



# The Known Unknowns: Planning for the Next Emergencies

By Jonathan Bydlak

**As global threats escalate, policymakers should focus on fortifying the federal budget against future emergencies and encouraging solutions that lessen the burden when such events arise.**

## Executive Summary

The national debt has exploded in recent years, thanks primarily to spending in response to the COVID-19 pandemic. But despite this recent acceleration, federal spending was already on an unsustainable path.

Much attention has been paid to the role of mandatory spending in contributing to these trends. This is in part because entitlement programs like Social Security and Medicare primarily drive the U.S.’s long-term fiscal situation, but also because the impact of such programs is easier to forecast.

However, less attention has been paid to another significant factor: the rise of off-budget and emergency spending in response to unforeseen events. While the COVID-19 pandemic is perhaps the most salient recent example, numerous unpredicted events have rapidly worsened the federal balance sheet.

Since the start of the 2000s, when significant budget surpluses were the expected norm, the United States has faced a terrorist attack, two subsequent wars, the 2008 financial crisis, numerous hurricanes, other natural disasters and, of course, the pandemic. Each of these carried significant costs, both in their immediate aftermath and in terms of their impact on the federal budget over time.

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While it may not have been possible to predict them, unexpected shocks to the system should hardly be a surprise. That policymakers were often caught flat-footed points to a need to better prepare for such events.

Instead, lawmakers have largely used such events to both expand the federal budget and the powers at their disposal in times of emergency. These responses risk not only the fiscal solvency of the country, but also our ability to respond to events with appropriate levels of public accountability.

The expansion of emergency powers and emergency spending are flip sides of the same coin, and it is not possible to deal with one effectively without also addressing the other. To this end, there are multiple potential reforms to consider, and they fall into four general buckets:

- First, policymakers should more clearly define what constitutes an emergency, and ensure that the proper role of Congress is established clearly beyond the immediate aftermath of triggering events.
- Second, they should restrict executive power after emergencies have been declared, particularly as related to use of the Defense Production Act.
- Third, policymakers should consider creating a federal emergency fund and making budgetary reforms that curb the use of off-budget spending and reduce the long-term, indirect impact of crises on the federal budget over time.
- Finally, lawmakers should look for ways to incentivize private solutions that encourage better planning, thereby reducing the need for federal involvement when emergencies strike. By taking such actions in normal times, lawmakers can increase their flexibility to respond to crises, and better alleviate the types of emergencies experienced in the past, as well as wholly new ones that may arise in the future.



Unexpected shocks to the system should hardly be a surprise. That policymakers were often caught flat-footed points to a need to better prepare for such events.

## Introduction: A New Trend in Federal Spending Emerges

The last two decades have seen a dramatic increase in federal spending and deficits, pushing accumulated debt to an unprecedented level.<sup>1</sup> Nonetheless, while fiscal irresponsibility has become the norm, it was not inevitable. At the start of the 2000s, the Congressional Budget Office (CBO) projected fiscal surpluses seemingly as far as the eye could see, concluding that “[t]he outlook for the budget under current policies over the next decade continues to be bright.”<sup>2</sup>

We know now that this outcome was not to be, and while some of the U.S.’s worsening budgetary picture is attributable to demographic changes and associated increases in entitlement benefits, this explanation is woefully incomplete.<sup>3</sup> In the two decades since the CBO made its pronouncement, the country faced a series of unpredictable and budget-jolting events: a terrorist attack on American soil; multiple armed conflicts in the Middle East; a financial crisis and the associated Great Recession; significant natural disasters; and a devastating pandemic. Each of these

1. “The 2022 Long-Term Budget Outlook,” Congressional Budget Office, July 2022, pp. 5-6. <https://www.cbo.gov/system/files/2022-07/57971-LTBO.pdf>.

2. “The Economic and Budget Outlook: Fiscal Years 2000-2009,” Congressional Budget Office, Jan. 1, 1999, p. 23. <https://www.cbo.gov/sites/default/files/106th-congress-1999-2000/reports/eb0199.pdf>.

3. Brian Riedl, “Spending, Taxes & Deficits: A Book of Charts,” Nov. 1, 2022, p. 26-27. <https://media4.manhattan-institute.org/sites/default/files/BudgetChartBook-2022-1.pdf>.

events carried substantial costs and served to increase government spending at the expense of the federal balance sheet.<sup>4</sup> Importantly, none of these events could have been precisely predicted.

In the last several years, Congress and presidents from both parties have, to much fanfare, run up the national debt in response to the COVID-19 pandemic.<sup>5</sup> But while spending on this latest crisis may be the most recent driver of these ongoing trends, substantial off-budget spending is hardly new. In fact, in the same early 2000s CBO report, the authors noted cause for concern that spending was poised to “jump substantially” in part because of “emergency spending built into” the most-recently passed omnibus appropriation.<sup>6</sup>

## Defining an Emergency

Before going further, it is important to define the term “emergency.” The formal definition of an emergency was clarified most recently in federal law in 2011. Under current statute, an emergency consists of an unanticipated event (one that is “sudden,” “urgent,” “unforeseen” or “temporary”) that “requires new budget authority and outlays [...] for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security.”<sup>7</sup> Emergency spending, then, requires an immediate response, which means legislative action will be off-cycle and expedited, or off-budget.

There is also a difference between a crisis and an emergency. Like an emergency, a crisis is an important event worthy of a timely response, but it does not necessarily imply suddenness or unpredictability in the same way as emergency. While both types of events are time-sensitive, they need not merit the same governmental processes. As a result, policymakers ought to consider these types of events as distinct from one another.

A clarifying analogy may be in order: The immediate invasion of Ukraine can be understood initially as an emergency. Whereas, the subsequent conflict may be seen as a serious crisis—it is no longer an emergency—even though much of the U.S.’s aid has been formally classified as emergency spending. Similar examples include the distinction between the initial attack on Sept. 11, 2001 and the subsequent war in Afghanistan. An initial emergency may mark the beginning of a crisis, but the public policy process should adapt as the suddenness recedes and the situation stabilizes.

### Key Term

#### Emergency:

Under current statute, an emergency consists of an unanticipated event (one that is “sudden,” “urgent,” “unforeseen” or “temporary”) that “requires new budget authority and outlays [...] for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security.”



Emergency spending constitutes those expenditures undertaken by the federal government in response to a triggering event. For the purposes of this paper, there are multiple degrees of emergency spending to consider: (1) spending officially

4. See, e.g., Neta C. Crawford, “The U.S. Budgetary Costs of the Post-9/11 Wars,” The Watson Institute for International and Public Affairs at Brown University, Sept. 1, 2021. [https://watson.brown.edu/costsofwar/files/cow/imce/papers/2021/Costs%20of%20War\\_U.S.%20Budgetary%20Costs%20of%20Post-9%2011%20Wars\\_9.1.21.pdf](https://watson.brown.edu/costsofwar/files/cow/imce/papers/2021/Costs%20of%20War_U.S.%20Budgetary%20Costs%20of%20Post-9%2011%20Wars_9.1.21.pdf).

