Appropriations during the Biden Presidency. Nothing new under the sun: the regular order has turned into a permanent disorder

by Luigi Testa

Abstract: *Il processo di bilancio durante la Presidenza Biden. Niente di nuovo sotto il sole: il regular order è diventato permanent disorder* - The 2022 U.S. midterm elections posed significant challenges to the budget process, as Republicans regained control of the House of Representatives, leading to heightened political gridlock. Biden, while managing to avoid a shutdown, struggled to maintain full control over public finance, facing Republican opposition throughout his term. The current budget process reflects a permanent state of dysfunction, deviating from the intended regular order envisioned a century ago. The use of continuing resolutions and the absence of a unified legislative framework have led to a fragmented and disorderly process. This has eroded the control function of Congress, as partisan interests often overshadow effective oversight.

Keywords: Appropriations; Presidential budget; Debt ceiling; Shutdown; Oversight function

1. The challenge of the 2022 midterm elections

In 2022, the Republicans gained control of the U.S. House of Representatives, offering little reason for optimism about the proper handling of the budget process. A divided Congress frequently leads to deadlock, and the prospect of a government shutdown becomes all the more likely.

Even during Trump's presidency, he encountered similar challenges when the Democrats gained a majority in the House following the 2018 midterm elections for the 116th Congress. This shift, unsurprisingly, heightened the difficulties of governing both the House and the Senate.

In the context of the budget process, the House of Representatives is typically viewed as the "safe" House, where the majority can act without significant opposition. The real complications usually arise in the Senate, where the filibuster demands a supermajority to be overcome, making it the principal source of concern.

It is in the Senate that the budget process often becomes entangled, edging the government toward the brink of a shutdown. But when the President finds himself not only struggling with obstacles in the Senate but also unable to rely on the House, the situation becomes far more perilous.

This was the scenario Trump faced after the 2018 midterm elections, which led to the longest government shutdown in U.S. history.[1]

Even for President Biden, difficulties increased after the 2022 midterm elections, though without the catastrophic consequences that might have been expected. Unlike Trump, Biden managed to avoid the tragic circumstance of a government shutdown throughout his presidency.

At the same time, it cannot be said that he was able to fully control the public finance decision-making process, which remained largely at the mercy of Republican opposition.

What has been confirmed is an appropriation process that is increasingly fragmented and, in reality, has become a permanent process – no longer a regular order but *a permanent order*.

Before examining the concrete experience of the last two years of Biden's presidency, it is worth briefly outlining the rules of the game, providing a concise overview of a process that now exists almost solely in the *law in the books*.[2]

2. A general overview of regular order

The budgetary process in the United States begins with the President's proposal, but the power to finalize the budget rests with Congress[3] through appropriations, which are the «legislative means of authorizing expenditure from a source of public funds for designated purposes» – as the Supreme Court reaffirmed in a recent decision.[4]

The process of drafting and approving the federal budget is initiated with the submission of the Presidential Budget,[5] which serves as the foundational document outlining the President's fiscal proposals and policy objectives.

These proposals are the culmination of lengthy negotiations, during which the President must balance the spending requests put forth by

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[1] See Congressional Budget Office, *The Effects of the Partial Shutdown Ending in January 2019* (February 1, 2019). For a reconstruction of the relations between Congress and the President regarding budget approval during the Trump Presidency, see: L. Testa, *Appropriation of public funds in the Trump era (or "Trump vs. Congress")*, in *DPCE on line*, 1/2021, 1021.

[2] For the distinction between law in the books and law in action: R. Pound, *Law in Books and Law in Action*, in 44 *Am. L. Rev.* 12 (1910). See also: K.H. Neumayer, *Law in the Books, Law in Action et les méthodes du droit comparé*, in M. Rotondi (ed), *Buts et méthodes du droit comparé*, Padova, 1973, 507.

[3] For a general overview of the process, see: A. Schick, *The Federal Budget. Politics, Policy, Process*, Washington, 2007. Also: H.M. Robert, *Robert's Rules of Order Newly Revised*, Reading, 2011; and P. Mason, *Mason's Manual of Legislative Procedure*, New York, 2010.

[4] *Consumer Financial Protection Bureau v. Community Financial Services Ass'n of America, Ltd.*, n. 22-448, 601 U.S. 416 (2024).

