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The Watcher

February 7, 2012

Vol. 13, No. 3

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Revenue Proposals in FY 2013 Budget Anything but a Surprise

One doesn't need an inside source at the White House or an advance copy of this year's budget to know what the bulk of the proposed tax provisions in the Obama administration's 2013 budget proposal are likely to be. The debt ceiling deal, recent rhetoric at campaign stops, and the president's State of the Union speech have painted a good portrait of what we can expect to see on Feb. 13.

The biggest question is how the president intends to [stay under the discretionary spending caps](#) put in place by last year's [Budget Control Act](#). Analysts will be looking for more specifics on the president's call for multinational companies to pay the equivalent of an alternative minimum tax and waiting for the Office of Management and Budget (OMB) to estimate the revenue this provision might bring in.

Other revenue proposals will call for tax reforms to ensure the wealthy pay their fair share and to close unnecessary business tax loopholes.

The president has been able to persuade Congress to pass some of his more important tax cut proposals for families and individuals, but other cuts either have or will expire shortly. The refundable [Making Work Pay Tax Credit](#), which was part of the Recovery Act, expired in 2011. The [Payroll Tax Holiday](#), part of the two-year extension of the Bush tax cuts the president signed into law at the end of 2010, reduced each worker's federal payroll tax deductions by two percent. But the payroll tax holiday is [set to expire at the end of February](#), so the president's budget is likely to call for an extension of the tax cut through the remainder of 2012.

The [American Opportunity Tax Credit](#), also part of the Recovery Act and continued through the Bush tax cut extension, is set to expire at the end of the year. The opportunity tax credit, known as the [Hope Credit](#), reimburses students or their families for college tuition and related higher education expenses. Look for the president to call for an extension of the Hope Credit as he has in his last two budgets.

Obama's budget is also likely to call for the expiration of the Bush tax cuts at the end of 2013, but surely nothing will happen until the lame duck congressional session after the November elections. The president previewed his argument during his recent State of the Union Address, asking, "Do we want to keep these tax cuts for the wealthiest Americans? Or do we want to keep our investments in everything else – like education and medical research; a strong military and care for our veterans?" Emphasizing the choice, Obama noted, "We can't do both."

We can also expect proposals to raise the exceptionally low estate tax back to its 2009 levels and to raise the capital gains tax rate from 15 percent to at least 20 percent.

The FY 2013 budget proposal will also call for enactment of the so-called "Buffett Rule." Obama first [formally introduced the idea](#) in September 2011, saying, "No household making over \$1 million annually should pay a smaller share of its income in taxes than middle-class families pay."

The president presented a tweaked version of the Buffet Rule at the State of Union, combining closure of the carried interest loophole with a ratcheting-up of the alternative minimum tax for individuals making \$1 million a year or more, to 30 percent. Sen. Sheldon Whitehouse (D-RI) has already [introduced this iteration](#) of the Buffett Rule as legislation.

In addition to proposed changes in the tax code related to individual income, the administration is likely to call for closing a number of corporate tax loopholes. The White House has continually advocated for ending tax preferences for oil companies and the so-called Last-In-First-Out method of accounting for businesses; expect that advocacy to continue.

The president has also called for financial institutions to pay a [financial crisis responsibility fee](#) since he entered office. In his State of the Union address, President Obama reiterated that call but claimed his administration would now be billing the proposal as a way to help pay for mortgage relief, rather than covering the cost of the Troubled Asset Relief Program (TARP), as it was original devised.

With so many items left on the president's to-do list, it's hard to take seriously [Republican revisionist arguments](#) that Congress gave President Obama everything he wanted during his first two years in office. Had this actually happened, our national fiscal situation would have been quite a bit rosier.

The House's Fake Budget Process Changes

During the week of Jan. 30, the House began debating a slew of budget reform measures, part of a package of 10 bills proposed by the House Budget Committee that affect everything from budget resolutions to the president's veto power. Of the 10 pieces of legislation, two have passed the House so far.

The two bills that passed the House last week involved changing how the Congressional Budget Office (CBO), an independent analyst of the cost of legislation, does its work. The CBO scores legislation for its budgetary impact and provides long-term budgetary guidance for members of Congress. The office's reports are highly regarded, and CBO's independence from the political fray is its strongest asset. But these two bills would change that.

The first bill, the [Baseline Reform Act of 2012](#), would require the CBO to remove inflation from its discretionary budget baseline, which it produces every year. This baseline predicts what the budget will be in the future if Congress keeps current laws in place. Currently, the baseline calculation is adjusted for inflation.

This adjustment is designed to give Congress a true estimate of ongoing operating costs for programs: if inflation goes up, the cost of operating a program will rise as well, even without any changes in staff or services. Forcing CBO to exclude inflation and show expenditures in nominal dollars builds in a bias toward slowly reducing the real costs of all government programs over time.

