



CENTER ON BUDGET AND POLICY PRIORITIES

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April 27, 2004

FISCAL DISCIPLINE LIKELY TO BE GREATER THIS YEAR WITHOUT A NEW CONGRESSIONAL BUDGET RESOLUTION THAN WITH ONE

by Richard Kogan

Would the lack of a congressional budget resolution for fiscal year 2005 really mean the collapse of fiscal discipline, as some may think? This analysis suggests otherwise, for two basic reasons. If Congress does not agree to a new budget plan —

- **Appropriations will still be capped.** With regard to discretionary (or non-entitlement) programs, the Senate will remain bound by the cap on funding and expenditures established for fiscal year 2005 in *last year's* budget plan. That plan includes a provision capping discretionary funding for 2005 at \$814 billion, a level \$5 billion to \$7 billion below the level that is likely to emerge from the conference on the House-passed and Senate-passed budgets if there is agreement on a Congressional budget resolution this year.
- **More constraints will apply to tax cuts, not less.** Additional tax cuts are more likely to be enacted with a new budget plan than without one. Recent debate demonstrates that the Senate has great difficulty approving *any* entitlement or tax legislation without overcoming a filibuster, which takes 60 votes. The only sure way to enact legislation while avoiding a filibuster is to use the “reconciliation” process established by the Congressional Budget Act, because a reconciliation bill is the only legislation that the Senate cannot filibuster. Without a new budget plan, there can be no reconciliation bill this year. With a new budget plan, in contrast, the Senate can use the reconciliation process to approve additional tax cuts; the costs over the next five years might range from \$81 billion, the Senate amount, to \$138 billion, the House amount.

Finally, it is debatable how much fiscal discipline the congressional budget process imposes in any case. While the congressional budget process can strengthen fiscal discipline, it also can weaken discipline and bust the budget wide open. For example, it was because of the budget process — and the reconciliation process it set up — that the huge 2001 and 2003 tax cuts needed only 51 votes to pass on the Senate floor rather than 60 votes. Moreover, congressional budget plans may be adhered to in name only, with their limits routinely evaded. This has been the pattern in a number of recent years.

Last Year's Budget Plan Continues to Restrict Congressional Action

This analysis focuses on the Senate rather than the House of Representatives. The way that the House is governed makes the rules set under the Congressional Budget Act, and the limits set in Congressional budget plans, relatively unimportant. The House Leadership can —

and routinely has — used its control of the House Rules Committee, which sets procedures governing the consideration of legislation, to override limits set in the budget plans (see box). Likewise, even in the absence of a congressional budget plan, the House Leadership can choose to enforce the figures in the plan the House has approved for 2005.

In the Senate, the budget plan adopted a year ago continues, in the absence of a new congressional budget plan, to govern the consideration of tax and entitlement legislation.¹ In addition, while the Congressional Budget Act does not govern appropriations levels for 2005 in the absence of a new congressional budget plan, this turns out to be unimportant because appropriations levels for 2005 are limited instead by a one-time Senate rule, the discretionary funding cap of \$814 billion for 2005 established last year.

Senate Consideration of Tax Legislation

Under the congressional budget plan adopted last year, there is no room left for any more tax cuts using the “reconciliation process.” (The reconciliation process is an option that may, but need not, be included in congressional budget

plans; it allows Congress to use a special fast-track procedure that protects a specified amount of tax or entitlement legislation from filibusters and from non-germane amendments.) Consequently, although almost \$200 billion in additional tax cuts through 2008 are allowed under the budget targets set in last year’s budget plan, all of those tax cuts would have to be considered outside reconciliation, i.e., under regular legislative procedures. Significantly, this

The Leadership, not the Budget Act, Governs in the House

In the House, the Leadership is in control of legislation through its control of the Rules Committee. If the Leadership opposes legislation, the Rules Committee does not allow it to come to the floor. In addition, the Rules Committee frequently uses the power it has to bar amendments on the House floor to prevent proposals the Leadership opposes from being offered on the floor as amendments.

In contrast, if the Leadership supports legislation, the Rules Committee not only schedules it but generally waives all points of order against its consideration, including points of order that apply because the legislation violates the Congressional budget plan. Such waivers can be approved by majority vote and virtually always are adopted. Over the last four years, the Rules Committee has waived points of order almost every time an appropriations bill has been considered.

The Leadership can thus effectively override a budget plan that Congress has adopted whenever it proves convenient for the Leadership to do so. Because the House Leadership can effectively control budgeting with little or no reference to congressional budget plans, approval of a congressional budget plan has less significance in the House than in the Senate.