[5] The instrument was introduced by the Budget and Accounting Act of 1921 as a tool for streamlining the process. It assigns the Presidency a key role in public finance decision-making, while also subjecting it to a form of accountability that was perhaps unprecedented at the time. For an effective reconstruction of the debate, see: N. Caiden, *Paradox, Ambiguity, and Enigma. The Strange Case of the Executive Budget and the United States Constitution*, in I. Rubin (ed), *Public Budgeting. Policy, Process, and Politics*, New York, 2008, 47 ff.

various federal Agencies with the broader policy direction he seeks to implement.

Although this budget is a comprehensive document, it is not a formal legislative initiative in the strict sense. Rather, it represents an external proposal, which Congress is free to consider, modify, or reject as it sees fit.

The normal procedural course requires that both Houses of Congress take the first parliamentary step jointly. This is intended to ensure that the President's unified and comprehensive budget proposal is met with an equally coordinated and organized response from the legislative branch. This step typically takes the form of a concurrent resolution,[6] which is passed by both Houses.[7]

In theory, the concurrent resolution marks a pivotal moment in the budgetary process, as it incorporates two essential elements.

First, it provides the framework for the reconciliation process, which is designed to facilitate the enactment of the budget's financial components.[8]

Second, it establishes the basis for the appropriation process, which is the mechanism through which funds are distributed among the twelve Appropriation Committees. These committees are then responsible for drafting the twelve Regular Appropriation Bills, which allocate the necessary funds to the various branches of government.[9]

It is important to clarify the distinction between reconciliation and appropriation, as they serve different functions within the legislative process.

Reconciliation, on the one hand, is a useful but optional tool that allows Congress to expedite the passage of budget-related legislation. However, it is not an indispensable part of the process and may not occur in every budget cycle.

Appropriation, on the other hand, is constitutionally mandated. The U.S. Constitution explicitly states that «no money shall be drawn from the Treasury, but in consequence of appropriations made by law» (Art. I, Sec. 9).[10]

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[6] The instrument was introduced by the Congressional Budget Act of 1974, which finally enabled Congress to express a unified and comprehensive stance on government proposals as soon as they were presented to the chambers. Until then, the procedure that followed the Presidential Budget maintained a completely disjointed structure, with each body acting in full autonomy within its designated sphere. *A. Schick*, cit., 118, effectively describes it as «the fiscal framework within which Congress takes [its] statutory actions».

[7] It is important to note that because a concurrent resolution is not a law, it cannot be subject to a presidential veto, thus maintaining its procedural distinction from formal legislation.

[8] A. Schick, *Reconciliation and the Congressional Budget Process*, Washington, 1981; R. Keith, B. Heniff Jr., *The Budget Reconciliation Process: House and Senate Procedures*, CRS Report, 2005.

[9] See S. Streeter, *The Congressional Appropriations Process: An Introduction*, CRS Report (Updated November 30, 2016).

[10] In *Consumer Financial Protection Bureau* (v. note 4), the Supreme Court offers a historical reconstruction – from the Middle Ages to the congressional practice immediately following ratification – of the Appropriations Clause in Art. I, Sec. 9. The case addressed by the Court concerned appropriations made in favor of the Consumer Financial Protection Bureau, which enjoys special autonomy. Specifically, Congress

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This means that while Congress has the discretion to forgo the reconciliation process, it is obligated to carry out the appropriation process, as no government spending can occur without it.

Consequently, while it is not uncommon for the two Houses of Congress to fail to pass a concurrent resolution due to internal disagreements, and while it is also frequent for the reconciliation process to be bypassed, the appropriation process cannot be ignored. Whether through a concurrent resolution, an alternative deeming resolution,[11] or even through less formal means, the allocation of funds must always be addressed by Congress.

Once the allocation process is in place, the twelve Appropriation Committees begin the task of drafting the twelve Regular Appropriation Bills. These bills, which set out the specific funding levels for each branch of the federal government, are then debated and passed according to the rules of ordinary legislative procedure.[12] Every sector of the federal administration must receive its designated funding through a legislative appropriation, ensuring the continuation of government operations.

2.1 The emergency case of a funding gap

A true evaluation of the balance of powers in the budgetary process can be best understood by examining what happens when the appropriation process fails.

In this respect, the United States provides a prime example of an "assembly-dominated model", where Congress holds significant authority.[13] This dominance becomes especially evident when Congress either refuses to approve or fails to pass the appropriations requested by the President. Congress's dominance is twofold in such situations.

The first aspect of this dominance is Congress's ability to pass a temporary financial authorization, known as a continuing resolution[14]. Through this mechanism, the budget from the previous fiscal year is

provides the Bureau with the amount determined by the Bureau's Director to be reasonably necessary to carry out its duties, outside the ordinary annual appropriations process. The question was whether this legislative provision violated the Appropriations Clause. However, the majority of the Court excluded any violation, reasoning that appropriations need only identify a source of public funds and authorize the expenditure of those funds for designated purposes to satisfy the Appropriations Clause.

