Center on Budget and Policy Priorities

820 First Street NE, Suite 510
Washington, DC 20002

Tel: 202-408-1080
Fax: 202-408-1056

center@cbpp.org
www.cbpp.org

April 18, 2006

CHANGING THE BUDGET RULES:
Administration's New Rules Would Favor Tax Cuts Over All Other Budget Priorities

By Richard Kogan

Summary

In the budget it presented to Congress last month, the Bush Administration proposed a series of changes in the rules under which Congress considers and approves the federal budget.[1] The principal Administration proposals have a common theme: the new rules would allow unlimited tax cuts while imposing tight limits on federal programs.

The leaderships of both the Senate and the House have indicated that they plan to take up

Contents

Part 1: Proposals That Limit Program Budgets While Favoring Tax Cuts:
- Triggering annual cuts in Medicare .... page 3
- Prohibiting new entitlement costs (one-sided Pay-As-You-Go) .... page 4
- Capping the long-term costs of certain entitlement legislation .... page 6
- Imposing annual caps on discretionary programs for the next five years .... page 6
- Making it easier to extend the 2001 and 2003 tax cuts .... page 7
- Effects of the proposed rules:
    encouraging unproductive tax breaks, distorting policy decisions, favoring the well off .... page 8
- Do the proposed rules reflect a concern about deficits? .... page 10

Part II. Proposals that Would Enhance the White House's Power and Diminish That of Congress:
- Expedited Rescission, also known as a Line-Item Veto .... page 12
- Joint Budget Resolution .... page 14
- Biennial Budgeting and Appropriations .... page 15
- Automatic Appropriations .... page 15

Part III: Can the Budget Rules Be Improved? .... page 16

[1] See Chapter 15 of the FY 2007 Analytical Perspectives, one of the documents making up the Administration's budget.

legislation later this year to change the budget rules. Some of the Administration proposals may be considered at that time.

In the first part of this analysis, we discuss four Administration proposals to limit or "cap" the costs of budget programs.

- Medicare costs would be subject to an artificial cap, based on a formula that is designed to induce cuts in benefits, reductions in provider payments, increases in beneficiary premiums, and/or increases in regressive payroll taxes, but to rule out any increases in progressive income taxes as part of a larger plan to address Medicare's financing problems.

- Legislation that would increase the cost of entitlement programs in any of the first five years after its enactment would be prohibited.

- For major entitlement programs such as Medicare and Social Security, program expansions with *long-term* costs also would be prohibited, unless paid for with dedicated taxes such as the regressive Medicare payroll tax.

- Finally, annually appropriated or discretionary programs would be capped at levels that imply substantial reductions in domestic programs.

On the other hand, the Administration proposes no new rules to impede tax cuts of any size, no matter how costly. Moreover, the Administration proposes a fifth rule, a new accounting gimmick under which the 2001 and 2003 tax cuts, which are temporary, could be extended indefinitely by Congress — at an actual cost of hundreds of billions of dollars per year — with such extensions officially considered to have *zero cost*. The extension of these tax cuts could thus be accomplished outside of even the routine budgetary constraints that Congress places on tax cuts in its annual budget plans.

Capping budget programs but allowing unlimited tax cuts has four consequences, all undesirable.

- Savings achieved by capping budget programs would likely facilitate more tax cuts rather than reduce the deficit.

- Congress would be more likely to provide new or increased benefits by way of special tax deductions, preferences, or other tax loopholes, even when new targeted tax breaks were more costly and less efficient than providing benefits through targeted program increases.

- Budget policies would favor the well-off rather than the middle class and the poor to a greater extent than they already do.

- Congress and the President probably would be less, rather than more, likely to enter into a major deficit-reduction deal.

In the second part of this analysis, we examine four additional Administration budget-process proposals. These proposals would strengthen the President and weaken Congress in various ways:

- creating fast-track "expedited" rescission powers, sometimes called a line-item veto;
- requiring the President's signature on congressional budget plans;
- establishing biennial budgeting; and
- enacting an "automatic" continuing appropriations bill to preclude government shut-downs.

In the third and final part of this analysis, we suggest some changes to the budget process to strengthen fiscal responsibility across the entire budget and to improve congressional consideration of budget legislation.

Part I: Proposals That Limit Program Budgets While Favoring Tax Cuts

Proposal #1: Triggering annual cuts in Medicare

The 2003 prescription drug legislation established a requirement known as the "45 percent trigger." Under this provision, the Medicare trustees must report annually whether the portion of Medicare costs that is financed by "general revenues" will surpass 45 percent within the next six years. If the trustees issue two such reports in successive years, the President must submit legislation to solve this supposed problem, and Congress is required to consider the legislation.

This year, the Administration proposes attaching another condition to the 45 percent trigger: in every year that the 45 percent limit is actually reached, Medicare payments to providers would be automatically and permanently reduced by four-tenths of one percent. (As long as general revenues continued to finance more than 45 percent of Medicare costs, there would be an additional automatic cut each year.) Given Medicare trends, such an automatic cut in provider reimbursements would generally be insufficient to eliminate the breach, so Medicare payments would automatically be cut an additional four-tenths of one percent every year, with the magnitude of the cuts growing steadily deeper over time. CBO estimates suggest that these automatic cuts would first occur in 2011 and strike again in 2013 and every subsequent year.[2]

The conceptual and policy flaws behind the existing 45-percent calculation, and the likely consequences of the proposed automatic cuts, are discussed in a separate Center analysis.[3] In brief, the 45-percent limit has little to do with controlling Medicare costs; rather, the limit appears designed to make sure that rising Medicare costs ultimately prompt benefit or provider-payment

---

[2] The Administration considers this proposal as budget-process legislation and so explains the proposal in its chapter on other proposed budget rules, including the ones we discuss in this analysis. The Administration does not show the Medicare reductions that would likely result from this rule within its budget totals. Interestingly, the Congressional Budget Office, which does not customarily provide any official scorekeeping recognition to budget process rules such as discretionary caps or entitlement caps, treats this Medicare proposal as a policy proposal rather than a process proposal; consequently, CBO does estimate the amount of Medicare reductions the proposal would produce and includes those reductions as part of the cuts in entitlement programs that the President's budget contains.