¹ Under the Congressional Budget Act of 1974, a congressional budget plan is a “concurrent resolution.” This type of measure is adopted only when it has been agreed to by the House and Senate in identical form. Customarily, the House and Senate each adopt budget plans, differences between them are then resolved in a conference of the House and Senate Budget Committees, and the compromise plan is then ratified by the House and Senate. Only after that happens does the new congressional budget plan go into effect. Because the congressional budget plan does not go to the president for his signature or veto, it cannot directly enact tax, entitlement, or appropriations legislation; instead, the congressional budget plan sets dollar targets for the House and Senate to follow when they consider subsequent tax, entitlement, and appropriations legislation. Since no “concurrent budget resolution” for fiscal 2005 has yet been agreed to by the House and Senate, the Senate’s actions are currently governed by last year’s budget plan. The Congressional Budget Act automatically keeps the prior budget plan in place until a new one is approved.

means they all could be filibustered, and therefore their enactment could require the votes of 60 Senators.

The new budget plan that the Senate approved in March 2004 calls for \$139 billion in additional tax cuts over the five-year period 2005-2009, *and would use the reconciliation process to enact \$81 billion of that amount*. The new budget plan that the House approved in March calls for \$146 billion in additional tax cuts over the five-year period, *of which \$138 billion would be considered under the reconciliation process*. While the House and Senate tax-cut targets are smaller under these new budget plans than the \$200 billion for tax cuts that remains under last year's budget plan, the more important fact is that the amount of tax cuts that could be considered *under the reconciliation process* is likely to be between \$81 billion (the Senate figure) and \$138 billion (the House figure) under this year's plan but is zero as long as last year's plan remains in effect.

In other words, the lack of a new congressional budget plan means that 60 Senate votes are needed to extend existing tax cuts, make them permanent, or enact new ones. A compromise on a congressional budget plan could well mean that the extension of existing tax cuts and the enactment of some additional tax cuts could be accomplished with 51 Senate votes.

For this reason alone, gridlock may be the single best way to ensure fiscal discipline (but see the box on a possible Pay-As-You-Go rule).

Senate Consideration of Entitlement Legislation

The situation with respect to entitlements is more complex than that for tax cuts. Briefly, the existing budget resolution permits enactment of some entitlement increases, but all would require 60 votes to avoid a filibuster. In contrast, it is not clear whether a new budget plan would call for net entitlement increases or reductions. (The House plan assumes net entitlement increases of \$6 billion over five years; the Senate plan assumes net entitlement reductions of \$24 billion over the same period.) A new budget plan would almost surely include some reductions and some increases, and some of the reductions may be subject to reconciliation, which means they could be enacted with 51 votes. But even the maximum possible amount of reconciled entitlement savings under a new plan — at most \$24 billion over five years — is far

A New Senate Pay-As-You-Go Rule?

The Senate-passed budget plan also includes a provision requiring that all entitlement increases or tax cuts over the next five years (including extension of existing tax cuts) be fully offset, or "paid for." (This provision is inconsistent with the dollar figures in the Senate budget plan, which assume that tax cuts will be enacted without being paid for.) For the next five years, a point of order would lie against any entitlement increases or tax cuts that are not paid for, and the point of order could not be waived unless 60 Senators voted to do so.

If the final budget plan includes such a Pay-As-You-Go rule, without exemptions or loopholes, such a plan would likely impose more fiscal restraint than inaction on this year's budget. But a plan that includes reconciled tax cuts and contains a Pay-As-You-Go provision weakened by exemptions, loopholes, or other deficiencies, would likely be worse than inaction. As we explain in this analysis, inaction is synonymous with enforcement of the existing relatively constrained budget, rather than with abandonment of budget constraint.

smaller than the revenue losses from reconciled tax cuts, as discussed above. Thus, a new budget plan would mean net increases in projected deficits because the tax cuts would exceed the entitlement reductions.²

Under the congressional budget plan approved last year, which currently governs Senate consideration of entitlement legislation, some \$6 billion through 2008 remains allocated to committees for entitlement expansions and an additional \$36 billion through 2008 remains available “in reserve” for certain specified entitlement expansions.³ But if no new budget plan is agreed to and these allowances for entitlement increases consequently remain in effect, there are four strong reasons why the entitlement expansions allowed under the existing budget plan are unlikely to occur.