[11] M.S. Lynch, *The "Deeming Resolution": A Budget Enforcement Tool*, CRS Report, 2010.

[12] In some instances, two or more of these Regular Appropriation Bills may be consolidated into a single piece of legislation, known as an Omnibus Appropriation Bill.

[13] Distinction between «assembly-dominated model» and «executive-dominated model», with regard to funding gaps, is discussed in L. Testa, *Funding Gap and "Budget-oriented Classification" of Forms of Government*, in 11(2) *Comp. Law Rev.* 106 (2020).

[14] See J. White, *The Continuing Resolution: A Crazy Way to Govern?*, in 6(3) *Brookings Review* 30 (1988); C. T. Brass, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, CRS Report (Updated July 25, 2012); J. Tollestrup, *Continuing Resolutions: Overview of Components and Recent Practices*, CRS Report (Updated April 19, 2019).

extended on a temporary basis, ensuring that government operations can continue despite the failure to pass new appropriations.

While continuing resolutions exist in many legal systems, in the U.S. they are firmly under the control of Congress, with far less influence from the Executive Branch compared to other countries.[15] This explains why the U.S. has resorted to continuing resolutions almost every year since 1977, with only a few exceptions.[16]

If Congress manages to pass a Regular Appropriation Act before the continuing resolution expires, the new budget authority from the Appropriation Act immediately replaces the temporary authority of the continuing resolution, rendering the latter no longer effective.

However, if the final appropriations are delayed further, Congress is faced with the same decision again: either pass another continuing resolution to avoid a funding gap or risk a government shutdown. This decision is entirely within the hands of Congress, and no other body, including the Executive, can intervene in this process.

This is why Congress is said to have a double dominance in the budgetary process. Not only does it have complete control over the continuing resolution, without interference from the Executive Branch, but it also holds ultimate power if it chooses not to pass the continuing resolution.

In such a case, the government cannot take any independent action and is forced to declare a shutdown of government operations due to a lack

[15] See, L. Testa, *Funding Gap and "Budget-oriented Classification" of Forms of Government*, cit., 125 ff.

[16] The practice of using continuing resolutions has highlighted three key elements that are subject to negotiation among the stakeholders involved. The first critical element is "legislative coverage": Provisional funding is only allowed for activities that were already included in a previous Appropriation Act or for an Appropriation Bill currently under consideration by Congress. This means that new initiatives or programs are generally prohibited from receiving funding under a continuing resolution. The second key element concerns the amount of budget authority provided by the continuing resolution. Historically, the budget authority was determined based on past spending levels. However, in recent years, the trend has shifted toward using the President's financial proposals for the new fiscal year as a basis for the continuing resolution's budget authority. The third element is the duration of the temporary funding. Although continuing resolutions are meant to be provisional, they are not always short-term in practice. In some cases, continuing resolutions have extended funding for the entire upcoming fiscal year. These are referred to as "full-year continuing resolutions".

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of legislative funding,[17] with serious consequences for the national economy.[18]

This is not an uncommon occurrence in recent American history. In the past, there have been instances of funding gaps that resulted in government shutdowns, including one lasting 21 days, from December 16, 1995, to January 6, 1996. Another shutdown occurred at the start of FY2014 (October 1, 2013), which lasted for 16 days. Later, two shorter shutdowns took place during FY2018, in January and February of that year. The longest shutdown on record happened in FY2019, beginning on December 21, 2018, and lasting for 35 days.[19]

3. The first two years of the Biden Presidency: the usual disorder

Before focusing on the second two years of the Biden Presidency, which were complicated by the new Republican majority in the House of Representatives, it is essential to briefly review the performance of the first two years.[20] This will help us understand how the difficulties for the President (and for the successful outcome of the budget process) began much earlier.

In June 2022, President Joe Biden submitted his first Presidential Budget to Congress. The proposal faced immediate opposition from Republicans, who called for parity between increases in defense and non-defense spending.

Despite this opposition, Democrats moved forward independently, with the House of Representatives adopting its own budget authority through a deeming resolution in late June, and by July, it had approved three of the twelve Regular Appropriation Bills.

As partisan tensions rose, the U.S. hit its debt ceiling in early August 2021, triggering a "debt issuance suspension period" during which the Treasury implemented "extraordinary measures" to prevent default.

