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**Analysis of Congressional
Budget Cycles:**

Fiscal Years 2004 - 2007

Avery Day

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I. Fiscal Years 2004 – 2007: Overall Budget Picture

From Fiscal Year (FY) 2004 through FY2007, the federal government spent over \$10.15 trillion and collected over \$9 trillion in receipts.¹ Under the federal Constitution and federal statute, all federal spending must be approved by Congress.² How Congress approves this spending is controlled by the Congressional Budget Act of 1974.³ Under this Act, a number of significant budgetary events take place throughout the year including: submission of the President's budget request for the coming fiscal year, approval of the congressional budget resolution and completion of all annual appropriations bills before the beginning of the new fiscal year (See Table 1).⁴

Table 1: Congressional Budget Timetable

<u>On or Before:</u>	<u>Action to be Completed:</u>
First Monday in February	President submits his budget.
February 15	Congressional Budget Office submits report to Budget Committees.
Not later than 6 weeks after President submits budget.	Committees submit views and estimates to Budget Committees.
April 1	Senate Budget Committee reports concurrent resolution on the budget.
April 15	Congress completes action on concurrent resolution on the budget.
May 15	Annual appropriation bills may be considered in the House.
June 10	House Appropriations Committee reports last annual appropriation bill.
June 15	Congress completes action on reconciliation legislation.
June 30	House completes action on annual appropriation bills.
October 1	Fiscal year begins.

Source: 2 U.S.C. § 631 (2000).

¹ Budget of the United States Government, Fiscal Year 2009, Historical Tables, Office of Management and Budget, 22, (2008) (available at: <http://www.whitehouse.gov/omb/budget/fy2009/pdf/hist.pdf>).

² U.S. Const. art. I, § 9, cl. 7; Antideficiency Act, 31 U.S.C. § 1341 (2000).

³ Pub. L. No. 93-344 tit. I-IX (codified at: 2 U.S.C. §§ 601-88 (2000)).

⁴ 2 U.S.C. § 631 (2000).

A student of the budget armed with only this basic timetable of the budget process would, however, be horribly lost when analyzing federal spending in FY2004 through FY2007. During this period, Congress often failed to follow the regular budget process and relied on a number of “extra-budgetary” procedures to fund the United States Government. Congress largely failed to pass annual appropriations bills before the October 1st deadline; only seven of 48 appropriations bills were enacted on time during this four-year period.⁵ Congress even failed to pass a budget resolution for FY2005 and for FY2007.⁶ These breakdowns in the budget process forced Congress to rely on “extra-budgetary” procedures – procedures that would not have been unnecessary had the budget process worked as prescribed in the Congressional Budget Act of 1974 – to keep the government running. For example, Congress passed two omnibus appropriations bills during this four-year period.⁷ Congress generally resorts to adopting omnibus appropriations bills only when it is clear that individual appropriations bills will not be passed on time.⁸ In this same four-year period, 14 continuing resolutions were enacted to ensure continued funding of the federal government.⁹ Continuing resolutions usually act as stop-gap

⁵ FY2004: FY2004 Department of Defense Appropriations Act, Pub. L. No. 108-87 (2003); FY2004 Department of Homeland Security Appropriations Act, Pub. L. No. 108-90 (2003); FY2004 Legislative Branch Appropriations Act, Pub. L. No. 108-83 (2003). FY2005: FY2005 Department of Defense Appropriations Act, Pub. L. No. 108-287 (2004). FY2006: FY2006 Department of Interior, Environment, and Related Agencies Appropriations Act, Pub. L. No. 109-54 (2005); FY2006 Legislative Branch Appropriations Act, Pub. L. No. 109-55 (2005). FY2007: Department of Defense Appropriations Act, Pub. L. No. 109-289 (2006).

⁶ For FY2005, the Senate passed a budget resolution, S. Con. Res. 95, 108th Cong. (2004), and the House passed its own version of the budget resolution, H.R. Con. Res. 393, 108th Cong. (2004). A conference report, H.R. Rep. No. 108-498 (2004) (Conf. Rep.), to reconcile the differences between these two resolutions was filed and passed in the House but not considered in the Senate, producing no congressional budget resolution for FY2005. For FY2007, the Senate passed a budget resolution, S. Con. Res. 83, 109th Cong. (2006), and the House passed its own version of the budget resolution, H.R. Con. Res. 376, 109th Cong. (2006). This year, however, no further conference action was taken by Congress, producing no congressional budget resolution for FY2007.

⁷ FY2004 Consolidated Appropriations Act, Pub. L. No. 108-199 (2003) (consolidating seven of the 13 annual appropriations bills); FY2005 Consolidated Appropriations Act, Pub. L. No. 108-447 (2004) (consolidating nine of the 13 annual appropriations bills).

⁸ The FY2004 Omnibus Appropriations bill was passed over three months after the October 1st deadline. The FY2005 Omnibus Appropriations bill was passed over two months after the October 1st deadline.

⁹ FY2004: Pub. L. No. 108-84 (2003); Pub. L. No. 108-104 (2003); Pub. L. No. 108-107 (2003); Pub. L. No. 108-135 (2003). FY2005: Pub. L. No. 108-309 (2004); Pub. L. No. 108-416 (2004); Pub. L. No. 108-434 (2004).

funding measures. They are enacted after October 1st, the beginning of the fiscal year, to provide temporary funding to those agencies that have not yet been funded through the annual appropriations process. Congress, however, used a continuing resolution as a long-term funding mechanism in FY2007 when only two of the 11 annual appropriations bills were individually enacted.¹⁰ It was only by stepping outside of the formal budget process that Congress was able to ensure the uninterrupted operation of the federal government for these four years.

To describe the budget process in FY2004 through FY2007 as simply “functioning” would not capture the full picture. During this period, statutory budget enforcement was not in effect. Sequestration of discretionary spending that exceeded annual budget caps and sequestration of mandatory spending or revenue legislation that exceeded pay-as-you-go (PAYGO) limits were put in place beginning in FY1991, but expired at the end of FY2002.¹¹ The expiration of these statutory budget enforcement mechanisms left only congressional points of order in the House and Senate to enforce annual discretionary spending limits¹² and PAYGO points of order in the Senate to restrain mandatory spending and revenue legislation that increased the deficit.¹³

FY2006: Pub. L. No. 109-77 (2005); Pub. L. No. 109-105 (2005); Pub. L. No. 109-128 (2005). FY2007: Pub. L. No. 109-289 (2006); Pub. L. No. 109-369 (2006); Pub. L. No. 109-383 (2006); Pub. L. No. 110-5 (2007).

¹⁰ Pub. L. No. 110-5 (2007) was enacted on February 15, 2007 as a continuing resolution to maintain funding until September 30, 2007, the end of FY2007, for those agencies not funded through the FY2007 Department of Defense Appropriations Act, Pub. L. No. 109-289 (2006), or the FY2007 Department of Homeland Security Appropriations Act, Pub. L. No. 109-295 (2006).

¹¹ 2 U.S.C. §§ 900-907d (2000). See generally David Burd & Brad Shron, Analysis & Critique of Specialized Rules: Discretionary Caps, Spending Targets, and Committee Allocations, Harvard Law School Federal Budget Policy Seminar, Briefing Paper No. 1, 7-9 (statutory enforcement of discretionary spending caps) and Ellen Bradford & Matthew Scogin, PAYGO Rules and Sequestration Procedures, Harvard Law School Federal Budget Policy Seminar, Briefing Paper No. 2, 3-6 (statutory enforcement of PAYGO limits) (both available at: www.law.harvard.edu/faculty/hjackson/budget.php).

