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Table 2 – BCA Fallback Mechanism Redefines Starting Values for Two Categories
(budget authority, in $ billions)

	2013	2014	2015	2016	2017	2018	2019	2020	2021
Defense (050)	546	556	566	577	590	603	616	630	644
Nondefense (all other)	501	510	520	531	541	553	566	578	590
Total	1,047	1,066	1,086	1,107	1,131	1,156	1,182	1,208	1,234

Note: Under the fallback mechanism, the BCA redefines the components for two categories as defense (though the BCA continues, confusingly, to call the category "security" even though it is limited to only the accounts in budget function 050 rather than the broader swath of activities in the security category before) and nondefense (which is appropriations for everything else not in budget function 050).

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- Except for the part about interest effects (more on this later) and requiring information on budgetary effects after 2021, this is pretty much business as usual. CBO already prepares cost estimates for nearly every major piece of legislation considered by the House or Senate.
- If and when any Super Committee legislation is enacted, however, the BCA language (as added by section 302(a)) is less than clear about who determines whether this condition is met:

> Unless a joint committee bill achieving an amount greater than [$1.2 trillion] in deficit reduction as provided in section 401(b)(3)(B)(i)(II) of the Budget Control Act of 2011 is enacted by January 15, 2012, the discretionary spending limits listed in section 251(c) shall be revised, and discretionary appropriations and direct spending shall be reduced.

- When this language in the BCA says that the initial discretionary spending limits "shall be revised, and discretionary appropriations and direct spending shall be reduced," there is little debate that it is putting OMB in sole charge of making those revisions and reductions, because the language is turning back on the tool of sequestration (determined, calculated, and implemented by OMB) that was used to enforce the Balanced Budget and Emergency Deficit Control Act from 1987-2002.
- The language does not 100 percent clearly implicate OMB as the arbiter of whether "a joint committee bill achiev[es] an amount greater than" $1.2 trillion in deficit reduction. However, we are not likely to find out if OMB will get to decide whether the BCA puts that agency in charge of measuring how much of the $1.2 trillion target the Super Committee achieved.
- Why not? Because one can imagine the Super Committee will want to be able to assert at the time it reports its legislation that its package accomplishes a specific amount of deficit reduction, rather than waiting to find out later how OMB might estimate the bill and have the answer be disappointingly lower. Therefore, it is possible that any legislation that the Super Committee successfully reports out will include a provision instructing OMB on how to evaluate the amount of deficit reduction that is accomplished by the legislation for purposes of OMB implementing the fallback mechanism under the BCA.
- Once Congress enacts the Super Committee bill – including instructing OMB how to calculate how much deficit reduction that bill accomplishes – OMB will have a whole year to figure out what, if any, steps it will need to take to implement the BCA's fallback mechanism. And if such steps appear necessary, Congress and the President will have a whole year to decide whether they want to let those steps go into effect or whether they want to change the law to produce an alternative result.

2013

January 2

- The BCA requires that, on this date, "OMB shall calculate and the President shall order a sequestration" to reduce discretionary appropriations and nonexempt direct spending. And the BCA gives OMB a head start on the necessary calculations for reducing the discretionary caps and sequestering direct spending over 2013-2021.
- The BCA does this by redefining the components of the firewalls for 2013, extending the firewalls for the subsequent eight years (rather than having just one overall cap for 2014-2021), and providing levels that represent **a starting point only** for calculating new limits on annual appropriations. This starting point for the fallback mechanism calculations only takes effect if Congress and the President do not enact into law a legislative package from the Super Committee that reduces the deficit by $1.2 trillion.
- Gone would be the initial BCA caps (shown in Table 1) with a broad security category and a smaller nonsecurity category for 2013 only and the one overall cap for each year over 2014-2021. Instead, the BCA tells OMB to begin its calculations with the starting values in Table 2 for defense and nondefense caps for every year over the period (yes, the BCA continues to call the two new categories "security" and "nonsecurity," but that is unnecessarily confusing, since the two revised categories are defined in the traditional way: defense – aka budget function 050, which includes the Department of Defense, intelligence activities, and atomic energy activities in the Department of Energy – and nondefense, which includes all other discretionary accounts NOT in budget function 050).
- **Note that the levels in Table 2 do not represent caps that have any legal meaning or are enforceable in any way for 2014-2021;**

they are simply the first entry in a possible OMB spreadsheet that will calculate what the ultimate caps will be after going through all the steps in BCA's fallback mechanism.

