
BUDGET REFORM PROPOSALS

15. BUDGET REFORM PROPOSALS

The budget process should be transparent, accountable, and orderly. The current budget process needs reforms to achieve these goals. No one change can fix the budget process, and process alone cannot address important fiscal issues. Nevertheless, process changes can be a key factor in the effort to control spending. Starting with *A Blueprint for New Beginnings* and continuing with subsequent budgets, this Administration has consistently proposed changes to the budget process, as well as an extension with changes to key provisions of the Budget Enforcement Act (BEA) of 1990, as amended, that are designed to improve budget decisions and outcomes. This chapter updates the Administration's previous proposals and describes additional reforms proposed by the Administration.

Controlling Entitlements and Other Mandatory Spending

Mandatory Spending Control.—The Administration proposes to require that all legislation that changes mandatory spending, in total, does not increase the deficit. The five-year impact of any proposals affecting mandatory spending would continue to be scored. Legislation that increases the current year and the budget year deficit would trigger a sequester of direct spending programs. The proposal does not apply to changes in taxes and does not permit mandatory spending increases to be offset by tax increases. This proposal effectively applies a pay-as-you-go requirement to mandatory spending. Table 15–1 displays the President's mandatory spending proposals that would be subject to this requirement.

Long-term Unfunded Obligations.—The Administration proposes new measures to address the long-term unfunded obligations of Federal entitlement programs.

As discussed in Chapter 13 of this volume, “Stewardship,” spending by the Government’s major entitlement programs, particularly Social Security and Medicare, is projected to rise in the next few decades to levels that cannot be sustained, either by those program’s own dedicated financing or by general revenues. The Administration’s proposed measures are designed to begin addressing these challenges.

In the Medicare Modernization Act (MMA) of 2003, Congress provided for a more comprehensive review of the Medicare program’s finances and required the Medicare trustees to issue a warning when general revenue Medicare funding is projected to exceed 45 percent of Medicare’s total expenditures. The President’s Budget proposes to build on this reform by requiring an automatic reduction in the rate of Medicare growth if the MMA threshold is exceeded. The Medicare funding warning was triggered in the 2007 Medicare Trustees’ Report because, for the second year in a row, general revenue expenditures are projected to exceed the threshold within the next six years. If action is not taken to keep this threshold from being exceeded, the reduction would begin as a four-tenths of a percent reduction to all payments to providers in the year the threshold is exceeded, and would grow by four-tenths of a percent every year the shortfall continued to occur. This provision is designed to encourage the President and the Congress to reach agreement on reforms to slow Medicare spending and bring it back into line with the threshold established by the MMA.

Social Security’s Disability Insurance (DI) program provides disability insurance coverage and benefits to America’s workers. DI outlays have grown as a percentage of all Federal budget outlays from about 2.0 percent in 1990 to an estimated 3.7 percent in 2008. The Budget projects DI outlays will continue to increase as a

Table 15–1. MANDATORY PROPOSALS SUBJECT TO PAYGO

(Cost/Savings (–) in millions of dollars)

Proposals	2008	2009	2010	2011	2012	2013	2008–13
Medicare		–12,437	–26,875	–39,798	–45,741	–53,384	–178,235
State Children’s Health Insurance Program		2,260	3,005	4,010	4,680	5,315	19,270
Medicaid	140	–1,767	–2,924	–3,758	–4,305	–4,671	–17,285
Pension Benefit Guaranty Corporation premiums		–380	–2,217	–2,093	–2,127	–2,056	–8,873
Outlay effects of tax proposals ¹		–37	3,082	2,570	1,973	1,249	8,837
Social Services Block Grant			–1,445	–1,683	–1,700	–1,700	–6,528
Federal student aid programs		–2,763	–775	–801	–885	–859	–6,083
Arctic National Wildlife Refuge leasing			–3,502	–2	–503	–3	–4,010
Other proposals	–148	–1,140	–1,807	–920	–660	–1,809	–6,484
Total	–8	–16,263	–33,458	–42,475	–49,268	–57,918	–199,391
Total, 2008 and 2009		–16,271					

¹ Affects both receipts and outlays. Only the outlay effect is shown here. For receipt effects, see Table S–7 in the Budget volume.

Note: A more detailed list of the Administration’s mandatory proposals can be found in Table S–6 of the Budget volume.

percentage of the Federal budget, along with escalating annual cash deficits. The President's Budget proposes a Funding Warning to highlight the escalating and persistent fiscal problems facing DI. If SSA's actuaries project a negative DI cash flow that is more than 10 percent of program cost for four consecutive years in the upcoming 10 years, the Board of Trustees will issue the warning in the annual Trustees Report.

In addition to this Medicare-specific control mechanism and DI Funding Warning, the President's Budget proposes to establish a broader enforcement measure to analyze the long-term impact of legislation on the unfunded obligations of major entitlement programs and to make it more difficult to enact legislation that would expand the unfunded obligations of these programs over the long-run. These measures would highlight proposed legislative changes that appear to cost little in the short run but result in large increases in the spending burdens passed on to future generations.

First, the Administration proposes a point of order against legislation that worsens the long-term unfunded obligation of major entitlements. The specific programs covered would be those programs with long term actuarial projections, including Social Security, Medicare, Federal civilian and military retirement, veterans disability compensation, and Supplemental Security Income. Additional programs would be added once it becomes feasible to make long-term actuarial estimates for those programs.

Second, the Administration proposes new reporting requirements to highlight legislative actions worsening unfunded obligations. Under these requirements, the Administration would report on any enacted legislation in the past year that worsens the unfunded obligations of the specified programs

Budget Discipline for Agency Administrative Actions.—A significant amount of Federal policy is made via administrative action, which can increase Federal spending, often on the order of tens of billions of dollars in entitlement programs such as Medicare or Medicaid. Although known costs are incorporated into the budget baselines of various programs, agencies frequently initiate unplanned for and costly proposals. Often, these costs are not reflected in the baseline, or are not accompanied by other actions that would pay for the proposed change. This results in increased spending and deficits.

