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**THE OBAMA BUDGET
CYCLES:**

FY2011 – FY2014

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I. Introduction¹

Between FY2009 and FY2014 the overall budget position of the United States improved dramatically, with the deficit falling from \$1.293 trillion in FY2010 to \$628 billion in FY2014, a 50 percent reduction.² (See Chart 1). Yet, over the course of the administration, budget negotiations between the White House and Congress grew increasingly contentious and protracted. During the first five years of the Obama administration, almost all budget negotiations took place under the backdrop of a looming government shutdown, or a rapidly approaching statutory debt ceiling. As a result, many budget specifics between FY2011³ and FY2014 were negotiated in the midst of a crisis, or at a minimum, under the threat of a crisis.

The Obama administration established baseline discretionary spending levels in FY2010. With both houses of Congress controlled by Democrats the administration was able to establish new budgetary priorities that have been relatively consistent throughout the administration. While overall discretionary funding levels have declined since their peak in FY2010, funding levels for Education, Veterans Affairs, and Energy have all consistently seen funding increases under the Obama administration.

In the first five budget cycles of the Obama administration there has been an increased use of continuing resolutions (“CR”), a near abandonment of the budget resolution process, and an almost complete collapse of the budgetary process outlined in the Budget Control Act of 1974. There have been significant declines in discretionary spending between FY2010 and FY2014, yet mandatory spending levels have continued to increase. The budget process has

¹ This paper focuses on domestic discretionary spending and does not provide an in depth analysis of supplemental spending or mandatory spending outside of inclusion in yearly totals. All data analysis is done based on numbers provided by the Office of Management and Budget in the yearly Presidential Budgets submitted to Congress.

² *Budget of the United States Government: Fiscal Year 2015*, Office of Management and Budget at 163, available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/budget.pdf> [hereinafter FY 2015 Budget]; *Budget of the United States Government: Fiscal Year 2012*, Office of Management and Budget at 171 available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/budget.pdf> [hereinafter FY 2012 Budget].

³ FY2010 was an aberration with a relatively smooth budget process.

been a political minefield throughout the administration, with budget negotiations consistently putting the country on the brink of a government shutdown or default. Yet, FY2014 and it appears FY2015, reflect an attempt to shift back to a more functional budget process. It is too soon to see if this renewed bipartisanship will work for the last three years of the administration, but there does appear to be increased effort to achieve compromise.

a. Trends in the Obama Budget Cycles

i. Continuing Resolutions

After the government shutdown in 2013, the first truly bi-partisan budget package (for FY2014) of the administration was produced without partisan brinksmanship. The omnibus package for FY2014 marked the first time that a budget was produced without an accompanying threat of fiscal doom. Over the course of the Obama administration there has been an increased use of CRs with seventeen CRs being authorized between FY2010 and FY2014. (See Chart 2). The use of interim CRs to fund the government avoids allows Congress to avoid an immediate shutdown, but does not allow for significant budgetary adjustment. The CR process creates uncertainty for agency officials and limits Congress' ability to adjust programmatic funding or implement new policies.⁴ Typically, under interim CRs, agencies continue to be funded at levels negotiated for the previous fiscal year. Over the past five budget cycles, FY2011 and FY2013 were funded entirely through continuing resolutions, FY2010 and FY2012 operated under continuing resolutions through December, and FY2014 was funded by a continuing resolution through January.

ii. Budget Resolutions

⁴ For further discussion of the policy implications of continuing resolutions see Greg Schmidt & Justin Dews, *The Rise of Continuing Resolutions*, (Harvard Law School Federal Budget Policy Seminar Briefing Paper, May 2014).

The last five years have also seen a breakdown in the budget resolution process. While a budget resolution does not have the force of law, it does create a blueprint for spending and revenue levels. This is the document that the House and Senate work from to complete a final budget. For the years analyzed, a budget resolution was only adopted in FY2010, Congress did not complete action on a budget resolution in FY2011, FY2012, FY2013, or FY2014.⁵ As a historical comparison, since the adoption of the Budget Control Act of 1974,⁶ Congress has only failed to complete action on a budget resolution eight times; fifty percent of the failure has been in the last four years.⁷

iii. Discretionary and Mandatory Spending Levels

Overall, discretionary funding levels have steadily gone down between FY2010 and FY2014, with discretionary spending peaking in FY2010 at \$1.306 trillion.⁸ (See Chart 5 and Chart 4). In an attempt to blunt the impact of the recession Congress passed The American Recovery and Reinvestment Act (ARRA)⁹ in 2009, authorizing an additional \$787 billion in discretionary spending. While authorized in FY2010, the ARRA funding impacted agency spending beyond FY2010. For example, ARRA authorized \$48.1 billion in infrastructure spending through the Department of Transportation, but the money was spent over the course of three years.¹⁰

Meanwhile, mandatory spending has consistently increased between FY2010 and FY2014, rising almost \$300 billion in five years. (See Chart 4). However, there has not been any

⁵ Bill Heniff Jr., Cong. Research Serv., RL30297, *Congressional Budget Resolutions: Historical Information*, (Feb. 7, 2014).

⁶ Budget Control Act of 1974, 2 U.S.C. §§ 601-688 (1974).

⁷ *Supra* note 5.

⁸ FY 2012 Budget at 176 (Table S-4).

⁹ PUB. L. NO. 111-5.

¹⁰ Because of the ARRA, agency spending levels remained higher than appropriated levels beyond FY2010. As a result, agency spending levels reflected in this paper may be higher than those authorized by Congress in a given fiscal year. Data provided by the Office of Management and Budget, which is used throughout this paper, does not differentiate between ARRA funding and regular appropriations when describing actual spending by agency beyond FY2010.

concentrated political effort from the White House or Congress to curb mandatory spending. Between FY2010 and FY2014 almost all budgetary negotiations centered on cuts to discretionary spending and the recession of the Bush tax cuts.¹¹

iv. Impact of the President's Budget on Appropriations Levels

The President's budget proposals are designed be a jumping off point for negotiations with Congress. This paper seeks to analyze the impact that the annual budget proposals submitted by the President, have on what is ultimately appropriated by Congress. FY2010 demonstrated the strongest correlation between request level and funding level. This was largely because it was the shortly after the election, when President Obama had the most political strength, and there was a Democratically controlled Congress. (See Charts 8-12). In some ways this paradigm reflects what has effectively become an eight-year budget cycle, with the first fiscal year of an administration setting a baseline spending level for subsequent years. This is evident in the Obama administration, with agency funding levels tracking the policy priorities of the administration.

Therefore, there are normally not drastic changes in agency funding during the course of an administration; usually the largest deviations in agency spending levels are seen with a change in administration. (See Chart 6). For example, between FY2009 and FY2010 overall discretionary spending increased by \$87 billion and every agency except Homeland Security saw an increase in funding. Education received the largest increase—nearly \$23 billion. (See Chart 6 and Chart 4). Comparatively, between FY2010 and FY2011 there was only a \$6 billion change

¹¹ Throughout the Obama administration there were continuing negotiations over the expiration of the 2001, (The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)) and 2003, (The Jobs and Growth Tax Relief Act of 2003 (JGTRRA)) tax cuts. Throughout this paper those two tax packages will be referred to as the Bush tax cuts. For further details of these tax cuts see Mona Lewandoski, *The Bush Tax Cuts of 2001 and 2003: A Brief Legislative History* (Harvard Law School Federal Budget Policy Seminar Briefing Paper No. 37, May 2008).

in discretionary spending. This deviation between administrations reflects the use of budgetary authority to implement policy changes at the agency level.

In FY2010 the Obama budget proposal was very closely aligned with what was ultimately passed by Congress. The largest gap between discretionary funding requested by President Obama and actual funding levels were in FY2011 and FY2013 (\$115 billion and \$114 billion respectively), because both of those years funded entirely through CRs. In FY2010, FY2012, and FY2014 the difference between the funding levels requested in President Obama's budget proposal and actual funding levels authorized by Congress were much less significant, \$62 billion, \$55 billion and \$68 billion respectively.¹² With an improving economy and a Republican controlled House, the discretionary budget requests submitted by President Obama since FY2010 have declined, in an attempt to be more closely aligned with what Congress might authorize.

Because overall discretionary funding levels have gone down, and most of the ARRA funds have been spent, almost all agencies have seen funding levels decrease since FY2010. (See Chart 7). However, Obama administration priorities are still reflected in agency funding levels with appropriations for Veterans Affairs, Education, (although Education saw a small decrease in FY2013), Health and Human Services, and Energy generally increasing over the course of the Obama administration. (See Chart 7).

b. Statutory Framework

Between FY2010 and FY2014 the statutory framework for the budget process, established by the Budget Control Act of 1974,¹³ was increasingly ignored. (See Chart 3). According to the

¹² *Budget of the United States Government: Fiscal Year 2014*, Office of Management and Budget at 189 (Table S-5) available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/budget.pdf> [hereinafter FY 2014 Budget]; FY 2012 Budget at 176 (Table S-4); *Budget of the United States Government: Fiscal Year 2010*, Office of Management and Budget at 119 (Table S-4) available at http://www.whitehouse.gov/sites/default/files/omb/assets/fy2010_new_era/A_New_Era_of_Responsibility2.pdf [hereinafter FY 2010 Budget].

¹³ *Supra* note 6.

statutory timetable, on the first Monday of February the President is supposed to submit his budget proposal to Congress. Then, during February the House and Senate Budget Committees each hold hearings and draft a budget resolution, ideally before April 15th. Once the House and Senate each pass their own budget resolutions, the resolutions go to a conference committee for reconciliation out of which a joint budget resolution is created.¹⁴

After the resolution is adopted, the 12 appropriations sub-committees began the mark up process,¹⁵ the appropriations bills go to a committee vote, and then there is a full floor vote. Each of the 12 appropriations bills is then sent to a conference committee where they work to achieve spending levels set by the budget resolution.¹⁶ After the authorizing committees report their respective reconciliation legislation, each appropriations bill is packaged by the Budget Committees into a single Reconciliation bill for House and Senate Floor consideration, followed by a House-Senate conference and a final vote on a Conference Report.

Typically, the goal is for all twelve appropriations bills, as well as budget reconciliation, to be completed before the start of the fiscal year (October 1st). However, the last time all twelve appropriations bills were passed on time was 1997.¹⁷ Therefore, most often at the end of the fiscal year Congress passes a CR to maintain funding for the agencies. Over the course of the Obama administration there have been varying levels of success in passing appropriations bills. In FY2010 six individual appropriations bills were adopted with the other six being consolidated,

¹⁴ Since the Budget Act was adopted in 1974 Congress has not completed action on a Budget Resolution for 7 fiscal years including FY2011, FY2012, FY2013.

¹⁵ Appropriations Subcommittees: Agriculture, Rural Development, Food and Drug Administration and Related Agencies; Commerce, Justice, Science, and Related Agencies; Defense; Energy and Water Development; Financial Services and General Government, Homeland Security; Interior, Environment, and Related Agencies; Labor, Health and Human Services, Education, and Related Agencies; Legislative Branch; Military Construction, Veterans Affairs, and Related Agencies; State, Foreign Operations, and Related Programs; Transportation, Housing and Urban Development and Related Agencies.

¹⁶ Reconciliation instructions typically direct committees to reduce spending or change revenue levels by a specified dollar amount over a certain number of years, but leave the programmatic details entirely to the committees' discretion.

¹⁷ Jessica Tollestrup, Cong. Research Serv., *Continuing Resolutions: Overview of Components and Recent Practices* (Aug. 6, 2012).

none were passed in FY2011, in FY2012 all twelve appropriations bills were consolidated into two appropriations acts, no individual appropriations bills were passed in FY2013, and in FY2014 funding for all twelve was done in an omnibus package.

Adding another layer of complication to the process, The Statutory Pay-As-You-Go Act of 2010 (“PAYGO”)¹⁸ requires that new tax cuts or mandatory spending increases be fully offset by other mandatory spending cuts or revenue increases. Further complicating the process Congress passed the Budget Control Act (“BCA”)¹⁹ in 2011 in an attempt to rein in deficit spending. Under the BCA caps are imposed on total defense and non-defense discretionary spending for each year through FY 2021. The caps are enforced by automatic, across-the-board budget cuts (called sequestration) if they are breached.²⁰

c. Future of the Budget Process

In FY2014 a two-year budget compromise was carved out by Senator Murray (D-WA) and Congressman Paul Ryan (R-WI), which has set the stage for a renewed conversation about moving the federal government to a biennial budget process. In 2013, in response to what is viewed as a broken budget process, bills were proposed in both the House and Senate to move to biennial budgeting. Proponents of such biennial budgeting argue that it leads to more thoughtful and deliberative budgeting.²¹ Those arguing against it (like former CBO director Douglas Holtz-Eakin) testify that biennial budgeting forces agencies to budget out too far in advance, not allowing agencies enough flexibility to adjust spending.²² Under a biennial system agencies

¹⁸ 2 U.S.C. § 933 (2010).

¹⁹ PUB. L. NO. 112-25.

²⁰ For a more in depth analysis of the Budget Control Act of 2011 see Justin Dews & Dan McConnell, *Sequestration and the 2011 Budget Control Act* (Harvard Law School Federal Budget Policy Seminar Briefing Paper, May 2014).

²¹ Richard Kogan, Robert Greenstein & James R. Horney, *Biennial Budget: Do the Drawbacks Outweigh the Advantages?*, Center on Budget and Policy Priorities (Jan. 20, 20120), available at <http://www.cbpp.org/cms/?fa=view&id=3657>.

²² Id.

would have to put together budgets for the second year of a two-year cycle at least 28 months before the year would start.

The enthusiasm for a two-year budget cycle is largely in response to the recent breakdown of the budget calendar. It is nearly impossible to have a functioning budget process if budget planning does not begin in earnest until four to six months into a given fiscal year. The current trending towards funding at least half a fiscal year through the CR process is illustrative of an almost default transition to a two-year budget cycle. Increasingly, every other fiscal year is funded entirely through the CR process, establishing funding levels at the prior year for two years.

II. The Yearly Budget Process: FY2010 – FY2014

a. Fiscal Year 2010 Budget Process

i. Summary

FY2010 was the fastest and least contentious budget process in the first five fiscal years of the Obama administration, and the appropriations bills that emerged were the most closely aligned with the President's original budget requests. The relative ease of the budget process was largely because Democrats controlled the House of Representatives and had a filibuster-proof majority in the Senate. Furthermore, President Obama came into the budget negotiations with the highest approval ratings of his presidency, coming on the heels of the 2008 election.²³

However, there was some debate over the FY2010 budget because of the passage of the \$787 billion ARRA in February of 2009, initiating a contentious relationship between the White House and Congressional Republicans over government spending—ARRA passed with no

²³ Shortly after he arrived in office President Obama had the highest approval of his presidency thus far – 69 percent. See *Presidential Approval Ratings: Barack Obama*, Gallup, available at <http://www.gallup.com/poll/116479/barack-obama-presidential-job-approval.aspx>.

Republican support in the House and only two Republican supporters in the Senate.²⁴ Because ARRA came so quickly after the \$700 billion Troubled Asset Relief Program (“TARP”)²⁵ (passed in October of 2008) there was early Republican opposition to deficit spending under the Obama administration.²⁶

ii. Obama Budget Proposals for FY2010

On February 26, 2009 President Obama submitted his first budget for FY2010 to Congress.²⁷ Because the budget timetable dictated that President Obama submit his FY2010 very shortly after his inauguration, he was allowed to submit a more detailed budget later in the year.²⁸ This detailed budget proposal was submitted in May of 2011 and the budget was re-designed as a package with the ARRA.²⁹

The President’s budget sought \$1.403 trillion in discretionary spending for FY2010, and requested a \$500 billion increase in federal spending over ten years. While funding for every agency was increased from FY2009 levels, specific areas saw dramatic funding increases, reflecting administration priorities.³⁰ For example, the Obama budget requested \$364 billion for a reserve fund to prepare for health care reform,³¹ the Department of Education saw dramatic funding increases in FY2010 to fund charter schools, revise standards for teachers, and increase student aid and access to low-cost Federal loan,³² and Veterans Affairs saw a ten percent

²⁴ Senators Susan Collins (R-ME) and Olympia Snowe (R-ME).

