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WHAT IF CONGRESS CANNOT AGREE ON A CONGRESSIONAL BUDGET PLAN?

by Richard Kogan

Some have asserted or assumed that the lack of a congressional budget plan for the coming fiscal year will result in a breakdown of fiscal discipline. For example, Senate Minority Leader Trent Lott recently charged that the lack of a budget plan would lead to a "Wild, Wild West" appropriations process with no spending limits.[1]

Would the lack of a congressional budget plan (or "congressional budget resolution") for fiscal year 2003 really mean the collapse of fiscal discipline? This analysis suggests otherwise, for two basic reasons. First, the rules of the House and Senate may impose more fiscal discipline *without* a new budget plan than with one. Without a new budget plan, the dollar levels in the last year's Congressional budget plan continue to apply to tax and entitlement legislation. These limits are *more restrictive* than the limits likely to be included in any new budget plan. With regard to taxes and entitlements, adoption of a new budget plan almost surely would weaken fiscal discipline rather than strengthen it. Second, with regard to appropriations for discretionary (or non-entitlement) programs, the Senate and House, acting either separately or together, are likely to agree to a "deeming resolution" that sets enforceable limits on the total levels of funding that could be appropriated for the coming fiscal year. The House passed such a "deeming resolution" just before the Memorial Day recess, so its appropriations bills are now limited to a fixed dollar total. Senate Majority Leader Tom Daschle has expressed interest in passing a "deeming resolution" in that body as well.

Gridlock on tax issues — and especially, the avoidance of a new congressional budget plan like the one agreed to by the House — is the single, best way to ensure fiscal discipline.

Furthermore, it is debatable how much fiscal discipline the congressional budget process imposes. While the budget process can be used to strengthen fiscal discipline, it also can be used to weaken discipline and bust the budget wide open. For example, it was as a result of last year's Congressional budget resolution that the large tax cut enacted last June effectively needed 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 the past few years. There are serious questions about how important it is to adopt budget plans if, as has been the case in recent years, the budget plans set targets that are unrealistic and are not really intended to be complied with.

These issues are discussed in the remainder of this analysis.

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1 *The New Republic*, May 6, 2002.

What Rules Apply in the Absence of a Congressional Budget?

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 on page 3.)

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.[2] Appropriations levels are *not* governed by the existing plan, but a special "deeming resolution" can be passed to set enforceable Senate targets for this year's appropriations bills.

Senate Consideration of Tax Legislation

Under the congressional budget plan adopted last year, there is no room left for any more tax cuts. Any new legislation that loses revenues in the period from 2002 through 2011 must be fully "paid for" by an offsetting tax increase or must secure the votes of 60 Senators, the number necessary to waive this requirement.

The new budget plan that the Senate Budget Committee approved in early April 2002 likewise would make no room for further tax cuts. The new budget plan the House has passed, however, would authorize further tax cuts. It calls for $28 billion in further tax cuts over the next five years and opens the door to unlimited tax cuts in years after the fifth year. Two observations follow.

- Any compromise between the House and the Senate — which would be necessary for a new congressional budget plan to be agreed to — would almost certainly increase the room for further tax cuts from zero to some higher figure.

- Last year's tax cuts expire at the end of 2010, and the Administration's top budget priority is to make these expiring tax cuts permanent. Such a proposal would cost $127 billion in 2011 (and $229 billion in 2012), according to the Congressional

[2] 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; the congressional budget plan merely 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 2003 has 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.

Budget Office (CBO). Because the existing Congressional budget plan adopted a year ago covers years through 2011, the costs in 2011 of making the tax cuts permanent would violate that plan. Such a tax proposal consequently requires the vote of 60 Senators to be approved.

But unlike the existing Congressional budget plan, the new House-passed congressional budget plan covers only five years — 2003 through 2007. Under this plan, unlimited tax cuts can be approved for years after 2007. If a compromise agreement on a new congressional budget plan covered only five years, that would enable the Senate to make the tax cut permanent by majority vote, despite its huge cost in 2011.

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

Previous analyses by the Center on Budget and Policy Priorities indicate that the cost of the tax cut enacted last year, if made permanent, could exceed $4 trillion in the 10-year period 2013-2022 and that its 75-year cost is almost 2½ times the 75-year shortfall in the Social Security trust fund.[3] The risk that these costs could be locked into law outweighs all other issues of fiscal discipline. For this reason alone, gridlock on tax issues — and especially,

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.

