

§ 251 **SEC. 251.¹¹⁹⁹ ENFORCING DISCRETIONARY SPENDING LIMITS.¹²⁰⁰**

§ 251(a) **(a) FISCAL YEARS 1991-1998¹²⁰¹ ENFORCEMENT. —**

§ 251(a)(1) **(1) SEQUESTRATION.¹²⁰² — Within 15 calendar days after Congress adjourns¹²⁰³ to end a session and on the same day as a sequestration (if any) under section 252 and section 253, there shall be a sequestration to eliminate a budget-year breach,¹²⁰⁴ if any, within any category.¹²⁰⁵**

¹¹⁹⁹ Section 251 is codified as amended at 2 U.S.C. § 901 (Supp. IV 1992), amended by the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 14002(c), 107 Stat. 312 (1993). Section 13101(a) of the Budget Enforcement Act amended section 251 to read substantially as it does now. See *infra* p. 701. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act explaining section 251, see *infra* note 1302 (at the end of this section).

¹²⁰⁰ Section 250(c)(1) of Gramm-Rudman-Hollings (see *supra* p. 440) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (see *supra* pp. 301-303) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. See *infra* pp. 475-502, 523-533.

¹²⁰¹ Section 14002(c)(1)(A) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 14002(c)(1)(A), 107 Stat. 312 (1993), changed this reference to "1998" from "1995." Section 14001 of that Act states that "[t]he Congress declares that it is essential to . . . extend the system of discretionary spending limits for the single discretionary category . . ." *Id.* § 14001. For legislative history of the extension, see *supra* notes 870 & 936 & *infra* note 1807.

¹²⁰² Section 250(c)(2) defines "sequestration." See *supra* p. 440.

¹²⁰³ What happens if the Congress recesses to end the first session of a Congress? Congress plainly intended to require annual review of legislation. This language should be read as "adjourns or recesses to end a session."

¹²⁰⁴ Section 250(c)(3) defines "breach." See *supra* p. 440.

¹²⁰⁵ Section 250(c)(4) defines "category." See *supra* p. 441.

For an example of an end-of-year sequester under this paragraph, see, e.g., OFFICE OF MANAGEMENT AND BUDGET, FINAL OMB SEQUESTER REPORT TO THE PRESIDENT (continued..)

§ 251(a)(2)

(2) **ELIMINATING A BREACH.**¹²⁰⁶ — Each non-exempt account¹²⁰⁷ within a category¹²⁰⁸ shall be reduced by a dollar amount calculated by multiplying the baseline¹²⁰⁹ level of sequestrable budgetary resources¹²¹⁰ in that account at that time by the uniform percentage necessary to eliminate a breach within that category; except that the health programs set forth in section 256(e) shall not be reduced by more than 2 percent and the uniform percent applicable to all other programs under this paragraph shall be increased (if necessary) to a level sufficient to eliminate that breach. If, within a category, the discretionary spending limits¹²¹¹ for both new budget authority¹²¹² and outlays¹²¹³ are breached,

¹²⁰⁶(...continued)

AND CONGRESS FOR FISCAL YEAR 1991, H.R. DOC. NO. 102-11, 102d Cong., 1st Sess. (Nov. 9, 1990) (\$395 million, 1.9% sequester in international discretionary budget authority as a result of a drafting error in the H.R. 5114, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, Pub. L. No. 101-513, 104 Stat. 1979); PRESIDENT OF THE U.S., FINAL SEQUESTER ORDER, FISCAL YEAR 1991, H.R. DOC. NO. 102-10, 102d Cong., 1st Sess. (Nov. 9, 1990) (same).

¹²⁰⁶ Section 250(c)(3) defines "breach." *See supra* p. 440.

¹²⁰⁷ Section 250(c)(11) defines "account." *See supra* p. 445.

¹²⁰⁸ Section 250(c)(4) defines "category." *See supra* p. 441.

¹²⁰⁹ Section 250(c) (*see supra* p. 442) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 600-617.

¹²¹⁰ Section 250(c)(6) defines "budgetary resources." *See supra* p. 443.

¹²¹¹ Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 440) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 301-303) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See pp.* 475-502, 523-533.

¹²¹² Section 250(c)(1) (*see supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

¹²¹³ Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

the uniform percentage shall be calculated by —

- § 251(a)(2)(A) (A) first, calculating the uniform percentage necessary to eliminate the breach¹²¹⁴ in new budget authority,¹²¹⁵ and
- § 251(a)(2)(B) (B) second, if any breach¹²¹⁶ in outlays¹²¹⁷ remains, increasing the uniform percentage to a level sufficient to eliminate that breach.
- § 251(a)(3) (3) **MILITARY PERSONNEL.** — If the President uses the authority to exempt any military personnel from sequestration¹²¹⁸ under section 255(h),¹²¹⁹ each account¹²²⁰ within subfunctional category 051 (other than

¹²¹⁴ Section 250(c)(3) defines "breach." See *supra* p. 440.

¹²¹⁵ Section 250(c)(1) (see *supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. See *supra* pp. 11-13.

¹²¹⁶ Section 250(c)(3) defines "breach." See *supra* p. 440.

¹²¹⁷ Section 250(c)(1) (see *supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. See *supra* p. 11.

¹²¹⁸ Section 250(c)(2) defines "sequestration." See *supra* p. 440.

¹²¹⁹ See *infra* p. 576. This reference refers to the section 255(h) at the end of section 255, dealing with "OPTIONAL EXEMPTION OF MILITARY PERSONNEL," not the section 255(h) that preexisted the Budget Enforcement Act, dealing with "LOW-INCOME PROGRAMS." See *infra* p. 576. Section 13101(c)(4) of the Budget Enforcement Act added the subsection (h) dealing with "OPTIONAL EXEMPTION OF MILITARY PERSONNEL" "at the end" of section 255. See *infra* p. 703. As section 13101(c)(4) of the Budget Enforcement Act simply added the new subsection (h) at the end of section 255 and did not amend the existing subsection (h) to read as the new subsection (h), Congress evidently wanted to add another subsection and not to repeal the existing subsection (h). As subsections (h) and (i) already existed, however, the Budget Enforcement Act should have added a new subsection (j) at the end of section 255, or perhaps have inserted the new subsection (h) in place of the existing subsection (f), which at least some drafters of the Budget Enforcement Act intended to repeal. The reference here then should have been to subsection (j) or subsection (f), as the case may have been.