Controlling these costs is integral to the Administration's commitment to reducing the deficit and enforcing fiscal discipline. Toward that end, the Director of the Office of Management and Budget issued on May 23, 2005 a memorandum to all Executive Branch agencies implementing a budget-neutrality requirement on agency administrative actions affecting mandatory spending. Discretionary administrative actions in entitlement programs, including regulations, program memoranda, demonstrations, guidance to States or contractors, and other similar changes to entitlement programs are generally required to be fully offset. This effectively establishes a pay-as-you-go requirement for discretionary ad-

ministrative actions involving mandatory spending programs. Exceptions to this requirement are only provided in extraordinary or compelling circumstances.

Controlling Discretionary Spending

Discretionary Caps.—The Administration proposes to set limits for 2008 through 2013 on net discretionary budget authority and outlays equal to the levels proposed in the 2009 Budget. Legislation that exceeds the discretionary caps would trigger a sequester of non-exempt discretionary programs. Table 15–2 displays the total levels of discretionary budget authority and outlays proposed for 2008 through 2013. This approach would put in place a budget framework for the next five years that ensures constrained, but reasonable growth in discretionary programs. For 2008 through 2010, separate defense (Function 050) and nondefense categories would be enforced. For 2011–2013, there would be a single cap for all discretionary spending.

These discretionary levels do not reflect the Administration's proposal to replace aviation taxes that are currently recorded as governmental receipts with FAA user fees that would be recorded as offsetting collections. If this proposal is enacted, the Administration would adjust discretionary spending levels downward for 2010–2013 by the amount of the proposal. In addition, a separate category for transportation outlays financed by dedicated revenues would be established for 2009. The Administration would support expanding the defense category to include all security programs and a corresponding change to create a non-security category to ensure resources are devoted to security programs and are not diverted for other purposes.

Program Integrity Cap Adjustments.—An improper payment occurs when Federal funds go to the wrong recipient, the recipient receives an incorrect amount of funds, or the recipient uses the funds in an improper manner. Approximately 85 percent of improper payments are overpayments. The Administration has made the elimination of improper payments a major focus. Federal agencies have aggressively reviewed Federal programs to evaluate the risk of improper payments and have developed measures to assess the extent of improper payments. Processes and internal control improvements have been initiated to enhance the accuracy and integrity of payments and to report the results of these efforts, pursuant to the Improper Payments Information Act of 2002 (Pub. L. No. 107–300).

The results of the agencies' assessments have been aggregated into a Government-wide report entitled *Improving the Accuracy and Integrity of Federal Payments*. (The report can be found at www.whitehouse.gov/omb/financial/fia—improper.html.) In 2007, the agencies reported a total of \$55 billion in improper payments. This represents a 3.5 percent improper payment rate. Over 51 percent of those improper payments are in four programs: Medicare, Earned Income Tax Credit, Old-Age, Survivors, and Disability Insurance, and Unemployment Insurance. This program integrity cap adjustment initiative also captures IRS efforts to improve tax com-

Table 15-2. DISCRETIONARY CAPS AND ADJUSTMENTS

(Amounts in billions of dollars)

	2008 ¹	2009	2010	2011	2012	2013
Proposed Discretionary Spending Categories:						
Defense Category (Function 050):						
Budget authority	500.2	536.8	545.4	NA	NA	NA
Outlays	577.1	576.0	545.4	NA	NA	NA
Nondefense Category:						
Budget authority	441.2	449.8	451.3	NA	NA	NA
Outlays	484.5	487.3	518.2	NA	NA	NA
Discretionary Category:						
Budget authority	NA	NA	NA	1,004.5	1,017.5	1,029.5
Outlays	NA	NA	NA	1,056.3	1,060.8	1,068.8
Proposed Cap Adjustments:						
SSA Continuing Disability Reviews:						
Budget authority	NA	0.2	0.5	0.5	NA	NA
Outlays	NA	0.2	0.5	0.5	NA	NA
IRS Tax Enforcement:						
Budget authority	NA	0.5	0.7	1.0	NA	NA
Outlays	NA	0.5	0.7	1.0	NA	NA
Health Care Fraud and Abuse Control:						
Budget authority	NA	0.2	0.2	0.2	NA	NA
Outlays	NA	0.2	0.2	0.2	NA	NA
Unemployment Insurance Improper Payments:						
Budget authority	NA	0.04	0.04	0.04	NA	NA
Outlays	NA	0.04	0.04	0.04	NA	NA
Subtotal, Nondefense Category with Adjustments:						
Budget authority	441.2	450.8	452.8	NA	NA	NA
Outlays	484.5	488.2	519.7	NA	NA	NA
Highway Category:						
Outlays	38.5	40.0	NA	NA	NA	NA
Mass Transit Category:²						
Outlays	8.7	9.4	NA	NA	NA	NA
Total, All Discretionary Categories:						
Budget authority	941.4	987.6	998.2	1,006.2	1,017.5	1,029.5
Outlays	1,108.8	1,113.6	1,065.1	1,058.0	1,060.8	1,068.8
Project BioShield Category:						
Budget authority .....	.....	2.2	.....	.....	.....	.....
<i>Memorandum: 2008 Enacted Emergencies</i>						
Budget authority	104.4	.....	.....	.....	.....	.....

¹ The combined amounts of discretionary emergency budget authority provided in 2008 Appropriations Acts and Continuing Resolutions are displayed separately to display the proposed year-to-year growth in base discretionary budget authority.

² Includes outlays from discretionary budget authority.

pliance. While not technically improper payments, the challenges of tax compliance are similar to those of the improper payments programs.