²⁵ PUB. L. No. 110-343.

²⁶ Naftali Bendavid, *Republicans Warn Against Overspending on Stimulus*, Wall Street Journal, (Dec. 30, 2008), <http://online.wsj.com/news/articles/SB123059778577841155>.

²⁷ Because FY2010 was a transition year, the President simply released an overview of his budget proposals in February and submitted his final budget proposal on May 11, 2009.

²⁸ Michelle D. Christensen, Cong. Research Serv., RS20752, *Submission of the President’s Budget in Transition Years*, (May 17, 2012).

²⁹ President Obama Press Conference, (March 24, 2009) transcript available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/24/AR2009032403036.html>.

³⁰ FY2010 Budget.

³¹ Peter Orszag, *Notes on the Budget*, Office of Management and Budget, (March 3, 2009, 11:29 AM), <http://www.whitehouse.gov/omb/blog/09/03/03/MyNotesontheBudget>.

increase in funding levels. All of these funding increases were in addition to the resources agencies received from ARRA. For example, in the President's FY2010 budget the Department of Education got \$46.6 billion (up from \$46.2 in FY2009), but there was also there was an additional \$81.1 billion for Education in the ARRA, essentially tripling funding levels from FY2009.³³ (See Chart 8).

On the revenue side, the President proposed ending the Bush tax cuts for the top two percent of earners (those making over \$250,000), while giving a tax cut to 95% of working families.³⁴ These changes to the top marginal tax rate, became an ongoing point of contention between budget negotiators during the first five years of the Obama administration.

iii. FY2010 Budget and the Political Process

The Congressional Budget Office ("CBO") analysis of the Obama FY2010 budget came out on March 20, 2009.³⁵ The CBO estimates of deficits under the President's budget proposal exceeded those anticipated by the administration by \$2.3 trillion over the ten-year period, because of differing projections of baseline revenues and outlays.³⁶ The numbers were contested by the White House, but were seized by Republicans to underscore their concern about runaway deficit spending.³⁷ Some conservative Democrats also expressed concern about the spending levels proposed by President Obama for FY2010. Shortly after the CBO report was released Senator Kent Conrad (D-ND), the Chairman of the Senate Budget Committee, rolled out an

³³ FY 2010 Budget at 54.

³⁴ President Barack Obama, *Remarks to a Joint Session of Congress*, (Feb. 20, 2009).

³⁵ Congressional Budget Office, *A Preliminary Analysis of the President's Budget and an Update on CBO's Budget and Economic Outlook*, (March 2009) available at <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/100xx/doc10014/03-20-presidentbudget.pdf>.

³⁶ *Id.*

³⁷ Peter Orszag, *CBO's new numbers*, Office of Management and Budget, (March 20, 2009, 1:55 PM), <http://www.whitehouse.gov/omb/blog/09/03/20/CBOsNewNumbers>.

alternative budget plan specifically excluding the \$364 billion for health care,³⁸ not increasing spending for Pell Grants, and decreasing the deficit from \$749 billion to \$508 billion.³⁹

However, the House and Senate budget committees ultimately took up budget resolutions in late March of 2009 that were fully in line with the President's key priorities—in fact they were 98 percent the same as the proposal that President Obama submitted in February.⁴⁰ The House and Senate each passed versions (both with no Republican support) of the budget on April 2, 2009, keeping the vast majority of what President Obama requested in February.⁴¹

A Republican counter-proposal entitled, “Republican Road to Recovery,”⁴² was released on March 26, 2009 by Congressmen Eric Cantor (R-VA) and Paul Ryan (R-WI). However, because Republicans did not control the House, the document was mainly designed as a press release in preparation for the 2010 election cycle—it was only an 18-page proposal and never factored into the budget negotiations.

On April 29, 2009, the House and Senate each passed (with no Republican support and some Democratic defections)⁴³ a final \$1.086 trillion version of the budget resolution and work on the twelve appropriations bills began right away.⁴⁴ To allow time to complete appropriations bills, two CRs were passed in the fall, authorizing spending through December 18, 2009. A final

³⁸ David Rogers, *Conrad carves up Obama's budget*, Politico (March 25, 2009, 12:46 PM), <http://www.politico.com/news/stories/0309/20510.html>; David Rogers, *Budget battle rife with contradictions*, Politico (March 26, 2009, 9:01 AM), <http://www.politico.com/news/stories/0309/20458.html>.

³⁹Id.

⁴⁰ Office of Management and Budget Director Peter Orszag, *Press Briefing on House and Senate Budget*, (March 25, 2009, 9:49 AM), available at http://www.whitehouse.gov/sites/default/files/omb/assets/blog/032509_Orszag_Press_Briefing.pdf.

⁴¹Carl Hulse, *Budget Approved, With No G.O.P. Votes*, The N.Y. Times (April 2, 2009), http://www.nytimes.com/2009/04/03/us/politics/03budget.html?_r=1&.

⁴² Nate Silver, *The Real Republican Road to Recovery*, FiveThirtyEightPolitics, (March 27, 2009, 12:13 AM), <http://fivethirtyeight.com/features/real-republican-road-to-recovery/>.

⁴³ There were 17 Democrats opposed in the House. In the Senate, Democrats Evan Bayh (D-IN), Ben Nelson (D-NE), and Robert Byrd (D-WV) and Arlen Specter (D-PA) voted against the budget. Although Senator Specter had only recently switched his party affiliation,

⁴⁴ Interestingly, the only appropriations bill that passed before the end of the fiscal year was for funding of the Legislative branch.

consolidated appropriations bill,⁴⁵ incorporating the final five appropriations bills, was passed on December 16, 2009. Ultimately, Congress only authorized \$10 billion less in discretionary spending than originally requested by President Obama in February.

b. Fiscal Year 2011 Budget Process

i. Summary

The FY2011 budget process was not nearly as smooth as FY2010. Congress never passed a budget resolution, and FY2011 was funded through a series of eight continuing resolutions.⁴⁶ Much of this immobilization was the result of the political situation—Democrats lost their filibuster proof majority in the Senate in January of 2010,⁴⁷ the FY2011 budget negotiations came the heels of the passage of the Affordable Care Act (“ACA”) on March 23, 2010, and Democrats did not manage to complete the budget reconciliation process before the loss of the House in the 2010 midterm elections.⁴⁸ This was also the first full budget since the passage of the ARRA so the administration was trying to covert some of the stimulus spending into the agency baseline numbers.

ii. Obama Budget Proposals for FY2011

The President introduced his FY2011 budget on February 1, 2010. The budget proposal emphasized the need to pass comprehensive health care reform, as part of the solution to the long-term deficit problem. President Obama had campaigned on a platform of health care reform in 2008, and it was the first big legislative initiative undertaken by his administration.

However, by the beginning of 2010, largely as a result of dramatically high spending in FY2009

⁴⁵ PUB. L. NO. 111-117.

⁴⁶ PUB. L. NO. 111-242, enacted 9/30/2010 for 64 days; PUB. L. NO. 111-290, enacted 12/4/2010 for 15 days; PUB. L. NO. 111-317, enacted 12/18/2010 for 3 days; PUB. L. NO. 111-322p, enacted 12/22/2010 for 73 days; PUB. L. NO. 112-4, enacted 3/2/2011 for 14 days; PUB. L. NO. 112-6 enacted 3/18/2011 for 21 days; PUB. L. NO. 112-8, enacted 4/9/2011 for 7 days; PUB. L. NO. 112-10 enacted 4/15/2011 for 168 days.

⁴⁷ This was in a special election held on January 19, 2010 for Senator Edward Kennedy’s seat, where Republican Scott Brown defeated Democrat Martha Coakley.

⁴⁸ Patient Protection and Affordable Care Act, PUB. L. NO. 111-148.

and FY2010,⁴⁹ both parties were publically pushing to curb deficit spending. During the political fight for passage of the ACA in the beginning of 2010, much of the back and forth between the White House and Congress focused on the overall cost savings of reform and how it would “bend the cost curve” for Medicaid.⁵⁰

As part of his response to the public concern about the debt, and in an attempt to initiate bipartisan discussion about fiscal sustainability, President Obama created a debt commission chaired by former Senators Erskine Bowles (D-NC) and Alan Simpson (R-WY) via Executive Order on February 18, 2010.⁵¹ The commission was tasked with writing a report for the President and Congress that identified policies for improving the fiscal situation in the medium term, and to achieve fiscal sustainability over the long run. The report was not due to be released until December of 2010, after the mid-term elections.

On the deficit reduction side, the President’s budget for FY2011 proposed a three-year freeze on non-security discretionary spending (starting in FY2012), designed to save \$250 billion over a ten-year period.⁵² The spending freeze proposed did allow for flexibility between agencies, with the agencies slated to see increases in spending during the three-year period, being offset by decreases elsewhere.

The President’s FY2011 budget maintained his FY2010 policy priorities with increased funding requests for education, infrastructure, and clean energy. For example, the Department of Education saw a 6.2% increase over FY2010 levels,⁵³ a \$4 billion dollar request was made for a

⁴⁹ The high levels was partially because of a change in administration but was largely because of overall increases in spending as a result of the 2008 financial crisis.

⁵⁰ Peter Orszag, *Bending the Curve in More Ways Than One*, Office of Management and Budget, (Oct. 13, 2009, 2:00 PM), <http://www.whitehouse.gov/omb/blog/09/10/13/BendingtheCurveinMoreWaysThanOne>.

⁵¹ Exec. Order No. 13,531, 75 C.F.R. 7927 (2010).

⁵² Peter Orszag, *Introducing the 2011 Budget*, Office of Management and Budget, (Feb. 1, 2010, 10:00 AM), <http://www.whitehouse.gov/omb/blog/10/02/01/Introducing-the-2011-Budget>.

⁵³ The increased funding was allocated for Elementary and Secondary Education Act programs as well as increased funding for Pell grants and Race to the Top.

National Infrastructure Innovation & Finance Fund, \$6 billion was allocated for clean energy funding along with \$61.6 billion for civilian research and development at the Department of Energy.⁵⁴ While not highlighted by the administration there was also a \$160 billion increase in military spending for FY2011 because of the planned surge in Afghanistan.

iii. FY2011 Budget and the Political Process

After the proposed budget was submitted to Congress the budget process stalled. Part of this was a result of other legislative priorities and national events taking precedence: passage of the ACA (signed March 23, 2010), Dodd-Frank⁵⁵ (signed July 2010, 2010), the Deepwater Horizon crisis (the explosion was on April 20th and the well was not capped until July 15th), a change in the Office of Management and Budget (“OMB”) director (Peter Orzag left in August of 2010, Jack Lew did not start till late November), and earmark reform. It was also a demonstration of the growing antagonism between the White House and Congress because of the legislative struggles in passing the ACA and Dodd-Frank. Moreover, because it was an election year, there was an incentive amongst Republicans (and conservative Democrats) to withhold voting on budget matters until after the midterms. As a result, Congress completely missed the standard April 15th deadline without even considering a draft budget⁵⁶ and never completed action on a budget resolution for FY2011.

On June 22, 2010 Congressman Steny Hoyer (D-MD) officially announced that the House would not be able to get a budget resolution passed in 2010. Congressman Hoyer stated that Congressional leadership wanted to receive the report of the bipartisan fiscal commission

⁵⁴ President Barack Obama, *Address Before a Joint Session of Congress on the State of the Union* (Jan. 27, 2010).

⁵⁵ Dodd–Frank Wall Street Reform and Consumer Protection Act, PUB. L. NO. 111-203.

⁵⁶ Although the deadline is non-binding.

(due in December of 2010) before moving forward on the budget process.⁵⁷ Partially because of this delay, FY2011 was ultimately funded through a series of eight CRs that maintained funding at or near FY2010 levels.⁵⁸ The battle over the budget became part of the 2010 midterm election narrative, with Republicans accusing Democrats of an “inability to govern” because they could not produce a FY2011 budget.

Once Republicans won control of the House in the 2010, the budget process for FY2011 came to an abrupt halt during the lame duck period. The fall of 2010 was the height of the Tea Party movement, and many newly elected Republicans in Congress had run on an anti-deficit message. As a result, within the Republican Party, there was a strong push to focus exclusively on decreasing spending and a refusal to consider increases on the revenue side. At the time, figures like Grover Norquist were pushing Republican House leadership to adopt a “take no prisoners” approach to the budget, and embrace the idea of a 1995-era government shutdown if they did not receive their requested budget cuts.⁵⁹

Significant budget negotiations did not begin until late November of 2010 because the first continuing resolution⁶⁰ had authorized funding through December 3rd. On November 30th, three days before a government shutdown, negotiations were at an impasse, and Congress passed a two-week compromise CR,⁶¹ extending funding through December 18, 2010.⁶² At this time, because agencies were operating under a CR with limited discretion, the White House sought nearly open-ended authority to move money between accounts, in an attempt strategically target

⁵⁷ Jared Allen, *Dems won't pass budget in 2010*, The Hill, (June 22, 2010, 4:01 AM), <http://thehill.com/homenews/house/104635-dems-wont-pass-budget>.

⁵⁸ The first of these, PUB. L. NO. 111-242 was passed September 29, 2010 and funded the government through December 3, 2010.

⁵⁹ Jeanne Cummings, *Another 1995-style government shutdown?*, Politico, (Nov. 19, 2010, 11:15 AM), <http://www.politico.com/news/stories/1110/45223.html>.

⁶⁰ PUB. L. NO. 111-242.

⁶¹ PUB. L. NO. 111-290.

⁶² Jessica Tollestrup, Cong. Research Serv., R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, (Aug. 6, 2012).

funds for specific programs.⁶³ This move upset many of the more liberal House members who saw it as an overreach of executive power.

On December 17, 2010, in the midst of these spending negotiations, President Obama signed the Middle Class Tax Relief Act of 2010,⁶⁴ a two-year extension of the Bush tax cuts, which were set to expire on January 1, 2011.⁶⁵ Originally the President had proposed extending the rate cut only for those earning more than \$250,00 (\$200,000 for individual filers), however that measure did not gain approval in the Senate. Unlike future years where the fights over rolling back the Bush tax cuts were with House Republicans, at this stage the administration was concerned about a filibuster from Senate Democrats. The final package cost \$858 billion, and was strongly opposed by a number of liberal Democrats in the House and Senate.⁶⁶ But, this was part of the budget negotiation process between the White House and with the new Republican House, many of whom campaigned on maintaining tax rates at the same level as the Bush administration.

The strife over the tax bill led to the collapse of the previously negotiated bipartisan \$1.1 trillion omnibus spending package, forcing Congress to authorize a three-day CR on December 17th to avoid an imminent government shutdown.⁶⁷ On December 21, 2010 Congress authorized

⁶³ David Rogers, *Barack Obama's deals may leave liberals behind*, Politico, (Dec. 6, 2010, 5:21 AM), <http://www.politico.com/news/stories/1210/45944.html#ixzz2vgqggc56>.

⁶⁴ Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, PUB. L. NO. 111-312.

⁶⁵ Technically a combination of the Economic Growth and Tax Relief Reconciliation Act of 2001, PUB. L. NO. 107-16, and the Jobs and Growth Tax Relief Reconciliation Act of 2003, PUB. L. NO. 108-27. .

⁶⁶ For example House Appropriations Chair David Obey (D-WI) commented on the tax package that, "[i]sn't it wonderful to be in the city of misplaced priorities and ass backward judgments. The city where it's more important to provide another tax credit for millionaires than it is to provide for child care of Head Start or investments." See David Rogers, *House Democrats slash spending package*, Politico, (Dec. 8, 2010, 10:33 AM), <http://www.politico.com/news/stories/1210/46119.html#ixzz2vkwmXVfK>.

