Budget Resolutions by requiring the budgetary inclusion of Constituency Allowances and the Emergency Trust Fund, therefore making it more difficult for the President and Congress to hide the full cost of the budget through supplemental appropriations.<sup>152</sup> Of course, this is also part of the appeal of TASA. Since it would be more difficult to shift appropriations off the regular budget through the use of supplemental appropriations, the President and Congress would be encouraged to use the regular budgeting process and its increased oversight and budget controls. Congress and the President would be forced to consider the budget as a whole and make budgetary decisions accordingly.

A further cause of discontent may be found in TASA's Emergency Trust Fund's limitation of the House and Senate Committees on Appropriation's power. This may upset

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<sup>150</sup> This would be due to the Contingency Allowances tracking past supplemental appropriations, not military operation oriented regular appropriations.

<sup>151</sup> U.S. Const. art. I, 9.

<sup>152</sup> See SCHICK 259.

various Members of the House and Senate, but is balanced by the more numerous House and Senate Members sitting on authorizing committees such as House Committee on Agriculture, the Senate Committee on Agriculture, Nutrition, and Forestry, the House Committee on Homeland Security, and the Senate Committee on Homeland Security & Governmental Affairs who would gain jurisdiction over withdrawal requests required by TASA's Emergency Trust Fund.

Other critics could argue that TASA's Contingency Allowances hinder the ability to get funding to the military by forcing DoD to compete for funds with other agencies during the regular budget process. In reality, Contingency Allowances would only be included for accounting and decision making purposes and the actual process of supplemental appropriations for military operations would be left untouched. Nonetheless, this issue would come down to a matter of framing. TASA supporters would counter the opposition by pointing out that Contingency Allowances would ensure that the full funding needs of military operations are being properly considered during the regular budget process. Supporters could also argue that the programs on the chopping-block would be non-military related programs that are not represented by a Contingency Allowance.

Despite any of the difficulties mentioned above, today's political environment is especially receptive to legislation such as TASA. Several political leaders have focused heavily on transparency, accountability, budget discipline, and other open-government type ideas. Examples include Democratic President Barack Obama,<sup>153</sup> Democratic Senator Russ Feingold,<sup>154</sup> and Republican Senator John McCain.<sup>155</sup> As mentioned above, other sources of Congressional support may come from Members on the various authorizing committees that would gain jurisdiction over withdrawal requests required by TASA's Emergency Trust Fund.<sup>156</sup>

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<sup>153</sup> See WhiteHouse.gov, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, Transparency and Open Government, [http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment/](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/) (last visited May 1, 2009) ("My Administration [President Barack Obama] is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.").

<sup>154</sup> See feingold.senate.gov, Russ Feingold: Deficit – Enforcing Budget Discipline, [http://feingold.senate.gov/issues\\_budget.html](http://feingold.senate.gov/issues_budget.html) (last visited May 1, 2009) ("Since I was first elected to the Senate in 1992, I have worked to bring Wisconsin's historic tradition of fiscal responsibility to Congress, where wasteful spending too often dominates the budget process. Congress owes it to taxpayers to be a careful steward of their tax dollars.").

<sup>155</sup> See Robert Novak, GOP Pork, Imperiled by McCain, WASH. POST, Mar. 10, 2008, at A15 (available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/09/AR2008030901428.html>) (last visited May 1, 2009).

<sup>156</sup> See SCHICK at 56 ("Most congressional committees are authorizing committees.").



With the backing of open-government minded politicians on both sides of the aisle, TASA may be marketed to a broad array of constituencies. TASA's potential use as a tool to encourage fiscal restraint could be marketed to fiscal Republicans who would look favorably to the regular budgeting encouraged by TASA. Anti-war Democrats may look favorably on TASA's use of Contingency Allowances as a means to fully account for the cost of military operations in Iraq and Afghanistan. On the other hand, Contingency Allowances may be marketed to national security oriented constituency groups as a means to ensure on-going military operations get proper consideration during the regular budget process. TASA's Emergency Trust Fund would be appealing to a variety of constituencies who commonly face natural disaster, constituencies who would be comforted knowing there is an emergency fund in place should the worst happen. Hurricane prone gulf coast states such as Florida, Texas, and Louisiana;<sup>157</sup> earthquake and wildfire prone California;<sup>158</sup> and flood prone Midwest<sup>159</sup> states such as Iowa, Illinois, Indiana, and Missouri could all be sources of Emergency Trust Fund support.

