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THE CURRENT SEARCH FOR ENHANCING THE QUALITY OF PUBLIC EXPENDITURE RELATED TO DISCRETIONARY PRIMARY SPENDING

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Abstract

This article proposes to address the quality of public expenditures related to the Federal Government's discretionary primary spending, addressing topics that need attention and improvement. The study initially considers that the results-based budget approach associated with the current program-budget technique results in better public spending. Afterwards, the flexibility in the public budget execution is recognized as necessary, however, it is investigated as being indiscriminately used by public administrators that through certain amendments can depart from what had been approved in the budget legislation and may generate expenditures that are dissociated from the public interest. The last topic analyzes the possible improvements that can be accomplished by a well thought out and controlled budget execution, in all stages of public expenditure, avoiding unnecessary unpaid commitments and complying with the current mandatory budget, with the support of the suggested budgetary and financial model.

Keywords: quality, public expenditures, results, flexibility, planning.

JEL: E62, H50, H61.

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1. INTRODUCTION

In general terms, quality represents the adequacy of something to the expected parameters, referring to excellence, a concept that cannot be forgotten by the modern Public Administration in the performance of its institutional mission, especially in times when governance has been implemented with a view to conducting public policies.

Contemporary public management requires a performance from its administrators focused on results, which are materialized with the application of public resources, and, in this step, the execution of public expenditure arises. Talking about public spending is inevitably talking about public budget, a legal instrument that, today, has the most important assignment of serving as a tool for planning and development of public management.

Starting from the premise that the public budget is prepared in order to meet the real needs of the community, its execution must be in the same line. Thus, when executing discretionary expenses, the public administrator must be guided by the limits imposed by law, as happens in every discretionary administrative act.

Focusing on this administrative performance, this article aims to address the quality of public spending related to discretionary primary expenditure of the Federal Government, whose attention will turn to the study of topics that can collaborate in the search for this evolution, addressing various topics, but all related to each other, in order to obtain a broad analysis of the subject.

The study will address: the evolution of budget planning and the evaluation of the benefits that the focus of the budget by results can bring, if combined with the current program-budget technique; moderation in the use of budget flexibility; the budgetary and financial execution of discretionary primary expenditure with a focus on quality, considering the stages of expenditure, the rests payable, the EC No. 95/2016 and the imposition budget.

Finally, it will be shown how Public Accounting can collaborate, in this whole dynamic, by suggesting the creation of a budgetary and financial balance of the execution of discretionary primary expenditures.

2. THE EVOLUTION OF BUDGET PLANNING AND THE FUTURE CONTRIBUTION THAT RESULTS-BASED BUDGETING CAN OFFER, IF COMBINED WITH THE CURRENT PROGRAM-BUDGET

The Brazilian public budget began to take shape in the early 19th century, with the arrival of the Portuguese royal family to Brazil and the publication of the Alvará of June 28, 1808, which created the Erário Régio (Royal Treasury) and the Conselho da Fazenda (Finance Council), whose objective was to organize the financial activity of the State.

Agenor de Roure¹ explains that “it was the embryo of the general principles of budgetary law regarding annuality and inspection, accountability and specialization” and Rafael Baldo² adds that, at that moment, “the importance of the internal rationalization of the financial activities in the formation of the Brazilian public budget is therefore highlighted.

According to Marcus Abraham³, “since Independence, our Constitutions began to include budget rules (...)”. Each political charter dealt with the matter in its own way and the budget process improved over time.

Without going into the details and the importance given to budgetary matters in each constitutional text, the major highlight were the changes that occurred in the Brazilian public budget with the enactment of the 1988 Federal Constitution. Among the changes, planning was highlighted with the creation of the Multiyear Plan (successor to the Multiyear Investment Budget) and the Budget Guidelines Law, whose pieces were combined with the Annual Budget Law, a single document that replaced the Federal Government’s Fiscal Budget and the State Companies’ Budget.

Turning our attention to budget planning, we cannot forget important events during this historical evolution, whose highlights are:

i) The enactment, as of the Charter of 1891, of the Federal Accounting Code (Decree No. 4.536/1922), which, according to Vander Gontijo⁴, enabled the ordering of the budgetary, financial, accounting, and equity procedures of federal management;

ii) The creation in 1938 of the Public Service Administrative Department (DASP), provided for in the 1937 Constitution. In the lesson of José Maurício Conti⁵, the creation of this department was extremely relevant in this period, because the agency was responsible for intensifying the modernization of the Public Administration at the time, and, in this line of action, implemented measures to make public budgets instruments aimed at planning government activities;

iii) The enactment, under the aegis of the 1946 Constitution, of Law no. 4,320/1964, which establishes general rules of financial law until today, being one of the main legal institutes on the matter and the normative that reinforced planning by means of the program-budget stated in its text;

iv) With the advent of the 1967 Constitution, there was the creation of Decree-Law No. 200, in February of the same year, which institutionalized the practice of planning and established a

1 ROURE, Agenor de. Formation of the Brazilian budget law. Rio de Janeiro: Printing of the Journal of Commerce, 1916, p.15.

2 BALDO, Rafael Antonio. The history of public budget in the paradigms of legality, economy and legitimacy. Curitiba: Juruá, 2022, p. 96.

3 ABRAHAM, Marcus. Course on Brazilian Financial Law. 6. ed. Rio de Janeiro: Forense, 2021, p. 300.

4 GONTIJO, Vander. Federal Budget - Historical Evolution in Brazil. Brasília: Chamber of Deputies, 2004. Available at: <https://www2.camara.leg.br/orcamento-da-uniao/cidadao/entenda/cursopo/HistoricoBrasil>. Access on July 5, 2022.

5 CONTI, José Mauricio. The budget planning of public administration in Brazil. 1. ed. São Paulo: Blucher Open Access, 2020, p. 60-61.

correlation between the need to plan the actions before executing the public budget and, in the midst of this connection, the elaboration of the program-budget was configured; and

v) The publication of the Fiscal Responsibility Law (LC No. 101/2000), edited under the mantle of the 1988 Constitution, “to ensure greater transparency, efficiency and control of public spending”⁶. According to Deusvaldo Carvalho⁷, “in several points the LRF emphasizes the planned and transparent action in the Public Administration”. According to the author, the LRF reinforces the role of the planning activity and highlights the integration between the Multiyear Plan, the Budget Guidelines Law and the Annual Budget Law.

After this brief history, it should be emphasized that the Brazilian budget planning process has intensified over time, and “the development of the practical dimensions of the budget, due to its growing importance, has led to the creation of budget techniques that integrate planning instruments.”⁸

In this context, the traditional or classic budget - characterized by being a piece intended for the accounting control of expenditures, restricted to the forecasting of revenue and authorization of expenses - has lost space to the current program-budget, which, in the teaching of Abraham⁹, “includes, in addition to financial information on revenues and expenses, the State’s action programs, by identifying projects, plans, objectives and goals.

But public budgets were not restricted, in Brazil, to these two types. About the budgeting techniques already employed, it is appropriate to mention the approach of Carvalho, Lochagin and Silveira¹⁰:

There are numerous other techniques that could be mentioned, such as the PPBS (Programming Planning and Budgeting System), implemented to organize the budget into plans, programs and financial forecasts, and the zero-based budgeting, adopted so that all government agencies budget as if starting from scratch, in order to avoid the continuation of unnecessary programs. To some extent, these techniques have not been taken very far because of the complexity of the information generated. However, the association between budget and programs remains an important idea. Mainly because of the constitutional guidelines, which transform planning into a continuous process of state action, making a

6 ABRAHAM, Marcus. Course on Brazilian Financial Law. 6. ed. Rio de Janeiro: Forense, 2021, p. 302.

7 CARVALHO, Deusvaldo. LRF: doctrine and case law. 2. ed. Rio de Janeiro: Impetus, 2018, p. 26-27.

8 CARVALHO, André de Castro; LOCHAGIN, Gabriel Loretto; and SILVEIRA, Francisco Secaf A. Lessons in financial law / general coordinator Regis Fernandes de Oliveira; coordinators Estevão Horvath, José Mauricio Conti, Fernando Facury Scaff. São Paulo: Editora Revista dos Tribunais, 2016, p. 70.