In the context of the Administration's efforts to eliminate improper payments, the Administration is proposing adjustments for spending above a base level of funding within the discretionary levels for several program integrity initiatives, specifically for continuing disability reviews (CDRs), redeterminations of eligibility, and potentially two additional activities if they are as cost-effective as redeterminations in the Social Security Administration (SSA), Internal Revenue Service (IRS) tax enforcement, the Health Care Fraud and Abuse Control Program (HCFAC) in the Centers for Medicare and Medicaid Services and Unemployment Insurance improper payments in the Department of Labor. These cap adjustments provide an effective way

to ensure that limited resources are applied to activities that reduce errors and generate program savings.

In the past decade, there have been a variety of successful statutory efforts to ensure dedicated resources for program integrity efforts. These efforts include cap adjustment funding for Social Security continuing disability reviews and integrity efforts associated with the Earned Income Tax Credit (EITC). These initiatives have led to increased savings for the Social Security and Supplemental Security Income programs and an increase in enforcement efforts in EITC. The Administration's proposed adjustments for program integrity activities will total \$968 million in budget authority in 2009, \$1,466 million in budget authority in 2010 and \$1,777 million in budget authority in 2011.

The Administration continues to support a cap adjustment mechanism to promote spending on program integrity efforts. However, statutory cap adjustments

do not work well when the President and the Congress do not have a cap or binding agreement on the top-line for discretionary budget authority. Therefore, the Administration is also asking that the Budget Committees consider one of several alternative approaches to protecting program integrity funding in the Congressional budget resolution.

One approach would be to adopt a scoring rule in the budget resolution for specific program integrity activities. Such a rule would demonstrate an agreement between the Budget Committees, would expressly delineate the programs and activities encompassed by the rule and would be applied only for activities which have accurate and independently validated savings estimates. For example, the rule could prescribe a score of "zero" for the costs of specific program integrity activities where the savings are documented. This approach would avoid the issue raised by scorekeeping rule 3, which prohibits scoring of changes in mandatory outlays unless the authorizing language is modified or appropriations language substantively changes the program statute, and that is a particular barrier in the context of IRS enforcement.

Another option would be for the Congressional budget resolution to include a reserve fund (or funds) for specific program integrity activities with documented savings. Such a fund would hold the Appropriations Com-

mittee harmless from the cost of the program integrity funds requested by providing savings only to offset the discretionary cost of such program integrity efforts. If the Appropriations Committees did not provide funding for these program integrity activities, the discretionary offset would disappear, leaving the top-line unchanged.

For the Social Security Administration, the \$240 million cap adjustment would allow SSA to conduct at least an additional 140,000 Continuing Disability Reviews (CDRs) and at least an additional 635,000 SSI redeterminations of eligibility in 2009. In addition, up to \$74 million of the cap adjustment funding may be available for initiatives to improve the disability process and initiatives to improve the asset verification process. The funding could only be used for these initiatives if they are as cost-effective as redeterminations of eligibility. If this criterion is not met, the funding would be used for additional Continuing Disability Reviews and SSI redeterminations. One promising activity is an asset verification initiative, currently in place in two states, which automatically verifies bank assets for SSI applicants through an electronic system. If this initiative is assessed and found to be as cost-effective as redeterminations of eligibility, some of the cap adjustment funding could be used for a national roll-out of the initiative. As a result of the cap adjustment funding, SSA would recoup over \$2.6 billion in savings

Table 15-3. PROGRAM INTEGRITY BASE AND CAP ADJUSTMENTS

(Budget authority in millions of dollars)

	2006 Actual	2007 Actual	2008 Enacted	Proposed		
				2009	2010	2011
SSA Program Integrity:						
Enforcement Base ¹	224	141	264	264	264	264
Cap Adjustments:						
BA	NA	NA	NA	240	485	518
Outlays	NA	NA	NA	240	485	518
IRS Tax Enforcement:						
Enforcement Base	6,378	6,822	6,997	6,997	6,997	6,997
Cap Adjustments:						
BA	446	NA	NA	490	730	992
Outlays	415	NA	NA	462	688	963
Health Care Fraud and Abuse Control Program:						
Enforcement Base (Mandatory)	1,187	1,112	1,132	1,156	1,176	1,176
Cap Adjustments:						
BA	NA	NA	NA	198	211	227
Outlays	NA	NA	NA	198	211	227
Unemployment Insurance Improper Payments:						
Enforcement Base	10	10	10	10	10	10
Cap Adjustments:						
BA	NA	NA	NA	40	40	40
Outlays	NA	NA	NA	40	40	40
TOTAL:						
Enforcement Base	7,799	8,085	8,403	8,427	8,447	8,447
Cap Adjustments:						
BA	446	NA	NA	968	1,466	1,777
Outlays	415	NA	NA	940	1,424	1,748

¹ The numbers for 2006 and 2007 for SSA reflect spending on Continuing Disability Reviews (CDRs). For 2008 and 2009–2011, numbers reflect spending on CDRs and SSI redeterminations. Limited funding in the 2009–2011 cap adjustments may also be available for asset verification or disability improvement processes, provided the activities are as cost-effective as SSI redeterminations.

over a ten-year period, with additional savings after the ten-year period, as estimated by SSA's Office of the Actuary. The savings from one year of program integrity activities are realized over multiple years because some CDRs identify that the beneficiary has medically improved and is capable of working, which may mean that they are no longer eligible to receive Disability Insurance (DI) or Supplemental Security Income (SSI) benefits. This may also result in savings in Medicare and Medicaid, since eligibility for these programs is linked to DI and SSI. Overpayments of SSI benefits identified by a redetermination are not always recovered in the same year that the redetermination is conducted.

SSA is required by law to conduct CDRs for all beneficiaries who are receiving Disability Insurance benefits, as well as all children under 18 who are receiving Supplemental Security Income. SSI redeterminations are also required by law, but the frequency is not specified in statute. The baseline assumes a more likely scenario for program integrity funding, and the President's Budget shows the savings which will result from the program integrity cap adjustment proposal.