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[3] See "The Administration's Proposal to Make the Tax Cut Permanent," Freidman, Greenstein, and Kogan, Center on Budget and Policy Priorities, April 16, 2002, and "Social Security and the Tax Cut," Kogan, Greenstein, and Orszag, Center on Budget and Policy Priorities, April 9, 2002.

the avoidance of a new congressional budget plan like the one agreed to by the House — is the single best way to ensure fiscal discipline.

Senate Consideration of Entitlement Legislation

Under the congressional budget plan approved last year, which currently governs Senate consideration of entitlement legislation, some $300 billion over ten years remains available "in reserve" for a Medicare prescription drug benefit.[4] *No* room remains for any other entitlement increases. Any new legislation that increases entitlement costs in the period 2002 through 2011, other than a prescription drug benefit, must be fully "paid for" by an offsetting entitlement cut or must secure the votes of 60 Senators, the number necessary to waive this requirement.

In contrast, the new House-passed congressional plan makes room for $350 billion for Medicare increases over ten years, including a prescription drug benefit, and $24 billion over five years for legislation increasing other entitlement programs.[5] The new Senate-reported congressional plan makes room for $500 billion in health care costs, including a prescription drug benefit, and $96 billion for other entitlement increases over ten years, primarily intended for mandatory payments to school districts to assist in educating children with disabilities.

Table 1
How Much Room Would There Be For Entitlement Legislation Under Alternative Congressional Budget Plans?
Multi-year totals in billions

	Medicare/health, including prescriptions	All other entitlement programs*
Existing budget plan — room through 2011	$300	$0
New Senate budget plan — room through 2012	$500	$96
New House budget plan — Medicare room through 2012; room for other entitlements through 2007	$350	$24

* excludes amounts the House and Senate had set aside for the farm bill, which is now law.

[4] 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).

[5] In an unprecedented approach, this year's House-passed congressional budget plan covers only five years for tax cuts and all entitlement programs except Medicare, but covers ten years for Medicare. Under the House plan, there is no limit on the magnitude of tax cuts and increases in entitlements other than Medicare that can be approved for the sixth through the tenth years. Limits for these years apply only to increases in Medicare.

It is evident that a new congressional budget plan would allow more for Medicare than the existing budget plan. Stated more formally, without a new budget plan, the vote of 60 Senators would be required to increase Medicare costs by more than $300 billion over ten years. If a new congressional budget plan is agreed to, Medicare increases costing $350 to $500 billion could be enacted by majority vote (assuming the conferees on a new congressional budget plan would agree to a figure between the figures in the House-passed and Senate Budget Committee-approved plans). CBO and the Administration project that the cost of any Medicare prescription drug benefit would grow more rapidly than GDP (and therefore more rapidly than the revenue base) for the foreseeable future. This makes the design and cost of such a program a more important fiscal issue for the long term than the short term.

It is also likely that a new congressional budget plan would allow a majority of Senators to approve some increases for other entitlement programs, assuming that a compromise budget plan falls somewhere between the House and Senate figures. Under the existing budget plan, the votes of 60 Senators are required to increase the costs of any other entitlement program by any amount.

For entitlements, as for tax cuts, the *lack* of a new congressional budget plan is the more restrictive outcome.

Senate Consideration of Appropriated Programs

About 35 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 scientific research, law enforcement, veterans hospitals and some public health programs, NASA, low-income housing assistance, environmental protection, national parks and other natural resources, general government costs, and some programs providing job training, social services, and nutrition assistance.

In recent weeks, the debate about budget restraint has focused on what it means to these programs to have, or to fail to have, a congressional budget plan in place for fiscal 2003. As noted, the largest fiscal issues, and the issues most important for the long run, involve the continuation of last year’s tax cut and a Medicare prescription drug benefit. Issues with appropriated programs are less important over the long term, primarily because the funding levels for these programs are revisited every year. Still, it is valid to ask whether congressional agreement to a new budget plan would increase or decrease fiscal discipline with respect to appropriated programs.

The answer to this question is not entirely clear. On its face, it appears that agreement on a new congressional budget plan would increase fiscal constraints on appropriated programs (while loosening it for tax cuts and entitlement programs, as noted above), because the Congressional Budget Act does not automatically provide a fallback target for the Senate

Appropriations Committee to aim at. Furthermore, while the Congressional Budget Act prohibits the Senate from considering any appropriations bills for fiscal 2003 until Congress adopts a new budget plan, this restriction can be waived by majority vote. Some thus contend that without a new congressional budget plan, the Senate is likely to adopt appropriations bills at devil-may-care levels.