⁶⁷ David Rogers, *Hill extends stop-gap bill*, Politico, (Dec. 18, 2010, 10:31 AM), <http://www.politico.com/news/stories/1210/46569.html#ixzz2yJn1Gy54>.

a fourth CR, authorizing FY2010 spending levels through March 4, 2011, leaving the final FY2011 decisions to the next Congress.⁶⁸

Meanwhile, the Debt Commission released their report on December 1, 2010.⁶⁹ The Commission recommended specific measures to cut \$4 trillion from the deficit by 2020, reduce the deficit to 2.3% of GDP by 2015, and reduce the debt to 60% of GDP by 2023.⁷⁰ However, the recommendations included tax increases, which Republicans were not inclined to endorse, as well as cuts to discretionary and entitlement spending cuts beyond what Democrats would support. Therefore, Congress largely ignored the Commission's recommendations.

At the end of the Congressional session, Republican Minority Leader John Boehner (R-OH), announced that once in power Republicans would ensure that all twelve appropriations bills were passed individually, in order to allow Congress to make precise cuts to the budget. Boehner also announced that his goal was to get discretionary domestic spending down to the 2008 level of \$914.4 billion, a \$391.6 billion decline from the \$1.306 trillion authorized in FY2010.⁷¹ This figure was drastically different from President Obama's February budget proposals for FY2011, in which he requested \$1.368 trillion in discretionary spending for FY2011 (\$695 billion not including defense). Boehner's proposed spending levels would require nearly a 30 percent reduction in domestic spending.⁷² This drastic discrepancy in desired funding levels set the stage for a budget showdown once the CR expired in March. Throughout

⁶⁸ PUB. L. NO. 111-322.

⁶⁹ The National Commission on Fiscal Responsibility and Reform, *The Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform*, (Dec. 2010), available at http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/TheMomentofTruth12_1_2010.pdf.

⁷⁰ Id.

⁷¹ David Rogers, *Budget cuts may prove elusive for Republicans*, Politico, (Jan. 20, 2011, 7:46 AM), <http://www.politico.com/news/stories/0111/47865.html>.

⁷² *Budget of the United States Government: Fiscal Year 2009*, Office of Management and Budget at 141, available at <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/budget/fy2009/pdf/budget/tables.pdf> [hereinafter FY 2009]; *Budget of the United States Government: Fiscal Year 2008*, Office of Management and Budget at 151, available at <http://www.gpo.gov/fdsys/pkg/BUDGET-2008-BUD/pdf/BUDGET-2008-BUD-30.pdf> [hereinafter FY 2008 Budget].

January and February of 2011, various House budget proposals were submitted with the aim of cutting \$100 billion from the overall FY2011 budget, including massive cuts to the SEC and the FTC in an attempt to slow down implementation of Dodd-Frank.⁷³

By early March of 2011, Senate Democrats and House Republicans had created vying budget proposals. The Senate version was basically in line with the President's original February proposal, while the House version reflected \$100 billion in cuts. Meanwhile, to avoid a government shutdown, Congress passed three short term CRs (a two-week CR⁷⁴ that authorized spending through March 18, 2011, a three week CR⁷⁵ authorizing funding through April 8, 2011, and a week long CR to fund the government through April 15).⁷⁶ Ultimately, Republicans and Democrats were never able to come to a compromise regarding funding levels and funded all of FY2011 through CRs. On April 15, 2011 Congress passed the final CR,⁷⁷ authorizing \$1.049 trillion⁷⁸ in discretionary spending for FY2011. Because FY2011 funding levels were established through CRs discretionary spending levels were roughly the same (only \$6 billion lower) as FY2010. (See Chart 9).

The final CR package, cutting \$38 billion (\$20 billion from discretionary programs and \$17.8 billion from mandatory programs) in spending for the rest of FY2011, was passed two hours shy of a government shutdown on April 14, 2011. The final negotiated package did not have the full support of the House Republican caucus (59 Republicans voted against the measure) forcing Speaker Boehner to reply on a large number of Democrats to pass the

⁷³ Meredith Shiner, *GOP tries to slash Wall Street law*, Politico, (Feb. 18, 2011, 6:13 AM), <http://www.politico.com/news/stories/0211/49783.html>.

⁷⁴ PUB. L. NO. 112-4.

⁷⁵ PUB. L. NO. 112-6.

⁷⁶ PUB. L. NO. 112-8.

⁷⁷ PUB. L. NO. 112-10.

⁷⁸ Press Release, House Appropriations Committee Chairman Hal Rogers, *Summary – Fiscal Year 2011 Continuing Resolutions*, (April 12, 2011), [available at http://appropriations.house.gov/_files/41211summaryfinalfy2011cr.pdf](http://appropriations.house.gov/_files/41211summaryfinalfy2011cr.pdf).

measure,⁷⁹ but the final compromise easily passed the Senate (89-11). While it was announced at the time that the deal saved almost \$40 billion from the FY2011 budget,⁸⁰ a later CBO report found that the package represented only \$352 million in spending cuts. The CBO attributed this to increases in defense spending, and the timing of the CR. The package was passed more than halfway through the fiscal year, and as a result most of the cuts were made in programs that would not have used all their budgets anyway.⁸¹

c. Fiscal Year 2012 Budget Process

i. Summary

The end of FY2011 negotiations complicated the budget process in FY2012. The first three months of the FY2012 budget process overlapped with dramatic end of the FY2011 budget process. The shifting timeline of the budget process was common throughout the Obama administration. Every year negotiations for the prior fiscal year were still ongoing when the process had to begin again.

In FY2012 President Obama's overall requested discretionary funding levels declined significantly (by \$75 billion) from his FY2011 budget. The Republicans also created a proposed FY2012 budget, which had about \$103 billion less in discretionary spending than the budget proposed by President Obama. The FY2012 process was also overshadowed by the exhaustion of the debt limit anticipated in August of 2011. Ultimately, FY2012 was funded through two consolidated spending bills passed in November and December of 2011. (See Chart 2). But this

⁷⁹ Jenniger Steinhauer, *Congress Passes Budget Bill, but Some in G.O.P. Balk*, N.Y. Times, (April 14, 2011), <http://www.nytimes.com/2011/04/15/us/politics/15congress.html>.

⁸⁰ *Supra* note 78.

⁸¹ David A. Fahrenthold, *Budget deal: CBO analysis shows initial spending cuts less than expected*, The Washington Post, (April 14, 2011), http://www.washingtonpost.com/politics/deal-includes-86b-in-cuts-that-likely-would-never-have-been-spent/2011/04/12/AFFbG4bD_story.html.

compromise created the Budget Control Act of 2011 (“BCA”)⁸², which dictated automatic spending cuts on January 1, 2013 if adequate modifications were not made to the deficit.

ii. Obama Budget Proposals for FY2012

President Obama outlined his budget priorities for FY2012 during his State of the Union address in January of 2011, and released the FY2012 budget on February 14, 2011. The new budget requests reflected the changing political realities, with an increased focus on deficit reduction. The FY2012 budget proposal requested \$456 billion⁸³ for non-security discretionary domestic spending, whereas in FY2011 the President had proposed \$520 billion,⁸⁴ a 12% decline. These changes were attributable to a variety of factors: natural episodic spending declines towards the end of a recession, growing public concern about the debt, and an attempt to put the budget requests more in line with what was possible to get through Congress.

The main domestic discretionary budget priorities for the President in FY2012 included increased spending for clean energy, infrastructure, K-12 education, and reform of the Pell Grant program.⁸⁵ To curb spending and cut the deficit, the President’s FY2012 budget largely focused on a proposal to freeze non-security discretionary spending at existing levels through FY2015.⁸⁶ On the revenue side the President’s budget proposal included a permanent extension of the Bush tax cuts for families making less than \$250,000, but rolling back the tax cut for those making more than \$250,000, and changes in the estate tax.⁸⁷

⁸² PUB. L. NO. 112-25.

⁸³ FY 2012 Budget at 176 (Table S-4).

⁸⁴ *Budget of the United States Government: Fiscal Year 2011*, Office of Management and Budget at 151 (Table S-4) available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2011/assets/budget.pdf> [hereinafter FY 2011].

⁸⁵ President Barack Obama, *Address Before a Joint Session of Congress on the State of the Union* (Jan. 25, 2011).

⁸⁶ Mindy R. Levit, Cong. Research Serv., R41685, *The Federal Budget: Issues for FY2011, FY2012, and Beyond*, (Oct. 13, 2011).

⁸⁷ Andrew Fieldhouse, *President Obama’s 2012 budget: An analysis of tax policies*, Economic Policy Institute, (Feb. 14, 2011), available at http://www.epi.org/publication/president_obamas_fy_2012_budget_an_analysis_of_tax_policies.

iii. Republican FY2012 Budget Proposals

Between February and April the White House and Congress were focused on finalizing the FY2011 budget. In early April, shortly before that process was complete, the Republican House, led by Congressman Paul Ryan (R-WI) rolled out an alternative budget proposal for FY2012 entitled, “The Path to Prosperity.”⁸⁸ The Republican plan proposed \$6 trillion in savings over the next ten years, with most of the money coming from cuts to Medicaid and Medicare. The plan proposed \$4.2 billion in tax cuts over 10 years, driven by a reduction in the top rates on corporate and individual income,⁸⁹ and \$1.7 trillion in cuts from domestic discretionary programs over ten years. The plan also created \$1.4 trillion in savings by defunding the ACA, and achieved \$771 billion in savings by turning Medicaid into a block-grant program. The House adopted the Ryan plan as a budget resolution on April 15, 2011, by a vote of 235-193.⁹⁰

iv. FY2012 Budget and Debt Ceiling

In response to the Republican proposal, as well as to mark the completion of the final CR for FY2011, President Obama gave a major budget address on April 13, 2011 focusing on the long-term debt problem. The goal of the speech was to reframe the budget debate and regain focus on entitlement reform, reform of the tax code, and cuts to the defense budget rather have all deficit reduction negotiations focus on cuts to discretionary spending.⁹¹

However, the speech did not gain the President much traction with Congress and there was limited Congressional budget action until late May of 2011. During May, budget negotiations

⁸⁸ Fiscal Year 2012 Budget Resolution, *The Path to Prosperity: Restoring America's Promise*, House Committee on the Budget, (April 5, 2011), [available at](http://budget.house.gov/uploadedfiles/pathtoprosperityfy2012.pdf) <http://budget.house.gov/uploadedfiles/pathtoprosperityfy2012.pdf>.

⁸⁹ *Id.*

⁹⁰ H.Con.Res. 34.

⁹¹ President Barack Obama, *The Country We Believe In*, Address at The George Washington University (April 13, 2011), [available at](http://blogs.wsj.com/washwire/2011/04/13/text-of-obama-speech-on-the-deficit/) <http://blogs.wsj.com/washwire/2011/04/13/text-of-obama-speech-on-the-deficit/>.

were overshadowed by the upcoming exhaustion of the debt limit. Historically, the debt ceiling had been raised without controversy, but in 2011 it became a central focus of the budget negotiations. In January of 2011, Secretary Geithner told Congress that the debt ceiling would be exhausted by mid-May. On May 16, 2011 the Treasury Department initiated several extraordinary measures to free up funds.⁹² This maneuvering by Treasury provided negotiators an additional eleven weeks to reach an agreement, creating a new deadline of August 2, 2011.⁹³ However, because the August deadline so closely aligned with the end of FY2011, a two-track budget process emerged with the House and Senate working on appropriations bills while separate debt ceiling negotiations went on.⁹⁴

Starting May 5th, Vice President Joe Biden initiated debt-ceiling negotiations in the hopes of achieving a “grand bargain” to solve the budget and debt ceiling impasse. Independently, a Senate “Gang of Six”⁹⁵ also spent May and June working to draft a comprehensive deficit reduction package to offset the needed debt ceiling increase. The Biden group negotiations went back and forth during May and June. The administration originally insisted on an increase to the debt ceiling with no strings attached, while early on Republicans were adamant there could be no tax increases and any increase in the debt ceiling had to be offset with spending cuts. On May 31st, a House vote on a “clean” debt-ceiling bill overwhelming failed.⁹⁶

Negotiations went back and forth through early June at which point President Obama began to be more publically involved—a golf outing for the President and Speaker Boehner was even

⁹² For more information see Jeremy Kreisberg & Kelley O’Mara, *The 2011 Debt Limit Impasse: Treasury’s Actions & The Counterfactual—What Might Have Happened if the National Debt Hit the Statutory Limit*, (Harvard Law School Federal Budget Policy Seminar Briefing Paper No. 41, Sept. 4, 2012).

⁹³ Paul M. Krawzak & Joseph J. Schatz, *Sparring Over Deficit Reduction*, CQ Weekly (May 16, 2011) at 1066.

⁹⁴ David Rogers, *As debt limit nears, budget battle gets real*, Politico, (June 1, 2011, 4:38 AM), <http://www.politico.com/news/stories/0511/55987.html>.

⁹⁵ Senators Mark Warner (D-VA), Dick Durbin (D-IL), Kent Conrad (D-ND), Saxby Chambliss (R-GA), Mike Crapo (R-ID), Tom Coburn (R-OK).

⁹⁶ Jake Sherman, *House rejects debt increase*, Politico, (May 31, 2011, 7:41 PM), <http://www.politico.com/news/stories/0511/55982.html>.

organized in an attempt to thaw negotiations.⁹⁷ Despite nearly constant meetings, by mid-June the Biden group had not made much progress. Republicans and Democrats were still \$1.1 trillion apart over a 10-year budget horizon.⁹⁸ Meanwhile appropriations bills were moving through the House.⁹⁹

The negotiation process started to completely derail at the end of June. On June 23rd, House Majority Leader Eric Cantor (R-VA) announced that he was withdrawing from the Biden group negotiations, publically stating his withdrawal was due to a disagreement over taxes and a lack of participation by President Obama.¹⁰⁰ On June 26th, Congressional leadership met at the White House, but the negotiations remained stuck over tax increases. By the end of June, the Biden group had managed to identify \$1.5 trillion in spending reductions, with a stated goal of \$2.4 trillion in to offset the increase in the federal debt ceiling. By early July, negotiations were at such an impasse that Congress cancelled the July recess.

Then, while the Biden group negotiations were ongoing, on July 12, 2011, Senate Democrats, (led by Senate Budget Committee Chairman Kent Conrad), outlined their budget “blueprint”¹⁰¹ for FY2012. Senate Democrats had been under fire from House Republicans for not moving forward on the FY2012 budget, but Democratic Senate leadership had been waiting for the Biden group, or the Gang of Six, to carve out their own plan. With none forthcoming Conrad’s plan was rolled out. The plan sought to cut the deficit by \$4 trillion over 10 years¹⁰² through an even

⁹⁷ Glenn Thrush, *Barack Obama’s private golf club*, Politico, (June 6, 2011, 4:33 AM), <http://www.politico.com/news/stories/0611/56305.html>.

⁹⁸ David Rogers, *Joe Biden group looks for budget deal*, Politico, (June 13, 2011, 11:28 PM), <http://www.politico.com/news/stories/0611/56874.html>.

⁹⁹ David Rogers, *Joe Biden deficit group down to the ‘tough stuff’*, Politico, (June 15, 2011, 8:15 AM) <http://www.politico.com/news/stories/0611/56985.html>.

¹⁰⁰ David Rogers, *Deficit talks in danger as Eric Cantor bails*, Politico, (June 23, 2011, 6:45 PM), <http://www.politico.com/news/stories/0611/57621.html>.

¹⁰¹ There was no physical document shared but a blueprint/outline offered at a press conference.

