AMERICANS for PROSPERITY

# REVISITING THE BALANCED BUDGET AMENDMENT

## TOWARD DESIGNS WITHOUT DEFECTS

**By Kurt Couchman**

### A well-crafted BBA can help check federal debt growth

High inflation, a growing debt burden, and political dysfunction are again drawing attention to proposals for a balanced budget amendment (BBA) to the U.S. Constitution. Recent polling shows 80% voter support for "a constitutional amendment that would require a balanced budget within 10 years." U.S. states and other countries have tamed debt buildups through constitutional and statutory fiscal rules as well as through economic growth and direct deficit reduction.

**80% of voters**

support "a constitutional amendment that would require a balanced budget within 10 years"

Members of Congress have pursued a BBA for most of the second half of the 20th century and into the 21st. Votes have approached the two-thirds threshold in both houses, but Congress hasn't yet sent a proposal to the states for ratification. Meanwhile, activists seek to bypass Congress with a convention of states to propose a BBA and perhaps other constitutional amendments.

This paper highlights policy and political challenges of common BBA provisions, especially annual balance. It does not cover every possible concern. It also highlights two better-designed proposals: the Business Cycle BBA, which provides mechanisms for a specific approach to structural balance, and the Principles-based BBA, which would set broad goals and let Congress fill in the details through statute.

A BBA would not be a silver bullet or panacea. It would do much to restore the norm that federal budgets should balance in some way and to create an enforceable supermajority for emergency spending, but statutes must address the rest. Implementing legislation would specify definitions, targets, tracking, enforcement, and other features.

### Constitutional provisions are foundations for statutes

The Constitution is mostly composed of permanently applicable principles. Constitutional language sets general directions while leaving Congress broad scope to develop and revise operational details through the much easier process of enacting statutes. Of course, that depends on Congress to recognize the constitutional foundations and craft appropriate implementing legislation, a task it still has not fully completed.

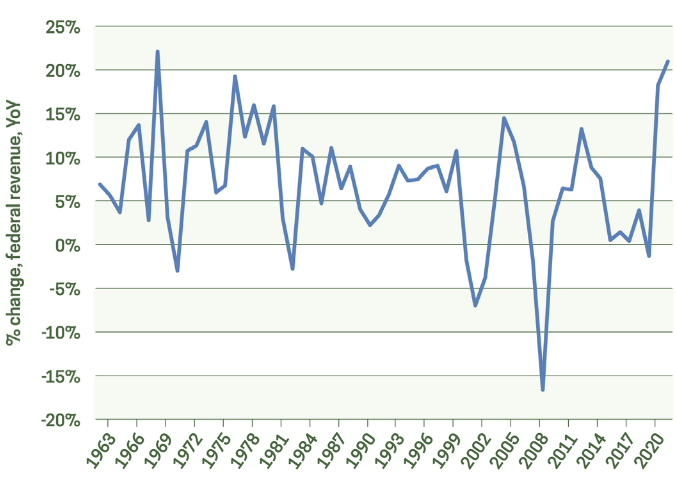
Even so, the difficulty of amending the Constitution has largely preserved that model. In an evenly divided Congress, reaching the two-thirds threshold to propose a new amendment would require at least all members of one party plus 17 senators and 72 representatives of the other. Even then, a proposed amendment would not be ratified until approved by 38 state legislatures.

## Common BBA provisions have challenges

Putting specifics into BBA proposals has produced policy and political challenges. Members of Congress and staff generally work on statutory law. Most have let the pursuit of clarity — entirely appropriate for statutes — seep into the language of constitutional proposals where details usually do not belong. Common problematic provisions include:

- **Annual balance:** Trying to match spending to revenue every year in a dynamic economy (see Figure 1) would drive policy instability, consume a great deal of Congress' time and energy, and pressure Congress to evade the rules. Prospective annual balance requires spending and revenue estimates, which can be manipulated and are subject to estimation error. Several state legislatures are actively considering moving from annual balance to structural balance, which means balance over the medium term.

**Figure 1: Federal revenue is too volatile for annual balance**




*Source: Congressional Budget Office*

- **Full balance:** Full balance is fine in theory. It would, however, require more policy changes than many members of Congress believe possible. By contrast, ambiguity that allows primary balance could exclude net interest. That would require about half as much deficit reduction and could be a step toward full balance later.

- **Short transition times:** Many BBAs would require balance two to five years after ratification. Yet many deficit-reduction options start small and grow over time. A longer transition would give Congress more choices to reach balance. The period between Congress proposing and the states ratifying a BBA could be several years, but congressional commitment to a balance goal is unlikely to reach peak strength until ratification is complete.

