



## THE NON-PARTISAN SOLUTION TO THE CIVIL RIGHTS ISSUE OF OUR AGE

### The Compact For America Balanced Budget Amendment

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#### Introduction

The issue of the runaway national debt is not a political or partisan issue. Future generations are being forced to pay the bill for our policy choices. If current trends continue, it will only be a few more years before much, if not most, of the federal government's budget will be allocated to debt service. This denies future generations the right to self-governance. That's a civil rights issue. It is time to treat the national debt the same way as we have addressed other civil rights issues.

The Constitution has been amended five times to protect the right of self-governance in our political system. The Fifteenth Amendment protected the right to vote regardless of race. The Nineteenth Amendment established the right of vote of women. The Twenty-Third Amendment assigned electors to Washington, DC, allowing it to participate in the Electoral College and effectively giving residents the right to vote for the President. The Twenty-Fourth Amendment abolished poll taxes that impeded the right to vote. The Twenty-Sixth Amendment reduced the voting age to 18 from 21.

If current trends continue, it will only be a few more years before much, if not most, of the federal government's budget will be allocated to debt service.

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These amendments recognized the systemic flaw of denying representation on the basis of race, gender, DC residency, inability to pay a poll tax, and age (when you're old enough to fight and die for your country). Why? Because the people best able to protect their civil rights are those whose rights are at stake. Protecting civil rights requires self-governance.

But what about the amendment that is missing — the one that prevents unlimited debt spending by Congress? And what about future voters? What about those who are going to be burdened with our \$20+ trillion and growing national debt; whose policy options are going to be limited by the \$200 trillion in unfunded promises made on the basis of limitless federal borrowing; whose income and wealth will be seized by taxation compelled by decisions made long ago without their input?

The fiscal calamity we are delivering to our kids and future generations will deprive them of their right to self-governance just as assuredly as did the poll tax and age, race and gender-based voting restrictions deny civil rights to so many other groups. They face the same systemic flaw - a political system that impacts them in fundamental and permanent ways without their input; a political system in which citizens are forced to rely entirely on the good will of current voters to protect their interests. Given our nation's history of fixing systemic failures of self-governance, it is not justifiable to do nothing in the face of this injustice.

Our Constitution was designed from the perspective of embedding governance principles that could last for an eternity. The rights of children and future generations are properly relevant to its design. But there is no time machine to transport future voters to present day voting booths. No amendment can protect the right of self-governance for future voters in the same way that previously excluded groups have been protected. Fortunately, there is a proxy: the Balanced Budget Amendment at the heart of the Compact for a Balanced Budget.

By preventing unlimited spending, the Amendment would stop representatives of current voters from endlessly sending the debt bill for their policy choices to our kids and future generations. It would end unlimited taxation without representation. It would protect the policy options of future voters from being limited by a mortgage they never signed.

In short, the Compact's Balanced Budget Amendment would do nothing less than protect the right of our children and future generations to self-governance. That's why the "payload" of the Compact for a Balanced Budget should appeal to people of good will on both sides of the aisle.

For the first time, a balanced budget amendment has been

designed that overcomes the legitimate concerns that have been expressed about past amendment drafts over the past 40 years. As discussed in the following pages, the Compact's amendment cannot be cheated using any known method of budgetary gamesmanship. Equally important, the amendment avoids the inherent conflict of interest involved in giving Congress control over its borrowing capacity, in which most other draft amendments have authorized Congress to decide when to increase its borrowing capacity or otherwise to deviate from a balanced budget requirement. After all, a debt limit that is controlled by the debtor is no limit at all. The consequence of a debtor-controlled debt limit is that nothing is prioritized because everything can be funded with debt. This conflict of interest is eliminated by the Compact's amendment through repositioning the states to exercise oversight over any increase in an otherwise fixed constitutional debt limit. Under the Compact's amendment, Congress can only increase the specified constitutional debt limit with the rapid approval of a majority of the state legislatures. This ensures transparency and a broad national consensus must be secured before any additional borrowing capacity is obtained by Congress.

An interstate compact is used to advance and ratify this powerful, nonpartisan amendment because the Compact approach makes advancing constitutional amendments to the U.S. constitution from the states eminently plausible. It does this by consolidating into a single enactment joined by 38 states all of the legislative acts involved in originating a constitutional amendment from the states under Article V of the U.S. Constitution. It also consolidates all the stages of the amendment process that Congress controls into a single resolution passed once with simple majorities and no presidential presentment. This cuts the time and resources needed to originate a balanced budget amendment from the states dramatically. The Compact approach allows for the specification of the text of the amendment to be advanced by the limited convention it organizes under Article V of the U.S. Constitution – avoiding the very difficult sales pitch that “we have to organize a convention to find out what it might propose.”

## **A Balanced Budget Amendment is Desperately Needed**

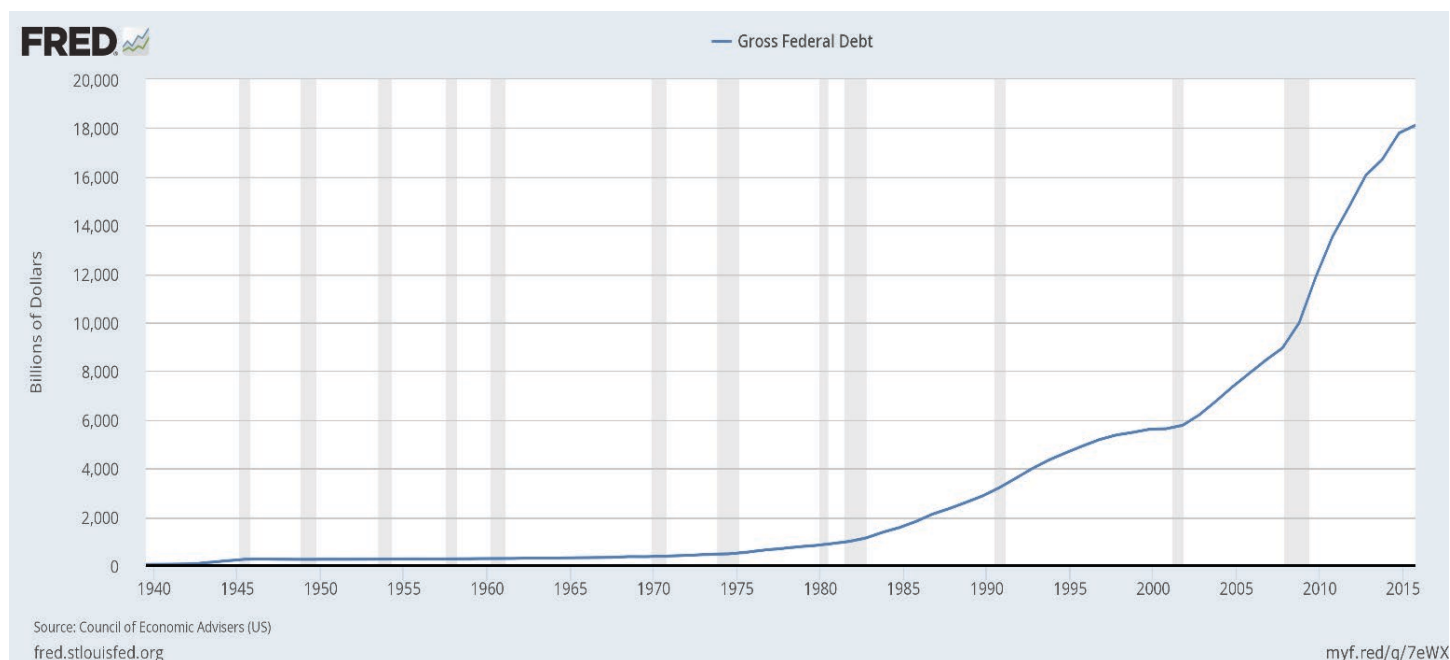
It is politically impossible to protect the right of self-governance of future generations when the Constitution as it currently exists entrusts the federal government with an unlimited credit card. The proof of this proposition is evident from all relevant data.