These measures included reducing the Treasury's cash reserves and divesting securities held in federal employee pension accounts. These actions were taken to create additional space under the debt limit, enabling

[17] The Antideficiency Act of 1982 (31 U.S.C. §§1341 et seq.) provides for criminal penalties for any federal officer or employee who orders or even authorizes payments or other forms of financial commitments that exceed the funds allocated by law. The failure to pass legislative appropriations, therefore, results in the cutting of so-called non-discretionary public spending, leading to a suspension of federal services and the forced furlough of the corresponding portion of civil servants — with the exception of certain "emergencies involving the safety of human life and the protection of property". See *Shutdown of the Federal Government: Causes, Processes, and Effects*, CRS Report (Updated December 10, 2018).

[18] See, for instance: Executive Office of the President of the United States, *Impacts and Costs of the October 2013 Federal Government Shutdown*, 2013, 4; M. Labonte, B. Momoh, *Economic Effects of the FY2014 Shutdown*, CRS Report, 2015.

[19] In *Past Government Shutdowns: Key Resources*, CRS Report (Updated May 15, 2024), you can find an annotated list of historical documents and other resources related to several past government shutdowns.

[20] For more details, see: L. Testa, *Budget, debt ceiling and "assembly dominance": Biden's (and his predecessors') curbs*, in *DPCE Online*, Special Issue, *The American presidency after two years of President Biden*, 2023, 405.

federal obligations to be paid without immediately increasing the debt ceiling.

In the face of these challenges, a brief moment of cooperation emerged between the two houses of Congress, which jointly passed a common budget resolution in August, agreeing on a unified allocation.

However, this cooperation was short-lived, as a Republican filibuster soon re-emerged, which the Democrats were unable to overcome due to their lack of a supermajority in the Senate.[21]

On September 21, 2021, the House approved a draft continuing resolution to finance federal operations until December 3, 2021, which also proposed suspending the debt limit until December 16, 2022. However, on September 27, the Senate attempted to bring debate to a close through cloture but failed to secure the necessary 60 votes, falling short with a vote of 48-50.

The following day, Treasury Secretary Janet Yellen warned Congress that the Treasury was on the brink of exhausting its extraordinary measures by October 18 and would soon run out of funds to meet government obligations.

On September 29, the House passed two measures: a "clean" continuing resolution to fund the government until December 3, without addressing the debt limit, and a separate bill to suspend the debt limit.

The Senate quickly approved the continuing resolution, and President Biden signed it on the eve of the fiscal year's end, narrowly avoiding a government shutdown. In response to the debt limit issue, the Senate passed an amended measure, raising the debt limit by $480 billion. After the House agreed to the revised version, President Biden signed it into law on October 14, 2021.

However, this provisional funding was not the end of the budget struggle. Over the next several months, three additional continuing resolutions were passed to prevent further government shutdowns, allowing time for a more comprehensive Omnibus Appropriation Act to be finalized. It wasn't until March 10, 2022, more than five months after the fiscal year began, that the Omnibus Appropriation Act was finally passed, with notable shifts in funding from Biden's initial vision.

Additionally, the budget for the fiscal year ending September 30, 2022, was later amended in May 2022 due to the emergency posed by Russia's invasion of Ukraine. On May 19, 2022, the Senate passed a $40 billion emergency aid package for Ukraine, which had been approved earlier by the House on May 10. This aid package provided $40.1 billion in funding for the 2022 fiscal year, with $41.6 billion allocated over the following ten years.

When President Biden's budget for fiscal year 2023 in presented in March, Republicans continue to push for parity between increases in defense and non-defense spending, while Democrats prioritize boosting funding for non-defense programs. Republicans also have a political interest in delaying the final appropriations process until after the

[21] At Senate, the minority has the ability to engage in aggressive filibustering, effectively stalling a bill through prolonged debate. This tactic can only be stopped by passing a cloture motion, which requires the support of 60 senators to proceed. See C. M. Davis, *Invoking Cloture in the Senate*, CRS Report (Updated April 6, 2017).

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November 2022 midterm elections, hoping for favorable results that would give them greater control over the budget process in the next Congress.

As a result, passing a concurrent resolution to finalize the budget seems impossible in this polarized environment. By early June, the House of Representatives had moved forward with its budget allocation through a deeming resolution, bypassing the need for Senate agreement.

By July, the House passed six of the twelve necessary Appropriation Bills, covering roughly half of the required appropriations. However, in the Senate, no significant movement occurred until early September.