¹²²⁰ Section 250(c)(11) defines "account." See *supra* p. 445.

those military personnel accounts for which the authority provided under section 255(h)¹²²¹ has been exercised) shall be further reduced by a dollar amount calculated by multiplying the enacted level of non-exempt budgetary resources¹²²² in that account at that time by the uniform percentage necessary to offset the total dollar amount by which outlays¹²²³ are not reduced in military personnel accounts by reason of the use of such authority.

§ 251(a)(4) (4) PART-YEAR APPROPRIATIONS. — If, on the date specified in paragraph (1), there is in effect an Act making or continuing appropriations for part of a fiscal year for any budget account,¹²²⁴ then the dollar sequestration¹²²⁵ calculated for that account under paragraphs (2) and (3) shall be subtracted from —

§ 251(a)(4)(A) (A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

§ 251(a)(4)(B) (B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation.

§ 251(a)(5) (5) LOOK-BACK. — If, after June 30, an appropriation for the fiscal year in progress is enacted that causes a

¹²²¹ See *infra* p. 576. This reference refers to the section 255(h) at the end of section 255, dealing with "OPTIONAL EXEMPTION OF MILITARY PERSONNEL," not the section 255(h) that preexisted the Budget Enforcement Act, dealing with "LOW-INCOME PROGRAMS." See *infra* p. 576. See the discussion *supra* note 1219.

¹²²² Section 250(c)(6) defines "budgetary resources." See *supra* p. 443.

¹²²³ Section 250(c)(1) (see *supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. See *supra* p. 11.

¹²²⁴ Section 250(c)(11) defines "account." See *supra* p. 445.

¹²²⁵ Section 250(c)(2) defines "sequestration." See *supra* p. 440.

breach¹²²⁶ within a category¹²²⁷ for that year (after taking into account any sequestration¹²²⁸ of amounts within that category), the discretionary spending limits¹²²⁹ for that category for the next fiscal year shall be reduced by the amount or amounts of that breach.

§ 251(a)(6)

(6) WITHIN-SESSION SEQUESTRATION.¹²³⁰ — If an appropriation for a fiscal year in progress is enacted (after Congress adjourns¹²³¹ to end the session for that budget year¹²³² and before July 1 of that fiscal year) that causes a breach¹²³³ within a category¹²³⁴ for that year (after taking into account any prior sequestration of amounts within that category), 15 days later there shall be a sequestration to eliminate that breach within that category following the procedures set forth in paragraphs (2)

¹²²⁶ Section 250(c)(3) defines "breach." See *supra* p. 440.

¹²²⁷ Section 250(c)(4) defines "category." See *supra* p. 441.

¹²²⁸ Section 250(c)(2) defines "sequestration." See *supra* p. 440.

¹²²⁹ Section 250(c)(1) of Gramm-Rudman-Hollings (see *supra* p. 440) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (see *supra* pp. 301-303) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. See pp. 475-502, 523-533.

¹²³⁰ Section 250(c)(2) defines "sequestration." See *supra* p. 440.

¹²³¹ What happens if the Congress recesses to end the first session of a Congress? Congress plainly intended to require annual review of legislation. (For example, the language later in this sentence refers to "that budget year.") This language should be read as "adjourns or recesses to end a session."

¹²³² Section 250(c)(12) defines "budget year." See *supra* p. 446.

¹²³³ Section 250(c)(3) defines "breach." See *supra* p. 440.

¹²³⁴ Section 250(c)(4) defines "category." See *supra* p. 441.

through (4).¹²³⁵

§ 251(a)(7)

(7) OMB¹²³⁶ ESTIMATES. — As soon as practicable after Congress completes action on any discretionary appropriation,¹²³⁷ CBO,¹²³⁸ after consultation with the Committees on the Budget of the House of Representatives

¹²³⁵ See, e.g., OFFICE OF MANAGEMENT AND BUDGET, WITHIN-SESSION OMB SEQUESTER REPORT TO THE PRESIDENT AND CONGRESS FOR FISCAL YEAR 1991, H.R. DOC. NO. 102-70, 102d Cong., 1st Sess. (Apr. 25, 1991) (\$1.4 million, 0.0013% sequester in domestic discretionary budget authority after enactment of H.R. 1281, the Dire Emergency Supplemental Appropriations Act, 1991, Pub. L. No. 102-27 (Apr. 10, 1991)). In the case of this mid-session sequester, the General Accounting Office found that the Office of Management and Budget had called for the sequester erroneously. Commenting on the rescission request that the President sent up to remedy the supposed overage, the Special Assistant to the Comptroller General, writing for the Comptroller General, wrote as follows:

As you know, the President's justification for the proposed rescission is that its approval would eliminate the need for a sequester of domestic discretionary resources in fiscal year 1991 (calculated by OMB to be .0013 percent of sequesterable domestic budget authority). In the Administration's opinion, the sequester action was necessary because the Dire Emergency Supplemental Appropriation for fiscal year 1991, Pub. L. No. 102-27, ____ Stat. ____ (1991), exceeded by \$2.4 million the domestic discretionary spending cap established by the 1991 Budget Reconciliation Act. On April 25, 1991, OMB issued a within-session sequester report and the President ordered a sequester of budgetary resources in domestic discretionary accounts of .0013 percent. See OMB Bulletin No. 91-11, April 25, 1991.