The national debt stands at \$20.2 trillion (\$20,181,984,148,961.74) as of September 22, 2017.<sup>2</sup> This is approximately:

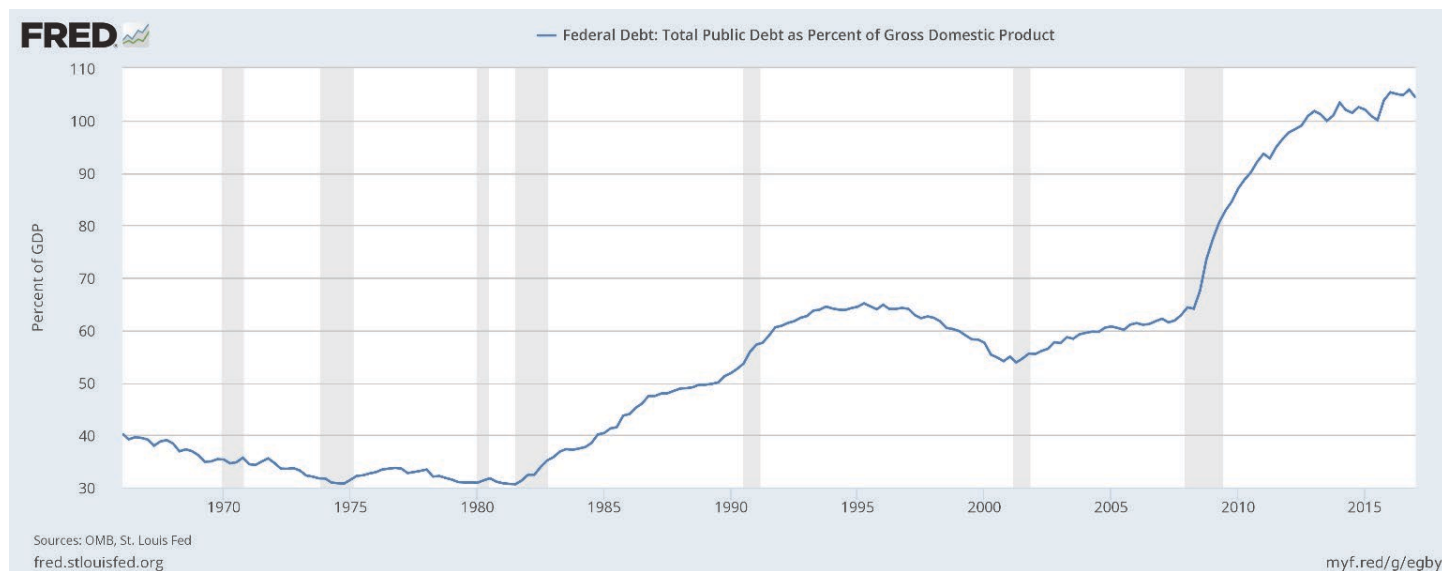
- \$61.5k for each person living in the U.S.;

The use of debt by the federal government has increased exponentially<sup>4</sup> over time.<sup>5</sup>

- \$159k for each household in the U.S.;
- 105% of the U.S. gross domestic product;
- 550% of annual federal revenues.<sup>3</sup>



As a result, we are at historic levels of debt relative to GDP.<sup>6</sup>

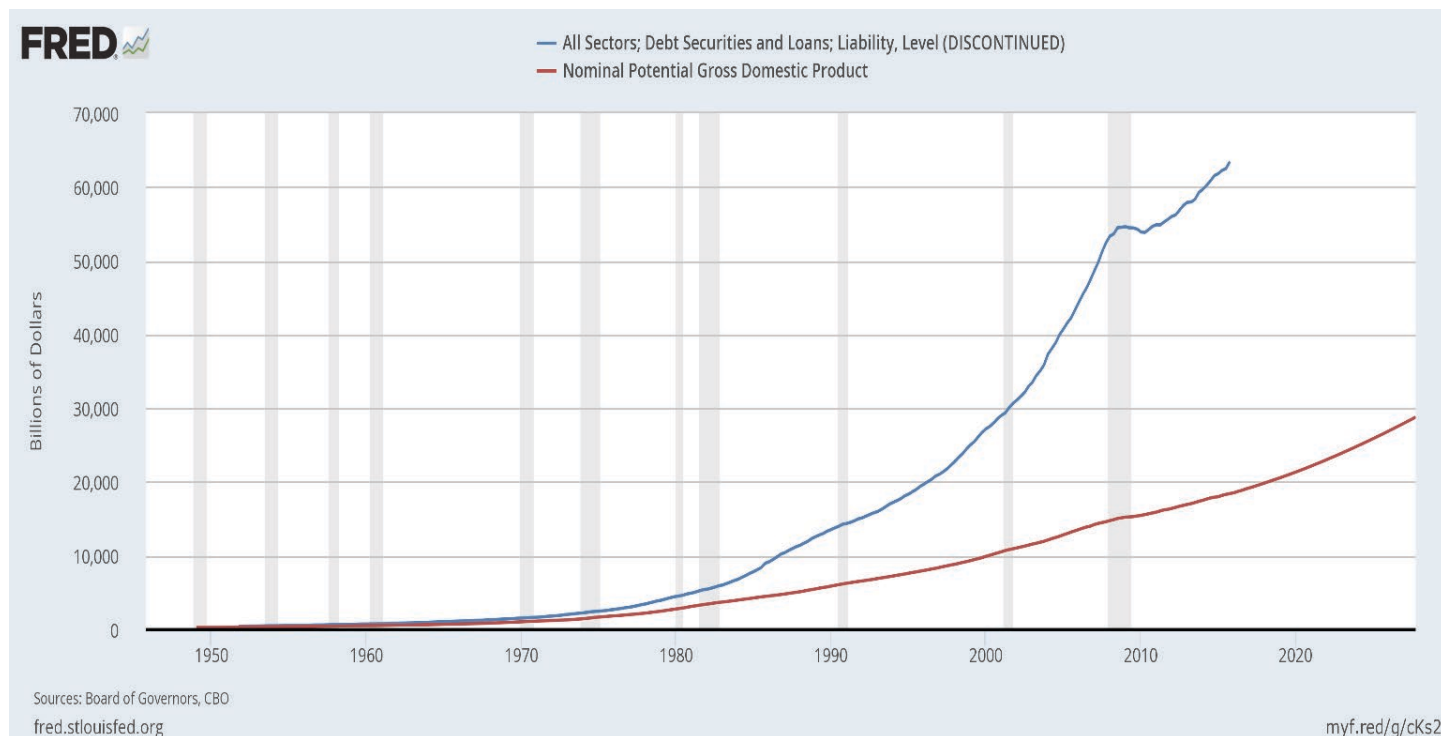


This is clear evidence of an underlying system failure. Specifically, the runaway national debt is the natural and inevitable result of empowering elected officials to borrow and spend money at little or no immediate cost to current voters. Such authority both creates an overwhelming political incentive to promise anything to get elected and the perverse ability to deliver on such promises—until the system crashes.

There is a real risk of a system crash because the capacity to engage in limitless debt spending has fueled what certainly ap-



pears to be unsustainable promises of unfunded liabilities, with a present value estimated in excess of \$200 trillion.<sup>7</sup> Indeed, debt levels in all sectors are out-of-control, far exceeding our gross domestic product, which strongly cautions the federal government to be preparing for the possibility of another major bubble bursting in the economy. Yet, the debt spending continues unabated.<sup>8</sup>



The national debt continues to grow despite the fact that the risks of excessive sovereign debt are well-understood. They include:

- reduced future national income and living standards;
- reductions in spending on government programs;
- higher marginal tax rates;
- higher inflation that increases future budget deficits and decreases the purchasing power of citizens' savings and income;
- restricted ability of policymakers to use fiscal policy to respond to unexpected challenges, such as economic downturns or international crises;
- losses for mutual funds, pension funds, insurance companies, banks, and other holders of federal debt; and
- increased probability of a fiscal crisis in which investors would lose confidence in the government's ability to manage its budget, and the government would be forced to pay much more to borrow money.<sup>9</sup>

In 2012 and 2013, respectively, the Journal of Economic Perspectives and the Political Economy Research Institute at the University of Massachusetts, Amherst, each published papers about the economic consequences of government debt.<sup>10</sup> They

agreed based on extensive research that countries maintaining national debts above 90% of GDP depress real annual economic growth by more than a third (in the 2012 paper) and as much as nearly half (in the 2013 paper) as compared to countries with debt under 90% of GDP. Because of the compounding of economic growth, this calculation translates to millions of lost jobs and trillions of dollars of lost wealth over time. Many economists believe the likely driving factor is the diversion of resources from a more efficient private sector to a less efficient public sector. The national debt today stands well above 90% of GDP. And yet, the fact that excessive debt kills jobs and economic growth has not stopped the exponential growth of the national debt.

In view of these tremendous risks, in the American political context, the federal government is a radical outlier when it comes to constitutional limitations on debt. At least 44 states have constitutional balanced budget requirements or debt limits. The fact that excessive debt denies future generations policy choices has not stopped the exponential growth of the national debt. No debtor, especially a sovereign debtor that responds to political incentives (the need to ingratiate current voters), can be trusted to behave responsibly over time with unilateral control over unlimited borrowing capacity. This is why the overwhelm-

ing majority of states have adopted constitutional amendments or provisions requiring a balanced budget amendment or limitations on the use of sovereign debt. It is why states typically do not even allow school districts to issue bonds without a popular referendum. Indeed, the lesson to learn from state and local experimentation with sovereign debt is that no parchment barrier short of a fundamental law that limits the use of sovereign debt can counteract the systemic tendency by elected officials to abuse a government's borrowing capacity.