Yet such contentions do not appear to be warranted. There are a number of reasons why lack of a Congressional budget plan may not yield such a result.

- 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 any such veto. If the President used his veto against appropriations that he considered excessive, this could restrain their cost even in the absence of a congressional budget. Ultimately, the Senate and the President would have to negotiate their differences.

- The House of Representatives has agreed to a "deeming resolution," which establishes a limit on the level of appropriations for 2003 that the House can approve. (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 *as though* Congress had agreed to a new budget plan.) In this case, the ceiling on appropriations put into effect by the House "deeming resolution" is identical to the ceiling contained in the House-passed budget plan.[6]

  For appropriated programs, the 2003 funding limit set by the House is very tight. If the President's funding requests for defense, international affairs, and homeland security are approved, appropriations for the remaining, primarily domestic programs would have to be cut by $3 billion below the 2002 level and $15 billion below the CBO "baseline level" — which reflects the fiscal year 2002 appropriations levels adjusted for inflation — in order to comply with this limit. The House level is $9 billion below the level in the Senate Budget Committee-passed plan.[7]

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[6] H. Res. 428, agreed to by the House on May 22. This resolution deemed all aspects of the House-passed budget plan to be in effect.

[7] On its surface, the House level for appropriated programs appears to be below the President's level. However, Congress intends to account for agency payments to the federal retirement trust funds differently from the way the President proposes; when this accounting difference is set aside, it can be seen that the House figures equal the President's. (In addition, both the House and the Senate assume that Congress will restore about $5 billion of the $9 billion in funding cuts for transportation trust fund programs proposed by the President; for technical reasons, appropriations levels for these programs do not count as discretionary funding.)

- The Senate also could approve a deeming resolution, as the House has done. (Passing such a resolution in the Senate might prove difficult; there may be no single figure for an appropriations ceiling that can command majority support in that body. If so, a bipartisan, bicameral negotiation with the White House on a ceiling for 2003 appropriations could resolve the relatively modest differences among the actors.) If the Senate agrees to a deeming resolution that sets a ceiling on appropriations, that ceiling is likely to be similar to the appropriations limit contained in the budget plan the Senate Budget Committee has approved. Such a ceiling could then be breached only by the votes of 60 Senators.

- Finally, if the Senate is unable to secure agreement on a deeming resolution, the Senate Appropriations Committee could set a target on its own, such as the level in the budget plan the Senate Budget Committee has approved. The Senate Appropriations Committee might find it difficult to proceed to pass appropriations bills on a bipartisan basis, which is its standard mode of operation, without first agreeing to some overall ceiling, even though such a ceiling would not be formally binding.

It may be noted that the 2003 appropriations ceiling in the Senate Budget Committee-approved plan and the ceiling in the House-passed budget plan are only about one percent apart. One question is whether these levels constitute fiscal restraint. The President has requested very substantial increases in funding for defense and homeland security, as well as some increases for international affairs. Because of the terrorist attacks on the United States and the international situation generally, both chambers and both parties seem supportive of these increases. Outside of these areas, however, both the Senate Budget Committee plan and the House budget plan are very constrained. Assuming the President's requests for defense, international affairs, and homeland security are funded, the overall funding level approved by the Senate Budget Committee would leave domestic appropriations (other than homeland security programs) more than $6 billion *below* the level needed simply to keep pace with inflation. This means that the overall level of goods and services these programs provide would have to be reduced. The House budget plan and the President's budget entail still larger reductions in domestic appropriated programs. (See Table 2 on page 8.)

Assuming there ultimately will be a Senate deeming resolution or some other bipartisan Senate agreement on an overall appropriations limit, any such limit is likely to be similar to the level assumed in the Senate Budget Committee plan. Because this level exceeds the appropriations level in the House budget plan and the deeming resolution the House recently approved, the appropriations ceiling contained in the Senate Budget Committee plan may represent the high-water mark for appropriated programs for 2003 regardless of whether there is a new Congressional budget resolution. This high-water mark itself would represent significant fiscal constraint.

Table 2
Alternative Funding Levels for 2003 for Domestic Appropriated Programs
budget authority in billions

	House Budget Plan	Senate Budget Committee Plan
Total funding	759.1	768.1
President's request for defense, international, & homeland security	441.6	441.6
Remaining for domestic programs (except homeland security)	317.5	326.5
Cut below 2002 level adjusted for inflation (CBO baseline)	-15.2	-6.2
Cut below 2002 level adjusted for inflation and population growth	-18.1	-9.1

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

Moving beyond the immediate issues regarding fiscal year 2003 appropriations, 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.