The return on investment (ROI) for CDRs is approximately 10 to 1 in lifetime program savings. The ROI for redeterminations is approximately 7 to 1. Redeterminations focus on an individual's eligibility for the means-tested SSI program and generally result in a

revision to the individual's benefit level. However, the schedule of savings resulting from redeterminations will be different for the base and the cap adjustment. This is due to the fact that redeterminations of eligibility can uncover underpayment errors as well as overpayment errors. SSI recipients are more likely to initiate a redetermination of eligibility if they believe there is an underpayment error, and these recipient-initiated redeterminations are included in the base. In addition, corrections for underpayment errors are realized more quickly than corrections for overpayment errors.

For the IRS, the \$490 million cap adjustment covers cost increases (+\$132 million) for the \$7.0 billion base IRS enforcement program plus new investments in expanding staff and improving the efficiency of the IRS' enforcement programs (+\$358 million). As a result of these efforts, the IRS will collect an estimated \$55 billion in 2009 in direct enforcement revenue. The IRS succeeded in increasing this figure by 75 percent between 2002 and 2007. The IRS estimates that work completed by the proposed new staff in 2009 will eventually yield another \$769 million (including \$3 million collected after 2018). Once these new staff are trained and become more experienced, the enforcement revenue impact of the work they complete each year will rise to \$2,001 million. However, this ROI estimate is understated because much of the new investment is directed towards efforts to improve the performance of the exist-

Table 15-4. DIRECT SAVINGS ESTIMATED FROM 2009 PROGRAM INTEGRITY FUNDING

(Budget authority in millions of dollars)

	2009 Program Integrity Funding	Direct Savings Estimates										
		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
SSA Program Integrity¹												
Enforcement Base	264	508	-474	-357	-193	-193	-177	-163	-155	-135	-119	-1,458
Cap Adjustment	240	-123	-795	-469	-209	-214	-195	-179	-172	-146	-125	-2,627
IRS Tax Enforcement²												
Enforcement Base	6,997	-55,200										-55,200
Cap Adjustment ³	490	-154	-425	-86	-36	-26	-13	-8	-7	-3	-8	-766
Health Care Fraud and Abuse Control Program												
Cap Adjustments ⁴	198	-350										-350
Unemployment Insurance Improper Payments⁵												
Enforcement Base	10	-40										-40
Cap Adjustments	40	-78	-77									-155

¹ This is based on SSA's Office of the Actuary estimates of savings. In the first year, the enforcement base shows a positive outlay. This is due to the fact that redeterminations of eligibility can uncover underpayment errors as well as overpayment errors. SSI recipients are more likely to initiate a redetermination if they believe there is an underpayment, and SSA completes these beneficiary-initiated redeterminations in the enforcement base. In addition, corrections for underpayments are realized more quickly than corrections for overpayment. The cap adjustment does not show an outlay in the first year because SSA would target their cap adjustment redetermination dollars to cases where an overpayment is suspected.

² Savings for IRS are revenue increases rather than spending reductions. They are shown as negatives for consistency in presentation.

³ The Internal Revenue Service (IRS) cap adjustment funds cost increases for the base program (+\$132 million) and new initiatives (+\$358 million). The IRS collects \$55.2 billion per year (2009 estimate) in direct enforcement revenue, and its enforcement program helps maintain the more than \$2 trillion in taxes voluntarily paid each year. The cost increases will help maintain the base revenue. The 2009 initiatives will yield an estimated \$769 million in new enforcement revenue over ten years (including \$3 million collected after 2018), fund research to help the IRS better target its enforcement resources, and help deter tax cheating. This deterrence impact is not directly measured. However, research suggests it is at least three times as large as the direct impact on revenue.

⁴ These data are based on estimates from the HHS Office of the Actuary for return on investment from program integrity activities.

⁵ The maximum UI benefit period is typically 26 weeks. As a result, preventing an ineligible individual from collecting UI benefits would save at most a half year of benefits. The two years of savings reflect the fact that reemployment and eligibility assessments conducted late in the year affect individuals whose benefits would have continued into the subsequent fiscal year.

ing staff (such as new computers and better research) that are not reflected in the IRS' ROI calculation. More importantly, the ROI is understated because it does not reflect the impact enhanced enforcement has on deterring non-compliance that helps to ensure the continued payment of more than \$2 trillion in taxes voluntarily paid each year. The impact of increased IRS enforcement on improving voluntary compliance is not directly measured. However, research suggests it is at least three times as large as the direct impact on revenue.

The discretionary cap adjustment of \$198 million for the Centers for Medicare and Medicaid Services' HCFAC program is designed to provide additional resources to identify and reduce improper payments in the Medicare prescription drug benefit and Medicare Advantage programs. The funding would be allocated among CMS, the Health and Human Services Office of Inspector General, the Federal Bureau of Investigation, and Department of Justice to safeguard these programs as well as Medicaid against fraud and abuse. This \$198 million would generate approximately \$350

million in savings in 2009, which would reflect recouping improper payments made to providers.

The 2009 Budget proposes a discretionary cap adjustment of \$40 million for the Department of Labor's (DOL) Unemployment Insurance (UI) State administrative grants program to reduce UI improper payments, a top management challenge identified by GAO and DOL's Inspector General. The proposal would expand a \$10 million Reemployment and Eligibility Assessment initiative begun in 2005 to finance in-person interviews at One-Stop Career Centers to assess UI beneficiaries' need for job-finding services and their continued eligibility for benefits. The current \$10 million effort results in a savings in UI benefit payments of \$40 million. The maximum UI benefit period is typically 26 weeks. As a result, preventing an ineligible individual from collecting UI benefits would save at most a half year of benefits. The two years of savings from the additional \$40 million, totaling \$78 million in 2009 and \$77 million in 2010, reflect the fact that reemployment and eligibility assessments conducted late in the year affect individuals whose benefits would have continued into the subsequent fiscal year.

