



DEFENSE ACQUISITION UNIVERSITY
Business, Cost Estimating and Financial Management Department

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TEACHING NOTE

**PRESIDENT'S BUDGET SUBMISSION AND
THE CONGRESSIONAL ENACTMENT PROCESS**

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INTRODUCTION

As required by law (U.S. Code, Title 31, Section 1105), the President shall submit to Congress – not earlier than the first Monday in January but not later than the first Monday in February – a budget request for the U.S. Government for the following fiscal year (which begins 1 October of the same calendar year). This budget submission, known as the *President's Budget (PB)*, is for all three branches of the federal government (i.e., legislative, executive, and judicial). The PB includes proposed appropriations for new budget authority (i.e., permission to legally obligate the government to make payments from the U. S. Treasury); outlay authority (i.e., permission to make those payments); estimated receipts into the U. S. Treasury; and other detailed information to justify the requested budget amounts. It should be noted the cited U. S. Code requires the legislative and judicial branches submit their budget request to the president for inclusion in the PB and states the President shall incorporate these budget requests without making any changes.

Of particular significance to the Defense acquisition community is the DoD portion of the PB, which is the end product of the Planning, Programming, Budgeting, and Execution (PPBE) process. Effective with the FY 1988 budget, Congress required the president submit a proposed two-year budget for DoD and related agencies every other year (e.g., FY 1988 and FY 1990). In the alternating years, the PB included only the “updated” second year of the previous two-year budget for those agencies. Although Congress received a two-year DoD budget request every other year, that body typically acted on only one fiscal year each session. The FY 2008 National Defense Authorization Act (Section 1001 of Title X) repealed the requirement for a two year budget cycle for DoD.

Upon receipt of the PB, Congress begins the enactment process, which, if done as specified in several laws and laid out by congressional rules, culminates in a *Concurrent Budget Resolution* for the entire Federal Government, an *Authorization Act* for some executive agencies (to include DoD), and twelve separate *Appropriation Acts*. Of primary interest to DoD are (1) the National Defense Authorization Act, (2) the Defense Appropriations Act, (3) the Energy and Water Development Appropriations Act, and (4) the Military Construction and Veterans Affairs, and Related Agencies Appropriations Acts. Of all the legislative matters before Congress, none is more important nor more political than the review of the PB. It will be examined by the 541 members of Congress and hundreds of congressional staffers, each having their own agendas and

priorities. One thing is certain, however: the end products of the enactment process will differ – at least to some extent – from the requests contained in the PB.

CONGRESSIONAL PARTICIPANTS

House/Senate Budget Committees (HBC/SBC) - Committees responsible for crafting the annual concurrent budget resolution.

House Armed Services/Senate Armed Services Committees (HASC/SASC) - Committees responsible for crafting the annual National Defense Authorization Bill.

House/Senate Appropriations Committees (HAC/SAC) - Committees responsible for crafting the 12 annual appropriations bills for the Federal Government.

Conference Committees - These joint House-Senate meetings are convened to reconcile differences between similar measures passed by both chambers. The Speaker of the House and the Senate Majority Leader appoint members to represent their chamber at the conference. Usually, but not always, these conferees are the members of the House and Senate committees who originally drafted the measures.

Personal Staff - Employees of the individual members of Congress. Numbering over 12,000, they are hired, fired and paid (within an established budget) by each member. They provide constituent support services and support the member with expert knowledge in the areas in which the member has an interest, including committees on which the member serves. Service Legislative Liaison/Affairs offices have organizations that respond to defense related constituent issues.

Professional Staff - These individuals support each of the committees/subcommittees. They are typically hired and fired by the committee chairperson. Typically experts in particular areas of interest to the committee/subcommittee they serve, they review their portion of the PB down to the line item and program element level of detail. They have a profound effect on the ultimate form of the Authorization and Appropriations Bills.

Government Accountability Office (GAO) – As Congress' chief investigator, auditor, and program evaluator, the GAO is one of the most visible aspects of congressional oversight. Acting on the requests of committees, individual members, and also upon self-initiated investigations, the GAO examines agency financial accounts, federal program performance, and the economy and efficiency of governmental operations.