¹⁰² Scott Wong, *Dem budget combines cuts, tax hikes*, Politico, (July 12, 2011, 1:22 AM), <http://www.politico.com/news/stories/0711/58727.html#ixzz2yX0J5YbI>.

blend of spending cuts and tax increases, while leaving Social Security untouched, and only imposing modest cuts to Medicare and Medicaid. However, Conrad's budget targeted deep cuts to the Defense Department, sought to raise taxes on the wealthiest one percent of Americans, and sought to close corporate tax loopholes and shelters. However, the plan was never actually taken up by the Senate.

By mid-July it appeared the Biden Group had reached a complete impasse, and tales of negotiation walkouts were leaking into the Washington press. The Gang of Six had also failed to reach any sort of compromise, and Senator Coburn had walked out of the negotiations, only to release his own budget shortly thereafter. Inexplicably, two days after releasing his plan Senator Coburn re-joined the Gang of Six. The Gang of Six promptly announced a compromise plan to cut the deficit by \$3.7 trillion over 10 years, including \$1 trillion in new revenue.¹⁰³ President Obama and Senate Democrats quickly latched onto this bipartisan agreement in an attempt to demonstrate the intractability of House Republicans over the tax issue.

Meanwhile, on July 19th the "Cut, Cap and Balance"¹⁰⁴ bill passed the House. The House bill conditioned the \$2.4 trillion increase in the debt ceiling on congressional approval of a constitutional balanced budget amendment, imposed statutory spending caps in order to gain \$5.8 trillion in unspecified savings over a 10 year window, and required \$11 billion in cuts from FY2012.¹⁰⁵ Democrats did not see the bill as a viable solution, with Senator Reid declaring the bill, "perhaps some of the worst legislation in the history of this country."¹⁰⁶ By July 23rd, a mere 10 days before the August 2nd debt ceiling deadline, negotiations had broken down so

¹⁰³ Carrie Budoff Brown & Jennifer Epstein, *President Obama praises 'Gang of Six' debt ceiling plan*, Politico, (July 19, 2011, 2:02 PM), <http://www.politico.com/news/stories/0711/59377.html#ixzz2yX5mm8Mp>.

¹⁰⁴ H.R. 2560.

¹⁰⁵ Defense, Medicare, and Social Security were exempt.

¹⁰⁶ Scott Wong, *Harry Reid: Cut, cap may be among 'worst legislation' in history*, Politico, (July 21, 2011, 5:07 PM), <http://www.politico.com/news/stories/0711/59603.html#ixzz2yX7fFEye>.

completely that President Obama was publically declaring that he couldn't get Speaker Boehner to return his phone calls.¹⁰⁷ On July 25, 2011 the President gave a national prime time speech¹⁰⁸ addressing the debt-ceiling crisis.¹⁰⁹

Yet, in an eleventh hour compromise, a final deal was struck on Sunday, July 31, 2011. The debt ceiling and budget package was adopted as the Budget Control Act of 2011 with bills passing the House and Senate mere hours before August 2nd deadline.

1. The Budget Control Act of 2011¹¹⁰

The BCA increased the debt ceiling by \$2.1 trillion in three installments. After passage, it immediately raised the debt ceiling by \$400 billion, then allowed the President to request another \$500 billion subject to a congressional motion of disapproval (which the President could veto), and allowed the President to request another increase of \$1.2–1.5 trillion, subject to the same disapproval procedure. This structure allowed members of Congress to vote against the debt ceiling increases for political purposes. The BCA also established caps on discretionary spending through 2021, although there were some exempt areas (like disaster relief and emergency spending). The final package managed to decrease spending by more than the corresponding increase in the debt limit.

On the revenue side, Republicans were successful in ensuring that there were no tax increases included in the bill. The bill included \$917 billion in discretionary spending cuts over 10 years, \$21 billion of which had to be applied to the FY2012 budget. The BCA also included a requirement that Congress produce a deficit reduction bill (incorporating \$1.2 trillion in cuts) by

¹⁰⁷ Carrie Budoff Brown, *Phone tag and wrong numbers: The collapse of the debt talks*, Politico, (July 23, 2011, 1:31 AM), <http://www.politico.com/news/stories/0711/59709.html>.

¹⁰⁸ President Barack Obama, Address to the Nation, (July 25, 2011) available at <http://www.whitehouse.gov/the-press-office/2011/07/25/address-president-nation>.

¹⁰⁹ Speaker John Boehner, *Remarks to the Nation*, (July 25, 2011), available at <http://www.politico.com/news/stories/0711/59885.html>.

¹¹⁰ For a more in depth analysis of the BCA see Justin Dews & Dan McConnell, *Sequestration and the 2011 Budget Control Act* (Harvard Law School Federal Budget Policy Seminar Briefing Paper, May 2014).

January 1, 2012, or risk triggering automatic spending restrictions (known as sequestration). The bill also required a vote on a balanced budget amendment, and increased Pell Grant funding.

In an attempt to prevent this type of partisan showdown over the debt limit in the future, the BCA established the Joint Select Committee on Deficit Reduction (most commonly referred to as the “super committee”). The super committee consisted of twelve Members of Congress¹¹¹ assigned to find \$1.2 trillion in savings over a ten year horizon. The BCA stipulated that the super committee’s recommendations would be voted on by a simple up or down vote by the full House and Senate, *without* any amendments in an attempt to limit partisan gridlock. If a measure was not passed, sequestration would be instituted equal to the \$1.2 trillion debt ceiling increase. Because the super committee was unable to come to a compromise,¹¹² and actually disbanded in December of 2011 sequestration cuts were ultimately implemented.

2. Appropriations Bills

Because of the intense fight over the debt ceiling throughout 2011, the normal budgeting process for FY2012 had made almost no progress, with appropriations bills stagnating. Once Congress returned from the August recess, movement on appropriations bills began in earnest to avoid a government shutdown.

For FY2012, the goal for Congressional appropriators was to stay as close as possible to the \$1.043 trillion cap set for FY2012 in the BCA. That represented a \$6.8 billion cut from FY2011 funding levels and was \$79.2 billion below President Barack Obama’s initial budget

¹¹¹ The members of the super committee from the Senate were Patty Murray (D-WA), Max Baucus (D-MT), John Kerry (D-MA), Jon Kyl (R-AZ), Rob Portman (R-OH), and Patrick Toomey (R-PA). From the House of Representatives Jeb Hensarling (R-TX), Xavier Becerra (D-CA), Dave Camp, (R-MI), Jim Clyburn (D-SC), Fred Upton (R-MI), and Chris Van Hollen (D-MD).

¹¹² On November 21, the committee issued the following statement: "After months of hard work and intense deliberations, we have come to the conclusion today that it will not be possible to make any bipartisan agreement available to the public before the committee’s deadline." See Press Release, *Statement of the Co-Chairs of the Joint Select Committee on Deficit Reduction*, (Nov. 21, 2011), available at <http://www.murray.senate.gov/public/index.cfm/newsreleases?ID=3ee7a9e6-a66e-4703-b8f9-2b4169b9328e>.

request, but \$24 billion more than the Republican proposal put forth in April. In late September, it was clear that the appropriations packages would not be completed before the start FY2012 and an initial four-day CR was authorized.¹¹³ Quickly on its heels Congress passed (with a vote of 352–66) a 45-day CR, extending funding through November 18, 2011. The second CR instituted 1.503% across the board spending cuts from FY2011 levels.

The first consolidated appropriations bill¹¹⁴ covered \$182 billion in spending and was passed on November 18, 2011. It was a package that combined three¹¹⁵ of the twelve appropriations bills and also contained a CR¹¹⁶ to fund the rest of the government through December 16, 2011. While the bill cut spending across almost all categories some specific spending increases were included: a \$570 million increase¹¹⁷ in funding for the Special Supplemental Nutrition Program for Women, Infants and Children, and a \$173 million increase for the National Science Foundation.¹¹⁸ However, this was the first year of the Obama administration where agencies began to see some significant budgetary cuts from what had been submitted in the President's original budget proposal. (See Chart 10).

The other nine appropriations bills for FY2012 were combined into the Consolidated Appropriations Act of 2012,¹¹⁹ passed on December 15, 2011 authorizing \$1.043 trillion in spending. The final bill displayed some compromise work by both parties, with the Environmental Protection Agency facing a \$233 million cut, the Indian Health Service getting a \$237 million increase, funding increases for clean energy and the National Institutes of Health, a

¹¹³ PUB. L. NO. 112-33, done by unanimous consent.

¹¹⁴ The Consolidated and Further Continuing Appropriations Act of 2012, PUB. L. NO. 112-55.

¹¹⁵ Agriculture, Commerce/Justice/Science (CJS), and Transportation/Housing and Urban Development (THUD).

¹¹⁶ PUB. L. NO. 112-55.

¹¹⁷ Up from \$6.62 billion.

¹¹⁸ David Rogers, *Rare spending deal shapes up on Hill*, Politico, (Nov. 14, 2011, 8:07 PM), <http://www.politico.com/news/stories/1111/68362.html#ixzz2ybvq2xvr>.

¹¹⁹ PUB. L. NO. 112-74.

21 percent reduction in Race to the Top funding, and a \$5.1 billion increase for the Pentagon.¹²⁰ FY2012 was the most impactful of the Obama administration because of the future implications of the BCA and the initiation of downward trends in discretionary spending. It set the stage for the contentious negotiations for FY2013 and FY2014.

d. Fiscal Year 2013 Budget Process

i. Summary

The FY2013 budget cycle was dominated by the 2012 election, the sequester implications of the BCA, and the fight over the expiring Bush tax cuts.¹²¹ FY2013 came after two highly dysfunctional budget cycles, and the Obama administration knew that the FY2013 budget proposal would need to reflect a substantial decline in spending requests. In mid-August of 2011 the White House began requesting that agencies dramatically pare back their requests from FY2012 levels, with budget proposals reflecting cuts of five to ten percent. Jack Lew (then OMB director) sent a letter to agency heads directing that, “your overall agency request for 2013 should be at least 5 percent below your 2011 enacted discretionary appropriation.”¹²²

i. Obama Budget Proposals for FY2013

President Obama submitted his budget proposal for FY2013 to Congress on February 13, 2012.¹²³ The budget proposal projected a \$901 billion deficit¹²⁴ in FY2013 and requested \$1.261 trillion in discretionary spending,¹²⁵ a 6% decline from the \$1.340 trillion¹²⁶ requested for FY2012. However, there were attempts to shift funding between agencies in order to adjust

¹²⁰ David Rogers, *Sensitive bargains in House approps*, Politico, (Dec. 15, 2011, 3:04 PM), <http://www.politico.com/news/stories/1211/70471.html#ixzz2ybzBi8Gv>.

¹²¹ The tax cuts had previously been extended for two years.

¹²² David Rogers, *White House memo urges cuts to federal agencies*, Politico, (Aug. 18, 2011, 2:31 PM), <http://www.politico.com/news/stories/0811/61651.html>.

¹²³ *Budget of the United States Government: Fiscal Year 2013*, Office of Management and Budget available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/budget.pdf> [hereinafter FY 2013 Budget].

¹²⁴ FY 2013 Budget at 205 (Table S-1).

¹²⁵ FY 2013 Budget at 208 (Table S-4).

¹²⁶ FY 2012 Budget at 176 (Table S-4).

spending to be in line with agency priorities. The FY2013 budget included a five percent increase for the Commerce Department in order to create the Interagency Trade Enforcement Unit,¹²⁷ a one percent reduction for the Defense Department (reflecting the drawdown in Afghanistan and withdrawal in Iraq),¹²⁸ a two point five percent increase for Education (to \$69.8 billion), a three point two percent increase for Energy, massive shifting in funds for Health and Human Services in order to implement the ACA while keeping overall agency spending steady, a five percent increase for the National Science Foundation, increases for infrastructure spending at Transportation, and a four point five percent increase in funding for Veterans Affairs (directed towards medical care). On the revenue side, the President's FY2013 budget again included a proposal to expire the Bush tax cuts for couples making over \$250,000 a year (\$200,00 for individuals) and some targeted tax cuts for families and small businesses.

FY2013 was ultimately funded entirely through CRs that had to reflect the budget targets set in the BCA. Therefore, there was a substantial decline (\$138 billion) in discretionary funding levels from FY2012. While President Obama's budget requested had reflected that spending levels would decline, on the whole agencies were funded at levels beneath what was proposed. (See Chart 11).

ii. FY2013 Budget and the Political Process

House Republicans, led by Congressman Paul Ryan, put forward their own budget proposal for FY2013, an update to the FY2012 proposal, "The Path to Prosperity."¹²⁹ The plan capped appropriations at \$1.028 trillion, \$20 billion less than stipulated in the negotiated BCA

¹²⁷ President Barack Obama, *Address Before a Joint Session of Congress on the State of the Union* (Jan. 24, 2012).

¹²⁸ Washington Post Staff, *Federal Budget 2013: How Obama's budget plan affects each agency*, (Feb. 13, 2012, 11:40 AM), http://www.washingtonpost.com/blogs/federal-eye/post/federal-budget-2013-how-obamas-budget-plan-affects-each-agency/2012/02/13/gIQAsDH4AR_blog.html.

¹²⁹ Fiscal Year 2013 Budget Resolution, *The Path to Prosperity: Blueprint for American Renewal*, House Budget Committee, (March 20, 2012) [available at http://budget.house.gov/uploadedfiles/pathtoprosperity2013.pdf](http://budget.house.gov/uploadedfiles/pathtoprosperity2013.pdf).

and proposed plans to privatize Medicare and simplify the tax code. On March 29, 2012 the House adopted (228-191) a version of the Ryan budget. Because the House adopted this budget resolution, House and Senate appropriators were operating under two sets of instructions—the Senate under the \$1.047 trillion cap negotiated under the BCA, and the House under the \$1.028 trillion level set in the Ryan budget.¹³⁰ This caused increased strife between the administration and House Republicans. In mid-April Acting OMB Director Jeff Zients sent a letter to Congressman Hal Rogers (R-KY), the Chair of the Appropriations Committee, stipulating that the President wouldn't sign any appropriations bills that did not comply with the agreements set out in the BCA.¹³¹

At the end of July, Speaker Boehner and Majority Leader Reid struck a deal for a six-month CR,¹³² avoiding a funding crisis at the end of the fiscal year. The agreement funded the government through March of 2013 at the \$1.047 trillion level for FY2013, as set forth in the BCA. The CR passed the House on September 13th (329-91) and the Senate cleared the bill on September 22nd (62-30) with the President signing it on September 28th. The deal pushed sequesters and budget talks off till after the 2012 election.

However, the budget was not divorced from the campaign. While specific cuts were not outlined, Governor Mitt Romney campaigned on a proposal to cap federal spending at 20 percent of GDP, increase defense spending by four percent, and repeal the ACA.¹³³ If his proposal was adopted that would set total spending levels at \$3.108 trillion in 2012 (2012 GDP was \$15.54 trillion), when actual spending levels were more than \$400 billion higher (there was \$3.537

¹³⁰ Id.

¹³¹ Letter from Jeffrey D. Zients, Acting Director of the Office of Management and Budget, to Harold Rogers, Chairman, House Committee on Appropriations (Apr. 18, 2012), available at <http://www.whitehouse.gov/sites/default/files/omb/legislative/letters/letter-regarding-fy2013-apps.pdf>.

¹³² PUB. L. NO. 112-175.

¹³³ Richard Kogan & Paul N. Van de Water, *Romney Budget Proposals Would Necessitate Very Large Cuts in Medicaid, Education, Health Research, and Other Programs*, Center on Budget and Policy Proposals, (Sept. 24, 2012), available at <http://www.cbpp.org/files/1-23-12bud.pdf>.

trillion in total spending in FY2012). Romney's policy proposals also included a permanent extension of the Bush tax cuts, a reduction in the capital gains rate, elimination of the alternative minimum tax, a repeal of the estate tax, and elimination of the taxes enacted as part of the ACA.¹³⁴ This emphasis on tax cuts became a broad policy platform for the Republican Party throughout 2012, and had an impact on negotiation positions in the budget debate.