9 ABRAHAM, Marcus. Course on Brazilian Financial Law. 6. ed. Rio de Janeiro: Forense, 2021, p. 307.

10 CARVALHO, André de Castro; LOCHAGIN, Gabriel Loretto; and SILVEIRA, Francisco Secaf A. Lessons in financial law / general coordinator Regis Fernandes de Oliveira; coordinators Estevão Horvath, José Mauricio Conti, Fernando Facury Scaff. São Paulo: Editora Revista dos Tribunais, 2016, p. 70-71.

very strong association between planning and budgeting.

Therefore, the program-budget technique was the one that was consolidated and currently meets the constitutional precepts, after the improvement of the budgetary process achieved over the years. This type of budget is defined, according to the Glossary of Budgetary Terms of the National Congress¹¹, as a:

A methodology of public-budget preparation, adopted by Law no. 4,320/1964, that expresses, financially and physically, the government's work programs, allowing for the integration of planning and budgeting, the quantification of objectives and the setting of targets, the relations between input and output, the programmatic alternatives, the physical-financial monitoring, the evaluation of results, and the management by objectives.

In light of this paradigm, it can be observed that the changes in the budgetary sphere have moved towards obtaining a structure of pieces that reflect the government's intentions, through programs planned for a given period. According to the Federal Budget Secretariat of the Ministry of Economy¹², the mission of the public budget is to: "to rationalize the process of resource allocation, ensuring the balance of public accounts, with a focus on results for Society."

But in times when public governance directs modern public management to the pursuit of desirable performance parameters, this study raises the debate about the effectiveness of achieving the expected results from the program-budget and the contribution that the budget by results can offer, so that there is a budget planning that provides more quality in public spending, especially those related to administrative discretion.

Élida Graziane Pinto¹³, in a study about the quality of public spending, when emphasizing the deference of the management of public resources to planning, infers that:

Quality public spending, under this prism of analysis, means well planned spending, whose execution proves to be adherent to the estimates of cost and result, without prejudice to obedience to the other filters of conformity with the law. In an even more direct manner, an adequate expense is that which is resolute in relation to the problem that justified its realization. But, in order to know how to solve it, the problem itself must be well outlined,

11 BRAZIL, National Congress. Glossary of Budgetary Terms. Available at: https://www.congressonacional.leg.br/legislacao-e-publicacoes/glossario-orcamentario/-/orcamentario/termo/orcamento_programa. Accessed on July 9, 2022.

12 BRAZIL, Ministry of Economy - Federal Budget Secretariat. Available at: <https://www.gov.br/fazenda/pt-br/orgaos/secretaria-de-orcamento-federal-sof>. Accessed on July 9, 2022.

13 PINTO, Élida Graziane. 15 years of the LRF: still in search of control over the results of public policies and the quality of public spending. Belo Horizonte: Financial and Economic Law Forum Magazine, 2016, p. 5.

and its confrontation routes should have been intensely analyzed; otherwise, we will return to the vicious cycle of not having clarity about what to do so as not to repeat the mistakes of the past.

According to the author's view, the quality of public spending requires a results-oriented planning. Thus, when conceptualizing the budget by results, José Mauricio Conti¹⁴ infers that this technique is based on the central idea that the budget is based on programs in which the resources are allocated so as to be linked to results that allow the performance measurement. The author¹⁵ emphasizes that this type of budgeting is relevant for planning and management, insofar as it provides the use of information about the results in the decision process about the allocation of public resources.

In this step, it is noted that, while the program-budget is concerned with objectives and setting goals, whose expenses are classified, among other grouping categories, according to a programmatic structure composed of programs, actions, projects, activities and special operations, the budget by results, according to Conti¹⁶, directs the expenses, "classifying them in the budget pieces, so as to link them to the results intended with the government actions for which appropriations were consigned."

Not that the approach chosen in this article, away from the program-budget, but it compounds the emphasis of the budget by results to the methodology adopted by Law No. 4,320/1964, in order to improve this structure, so that the schedules are performed from the expected result. The lawyer Stephan Righi Boechat¹⁷, in a work dedicated to the study of the budget by results, when dealing with the incorporation of results in the budget process, clarifies this approach:

In results-based budgeting, the structure of programs and their classification is resized to focus on outputs and outcomes, so that results and impacts become the direction of programming and planning. Of course, expenditures must be program-driven (program-budget), and this is a pre-constitutive step for the formulation of the structural arrangements in results-based budgeting.

It is true that most of the budget law is destined to the setting of mandatory expenditures, by force of the Constitution and the infra-constitutional legislation. In 2020, for example, the mandatory

14 CONTI, José Mauricio. The budget planning of public administration in Brazil. 1. ed. São Paulo: Blucher Open Access, 2020, p. 93.

15 CONTI, José Mauricio. The budget planning of public administration in Brazil. 1. ed. São Paulo: Blucher Open Access, 2020, p. 92.

16 CONTI, José Mauricio. The budget planning of public administration in Brazil. 1. ed. São Paulo: Blucher Open Access, 2020, p. 91.

17 BOECHAT, Stephan Righi. Budget by results and financial law. São Paulo: Blucher, 2018, p. 123 (Financial Law Series / coordinated by José Mauricio Conti).

expenditure corresponded to 92.6%¹⁸ of the total primary expenditure¹⁹. Exempting this article from entering into this consigned part of the budget, and looking at the small discretionary slice, it is noted that the budget by results has much to contribute to the decision-making process of public administrators.

This is because, if the allocation of resources, at the time of planning the budget laws, has already been conducted to obtain certain results, the public administrator will find himself in a more directed performance, at times when he will need to use administrative discretion in the decision-making process about public spending.

It is clear that the creation of discretionary spending occurs in the course of budgeting and programming, according to Law No. 4.320/1964, must observe the principle of budgetary specificity, “according to which revenue and public spending should be included in the budget with a satisfactory level of specification or discrimination, i.e., should be authorized by the Legislature not in block, but in detail²⁰ “; so that the expenses are well outlined in view of the objectives that were set, however, what we see, in the end, are unnecessary expenses, unmet structures, useless purchases, i.e., numerous expenses that do not serve the public interest.

In this direction, Élide Graziane Pinto²¹ calls attention to the understanding that the quality of public spending involves a budget planning that binds the managers’ actions.

Now, the nodal point, the true critical axis of the quality of public spending, passes, necessarily, through the requirement that the state plans, especially the laws of the budget cycle, contain indicators of its achievement, linked to quantitative goals of goods, services, works and citizens served, which, in turn, implies an estimate of unit and overall cost. (my emphasis)

Once formulated, we must assume that such planning is binding for the manager insofar as its partial execution or non-execution requires consistent motivation, as long as it is in line with the facts that intervene in its route. (my emphasis)

18 Data extracted from the Fiscal Monitoring Report No. 50, March 22, 2021, prepared by the Independent Fiscal Institution of the Federal Senate, p. 5. Available at: https://www2.senado.leg.br/bdsf/bitstream/handle/id/586156/RAF50_MAR2021.pdf. Accessed on July 11, 2022.

19 According to Enap: “Primary expenditures are the expenses incurred by the government to provide public goods and services to the population, such as health, education, road construction, in addition to expenses necessary for the maintenance of the state structure (maintenance of the public machine).” (Introduction to Public Budgeting. Module 2 Public Revenue and Expenditure. Brasília: Enap National School of Public Administration, 2017, p. 15. Available at: <https://repositorio.enap.gov.br/bitstream/1/3168/1/Modulo%20-%20Receita%20e%20Despesa%20Publicas.pdf>. Accessed July 11, 2022).

20 BRAZIL, National Congress. Glossary of Budget Terms. Available at: https://www.congressonacional.leg.br/legislacao-e-publicacoes/glossario-orcamentario/-/orcamentario/termo/principio_da_especificidade_orcamentaria#:~:text=Princ%C3%ADpio%20or%C3%A7ament%C3%A1rio%20second%20which,in%20block%2C%20but%20in%20detail. Accessed July 11, 2022.

