THE BASELINE

Issue Brief

SEPTEMBER 24, 2019

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CBO and the Mysterious $12.6 Trillion Continuing Resolution Cost Estimate

Introduction

Taxpayers are once again facing the prospect of a government shutdown. There are just a handful of working days in Congress before the new fiscal year starts on October 1 and lawmakers have yet to agree on funding levels. A temporary Continuing Resolution (CR) will keep the government open through November 21st while they finalize negotiations on funding for the whole year.

Meanwhile, the Prevent Government Shutdowns Act, a proposal to put an end to this recurring drama, has run into a serious scoring problem at the Congressional Budget Office (CBO). In defiance of common sense, CBO's cost estimate of a bill to continue funding at previously enacted levels makes it look as though it would increase spending by *$12.6 trillion* over ten years. This bizarre result misleads Congress and makes it more difficult to properly assess legislation that would avoid future shutdowns.

Key Facts:

If Congress fails to approve funding before the beginning of the fiscal year, the Prevent Government Shutdowns Act would enact an automatic Continuing Resolution at the previous year's level and prioritize floor consideration of appropriations.

CBO produced a misleading cost estimate showing that the proposal would increase spending by nearly $13 trillion.

This cost estimate does not account for the uncertainty regarding the scope or duration of shutdowns and results in scorekeeping problems including a double-counting of spending in the budgetary baseline.

Government Shutdowns

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law — U.S. Constitution, Article I, section 9, clause 7

Government shutdowns occur when Congress fails to approve appropriations before the fiscal year starts on October 1 each year. Because of the Antideficiency Act, agencies cannot obligate funds when appropriations have not been enacted. Violations can result in both civil and criminal penalties. The earliest version of the law, dating back to 1870, was passed to prevent agencies from engaging in the coercive practice of quickly spending all of their allotted funding and incurring additional obligations, with the assumption that Congress will be forced to pick up the tab after the fact.

As a result, under modern budget practice agencies simply cannot spend beyond their appropriated amounts, with limited exceptions related to safety of human life and property. In the event that Congress fails to pass new appropriations bills, agencies are obliged to shut down until such time as legislators agree on funding.

The Congressional Research Service reports that since the modern budget system was established in 1977, there have been 20 funding gaps ranging in duration from one to thirty-four days. However, not all of these resulted in total shutdowns. Guidance and executive branch policy interpreting how the Antideficiency Act applies to government shutdowns were issued starting in 1980. Pursuant to the established guidance, many employees are required to report to work to assist in shutting down operations, then for the duration of the shutdown they are either furloughed, or if their responsibilities are considered "essential" or "excepted" from the Antideficiency Act, they continue to perform their duties without pay.

Consequences and Costs of Shutdowns

The largest direct cost of previous shutdowns has been the salaries eventually paid to federal employees for work not performed. Following each previous shutdown, Congress has provided retroactive pay to all furloughed or "excepted" federal employees covering the duration of the funding gap. This means that despite performing little or no work for the period of the shutdown, federal employees have been paid in full for each work day missed. This year's budget impasse led to a partial shutdown, as Congress had approved five of its regular appropriations. CBO estimated that this would result in retroactive pay of $9 billion, including $3 billion for furloughed workers and $6 billion for the excepted workers.

The provision of retroactive pay is now law: the Government Employee Fair Treatment Act of 2019 guarantees that furloughed employees receive back pay when regular funding is resumed following a lapse. Federal contractors, however, have generally not received the same benefit. A class action lawsuit related to a shutdown in 2013 led to a ruling in 2017 that the federal government must pay monetary damages to over 25,000 contactors who were impacted. A similar lawsuit was filed on behalf of contractors after this year's shutdown.

Additionally, there are opportunity costs for the time agencies spend preparing for a potential shutdown. In order to mitigate negative impacts, they must spend time implementing shutdown policies and restarting activities after a shutdown ends, rather than completing their ordinary work. A brand new report from the Senate Homeland Security and Governmental Affairs Committee (HSGAC) of the past three shutdowns found "at least $338 million in other costs associated with the shutdowns, including extra administrative work, lost revenue, and late fees on interest payments."

Taxpayers are also impacted as certain services become unavailable or are scaled back. For example, the shutdown added to the Internal Revenue Service's (IRS) challenges as the tax season started this past year, given that it was the first to incorporate the changes enacted in the Tax Cuts and Jobs Act of 2017. With over 40 percent of IRS employees furloughed, walk-in assistance centers were closed down and taxpayers calling the agency for assistance experienced longer wait times and far fewer received help compared to the previous year.

Previous shutdowns have featured the spectacle of federal parks and monuments being closed off and gated whether or not they were free to access. This year, the Department of the Interior used funds from park entrance fees to keep parks open and pay government workers to upkeep the parks – money provided from a separate account – but the Government Accountability Office recently issued an opinion that shifting these funds was a violation of the Antideficiency Act.