The second bill, the [Pro-Growth Budgeting Act of 2012](#), would require the CBO to include in its cost estimates the macroeconomic effects of legislation, specifically the "revenue feedback" a bill would generate. Such estimates are called "dynamic analyses," although the bill does not use this term. For any bill that would impact the economy by more than 0.25 percent, the CBO would be required to report on "major economic variables, including real gross domestic product, business investment, the capital stock, employment, and labor supply" and "the potential fiscal effects of the bill or resolution, including any estimates of revenue increases or decreases resulting from changes in gross domestic product."

The proponents of this method [claim](#) that lower taxes spur economic growth, which, in turn, results in increased tax receipts. If certain extreme assumptions are built into dynamic models, tax cuts appear to pay for themselves. Of course, this logic is what led to the large deficits that the George W. Bush administration left the Obama administration. And no serious analysis has ever determined that tax cuts pay for themselves.

The other eight bills in the House Budget Committee package are similarly ideological. (A list of all the House Budget Committee bills under consideration can be found [here](#).) One bill would move Congress onto a biennial budget cycle, where Congress produces two-year budgets, instead of the current annual process, making it [harder for the government to respond to crises](#). Two other bills seek to limit the size of government by instituting strict spending caps or limits on the size of the budget relative to the country's Gross Domestic Product (GDP). Another would require that every federal program “sunset” after a period of time. Yet another proposed bill would give the president a line-item veto power, making it easier to cut certain programs.

The theme of these bills is clear: they are designed to bias the process toward cutting spending. But budget expert Stan Collender [notes](#) that Congress already has plenty of tools to cut spending – if the House and Senate can agree on what to cut.

It's unfortunate that real budget process reform is not on the table. The current process has too many choke points, making it difficult for Congress to budget responsibly and pass all its yearly spending bills on time. Instead, the budget is typically rushed through Congress in the span of a few short weeks, with twelve spending bills often smashed into one, with little transparency or real debate on [spending priorities](#).

In fact, Congress is already designed to make it hard to spend money, with a split between authorizing committees, which approve programs, and appropriating committees, which approve funding. And yet a third committee – the budget committee – oversees the process between the two.

To be approved and funded, a program must first pass through this legislative gauntlet. In all, a spending bill must be signed-off on by at least one authorization committee and one of its subcommittees, an appropriations committee and one of its subcommittees, and the Rules committees (twice) and the floor (twice), and it must do this in both houses. That's 16 decision points at which a program could face cuts or outright elimination.

At each step of the way are myriad opportunities to hold up the legislation. For instance, on the Senate floor, any member can stop almost any legislation using a filibuster, requiring a supermajority of his or her colleagues to break it.

All of these choke points make it easy to hold up spending. The Senate Budget Committee finds itself unable to report out a budget resolution because the Democrats on the committee cannot agree on the appropriate spending levels. The House Appropriations subcommittees load their bills full of poison-pill policy riders, holding the budget hostage to their ideological agendas.

To improve fiscal policy outcomes – i.e., to ensure outcomes that better reflect national priorities – the budget process needs an easier path, one with fewer obstacles and more opportunities for public participation. Simplifying the budget process should be something both parties can agree on, but they are currently too busy manipulating the process for their own political advantage.

Freedom of Information Act Portal Would Boost Responsiveness, Improve Efficiency

An interagency project underway could revolutionize implementation of the Freedom of Information Act (FOIA) and significantly improve transparency and efficiency. The project to develop a government-wide portal for FOIA requests, a goal long supported by the open government community, could deliver as soon as this fall.

Background

Under FOIA, federal agencies respond to public requests for their records. Each agency requires different procedures for submitting a request and tracking its progress, which can be confusing to members of the public. Innovative technologies, already in use at some agencies, could increase proactive disclosure, improve responsiveness, and reduce backlogs. But not all agencies have taken advantage of these opportunities. Many agencies do not have web forms to submit requests, automatic tracking of request status, electronic communication with requestors, or proactive disclosure of request logs or the documents released.

To improve the situation, OMB Watch and other open government groups [recommended](#) in 2008 that the government invest in better technology for FOIA, including a centralized system where the public could file FOIA requests with every agency. An [OMB Watch assessment](#) in March 2011 showed that, while there had been no progress toward a centralized system, agencies had made some progress in using technology to streamline their FOIA systems. For instance, the Treasury Department [launched](#) an [online request form](#) in April 2011. However, most agencies have implemented only a few of these modern practices or none at all, despite being [recommended as best practice](#) by the [Office of Government Information Services](#) (OGIS), the government's FOIA ombudsman.