5. “The Federal Response to COVID-19,” USASpending.gov, last accessed March 13, 2023. <https://www.usaspending.gov/disaster/covid-19?publicLaw=all>.

6. “The Economic and Budget Outlook: Fiscal Years 2000-2009,” <https://www.cbo.gov/sites/default/files/106th-congress-1999-2000/reports/eb0199.pdf>.

7. Andrew Lautz, “The Final Verdict of the Budget Control Act: Congress Cheated Caps By \$2.7 Trillion,” National Taxpayers Union, Sept. 28, 2021, p. 3. <https://www.ntu.org/library/doclib/2021/09/The-Final-Verdict-of-the-Budget-Control-ActCongress-Cheated-Caps-By-2-7-Trillion-1-.pdf>.



categorized as emergency spending under the law; (2) supplemental spending that is not necessarily classified as emergency, but nonetheless takes place “off-budget” and is due to unforeseen events; and (3) incidental or indirect outlays that take place “on-budget” that are also related to a crisis, real or perceived.

However, it is important to recognize that the budgetary impact of an unforeseen event may extend beyond the initial spending at the onset of a crisis, causing many additional expenditures over time. Those costs should also be understood to be caused by the initial triggering event.

In any case, the process for an immediate emergency response ought to be distinct from later stages of crises when needs may still be urgent, but have become well-established. In the previous examples, Congress and the president often used emergency processes for events long after they were no longer emergencies. This is true of both the exercise of emergency powers and of associated emergency spending.

## 2000-Present: The Era of Unending Emergency

Although the topic of emergency spending has garnered attention during the last few years thanks to the record-setting pandemic spending packages, the use of off-budget and/or emergency spending is hardly new.<sup>8</sup> Since the start of the 21st century, these bills have increasingly become the norm in Washington, not the exception.

Emergency spending bills provided significant funding for the wars in Afghanistan and Iraq; responses to the 2007-08 financial crisis; supplemental relief for various hurricanes; infrastructure; baby formula; and recently, foreign aid.<sup>9</sup> These expenditures may have been necessary, but they also contributed to a growing culture of off-budget spending in lieu of the usual appropriations process. Such an environment is often less focused on planning and putting priorities in their broader budgetary context, which can result in a temptation to spend more than needed.

Spending more is just one part of a wider problem: The existence of emergencies has also provided elected officials—particularly presidents—with an excuse to expand executive power.<sup>10</sup> The number and length of declared emergencies has created a political environment that is rife for both abuse of power and threats to short- and long-term fiscal sustainability.<sup>11</sup> It is no surprise that the national debt as a share of the economy is now at a post-World War II high, with public debt approaching 100 percent of GDP.<sup>12</sup>



The process for an immediate emergency response ought to be distinct from later stages of crises when needs may still be urgent, but have become well-established.

8. Paul Winfree et al., “How Emergency Spending Has Exploded in Recent Years,” The Heritage Foundation, Sept. 19, 2018. <https://www.heritage.org/debt/commentary/how-emergency-spending-has-exploded-recent-years>.
9. Supplemental Appropriations Act, Pub. L. No. 111-32, 123 Stat. 1859 (GPO, 2009), 111th Congress. <https://www.govinfo.gov/content/pkg/PLAW-111publ32/pdf/PLAW-111publ32.pdf>; Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613 (GPO, 2008), 110th Congress. <https://www.congress.gov/110/plaws/publ185/PLAW-110publ185.pdf>; Disaster Relief Appropriations, Pub. L. No. 113-2, 127 Stat. 4 (GPO, 2013), 113th Congress. <https://www.congress.gov/113/plaws/publ2/PLAW-113publ2.pdf>; Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (GPO, 2022), 117th Congress. <https://www.govinfo.gov/content/pkg/PLAW-117publ58/pdf/PLAW-117publ58.pdf>; Access to Baby Formula Act of 2022, Pub. L. No. 117-129, 136 Stat. 1225 (GPO, 2022), 117th Congress. <https://www.congress.gov/117/plaws/publ129/PLAW-117publ129.pdf>; Additional Ukraine Supplemental Appropriations Act, Pub. L. No. 117-128, 136 Stat. 1211 (GPO, 2022), 117th Congress. <https://www.govinfo.gov/content/pkg/PLAW-117publ128/pdf/PLAW-117publ128.pdf>.
10. “A Guide to Emergency Powers and Their Use,” The Brennan Center for Justice, Dec. 5, 2018. <https://www.brennancenter.org/our-work/research-reports/guide-emergency-powers-and-their-use>.
11. Elizabeth Goitein, “The Alarming Scope of the President’s Emergency Powers,” *The Atlantic*, January 2019. <https://www.theatlantic.com/magazine/archive/2019/01/presidential-emergency-powers/576418>.
12. Howard Gleckman, “CBO: \$19 Trillion In New Debt Over the Next Decade, Mostly From Programs Nobody Will Cut,” *Forbes*, Feb. 16, 2023. <https://www.forbes.com/sites/howardgleckman/2023/02/16/cbo-19-trillion-in-new-debt-over-the-next-decade-mostly-from-programs-nobody-will-cut>.

Most major spending drivers seemed to take lawmakers by surprise. The 9/11 terrorist attacks, for example, came at a time of record surpluses.<sup>13</sup> Likewise, few can predict which hurricanes and natural disasters will require a significant response, nor the scale of the COVID-19 pandemic. But as state-level actions show, lawmakers do know that some form of future emergency will inevitably arise and can be planned for despite the inability to know specific upcoming events.<sup>14</sup> Emergency spending in American budgeting is, to borrow the phrase, a “known unknown.”<sup>15</sup>

Nevertheless, the use of so-called emergency spending has become one of the most routine and predictable parts of modern federal budgeting. The fiscal problems exacerbated by emergency spending have created an urgent need to identify better ways to address unforeseen events without further expanding executive power or blowing out the federal budget. Doing so would put the country on stronger footing when the next emergency arises.

Given this, it is surprising that in the wake of the pandemic, so few experts have directed their attention toward how to rein in emergency spending and associated emergency declarations. While it is perhaps easier to focus on entitlement spending and other aspects of the federal budget that are more predictable, improving the country’s fiscal picture is not possible without a plan for dealing with emergencies and so-called emergencies before they occur.

