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SCHOOL OF PUBLIC POLICY

Testimony of Philip G. Joyce

Professor of Public Policy and Senior Associate Dean

University of Maryland, School of Public Policy

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House of Representatives

On

“The Role of the Congressional Budget Office in a Modern Congress”

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Chairman Kilmer, Vice Chairman Timmons, and members of the Committee, thank you for inviting me to share my views on the role of the Congressional Budget Office (CBO) in supporting the Congress.

I want to express at the outset my admiration for this committee and what you are trying to accomplish. There is no more important issue, in my view, facing our political system than ensuring that the Congress remains a strong body capable of serving as an independent voice in our political system. Indeed, this should be, and is, a bipartisan issue. I have testified twice at hearings held by the House Budget Committee (in 2016 when Republicans were in the majority and in 2020 when Democrats were the majority party) in the past five years that were focused explicitly on ensuring that the Congress could maintain its ability to exercise its constitutional power of the purse.<sup>1</sup>

I mention this because the congressional support agencies play a crucial role in the ability of Congress to maintain that role. Weak, understaffed or outdated support agencies invariably contribute to a weaker Congress, and therefore transfer power to the executive branch. That is, in my view, an undesirable outcome, and I applaud you for reviewing the support agencies as part of your examination of Congressional modernization. I would also note that, internationally, the United States is considered a leader in the kind of support given to the Congress.

You have asked me explicitly to talk about the Congressional Budget Office. As background, I was an employee of CBO in the early 1990s, and wrote what is to date the only book written about the agency.<sup>2</sup> To my earlier point about the U.S. as a leader, there have been many countries that have looked at CBO's successes over the past almost half century and established similar independent fiscal agencies. In that sense, Congressional organization has served as a model for the modernization of legislative institutions in other countries.

In my testimony, I will make five points:

- CBO has, as intended, empowered the Congress relative to the President.
- CBO's budget forecasts have normally been influential mainly when the Congress is interested in reducing budget debt and deficits, while its cost estimates on individual legislation are consistently influential.
- It is important for CBO cost estimates and other products to be accurate and timely, to employ a consistent methodology, and to be transparent about assumptions used.
- While some have argued for CBO estimates to focus on broader issues than federal budgetary costs, it is important to understand that doing these broader analyses are not generally consistent with CBO's role and could require significant additional resources.
- CBO, the Congress, and the nation all benefit from CBO maintaining its reputation for objective, nonpartisan analysis.

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<sup>1</sup> The 2016 hearing can be found at <https://budget.house.gov/legislation/hearings/reclaiming-congressional-authority-through-power-purse>; The 2020 hearing can be found at <https://budget.house.gov/legislation/hearings/protecting-congress-power-purse-and-rule-law-0>.

<sup>2</sup> Joyce, Philip, *The Congressional Budget Office: Honest Numbers, Power, and Policymaking* (Washington, Georgetown University Press, 2011).

## CBO Has Empowered the Congress Relative to the President

While I will spare you chapter and verse of occasions where CBO has empowered the Congress vis a vis the President, I will say that this capacity surfaced early on, through events such as the CBO challenge to the Carter energy policy and the Reagan fiscal projections, and extends to more recent examples such as the agency's key role in debates over the Affordable Care Act. I would note three key lessons concerning CBO's credibility and influence over its almost half century:

- CBO was created to give in large part to give Congress more leverage over the White House in key policy debates. Prior to the creation of CBO, the only numbers produced came from the executive branch, and these understandably assumed that the President's economic policies would be successful. The CBO baseline gives the Congress the capacity to develop its own path for fiscal policy. Time and again the Congress has made use of that capacity to place its own stamp on both overall fiscal policy and respond to particular Presidential policy proposals. This has occurred in part because of the capacity of CBO to develop alternate numbers to those coming out of the executive branch, which has tended to both empower the Congress and keep the executive branch more honest.
- The influence of CBO cannot be separated from the role of the Budget Committees, and having a strong CBO is essential not only to the Congress as a whole, but is particularly important to the ability of these committees to fulfill their statutory role. The leadership of those committees, both Republican and Democrats, have been quite responsible in their selection of CBO directors and in protecting CBO from attempts to politicize and weaken it.
- The story of CBO is as much a story about leadership as about budgeting or technical analytical capacity. Its first Director, Alice Rivlin, got CBO off to a strong start by establishing the initial culture and operating procedures designed to insulate CBO analyses from politics. Subsequent directors—whether nominal Democrat or nominal Republican—have continued the non-partisan tradition, and CBO staff have responded by consistently producing sound, technocratic analysis.

