Backgrounder

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Better Budget Reform: A Guide to the Family Budget Protection Act

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House lawmakers have finally pledged to vote on reform of the federal budget process. This represents a golden opportunity to overhaul a process that was created in 1974 to maximize federal spending but whose few restraints have been eviscerated by 30 years of clever exploitation of loopholes.

In the past few years, for example, the current budget process has allowed:

- Federal spending to top $20,000 per household for the first time since World War II;
- Federal spending to leap $455 billion in just three years;
- Discretionary spending to surge 39 percent in three years; and
- Entitlement spending to surpass 11 percent of gross domestic product (GDP) for the first time ever.[1]

This runaway spending is not an accident, but a predictable consequence of a federal budget process that:

- Provides no statutory limits on how much money Congress and the President may spend;
- Does not bring the President and Congress together to settle on even a basic budget framework until the very end of the process when the government is on the verge of shutting down;
- Allows Congress to override its own budget resolution by a majority vote in the House of Representatives and a three-fifths vote in the Senate;
- Classifies two-thirds of the budget as "uncontrollable" and consequently excludes it from annual

Talking Points

- The budget process was designed in 1974 without any significant restraints on federal spending, and even the slightest restraints have been rendered useless by 30 years of exploitation of loopholes.
- The Family Budget Protection Act gives lawmakers a tool they can use to rein in runaway spending and brings the budget process closer to America's budget priorities.
- Reasonable caps on the growth of entitlements are required to avert a serious budgetary catastrophe.
- Lawmakers must better enforce their own budget rules. This means converting the annual budget resolution into a binding law and requiring a supermajority vote to bypass any spending restraints.
- Family budget protection accounts, enhanced presidential rescission, sunset provisions, and commissions to reduce government waste would provide lawmakers with additional tools to eliminate wasteful spending.

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appropriations oversight;

- Sets aside no money for emergencies, but instead budgets for them on an ad hoc basis outside the normal budget constraints; and
- Is so complex that important decisions are often determined by who can bend the budget rules in their favor.

Current proposals to reform the budget process would merely bring back the discretionary caps and Pay-As-You-Go (PAYGO) rules from the early 1990s. These Band-Aid reforms fail to address the structural flaws that created the current budgetary mess. Letting this reform opportunity pass will translate inevitably into decades of stratospheric spending, massive budget deficits, and painful tax increases.

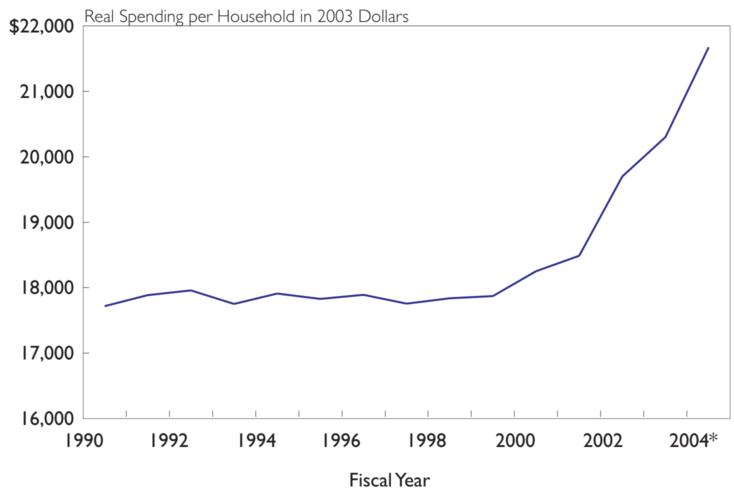
Table 1 B 1758

Highlights of the Family Budget Protection Act (H.R. 3800)

1) Cap entitlement spending as well as discretionary spending.
2) Create a joint budget resolution.
3) Provide point of order protections.
4) Create family budget protection accounts.
5) Create a rainy day fund.
6) Prevent government shutdowns with automatic continuing resolutions.
7) Strengthen presidential rescission.
8) Create a one-page budget.
9) Create sunset provisions and a government waste commission.