21 PINTO, Élide Graziane. 15 years of the LRF: still in search of control over the results of public policies and the quality of public spending. Belo Horizonte: Financial and Economic Law Forum Magazine, 2016, p. 6.

The process is better understood when analyzing the steps that the Association of Government Finance Officers recommends adopting in the implementation of the budget by results, cited in one of the works by James Giacomoni²². Briefly, they are: 1) Determine the amount of financial resources available, from the expected revenue; 2) Prioritize the results, according to the needs of society; 3) Allocate the resources among the results of high priority; 4) Determine, through analysis, which strategies, programs and activities best produce the desired results; 5) Commit available resources to the most significant programs and activities in order to maximize the benefits of applying those resources; 6) Establish annual follow-up and monitoring measures; 7) Verify what actually happened by using performance measures to compare planned results with achieved results; and 8) Disseminate performance results to all stakeholders through an understandable presentation.

Thus, with the adoption of this model, the decisions of public managers are guided by the results to be achieved, which have already been defined and prioritized in the budget laws and, consequently, administrative discretion is exercised in order to adjust the necessary conduct to achieve what is intended.

However, change requires effort. Rodrigo Oliveira de Faria²³, in a study focused on trends, prospects and challenges of the budget by results, concludes, among other conclusions, that

The numerous challenges to be faced for the introduction of the Budget by Results make it possible to visualize the degree of difficulty for its implementation. However, the longevity of its conceptual core and the growing social demand for quality of public spending and effectiveness of government intervention suggest that this theme will remain on the agenda of modern budget reform agendas. For Brazil, the challenges will be no less.

Thus, considering that the budget process represents the government's interests, the implementation of the budget by results associated with the program-budget technique will depend on political support allied to an institutional environment favorable to such a change, because the introduction of this model will face challenges, even with the beneficial perspective that results-oriented planning offers.

22 GIACOMONI, James. Public Budget. 18. ed. São Paulo: Atlas, 2022, p. 193-194.

23 FARIA, Rodrigo Oliveira de. Budget by results: trends, perspectives and challenges. SOF monograph award 2010. Brasília: National School of Public Administration (Enap), 2010, p. 60. Available at: https://repositorio.enap.gov.br/bitstream/1/4682/1/tema-2-mencao-honrosa_2010.pdf. Accessed July 12, 2022.

3. FLEXIBILITY WITH ACCOUNTABILITY IN THE EXECUTION OF THE PUBLIC BUDGET

Once the planning and approval phases of the budget law are concluded, the execution stage of the public budget begins. It is in this phase of the so-called budget cycle²⁴ that the expenses are incurred by the public administration, aiming at the fulfillment of the planned programs and actions. When conceptualizing public spending, Marcos Abraham²⁵ draws a parallel with public spending and highlights its role before the collectivity:

Public Expenditure is the set of expenses incurred by the State in its operation. In other words, it is the application of financial resources in goods and services intended to meet collective needs. The etymological origin of the word expenditure comes from the Latin *dispendere*, which means to employ and, therefore, indicates its function: to use state resources in the execution of its purpose. Although we use the word “expense” as a synonym for expenditure, in financial law there is no negative connotation as it is usually used in everyday life, in the sense of waste or squandering. Quite the contrary, the spending of public money should always be done and considered as a use of public funds in a positive way, i.e., an investment in society or state property, adding value through public spending, in goods or services of interest to the community. (emphasis added)

Directing this article to the approach of primary discretionary expenses, it is important to note that the public administrator, when making such expenditures, cannot act at will, and must base the management of public finances on the budget laws. According to Di Pietro²⁶: “And the action is discretionary when the Administration, faced with the concrete case, has the possibility to assess it according to criteria of opportunity and convenience and choose one of two or more solutions, all valid for the law (see Di Pietro, 2001b).”

Therefore, once the financial year begins²⁷, what enables the execution of expenses, by public managers, is the receipt of budget credits provided for in the Annual Budget Law and the appropriations corresponding to these credits. Regarding these nomenclatures, it is appropriate to bring the explanation of Giacomoni²⁸:

24 In the lesson of Abraham: “We say that the budget cycle comprises the set of steps that begins with the preparation of the bill, goes through the analysis, debate and vote in the Legislature, involves its implementation and control and ends with the evaluation of its compliance. (emphasis added) (ABRAHAM, Marcus. Course on Brazilian Financial Law. 6. ed. Rio de Janeiro: Forense, 2021, p. 381).

25 ABRAHAM, Marcus. Course on Brazilian Financial Law. 6. ed. Rio de Janeiro: Forense, 2021, p. 213.

26 DI PIETRO, Maria Sylvia Zanella. Administrative Law. 35. ed. Rio de Janeiro: Forense, 2022, p. 222.

27 According to art. 34 of Law No. 4.320/1964, the fiscal year coincides with the calendar year.

28 GIACOMONI, James. Public Budget. 18. ed. São Paulo: Atlas, 2022, p. 270-271.

(...) In fact, the budget credit is constituted by the set of classificatory categories and accounts that specify the actions and operations authorized by the budget law. (...) In turn, the appropriation is the amount of financial resources that the budget credit counts on.

Thus, the agencies and entities of the public administration execute their expenses from the analytical record of budget credits and appropriations. In the lesson of Gabriel Loretto Lochagin²⁹, the expression “analytical budget” relates to the principle of budgetary specificity and this model of accounting organization is essential for the implementation of public expenditure, because it determines the form of its exercise.

However, during execution, the budget can be changed in order to meet situations that were not foreseen at the time of its preparation and this adjustment is exercised through legal instruments that authorize the flexibility of budget execution. Using this tool, the public manager can take advantage of the change in the expenditure specification so that the budget is adjusted to the reality that is imposed in the daily administrative routine.

But this flexibility is not unlimited and nor could it be, both because of the legislative process in which the budget is inserted and because of the political character of which it [budget] is vested. Lochagin³⁰ points out that: “One executes the budget to comply with the budget. Likewise, one changes the budget to make it possible to meet its objectives.” The author³¹ further adds:

In a sense, the classification of expenditure only to a point where it does not compromise administrative efficiency, avoiding such detailed forecasts that significantly reduce administrative discretion, shows that the public budget gives the Executive Branch room to promote the adaptation of the budget to the more specific needs of the administration. However, major adjustments, which reach broader levels of expenditure classification, affecting the appropriations themselves, must return for parliamentary consideration - which is done, in the execution phase, by submitting bills that create additional credits or transfer resources from one appropriation to another.

Thus, the principle of specificity, present in the registration of budget credits, does not prevent the executing units and the sectorial organs³² to make use of any rectifications, at more detailed levels

29 LOCHAGIN, Gabriel Loretto. The execution of the public budget: flexibility and enforceable budget. São Paulo: Blucher, 2016, p. 81.

30 LOCHAGIN, Gabriel Loretto. The execution of the public budget: flexibility and enforceable budget. São Paulo: Blucher, 2016, p. 91.

31 LOCHAGIN, Gabriel Loretto. The execution of the public budget: flexibility and enforceable budget. São Paulo: Blucher, 2016, p. 91.

32 According to the National Congress, Sectorial Organ is the “Organ integrating the Federal Planning and Budget Sys-

of public spending, as is the case of the change between the elements of expenditure and between budget plans, however, beyond, of course, the legal compliance for such conduct, public managers who decide on these changes should be concerned with the quality of spending that will arise.

The public administrator, before deciding on the intended reclassification, needs to weigh the real needs of these reallocations, from minor changes in the detailing of expenditures to, for example, requests for special additional credits³³ aiming at changes between groups of nature of expenditure³⁴, these requiring legislative authorization. The changes must be aligned with the objectives and goals set at the time of budget planning.

Thus, what is expected is to avoid discretionary conduct that affects the quality of public spending. For example, when a public administrator decides to make a change between expenditure items, increasing the per diem item and decreasing the resource allocated to the contracting of clearing for a public park, the performance parameters change. The intention here is not to question the need for travel of public servants, but to reflect on whether this change would have been even imperative if there had been prior planning for these trips, because in this case, the question is: Was the optimization of routes studied, in order to reduce the amount of travel required and adjust it to the budget credit available for this activity?