### **The Compact's Balanced Budget Amendment**

It is reasonable to infer that most constitutional balanced budget requirements would, at a minimum, establish political high ground that favors advocates of more prudent fiscal policy. As we have seen in the states, the political high ground such requirements establish can have very positive effects by minimizing unsustainable spending policies.<sup>11</sup> For this reason, just about any balanced budget amendment proposal is likely to be a net positive for public policy when compared to the status quo. They are all "needed" in this sense. But we don't have to settle for just any amendment. The Compact approach ensures that the ultimate balanced budget amendment to the U.S. Constitution will have more teeth than simply serving to enable advocates of fiscal responsibility to seize the political high ground.

The balanced budget amendment advanced by the Compact has been over 5 years in the making. The Compact's amendment was designed from day one to address the valid concerns over potential impacts of a balanced budget amendment that have been the subject of testimony before this committee for the past 40 years. The Amendment recognizes that a balanced budget is not an end-in-itself. It is a measure of fiscal responsibility, the enforcement of which is meant to prevent the abuse of borrowing capacity. Advocates of balanced budget amendments recognize that unrepresented future generations are at great risk of bad debt policy decisions under a regime that allows limitless borrowing. The real goal of a balanced budget amendment, therefore, is to impose a constitutional limit on the use of sovereign debt in order to protect future generations from unsustainable debt-fueled spending that, at best, threatens taxation without representation and, at worst, third world economic devastation. The goal is not bookkeeping symmetry.

Perhaps the greatest concern about any Balanced Budget Amendment from a constitutional design perspective is enforcement. The reality is that state-level compliance with balanced budget requirements and debt limits has been partial and unreliable.

For example, the backbone of most state constitutional balanced budget or debt limit requirements consist of a fiscal year limit based on revenue and spending estimates. Like any economic forecast by a governmental body, those estimates are subject to substantial error and political manipulation. The fairly routine discovery of the inaccuracy of budget projections in the states, in turn, creates significant political and legal pressure to find ways to evade constitutional balanced budget or debt limit requirements.

Such pressure is often accommodated by members of the state judiciary in decisions that interpret key terms used in state constitutional balanced budget requirements and debt limits, such as the definition of debt itself, to exclude from any constitutional limitation: (a) the short-term nonpayment of obligations, (b) the issuance of special fund debt, (c) so-called moral obligation no-recourse bonding (which still has an implicit guarantee), and (d) the incurrence of liabilities.

Over the years, these judicial decisions have enabled state governments or their special funds, instrumentalities and political subdivisions to engage in as much borrowing as the political and financial market will bear through: (a) delaying payment of obligations into the next fiscal year through budget "rollovers," (b) the sale of state assets through sale-lease-back schemes, (c) the "floating" of warrants or outright issuance of IOUs, (d) the diversion of receipts meant for pension or other programs involving incurred liabilities or quasi-trust fund obligations; and (e) the creation of special purpose instrumentalities to handle borrowing for what would otherwise be debt-limited general fund expenditures.

There is every reason to believe the federal government itself would face similar compliance problems should it adopt a constitutional balanced budget or debt limit requirement that did not compensate for these evasion tactics. In fact, the federal government's constitutional authority to coin money and its close relationship to the fiat money Federal Reserve banking system creates an additional evasion risk foretold by reports of officials in the previous Obama Administration proposing the minting of a trillion dollar coin to repay the federal debt. Unlike in the states, it would be possible (with a few statutory tweaks) for the federal government to simply coin the money it needs to balance the budget, or engage in other monetary policy manipulations with similar effect. A well-designed federal constitutional balanced budget amendment or debt limit requirement should counteract these possibilities.

As discussed in more detail below, the Compact's amend-





ment has been designed to deter the foregoing evasion tactics, which threaten the efficacy of most other amendment proposals.<sup>12</sup> Its core is a “pay-as-you-go” spending limit coupled to a line of credit in a specific amount. Spending is limited to tax cash flow or unencumbered cash flow (such as proceeds from mineral rights sales) plus whatever borrowing capacity is left in the line of credit. Unauthorized borrowing is deemed “void,” which will deter bond markets from participation in the issuance or purchase of illegal debt (if any should be issued). Flexibility is provided by an initial borrowing cushion of 5% above the outstanding debt on ratification, a referendum process whereby a simple majority of state legislatures must approve additional borrowing capacity in 60 days, and an impoundment process whereby spending must

be curtailed and reprioritized when 98% of available borrowing capacity is utilized. To minimize the risk of overshooting revenue increases, the amendment imposes a default rule of requiring two-thirds of each House of Congress to pass any new or increased income or sales tax, but it expressly or implicitly excepts from this default rule: 1) revenue increases from a new consumption tax that completely replaces the income tax; 2) revenue increases from closing tax loopholes; and 3) revenue increases from imposts and duties. The tax limit is designed to channel any revenue increase to the areas where it will do the least harm—i.e., with greater reliance on consumption taxes or flatter taxation. The actual text of the Compact’s balanced budget amendment is presented below.

## THE BALANCED BUDGET AMENDMENT

**Section 1.** Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

**Section 2.** Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

**Section 3.** From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

**Section 4.** Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

**Section 5.** No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

**Section 6.** For purposes of this article, “debt” means any obligation backed by the full faith and credit of the government of the United States; “outstanding debt” means all debt held in any account and by any entity at a given point in time; “authorized debt” means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; “total outlays of the government of the United States” means all expenditures of the government of the United States from any source; “total receipts of the government of the United States” means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; “impoundment” means a proposal not to spend all or part of a sum of money appropriated by Congress; and “general revenue tax” means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

**Section 7.** This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement.

This language codifies a five-point plan for fixing the national debt.

First, the amendment ensures the federal government cannot spend more than available cash from taxes (and proceeds not originating from the incurrence of debt and liabilities), with the sole exception of borrowing under a fixed debt limit.<sup>13</sup> Section 1 of the proposed amendment states, “Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.” “Total outlays” is expressly defined as “total expenditures.”

Second, the amendment imposes a limit on the amount of federal debt.<sup>14</sup> Section 2 of the proposed amendment states, in relevant part, “Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105

balances the President’s ability to abuse his impoundment power by empowering simple majorities of Congress to override impoundments within 30 days without having to repeal the underlying appropriations (which is currently the only way Congress can respond to abusive presidential impoundments short of litigation). Specifically, once the President puts proposed impoundments on the table, Section 4 provides, “Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective.”<sup>17</sup>

Fourth, if new revenue streams are needed to avoid borrowing beyond the debt limit, the amendment would ensure all possible spending cuts are considered first. It does this by requiring abusive tax measures (new or increased sales or income taxes) to secure supermajority approval from each house of Congress.<sup>18</sup> It reserves the current simple majority

By requiring spending impoundments when 98 percent of the debt limit is reached, the proposed amendment would ensure spending is reduced long before borrowing reaches its debt limit, preventing any default on obligations.

percent of the outstanding debt on the effective date of this article.” In other words, assuming \$20 trillion of outstanding debt at the time of ratification, the federal government’s line of credit will be fixed initially at \$21 trillion. The additional \$1 trillion borrowing cushion would provide approximately 18 to 24 months of borrowing capacity based on current annual deficit rates (\$500 to \$650 billion per year). This cushion would give Congress a transition period to adjust to debt scarcity and to develop and plan for the necessary debt increase request that must be made to the state legislatures.<sup>15</sup>

Third, by requiring spending impoundments when 98 percent of the debt limit is reached, the proposed amendment would ensure spending is reduced long before borrowing reaches its debt limit, preventing any default on obligations.<sup>16</sup> Section 4 of the proposed amendment provides, in relevant part, “Whenever the outstanding debt exceeds 98 percent of the debt limit ... the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt.” It also checks and

rule for new or increased taxes only for completely replacing the income tax with a non-VAT sales tax (“fair tax” reform), repealing existing taxation loopholes (“flat tax” reform), and increasing tariffs (the Constitution’s original primary source of federal revenues). Any push for new revenue through these narrow channels would generate special-interest push-back, strongly incentivizing spending cuts before taxes are raised—but reasonably keeping the opportunity for targeted simple-majority revenue increases as an option.

Fifth, if borrowing beyond the debt limit proved truly necessary, the proposed amendment eliminates the conflict of interest involved in Congress having the power to increase its credit unilaterally. Instead, the amendment would give the states and the people the power to impose outside oversight by requiring a majority of state legislatures to approve any increase in the federal debt limit within 60 days of a congressional proposal of a single-subject measure to that effect.<sup>19</sup> Specifically, Section 3 provides, “From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly



refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval.” Further, “If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.”

