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WHAT'S THE EMERGENCY?

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Rarely does a fiscal year pass without the occurrence of some type of emergency that requires a response from the federal government. When a disaster strikes, lawmakers need prompt access to federal funds. The supplemental spending process provides this access.

Supplemental bills are supposed to fund programs that cannot wait until the next appropriations cycle or programs whose authorizations were just enacted or renewed. Once a small blip among federal outlays, emergency supplemental spending has exploded since 2002 when the Republican Congress let a key legislative restriction on its use expire. Now supplemental bills are Congress and the Administration's tool of choice for avoiding the annual budget caps and dramatically increasing government spending.

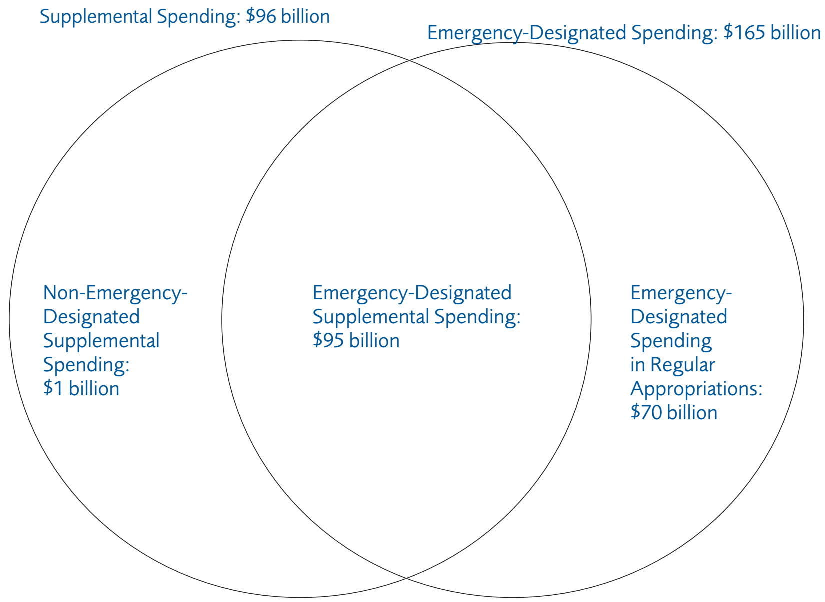
THE BUDGET RULES

Supplemental appropriations provide additional funding to an agency during the course of a fiscal year for programs and activities considered too urgent to wait until next year's budget.[1] A single supplemental appropriations bill may designate some funds as emergency and others not. While the regular appropriations process does include some emergency funding, the majority of emergency funding goes through the supplemental process.[2]

In FY 2006, $165 billion of federal spending received an emergency designation.[3] Emergency allocations in the regular appropriations process accounted for $70 billion. The remaining $95 billion came through the supplemental process [4] and formed almost the entire total of FY 2006's $96 billion in supplemental spending.[5] (See Figure 1.)

The distinction between emergency and non-emergency funding is important because normal budget controls do not constrain emergency-designated funds. Until recently, the Budget Enforcement Act of 1990 regulated emergency and supplemental appropriations. Under the BEA rules, emergency-designated spending was given special excep-