In our view, OMB's scoring of two provisions in the Dire Emergency Supplemental as new budget authority was erroneous. B-243744, Apr. 24, 1991. Since, in our opinion, the language of the two provisions did not create any new budget authority, the discretionary spending cap was not breached. Accordingly, no mid-session sequester was necessary, and the proposed rescission was not needed.

Letter from Milton J. Socolar to the President of the Senate and the Speaker of the House of Representatives (June 11, 1991) (GAO file no. B-241514.8)

¹²³⁶ Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." See *supra* p. 446.

¹²³⁷ Section 250(c)(7) defines "discretionary appropriations." See *supra* p. 444.

¹²³⁸ Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." See *supra* p. 446.

and the Senate, shall provide OMB with an estimate of the amount of discretionary new budget authority¹²³⁹ and outlays¹²⁴⁰ for the current year¹²⁴¹ (if any) and the budget year¹²⁴² provided by that legislation. Within 5 calendar days after the enactment of any discretionary appropriation, OMB shall transmit a report to the House of Representatives and to the Senate containing the CBO estimate of that legislation, an OMB estimate of the amount of discretionary new budget authority and outlays for the current year (if any) and the budget year provided by that legislation, and an explanation of any difference between the two estimates. For purposes of this paragraph, amounts provided by annual appropriations shall include any new budget authority and outlays for those years in accounts¹²⁴³ for which funding is provided in that legislation that result from previously enacted legislation. Those OMB estimates shall be made using current¹²⁴⁴ economic and technical assumptions. OMB shall use the OMB estimates transmitted to the Congress under this paragraph for the purposes of this subsection. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeeping guidelines determined after consultation among the House and Senate Committees on

¹²³⁹ Section 250(c)(1) (*see supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

¹²⁴⁰ Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

¹²⁴¹ Section 250(c)(13) defines "current year." *See supra* p. 446.

¹²⁴² Section 250(c)(12) defines "budget year." *See supra* p. 446.

¹²⁴³ Section 250(c)(11) defines "account." *See supra* p. 445.

¹²⁴⁴ Section 250(c)(9) defines "current." *See supra* p. 445.

the Budget, CBO, and OMB.¹²⁴⁵

¹²⁴⁵ The statement of managers accompanying the conference report on the Budget Enforcement Act expressed concern regarding the powers conferred by this paragraph and set forth the scorekeeping guidelines to which this paragraph refers:

XII. SCOREKEEPING

The conferees recognize that, because of the constraints imposed by the Supreme Court's decision in *Bowsher v. Synar*, the conference agreement vests substantial power to estimate the costs of legislation with the Office of Management and Budget. The conferees are concerned that the Office of Management and Budget has not always shown complete objectivity in its estimates. The conferees urge the Congress to scrutinize the scorekeeping of the Office of Management and Budget as that Office implements the procedures under this conference agreement. The conferees considered procedures under which Congress would enact into law Congressional Budget Office cost estimates as part of any spending legislation. Should the Office of Management and Budget abuse its scorekeeping power, the conferees believe that the Congress should adopt such procedures at that time.

Section 251(a)(7) and 252(d) of Gramm-Rudman-Hollings as amended by this conference agreement provide that the Office of Management and Budget must make its estimates in conformance with scorekeeping guidelines determined for consultation among the Senate and House Committees on the Budget, the Congressional Budget Office, and the Office of Management and Budget. These provisions carry on and codify the existing consultative process that has led to these parties developing the following scorekeeping guidelines:

SCOREKEEPING GUIDELINES FOR [FISCAL YEAR] 1991

The guideline[s] listed below reflect general budget scorekeeping conventions that will be used by the House and Senate Budget Committees and the Office of Management and Budget in measuring compliance with Congressional budget targets and the Budget Summit Agreement.

To the extent possible under the Budget Enforcement Act of 1990, the Gramm-Rudman-Hollings statute, the Congressional Budget Office and the Office of Management and Budget will follow these guidelines in calculating deficit estimates and making projections for Gramm-Rudman-Hollings and the Budget Enforcement Act 1990.

For both budget scorekeeping and Gramm-Rudman-Hollings, final scoring will necessarily depend on the review of legislation by the scorekeepers, as provided in the Budget Enforcement Act of 1990, the Congressio-
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¹²⁴⁵(...continued)

nal Budget Act and Gramm-Rudman-Hollings. These rules will be reviewed on an annual basis.

1. Mandatory spending

The list of accounts that are considered mandatory for purposes of scoring appropriations bills follows.

2. Outlays prior

Outlays from prior-year appropriations will be classified consistent with the discretionary/mandatory classification of the account from which the outlays occur.

3. Direct spending programs

Entitlements and other mandatory programs (including offsetting receipts) will be scored at current law levels, unless congressional action modifies the authorizing legislation. Substantive changes to or restrictions on entitlement law or other mandatory spending law in appropriations bills will be scored against the Appropriations Committee section 302(b) allocations in the House and the Senate except for those savings provisions that are to be enacted by an authorizing committee pursuant to the Budget Summit Agreement.

4. Transfer of budget authority from a mandatory account to a discretionary account

The transfer of budget authority to a discretionary account will be scored as an increase in discretionary budget authority and outlays in the gaining account. The losing account will not show an offsetting reduction if the account is an entitlement or mandatory.

5. Permissive transfer authority

Permissive transfers will be assumed to occur (in full or in part) unless sufficient evidence exists to the contrary. Outlays from such transfers will be estimated based on the best information available, primarily historical experience and, where applicable, indications of Executive or Congressional intent.

This guideline will apply to specific transfers (transfers where the gaining and losing accounts and the amounts subject to transfer can be ascertained) for [Fiscal Year] 1991 and to both specific and general transfer authority thereafter.

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¹²⁴⁵(...continued)

6. Reappropriations

Reappropriations of expiring balances of budget authority will be scored as new budget authority in the fiscal year in which the balances become newly available.