[3] Greenstein, Kogan, Park, and Horney, "President and Budget Committee Embrace Misguided and Misleading 45 Percent Trigger," Center on Budget and Policy Priorities, March 13, 2006, at http://www.cbpp.org/3-13-06health.pdf.

cuts, or increases in regressive taxes such as the payroll tax, but in no case prompt increases in taxes such as the income tax. (The Senate-passed congressional budget resolution for fiscal year 2007 also would use this same 45 percent limit, but as a means of triggering a new Senate point of order prohibiting any legislation that would increase entitlement costs. The point of order would apply to all entitlements, not just Medicare. It would *not* apply to tax cuts.)[4]

Proposal #2: Prohibiting new entitlement costs (One-sided Pay-As-You-Go)

The Administration proposes a new rule to cap expenditures on entitlement programs at the levels projected under current law. The rule would not prevent the costs of entitlements from automatically rising or falling based on circumstances beyond policymakers' control — for example, the cost of unemployment insurance would still rise automatically during a recession and shrink automatically during a recovery. But the rule would prohibit Congress from amending an entitlement law to make it more generous, either by increasing the amount of a benefit or increasing the number of people eligible for the benefit. Thus, for example, Congress would not be allowed to continue its long-established practice of enacting legislation to temporarily extend an unemployed worker's eligibility for federal unemployment benefits from 13 weeks to 26 weeks during a recession, when jobs are harder to find. Likewise, the rule would prohibit Congress from creating a new entitlement program.

This rule would apparently apply to the total cost of all entitlement programs.[5]

Case Study: Asbestos Liability

For years, Congress has been wrestling with the thorny issue of liability for the many severe illnesses or deaths caused by exposure to asbestos, especially for those who worked in asbestos factories. There is widespread agreement that the most workable solution is that companies who bear some legal liability would pay into a single fund, from which all persons who suffered as a result (or their survivors) would be compensated; those accepting compensation from the fund would give up their right to sue for damages. In effect, the payments by companies into the fund would largely or entirely relieve them of any further legal liability. No general revenues would be allocated to the fund. (There remains considerable disagreement about the details.)

CBO has estimated that the underlying asbestos bill considered by the Senate would be deficit-neutral both during its first five years and in perpetuity. But under standard budget accounting, the payments by the companies into the common fund would be considered "taxes" while the distribution of those amounts to the victims would be considered entitlement payments. Thus, the bill would increase net entitlement costs above current law; the Administration's proposed rule consequently would bar such a solution to the asbestos problem.

---

[4] The fiscal year 2007 budget resolution that the Senate passed in March provides that if the Senate Budget Committee chairman reports in two successive years that the 45-percent limit will be reached within the following six years, then upon issueanceof the second such report, a new Senate point of order will go into effect. The point of order would bar Senate consideration of any legislation that results in a net increase in entitlement costs. This point of order would likely go into effect in the spring of 2007 (i.e. that would likely be the second consecutive year that the Budget Committee chairman would issue such a report. For further information on the Senate point of order, see Greenstein, Kogan, Park, and Horney, op. cit.

[5] We say "apparently" because the description of this proposed entitlement cap is very sparse and is not accompanied by draft legislation. Therefore, we must infer the Administration's intentions with respect to some aspects of this proposal. For instance, it is likely but not certain that the Adminsitration intends the cap to apply to the cost of entitlement programs under "baseline rules." Under those rules, for example, expiring entitlements such as food stamps can be

Congress could increase benefits in one entitlement program if it simultaneously cut benefits in another entitlement program and fully offset the cost increase in each year. It is difficult to design cuts in one program, however, that exactly offset increases in another program year by year.

This proposal differs markedly from the "Pay-As-You-Go" rules that were in effect in the 1990s. The proposed rule would apply to entitlement increases but *not* to tax cuts. Unlimited tax increases would be allowed at the same time that entitlement increase would be prohibited. By contrast, the Pay-As-You-Go rules of the 1990s applied equally to entitlements and tax cuts.

Entitlement increases would be banned even if Congress fully offset the costs through matching revenue increases, such as by closing abusive tax shelters. In contrast, the 1990s pay-as-you go rule allowed both entitlement increases and tax cuts to be offset by *either* reducing entitlement programs *or* raising more tax revenue. These aspects of the proposal are why it is known as a "one-sided pay-as-you-go rule. The issues it raises are discussed in more detail in subsequent sections of this paper.

How Restrictive Would the Provision Be?