¹² 2 U.S.C. § 633 (2000) (congressional enforcement of discretionary spending caps).

¹³ H.R. Con. Res. 95, 108th Cong. § 505 (2003) (enacted) (The Senate rules-based PAYGO point of order for each fiscal year from FY2004 to FY2007. This revised version of PAYGO exempted legislation implementing mandatory spending and revenue policy changes assumed in the most recent budget resolution from the Senate rules-based PAYGO point of order, even if the assumed changes increased deficit spending.).

Although budget enforcement was particularly weak during this period, Congress did succeed in reducing the federal deficit. The FY2004 budget deficit of \$412.7 billion set the record for the largest federal deficit in United States history.¹⁴ The FY2004 deficit accounted for 3.6 percent of the Gross Domestic Product (GDP), a figure above the then 40-year average of 2.2 percent of GDP.¹⁵ After reaching record levels, the budget deficit, in real terms and as a percentage of GDP, shrunk each year from FY2004 until FY2007.¹⁶ The FY2007 deficit totaled \$162 billion, which was 1.2 percent of GDP or half of the then 40-year average of 2.4 percent of GDP.¹⁷ Though there was a decrease in the size of the annual deficit, the federal debt continued to climb. At the beginning of FY2004, the federal debt limit stood at \$7.384 trillion.¹⁸ The debt limit was raised in each subsequent fiscal year, and by the end of FY2007, the debt limit had reached \$9.815 trillion.¹⁹ Actual outstanding debt totaled approximately \$9.008 trillion by the end of FY2007.²⁰

Congress tried to keep control of spending, primarily through discretionary spending caps. Annual limits on discretionary spending rose throughout this period, starting out at approximately \$786 billion for FY2004²¹ and reached almost \$873 billion for FY2007.²² Though Congress stayed within discretionary spending caps each year, this was a qualified

¹⁴ Budget of the United States Government, Fiscal Year 2009, Historical Tables, Office of Management and Budget, 22 (2008).

¹⁵ Id. at 25.

¹⁶ Id. at 22, 25.

¹⁷ Id.

¹⁸ Pub. L. No. 108-24 (2003).

¹⁹ FY2005: Pub. L. No. 108-415 (2004) (raising limit to \$8.184 trillion). FY2006: Pub. L. No. 109-182 (2006) (raising limit to \$8.965 trillion). FY2007: Pub. L. No. 110-91 (2007) (raising limit to \$9.815 trillion).

²⁰ D. Andrew Austin, The Debt Limit: History and Recent Increases, CRS Report RL31967, 5 (2007).

²¹ H.R. Con. Res. 95, 108th Cong. (2003) (enacted).

²² The House and Senate failed to pass a budget resolution setting discretionary spending caps for FY2007. Each body did enact separate pieces of legislation setting the same discretionary spending limit of \$872.8 billion. See H.R. Res. 818, 109th Cong. (2006) (enacted) (House cap); H.R. Res. 6, 110th Cong. (2007) (enacted) (House cap); and Pub. L. No. 109-234 § 7035 (2006) (Senate cap).

success. Targets were met by employing a number of budget gimmicks, such as canceling highway program contract authority, which produced savings on paper but no actual reduction in federal obligations.²³ These discretionary spending targets mean even less when the amount of supplemental spending passed by Congress during these four fiscal years is considered. From FY2004 through FY2007, Congress authorized approximately \$529 billion in new gross budget authority through the use of supplemental appropriations bills (See Table 2). A vast majority of this supplemental spending was designated emergency spending, meaning it was not counted against annual discretionary spending caps.²⁴

Table 2: FY2004-FY2007 Supplemental Spending

<u>Fiscal Year</u>	<u>Gross Budget Authority (in billions)</u>
2007	\$120
2006	\$129
2005	\$162
2004	\$118
Total Supplemental Budget Authority	\$529

Source: United States Government Accountability Office, Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls, GAO-08-314, 7, 37-39 (2008).

While Congress tried to control discretionary spending, very little was done to limit mandatory spending. Mandatory spending totaled \$1.237 trillion in FY2004 and grew to \$1.451 trillion by the end of FY2007.²⁵ Congress did pass one reconciliation bill, in February of 2006, that reduced mandatory spending over a five year period, FY2006 through FY2010, by a net

²³ See e.g., Pub. L. No. 110-5 § 21014 (2007) (canceling \$3.472 billion in highway contract authority in order to meet FY2007 discretionary spending targets).

²⁴ Allen Schick, The Federal Budget, 74 (3rd ed., The Brookings Institution 2007).

²⁵ Budget of the United States Government, Fiscal Year 2009, Historical Tables, Office of Management and Budget, 142-3 (2008).

amount of \$38.8 billion.²⁶ These savings were overshadowed by the rising cost of existing mandatory spending programs and by the creation of new mandatory spending programs. For example, the Medicare Prescription Drug Benefit, a new mandatory spending program passed by Congress in FY2004, was estimated to cost \$395 billion over the 10-year period from FY2004 to FY2013, far eclipsing the \$38.8 billion in savings that came from mandatory spending cuts.²⁷ At the same time as both mandatory and discretionary spending rose from FY2004 to FY2007, Congress enacted two tax reconciliation measures estimated to reduce federal revenues by roughly \$400 billion over the ten years between FY2003 and FY2013.²⁸ Congress also managed to approve a number of tax cuts during the FY2004 to FY2007 period outside of the reconciliation process, the largest of these revenue reducing measures was the Working Families Tax Relief Act of 2004.²⁹ Overall, FY2004 through FY2007 represented a time of increased federal spending, reduced federal revenues, and limited efforts to constrain spending growth.

²⁶ Deficit Reduction Act of 2005, Pub. L. No. 109-171 (2006). See generally William G. Dauster, The Congressional Budget Process, in Fiscal Challenges: An interdisciplinary Approach to Budget Policy 4, 26-34 (Elizabeth Garrett et al. eds., Cambridge University Press 2008) (explaining the budget reconciliation process).

²⁷ Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173 (2003). The Congressional Budget Office originally estimated that this legislation would increase mandatory spending by \$395 billion from FY2004-FY2013 (See Douglas Holtz-Eakin, CBO Estimate of Effect on Direct Spending and Revenues of Conference Agreement on H.R.1, Congressional Budget Office (2003) (available at: <http://www.cbo.gov/ftpdocs/48xx/doc4808/11-20-MedicareLetter.pdf>)). More recent estimates have projected even more mandatory spending under this law, as much as \$746 billion from FY2006-FY2015 (See Medicare Prescription Drug Benefit: Hearing Before the H. Comm. on Ways and Means, 109th Cong. (2006) (statement of Dr. Mark B. McClellan, Administrator of the Centers for Medicare & Medicaid Services) (available at: <http://www.hhs.gov/asl/testify/t060614b.html>)).