- **Multiple emergency thresholds:** All BBAs have a general safety valve for emergencies, usually set at three-fifths or two-thirds of both houses. Many would set lower thresholds or waive the BBA entirely during military conflicts or economic weakness. Some perversely would encourage minor military conflicts to weaken or evade the BBA provisions. Low thresholds like majorities or three-fifths may be too low to reserve safety valves for real emergencies. Conversely, very high levels like three-fourths are higher than the threshold to override a president's veto.

- **President's budget:** Statute requires the president to submit a budget request. This gives Congress valuable budget information to aid its budget and appropriations process. Yet putting such a requirement in the Constitution could shift power toward the president and away from Congress. The president's constitutional budget powers are presently limited to signing or vetoing legislation, making sure the laws are faithfully executed, and submitting proposals for Congress' consideration.

- **Statutory concepts:** Terms defined by statute like "outlays," "fiscal year," and the debt limit don't belong in the Constitution. Congress could subsequently redefine or rename them through the normal statutory process, leaving anachronisms in the Constitution. Congress directly controls "budget authority," which lets agencies spend money, but "outlays" flow from budget authority and sometimes with multi-year lags. Further, a BBA and effective implementing legislation could make the statutory debt limit superfluous.

- **Entitlement carve-outs:** Some BBAs would exclude Social Security and Medicare spending and revenue from balance. These statutory programs are a large share of federal spending and are expected to grow substantially. Their imbalances and attributable interest costs drive projections of unsustainable federal debt growth. Besides, a BBA that covers all programs would still let Congress treat different programs differently in automatic enforcement and in policy choices.

- **Revenue restrictions:** Current and projected revenue is in line with historical norms, while spending is already well above historical levels and is expected to keep growing under current law (see Fig. 1.3). Federal debt growth is mostly a spending growth problem. Even so, provisions to increase the difficulty of raising revenue compared to reducing spending can polarize budget discussions and may undermine prospects for proposing, ratifying, and sustaining a BBA.

- **Percent-of-GDP caps:** Limiting federal spending to an estimated percentage of economic output or a fraction of the prior year's output may have similar political challenges as revenue restrictions. Some members of Congress want more spending, while others want less and would worry that a cap would also be a floor. Moreover, capping spending without addressing other sources of budget dysfunction could push spending programs into spending-through-the-tax-code programs without necessarily addressing imbalances between spending and revenue. Pairing such caps with a balance rule reduces that risk, however.

- **Role of judiciary:** The courts are a vital part of the American system of checks and balances. They buttress Congress' legislative powers when the executive branch fails to faithfully execute the laws. The courts' role(s) in enforcing a BBA — and most other constitutional provisions — may be more appropriately settled in statute, where Congress can adjust to changing norms and practices.

*Appendix A tracks these features in recently proposed BBAs.*

## New BBAs have more promise

Two BBAs introduced in Congress don't have these challenges.

**Business Cycle BBA (BCBBA):** When first introduced in the 112th Congress (2011-2012), the BCBBA attracted 45 Republican and 14 Democratic cosponsors across all ideological factions. Representatives Jodey Arrington and Nancy Mace have proposed similar versions recently. Appendix B includes the text of the BCBBA as proposed by Senator Mike Braun and Representative Jodey Arrington in 2022. The BCBBA avoids the problematic concepts noted above by redesigning the three core features.

- <u>Basic rule:</u> Spending would be limited to the average revenue of the three prior years, adjusted for inflation and population. Instead of limiting "outlays," the BCBBA limits "expenditures," a general word already in the Constitution. This backward-looking rule would let policy be more stable and predictable than annual balance. It would be mildly countercyclical compared to trend: modest fiscal expansion during recessions and contraction after recovery. Implementing legislation could determine whether to target full balance or primary balance.

- <u>Emergencies:</u> With an emergency declaration, two-thirds (Arrington) or three-fourths (Mace) of both houses of Congress could approve spending greater than the rule for one year at a time.

- <u>Transition to balance:</u> After a post-ratification grace period, the BCBBA would set a schedule for phasing out deficits. The BCBBA's declining fractions would cap spending above the basic rule by not more than 90%, 80%, and so on of the ratification-year gap until the budget balances.

**Principles-based BBA (PBBA):** When originally proposed in the 114th Congress (2015-2016), the PBBA had 64 Republican cosponsors and one Democratic cosponsor. Under more favorable conditions, many more members of both parties could support it. Rather than proposing better mechanisms, the PBBA states general principles and relies on Congress to enact implementing legislation for the details. Appendix B includes the text of the PBBA as proposed by Senator Mike Braun and

Representative Nathaniel Moran in 2023.

