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The Executive Budget Process: An Overview

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Summary

The U.S. Constitution vests Congress with the power to raise revenue and borrow money. Those funds may only be drawn from the Treasury in consequence of appropriations made by law. The Constitution, however, is largely silent with respect to the President's role in the budget process. Instead, the current executive budget process is largely the result of statutes enacted by Congress.

The executive budget process consists of three main phases: development of the President's budget proposal, submission and justification of the President's budget proposal, and execution of enacted appropriations and other budgetary legislation. The purpose of this report is to provide an introduction to many elements of the executive budget process, highlighting the roles of the President, the Office of Management and Budget (OMB), and executive agencies.

The Budget and Accounting Act of 1921 established the modern executive budget process. It created a legal framework for a federal budget proposal to be developed by the President and submitted to Congress prior to the start of each fiscal year. In practice, development of the President's budget proposal begins approximately 18 months prior to the start of the fiscal year to which it applies. Executive agencies submit their requests and justification materials to OMB for examination and review. After final decisions have been made by the President, the budget proposal is compiled by OMB. Under current law, the President must submit the budget proposal to Congress no later than the first Monday in February.

Once the President has submitted the budget, OMB and agency officials explain and justify the request to Congress. Early in the congressional budget process, often in the week following the submission of the President's budget, the OMB director and other Cabinet officials typically provide testimony regarding the President's broad budgetary objectives before congressional committees. In addition, agencies typically submit written justifications of their budget requests to Congress, and agency officials often will testify before the committees of jurisdiction.

The President's budget, though not legally binding, provides Congress with recommended spending levels for programs, projects, and activities that are funded through appropriations and other budgetary legislation. Funds provided in appropriations and other budgetary legislation are not immediately available for obligation or expenditure. With certain exceptions, the Antideficiency Act requires that funds be apportioned (or divided), often by fiscal quarter, prior to obligation or expenditure. Agencies then allocate those funds to programs, projects, and activities.

Congress has recognized the need to permit agencies some flexibility during budget execution, and it has provided agencies with limited authority to make spending adjustments. For example, Congress may provide agencies with limited authority to reallocate funds from one appropriations account to another (i.e., transfers), or from one purpose to another *within* an appropriations account (i.e., reprogramming). Under the Impoundment Control Act (ICA) of 1974, the President may withhold appropriated funds temporarily (referred to as deferrals) or propose to Congress permanent cancellations of budget authority (referred to as rescissions).

Finally, certain executive budgetary procedures are triggered under limited, less common circumstances. For example, OMB and agencies have established procedures for implementing a shutdown of certain government operations in the event that their full-year or interim appropriations are not enacted by the start of the fiscal year. OMB and agencies may also be subject to additional procedures in the event of a statutorily prescribed sequestration.

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Introduction

The U.S. Constitution vests Congress with the power to raise revenue and borrow money. Those funds may only be drawn from the Treasury in consequence of appropriations made by law.¹ The Constitution, however, is largely silent with respect to the President's role in the budget process. Instead, the executive budget process as it exists today is primarily the result of statutes enacted by Congress.

The Budget and Accounting Act of 1921 (P.L. 67-13; 42 Stat. 20-27) established the modern executive budget process. Prior to its enactment, executive budgeting was highly decentralized. At that time, agencies submitted their budget estimates to Congress individually, either directly or through the Secretary of the Treasury, with varying levels of involvement or direction by the President.² The Budget and Accounting Act altered this practice by establishing a legal framework for a consolidated federal budget proposal to be developed by the President and submitted to Congress prior to the start of each fiscal year.

This report outlines many of the budgetary procedures that are performed by the President, the Office of Management and Budget (OMB), and agencies. This report provides an overview of the development, submission, and justification of the President's budget proposal. This report also describes how the President, OMB, and agencies execute the federal budget following the enactment of appropriations and other budgetary legislation by Congress.³

Development of the President's Budget

The President's budget, or the *Budget of the United States Government* as it is referred to in 31 U.S.C. Section 1105(a), is a statement of the President's policy priorities and a unified plan for the allocation of federal budgetary resources. The President's budget is a set of recommendations. Congress is not required to adopt the recommendations contained within the President's budget. Nevertheless, the budget is one of the President's most important policy tools. Though it is not legally binding, the President's budget initiates the congressional budget process and provides Congress with recommended spending levels for agency programs, projects, and activities funded through the annual appropriations acts. The President's budget also includes budgetary projections based on existing law and provides Congress with estimations of the effects the President's revenue and direct spending proposals will have on those projections.