In September, the Senate Republicans became split over how to proceed. While some Republicans remained steadfast in their opposition, refusing to compromise, others signaled a willingness to agree to a continuing resolution that would provide provisional funding to avoid a government shutdown. These Republicans preferred to delay the final appropriations process until after the new Congress convenes in January, but did not want to push the country into a shutdown. This divide created an opportunity for Democrats to break the gridlock.

On September 27, Democrats, with the support of a portion of Senate Republicans, successfully passed a cloture motion to overcome the filibuster, securing the 60 votes needed to move forward. In fact, the motion passed with 72 senators voting in favor, showing a significant bipartisan effort to avoid a government shutdown. Just two days later, on September 29, the same 72 senators approved the continuing resolution, which was then quickly signed by President Biden on September 30, the last day of the fiscal year.

The continuing resolution temporarily funded the government through December 16, 2022, preventing an immediate shutdown. However, this was achieved only after Senate Majority Leader Chuck Schumer withdrew a controversial provision from the bill that would have made significant changes to energy project authorizations, a concession that helped secure the necessary Republican votes.

While Republicans managed to delay the final budget decisions, they had to give up their goal of having the continuing resolution expire early in the new year when they hoped to gain control of the House following the midterm elections.

Instead, the end of the interim coverage was set for December 16 and than for December 30, 2022, a date that falls before the new Congress is seated in January. In this way, the Democrats manage to complete the appropriation process before the new Congress convenes, and therefore before the Republican majority takes control of the House of Representatives.

The House passed an Omnibus Appropriations bill, by a 221-205-1 vote, on Friday, December 23, following Senate passage by a 68-29 vote on December 22, and President Biden signed the FY 2023 Omnibus Appropriations Act on Thursday, December 29.

4. The second half of Biden's Presidency: *it could have been worse*

For President Biden, challenges grew following the 2022 midterm elections, though the severe outcomes many anticipated for budget process didn't materialize. Unlike Trump, Biden succeeded in steering clear of the major crisis of a government shutdown during his term. However, he wasn't entirely able to maintain control over the public finance decisions, as much of that process continued to be influenced by Republican opposition. But let's proceed in order.

4.1 A new debt-ceiling crisis

The Biden Administration released its Fiscal Year 2024 budget proposal on March 9, outlining the President's spending priorities and tax plans for the following ten years.

According to this budget, federal debt would have continued to rise, though at a slower pace than in the past, but would have still hit an unprecedented high, growing from 98% of Gross Domestic Product (GDP) by the end of FY 2023 to 110% by 2033.

Although annual budget deficits would decrease from the historically high levels reached in the aftermath of the COVID-19 pandemic, they were still projected to grow steadily over both the short and long term.

In particular, federal spending as a percentage of GDP was projected to fall slightly from 25.1% in FY 2022 to 24.2% in FY 2023, only to rise again, reaching 25.2% of GDP by 2033. The Biden budget called for increased investments in social programs, infrastructure, and climate initiatives, alongside defense spending, while also proposing tax reforms aimed at raising revenue, particularly through higher taxes on corporations and the wealthy.[22]

Before beginning the parliamentary debate on the President's proposal, Congress needed to first reach an agreement on the long-term framework and, above all, resolve the issue of the public debt limit.

Already in August 2021, the public debt limit had already been reached, and the U.S. Treasury had implemented extraordinary measures; it was only in mid-October that Congress managed to approve an increase to the debt ceiling. However, the same issue resurfaced at the beginning of 2023.

On January 19, 2023, the United States reached its debt ceiling, sparking a debt-ceiling crisis amid ongoing political debate in Congress over federal spending and the national debt. In response, Treasury Secretary Janet Yellen initiated temporary "extraordinary measures" to prevent default. On May 1, 2023, Yellen cautioned that these measures could run out by June 1, though the deadline was eventually extended to June 5.

By that date, a political agreement is reached, and consequently, on May 29, the Fiscal Responsibility Bill is presented to the House of Representatives. The Act is ultimately approved on June 3rd, 2023, with a

[22] Committee for a Responsible Federal Budget, *An Overview of the President's FY 2024 Budget* (March 9, 2023), https://www.crfb.org/blogs/overview-presidents-fy-2024-budget-.

bipartisan majority,[23] after Congressional Budget Office provided an assessment of the budgetary effects.[24]

This landmark legislation had two crucial components.[25] First, it suspended the federal debt ceiling until January 1, 2025, giving the government breathing room to manage its finances without facing immediate default risks. Second, it imposed strict caps on discretionary spending, both for defense and non-defense programs, for fiscal years 2024 and 2025, with enforcement via "sequestration" – automatic, across-the-board spending cuts if these limits were exceeded.