- For the years 2014-2021, implementation of the fallback mechanism is relatively straightforward. On an ongoing annual basis, OMB would calculate the dollar amount of reduction needed for each year and split it between defense and nondefense. Then OMB would calculate and set the statutory caps for discretionary spending for the two categories for each year based off of the starting values shown in Table 2 (the appropriators then would have flexibility to decide on how much to appropriate for every account under each category up to the total limit), and OMB also would implement a sequester of nonexempt mandatory spending each year.
- For 2013, the BCA makes it clear that it intends for OMB's action under the fallback mechanism to be a sequester of both discretionary and mandatory spending. Table 3 summarizes what some of OMB's "spreadsheet" calculations might look like under two scenarios if OMB has to put the fallback mechanism into operation. The first scenario is the "worst-case" scenario – it assumes that Congress fails to enact any deficit reduction from the Super Committee process and that the fallback mechanism must be implemented to accomplish $1.2 trillion in deficit reduction (over 2013-2021) instead. The other illustrative scenario shows what OMB's calculations might look like if Congress enacts, say, only $720 billion in deficit reduction, falling short of $1.2 trillion by $480 billion.
- <u>Worst-Case Scenario</u>. If the Super Committee process fails to produce any enacted deficit reduction at all, then the fallback mechanism must accomplish in 2013 one-year's share of the $1.2 trillion in savings from the 2013-2021 period, not including interest (one-ninth, or $984 billion divided by 9 = $109 billion).
- The BCA requires that <u>half</u> of the $109 billion in reductions ($55 billion) occur in defense accounts and the other half in nondefense accounts. (Note that even though defense spending accounts for only **<u>one-sixth</u>** of total spending, not including interest, the BCA requires that **<u>half</u>** of whatever amount is sequestered under the fallback mechanism come from defense).
- Since CBO estimates the amount of mandatory defense spending is small, nearly all of the defense reduction would come from discretionary defense accounts. So if, for example, Congress enacts appropriation bills for 2013 that provide $500 billion for defense accounts, OMB would have to sequester about $9 billion in defense discretionary budgetary resources to get down to $491 billion (it is impossible to know at this point how much unobligated balances will count as sequesterable budgetary resources, so this example does not reflect those possible amounts).
- On the nondefense side, it would take an across-the-board reduction of 5 percent to achieve the equal amount ($55 billion) of reductions, but the sequester of Medicare spending would be limited to 2 percent ($11 billion). Therefore, the rest of nondefense spending ($501 billion starting value for nondefense cap + $60 billion in non-exempt, nondefense mandatory spending = $561 billion) would have to absorb the remaining reduction ($55 billion - $11 billion in maximum Medicare reduction = $44 billion). So the reduction in the non-Medicare universe of nondefense spending would be 7.8 percent ($44 billion divided by $561 billion = 0.078).
- <u>$720 billion Enacted Scenario</u>. Under one of many potential scenarios where the Super Committee does not completely fail but also does not accomplish the entire $1.2 trillion, the fallback mechanism would need to accomplish, say, only $480 billion in deficit reduction over 2013-2021. In 2013, then, the fallback mechanism would only have to achieve $44 billion in deficit reduction.

Table 3: Illustrative Deficit Reduction Scenarios Under BCA Fallback Mechanism ($ billions)

	If Process Enacts **$0** in Deficit Reduction	If Process Enacts **$720 billion** in Deficit Reduction
Over 2013-2021, Fallback Mechanism Must Save Amount Not Achieved by Super Committee Process:	1,200	480
Subtract 18% that BCA says will come from interest savings	-216	-86
Leaves amount of savings over 2013-2021 to be achieved through fallback mechanism	984	394
Divide by 9 years over which fallback savings are to be achieved	109	44
Divide by 2, because half of savings will come from defense and half from nondefense	55	22
Defense (all accounts in budget function 050) Reduction Calculation for 2013		
Divide the defense share of savings by the starting point ($546b) of the discretionary defense cap (the nonexempt mandatory defense universe is only $150 million per year and is so small, any sequester does not round to significant digits)	55 / 546 = 10%	22 / 546 = 4%
Effective Defense Discretionary Cap for 2013	546 - 55 = **491**	546 - 22 = **524**
Nondefense (all accounts NOT in budget function 050) Reduction Calculation for 2013		
Divide the nondefense share of savings by sum of the starting value ($501b) for the nondefense discretionary cap, Medicare spending ($542b), and nondefense, nonexempt mandatory spending ($60b)	55 / 1103 = 5%	22 / 1103=1.99%
Is the initial nondefense sequester % calculation <u>larger</u> than the 2% maximum cut for Medicare?	Yes	No
Amount of Medicare reduction = 2% of $542b or aggregate nondefense % reduction, whichever is smaller	11	11
Remaining amount of nondefense reduction that must come from non-Medicare accounts	55 - 11 = 44	22 - 11 = 11
Remaining reduction is this % of the starting value ($501b) for the nondefense discretionary cap, and the same % reduction of nondefense, nonexempt mandatory spending ($60b)	7.8% = 44/(501 + 60)	1.96% = 11/(501 + 60)
Effective Nondefense Discretionary Cap for 2013	501 - (501 X .078) = **462**	501- (501 X .0196) = **491**

