AMERICANS FOR PROSPERITY

THE FISCAL YEAR 2020 SPENDING BILLS ARE OUT AND IT'S NOT PRETTY

By Alison Acosta Winters

Once again, Congress has foisted a mammoth, unsightly Christmas Tree on Americans right before flocking home for the holidays.

Sadly, these two spending bills do not serve the broad interests of Americans. With $1.4 trillion in discretionary spending, they represent a 4.8% increase over last year's record high discretionary spending levels. Of course, that will just get things started – no doubt there will be supplemental disaster and emergency spending bills passed before all is over.

Remember, to get to these levels, Congress and the administration negotiated to blow through the last two years of spending caps in the Budget Control Act without even paying lip service to the BCA's intent to control spending. And that was after even higher spending increases in the previous spending deal.

Any time legislation has something for everyone to like, we should all hold on to our wallets. Perhaps we can be thankful that the bill isn't worse. But beyond the fiscal and economic costs to American taxpayers and workers, the numerous policies unrelated to spending included in the bill also mean we should be worried about the integrity and transparency of the legislative process.

The Good, the Bad and the Ugly

The Good

- **No shutdown:** If passed and signed into law prior to midnight December 20, when the current continuing resolution expires, this will keep all government agencies operating and avoid another polarizing government shutdown.

- **Repeals some tax increases:** The bill permanently repeals harmful taxes from the Affordable Care Act (ACA) -- the medical device tax, the Cadillac tax and the health insurance tax. Even though these are positive policy changes, they should have been considered and passed on their own merit. And more profoundly, this is final proof that the Affordable Care Act was not sustainable and the policies included to pay for it were not serious. This should be a warning bell that punitive, harmful taxes to pay for expansive, new policies like Medicare for All are hollow promises.

- **Shines a light on secret law:** The funding bill also "strongly urges" the attorney general to publish all legal opinions created by Office of Legal Counsel. OLC is a part of the Department of Justice and drafts consequential legal memorandums relied on by the president and federal agencies – they include legal arguments on topics such as what type of conduct constitutes torture, when U.S. citizens can be subjected to lethal force when they're on foreign soil, and how executive orders should be interpreted. The pending bill's language doesn't go far enough to ensure that the public is able to review the legal reasoning underpinning critical decisions, but it is a step in the right direction.

The Bad

Spending Levels: There's still too much spending. The deal struck earlier this summer set spending levels too high and, worse, did not replace the expiring Budget Control Act caps that were set to expire in fiscal 2021.

Even though base spending is within the budget limits agreed to this summer, emergency and disaster spending pushed numbers higher. This could well increase before the end of the fiscal year. Extra spending outside the caps pushed total spending up 4.8% after accounting for disasters and emergencies.

No transparency and rushed voting: The more than 2,300 pages of bill text were released less than 24 hours prior to House debate and voting. This "pass the bill in order to know what's in the bill" approach to legislating makes a mockery of House rules on transparency and informed debate and voting. That's ironic, considering the rules were changed just this year from an ill-defined three days to 72 hours to prevent timing shenanigans. It should also be a warning siren for all Americans. Congress does not know, cannot know, what's in these massive bills, yet it votes on them anyway.

The Ugly

Budget by crisis: When the fiscal year began on October 1, not one appropriations bill had been signed into law. The second continuing resolution is set to expire in just days, at midnight on December 20. Once again, Congress has presented its members with a Hobson's choice between voting for legislation and bad policies they would otherwise vote against, or voting for a government shutdown. This budgeting by crisis leads to even higher spending and bad policies.

It's time for lawmakers to stop using their own dysfunction as an excuse for bad policy – this practice should be ended. One tool to end the practice would be through an automatic continuing resolution like the End Government Shutdowns Act by Sen. Rob Portman (R-Ohio), or the Prevent Shutdowns Act by Sens. James Lankford (R-Okla.) and Maggie Hassan (D-N.H.).

Unrelated, damaging policy provisions: "Must-pass" crisis appropriations bills have spending goodies and policy riders unrelated to spending tacked on like ornaments. And since they frequently pass right before Christmas this kind of loaded-up legislation earns the "Christmas tree" moniker. . These bills are no exception. They include policies unrelated to spending that should be debated and voted on through the normal legislative process. Many are flawed, would exacerbate bad policies, and increase risk to taxpayers and the broader economy.

Moreover, if considered on their own they would face significant legislative hurdles. We won't know the details on some of the policies and the full story will take even longer to be clear. But some of the most noteworthy include:

- **Export-Import Bank reauthorization:** Ex-Im is reauthorized for seven years (not the four to five typical of most reauthorizations.) The requirement for a quorum of board members to approve major financing assistance was eliminated, so bureaucrats will now have a heavy hand in directing taxpayer-backed lending subsidies.

  While loan authority was not dramatically increased as some proposed, Ex-Im is still bad policy and has no businesses in a spending bill. It perpetuates one of the most egregious federal corporate welfare programs, which supports the country's largest exporting companies, such as Boeing, while also benefiting foreign firms.

- **Tax extenders.** By some accounts, House and Senate leadership were having trouble reaching agreement on a package of so-called tax extenders. These temporary, special interest giveaways also faced united bipartisan opposition. The only possible silver lining is that the tax provisions were not worse. Special interest lobbying to expand the electric vehicle credit didn't make the cut, nor did most efforts to undo provisions of the Tax Cuts and Jobs Act.

  Tax policy should be permanent with a broad base, and not pick winners and losers. So, naturally, this corporate welfare deal was crammed into the spending bill, literally during the dead of night at 12:11 am.

  Some of these "extenders" were even retroactive, reviving special breaks that had expired as far back as 2017, proving that even bad zombie tax policies can be brought back to life at any time. Since virtually no tax extenders were excluded, Congress has indicated that it has no interest in sticking up for the taxpayer – instead it prefers to continue passing temporary tax policies and inviting special interests to continue to seek handouts. Some of the winners of the corporate welfare tax policies include:

  - Wind, solar, biomass, and efficiency improvements for buildings.
  - Motorsports tracks and horse racing owners.
  - Film and television production.
  - Distillers and brewers.
  - Railroads.

- **Pension Bailouts:** America has a major pension problem. From state and local governments to the private multiemployer pension system, pension systems across the country have trillions of dollars in benefit liabilities they cannot pay. These plans are chronically underfunded and strapped with overpromised benefits.

  The miners' pension plan would receive a bailout, yet the underlying problems in the plan would not be adequately addressed and could lead to further deterioration. Additionally, Congress is unfairly picking winners and losers—bailing out coal miners but not steelworkers, truckers or firefighters—or, worse, it is setting the stage for a full-scale bailout of underfunded private multi-employer pension systems.

  Congress can and should do better. It should enact reforms that would require employers to address ailing plans now, and any government insurance or support should be limited and run through strict steps similar to single-employer plans through the Pension Benefit Guaranty Corporation.

- **Smoking:** The minimum age to purchase smoking products, including cigarettes and vaping, is raised from 18 to 21. This is another Congressional affront to federalism, taking decisions out of the hands of state policymakers where it rightfully belongs.

End Budget-By-Crisis

Americans deserve better than budget-by-crisis, must pass legislation. These bills, like many others before them, left lawmakers with a choice between bad policy and a government shutdown. It's time for lawmakers to stop using their own dysfunction as an excuse for bad policy.

Alison Acosta Winters is a senior policy fellow at Americans for Prosperity. Michael Lambert, policy analyst and Billy Easley Sr., policy analyst at Americans for Prosperity, contributed to this report.