Elected officials do not face strong incentives to better anticipate potential “known unknowns,” and their incentivization is further complicated by states’ dependence on the federal government. In the case of natural disasters, emergency spending is greater when states and localities are less prepared. Federal disaster declarations are only necessary once states have exhausted their resources, and it follows that federal costs due to associated intervention could be reduced by increased planning.<sup>16</sup> This fact is especially important considering that the number of disaster declarations has increased drastically over time.<sup>17</sup>

Creating a better framework for dealing with future emergencies would allow policymakers to address them when necessary. Perhaps more importantly, a better way of dealing with emergencies would reduce the mission creep of unrelated priorities being designated as emergencies, expanding both unrestrained spending and executive overreach. There is little excuse to continue to follow the status quo in a post-COVID-19 world.



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13. “Announcing the Largest Budget Surplus in History,” The White House, Sept. 27, 2000. [https://clintonwhitehouse4.archives.gov/WH/Work/Wed\\_Sep\\_27\\_133729\\_2000.html](https://clintonwhitehouse4.archives.gov/WH/Work/Wed_Sep_27_133729_2000.html).

14. “States Build Their Reserves Amid Growing Uncertainties,” Pew Charitable Trusts, last updated March 9, 2023. <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2014/fiscal-50>.

15. David A. Graham, “Rumsfeld’s Knowns and Unknowns: The Intellectual History of a Quip,” *The Atlantic*, March 27, 2014. <https://www.theatlantic.com/politics/archive/2014/03/rumsfelds-knowns-and-unknowns-the-intellectual-history-of-a-quip/359719>.

16. Federal Emergency Management Agency, “A Guide to the Disaster Declaration Process and Federal Disaster Assistance,” U.S. Department of Homeland Security, p.4. [https://www.fema.gov/pdf/rrr/dec\\_proc.pdf](https://www.fema.gov/pdf/rrr/dec_proc.pdf).

17. “Stafford Act Declarations 1953-2016: Trends, Analyses, and Implications for Congress,” Congressional Research Service, Aug. 28, 2017, p.8. <https://sgp.fas.org/crs/homesec/R42702.pdf>.

## A Problem, Foreign and Domestic

Coming off the peacetime surpluses of the 1990s, the terrorist attacks on the World Trade Center and Pentagon in 2001 sparked a multi-trillion-dollar military response in Afghanistan and later Iraq. These massive increases in the defense budget only partly followed the ordinary budget-making process, with significant portions of spending coming via the “Overseas Contingency Operations” account (OCO), a workaround to the budget caps that had been implemented as an attempt to curb growth in discretionary spending.<sup>18</sup>

In 2011, Congress passed the Budget Control Act (BCA) which created new spending caps that mandated equal cuts for the defense and non-defense budget. However, meaningfully limiting the Pentagon budget would have required tradeoffs that legislators were largely unwilling to make. Instead, Congress began to make use of the OCO account as an off-budget slush fund to avoid being limited by spending caps. Over time, the OCO account became an even more insidious tool, in which base defense expenditures were added to the account to further escape attempts at limitation.<sup>19</sup>

Off-budget disaster relief packages also were the norm after hurricanes like Katrina, Sandy and Harvey.<sup>20</sup> Attempts to force offsetting cuts for these packages were defeated, and such spending was often for rebuilding and recovery, rather than immediate response.<sup>21</sup> This experience exemplifies how crisis and emergency become indistinguishable in spending practices.<sup>22</sup>

Recent analysis shows that officially designated emergency spending totaled nearly \$3 trillion since 2000, with more than \$1 trillion in spending taking place during the last five years.<sup>23</sup> But even these estimates do not capture the full costs of unforeseen circumstances. One third-party estimate of the War on Terror, for example, puts its total cost at more than \$8 trillion, including \$2.3 trillion for the War in Afghanistan.<sup>24</sup> While later war spending was not designated as an emergency, this estimate highlights the extent to which spending and debt continued to grow in the years following the initial military response. Such expenses include increased spending at the Veterans Administration, subsequent interest on the debt needed to fund the new spending and increases in base spending that otherwise would not have taken place.<sup>25</sup> The War on Terror spending alone accounts for more than a quarter of the current national debt.

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18. “Funding for Overseas Contingency Operations and Its Impact on Defense Spending,” Congressional Budget Office, Oct. 23, 2018, p. 8. [https://www.cbo.gov/system/files/2018-10/54219-oco\\_spending.pdf](https://www.cbo.gov/system/files/2018-10/54219-oco_spending.pdf).

19. Andrew Lautz, “Reforming the OCO Account: A Better Deal for Taxpayers, Watchdogs, and the Military,” National Taxpayers Union, May 27, 2020, p. 1. <https://www.ntu.org/library/doclib/2020/05/Reforming-the-OCO-Account-A-Better-Deal-for-Taxpayers-Watchdogs-and-the-Military-2-.pdf>.

20. “FEMA’s Disaster Relief Fund: Budgetary History and Projections,” Congressional Budget Office, Nov. 29, 2022, p. 3. <https://www.cbo.gov/system/files/2022-11/58420-FEMA-DRF.pdf>.

21. Catalina Camia, “\$51 billion in Sandy aid: Who voted ‘no’ and why,” *USA Today*, Jan. 16, 2013. <https://www.usatoday.com/story/onpolitics/2013/01/16/sandy-aid-congress-politics/1840377>.

22. “FEMA’s Disaster Relief Fund: Budgetary History and Projections,” p. 3. <https://www.cbo.gov/system/files/2022-11/58420-FEMA-DRF.pdf>.

23. Romina Boccia and Dominik Lett, “Emergency Spending Is on the Rise: Here’s How Congress Can Stop It,” Cato Institute, Dec. 20, 2022. <https://www.cato.org/blog/emergency-spending-rise-heres-how-congress-can-stop-it>.

24. Crawford. [https://watson.brown.edu/costsofwar/files/cow/imce/papers/2021/Costs%20of%20War\\_U.S.%20Budgetary%20Costs%20of%20Post-9%2011%20Wars\\_9.1.21.pdf](https://watson.brown.edu/costsofwar/files/cow/imce/papers/2021/Costs%20of%20War_U.S.%20Budgetary%20Costs%20of%20Post-9%2011%20Wars_9.1.21.pdf).

25. “Rethinking Afghanistan,” Institute for Spending Reform, last accessed March 13, 2023. <https://rethinkingafghanistan.org/pfip/rethinking-afghanistan.pdf>.