²⁸ Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27 (2003) (estimated to reduce federal revenues by roughly \$330 billion from FY2003-FY2013) (See Joint Committee on Taxation, Estimated Budget Effects of the Conference Agreement for H.R. 2 the “Jobs Growth Tax Relief Reconciliation Act of 2003”, (2003) (available at: <http://www.house.gov/jct/x-55-03.pdf>)); Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222 (2006) (originally to reduce federal revenues by roughly \$70 billion from FY2006-FY2011 (See Joint Committee on Taxation, Estimated Revenue Effects of the Conference Agreement for the “Tax Increase Prevention and Reconciliation Act of 2005”, (2006) (available at: <http://www.house.gov/jct/x-18-06.pdf>)).

²⁹ Working Families Tax Relief Act of 2004, Pub. L. No. 108-311 (2004) (See Joint Tax Committee on Taxation, Estimated Revenue Effects of the Conference Agreement for H.R. 1308, the “Working Families Tax Relief Act of 2004”, (2004) (available at: <http://www.house.gov/jct/x-60-04.pdf>) (estimated cost of \$146 billion from FY2005 to FY2014)).

II. Fiscal Years 2004 – 2007: Observed Budget Trends

The section above describes general, “bottom line” budget results from FY2004 to FY2007, such as annual deficits and annual discretionary spending caps. What follows is a description of more discrete budget trends that played an important role in determining federal spending during these four years.

A. Failure to Pass a Budget Resolution

Perhaps the most interesting budget trend of this period was Congress’ failure to approve a budget resolution for FY2005 and for FY2007.³⁰ Congress also failed to agree to a budget resolution for FY2003.³¹ This was remarkable considering that for 27 fiscal years (FY1976 through FY2002), Congress failed to adopt a budget resolution only once.³² The failure to pass a budget resolution, “the centerpiece of the congressional budget process,”³³ three times between FY2003 and FY2007 raised a number of questions. What was the practical effect of failing to pass a budget resolution and how did Congress deal with this situation? Why did Congress fail to pass budget resolutions during this period? Did Congress even need to pass a budget resolution?

Failing to pass a budget resolution could have made discretionary spending easier and harder at the same time. The failed FY2005 budget resolution illustrated how this was possible. Budget resolutions set discretionary spending caps for the upcoming fiscal year, but they can

³⁰ See *supra* note 5.

³¹ For FY2003, the Senate failed to consider a budget resolution on the Senate floor, though the Senate Budget Committee favorably reported a resolution, S. Con. Res. 100, 107th Cong. (2002). The House did adopt a budget resolution, H.R. Con. Res. 353, 107th Cong. (2002), but the Senate’s failure to approve a resolution prevented the House from proceeding to conference to develop a binding budget agreement.

³² For FY1999, the Senate passed a budget resolution, S. Con. Res. 86, 105th Cong. (1998), and the House passed its own version of a budget resolution, H.R. Con. Res 284, 105th Cong. (1998), but no conference agreement to reconcile the different budget resolutions was produced.

³³ Bill Heniff, Jr., *Overview of the Congressional Budget Process*, CRS Report RS20368, 1 (2008).

also set discretionary spending caps for future fiscal years. This was exactly what the FY2004 budget resolution did; it not only set a discretionary spending cap for FY2004, but it also included a discretionary spending cap of \$814 billion for FY2005 for the Senate.³⁴ Congress, however, wanted to allocate more than \$814 billion in discretionary spending for FY2005 – the conference report on the FY2005 budget resolution that was not adopted by the Senate set a discretionary spending cap of \$821 billion for FY2005.³⁵ By failing to pass a budget resolution for FY2005, The Senate was required to abide by a discretionary spending cap that was \$7 billion below what it wished to spend.³⁶

In one sense, however, the default FY2005 \$814 billion discretionary spending cap made discretionary spending easier. The FY2004 budget resolution contained only a total cap for FY2005 discretionary spending and did not divide this figure between the various appropriations bills.³⁷ Without individual caps for each appropriations bill, more and more spending could be added to each individual appropriations bill as it was considered without facing a budget point of order. A budget point of order could only be raised once the aggregate cap was reached, likely after a majority of the bills were already considered.³⁸ Having no individual caps meant members of the Senate needed only a majority vote to increase discretionary spending, not the

³⁴ H.R. Con. Res. 95, 108th Cong. § 504 (2003) (enacted).

³⁵ H.R. Rep. No. 108-498 (2004) (Conf. Rep.).

³⁶ Congress faced this same problem for FY2007. Congress wanted a discretionary spending cap of \$873 billion for FY2007, but failure to pass a budget resolution resulted in relying on the FY2006-passed cap of \$866 billion for the Senate. See Robert Keith, The “Deeming Resolution”: a Budget Enforcement Tool, CRS Report RL31443, 16 (2007).

³⁷ H.R. Con. Res. 95, 108th Cong. § 504 (2003) (enacted).

³⁸ See Robert Keith, The “Deeming Resolution”: a Budget Enforcement Tool, CRS Report RL31443, 14-15 (2007).

regular three-fifths majority that was required to waive a budget point of order.³⁹ Undoubtedly, a total cap could make increasing discretionary spending easier in some situations.⁴⁰

Congress headed off both of the problems that resulted from not passing a budget resolution for FY2005 and FY2007 by adopting “deeming resolutions.” A “deeming resolution” is legislation “which is deemed to serve as an annual budget resolution for purposes of establishing enforceable budget levels for a budget cycle.”⁴¹ For FY2005, the House passed a special rule that contained a “deeming resolution.”⁴² This resolution instructed the House to operate as if the conference report on the failed FY2005 budget resolution had been adopted by both chambers by giving the conference report “force and effect in the House.”⁴³ This implemented all of the budget policies in the conference report, subjecting all budgetary measures to “aggregate spending ceilings and revenue floors, as well as allocations of spending to committees.”⁴⁴ By using a “deeming resolution,” the House raised the total discretionary spending cap and placed individual caps on each appropriations bill. The House, again, adopted a “deeming resolution” for FY2007 that implemented all of the budget policies in that year’s failed budget resolution.⁴⁵ By using a “deeming resolution” the House was able to act as if Congress had reached an agreement on a budget resolution and avoided any of the pitfalls resulting from the lack of a budget resolution.⁴⁶

³⁹ 2 U.S.C. § 621 (three-fifths requirement to waive budget points of order in the Senate).

⁴⁰ Congress faced this same problem for FY2007. The FY2006 budget resolution contained a total FY2007 Senate discretionary spending cap, but no individual caps.

⁴¹ Robert Keith, The “Deeming Resolution”: a Budget Enforcement Tool, CRS Report RL31443, 1 (2007).

⁴² H.R. Res. 649, 108th Cong. § 2 (2004) (enacted).

⁴³ Id.

⁴⁴ Robert Keith, The “Deeming Resolution”: a Budget Enforcement Tool, CRS Report RL31443, 14 (2007).

⁴⁵ H.R. Res. 818, 109th Cong. § 2 (2006) (enacted) (This “deeming resolution” gave force and effect to the House version of the FY2007 budget resolution, H.R. Con. Res. 376, 109th Cong. (2006), as Congress did not produce a conference report on the budget resolution that year.).