These spending caps represented a return to fiscal discipline after a period of rapid growth in appropriations. Since the previous caps expired at the end of FY 2021, discretionary spending had grown by 17%, and by 37% since FY 2017. This surge had far outpaced inflation, even though the U.S. had largely ended its military engagements in Iraq and Afghanistan.[26]

The Fiscal Responsibility Act aimed to rein in this expansion, projecting $245 billion in direct savings over the following decade through its two-year caps. Moreover, although the caps expire after FY 2025, the Act set non-binding spending targets for fiscal years 2026 through 2029, limiting discretionary spending growth to just 1% annually. If followed, these targets could generate an additional $785 billion in direct savings and $855 billion in indirect savings over a decade.

4.2 Appropriations for FY 2024

The bipartisan agreement that led to the approval of the Fiscal Responsibility Act quickly fades, giving way once again to the old ideological divide.

In response to the President's budget proposal, both the House of Representatives and the Senate began drafting and marking up appropriations bills in June and July 2023. However, the two Houses were unable to agree on a unified budget resolution.

The House Appropriations Committee moved forward first, approving its 302(b) allocations and reporting out 10 of the 12 appropriations bills required to fund the government, all by the end of the summer. The full House passed one of these bills over the summer, followed by six more in the fall.

Meanwhile, in the Senate, the Appropriations Committee filed its 302(a) allocations in accordance with the Fiscal Responsibility Act and approved all 12 appropriations bills by July. However, the full Senate did not pass any of these bills before the start of the new fiscal year on October 1, 2023.

[23] In the House, vote: 314 – 117; in the Senate, vote: 63 – 36.
[24] Congressional Budget Office, *Letter to the Honorable Kevin McCarthy providing CBO's estimate of the budgetary effects of H.R. 3746, the Fiscal Responsibility Act of 2023* (May 30, 2023), www.cbo.gov/publication/59225.
[25] See Congressional Budget Office, *How the Fiscal Responsibility Act of 2023 Affects CBO's Projections of Federal Debt* (June 2023), https://www.cbo.gov/system/files/2023-06/59235-Debt.pdf.
[26] Importantly, these figures did not account for significant military and humanitarian aid to Ukraine.

As the deadline loomed, with no final appropriations bills passed, a continuing resolution became necessary to avoid a government shutdown.

The House of Representatives initially failed to pass a CR on September 29, but following intense negotiations, an agreement was reached, and a revised CR was passed on September 30, just in time to prevent the shutdown. This temporary resolution extended government funding through mid-November 2023, but it did not resolve the deeper budgetary disputes between the two parties.

In the months that followed, three additional continuing resolutions were required to keep the government running: one in November, another in January, and a third in March 2024. To pass the third continuing resolution in January, it was necessary to push through with a cloture motion in the Senate (January 16, 2024, Vote: 68-13). In contrast, for the second resolution in the previous November, a cloture motion had been proposed but later withdrawn by unanimous consent (November 15, 2023).

These repeated stopgap measures were symptomatic of a broader political impasse in Congress, exacerbated by increased funding requests from the White House, which further complicated negotiations.

One of the most significant supplemental funding requests came on October 20, 2023, when the Biden Administration submitted an emergency funding package totaling nearly $106 billion.[27] This request sought to address a variety of international and domestic crises. The largest portion – $61.4 billion – was designated for military, economic, and humanitarian aid to Ukraine, as the conflict with Russia continued to dominate U.S. foreign policy concerns. An additional $14.3 billion was earmarked for military and humanitarian support to Israel, and further funding was allocated for border security initiatives and strategic concerns in the Indo-Pacific region, reflecting the Biden Administration's focus on addressing rising tensions with China.

Just a week later, on October 27, the Administration submitted another emergency supplemental request, this time for nearly $56 billion in domestic funding.[28] This package included money for disaster relief, childcare, energy assistance, food and nutrition aid, expanded access to high-speed internet, efforts to combat the opioid crisis, and increased pay for wildland firefighters.

The budgetary process continued to drag on into the new year. By January 7, 2024, congressional leaders announced that they had reached a deal on topline appropriations for FY 2024.[29] The agreement set non-defense discretionary spending at $773 billion, including $704 billion in base non-defense programs and an additional $69 billion for specific side deals. Defense spending, meanwhile, was capped at $886 billion.

While this agreement represented a significant step forward, it was fragile and tentative, with political tensions still high. In early February,

[27] https://www.whitehouse.gov/wp-content/uploads/2023/10/Letter-regarding-critical-national-security-funding-needs-for-FY-2024.pdf.