FIGURE 1: SUPPLEMENTAL SPENDING VERSUS EMERGENCY-DESIGNATED SPENDING: FY2006



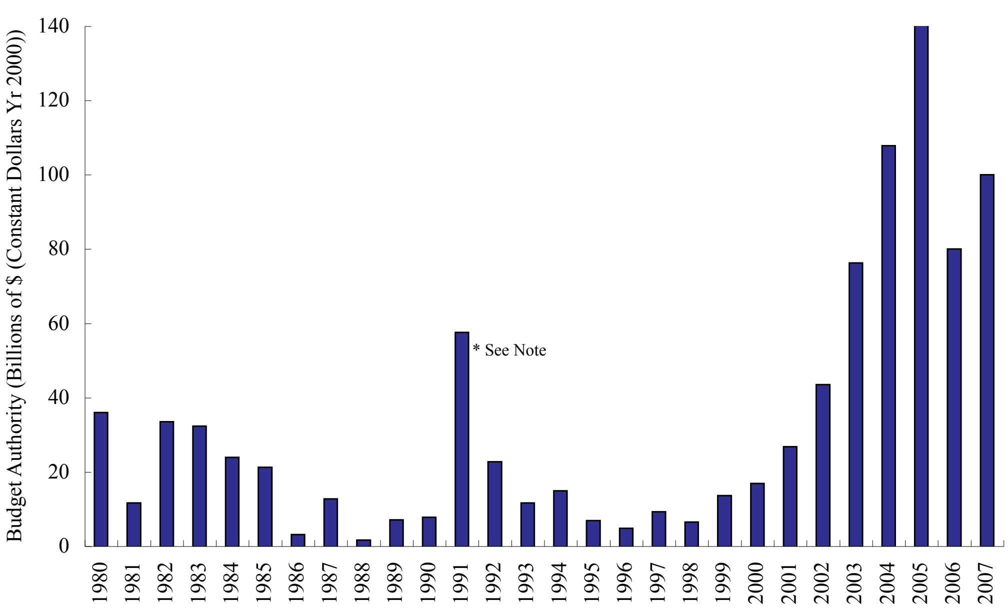
Sources: Congressional Budget Office 2007, GAO 2008 (numbers have been rounded)

tions from budgetary rules designed to restrain spending. For instance, emergency requests were exempted from Pay-as-You-Go (PAYGO) rules which required across-the-board cuts in spending if the sum of proposed new spending and revenue measures increases the deficit. Also, emergency bills were exempted from spending caps limiting budget authority and outlays for discretionary spending.[6]

However, because emergency requests lack the usual detail used to justify the federal government's annual budget request, making accountability more difficult, the BEA also strongly suggested that the emergency exemption only be used in case of *dire emergency* and that as much funding as possible be offset with rescissions.

In FY 2002, the president and Congress allowed the BEA to expire and relaxed the dire emergency and offset rules. In theory, supplemental bills are still subject to budget caps unless Congress makes an exception. However, since 2002, the exception has become the rule. Since 2002, the budget resolution has exempted "appropriations for contingency operations directly related to the global war on terrorism, and other unanticipated defense-related operations" from the budget rules. In addition, Congress rarely places limits on the amount it may spend above the budget caps. In other words, the emergency exemption lives.

FIGURE 2: REAL SUPPLEMENTAL APPROPRIATIONS (1980–2007)



*Sources: Author's compilations based on Congressional Budget Office, "Supplemental Appropriations in the 1970s" (1981), "Supplemental Appropriations in the 1980s" (1990), "Supplemental Appropriations in the 1990s" (2001), and "Supplemental Appropriations from 2000 to 2006" (2007). *Note: Uptrend reflects supplemental spending for Desert Storm. Contributions from allied nations repaid these costs.*

THE TREND

DURING THE LAST 25 years, single supplemental bills net of rescissions have varied in size from a low of $1.3 billion in FY 1988 to a high of $120 billion in FY 2007.[7] But supplemental spending as a share of total discretionary spending gives a true measure of its increase since after 1990 close to 100 percent of supplemental appropriations went toward discretionary spending.

The trends are striking. (See Figure 2.) Except for a sharp spike in 1991 to fund the first Gulf War—which was largely offset later—emergency appropriations remained a very small share of new discretionary spending—less than 3 percent—through most of the 1990s. Compare that to

2007, when Congress appropriated over 14 percent of all discretionary spending through the supplemental process.

Moreover, after the expiration of the BEA, the amount of supplemental appropriations offset by rescissions dropped significantly from 40 percent to only 0.4 percent.[8] This has a serious cost. According to the Congressional Research Service, if just 25 percent of the supplemental appropriations in FY 2003 through FY 2005 had been offset, the offset would have reduced the federal debt held by the public by over 1 percent or almost $65 billion.[9]

ENABLING A SPENDING EXPLOSION

Today, the Administration and Congress use supplemental spending to circumvent budget caps to increase overall spending. The heart of the problem is the concept of an "emergency." As explained earlier, under the BEA, emergency bills are given special exceptions from budgetary rules designed to restrain spending. However, Congress has never defined the term "emergency" specifically other than stating that emergency expenditures must meet five criteria. They must be necessary, sudden, urgent, unforeseen, and temporary.