Chart 1 B 1758

Washington Now Spends More Than $20,000 per Household



* 2004 represents the current estimate

Source: Heritage Foundation calculations based on data from the Office of Management and Budget and the US Census Bureau.

Analysis of the Family Budget Protection Act

The Family Budget Protection Act (H.R. 3800), introduced by Representatives Jeb Hensarling (R–TX), Paul Ryan (R–WI), Chris Chocola (R–IN), and Chris Cox (R–CA), along with 102 cosponsors, is an ambitious bill to bring the budget process more in line with the nation's budget priorities. This paper explains the main elements of this important legislation.

1. Cap Entitlement Spending as Well as Discretionary Spending

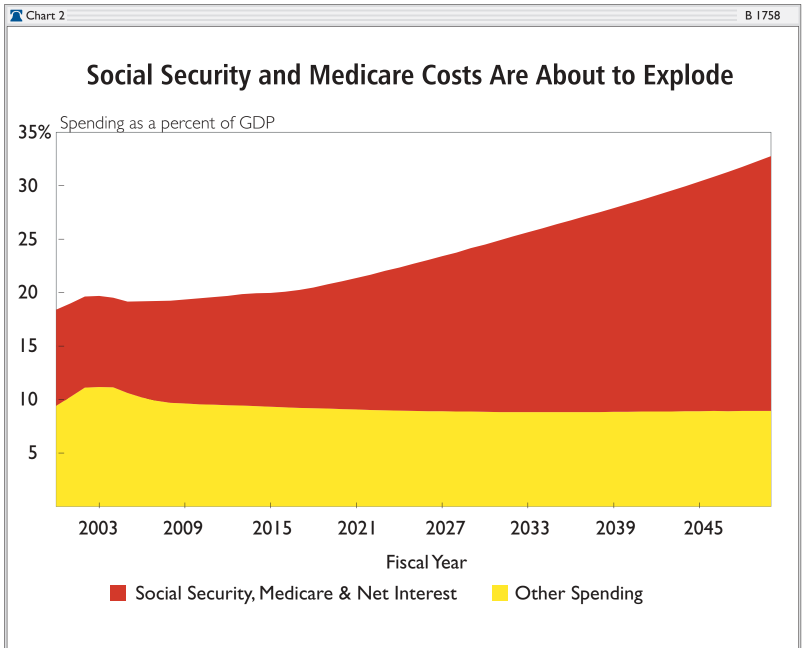
Bringing back statutory caps on annual discretionary spending is a commonsense proposal with wide support. Any successful budget reforms must include this reform to hold the line on discretionary spending. But lawmakers should not stop at capping discretionary programs.

The rapid growth of entitlement spending represents the nation's gravest economic danger. Entitlements currently comprise two-thirds of all federal spending, and it is projected that their budgets will nearly double over the next decade. Within three decades they will require tax increases that, in today's economy, would range between $5,000 and $10,000 per household. Federal spending can never be controlled until entitlements are addressed.

Yet, rather than sensibly cap entitlement spending, lawmakers are distracted by the idea of bringing back the Pay-As-You-Go rules from the 1990s.

1. See Brian M. Riedl, "How to Get Federal Spending Under Control," Heritage Foundation *Backgrounder* No. 1733, March 10, 2004, at *www.heritage.org/Research/Budget/bg1733.cfm*.

Traditional PAYGO mandates that any tax cut or new entitlement must be balanced by a choice of either entitlement cuts or tax increases. PAYGO also has several flaws:



Source: Heritage Foundation calculations based on the Congressional Budget Office, "Long-Term Budget Outlook," December 2003, located at *http://www.cbo.gov/showdoc.cfm?index=4916&sequence=0.* This chart refers to CBO's intermediate spending and low-tax scenario.

