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# Distinguishing Between Discretionary and Mandatory Spending

## Background and Historical Context

Congressional budget rules distinguish between discretionary spending and mandatory spending because these types of funding are provided in different ways and, therefore, require different methods of budget control.

Since its inception, Congress has considered annual appropriations bills providing funding for various functions of the federal government. This is now referred to as *discretionary* spending. From a budgeting perspective, discretionary spending is relatively straightforward: Decisions are made annually, and specified amounts are provided. If Congress wants to reduce levels of discretionary spending, it can provide less funding for the next year under consideration.

Things became more complicated in the 20<sup>th</sup> century with the creation of income security and health care programs (often referred to as entitlement programs but now formally defined as mandatory or direct spending). Such programs are typically permanent, meaning Congress need not make annual decisions on the amounts of spending provided. As a result, such programs have been referred to as “backdoor spending” or spending on “autopilot.” Spending levels for these types of programs are typically determined by eligibility criteria and payment formulas and are often sensitive to economic and demographic factors.

If Congress is not content with the cost of a mandatory spending program, it may develop legislative changes to the underlying statute. These might include changes to eligibility criteria and/or payment formulas. Once these reforms are enacted, it requires time to discern whether (or to what extent) these changes resulted in the desired budgetary effect.

In the 1970s and 1980s, as concern grew over rising deficits, Congress created new budgeting rules and deficit control mechanisms. These efforts required a more formal distinction between these two different types of spending, because they operate so differently and therefore require different modes for restricting their level or growth.

## Statutory Distinction

Budget law (2 U.S.C. §900) defines *discretionary spending* as budgetary resources provided in appropriations acts. Appropriations acts are under the jurisdiction of the House and Senate Appropriations Committees, and budget law (1 U.S.C. §105) requires that appropriations acts include the title “An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year).” Discretionary spending generally includes funding provided in the 12 regular appropriations bills, continuing resolutions, and supplemental appropriations bills.

*Mandatory spending* is defined in budget law (2 U.S.C. §900) as funding provided in laws other than appropriations law as well as entitlement authority and the food stamp program (known as SNAP). (In some cases, interest on the debt is considered to be mandatory spending as well.)

## Budget Enforcement

### Discretionary Spending

Creating budgetary restrictions on discretionary spending levels is relatively straightforward, as spending decisions are made annually, and specified amounts are provided.

There are two main mechanisms that Congress uses to limit or “cap” discretionary spending levels: First, before annual appropriations bills are considered, Congress may create a total (or topline) spending limit for all 12 bills. This is referred to as a *302(a) allocation* and might be included in a formal agreement, such as a budget resolution, or an informal agreement within the committee, the chamber, or Congress as a whole. Once the Appropriations Committee receives its 302(a) allocation, it subdivides this amount among its 12 subcommittees into *302(b) suballocations*, which act as caps on individual bills. If appropriations legislation is considered on the House or Senate floor that violates these allocations or suballocations, the legislation could be subject to a point of order. These points of order may be waived in the Senate by three-fifths of Senators and in the House by a simple majority.

Another mechanism for restricting annual discretionary spending levels is statutory limits. These levels are established through the enactment of legislation. If discretionary appropriations are enacted that breach the cap, it would trigger a sequester, making across-the-board cuts to non-exempt discretionary programs. These levels were in effect between FY1990 and FY2002, again between FY2011 and FY2021, in FY2023, and in FY2024.

### Mandatory Spending

Restricting and reducing mandatory spending is more complex because (1) spending decisions need not be made annually, (2) amounts spent are dictated by previously enacted criteria and formulas, and (3) spending levels are affected by economic and demographic factors.

Congress has created a two-fold method for attempting to restrict or reduce mandatory spending. First, Congress has created rules and laws for restricting the enactment of new legislation that would increase mandatory spending:

- The House CUTGO rule prohibits House consideration of legislation estimated to increase mandatory spending

over a six-year or 11-year period and can be waived by a simple majority.