Congressional Budget Office (CBO) – Created by the Budget and Impoundment Control Act of 1974. Supports the Budget Committees, the Appropriations Committees, and the revenue committees with fiscal and economic analyses to enable them to establish national priorities and to make informed decisions about budget policy. The CBO's function within the legislative branch is much the same as that of the executive branch's Office of Management and Budget.

Congressional Research Service - Provides each member of Congress and congressional committees with data and analytical assistance. It provides members with confidential, impartial, and tailor-made information in response to immediate and short-term needs.

Legislative Liaison - OSD and Service offices primarily responsible for interaction between OSD or the Service and Congress. There are two types of legislative liaison offices:

1. The Office of the Under Secretary of Defense(Comptroller) and the Services' senior financial management officials each maintain legislative liaisons which serve as the primary interface between DoD and the two Appropriations Committees (i.e., HAC and SAC). These offices serve as the formal point of contact between Congress and DoD elements on appropriation issues, serve as a conduit of information concerning all Defense appropriations-based legislative matters and track all legislative items that may affect Defense appropriations.
2. The Office of the Assistant Secretary for Legislative Affairs in OSD and offices of legislative liaison or legislative affairs in the secretariats of the Services provide DoD's interface with the two Authorization Committees (i.e., HASC and SASC) as well as with members of Congress in regard to constituent issues. Essentially, these legislative liaisons handle all Congressional issues except those that pertain to Defense appropriations.

BUDGET ENACTMENT

As stated in the above introductory section, congressional budget enactment is a three-step process: (1) ***concurrent budget resolution***, (2) ***authorization*** and (3) ***appropriation***. The defense budget is a highly visible, politically sensitive portion of the President's Budget, and its enactment is subject to frequent and significant delays as members of Congress attempt to use passage of the annual appropriations acts as a political tool. In practice, therefore, the schedule shown below in **Figure 1** is rarely achieved. Regardless, **Figure 1** provides a good reference for a discussion of the three-step process. Keep in mind that while these steps may appear to follow one another sequentially, in fact, they often overlap considerably.

NOTIONAL CONGRESSIONAL BUDGET TIMETABLE	
<u>DATE</u>	<u>ACTION</u>
NLT 1st Monday in February	PB Submission
1 April	Senate and House Budget Committees report Concurrent Budget Resolution to the floor of the respective chambers of Congress
15 April	Concurrent Budget Resolution
15 May	Annual Appropriations Bills considered, even if the Concurrent Budget Resolution has not been passed
10 June	House and Senate Appropriations Committees report final appropriations bills
30 June	House and Senate complete action on annual appropriations bills
15 July	President submits mid-session review of the budget
Prior to 1 Oct	Authorization and Appropriations Bills signed by the President

Figure 1

BUDGET RESOLUTION

The first step in the budget enactment process – the *Concurrent Budget Resolution* (CBR) – provides an overall blueprint for the congressional budget process. While not required by the Constitution, the budget resolution process was established by the Budget and Impoundment Control Act of 1974. This act, which also created the *Congressional Budget Office (CBO)*, requires that Congress pass an annual CBR to provide guidance for revenue and spending legislation. The CBR specifies the amounts of revenue, budget authority, and outlays that are authorized for the coming fiscal year as well as the nine years following. With respect to budget authority and outlays, the CBR effectively establishes ceilings for each of the 21 major government functions listed in Table 1.

The House and Senate Budget Committees, using the analysis provided by the CBO and the views and estimates provided by the standing committees regarding the funding required to continue their programs, will each present their version of the budget resolution for review, debate and ultimate passage by their respective chambers. The House of Representatives, for the 113th Congress that began 3 January 2013, required the chair of the Committee on the Budget to submit for printing in the Congressional Record budget aggregates and allocations contemplated by section 301 (Content of the Concurrent Resolution on the Budget) for 2013, and 2013 through 2017. Publication of these aggregates and allocations was considered to be the adoption of a concurrent resolution on the budget for fiscal year 2013. This provision was intended to give the Chair of the Committee on the Budget authority to set aggregates and allocations to complete the unfinished fiscal year 2013 budget resolution cycle, taking into account the latest CBO baseline, including its 5-year projections.