Table 15-5. TRANSPORTATION CATEGORY FOR HIGHWAYS AND MASS TRANSIT SPENDING

(Amounts in millions of dollars)

	2008	2009
Transportation Category:		
Highways: ¹		
Obligation Limitations	42,457	40,792
Outlays	38,504	40,040
Mass Transit:		
Obligation Limitations	7,768	8,361
Outlays ²	8,650	9,401
Memorandum:		
<i>Discretionary budget authority for Mass Transit included in the Nondefense Category:</i>		
<i>Budget authority</i>	1,723	1,775

¹ The 2009 level includes \$122 million for the National Highway Traffic Safety Administration. The proposal is to fund NHTSA completely from the Highway Trust Fund instead of a portion from the General Fund, as authorized in SAFETEA-LU.

² Includes outlays from discretionary budget authority.

Transportation Category.—The Administration's proposal for discretionary caps includes separate outlay categories for spending on Federal Highway and Mass Transit programs. The transportation levels will be financed by dedicated revenues through 2009. Table 15-5 shows the levels, including the revenue aligned budget authority (RABA) adjustment as authorized in the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) for 2008 and 2009. The RABA adjustment is calculated based on changes in estimated Highway Trust Fund receipts, and results in either an increase or decrease in the Highway Category funding level enacted in SAFETEA-LU. The

amounts shown for 2008 reflect the levels provided by the Consolidated Appropriations Act (Pub. L. No. 110-161), which included the 2008 RABA adjustment authorized in SAFETEA-LU. For 2009, the RABA adjustment authorized in SAFETEA-LU is a reduction of \$1,001 million. The Administration does not propose to make changes to this authorized reduction in 2009. The total level for 2009 includes the final installment of the \$286.4 billion in highway, transit, and safety spending agreed upon in SAFETEA-LU.

Advance Appropriations.—An advance appropriation becomes available one or more years beyond the year for which its appropriations act is passed. Budget au-

thority is recorded in the year the funds become available and not in the year of enactment. Too often, advance appropriations have been used to expand spending levels by shifting budget authority from the budget year into the subsequent year and then appropriating the budget authority freed up under the budget year discretionary cap to other programs. The effect of these advance appropriations is to limit the amount of discretionary budget authority available in subsequent years under the discretionary caps, thereby reducing future funding options available to both Congress and the President. From 1993 to 1998, an average of \$2.3 billion in discretionary budget authority was advance appropriated each year. In 1999, advance appropriations totaled \$8.9 billion and increased to \$23.5 billion in 2000. Between 2001 and 2007, advance appropriations remained relatively constant. In 2008, advance appropriations were again increased by \$2 billion to \$25.6 billion. The additional advance appropriations were added for Education programs in Pub. L. No. 110–161, the FY 2008 Consolidated Appropriations Act.

Because this budget practice distorts the debate over Government spending and misleads the public about spending levels in specific accounts, the 2001 Congressional Budget Resolution and this Administration's budget proposals have capped advance appropriations at the amount advanced in the previous year. By capping advance appropriations, increases in these and other programs can be budgeted and reflected in the year of their enactment. For 2010, the Administration proposes a cap on advance appropriations of \$25,552 million, which includes the already enacted advance appropriation for the Corporation for Public Broadcasting.

In addition, the Administration proposes to score the second-year effect of appropriations language that delays obligations of mandatory budget authority as advance appropriations that count against the discretionary caps. Appropriations acts often include provisions that delay obligations of mandatory BA from one year to the next. The first year is appropriately scored as a discretionary savings because it is included in an appropriations act and it reduces spending in that year. However, this is usually a temporary delay, and the funds become available for spending in the second year. Under this proposal, the second-year impact would be treated as an advance appropriation and scored against the discretionary caps. This would correct an inconsistency in the current practice where savings are scored in the first year, but the second-year impact is reclassified in the subsequent budget as mandatory and not scored against the discretionary caps.

To enforce the level of advance appropriations, the discretionary cap proposal provides that total funding for advance appropriations (including obligation delays) provided for 2010 in an appropriations act that is in excess of the Administration's limit on advance appropriations of \$25,552 million in 2010 will count against the discretionary cap in the year enacted, not against the year the funds first become available.

For more information on individual accounts with advance appropriations, please see the chapter on this subject in the Budget Appendix.

Federal Pell Grants.—To ensure funding shortfalls do not accumulate in the Pell Grant program in future years, the 2006 Congressional Budget Resolution adopted the Administration's proposal to score appropriations at the amount needed to fully fund the award level set in appropriations acts, beginning with the 2006–2007 school year, if the amount appropriated is insufficient to fully fund all awards. The Administration proposes to continue this scoring rule. Under this rule, the amount scored would be increased to cover any cumulative funding shortfalls from previous years and reduced by any surpluses carried over from previous years, beginning with any shortfalls or surpluses from the 2006–2007 school year. If the amount appropriated in previous years exceeds the estimated full cost, the amount appropriated would be scored against that year, and the surplus would carry over as a credit against the following year's cost estimate. In the 2009 Budget, the Department of Education estimates that a cumulative \$732 million shortfall will be carried into the 2009–2010 academic year. For scoring purposes, the funding needed to fully fund all awards for 2009–2010 is increased by the amount of this shortfall.

Project BioShield Category.—The Administration proposes a separate BEA category for budget authority for Project BioShield, which received an advance appropriation for 2009 of \$2.2 billion in Pub. L. No. 108–90, the 2004 Department of Homeland Security Appropriations Act. Because the success of this program in providing for the development of vaccines and medications for biodefense depends on an assured funding availability, it is critical that this funding not be diverted to other purposes. The Administration's proposal to create a separate category will help ensure that funding for this program is not reduced and used as an offset for other discretionary spending.