The Project

The U.S. Environmental Protection Agency (EPA) has taken the lead on the development of a multi-agency FOIA system that would include the best practices from across the government. The National Archives and Records Administration (NARA) and the Commerce Department formed a partnership with EPA in September 2011 to work on the project. They expect the portal to launch in October 2012. Details on the project were presented to the public at a [December 2011 conference](#) and in a Jan. 9 [OGIS blog post](#).

The portal would provide a single interface through which the public could submit requests to any participating agency, eliminating the need to find the contact information for multiple agencies. The system would automatically assign tracking numbers to requests, which the requester could use to automatically view the status of the request, obviating the need to wait for manual replies from agencies. Agencies could also generate e-mails to requesters through the system to seek clarifying information or send invoices for fees, reducing mail delays and postage costs.

When an agency identifies records responsive to a request, it could add them to the system. Consultations and referrals to other agencies could occur within the system, reducing the need to send documents around. Because the current consultation and referral process is a frequent source of delays and dead-ends for FOIA requests, improvements in timeliness here would be very welcome.

Released documents would be uploaded to a public website, and the requester would be notified of their availability. This critical feature would improve transparency by making released documents fully available to the general public, rather than delivered only to the requester.

The system would also allow requesters to submit appeals electronically. Withheld documents would remain in the system without public access but would be quickly available for agency review in the event of an appeal.

The project partners estimate the cost to build the system at about \$1.3 million dollars, with annual operating costs of \$500,000 to \$750,000. The project will keep costs down by leveraging the existing infrastructure of Regulations.gov, in which all agencies already participate. With full participation across the government, the agencies estimate the FOIA system would save a whopping \$200 million over five years from improved efficiencies. Although the project partners have not released the assumptions and calculations behind their cost estimates, the likelihood of considerable cost savings, as well as significant benefits to government transparency, make the project a worthwhile investment.

The project is being developed under a fee-for-service model, in which participating agencies would contribute from their budgets to fund the portal's costs. The partners are exploring expanding the project to include other agencies.

Concerns

Although the benefits are likely to be considerable, agencies may hesitate to join the project without a clear directive from Congress or the Obama administration. In a time of budget contraction, the fee-for-service model may give pause to some agencies, despite the fact that the expected costs would likely be only a fraction of what agencies currently pay to respond to FOIA requests on their own. Agencies may not want to abandon their current FOIA processing systems because of attendant "switching costs" like training staff to use a new system or even contractual obligations to current vendors supplying the agency's FOIA system. It would be unfortunate if these concerns blocked broader adoption of the new system, because the portal will be markedly less useful to the public if only a few agencies participate.

Importantly, the portal must maintain high standards of usability for the public. If the system is difficult to use or unreliable, then the public could be deterred from using it. Open government advocates have criticized Regulations.gov, whose infrastructure will underpin the FOIA system, as being confusing and user-unfriendly. It remains to be seen if the FOIA portal can do better. But even if the initial release is clunky, agencies could iterate the system to improve usability once the infrastructure is in place.

Recommendations

Agencies, the administration, and Congress should support this important effort to improve transparency and efficiency. Additional agencies should join the project as soon as possible. The administration should speed this process by directing agencies to utilize the multi-agency portal, as the Office of Management and Budget (OMB) did in 2004 in a [memo directing agencies to use Regulations.gov](#). Congress should also ensure that agency budgets can support any up-front costs for this innovative project that should result in significant savings in the future.

Agencies Release Updates on Regulatory Look-backs

On Jan. 30, the White House [announced](#) that 25 federal agencies had released reports on their progress in carrying out retrospective rule reviews, part of the Obama administration's regulatory reform effort.

On Jan. 18, 2011, President Obama issued [Executive Order 13563](#), "Improving Regulation and Regulatory Review," instructing federal agencies to develop plans to review existing regulations to identify rules that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them." In accordance with E.O. 13563, 26 agencies released final plans containing the list of rules that will be reviewed and revised, as well as descriptions of how the agencies intend to incorporate ongoing retrospective review processes into their administrative procedures. The January 2012 [reports](#) update both the list of rules undergoing review and agencies' progress in the look-back process.

After the release of the retrospective review plans, Office of Information and Regulatory Affairs (OIRA) Administrator Cass Sunstein issued an Oct. 26, 2011, [memorandum](#) on the "Implementation of Retrospective Review Plans," directing agencies to "give high priority to those reforms that will promote economic growth, innovation, competitiveness, and/or job creation . . . [including] those with the greatest potential to produce significant quantifiable cost savings and significant quantifiable reductions in paperwork burdens."

The memo also required agencies to report to OIRA on the status of their review efforts, describing "past progress, anticipated accomplishments, and proposed timelines for relevant actions, with an emphasis on high-priority reforms." OIRA's template for the reports asks agencies to describe, quantify, and monetize "anticipated savings in costs and/or information collection burdens, together with any anticipated changes in benefits" and asks agencies to provide the actual or target completion date for each rule listed and explain any progress updates and anticipated accomplishments. The first update reports were to be submitted on the second Monday of January, with follow-up reports expected in May and September. Going forward, agencies will be required to issue update reports twice a year, and all reports must be made publicly available after they are submitted to OIRA.