Any differences between CBR-related decisions by the House and Senate must be resolved (based on recommendations from the conference committee); the final CBR must be passed in identical form by both chambers. Because the president does not sign the CBR, it does not have the force of law. However, it is binding upon members of Congress to the extent that if a point of order is raised when a bill that exceeds the ceiling established in the resolution reaches the floor of a chamber, it will take a vote of 60% of the total members to pass the measure.

Concurrent Budget Resolution Major Functional Categories

050 - National Defense	550 - Health
150 - International Affairs	570 - Medicare
250 - General Science, Space, and Technology	600 - Income Security
270 - Energy	650 - Social Security
300 - Natural Resources and Environment	700 - Veterans Benefits and Services
350 - Agriculture	750 - Administration of Justice
370 - Commerce and Housing Credit	800 - General Government
400 - Transportation	900 - Net Interest
450 - Community and Regional Development	920 - Allowances
500 - Education, Training, Employment and Social Services	950 - Undistributed Offsetting Receipts
	970 - Overseas Contingency Operation (OCO) and Related Activities

Table 1

AUTHORIZATION

The second step in the enactment process – *authorization* – is also a creation of Congress rather than Constitutionally required. Originally appearing in 1946, it is a process that has evolved over time, initially to streamline the overburdened Appropriations Committees, and later and perhaps more importantly, to allow more members to become involved in the review of the PB. House Armed Services Committee (HASC) and Senate Armed Services Committee (SASC) hearings begin after the President's State of the Union Address. Initial "posture" hearings are conducted with senior members of the executive branch, OSD and the Services discussing and defending the programs in the PB. Follow-on hearings will go on for several months, delving into a variety of issues concerning particularly political or sensitive aspects of the budget. This process is shown below in **Figure 2**.

The HASC will normally be the first to complete its review of the budget. After *mark-up* sessions in which committee members (and staffers) conduct a line-by-line review of the PB, the HASC and SASC will each send their version of the Authorization Bill to the floor of their respective chambers. On the floor, the proposed bill will be debated, possibly amended and finally approved by each chamber. Assuming there are differences between the House and Senate versions (which is normal), an authorization conference will be convened to discuss and resolve those differences. After differences have been resolved and the bill passed in identical form by the full House and full Senate, it is sent to the president as an "Enrolled Bill" to be signed into law, and is then called an act or statute.