Lawmakers have used this loophole to fund many non-emergency items through emergency bills. For instance, supplimental bills has funded most of the cost of the wars in Iraq and Afghanistan—approximately $900 billion through the end of 2008. While the costs of the wars may be necessary and not permanent, they are by no means sudden or unforeseen. The war in Afghanistan started in October 2001, and the war in Iraq commenced in March 2003.

During conflicts in Korea, Vietnam, the Persian Gulf, and Bosnia, supplemental funding was used only initially to finance U.S. military operations.[10] Thereafter, as soon as even a limited and partial projection of costs could be made, the administrations in power during those conflicts funded ongoing military operations through regular appropriations bills. Although clearly capable of projecting costs in Iraq, the current Bush administration has chosen not to do so.

Not that Congress minds. Lawmakers use the emergency gimmick to increase non-war related spending. By transferring some defense spending from the regular Department of Defense (DOD) budget into an emergency-designated supplemental bill, lawmakers free up space under the spending caps, which allows them to increase defense and non-defense spending in the regular budget.

DEFENSE SPENDING

The latest war bill included 17 transfers, totaling almost $800 million, from peacetime budgeting to "emergency" war spending.[11] The transferred money freed the Pentagon to buy one F-15E fighter-bomber ($65 million) and two Littoral Combat Ships ($440 million) and to make hundreds of other smaller purchases. Because *most* of the regular budget's procurement accounts have similar gimmicks, Pentagon-watchers say that emergency transfers add up to tens of billions of dollars, allowing the Defense Department to boost other parts of its budget in equal share.

The President shares some of the blame. His latest emergency war request included many non-emergency items, some not even related to war. According to a document released by the Senate Committee on Budget, $4.2 billion of the $196 billion doesn't have anything to do with Iraq or Afghanistan, including $500 million for six electronic warfare planes—neither

SUPPLEMENTAL SPENDING IN BRIEF

Supplemental spending is for unforeseen needs: Part of the appropriations process since the first U.S. Congress, supplemental bills fund programs that cannot wait until the next appropriations cycle or that have very recently enacted authorizations, typically unexpected costs due to natural disaster or war.

Supplemental spending as a backdoor method to increase spending: Because emergency requests (most of which goes through the supplemental process) do not count against House and Senate budget caps and PAYGO rules, Congress and the President use them to increase the level of discretionary spending without the appearance of doing so. Each year over the last two-and-a-half decades, Congress and the President have enacted between one and eight supplemental spending bills, ranging from $1.3 billion in FY 1988 to $120 billion in FY 2007. Supplemental spending as a share of total new budget authority has increased over this period as well, ranging from 0.1 percent in FY 1988 to 6.2 percent in FY 2005.

The emergency loophole: Bills with an "emergency" designation avoid certain budgetary rules, making them much easier to approve, but the term "emergency" has only no binding definition. While some criteria have been proposed to guide lawmakers in using the designation, "this requirement has been ignored."

Supplemental + Emergency = No oversight: Compared to regular presidential budget requests, supplemental budget requests include little detail about how the money will be spent. This flexibility is necessary for responding to unforeseen needs, but too much flexibility effectively gives executive branch agencies a blank check. Supplemental bills also tend to move through Congress more quickly, again as a response to the pressing nature of the unforeseen need. Finally, the political effect of the word "emergency" increases public pressure for quick passage, largely muting opposition. The total effect of spending occurring in a supplemental bill and designated as "emergency" spending is that oversight, scrutiny, and debate is significantly curtailed and unnecessary spending often breezes through.

RECOMMENDATIONS

Several options exist to fix the current process:

- Stop exempting emergency spending from budget rules.
- Establish mandatory criteria for emergency spending.
- Require a supermajority vote for emergencies.
- Establish a reserve fund for emergencies.