⁴⁶ The House actually had to adopt two “deeming resolutions” for both FY2005 and FY2007 because the original “deeming resolutions” expired at the end of the 108th and 109th Congresses respectively. The second “deeming

The Senate approached the impasse on the FY2005 and FY2007 budget resolutions in a similar fashion as the House, with some minor variations. For FY2005, Congress inserted a Senate “deeming resolution” into the conference report on the FY2005 Department of Defense Appropriations Act, the first appropriations bill passed by Congress for that fiscal year.⁴⁷ Unlike the House “deeming resolution,” the Senate “deeming resolution” did not enact all of the budget policies found in the failed FY2005 budget resolution. Instead, the more narrow Senate “deeming resolution” only increased the total discretionary spending cap and established caps for individual appropriations bills.⁴⁸ The Senate “deeming resolution” specifically targeted the two problems created by Congress’ failure to pass a budget resolution, without enacting additional budget policy changes. For FY2007, Congress again included a narrow Senate “deeming resolution” in a conference report to an appropriations bill, this time a supplemental appropriations bill.⁴⁹

Why did Congress fail to adopt a budget resolution for FY2003, FY2005, and FY2007 after so many years of budget success? There is no one cause. During consideration of the FY2003 budget resolution control of Congress was divided, which could explain why the House and Senate could not agree to a budget resolution. But if that were the case, Congress should have passed a budget resolution for FY2005 and FY2007, as Congress was under the control of one party. Election year politics, which are generally accompanied by a reduction in bipartisan

resolutions” were included in the resolutions establishing the House rules at the opening of 109th and 110th Congresses. (See H.R. Res. 5, 109th Cong. § 3(a)(4) (2005) (enacted); H.R. Res. 6, 110th Cong. §511(a)(4) (2007) (enacted)).

⁴⁷ Pub. L. No. 108-287 § 14007 (2004).

⁴⁸ Id.

⁴⁹ FY2006 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, Pub. L. No. 109-234 § 7035 (2006). Unlike the House FY2005 and FY2007 “deeming resolutions,” the Senate “deeming resolutions” did not expire and only had to be adopted once.

congressional cooperation, likely played some part in Congress' failure to adopt budget resolutions for these three years, which were election years.

Budget procedure reforms also played a role in the failure to adopt a budget resolution for FY2005 and FY2007. The Congressional Budget Act of 1974's "elastic clause" states that a budget resolution may "set forth such other matters, and require such other procedures relating to the budget, as may be appropriate to carry out the purpose of [the Budget] Act."⁵⁰ Using this "elastic clause," Congress can adopt budget resolutions that modify budget procedures. In 2004, Congress tried to use the FY2005 budget resolution to modify the Senate rules-based PAYGO point of order.⁵¹ Lack of agreement on this budget procedure reform was the major obstacle that caused the FY2005 budget to fail.⁵² As the point of order stood, a rules-based PAYGO point of order could be raised in the Senate against legislation that increased the deficit through either increased mandatory spending or decreased revenues, but a point of order would not lie against any legislation that increased the deficit that was assumed in the most current budget resolution.⁵³ A majority of the Senate wanted to eliminate this exception for legislation assumed in the most recent budget resolution; the House wanted to retain this exception. The conference report on the FY2005 budget resolution did not eliminate the exception, and ultimately was not adopted by the Senate, causing the FY2005 budget resolution to fail.⁵⁴ Similarly for FY2007, there were proposed reforms of budget procedures that differed in the Senate and in the House.⁵⁵ These differences were not resolved, and there was no budget resolution for FY2007.

⁵⁰ 2 U.S.C. § 632(b)(4) (2000).

⁵¹ S. Con. Res. 95, 108th Cong. § 407 (2004).

⁵² Bill Heniff, Jr., Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule, CRS Report RL31943, 10 (2007).

⁵³ See *supra* note 13.

⁵⁴ H.R. Rep. No. 108-498 (2004) (Conf. Rep.).

⁵⁵ The Senate, again, proposed a modification of the Senate rules-based PAYGO point of order, and proposed an emergency spending cap, S. Con. Res. 83, 109th Cong. §§ 402, 406 (2006). The House version of the budget

Congress failed to pass a budget resolution for FY2003, FY2005 and FY2007, despite the fact that a budget resolution is “the centerpiece of the congressional budget process.”⁵⁶ The federal government continued to operate; agencies were still funded. As noted by budget scholar Allen Schick, “the lack of a budget resolution was hardly noticed.”⁵⁷ What does this say about the need for a budget resolution or about the utility of the congressional budget process in general? Schick argues that when discussing the congressional budget process it is important to distinguish between status quo and change-oriented years.⁵⁸ In status quo-oriented years, Congress does not need to pass a budget resolution to ensure the continued operation of the federal government.⁵⁹ In change-oriented years, when Congress wants to modify the tax code, entitlement programs, or federal budget rules, a budget resolution is necessary.⁶⁰ Schick also argues that the budget process from 2001 to 2006 was a significantly different activity than originally contemplated when the Congressional Budget Act was enacted in 1974.⁶¹ From 2001 to 2006, the budget process was primarily used to reduce taxes, and years when taxes were not reduced, there was no need to pass a budget resolution.⁶² This may be an accurate assessment of the failure to pass a budget for FY2003, FY2005 and FY2007. In fact, election years are often considered status quo-oriented years, as Congress approves few reforms during election years. It is worth noting, however, that both houses of Congress still adopted “deeming resolutions” for

resolution did not propose any modification of the Senate rules-based PAYGO point of order and contained an alternative emergency spending cap proposal, H.R. Con. Res. 376, 109th Cong. § 501 (2006).

⁵⁶ Bill Heniff, Jr., Overview of the Congressional Budget Process, CRS Report RS20368, 1 (2008).

⁵⁷ Allen Schick, The Federal Budget, 119 (3rd ed., The Brookings Institution 2007).

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id. at 141-2.

⁶² Id.

FY2005 and FY2007.⁶³ Even in these status quo-oriented years, Congress felt the need to adopt these de facto budget limits.

B. Congressional Spending Priorities

From FY2004 to FY2007, Congress controlled spending by modifying three major elements of the federal budget. This involved limiting discretionary spending through annual caps, increasing or decreasing mandatory spending, and increasing or decreasing revenues. By manipulating these three main areas of the budget, Congress implemented its various policy preferences. Budget procedures are designed to limit how these three main elements of the budget are manipulated by Congress, but it is unclear how successful these procedures were at constraining congressional action during this period.

During each fiscal year from FY2004 to FY2007, Congress did manage to set discretionary spending limits. Discretionary spending caps are generally set in each year's budget resolution. As noted above, however, Congress had to resort to the use of "deeming resolutions" for FY2005 and FY2007 in order to establish discretionary caps. In fact, the only issue addressed in the Senate FY2005 and FY2007 "deeming resolutions" was discretionary spending limits.⁶⁴

The FY2004 budget resolution established a discretionary cap of approximately \$786 billion. This was increased to \$821 billion for FY2005 by Senate and House "deeming

⁶³ Only the House adopted a "deeming resolution" for FY2003, H.R. Res. 428, 107th Cong. (2002) (enacted), which was readopted at the beginning of the 108th Congress because the original "deeming resolution" expired with the 107th Congress, H.R. Res. 5, 108th Cong. § 3(a)(4) (2003).