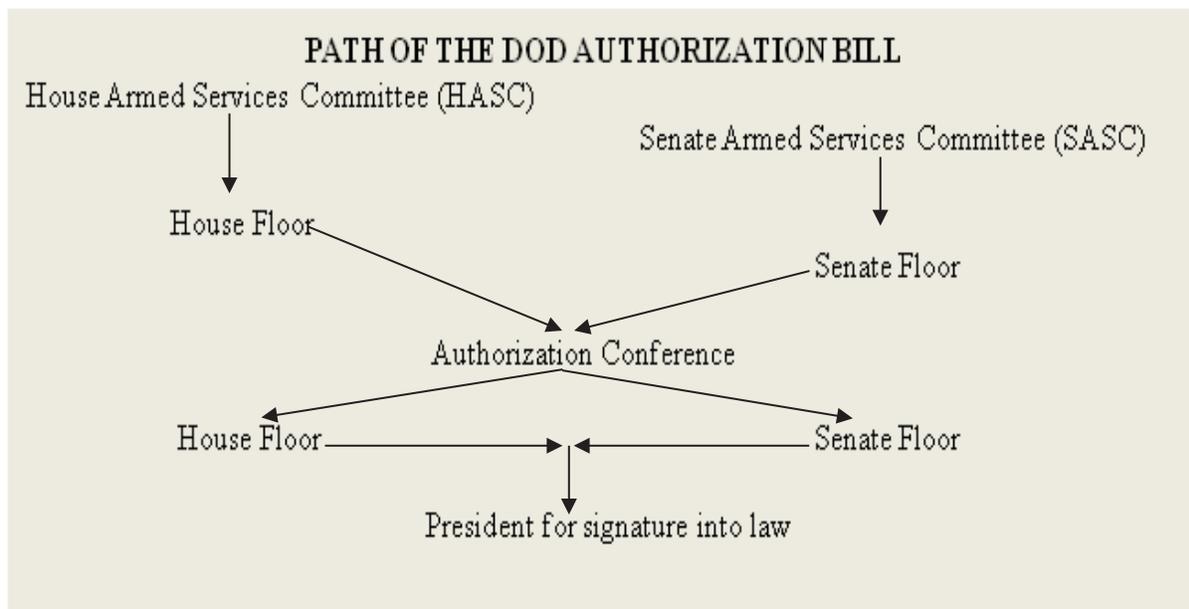


Figure 2

Defense budget authority, procurement quantities for major weapon systems, end strength and military construction usually require annual authorization. The Defense Authorization Act in effect allows programs to exist and recommends funding levels. House and Senate rules do not permit Congress to appropriate funds for any program or activity that has not been authorized. Moreover, funds should not be appropriated for a program or activity in excess of the recommended funding level in the Authorization Act. Historically, though, there have been exceptions to these rules.

APPROPRIATIONS

Appropriations, unlike the preceding steps in the enactment process, are required by the U.S. Constitution, Article I, Section 9 which states:

"No money shall be drawn from the Treasury except in consequence of Appropriations, made by law."

The House Appropriations Committee (HAC) and Senate Appropriations Committee (SAC) each have 12 subcommittees responsible for producing the 12 annual appropriations bills covering the various agencies and activities of the federal government (see Table 2). This Constitutional authority to create an appropriation is what gives Congress what is colloquially known as the "power of the purse."

Appropriations Subcommittees

<ul style="list-style-type: none">• Agriculture, Rural Development, Food & Drug Administration & Related Agencies• Commerce, Justice, Science & Related Agencies• Defense• Energy & Water Development	<ul style="list-style-type: none">• Financial Services & General Government• Homeland Security• Interior, Environment & Related Agencies• Labor, Health & Human Services, Education & Related Agencies	<ul style="list-style-type: none">• Legislative Branch• Military Construction, Veterans Affairs & Related Agencies• State, Foreign Operations & Related Programs• Transportation, Housing & Urban Development, & Related Agencies
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Table 2

The HAC and SAC and their subcommittees normally start their hearings in the March time frame. Mark-up of the PB is conducted by the subcommittees, followed by preparation of the appropriations bill for which the subcommittee is responsible. As in the authorization process, the House version of an appropriations bill is normally completed before the Senate version. Each version of the bill is sent to the floor of the appropriate chamber for debate, possible amendment, and final floor approval. An appropriations conference will ensue to resolve differences between the House and Senate versions. After the conference version of the bill has been passed by both the full House and full Senate, it is sent to the President as an "Enrolled Bill" to be signed into law, and is then called an act or statute. This process, which is similar to that of the authorization process, is shown in **Figure 3** on the following page.

STATUS OF CONGRESSIONAL ACTIONS OF VARIOUS ACTS

An excellent source of information on the status of various legislative acts being considered by Congress is the "Thomas" website, an official site of the Library of Congress. The website address is <http://thomas.loc.gov/> Once on the website, it is possible to initiate a search under the headings of "Bills, Resolutions," "Congressional Record," or "Committee Reports." To check the status of Congressional actions on pending legislation, click on one of the links under the "Legislation in Current Congress" banner. There is also a separate link to check the status of appropriations legislation.