## **Conclusion**

If Congress and the President do not address the upcoming fiscal tsunami, it has the potential to drastically disrupt and destabilize the federal budget and the U.S. economy. Preventing this calamity will likely require a variety of measures including the reduction of federal expenditures. One source of cost savings may be found by reforming the supplemental appropriations process. TASA has the potential to do just that by providing more transparency and political accountability to the supplemental appropriations process. It would do so by creating an Emergency Trust Fund that would be included in the regular budget and by requiring that the President's Budget and any Congressional Budget Resolution include Contingency Allowances representing the level of any supplemental appropriations used to pay for military conflicts during the prior fiscal year. By requiring the full cost of the budget to be considered at one time, TASA would ensure that wasteful spending cannot avoid the safeguards found in the regular budgeting process. By requiring the full cost of the budget to be considered at one time, TASA would also allow the President and Congress to make more informed decisions regarding

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<sup>157</sup> See Murray, CRS, at 4.

<sup>158</sup> See Murray, CRS, at 4

<sup>159</sup> *Id.*

spending priorities. This would potentially reduce overall budget costs and contribute toward avoidance of the fiscal tsunami.

## Example of the Use of Contingency Allowances for Funding Operation X

**Assumptions:**

- **Non-Military Funding Levels in Regular Budget** represent all funding other than that used for military operations. In this chart, non-military funding levels remain constant.
- **Funding of Military Operations through Regular Budget** represents the amount of military operation funding allocated through the regular budget process
- **Funding of Military Operations through Supplemental Appropriations** represents the level of military operations funding allocated through supplemental appropriations
- **Amount Required to be included as a Contingency Allowance** represents the Contingency Allowance level that must be represented in the President's Budget and the Congressional Budget Resolution.
- **Total Proposed Budget Authority** represents the figures proposed in the President's Budget and the Congressional Budget Resolution. It further assumes that these two documents contain the same figures. This is not likely, but simplifies the chart for explanatory purposes.
- **Total Actual Budget Authority** represents the total actual outlays at the end of this fiscal year.

**Scenario: Operation X** - On Year One, the federal government initiates a military operation, **Operation X**, costing \$100,000 a year. On Year Two, Operation X begins costing \$150,000 a year. This chart shows several ways the federal government could fund the Operation X and the accounting consequences.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Funding of Operation X through Supplemental Appropriations	\$100,000	\$100,000	\$150,000	\$50,000	\$50,000	\$0	\$0
Funding of Operation X through Regular Budget	\$0	\$0	\$0	\$100,000  (Part of the Operation X is funded through the regular budgeting process this year)	\$100,000	\$150,000  (Operation X is now being fully funded through the regular process now)	\$150,000
Amount Required to be included as a Contingency Allowance (CA)	\$0	\$100,000  (CA equals the previous FY's Supplemental Allocation)	\$100,000	\$150,000  (CA increases because the previous FY's Supplemental Allocation increased)	\$50,000  (CA decreases because the previous FY's Supplemental Allocation decreased)	\$50,000	\$0  (CA equals zero as the Operation X is now fully funded through the Regular Budget)
Non-Military Funding Levels in Regular Budget	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Total Proposed Budget Authority	\$1,000,000	\$1,100,000	\$1,100,000	\$1,150,000	\$1,150,000  (New Operation X funding included through the Regular Budget does not increase the Total Proposed Budget Authority except to the extent it is greater than the CA)	\$1,150,000  (This figure comes from the \$1,000,000 allocated for non-military funding + \$50,000 accounted through CA + an additional \$100,000 representing the amount of Operation X funding included in the Regular Budget that exceeds the CA.)	\$1,150,000
Total Actual Budget Authority	\$1,100,000	\$1,100,000	\$1,150,000	\$1,150,000	\$1,150,000	\$1,150,000	\$1,150,000