7. Advance appropriations

Advance appropriations of budget authority will be scored as new budget authority in the fiscal year in which the funds become newly available for obligation, not when the appropriations are enacted.

Advance appropriations will be classified as mandatory or discretionary consistent with the mandatory list below.

8. Rescissions and transfers of unobligated balances

Rescissions of unobligated balances will be scored as reductions in current budget authority and outlays in the year the money is rescinded.

Transfers of unobligated balances will be scored as reductions in current budget authority and outlays in the amount from which the funds are being transferred, and as increases in budget authority and outlays in the account to which these funds are being transferred.

In certain instances, these transactions will result in a net negative budget authority amounts in the source accounts. Such amounts of budget authority will be projected at zero. Outlay estimates for both the transferring and receiving accounts will be based on the spending patterns appropriate to the respective accounts.

9. Delay of obligations

Appropriations bills specify a date when funds will become available for obligation. It is this date that determines the year for which new budget authority is scored. In the absence of such a date, the bill is assumed to be effective upon enactment.

If a new appropriation provides that a portion of the budget authority shall not be available for obligation until a future fiscal year, that portion shall be treated as an advance appropriation of budget authority. If a law defers existing budget authority (or unobligated balances) from a year in which it was available for obligation to a year in which it was not available for obligation, that law shall be scored as a rescission in the current year and a reappropriation in the year in which obligational authority is extended. If the authority to obligate is contingent upon the enactment of a subsequent appropriation,

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¹²⁴⁵ (...continued)

new budget authority and outlays will be scored with the subsequent appropriation. If an appropriation is contingent on enactment of a subsequent authorization, new budget authority and outlays will be scored with the appropriation. If an appropriation is contingent on the fulfillment of some action by the Executive branch or some other event normally estimated, new budget authority will be scored with the appropriation and outlays will be estimated based on the best information about when (or if) the contingency will be met. Non-lawmaking contingencies within the control of the Congress are not scoreable events.

10. Absorption

Appropriations bills or reports should contain language that clearly specifies the extent to which funds for pay raises are either provided or absorbed within the levels appropriated in the bill, or remain to be provided.

11. Scoring purchases, lease-purchases and leases

General Rule. — When a bill provides the authority for an agency to enter into a contract for the purchase, lease-purchase, or lease of a capital asset, budget authority will be scored in the year in which the budget authority is first made available in the amount of the government's total estimated legal obligations.

Outlays for a purchase or for a lease-purchase in which the Federal government assumes substantial risk — for example, through an explicit government guarantee of third-party financing — will be spread across the period during which the contractor constructs, manufactures, or purchases the asset. Outlays for a lease, or for a lease-purchase in which the private sector retains substantial risk, will be spread across the lease period. In all cases, the total amount of outlays scored over time against a bill will equal the amount of budget authority scored against that bill.

Implementation of the Rule. — Contracts under existing authority will not be rescored. Purchases and lease-purchases will be scored on the basis of this rule starting in [Fiscal Year] 1991. Multi-year leases will be scored consistent with current practice, rather than this rule, in [Fiscal Year] 1991.

Further details. — See "Addendum: Details on scoring purchases, lease-purchases, and leases".

12. Write-offs of uncashed checks, unredeemed food stamps, and similar instruments

Exceptional write-offs of uncashed checks, unredeemed food stamps, and similar instruments (i.e., write-offs of cumulative balances that have build

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¹²⁴⁵(...continued)

up over several years or have been on the books for several years) shall be scored as an adjustment to the means of financing the deficit rather than as an offset. An estimate of write-offs or similar adjustments that are part of a continuing routine process shall be netted against outlays in the year in which the write-off will occur. Such write-offs shall be recorded in the account in which the outlay was originally recorded.

13. *Reclassification after an agreement*

Except to the extent assumed in a budget agreement, a law that has the effect of altering the classification of spending and revenues (e.g. from discretionary to mandatory, special fund to revolving fund, on-budget to off-budget, revenue to offsetting receipt), will not be scored as reclassified for the purpose of enforcing a budget agreement.

ADDENDUM: DETAILS ON SCORING PURCHASES, LEASE-PURCHASE, AND LEASES

Budget Authority. — Budget authority scored against a bill will include all costs of the project except for imputed interest costs calculated at Treasury rates. Imputed interest costs will not be scored against a bill or for current level but will count for other purposes.

Criteria for Defining a Lease. — Under a lease arrangement, ownership of the asset remains with the lessor during the term of the lease and is not transferred to the Government at or shortly after the end of the lease period. In addition, the Government should enter into the contract for limited use of an asset and not consume a substantial portion (75 percent) of its economic value. All risks of ownership of the asset (e.g. financial responsibility for destruction or loss of the asset) should remain with the lessor.

Illustrative Criteria Determining Private Risk. — Legislation and lease-purchase contracts will be considered against the following type of illustrative criteria to evaluate the level of private-sector risk in a project.

There should be no explicit government guarantee of third party financing.

All risks to ownership of the asset (e.g. financial responsibility for destruction or loss of the asset, etc.) should remain with the lessor unless the Government was at fault for such losses.

The asset should be a general purpose asset rather than for a special purpose of the Government and should not be built to unique specification for the Government as lessee. There should be a private-sector market for the asset.

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¹²⁴⁹(...continued)

The project should not be constructed on Government land.

Directed Scorekeeping. — Language that attempts to waive the Anti-Deficiency Act, or to limit the amount of timing of obligations recorded, does not change the government's obligations or obligation authority, and so will not affect the scoring of budget authority or outlays.

Authority to Obligate. — Unless bill language that authorizes a project clearly states that *no* obligations are allowed unless budget authority is provided specifically for that project in an Appropriations bill in advance of the obligation, the bill will be interpreted as providing obligation authority, in an amount to be estimated by the Congressional Budget Office (for the Congress) and the Office of Management and Budget (for the Executive).