Another hypothetical situation would be the proposal, to the parliament, of a special additional credit request to change the group of nature of expenditure, transferring possible budget surplus identified in group “3 - Other Current Expenses” to group “4 - Investments”, for the acquisition of some permanent asset that will not bring so much utility to the public administration, such as the purchase of a vehicle, for example, when the yard of the organ or public entity already shows a fleet satisfactory for the purpose for which it is intended.

An interesting point was raised by Marcos José Mendes³⁵, when addressing the flexibility of the

tem that plays the role of articulator between the central organ and the executing organs within its structure, coordinating the decision-making process at the sub-sectorial level of the Budget Units (UO).” (BRAZIL, National Congress. Glossary of Budgetary Terms. Available at: https://www.congressonacional.leg.br/legislacao-e-publicacoes/glossario-orcamentario/-/orcamentario/termo/orgao_setorial#:~:text=%C3%93rg%C3%A3o%20integrant%20of%20the%20System%20of,Law%20n%C2%BA%2010.180%2F%202001. Accessed July 15, 2022).

33 Marcos Abraham explains: “The additional credits are the amounts granted to make up for the lack of budgetary resources. According to art. 40 of Law No. 4.320/1964, the additional credits are the authorizations of expenditure not included or insufficiently provided in the Budget Law. (emphasis added) (...) These additional credits are classified as: I - supplementary, intended to reinforce a budget appropriation; II - special, intended for expenses for which there is no specific budget appropriation; III - extraordinary, intended for urgent and unforeseen expenses, in case of war, intestinal commotion or public calamity (art. 41, Law No. 4,320/1964).” (ABRAHAM, Marcus. Course on Brazilian Financial Law. 6. ed. Rio de Janeiro: Forense, 2021, p. 360).

34 According to the Federal Senate, “Group of Nature of Expenditure is the classification of expenditure aggregating elements of expenditure with the same characteristics as to the object of expenditure, as broken down below: 1 - Personnel and Social Charges; 2 - Interest and Debt Charges; 3 - Other Current Expenses; 4 - Investments; 5 - Financial Investments; 6 - Debt Amortization; and 9 - Contingency Reserve.” (BRAZIL, Federal Senate. Budget - Glossary. Available at: <https://www12.senado.leg.br/orcamento/glossario/grupo-de-natureza-da-despesa>. Accessed on July 15, 2022).

35 MENDES, Marcos José. Brazilian budget system: planning, fiscal balance and quality of public spending. Brasília: Legislative Consulting of the Federal Senate, 2008, p. 19.

public budget, enjoyed as a result of the consequences of the contingency of resources³⁶. The author warns about the inconsistency of this practice with the principle of transparency³⁷:

In the release of resources via contingency there is a natural transfer of expenses to the last months of the year, when there is already certainty as to the revenue realized and compliance with the primary surplus target. This means that government programs are kept in limbo throughout the year and, at the end of the fiscal year, need to carry out quick biddings. It becomes very difficult to manage public programs effectively if there is no regularity and predictability in the release of resources.

These massive releases of funds at the end of the year also disrupt the processing of the budget for the following year, because at the time it is conducting a complex evaluation of the draft LOA, the Budget Committee receives a large volume of projects for additional credits, in which the Executive, while releasing funds, proposes changes in the programs served. Transparency is strongly hampered, as the projects of additional credits are voted on quickly, without adequate information and analysis.

Finally, the assumptions about the indiscriminate use of budgetary flexibility are not few, unfortunately. However, it should be noted that the legal provision of the institute is wise, because this tool is extremely necessary in the course of budget execution, so that the administrative activity is fulfilled with efficiency, effectiveness and efficacy, facing unforeseen and urgent situations, being impractical a budget that cannot be changed during its execution.

From the standpoint of the budget by results combined with the program budget, flexibility in budget execution is an indispensable condition for the implementation of the model proposed in this study. Regis Fernandes de Oliveira³⁸, in an article published on the budget for results or performance budgeting, points out: “It is important to give the agents flexibility instruments so that they can use public funds. They can reallocate appropriations, facilitate bidding, change expenses, etc. All in view of the end to be achieved.”

36 According to the Federal Senate, “Contingency is the blocking of budget appropriations. Such procedure is done by the Executive in order to ensure balanced budgets, that is, to balance the execution of expenses and the effective availability of resources.” (BRAZIL, Federal Senate. Available at: <https://www12.senado.leg.br/noticias/glossario-legislativo/contingenciamento>. Accessed on July 17, 2022).

37 Marcus Abraham teaches that the budget principle of transparency “intends primarily to restrain the existence of obscure expenditures or the inclusion of inaccurate or unexplained funds, programs, projects or tax benefits that, for lack of clarity or transparency, may mislead or be manipulated to meet objectives other than those originally planned and approved.” (ABRAHAM, Marcus. Brazilian financial law course. 6. ed. Rio de Janeiro: Forense, 2021, p. 343).

38 OLIVEIRA, Regis Fernandes de. Budget of result or performance. Belo Horizonte: Financial and Economic Law Forum Magazine, 2014, p. 23.

Boechat³⁹, when emphasizing that the budget by results produces efficiency in the allocation of public resources, states that:

() This change leads to flexibility for managers of public resources to allocate them in a more suitable and efficient way when it comes to achieving the established objectives, because the achievement of results goals transcends the importance of the acquisition of inputs. Discretion increases; however, institutional responsibility also increases, aiming at a more efficient allocation of public funds in government programs.

Therefore, what is emphasized in this work is the duty of compliance, by the manager of public resources, of flexibility with responsibility or, better, of efficiency with awareness, but excuse us for the puns, it is said of the awareness of the budget as a law; of what is intended to achieve through this planned piece; and of the quality that society expects with the realization of public expenditure. Not that the quality of public spending is restricted to this point of flexibility, on the contrary, it needs to be treated in the broadest possible way. What we observe is that, when changes occur in the budget law, budget execution can be further distanced from the desirable standards.

4. THE BUDGETARY AND FINANCIAL EXECUTION OF PRIMARY DISCRETIONARY EXPENDITURES FROM A QUALITY PERSPECTIVE AND THE CONTRIBUTION OF PUBLIC ACCOUNTING

As already mentioned, it is from the accounting record of budget credits and appropriations provided in the budget law that public expenditures are executed. According to José Mauricio Conti⁴⁰, “(...) public spending is a complex act. Legal provision in the budget, bidding, commitment, schedules, settlements, in short, there is a long way to disbursement. And all this dynamic needs to happen, as a rule, within one financial year - January 1 to December 31.

José Augusto Moreira de Carvalho⁴¹ explains: “A financial year is understood as the period in which the budgetary and financial execution takes place. That is, it refers to the time period in which the revenues and expenses provided for in the budget should be realized.” Therefore, it is in this time interval that the three stages of public spending take place: commitment, settlement and payment, all provided for in Law No. 4,320/1964.

Art. 58 of Law No. 4,320/1964 defines it this way: “The expenditure commitment is the act

39 BOECHAT, Stephan Righi. Budget by results and financial law. São Paulo: Blucher, 2018, p. 70 (Financial Law Series / coordinated by José Mauricio Conti).

40 CONTI, José Mauricio. Taking financial law seriously: the struggle continues. 3. ed. São Paulo: Blucher, 2019, p. 255.

41 CARVALHO, José Augusto Moreira de. Public budgets: commented Law 4.320/1964 / José Mauricio Conti coordination. 4. ed. atual. São Paulo: Thomson Reuters Brazil, 2019, p. 129.

issued by the competent authority that creates a payment obligation for the State, whether or not pending the fulfillment of a condition. Giacomoni⁴² complements:

Strictly speaking, the commitment serves other purposes besides this one. It is the main instrument available to the public administration to monitor and control the execution of its budgets. To commit the expense means to fit it into the appropriate budget credit and deduct it from the balance of the appropriation of that credit. In addition to enabling such control, the commitment constitutes a guarantee to the creditor that the amounts committed are backed by the budget.