Under current law, the President is responsible for developing and submitting a consolidated budget to Congress no later than the first Monday in February prior to the start of the fiscal year.⁴ The development of the President's budget begins approximately 18 months prior to the start of

¹ U.S. Constitution, Article I, §9.

² Allen Schick, *The Federal Budget: Politics, Policy, Process*, 3rd ed. (Washington, D.C.: Brookings Institution Press, 2007), pp. 13-14.

³ Appropriations legislation provides agencies with budget authority (i.e., the authority to enter into obligations such as contracts or the hiring of personnel) and the ability to make payments from the U.S. Treasury. Other budgetary legislation includes direct spending (i.e., budget authority provided outside the appropriations process, by authorizing statute, for example), as well as revenue and debt-limit legislation. For a broad overview of the federal budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, coordinated by Bill Heniff Jr.

⁴ 31 U.S.C. §1105. The President's budget includes budget requests for all executive departments and agencies, as well as budget requests for the legislative and judicial branches. Since the legislative and judicial branches are co-equal branches of government, the President and OMB play no role in the development of their requests. Instead, the legislative and judicial branches transmit their budget requests to the President, who then is required to include them in the budget submission to Congress without modification (31 U.S.C. §1105(b)).

the fiscal year that the budget will cover, which is about 10 months before the President must submit the proposal to Congress. To put this timeline in context, as Congress begins action on appropriations bills and other budgetary legislation for the upcoming fiscal year, OMB and agencies have already begun planning for the subsequent fiscal year.

Initial Preparation of Agency Budget Requests

In practice, the President has delegated to OMB certain budgetary tasks and authorities necessary for developing the budget. OMB coordinates the development of the President's budget proposal by issuing circulars, memoranda, and guidance documents to the heads of executive agencies. Executive agencies then prepare their budget requests in accordance with the instructions and guidance provided by OMB.

OMB Circular No. A-11 (hereinafter Circular A-11) is an extensive document that contains instructions and schedules for agency submission of budget requests and justification materials to OMB.⁵ Updated annually, Circular A-11 provides agencies with an overview of applicable budgetary laws, policies for the preparation and submission of budgetary estimates, and information on financial management and budget data systems. Circular A-11 also provides agencies with directions for budget execution and guidance regarding agency interaction with Congress and the public.

Early in the development phase, OMB issues a budget planning guidance memorandum, also referred to as the "Spring Guidance," which provides executive agencies with detailed instructions and deadlines for submitting their budget requests and supporting materials to OMB.⁶ The guidance may also include specific instructions for how agency budget requests may help achieve the President's budgetary priorities and other policy goals. For example, the FY2013 Budget Guidance instructed,

[u]nless your agency has been given explicit direction otherwise by OMB, your overall agency request for 2013 should be at least 5 percent below your 2011 enacted discretionary appropriation ... [and] should also identify additional discretionary funding reductions that would bring your request to a level that is at least 10 percent below your 2011 enacted discretionary appropriation.⁷

While the general contents and timeline for agency budget submissions are guided by OMB, agencies also have their own internal procedures for developing the requests they submit to OMB. In practice, budget preparation is likely a time- and data-intensive process for agencies, involving detailed analysis and estimation of past and future budgetary resources.⁸

OMB Review of Agency Budget Requests

Agency budget requests are submitted to OMB in early fall, approximately four to five months before the President must submit the budget to Congress. OMB has been delegated the

⁵ U.S. Office of Management and Budget, Circular No. A-11, "Preparation, Submission and Execution of the Budget," August 18, 2011, http://www.whitehouse.gov/omb/circulars_default.

⁶ The budget planning guidance memorandum is usually issued in mid-to-late spring, nearly a year before the President submits the budget proposal to Congress. However, the memorandum has been issued as late as August.

⁷ Memorandum from Jacob J. Lew, Director of OMB, M-11-30, "Fiscal Year 2013 Budget Guidance," August 17, 2011, http://www.whitehouse.gov/omb/memoranda_2011.

⁸ Allen Schick, *Federal Budget: Politics, Policy, and Process*, 3rd ed. (Washington, D.C.: The Brookings Institution, 2007), pp. 92-93.

responsibility of reviewing executive agency requests and justification materials to ensure that they are consistent with the President's policy objectives.