[28] https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/25/fact-sheet-white-house-calls-on-congress-to-support-critical-domestic-needs/.

[29] https://www.crfb.org/press-releases/budget-agreement-should-pave-way-appropriations.

these tensions came to the fore when a $17.6 billion supplemental funding request for Israel was defeated in the Senate. However, on February 13, the Senate – with the help of a cloture motion – passed an amended $95 billion national security supplemental package, which included funds for Ukraine, Israel, Taiwan, and U.S. military operations in the Red Sea.

By March 2024, Congress finally began to make meaningful progress in passing full-year appropriations bills. On March 8, the Senate passed the first "minibus" appropriations package, covering six critical areas: Agriculture, Commerce-Justice-Science, Energy-Water, Interior-Environment, Military Construction-VA, and Transportation-HUD. This bill passed the Senate with strong bipartisan support, clearing the House by a 75-22 vote. Two weeks later, on March 23, the Senate passed a second "minibus" package, this time by a 74-24 vote. This second package covered the remaining six appropriations bills, which were set to expire on March 22, and included funding for Defense, Financial Services-General Government, Homeland Security, Labor-HHS-Education, the Legislative Branch, and State-Foreign Operations.

Compared to the President's initial requests, there is an increase in defense spending ($824.5 billion compared to the $745 billion initially requested), which is offset by slight reductions in other areas, particularly in funding for Labor, Health and Human Services, and Education ($194.4 billion, down from the $205 billion requested). Overall, compared to the requested discretionary spending of $1.695 trillion, a slightly lower amount has been allocated, totaling $1.590 trillion.

4.3 Appropriations for FY 2025

Even as the budget for FY 2024 was finally nearing resolution, the cycle for FY 2025 had already begun.

On March 11, 2024, the Biden Administration released its FY 2025 budget proposal, setting the stage for yet another year of contentious budget negotiations.[30] The President's budget projected continued high deficits, with the deficit expected to rise from $1.7 trillion (6.3% of GDP) in FY 2023 to $1.9 trillion (6.6% of GDP) in FY 2024. The deficit was forecast to fall to $1.5 trillion (4.3% of GDP) in 2029, before rising again to $1.7 trillion (3.9% of GDP) by 2034. Over the course of the FY 2025-2034 period, the total deficit was projected to reach $16.3 trillion, or 4.6% of GDP, which was $3.2 trillion less than the Office of Management and Budget's baseline projection.

Despite these efforts to curb the deficit, the persistent gap between spending and revenue remained a major challenge. Under the budget, spending was expected to rise from 22.7% of GDP in FY 2023 to 24.8% in 2025, while revenue was projected to increase from 16.5% of GDP in 2023 to 20.3% by 2034, driven largely by proposed tax increases on corporations and high-income earners.

Before Congress could fully turn its attention to the FY 2025 budget, it had to contend with another round of emergency funding requests.

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[30] https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/11/fact-sheet-the-presidents-budget-for-fiscal-year-2025/.

On April 23, 2024, the Senate passed a package of national security-oriented supplemental appropriations bills, which had been previously approved by the House.[31] This package provided a total of $96 billion in funding for Ukraine, Israel, and the Indo-Pacific, along with measures addressing economic sanctions and related issues.

Despite the progress made on supplemental funding, the familiar pattern of gridlock soon re-emerged. On July 3, the House passed a budget resolution for FY 2025, but this resolution was promptly rejected by the Senate.

As the October 1 deadline for the start of the new fiscal year approached, the House attempted to pass a continuing resolution to extend government funding through March 28, 2025, but the measure was defeated in a 202-220 vote on September 18.

Finally, on September 26, 2024, after weeks of negotiations, both the House and Senate passed a continuing resolution extending government funding through December 20, 2024.

It is no coincidence that in the Senate, the resolution was passed with a vote of 78 to 18 (with 4 abstentions). The result closely mirrors the 80 to 19 votes by which the cloture motion was approved for the final passage of the supplemental appropriations bills on April 23. This demonstrates a recurring pattern in the alignment of political forces in the Senate when faced with emergency needs.

President Biden signed the continuing resolution the same day of its approval, temporarily staving off the threat of a government shutdown – at least until the end of the year.[32]

5. Some conclusive remarks

The study of the budget process over the past two years confirms results consistent with observations from previous performances.

This is a trend that not only spans the Biden presidency but can be observed consistently since at least the first Obama presidency. While it is true that, unlike his two immediate predecessors, Biden has not had to declare a government shutdown, it remains true that he has been at the center of a disjointed appropriation process, undermining the unity of economic policy direction.