Include Stricter Standard For Emergency Designation in the BEA

When the BEA was enacted in 1990, it provided a “safety valve” to ensure that the fiscal constraint envisioned by the BEA would not prevent the enactment of legislation to respond to unforeseen disasters and emergencies such as Operation Desert Storm, the terrorist attacks of September 11, 2001, or Hurricane Katrina. If the President and the Congress separately designated a spending or tax item as an emergency requirement, the BEA held these items harmless from its enforcement mechanisms. Initially, this safety valve was used judiciously, but in later years its application was expanded to circumvent the discretionary caps by declaring spending for ongoing programs as “emergencies.”

The Administration proposes to include in the BEA a definition of “emergency requirement” that will ensure high standards are met before an event is deemed an “emergency” and therefore exempt. This definition

should include the following elements: the requirement is a necessary expenditure that is sudden, urgent, unforeseen, and not permanent. These elements, all of which would be used for defining something as an emergency, are defined as follows:

- necessary expenditure—an essential or vital expenditure, not one that is merely useful or beneficial;
- sudden—quickly coming into being, not building up over time;
- urgent—pressing and compelling, requiring immediate action;
- unforeseen—not predictable or seen beforehand as a coming need (an emergency that is part of the average annual level of disaster assistance funding would not be “unforeseen”); and
- not permanent—the need is temporary in nature.

This definition codifies the criteria for an emergency that have been the standard for a number of years. It is designed to preclude funds from being declared an emergency for events that occur on an annual or recurring basis. For example, even though it is not possible to predict the specific occurrence of fires, tornados, hurricanes, and other domestic disasters, it is reasonable to assume that a combination of domestic disasters will occur in any given year that require funding equal to a multi-year average for disaster relief. Funding at an average, therefore, should not be considered an emergency under this definition. On the other hand, an average level of funding for domestic disasters will not accommodate the level necessary to address a large and relatively infrequent domestic disaster, such as Hurricane Katrina. Under this definition for emergencies, spending for extraordinary events could be classified as emergency funding. In the end, classification of certain spending as an emergency depends on common sense judgment, made on a case-by-case basis, about whether the totality of facts and circumstances indicate a true emergency.

In addition, the Administration proposes that the definition of an emergency requirement also encompass contingency operations that are national security related. Contingency operations that are national security related include both defense operations and foreign assistance. Military operations and foreign aid with costs that are incurred regularly should be a part of base funding and, as such, are not covered under this definition.

The Administration proposal also would require that the President and Congress concur in designating an emergency for each spending proposal covered by a designation. This would protect against the “bundling” of non-emergency items with true emergency spending. If the President determines that specific proposed emergency designations do not meet this definition, he would not concur in the emergency designation and no discretionary cap adjustment or mandatory spending control exemption would apply.

Baseline

The Administration supports the extension of section 257 of the BEA governing baseline calculations with the changes discussed below. The baseline estimates presented in the Current Services chapter of this volume reflect these proposed changes.

- Assume extension of all expiring tax provisions in the Economic Growth and Tax Relief Reconciliation Act of 2001 and certain provisions in the Jobs and Growth Tax Relief Reconciliation Act of 2003. This proposal is consistent with the BEA baseline rules for expiring mandatory spending and for excise taxes dedicated to a trust fund. Except for a few relatively small mandatory programs, the BEA assumes that mandatory spending and excise taxes dedicated to a trust fund will be reauthorized and extends them in the baseline. The 2001 Act and 2003 Act provisions were not intended to be temporary, and not extending them in the baseline raises inappropriate procedural road blocks to extending them at current rates.
- Add a provision to exclude discretionary funding for emergencies from the baseline. Instead, the baseline would include emergency funding only for the year in which it was enacted. The current requirement is for the discretionary baseline estimates for the budget year and the outyears to assume the current year appropriated level, adjusted for inflation. This is reasonable for ongoing programs, where the need is expected to continue into the future. For emergencies, since the need should be for a short duration, the baseline rules build unnecessary funding into the baseline estimates for the years after the need has been addressed and passed. In effect, the current rule biases the baseline in favor of higher discretionary spending.
- Correct the overcompensation of baseline budgetary resources for pay raise-related costs due to the way in which these costs are inflated. The current requirement, which provides a full year’s funding for pay raises in the budget year and beyond, was written when Federal pay raises were scheduled to take effect on October 1, at the start of each fiscal year. However, this requirement is now inappropriate because the effective date for pay raises is now permanently set by law as the first pay period in January. By treating pay raises that begin on January 1 as if they take effect for the entire fiscal year, the baseline overstates the cost of providing a constant level of services.
- Eliminate the adjustments for expiring housing contracts and social insurance administrative expenses. Most multi-year housing contracts have expired or have been addressed since the BEA was first enacted in 1990, so the adjustment is no longer needed. The adjustment for social insurance administrative expenses is inconsistent with the baseline rules for other accounts that fund

the costs of administration. These programs should not be singled out for preferential treatment.

Earmark Reform

Earmarks are funds provided by the Congress for projects or programs where the congressional direction (in bill or report language) circumvents the merit-based or competitive allocation process, or specifies the location or recipient, or otherwise curtails the ability of the Executive Branch to properly manage funds. Historically, these provisions have not been publicly disclosed during the legislative process, and often they are special interest projects. A number of organizations track earmarks. The Congressional Research Service (CRS) and Citizens Against Government Waste (CAGW) have been tracking earmarks for over a decade. While they do not use the same definition, their data show similar trends. Earmarks have expanded dramatically in recent years, with the numbers and costs of earmarks more than tripling since the early 1990s. According to CAGW, the Congress added nearly 550 earmarks at a cost of \$3 billion to the budget in 1991. The number of earmarks peaked in 2005. CAGW has estimated that earmarks grew to almost 14 thousand at a cost of \$27 billion. CRS data show a similar trend, with earmarks reaching more than 16 thousand in 2005 at a cost of \$52 billion. OMB has also been tracking earmarks during recent years, and in 2007, publicly released its own estimates for 2005, the most recent fiscal year for which full data was available. Using the definition above, OMB estimates that the number of earmarks grew to over 13 thousand at a cost of nearly \$19 billion in the appropriations bills for 2005. In 2007, OMB also developed the capability to track earmarks during each stage of the legislative process and compare those amounts to the 2005 amounts. These estimates are available at www.omb.earmarks.gov.