Agency requests are first reviewed by the OMB program examiners who are responsible for the associated policy areas. Agency requests may also be reviewed by more senior OMB officials. Prior to making a recommendation, OMB program examiners may ask for additional information from agencies, either informally or by conducting formal hearings. Examiners' recommendations are reviewed by more senior OMB officials, culminating in review and approval by the OMB Director and the President.⁹

Agencies are notified of the President's decisions through a process known as "passback." During passback, OMB officials notify agencies of their approved budgetary levels, which may differ from the agencies' budget requests.¹⁰ The passback process and the content of passback decisions has differed under each Administration and each OMB Director. For example, passback decisions may also include program policy changes or personnel ceilings.¹¹ Agencies may appeal these decisions to the OMB Director, or in some cases, to the President directly, depending on the procedures established by the OMB Director.¹²

Submission and Justification of the President's Budget

The President's budget submission is a multi-volume set of documents, which may vary in size and composition from Administration to Administration. This section briefly discusses the components of the President's budget submission to Congress, and highlights some of the formal and informal interactions between Congress, the President, OMB, and agencies.¹³

Composition of the President's Budget Submission to Congress

Under 31 U.S.C. Section 1105, the President is required to provide certain information in the budget submission to Congress. The complete list of content the President is required to submit as part of the budget proposal is extensive, and includes (1) estimated receipts, expenditures, and proposed appropriations for the next five fiscal years; (2) actual receipts, expenditures, and appropriations for the previous fiscal year; (3) information on the public debt; and (4) separate statements of amounts for specified appropriations accounts and trust funds, among other things.¹⁴

The budget submissions of the past three Presidents have each included the following volumes:

⁹ Shelley Lynne Tomkin, *Inside OMB: Politics and Process in the President's Budget Office* (New York: M.E. Sharpe, 1998), pp. 120-130. For additional information, see http://www.whitehouse.gov/omb/program_examiner.

¹⁰ *Ibid.*, pp. 131.

¹¹ U.S. Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, pp. 105, <http://gao.gov/assets/80/76911.pdf>.

¹² Shelley Lynne Tomkin, *Inside OMB: Politics and Process in the President's Budget Office* (New York: M.E. Sharpe, 1998), pp. 131-134.

¹³ The details of the congressional budget process are outside the scope of this report. For discussion of congressional budgetary procedures, see CRS Report RS20095, *The Congressional Budget Process: A Brief Overview*, by James V. Saturno and CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, by Jessica Tollestrup.

¹⁴ 31 U.S.C. §1105.

- *Budget of the U.S. Government*—includes a short budget message summarizing the President’s policy priorities, summary tables of budgetary aggregates, and a detailed narrative description of proposed government activities, organized by issue and agency;
- *Historical Tables*—provides a historical overview of federal government finances, including time series statistics on budget authority, government receipts, outlays, government employment, gross domestic product (GDP), and the federal debt going back several decades and in some cases as far back as 1789;¹⁵
- *Analytical Perspectives*—contains in-depth analysis of government programs, including credit and insurance programs, discussion of crosscut budgets that span two or more agencies, and technical explanation of the budget baselines used in the analyses and estimates contained in the President’s budget proposal; and
- *Appendix*—includes detailed budget estimates and financial information on individual programs and appropriations accounts, proposed text of appropriations language, and information on the legislative and judicial branch appropriations that are not included in other volumes of the President’s budget proposal.¹⁶

Presidents have also included supplemental materials, such as legislative proposals for budget process reform, a brief guide to the budget that is intended for members of the public, or a summary of proposed spending reductions or program consolidations.

Supplements and Revisions to the President’s Budget Request

The President may also update the budget by submitting supplemental requests and revisions to Congress. Under current law, the President is required to submit a supplemental summary of the budget, commonly referred to as the Mid-Session Review (MSR), before July 16 of each year. The MSR is required to include any substantial changes in estimates of expenditures, receipts, or substantial changes to obligations plus any changes in outlays or budget authority requested.¹⁷ The MSR may reflect changes in economic conditions, budgetary actions taken by Congress, or other factors that have led the President to make adjustments to the initial budget submission.

Agency Budget Requests and Justifications

Once the President has submitted the budget, OMB and agency officials explain and justify the request to Congress. This frequently involves both formal and informal interactions. Early in the congressional budget process, often in the week following the submission of the President’s budget, the OMB Director and other Cabinet officials usually provide testimony regarding the President’s broad budgetary objectives before congressional committees. For example, in

¹⁵ The time frame for the information contained in the *Historical Tables* volume varies from table to table, presumably due to the availability of data. For example, information on aggregate levels of receipts and outlays is provided for all years starting with 1789, while information on total levels of federal government employment is only provided as far back as 1962.

¹⁶ CRS Report R42384, *FY2013 Budget Documents: Internet and GPO Availability*, by Jared Conrad Nagel.

¹⁷ 31 U.S.C. §1106.