APPROPRIATED ENTITLEMENTS AND MANDATORIES
FOR FISCAL YEAR 1991

Commerce-Justice-State

Payment to the Foreign Service retirement and disability fund
19-0540-0-1-153

Fishermen's guaranty fund
19-5121-0-2-376

Salaries of judges:
Supreme Court, S&E¹
10-0100-0-1-752

U.S. Court of International Trade¹
10-0400-0-1-752

U.S. Court of Appeals¹
10-0510-0-1-752

Courts of Appeals, District Courts, etc.¹
10-0920-0-1-752

Payment to judicial officers' retirement fund
10-0941-0-1-752

Fees and expenses of witnesses
15-0311-0-1-752

Independent counsel
15-0327-0-1-752

Public Safety Officers benefits
15-0403-0-1-754

Civil liberties public education fund
15-0329-0-1-808

(continued...)

¹²⁰(...continued)*Defense*

Payment to the Central Intelligence Agency retirement fund
56-3400-0-1-054

District of Columbia

No mandatory accounts.

Energy-Water

No mandatory accounts.

Foreign Operations

Housing and other credit guaranty programs
72-4340-0-3-151

Guarantee reserve fund
11-4121-0-3-152

Payment to the Foreign Service retirement and disability fund
11-1036-0-1-153

Interior

Miscellaneous trust funds
14-9971-0-7-302

Range improvements
14-5132-0-2-302

Administration of territories²
14-0412-0-1-808

Compact of free association³
14-0415-0-1-808

Labor-HHS-Education

Guaranteed student loans
91-0230-0-1-502

Higher education facilities loans
91-0240-0-1-502

College housing and academic facilities loans⁴
91-0242-0-1-502

Federal unemployment benefits and allowances (FUBA)
16-0326-0-1-504

16-0326-0-1-603
Social services block grant
75-1634-0-1-506

(continued...)

¹²⁰⁵(...continued)

Payments to States for foster care and adoption assistance

75-1645-0-1-506

Rehabilitation services and handicapped research

91-0301-0-1-506

Vaccine [injury] program trust fund

20-8175-0-7-551⁵

Retirement pay and medical benefits for commissioned officers

75-0379-0-1-551

Medicaid

75-0512-0-1-551

Medical facilities guarantee and loan fund

75-4430-0-3-551

HMO loan and loan guarantee fund

75-4420-0-3-551

Health professions graduate student loan insurance fund

75-4305-0-3-553

Payments to health care trust funds

75-0580-0-1-571

Advances to the unemployment trust fund

16-0327-0-1-601

Special benefits

16-1521-0-1-601

16-1521-0-1-602

Black lung disability trust fund

20-8144-0-7-601

Federal payments to the railroad retirement accounts

60-0113-0-1-601

Special benefits for disabled coal miners

75-0409-0-1-601

Supplemental security income program⁶

75-0406-0-1-609

Family support payments to States

75-1501-0-1-609

Payments to States for family support activities

75-1509-0-1-609

Payments to social security trust funds

75-0404-0-1-651

Legislative Branch

Compensation of members, Senate

00-0100-0-1-801

Compensation of members, House

00-0200-0-1-801

Payments to widows and heirs of deceased members of Congress

00-0215-0-1-801

(continued...)

¹²⁴⁵(...continued)

Payments to widows and heirs of deceased members of Congress -

Senate

00-0115-0-1-801

Military Construction

No mandatory accounts.

Rural Development-Agriculture

Reimbursement to the rural electrification and telephone fund

12-3101-0-1-271

Conservation reserve program⁷

12-3319-0-1-302

Dairy indemnity program

12-3314-0-1-351

Temporary emergency food assistance program (TEFAP)⁸

12-3635-0-1-351

Federal Crop Insurance Corporation fund

12-4085-0-3-351

Agricultural credit insurance fund⁹

12-4140-0-3-351

Commodity Credit Corporation fund

12-4336-0-3-351

Payments to the farm credit system financial assistance corp.

20-1850-0-1-351

Rural housing insurance fund⁹

12-4141-0-3-371

Rural communication development fund

12-4142-0-3-452

Rural development insurance fund⁹

12-4155-0-3-452

Special milk program

12-3502-0-1-605

Food donations programs for selected groups¹⁰

12-3503-0-1-605

Food stamp program

12-3505-0-1-605

Child nutrition programs

12-3539-0-1-605

Nutrition assistance for Puerto Rico

12-3550-0-1-605

Funds for strengthening markets (section 32)¹¹

12-5209-0-2-605

(continued...)

¹²⁴³(...continued)
Transportation

WMATA, interest payments
46-0300-0-1-401
FAA, aircraft purchase loan guarantee program
69-1399-0-1-402
Coast Guard, retired pay
69-0241-01-403

Treasury-Postal Service

Payment to the Postal Service fund for non-funded liabilities
18-1004-0-1-372
Government payment for annuitants, employees health benefits
24-0206-0-1-551
Government payment for annuitants, employees life insurance
24-0500-0-1-602
Compensation of the President
11-0001-0-1-802
Payment of government losses in shipment
20-1710-0-1-803
Payment to civil service retirement and disability fund
24-0200-0-1-805

Veterans-HUD

FSLIC resolution fund
51-4065-0-3-371
Federal Housing Administration fund¹²
86-4070-0-3-371
Veterans Benefits Administration:
Insurance and indemnities
36-0120-0-1-701
Compensation
36-0153-0-1-701
Pensions
36-0154-0-1-701
Burial benefits
36-0155-0-1-701
Readjustment benefits
36-0137-0-1-702
Guaranty and indemnity fund
36-4023-0-3-704
Loan guaranty revolving fund
36-4025-0-3-704

(continued...)