Most of the January 2012 reports follow OIRA's template and provide organized updates on the reviews identified in agencies' final plans. For example, the U.S. Environmental Protection

Agency's (EPA) final plan listed five completed actions and 35 priority reviews; updates on all 40 reviews were included in the progress report.

Some agencies, however, included additional reviews that were not identified in final plans. The Department of Health and Human Services provided updates on a staggering 83 rules, which were only identified in the context of broad initiatives in the agency's plan for how it would conduct retrospective reviews. The U.S. Department of Agriculture's (USDA) update report included 14 reviews, five more than the nine initiatives listed in the agency's plan. The Food Safety and Inspection Service (FSIS) within USDA added two new specific reforms. One is a proposed rule expected in March 2012 that would provide for electronic transmittal of foreign establishment and inspection certificates, saving importers approximately 10,000 hours in information collection. The other is a controversial proposed rule published in January 2012 that would shift inspection responsibilities for chicken and turkey carcasses away from FSIS inspectors and to the regulated slaughtering plants.

Agencies generally attempted to provide information on the anticipated savings in costs and burden reductions but were unable to quantify and monetize anticipated savings in terms of dollars or burden-hours for many of the reviews. For some, it is too early in the review process to have savings estimates. Although the agency reports provide more narratives on savings than quantifiable estimates, "more than \$10 billion in savings are anticipated from just a small fraction of the hundreds of initiatives now underway," Sunstein wrote in a [blog](#) announcing the updates. "[A]s the plans are implemented," he concluded, "we expect to save a great deal more."

The on-time release of agency updates indicates that the administration is committed to the look-back effort and ensuring that agencies are following through with implementing their review plans. Many will be looking for more detailed cost-savings estimates and progress updates in the next round of reports expected in May. As the process continues, it is imperative that agencies remain focused on their missions of safeguarding the public and do not allow regulatory reform and look-back efforts to undermine important health and safety protections.

Super (Loud) PACs and Soft-spoken Issue Advocates

Outside groups are spending nearly 1,300 percent more on broadcast advertising for the 2012 election than they did in 2008, according to an [analysis](#) released on Jan. 30. This is the clearest demonstration yet that [Citizens United v. Federal Election Commission](#) has fundamentally rewritten the rules for political spending.

The Jan. 31 disclosure reports filed by independent expenditure-only political action committees – typically referred to as “super PACs” – contained few surprises: super PACs have been raising, and spending, dizzying amounts of money in an attempt to influence the 2012 elections. In fact, these more than 300 “independent” (that is, “not coordinated” with a candidate or political party) groups have accounted for more than 40 percent of all the broadcast ads aired during the Republican presidential primaries, as compared to only three percent of the 2008 ads.

While candidates are vying to attract the support of a broad swath of voters, the super PACs endorsing them are funded almost entirely by very few, very wealthy donors. For example, more than 80 percent of the \$17.9 million dollars collected by the super PAC supporting (but not connected to or coordinated with) Mitt Romney's campaign came via six-figure contributions. Five other super PACs supporting Newt Gingrich, Ron Paul, Rick Santorum, Rick Perry, and Jon Huntsman [showed a similar pattern](#). Winning Our Future, a pro-Gingrich super PAC, received \$10 million from just one couple.

While super PACs must remain independent from candidates and political parties, new federal election rules have allowed many of them to coordinate with traditional political action committees (so long as the two keep separate bank accounts). So far, corporations and labor unions cannot manage these hybrid PACs; however, a case now pending before the Federal Election Commission (FEC) could change that by late winter. Hybrids retain the ability to make independent expenditures out of their super PAC account and campaign contributions out of their traditional PAC account. Dan Backer, the attorney handling the cases, [told Politico](#) that hybrid PACs are "the best demonstration yet of flexibility and power and the ability get results for your dollar."

Though the FEC is making it easier for corporations and wealthy individuals to "speak" by pouring cash into the political process, the rules for some nonprofit advocacy groups are not moving as quickly. The penalties for violating the restrictions on nonprofit organizations' interaction with political campaigns can include excise taxes or even revocation of nonprofit status, but issue advocates often don't know whether or not they are engaging in a risky activity: the determination of what speech is permitted hinges on a vague determination of all the "facts and circumstances" surrounding the comments.

Writing for the majority in *Citizens United*, U.S. Supreme Court Justice Anthony Kennedy [opined](#) that the First Amendment "prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." It is difficult to reconcile the ongoing loosening of the restrictions on corporations' political spending with the continued restriction on issue advocates' political speech.

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