February of 2012, acting OMB Director Jeffrey Zients and Treasury Secretary Timothy Geithner each testified before the House and Senate Budget Committees.

Agencies also submit written justification of their budget requests to the appropriations committee and subcommittees of jurisdiction in each chamber.¹⁸ As budgetary legislation is being formulated by Congress, agency officials are often called before the appropriations subcommittees to justify and explain their budget requests to Congress. To ensure that all testimony and written justification materials are consistent with the President's policy objectives, OMB may review materials before agencies provide them to Congress.¹⁹

Agency testimony and written justification materials facilitate dialogue and information sharing between federal agencies and congressional committees. Justification materials are often the starting point for language contained in the committee reports that accompany each appropriations bill. Agency justification materials also provide program details that Congress may use when determining the amounts to be appropriated and the language to be included in reports accompanying appropriations acts.

Finally, agencies and other Administration officials may interact with Members of Congress informally. While the specifics of these informal communications are not public, committees may seek to develop ongoing relationships with the agencies within their jurisdiction.

Statements of Administration Policy and Other Presidential Actions

As Congress is considering budgetary legislation, formal and informal communications may be used to clarify and reiterate the President's policy positions. For example, OMB may formally communicate the President's position on proposed or pending legislation by issuing Statements of Administration Policy (SAPs), which are brief documents expressing support or opposition to pending legislation. The President and his or her Administration may also negotiate with Congress informally at any time during the congressional budget process by holding summits or private meetings with Members of Congress. The President may also attempt to influence Congress indirectly by promoting his or her policy priorities through direct appeals to the public.²⁰

Finally, the President may veto, or threaten to veto, any budgetary legislation passed by Congress. Between 1973 and 2012, for example, Presidents have successfully vetoed appropriations acts on at least 33 occasions.²¹

¹⁸ Federal agencies also make their justification materials available electronically. For a list of links to the justification materials for all 15 executive branch departments and selected independent agencies, please see CRS Report R42453, *Selected Agency Budget Justifications for FY2013*, by Justin Murray.

¹⁹ For example, Circular A-11 §22 establishes guidelines regarding agency conversations with Congress or the public and emphasizes statutory restrictions on attempts to influence legislation outside of official channels.

²⁰ Samuel Kernell, *Going Public: New Strategies of Presidential Leadership*, 4th ed. (Washington: CQ Press, 2006).

²¹ CRS Report RS22188, *Regular Vetoes and Pocket Vetoes: An Overview*, by Kevin R. Kosar.

Execution of Appropriations and Other Enacted Budgetary Legislation

Once appropriations and other budgetary legislation have become law, federal agencies are responsible for executing the budget.²² The President, OMB, and agencies execute the budget by collecting, obligating, and expending federal resources in accordance with the budgetary laws that have been enacted. The President, OMB, and agencies also possess limited authority to make spending adjustments after appropriations and other spending legislation have been enacted.

Apportionment and Allocation of Budget Authority

Appropriations and other budgetary legislation provide agencies with budget authority, which allows agencies to enter into obligations, such as contracts or employment of new personnel. The budget authority provided to agencies may not be automatically available for obligation or expenditure. With certain exceptions, the Antideficiency Act requires that appropriated funds be apportioned (or divided)—by time period, function, or program—in order to prevent agencies from exhausting their appropriated funds prematurely.²³

Under the Antideficiency Act, funds appropriated for a definite period of time shall be apportioned “to prevent obligation or expenditure at a rate that would indicate a necessity for a deficiency or supplemental appropriation,” while funds appropriated for an indefinite amount of time shall be apportioned “to achieve the most effective and economical use.”²⁴ Appropriations must be apportioned no later than (1) 30 days prior to the start of the fiscal year for which the appropriations were provided, or (2) 30 days after the date of enactment of the appropriations act.²⁵

Funds appropriated to executive agencies are apportioned by OMB.²⁶ Executive agencies must submit an apportionment request to OMB at least 40 days before the start of the fiscal year or

²² In the event that an agency’s regular appropriations act has not become law prior to the start of the fiscal year, a temporary continuing appropriations act (i.e., a continuing resolution or CR) may be enacted. This allows the agency to continue operating for the period of time covered by the CR. See CRS Report RL30343, *Continuing Resolutions: Latest Action and Brief Overview of Recent Practices*, by Sandy Streeter and CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Jessica Tollestrup.