There is an increasingly pronounced and now definitive gap between the *law in the books* and the *law in action*. In addition to the damage caused by chronic political polarization, Biden has also faced the need to request additional funds during the fiscal year, primarily due to war events in Ukraine and Israel. This has contributed to further fragmentation of the temporal unity of the appropriation process.

[31] Senate Foreign Aid Supplemental; Indo-Pacific Security Supplemental Appropriations Act; Israel Security Supplemental Appropriations Act; Ukraine Security Supplemental Appropriations Act. All of these were approved through a cloture motion, which passed with a vote of 80 to 19, indicating a significant shift in the alignment of political forces.

[32] Please note that this text was finalized and submitted for publication on October 25, 2024.

A century ago, the decision to unify the President's request for funds – with the introduction of the Presidential Budget – and to correspondingly unify Congress's response – with the adoption of a common resolution that was supposed to be the legislative framework for appropriations – aimed to increase the responsibility of the White House and strengthen parliamentary oversight.[33]

The departure from this model now works in the opposite direction: it diminishes the President's responsibility and neutralizes effective Congressional oversight.

On one hand, the President's request presented with the Presidential Budget is later supplemented by additional and specific requests throughout the fiscal year, lacking a coherent overall plan.

On the other hand, Congress has long abandoned adopting a common resolution, opting instead for ad hoc agreements on various appropriation bills – again, without a cohesive plan.

This disperses the unity of the budget process as it was conceived a century ago, transforming what was once called "regular order" into a "regular disorder." In fact, it could be described as a "permanent disorder".

Not only do additional funding requests reopen the appropriation process throughout the year, but even without considering these, the overuse of continuing resolutions to avoid government shutdowns effectively prolongs negotiations between the two Houses and the President throughout the fiscal year.[34]

As seen, continuing resolutions cover at least half of the fiscal year: final appropriations are almost never reached before April.[35] By the time they are completed in April, the Presidential Budget for the following fiscal year is already being presented. The parliamentary budget session, therefore, has effectively become a permanent session.

A permanent, disjointed, and fragmented budget process, without an orderly framework, primarily harms the oversight function of Congress – which had drawn so much attention after the crisis in the legislative function of the Parliament had already been observed. The situation is, moreover, made even more dramatic by the fact that, in reality, it doesn't seem like Congress – or rather, the political parties in Congress – have the slightest interest in safeguarding this function. It is Congress itself that is abdicating it.

[33] For a recent reflection on the point, see J. W. Douglas, R. S. Kravchuk, *Creating the executive budget process: What was Congress thinking?*, in 53(3) *Pres. Stud. Q.*, 407 (2023).
[34] Among the not always positive effects of the excessive use of continuing resolutions, some authors have also noted implications for federal contracting: S. Kasdin, *Continuing Costs: The Impact of Continuing Resolutions on Federal Contracting*, in 51(7) *Am. Rev. Public Adm.*, 542 (2021). In general, for some evidence consistent with an effect of procedural performance on the expectations of economic actors, see N. McCarty, *The Decline of Regular Order in Appropriations: Does It Matter?* (December 12, 2014), available at SSRN: https://ssrn.com/abstract=2537444 or http://dx.doi.org/10.2139/ssrn.2537444.
[35] In 2012, J. Woon, S. Anderson, *Political Bargaining and the Timing of Congressional Appropriations*, in 37(4) *Legis. Stud. Q.* 409 (2012), noted that delays are usually shorter when the ideological distance between pairs of key players decreases and distributive content is higher, but they are longer following an election.

There will only be one side whose sole interest is to obstruct the President's political faction, and the other side whose only interest is in achieving the outcome indicated by the President.[36]

With such disorder – and such weakened parliamentary control – it's no surprise that the United States is almost always in a debt ceiling crisis.

Biden has had to deal with this crisis twice, as we have seen: in August 2021 and in June 2023. Now, just under two years later, the suspension set by last year's Fiscal Responsibility Act is about to expire.

On January 2, the government will reach its self-imposed borrowing limit, starting the countdown for lawmakers to reach a deal to extend the debt ceiling; otherwise, the U.S. government could default on its debts.

Luigi Testa
Dip.to di Diritto Economia e Culture
Università degli Studi dell'Insubria
luigi.testa@uninsubria.it

[36] With regard to Senate majority party's influence, see P. Hanson, *Abandoning the Regular Order*, in 67(3) *Polit. Res. Q.* 519 (2014).