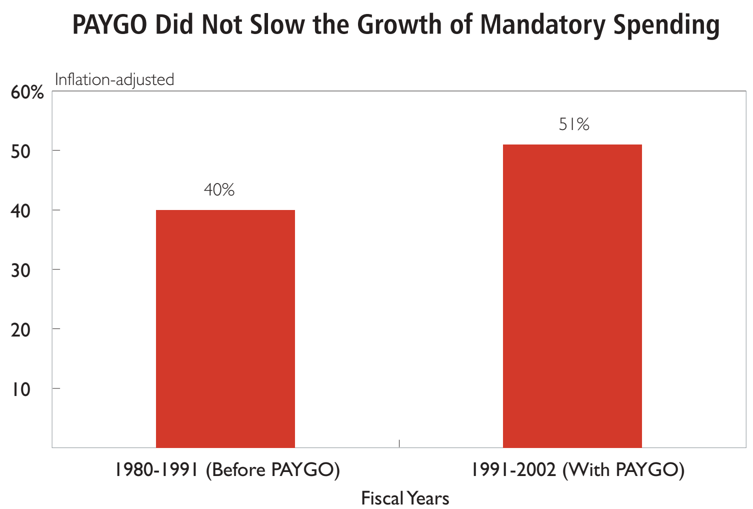
1. PAYGO ignores current entitlements. PAYGO limits only the creation of new entitlements. All current entitlements, such as Social Security and Medicare (including the new drug entitlement), would remain on autopilot, growing at the same rates that are currently projected to drown the budget in red ink. PAYGO takes the $1.3 trillion in current entitlements, projected to nearly double over the next decade, completely off the table.
2. PAYGO is rarely enforced. No meaningful sequestration ever took place in 12 years of PAYGO. Between fiscal year 1998 and FY 2001, Congress enacted legislation violating PAYGO by a total of $46 billion and then attached provisions to later legislation preventing the Office of Management and Budget from enforcing the law with a sequestration. Congress then voted to block the sequestration of its $130 billion violation for FY 2002 and its $127 billion violation for FY 2003.[2] Thus, PAYGO served only as a slight deterrent to new entitlement legislation.
3. PAYGO prevents trade-offs. Applying caps to one part of the budget and PAYGO to another part creates inconsistencies that actually block the shared goals of spending restraint and deficit reduction. For example, policymakers could not shift $10 billion in discretionary expenditures to mandatory programs because this would violate PAYGO. Conversely, shifting $10 billion from mandatory to discretionary spending would violate the caps. Even though balancing a $10 billion tax cut with a $20 billion reduction in discretionary spending would reduce both spending *and* the budget deficit, such a move would not be permissible because it would violate PAYGO.
4. PAYGO would force steep tax increases. While PAYGO allows current entitlement programs to grow on autopilot, it would likely lead to the expiration of the current tax cuts. Merely retaining the tax relief that Americans now enjoy would, under PAYGO, require 60 votes in the Senate and a waiver in the House (unless lawmakers are willing to raise other taxes or enact unprecedented spending cuts). If the 2001 and 2003 tax cuts are allowed to expire, a married couple with two children and a combined income of $40,000 will see their annual income tax burden rise from $45 to $1,978.

Think of entitlement programs as fires rapidly spreading across the federal budget. Rather than

2. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2003: Analytical Perspectives*, p. 291, and Bud Newman, "Senate Passes Pay-Go Bill Ordering OMB to Avoid Sequester of Entitlement Programs," Bureau of National Affairs *Daily Report for Executives*, November 19, 2002, p. G5.

contain these fires before they consume the entire budget, PAYGO merely asks lawmakers not to set any additional fires. Not surprisingly, mandatory spending (excluding net interest) actually grew *faster* during the 12 years with PAYGO than it did during the 12 years before enactment of the law.[3] (See chart 3.)

Chart 3 B 1758



Note: Excludes net interest spending.