It is important to underscore that the proposed amendment does not include any emergency spending or borrowing loopholes because of the flexibility made possible through the built-in line of credit. Once the Compact’s balanced budget amendment is in place, all Congress would need to do is make sure to pay down its debt during good times, and it would enjoy a huge and continuous line of credit that could cover any war or emergency. If additional borrowing beyond the initial debt limit were somehow truly necessary, there would be plenty of time for Congress to ask the states to approve an increase in the debt limit. Current tax cash flow is adequate to allow for dramatic increases in discrete spending priorities; by redirecting available funds, the President or Congress could double or even triple current military expenditures without additional borrowing. A sudden demand for emergency expenditures thus could be handled through the temporary reallocation of existing cash flows while a longer-term borrowing proposal is submitted for consideration by a majority of state legislatures. If Congress ultimately could not persuade 26 state legislatures to approve such additional borrowing, that should be reason enough to stop the proposed spending.

The basic reason for state oversight is that we must strike at the root of our national debt problem by ensuring that the federal government debtor is not free to write itself blank checks with a line of credit it alone determines. Assigning that intervention responsibility to the states is consistent with the Constitution’s original design, which gave the states control over the U.S. Senate. Moreover, securing approval from a majority of state legislatures for new borrowing above the Amendment’s initial debt limit would be anticipated in advance by both the state legislatures and Congress. The Amendment authorizes states to establish by state law the specific process by which their referendum authority is exer-

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cised. We can expect that the states will use that authority to enjoy their restored oversight role in national policy making; and that means that states can be expected to establish procedures for rapidly responding to a request for more borrowing capacity in a timely manner. The states will have plenty of time to develop those procedures because the Amendment will not be advanced and ratified overnight, and because its debt limit allows for a cushion of one to two years of additional borrowing capacity at current deficit spending rates. And Congress likewise can be expected to time their requests to coincide with the annual state legislative sessions that occur in every year between January and May in 46 states in even years and 50 states in odd years,

Taken together, the Compact’s Amendment imposes a cash-flow-based “pay-as-you-go” spending limit coupled to a debt limit which cannot not be circumvented by inaccurate budget projections or delays in payment of amounts due (“rollovers”). If fiscal gaming tactics – such as no-recourse borrowing, trust fund raiding, sale-leaseback schemes, and money printing – were attempted, the resulting proceeds would not count as receipts affecting the expenditure limits, and thus could not support spending in excess of the expenditure limit, neutralizing any incentive to engage in such gaming tactics. Likewise, moral obligation or non-recourse borrowing could not supply additional funds for spending beyond the constitutional limit because the definition of “debt” in Section 6 of the proposed amendment limits approved borrowing to proceeds from full faith and credit obligations.<sup>20</sup> Finally, the definition of “total receipts” in Section 6 of the proposed amendment to which “total expenditures” are limited excludes “proceeds from [the federal government’s] incurrence of debt or any type of liability.”



This ensures the pay-as-you-go spending limit in Section 1 cannot be increased by raiding trust funds, proceeds from sale-leaseback schemes, or even direct deposits into the U.S. Treasury of \$1 trillion coins; these actions would constitute excluded “proceeds from [the federal government’s] issuance or incurrence of debt or any type of liability.”

Apart from enforcement advantages, there are a number of benefits and features contained in the Compact’s Amendment that have never appeared in other BBA proposals. These key features include

- Actual cash flows, not budget figures, are the key drivers of the amendment

- “Balance” is determined by actual cash flows at all times, as opposed to being calculated annually

- A constitutional debt limit is established for the first time

- The new debt limit incorporates a line of credit that

- prove a request for more borrowing capacity)

- Strong incentives exist to achieve and maintain a balanced budget but deficits are permitted as long as borrowing stays within this constitutional debt limit

- An explicit impoundment mechanism is provided to avoid current debates over the constitutionality of presidential impoundment, and to assure that the debt limit is not breached, but with Congress having the opportunity to override the President’s impoundment plan with simple majority approval of an impoundment plan of their own

- Bi-partisanship and plausibility of ratification by 38+ state legislatures are enhanced by the provision that allows for revenue increases to be considered when reducing reliance on borrowing, while encouraging tax reforms consisting of eliminating tax loopholes or transitioning to a consumption tax system.

The Compact’s Amendment provides for more borrowing capacity if a simple majority of Congress and a simple majority of state legislatures can be persuaded respectively to refer and approve an increase in the Amendment’s debt limit.

can be used by Congress to fund wars, military conflicts, national emergencies, business cycle downturns, trust fund obligations, and cash flow peaks and valleys

- — The line of credit can be paid down in good times to provide the necessary rainy-day funds for new wars, military conflicts, national emergencies, business cycle downturns, trust fund obligations, and cash flow peaks and valleys that can be anticipated to occur in the future

- — The new debt limit can be increased in the future with the concurrence of a majority of the state legislatures

- — The constitutional debt limit is denominated in nominal terms, like the current statutory debt limit, and, therefore, the economic impact of federal borrowing will diminish over time relative to the overall economy, as the economy grows, trending towards the functional equivalent of a strict balanced budget requirement over time (unless the states ap-

### State Oversight is Key to Any Debt Limit Flexibility

As previously discussed, the Compact’s Amendment provides for more borrowing capacity if a simple majority of Congress and a simple majority of state legislatures can be persuaded respectively to refer and approve an increase in the Amendment’s debt limit. This state referendum process could very well be deemed the “war” or “emergency” exception to the Amendment’s debt limit. But the interpretation of the exception is wisely not placed in Washington’s sole hands.

The Amendment would eventually become useless if it included any exception that Congress unilaterally applied. Even if Congress regained its fiscal composure for a few years with the “right” people in charge, the structural flaw that originally caused our national debt problem would remain; namely, allowing the debtor to have the unilateral power to write its own credit limit. Faced with the ability to spend with the costs shifted to future non-voting generations, we can reasonably predict that Congress would eventually yield



to the pressure placed on them by special interests to invoke any debt limit exception. For example, if the Amendment's restrictions on borrowing capacity did not apply during declared wars or emergencies, Congress would not even need to officially declare micro-wars and mini-emergencies (although that would be possible); insiders could simply reference any of the approximate 53 states of emergency that have been declared by previous Presidents that are still in effect today and instantly Washington would again be able to borrow without limit or outside oversight.<sup>21</sup> Very soon the federal government would be back in the same position of near-bankruptcy in which we find it today. An amendment that retains Washington's unilateral power to engage in unlimited debt spending in any form is designed to fail. But that doesn't mean there should not be flexibility for emergency or war borrowing. The Compact's Amendment already allows for flexibility to borrow for wars and emergencies—as much flexibility as is consistent with fiscal responsibility.

Given the current level of debt, before undertaking any war that requires massive new borrowing, Washington should ensure that it has the backing of the nation, not just the denizens of Washington. And if we need to undertake massive new borrowing for an emergency, Washington should ensure that a national consensus stands behind that purpose, especially when emergency spending tends to benefit only certain regions, communities, and special interests directly. By requiring state oversight and approval of any increase in a constitutional debt limit, the Amendment ensures that this exact consensus will happen. Requiring Washington to secure a consensus from the representative bodies that are closest to the people is nothing more than what a wise states-man would do.

### Plausibility of Cross-Partisan Support in 38 States

Any constitutional amendment, however originated, ultimately requires ratification by 38 states. Significantly, Compact's amendment is the **only** Balanced Budget Amendment which any state, let alone five states, have agreed to ratify in any respect, let alone in a solemn binding interstate compact. It has commanded the assent of the Compact's member states, in part, because it is carefully designed to instill fiscal responsibility and restraint on the part of the U.S. Congress without partisan advantage.

It is entirely plausible that at least 33 more states will join the Compact. According to McLaughlin & Associates:<sup>22</sup>

Given the current level of debt, before undertaking any war that requires massive new borrowing, Washington should ensure that it has the backing of the nation, not just the denizens of Washington.

- Informed popular support for a compact to advance constitutional amendments exceeds opposition by more than 2 to 1.

- 61% of Americans agree that a majority of state legislatures should be required to approve any increase in the federal debt.

- 71% of Americans agree that Congress should reduce or restrain spending before raising taxes.

- 86% of Americans agree that Congress should be required to balance its budget.

These results are confirmed by more recent state-by-state polling results obtained by West-Third Group:

- 58% of Michigan voters<sup>23</sup> overall support the Compact for a Balanced Budget, and 72% of Michigan voters overall feel more confident about the amendment process using the Compact approach to Article V. The strength of support swamps opposition. No more than 20% of Michigan voters overall oppose any of the Compact's policy elements.