Congressional Budgets Are Tools That Can Be Used *Any* Purpose

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 49.5 percent of GDP.

History repeated itself last year, 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 a special procedure that limited Senate amendments and, once again, prevented 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 last year's tax cut legislation.

Made to be Broken...

The old saw that "records are made to be broken" seems, in recent years, to have been transmuted by Congress into "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 last four years. 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.

For whatever reason, the rules of budgeting are now frequently evaded. Congressional budget plans are agreed to in the spring and often violated in subsequent months. Also violated has been the Budget Enforcement Act of 1990, which established statutory caps on appropriated programs and established a rule of budget neutrality (the "pay-as-you-go" rule) for entitlement and tax legislation. One long-time budget expert recently concluded that all such rules are useless and that extending any such rules should not be viewed as a true commitment by Congress to fiscal discipline.

> The caps and PAYGO rules that Congress suddenly considers so vital were ignored or shunted aside the past few years whenever it was convenient for Congress and the White House to do so. Extending these provisions now will have no real impact on the spending and revenue policies put in place in the coming years. Any claims that they will be important or that extending them makes the debt ceiling increase more palatable should be ignored... or ridiculed.

> The same applies to [congressional budget resolutions]; those limits will also be meaningless because no one is committed to them and there is no way to enforce them.[8]

The Concord Coalition has similarly noted that under some circumstances, constraints on appropriations levels are of little value. Concord has concluded that the most fiscally responsible targets are those that are tight enough to provide restraint but not so tight as to be dismissed as a fantasy and honored in the breach. In short, the targets must be sufficiently realistic to be politically credible. In the fall of 2000, Concord assessed appropriations limits that had been set in statute but were unrealistically tight and ultimately were breached by large amounts through use of an array of gimmicks. Stressing the importance of consensus and credibility, Concord declared:

> [S]etting new limits on discretionary spending requires consensus on what the new limit should be... Without a consensus on the upper limit, spending ... is essentially uncapped. ... Congress and the president could begin by negotiating new caps, *before* it becomes impossible to avoid another chaotic year-end spending frenzy. ... The point of [raising the] caps should not be to finance a spending spree but to prevent one. ... Without credible caps on discretionary spending, what comes next is likely to be a messy, arbitrary, expansion of government spending based not on policy priorities but on interest group clout and the leverage of powerful legislators. ... Credible caps must assume a plausible, achievable path for discretionary spending. ... It is important to have a credible process for deciding how to prioritize federal resources. ... Rules that are routinely violated are worse than no rules at all because they fail in their basic purpose to control spending and they breed contempt for the budget process by encouraging gamesmanship and chaos.[9]

Conclusion

Agreement on a new budget resolution could pave the way for a permanent extension of last year's tax cut or enactment of a more expensive prescription drug benefit. Either of these would have much greater budgetary significance over the long term than even an unconstrained level of appropriations for 2003.

Furthermore, the level of appropriations is not likely to be unconstrained, since appropriations bills must obtain the President's signature, must be adopted by the House (which

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[8] "Robert Novak is Wrong," Stan Collender, NationalJournal.com, May 21, 2002. Mr. Collender appended the last sentence of the quoted material in a separate communication to the author.

[9] "Discretionary Spending Caps: What Next?" Concord Coalition Issue Brief, September, 2000. Available at http://www.concordcoalition.org/federal_budget/000911issuebriefdiscrcaps.pdf

recently agreed to a very tight limit on appropriations) and may be constrained by formal or informal agreements in the Senate.

In any case, the notion that budget resolutions constrain the level of appropriations, while largely true for two decades, appears no longer to hold. We may now have reached the stage where appropriations bills will be relatively larger or smaller based on substantive and political forces that are not affected by the presence or absence of a formal congressional budget plan.

Finally, the two most fiscally irresponsible actions taken since the Congressional Budget Act was enacted in 1974 — the large 1981 and 2001 tax cuts — were called for and facilitated by congressional budget resolutions. One of the principal purposes of budget resolutions seems to have become to protect tax cuts from Senate filibusters and the Senate's open amendment process. This year at least, fiscal responsibility may be enhanced more by the absence of a budget resolution than its presence.