After the election was over, budget issues could not be avoided for long. The day before the 2012 election, the CBO released a report projecting that if the Congress did not take action on the sequester, GDP would fall by .5 percent in 2013 and the unemployment rate would rise to 9.1 percent (from the 2012 rate of 7.9 percent).¹³⁵ Sequester negotiations began in earnest shortly after the election, amidst growing public concern about the devastating impact the cuts would have if Congress did not take action.¹³⁶

All of the sequester negotiations in November were done with the knowledge that there was also an expiring debt ceiling. The Treasury Department announced that the previously negotiated debt ceiling would expire by March of 2013. Yet, on December 18th, President Obama and Speaker Boehner were still in budget negotiations, focused on the expiring Bush tax cuts. In the negotiations President Obama was pressing for a roll back of the Bush tax cuts on individuals making over \$400,000, but Speaker Boehner would only agree to increase rates on

¹³⁴*The Romney Tax Plan*, Urban-Brookings Tax Policy Center, (March 1, 2012), [available at](http://taxpolicycenter.org/taxtopics/upload/Romney-Tax-Plan_March-1-2.pdf) http://taxpolicycenter.org/taxtopics/upload/Romney-Tax-Plan_March-1-2.pdf.

¹³⁵ Congressional Budget Office, *Economic Effect of Policies Contributing to Fiscal Tightening in 2013*, (Nov. 2012) [available at](http://www.cbo.gov/sites/default/files/cbofiles/attachments/11-08-12-FiscalTightening.pdf) <http://www.cbo.gov/sites/default/files/cbofiles/attachments/11-08-12-FiscalTightening.pdf>.

¹³⁶ There was a lot of public concern about the impact of the sequester on the economy and local government budgets. Some of the public statements to Congress included: Letter from Steven T. Miller, Acting Commissioner of the Internal Revenue Service, to Sander M. Levin, Ranking Member, House Committee on Ways and Means, (Nov. 13, 2012) [available at](http://usbudgetalert.com/November%2013%20IRS%20Letter%20on%20Fiscal%20Cliff.pdf) <http://usbudgetalert.com/November%2013%20IRS%20Letter%20on%20Fiscal%20Cliff.pdf>; *Getting Closer: Fiscal Cliff Number One Concern for Investors*, Committee for a Responsible Federal Budget, (Oct. 23, 2012), [available at](http://crfb.org/blogs/getting-closer-fiscal-cliff-number-one-concern-investors) <http://crfb.org/blogs/getting-closer-fiscal-cliff-number-one-concern-investors>; Letter from Financial Services Forum to Members of Congress, (Oct. 18, 2012) [available at](http://usbudgetalert.com/Financial%20Services%20Forum%20Letter%20on%20Fiscal%20Cliff.pdf) <http://usbudgetalert.com/Financial%20Services%20Forum%20Letter%20on%20Fiscal%20Cliff.pdf>; *Toppling Off The Fiscal Cliff: Whose Taxes Rise and How Much*, Tax Policy Center: Urban Institute and Brookings Institution, [available at](http://www.taxpolicycenter.org/taxtopics/fiscal-cliff.cfm) <http://www.taxpolicycenter.org/taxtopics/fiscal-cliff.cfm>

those making over one million.¹³⁷ A deal was struck on New Years Eve, and the American Taxpayer Relief Act of 2012¹³⁸ was passed on January 1, 2013. The negotiated bill permanently extended the Bush tax cuts for those making under \$400,000 (\$450,000 for joint filers), allowed the expiration of the payroll tax cut, delayed automatic sequestration cuts for two months (till March 1), and extended expiring unemployment insurance for one year.¹³⁹

Having delayed sequester cuts for two months, negotiations switched to the debt ceiling in early February of 2013. Negotiators were able to temporarily push off this crisis as well, coming to a three-month agreement on February 4, 2013,¹⁴⁰ that suspended the debt ceiling through May 18, 2013. Meanwhile, because the sequester cuts had merely been pushed off to March 1, 2013, throughout February there was a drumbeat of concern about the upcoming cuts to agency funding. Agency heads began publically outlining the specific impacts the sequester would have on their organizations and the impact that the non-targeted budget cuts would have on services.¹⁴¹

Negotiations stalled out, and on March 1, 2013 sequester cuts kicked in, initiating \$85 billion in across the board cuts for FY2012. Under the terms of the BCA, half of the cuts were to come from defense discretionary spending and half from non-defense spending. Of the non-defense cuts, about \$29 billion came from nondefense discretionary programs, \$10 billion from

¹³⁷ Fiscal Cliff Summary Table, USBudgetAlert.com, (Dec. 18, 2012), available at <http://usbudgetalert.com/Fiscal%20Cliff%20Summary%20Table.pdf>.

¹³⁸ PUB. L. NO. 112-240.

¹³⁹ Mindy R. Levit, et al., Cong. Research Serv., R42884, The “Fiscal Cliff” and the American Taxpayer Relief Act of 2012, (Jan. 4, 2013).

¹⁴⁰ PUB. L. NO. 113-3.

¹⁴¹ These publicly released documents include: Letter from NDD United to Members of Congress, (Feb. 11, 2013), available at http://media.wix.com/ugd//8c2a65_5efe314e72dbf3e943918bbc13a2cfea.pdf; Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2013 to 2023*, (Feb. 2013) available at <http://cbo.gov/publication/43907>; Letter from Secretary of Defense Leon Panetta to Howard P. McKeon, Chairman, House Committee on Armed Services, (Feb. 20, 2013) available at <http://usbudgetalert.com/Pentagon%20Furloughs.pdf>.

Medicare, and \$4 billion from other mandatory spending.¹⁴² Social Security, Medicaid, veterans programs, and the Supplemental Nutrition Assistance Program (“SNAP”) were exempt, and the President used his authority to exempt military personnel.¹⁴³

However, once the sequester went into effect there was little political appetite for a government shutdown, forcing the House and Senate to work on a new CR (with the initial CR expiring on March 27, 2013). The House approved another CR on March 3, 2013 (267-151).¹⁴⁴ The CR kept the sequester cuts in place, and pushed total discretionary spending down to about \$984 billion, more than \$60 billion below the initial target for FY2013 under the BCA.¹⁴⁵ Meanwhile, FY2014 budget negotiations had already begun, so Senators Barbara Mikulski (D-MD), and Richard Shelby (R-AL) began concurrently working to wrangle a six-month CR through the Senate in order to complete funding for FY2013.

As with the House bill the Senate bill did not overturn the sequestration. However, the Senate bill did update the base from which the cuts were made, providing the various departments (Defense, Veterans Affairs, Justice, Commerce, Agriculture and Homeland Security, as well as the Food and Drug Administration, National Science Foundation and NASA) with more detailed full-year appropriations, ultimately providing two thirds of discretionary spending with detailed appropriations. The House bill had only done that for the Defense

¹⁴² Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2013 to 2023*, (Feb. 2013) available at <http://cbo.gov/publication/43907>.

¹⁴³ Letter from Deputy Director of the Office of Management and Budget, Jeffrey D. Zients, to Speaker John A. Boehner, (March 1, 2013), available at http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/fy13ombjcsequestrationreport.pdf; Press Release, The White House, *Sequestration Order for Fiscal Year 2013 Pursuant to Section 251A of the Balance Budget and Emergency Deficit Control Act, as Amended*, (March 1, 2013) available at <http://www.whitehouse.gov/sites/default/files/2013sequestration-order-rel.pdf>.

¹⁴⁴ PUB. L. NO. 113-6.

¹⁴⁵ David Rogers, *House passes bill to fund government past March 27*, Politico, (March 6, 2013, 2:06 PM), <http://www.politico.com/story/2013/03/house-passes-bill-to-fund-government-past-march-27-88514.html>.

Department and Veterans Affairs.¹⁴⁶ The Senate CR passed on March 20th, with the House passing (318-109) the same version on March 21st, funding the government for the rest of FY2013. However many liberal Democrats were very upset with the negotiated package, because once the sequestration cuts were factored in, the bill was closer to \$984 billion in discretionary spending rather than the \$1.043 cap negotiated in the BCA.¹⁴⁷

a. Fiscal Year 2014 Budget Process

i. Summary

FY2014 demonstrated the nearly complete breakdown of the budget process that had taken hold by the fifth year of the Obama administration. The sequestration cuts were still in place, Congressman Ryan and Senator Murray released budget proposals before the White House released a budget, and after dancing around the possibility of a government shutdown for the past three years, FY2014 negotiations broke down so completely that there was a 16-day government shutdown starting October 1st.

However, all of this chaos led to a renewed Congressional effort to regain control of the budget process within congressional committees and move it away from the White House and congressional leadership. After the shutdown, the respective Chairmen of the House and Senate Budget Committees began negotiations independent of the White House and congressional leadership. They were able to create a negotiated budget resolution and the Appropriations Committees managed to draft an omnibus package for FY2014 that passed both houses of Congress in January of 2014.

ii. Republican Budget Proposals for FY2014

¹⁴⁶David Rogers, *Senate continuing resolution advances*, Politico, (March 18, 2013, 7:31 PM), <http://www.politico.com/story/2013/03/senate-continuing-resolution-government-shutdown-advances-89045.html#ixzz2ynQrBFvt>.

¹⁴⁷David Rogers, *Congress avoids government shutdown*, Politico, (March 21, 2013, 10:56 AM), <http://www.politico.com/story/2013/03/congress-avoids-government-shutdown-89180.html#ixzz2ynUIE9zR>.

On March 12, 2013, in the midst of FY2013 budget negotiations, House Budget committee Chairman Paul Ryan (R-WI) released the Republican budget resolution for FY2014 (an updated “Path to Prosperity”).¹⁴⁸ The proposal sought to balance the budget by 2023 with \$5 trillion in spending cuts over 10 years, deep cuts to Medicaid and food stamps, and the repeal of the ACA.¹⁴⁹ The only budget area seeing growth would be defense spending, and Medicare would be converted into a “premium support” system, where people 65 and older could buy private insurance with federal subsidies instead of government-paid health care. The main difference with Ryan’s FY2014 budget (as compared to his proposals in FY2013 and FY2012) is that it sought to balance the budget by 2023, whereas the previous two budgets aimed for a balanced budget by 2040.

iii. Senate Democrats Budget Proposals for FY2014

A day after Ryan’s proposal was released, Senate Budget Committee Chairwoman Patty Murray (D-WA) released her budget resolution entitled, “Foundation for Growth: Restoring the Promise of American Opportunity.”¹⁵⁰ Notably, this was the first Senate-proposed budget resolution in four years. Murray’s proposal replaced the sequestration (and its \$1.2 trillion in spending reductions) with a \$1.8 trillion deficit reduction, through a combination of spending cuts and revenue increase. The proposal asked the Senate Finance Committee to find \$975 billion in additional revenue by October 1, 2013, and proposed \$975 billion in cuts to discretionary spending. Murray’s proposal preserved the ACA, protected SNAP and the nutrition program for Women, Infants and Children, and included some spending increases, with a \$100

¹⁴⁸ Fiscal Year 2014 Budget Resolution, *The Path to Prosperity: A Responsible Balanced Budget*, House Committee on the Budget, (March 2013), available at <http://budget.house.gov/uploadedfiles/fy14budget.pdf>.

¹⁴⁹ Jonathan Weisman, *Ryan’s Budget Would Cut \$5 Trillion in Spending Over a Decade*, N.Y. Times, (April 1, 2014), http://www.nytimes.com/2014/04/02/us/politics/paul-ryan-budget.html?_r=0.

¹⁵⁰ Press Release, Senator Patty Murray, *Foundation for Growth: Restoring the Promise of American Opportunity*, (Mar. 13, 2013), available at <http://www.murray.senate.gov/public/index.cfm/2013/3/foundation-for-growth-restoring-the-promise-of-american-opportunity>.

billion jobs and infrastructure package. However, unlike the Ryan proposal, the plan did not achieve a balanced budget within ten years.

iv. Obama Budget Proposals for FY2014

President Obama did not release his budget proposal until almost a month after Ryan and Murray. The budget plan,¹⁵¹ released April 10th, was presented by the White House as a final proposal rather than a jumping off point for negotiations. During the budget rollout the President announced, “[w]hen it comes to deficit reduction, I’ve already met Republicans more than halfway so in the coming days and weeks I hope that Republicans will come forward and demonstrate that they are really as serious about deficits and debt as they claim.”¹⁵² The budget Obama put forward did not include sequestration cuts, operating under the assumptions that a deal would be struck before the start of the fiscal year.

The FY2014 Obama budget included \$1.242 trillion in discretionary spending (\$618 billion for defense, \$624 billion for non-defense)¹⁵³ and reflected similar policy priorities as earlier years, with increases to Education (4.6 percent increase with \$750 million in grants for universal pre-K and \$200 million for Race to the Top), Veterans Affairs (to \$63.5 billion), Energy (increases for clean energy research), and Commerce (\$1 billion increase for wireless broadband development), and overall increases for cybersecurity across agencies (Homeland Security overall funding went down but specific cybersecurity programs saw increases). Money was included for some specific policy objectives, including a universal preschool program which would be funded by an increase on cigarette taxes (from \$1.01 a pack to \$1.95), a five percent increase in State Department security funding (in reaction to the 2012 Benghazi attack), \$222

¹⁵¹ FY 2014 Budget.

¹⁵² President Barack Obama, *Remarks on 2014 Budget Proposal*, (April 10, 2013), available at http://www.washingtonpost.com/politics/president-obamas-remarks-on-his-2014-budget-proposal-transcript/2013/04/10/b99a8d9e-a1f4-11e2-be47-b44febada3a8_story.html.

¹⁵³ FY2014 Budget at 189 (Table S-5).

million for gun safety grants to states and cities,¹⁵⁴ and \$350 million for Dodd-Frank implementation.

v. FY2014 Budget and the Political Process

Before Obama's budget was even released, the House had adopted the Ryan budget resolution on March 21, 2013 by a vote of 221-207.¹⁵⁵ The Senate adopted the Murray budget resolution on March 23, 2013 by a vote of 50-49 (the first budget resolution adopted by the Senate since FY2010).¹⁵⁶ It was never anticipated that these two budget resolutions would be reconciled, but rather were adopted as political positions by both parties.¹⁵⁷ However, since both parties had adopted budget resolutions, regular order procedures could go forward, and a joint budget conference committee could be appointed.¹⁵⁸ However, this was never done and the House and Senate each began work separately on the twelve appropriations bills. In August of 2013 the CBO released a report that under the caps mandated by the BCA, the overall limit on discretionary spending would be \$967 billion in FY2014.¹⁵⁹

During the August recess in 2013 there was increasing efforts amongst Congressional Republicans to repeal the ACA. On August 21, 2013, eighty Republican House members sent a letter¹⁶⁰ to Speaker Boehner advocating that Congress repeal the ACA through the appropriations process, proposing that the House should, "affirmatively de-fund the implementation and

¹⁵⁴ This was part of a gun control push by the Obama administration in the aftermath of the December 2012 shooting at Sandy Hook Elementary.

¹⁵⁵ H.Con. Res.25.

¹⁵⁶ S.Con. Res.8.

¹⁵⁷ Howard Gleckman, *Don't Hold Your Breath For a Budget: House, Senate Aren't Even Trying to Reconcile Bills*, "Forbes, (March 25, 2013, 3:28 PM), <http://www.forbes.com/sites/beltway/2013/03/25/dont-hold-your-breath-for-a-budget-house-senate-arent-even-trying-to-reconcile-bills/>.

¹⁵⁸ John Dickerson, *Disorderly Conduct: Why Republicans and Democrats can't even agree on their own rules for disagreeing about the budget*, Slate.com, (April 24, 9:47 PM), http://www.slate.com/articles/news_and_politics/politics/2013/04/house_and_senate_budget_conference_committee_republicans_and_democrats_can_single.html.