- Basic rule: "Expenditures and receipts shall be balanced, which may occur over more than one year." Congress would have the flexibility to design and update detailed rules through the normal legislative process. Congress could choose whether to target primary balance (excluding interest) or full balance, or perhaps, primary balance first with the option of full balance later. The core of the statutory complement could be Senator Braun and Representative Emmer's Responsible Budget Targets Act, for example.

- Emergencies: Two-thirds of both houses could spend more than the budget balance rule — as defined by statute — for emergency situations. It states that emergency-related debts should "be paid as soon as practicable." Emergency spending should not be a budget loophole.

- Transition to balance: Within a general power to enact implementing legislation, the PBBA would allow ten years after ratification to reach balance. The specific transition path could be defined by statute.

The BCBBA and the PBBA are neutral, comprehensive, and practical proposals without the challenges of other BBAs. They mainly differ in terms of specificity. The BCBBA includes mechanisms, while the PBBA's principles rely more on implementing legislation.

## A BBA relies on statutory complements

The rules under any BBA would need effective enforcement mechanisms. Several options exist.

- **Debt limit:** The debt limit could increase automatically as long as the budget meets the BBA targets or those in implementing legislation. If targets are missed, Congress could have to vote on the debt limit again. Even under a BBA with full balance, the debt would continue to increase as deficits phase out.

- **Comprehensive budget:** Congress could replace the disjointed and ineffective appropriations-and-reconciliation process with a comprehensive budget that has all spending and revenue in a single bill each year. A comprehensive congressional budget would provide more degrees of freedom and empower more potential coalitions to make reaching and staying in balance possible. An annual budget act would strengthen congressional accountability for meeting budget targets.

- **Incremental adjustments:** Automatic enforcement could be far more effective than the "goofy meat axe" of PAYGO and discretionary sequesters. It could instead rely on small adjustments to various features of current laws to generate budget savings and encourage Congress to meet its budget goals.

## A better BBA could earn broad support and help repair federal budgeting

The congressional history of considering BBA proposals with serious policy and political challenges has contributed to their failure and possibly even brought disrepute on the idea. A BBA without those problems could dramatically expand the coalition of support.

Any BBA would rely on implementing legislation. A principles-based BBA would give Congress the most flexibility to design reasonable statutory complements and update them as conditions change.

Absent timely congressional action, a fiscal crisis could lead states to trigger America's first convention of states for proposing constitutional amendments. Many members of Congress may prefer to develop and deliberate on well-crafted BBA options and related statutes rather than letting others choose for them.

A well-designed BBA and related statutory complements can help Congress repair federal budgeting, restore sound governance, and promote prosperity in America.

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*Learn more about this topic and more at* ***AmericansForProsperity.org***

APPENDIX A:

# Features of recent BBA proposals

| Resolution #: Sponsor/Cosponsors[1] | Sections: Words[2] | Annual or Structural Balance | Full or Primary Balance | Years to Balance | Emergency Waivers[3] | POTUS Budget | Statutory Concepts | Debt Limit | Carve Outs | Revenue Restrictions | %GDP Caps | Limits on Judiciary | Prescriptive or Principles |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| H.J.Res.2: Buchanan | 11: 547 | Annual | Full | 5 | 2/3 W-a C-m | Y | Y | 2/3 | - | 2/3 | 18%, 2/3 | Y | Prescriptive |
| H.J.Res.6: Fitzpatrick/1R | 7: 239 | Annual | Full | 5 | 2/3 WED-m | Y | Y | - | - | - | - | - | Prescriptive |
| H.J.Res.9: McClintock/3R | 2: 42 | No new debt | Full+ | 10 | 3/4 | - | - | 3/4 | - | - | - | - | Principles |
| H.J.Res.12: Nunn/19R | 8: 325 | Annual | Full | 5 | 3/5 W-a C-m | Y | Y | 3/5 | - | m | - | - | Prescriptive |
| H.J.Res.15: Obernolte | 5: 155 | Annual | Full | 5 | 3/4 | Y | Y | - | - | - | - | - | Prescriptive |
| H.J.Res.19: Perry/4R[4] | 9: 545 | Annual | Full | 10 | 3/5 WCD-2/3 | Y | Y | 2/3 | - | 3/5 | 20-16%, 3/5 | - | Prescriptive |
| H.J.Res.21: Van Orden | 8: 302 | Annual | Either | 10 | 3/5 WC-m | Y | Y | 3/5 | - | m | | | Prescriptive |
| H.J.Res.36: Biggs | 3: 61 | Annual | Full | 0 | - | - | Y | Freeze | - | 2/3 | - | - | Prescriptive |
| H.J.Res.55: Yakym | 8: 325 | Annual | Full | 5 | 3/5 W-a C-m | Y | Y | 3/5 | - | m | - | - | Prescriptive |
| H.J.Res.67: Pfluger | 9: 334 | Annual | Full | 2 | 2/3 | - | Y | 2/3 | - | 2/3 | 18%, 2/3 | Y | Prescriptive |
| H.J.Res.75: Loudermilk | 9: 334 | Annual | Full | 10 | 2/3 | - | Y | 2/3 | - | 2/3 | 18%, 2/3 | Y | Prescriptive |
| H.J.Res.80: Moran | 2: 100 | Either | Either | 10 | 2/3 | - | - | - | - | - | - | - | Principles |
| H.J.Res.90: Mace | 4: 217 | Structural | Either | 10 | 3/4 | - | - | - | - | - | - | - | Prescriptive |
| S.J.Res.13: Hyde Smith/23R | 11: 549 | Annual | Full | 5 | 2/3 W-m C-3/5 | Y | Y | 3/5 | - | 2/3 | 18%, 2/3 | Y | Prescriptive |
| S.J.Res.14: Lee/1R | 9: 334 | Annual | Full | 2 | 2/3 | - | Y | 2/3 | - | 2/3 | 18%, 2/3 | Y | Prescriptive |
| S.J.Res.19: Braun/1R | 2: 100 | Either | Either | 10 | 2/3 | - | - | - | - | - | - | - | Principles |
| **Prior to the current Congress** | | | | | | | | | | | | | |
| H.J.Res.77: Arrington/2R, 117th | 4: 217 | Structural | Either | 10 | 2/3 | - | - | - | - | - | - | - | Prescriptive |
| H.J.Res.55: McAdams/12D, 117th | 8: 543 | Annual | Full | 5 | 3/5 WC-m R-a | Y | Y | - | OASDI, HI[5] | - | - | Y | Prescriptive |
| H.J.Res.55: Brat/64R/1D, 114th | 3: 119 | Either | Either | 10 | 2/3 | - | - | - | - | - | - | - | Principles |
| H.J.Res.81: Amash/45R/14D, 112th | 5: 280 | Structural | Either | 10 | 2/3 | - | - | - | - | - | - | - | Prescriptive |

1. 118th Congress unless otherwise noted; number of cosponsors as of September 29, 2023
2. Includes each instance of "Section" and the associated section number
3. W = war, C = military conflict, E = national emergency, D = natural disaster, R = recession; After dash, a = automatic, m = majority vote
4. Requires agencies to justify each line item
5. OASDI = Social Security Old Age and Survivors Insurance and Social Security Disability Insurance, HI = Medicare Hospital Insurance (Part A)

APPENDIX B:

## A Business Cycle BBA

*Introduced as S. J. Res. 42 (117th Congress) by Senator Mike Braun (R-IN) and as H. J. Res. 77 (117th Congress) by Representative Jodey Arrington (R-TX) on March 17, 2022.*

**SECTION 1.**
Total expenditures for a year shall not exceed the average annual revenue collected in the three prior years, adjusted in proportion to changes in population and inflation. Total expenditures shall include all expenditures of the United States except those for payment of debt, and revenue shall include all revenue of the United States except that derived from borrowing.

**SECTION 2.**
Congress may by a roll call vote of two-thirds of each House declare an emergency and provide by law for specific expenditures in excess of the limit in section 1. The declaration shall specify reasons for the emergency designation and may authorize expenditures in excess of the limit in section 1 for up to one year.

**SECTION 3.**
Congress shall have power to enforce this article by appropriate legislation.

**SECTION 4.**
This article shall take effect in the first year beginning at least 90 days following ratification, except that expenditures may exceed the limit in section 1 by the following portion of the prior year's expenditures exceeding that limit (excepting emergency expenditures provided for by section 2): nine-tenths in the first year, eight-ninths in the second, seven-eighths in the third, six-sevenths in the fourth, five-sixths in the fifth, four-fifths in the sixth, three-fourths in the seventh, two-thirds in the eighth, and one-half in the ninth.

## A Principles-based BBA

*Introduced as S. J. Res. 19 (118th Congress) by Senator Mike Braun (R-IN) on March 15, 2023, and as H. J. Res. 80 (118th Congress) by Representative Nathaniel Moran (R-TX) on July 13, 2023.*

**SECTION 1.**
Expenditures and receipts shall be balanced, which may occur over more than one year. Expenditures shall include all expenditures of the United States except those for payment of debt, and receipts shall include all receipts of the United States except those derived from borrowing. Congress shall achieve balance within ten years following the ratification of this article.

**SECTION 2.**
For emergency situations, two-thirds of the House of Representatives and the Senate may for limited times authorize expenditures exceeding those pursuant to rules established under section 1. Debts incurred from such expenditures shall be paid as soon as practicable.

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