- These entitlement expansions do *not* have reconciliation protection, so their enactment would likely require the vote of 60 Senators.
- The Senate has approved a Pay-As-You-Go Rule saying that all entitlement expansions and tax cuts must be paid for (see box on page 3). While that rule will not be in effect unless a new budget plan is agreed to, many Senators who have advocated it may feel bound to oppose entitlement expansions (and tax cuts) that are not paid for. This suggests it may be quite difficult to obtain 60 votes for entitlement expansions that are not paid for.
- The entitlement expansions are largely opposed by House Leadership, which can simply choose not to schedule such expansions for House consideration even if the Senate were to approve some expansions.
- Some \$28 billion of the \$36 billion in funds for entitlement expansions that are being held in reserve under last year’s budget resolution are available only to expand access to health insurance, through either entitlement expansions or tax incentives. Due to deep disagreements in Congress on what measures to adopt in the health insurance area, there is consensus that little is likely to happen on that front this year. Indeed, nothing has happened on this matter in the 12 months since last year’s budget resolution was approved.

² For a further discussion of the deficit-increasing actions contemplated under the pending House and Senate budget plans, see Kogan and Greenstein, *House Budget Plan Would Swell Deficits By Extending The 2001 And 2003 Tax Cuts And Making Them Permanent: Plan Would Make Deficits \$240 Billion Higher Over Five Years — and \$1.5 Trillion Higher Over 10 Years — Than They Otherwise Would Be*, Center on Budget and Policy Priorities, April 2, 2004, <http://www.cbpp.org/3-12-04bud.pdf>, and Kogan, Freidman, and Kamin, *Digging the Hole Deeper: The Senate Plan Substantially Increases Deficits*, Center on Budget and Policy Priorities, March 26, 2004, <http://www.cbpp.org/3-11-04bud.pdf>.

³ When a congressional budget holds funds “in reserve,” those amounts can be used only for the purpose specified in the budget resolution’s provision that created the “reserve.” More normally, congressional budget plans allocate amounts to congressional committees for those committees to use as they see fit (although the framers of the congressional budget plan are usually clear about which uses they *assume* the committees will choose). Some \$28 billion of the \$36 billion in funds held in reserve through 2008 can be used to expand access to health insurance either through entitlement expansions or tax incentives, as the Finance Committee chooses.

Is Adoption of a Congressional Budget Plan Synonymous with Fiscal Discipline?

Moving beyond the immediate issues regarding the 2005 budget, two considerations suggest that, in general, adoption of a congressional budget plan may not be synonymous with fiscal discipline. First, such a plan may itself facilitate larger tax cuts or spending increases than would otherwise occur. Second, such a plan may exist more for the sake of scoring political points than for the purpose of guiding and limiting the cost of subsequent legislation.

Prior to enactment of the Congressional Budget Act of 1974, Congress did not write annual congressional budget plans. Rather, its committees, acting without formal congressional guidance, designed budgetary legislation on their own. This did not mean that the committees were legislating in the dark; they could and did measure their appropriations, tax, or entitlement proposals against existing law or against the prior level of appropriations. They also measured their legislation against the President's budget. Before the Congressional Budget Act, being "over budget" meant breaching the President's budget, and Congress usually tried to avoid that.

From the perspective of fiscal discipline, these two benchmarks — current law and the president's budget — worked well. From the end of World War II to approval of the first congressional budget under the Congressional Budget Act in fiscal year 1976, the publicly held debt shrank from 109 percent of the Gross Domestic Product (or GDP) to 27 percent of GDP. In contrast to this positive record, Congress used the new Congressional Budget Act to adopt and enforce the first Reagan budget plan (for fiscal 1982); the massive tax cuts and large defense increases in that plan led to large increases in debt. Between 1981 and 1993, the debt grew from 25.8 percent to 49.4 percent of GDP.

History repeated itself in 2001, when President Bush called for another very large tax cut (as well as substantial increases in defense spending). In this case, the congressional budget process not only countenanced this episode of fiscal imprudence but facilitated it. Because of the Congressional Budget Act, the Senate's debate on its congressional budget plan — a plan that encompassed the Bush tax cut — was conducted under a special procedure that prohibited filibusters. Moreover, the Congressional budget plan that then was adopted enabled the Senate to consider the tax-cut legislation itself under the reconciliation process, a special procedure that limits Senate amendments and, once again, prevents filibusters, thereby effectively reducing the number of votes needed for the legislation from 60 to 51.