There have been occasional instances of backlash to emergency spending, though these are rare and have been motivated more by politics than fiscal prudence. President Donald J. Trump's attempts to circumvent Congress and redirect Pentagon funds to "Build the Wall" on the U.S.-Mexico border is one such example.<sup>26</sup> In this instance, the \$3.8 billion price tag was largely viewed as secondary to political disagreements and abuse of power concerns as the Democratic House swiftly passed a resolution calling to end the Republican President's national emergency declaration.<sup>27</sup> Nevertheless, the pushback was notable.

Pushback from across the political spectrum also came in response to President Joe R. Biden's executive order proposing cancellation of federal student debt.<sup>28</sup> Some members of Biden's own party, including then-House Speaker Nancy Pelosi, questioned whether the president has such an emergency power, with the issue ultimately rising to the Supreme Court.<sup>29</sup> In addition to the abuse of power questions, the action also carried a substantial budgetary impact of nearly \$500 billion.<sup>30</sup>

### The COVID-19 Crisis

No event stimulated more rapid spending growth, however, than the COVID-19 pandemic. In 2020 and 2021, the federal response included six relief packages totaling a staggering \$4.6 trillion.<sup>31</sup> Yet even as warning signs of inflation appeared on the horizon, Congress and two administrations continued with the now-familiar script: an unexpected emergency, followed by massive, unbudgeted spending even after the initial emergency had passed, and a continued expansion of the already nebulous definition of emergency. More recently, there was a further effort to address ongoing baby formula shortages through emergency legislation.<sup>32</sup>

Increasingly, some members of Congress prefer legislating in times of crisis, often under a loose definition of emergency, because it can afford an opportunity to act on issues when it otherwise might not be possible. In recent years, members have called for the president to declare an emergency over issues ranging from climate change to gun violence.<sup>33</sup>



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26. Braktkton Booker, "Trump Administration Diverts \$3.8 Billion In Pentagon Funding To Border Wall," *NPR*, Feb. 13, 2022. <https://www.npr.org/2020/02/13/805796618/trump-administration-diverts-3-8-billion-in-pentagon-funding-to-border-wall>.
27. H.J.Res.46 – "Relating to a national emergency declared by the President on February 15, 2019," 116th Congress, last accessed March 13, 2023. <https://www.congress.gov/bill/116th-congress/house-joint-resolution/46>.
28. Michael Stratford, "Business lobby, GOP officials urge SCOTUS to reject student debt relief," *POLITICO*, Feb. 6, 2023. <https://www.politico.com/newsletters/weekly-education/2023/02/06/business-lobby-gop-officials-urge-scotus-to-reject-student-debt-relief-00081274>; Jim Newell, "Why Some Democrats Are Running Away From Biden's Student Debt Relief," *Slate*, Aug. 30, 2022. <https://slate.com/news-and-politics/2022/08/student-loan-forgiveness-democrats-biden-midterms.html>; Office of the President, "FACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most," WhiteHouse.gov, Aug. 24, 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most>.
29. Annie Nova, "Pelosi says Biden doesn't have power to cancel student debt," *CNBC*, July 28, 2021. <https://www.cnn.com/2021/07/28/pelosi-says-biden-doesnt-have-authority-to-cancel-student-debt.html>; Brian Backstrom, "SCOTUS to Decide: Is the Biden Administration's Student Loan Debt Cancellation Program Legal?," *Nelson A. Rockefeller Institute of Government*, Feb. 23, 2023. <https://www.rockinst.org/blog/scotus-to-decide-is-the-biden-administrations-student-loan-debt-cancellation-program-legal>.
30. "New Student Debt Changes Will Cost Half a Trillion Dollars," *Committee for a Responsible Federal Budget*, Aug. 24, 2022. <https://www.crfb.org/blogs/new-student-debt-changes-will-cost-half-trillion-dollars>.
31. "COVID-19 Relief: Funding and Spending as of Jan. 31, 2023," *U.S. Government Accountability Office*, Feb. 28, 2023. <https://www.gao.gov/assets/gao-23-106647.pdf>.
32. "Addressing the Infant Formula Shortage," *The White House*, last accessed March 13, 2023. <https://www.whitehouse.gov/formula>.
33. "Blumenauer, Ocasio-Cortez, and Sanders Introduce Legislation to Mandate National Climate Emergency Declaration," *Office of U.S. Congressman Earl Blumenauer*, last accessed March 30, 2023. <https://blumenauer.house.gov/media-center/press-releases/blumenauer-ocasio-cortez-and-sanders-introduce-legislation-to-mandate-national-climate-emergency-declaration>; Myah Ward, "Biden finds himself being called out, once more, by gun safety groups," *POLITICO*, Jan. 31, 2013. <https://www.politico.com/news/2023/01/31/gun-safety-groups-to-biden-your-work-isnt-done-00080312>.



Some experts have highlighted such unchecked spending. In 2011, one working paper noted the history of “never-ending” emergencies.<sup>34</sup> The authors noted that supplemental spending increased dramatically in the early 2000s, and that “supplemental bills are enabling a spending explosion” thanks to what they term “the emergency loophole,” which continues to be abused. During the decade when BCA’s spending caps were in place (2012-2021), Congress still neglected its budgetary responsibilities and allowed growing off-budget expenditures.<sup>35</sup> Now, legislators seem just as content to accelerate federal spending and debt accumulation. Changing this status quo will require significant changes.

## Current Framework: Expansive Laws in Need to Reform

Two related issues are driving the current emergency spending dynamic. First is the power of the executive branch to designate and spend on emergencies; second is the planning—or lack thereof—for emergencies, whether legitimate or not.

In 1988, President Ronald Reagan signed the Robert T. Stafford Emergency Relief and Disaster Assistance Act (the Stafford Act) into law, which refined and expanded executive authority governing natural disaster response to include powers as wide as reprogramming of funding and suspension of existing regulations.<sup>36</sup> In 1992, the Office of Management and Budget (OMB) identified five criteria for requests to qualify for emergency funding under the Act: (1) a necessary expenditure, “not one that is merely useful or beneficial; (2) sudden, “not building up over time;” (3) urgent, “a pressing and compelling need requiring immediate action;” (4) unforeseen, “not predictable or seen beforehand;” and (5) not permanent, but “temporary in nature.”<sup>37</sup>

With these and other expanded powers, presidents have exercised broad power to issue disaster declarations.<sup>38</sup> Indeed, the number of disasters declared has exploded as presidents recognized the political value in responding to emergencies.<sup>39</sup> Other factors like climate change and an increasing number of Americans living in disaster-prone areas have helped to exacerbate this trend.<sup>40</sup>

## The Defense Production Act

Once emergencies are declared, presidents also exercise broad power to direct funds in response. One of the most significant tools in this arsenal is the Defense Production Act (DPA), a Cold War-era law passed in 1950 that allows the federal government to intervene in private contracts in the name of national security.<sup>41</sup>

### KEY TAKEAWAY

During the decade when BCA’s spending caps were in place (2012-2021), Congress still neglected its budgetary responsibilities and allowed growing off-budget expenditures. Now, legislators seem just as content to accelerate federal spending and debt accumulation. Changing this status quo will require significant changes.