- 57% of Ohio voters<sup>24</sup> overall support the Compact for a Balanced Budget, and 67% of Ohio voters overall feel more confident about the amendment process using the Compact approach to Article V. No more than 25% of Ohio voters overall oppose any of the Compact's policy elements.

- 59% of North Carolina voters<sup>25</sup> overall support the Compact for a Balanced Budget, and 70% of North Carolina voters overall feel more confident about the amendment process using the Compact approach to Article V. No more than 21% of North Carolina voters overall oppose any of the Compact's policy elements.

- 67% of Alabama voters<sup>26</sup> overall support the Compact for a Balanced Budget, and 72% of Alabama voters overall feel more confident about the amendment process using the

Compact approach to Article V. No more than 26% of Alabama voters overall oppose any of the Compact's policy elements.

■ 68% of Texas voters<sup>27</sup> overall support the Compact for a Balanced Budget, and 71% of Texas voters overall feel more confident about the amendment process using the Compact approach to Article V. No more than 21% of Texas voters

Among the various experts that have offered testimony, two individuals have been consistent in expressing their concerns. These two individuals are Robert Greenstein of the Center for Budget and Policy Priorities, and Alan Morrison of the George Washington University Law School. More recently, a group of economists and Nobel Laureates, including Alan Blinder of Princeton University, have also expressed concerns over the impacts and

Over the past 40 years, committees in both the House and Senate have conducted a number of hearings to address whether a BBA is necessary, how a BBA would be crafted, concerns over various provisions, and how the amendment would be enforced.

overall oppose any of the Compact's policy elements.

### **How the BBA Addresses the Concerns Expressed Before Congress in Prior Years**

Over the past 40 years, committees in both the House and Senate have conducted a number of hearings to address whether a BBA is necessary, how a BBA would be crafted, concerns over various provisions, and how the amendment would be enforced.

ramifications that are associated with BBAs in general. Copies of prior testimony from these witnesses are readily available on the House Judiciary Committee website and other well-known websites that store records of congressional testimony. We believe many of these concerns to be valid, and it is incumbent on those proposing BBAs to show how these concerns are addressed and mitigated. The mitigation strategies that have been developed for the Compact BBA are described on the following pages.



## Concerns Expressed by Robert Greenstein and the Center for Budget and Policy Priorities

- Concern:** Because deficits are not allowed, the impact of automatic stabilizers are not allowed to occur
- Mitigation:** CFA BBA Mitigation - deficits are allowed and stabilizers remain in play to the extent that spending stays within the specified constitutional debt limit; there is also flexibility to increase that constitutional debt limit by approval of a majority of state legislatures.
- Concern:** Folly of trying to require “balance” every year based on estimates
- Mitigation:** Cash flow nature of the amendment eliminates the need to rely on balance calculations to enforce the amendment.
- Concern:** Effects on banking system and loan guarantees, Social Security, military/civil retirement and other trust funds
- Mitigation:** Built-in line of credit authorized by the constitutional debt limit allows trust fund and other obligations to be repaid even in deficit situations. Additionally, the risk of trust fund raiding to support additional spending is eliminated because the amendment limits spending to authorized credit, tax cash flow, and cash sources that are not proceeds from the incurrence of debt or liabilities.
- Concern:** Problems with GDP limitations
- Mitigation:** GDP is not a factor in the CFA BBA - if GDP limitations are desired, they should be by overlay of legislation, not by constitutional amendment.
- Concern:** Need to stabilize debt
- Mitigation:** That is the overriding premises in the CFA BBA – to stabilize debt in a way that forces prioritization of expenditures in a responsible manner.

## Concerns Expressed by Alan Morrison Relating to Judicial Review

- Concern:** Calculation and timing of budgetary items could lead to disputes requiring judicial review
- Mitigation:** The CFA BBA is based on actual cash flows and not budgetary figures or estimates. You will not find any of the following words in the CFA BBA: *Balance, Balanced, Budget, Targets, Fiscal Year, Assumptions, Estimates, Annual Budget, Appropriations*.
- Concern:** Judicial enforcement mechanisms are not necessary to assure compliance
- Mitigation:** Three serious institutions play an important role in outside enforcement of the CFA BBA – the executive branch (through impoundment authority), state legislatures (through state approval of increases in the debt limit), and the bond markets (because of the explicit designation of unauthorized debt as “void” which will render questionable debt issuances unmarketable).
- Concern:** An amendment with no teeth will invite judicial review
- Mitigation:** The above three institutions have plenty of teeth to take a bite out of efforts to evade enforcement.
- Concern:** Who enforces the amendment – the President, Congress, outside institutions?
- Mitigation:** It is a combination of the three: 1) enforcement begins with the President with the impoundment provision, 2) Congress has a check on the Presidential impoundment plan if they so choose, 3) the state legislatures control future increases in the debt limit, and 4) the bond markets assure that new debt is issued in compliance with the amendment.



- Concern:** Lack of standing to sue
- Mitigation:** The reluctance of bond markets to purchase void bonds will be the primary enforcement mechanism to deter evasion of the amendment, and it will avoid the need for litigation. If bond markets are bypassed through QE type transactions, then the breach of the debt limit will be the key issue, and the state legislatures will have standing to sue if the debt limit is breached in violation of the amendment.
- Concern:** Ripeness of the time to sue
- Mitigation:** Ripeness would occur when the debt limit is actually breached, and state legislatures will likely have standing to sue if the debt limit is breached in violation of the amendment.
- Concern:** How the courts will define balance and what they will do to correct in imbalance
- Mitigation:** The “Balance” requirement is written as a spending limit; i.e. the federal government cannot spend in excess of authorized credit, tax-sourced cash, and cash which is not proceeds of the incurrence of debt or liabilities. There is no textual hook for courts to enforce that would require intervention into budgeting. At worst, courts would only have the power to prohibit spending of unauthorized sources of cash, such as illegally issued bonds. This is not the sort of legal inquiry that would require the judiciary to assume any traditionally legislative role and is analogous to the role of courts in municipal bond authorization litigation.
- Concern:** Differences between budget figures and actual figures will cause disputes
- Mitigation:** Budget figures are not used, so any difference between budget vs actual becomes irrelevant.
- Concern:** The timing of receipts and disbursements will cause disputes
- Mitigation:** The timing issued is resolved by availability of the line of credit in the amendment.

### Concerns Expressed by Alan Blinder and Others Relating to Economic Policy Implications

- Concern:** BBA would mandate perverse actions in the face of recessions
- Mitigation:** The CFA BBA anticipates recessions and allows for deficit financing to occur in such times through the use of the revolving line of credit implicit in the constitutional debt limit. The built-in economic stabilizers would be allowed to continue.<sup>28</sup>
- Concern:** A BBA would prevent borrowing to finance long-term expenditures and infrastructure
- Mitigation:** The CFA BBA contemplates borrowing for long-term expenditures and infrastructure and provides a line of credit for such investments to occur.
- Concern:** A BBA would invite budgetary gimmicks
- Mitigation:** The BBA is based on actual cash flows and debt that is subject to the full faith and credit of the U.S. governments – it would be very hard to game an amendment of this nature with accounting and definitional gimmicks.
- Concern:** Most BBAs have escape hatches during times of emergencies
- Mitigation:** Apart from state legislative approval of an increase in a constitutional debt limit, there are no escape hatches in the CFA BBA – the Congress is expected to anticipate that unforeseen wars, military conflicts, business cycle downturns, and other national emergencies will occur, and Congress is provided with a sufficient line of credit to fund such events.