Source: Calculated from the Office of Management and Budget's *Historical Tables in the Budget of the United States Government, Fiscal Year 2003.*

Entitlement Caps: A Key to Workable Spending Limits. A simple and effective policy of responsible budgeting would apply spending caps to entitlement programs as well as discretionary programs. The Family Budget Protection Act takes a strong first step in that direction by capping the growth of each entitlement program at the inflation rate plus the increase in the program's beneficiary population. Expenditures above cap levels would be subject to sequestration, with three important qualifications:

1. Programs such as Social Security, Medicare Part A, and the Civil Service Retirement System for federal employees would be exempt from sequestration because beneficiaries paid into the system and earned their benefits;
2. Programs that fulfill constitutional requirements, meet government commitments, and regulate economic institutions would be exempt; and
3. Certain high-priority programs (such as Medicare Parts B–D, veterans, military and retiree benefits, and specified low-income programs) could be sequestered by no more than 2 percent of their budget.

Entitlement caps would not lead to massive spending cuts: Earned entitlements and vital constitutional and regulatory duties would be exempt, and even the 2 percent maximum reduction for other priority programs could be absorbed by reducing the billions of dollars of waste, fraud, and abuse that plagues most agencies. Entitlement caps are vital to reining in runaway spending.

2. Create a Joint Budget Resolution

If two parties are expected to negotiate a detailed agreement on a complex subject within a nine-month period, separating them until the end of the ninth month makes little sense. It makes even less sense for one side to spend a great deal of time working out the smallest details of its offer without first having forged the basic structure of an agreement with the other side. Yet Congress and the President currently use this method to write the federal budget.

The President begins the process in February by presenting his proposed budget as an opening offer. Congress then spends up to eight months preparing its counteroffer in the form of 13 detailed, annual appropriations bills. At that point—with the deadline for completion quickly approaching—the President's options are limited to either signing or vetoing each appropriations bill.

3. Calculated from Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2003: Historical Tables*. Annual mandatory spending (excluding net interest) grew by 40 percent between 1980 and 1991 (before PAYGO), and by 51 percent between 1991 and 2002 (during PAYGO).

Without any agreed-upon budgetary framework, these last-minute negotiations over the details of hundreds of programs become extremely difficult. The inevitable results are rushed compromises that are completed well past the fiscal year deadline. In fact, the past two federal budgets were completed four months late—four months into the years that they were designed to fund.

The Family Budget Protection Act proposes shifting from a concurrent budget resolution (which does not involve the President) to a joint budget resolution (which would be signed into law by the President). Working out differences early in the process and enacting a binding law would make it possible for contentious debates on the size of government to be settled in March rather than in October, when delays risk government shutdowns. The appropriations debate would be limited to the composition of federal spending, and disagreements would be far easier to resolve if spending limits were already fixed by law.

Furthermore, since it is law, a joint budget resolution could not easily be ignored by Congress. The budget resolution's spending ceilings could be bypassed *only* if Congress enacted and the President signed an entirely new law overturning the budget resolution. This enforcement would help Congress to prioritize and spend taxpayer dollars more efficiently.

Some critics contend that giving the President a role in the budget resolution unfairly transfers power from Congress to the President. However, Congress's budget cannot be enacted until the President approves it.[4] This reform would simply move up the inevitable negotiations and provide an opportunity to settle contentious issues earlier rather than later.

3. Provide Point of Order Protections

Budget restraints without strong enforcement are paper tigers. Restraints are intended to force Congress to make some difficult trade-offs in order to preserve the nation's long-term economic health. However, Members of Congress typically take the easy path of seeking loopholes that bypass restraints, thus avoiding difficult choices. Consequently, rules are only strong as their weakest link.

The largest loopholes are in points of order, which lawmakers can raise when legislation violates congressional rules such as spending limits. In the Senate, waiving a point of order requires a three-fifths vote, effectively raising the bar for passing such legislation.

In the House of Representatives, however, waiving a point of order requires only a simple majority—which is no more of a hurdle than any other spending bill must clear. This loophole renders most spending restrictions meaningless in the House. Worse, the House Rules Committee can waive these points of order even before they reach the floor.