One major concern about earmarks is the lack of transparency. Most earmarks do not appear in statutory language. Instead, they are included in committee reports that accompany legislation. According to CRS, more than 90 percent of earmarks are in report language. This means that the vast majority of earmarks do not appear in the statutory language that the Congress actually votes on or that the President signs into law. Also, earmarks frequently surface in the last stage of the legislative process, in conference committees between the House and the Senate.

In response to the President's call for earmark reform, changes in the House Rules and Senate legislation during the 110th Congress required more disclosure for earmarks. The President is pleased that the Congress has begun to make progress in bringing greater transparency to the earmarking process. Taxpayers should feel confident that their tax dollars are being spent wisely. Unfortunately, the large number of earmarks and the continuing lack of transparency in the earmarking process make it difficult to assure the public that the Government is spending the people's money

on the Nation's highest priorities. As a consequence, earmark reform remains a priority in this Budget.

Line-Item Veto

A perennial criticism of the Federal Government is that spending and tax legislation contain too many provisions that are not fully justified, are a low priority, or are earmarked to avoid the discipline of competitive or merit-based reviews. These special interest items would likely not become law if considered as a stand-alone bill, and their persistence diverts resources from higher priority programs and erodes the confidence of citizens in Government.

From the Nation's founding, presidents have exercised the authority to not spend appropriated sums. However, Congress sought to curtail this authority in 1974 through the Impoundment Control Act, which restricted the President's authority to decline to spend appropriated sums. Although the Line Item Veto Act of 1996 attempted to give the President the authority to cancel spending authority and special interest tax breaks, the U.S. Supreme Court found that law unconstitutional.

In 2006, the President asked that Congress correct this state of affairs by providing him and future presidents with a line item veto that would withstand constitutional challenge, and the President transmitted legislation to the Congress in March 2006 that accomplishes this purpose. Under the President's proposal, a President could propose legislation to rescind wasteful spending, and the Congress would be obligated to vote quickly on that package of rescissions, without amendment. All savings from the line-item veto would be used for deficit reduction; they could not be applied to augment spending elsewhere.

The President's proposal received strong support. In June 2006, the House of Representatives voted on a bipartisan basis to enact a version of the Legislative Line Item Veto. In the Senate, members voted to report an amended version of the President's proposal out of the Senate Budget Committee for consideration on the floor.

Forty-three Governors have a line item veto to reduce spending, and the President needs similar authority to help control unjustified and wasteful spending in the Federal budget. The Administration urges continued support for this common-sense provision and will seek its enactment in the 110th Congress.

Credit Reform and Insurance Proposals

Credit Reform

The Federal Credit Reform Act (FCRA), as amended by the Balanced Budget Act of 1997, provides the framework for budgetary accounting for Federal credit programs. In the coming year, the Administration plans to discuss with Congressional Committees, the Congressional Budget Office, and the Government and Accountability Office the following issues:

- Scope of the Federal Credit Reform Act;

- Treatment of administrative costs in credit program cost estimates;
- Improvements in methods for making credit subsidy cost estimates; and
- Treatment of financial risk insurance programs in the budget.

Scope of the Federal Credit Reform Act.—The Administration proposes to explore options to build consensus on FCRA applicability, and reduce the potential for budgetary gimmicks based on FCRA scoring. For example, budgetary constraints for capital projects can lead agencies and their advocates to develop proposals which minimize or eliminate up-front costs by relying on third-party financing. Where the Federal Government is ultimately responsible for the activity or asset, financing through third parties is an inefficient means of accomplishing the policy goal, and can ultimately lead to higher taxpayer costs than financing the activity directly through the Treasury.

In some cases, there is disagreement with FCRA applicability. For example, since the implementation of FCRA in 1992, it has been the position of OMB that the FCRA definition of loan guarantee, which includes “any guarantee, insurance, or other pledge with respect to payment of all or part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender” applies to guarantees of non-Federal securities, including those providing secondary guarantees on federally-guaranteed loans. Opposing arguments have focused on the administrative burden of FCRA implementation or stated that FCRA should not apply because risk is primarily borne by the primary guarantors.

Administrative costs.—When credit reform was being formulated some argued to include administrative costs in the subsidy cost estimate, as the Government clearly has a long term commitment to maintaining the credit portfolio while the loans are outstanding. However, when FCRA was enacted, Congress maintained administrative expenses on a cash basis, consistent with other administrative costs. In some cases, increasing loan volumes without sufficient administrative resources may impede the agency’s ability to effectively manage its credit portfolios if it cannot support loan accounting systems or other basic tools necessary for effective oversight and management. Ineffective oversight and management can lead to increased risk to the taxpayer and potentially higher cost.

Methods to improve credit subsidy cost estimates.—Potential improvements the Administration would like to consider include discounting to a single point in time, and identifying methods to better reflect uncertainty and risks not explicitly captured under the current system. Currently, under FCRA and associated guidance, the cost of credit programs is based on cash flows discounted to the point of disbursement. Some programs disburse over several years. To accurately calculate the subsidy costs, agencies have to keep more detailed records of cashflows associated with each disbursement, or employ simplified methods. The former can be an

administrative burden, while the latter may make it difficult to understand changes in cost due to borrower performance, versus the simplified methods. Also, current methods may not fully capture certain risks and uncertainty, such as the total cost of variable rate loans or guarantees, or the potential of unexpectedly high losses coinciding with periods of economic distress and budgetary pressure. The private sector employs methods to reflect these risks in their own portfolios which may be useful and will be considered, although some methods may not be applicable to Federal programs or may be too complex to effectively implement.