⁶⁴ See supra notes 47-49.

resolutions,” an increase of roughly 4.4 percent.⁶⁵ The FY2006 budget resolution established a discretionary cap of \$843 billion, an increase of about 2.7 percent over FY2005 levels.⁶⁶ The FY2007 discretionary spending cap established by Senate and House “deeming resolutions” was approximately \$873 billion, a 3.6 percent increase over FY2006 levels.⁶⁷ The overall growth in discretionary spending caps from FY2004 to FY2007 was roughly 11 percent.⁶⁸ The growth of these discretionary spending caps closely tracked the President’s proposed spending levels for these fiscal years.⁶⁹

Though Congress did establish and abide by discretionary spending limits for each of these fiscal years, this was a qualified success story. Between FY2004 and FY2007, Congress approved roughly \$529 billion in gross supplemental budget authority (See Table 2). A vast majority of this supplemental budget authority was deemed emergency spending and was approved outside of the annual discretionary caps. In fact, actual discretionary spending during this period was approximately \$599 billion above congressional discretionary caps.⁷⁰ Congress

⁶⁵ FY2004: H.R. Con. Res. 95, 108th Cong. (2003) (enacted). FY2005: H.R. Res. 649, § 2, 108th Cong. (2004) (enacted) (House cap); H.R. Res. 5, 109th Cong. § 3(a)(4) (2005) (enacted) (House cap); and FY2005 Department of Defense Appropriations Act, Pub. L. No. 108-287 § 14007 (2004) (Senate cap).

⁶⁶ H.R. Con. Res. 95, 109th Cong. (2005) (enacted).

⁶⁷ The House and Senate failed to pass a budget resolution setting discretionary spending caps for FY2007. Each body did enact separate pieces of legislation setting the same discretionary spending limit of \$872.8 billion. See H.R. Res. 818, 109th Cong. (2006) (enacted) (House cap); H.R. Res. 6, 110th Cong. (2007) (enacted) (House cap); and Pub. L. No. 109-234 § 7035 (2006) (Senate cap).

⁶⁸ As a comparison, the inflation rate from the beginning of FY2004 until the end of FY2007 was roughly 12.9 percent.

⁶⁹ FY2004: \$782 billion discretionary spending request. Budget of the United States Government, Fiscal Year 2004, Historical Tables, Office of Management and Budget, 104 (2003). FY2005: \$818 billion discretionary spending request. Budget of the United States Government, Fiscal Year 2005, Historical Tables, Office of Management and Budget, 105 (2004). FY2006: \$ 840 billion discretionary spending request. Budget of the United States Government, Fiscal Year 2006, Historical Tables, Office of Management and Budget, 105 (2005). FY2007: \$871 billion discretionary spending request. Budget of the United States Government, Fiscal Year 2007, Summary Tables, Office of Management and Budget, 314 (2006) (all available at: <http://www.gpoaccess.gov/usbudget/browse.html>).

⁷⁰ Budget of the United States Government, Fiscal Year 2009, Historical Tables, Office of Management and Budget, 155 (2008) (actual discretionary spending for FY2004-FY2007 less congressional spending caps for FY2004-FY2007).

was able to approve a significant amount of spending above annual caps for these fiscal years while still, technically, complying with discretionary spending limits.

Though one reconciliation bill to reduce mandatory spending was enacted during FY2006, Congress largely left mandatory spending alone during the four years from FY2004 to FY2007.⁷¹ The President proposed a \$62 billion reduction of mandatory spending from FY2006 through FY2010 in his FY2006 budget request.⁷² For the first time since 1997, Congress adopted a budget resolution that included reconciliation instructions requiring mandatory spending cuts: \$34.7 billion over the five-year period from FY2006 to FY2010.⁷³ The actual reconciliation bill enacted to reduce mandatory spending, the Deficit Reduction Act of 2005, resulted in a net reduction of about \$38.8 billion in mandatory spending from FY2006 through FY2010.⁷⁴ Notably, this bill contained over \$26 billion in increased mandatory spending for this same five year period that had to be offset by mandatory spending reductions in order to arrive at the target set by the FY2006 budget resolution.⁷⁵ Congressional leaders had to provide a number of “sweeteners” in this bill, such as \$1 billion in home heating assistance, \$1 billion for a dairy subsidy program and \$1.5 billion to subsidize the purchase of television converter boxes, in order to win approval of these mandatory spending cuts.⁷⁶

⁷¹ Deficit Reduction Act of 2005, Pub. L. No. 109-171 (2006).

⁷² Budget of the United State Government, Fiscal Year 2006, Summary Tables, Office of Management and Budget, 348-53 (2005).

⁷³ H.R. Con. Res. 95, 109th Cong. (2005) (enacted).

⁷⁴ See S. 1932 Deficit Reduction Act of 2005, Congressional Budget Office, 2 (2006) (available at: www.cbo.gov/ftpdocs/70xx/doc7028/s1932conf.pdf).

⁷⁵ Robert Keith, Budget Reconciliation Legislation in 2005-2006 Under the FY2006 Budget Resolution, CRS Report RL33132, 37 (2007).

⁷⁶ Id.

Budget authority William Dauster characterizes the reconciliation process as “the dominant means for Congress to make fiscal policy.”⁷⁷ This may be true for revenue reductions, but even with the protections of the reconciliation process it is still politically difficult to enact mandatory spending cuts. The experience of the Congress in FY2006 bears this out: this was the first cut in mandatory spending since 1997, the President proposed only modest reductions to mandatory spending, Congress enacted reductions at a level below even what the President proposed, and ultimately, it took a number of “sweeteners” to get this legislation approved.

Growth in mandatory spending from FY2004 to FY2007 dwarfs the Deficit Reduction Act’s \$38.8 billion mandatory spending cuts. This is due to the natural growth of existing mandatory programs and the creation of new mandatory programs during this period. The largest new mandatory spending program that was created during this period was the Medicare Prescription Drug Benefit that was enacted during FY2004. This Medicare overhaul was originally estimated to increase mandatory spending by \$395 billion from FY2004 to FY2013.⁷⁸ Congressional leaders were able to use the budget process in a number of ways to get this legislation enacted. As noted above, the FY2004 budget resolution changed the Senate rules-based PAYGO point of order so that it did not apply to increases in the deficit that were assumed in the most recent budget resolution.⁷⁹ The FY2004 budget resolution also assumed \$400 billion dollars over the next ten fiscal years to implement the Medicare Prescription Drug Benefit.⁸⁰ These two actions allowed Congress to create this new mandatory spending program without triggering any budget enforcement mechanisms. Strangely, rising deficit forecasts added an

⁷⁷ William G. Dauster, The Congressional Budget Process, in *Fiscal Challenges: An interdisciplinary Approach to Budget Policy* 4, 27 (Elizabeth Garrett et al. eds., Cambridge University Press 2008).

⁷⁸ Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173 (2003) (\$395 billion budget estimation at: Douglas Holtz-Eakin, CBO Estimate of Effect on Direct Spending and Revenues of Conference Agreement on H.R.1, Congressional Budget Office (2003)).

⁷⁹ See supra note 13.