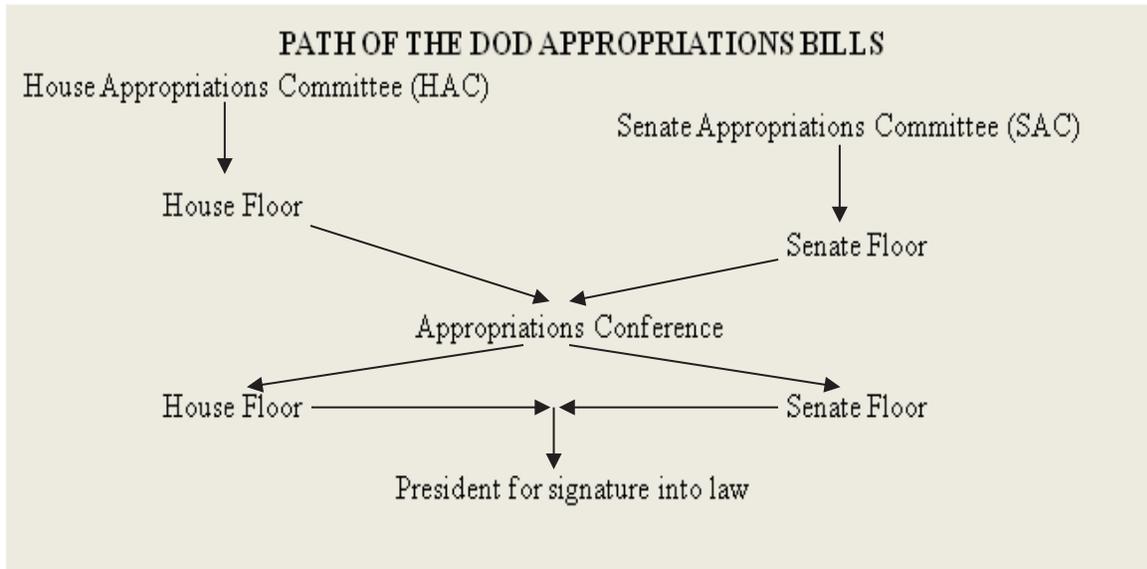


Figure 3

APPEAL OF CONGRESSIONAL MARKS

As the authorization and appropriations committees mark up the PB request, DoD tracks the mark-up and may submit *appeals* to these marks. Appeals may be made on the basis of committee changes to the dollars, quantities, manpower and/or language as originally requested in the PB. DoD appeals are transmitted under cover of a letter prepared by USD (Comptroller) and usually signed by the Secretary of Defense (SECDEF).

DoD components will be requested to provide candidate programs for incorporation into the SECDEF letter. Only the component's highest priority appeal candidates will be submitted and all material must be unclassified. While responsibility for consolidation and coordination of all appeal materials resides with the USD (Comptroller), all appropriate offices are responsible to ensure materials submitted in support of appeal candidates remain up-to-date. Appeals are addressed to the chair of the next committee to take action on the budget request, or in the case of appeals to conferees, to the chairs of both the House and Senate committees.

The authorization and appropriations processes normally proceed in a relatively parallel fashion. Consequently, by agreement with Congress, DoD appeals marks made in one of those processes only within that process' chain. Therefore, marks made by authorizers can only be appealed to an authorizing committee or conference, while marks made by appropriators can only be appealed to an appropriations committee or conference. When marks to budget amounts are appealed, the appeal will be to the amount that is closest to (but does not exceed) the PB request within the last two marks. If only one mark has been made, or if one or more marks exceeds the PB request, then the appeal will be for the amount of the PB request. Appeals to marks should consider the most recent floor action on the committee mark, since amendments may have changed the mark.

Assuming that the House committees have completed their mark-ups first, the sequence of appeals is usually as follows:

In the Authorization Process:

- To SASC. This appeal is based on the actions of the HASC, as modified by House floor action.
- To Authorization Conference. This appeal is based on the actions of both the HASC and SASC, as modified by House and Senate floor action.

In the Appropriations Process:

- To SAC. This appeal is based on the actions of the HAC, as modified by House floor action.
- To Appropriations Conference. This appeal is based on the actions of both the HAC and SAC, as modified by House and Senate floor action.

If for some reason the Senate is the first to mark, then the appeals would be made to the next committee to mark, that being the House.