## When Has CBO tended to be Most Influential?

As a budget office, CBO's role, in a macro sense, is to assist the Congress in making overall fiscal policy. It is not the role of CBO to tell the Congress what policy to pursue (indeed, it does not make recommendations), but rather to illuminate the choices that the Congress needs to make. One of those choices has to do with the level of deficits and debt, and the tradeoffs between (for example) responding to immediate crises by deficit-financed spending and tax policy versus taking action to reduce deficits and debt. CBO has historically been most influential when the Congress is interested in taking actions to fundamentally change the direction of fiscal policy, such as happened in the 1990s, when multiple reconciliation packages helped to move the budget from annual deficits to four consecutive years of budget surpluses.

It has been my observation, on the other hand, that CBO is somewhat less influential in terms of overall fiscal policy when the Congress is less interested in reducing deficits and debt. This probably describes the last two decades, when the combination of various economic crises (the

Great Recession and the COVID-19 pandemic) and Congressional hyper-partisanship has made it much more difficult to reach agreements that would result in reductions in deficits and debt.

What this means, in the end, is that CBO's influence is much more likely to be seen in its analyses of individual policies, especially its required cost estimates of legislation. There is no question that the structure of many policies are substantially affected by CBO's estimates of cost, either because they are changed in response to formal or informal cost estimates, or because they are drafted with an eye toward CBO "scoring" in the first instance. There is no better example of that than the Affordable Care Act (ACA). The final version of the ACA included many of the provisions that it did (at least in the form that they ended up) because of the knowledge of how CBO would score them. This was particularly true because President Obama had said that he would not sign any bill that added to the deficit. In such an instance, CBO scoring becomes very important. There are many other lower profile instances every year where CBO cost estimates have a similar effect on the ultimate structure of legislation.

### What Factors are Most Important When Doing These Estimates?

If it is true that CBO cost estimates (there are about 600 of these in a typical year) represent the most consistent impact that CBO has on the congressional process, what are the most important factors for a modern CBO to focus on with respect to its cost estimates? To me, four would seem to stand out: accuracy, timeliness, consistency of assumptions, and transparency. I will discuss each briefly.

Accuracy. While some people attribute this sentiment to Yogi Berra, it is apparently Danish physicist Niels Bohr who first said that "(p)rediction is very difficult, especially if it's about the future". At the most basic level, everyone knows (or should know) that CBO estimates—like virtually all budget estimates—are wrong. More broadly, however, they are often criticized for communicating a false sense of precision. In point of fact, CBO cost estimates almost always represent the midpoint of a possible range of costs associated with a given change in policy. Given the many factors that go into calculating these costs, and the fact that the costs must be presented over ten years, there is almost no chance of the point estimate being correct.

Some have suggested that a solution—a modernization, if you will—to this process would be to have CBO explicitly present the estimates as ranges rather than point estimates. If everyone knows that the point estimates are wrong, the argument goes, why present point estimates? The first, and probably most important, reason is that budget enforcement (for example, of the budget resolution) relies on point estimates. It is difficult to imagine a workable substitute enforcement regime if an estimate was provided that said, in effect, "the cost is somewhere between X and Y". Presenting such ranges would also invariably further muddle the political process, as advocates of a given policy would choose to cite the lower end as THE cost, and opponents would tend to gravitate toward the higher end.

Beyond not being precise, some critics argue that CBO estimates are not just wrong, but systematically wrong; of particular concern is the possibility that there is a tendency to underestimate costs, resulting in later surprises. There is, in fact, little evidence of this. CBO itself

does not systematically study the accuracy of its cost estimates in general, for two very simple reasons. First, most legislation estimated by CBO is never enacted, so it is impossible to ascertain how good or bad the cost estimates were. Second, most of its estimates concern changes that are being made to ongoing programs, and it becomes almost impossible later on to separate spending that is associated with the change in the program from other pre-existing factors. The relatively rare exceptions are where legislation creates a new program, or new spending, such as occurred when Medicare Part D was created.

Timeliness. CBO cost estimates are ideally available in time for legislation to be considered on the floor of the House or Senate. At times this is not possible, such as when the Congress is moving a piece of legislation too quickly to permit the analysis to be done in that time frame. CBO, in its FY22 budget justification, indicates that it did 291 formal cost estimates of bills considered on the floor of the House or Senate, and that 75% of those were completed prior to floor consideration. This means, to state the obvious, that 25% were NOT. There may be room for a better record on timeliness, and it is worth asking to what extent this number can be affected by CBO practice, and to what extent this gap results from the House or Senate being unwilling to wait for the CBO estimate prior to taking floor action.