Restrictions that can be bypassed so easily cease to be restrictions. The FBPA would address these loopholes by:

1. Creating a point of order against passing a budget resolution that exceeds either the discretionary or entitlement cap;
2. Requiring a two-thirds vote to waive points of order; and
3. Barring the Rules Committee from reporting rules waiving points of order related to spending levels.

These reforms will help lawmakers enforce their budget decisions and keep their promises to the American people.

4. Create Family Budget Protection Accounts

Lawmakers who amend an appropriations bill to reduce a program's funding are often dismayed to see those savings diverted to another program. Setting those savings aside for deficit reduction or tax relief is not an option because lawmakers feel compelled to spend all of their allotted 302(a) and 302(b) budget allocations for the year.[5]

The Family Budget Protection Act would remedy this bias by allowing lawmakers who offer amendments to reduce spending to include provisions setting aside those savings for deficit reduction or tax relief. The 302(a) allocations, which

4. Presidential vetoes are occasionally overridden by a two-thirds vote in the House and Senate.

determine how much Congress can spend, would be reduced by the amount of the money saved. Lawmakers would finally have the option of saving taxpayer dollars rather then merely shifting spending from one wasteful program to another.

5. Create a Rainy Day Fund.

Most families understand the wisdom of setting aside money for unexpected emergencies. States likewise maintain "rainy day funds" for disaster relief and other unforeseen needs.

The federal government, however, does not set aside any funding for emergencies. More than just an oversight, the failure to budget for emergencies provides Congress with a backdoor means of exceeding discretionary spending caps. After allocating all budgetary resources to regular spending programs within the limitations of caps, Members can later claim that "unforeseen" emergency needs require them to exceed the original spending caps.

The budget process makes this easy. As stated earlier, Congress can bypass discretionary spending caps to fund emergencies with only a majority vote. Exceeding the budget resolution's spending ceilings requires only a majority vote in the House and a three-fifths vote in the Senate.[6] These low hurdles for excess spending leave Congress with little incentive to fund emergencies (or even non-emergencies) at levels that are within either discretionary spending caps or the annual budget resolution.

Congress should budget sufficiently for regular emergencies while assuring that the necessary escape hatch for catastrophic emergencies is not abused. Such reforms would promote better planning and coordination within the constraints of the budget caps and annual budget resolution.

The Family Budget Protection Act would require that annual budget resolutions include a rainy day fund. The annual set-aside would equal the rolling average of the five preceding years' emergency spending, and any additional emergency spending would be subject to a supermajority point of order. All spending from the rainy day fund would have to meet a set of criteria to determine whether it is a true "emergency."

It should be noted that none of these restraints would apply to emergency military funding. Although such military funding would be classified as "emergency," it would not count against the rainy day fund and would not be subject to a point of order if it causes the overall discretionary caps to be exceeded.

6. Prevent Government Shutdowns by Instituting Automatic Continuing Resolutions

Even the best efforts to simplify the budget process and foster cooperation cannot guarantee that a budget will be completed by the October 1 deadline, but failure to complete the budget by this deadline risks paralysis in the federal government because it leaves many agencies unable to spend money. Budgeters have missed the October 1 deadline in 24 of the past 25 years, resulting in a series of continuing resolutions (CRs) to fund the federal government in the interim.

Contentious debate regarding the composition of CRs creates regular uncertainty among both providers and recipients of federal services—an uncertainty that was heightened after the inability of Congress and the President to agree on a CR led to a government shutdown in the winter of 1995–1996. This insecurity could be assuaged through a law guaranteeing that agencies lacking a budget for the new fiscal year continue to operate at the prior year's funding level.

7. Strengthen Presidential Rescission

The increasing usage of omnibus spending bills is forcing lawmakers to vote on increasingly large spending bills. Consequently, the same bills that fund priorities such as homeland security, health, and education also fund $50 million for an indoor

5. Following completion of a budget resolution, the total amount of permitted spending is divided by committee, and the appropriations committees further divide this spending by subcommittee; these allocations are known, respectively, as 302(a) and 302(b) allocations.

