



SENATE COMMITTEE ON THE BUDGET **BUDGET BULLETIN**

CHAIRMAN MIKE ENZI | @BUDGETBULLETIN

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How Transportation's Split Treatment Evades Budgetary Controls

by Republican Budget Committee Staff

This week, after three short-term extensions, Congress passed legislation reauthorizing the Federal Aviation Administration (FAA) through 2021. One of the programs reauthorized by this legislation, the Airport Improvement Program (AIP), highlights a unique split budgetary classification that is only found in select aviation and surface transportation programs. This bifurcated budget treatment is the byproduct of decades of debate concerning the appropriate role of the federal government in transportation infrastructure development, the financing of such activities, and the realities of federal spending, deficits, and debt. As Congress will soon begin consideration of the next surface transportation reauthorization, these debates will continue, and bring the complexity of this split budgetary treatment to the fore.

What Is Split Budgetary Treatment?

Within the federal budget, the spending for programs is classified as either mandatory or discretionary. Mandatory spending refers to budget authority (the authority to enter into obligations) and outlays (liquidation of obligations) provided outside of appropriation acts, while discretionary spending refers to budget authority and outlays provided in appropriation acts. Typically the budget authority and outlays for a program share the same mandatory or discretionary classification.

In the case of certain transportation programs, however, budget authority is classified as mandatory while the outlays are classified as discretionary. This distinction is what is referred to as split budgetary treatment.

FY 2019 Authorized Contract Authority, In Millions of Dollars	
Highway Programs	47,436
Transit Programs	9,939
Aviation Programs	3,350
TOTAL	60,725

The transportation programs receiving this split treatment include the Airport Improvement Program and most surface transportation programs financed through the Highway Trust Fund (HTF), including the Federal-Aid Highway Program and the various transit formula grant programs. All of these programs utilize a special form of mandatory budget authority known as contract authority, which is provided by authorizing committees and permits agencies to incur obligations in advance of appropriations.

The discretionary outlays associated with mandatory contract authority are limited by appropriation acts through obligation limitations, which cap the amounts of contract authority that can be liquidated annually. When

it comes to budgeting for such transportation programs, these details matter.

How Does It Affect Enforcement?

Split treatment matters because it means the traditional enforcement controls meant to ensure Congress does not overspend have limited effectiveness. With most federal spending, Congress relies on two statutory budget controls – the Statutory Pay-As-You-Go Act of 2010 (S-PAYGO) for mandatory spending and spending caps for discretionary spending.

Discretionary Outlays Evade PAYGO

S-PAYGO was put in place to limit deficit increases tied to legislation that increases mandatory spending and revenue losses. Under S-PAYGO, the Office of Management and Budget maintains two scorecards that record deficit increases and orders a sequester at the end of a session to remedy any scorecard debit. Since the outlays in split-treatment accounts are discretionary (stemming from obligation limitations in appropriations bills), they are never recorded on the S-PAYGO scorecards and cannot cause a sequester.

Mandatory Budget Authority Evades the Caps

To control discretionary spending levels, Congress relies on sequestration-backed discretionary spending caps imposed by the Budget Control Act (BCA). These spending caps, which are in place through fiscal year 2021, are enforced on discretionary budget authority only. Since the budget authority for split-treatment programs is classified as mandatory, it is not counted toward BCA cap compliance and cannot cause a breach or sequester of funds.

Can't Cause a Breach, Can't Be Sequestered

In sum, whereas S-PAYGO and the BCA together effectuate limits on mandatory outlays and discretionary budget authority, split-treatment programs have mandatory budget authority and discretionary outlays. This mismatch between the funding and enforcement regimes means that split-treatment programs can escape key statutory enforcement controls and cannot cause a sequester.

	Split-Treatment Programs		Statutory Enforcement	
	Discretionary	Mandatory	Discretionary	Mandatory
BA		X	X	
OT	X			X

As neither the budget authority nor outlays associated with split-treatment programs can cause a sequester, one may ask whether such programs are subject to reductions in the event spending on other programs exceeds statutory controls. Unsurprisingly, split-treatment programs have a special sequestration exemption in the Balanced Budget and Emergency Deficit Control Act (Section 255(j)).