In considering how restrictive this "current-law entitlement cap" would be, one should note that a number of important federal programs distribute a fixed amount of dollars to states each year. Examples of such programs are Temporary Assistance to Needy Families (the welfare-reform block grant), the State Child Health Insurance Program, the Child Care Entitlement to States, and the Social Services Block Grant. Under current law, each of these programs pays the same dollar amount to states each year, regardless of inflation, increases in the size of the U.S. population, or increases in the number of households that meet the income limits qualifying them for benefits. If inflation remains tame and the poverty rate does not worsen, these programs still will lose *half* of their per-household value over the next two decades; the erosion in benefits will be more severe if inflation is higher than the 2.2 percent annual average that CBO projects for the long term. Congress would probably want to adjust these programs from time to time to account for at least some of the growth in population and decline in the value of the dollar. The OMB rule would prohibit such legislation unless offsetting cuts could be enacted in other entitlement programs.

To be sure, the total cost of entitlement programs is projected to rise faster than the economy over the long term, even though some entitlements such as those we have just discussed are frozen in perpetuity. But almost all the overall growth in entitlement costs relative to the economy comes in the health care programs; the multi-decade trend of rapidly rising health-care costs is expected to continue in future decades. An additional but smaller source of upward cost pressure is in Social Security, since the over-62 population will grow faster than the rest of the population. Outside of Medicare, Medicaid, and Social Security, all other entitlements (as a group) are projected to grow more slowly than the economy as far as the eye can see. The Administration has written a restrictive rule because of the known issue of rapid health care cost growth; yet the rule could impede thoughtful or necessary legislation on a wide variety of entitlement programs that have nothing to do with health care and are not projected to place additional pressure on the budget over the long term.

---

reauthorized as long as they are not liberalized. Likewise, it is not clear whether Social Security would be inside or outside the entitlement cap.

Proposal #3: Capping the *long-term* cost of certain entitlement legislation.

The Administration also is proposing a second rule limiting entitlement legislation; this second rule would apply to a group of selected entitlement programs. Under this rule, the House of Representatives and the Senate would be permanently barred from considering any measures that would increase the overall cost of this group of programs *over the next 75 years* (measured on a "present-value" basis).[6] More precisely, an improvement in a covered program could be enacted only if the projected cost of the improvement over 75 years was fully offset by savings over 75 years from enactment of cuts in one or more of the other entitlements programs subject to this rule, or from an increase in the Medicare payroll tax or a new tax specifically dedicated to one of these programs. The programs subject to these requirements would be Medicare, Supplemental Security Income (SSI), federal military and civilian retirement, veterans' disability benefits, Medicaid (within a few years), and ultimately any other entitlement that OMB chose to add to the list. Social Security would be treated separately. Social Security benefit increases would be ruled out unless offset by other reductions in Social Security benefits or an increase in payroll taxes.

One noteworthy feature of this proposed rule is that legislation increasing the cost of these entitlements could be paid for by an increase in *dedicated* revenues, but not by an increase in *general* revenues. The effect of this rule would be to block increases in progressive individual and corporate income taxes (including the closing of tax loopholes or shelters) from being considered as a way to pay for improvements in these programs. Thus, increases in regressive payroll taxes (or in Medicare premiums) would be allowable as long-term financing mechanisms but increase in progressive income tax revenues would not be.

Furthermore, CBO and other health and budget analysts have warned that long-term trends in health care costs are virtually impossible to forecast and that 75-year cost estimates for health care legislation would be highly unreliable. It seems inappropriate to enforce a rule on the basis on estimates that are known to be of dubious validity.

Proposal #4: Imposing annual caps on discretionary programs for the next five years

The Administration proposes to limit or "cap" funding and expenditures for annually appropriated programs (i.e., "discretionary" or non-entitlement programs). The caps would be specified in statute and would apply for each of the next five years. These statutory caps would be set at the overall discretionary funding and spending levels proposed in the President's Fiscal Year 2007 budget for every year through 2011. In each year, both funding (budget authority) and expenditures (outlays) would be capped.

The proposed caps would be quite restrictive. By 2011, the total amount of funding allowed for all discretionary programs (including defense) would be $31 billion — or 3.2 percent — below the 2006 level of funding, adjusted for inflation, but those figures obscure the fact that within these totals, the Administration intends large increases for defense. Indeed, under the President's budget,

---

[6] This proposal appears identical to one the Administration advanced in prior years. For an earlier and more complete analysis of this proposal, see Greenstein and Kogan, "Administration Expected to Propose new Budget Rule that Could Adversely Affect Social Security, Medicare, SSI, Veterans' Disability, and other Programs," Center on Budget and Policy Priorities, February 2, 2005, at http://www.cbpp.org/2-1-05bud.pdf.

funding for *domestic* discretionary programs would be cut $183 billion over the five-year period, relative to the 2006 levels adjusted for inflation. The domestic funding cuts would grow larger each year, reaching $57 billion — or 13 percent — by 2011.[7] (If we also account for growth in the U.S. population, the per-person funding cuts would reach 18 percent by 2011, after adjusting for inflation.) In other words, if Congress follows the Administration's proposed funding path for defense and international affairs, the amounts that would remain for domestic programs would necessitate large domestic cuts.

One might ask whether Congress would adhere to the Administration's defense requests. Under this proposal, Congress would have to do so for several years. Under the rule the Administration is proposing, there would be *two* sets of caps in 2007 and 2008, one applying to programs in the "national defense" part of the budget and the other applying to all other discretionary programs.[8] Starting in 2009, there would be a single set of caps. In other words, the Administration would establish temporary "firewalls" between its proposed defense and non-defense budgets in 2007 and 2008; Congress would not be permitted to re-order priorities between these two parts of the budget until 2009. (Two of our recent analyses explain the consequences of adhering to the amounts that the Administration's budget proposes for domestic discretionary programs and the magnitude of the cuts that would be required.[9])

Proposal #5: Making it easier to extend the 2001 and 2003 tax cuts.