⁸⁰ H.R. Con. Res. 95, 108th Cong. § 401 (2003) (enacted).

additional pressure to pass this legislation, as many members of Congress “saw the opportunity [to increase mandatory spending] as fleeting.”⁸¹

Even with these budgetary process factors working in favor of the bill, this program was adopted in the House by a very thin margin. In a controversial move, House leaders held the vote for this program open for nearly three hours in what is thought to be the longest time a vote has been held open since the House adopted electronic voting in 1973.⁸² The controversy did not end after the program was created. Since adoption, many have questioned the Congressional Budget Office’s cost estimation of this legislation that was found to be just within the \$400 billion limit created by the FY2004 budget resolution. Subsequent estimates have projected that this program will cost more in mandatory spending than originally assumed. One such estimate projected \$746 billion in increased mandatory spending from FY2006 through FY2015.⁸³

Congress was more active in modifying revenue legislation from FY2004 to FY2007 than in changing mandatory spending. Allen Schick characterized the period from 2001 to 2006 as a time when the budget process was used to reduce taxes.⁸⁴ He further argues that years when Congress did not consider tax cuts, it avoided the difficulties of the budget process altogether by not adopting a budget resolution.⁸⁵ Congress’ revision of the Senate rules-based PAYGO point of order in the FY2004 budget resolution greatly facilitated enacting tax cuts through the reconciliation process.⁸⁶ Because the new version of the Senate rules-based PAYGO point of order did not apply to proposals assumed in the most recent budget resolution that would

⁸¹ Congressional Quarterly Almanac 2003, 11-3 (Jan Austin ed., Congressional Quarterly Inc. 2004).

⁸² Id. at 11-8.

⁸³ Medicare Prescription Drug Benefit: Hearing Before the H. Comm. on Ways and Means, 109th Cong. (2006) (statement of Dr. Mark B. McClellan, Administrator of the Centers for Medicare & Medicaid Services).

⁸⁴ Allen Schick, The Federal Budget, 142 (3rd ed., The Brookings Institution 2007).

⁸⁵ Id.

⁸⁶ See supra note 13.

increase the deficit, tax cuts enacted through the reconciliation process were not subject to budget enforcement mechanisms and did not have to be offset.

The largest tax cut in this four-year period was enacted in FY2004.⁸⁷ The President's FY2004 budget proposed a \$1.46 trillion tax cut from FY2004 to FY2013.⁸⁸ This figure was substantially reduced by Congress during consideration of the FY2004 budget resolution.⁸⁹ The final FY2004 reconciliation bill reduced revenues by \$330 billion over a ten year period.⁹⁰ Congress used the reconciliation process again to reduce taxes during FY2006.⁹¹ For this fiscal year, the President proposed a \$1.29 trillion tax cut from FY2006 through FY2015.⁹² Again, this figure was substantially reduced during consideration of the budget resolution, and reconciliation instructions required only a \$70 billion reduction in revenues over the next five fiscal years.⁹³ The final FY2006 tax reconciliation bill complied with reconciliation instructions and reduced revenues by \$70 billion over five fiscal years.⁹⁴

Notably, however, Congress was able to adopt a \$146 billion tax cut during FY2005 without the use of the reconciliation process.⁹⁵ As noted above, Congress failed to pass a budget resolution for FY2005, meaning any reduction in revenues during that year would be subject to the Senate rules-based PAYGO point of order.⁹⁶ Budget enforcement mechanisms did not impede passage of this \$146 billion tax cut, however, as "election-year politics made [this]

⁸⁷ Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27 (2003) (\$330 billion) (see supra note 28).

⁸⁸ David Brumbaugh, President Bush's 2003 Tax Cut Proposal: a Brief Overview, CRS Report RS21420, 1 (2003).

⁸⁹ H.R. Con. Res. 95, 108th Cong. §§ 201, 202 (2003) (enacted).

⁹⁰ See supra note 28.

⁹¹ Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222 (2006) (\$70 billion) (see supra note 28).

⁹² David Brumbaugh, Major Tax Issues in the 109th Congress, CRS Report RL32719, 10 (2005).

⁹³ H.R. Con. Res. 95, 109th Cong. §§ 201, 202 (2005) (enacted).

⁹⁴ See supra note 28.

⁹⁵ Working Families Tax Relief Act of 2004, Pub. L. No. 108-311 (2004) (See supra note 29).

⁹⁶ See supra note 5.

package of family and business tax breaks irresistible.”⁹⁷ During consideration in the Senate, no rules-based PAYGO point of order was raised against this deficit-increasing, but politically popular, bill and it was adopted by a vote of 92 – 3.⁹⁸

Congress produced a number of results during this period. Were these results shaped by the constraints of the budget process or was the budget process shaped by the results that Congress wanted to reach? Perhaps, the answer is both. Congress felt the need to establish discretionary spending caps, even for those years in which it did not pass a budget resolution. These constraints effectively channeled additional spending into emergency spending. At the same time, Congress modified the Senate rules-based PAYGO point of order to reach the results it wanted – specifically, the Medicare Prescription Drug Benefit and FY2004 and FY2006 tax cuts. The answer could also be neither. Congress enacted tax cuts during FY2005 free from the constraints of existing budget enforcement mechanisms and without the need to modify the rules of the budget process.

C. Growth of Supplemental and “Emergency” Spending

Supplemental appropriations bills “provide additional budget authority for government activities for the fiscal year already in progress, over and above any funding provided in regular appropriations laws, continuing resolutions, or omnibus appropriations.”⁹⁹ Congress’ increased reliance on supplemental spending bills in recent years is a well documented phenomenon. The Government Accountability Office (GAO) found a five-fold increase in the amount of new gross budget authority authorized through supplemental appropriations bills from FY1997 through

⁹⁷ Congressional Quarterly Almanac 2004, 13-8 (Jan Austin ed., Congressional Quarterly Inc. 2005).

⁹⁸ Senate Vote No. 188, 108th Cong. (2004).

⁹⁹ United States Government Accountability Office, Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls, GAO-08-314, 5 (2008).

FY2006, as compared to the previous ten-year period.¹⁰⁰ Additionally, Congress offset less and less of this supplemental spending in the years since the expiration of statutory budget enforcement mechanisms.¹⁰¹

From FY2004 to FY2007, Congress authorized approximately \$529 billion in new gross budget authority through supplemental appropriations legislation (See Table 2).¹⁰² A vast majority of this new budget authority was designated “emergency” spending, meaning this was new discretionary spending that was not counted against annual discretionary spending caps. Actual discretionary spending during this period was approximately \$599 billion above annual discretionary spending caps.¹⁰³ These figures differ because not all “emergency” funding has been approved through the supplemental appropriations process – Congress has also included “emergency” spending in various regular appropriations bills.¹⁰⁴

Supplemental appropriations in each fiscal year from FY2004 through FY2007 were higher than in any other previous year,¹⁰⁵ with much of this supplemental funding going to finance military operations in Iraq and Afghanistan.¹⁰⁶ From FY1997 to FY2006, 60 percent of all supplemental appropriations went to the Department of Defense and 14 percent went to the Department of Homeland Security – all other departments received five percent or less of total

¹⁰⁰ Id. at 3.

¹⁰¹ Between FY1981 and FY2002, about 25 percent of all supplemental appropriations were offset by reductions in other spending or increases in revenues. From the expiration of statutory budget enforcements mechanisms at the end of FY2002 to FY2006, less than five tenths of one percent of supplemental appropriations have been offset. (Thomas Hungerford, Supplemental Appropriations: Trends and Budgetary Impacts Since 1981, CRS Report RL33134, 8 (2006)).

¹⁰² United States Government Accountability Office, Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls, GAO-08-314, 7, 37-39 (2008).

¹⁰³ See supra note 70.