Note: Detail may not add to totals because of rounding

- In that case, the reduction to Medicare would be just under 2 percent ($11 billion), and other nonexempt mandatory spending would be sequestered by $1 billion, or 1.96 percent. (Note that if the Super Committee process saves about $720 billion or more, then the nondefense reductions will be less than 2 percent and will be the same across all affected nondefense accounts; only if the Super Committee process saves less than $720 billion would the rule limiting a Medicare sequester to 2 percent take effect.) For discretionary accounts in 2013, the reduction would be $22 billion for defense and $10 billion for nondefense.
- But these scenarios are just illustrations and educated guesswork. While they are based on CBO's estimates of the universe of nonexempt mandatory spending for defense and nondefense, **the ultimate calculations will depend on OMB's estimates of the universe of sequesterable mandatory spending**, which can be quite different from CBO's. The last time a sequester could have potentially happened (in 2003, before Congress and the President agreed to turn it off), the total of sequesterable mandatory spending under OMB's estimate was about half of CBO's estimate.
- There are other caveats as well. While some have gamed out a worst-case scenario that is fairly consistent with CBO's analysis, others argue that they have an inside scoop on how OMB is going to conduct the calculations that produces different results. One area of disagreement across fallback scenarios that various analysts have outlined stems from what might be exempt from sequestration.
- For example, if OMB issues a sequester order that reduces already enacted discretionary appropriations for 2013, the BCA gives the President the authority to exempt military personnel accounts from the half of the sequester that is supposed to apply to defense accounts. If the President uses that authority, as many assume he would, then the percentage reduction to the remaining accounts would be larger.
- While the President's optional authority to exempt military personnel from a sequester in 2013 is not in dispute, it is uncertain whether veterans accounts are exempt. Some analysts assume that discretionary veterans accounts would be exempt by virtue of an exemption that applies to mandatory veterans programs from any sequestration that may ever be ordered under the statutory PAYGO act (statutory PAYGO does not apply to discretionary programs). But the signals in the various laws are so conflicting, OMB has not determined whether discretionary veterans accounts would be exempt from a sequester in 2013 under BCA.
- For similar reasons, some argue that discretionary appropriations for Pell grants also would be exempt from a sequester of discretionary appropriations in 2013. Ultimately, no one will know how the fallback mechanism will affect specific programs until OMB publishes a list of exempt programs, and no one expects to see such a list for quite some time.

THE SUPER COMMITTEE'S PREDECESSORS

- While the Budget Control Act created a somewhat complicated process for the Super Committee and for the consequences that follow if the Super Committee process fails, creating a special entity to deal with a challenging problem is nothing new. Historian budgeteers know this approach has antecedents, only some of which have been successful. For example, it was not even one year ago that the report of the President's Fiscal Commission (created by executive order) failed to muster the votes necessary to deserve a vote in the House and Senate on a proposal to reduce the deficit.

Structure of Previous Committees/Commissions – What We'll Call Special "Entities"

- Several factors go into defining the responsibilities and organization of new or special entities. The first factor many observers look for to predict the success of a special entity is its leadership and composition of membership. However, a look at previous entities, both successful and unsuccessful, shows that other factors, such as scope, duration, and output can affect their results.

Scope: Comprehensive or Selective

- ***Comprehensive***. A comprehensive entity is one that takes a holistic look at a problem, such as reviewing the entire federal budget. In this instance, no area of the government (including revenues) is off-limits; such comprehensive entities (such as the Super Committee) have the ability to look across the entire government to identify potential deficit reduction proposals.
- ***Selective***. A selective entity only investigates specific subject areas, such as a particular government agency or particular program. One prominent example of a selective entity is the periodically constituted Defense Base Closure and Realignment Commission (BRAC), which has examined military installation recommendations from the Department of Defense.

Duration: Ongoing or One-Time

- ***Ongoing***. Such entities (such as standing congressional committees) do not have a termination date. Ongoing entities are more likely to take incremental steps towards addressing problems within their scope or jurisdiction.
- ***One-Time***. A one-time entity exists for a limited period of time or until a particular goal has been achieved. Such entities usually address specific problems and are intended to make big changes or identify major impovements, suggesting a greater urgency to fix a pressing problem.