The Administration proposes that the Congressional Budget Office and the Office of Management and Budget be required to treat extension of the 2001 and 2003 tax cuts as though such an extension *has already been enacted*. Under this proposal, when CBO and OMB are asked to provide estimates of the cost of legislation to extend the tax cuts or make them permanent, they would be required to show the cost to be "zero." [10] (In reality, CBO estimates that extending the tax cuts and making them permanent would cost $1.6 trillion over the next ten years, counting neither the related costs of relief from the Alternative Minimum tax nor the increased interest payments on

---

[7] These figures represent the difference between the Administration's budget proposal and OMB's current-services baseline. (OMB's baseline is available on line or in a CD that accompanies the *Analytical Perspectives* volume of the Administration's fiscal year 2007 Budget.) OMB's baseline assumes that emergency funding in 2006 (e.g., for Katrina relief or the "global war on terrorism") does not recur in future years. If the Administration's discretionary funding proposals instead are measured relative to the CBO (rather than the OMB) baseline measured the same way, the cuts would total $152 billion over five years and grow to $47 billion, or 11 percent, by 2011. CBO's estimate of the cuts is smaller than OMB's primarily because CBO assumes a lower rate of inflation, and consequently projects that the inflation-adjusted cost of existing programs will rise more slowly.

[8] The national defense function includes the military activities of the Department of Defense (and so excludes the civilian operations of the Army Corps of Engineers). It also includes the nuclear weapons programs of the Department of Energy, some Coast Guard and FEMA operations (these agencies are part of the Department of Homeland Security), and certain FBI activities, among other non-Defense Department programs.

[9] See Kogan, Shapiro, and Richards, "The Hidden Cuts in Domestic Appropriations," Center on Budget and Policy Priorities, February 9, 2006, at http://www.cbpp.org/2-9-06bud.pdf, and Horney, Sherman, and Parrott, "Program Cuts in the President's Budget, Center on Budget and Policy Priorities, February 23, 2006, at http://www.cbpp.org/2-23-06bud.pdf.

[10] For a recent and more extensive discussion of this proposal, see Friedman and Greenstein, "Administration Proposals to Hide Tax-Cut Costs," Center on Budget and Policy Priorities, February 14, 2006, at http://www.cbpp.org/2-14-06tax.pdf.

the debt that would result from extending the tax cuts. Counting the AMT and interest costs, the total cost of extending the tax cuts rises to $3.3 trillion over the next ten years.[11])

This proposal to make the costs of extending the tax cuts disappear is highly significant. It would exempt legislation to extend the tax cuts, or to make them permanent, from *any* sort of Congressional budget enforcement, even from the limits on tax cuts normally included in the annual congressional budget plan. In effect, Congress would treat the extension of these tax cuts as though they were "off budget" or an "emergency." The costs simply would not count.

It should be recalled that the tax cuts enacted in 2001 and 2003 were purposely given early expiration dates so their costs would be viewed as small enough to fit within the budget targets set for tax cuts in those years. This constituted a massive budget gimmick. Under the Administration's new proposal, the costs of these tax cuts after 2010 — and in the case of the dividend and capital gains tax cuts, the costs after 2008 — would *never* be counted within the budget enforcement rules: neither when first enacted nor when extended. Such budgetary legerdemain would be unprecedented and would shatter rules designed to promote some modicum of fiscal responsibility.

False Analogy with Entitlement Legislation

The Administration alleges that its proposal to assume the permanent extension of the 2001 and 2003 tax cuts within the existing budget baseline is "consistent with the [Budget Enforcement Act] baseline rules for expiring mandatory spending and excise taxes dedicated to trust funds."

That claim is false. When new entitlement programs are enacted, they are almost always scored as though they are permanent, even if they actually are enacted on a temporary basis. This means that if a new program is authorized for, say, three years, it is scored as though it is permanent and its five-year or ten-year costs must fit within the five-year and ten-year budget constraints that Congress has imposed. The scored costs are *not* reduced merely because the program is slated to expire in three years. This prevents Congress from understating new entitlement costs by artificially sunsetting an entitlement expansion after a few years.

In rare cases, a temporary new entitlement program is scored as temporary, and in all cases a temporary increase in an existing program is scored as temporary. That scoring may make it easier for the new costs to fit within a multi-year budget limit. But in every such case without exception, the baseline will *not* assume the extension of the temporary program. If Congress later wants to extend the temporary program, it will have to recognize the costs of the extension and fit those costs within its budget limits.

In short, there is not now and never has been an entitlement increase that was scored as temporary when enacted but treated as permanent in later baselines. The *only* legislation that would receive the unfair benefit of having some of its costs *never scored at all* — as the Administration proposes for the 2001 and 2003 tax cuts – would be those tax cuts.

Effects of the proposed rules: encouraging unproductive tax breaks, distorting policy decisions, favoring the well off

The goal of ensuring that the five-year or long-term cost of entitlement expansions is offset could be thwarted in cases where a desired entitlement expansion can be converted into a targeted tax break. The caps on annually appropriated "discretionary" programs may also prompt the creation or expansion of tax breaks in an attempt to serve the purposes otherwise served by some of those programs.

[11] Friedman and Aron-Dine, "Extending Expiring Tax Cuts and AMT Relief Would Cost $3.3 Trillion Through 2006," Center on Budget and Policy priorities, February 6, 2006, at http://www.cbpp.org/2-6-06tax.pdf.