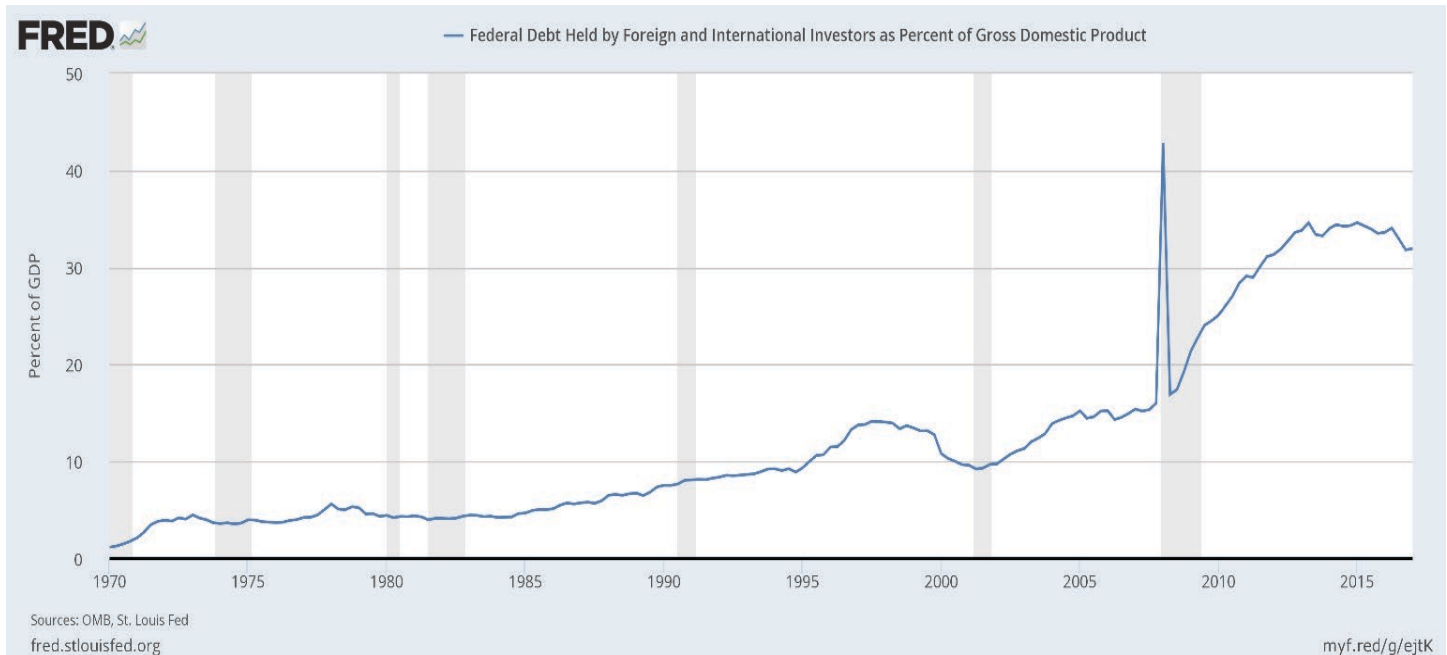


- Concern:** Most BBAs require supermajorities in each chamber of Congress to adopt an unbalanced budget or to raise the debt limit
- Mitigation:** Not true with the CFA BBA – deficits are anticipated and allowed, and a simple majority of the state legislatures is all that is required to increase the debt limit.
- Concern:** An overall spending cap in most BBAs would limit Congress’ ability to fight recessions
- Mitigation:** There is no overall spending cap in the CFA BBA – recessions are anticipated and the line of credit allows funding of the anticipated expenditures without necessarily requiring reductions elsewhere in the budget.
- Concern:** There is no need for a BBA – let the President and Congress make fiscal policies in response to national needs and priorities
- Mitigation:** We agree that forcing expenditures to equal revenues on an annual basis without factoring in debt is not wise – no business operates in such a fashion. However, no business has access to unlimited debt as is the case in the current Congress. Unlimited debt means that there are no priorities – everything can be funded by debt and the repayment dilemma is left to future generations that are currently unrepresented, because after all, debt is taxes if the intent is to ever repay the debt.
- Concern:** It is dangerous to try and balance the budget too quickly in today’s economy
- Mitigation:** We agree that a glidepath to balance is necessary, and the 10-year path to balance in the recent Trump administration budget proposal seems prudent and reasonable.

### General Concerns

- Concern:** Why not just enforce the Constitution instead of amending it?
- Answer:** The Constitution as it currently exists allows for limitless borrowing. The claim that the enumerated powers, properly understood, supply those limits is not true. We could easily have a massive, unsustainable, overtaxing, over-borrowing, and inefficient federal government if it were doing nothing but what the enumerated powers authorize. Of course, many people believe the federal government is doing much more than what the Founders thought the enumerated powers authorized. But that outcome is politically inevitable when elected officials have a constitutionally-authorized unlimited credit card with which they can promise anything to get elected at little or no immediate cost to current voters. The rules of the political game must change to limit borrowing capacity to ensure Constitutional limitations are respected, as well as to assure fiscally responsible outcomes and intergenerational justice.
- Concern:** Doesn’t national security require an express war or emergency exception to the amendment?
- Answer:** No. National security requires fiscal responsibility. Fiscal responsibility can only exist sustainably if the federal government has limited borrowing capacity—with any flexibility subject to outside oversight. Moreover, the redirection of available tax cash flow to military spending (or any other emergency) will give Congress and the states plenty of time to propose and approve respectively any increase in the Amendment’s debt limit that truly commanded a national consensus. Further, the Amendment allows for a line of credit for borrowing by Congress—which is initially fixed at 105% of the outstanding debt on ratification. If the amendment were ratified in the near future, that means as much as \$21 trillion in borrowing capacity (or more) would be available under the Amendment. That would be six times as much borrowing capacity as annual tax revenue: think of it as like a home equity line of credit that was six times your income. This is plenty of borrowing capacity for a fiscally responsible federal government to manage all of its affairs, including the need to finance declared wars and emergency actions. All the federal government needs to do is get into the habit of paying down the debt during good times, and conserve

adequate borrowing capacity for bad times. Once borrowing reaches 98% of the debt limit, the President can use his impoundment power under the Amendment to redirect spending to the military, subject to Congressional override by simple majority. In contrast, preserving the current system of unlimited debt spending, in which we must borrow from our actual and potential adversaries to keep the ship of state afloat, is a terrible threat to our national security. To underscore this point, below is a chart of foreign investment in federal debt, of which China represents approximately 20% of the total foreign investment<sup>29</sup>.



### The Interaction between the CFA BBA and the FY 2018 House Budget Proposal

The interaction of the CFA BBA and the House Proposal (H.Con.Res. 71) is straight-forward. A one-page analysis of the House budget projection that shows the interaction with the CFA Balanced Budget Amendment follows this section. The analysis shows that the House plan achieves balance in FY 2027, with forecasted debt peaking in FY 2026 at \$23.7 trillion. Anticipating the peak debt in the analysis, Congress should immediately raise the debt limit to \$23 trillion. Then, if the BBA were to be ratified in 2018, a new constitutional debt limit of \$24.2 trillion would be established on the date of ratification. That limit would provide a minimum \$500 billion rainy-day reserve at all times. Then, in FY 2027, the outstanding debt begins to be paid down as Congress further builds its rainy-day fund to handle anticipated wars, national emergencies, and economic downturns that may not yet be on the horizon.

# H.Con.Res. 71 - House Budget Committee Resolution Interaction of the Compact for a Balanced Budget with the Unified FY 2018 Budget and 10-Year Forecast