¹⁰⁴ See, e.g., FY2006 Department of Defense Appropriations Act, Pub. L. No. 109-148 tit. IX (2005) (\$50 billion in emergency funding for the Department of Defense).

¹⁰⁵ United States Government Accountability Office, Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls, GAO-08-314, 7 (2008).

¹⁰⁶ Allen Schick, The Federal Budget, 259 (3rd ed., The Brookings Institution 2007).

supplemental funds.¹⁰⁷ GAO experts believe that the growth of supplemental spending “stem[med] from a greater breakdown of and failures in the regular budget and appropriations process.”¹⁰⁸ Further, these experts believe that unrealistic discretionary budget caps increased incentives to use supplemental appropriations.¹⁰⁹

The growth of supplemental funding during this period was not without controversy, as there were a number of policy considerations associated with this funding mechanism. As previously noted, supplemental funding was usually deemed “emergency” spending by Congress, exempting this funding from annual discretionary spending caps. As Schick notes, however, “the emergency exemption [was] quite elastic.”¹¹⁰ “Emergency” was not defined by statute, though Congress defined what qualified as an “emergency” in congressional budget resolutions: a necessary expenditure that was sudden, urgent, unforeseen and not permanent.¹¹¹ The GAO found that these criteria were not always enforced and that provisions inconsistent with these criteria were regularly enacted by Congress.¹¹² For example, some have questioned whether funding for an ongoing event, such as the military conflict in Iraq, qualified as a “sudden” or “unforeseen” event.¹¹³ The GAO also found that a number of accounts are regularly funded through supplemental appropriations bills, a potential budget gimmick to avoid annual discretionary spending caps.¹¹⁴ Further, the GAO found diminished Congressional oversight of

¹⁰⁷ United States Government Accountability Office, Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls, GAO-08-314, 10 (2008).

¹⁰⁸ Id. at 28.

¹⁰⁹ Id.

¹¹⁰ Allen Schick, The Federal Budget, 259 (3rd ed., The Brookings Institution 2007).

¹¹¹ United States Government Accountability Office, Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls, GAO-08-314, 14 (2008). See e.g., H.R. Con. Res. 95, 109th Cong. § 402(c) (2005) (enacted) (definition of “emergency”).

¹¹² United States Government Accountability Office, Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls, GAO-08-314, 13 (2008).

¹¹³ Id. at 15.

¹¹⁴ Id. at 13.

how supplemental funds were expended because they were often available until expended, unlike regular funds which generally expire annually.¹¹⁵

Congress responded to the growth in the use of supplemental spending bills and “emergency” spending by proposing and enacting budget process reforms. As noted above, Congress included a definition of “emergency” in various budget resolutions, beginning with the FY2004 budget resolution.¹¹⁶ Though ultimately not adopted, Congress considered placing a limit on how much “emergency” spending for overseas military operations would be exempt from Senate budget points of order when debating the FY2005 budget resolution.¹¹⁷ Then, for the first time, Congress limited the amount of “emergency” spending for overseas military operations that would be exempt from Senate budget points of order to \$50 billion in the FY2006 budget resolution.¹¹⁸ It is unclear how effective this limit proved to be, however, as the amount of new gross budget authority authorized in FY2005 through supplemental appropriations bills totaled over \$128 billion.¹¹⁹ Though a budget resolution was not adopted for FY2007, the House and the Senate considered differing proposals to limit the use of “emergency” spending.¹²⁰ The House proposed a cap of \$6.45 billion on all non-military “emergency” spending for FY2007.¹²¹ Non-military “emergency” spending above this cap would be subject to adjustments and approval by the Chairman of the House Budget Committee.¹²² The Senate, again, proposed limiting the amount of “emergency” spending that would be exempt from Senate budget points

¹¹⁵ Id.

¹¹⁶ H.R. Con. Res. 95, 108th Cong. § 502(c)(3) (2003) (enacted).

¹¹⁷ H.R. Rep. No. 108-498, § 403 (2004) (Conf. Rep.) (\$50 billion cap).

¹¹⁸ H.R. Con. Res. 95, 109th Cong. § 402(b)(11)(B) (2005) (enacted).

¹¹⁹ United States Government Accountability Office, Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls, GAO-08-314, 7 (2008).

¹²⁰ H.R. Con. Res. 376, 109th Cong. § 501 (2006); S. Con. Res. 83, 109th Cong. § 402(a)(3) (2006).

¹²¹ H.R. Con. Res. 376, 109th Cong. § 501 (2006).

¹²² Id.

of order.¹²³ This was the same procedure that was adopted for FY2006, though this new proposal would have privileged the first \$90 billion of all “emergency” spending (military and non-military spending alike).¹²⁴

Congress’ attempts at budget process reform did acknowledge the growing concerns regarding the expanded use of supplemental and “emergency” spending. These reforms, however, likely did little more than acknowledge the public’s concern. Any attempt to limit the use of supplemental appropriations looks like a failure with the passage of the largest supplemental appropriations bill in U.S. history in FY2007.¹²⁵

D. Substantive Budget Reform

Arguably, the budget process may have put few limits on Congressional spending from FY2004 to FY2007. Further, Congress did not always comply with budget procedures, such as completing a budget resolution, during this period. Congress’ consideration of a number of budget process reforms, however, indicated that Congress continued to view the budget process as an important institution. Clashes over budget reforms had real results in Congress, like the failure to complete the FY2005 budget resolution.¹²⁶ Further, budget process reforms were proposed during each fiscal year by Congress and by the President.

Each fiscal year from FY2004 to FY2007, the President included a package of budget reform proposals in his annual budget request.¹²⁷ Each fiscal year, the President proposed

¹²³ S. Con. Res. 83, 109th Cong. § 402(a)(3) (2006).

¹²⁴ Id.

¹²⁵ U.S. Troop Readiness, Veteran’s Care, Katrina Recovery, and Iraq Accountability Appropriations Act, Pub. L. No. 110-28 (2007) (\$120 billion supplement appropriations bill).

¹²⁶ See supra note 52.

¹²⁷ FY2004: Budget of the United States Government, Fiscal Year 2004, Analytical Perspectives, Office of Management and Budget, 315-18, (2003); FY2005: Budget of the United States Government, Fiscal Year 2005, Analytical Perspectives, Office of Management and Budget, 215-19, (2004); FY2006: Budget of the United States

reinstating statutory discretionary budget caps and statutory PAYGO caps for mandatory spending, both to be enforced through the sequestration process.¹²⁸ This would largely restore the statutory budget enforcement procedures that expired at the end of FY2002, except the President proposed that PAYGO procedures not apply to proposals that decreased federal revenues. Each fiscal year, the President proposed amending the Congressional Budget Act of 1974 to create a statutory definition of “emergency” spending: a necessary expenditure that was sudden, urgent, unforeseen and not permanent.¹²⁹ The President also requested that each fiscal year’s budget be adopted through a joint resolution, as opposed to a concurrent resolution.¹³⁰ A joint resolution would have the force of law and would require Presidential presentment in order to be adopted. Each fiscal year, the President proposed abolishing annual budgeting in order to establish a biennial budgeting and appropriations process.¹³¹ The President also asked Congress to grant him line-item veto powers in each of his budget requests.¹³² Finally, the President proposed that each agency that was not funded by a regular appropriations bill at the beginning of the fiscal year automatically be provided funding at the lower of either the President’s budget request or the prior year’s funding level as a way to prevent government shutdowns.¹³³ None of

Government, Fiscal Year 2006, Analytical Perspectives, Office of Management and Budget, 235-42, (2005); FY2007: Budget of the United States Government, Fiscal Year 2007, Analytical Perspectives, Office of Management and Budget, 211-17, (2006) (all available at: <http://origin.www.gpoaccess.gov/usbudget/browse.html>).