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34. Veronique de Rugy and Allison Kasic, “The Never-ending Emergency: Trends in Supplemental Spending,” The Mercatus Center at George Mason University, Aug. 4, 2011. <https://www.mercatus.org/media/document/emergencyspendingderugyaugust20111pdf>.

35. Lautz, “The Final Verdict of the Budget Control Act: Congress Cheated Caps By \$2.7 Trillion,” p. 1. <https://www.ntu.org/library/doclib/2021/09/The-Final-Verdict-of-the-Budget-Control-ActCongress-Cheated-Caps-By-2-7-Trillion-1-.pdf>.

36. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 100-707, 101 Stat. 4869 (1988), 100th Congress. <https://www.congress.gov/100/statute/STATUTE-102/STATUTE-102-Pg4689.pdf>.

37. Keith Bea, “Federal Emergency Management Agency Funding for Homeland Security and Other Activities,” Congressional Research Service Report for Congress, April 9, 2002, p. 24. [https://www.everycrsreport.com/files/20020409\\_RL31359\\_0fa9608b592008054d787c5b502b3f59e0c9e1eb.pdf](https://www.everycrsreport.com/files/20020409_RL31359_0fa9608b592008054d787c5b502b3f59e0c9e1eb.pdf); Justin Bogie, “Congress Must Stop the Abuse of Disaster and Emergency Spending,” The Heritage Foundation, Feb. 4, 2019. <https://www.heritage.org/sites/default/files/2019-02/BG3380.pdf>.

38. Wayne Vroman, “Disaster Reporting in the United States,” The Urban Institute, July 2019, p. 6. [https://www.urban.org/sites/default/files/publication/100747/disaster\\_reporting\\_in\\_the\\_united\\_states.pdf](https://www.urban.org/sites/default/files/publication/100747/disaster_reporting_in_the_united_states.pdf).

39. “Stafford Act Declarations 1953-2016: Trends, Analyses, and Implications for Congress,” p. 8. <https://sgp.fas.org/crs/homsec/R42702.pdf>.

40. Anna Marandi and Kelly Leilani Main, “The Next American Migration: What Cities Should Know About Climate Change and Populations on the Move,” The National League of Cities, April 2022, p. 23. <https://www.nlc.org/wp-content/uploads/2022/04/CS-Domestic-Climate-Migration-and-US-Cities-Report.pdf>.

41. Aidan Lawson and June Rhee, “Usage of the Defense Production Act throughout history and to combat COVID-19,” Yale School of Management, June 3, 2020. <https://som.yale.edu/blog/usage-of-the-defense-production-act-throughout-history-and-to-combat-covid-19>.



The rationale for the law was obvious at the time: To formally codify powers utilized during World War II and to ensure that, should the Cold War break out into open conflict, lawmakers would have the same ability to urgently increase manufacturing capacity.<sup>42</sup> Other security-related industries would need to be quickly retooled, and working through Congress might be too time-consuming in instances of unclear government continuity.

In practice, the DPA “has only rarely been used for such conventional national security concerns.”<sup>43</sup> Today, it is most commonly used after a disaster to redirect contracts toward items like food, building materials and reconstruction, while shielding private sector participants from liability related to breaching contracts.<sup>44</sup>

The current framework for designating emergencies and spending on these priorities is overdue for reforms that further clarify limits and empower Congress to hold executives to those limits.

### Attempts at Reforms

In 1973, Congress subsequently created a special committee to address the overuse of Presidential emergency powers, culminating in the National Emergencies Act of 1976. Legislators identified four existing national emergencies that had been declared and remained in place long after the moment of emergency had passed, as well as roughly 475 statutes that gave the president notable power after declaring an emergency.<sup>45</sup> The Act did not seek to remove or curtail the President’s ability to declare emergencies, but instead placed the onus on Congress by giving it the authority to remove declarations after the fact. The Supreme Court also contributed to the expanding power of the executive with its decision in *Immigration and Naturalization Service v. Chadha* (1983), which made it more difficult for Congress to roll back a Presidential emergency.<sup>46</sup>

Generally, Congress has been hesitant to exercise its emergency oversight power, notwithstanding recent House actions against Former President Trump. But Congress has also been largely unwilling to plan for emergencies in advance. Even if Congress were to limit executive power on emergencies—as it should—it is still perpetually taken by surprise with events that result in increased federal expenditures.

Furthermore, members of Congress are rarely rewarded for their long-term prudence, and members of both parties tend to prioritize immediate expenditures in response to present problems rather than saving for the future.<sup>47</sup> The increasing urgency of the nation’s finances demands action, but steps will not be possible if substantial portions of government spending occur outside of the regular process



Even if Congress were to limit executive power over declaring and spending funds on emergencies—as it should—Congress is still perpetually taken by surprise with events that result in increased federal expenditures.

42. Philip Rossetti, “Stop Misusing and Abusing the Defense Production Act,” R Street Institute, May 5, 2022. <https://www.rstreet.org/dpa>.

43. Ibid.

44. Thomas Frank, “How the Defense Production Act became a disaster law,” Climatewire, March 31, 2020, <https://www.eenews.net/articles/how-the-defense-production-act-became-a-disaster-law>.

45. James Wallner, “The National Emergencies Act of 1976,” LegBranch.org, Feb. 28, 2019. <https://www.legbranch.org/the-national-emergencies-act-of-1976>.

46. *Immigration and Naturalization Service v. Chadha*, United States Supreme Court, June 23, 1983. <https://supreme.justia.com/cases/federal/us/462/919>.

47. Peter Cohn et al., “In the game of earmarks, Shelby has no peers,” Roll Call, March 16, 2022. <https://rollcall.com/2022/03/16/in-the-game-of-earmarks-shelby-has-no-peers>.

or with minimal planning. Solutions to constrain both emergency powers and emergency spending is more important than ever.

## Proposed Solutions

As with most issues, there is no silver-bullet solution for limiting the growth of off-budget spending or improving how the federal government responds to unforeseen events. But clear opportunities for reform exist and should be pursued. Below, we summarize some options.