Consistency. Often the Congress is considering many different pieces of legislation in the same policy area in the same session of Congress. If CBO is to provide valuable information to the Congress, and to be fair to the proponents of various policies, the policy alternatives must be scored using a consistent set of assumptions. I do not think this need for consistency is well understood by many consumers of CBO products. For example, when comprehensive health reform was being debated in 2009, CBO needed to make sure not only that it got the costs at least approximately correct for each individual bill, but that each specific proposal's costs could be compared to other proposals. Anticipating the probability that health reform would be considered in 2009, CBO had been working in 2008 on a "road map" of sorts describing how it would evaluate various health reform elements, including issues such as the choice of plans, efforts to limit insurance premiums, changes in medical practices, and the budgetary treatment of mandated insurance payments.<sup>3</sup> Separately, it presented a volume of health care reform options, including the costs of each.<sup>4</sup> This took some the guesswork out of the process of developing proposals, since CBO had already provided guidance concerning how they would be scored.

Transparency. Since its creation, CBO has paid attention not just to what it says, but how it says it. In fact, in a seminal meeting that Alice Rivlin had with early CBO leaders to organize the agency, she concluded that the readability of CBO reports was perhaps as important as the analysis. CBO cost estimates have long included an explanation of how the estimate was derived. In recent years, however, there have been calls for greater transparency, and CBO has responded in several ways, all of which are outlined in a recent CBO report on transparency.<sup>5</sup> In addition to traditional means of transparency such as testifying and responding to questions from Members and committees, that document points to the following aspects of its 2021 transparency efforts:

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<sup>3</sup> Congressional Budget Office, *Key Issues in Analyzing Major Health Insurance Proposals* (December 2008).

<sup>4</sup> Congressional Budget Office, *Budget Options I: Health Care* (December 2008).

<sup>5</sup> <https://www.cbo.gov/system/files/2021-03/57008-Transparency.pdf>.

- Making public reports and other products available that explain CBO’s methodology in coming up with estimates, especially in complicated areas such as health policy, climate change, and economic forecasting;
- Publishing data sets underlying not only its overall baseline budget estimates, but also for many large programs, such as those related to Social Security, agriculture, transportation, veterans benefits, and unemployment insurance;
- Comparing CBO estimates to prior estimates (for example, for the baseline projections and economic forecasts) and also to estimates of other organizations, in order to gauge their accuracy; and
- Disseminating CBO products in more accessible ways, including data visualizations and through social media.

All of this points to substantial effort by CBO to address criticisms concerning transparency. The agency is likely never to satisfy all of its critics on this score; some of these critics are probably focused on transparency as a proxy for dissatisfaction with the result of the analysis. Still, it continues to be important for the Congress to be able to understand not just what the number is, but where it came from, and CBO should do all it can to illuminate its work.

#### Should CBO Estimate Focus on Broader Costs, and Also Benefits?

A criticism that has been levied at CBO cost estimates is that they place too much weight on costs to the federal government, and not enough on effects on other sectors of the economy, or on the benefits of legislation. There are two main specific manifestations of this argument:

1. CBO cost estimates pay little attention to the costs that legislation has on non-federal actors, such as state and local governments and the private sector, or on the overall economy.
2. CBO cost estimates do not appropriately account for the positive effects of legislation, such as the broader societal impacts of legislation.

Impact on Non-Federal Actors. CBO’s federal cost estimates are just that. They represent CBO’s estimate of the cost to the federal government of proposed legislation. They explicitly do not take into account the costs that might occur to other, non-federal actors, with two exceptions. The first is the requirements that exist for CBO to provide information under the Unfunded Mandates Reform Act (UMRA). The second is the broader work of CBO’s program divisions who conduct broader policy analysis of legislation. In the former case, the law requires CBO to notify the Congress of any requirement in proposed legislation that would impose an intergovernmental mandate (an “enforceable duty” on state, local, or tribal governments) that exceeds a statutory threshold. It also requires CBO to identify mandates on the private sector that exceed an established threshold.<sup>6</sup> The law creates a point of order against considering a bill if such a mandate statement is not included. Aside from the UMRA requirements, CBO’s program divisions also may discuss the broader economic effects of legislation, and of federal policies in general. CBO

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<sup>6</sup> This threshold is adjusted annually for inflation. Upon enactment, the limits were \$50 million (intergovernmental) and \$100 million (private sector”); in 2019, the limits were \$82 million and \$164 million, respectively (Congressional Budget Office, *CBO’s Activities Under the Unfunded Mandates Reform Act*, December 2019).

work on health care, for example, has routinely analyzed the effect of federal policies (such as the Affordable Care Act) on national health care spending.