Is the Administration's Proposed Entitlement Cap a "Step in the Right Direction?"

A supporter of the Administration's proposed five-year entitlement limitation might argue that although the proposed rule would be less effective than reinstating the old Pay-As-You-Go rules that applied to both entitlements and taxes, it would at least be a step in the direction of restraining deficits. Such an argument, however, would be unpersuasive. Agreement to the one-sided PAYGO rule that the Administration is proposing could simply encourage Congress to enact additional tax cuts, thereby accomplishing little or no deficit reduction at all.

Of particular concern, history suggests that the Administration's one-sided PAYGO rule could make it more difficult to secure agreement on a large-scale bipartisan deficit-reduction package. History shows that major deficit-reduction legislation is difficult to enact because it involves the unpopular steps of raising taxes and cutting popular programs. To take such steps generally requires bipartisan negotiation and agreement in which all sides give up something they value. Recently, both Robert Rubin, Treasury Secretary during the Clinton Adminsitration, and Kevin Hassett, director of economic policy studies at the American Enterprise Institute, have each called for such bipartisan negotiations, including both tax increases and entitlement reductions, for precisely this reason. Since 1990, such major agreements have included the imposition of two-sided PAYGO, because it is a balanced way in which both sides to a negotiation — those who worry most about costly, deficit-financed tax cuts and those who worry most about costly deficit-financed entitlement increases — agree that neither should be allowed to occur. Two-sided PAYGO is a logical and essential element of a bipartisan negotiation in which all parts of the budget are on the table.

If one-sided PAYGO has already been enacted, however, such bipartisan negotiations become more difficult. One political faction will already have achieved an important goal — an entitlement limit. It will have little incentive to come to the bargaining table to negotiate a measure that adds constraints on tax cuts. As a result, enactment of one-sided PAYGO would decrease the likelihood of subsequently applying the pay-as-you-go discipline to tax cuts as well, and thus would likely make achievement of a major bipartisan deficit-reduction compromise more difficult.

This suggests the nation will be more likely to achieve significant deficit reduction at some point in the foreseeable future if Congress does *not* enact one-sided PAYGO law now. Rather than being a step in the right direction, enactment of the Administration's proposal would likely have the effect of impeding major progress on deficit reduction in the future.

The tax code is packed with dozens of tax breaks favoring particular activities, from home ownership to energy production. These tax breaks are referred to as "tax expenditures" by the Joint Committee on Taxation and the Office of Management and Budget, because they essentially represent spending accomplished through the tax code. Indeed, Federal Reserve Chairman Alan Greenspan has referred to these tax breaks as "tax entitlements."[12] These measures are costly. GAO estimates that tax expenditures cost roughly three-quarters of a trillion dollars per year.[13]

If five-year or long-term pay-as-you-go requirements are imposed only on spending entitlements and not on "tax entitlements," there is little doubt that tax lawyers and lobbyists will be able to redesign various proposed entitlement expansions so they can be delivered through the tax code.

[12] Alan Greenspan, in response to a question from Rep. Eva Clayton before the Bipartisan Commission on Entitlements and Tax Structure Reform, Federal News Service Transcript, July 15, 1994.

[13] "Tax Expenditures Represent a Significant Federal Commitment and Need to be Reexamined," GAO-05-690, September 2005, page 25.

(In some cases, the same could be true of tax breaks substituting for domestic appropriations.) Such tax breaks would increase the deficit just as increasing an entitlement or discretionary program on the spending side of the budget would, and this artificial reliance on the tax code to circumvent the rules often would represent a more costly and less efficient approach to achieving the intended policy goals than doing so directly through budget expenditure.

For example, this proposal would inappropriately skew debates on health care policy and the uninsured. The 75-year costs of legislation to expand Medicaid to cover more of the uninsured would have to be offset (once Medicaid was added to the list of programs subject to the new rule, as the Administration has said it would do). But legislation to provide new tax deductions or other tax breaks related to health insurance, other than refundable tax credits,[14] would *not* have to be offset even though such proposals would necessarily be less well targeted on the uninsured population and likely be less effective at reducing the ranks of the uninsured.

A number of health insurance tax breaks that have been proposed in the past few years would most heavily subsidize individuals in the top tax brackets, the vast bulk of whom already have health insurance. Such proposals would be less effective at reducing the ranks of the uninsured than an expansion of SCHIP or Medicaid.

The rule changes that the Administration is proposing thus would force policymakers to debate competing proposals on a tilted playing field and would confer a large advantage to tax-cut approaches to health insurance over program-based approaches, regardless of their relative merits as health policy.

Moreover, "tax entitlements" generally provide more benefit to people in higher tax brackets than to those with more modest incomes. The middle class and people with low incomes receive most of their government benefits through programs — whether entitlement or discretionary — such as Medicare, unemployment compensation, housing, and the like, while people at higher income levels tend to receive a much larger share of their government subsidies through tax expenditures. As a result, the rules the Administration is proposing that favor tax entitlements over program expenditures and shield the tax entitlements from fiscal discipline would have the effect of favoring well-off Americans over citizens of more ordinary means.

Do the proposed rules reflect a concern about deficits?

The proposed rules would do little or nothing to decrease the structural deficit that re-emerged in 2002. The limits that the Administration proposes on the cost of programs will not by themselves reduce deficits if there are no limits on the size of tax cuts, especially if Congress enacts annual tax cuts as some congressional leaders have pledged to do. Moreover, under the Administration's proposed budget rules, entitlement increases or appropriations in excess of the proposed caps that are *fully paid for* by revenue increases would be disallowed. It seems evident that the proposed rules are not grounded in concern about the deficit.

