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THUNE RESPONSE TO CBPP REPORT MISSES MARK

By James R. Horney

We reported on June 15[1] that Senator John Thune's proposal to cut $140.6 billion in budget authority from discretionary (i.e., non-entitlement) programs in fiscal year 2010 would shut down much of the federal government for the last two and a half months of the fiscal year (which ends September 30). Senator Thune said we are wrong because we confused budget authority (i.e., appropriations) and outlays. He also said that, because his proposal would cut discretionary *outlays* by a relatively small amount in 2010, his cuts could not possibly have a serious negative effect on government operations.

Neither of Senator Thune's assertions is correct. They reflect an apparent misunderstanding of federal budget laws and processes.

It is the amount of "budget authority" — a federal agency's authority to pay salaries and enter into contracts and agreements to pay for goods and services — that an agency has available that determines what activities it can conduct. "Outlays" are simply the actual dollars that go out the door when the government writes the check *after* the agency uses its budget authority to purchase goods and services and those services have been rendered. That can take place long after the agency agrees to purchase the goods and services — in this case, long after fiscal year 2010 ends.

An agency violates the Anti-Deficiency Act — the basic federal law that provides possible criminal penalties for federal program managers who violate it — if the agency allows employees to come to work or signs a contract to pay a private company for goods and services *when the agency does not have sufficient budget authority remaining for the fiscal year to cover the salary and benefits the employees would earn during that period or the cost of the goods and services ordered.* It does not matter whether the check will not be written until the next fiscal year. This is why, when Congress fails to pass either a regular appropriation bill or a continuing resolution before the start of the new fiscal year, an agency funded by that appropriation bill must shut down (except for continuing truly essential operations such as protecting the President).

Senator Thune's proposed cuts, coming very late in the fiscal year, would have a devastating effect on the ability of many government agencies to function in the final months of fiscal year 2010. Consider, for example, the effect of just one part of Senator Thune's proposal — the requirement to

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[1] James R. Horney, "Thune Amendment Would Shut Down Much of the Federal Government for Final Months of Fiscal Year," Center on Budget and Policy Priorities, June 15, 2010, http://www.cbpp.org/cms/index.cfm?fa=view&id=3215.

cut every appropriation account other than those in the Departments of Defense and Veterans Affairs by 5 percent of the account's appropriation (i.e., by 5 percent of its budget authority) for 2010. This provision accounts for $23 billion of the $140.6 billion in cuts in discretionary programs that Senator Thune proposes.

We take the Mine Safety and Health Administration, which carries out safety inspections in mines, as a case study.

- The Mine Safety and Health Administration received an appropriation of $359 million for fiscal year 2010. Assuming MSHA spends its appropriation at a constant rate throughout the year, it would have $75 million of its funding left to cover its operations for the last half of July and for August and September.[2]

- The earliest the cuts could be implemented is likely July 15. It is virtually impossible for the Senate and House to complete work on the legislation *and* for the cuts to be put into effect by agencies before then. The cut required by the Thune proposal for the Mine Safety and Health Administration would total $18 million, or *nearly one-quarter of the 2010 appropriations it is likely to have remaining to cover its operations for the rest of the fiscal year.*

- Since more than two-thirds of MSHA's funding goes for personnel costs — and much of its other spending, such as rent on its buildings, cannot be quickly reduced — there is no way that the agency could institute such a cut without furloughing a substantial portion of its workforce, which would severely disrupt the agency's operations. This example would be repeated throughout the federal government.

Moreover, this example ignores the additional effect of the separate $80 billion cut in budgetary resources (including unspent funds from prior-year appropriations) under the Thune proposal and the elimination of $37.5 billion in funding that remains available from last year's Recovery Act. Since the proposal gives the Administration flexibility to decide which accounts to cut to achieve these savings, no one could know precisely how these additional cuts would affect each agency, coming on top of the effective 21 percent cut in all agencies' appropriation for the final months of the year. Nevertheless, the Administration could not possibly achieve the savings required without making cuts that would further impede the ability of many agencies to perform their activities in the final 2½ months of 2010.

Interestingly, the *total* amount of $140.6 billion in discretionary budget authority that the Thune proposal requires the Administration to cut in the final two and a half months of 2010 is approximately equal to two and a half months worth of the *total fiscal year 2010 budget authority appropriated* for all federal agencies subject to the cuts — i.e., all agencies outside the Departments of Defense and Veterans Affairs. (The $140.6 billion amount equals 21 percent of the total fiscal year 2010 appropriation for these agencies, and 2½ months equals 21 percent of the year.) As a result, even with flexibility in where to make the cuts and the ability to cut funds carried over from prior year appropriations, government agencies simply could not cut $140.6 billion in discretionary

[2] In the middle of July, two and one-half months of the fiscal year — 21 percent of it — would remain. Twenty-one percent of $359 million equals $75 million.

funding in the last 2½ months of 2010 without shutting down the operations of much of the government.

Senator Thune notes that the Congressional Budget Office calculates the resulting cut in *outlays* as only $3 billion during the rest of 2010 — but that misses the point. The flow of *outlays* derives entirely from the legal obligation of budget authority, and it will extend over many more months than the period during which the budget authority is committed. It simply reflects when the checks are written, as noted above.

Senator Thune's proposed $140.6 billion cut in budget authority is the relevant and critical point. A cut of that size over a 2½-month period for domestic discretionary accounts will bring many of the domestic activities and agencies funded by these accounts — from the MHSA to the National Park Service to the Department of Education — to a grinding halt.