The liquidation of the expense is dealt with in article 63 of Law No. 4,320/1964 and “consists of the verification of the right acquired by the creditor based on the titles and documents supporting the respective credit.” According to § 1 of the same article, “this verification aims to ascertain: I - the origin and the object of what is to be paid; II - the exact amount to be paid; III - to whom the amount is to be paid, to extinguish the obligation.” In § 2, it is listed what should be considered in this verification to be carried out after the delivery of the good or the provision of the service: “I - the respective contract, adjustment or agreement; II - the commitment note; III - the evidence of the delivery of the material or the effective provision of the service.” Christopoulos, Haber and Torres⁴³ explain:

The liquidation consists, in this way, in the act of verifying the right acquired by the creditor to receive the installment. This verification is not only formal. It must always observe what actually occurs, often including physical verification of the contractor’s compliance with the obligation (by visiting a construction site, for example). The settlement must take into account the conditions foreseen in the bidding, in the contract, in the commitment and in all the administrative acts that specify the requirements for the correct performance of the obligation.

Finally, after the regular settlement of the expense, the payment is made by means of an order issued by the competent authority (articles 62 and 64 of Law no. 4,320/1964), thus ending the public expense realization process.

That said, considering that public resources are scarce and that they need to be used very well, the execution phase of the public budget is a relevant time to adopt measures to improve the quality of

42 GIACOMONI, James. *Public Budget*. 18. ed. São Paulo: Atlas, 2022, p. 276-277.

43 CHRISTOPOULOS, Basile Georges Campos; HABER, Michel; and TORRES, Ricardo Ezequiel. *Lessons in financial law / general coordinator Regis Fernandes de Oliveira; coordinators Estevão Horvath, José Mauricio Conti, Fernando Facury Scaff*. São Paulo: Editora Revista dos Tribunais, 2016, p. 47.

spending. Some measures are dealt with below.

According to an excerpt from Giacomoni's lesson, the public administration carries out the monitoring and control of its budget execution, mainly through the commitments issued, because, by committing the expense, one obtains information about which budget credits and their appropriations have already been consumed, as well as the availability for new hirings and acquisitions.

Therefore, such control associated with the use of a software that can record budget credits and appropriations received; projected expenses for the entire financial year; amounts to be committed; payments made; financial programming; and, still, that enables the issuance of reports for analysis and decision making, leads the public administration to a more efficient performance, with the consequent optimization of the application of public resources. It is suggested, then, that this budget and financial management system be fed with data extracted from the SIAFI system⁴⁴ and supplemented with information relating to the planning of spending for the financial year.

In addition, the committed and projected expenses for the fiscal year must always be aligned with the objectives and goals established in the public budget and observe the provisions contained in plans: strategic, hiring, construction, modernization, information technology, in short, to achieve better spending, there must be an alignment between the budget laws, the plans developed by public agencies and entities and the budgetary and financial execution.

As far as the expense liquidation stage is concerned, besides being the moment when the fulfillment of all the conditions established in the adjustments made between the public administration and the creditor is verified, it is also the moment when public administrators have the opportunity to obtain relevant information about the final result of the contracting process and, based on the management of this information, correct, a posteriori, any deviations identified in the planning process, as well as adopt measures to improve the cost-benefit ratio in future contracting processes, based on situations experienced in the present.

When attention turns to the payment phase of discretionary spending, a topic that deserves to be highlighted and refers us to the quality of public spending, is the adoption of the Results Measurement Instrument - IMR, in the hiring of services under the regime of indirect execution. Normative Instruction No. 5/2017 of the Ministry of Planning, Development and Management defines the IMR thus, in its Annex I: "mechanism that defines, on an understandable, tangible, objectively

⁴⁴ Concept of the Integrated System of Financial Administration of the Federal Government (SIAFI), by the Federal Senate: "A way of monitoring the activities related to the financial administration of the Federal Government's resources, which centralizes or standardizes the processing of budget execution, using electronic data processing techniques, with the involvement of the executing and sectorial units, under the supervision of the National Treasury and resulting in the integration of procedures concerning, essentially, financial programming, accounting, and budget administration. There is a correspondent in the states and municipalities, whose acronym is SIAFEM." (BRASIL, Senado Federal. Budget - Glossary. Available at: <https://www12.senado.leg.br/orcamento/glossario/sistema-integrado-de-administracao-financeira-do-governo-federal-siafi>. Accessed July 21, 2022).

observable and verifiable basis, the expected levels of quality of service provision and respective payment adjustments.” Zênite Consulting⁴⁵ explains:

It is, therefore, an instrument that allows the definition of objective bases to be applied in the control of the quality of the object executed, allowing the Administration, also based on an express provision in this instrument, to promote the payment adjustments that are due in case the established goals are not met.

Once an IMR is adopted, a minimum quality level is defined so that the contractor is entitled to receive the agreed amount. If the service is provided, but with a quality level below the minimum established, the IMR itself provides for the corresponding reduction to be operated on the amount to be paid to the contractor.

Thus, with the adoption of this instrument, observing the guidelines established in the norms that govern the matter, the public administration will pay the creditor the exact amount, as measured by the inspection performed based on the adopted IMR, adding more quality to the contracted services and obtaining, therefore, the efficient application of available resources, ensuring economy and morality in public spending.

Another issue of utmost importance concerning the payment of public expenses are the accounts payable (*restos a pagar*), which, in fact, refer to the absence of this stage within the financial year. The caput of Article 36 of Law No. 4,320/1964 states: “Art. 36. Accounts payable are considered the expenses committed but not paid until the 31st of December distinguishing the processed from the unprocessed.”

For its part, Decree No. 93.872/1986 conditions the recording of expenses as accounts payable at the end of the financial year of issuance of the commitment note to compliance with the conditions established therein for commitment and settlement of expenditure. Therefore, obeying the legal provisions, the commitment may be entered as accounts payable in cases where there was or was not the settlement of the expense within the financial year, however, the organs and entities of the public administration must use this mechanism only in situations strictly necessary to achieve the public interest involved.

It is unquestionable that all sorts of operational issues can occur during the execution phase of the expense and even during the previous procedure of public contracting, making the payment until December 31 unfeasible, thus the legal permissive. However, public administrators must adhere to a responsible fiscal management in order to guarantee the balance of public accounts, adopting

45 Available at Zênite Blog: <https://zenite.blog.br/o-que-e-o-instrumento-de-medicao-de-resultado-imr-previsto-na-in-no-0517-qual-o-seu-objetivo-e-quais-os-cuidados-na-sua-estruturacao/#:~:text=In%20view%20of%20exposed%2C%20res-ponds,with%20quality%20inferior%20to%20the%20n%C3%ADvel>. Accessed July 21, 2022.

measures to avoid the excessive entry of expenses in rests payable and reduce the existing stock. The Fiscal Responsibility Law is translucent in this sense. On the subject, José Mauricio Conti⁴⁶ asserts:

Hence the need for mechanisms, as in the case of rests payable, that allow the adaptation of the necessary temporariness of the budget law with the diversity of situations that arise from the uninterrupted financial activity of the public sector.

Unfortunately, what has been observed is its abusive use, with the generalization of the inscription of amounts in accounts payable, causing the year to start with significant amounts already committed, creating a true “parallel budget”, which hinders planning and management and makes public spending less transparent.

And with the focus on the quality of spending related to discretionary primary expenditure, talking about unpaid rests payable, currently, is not talking about a type of extra-budgetary expense, at least until the year 2036. According to the Glossary of Budgetary Terms of the National Congress⁴⁷, extra-budgetary expenditure means: “Expenditure that does not require legislative authorization to be held, that is, that does not integrate the public budget. Examples are: return of collateral, redemption of credit operations by anticipation of budget revenue and payment of accounts payable.”

Therefore, the rests payable, in the year they are registered, are budget expenses, but, in the year they are paid, they are off-budget expenditures, not provided for in the annual budget law. However, as of Constitutional Amendment No. 95/2016, the payables paid started to impact the budget execution of the fiscal year in which they are settled.