---

[14] Refundable tax credits count as tax expenditures to the extent that they reduce a taxpayer's income tax liability, but count as entitlement expenditures to the extent that they bring a taxpayer's income tax liability below zero and the taxpayer receives a refund for the difference.

Enforcing these Rules

We have discussed the Administration's proposed rules as though they would erect absolute bars on legislation that would cost more than allowed. In reality, the proposed rules, like all congressional budget rules, could be formally waived or otherwise set aside if agreement were obtained from the House Majority Leadership (acting through the Rules Committee), a majority of the House itself, and 60 of the 100 Senators.

Congress enforces its rules by "points of order." In both the House and Senate, if legislation violates a congressional rule — for example, by costing more than the most recent congressional budget plan allows — any member may raise a point of order against the legislation. If the parliamentarian agrees that the point of order applies, the legislation is effectively killed.

The Administration's proposed 75-year limit on entitlement legislation would use this arrangement. The Administration proposes a new congressional "point of order" against House or Senate consideration of any entitlement legislation that would breach the requirement that selected entitlement increases be paid for over the next 75 years.

By contrast, the Administration proposals regarding the Medicare 45-percent rule, the proposed requirement that legislation not raise entitlement costs over the next five years, and the proposed discretionary caps would be enforced *not* by Congressional points of order, but by automatic cuts instituted by the Office of Management and Budget.

- *Discretionary Caps:* If OMB determines that the cost of all appropriations bills for a given fiscal year exceeded either the discretionary *funding* cap or the discretionary *spending* cap for that year, it would order funding for discretionary programs to be cut across the board by a percentage sufficient to remove the overage. (In 2007 and 2008, the defense and non-defense categories would be evaluated separately, with any across-the-board cuts occurring only in the category that had breached its cap. After 2008, any required across-the-board cuts would apply to *all* discretionary programs, defense and non-defense alike.)

- *Five-year entitlement rule:* If OMB determines that Congress has enacted legislation that has the net effect of increasing entitlement spending in the year of its enactment or any of the next five years, OMB would — during the early part of any such year — order automatic entitlement cuts sufficient to remove the increase for that year.

- *Medicare 45-percent rule:* There would be an automatic, permanent cut of 0.4 percent in Medicare payments made to health care providers in each year that the 45 percent limit would otherwise be breached.

Congress could try to get around these automatic-cut rules by enacting a provision that directed OMB to ignore the cost of a specific piece of legislation. This occurred in 2001, for instance, after enactment of the first Bush tax cut, which breached the two-sided Pay-As-You-Go rule then in effect; Congress passed legislation exempting the tax cut from the pay-as-you-go regimen.

But legislation to get around these strictures would itself constitute a violation of House and Senate rules. And those rules are enforced by points of order of their own that can be set aside only when three conditions are met: the House Rules Committee reports a "special order" (or "rule") setting aside the point of order that otherwise would halt consideration of the legislation; the House approves the special order by majority vote; and 60 Senators vote to waive the point of order that otherwise would halt consideration of the legislation in the Senate.[a] In other words, a budget process rule can be waived or ignored, but only if the House Rules Committee (which is an arm of the majority leadership), a majority of the House, and 60 Senators vote to do so.

---

[a] It would take a majority of the Senate (rather than 60 Senators) to direct OMB to set aside enforcement of the statutory rules the Administration has proposed *if* the Senate Budget Committee reported the legislation containing the directive to OMB, or if the provision were an amendment to a bill that the Budget Committee had approved and sent to the Senate floor. The Senate Budget Committee, however, has never reported such a piece of legislation.

As noted earlier, the proposed five-year entitlement limitation would prohibit Congress from raising taxes — and even from closing abusive tax shelters — to offset or "pay for" a new entitlement or an expansion of an existing entitlement.[15] In contrast, the old "Pay-As-You-Go" rule, which was enacted in 1990 and finally expired in the spring of 2003, explicitly allowed entitlement increases to be enacted if paid for by either offsetting entitlement cuts or tax increases. The old PAYGO rule was a rule of deficit neutrality; Congress was not allowed to enact tax or entitlement legislation that made projected deficits worse. The new five-year entitlement limit would be nothing of the sort. Under this new rule, Congress would be prohibited from enacting entitlement increases *even if* it had enacted tax increases to pay for them (see the box on asbestos legislation on page 4). And Congress would be permitted to enact tax cuts without any offsets at all; the tax cuts could be entirely deficit financed.

The new rule clearly is not a rule of deficit neutrality. Congress would be able to continue increasing deficits to its hearts' content through tax cuts. Rather, the new rule simply would cap entitlement costs.

Over the past three years, many budget watchdog organizations have called for the reinstatement of the old "Pay-As-You-Go" rule of deficit neutrality, sometimes called "two-sided PAYGO" because it would apply to both tax cuts and entitlement increases. Last June, for example, the Concord Coalition, the Committee for Economic Development, the Center on Budget and Policy Priorities, the Committee for a Responsible Federal Budget, and Centrists.Org issued a joint statement calling for re-instatement of two-sided PAYGO.[16] (Some may assume that the entitlement-limit rule the Administration is proposing at least is a step in the right direction since entitlement increases would have to be paid for. A closer look suggests otherwise, however; see the box above.)