Iraqi insurgents nor Al Qaeda have an air force or radar—and $400 million for two developmental aircraft that won't see service until 2013.[12]

NON-DEFENSE SPENDING

An ever-greater number of non-emergency, non-defense programs are finding their way into emergency war bills, increasing overall government spending while avoiding the usual consequences. The most recent supplemental bill, signed by the president in June 2007, contained $24 billion in non-emergency spending, including $120 million for the shrimp and menhaden fishing industries, $283 million for the Milk Income Loss Contract program, $60.4 million for salmon fisheries, $100 million for California citrus growers, $50 million for asbestos mitigation at the U.S. Capitol plant, $1 billion for Avian Flu, and $1 billion for NASA.[13]

Also, it has become routine for lawmakers to shift budget-resolution funds from defense to domestic programs, knowing that additions to the next supplemental bill can replenish the defense funds. For instance, in May 2006, House Appropriations Chairman Jerry Lewis asked that his fellow lawmakers shift $6 billion of proposed defense increases to erase almost $4 billion worth of cuts in domestic programs.[14]

4. CONCLUSION

Congress has several options that would fix the current process and stop the abuse. The best one would be to stop exempting emergency spending from budget rules. That means that supplemental spending—whether an emergency or not—should be offset with funding cuts in low-priority programs and should also be included in deficit accounting. If that option is not available, another would be to retain the emergency exemption but establish specific criteria for designating spending as "emergency." A third would be to retain the emergency exemption while requiring a supermajority vote of Congress to approve emergency spending. The final option would be to create a reserve fund for emergency spending.

These options are not mutually exclusive. Lawmakers could combine some of them to form a more thorough method of curtailing emergency spending. But no matter which option prevails, lawmakers must stop pretending that predictable costs are an "emergency."

ENDNOTES

1. Thomas Hungerford, *Supplemental Appropriations: Trends and Budgetary Impacts Since 1981* (Washington, DC: Congressional Research Service, RL33134, November 2, 2005), 2. http://assets.opencrs.com/rpts/RL33134_20051102.pdf.

2. United States Government Accountability Office, *Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls*, GAO-08-314 (Washington, DC, January 2008), 3. http://www.gao.gov/new.items/d08314.pdf.

3. Ibid.

4. GAO, *Supplemental Appropriations*, 38

5. Congressional Budget Office, *Supplemental Appropriations from 2000 to 2006* (Washington, DC, 2007).

6. William G. Dauster, "Budget Emergencies," *Journal of Legislation* 18, no. 2 (1992): 253.

7. The dollar amounts are in nominal dollars. Also, since this study focuses on supplemental bills, it does not include any emergency-designated funding included in regular appropriations laws. For example, the FY 2006 and 2007 data does not include the $50 billion and $70 billion respectively in so-called bridge funding that was provided to the Department of Defense through a separate title in its regular appropriations. Unless otherwise specified, I will always give supplemental appropriations "net of rescissions."

8. Hungerford, *Supplemental Appropriations*, 5.

9. Ibid.

10. Stephen Daggett, *Military Operations: Precedents for Funding Contingency Operations in Regular or Supplemental Appropriations Bills* (Washington, DC: Congressional Research Service, RS22455, June 13, 2006).

11. Winslow Wheeler, *Defense Budget Tutorial #2: The Smoke and Mirrors in Congress' Defense Appropriations Bills: You'll Need a Rosetta Stone*, (Washington, DC: Center for Defense Information, Strauss Military Reform Project, January 2006).

12. U.S. Congress. Senate Committee on the Budget, Republican staff. *Informed Budgeteer*, 110th Cong., 1st sess., No. 3 (March 9, 2007). http://budget.senate.gov/republican/analysis/2007/bb03-2007.pdf

13. Senate Committee on the Budget, *Informed Budgeteer*.

14. Cohn, "Lewis Eyes $6 Billion Shift to Boost Domestic Programs," *Congress Daily*, May 3, 2006.

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