Insight

Congress Considers Budget Execution Reforms

GORDON GRAY | AUGUST 13, 2020

Executive Summary

- Once Congress makes high-level budget decisions, it falls to the executive branch to distribute that funding into agencies and activities – this is known as budget execution.
- The budget execution function is largely out of public view, in part because the Constitution and other federal laws limit the executive branch's discretion in the disposition of taxpayer funds.
- Nevertheless, there is some interest in reforming certain elements of budget execution, including three modest reforms recently enacted by the House of Representatives.

Introduction

Fiscal policy debates often focus on high-level policy decisions by Congress and move on after the ink on a new tax law or appropriations bill is dry. But once the topline decisions are made, it's largely left to the executive branch to administer the disposition of taxpayer dollars. This element of the budget process, known as budget execution, is a somewhat overlooked federal function but is very much where the rubber meets the road in fiscal policy. There's little appetite among most congressional policymakers for this degree of policy nitty gritty if it can be avoided, which well aligns with the institutional interest of the executive branch to exercise as much discretion over fiscal policy as it can. But periodically, Congress reasserts its primacy over the national fisc, rarely with the encouragement of the executive branch. Legislation recently enacted in the House of Representatives is instructive on this point and offers Congress a worthwhile opportunity to exercise greater authority

over federal spending.

Budget Execution

Part of the relative obscurity of budget execution is that it's granular – budget execution is where a multi-billion-dollar congressional appropriation gets chopped up into discrete budgetary commitments. Sure, Congress can decide to buy a new aircraft carrier, but it's through the budget execution function where that decision becomes the practical reality of milestones, contract awards, and performance monitoring. While taxpayer funds eventually flow through the various federal departments and agencies, the Office of Management and Budget (OMB) serves as the coordinating agency for budget execution. Its directives and processes are codified in Circular-A-11, which serves as the handbook for how the federal government spends and collects taxpayer funds.

Among the key functions of OMB is apportionment – which is the distribution of a congressional appropriation into discrete programs over time. At the most basic level, Congress provides funds in large blocks, typically over the course of a single fiscal year. Congress typically specifies the disposition of these funds at the budget-account-level of detail. Budget accounts are highly detailed compared to overall agency budgets – indeed there are thousands – but are well short of the specificity required to oversee expenditures well in excess of $4 trillion a year. The apportionment process divides up congressional appropriations over the course of the year and into discrete agency functions at greater level of granularity than does Congress, in order that agencies carry out their missions within the limits of the resources Congress provides.

As a simple example, consider one of the first discretionary budget accounts listed by OMB: Senators' Official Personnel and Office Expense Account. OMB notes that for this account (001-05-0130), $429 million was appropriated in FY2019. And sure enough, checking the legislative branch appropriation bill for FY 2019 one finds the following: "For Senators' Official Personnel and Office Expense Account, $429,000,000…." That essentially is all that Congress decides. But that chunk of money has to be turned into paychecks, procurements, reimbursements, and other disbursement over the course of the year. OMB quarterbacks that effort in conjunction with the agency to chop that large appropriation into discrete pieces for disbursement by the agency. This is typically done on a quarterly basis, but OMB can also tie apportionments to specific projects, or some mix of contingencies and periods.

This example reflects a fairly mundane process, and underscores the scant attention paid to this function in fiscal policy debates. But the executive branch has *some* discretion to temporarily withhold funding from certain activities, subject to certain statutory limits. And it is this aspect of the budget execution function that has invited congressional scrutiny of

late.

Budget Execution Reforms

Article I, Section 9 of the Constitution states: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." It is from this clause that Congress derives its "power of the purse," or its prerogative over the nation's finances. It is among the strongest checks against the power of the executive branch. But these 16 words fall well short of, for example, the 1,022 pages in the current edition of A-11 required to operationalize budget execution. Disagreements sometimes occur.

While there are a number of proposals to impose limits on the powers of the executive branch, including those from Senator Mike Lee and House Budget Chairman John Yarmuth, the House recently passed three reforms as part of a consolidated multi-agency appropriations act.

The House proposed requiring OMB to make public its apportionments in a new online repository, and to require that the executive branch report to Congress if its apportionments are not performed on a timely basis or otherwise conditions or hinders the obligation of the appropriation.

The House proposed requiring agency heads to respond to requests for information from the Government Accountability Office (GAO) pertaining to agency decisions on budget or appropriations law and, in the event of certain findings from GAO, specifically if GAO finds the executive agency violated the Antideficiency Act (ADA), to respond in writing to GAO. This had largely been practiced and had been incorporated in past editions of A-11 but was not a legal requirement. The current administration has abandoned this practice and ignores GAO's ADA violations findings.

Last, the House bill would prohibit the executive branch from withholding funds within 90 days of the expiration of the funding. As noted above, the executive can temporarily withhold funding for limited reasons. Yet recent practices by the current administration have raised questions on the executive branch's authority to withhold funding until that funding expires – effectively cutting the spending. While the GAO has found this would be impermissible, recall that the administration ignores GAO findings as a matter of policy.

The administration has threatened to veto this legislation if it were to arrive on the president's desk. To be clear, this appropriations package will not be reaching the president's desk – it has no chance of passage in its current form in the Senate – and the administration's veto threat is largely based on policies separate and apart from the budget reforms. Nevertheless, the administration did specifically object to these measures. How

much of this objection is rooted in institutional prerogatives or current policy is unclear. To be sure, the recent attention to this otherwise dusty corner of public policy is animated by the current administration's actions.

Conclusion

Budget execution is very much the day-to-day business of federal governance. It is performed by professional public servants, largely out of public view. Notwithstanding recent attention to the budgetary practices of the current administration, Congress has slipped its grip on the power of the purse through neglect of its own duties. The budget execution reforms recently passed by the House would modestly improve Congress's ability to exercise its power over fiscal policy. The upshot of these measures is essentially greater transparency, and closer adherence to the spirit of Article 1. These are worthwhile policies irrespective of the administration.