Part II. Proposals that Would Enhance the White House's Power and Diminish That of Congress

Expedited Rescission, also Known as a Line-Item Veto

The Administration proposes that the President be allowed to sign appropriations acts and then strike specific provisions from them. Under such proposals, the President would be allowed to strike much more than "earmarks." For example, the President could, if he chose, leave all earmarks in place while eliminating all the funding for the 91 programs he has proposed to eliminate in his February budget.[17]

---

[15] The long-term entitlement cap would allow entitlement expansions, but only if financed by increased dedicated revenues, almost all of which currently are regressive (e.g., the payroll tax).

[16] "Joint Statement on the Need for Pay-As-You-Go Discipline," June 23, 2005, at http://www.cbpp.org/6-23-05bud.pdf.

[17] Under this procedure, the President could not simply reduce a funding level of a program to a lower funding level; he would have to keep all the funding or eliminate it all. However, he could continue to use the existing "rescission" provisions of the Impoundment Control Act if he wanted to reduce but not eliminate a program or an item.

The President's funding reductions and terminations would remain in effect for up to 180 days. During that time, Congress would have the opportunity to enact a statute that eliminated funding as the President had requested. (This is what cures the constitutional problem that the Supreme Court had identified with the old Line Item Veto Act.)

The new proposal, as we have described it so far, would be an expansion of the President's authority under the Impoundment Control Act of 1974. Under that Act, the President can request that Congress rescind enacted appropriations and can temporarily withhold the money in question while Congress considers the rescission request. There are four main differences between the existing rescission procedure and the proposed new procedure.

- The new procedure would give the President a "fast track" to force an up-or-down congressional vote on his package of terminations in its entirety, without amendment. The existing rescission procedure, in contrast, allows Congress to amend the President's proposals or to ignore them and decline to vote on them.

- The new procedures would allow the President to withhold funding for 180 days after he proposes his package of terminations, whether or not Congress has approved them. If he submits his proposals in the spring of the year, he could effectively kill the funding simply by withholding it until the end of the fiscal year on September 30, even if Congress rejects the package. This lengthy period of withholding is not necessary given the fast-track mechanism that would ensure a prompt vote in Congress. The existing rescission procedure, in contrast, allows the president to withhold funds requested for rescission for only 45 days.[18]

- The new procedure only allows the President to propose eliminations, not reductions.

- The new procedure could be applied not only to appropriations for discretionary programs *but also to new entitlement legislation and to new "targeted tax benefits"* contained in recently enacted tax bills. (The President could propose to cancel *or scale back* an increase in benefits or eligibility in a provision of an entitlement bill if he submits his request after enactment of the bill but before his next annual budget is issued. By contrast, the Line Item Veto Act of 1996 only allowed the president to cancel entitlement increases, not to scale them back, and gave the President five days from the enactment of the entitlement bill to decide whether to cancel one of its provisions. The story is different with regard to "targeted tax benefits." Under the Administration's proposal, the term "targeted tax benefit" would be defined so narrowly that it appears Congress could design special-interest tax breaks so they would *not* be subject to a presidential "rescission." The definition is the same as used in the Line Item Veto Act of 1996, and at that time, the Joint Committee on Taxation suggested that tax benefits generally could be drafted in ways that would not make them subject to presidential cancellation.)

The Administration proposes that the new "expedited rescission" procedure exists alongside the existing rescission procedures, rather than replacing those procedures. If the President wished Congress to rescind some amounts of funding, he could submit his proposed rescissions to Congress under either set of procedures. Or he could choose which rescissions to submit under the existing procedure and which to submit under the new, fast-track, up-or-down vote procedure. It also appears that if the President proposes the rescission of funds under one of the procedures but

[18] The existing 45-day period does not count congressional recesses of more than three days.

Congress does not acceded to his request, he could then re-propose it under the other procedure, withholding the funds for an additional period of time.

The current division of powers gives the President the power to veto legislation but balances this presidential power by giving Congress the power to package legislation. The new proposal would further weaken Congress in relation to the President by enabling the President to package recession proposals in a way that could divide the congressional coalition that had negotiated the legislation in the first place.

CBO suggests that the consequences of this proposal might be to increase total spending rather than to decrease it, because "Congress might accommodate some of the President's priorities in exchange for a pledge not to propose rescission of certain provisions." CBO says that studies of states with line-item vetoes have "documented similar devices employed by state legislatures."

Suppose the President's authority to create a package of cancellations that Congress must vote on proves effective in determining whether a program or line-item survives, at least in some instances. He may then be able to use the threat to veto an item, or the promise not to so, to secure support from members of Congress or from outside interests, either for overall budgetary goals or for policies not related to the budget, such as support for presidential nominees, for regulatory legislation, or for foreign treaties.[19]

Joint Budget Resolution. Congress currently passes a budget plan each spring to guide its committees in preparing budget legislation during the year. That plan is called a "congressional budget resolution." The Administration proposes to allow the President to sign or veto the congressional plan. This proposal would give the President more control over the contents of congressional budget plans.

In addition, the proposal could lead to major delays in the appropriations process because consideration of appropriations legislation generally cannot commence until after a congressional budget is adopted. Currently, House rules provide an exception to that prohibition; appropriations bills are allowed to be considered in the House after May 15 even if a budget plan has not been agreed to by Congress. But the administration's proposal would eliminate that exception. Both because of that elimination and because more time will generally be needed to arrange a budget agreement between the House, the Senate, and the President than to arrange an agreement between the House and the Senate, consideration of appropriations bills stands a greater chance of being substantially delayed.