Failure to Account for the Benefits of Legislation. Even where the work of CBO may focus on cost beyond only federal costs, it is still true that the primary focus is on costs, not benefits. Again, there can be some exceptions to this (such as the analysis of the effect of particular policies on military readiness, or an estimate of the effect of the Affordable Care Act on the number of Americans who have health insurance) but by and large, CBO does not tend to focus on benefits, at least in its cost estimates.

The argument that the Congress should be focused on benefits is simple and practically unassailable. Focusing on federal budgetary costs may encourage downplaying other, arguably more important, considerations. The Congress, in an effort to reduce the federal budgetary cost, may then enact ill-advised or short-sighted policies, and encourage the redesign of policies in an effort to reduce their costs. Health estimates present a particularly fitting example of this dilemma. When people live longer they may spend more time receiving government-funded health care (Medicare, Medicaid, or veterans' health, for example), thus increasing the federal government's cost. This does not mean that we should not enact policies that save lives, but it does seem to mean that the cost estimate can present a radically incomplete picture of the effects of a given piece of legislation.

It is clear that the Congress should consider both costs and benefits when considering a given piece of legislation. That is different, however, than saying that it should be CBO's responsibility to provide these estimates. Beyond the fact that there would be substantial resource implications were CBO to provide cost-benefit analyses of legislation, two other factors argue against such an approach, in my view. First, as hard as it is to measure costs with any precision, that challenge pales in comparison to the difficulty of placing a dollar value on benefits. Second, doing such analyses would more CBO very close to what it has avoided through its history—making recommendations—which would threaten its ability to maintain its reputation for nonpartisanship.

### **How Can CBO Assist the Congress Going Forward?**

What does all of this tell us about the future of CBO, and how to make sure that it is able to appropriately serve a modern Congress? Several questions are worth pursuing in closing:

- Is there any way that CBO could better assist the Congress in confronting the nation's fiscal policy challenges?
- What could be done to change the quality of CBO's analyses?
- How might the Congress use information coming out of CBO to make better policy?

### Confronting the Nation's Budgetary Challenges

How might CBO better encourage the nation's leaders to confront the nation's future budgetary challenges? Given that debt has increased from 31 percent of GDP in 2001<sup>7</sup> to 100 percent of

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<sup>7</sup>Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2015-2024* (February 2014).

GDP in 2020<sup>8</sup>, and is projected to remain at roughly that higher level for the next decade, many people are alarmed at the continued failure of the Congress to come to grips with this imbalance.

While there is general agreement on these facts, there is much less consensus on what to do, and when. CBO has, over its history, been consistent in sounding the alarm about the effects of an increasing federal debt. It would be surprising, in fact, if a budget office did not raise these concerns. While CBO has provided information, it has not tended to tell (nor is it empowered to force) the Congress to act. In point of fact, CBO was set up as a provider of information, not a spur to particular action. If it is a spur to action, it is only as a result of the political impact of the data that are provided. There are similar budget offices in other countries which are given the authority to certify whether the government is engaging in fiscally responsible policies. The British Office for Budget Responsibility (OBR) both evaluates the government's progress toward meeting its stated fiscal objectives and assesses long-term fiscal responsibility.<sup>9</sup> This sort of evaluation is not without its pitfalls. The real question is whether CBO should go further in exhorting the Congress and administration to take action. The benefits of doing so are uncertain, but it seems to me that such a stance could be potentially quite dangerous in terms of CBO's continued nonpartisan impact.

This is probably as good a place as any to raise the issue of CBO's public profile and role in educating both the Congress and the public. Since the beginning, CBO directors have had to walk a tightrope between being the public face of the agency's analyses and behaving as behind-the-scenes Congressional staff. Early on, the Congress took Director Rivlin to task because she was perceived as taking positions that were too public, and in forums that were too visible (she sometimes held press conferences, and appeared on national network news programs). Later in her tenure, she toned down her public profile, and subsequent directors have generally stayed out of the (non C-SPAN watching) public eye.