### Narrow the Definition of Emergency

The expanding definition of what constitutes an emergency is problematic and has led to largely unlimited executive power. Ideas proposed to limit this growth include:

- 1) eliminating the loss of property from the definition of an ‘emergency’ (property losses as a result of natural disasters could be covered under the ‘disaster relief’ category exempt from the caps);
- 2) expanding the definition to eliminate potential abuses, such as specifying that emergency requirements cannot have been planned or requested prior to a certain date before the emergency (i.e., the new FBI HQ) or capping emergency spending in an existing account at a certain percentage of regular appropriations (i.e., the NEH/NEA).<sup>48</sup>

It may also be wise to enumerate a list of factors that automatically result in a disaster, while requiring anything outside of the established list to require action from Congress.

Another useful step would be removing the need for a reluctant Congress to proactively end national emergencies as proposed in multiple congresses by Sen. Mike Lee’s (R-Utah) Assuring that Robust, Thorough, and Informed Congressional Leadership is Exercised Over National Emergencies Act (ARTICLE ONE Act).<sup>49</sup> This is an action that currently requires passing a resolution with a veto-proof supermajority. This proposal would automatically end NEA emergency declarations after 30 days unless Congress votes affirmatively to extend the emergency.

Such a limitation allows the executive branch to immediately respond in the wake of emergencies while maintaining the proper role of Congress once the situation has stabilized. This measure also shifts the burden to the executive branch to justify its actions. Given that presidents across the political spectrum have enjoyed the expanding power of the office, the ARTICLE ONE Act has garnered bipartisan support.<sup>50</sup> Policymakers could similarly build upon the ARTICLE ONE Act and require congressional reauthorization on emergency orders made by the executive, whether under the NEA or under other statutes such as the Stafford Act or DPA.

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Policymakers could build upon the ARTICLE ONE Act and require congressional reauthorization on emergency orders made by the executive, whether under the NEA or under other statutes such as the Stafford Act or DPA.

48. Lautz, “The Final Verdict of the Budget Control Act: Congress Cheated Caps By \$2.7 Trillion,” p. 4. <https://www.ntu.org/library/doclib/2021/09/The-Final-Verdict-of-the-Budget-Control-ActCongress-Cheated-Caps-By-2-7-Trillion-1-.pdf>.

49. S. 241, ARTICLE ONE Act, (GPO, 2021), 117th Congress. <https://www.congress.gov/117/bills/s241/BILLS-117s241is.pdf>.

50. “Coalition Letter on the ARTICLE ONE Act in the Senate FY2021 NDAA,” American Civil Liberties Union, July 1, 2020. <https://www.aclu.org/letter/coalition-letter-article-one-act-senate-fy2021-ndaa>.

Other proposals would make similar reforms. The House's National Security Reforms and Accountability Act from last session required proactive Congressional action to extend emergency powers beyond 30 days, along with limiting emergency powers to those related to the declared emergency.<sup>51</sup> The Protecting our Democracy Act (2021) passed the House with a number of key reforms to reassert Congressional power of the purse, including some of the provisions in Sen. Lee's bill.<sup>52</sup> Indeed, the Senate's National Security Powers Act would have required the president to consult congressional leaders and obtain congressional authorization before taking actions related to emergency powers and other items.<sup>53</sup> To date, however, none of these proposed reforms have achieved the level of support necessary to become reality.

### **Restrict Executive Power After Emergencies are Declared**

In recent years, the uses of the DPA have expanded to everything from bolstering production of electric vehicles to raising oil and gas production, which are largely unrelated to the triggering event.<sup>54</sup> Amending the DPA to clarify and limit its powers would be an essential first step.

The DPA's current authority is not only expansive but also multi-layered. Amending its text to eliminate the president's authority to perform an action under one section would not necessarily preclude actions under other sections that may amount to the same form of intervention. Therefore, identifying pathways for reform will require careful analysis of the legislative text to ensure that various avenues for abuse are avoided. Actions should be accompanied by Congress explicitly noting its intent not to cede its authority to the president but to assert its own.

The following are potential ideas for achieving DPA reform and reigning in presidential power in times of emergencies.

#### **1. Introduce a DPA "Shot Clock"**

A complementary reform to the ideas proposed in the ARTICLE ONE Act, a "shot clock" would emulate the use of the War Power Act and require Congress to approve an action under the DPA within 30 days of its being implemented, perhaps by a two-thirds majority. This goal could be achieved with an amendment to the DPA adding a new section specifying that any presidential actions under the act would be rescinded 30 days after implementation unless such action is sustained by a two-thirds majority vote in both chambers of Congress. The provision would have the added benefit of disincentivizing DPA actions during times of recess or when Congress may not be able to vote on an action. Congress has been hesitant in recent years to restrain the executive's war powers, and the reform would likely require further enforcement mechanisms.

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**Emulate the use of the War Power Act and require Congress to approve an action under the DPA within 30 days of its being implemented, perhaps by a two-thirds majority.**

51. H.R. 5410, National Security Reforms and Accountability Act, (GPO 2021), 117th Congress. <https://www.congress.gov/117/bills/hr5410/BILLS-117hr5410ih.pdf>.  
52. "Protecting Our Democracy Act," Protect Democracy, Nov. 1, 2022. <https://protectdemocracy.org/work/protecting-our-democracy-act-2/#TitleV-Preventing-Abuse-National-Emergencies-Act>.  
53. "Murphy, Lee, Sanders Introduce Sweeping, Bipartisan Legislation to Overhaul Congress's Role in National Security," Office of U.S. Senator Chris Murphy, July 20, 2021. <https://www.murphy.senate.gov/newsroom/press-releases/murphy-lee-sanders-introduce-sweeping-bipartisan-legislation-to-overhaul-congresss-role-in-national-security>.  
54. Emma Newburger, "Biden to invoke Defense Production Act for electric vehicle battery materials," CNBC, March 31, 2022. <https://www.cnbc.com/2022/03/31/biden-to-invoke-defense-production-act-for-ev-battery-materials.html>; Lily Jamali, "Pressure mounts on Biden to use Defense Production Act, but it's not a 'magic wand,'" Marketplace, March 14, 2022. <http://marketplace.org/2022/03/14/pressure-mounts-on-biden-to-use-defense-production-act-but-its-not-a-magic-wand>.

## **2. Break the DPA into Two Separate Bills**

In its current form, almost all the DPA's authority is granted by actions seen as in the interest of "national defense," a notoriously vague standard. One of the modern justifications of the DPA is its role in dispersing disaster relief, in addition to its legitimate national security purposes. However, the law does not reflect these different purposes. Fixing this problem without limiting the president's authority to react to legitimate needs could be possible by breaking the DPA into two separate pieces of legislation—one that is expressly for Department of Defense utilization, and one for disaster scenarios or other related circumstances. Requiring more specific justification for its use could help constrain currently freewheeling DPA use. This approach has the benefit of being appealing both to national security hawks and current defenders of the DPA, while cutting down on vagueness where a president can deem almost anything as related to "national defense."