6. A three-fifths vote in the Senate is required only if a Senator offers a point of order against legislation violating these rules. Otherwise, a simple majority vote could override these rules in the Senate.

rainforest in Iowa and $250,000 for the Rock and Roll Hall of Fame in Ohio. The only course available to lawmakers who refuse to fund wasteful spending is to vote against the entire bill.

Rescission bills provide an innovative way to cut the wasteful spending out of legislation. After the legislation is enacted, the President can request a bill to defund wasteful programs and grants before the funds are spent. Lawmakers frustrated by having to vote for the wasteful components of an otherwise good bill are given an opportunity to go back and remove the waste.

Congress, however, often balks at rescission requests. Rather than go on record as supporting wasteful pork-barrel projects and obsolete programs, Congress blocks rescission requests by refusing to vote on them.

The Family Budget Protection Act would guarantee that all presidential rescission requests receive "expedited consideration" by proceeding directly to the House and Senate floor for a vote. Rather than continuing to avoid rescission requests, lawmakers would be forced to go on record as supporting or opposing these wasteful expenditures. The likely result would be less wasteful spending.

8. Create a One-Page Budget

The current budget resolution includes lengthy spending breakdowns by 20 budget functions, such as "general science, space and technology" and "commerce and housing credit." Lawmakers spend substantial time debating these functional breakdowns and offering "gotcha" amendments to force the other party into embarrassing votes to increase or decrease spending for a certain function. After all that, the functional breakdowns are immediately ignored upon passage of the budget resolution, and actual discretionary spending breakdowns are written from scratch by the appropriations committees.

The FBPA skips this charade and mandates a one-page budget that divides spending into four important, binding categories: mandatory, defense discretionary, non-defense discretionary, and emergency.

9. Create Sunset Provisions and a Commission on Government Waste.

Over the past decade, Congress has been largely silent about waste and ineffectiveness in the federal government. Those problems persist, as shown by the following examples:

- The federal government cannot account for $24.5 billion spent in 2003;
- The U.S. General Accounting Office refuses to certify the federal government's own accounting books because the bookkeeping is so poor;
- The Medicare program pays as much as eight times the cost that other federal agencies pay for the same drugs and medical supplies;
- The federal government made $20 billion in overpayments in 2001; and
- A recent audit revealed that employees of the Department of Agriculture (USDA) diverted as much as 3 percent of the USDA budget to personal purchases through their government-issued credit cards.[7]

Nor are these isolated incidents; they are powerful examples of a federal government that is too large and inefficient. New programs are continually added, but obsolete programs are never replaced.

The Family Budget Protection Act would sunset every discretionary program and unearned entitlement program over 2008 and 2009. Programs that are not reauthorized by that date would have their budgets frozen, subject to a supermajority point of order. This would provide Congress with the chance to examine these programs and determine what works, what does not work, and what can be performed more efficiently.

Additionally, the FBPA would create a commission, similar to those that closed military bases a decade ago, to investigate all federal programs and then compile a list of potential savings from waste, fraud, and abuse. This proposal would then proceed directly to the House and Senate floors, where lawmakers would vote up or down on the entire package of program terminations, thus preventing

7. See Riedl, "How to Get Federal Spending Under Control."

each of them from offering amendments to preserve their own special-interest programs. The substantial savings from this effort could be allocated to higher priorities, such as deficit reduction, defense, or making the pro-growth tax cuts permanent.

Conclusion

The past quarter-century has shown that a budget process cannot last longer than 10 to 12 years before mounting abuses necessitate major reform. The last major reforms, enacted in 1990, hung on by a thread before expiring in 2002.

In 2004, runaway federal spending and the prospect of entitlements consuming the federal budget can no longer be ignored. The current budget process—which has engendered shortsighted, haphazard decision-making by those who can manipulate the process—will not efficiently allocate the nation's resources to its central priorities of defense, the war on terrorism, economic growth, and long-term entitlement reform.

The Family Budget Protection Act provides realistic, implementable solutions to these budget process failures. Lawmakers seeking sound budget planning should settle for nothing less.

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