²³ The collection of statutes commonly referred to as the Antideficiency Act have been codified in multiple sections of Title 31 (31 U.S.C. §§1341-1342, 1349-1350, 1511-1519). Select government entities are exempted from the apportionment requirements of the Antideficiency Act, including the Senate, the House of Representatives, congressional committees, and the Office of the Architect of the Capitol (31 U.S.C. §1511 (b)(3)).

²⁴ 31 U.S.C. §1512(a).

²⁵ 31 U.S.C. §1513(a).

²⁶ Under 31 U.S.C. §1513(b)(1), the President is statutorily responsible for apportioning funds for executive branch agencies. This responsibility has been delegated to OMB. For the legislative and judicial branches, apportionments are made by the officials who maintain administrative control of each appropriations account. For example, the appropriations bill for the judicial branch is currently comprised of 12 accounts. According to an official at the Administrative Office of the U.S. Courts, eight of those accounts—including accounts that provide funds for federal court jurors, court security, federal judicial salaries (excluding salaries of the Supreme Court) and retirement funds—are administered by the Director of the Administrative Office of the U.S. Courts, who also serves as the Secretary of the U.S. Judicial Conference. The remaining four accounts provide funds for Supreme Court salaries and expenses and for judicial organizations such as the U.S. Sentencing Commission and the Court of International Trade. These accounts are administered by the organizations they fund. Each of those organizations is responsible for apportioning the funds that they have been appropriated. (Telephone and email conversations with an official at the Administrative Office of the U.S. Courts, May 17, 2012 and June 12, 2012).

within 15 days of the enactment of the appropriations act.²⁷ OMB then determines how executive agency funds will be apportioned, generally by fiscal quarter or by project.²⁸ OMB may also apportion multi-year and no-year funds for a period longer than one fiscal year, provided that an apportionment is made at the beginning of each fiscal year.²⁹

Once funds are apportioned by OMB, executive agencies determine how to allocate and sub-allocate those funds among the programs, projects, and activities that fall within the scope of each apportionment. While executive agencies may have legal discretion to determine how to allocate the funds available to them, they are also legally obligated to execute spending legislation as enacted. In practice, executive agencies may come to informal arrangements with appropriations committees and subcommittees to ensure that they allocate funds in a manner consistent with both the text of appropriations and the details contained within reports accompanying appropriations acts.

Under the Antideficiency Act, executive agencies are responsible for ensuring that their obligations and expenditures stay within the allowable limits throughout the fiscal year. Agency heads must report any Antideficiency Act violations to the President (through the Director of OMB), to Congress, and to the Comptroller General. In the event that an agency's budgetary needs exceed their funding resources, the agency must request additional funding if it wants to spend more than it has available. OMB is responsible for reviewing requests for supplemental appropriations prior to the President's transmittal of those requests to Congress.

Reallocation of Budget Authority: Transfers and Reprogramming

Agencies may also possess limited authority to reallocate funds during budget execution, either by transfers or by reprogramming. Transfers typically involve a shift of budgetary resources from one appropriations account to another, while reprogramming involves a shift of budgetary resources from one project or purpose to another *within* an appropriations account.³⁰

Transfers

There are two types of transfers: "expenditure" and "non-expenditure" transfers. Expenditure transfers occur when one agency or program "purchases" goods or services from another agency

²⁷ 31 U.S.C. §1513(b)(1) states that agencies must submit "information required for the apportionment" to the President. Circular A-11 §120.26 has further specified that agencies should submit their apportionment requests by August 21, or "within 10 calendar days after the approval of the appropriation or substantive acts providing new budget authority, whichever is later."

²⁸ Circular A-11 §120 defines an apportionment as "a plan, approved by OMB, to spend resources provided by one of the annual appropriations acts, a supplemental appropriations act, a continuing resolution, or a permanent law (mandatory appropriations)." OMB may also apportion non-financial resources, such as personnel and motor vehicles. In addition to apportioning appropriated funds, OMB may also provide agencies with guidance regarding the implementation of laws related to mandatory spending (i.e., spending provided in acts other than appropriations), such as laws authorizing certain entitlement programs. For additional information, see CRS Report R41375, *OMB Controls on Agency Mandatory Spending Programs: "Administrative PAYGO" and Related Issues for Congress*, by Clinton T. Brass and Jim Monke.

²⁹ Multi-year funds are appropriations that remain available for obligation for more than one year. No-year funds are appropriations that remain available until expended. Unobligated balances from each quarter remain available until the end of the fiscal year without reapportionment. U.S. Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, <http://gao.gov/assets/80/76911.pdf>.