¹²⁴⁵(...continued)

[Notes for the list "APPROPRIATED ENTITLEMENTS AND MANDATORIES FOR FISCAL YEAR 1991" that appears in this note 1245, pp. 487-493:]

- ¹ Account split — Only salaries of judges are mandatory.
- ² Account split — The interest rate differential related to the Guam Power Authority refinancing and the Northern Marianas covenant will be scored as mandatory.
- ³ Account split — The account shall be split between mandatory payments (required by treaty) and discretionary costs.
- ⁴ Account split — Payment of interest to Treasury shall be scored as mandatory. Loan levels shall be scored as discretionary loan limitations and borrowing authority.
- ⁵ The administrative expenses associated with this account are discretionary within the jurisdiction of the Commerce, Justice, State subcommittee.
- ⁶ Account split — Administrative expenses shall be scored as discretionary BA and outlays.
- ⁷ Appropriations to fund an agreed-upon level of 40 million acre minimum specified in authorizing legislation shall be scored as mandatory. Appropriations above this level shall be scored as discretionary.
- ⁸ Account split — Only purchases of commodities for Hunger Prevention Act are mandatory.
- ⁹ Account split — Appropriations for losses will be scored as mandatory. Changes to loan levels allocated to authorizing committees will be scored as discretionary.
- ¹⁰ Account split — Only purchases of commodities for Hunger Prevention Act are mandatory.
- ¹¹ The entire account shall be scored as mandatory except to the extent that discretionary set asides are specified in appropriations language.
- ¹² Account split — Payments for interest, net realized losses, and temporary mortgage assistance payments are mandatory. Administrative expenses transferred to Management and Administration and Inspector General accounts will be classified as a discretionary obligation limitation and
(continued...)

§ 251(b)(1) (b) **ADJUSTMENTS TO DISCRETIONARY SPENDING LIMITS.**¹²⁴⁶ — (1) When the President submits the budget under section 1105(a) of title 31, United States Code, for budget year¹²⁴⁷ 1992, 1993, 1994, 1995, 1996, 1997, or 1998¹²⁴⁸ (except as otherwise indicated), OMB¹²⁴⁹ shall calculate (in the order set forth below), and the budget shall include, adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each out-year¹²⁵⁰ through 1998¹²⁵¹ to reflect the following:

§ 251(b)(1)(A) (A) **CHANGES IN CONCEPTS AND DEFINITIONS.** — The adjustments produced by the amendments made by title

¹²⁴⁵(...continued)
outlays.

H.R. CONF. REP. NO. 101-964, 101st Cong., 2d Sess. 1172-80, *reprinted in* 1990 U.S.C.C.A.N. 2374, 2877-85.

For additional legislative history on the accounting for lease-purchases, see 136 CONG. REC. S8019-20 (daily ed. June 14, 1990) (statements of Sen. DeConcini and Chairman Sasser).

¹²⁴⁶ Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 440) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 301-303) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 475-502, 523-533.

¹²⁴⁷ Section 250(c)(12) defines "budget year." *See supra* p. 446.

¹²⁴⁸ Section 14002(c)(1)(B)(i)(I) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 14002(c)(1)(B)(i)(I), 107 Stat. 312 (1993), extended this reference to fiscal years 1996, 1997, and 1998. For legislative history of the extension, *see supra* notes 870 & 936 & *infra* note 1807.

¹²⁴⁹ Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 446.

¹²⁵⁰ Section 250(c)(14) defines "outyear." *See supra* p. 446.

¹²⁵¹ Section 14002(c)(1)(B)(i)(II) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 14002(c)(1)(B)(i)(II), 107 Stat. 312 (1993), changed this reference from "1995" to "1998." For legislative history of the extension, *see supra* notes 870 & 936 & *infra* note 1807.

XIII of the Omnibus Budget Reconciliation Act of 1990 or by any other changes in concepts and definitions shall equal the baseline¹²⁵² levels of new budget authority¹²⁵³ and outlays¹²⁵⁴ using up-to-date concepts and definitions minus those levels using the concepts and definitions in effect before such changes. Such other changes in concepts and definitions may only be made in consultation with the Committees on Appropriations, the Budget, Government Operations, and Governmental Affairs of the House of Representatives and Senate.

§ 251(b)(1)(B)(i)

(B) CHANGES IN INFLATION. — (i) For a budget submitted for budget year¹²⁵⁵ 1992, 1993, 1994, or 1995, the adjustments produced by changes in inflation shall equal the levels of discretionary new budget authority¹²⁵⁶ and outlays¹²⁵⁷ in the baseline¹²⁵⁸ (calculated using current¹²⁵⁹ estimates) subtracted from those levels in that baseline recalculated with the baseline inflators for the

¹²⁵² Section 250(c) (*see supra* p. 442) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 600-617.

¹²⁵³ Section 250(c)(1) (*see supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

¹²⁵⁴ Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

¹²⁵⁵ Section 250(c)(12) defines "budget year." *See supra* p. 446.

¹²⁵⁶ Section 250(c)(1) (*see supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

¹²⁵⁷ Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

¹²⁵⁸ Section 250(c) (*see supra* p. 442) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 600-617.

¹²⁵⁹ Section 250(c)(9) defines "current." *See supra* p. 445.

budget year only, multiplied by the inflation adjustment factor computed under clause (ii).

§ 251(b)(1)(B)(ii) (ii) For a budget year¹²⁶⁰ the inflation adjustment factor shall equal the ratio between the level of year-over-year inflation measured for the fiscal year most recently completed and the applicable estimated level for that year set forth below:

For 1990, 1.041

For 1991, 1.052

For 1992, 1.041

For 1993, 1.033

Inflation shall be measured by the average of the estimated gross national product implicit price deflator index for a fiscal year divided by the average index for the prior fiscal year.