Requiring more specific justification for its use could help constrain currently freewheeling DPA use.

## **3. Create a Commission to Authorize the DPA and Other Emergency Actions**

Congress's strong incentives to maintain the status quo means that it may be wise to vest an alternative body with power over invoking the DPA as a way of forcing restraint. Such a commission could determine what levels of the DPA, or other executive powers, like those under the Stafford Act, are permitted. A bipartisan commission, subject to congressional oversight through nominations and requiring two-thirds majority confirmation, could have a tiered list of presidential authorizations under certain conditions. By creating levels of emergency, similar to the "DEFCON" system, the commission could establish appropriate responses for various triggering events. Lesser emergencies could, say, allow for redirecting contracts for post-disaster relief under the DPA and reconstruction under the Stafford Act, whereas an invasion or global war could allow the president to reprioritize private activities for national defense purposes. While this approach may be prone to seeing all emergencies as equally critical, clear criteria and the insulation of commissioners from day-to-day politics would be key to this approach's success.



By creating levels of emergency, similar to the "DEFCON" system, the commission could establish appropriate responses for various triggering events.

In practice, reforming federal law to require a determination by the commission rather than by the president would be straightforward. More challenging, however, is ensuring that there are sufficient checks on the commission itself, including a requirement that it justify its actions and a mechanism for Congress to remove and replace commissioners who abuse power. It is plausible that a commission could make it easier for the president to wield emergency powers by shielding the executive branch from scrutiny and creating a political scapegoat. But a commission could also play an important role in preventing presidents from abusing the authority they already have under current law, if structured independently akin to the Federal Reserve System.

## **Incentivize Congressional Fiscal Responsibility**

Beyond reforms to defining and executing emergency powers, other potential solutions involve reforming the budget process to help put the federal ledger on sounder footing before unforeseen events arise. One proposal in the 117th Congress

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requires the executive branch to provide better information about the risk of natural hazards so that Americans may better make decisions with respect to planning for natural disasters.<sup>55</sup> Unfortunately, other ideas would exacerbate existing problems, such as increasing the share of federal funds provided under the Stafford Act.<sup>56</sup>

In addition to limiting emergency powers, Congress must rededicate itself to reforming the budgeting process. Changes proposed during the 116th Congress, as part of the Bipartisan Congressional Budget Reform Act under then-Budget Committee Chairmen Sen. Mike Enzi (R-WY) and Sen. Sheldon Whitehouse (D-RI), would have made worthwhile reforms such as improving budget resolutions, encouraging fiscal targets and creating a deficit-reduction-only reconciliation process, among other potential reforms to the budget process.<sup>57</sup>

As many experts have noted, returning Congress to “regular order,” in which appropriations legislation is prepared and passed on a set schedule, would mark a significant improvement over the increasingly ad-hoc process that has come to replace it.<sup>58</sup> Not following a predictable budgeting process makes it more difficult for Congress to plan ahead of time for potential emergencies and adequately consider such costs in their fuller budgetary context.

Congress’s struggles to follow regular order when developing annual spending bills suggests that further reforms to the budget process may be necessary. Borrowing from many states, Congress could shift to a unified budget, where all spending decisions would be made together, including mandatory, discretionary and currently off-budget spending.<sup>59</sup> This proposal would essentially eliminate reconciliation, a standalone process that was used as a vehicle for advancing the American Rescue Plan, the most recent pandemic-related spending package.<sup>60</sup> Making such reforms could force more thoughtful planning while encouraging policymakers to think more concretely about budgetary tradeoffs, but an existing reliance on large spending packages raises a potential concern. The modern era of enormous annual omnibus bills, in which scrutinizing individual spending items is challenging and pork-barrel spending is often encouraged, suggests that Congress may struggle to execute this approach without substantial increases in its own capacity.<sup>61</sup>

Some experts have proposed the imposition of new fiscal rules that would place restraint on spending as a function of expected tax revenue. These ideas have varied from the imposition of a Swiss-style “debt brake,” which would limit expenditures as a function of expected revenues, to even more stringent statutory and



As many experts have noted, returning Congress to “regular order,” in which appropriations legislation is prepared and passed on a set schedule, would mark a significant improvement over the increasingly ad-hoc process that has come to replace it.

55. Community Disaster Resilience Zones Act, Pub. L. No. 117-255, 136 Stat. 2363 (GPO, 2022), 117th Congress. <https://www.govinfo.gov/content/pkg/BILLS-117s3875enr/pdf/BILLS-117s3875enr.pdf>.

56. H.R. 1951, Increase Federal Disaster Cost Share Act, (GPO, 2022), 117th Congress. <https://www.govinfo.gov/content/pkg/BILLS-117hr1951rh/pdf/BILLS-117hr1951rh.pdf>.

57. “Enzi-Whitehouse Budget Process Bill Includes Important Reforms,” Committee for a Responsible Federal Budget, Nov. 21, 2019. <https://www.crfb.org/blogs/enzi-whitehouse-budget-process-bill-includes-important-reforms>.

58. Peter Hanson, “Restoring regular order in congressional appropriations,” Brookings Institution, Nov. 19, 2015. <https://www.brookings.edu/wp-content/uploads/2016/07/Download-the-paper-1.pdf>.

59. Kurt Couchman, “Unified Budgets Can Help Revive Congress,” Americans for Prosperity, Dec. 4, 2021. <https://americansforprosperity.org/congressional-budgeting-is-a-mess-heres-the-fix>.

60. S. Con. Res. 5, Concurrent Resolution on the Budget for Fiscal Year 2021, (GPO, 2021). <https://www.congress.gov/117/bills/sconres5/BILLS-117sconres5enr.pdf>.

61. Kevin Kosar, “Congress must invest in its own capacity again,” R Street Institute, March 9, 2016. <https://www.rstreet.org/commentary/congress-must-invest-in-its-own-capacity-again>.

constitutional rules.<sup>62</sup> Others have proposed the creation of “notional emergency spending accounts,” which would provide additional funds for times of need.<sup>63</sup>

A critical component of a rigorous rules-based restraint system is the creation of a “rainy-day” or “budget stabilization” fund, a concept utilized by many states but not currently in existence at the federal level.<sup>64</sup> Such funds proved valuable for many states at the height of the pandemic, as well as during the financial crisis in 2008.<sup>65</sup>

A federal emergency fund could be established to lessen the burden of natural disasters, pandemics and other emergencies on the federal budget.<sup>66</sup> At least one bill has been introduced this session to do so.<sup>67</sup> Of course, restraining deficits during non-emergency times would become even more critical, as would the need to limit access to the fund for true emergencies, perhaps by requiring a supermajority vote or other specified criteria.