CONTINUING RESOLUTION AUTHORITY (CRA)

If Congress is unable to pass one or more appropriations acts by 1 October (the beginning of the fiscal year), it must provide *Continuing Resolution Authority (CRA)* to prevent agencies whose appropriations have not been passed from shutting down. A *Continuing Resolution (CR)* provides "stopgap" funding to keep affected agencies operating for a specified period of time. This period, spelled out in the resolution, may range from a few days to a few weeks or months, depending on when Congress believes it can pass the final appropriations bill(s). It is also possible that Congress extend the CR for one or more of the 12 appropriation acts through the entire fiscal year; this has been done in some recent fiscal years.

Unlike an appropriations act, a Continuing Resolution normally does not specify dollar amounts of budget authority. Rather, it normally permits activities to operate at "the current rate of operations," which is usually based on one of the following levels depending on circumstances specified in the Continuing Resolution: (1) the amount the activity was appropriated in the prior year (which the CR increased by 0.612%); (2) the amount in the current PB for that activity, e.g., Overseas Contingency Operations/Global War on Terrorism; or (3) the lowest Congressional mark. Office of Management and Budget (OMB) provides guidance for Continuing Resolutions to agencies. Recent guidance (2009 through 2012) did not include (3) above but did provide specific direction on computing "the current rate of operations". However, previous guidance did include the lowest Congressional mark in the guidance. Readers should confirm the latest OMB guidance to ensure compliance with that direction. Depending on status of the appropriations bills and whether or not a program was zeroed out during the committee mark-ups, other spending level limits may be specified in the Continuing Resolution. However, those mentioned previously are more common. The interpretation of a "current rate of operations" is left to the individual agencies, but clearly is not intended to permit the agency (or Military Service in the case of DoD) to obligate an entire year's worth of funding during the period covered by the CRA. While a Service may provide an individual program office a relatively large percentage of its probable total funding for the fiscal year, that appropriation account at the Service level must be held to the limit under the provisions of the CRA.

Late enactment of appropriations presents several problems to programs. First, Continuing Resolutions usually contain language which prohibits "new starts," or activities which were not funded in the prior year. Secondly, rates of obligation are usually limited and may impede planned ramp-up of program efforts.

BUDGET ENACTMENT SCHEDULE ADHERENCE

As remarked upon earlier, the notional timetable for the budget enactment process is rarely adhered to by Congress. Conflicts between the Congress and the executive branch and among the members themselves have caused inordinate delays in execution of all three of the above steps.

Based on the Congressional record relative to passage of appropriation acts for the entire federal government, the years in which the three enactment steps occur on or close to schedule are clearly exceptions. Members of the OSD, the Services and the acquisition community must consider late enactment to be the norm rather than the exception and, therefore, plan their acquisition strategy and obligation plans accordingly.

SUMMARY

The process which culminates in the enactment of DoD budget authority consists of three steps: a concurrent budget resolution (which covers the entire federal government), authorization legislation (specifically for DoD), and appropriation legislation (specifically for DoD). The Concurrent Budget Resolution sets spending ceilings for the major federal government functions, to include National Defense. The Defense Authorization Act provides permission to initiate new programs, continue existing programs, achieve or maintain specific military manpower levels, prescribes quantities, proposed ceilings for specific appropriations, and various policies concerning Defense activities. DoD's budget authority comes primarily from the Defense Appropriations Act although DoD also receives budget authority from two other appropriation acts: (1) Energy and Water Development Appropriations Act and (2) Military Construction and Veterans Affairs, and Related Agencies Appropriations Acts. During the enactment process, Congress marks (i.e., makes changes to) the budget requests contained in the PB. DoD may appeal these marks prior to final Congressional action on the Authorization and Appropriations Acts.

When Congress is unable to enact appropriations legislation by 1 October (the beginning of a new fiscal year), it usually provides stop-gap spending authority to keep the federal government operating by means of a Continuing Resolution. However, levels of operation are limited by restrictions specified in the language of the Continuing Resolution.