§ 251(b)(1)(B)(iii) (iii) For a budget submitted for budget year 1996, 1997, or 1998, the adjustments shall be those necessary to reflect changes in inflation estimates since those of March 31, 1993, set forth on page 46 of House Conference Report 103-48.¹²⁶¹

§ 251(b)(1)(C) (C) CREDIT REESTIMATES. — For a budget submitted for fiscal year 1993 or 1994, the adjustments produced by

¹²⁶⁰ Section 250(c)(12) defines "budget year." See *supra* p. 446.

¹²⁶¹ Section 14002(c)(1)(B)(ii) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 14002(c)(1)(E)(ii), 107 Stat. 312 (1993), added this clause, providing for fiscal years 1996 through 1998. For legislative history of the extension, see *supra* notes 870 & 936 & *infra* note 1807. For the inflation assumptions to which the clause refers, see H.R. CONF. REP. NO. 103-48, 103d Cong., 1st Sess. 46 (1993), reprinted in 139 CONG. REC. H1747, H1760 (daily ed. Mar. 31, 1993).

reestimates to costs of Federal credit programs shall be, for any such program, a current¹²⁶² estimate of new budget authority¹²⁶³ and outlays¹²⁶⁴ associated with a baseline¹²⁶⁵ projection of the prior year's gross loan level for that program minus the baseline projection of the prior year's new budget authority and associated outlays for that program.

§ 251(b)(2) (2) When OMB¹²⁶⁶ submits a sequestration¹²⁶⁷ report under section 254(g) or (h) for fiscal year 1991, 1992, 1993, 1994, 1995, 1996, 1997, or 1998¹²⁶⁸ (except as otherwise indicated), OMB shall calculate (in the order set forth below), and the sequestration report, and subsequent budgets submitted by the President under section 1105(a) of title 31, United States Code, shall include, adjustments to discretionary spending limits¹²⁶⁹ (and those limits as adjusted) for the fiscal year

¹²⁶² Section 250(c)(9) defines "current." *See supra* p. 445.

¹²⁶³ Section 250(c)(1) (*see supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

¹²⁶⁴ Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

¹²⁶⁵ Section 250(c) (*see supra* p. 442) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 600-617.

¹²⁶⁶ Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 446.

¹²⁶⁷ Section 250(c)(2) defines "sequestration." *See supra* p. 440.

¹²⁶⁸ Section 14002(c)(1)(B)(iii)(I) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 14002(c)(1)(B)(iii)(I), 107 Stat. 312 (1993), extended this reference to fiscal years 1996, 1997, and 1998. For legislative history of the extension, *see supra* notes 870 & 936 & *infra* note 1807.

¹²⁶⁹ Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 440) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 301-303) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 475-502, 523-533.

and each succeeding year through 1998,¹²⁷⁰ as follows:

§ 251(b)(2)(A) (A) IRS FUNDING. — To the extent that appropriations are enacted that provide additional new budget authority¹²⁷¹ or result in additional outlays¹²⁷² (as compared with the CBO¹²⁷³ baseline¹²⁷⁴ constructed in June 1990) for the Internal Revenue Service compliance initiative in any fiscal year, the adjustments for that year shall be those amounts, but shall not exceed the amounts set forth below—

§ 251(b)(2)(A)(i) (i) for fiscal year 1991, \$191,000,000 in new budget authority and \$183,000,000 in outlays;

§ 251(b)(2)(A)(ii) (ii) for fiscal year 1992, \$172,000,000 in new budget authority and \$169,000,000 in outlays;

§ 251(b)(2)(A)(iii) (iii) for fiscal year 1993, \$183,000,000 in new budget authority and \$179,000,000 in outlays;

§ 251(b)(2)(A)(iv) (iv) for fiscal year 1994, \$187,000,000 in new budget authority and \$183,000,000 in outlays; and

¹²⁷⁰ Section 14002(c)(1)(B)(iii)(II) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 14002(c)(1)(B)(iii)(II), 107 Stat. 312 (1993), changed this reference from "1995" to "1998." For legislative history of the extension, see *supra* notes 870 & 936 & *infra* note 1807.

¹²⁷¹ Section 250(c)(1) (*see supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

¹²⁷² Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

¹²⁷³ Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 446.

¹²⁷⁴ Section 250(c) (*see supra* p. 442) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 600-617.

§ 251(b)(2)(A)(v)

(v) for fiscal year 1995, \$188,000,000 in new budget authority and \$184,000,000 in outlays; and

the prior-year outlays resulting from these appropriations of budget authority.

§ 251(b)(2)(B)

(B) DEBT FORGIVENESS. — If, in calendar year 1990 or 1991, an appropriation is enacted that forgives the Arab Republic of Egypt's foreign military sales indebtedness to the United States and any part of the Government of Poland's indebtedness to the United States, the adjustment shall be the estimated costs (in new budget authority¹²⁷⁵ and outlays,¹²⁷⁶ in all years) of that forgiveness.¹²⁷⁷

§ 251(b)(2)(C)

(C) IMF FUNDING. — If, in fiscal year 1991, 1992, 1993, 1994, or 1995 an appropriation is enacted to provide to the International Monetary Fund the dollar equivalent, in terms of Special Drawing Rights, of the increase in the United States quota as part of the International Monetary Fund Ninth General Review of Quotas, the adjustment shall be the amount provided by that appropriation.

§ 251(b)(2)(D)(i)

(D) EMERGENCY APPROPRIATIONS. — (i) If, for any fiscal year,¹²⁷⁸ appropriations for discretionary

¹²⁷⁵ Section 250(c)(1) (*see supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

¹²⁷⁶ Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

¹²⁷⁷ For a discussion of the motivation for forgiving Egypt's debt, *see, e.g.,* Clyde H. Farnsworth, *Egypt's Reward: Forgiven Debt*, N.Y. TIMES, Apr. 10, 1991.