### Encourage Better Emergency Planning

While it is important for Congress to limit executive emergency powers and promote more responsible fiscal processes, there also are many actions that Congress could take to encourage individuals and private-sector actors to plan for emergencies themselves, thereby lessening the need for future federal aid.

For example, reforms contained within the Securing a Strong Retirement Act, or SECURE 2.0, which was rolled into the final appropriations omnibus of 2022, included a provision that allows for a \$1,000 withdrawal from a qualifying retirement plan in cases of hardship.<sup>68</sup> Importantly, the law also allows for larger withdrawals (up to \$22,000) in instances of federally declared natural disasters.<sup>69</sup> Some companies already responded by creating emergency savings incentive programs for their employees.<sup>70</sup>

While emergency savings accounts (ESAs) have existed for some time, SECURE 2.0 provided a vehicle for people to save for emergencies pre-tax.<sup>71</sup> A similar proposal at the height of the pandemic called for developing “pandemic health accounts,” which would allow people to save, tax free, for loss of insurance due

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Congress could encourage individuals and private-sector actors to plan for emergencies themselves, thereby lessening the need for future federal aid.

62. Ryan Bourne, “Swiss Brake Offers Model for Preventing Debt Spiralling out of Control,” Cato At Liberty, Nov. 10, 2022. <https://www.cato.org/commentary/swiss-brake-offers-model-preventing-debt-spiralling-out-control>.

63. Boccia and Lett. <https://www.cato.org/blog/emergency-spending-rise-heres-how-congress-can-stop-it>.

64. “What are state rainy day funds, and how do they work?” Tax Policy Center, May 2020. <https://www.taxpolicycenter.org/briefing-book/what-are-state-rainy-day-funds-and-how-do-they-work>.

65. Ryan Lanier, “States Wisely Increase Emergency Funds,” Citizens Against Government Waste, June 13, 2022. <https://www.cagw.org/thewastewatcher/states-wisely-increase-emergency-funds>.

66. John D. Merrifield and Barry W. Poulson, *Can the Debt Growth Be Stopped?: Rules-Based Policy Options for Addressing the Federal Fiscal Crisis*, (Lexington Books, 2016).

67. S. 718, A bill to establish the Federal Rainy Day Fund to control emergency spending, 118th Congress. <https://www.congress.gov/bill/118th-congress/senate-bill/718>.

68. Consolidated Appropriations Act, Pub. L. No. 117-328, (GPO, 2022), 117th Congress. <https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf>, pp. 817-872.

69. Ted Godbount, “What Else Is in the New SECURE 2.0?,” National Association of Plan Advisors, Dec. 21, 2020. <https://www.napa-net.org/news-info/daily-news/what-else-new-secure-20>.

70. Noah Zuss, “Delta Pilots Emergency Savings Program,” PLANSPONSOR, Jan. 25, 2023. <https://www.plansponsor.com/delta-pilots-emergency-savings-program>.

71. Taylor Medine, “What Is an Emergency Savings Account (ESA)?” Experian, June 8, 2020. <https://www.experian.com/blogs/ask-experian/what-is-emergency-savings-account>.

to lost employment.<sup>72</sup> These ideas are a good start to reducing federal spending in response to emergencies. They could even be expanded by allowing for greater withdrawals from retirement savings plans, by broadening which plans and types of emergencies would qualify, or by creating entirely separate savings accounts, such as an “emergency assistance account” akin to a Health Savings Account (HSA).<sup>73</sup> Like HSAs, such funds could become available for any purpose after age 65.<sup>74</sup>

Policymakers would be wise to also consider the role of private insurance in helping people faced with both localized (e.g., natural disasters) or worldwide (e.g., pandemics) emergencies. While it is not possible to predict the specifics of future events, the insurance market was created to hedge against a wide range of risks.<sup>75</sup> Existing federal insurance programs, like the National Flood Insurance Program, have had substantial issues with undervaluing risk, but there are many reform options to improve program resiliency while lessening the potential exposure of taxpayers.<sup>76</sup>

### Conclusion

Policymakers face few challenges that are more pressing than dealing with unforeseen events. Although emergencies are inevitable, Congress has failed to adequately prepare for them, and the policy responses following recent emergencies have been uncoordinated and excessive. The result has been a large expansion of the federal balance sheet and continued abuse of existing emergency powers. As global threats escalate, policymakers should focus on fortifying the federal budget against future emergencies and encouraging solutions that lessen the burden when such events arise.

Such reforms should be multifaceted to deal with a wide range of “known unknowns,” and perhaps even “unknown unknowns”—new types of emergencies that we have yet to face. They should help address future pandemics, natural disasters and national defense crises, but also be flexible enough to deal with potential emergencies that are beyond the scale of current imagination. Fortunately, options are plentiful. Congress would be wise to take prudent actions now before the next crisis is at our doorstep.



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72. Andrew Lautz, “Pandemic Health Accounts (PHAs): How Congress Can Best Help Millions of Americans Who May Soon Be Uninsured,” National Taxpayers Union, April 8, 2020. <https://www.ntu.org/library/doclib/2020/04/Pandemic-Health-Accounts-PHAs-How-Congress-Can-Best-Help-Millions-of-Americans-Who-May-Soon-Be-Uninsured-4-.pdf>.
73. Jonathan Bydlak, “Fiscal Policy in a Time of Crisis,” R Street Institute, March 24, 2020. <https://www.rstreet.org/commentary/fiscal-policy-in-a-time-of-crisis>.
74. “5 ways HSAs can help with your retirement,” Fidelity, Dec. 7, 2022. <https://www.fidelity.com/viewpoints/wealth-management/hsas-and-your-retirement>.
75. R.J. Lehmann, “We Oppose Nearly Every Government Insurance Program. We Could Support One for Pandemics,” Insurance Journal, March 26, 2020. <https://www.insurancejournal.com/blogs/2020/03/26/562531.htm>.
76. Testimony of Jerry Theodorou, Senate Committee on Banking, Housing, and Urban Affairs, 117th Congress, June 16, 2022. <https://www.banking.senate.gov/imo/media/doc/Theodorou%20testimony%206-16-22.pdf>; “Resiliency and Pre-Disaster Mitigation: Investments that Benefit American Taxpayers,” SmarterSafer.org, December 2022. [https://www.smarter safer.org/wp-content/uploads/2022/12/SmarterSafer\\_Taxpayer-Protection-and-Resiliency.pdf](https://www.smarter safer.org/wp-content/uploads/2022/12/SmarterSafer_Taxpayer-Protection-and-Resiliency.pdf).

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