¹⁵⁹ Congressional Budget Office, *Sequestration Update*, (Aug. 2013), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/44491-SequestrationUpdate.pdf>.

¹⁶⁰ Letter from Republican Members of Congress to Speaker John Boehner and Leader Eric Cantor, (Aug. 21, 2013) available at http://meadows.house.gov/uploads/Meadows_DefundLetter.pdf.

enforcement of ObamaCare in any relevant appropriations bill brought to the House floor in the 113th Congress, including any continuing appropriations bill."¹⁶¹

At the same time, Treasury Secretary Jack Lew sent a letter¹⁶² to Speaker Boehner alerting him that the extraordinary measures the Treasury Department initiated in May to avoid hitting the debt ceiling, would be exhausted by mid-October. In response, Speaker Boehner publically stated that he wanted to use the debt ceiling as leverage to get the White House and Senate Democrats to agree to more spending cuts.¹⁶³ However, during this round of budget negotiations, in an attempt to avoid a repeat of the 2011 debt ceiling negotiations, President Obama publically declared that he refused to negotiate over the debt ceiling.¹⁶⁴ Senate Democrats followed his lead demanding that the House pass a “clean” debt limit bill.¹⁶⁵ The timing, with the end of the fiscal year and the exhaustion of the debt ceiling arriving at roughly the same time, led to a combined negotiation framework.

In mid-September it became apparent that a government shutdown was likely. House Republicans remained entrenched on repealing the ACA (with open enrollment beginning on October 1st) through the appropriations process, and the President refused to include the ACA in any negotiations. Preparations for a shutdown began in mid-September with OMB Director Sylvia Burwell issuing a letter to agencies directing them on how to plan for a shutdown.¹⁶⁶ On September 28, with the shutdown coming in two days and no deal on the horizon, House

¹⁶¹ Id.

¹⁶² Letter from Jacob J. Lew, Treasury Secretary to Speaker John A. Boehner, (April 26, 2013), available at <http://www.treasury.gov/initiatives/Documents/082613%20Debt%20Limit%20Letter%20to%20Congress.pdf>.

¹⁶³ Ashley Parker, *Boehner Sees Showdown Over Raising Debt Limit*, N.Y. Times, (Aug. 27, 2013), http://www.nytimes.com/2013/08/28/us/politics/boehner-foresees-whale-of-a-fight-over-debt-limit.html?_r=1&.

¹⁶⁴ Id.

¹⁶⁵ Letter from Senator Patty Murray, Chairman Senate Budget Committee, and Max Baucus, Chairman, Senate Finance Committee to Colleagues, (Sept. 23, 2013) available at <http://www.finance.senate.gov/imo/media/doc/09232012%20Baucus%20Murray%20letter.pdf>.

¹⁶⁶ Memorandum from Sylvia Burwell, Director of the Office of Management and Budget to Heads of Executive Departments and Agencies, *on Planning for Agency Operations during a Potential Lapse in Appropriations*, (Sept. 17, 2013) available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-22.pdf>.

Republicans passed a bill,¹⁶⁷ funding the government through November 15, 2013 but delaying the implementation of the ACA for a year. The Senate stripped the defunding language from the bill and sent the legislation back to the House. On September 29th the House passed another spending bill delaying ACA implementation, which the Senate again rejected and on October 1, 2013 the government shutdown began. The shutdown lasted for 16 days, with 800,000 federal employees furloughed, and another 1.3 million employees working without known payment dates.

Meanwhile, there was also no movement on the debt ceiling, which was estimated to be exhausted on October 17, 2013. The Treasury Department tried to raise alarms about the devastating financial impact of default announcing that: “[A] default would be unprecedented and has the potential to be catastrophic: credit markets could freeze, the value of the dollar could plummet, and U.S. interest rates could skyrocket, potentially resulting in a financial crisis and recession that could echo the events of 2008 or worse.”¹⁶⁸

Once the government shutdown began, the House started to pass piecemeal funding legislation in an attempt to re-open specific entities and programs that were subject to the shutdown but Senate Democrats refused to consider any bill that did not reopen the entire government.¹⁶⁹ Meanwhile, the White House and Speaker Boehner had become so locked into their positions that on October 12th, the negotiating parties publically switched to Senate Majority Leader Harry Reid and Minority Leader Mitch McConnell.¹⁷⁰

¹⁶⁷ H.J.Res.59.

¹⁶⁸ Department of the Treasury, *The Potential Macroeconomic Effect of Debt Ceiling Brinksmanship*, (Oct. 2013) available at <http://www.treasury.gov/initiatives/Documents/POTENTIAL%20MACROECONOMIC%20IMPACT%20OF%20DEBT%20CEILING%20BRINKMANSHIP.pdf>.

¹⁶⁹ Although some small measures got through including legislation paying furloughed federal workers and death benefits for military families.

¹⁷⁰ Susan David & David Jackson, *Senators say debt, shutdown deal is near*, USA Today, (Oct. 14, 2013, 9:48 PM), <http://www.usatoday.com/story/news/2013/10/14/obama-reid-mcconnell-boehner-pelosi/2980695/>.

The real impetus for compromise between Reid and McConnell was the threat of default posed by the debt ceiling, not the government shutdown. With the debt ceiling looming, Senate leadership announced that they had a deal to re-open the government and raise the debt ceiling. The final package¹⁷¹ included a CR funding for the government through January 15, 2014, suspended the debt ceiling till February 7, 2014, and established a framework for formal budget negotiations to conclude by December 15th. These new negotiations were supposed to develop long-term recommendations for funding levels and deficit reduction. The bill passed the Senate by a vote of 81-18¹⁷² and the House approved it 285-144. The funding levels established for FY2014 in the package were the same, on a pro rata basis, as had been for the FY2013 year. Critically, as part of the agreement, congressional leaders agreed to convene a long-delayed House/Senate budget resolution conference committee. The goal for the committee was to get agreement on total appropriations levels for FY2014 and FY2015, and develop a package of entitlement and tax reforms in order to stabilize long-term U.S. debt. Republicans viewed the overall package as a “loss” for the party with Speaker Boehner publically stating after the vote, “[w]e fought the good fight. We just didn't win.”¹⁷³

After the government shutdown Congress started work on final FY2014 appropriations in order to meet the January 15, 2014 deadline. Senator Patty Murray and Congressman Paul Ryan began conference committee negotiations as soon as the CR passed on October 17th. At the start of the negotiations the original Senate and House proposals for FY2014 were \$91 billion apart. However, both Murray and Ryan were under substantial pressure from appropriators to establish a topline number, to allow an omnibus package to be completed and end the sequester cuts. On

¹⁷¹ The Continuing Appropriations Act of 2014, PUB. L. NO. 113–46.

¹⁷² Notably most of those considered possible Republican Presidential candidates for 2016 voted against the bill: Senators Ted Cruz (R-TX), Rand Paul (R-KY), and Marco Rubio (R-FL).

¹⁷³ Jonathan Weisman & Ashley Parker, *Republicans Back Down, Ending Crisis Over Shutdown and Debt Limit*, N.Y. Times, (Oct. 16, 2013), http://www.nytimes.com/2013/10/17/us/congress-budget-debate.html?_r=0.

October 31, 2013, in a joint letter, the Chairs of the House and Senate Appropriations Committees Harold Rogers (R-KY) and Barbara Mikulski (D-MD), asked the congressional leadership to settle on a top line appropriations number for 2014 before Thanksgiving. The letter reflected the growing impatience with the dysfunctional budget process stating, "[w]e believe that if an agreement on a discretionary spending number can be reached early, it will allow for more thoughtful and responsible spending decisions."¹⁷⁴

On December 10, 2013, Ryan and Murray announced that they had reached a two-year budget agreement. The deal they reached replaced the sequester, set FY2014 discretionary spending at \$1.012 trillion, FY2015 discretionary spending at \$1.014 trillion, provided \$63 billion in sequester relief, \$85 billion in total savings, and \$23 billion in net deficit reduction.¹⁷⁵ However, the deal did not raise the debt ceiling nor did it offer tax or entitlement reform. While liberal Democrats and conservative Republicans both publically cited opposition to parts of the bill, in a rare display of bi-partisanship, the package passed the House on December 12, 2013 332-94, with 169 Republicans and 163 Democrats voting for the bill.¹⁷⁶ The Senate passed the bill 64-36 on December 18th and the President signed the bill on December 26th.¹⁷⁷

Preparations for the FY2014 omnibus package quickly moved forward in the House and Senate Appropriations subcommittees in order to avoid another government shutdown. A three-day CR was passed on January 15, 2014 to buy some extra negotiating time and President

¹⁷⁴ Letter from Harold Rogers, Chairman, House Committee on Appropriations and Barbara Mikulski, Chairwoman, Senate Committee on Appropriations, to Paul Ryan, Chairman, House Budget Committee, Chris Van Hollen, Ranking Member, House Budget Committee, Patty Murray, Chairwoman, Senate Budget Committee, Jeff Sessions, Ranking Member, Senate Budget Committee, available at

http://appropriations.house.gov/uploadedfiles/10.31.13_mikulski_rogers_letter_to_budget_conferees.pdf

¹⁷⁵ John Bresnahan & Jake Sherman, *Budget agreement reached*, Politico, (Dec. 10, 2013, 10:20 PM), <http://www.politico.com/story/2013/12/budget-deal-update-patty-murray-paul-ryan-100960.html#ixzz2ysNUotfF>.

¹⁷⁶ *Inside Congress: House Vote 640 – Passes Bipartisan Budget Bill*, N.Y. Times, (Dec. 12, 2013), <http://politics.nytimes.com/congress/votes/113/house/1/640>.

¹⁷⁷ PUB. L. NO. 113-67.

Obama signed the final package, the Consolidated Appropriations Act, 2014,¹⁷⁸ on January 17, 2014. In the negotiated omnibus, all but one appropriations act,¹⁷⁹ saw an increase from FY2013 funding levels, yet because FY2013 reflected the sequester cuts there were still overall declines in funding levels from FY2012. For example the Department of Education received \$67.3 billion in FY2014, an increase from the \$65.6 billion in FY2013 but an \$800 million decline from the \$68.1 billion level in FY2012.¹⁸⁰

Meanwhile, on February 11, 2014 the House approved a debt ceiling increase till March of 2015, marking the first time since 2009 that the debt ceiling had been raised without additional conditions. The new system for increasing the debt ceiling no longer set the debt ceiling at a particular monetary level, but rather authorized borrowing through a specific date.

III. Conclusion

The negotiated budget deal for FY2014 was evidence of what has effectively become a default two-year budget cycle in the United States. During the Obama administration every other fiscal year has been funded entirely through CRs, creating a two-year system by default. It is even possible to describe it as an eight year cycle, with the FY2010 budget establishing baseline spending levels for the rest of the administration. Viewed from this perspective, budget priorities for an entire administration are established in the first year and then adjusted slightly in every subsequent year depending on the makeup of Congress. The structure of the budget process requires that most funding remain reasonably consistent on a year to basis. While the structural integrity of the budget process has largely collapsed over the last five years, it still limits Congress' ability to mandate massive changes in agency funding. As a result, President

¹⁷⁸ PUB. L. NO. 113-76.

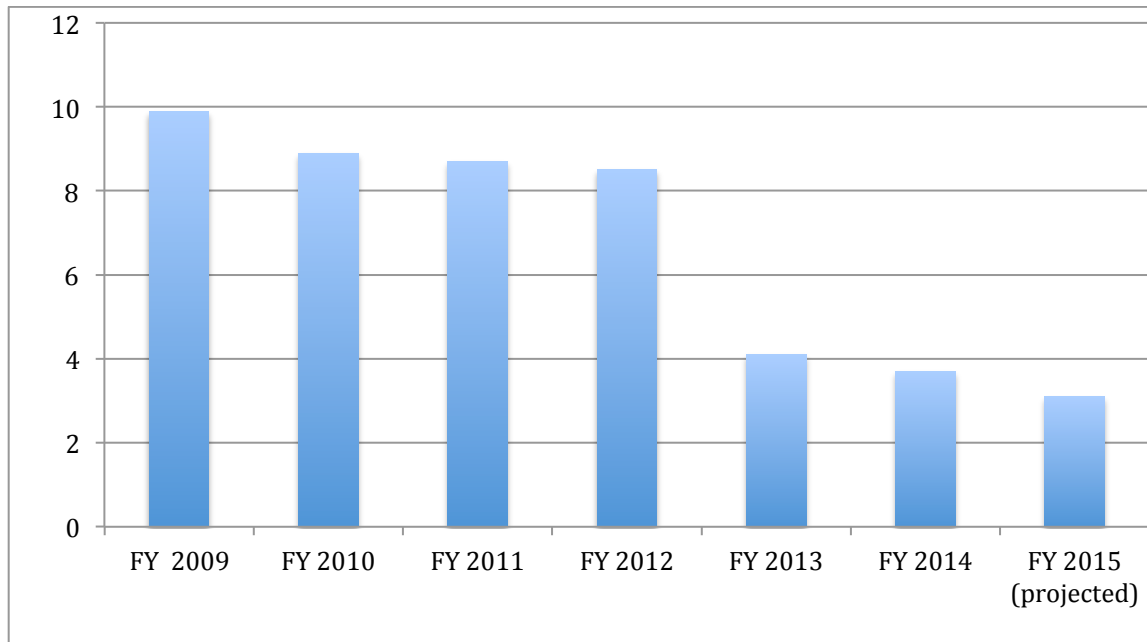
¹⁷⁹ Energy and Water saw a \$203 million decline in funding, from \$34.263 billion to \$34.060 billion. Source: Fiscal 2014: Where the Money Goes, Congressional Quarterly, (2014) available at <http://media.cq.com/pub/table/index.php?id=177>.

¹⁸⁰ FY2015 Budget and FY2014 Budget.

Obama has been able to be relatively consistent in increasing funding for his highest priority agencies—Education, Energy and Veterans Affairs. FY2010 was the high water mark of spending levels and every subsequent year of the administration has been a grading down from those initial budget levels.

Appendix

Chart 1: Deficit as a Percentage of GDP¹⁸¹



¹⁸¹ Source: FY 2015 Budget at 163 (Table S-1); FY 2014 Budget at 183 (Table S-1); FY 2013 at 205 (Table S-1); FY 2012 Budget at 180 (Table S-1); FY 2011 Budget at 146 (Table S-1); FY 2010 Budget at 114 (Table S-1); FY 2009 Budget at 139 (Table S-1).

