

Federal Budget – Fall 2023

Professor Timothy J. Muris

Thursday, 6:05 pm – 8:05 pm

We will study the Federal Budget in its many particulars, including the relevant constitutional and case law, statutory framework, institutional structure, and important policy components, such as discretionary spending, entitlements, and regulatory analysis. We will discuss the budget process as it evolves during the year, beginning with CBO's Baseline Reports, release of the President's Budget, development and passage of the Congressional Budget Resolution, the Appropriations Process, and (sometimes) Reconciliation.

Grades will be based upon a paper, due the last class period, **Thursday, November 16th**. I will circulate a list of topics, from which you can choose to write or we can mutually agree on the topic. We will have multiple individual meetings on your papers. I will circulate a sign-up sheet on September 14th, with individual meetings on your topics September 21st.

An outline, of at least 4-5 pages double spaced pages, will be due on October 4th via email: tmuris@gmu.edu. Individual meetings with me on the outlines will be on October 5th. I will circulate a sign-up sheet on September 28th.

We will use a variety of sources, including:

Attachment 1 (articles, cases, and DOJ opinions)

Attachment 2 (The Budget Puzzle, on reserve).

You should also regularly visit:

- <https://www.cbo.gov>
- <https://www.whitehouse.gov/omb>
- <http://crfb.org>
- <http://www.concordcoalition.org>

The blogs and government material cited above provide relevant introductory material, for example on the recently much discussed reconciliation process. A still useful book on the subject is Allen Schick, *The Federal Budget: Politics, Policy, Process* (2007)

We will begin with introductory class sessions and the Stith, Sidak, and Metzger articles, cited in Attachment 1.

We will also discuss John Cogan's recent book, "The High Cost of Good Intentions: A History of U.S. Federal Entitlement Programs" (Stanford U. Press 2017), also available on reserve.

Finally, we will use the basic CBO, OMB, and legislative tools on the budget as they develop during the budget process.

Learning Outcomes: The American Bar Association requires that this syllabus describe what the ABA calls "learning outcomes." For this course, the learning outcomes include one that has been designated by the faculty: "Students will exercise the professional skills expected of members of the legal profession." We will discuss the role of the federal budget in numerous scenarios that practicing attorneys may face.

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Stith, “Congress’ Power of the Purse,” 97 Yale L.J. 1343, (1988)

Sidak, “The President’s Power of the Purse,” 1989 Duke L.J. 1162 (1989)

Budget Process Law Annotated (1993 edition) (annotations by William G. Dauster)

Furman and Summers, Who’s Afraid of Budget Deficits, Foreign Affairs 82 (March/April 2019)

Metzger, Taking Appropriations Seriously, 121 Colum. L. Rev. 1075 (2021)

We will frequently discuss current events, especially as reflected in news outlets, such as The Wall Street Journal. For example, at the beginning of August, Fitch Ratings downgraded securities sold by the US government from AAA to AA+ (https://www.wsj.com/articles/fitch-downgrades-u-s-credit-rating-56c73b89?mod=Searchresults_pos2&page=1)

AG Civiletti-OLC Shutdown Memo (1980)

Government Operations in the Event of a Lapse in Appropriations, Letter from Walter Dellinger, August 16, 1995, 2 Op. O.L.C. at 323.

Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations. Letter from Benjamin Civiletti, January 16, 1981, 43 Op. Att’y.Gen. 293 (1981).

U.S. Const. Art. 1, Sec. 9 cl. 7

United States v. Butler, 297 U.S. 1 (1936).

United States v. Dickerson, 310 U.S. 554 (1940).

New York Airways, Inc. v. United States, 369 F.2d 743 (Court Claims, 1966).

Los Angeles v. Adams, 556 F.2d 40 (D.C. Cir. 1977).

Human Resources Development Institute v. Donovan, 587 F. Supp. 617 (D.C. Cir. 1983).

International Union UAAAIWA v. Donovan, 746 F.2d 855 (D.C. Cir. 1984).

Virginia v. Sebelius, 728 F. Supp. 2d 768 (E.D. Va. 2010).

Thomas More Law Center v. Obama, Case No. 10-CV-11156 (E.D. Mich. 2010), *available at* <https://www.mied.uscourts.gov/PDFFiles/09714485866.pdf>

Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012).

King v. Burwell, 135 S. Ct. 2480 (2015).

House v. Burwell, 185 F. Supp.3d 165 (D. D.C. 2018)

Sierra Club v. Trump, 379 F. Supp. 3d 883 (N.D. Cal. 2019) *aff'd* 963 F.3d 874 (9th Cir 2020), vacated and remanded sub nom. Biden v. Sierra Club, 142 S. Ct. 46 (2021).

Maine Community Health Options v. United States, 140 S. Ct 1408 (2020).

Biden v. Nebraska, 143 S. Ct. 477 (2022).

Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney, P.C., 63 F.4th 174 (2d Cir. 2023); and Community Financial Services Association of America, Ltd. v. Consumer Financial Protection Bureau, 51 F.4th 616 (5th Cir. 2022), cert. granted, 143 S. Ct. 978 (2023), and cert. denied sub nom. Community Financial Services Association of America v. Consumer Financial Protection Bureau, 143 S. Ct. 981 (2023).

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The Budget Puzzle: Understanding Federal Spending

by

John F. Cogan, Timothy J. Muris and Allen Shick

On Reserve in Library