Finally, because this joint budget resolution would be a statute, the President and the congressional leadership may succumb to the temptation to insert changes in tax, entitlement, appropriations, or budget-process law into the budget plan, as a way of getting all budgetary matters enacted by a single up-or-down vote.[20]

---

[19] For a more thorough Center analysis of this proposal, see Kogan, "Proposed Line-Item Veto Legislation Would Invite Abuse By Executive Branch: President Could Continue Withholding Funds After Congress Voted to Release Them," March 23, 2006, at http://www.cbpp.org/3-23-06bud.pdf.

[20] For previous Center analysis of this concept, see Kogan, "Joint Budget Resolution Could Lead to Gridlock on Appropriations and Shift Power to the Executive Branch," June 24, 2004, at http://www.cbpp.org/6-21-04bud.pdf.

Biennial Budgeting and Appropriations. The Administration proposes that Congress enact budgetary legislation only in odd-numbered years (i.e., not in election years). Advocates of biennial budgeting often maintain that it would free up time in the congressional schedule for better oversight of the executive branch. But Congress currently uses the annual appropriations process as the most direct form of oversight and control over officials of the executive branch; biennial budgeting could reduce rather than increase such congressional control.

In any case, budget estimates grow less reliable as one looks further in the future, so requests for supplemental funding, or requests to rescind enacted funding, would likely become more frequent. Thus, instead of dealing with budgetary matters annually, Congress would likely have to deal with budgetary matters on an overall basis every other year, and then deal with budgetary matters that arise in the interim on an ad hoc basis. The likely result would be a substantial increase in ad hoc budgetary legislation. The recent proliferation of supplemental funding bills for the wars in Iraq and Afghanistan and for hurricane relief already runs counter to the Budget Act's goals of trying to use a congressional budget resolution as a way of coordinating many disparate congressional budget actions. If budget resolutions and appropriations bills are enacted only every other year, budgetary coordination will likely be diminished rather than increased.

Finally, it is ironic that the President has requested biennial appropriations in the same budget from which all information on the funding levels that the President envisions for discretionary programs in the second year — fiscal year 2008 — has been removed.[21]

Automatic Appropriations. The Administration proposes that if an appropriations bill is not enacted by the start of the fiscal year, each program normally covered by that bill would continue automatically at the lower of the funding level that the President had requested or the level provided for the prior fiscal year. This proposal would strengthen the President's hand by making it easier for him to veto some appropriations bills and refuse to negotiate with Congress on their contents; the agencies funded by the bill would not have to shut down, and the President thus would be likely to get his way on more of the funding levels in the bill.

For a similar reason, the proposal would strengthen a Senate minority that threatened to filibuster an appropriations bill, since the minority would know its filibuster could not be thwarted by the specter of an agency shutdown. Currently, filibusters are frowned upon in such circumstances because they risk agency shutdowns.[22]

For these reasons, this proposal would likely make it more difficult to pass annual appropriations bills.

---

[21] For a previous Center analysis of this concept, see Greenstein, "Biennial Budgeting: Do the Drawbacks Outweigh the Advantages?", May 5, 2000, at http://www.cbpp.org/3-1-99bud.pdf.

[22] For a Center analysis of a similar proposal, see Kogan, "Proposal for Automatic Continuing Resolutions Would Likely Make It Harder To Pass Regular Appropriations Bills," June 24, 2004, at http://www.cbpp.org/6-22-04bud3.pdf.

Part III: Can the Budget Rules Be Improved?

Our discussion of the Administration's proposed budget rules has been quite negative; only a few of OMB's most technical proposals seem beneficial. Does this mean we see the existing budget rules as largely being well designed?

The answer is yes in part — but only in part. To a large extent, the existing congressional budget process allows a majority of the members of the House and Senate to agree to a budget plan (if agreement is possible) and then adhere to and implement that plan. Moreover, the existing rules make it harder for Congress to enact budget increases or tax cuts that violate its annual budget plan. The essential rules for congressional budgeting appear reasonable even if the particular budgets that Congress chooses to design may represent ill-advised policy.

But clear improvements to the existing rules can, and should, be made.

1) As we and other budget watchdog groups have long urged, Congress should reinstate the two-sided pay-as-you-go rule and make it a permanent rule. Given the current high level of deficits and the predicted even larger long-term mismatch between revenues and existing programs, it seems clear that entitlement increases and tax cuts should not occur unless they can be paid for.

2) Budget rules should require that any "reconciliation" bill *reduce* projected deficits in each year. Recently, the "reconciliation" process — a special process that bundles together legislation from various committees, places the legislation on a fast track, and bars filibusters of the legislation — has been used to *increase* projected deficits.

3) Congress should require CBO cost estimates on budget legislation when it is reported from conference, not just when it is initially reported by a committee. When Members of Congress are asked to vote on a conference report, they should be informed of the legislation's effect on the deficit.

4) For any budget legislation with more than a minimal budget effect, the CBO cost estimates should show both the direct budgetary cost or savings from the legislation and the degree to which the legislation would increase or decrease interest payments on the national debt.

5) Any tax, entitlement, or appropriations legislation should be publicly available in the form in which it will be voted on for at least 24 hours before debate begins on the legislation. The same requirement should apply to substitute amendments (i.e., proposals to replace the entire piece of legislation with an alternative substantive measure).

Common-sense proposals such as the five above would, if adhered to, do far more to produce fiscal discipline than the administration's proposals because they would subject tax cuts to the same discipline as budget increases. Moreover, this even-handed approach would not interfere with the prospects of a major, bipartisan negotiation to reduce projected deficits. And the final three proposals would allow Members to be better informed about the substance and cost of legislation they considered, which could improve the quality of legislation.