Description	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	10 Year Totals
<b>Revenues</b>											
Revenues tracked in Congressional budget - "on-budget"	2,670	2,767	2,870	2,964	3,078	3,195	3,326	3,476	3,643	3,811	
Revenues not tracked in Congressional budget - "off-budget"	872	901	927	956	989	1,024	1,061	1,099	1,142	1,182	
Macroeconomic fiscal impact	10	20	30	70	100	150	210	250	300	360	
<b>Total revenues</b>	<b>3,552</b>	<b>3,688</b>	<b>3,827</b>	<b>3,990</b>	<b>4,167</b>	<b>4,369</b>	<b>4,597</b>	<b>4,825</b>	<b>5,085</b>	<b>5,353</b>	<b>43,453</b>
<b>Outlays</b>											
<b>Mandatory</b>											
Income security	477	455	465	475	489	468	471	481	497	505	
Social security	39	43	46	50	53	57	62	66	71	75	
Medicare	594	653	692	739	826	846	850	916	988	1,053	
Health	551	570	542	518	534	550	569	591	614	627	
Veteran's benefits	178	190	194	198	213	210	208	226	233	242	
Other outlays not tracked in Congressional budget*	859	919	981	1,048	1,119	1,195	1,274	1,357	1,445	1,538	
<b>Total</b>	<b>2,698</b>	<b>2,830</b>	<b>2,920</b>	<b>3,028</b>	<b>3,234</b>	<b>3,326</b>	<b>3,434</b>	<b>3,637</b>	<b>3,848</b>	<b>4,040</b>	<b>32,995</b>
<b>Discretionary</b>											
Defense	608	637	667	699	718	720	721	730	734	738	
International affairs	44	41	40	39	38	38	38	39	39	40	
General science	30	29	29	30	30	31	31	32	33	33	
Energy	3	2	(12)	1	0	0	(1)	(1)	1	1	
Natural resources	36	34	34	33	34	34	34	35	36	36	
Agriculture	23	20	19	18	17	18	18	19	20	20	
Commerce and housing credit	(20)	(16)	(18)	(22)	(22)	(23)	(22)	(23)	(24)	(25)	
Transportation	92	91	91	78	65	69	70	69	69	70	
Community development	19	17	12	10	6	5	5	5	5	5	
Education	89	81	81	82	84	86	88	89	89	90	
Justice	61	59	60	61	62	63	65	66	70	70	
General government	23	23	23	23	23	26	26	26	26	26	
Overseas contingency	46	51	43	32	19	14	12	4	1	0	
Allowances and adjustments	(104)	(124)	(176)	(232)	(280)	(310)	(337)	(356)	(393)	(424)	
<b>Total</b>	<b>950</b>	<b>945</b>	<b>893</b>	<b>852</b>	<b>794</b>	<b>771</b>	<b>748</b>	<b>734</b>	<b>706</b>	<b>680</b>	
<b>Net interest</b>	<b>377</b>	<b>409</b>	<b>451</b>	<b>494</b>	<b>532</b>	<b>565</b>	<b>589</b>	<b>607</b>	<b>621</b>	<b>624</b>	
<b>Total outlays</b>	<b>4,025</b>	<b>4,184</b>	<b>4,264</b>	<b>4,374</b>	<b>4,560</b>	<b>4,662</b>	<b>4,771</b>	<b>4,978</b>	<b>5,175</b>	<b>5,344</b>	<b>46,337</b>
<b>Annual (deficit)/surplus</b>	<b>(473)</b>	<b>(496)</b>	<b>(437)</b>	<b>(384)</b>	<b>(393)</b>	<b>(293)</b>	<b>(174)</b>	<b>(153)</b>	<b>(90)</b>	<b>9</b>	<b>(2,884)</b>
* Social Security Trust Fund, Post Office, Fannie Mae and Freddie Mac											
Debt held by public at EOY	15,400	15,972	16,477	16,921	17,372	17,720	17,949	18,156	18,299	18,346	
Debt held by intragovernment trust funds at EOY	5,660	5,749	5,786	5,797	5,748	5,695	5,628	5,510	5,402	5,139	
<b>Gross federal debt at EOY</b>	<b>21,060</b>	<b>21,721</b>	<b>22,263</b>	<b>22,718</b>	<b>23,120</b>	<b>23,415</b>	<b>23,577</b>	<b>23,666</b>	<b>23,701</b>	<b>23,485</b>	
<b>Recommended legislative debt limit</b>	<b>23,000</b>										
<b>Resulting CBB constitutional debt limit at 105%</b>	<b>24,200</b>	<b>24,200</b>	<b>24,200</b>	<b>24,200</b>	<b>24,200</b>	<b>24,200</b>	<b>24,200</b>	<b>24,200</b>	<b>24,200</b>	<b>24,200</b>	
<b>Available line of credit (constitutional debt limit - gross federal debt)</b>	<b>3,140</b>	<b>2,479</b>	<b>1,937</b>	<b>1,482</b>	<b>1,080</b>	<b>785</b>	<b>623</b>	<b>534</b>	<b>499</b>	<b>715</b>	

Balance!

Peak debt

## The preferred scenario if Congress proceeds with the plan:

1. Congress proceeds with plan outlined in the House Budget Resolution to balance the budget by FY 2027

2. Congress raises legislative debt limit to \$23 trillion in September of 2017

3. 38+ state legislatures join the Compact for a Balanced Budget by June 2018 and the required 24-hour convention is held in Dallas, TX in August, 2018

4. \$24.2 trillion constitutional debt limit is established when the convention proposes the CBB balanced budget amendment, which is then automatically ratified by the terms and provisions of the CBB

5. Congress continues with the plan to achieve balance by FY 2027

6. Congress pays down line of credit in good times to have funding for wars, national emergencies and business cycle downturns



## Conclusion

In order to be able to establish national priorities, there must be some limits on governmental spending. Access to unlimited debt will never result in fiscal responsibility – there is just too much pressure exerted on members of Congress by outside groups (and no countervailing pressure from future generations who are stuck with the bill). Reasonable limits must be placed on borrowing by the federal government and control of those limits must be by forces outside of Washington DC. It is imperative that the authors of any amendment to impose a balanced budget requirement on Congress be able to address and mitigate concerns that have been brought forth by recognized economists, Nobel Laureates, and legal scholars. The Balanced Budget Amendment contained the Compact for a Balance Budget was designed specifically to mitigate these concerns, and still provide the opportunity for the President and Congress to fund unforeseen, yet non-unexpected, wars, military conflicts, natural disasters, economic downturns, or recessions. And it does so while still maintaining the nation's commitment to the retirement trust funds and other key governmental functions. It is the state-of-the-art, game-changing BBA that both sides of the political spectrum can support.

As with anything in the field of constitutional law, there are disagreements over the Compact approach to Article V amendments. But the constitutionality of the Compact approach is vouched for by Judge Harold R. DeMoss II (retired-U.S. Court of Appeals, Fifth Circuit), Dr. John Eastman, PhD, JD (professor and former Dean, Chapman Law School), Ilya Shapiro, JD (Cato Institute Constitutional Expert), Dr. Kevin Gutzman, PhD, JD (Professor and past History Department Chair, Western Connecticut State University), and many other top constitutional scholars.<sup>30</sup> No one has brought litigation in any state to challenge the operations of the Compact for a Balanced Budget Commission or the viability of the Compact for a Balanced Budget. It is, therefore, time to move forward with the best vehicle for deliv-

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ering a desperately needed civil rights reform. Doing so only requires a fraction of the courage of the Founders and the leaders of past civil rights movements.



## (Endnotes)

1. Gratitude is expressed to Judge Harold R. DeMoss II, Drs. John Eastman, Kevin Gutzman and Byron Schlomach, Baker Spring, and Professor Charles Steele for their review and approval of the written testimony of Nicholas C. Dranias before the U.S. House Judiciary Committee on July 27, 2017 from which the majority of this policy report is sourced.

2. See “Debt to the Penny,” Treasury Direct, available at <https://www.treasurydirect.gov/NP/debt/current>

3. Dataset: “Monthly Population Estimates for the United States: April 1, 2010 to December 1, 2017.” U.S. Census Bureau, Population Division, December 2016; Dataset: “Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2016.” U.S. Census Bureau, November 2016; Dataset: “Table 1.1.5. Gross Domestic Product.” U.S. Department of Commerce, Bureau of Economic Analysis. Last revised June 29, 2017; Dataset: “Table 3.2. Federal Government Current Receipts and Expenditures.” U.S. Department of Commerce, Bureau of Economic Analysis. Last revised June 29, 2017. Hyperlinks to sources available at <http://www.justfacts.org>.

4. This is true even after adjusting for inflation—the use of debt has largely coincided with increases in the money supply, and increases in the money supply are the primary driver of inflation. Moreover, gross public debt is the correct measure of the national debt, not publicly-held debt, because the legal obligation to repay it is the same; and default on any of the national debt will likely roil bond markets and fiscal policy similarly.

5. Council of Economic Advisers (US), Gross Federal Debt [FYGFD], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/FYGFD>, July 23, 2017.

6. Federal Reserve Bank of St. Louis and U.S. Office of Management and Budget, Federal Debt: Total Public Debt as Percent of Gross Domestic Product [GFDEGDQ188S], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/GFDEGDQ188S>, July 24, 2017. Notably, it has been suggested that the foregoing chart adjusted by applicable interest rates looks less dire. See [https://fredblog.stlouisfed.org/2017/02/two-tales-of-federal-debt/?utm\\_source=series\\_page&utm\\_medium=related\\_content&utm\\_term=related\\_resources&utm\\_campaign=fredblog](https://fredblog.stlouisfed.org/2017/02/two-tales-of-federal-debt/?utm_source=series_page&utm_medium=related_content&utm_term=related_resources&utm_campaign=fredblog). But relying on historically (and QE-induced) low interest rates to suggest that our 100%+ debt to GDP level is sustainable is absurd. There is nowhere for interest rates to go but up. And when they do, the music will stop.

7. Lawrence Kotlikoff, 17 Nobel Laureates and 1200+ Economists Agree with Ben Carson re U.S. Fiscal Gap, *Forbes.com* (May 13, 2015), available at <https://www.forbes.com/sites/kotlikoff/2015/05/13/17-nobel-laureates-and-1200-economists-agree-with-ben-carson-re-u-s-fiscal-gap/#7f71f78f4d17>

8. Board of Governors of the Federal Reserve System (US), All Sectors; Debt Securities and Loans; Liability, Level (DISCONTINUED) [TCMDO], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/TCMDO>, July 24, 2017

9. Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, p.1; Report: “The Long-Term Budget Outlook.” Congressional Budget Office, June 2010 (Revised August 2010), p.xi; Paper: “Tempting Fate: The Federal Budget Outlook.” By Alan J. Auerbach and William G. Gale. Brookings Institution, June 30, 2011, p.16; Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, p.1; Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, p.1; Carmen M. Reinhart (University of Maryland) and Kenneth S. Rogoff (Harvard University), *This Time is Different: Eight Centuries of Financial Folly*, xxvii, 77, 175, 398, 400, (Princeton University Press, 2009); Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, p.7; Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, p.1; Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, p. 7; Report: “The Long-Term Budget Outlook.” Congressional Budget Office, June 2010 (Revised August 2010), pp. xi, 14; Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, pp. 4-5.