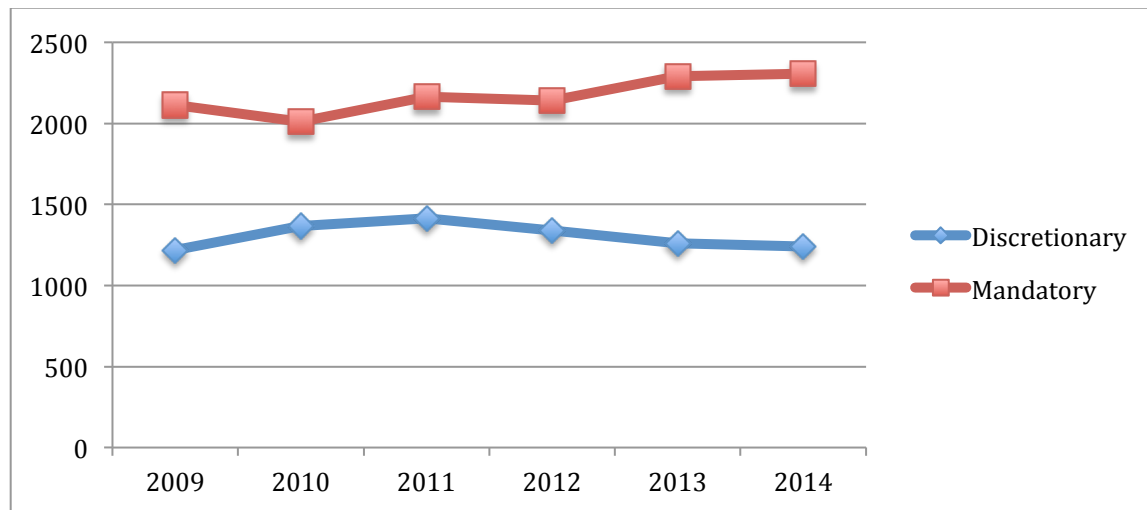
Chart 2: Continuing Resolutions, FY2010-FY2014¹⁸²

	FY 2010	FY2011	FY2012	FY 2013	FY 2014
1	PUB. L. NO. 111-68, 10/2/2009- 10/31/2009 (31 days)	PUB. L. NO. 111-242: 9/30/2010 - 12/3/2010 (64 days)	PUB. L. NO. 112-33 9/30/2011- 10/4/2011 (4 days)	PUB. L. NO. 112-175 9/29/2012 – 3/27/2013 (178 days)	PUB. L. NO. 113-46 10/17/2013- 1/15/2014 (90 days)
2	PUB. L. NO. 111-88 12/30/2009- 12/18/2009 (48 days)	PUB. L. NO. 111-290 12/4/2010– 12/18/2010 (15 days)	PUB. L. NO. 112-36 10/5/2011- 11/18/2011 (45 days)	P.L 113-6. 3/27/2013- 9/30/2013 (187 days)	PUB. L. NO. 113-73 1/15/2014 – 1/18/2014 (3 days)
3		PUB. L. NO. 111-317 12/18/2010- 12/21/2010 (3 days)	PUB. L. NO. 112-55 11/18/2011- 12/16/2011 (28 days)		
4		PUB. L. NO. 111-322 12/22/2010- 3/4/2010 (73 days)	PUB. L. NO. 112-67 12/16/2011- 12/17/2011 (1 day)		
5		PUB. L. NO. 112-4 3/2/2011-3/18/2011 (14 days)	PUB. L. NO. 112-68 12/17/2011 – 12/23/2011 (6 days)		
6		PUB. L. NO. 112-6 3/2/2011-4/8/2011 (21 days)			
7		PUB. L. NO. 112-8 4/9/2011-4/15/2011 (7 days)			
8		PUB. L. NO. 112-10 4/15/2011 – 9/30/2011 (168 days)			

¹⁸² Source: Library of Congress, Status of Appropriations for Fiscal Year 2010 (last visited May 8, 2014), <http://thomas.loc.gov/home/approp/app10.html>; Library of Congress, Status of Appropriations for Fiscal Year 2011 (last visited May 8, 2014), <http://thomas.loc.gov/home/approp/app11.html>; Library of Congress, Status of Appropriations for Fiscal Year 2012, (last visited May 8, 2014), <http://beta.congress.gov/legislation/appropriations/fy2012>; Library of Congress, Status of Appropriations for Fiscal Year 2013 (last visited May 8, 2014), <http://beta.congress.gov/legislation/appropriations/fy2013>; Library of Congress, Status of Appropriations for Fiscal Year 2014, (last visited May 8, 2014), <http://beta.congress.gov/legislation/appropriations/fy2013>.

Chart 3: Budget Timetable per the Budget Control Act of 1974¹⁸³

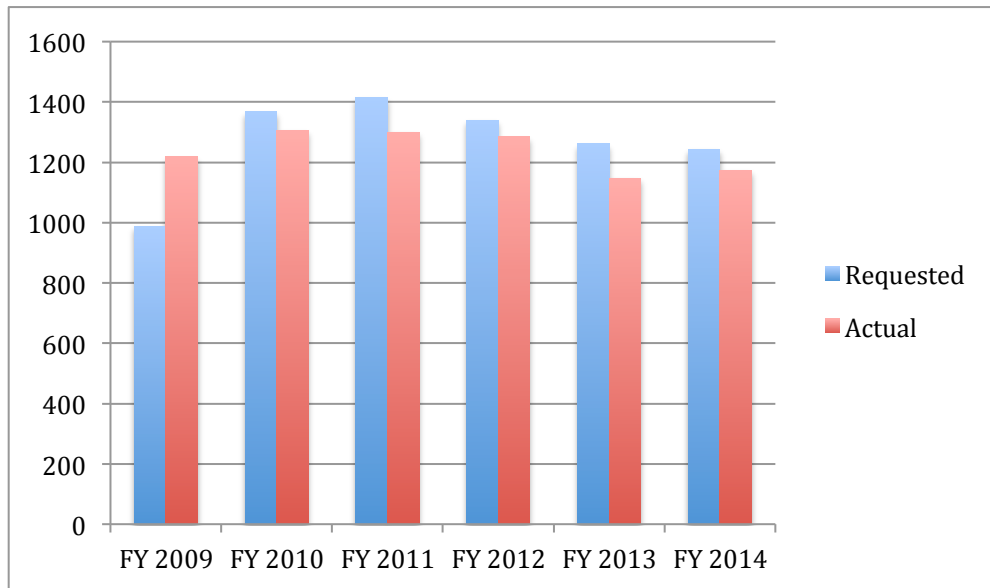
On or before:	Action to be completed:
First Monday in February	President submits his budget.
February 15	Congressional Budget Office submits report to Budget Committees.
Not later than 6 weeks after President submits budget	Committees submit views and estimates to Budget Committees.
April 1	Senate Budget Committee reports concurrent resolution on the budget.
April 15	Congress completes action on concurrent resolution on the budget.
May 15	Annual appropriation bills may be considered in the House.
June 10	House Appropriations Committee reports last annual appropriation bill.
June 15	Congress completes action on reconciliation legislation.
June 30	House completes action on annual appropriation bills.
October 1	Fiscal year begins.

Chart 4: Discretionary vs. Mandatory Spending FY2009 – FY2014¹⁸⁴ (in billions)

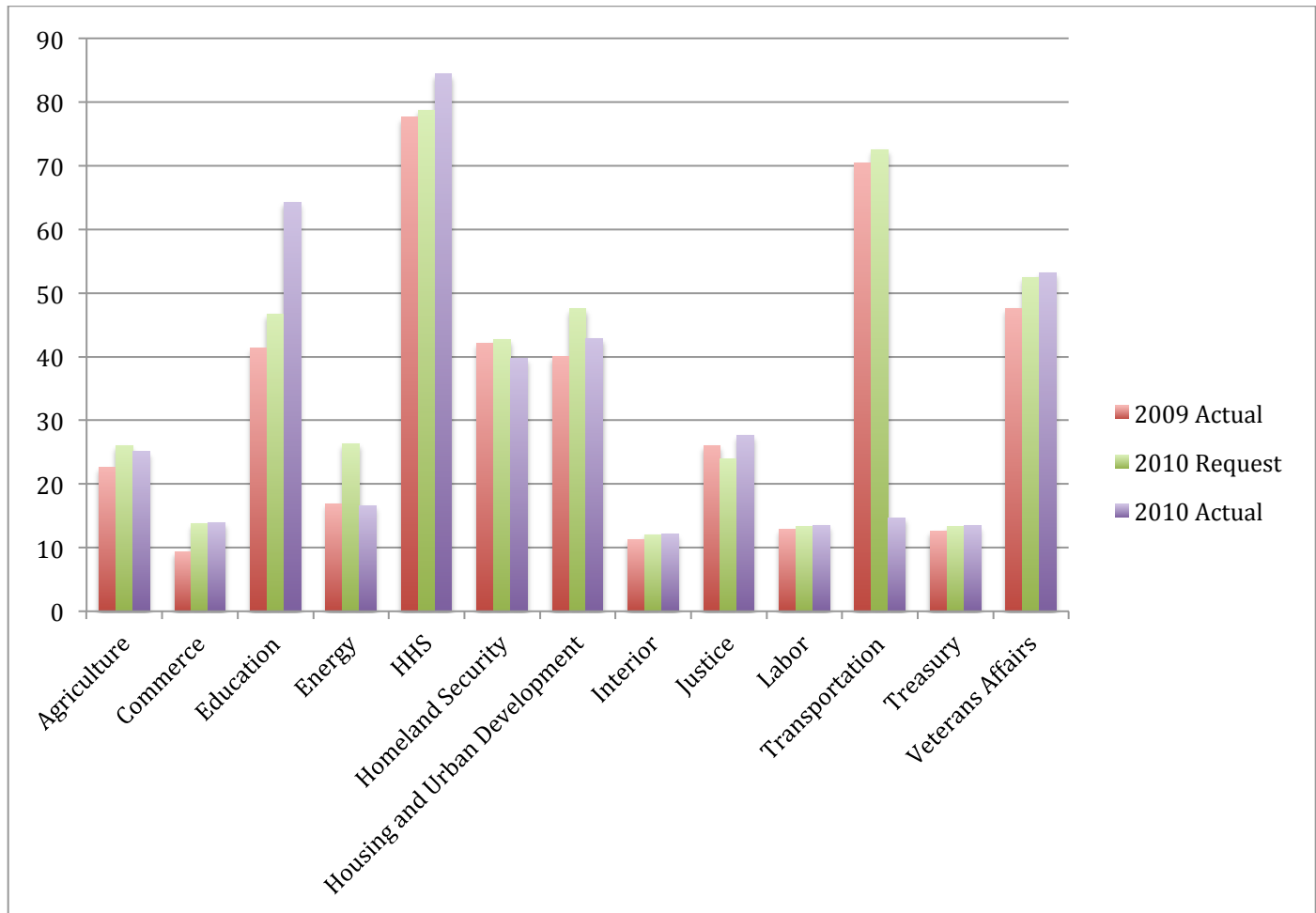
¹⁸³ Budget Control Act of 1974, 2 U.S.C. §§ 601-688 (1974).

¹⁸⁴ Source: FY 2015 Budget at 168 (Table S-4), FY 2014 Budget at 187 (Table S-4), FY 2013 Budget at 208 (Table S-4), FY 2012 Budget at 174 (Table S-3), FY 2011 Budget at 149 (Table S-3), FY 2010 Budget at 117 (Table S-3), FY 2009 Budget at 140 (Table S-2).

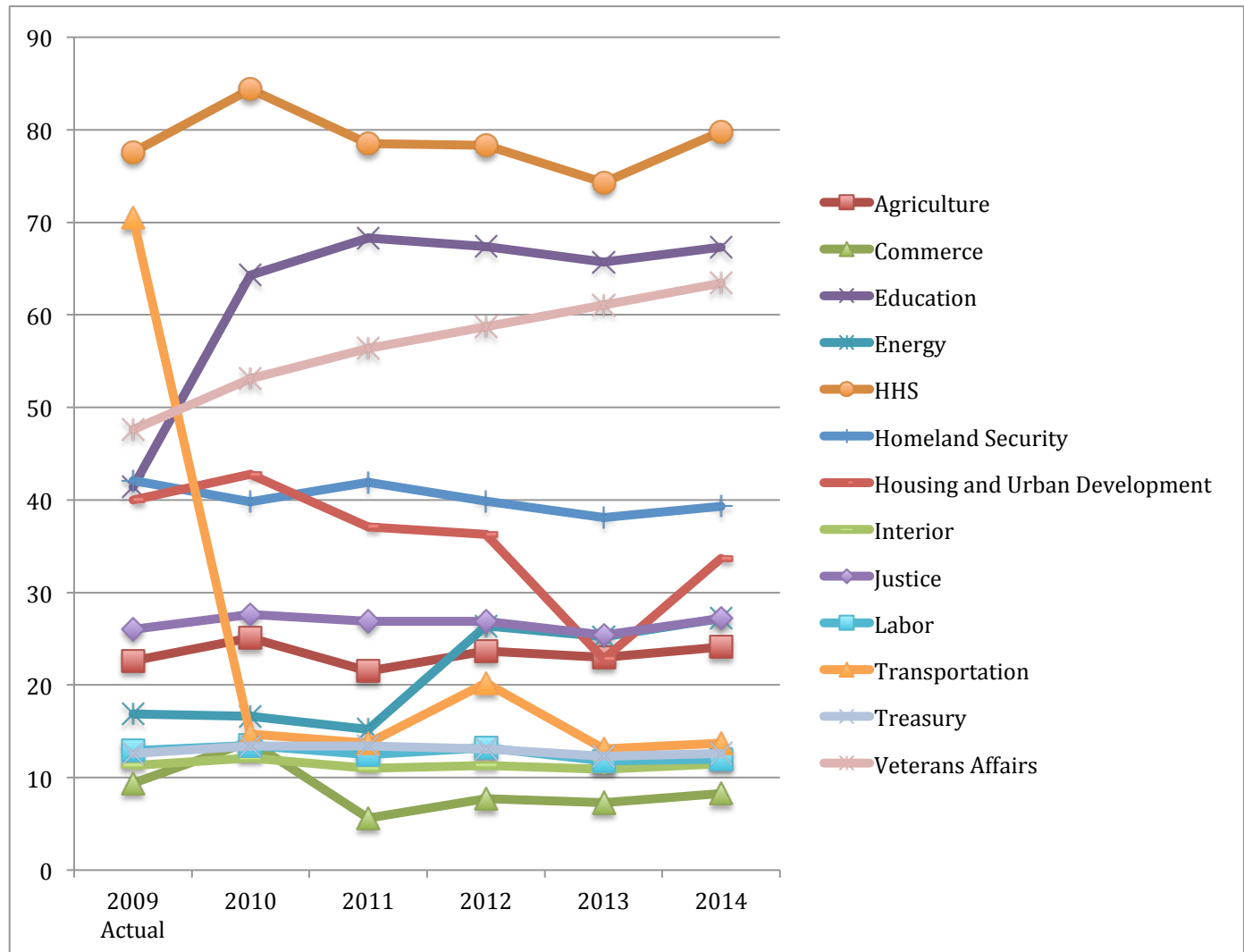
Chart 5: Comparison of Discretionary Requests with Actual Funding Levels FY2009-FY2014¹⁸⁵ (in Billions)



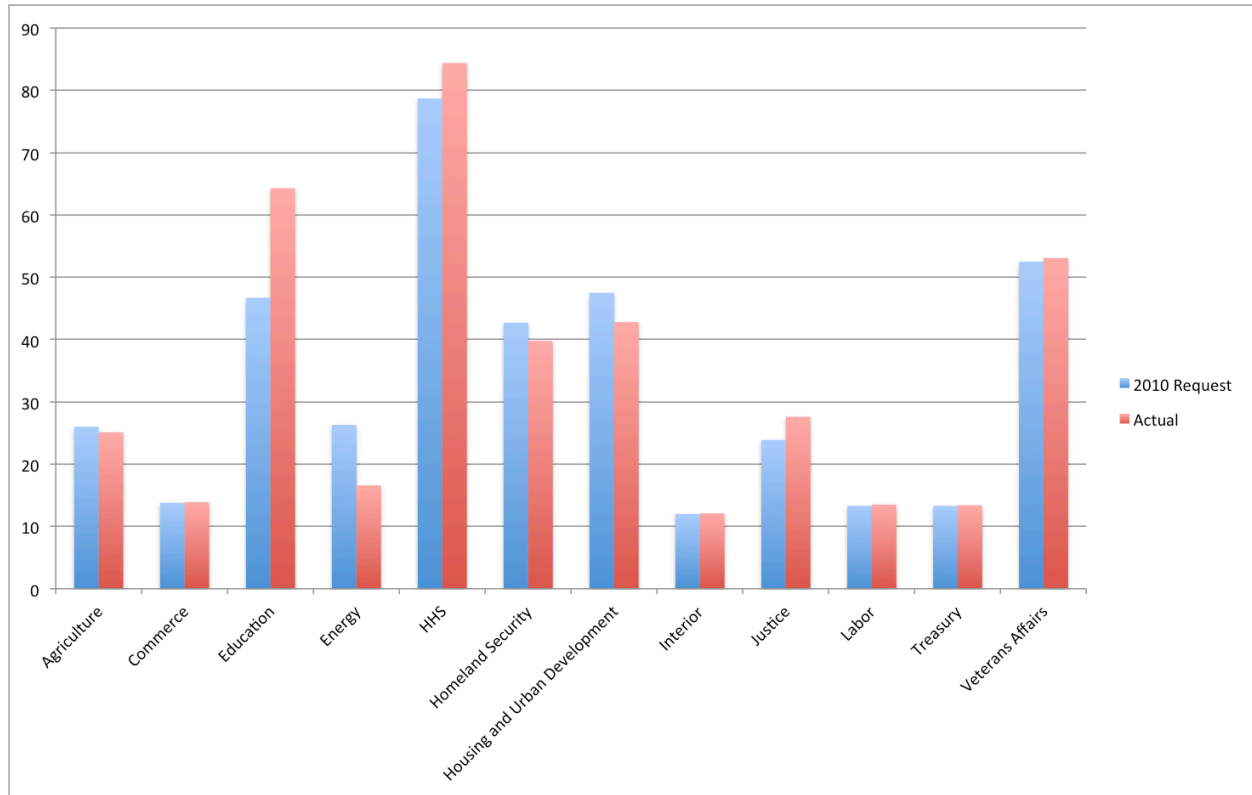
¹⁸⁵ Source: FY 2015 Budget at 170 (Table S-5), FY 2014 Budget at 189 (Table S-5), FY 2013 Budget at 210 (Table S-5), FY 2012 Budget at 176 (Table S-4), FY 2011 Budget at 151 (Table S-4), FY 2010 Budget at 119 (Table S-4); FY 2009 Budget at 141 (Table S-3).