Why Does It Matter?

The split budgetary treatment of transportation programs arguably encourages higher spending – spending that is subjected to little enforcement. Congress will soon need to revisit the funding troubles facing the Highway Trust Fund as the program's reauthorization, the Fixing America's Surface Transportation (FAST) Act, expires in fiscal year 2020. Congress needs a full understanding of this complex budgetary treatment for transportation programs in order to make informed and responsible policy changes.

A Brief History of Contract Authority and Obligation Limitations in Transportation

Contract authority was designed to address the funding realities of capital-intensive expenditures, which often span multiple fiscal years. In 1921, Congress passed the Budget and Accounting Act, which reorganized the federal budget and gave birth to the current system we have today. This legislation required reconciliation of congressional committee responsibilities, especially between authorizing and appropriating committees. At this time, Congress was also operating under a one-year authorization and appropriation for federal-aid highways. It was during this transition in 1922 that a unique highway conference committee was convened between Senate authorizers and House appropriators.

The byproduct of this conference committee was a compromise. The conference agreement would not appropriate funds for federal-aid highways, but would include language granting authority to the executive branch to immediately apportion authorized amounts upon enactment of the bill. It was this language permitting the federal government to incur obligations in advance of appropriations that provided contract authority, along with long-term certainty for transportation-related capital expenditures.

Contract authority was considered a “backdoor” form of spending since it was not subject to the control of the Appropriations Committee. This concern partially informed the 1967 report of the President’s Commission on Budget Concepts, which laid the groundwork for what would become the Congressional Budget and Impoundment Control Act of 1974. This law grandfathered transportation programs and prevented any expanded use of contract authority.

One of the most significant changes attributed to the Concepts Commission and subsequent Budget Act was the federal government’s transition to a unified budget. By moving to a unified budget, which included all government receipts and outlays, including those associated with trust funds, the full scope of federal activities would be captured. It was because of the Budget Act (and eight years of executive branch impoundments of unexpended Highway Trust Fund balances) that obligation limitations came about. Congress had to account for the outlays associated with the transportation trust fund’s contract authority.

While the modern history of obligation limitations since 1974 is complex, one of the most consequential changes occurred in 1988. Prior to this year, all contract authority and most outlays for transportation programs were considered mandatory. But in 1988, in order to avert an automatic sequestration of funds pursuant to the Balanced Budget and Deficit Control Act of 1985, Congress imposed statutory caps on defense and nondefense discretionary spending. This action defined new categories of spending and severed transportation programs’ mandatory contract authority set by authorizers from the discretionary outlays (obligation limitations) set by appropriators. This split budgetary treatment was codified with the passage of the Budget Enforcement Act of 1990. And the rest is history.



Committee Allocation

As defined in the Congressional Budget Act, committee allocations are a set amount of spending established each year for congressional committees in the budget resolution. Allocations for authorizing committees consist of budget authority and outlay levels and span the budget year, the budget year plus the ensuing four years, and the total of all fiscal years in the budget resolution. The Appropriations Committee receives an allocation for only one year at a time—this allocation is currently split to reflect the security and non-security statutory caps and is always subdivided by the committee for its subcommittees. Committee allocations are enforced with a 60-vote point of order contained in Section 302 of the Budget Act. Committees' adherence to their allocations can be found in the Budget Chairman's scorekeeping reports published in the *Congressional Record*.

Budget Busters

Census Costs Climbing Higher Than Initial Estimates

The 2020 Census will commence just over a year from now. Given many of the challenges associated with the 2010 Census—the most expensive headcount in our nation's history—the U.S. Census Bureau is instituting significant change in how it will conduct the next census, specifically with regard to information technology. In 2017, the Census Bureau estimated the cost of the 2020 census at \$15.6 billion. This is \$3 billion more than they estimated in October 2015. Unfortunately, the cost estimates produced by the Census Bureau have been identified by the Government Accountability Office (GAO) as unreliable and minimally meeting credibility standards. Given previous concerns by the GAO regarding the doubling of costs associated with the census in each decade since 1970, and the GAO's identification of the Census Bureau's cost estimates, it is imperative that Congress play an ongoing role in the oversight of cost estimates and expenditures.

Census Costs Continue to Climb

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