This does not mean, however, that the agency has not played a visible educational role. Numerous directors have cultivated (mostly off-the-record) relationships with journalists in an attempt to put an accurate face on CBO analyses and on general fiscal and economic challenges facing the country. Further, CBO products have always been available to anyone who requested them. Clearly materials have become much more accessible in the age of the internet. The efforts identified above that have enhanced the transparency of CBO should continue, in my view, and can have the effect of educating the public, through the media, and thus potentially spurring Congressional action. This seems a clearer, and safer, path to follow.

### Improving the Breadth and Quality of CBO Analyses

As noted above, the need for the budget process to rely on point estimates communicates perhaps an unrealistic sense of precision to CBO estimates, when there is in fact a lot of uncertainty. It might, therefore be useful for CBO to be more systematically explicit about the ranges around its estimates, and the level of uncertainty involved. The down side of this is that it might, as suggested

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<sup>8</sup> Congressional Budget Office, *An Update to the Budget and Economic Outlook: 2021 to 2031* (July 2021).

<sup>9</sup> See Chote, Robert, "Recognising Uncertainty," presentation at the Hutchins Center on Fiscal and Monetary Policy, Brookings Institution, December 15th, 2014.



above, encourage supporters to choose the low estimate of costs and opponents the high estimate. Some more explicit information on the level of uncertainty might be useful, however. Suggesting the level of uncertainty (in effect, the size of the confidence interval) surrounding a particular number would communicate useful information and might discourage the Congress from treating estimates with a false sense of precision.

It is also important that CBO continue to be granted access to the information that it needs to access and the people that it needs to talk to in doing its estimates. In the former case, it is my understanding that a positive effect of the need for remote work during the pandemic has been to provide CBO with temporary access to some data electronically that was normally not available in that format. It would be desirable for this to continue. And the Congressional Budget Act requires the executive branch to make its employees available to respond to CBO inquiries. What is most important here is that CBO have access to the RIGHT people; this often means the career staff with most detailed knowledge of programs.

### Making Appropriate Use of Information from CBO

Perhaps the most important thing that the Congress could do to make sure that it makes better use of CBO products would be to more explicitly recognize both the limitations and the benefits of the analysis that CBO provides. On the former point, the Congress should be more explicit about considering the broader societal and economic implications of policy. In short, the Congress could step back from a main emphasis on the budgetary consequences of policy and understand that those consequences are one (but only one, and probably not the most important) thing to consider when decided whether to adopt legislation, and what form it should take. Clearly there are certain policies (climate change, health policy, and immigration reform, to name three) where there are many factors to consider, besides the federal budgetary cost. The more those factors can be considered when the policy is under development, the greater the chance of avoiding narrow, short-sighted policies. For all the positives that have come from having CBO, perhaps the main caveat is not to take its analyses TOO seriously. They are not the answer, they are an input—one that the Congress can make effective use of only if it recognizes the limitations.

Moreover, the Congress should avoid, unless absolutely necessary, considering bills on the floor of the House or Senate before it receives a CBO cost estimate. The fact that 25% of the bills voted on in 2020 did NOT include such an estimate is cause for concern. If CBO delays are contributing to this gap, they should be addressed. It seems more likely, however, that this is a reflection of a willingness of Congress to act before CBO provides an estimate. This is a situation that should be avoided.

## **Conclusion**

My main conclusion, having studied the history of CBO and with knowledge of its current practices, is that, far from the Congress needing to reform CBO in pursuit of modernization, CBO (and I think that same could be said for GAO and CRS as well) is instead one of the most important factors that contributes TO the modernization of Congress. The desire of other nations to create their “own CBO” is, in my view evidence of this. In short, other countries want what the U.S. has, and are flabbergasted to discover that the Congress supports a large and influential nonpartisan agency in the midst of such a highly partisan political environment.

The gap between objective analysis and “ammunition” to be used in political debates has perhaps never been greater. In such a partisan environment, policymakers will continue to be tempted both to attempt to move CBO in a more partisan direction, and to use CBO analyses (or portions of those analyses) to further their own political agendas. While substantial disagreements with CBO have come from both sides of the political spectrum, it is important for the Congress to recognize that a credible, nonpartisan CBO is vital to the ability of the Congress to both set its own fiscal policy and to challenge the President—any President—on policy. If CBO becomes viewed as one more source of noise in a cacophony of partisan voices, it will be of limited use to either the Congress or the nation. The capacity for nonpartisan analysis—from all support agencies, not just CBO--should be protected. Once lost, it would not easily be regained.