EC no. 95/2016, originally baptized as PEC of the “Spending Ceilings”, instituted a new fiscal regime, which will be in force for 20 (twenty) financial years, beginning in 2017, and established, for each financial year, individualized limits for primary expenses. Abraham⁴⁸ clarifies:

Therefore, while the Fiscal Regime model of the Public Expenditure Ceiling foreseen in EC no. 95/2016 is in force, there can be no real growth in federal public spending, and each year’s spending will be limited to the previous year’s spending only corrected for inflation, and so on in the following years.

And in this limitation were included the paid rests payable, as verified in § 10 of art. 107 of the Act of Transitional Constitutional Provisions, amended by EC no. 95/2016: “§ 10. For purposes of

46 CONTI, José Mauricio. Taking financial law seriously: the struggle continues. 3. ed. São Paulo: Blucher, 2019, p. 216.

47 BRAZIL, National Congress. Glossary of Budgetary Terms. Available at: https://www.congressonacional.leg.br/legislacao-e-publicacoes/glossario-orcamentario/-/orcamentario/termo/despesa_extraorcamentaria. Accessed on July 23, 2022.

48 ABRAHAM, Marcus. Course on Brazilian Financial Law. 6. ed. Rio de Janeiro: Forense, 2021, p. 266.

verification of compliance with the limits referred to in this article, it will be considered the primary expenses paid, including the paid rests payable and other operations that affect the primary result in the fiscal year.”

That is, during the effects of EC no. 95/2016, the execution of primary expenditures, at the federal level, will be affected by the amounts paid as accounts payable inscribed in previous years, reducing the availability for the performance of public administration. At this pace, in times of budget restrictions, the essential point to seek the quality of discretionary spending is the planned performance of managers of public resources, controlling every penny of available appropriations, acting in time and manner to avoid unnecessary entries of expenses in rests payable and electing priorities before what Parliament voted - if the conjuncture so requires - so that the collectivity is benefited as much as possible.

In fact, this action needs to be, habitually, attempted by public administrators, whether in “normal” times, in times of “spending caps”, in times of “contingency” of resources, in short, the culture of public service, as a whole, can no longer be the culture of the last minute. The inputs do not need to run out in order to start the procedures for a new acquisition; it is no longer tolerated that contract extensions are made “on the fly”; or that a particular public service is shaken by lack of planning or poor operationalization of public spending.

The managerial model⁴⁹ of public administration, despised by many civil servants, needs strengthening, so that the constitutional principle of efficiency⁵⁰ is well fulfilled by the managers of public resources, which must act in a way committed to the quality of spending. Thus, the results desired with the execution of discretionary spending, within the current scenario of budget imposition, become achievable.

Regarding the mentioned impositivity, as of Constitutional Amendments No. 100 and 102/2019, the public budget went from authoritative to impositive. When dealing with the species of public budget, Marcus Abraham⁵¹ teaches that:

49 According to Maximiano and Nohara: “the Public Administration adopted the managerial model, focused on control of results (performance-based accountability), officially implementing it after the 1995 Master Plan for Reform of the State Apparatus and, in the constitutional sphere, through Constitutional Amendment 19/98 (the principle of efficiency came from the transformation of quality in services). (emphasis added) (MAXIMIANO, Antonio Cesar Amaru; NOHARA, Irene Patrícia. Public management: integrated approach to Administration and Administrative Law. 1st ed. - 3. reimpr. São Paulo: Atlas, 2021, p. 134)

50 Di Pietro explains that “the principle of efficiency presents, in fact, two aspects: it can be considered in relation to the way of acting of the public agent, from which it is expected the best possible performance of its duties, to achieve the best results; and in relation to the way of organizing, structuring, disciplining the Public Administration, also with the same goal of achieving the best results in the provision of public service. (emphasis added) (DI PIETRO, Maria Sylvia Zanella. Direito administrativo. 35. ed. Rio de Janeiro: Forense, 2022, p. 98)

51 ABRAHAM, Marcus. Course on Brazilian Financial Law. 6. ed. Rio de Janeiro: Forense, 2021, p. 307.

As for the execution of the content of the public budget, we have: a) the imposing **budget**, which imposes on the government the obligation to carry out all programs and expenses provided for in its text, creating subjective rights for the citizen and duties to the State; b) the **authorizing budget** is the piece that contains the forecast of revenue and the mere authorization of expenditure, and the government is authorized to execute them, without the obligation of its full compliance, leaving it up to the public manager to assess the interest and convenience. (emphasis added)

In June 2019, Constitutional Amendment No. 100 included § 10 in art. 165 of the 1988 Federal Constitution to provide the general rule of the duty of the Administration to execute the budget schedules: “§ 10. The administration has the duty to execute the budget schedules, adopting the necessary means and measures, with the purpose of ensuring the effective delivery of goods and services to society.” EC No. 102/2019 came three months later bringing rules for the execution of the enforceable budget and the Independent Fiscal Institution of the Federal Senate⁵² clarifies:

In September 2019, Constitutional Amendment No. 102 disciplined the application of the enforceable budget (§ 10 of art. 165). The duty to execute the budget is not unlimited, since: (i) it is subject to compliance with fiscal rules, fiscal targets, or expenditure limits; (ii) it does not prevent the cancellation necessary for the opening of additional credits; (iii) it does not apply in cases of duly justified technical impediments; and (iv) it applies exclusively to discretionary primary expenditures of the fiscal and social security budgets. It is worth noting that the duty of budget execution covers the parliamentary amendments, but these have additional protection, which is the contingency restricted to the percentage of the cut on the total discretionary spending. (emphasis added)

In view of this, with the imposition of the budget focused on discretionary primary expenses of the fiscal budget and social security, we can already identify that the percentage of execution of these expenses, at the federal level, has increased considerably.

Francisco Secaf Alves Silveira⁵³ dealt with budget non-execution in an article published in 2015. In this study, the author found, through data collection in the Siga Brasil system/Budget Portal, for the period 2010 to 2013, that the execution of discretionary spending was far below what was approved in the budget law. It was found, on average, the percentage of 56%, considering commitments

52 BRAZIL, Independent Fiscal Institution of the Federal Senate. Fiscal Monitoring Report No. 38, March 16, 2020, p. 30. Available at: https://www2.senado.leg.br/bdsf/bitstream/handle/id/569834/RAF38_MAR2020.pdf. Accessed July 25, 2022.

53 SILVEIRA, Francisco Secaf Alves. Problems and diagnoses in the execution of budget planning. Belo Horizonte: Journal Forum of Financial and Economic Law, 2015, p. 63.

and payments, including accounts payable, and 76% was the average obtained of the total amount committed in relation to what was approved in the budget.

After the advent of EC's nº 100 and 102/2019, it is verified, in the reports of execution of discretionary expenses published in the portal of the Ministry of Economy, that, "in the year 2020, 90.8% of the budget allocation intended for the agencies was committed."⁵⁴ (considering the three branches of government). And "in the year 2021, 96.7% of the discretionary appropriation allocated to the bodies of the Executive Branch was committed."⁵⁵

With the increase in the percentage of execution of primary discretionary spending is expected, of course, that the collectivity is better served through the mandatory fulfillment of the schedules provided in the public budget. However, the main concern that arises is about the quality of these expenditures and, then, the question arises: Is the execution of discretionary spending taking place in a hurry, during the financial year, in order to comply with the current imposition and, therefore, the results end up being the secondary factor of budget execution?

One thing is certain: the first step has been taken, but there will be the need for studies and regulations about this requirement, to achieve what is expected through discretionary spending. The Independent Fiscal Institution of the Federal Senate⁵⁶ made some considerations about the enforceable budget and, among them, noted that

With the tax budget expressly provided for in the Constitution, the notion of what would be discretionary spending is changed, since it is no longer related to the possibility of unjustifiably failing to make an expense. It would be important that these classifications of spending also gain their own legal order, with clear definitions. The so-called reform of the Finance Law (law no. 4,320/1964), proposed in PLP 295/2016, authored by Senator Tasso Jereissati, could be the locus for this debate.