Chart 6: Comparison by Agency between FY2009 and FY2010¹⁸⁶ (in Billions)

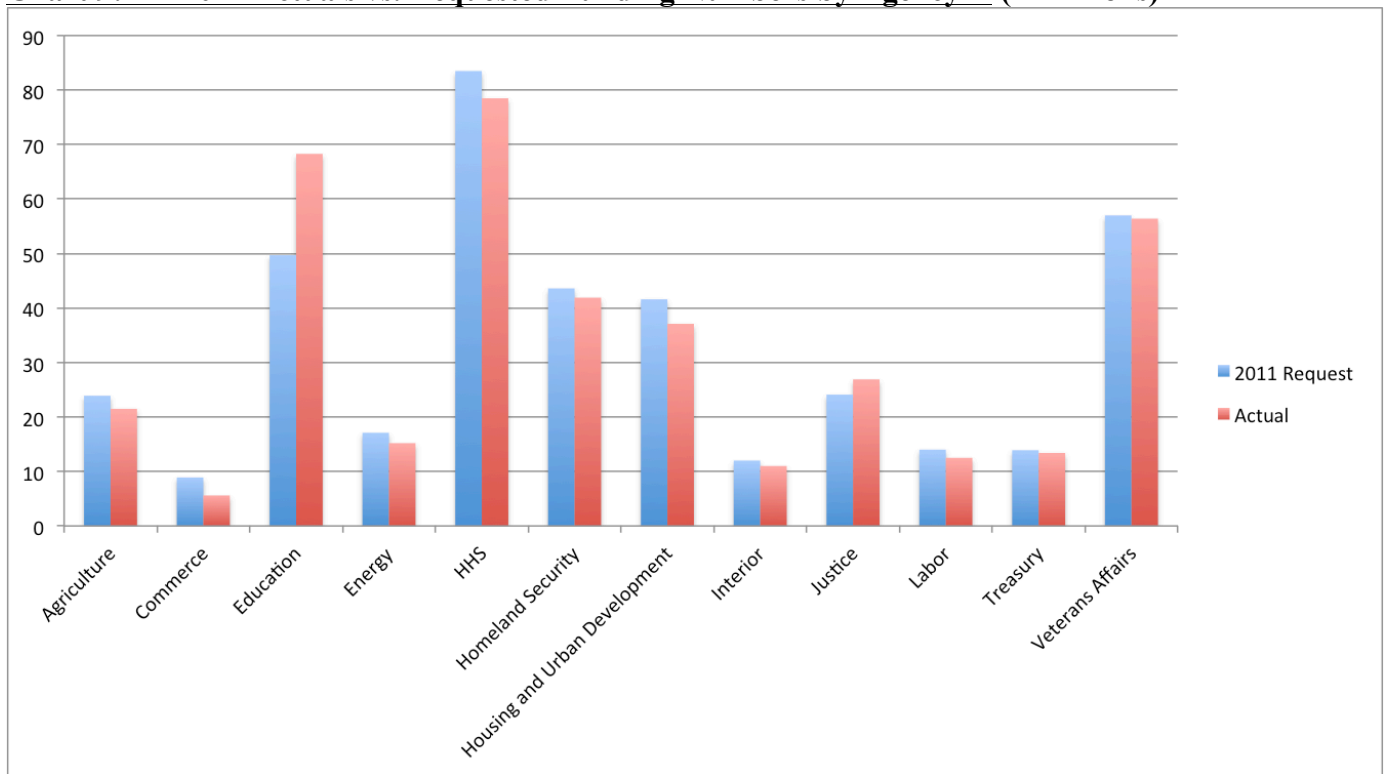
¹⁸⁶ Source: FY 2012 Budget at 199 (Table S-11); FY 2010 Budget at 130 (Table S-7); FY 2009 Budget at 141 (Table S-3).

Chart 7: Actual Funding Levels By Agency FY2009-FY2014¹⁸⁷ (in Billions)

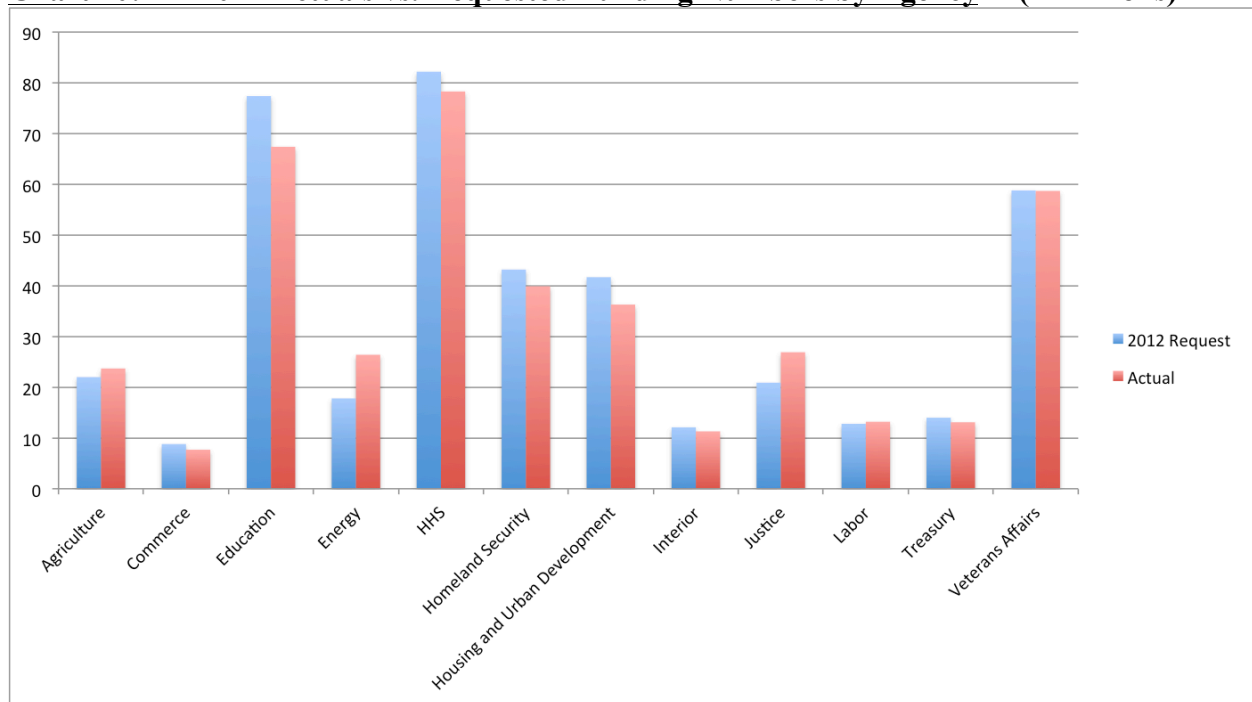
¹⁸⁷ Source: FY 2015 Budget at 203 (Table S-11), FY 2014 Budget at 222 (Table S-11), FY 2013 Budget at 240 (Table S-12), FY 2012 Budget at 199 (Table S-11), FY 2011 Budget at 174 (Table S-11), FY 2010 Budget at 130 (Table S-7).

Chart 8: FY 2010 Actuals vs. Requested Funding Numbers by Agency¹⁸⁸ (in Billions)

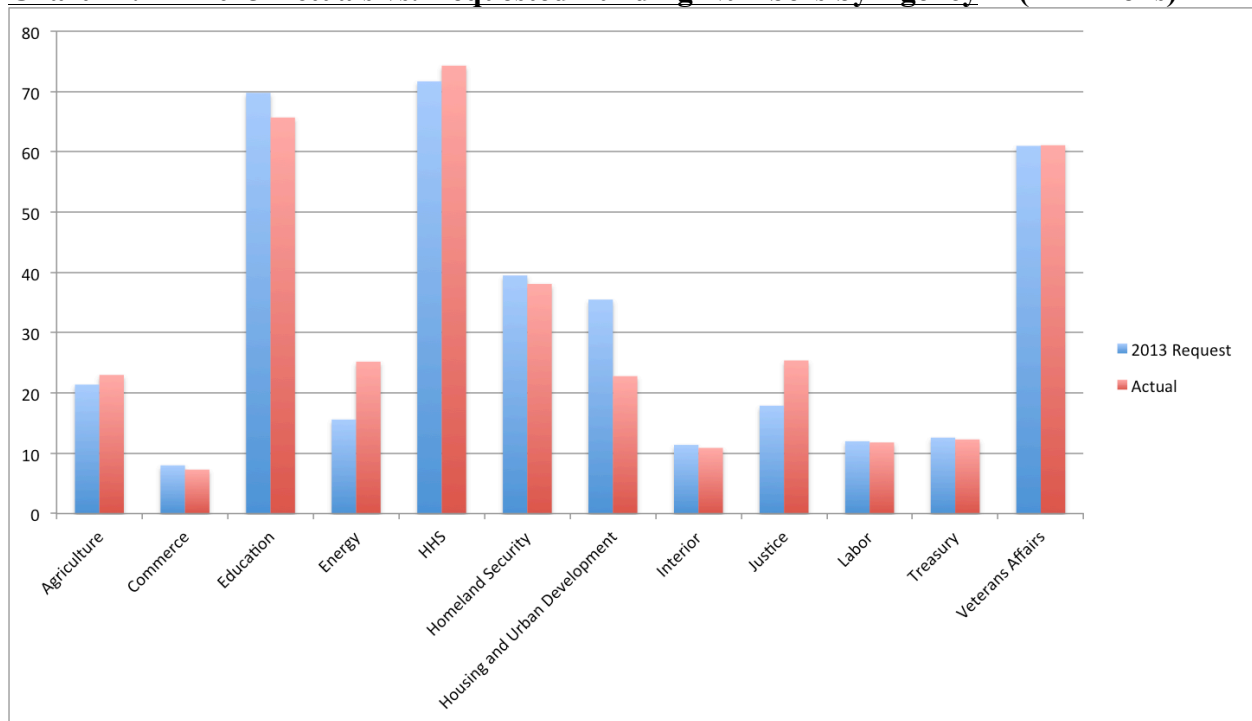
¹⁸⁸ Source: FY 2010 Budget at 130 (Table S-7); FY 2012 Budget at 199 (Table S-11).

Chart 9: FY 2011 Actuals vs. Requested Funding Numbers by Agency¹⁸⁹ (in Billions)

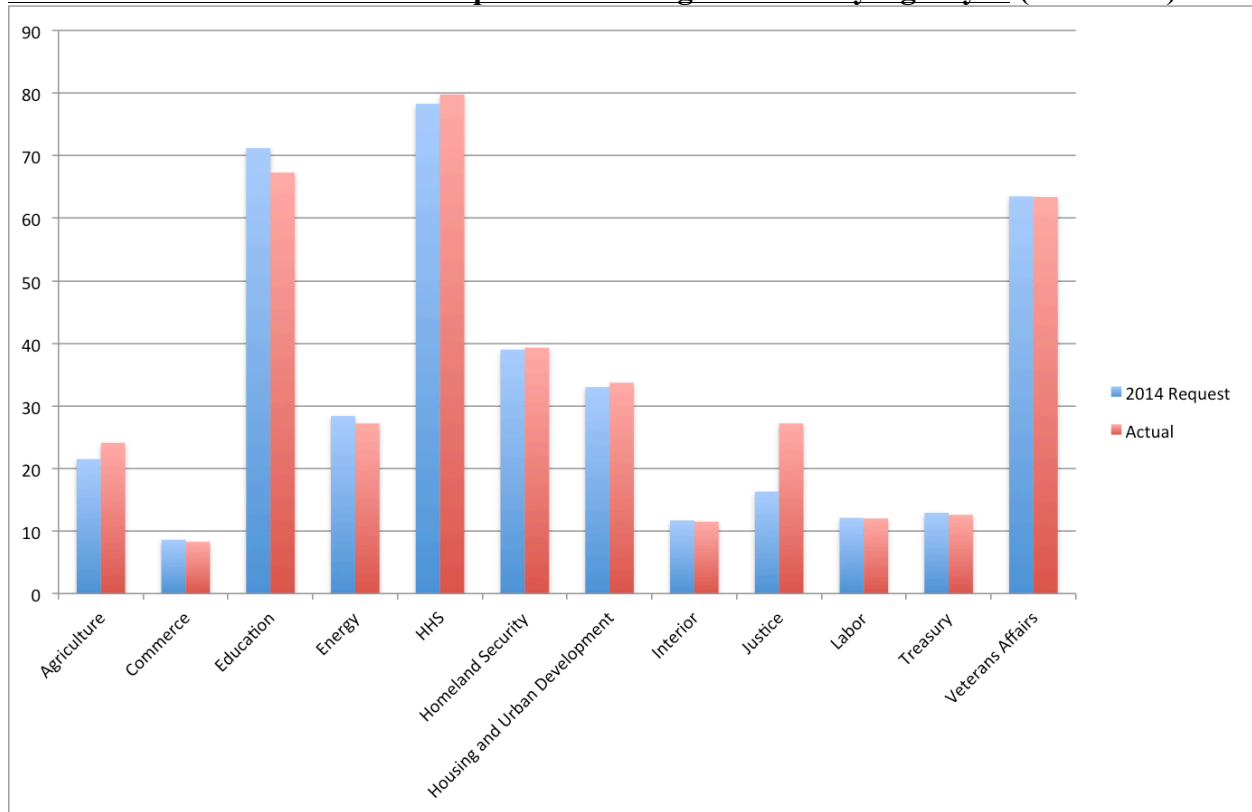
¹⁸⁹ Source: FY 2011 Budget at 174 (Table S-11); FY 2013 Budget at 240 (Table S-12).

Chart 10: FY 2012 Actuals vs. Requested Funding Numbers by Agency¹⁹⁰ (in Billions)

¹⁹⁰ Source: FY2012 Budget at 199 (Table S-11); FY 2014 Budget at 222 (Table S-11).

Chart 11: FY 2013 Actuals vs. Requested Funding Numbers by Agency¹⁹¹ (in Billions)

¹⁹¹ Source: FY 2013 Budget at 240 (Table S-12); FY 2015 Budget at 203 (Table S-11).

Chart 12: FY 2014 Actuals vs. Requested Funding Numbers by Agency¹⁹² (in Billions)

¹⁹² Source: FY 2014 Budget at 222 (Table S-11); FY 2015 Budget at 203 (Table S-11).