- The Senate PAYGO rule prohibits Senate consideration of legislation that would increase the deficit in the current year, in the budget year, or over a six-year or 11-year period and can be waived by three-fifths of Senators.
- The budget resolution allows Congress to create total spending levels, as well as 302(a) spending allocations for committees with jurisdiction over mandatory spending. If legislation is considered on the House or Senate floor that violates these levels, it could be subject to a point of order, which can be waived in the Senate with the support of three-fifths of Senators and in the House with the support of a simple majority.
- Statutory PAYGO requires that the Office of Management and Budget (OMB) record the budgetary effects of newly enacted revenue and mandatory spending legislation over the course of a year. After the end of a congressional session, OMB is required to issue an annual PAYGO report noting whether a debit has been recorded for the current budget year. If a debit is found, the President must issue a sequestration order, which automatically implements across-the-board cuts to non-exempt direct spending programs to compensate for the amount of the debit.

Because these rules restrict only new spending, Congress has also developed a mechanism to facilitate its ability to change levels of mandatory spending under existing law. This is referred to as the budget reconciliation process, because it allows Congress to *reconcile* levels of mandatory spending and revenue under existing law with those budgetary levels expressed in the budget resolution.

If Congress intends to use the reconciliation process, it must adopt a budget resolution that includes reconciliation directives instructing individual committees to develop and report legislation that would change laws within their jurisdictions related to mandatory spending, revenue, or the debt limit. Such reconciliation legislation is then eligible to be considered under special expedited procedures. These procedures are especially important in the Senate, as the legislation requires the support of only a simple majority of Senators.

## Complexities Within the Distinction

### Mandatory Spending in Appropriations Bills

While the definition of *discretionary spending* makes it synonymous with appropriations bills, Congress commonly includes provisions that affect mandatory program funding in appropriations bills. First, budget law allows changes to mandatory programs that are included in discretionary spending legislation to be scored as discretionary spending and therefore allow any resulting savings to count as discretionary savings rather than mandatory. These

provisions are referred to as CHIMPS (changes in mandatory programs).

There are also certain programs that are defined as mandatory but are funded annually in appropriations legislation. These are often referred to as “appropriated entitlements” and include programs such as SNAP and Medicaid. While the funding for these programs is included in appropriations bills, the level of funding provided is considered mandatory spending and is based on a projection of the cost of the program pursuant to the benefit and eligibility criteria established in law.

### Types of Activities Funded by Each Category

Another complexity relates to the types of activities funded by each category. Originally, mandatory spending was provided for things such as health care and income security programs, while discretionary was used to fund agencies and departments. In recent years, however, there has been variation in the types of activities funded by each category. For example, recent reconciliation bills have provided mandatory funding for government departments and agencies typically funded through appropriations such as the Internal Revenue Service, the Department of Defense, U.S. Customs and Border Protection, and OMB. Similarly, some health care programs, such as veterans’ health care, is funded by both mandatory and discretionary spending.

These practices complicate comparisons of mandatory spending and discretionary spending levels over time, as well as the comparison of defense and nondefense discretionary spending levels.

### Cost Estimate and Baseline Treatment

When providing cost estimates to Congress, the Congressional Budget Office (CBO) measures the budgetary effect of a legislative proposal in relation to a baseline. This means that the way a policy is reflected in the baseline will affect how CBO estimates a related policy.

For discretionary spending, projections assume that discretionary appropriations in future years will match current funding, with adjustments for inflation using the GDP price index. Discretionary spending related to federal personnel is adjusted using the employment cost index for wages and salaries of workers in private industry.

For mandatory spending, projections generally assume that future mandatory program spending levels reflect what is scheduled to occur in law. An exception exists, however, for programs with current year outlays greater than \$50 million. These programs are assumed to continue to operate even if slated to expire.

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