³⁰ An "appropriations account" is the basic unit of an appropriation. In the case of funds provided in appropriations acts, each "account" reflects an unnumbered paragraph in an appropriations act, which may encompass a number of related programs, projects, and activities.

or program.³¹ Non-expenditure transfers are all other transfers, including movement of funds from one account to another for the purpose of increasing the budgetary resources available to a specific program or activity. Both types require prior statutory authorization.

A general restriction against transfers may be found in 31 U.S.C. Section 1532, which reads, “An amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law.”³² There are statutory exceptions to this general restriction, and Congress may provide agencies with transfer authority either in authorizing statutes or within appropriations.

Appropriations or authorizing statutes that provide agencies with transfer authority will frequently include language establishing limitations on that authority. For example, transfers may be limited to a specific dollar amount. Alternatively, transfers may be limited to a certain percentage of the total amount appropriated. In addition, statutes may include language limiting the use of the transferred funds to specific purposes. In many of these instances, such transfer authority is governed by provisions requiring notification to Congress, either prior to the transfer or within a certain time period following the transfer.³³

Reprogramming³⁴

Reprogramming is the use of funds for a project or purpose other than that for which they were originally provided.³⁵ An agency’s authority to reprogram “is implicit in an agency’s responsibility to manage its funds.”³⁶ Though agencies are not statutorily prohibited from reprogramming funds, Congress may limit an agency’s ability to reprogram by including limiting language within appropriations bills. Alternatively, Congress may require agencies to notify committees within a specific time frame either before or after they reprogram funds.

Reprogramming of funds may require an agency to adjust its apportionments. For executive agencies, reapportionments are generally prohibited without prior approval from OMB. Under Circular A-11, executive agencies are generally allowed to adjust apportioned amounts by up to \$400,000 or 2% of their total budgetary resources, whichever is lower, without obtaining prior approval from OMB.³⁷ In addition, agencies may have additional procedures governing the reprogramming of certain funds. For example, executive agencies are required to submit a request

³¹ Such transfers are subject to the procedures established by the Economy Act (31 U.S.C. §1535). The act established guidelines and procedures allowing agencies to perform work and provide goods and services to one another. Transfers to and from federal funds, (e.g., revolving, trust, or other special funds) are also considered expenditure transfers as are transfers between budget accounts and off-budget deposit accounts. For discussion of Economy Act transactions and other interagency procurement, see CRS Report R40814, *Interagency Contracting: An Overview of Federal Procurement and Appropriations Law*, by Kate M. Manuel and Brian T. Yeh.

³² 31 U.S.C. §1532.

³³ CRS Report RL33151, *Committee Controls of Agency Decisions*, by Louis Fisher.

³⁴ It should be noted that the Department of Defense uses the term “reprogramming” to refer to both reprogramming and transfers.

³⁵ U.S. Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, <http://gao.gov/assets/80/76911.pdf>.

³⁶ U.S. Government Accountability Office (then the U.S. General Accounting Office), *Principles of Federal Appropriations Law, Volume I*, GAO-04-261SP, January 2004, p. 30, <http://www.gao.gov/products/GAO-04-261SP>.

³⁷ Circular A-11 §120.37.

to the Office of National Drug Control Policy prior to reprogramming any drug-related budgetary resources.³⁸

Congressional Notification and Holds

Congress may exercise oversight over agency budget execution by requiring congressional notification before certain expenditures take place. For example, under certain provisions of the Foreign Assistance Act of 1961 and the International Development and Food Assistance Act of 1978 (22 U.S.C. §2151, et seq.) the Secretary of Defense, and in some cases the Secretary of State, is required to submit a congressional notification (CN) to specified congressional committees at least 15 days before the obligation or expenditure of select foreign aid funds.³⁹

Similar notification requirements may also be included in appropriations and authorization acts. For example, the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81) included multiple provisions requiring a CN at least 15 days prior to the obligation or expenditure of specified funds, including certain funds for the Commanders' Emergency Response Program in Afghanistan and the Global Security Contingency Fund.⁴⁰

Following receipt of a CN, one or more of the committees may issue a hold instructing agencies not to obligate the specified funds until the hold is released by the issuing committee. While the congressional notification requirement is statutory, the hold on the obligation or expenditure of funds is a non-statutory understanding between congressional committees and the agencies under their jurisdiction.⁴¹

Impoundment of Appropriated Funds: Rescissions and Deferrals

Impoundment is a process by which budgetary authority is reduced (either permanently or temporarily) subsequent to the enactment of appropriations and other budgetary legislation.⁴² Under the procedures established by the Impoundment Control Act (ICA) of 1974 (Title X of P.L. 93-344, 2 U.S.C. §681 et seq.), the President has limited authority to reduce or withhold agency funding by impoundment (i.e., an executive action or inaction that prevents the obligation and expenditure of budget authority). The act distinguishes between two types of impoundments: rescissions, which permanently cancel budget authority, and deferrals, which temporarily delay the spending of funds.

