



“A well-designed BBA is achievable”

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Statement for the Record

“Examining Proposed Constitutional Amendments”

Hearing of the Subcommittee on the Constitution and Limited Government

Committee on the Judiciary, U.S. House of Representatives

Tuesday, September 19, 2023

Dear Chairman Johnson, Ranking Member Scanlon, and members of the subcommittee:

Thank you for the opportunity to submit remarks on the hearing “Examining Proposed Constitutional Amendments.” My comments focus on proposals to amend the Constitution to require a balanced budget (“BBAs”).

The pursuit of a BBA has been ongoing for 87 years

The House and Senate have each voted numerous times on BBAs. Representative Harold Knutson (R-MN) introduced the first BBA in 1936 due to the New Deal’s debt buildup. The first BBA hearing was in 1956 on versions proposed by Senators Harry Byrd (D-VA) and Styles Bridges (R-NH) and by Senator Carl Curtis (R-NE).

The Senate first approved a BBA in August 1982 with a 69-31 vote. Contributors to success included Republicans gaining a Senate majority, President Reagan’s strong support, and state legislatures’ accumulating applications for a convention of states. The first House BBA vote came in October 1982 following a successful, bipartisan discharge petition, but the 236-187 vote was short of the two-thirds needed for a constitutional amendment.

House leaders made a BBA a top priority in 1995. Before January ended, the House had approved one 300-132. The Senate followed in February but fell one vote short. It was the high-water mark for BBA votes.

Both houses of Congress last voted on BBAs in 2011. The House vote of 261-165 showed only 61.3 percent support. In the Senate, two-thirds of senators voted for at least one of two BBAs: 47 Republicans for one, and twenty Democrats and one Republican for another. A 2018 House vote on a BBA failed 233-184 in a less favorable environment.

Yet public support for a BBA remains strong. A July 2023 poll found that 80 percent of voters support "a constitutional amendment that would require a balanced budget within 10 years." Supporters include 83 percent of Republicans, 79 percent of Democrats, and 76 percent of Independents.

Why has Congress struggled to deliver on an issue with such broad support? The main reason is that every version voted on so far has had considerable shortcomings. The process for considering them hasn't always been a model of consensus-building either.

Problematic BBA provisions have sunk prior proposals

BBA shortcomings tend to be some combination of technical and ideological.

Annual balance is a common problem. Revenue in the dynamic American economy is volatile. Trying to get spending and revenue to balance every year is a recipe for uncertainty, policy instability, frustration, and fatigue. Nearly every state requires annual or biennial balance or something close to it, but such rules are typically holdovers from the 19th Century. Some states are now considering structural balance, which is balance over the medium term.

Full balance is a fine goal, in theory. Even so, it would require more policy changes than two-thirds of members of both houses of Congress can imagine today.

Short transition times dramatically narrow the possibilities for reaching balance. Many viable options must start small and grow as they phase in.

Multiple emergency thresholds create complications, definitional problems, and sometimes perverse incentives for military conflict.

The president's budget request is already required by statute. Putting it in the Constitution could empower proponents of executive authority to encroach further on Congress' powers.

Statutory constructs are vulnerable to Congress changing them with ordinary legislation. Such changes could leave anachronisms in the Constitution. Examples include "outlays," "fiscal year," and the debt limit, which a BBA and implementing legislation could replace.

Exemptions for specified pension and health programs are not only statutory constructs but also large and growing parts of the budget. Still, congressional practice under a BBA could tailor the treatment of different programs in many ways.

Restricting revenue raising appeals to many conservatives, but such provisions radically reduce support among those with other ideas about fiscal responsibility.

Percentage-of-GDP spending caps have similar dynamics for building a broad coalition as well as for those who favor a tighter federal scope and worry that ceilings would also be floors.

Limiting the judiciary's role may be appropriate, but Congress could do it through statute.

New BBAs could foster congressional consensus

Earning the support of two-thirds of both houses of Congress and three-fourths of state legislatures takes time and effort. Avoiding the problems discussed above and any others is crucial. Two versions are well-placed to meet that test.

Principles-based BBA: Representative Nathaniel Moran's resolution, H.J.Res. 80, would require the budget to balance, "which may occur over more than one year." The PBBA lets implementing legislation design the mechanics, which could include capital budgeting. Two-thirds of both houses could provide for emergencies, and Congress would have a decade to reach full or primary balance. The latter would exclude interest costs.

Business Cycle BBA: Representative Jodey Arrington's resolution, H.J.Res. 77 (117th Congress), proposes a specific rule: non-emergency spending could equal the rolling average of the prior three years of revenue, adjusted for inflation and population. The BCBBA would allow emergency spending with two-thirds of each house and set a scheduled phase-out of full or primary deficits.

Primary balance requires about half as much deficit reduction as full balance. A 10-year deficit phase-out after ratification would expand Congress' options to reach the balance responsibly compared to those that would allow only two or five years.

Mr. Moran's proposal allows Congress to draft implementing legislation for structural balance – balance over the medium term, not every year, to perform a smoothing function – possibly like Senator Mike Braun and Representative Tom Emmer's Responsible Budget Targets Act (S. 772, 118th/H.R. 7420, 117th). Mr. Arrington's approach directly proposes one version of such a rule. Both could attract broad, bipartisan support.

Any BBA would require implementing legislation. In addition, BBA-compliance-tied automatic debt limit increases, a comprehensive budget with all spending and revenue, and a better approach to automatic enforcement could be useful statutory complements.

Finally, the process for considering a BBA and related legislation should be inclusive. This ideal legislative practice is especially practical for a constitutional amendment. Members of both parties have ideas to contribute, and robust deliberation can improve proposals. An open process can help build trust and consensus to clear a high supermajority threshold.

The time has come for a BBA

This era is the second-longest period since Congress has proposed a successful constitutional amendment, after the 61 years between the 12th and 13th Amendments. A BBA and its implementing legislation would help Congress get the federal government's fiscal house in order, and a well-crafted and -managed version could obtain overwhelming support in Congress and from state legislatures. I look forward to engaging this committee and all members of Congress to make it a reality.