Reform Proposal to Prevent Shutdowns

To prevent the recurrence of government shutdowns, Senators Jim Lankford (R-OK) and Maggie Hassan (D-NH) introduced S. 1877, the Prevent Government Shutdowns Act. As reported by HSGAC, the bill would provide that in the event of a funding lapse, spending would be carried over through an automatic CR based on the funding level provided in the previous year.

The bill also establishes procedures in the House and Senate so that only appropriations and emergency legislation may be considered until the funding gap is resolved (it is expected that this provision would be modified going forward to give leadership greater discretion to move other necessary legislation). In addition, it would curtail travel by Cabinet officials and Members of Congress except for travel to Washington, provide an exception to the Antideficiency Act for services relating to enrolling individuals in a health benefits plan, and allow federal workers to obtain outside employment during a shutdown without prior approval, with exceptions related to conflict of interest.

CBO's Troubling $12.6 Trillion Score

Given that the bill would merely extend the previous year's funding levels when a funding gap occurs, CBO's budgetary score of S. 1877 was surprising, to say the least. Below is the table featured at the top of the cost estimate—note that the figures are in *trillions* of dollars:

S. 1877, Prevent Government Shutdowns Act of 2019
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on June 19, 2019

By Fiscal Year, TRILLIONS of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	5.8	12.6
Revenues	0	0	0
Deficit Effect	0	5.8	12.6
Spending Subject to Appropriation (Outlays)	0	0	0

Statutory pay-as-you-go procedures apply?	Yes	**Mandate Effects**	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	> $5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

Source: Congressional Budget Office

CBO's analysis found that the bill would increase spending by an average of $1.12 trillion per year, in contradiction to a commonsense view of what the bill would do. This result is a combination of assumptions made by CBO's analyst and the rules that CBO is required to use when constructing its baseline.

The source of this odd analysis is CBO's determination that S. 1877 would create an automatic process for the provision of agency appropriations, making funding pursuant to it look like entitlement spending under CBO math. Because of this, funding that is currently shown in the budget as discretionary spending (*i.e.*, subject to appropriations) is reflected in the CBO report as direct spending. The direct spending category, also referred to as mandatory or entitlement spending, includes outlays that result from budget authority in laws other than appropriations acts and includes programs such as Social Security and Medicare.

Under budget rules, CBO is required to "assume that most mandatory programs (and thus their spending) continue to operate after their scheduled expiration dates throughout the baseline projection period." The result is the agency layering S. 1877's funding *on top* of its existing baseline, essentially double-counting all discretionary spending.

Even though CBO acknowledges in the text of the analysis that "each agency would automatically receive an appropriation of the same amount as in the previous fiscal year," this fact is not reflected in the table. CBO ordinarily builds its baseline projection for discretionary spending by assuming the most recent appropriation levels will be continued and adjusted for inflation. By not accounting for a corresponding savings for discretionary outlays in its analysis of S. 1877, CBO is ensuring that the same spending shows up in its discretionary baseline and *also* in the direct spending baseline. If CBO had scored the proposal against its discretionary baseline with inflation adjustments, there would likely be a small savings on paper since simply continuing at previous levels understates the likely course of appropriated funding levels.

If CBO's methodology is not corrected, there would be additional unintended complications for score keeping. If agency spending is considered as direct spending in the event of a shutdown, they could potentially be subject to "paygo" rules which prohibit consideration of direct spending or revenue legislation that is not deficit neutral within certain time periods. It is also unclear what baseline CBO would then use to score any legislation that ultimately ends any spending gap.

The uncertainty involved makes the cost estimate even more suspect. After all, there is no guarantee that a shutdown will occur in a given time window, making any estimate that assumes a full shutdown suspect. CBO does note in the text that it "has no basis for predicting the timing or duration of future lapses in discretionary funding," yet its analysis is based on a scenario in which one occurs. It is impossible to determine whether there would be a shutdown in any given year, or whether such a shutdown would be full or partial. It is likewise impossible to determine how long a lapse might last, as history shows they're typically short in duration.

Conclusion

Instead of sticking the proposal with a difficult-to-comprehend trillion-dollar price tag, CBO should have taken a different approach that would have been more informative for lawmakers and for the general public trying to make sense of the budgetary process. The current table affixed to the estimate lacks context that would better reflect that the bill carries forward prior year spending levels. One approach would have been to include current year funding levels as well as CBO's current ten-year projection.

But this improved table would still fail to account for the uncertainty involved here. An even better approach would have been to simply lay out the mechanism established in the bill, explain the uncertainty of projecting whether this authority would kick in, and then present some of the budgetary issues such as those noted above that lawmakers would need to resolve before enactment.

That CBO felt compelled by convention and by budget rules to produce such a misleading estimate is proof that the agency and Congress have much work remaining to reform this vital institution.

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