³⁸ R. Gil Kerlikowske, Director of the Office of Drug Control Policy, *Fiscal Year 2010 Accounting of Drug Control Funds*, Executive Office of the President, Office of Drug Control Policy, June 13, 2011, http://www.whitehouse.gov/sites/default/files/ondcp/Fact_Sheets/fy2010_accounting_of_drug_control_funds_report_and_letters_june_2011.pdf.

³⁹ The specified committees include the House Committee on Foreign Affairs, the Senate Committee on Foreign Relations, and the House and Senate Appropriations Committees. In cases involving funds for military assistance, the Secretaries may also be required to submit CNs to the House and Senate Armed Services Committees.

⁴⁰ P.L. 112-81, §1201(g) and §1207 (l)(1).

⁴¹ Agencies maintain the authority to obligate funds despite a congressional hold. For further discussion of non-statutory understandings, see CRS Report RL33151, *Committee Controls of Agency Decisions*, by Louis Fisher.

⁴² Budget authority may also be reduced by sequestration. Sequestration involves the cancellation of budgetary authority after a statutorily prescribed sequester order.

Rescissions

Rescissions permanently cancel a specified portion of the budget authority available to an agency. The President may initiate rescissions by submitting a special message to Congress requesting that the specified budget authority be rescinded.⁴³

Under the ICA, if the President determines that the total amount of budget authority is no longer required to carry out the objectives for which it was provided, he or she may submit one or more rescission requests to Congress. If a President's rescission request is approved by Congress and enacted into law, the funds are no longer available for obligation and expenditure. However, if after 45 days Congress has not approved the rescission request, the funds must be reappropriated and made available for obligation and expenditure.

Deferrals

Deferrals are the temporary delay in the obligation or expenditure of appropriated funds, generally for no longer than 45 days. Deferrals allow agencies to adjust the timing of their obligations and expenditures in response to changing circumstances, such as a reduction or delay in expenses.

Under the ICA, funds may only be deferred (1) to provide for contingencies, (2) to achieve savings made possible by changes in requirements or greater efficiency of operations, or (3) as specifically provided by law. Funds may also be deferred pending congressional action on a rescission request from the President, but must be released if that request is not approved.⁴⁴ Funds may be deferred without prior approval of Congress. However, the President must inform Congress and the Comptroller General of all deferrals, including those initiated by legislative and judicial branch agencies.⁴⁵

Occasional Procedures During Budget Execution

The previous section provided an overview of the budget execution procedures that the President, OMB, and agencies utilize under normal conditions. Under existing law, there are additional executive budgetary procedures that are triggered under specific, less common circumstances.

Budget Execution During Federal Funding Gaps and Government Shutdowns

Under the Antideficiency Act, agencies are generally prohibited from obligating or spending funds prior to the enactment of their appropriations. A funding gap occurs when full-year or interim appropriations are not enacted by the start of the fiscal year.⁴⁶ A funding gap may also occur at other times during the fiscal year if an agency's interim appropriations (i.e., a continuing resolution or CR), expire and an additional CR is not subsequently enacted.⁴⁷ During a funding

⁴³ Rescissions may also be initiated by Congress by introducing legislation that would cancel budget authority previously enacted.

⁴⁴ 2 U.S.C. §684.

⁴⁵ 2 U.S.C. §684(a).

⁴⁶ 31 U.S.C. §1341(a)(1)(A).

⁴⁷ For historical information on previous federal funding gaps, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup. For discussion of the potential impact of CRs, see CRS Report RL34700, *Interim*

gap, the only budgetary resources that may be obligated or expended are those that will be used to provide for excepted activities, such as those involving “the safety of human life or the protection of property.”⁴⁸

During periods when enactment of full-year or interim appropriations seems uncertain, OMB may instruct executive agencies to prepare for funding gaps and government shutdowns.⁴⁹ Circular A-11 provides general guidance on how executive agencies should proceed if their regular appropriations or CRs are not enacted or if their existing CRs have expired.⁵⁰ For example, Circular A-11 instructs agencies to develop shutdown plans that identify “excepted” activities which will continue and “non-excepted” activities which will be terminated in the event of a funding gap. In addition, the circular instructs agencies to determine which of their employees will be subject to furlough and which will be retained. If a funding gap is imminent, OMB may issue additional guidance to agency heads.⁵¹