Output: Advisory or Legislative

- ***Advisory***. An advisory entity produces a report to inform policy makers but does not directly change policy or make law itself. These types of entities are most common for reviewing unexpected events and making recommendations to prevent them in the future. Some examples of this type of entity are the 9/11 Commission , the commission/board that reviewed the Challenger and Columbia Space Shuttle accidents, or the Financial Crisis Inquiry Commission that studied the 2008 meltdown on Wall Street. Such an advisory entity has also been used to examine persistent problems in the fiscal sphere, such as in the case of the Bipartisan Commission on Entitlement and Tax Reform created by President Clinton in 1993 to study the deficit problem (the commission never did reach the recommendation stage).
- ***Legislative***. A legislative output is actual legislative language that, if enacted, would change law. In some cases, like the Super Committee, these outputs are given special protections for consideration by the House and Senate.

So What Is the Super Committee?

- Based on this taxonomy, how should we describe the Super Committee? First, we know that the Committee's minimum goal is effectively $1.2 trillion in deficit reduction, which can be achieved through any means – so its scope is comprehensive.
- Second, the Committee must report by November 23, 2011, and it terminates on January 31, 2012, so it is clearly a one-time entity.
- Third, the BCA directs the Super Committee to produce legislation and, if the Super Committee successfully reports out, gives such legislation expedited floor consideration in each body of Congress (requiring only a simple majority, rather than 60 votes, to pass in the

Senate, since a filibuster is prohibited and cloture, therefore, not needed).

How Have Preceding Entities Fared?

- In the context of budget reform, there are several examples of unsuccessful entities, especially recently. The recent President's Fiscal Commission (followed up by the ad hoc/informal efforts of the Gang of Six and the Biden Group), as well as previous entities like the Taft Commission (1910-1913), did not see their recommendations (if any) immediately implemented. These were all comprehensive, one-time entities, but were essentially advisory (note that the Taft Commission did lay the groundwork for the Budget Act and Accounting Act of 1921).
- A few one-time entities have had success. In the 66th Congress (1919-1920), "select" (this usage meaning temporary) committees in both the House and the Senate investigated the prospects of creating a national budget system. Their recommendations included creating an executive budget office (currently called the Office of Management and Budget – OMB) and a government accounting office (currently called the Government Accountability Office – GAO). Though first vetoed by President Wilson in 1920, the Budget and Accounting Act was reintroduced in 1921 (with small modifications) and signed into law by President Harding. This was the product of a selective, one-time, and legislative entity.
- The BRAC process is a selective, occasional (not quite "one-time" but not exactly "ongoing" in the more permanent sense either) entity that has been used five times since 1988 to consolidate and streamline military force organization. While the BRAC does not actually produce legislation to be enacted into law, its product (a report identifying military installations to be closed down) is more legislative than advisory since its report goes into effect by virtue of the law that created the BRAC (unless Congress enacts another law to disapprove the BRAC recommendations). The BRAC process has resulted in the closure of over 300 military bases.
- A predecessor to the Budget Committees, the somewhat forgotten Harry F. Byrd Committee (formally known as the Joint Committee on Reduction of Nonessential Federal Expenditures, created in1941), was ongoing until it ended in 1974. According to the Congressional Research Service (CRS):

  > [T]he committee was a study committee, without legislative authority. Its recommendations on cutting or reducing nonessential spending were reported to the House and Senate and submitted to the Appropriations Committees....In the first decade and a half of its existence, the [committee's] work was oftentimes specific enough that one might surmise it could have had an impact on Members and committees in their budget decision making, but CRS research did not uncover instances that could be specifically attributed to a recommendation of the joint committee or documentation that attributed a specific cut in spending to a joint committee recommendation. The joint committee shone a light on many federal programs and activities, but it was the responsibility of other committees to follow through. The joint committee's role was solely oversight.

- However, CRS also notes that the Byrd Committee's reports would nonetheless claim credit for savings:

  > A supplemental report issued in July 1942 followed up on [previously] suggested reductions and claimed that $1.313 billion had been saved as a result of the joint committee's recommendations. A progress report issued in December 1943 claimed credit for approximately $2 billion in savings to-date.

- A notable example of a comprehensive, one-time, legislative entity is the Joint Study Committee on Budget Control, created as part of legislation increasing the debt ceiling increase in 1972. The 32-member committee (bipartisan and bicameral) reported the bill that became the Congressional Budget and Impoundment Control Act of 1974, which created the current congressional budget process.
- As for the Super Committee, will its duration be too short and its scope too large for it to reach consensus on a legislative output? The next few weeks will tell.