The Senate might have agreed to the very large Bush tax cut without these special procedural protections. But it is certainly the case that the unique ability to avoid filibusters afforded by the Congressional Budget Act facilitated enactment of the 2001 and 2003 tax cuts.

Furthermore, the old saw that "records are made to be broken" seems, in recent years, to have been transmuted by Congress into budget "rules are made to be broken." A congressional budget plan is a device for bringing to bear the rules of the House and Senate on budgetary legislation. After a congressional budget goes into effect, it is against the rules for either chamber to consider tax cuts that exceed the amount called for in the congressional budget plan. It is likewise against the rules for either chamber to consider program funding legislation that exceeds the amount Congress "allocates" to each of its committees pursuant to the congressional budget plan. Especially in the House of Representatives, however, these rules have been repeatedly waived by majority vote during the period from fiscal 1999 through 2002. Tax cuts in excess of those allowed by congressional budget plans have been routinely approved by the House, as have appropriations bills and, less frequently, entitlement legislation increasing payments (or delaying reductions in payments) to Medicare providers.

Congress showed greater ability to live within agreed-upon budget levels in 2003 and 2004 than it did in the prior four years. But last year's budget plan encompassed an expensive new tax cut; living within that "constraint" does not demonstrate fiscal prudence. And two years of living within (or close to) spending targets should not be enough to make people overlook four years of ignoring them.

As a result, there are likely to be few or no net entitlement expansions enacted under the existing budget plan, while some (but not a large dollar amount) of entitlement reductions may be enacted under a new plan. With respect to expenditures for entitlement programs, the actual dollar difference between the existing and a new budget plan is likely to be slight.

Senate Consideration of Appropriated Programs

About 39 percent of all federal spending occurs under programs whose funding levels are set annually in the appropriations bills that Congress passes. These are known as “discretionary” programs and include the Defense Department, most education programs, highways and other transportation programs, biomedical and other scientific research, law enforcement, veterans hospitals and some public health programs, NASA, low-income housing assistance, environmental protection, national parks and other natural resources, job training, general government costs, and some programs providing social services or nutrition assistance.

What does it mean for these programs if there is no plan for fiscal year 2005? The answer to this question is not entirely clear. On its face, it appears that agreement on a new congressional budget plan would modestly relax fiscal constraint on appropriated programs because a new plan would likely limit the total level of 2005 funding for these programs to between \$819 billion and \$821 billion while the existing Senate cap sets the level at \$814 billion. (The notion that, in the absence of a new budget plan, there are no procedural restraints on the level of appropriations for fiscal year 2005 is simply incorrect.)

On the other hand, the amount of funding sought by the President is \$823 billion, and the Appropriations Committees have publicly argued that the \$821 billion that appears likely to emerge from any conference agreement on a new budget plan should itself be viewed as considerably restrained. It is therefore arguable that the \$814 billion figure that continues to apply in the absence of a new budget plan might be too constrained for the current circumstances. If that ultimately proves the case — if Congress feels that it needs to breach the \$814 billion figure — but there is no higher, binding figure in place, it is possible that appropriations will be enacted at an level higher than the \$821 billion that would probably be the target under a new budget plan. While this may seem paradoxical, history has shown that unrealistically low caps sometimes provide less fiscal restraint than higher, realistic caps.

But there are two reasons to suspect that, even if the \$814 billion under the existing budget plan is unrealistically low and therefore unenforceable, the sky will not be the limit in the absence of a new budget plan.

- In the absence of a new budget plan, the House and the Senate could each, acting individually, approve “deeming resolutions” that set the target for discretionary appropriations at a modestly higher level than \$815 billion — perhaps at the \$821 billion the House has approved in its budget plan.⁴

⁴ A “deeming resolution” is a simple resolution that deems a new congressional budget plan to have been agreed to for some specified purpose, such as setting a limit on appropriations. After agreeing to such a resolution, the enforcement rules of the Congressional Budget Act become effective in the House or the Senate *as though* Congress had agreed to a new budget plan.

- The President can veto appropriation bills, and it requires the vote of two-thirds of the House and two-thirds of the Senate to override a veto. If the President uses his veto against appropriations that he considered excessive, this would restrain their cost even in the absence of a new congressional budget plan and the absence of “deeming resolutions.” Ultimately, Congress and the President would have to negotiate their differences.

Conclusion

Failure to produce a new budget resolution this year would not result in a collapse of fiscal discipline. To the contrary, last year’s budget resolution would remain in effect, and fiscal discipline would likely be stronger — and deficits lower — without a new budget resolution than with one.