Budget Execution in the Event of Sequestration

Sequestration involves the cancellation of budgetary resources under a statutorily prescribed presidential sequester order. A sequester order identifies the specific budgetary resources that can no longer be obligated or expended despite their being enacted into law. Under the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA; P.L. 99-177), as amended by the Statutory Pay-As-You-Go Act of 2010 (Statutory PAYGO Act; P.L. 111-139), a sequestration of nonexempt direct spending may be triggered if the new revenue and new direct spending legislation enacted during a congressional session are not “deficit neutral.”⁵² Under the BBEDCA and Statutory PAYGO, OMB is responsible for tracking the cumulative deficit impact of enacted budgetary legislation. If a sequestration is triggered, OMB is responsible for calculating the uniform percentage by which the budgetary resources of nonexempt programs will be reduced.

Under the provisions of the Budget Control Act of 2011 (BCA; P.L. 112-25), automatic spending reductions, including sequestration of nonexempt discretionary and direct spending, are triggered if legislation to reduce the deficit by \$1.2 trillion by the end of FY2021 is not enacted by January 15, 2012.⁵³ The BCA also includes provisions requiring sequestration in the event that the statutory discretionary spending caps established by the BCA are exceeded.⁵⁴ Under the BCA,

Continuing Resolutions (CRs): Potential Impacts on Agency Operations, by Clinton T. Brass.

⁴⁸ 31 U.S.C §1342.

⁴⁹ CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, by Clinton T. Brass.

⁵⁰ Circular A-11 §124.

⁵¹ For example, on December 15, 2011, one day prior to the expiration of the third FY2012 Continuing Resolution, OMB Director Jacob J. Lew issued a memorandum instructing agencies on how to prepare for operations in the event of a funding gap and subsequent shutdown of the federal government. Memorandum from Jacob J. Lew, Director of the Office of Management and Budget, M-12-03, “Planning for Agency Operations During a Lapse in Government Funding,” December 15, 2011, <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-03.pdf>.

⁵² For additional information on sequestration under the BBEDCA and the Statutory PAYGO Act, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Bill Heniff Jr.

⁵³ The necessary deficit reduction legislation was not enacted by the January 15, 2012, deadline. Consequently, the reductions, including sequestration, are scheduled to take effect in January 2013.

⁵⁴ For additional information on the BCA, see CRS Report R41965, *The Budget Control Act of 2011*, by Bill Heniff Jr., Elizabeth Rybicki, and Shannon M. Mahan and CRS Report R42050, *Budget “Sequestration” and Selected Program Exemptions and Special Rules*, coordinated by Karen Spar. For discussion of the potential impact of sequestration, see CRS Report R42506, *The Budget Control Act of 2011: The Effects on Spending and the Budget Deficit When the*

Automatic Spending Cuts Are Implemented, by Mindy R. Levit and Marc Labonte and CRS Report R42051, *Budget Control Act: Potential Impact of Automatic Spending Reduction Procedures on Health Reform Spending*, by C. Stephen Redhead.

OMB is responsible for calculating and preparing the sequestration order using the formula provided in the BCA and following the same procedures as those specified in the BBEDCA. Once prepared, the sequestration order is to be issued by the President.

Under both the BCA and the BBEDCA, once issued, the implementation of a sequestration (and execution of the resulting spending cuts) are the responsibility of OMB and each agency, respectively.⁵⁵ Circular A-11 summarizes the requirements of the BBEDCA and the Statutory PAYGO Act, and briefly discusses how agencies should manage and record sequestrations issued under those statutes, in order to avoid potential Antideficiency Act violations.⁵⁶ However, the circular does not specifically discuss how agencies might manage sequestrations that may be issued under the provisions of the BCA.⁵⁷

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⁵⁵ According to GAO, under the BCA “the execution and impact of any spending reductions will depend on the legal interpretations and actions taken by the Office of Management and Budget, which is vested with implementing the Budget Control Act.” See U.S. Government Accountability Office, *The Budget Control Act and the Department of Veterans Affairs’ Programs*, B-323157, May 21, 2012, pp. 4-5, <http://gao.gov/assets/600/591052.pdf>.

⁵⁶ Circular A-11 §20 and §81. The Antideficiency Act prohibits agencies from obligating or expending funds required to be sequestered under the BBEDCA (31 U.S.C. §1341(a)(1)).

⁵⁷ Circular A-11, Appendix F. The circular does, however, provide agencies with guidance for reporting budgetary information in a manner consistent with the new discretionary spending subcategories established by the BCA. These reporting guidelines may help facilitate agency identification of accounts that would be subject to sequestration.