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INFORMED BUDGETEER

APPROPRIATIONS DOUBLE TAKE

- As the Senate returned last week from August recess, it began debate on H.R. 4567, the Homeland Security Appropriations bill for 2005. A number of amendments were offered to increase spending in the bill, but those amendments fell because they could not muster the 60 votes needed to waive the 302(f) point of order raised against them.
- So far, that sounds like a normal, standard-operating-procedure budget/appropriations story, except – wait a minute – there is no conference budget resolution for 2005 adopted by the Senate! So how can there be the (302(a) and 302(b), respectively) allocations to and by the Appropriations Committee to conduct the 2005 appropriations process under the Budget Act enforcement procedures, which budgeteers have come to know and love over the past 30 years? Where did the allocations come from without a Senate-adopted conference report on the budget resolution?
- The answer may be found in the only appropriations bill enacted so far for 2005. Section 14007 of the Defense Appropriations act (P.L. 108-287) sets the same discretionary spending levels for the Senate Appropriations Committee as if (and until) a conference report on the 2005 budget resolution has been approved by the House and Senate. (Remember that only the House has passed that budget resolution conference report and, in lieu of the Senate's concurrence, has deemed that it is in effect for House purposes.)
- With this 302(a) allocation, the Senate Appropriations Committee was able to report out last Wednesday a set of 302(b) suballocations for all 13 bills (see table below). By reporting each bill at the level of the 302(b) allocations, the Appropriations Committee is now able to protect each bill from amendments that exceed each bill's allocation. Such spending amendments, if they are not offset, now are subject to a 302(f) point of order, requiring 60 votes to waive. Back in business-as-usual.
- What else from the 2005 budget resolution is tucked away in and given effect by section 14007 of the defense bill? Perhaps the most significant item is in the point of order on emergency legislation and a change in the way emergency designations can be made. Last year, the House and Senate treatment of emergency designations differed. Now, if the Congress simply designates an item as an emergency (that was not requested as an emergency by the President), then for congressional enforcement purposes, the item is considered as an emergency. There is no longer a "contingent" emergency designation; if the President signs the bill and its designations into law, then that signifies his concurrence in the emergency.
- The remaining items deal with various ways in which adjustments or exceptions to the allocations can be made for certain purposes, such as funds for the new classifications of "wildland fire suppression" and "overseas contingency operations" (sort of specially-labeled emergency funds) as well as for potential increases in spending for the surface transportation bill if new revenue sources are enacted. Nota bene: do not confuse this last item with the old discretionary categories for highways and transit (meaningless since they expired at the end of 2002), which lived on vestigially as part of Senate-only "caps" on discretionary spending set for 2004 and 2005 in the 2004 budget resolution. The 2005 defense bill finally did away with those categories by not setting separate allocations for them as part of the 2005 302(a). Transportation boosters should not fret, however, as the Transportation/Treasury subcommittee is as free as it has ever been to set as high an obligation limitation for these programs as it wants (subject to, as always, its 302(b) outlay allocation and,

ultimately, the availability of resources in the highway trust fund to cover those obligations – currently a dicey proposition).

- Given this selective application of the discretionary pieces of the 2005 budget resolution to the 2005 appropriations process, budgeteers may wonder how the rest of the budget (mandatory spending and revenues) is being enforced? The allocations and paygo balances set in the 2004 budget resolution 17 months ago remain applicable in the Senate (but not the House).

SENATE VS. HOUSE 302(b) ALLOCATIONS			
Fiscal Year 2005			
(in millions of dollars)			
	Senate (9/8/04)	House (7/22/04)	Senate -House
Agriculture			
BA	16,772	16,841	-69
OT	18,235	18,113	122
Commerce, Justice, State			
BA	39,792	39,815	-23
OT	40,440	40,463	-23
Defense			
BA	390,931	390,931	0
OT	415,772	415,987	-215
DC			
BA	560	560	0
OT	554	554	0
Energy and Water			
BA	27,988	27,993	-5
OT	27,897	27,973	-76
Foreign Operations			
BA	19,386	19,386	0
OT	26,735	26,735	0
Interior			
BA	19,726	20,039	-313
OT	19,890	20,214	-324
Labor, HHS			
BA	142,317	142,526	-209
OT	141,033	141,117	-84
Legislative Branch			
BA	3,575	3,575	0
OT	3,696	3,696	0
Military Construction			
BA	10,003	10,003	0
OT	10,010	10,015	-5
Transportation, Treasury			
BA	25,439	25,320	119
OT	69,605	68,993	612
Homeland Security			
BA	32,000	32,000	0
OT	29,729	29,873	-144
VA, HUD			
BA	92,930	92,930	0
OT	101,732	101,732	0
Not Allocated Yet			
BA	0	0	0
OT	0	283	-283
TOTAL			
BA	821,419	821,919	-500
OT	905,328	905,748	-420

- A look at the difference in the totals above yields the following question: if the Defense appropriations bill allocated to the Senate Appropriations Committee the same spending levels as the conference budget resolution passed by the House, why is there a \$500 million difference in BA? The reason is an adjustment for wildland fire suppression allowed by the budget resolution, which House Budget Committee has already made in the House 302(a) allocation. Once the Senate Appropriations Committee reports the Interior bill, the Chairman of the Senate Budget Committee may adjust the Senate 302(a) allocation, thereby harmonizing it with the House allocation.

WHAT'S WRONG WITH THIS PICTURE?