Therefore, issues such as this one, on the operationalization of discretionary spending as being "mandatory expenses" should be faced, so that there is the maturation of the advance occurred in the public finance area. In fact, the Complementary Bill no. 295/2016, currently in progress at the House of Representatives (in the Federal Senate under no. 229/2009), which proposes the creation of the so-

54 BRAZIL, Ministry of Economy. Report on the execution of discretionary spending 2020. Published in March 2021, p. 6. Available at: <https://www.gov.br/economia/pt-br/assuntos/planejamento-e-orcamento/orcamento/orcamentos-anuais/2020/relatorio-de-execucao-das-despesas-discrecionarias>. Accessed July 25, 2022.

55 BRAZIL, Ministry of Economy. Report on the execution of discretionary spending of the Executive Branch - 2021. Published in February 2022, p. 4. Available at: <https://www.gov.br/economia/pt-br/assuntos/planejamento-e-orcamento/orcamento/orcamentos-anuais/2021/execucao-primarias-discrecionarias/RelatorioPCPRExecuoDespesasDiscrecionarias2021.pdf>. Accessed on July 25, 2022.

56 BRAZIL, Independent Fiscal Institution of the Federal Senate. Fiscal Monitoring Report No. 38, March 16, 2020, p. 32. Available at: https://www2.senado.leg.br/bdsf/bitstream/handle/id/569834/RAF38_MAR2020.pdf. Accessed July 25, 2022.

called “Fiscal Quality Law”, which will replace Law no. 4,320/1964, is the opportunity to discuss and implement definitions and procedures capable of guiding the administrator of public resources in his institutional role.

The outlook is already good, as PL No. 295/2016 provides for the results-oriented planning process; provisions related to the continuous improvement of the quality of public spending; and mechanisms for monitoring and evaluating public policies with the aim of improving them. It is expected to be refined and approved.

But while the “Fiscal Quality Law” is not in place in the legal system, the way is to try to innovate with what we have, in order to obtain the best possible use of public resources, without prejudice to compliance with the legal rules involved. Thus, it is important to highlight that, in the world of public finances, accounting records and statements are of paramount importance in the decision-making process of the public administrator, especially at times when discretionary action leads him or her to create strategies for action, with a view to achieving the objectives and targets approved by parliament.

In this sense, Public Accounting “is a relevant management tool for the public administrator⁵⁷.” Its object of study is public assets, and its objective, according to Carvalho and Ceccato⁵⁸ is defined thus:

The goal of Public Accounting is to provide reliable information about the assets of the public entity, analyzing and controlling not only the material aspect of the assets, but also under the financial and economic perspective, including monitoring the implementation of the public budget (Annual Budget Law), demonstrating the changes that occurred and the results obtained in a given period.

About the role of accounting statements before public management, Deusvaldo Carvalho⁵⁹ explains that:

(...) public balance sheets are accounting statements prepared by the government for the purpose of demonstrating the economic and financial situation and assets of public entities in a given period. They are true instruments of analysis and management control of the public administration, made available in the budget, financial and asset balance sheets, statement of asset variations and other accounting documents.

57 ABRAHAM, Marcus. Course on Brazilian Financial Law. 6. ed. Rio de Janeiro: Forense, 2021, p. 273.

58 CARVALHO, Deusvaldo; CECCATO, Marcio. Complete Handbook of Public Accounting. 4. ed. Rio de Janeiro: Impetus, 2017, p. 6.

59 CARVALHO, Deusvaldo. Budget and Public Accounting. 5. ed. Rio de Janeiro: Elsevier, 2010, p. 547.

Therefore, to conclude this topic, it is suggested the creation of a balance sheet that aggregates information about the budgetary and financial execution of primary discretionary spending, projected for the financial year. The idea is that the public administrator can obtain information about this execution, combined into a single statement, respecting the budgetary blockage resulting from the impact of unpaid rests payable and checking the availability to meet what was planned, as shown in the following statement:

Balance of financial and budgetary execution of discretionary primary expenditures			
Financial Execution		Budgetary Execution	
(+) Appropriation received	R\$ 14.800.000,00	(+) Budget credits received	R\$ 17.300.000,00
(+) Appropriation receivable	R\$ 2.500.000,00	(-) Expenses committed and paid	R\$ 11.100.000,00
(-) Expenses made with the appropriation for the year	R\$ 11.100.000,00	(-) Prevision of commitments to	R\$ 1.600.000,00
(-) Payables Paid	R\$ 1.040.000,00	(-) Prevision of	R\$ 950.000,00
(=) Limit available on xx/xx/2022	R\$ 5.160.000,00	(-) Budgetary block in 2022	R\$ 150.000,00
(-) Payables in 2022	R\$ 60.000,00		
(-) Expenses committed	R\$ 1.600.000,00		
(=) Financial balance to be executed until the end of the fiscal year	R\$ 3.500.000,00	(=) Budgetary balance for execution until the end of the fiscal year (after blocking)	R\$ 3.500.000,00
Blocking Calculation in 2022			
(+) Prevision of payables to be paid in the financial year		R\$ 1.100.000,00	
(-) Prevision of registrations of payables at the end of the year		R\$ 950.000,00	
(=) Budgetary block for compliance with EC no. 95/2016		R\$ 150.000,00	

Source: prepared by the author with hypothetical figures.

Finally, the suggested balance sheet depicts the total amounts of budget credits and their appropriations, and the joint analysis of this data with information related to the specification of available funds is necessary for the decision making of public managers.

5. CONCLUDING REMARKS

For primary discretionary expenses to be better executed by public administrators, resulting in quality spending for the community, the improvement of all means by which they are employed must be sought, from the planning carried out in the public budget to payment to the creditor.

The implementation of the budget by results, combined with the program-budget technique, favors this evolution, because it directs the expenses, in the budget laws, to the intended results, which are prioritized based on the needs identified in society. This model requires monitoring and follow-up

measures but favors the flexibility of the actions of public managers, who will act in a more targeted way, to achieve the established goals.

But until planning is result-oriented, it should be noted that flexibility in the execution of the public budget, although necessary, requires caution. Managers should be concerned about the quality of spending that is made from changes in the budget, either directly, at the most detailed levels of expenditure, or through proposals for additional credits sent to the legislature. The execution of discretionary spending requires compliance with what was voted in parliament, and its change is an exceptional measure, in order to achieve the objectives outlined in the law or to meet unforeseen or urgent situations.

In addition to the prudent use of flexibility, the public administrator, based on the managerial model of administration, must adopt measures that contribute to the best possible use of resources during the budgetary and financial execution of discretionary spending within the financial year, given the current imposition of the budget and the impact that unpaid rests payable cause, as a result of the constitutional amendment of the “spending cap”.

The improvement in the application of public resources requires actions such as: good planning that reflects in the timely performance of managers; the use of software for the control and management of budget credits and their appropriations; the alignment of spending with the strategic and operational plans of agencies and entities; the registration and management of information obtained during the settlement of expenses; and the observance of rules for payment based on results, in contracts where this model is admitted.

And in all this dynamics, the public manager should not forget that public accounting is there to assist him, providing information for his decision making, especially when executing discretionary spending, which will be better controlled and interpreted from the use of the financial and budgetary balance, suggested in this article. Nevertheless, it is expected that the “Fiscal Quality Law” project lives up to its name and reflects on the quality of spending, through the innovations it can bring in the world of public finances.

Finally, it should be noted that “budgeting” is quite complicated and financial law, despite having evolved in recent years, needs to be better known and applied by managers of public resources. Actions such as the entertaining dissemination of the subject, such as the “Easy Budget”, an initiative of the Federal Senate, as well as training courses conducted by schools of government are very valid, but insufficient to achieve the much-desired quality public spending.

REFERENCES

ABRAHAM, Marcus. Course on Brazilian Financial Law. 6. ed. Rio de Janeiro: Forense, 2021.

BALDO, Rafael Antonio. The history of public budget in the paradigms of legality, economy and legitimacy. Curitiba: Juruá, 2022.

BOECHAT, Stephan Righi. Budget by results and financial law. São Paulo: Blucher, 2018. (Financial Law Series / coordinated by José Mauricio Conti).

BRAZIL, National Congress. Glossary of Budgetary Terms. Available at: https://www.congressonacional.leg.br/legislacao-e-publicacoes/glossario-orcamentario/-/orcamentario/termo/orcamento_programa. Accessed on July 9, 2022.