10. Public Debt Overhangs: Advanced-Economy Episodes Since 1800.” By Carmen M. Reinhart (University of Maryland), Kenneth S. Rogoff (Harvard University), and Vincent R. Reinhart (chief U.S. economist at Morgan Stanley). *Journal of Economic Perspectives*, Summer 2012. Pages 69–86; Working paper: “Does High Public Debt Consistently Stifle Economic Growth? A Critique of Reinhart and Rogoff.” By Thomas Hershdon, Michael Ash, and Robert Pollin. Political Economy Research Institute, April 15, 2013. Revised 4/22/13. Controversy has arisen regarding these findings, but they remain credible as per the assessment of the controversy available here: <http://www.justfactsdaily.com/do-large-national-debts-harm-economies/>

11. See Bohn, Henning, and Robert Inman. “Balanced Budget Rules and Public Deficits: Evidence from the U.S. States.” *Carnegie-Rochester Conference Series on Public Policy* 45 (1996): 13–76; Crain, Mark. *Volatile States: Institutions, Policy, and the Performance of American State Economies*. Ann Arbor, MI: University of Michigan Press, 2003; Crain, Mark, and James C. Miller III. “Budget Process and Spending Growth.” *William and Mary Law Review* 31, no. 4 (1990): 1021–46; Crain, Mark, and Nicole Crain. “Fiscal Consequences of Budget Baselines.” *Journal of Public Economics* 67, no. 3 (1998): 421–36; Knight, Brian. “Supermajority Voting Requirements for Tax Increases: Evidence from the States.” *Journal of Public Economics* 76, no. 1 (2000); Primo, David. *Rules and Restraint: Government Spending and the Design of Institutions*. Chicago, IL: University of Chicago Press, 2007.

12. See Nick Dranias, Introducing “Article V 2.0”: The Compact for a Balanced Budget, *Heartland Institute Policy Study* No. 134 (March 30, 2016), available at <https://www.heartland.org/publications-resources/publications/introducing-article-v-20-the-compact-for-a-balanced-budget>

13. Available at [https://www.congress.gov/bill/114th-congress/house-concurrent-resolution/26/text/section 202 \(section 1\)\)](https://www.congress.gov/bill/114th-congress/house-concurrent-resolution/26/text/section%202%20(section%201)).

14. *Ibid.* (section 2).



15. Alternatively, Congress, preparing for the impending ratification of the amendment, may sell enough bonds to set the initial debt limit high enough upon ratification to allow for a longer-term budget to be implemented. For instance, Congress could pass legislation requiring a return to balanced budgets in 10 years. Congress could add various measures to the proposed budget to make it credible and durable enough for the bonding market to absorb an otherwise large issuance of bonding to carry the entire plan into effect. By the time the amendment was ratified, the initial debt limit would be fixed at 105 percent of whatever bonding had been sold at that point, which would then lock-in the budget plan by constitutionally limiting borrowing capacity to the sum total of bonds previously issued to implement that plan plus a 5 percent cushion to allow for unforeseen contingencies.

16. Supra note 13 (section 202 (section 4)).

17. It is important to underscore that the foregoing provision does not increase presidential power. It regulates presidential power by requiring the President to use his existing impoundment power, under the threat of impeachment, when borrowing reaches 98 percent of a constitutional debt limit – as opposed to waiting until the midnight hour. Here's how it would work: Assuming the constitutional debt limit were \$21 trillion, this provision would be triggered when borrowing reached \$20.58 trillion, with about \$420 billion in available borrowing left under the debt limit. At current yearly deficits ranging between \$500 and \$650 billion, the president would be required to start designating spending delays approximately seven to ten months before reaching the constitutional debt limit. This provision would start a serious fiscal discussion with plenty of time in which to develop a plan to fix the national debt. With this proposed amendment in place, it would be easy to know who is responsible for any impoundment that is enforced. It will be either the president's impoundments or Congress's impoundments. And if neither the President nor Congress acts, spending will be limited to tax receipts as soon as the debt limit is reached, in effect resulting in an across-the-board sequester. The threat of an automatic sequester resulting from inaction would give the President a strong incentive to designate and enforce the required impoundments. Congress otherwise would be all too happy to shift the blame for a disorderly across-the-board sequester to the president by invoking the provision of Section 4 that provides, "The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor."

18. Supra note 13 (section 202 (section 5)).

19. Ibid. (section 3).

20. Ibid. (section 6).

21. See <https://www.usatoday.com/story/news/politics/2014/10/22/president-obama-states-of-emergency/16851775/>

22. Available at [http://docs.wixstatic.com/ugd/e48202\\_d2d89036b8934669b8dc6d37578b2719.pdf](http://docs.wixstatic.com/ugd/e48202_d2d89036b8934669b8dc6d37578b2719.pdf).

23. Available at [http://docs.wixstatic.com/ugd/e48202\\_71e9aee5ee1848678c41137d4f1192ec.pdf](http://docs.wixstatic.com/ugd/e48202_71e9aee5ee1848678c41137d4f1192ec.pdf)

24. Available at [http://docs.wixstatic.com/ugd/e48202\\_3cc6693d20094c25b268090db3ab5eec.pdf](http://docs.wixstatic.com/ugd/e48202_3cc6693d20094c25b268090db3ab5eec.pdf)

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26. Available at [http://docs.wixstatic.com/ugd/e48202\\_79cb551740a14162a4dcffc2b918cfd.pdf](http://docs.wixstatic.com/ugd/e48202_79cb551740a14162a4dcffc2b918cfd.pdf)

27. Available at [http://docs.wixstatic.com/ugd/e48202\\_f0f9f3b266c44a71b5e3575cf3fee4f0.pdf](http://docs.wixstatic.com/ugd/e48202_f0f9f3b266c44a71b5e3575cf3fee4f0.pdf)

28. Notably, traditional Keynesian fiscal policy calls for government deficits in downturns, but government surpluses in booms. In fact, Congress does not run countercyclical fiscal policy; downturns are excuses for increased spending, and so are upturns. The Compact's Amendment, if ratified, would actually make the countercyclical fiscal policy desired by Mr. Blinder more likely. But in fact, it is also important to note that many if not most economists dispute whether any good evidence exists that discretionary fiscal policy works well. There are lots of reasons for fiscal policy failure, not the least of which is that it necessarily involved diverting resources from the private sector to the government sector which is almost always less efficient. Most economists regard monetary policy as more powerful in affecting countercyclical economic change. The Compact's Amendment does not directly prevent the utilization of traditional monetary policy for this purpose; although it does deter monetization of the national debt (which is just a hidden form of default) and the nominally fixed amount of borrowing capacity would also create a stronger incentive than the status quo to preserve the value of the dollar.

29. Federal Reserve Bank of St. Louis and U.S. Office of Management and Budget, Federal Debt Held by Foreign and International Investors as Percent of Gross Domestic Product [HBFIGDQ188S], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/HBFIGDQ188S>, July 24, 2017. China's share is likely around twenty percent per dataset "Major Foreign Holders of Treasury Securities Holdings at End of Period (in billions of dollars)." U.S. Department of the Treasury, October 18, 2016.

30. Judge Harold R. DeMoss, Jr. (ret.), Nick Dranias, JD, Dr. John Eastman, JD, PhD, Dr. Kevin Gutzman, JD, PhD, Ilya Shapiro, JD, A Guidebook for Deploying Article V as the Founders Actually Intended: The Application & Convention Mode of Proposing Amendments, Compact for America Educ. Found. Policy Brief No. 7 (February 8, 2016), available at [http://docs.wixstatic.com/ugd/e48202\\_8ccea8ece20741ca82c0e2640b2aa2cd.pdf](http://docs.wixstatic.com/ugd/e48202_8ccea8ece20741ca82c0e2640b2aa2cd.pdf); Judge Harold R. DeMoss, Jr. (ret.), Nick Dranias, JD, Dr. John Eastman, JD, PhD, Dr. Kevin Gutzman, JD, PhD, Ilya Shapiro, JD, and Hon. Gregory Snowden, JD, Clearly Constitutional: The Article V Compact: A Vindication of the Principle of State Sovereignty Against Natelson's Attack, Compact for America Educ. Found. Policy Brief No. 11 (August 22, 2016), available at [http://docs.wixstatic.com/ugd/e48202\\_9b52a7f8ade7414fb04a6bde9449e2c5.pdf](http://docs.wixstatic.com/ugd/e48202_9b52a7f8ade7414fb04a6bde9449e2c5.pdf)



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