Treatment of Insurance Programs

Claims associated with a year’s insurance policies can pay out over years or even decades but the budget currently reflects only the payments made within the budget window. However, there are other options for the budgetary treatment of Federal insurance programs, including presentations on a net-present value basis similar to the treatment of credit programs.

For example, the Pension Benefit Guarantee Corporation suffers claims when under-funded plans terminate under financial distress. Under a claim, the PBGC incurs an obligation to pay participants benefits for their entire retirements, which can last decades. Under cash budgeting only the benefit payments within the budget window (usually five years) appear. However, the PBGC itself uses accrual accounting in its financial statements and in making its management decisions. Under accrual budgeting, the budget would record as a cost the amount that PBGC financial statements currently view as the cost of a claim: the present value of guaranteed benefit payments minus the value of plan assets.

The treatment of insurance programs in the budget is not a new issue. When the Congress and the George H.W. Bush Administration enacted the Federal Credit Reform Act of 1991, they ordered OMB, CBO, and GAO to study the issue, finding that analytical capabilities were not ready to implement accrual budgeting for insurance programs. However, since then, insurance program agencies have made great strides in developing models to project cash flows of insurance programs.

Indeed, with present accounting methods, measuring the cost of insurance programs on an accrual basis is generally not more difficult than measuring their cost on a cash basis. The main challenge facing insurance agencies is how to project a single set of cash flows for the budget given the multiple, and sometimes catastrophic scenarios facing their programs; that challenge exists under both cash accounting and net present value accounting. Insurance programs use probabilistic modeling to collapse such multiple scenarios into one for cash or present value budgeting. In some cases cash budgeting involves more steps than accrual budgeting; for example when an agency can accurately predict the value of a claim but faces uncertainty about the timing of its payouts or recoveries.

Before implementing a change in the treatment of insurance programs, the Administration and the Con-

gress would need to clarify the definition of an “insurance program.” For example, because the programs that are grouped under the label of “social insurance” do not involve binding obligations and in some cases do not resemble typical insurance programs (e.g., the main Social Security program), the Administration would not include social insurance programs in any such proposal.

Other Budget Reform Proposals

Joint Budget Resolution.—A joint budget resolution would set the overall levels for discretionary spending, mandatory spending, receipts, and debt in a simple document that would have the force of law. Under the current process, the Congress annually adopts a “concurrent resolution,” which does not require the President’s signature and does not have the force of law.

A joint budget resolution could be enforced by sequesters requiring automatic across-the-board cuts to offset any excess spending, similar to the BEA. It would bring the President into the process at an early stage, encourage the President and the Congress to reach agreement on overall fiscal policy before individual tax and spending bills are considered, and give the budget resolution the force of law.

Biennial Budgeting and Appropriations.—Only three times in the last 26 years have all appropriation bills been enacted by the beginning of the fiscal year. Because Congress must enact these bills each year, it cannot devote the time necessary to provide oversight and fully address problems in Federal programs. The preoccupation with these annual appropriations bills frequently precludes review and action on authorization legislation and on the growing portion of the budget that is permanently funded under entitlement laws. According to the Congressional Budget Office, in recent years the Congress appropriated between \$160 billion and \$170 billion for programs and activities whose authorizations of appropriations have expired.

In contrast, a biennial budget would allow lawmakers to devote more time every other year to ensuring that taxpayers’ money is spent wisely and efficiently. In addition, Government agencies would receive more stable funding, which would facilitate longer range planning and improved fiscal management. Under the President’s proposal for a biennial budget, funding decisions would be made in odd-numbered years, with even numbered years devoted to authorizing legislation.

Government Shutdown Prevention.—In the 23 out of the past 26 years in which Congress has not finished appropriation bills by the October 1st deadline, it has funded the Government through “continuing resolutions” (CRs), which provide temporary funding authority for Government activities, usually at current levels, until the final appropriations bills are signed into law.

If Congress does not pass a CR or the President does not sign it, the Federal Government must shut down. Important Government functions should not be held hostage simply because of an impasse over temporary funding bills. There should be a back-up plan to avoid the threat of a Government shutdown, although the expectation is that appropriations bills still would pass on time as the law requires. Under the Administration’s proposal, if an appropriations bill is not signed by October 1 of the new fiscal year, funding would be automatically provided at the lower of the President’s Budget or the prior year’s level.

Results and Sunset Commissions.—The Federal Government’s ability to serve the American people is often hampered by poorly designed programs or uncoordinated, overlapping programs trying to achieve the same objective. Today, almost 25 percent of assessed programs on which the Government spends almost \$150 billion a year have been determined to be either ineffective or unable to demonstrate results. And the problem of overlapping programs exists in many areas where the Government is trying to serve.

From the 1930s through 1984, presidents were permitted to submit plans for reorganizing Federal agencies to Congress that would become effective unless the plan was disapproved by either House of Congress. After the Supreme Court decision in *INS v. Chadha* (462 U.S. 919), the authority granted to presidents for submitting reorganization plans under the Reorganization Act (5 U.S.C. 903) was limited by the requirement of congressional approval through a joint resolution and by the scope of what could be proposed. This authority was no longer available to the President after 1984.

Today, proposals to restructure or consolidate programs or agencies so they can perform better require a change in law and often face long odds of being enacted due to a cumbersome process that requires approval from multiple congressional committees.

To address this problem, in June 2005 the Administration transmitted the Government Reorganization and Program Performance Improvement Act, which would establish bipartisan Results Commissions and a Sunset Commission. Results Commissions would consider and revise Administration proposals to restructure or consolidate programs or agencies to improve their performance. The Sunset Commission would consider Presidential proposals to retain, restructure, or terminate agencies and programs according to a schedule set by the Congress. Agencies and programs would automatically terminate according to the schedule unless reauthorized by the Congress. The legislation was introduced in the House and Senate, but was not enacted.