BRAZIL, National Congress. Glossary of Budget Terms. Available at: https://www.congressonacional.leg.br/legislacao-e-publicacoes/glossario-orcamentario/-/orcamentario/termo/principio_da_especificidade_orcamentaria#:~:text=Princ%C3%ADpio%20or%C3%A7ament%C3%A1rio%20second%20which,in%20block%2C%20but%20in%20detail. Accessed July 11, 2022.

BRAZIL, National Congress. Glossary of Budget Terms. Available at: https://www.congressonacional.leg.br/legislacao-e-publicacoes/glossario-orcamentario/-/orcamentario/termo/orgao_setorial#:~:text=%C3%93rg%C3%A3o%20integrant%20of%20the%20System%20of,Law%20n%C2%BA%2010.180%2F%202001. Accessed July 15, 2022.

BRAZIL, National Congress. Glossary of Budgetary Terms. Available at: https://www.congressonacional.leg.br/legislacao-e-publicacoes/glossario-orcamentario/-/orcamentario/termo/despesa_extraorcamentaria. Accessed on July 23, 2022.

BRAZIL. Decree No. 93.872, from December 23, 1986.

BRAZIL. Constitutional Amendment No. 95, dated December 15, 2016.

BRAZIL. Constitutional Amendment No. 100 of June 26, 2019.

BRAZIL. Constitutional Amendment No. 102, dated September 26, 2019.

BRAZIL, National School of Public Administration. Introduction to Public Budgeting. Module 2 Public Revenue and Expenditure. Brasília: Enap, 2017. Available at: <https://repositorio.enap.gov.br/bitstream/1/3168/1/Modulo%20%20-%20Receita%20e%20Despesa%20Publicas.pdf>. Accessed July 11, 2022.

BRAZIL, Independent Fiscal Institution of the Federal Senate. Fiscal Monitoring Report No. 50, March 22, 2021. Available at: https://www2.senado.leg.br/bdsf/bitstream/handle/id/586156/RAF50_MAR2021.pdf. Accessed on July 11, 2022.

BRAZIL, Independent Fiscal Institution of the Federal Senate. Fiscal Monitoring Report No. 38, March 16, 2020. Available at: https://www2.senado.leg.br/bdsf/bitstream/handle/id/569834/RAF38_MAR2020.pdf. Accessed on July 25, 2022.

BRAZIL, Independent Fiscal Institution of the Federal Senate. Fiscal Monitoring Report No. 38, March 16, 2020, p. 32. Available at: https://www2.senado.leg.br/bdsf/bitstream/handle/id/569834/RAF38_MAR2020.pdf. Accessed July 25, 2022.

BRAZIL. Law nº 4.320, from March 17th 1964.

BRAZIL, Ministry of Economy - Federal Budget Secretariat. Available at: <https://www.gov.br/fazenda/pt-br/orgaos/secretaria-de-orcamento-federal-sof>. Accessed on July 9, 2022.

BRAZIL, Ministry of Economy. Report on the execution of discretionary spending 2020. Published in March 2021. Available at: <https://www.gov.br/economia/pt-br/assuntos/planejamento-e-orcamento/orcamento/orcamentos-anuais/2020/relatorio-de-execucao-das-despesas-discrpcionarias>. Accessed July 25, 2022.

BRAZIL, Ministry of Economy. Report on the execution of discretionary spending of the Executive Branch - 2021. Published in February 2022, p. 4. Available at: <https://www.gov.br/economia/pt-br/assuntos/planejamento-e-orcamento/orcamento/orcamentos-anuais/2021/execucao-primarias-discrpcionarias/RelatrioPCPRExecuoDespesasDiscrpcionrias2021.pdf>. Accessed on July 25, 2022.

BRAZIL, Ministry of Planning, Development and Management. Normative Instruction No. 5, of May 26, 2017.

BRAZIL, Federal Senate. Available at: <https://www12.senado.leg.br/noticias/glossario-legislativo/contingenciamento>. Accessed on 17 July 2022.

BRAZIL, Federal Senate. Budget - Glossary. Available at: <https://www12.senado.leg.br/orcamento/glossario/grupo-de-natureza-da-despesa>. Accessed on July 15, 2022.

BRAZIL, Federal Senate. Budget - Glossary. Available at: <https://www12.senado.leg.br/orcamento/glossario/sistema-integrado-de-administracao-financeira-do-governo-federal-siafi>. Accessed on July 21, 2022.

CARVALHO, André de Castro. et al. Lessons in financial law. general coordinator Regis Fernandes de Oliveira; coordinators Estevão Horvath, José Mauricio Conti, Fernando Facury Scaff. São Paulo: Editora Revista dos Tribunais, 2016.

CARVALHO, Deusvaldo. LRF: doctrine and case law. 2. ed. Rio de Janeiro: Impetus, 2018.

CARVALHO, Deusvaldo. Budget and Public Accounting. 5. ed. Rio de Janeiro: Elsevier, 2010.

CARVALHO, Deusvaldo; CECCATO, Marcio. Complete Handbook of Public Accounting. 4. ed. Rio de Janeiro: Impetus, 2017.

CARVALHO, José Augusto Moreira de. et al. Public budgets: comments on Law 4.320/1964. José Mauricio Conti coordination. 4. ed. atual. São Paulo: Thomson Reuters Brazil, 2019.

CONTI, José Mauricio. Taking financial law seriously: the struggle continues. 3. ed. São Paulo: Blucher, 2019.

CONTI, José Mauricio. Budgetary planning in public administration in Brazil. 1. ed. São Paulo: Blucher Open Access, 2020.

DI PIETRO, Maria Sylvia Zanella. Administrative law. 35. ed. Rio de Janeiro: Forense, 2022.

FARIA, Rodrigo Oliveira de. Budget by results: trends, perspectives and challenges. SOF monograph award 2010. Brasília: National School of Public Administration (Enap), 2010. Available at: https://repositorio.enap.gov.br/bitstream/1/4682/1/tema-2-mencao-honrosa_2010.pdf. Accessed on 12 July 2022.

GIACOMONI, James. Public Budget. 18. ed. São Paulo: Atlas, 2022.

GONTIJO, Vander. Federal Budget - Historical Evolution in Brazil. Brasília: Chamber of Deputies, 2004. Available at: <https://www2.camara.leg.br/orcamento-da-uniao/cidadao/entenda/cursopo/HistoricoBrasil>. Access on July 5, 2022.

LOCHAGIN, Gabriel Loretto. The execution of the public budget: flexibility and enforceable budget. São Paulo: Blucher, 2016.

MAXIMIANO, Antonio Cesar Amaru; NOHARA, Irene Patrícia. Public management: integrated approach to Administration and Administrative Law. 1. ed. - 3. reimpr. São Paulo: Atlas, 2021.

MENDES, Marcos José. Brazilian budget system: planning, fiscal balance and quality of public spending. Brasília: Legislative Consulting of the Federal Senate, 2008.

OLIVEIRA, Regis Fernandes de. Budgeting for results or performance. Belo Horizonte: Financial and Economic Law Forum Magazine, 2014.

PINTO, Élide Graziane. 15 years of the LRF: still in search of control over the results of public policies and the quality of public spending. Belo Horizonte: Journal Forum of Financial and Economic Law, 2016.

ROURE, Agenor de. Formation of the Brazilian budget law. Rio de Janeiro: Printing of the Journal of Commerce, 1916.

SILVEIRA, Francisco Secaf Alves. Problems and diagnoses in the execution of budget planning. Belo Horizonte: Journal Forum of Financial and Economic Law, 2015.

ZÊNITE, Technical Team. What is the Result Measurement Instrument (IMR) foreseen in Normative Instruction (IN) No.05/17? What is its purpose and what care should be taken in its structuring? Curitiba, 2018. Available at: <https://zenite.blog.br/o-que-e-o-instrumento-de-medicao-de-resultado-imr-previsto-na-in-no-0517-qual-o-seu-objetivo-e-quais-os-cuidados-na-sua-estruturacao/#:~:text=In%20view%20of%20exposed%2C%20responds,with%20quality%20inferior%20to%20the%20n%C3%ADvel>. Accessed July 21, 2022.