¹²⁸ See supra note 127.

¹²⁹ See supra note 127.

¹³⁰ See supra note 127.

¹³¹ See supra note 127. See generally Stuart Young & Drew McLelland, Implementing Biennial Budgeting for the U.S. Congress, Harvard Law School Federal Budget Policy Seminar, Briefing Paper No. 20 and Allen Schick, The Federal Budget, 318-19 (3rd ed., The Brookings Institution 2007) (discussing biennial budgeting and appropriations).

¹³² See supra note 127.

¹³³ See supra note 127.

these proposals, which were largely designed to enhance the President’s role in the budget process, were enacted by Congress.¹³⁴

As stated above, the Congressional Budget Act of 1974 contains an “elastic clause” that allows Congress to consider budget process reforms in each year’s congressional budget resolution.¹³⁵ From FY2004 to FY2007, Congress exercised the power it was granted under the “elastic clause” and chose to consider and enact budget process reforms primarily through the budget resolution process. Arguably, the most important budget process reform for this entire period came in the FY2004 budget resolution. This budget resolution exempted mandatory spending and revenues legislation assumed in that and future budget resolutions from the Senate rules-based PAYGO point of order, even if these assumptions increased the deficit.¹³⁶ This change allowed Congress to pass the Medicare Prescription Drug Benefit and a \$330 billion tax cut reconciliation bill for FY2004 and another \$70 billion reconciliation bill for FY2006 without facing budget enforcement mechanisms in the Senate.¹³⁷ As noted above, Congress also passed budget process reforms to address the growing use of supplemental and emergency spending during this period by including a definition of “emergency” in the FY2004 and FY2006 budget resolutions and by limiting the amount of “emergency” spending for overseas military operations that would be exempt from Senate budget points of order to \$50 billion in the FY2006 budget resolution.¹³⁸

¹³⁴ Congress did define “emergency” in various budget resolutions, but did not give this definition the force of law as requested by the President.

¹³⁵ See *supra* note 50.

¹³⁶ H.R. Con. Res. 95, 108th Cong. § 505 (2003) (enacted).

¹³⁷ See *supra* notes 80, 90, and 94.

¹³⁸ H.R. Con. Res. 95, 108th Cong. § 502 (2003) (enacted) (FY2004 definition of “emergency”); H.R. Con. Res. 95, 109th Cong. § 402 (2005) (enacted) (FY2006 definition of “emergency” and \$50 billion cap on “emergency” military spending exempt from Senate budget points of order).

Congress also considered, but did not adopt, a number of budget process reform measures during debate of the failed FY2005 and FY2007 budget resolutions. For both FY2005 and FY2007, the Senate proposed reinstating the pre-FY2004 Senate rules-based PAYGO point of order, which would not exempt mandatory spending and revenue legislation assumed in the most recent budget resolution from PAYGO enforcement in the Senate.¹³⁹ Inability to reach an agreement with the House on this proposal is widely considered the reason for Congress' failure to adopt a budget resolution for FY2005 and is likely a contributing factor to its failure to adopt a budget resolution for FY2007.¹⁴⁰ For FY2007, the Senate and the House crafted separate proposals to address the increased reliance on supplemental and emergency spending. The House proposed a cap of \$6.45 billion on all non-military "emergency" spending for FY2007.¹⁴¹ Non-military "emergency" spending above this cap would be subject to adjustments and approval by the Chairman of the House Budget Committee.¹⁴² The Senate proposed limiting the amount of military and non-military "emergency" spending that would be exempt from Senate budget points of order to \$90 billion.¹⁴³ For FY2007, the House also included a budget process reform suggestion that future presidential budget requests and future congressional budget resolutions adopt the accrual accounting procedures found in the Financial Report of the United States Government.¹⁴⁴

¹³⁹ FY2005: S. Con. Res. 95, 108th Cong. §408 (2004) (as passed by the Senate). FY2007: S. Con. Res. 83, 109th Cong. § 406 (2006) (This proposal was similar to the pre-FY2004 Senate rules-based PAYGO point of order, but not an exact reinstatement of the old rule.).

¹⁴⁰ See supra note 52.

¹⁴¹ H.R. Con. Res. 376, 109th Cong. § 501 (2006).

¹⁴² Id.

¹⁴³ S. Con. Res. 83, 109th Cong. § 402(a)(3) (2006).

¹⁴⁴ H.R. Con. Res. 376, 109th Cong. § 601 (2006) (Sense of Congress on Long-Term Budgeting). See generally Howell E. Jackson, Counting the Ways: the Structure of Federal Spending, in Fiscal Challenges: An interdisciplinary Approach to Budget Policy 185 (Elizabeth Garrett et al. eds., Cambridge University Press 2008) (explaining accrual accounting).

There were also a number of budget process reform measures that were introduced in Congress outside of the annual budget resolution process. These proposals, generally, received less consideration than those included in the annual budget resolution process. For example, there were a number of bills that would have required the Congressional Budget Office and the Joint Committee on Taxation to use dynamic scoring models.¹⁴⁵ None of these proposals were considered in committee. Legislation was also introduced to institute biennial budgeting and appropriations in both the House and the Senate.¹⁴⁶ Again, these proposals were not considered in committee. In the House, there were also a number of proposals to add a balanced budget amendment to the Constitution.¹⁴⁷ A rare example of congressional consideration of a budget process reform proposal outside of the budget resolution process came in September 2004, when the House Judiciary Committee began, but did not complete, marking-up one such balanced budget amendment proposal.¹⁴⁸ While a number of innovative budget process reforms were proposed through the regular legislative process, they rarely advanced through normal legislative procedures.

III. Conclusion

From FY2004 to FY2007, the congressional budget process unfolded in a nature contrary to that prescribed by the Congressional Budget Act of 1974: never on time, occasionally without completion of a congressional budget resolution and replete with gimmicks to side-step budget enforcement mechanisms. This may signal that the budget process was not needed or that it was

¹⁴⁵ See e.g., S. 675, 108th Cong. (2003); S. 287, 109th Cong. (2005); H.R. 2842, 109th Cong. (2005). See generally Adam Fletcher & Trenton Hamilton, Scoring and Revenue Estimation, Harvard Law School Federal Budget Policy Seminar, Briefing Paper No. 5, 24-29 (discussing dynamic scoring).

¹⁴⁶ See e.g., S. 877, 109th Cong. (2005) and H.R. 2664, 109th Cong. (2005).

¹⁴⁷ See e.g., H.R. J. Res. 22, 108th Cong. (2003) and H.R. J. Res. 98, 109th Cong. (2006).

¹⁴⁸ H.R. J. Res. 22, 108th Cong. (2003).

unimportant. Congress, however, continued to have sharp disagreements about the budget process and continued to propose budget process reforms, signaling that the budget process continued to play an important role in federal spending decisions.

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