- In a report last year, CRS explained "report language" as follows: when a Senate or House committee reports a bill to the full Senate or House, "the committee usually publishes a committee report explaining the bill. These reports contain more detailed guidance to departments and agencies than is provided in the accompanying bill."

- But report language, because it is not always vetted to the extent that legislative language is (report language is not fixed in stone in that it does not become law, but agencies ignore its dictates at their peril), can occasionally contain mysterious, unmotivated, or incomplete requirements. While report language theoretically should illuminate the legislative language, sometimes the report language needs illuminating. Consider the Legislative Branch appropriations bill for 2005 (H.R. 4755, passed by the House in July), which provides funds for the operations of the House, Capitol complex, and other legislative branch agencies such as GAO, CRS, LOC, CBO, and GPO.
- The report ([http://www.congress.gov/cgi-lis/cpquery/R?cp108:FLD010:@1\(hr577\)](http://www.congress.gov/cgi-lis/cpquery/R?cp108:FLD010:@1(hr577))) accompanying the bill includes several sections that direct the recently renamed Government Accountability Office (GAO) to conduct a series of investigations related to the operations of certain legislative branch agencies. One requirement (set out under the GAO heading) would direct GAO to prepare a report “outlining the statutory responsibilities of the Congressional Budget Office [CBO], the Congressional Research Service [CRS], the Joint Economic Committee [JEC], and the Joint Committee on Taxation [JCT]. This report should include an inventory of the individual entities reports . . . [for 2003 and 2004], and identify how these products meet the statutory responsibilities. In addition, the GAO is to report if there is any overlap or duplication within the jurisdiction or work products of these agencies or joint committees.”
- Over the last 20 years, the appropriations committees have wrestled on and off with questions such as whether the Congress needs the JEC or other committees with overlapping jurisdictions or whether the JCT should be merged into CBO. As for CBO and CRS – two of the three “arms of Congress” – the appropriations committees have expected that the agencies would mutually take care not to duplicate the efforts of each other and the third arm of Congress: GAO. (The fourth arm of Congress – the Office of Technology Assessment – was eliminated by the Congress in 1995. Ironically, GAO currently is conducting, as directed by previous appropriations report language, a Technology Assessment Pilot Program, and has asked for a line-item appropriation in 2005 if it is to continue this effort.)
- So if the three arms of Congress can no longer be trusted to make sure that they are not duplicating each other’s efforts, why should GAO alone be trusted to review the reports of other Congressional entities for duplication without undergoing the same review itself conducted by a neutral party?
- There is recent evidence to suggest that GAO might not recognize duplication when it sees it. Consider GAO’s portfolio of work on an issue discussed in the last *Bulletin*: military family housing privatization. Over the many years that the federal government has been slow to own up to the deteriorating condition of its military housing, GAO has admirably done its duty pointing out the need for improvement, the failure of DoD to inform decisionmakers on the status of the privatization program and how it affects budget requests, and the persistent weaknesses in DoD’s justification process for constructing additional housing.
- On this last topic, GAO’s most recent paper (<http://www.gao.gov/new.items/d04556.pdf>) unfortunately wanders into territory that is more appropriately the province of and already adequately covered by another congressional agency. In this paper, which GAO initiated (as opposed to responding to a Congressional request) and addressed to Secretary Rumsfeld, GAO makes observations about and draws policy conclusions from the relative costs of community housing, “privatized” housing, and military housing. GAO’s conclusions differ from the independent cost estimates that CBO has provided to the Congress (and even differs from GAO’s warning in 1998 that housing privatization could cost more than conventional housing).
- In light of GAO’s potential mandate to examine duplication in other congressional entities, shouldn’t budgeteers be wary of GAO’s ability to ferret out duplication when, by this example, it is providing contradictory cost estimates in an area that CBO has covered extensively and, by statute, more legitimately?
- (One further side note about this GAO paper: How did GAO observe these costs? It used DoD’s “budget and program information” without testing “the reliability of this data because it represented DOD’s official information used to support the President’s budget.” Throughout the paper GAO draws conclusions based on differences in costs that are only sourced as “according to DOD officials.” So while GAO makes sure to put distance between itself and the very data that it usually goes into an agency to second-guess or verify, it does not disavow the conclusions that rely on the data that it caveats.)
- Another section of the report on H.R. 4755 (under “Legislative Branch Wide Matters”) adds to the “one-way street” dimension of GAO’s potential new oversight responsibilities. Here the committee expresses concern about the ad hoc evolution of Legislative Branch agencies, which might be forgoing opportunities to operate at maximum efficiency. GAO is supposed to “work closely with the head of each Legislative Branch entity” to identify opportunities to streamline, outsource, add technology, change management, and apply the Federal Activities Inventory Reform Act, the Chief Financial Officers Act, and the Government Performance and Results Act. (The very next heading of the report adds yet a third separate GAO reporting requirement on outsourcing that is, perhaps unwittingly, an apparent duplicative requirement to the outsourcing effort required in the previous section.)
- Again, a similar question applies in this case. Is GAO – comprising about 13% of Legislative Branch spending – exempt from the examination it is supposed to conduct? And if not, is it supposed to examine itself or is someone else supposed to do it? For that matter, what about the operations of the House and Senate (not usually considered Legislative Branch “entities”), which combined account for nearly half of the \$3.6 billion in Legislative Branch spending. Are there no opportunities to apply the techniques in the House and Senate that GAO is supposed to identify for the other entities?
- The report language for the companion Senate bill, S. 2666, contains no comparable requirements of GAO, so the final report language is eligible to be addressed in conference. Certainly the conferees will take that opportunity to clear up some of the questions surrounding this report language.