¹²⁷⁸ Section 14002(c)(1)(B)(iv) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 14002(c)(1)(B)(iv), 107 Stat. 312 (1993), changed this reference from "fiscal year 1991, 1992, 1993, 1994, or 1995" to "any fiscal year." For legislative history of the extension, *see supra* notes 870 & 936 & *infra* note 1807.

accounts¹²⁷⁹ are enacted that the President designates as emergency requirements and that the Congress so designates in statute, the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements and the outlays¹²⁸⁰ flowing in all years from such appropriations.¹²⁸¹

§ 251(b)(2)(D)(ii)

(ii) The costs for operation Desert Shield are to be treated as emergency funding requirements not subject to the defense spending limits. Funding for Desert Shield will be provided through the normal legislative process. Desert Shield costs should be accommodated through Allied burden-sharing, subsequent appropriation Acts, and if the President so chooses, through offsets within other defense accounts.¹²⁸² Emergency Desert Shield costs mean those incremental costs associated with the increase in operations in the Middle East and do not include costs that would be experienced by the Department of Defense as part of its normal operations absent Operation Desert Shield.

§ 251(b)(2)(E)(i)

(E) SPECIAL ALLOWANCE FOR DISCRETIONARY NEW BUDGET AUTHORITY.¹²⁸³ — (i) For each of fiscal years

¹²⁷⁹ Section 250(c)(11) defines "account." See *supra* p. 445.

¹²⁸⁰ Section 250(c)(1) (see *supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. See *supra* p. 11.

¹²⁸¹ Compare the parallel provisions for emergencies for direct spending in section 252(e). See *infra* p. 517. For discussions of these emergency provisions, see William G. Dauster, *Budget Emergencies*, 18 J. LEGIS. 249 (1992); ROBERT KEITH, EMERGENCY LEGISLATION UNDER THE GRAMM-RUDMAN-HOLLINGS ACT: 101ST-102ND CONGRESSES (Dec. 8, 1992) (Cong. Res. Serv. rep. no. 92-917 GOV).

¹²⁸² Section 250(c)(11) defines "account." See *supra* p. 445.

¹²⁸³ Section 250(c)(1) (see *supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. See *supra* pp. 11-13.

1992 and 1993, the adjustment for the domestic category¹²⁸⁴ in each year shall be an amount equal to 0.1 percent of the sum of the adjusted discretionary spending limits¹²⁸⁵ on new budget authority for all categories for fiscal years 1991, 1992, and 1993 (cumulatively), together with outlays¹²⁸⁶ associated therewith (calculated at the composite outlay rate¹²⁸⁷ for the domestic category);

§ 251(b)(2)(E)(ii)

(ii) for each of fiscal years 1992 and 1993, the adjustment for the international category¹²⁸⁸ in each year shall be an amount equal to 0.079 percent of the sum of the adjusted discretionary spending limits¹²⁸⁹ on new budget authority¹²⁹⁰ for all categories for fiscal years 1991, 1992, and 1993 (cumulatively), together with outlays¹²⁹¹ associated therewith (calculated at the composite outlay

¹²⁸⁴ Section 250(c)(4) defines "category." See *supra* p. 441.

¹²⁸⁵ Section 250(c)(1) of Gramm-Rudman-Hollings (see *supra* p. 440) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (see *supra* pp. 301-303) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. See pp. 475-502, 523-533.

¹²⁸⁶ Section 250(c)(1) (see *supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. See *supra* p. 11.

¹²⁸⁷ Section 250(c)(20) defines "composite outlay rate." See *supra* p. 447.

¹²⁸⁸ Section 250(c)(4) defines "category." See *supra* p. 441.

¹²⁸⁹ Section 250(c)(1) of Gramm-Rudman-Hollings (see *supra* p. 440) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (see *supra* pp. 301-303) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. See pp. 475-502, 523-533.

¹²⁹⁰ Section 250(c)(1) (see *supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. See *supra* pp. 11-13.

¹²⁹¹ Section 250(c)(1) (see *supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. See *supra* p. 11.

rate¹²⁹² for the international category);

§ 251(b)(2)(E)(iii) (iii) If, for fiscal years 1992 and 1993, the amount of new budget authority¹²⁹³ provided in appropriation Acts exceeds the discretionary spending limit¹²⁹⁴ on new budget authority for any category¹²⁹⁵ due to technical estimates made by the Director of the Office of Management and Budget, the adjustment is the amount of the excess, but not to exceed an amount (for 1992 and 1993 together) equal to 0.042 percent of the sum of the adjusted discretionary limits on new budget authority for all categories for fiscal years 1991, 1992, and 1993 (cumulatively); and

§ 251(b)(2)(E)(iv) (iv) If, for fiscal years 1994, 1995, 1996, 1997, and 1998, the amount of new budget authority provided in appropriation Acts exceeds the discretionary spending limit on new budget authority due to technical estimates made by the director of the Office of Management and Budget, the adjustment is the amount of the excess, but not to exceed an amount (for any one fiscal year) equal to 0.1 percent of the adjusted discretionary spending limit on new budget authority for that fiscal year.¹²⁹⁶

¹²⁹² Section 250(c)(20) defines "composite outlay rate." See *supra* p. 447.

¹²⁹³ Section 250(c)(1) (*see supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. See *supra* pp. 11-13.

¹²⁹⁴ Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 440) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 301-303) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. See pp. 475-502, 523-533.

¹²⁹⁵ Section 250(c)(4) defines "category." See *supra* p. 441.

¹²⁹⁶ Section 14002(c)(1)(B)(v)(II) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 14002(c)(1)(B)(v)(II), 107 Stat. 312 (1993), added this clause, providing for fiscal years 1996 through 1998. For legislative history of the extension, see *supra* notes 870 & 936 & *infra* note 1807. The drafters of this clause relied on historical experience of technical differences to formulate the adjustment percentage.

§ 251(b)(2)(F)

(F) SPECIAL OUTLAY ALLOWANCE. — If in any fiscal year outlays¹²⁹⁷ for a category¹²⁹⁸ exceed the discretionary spending limit¹²⁹⁹ for that category but new budget authority¹³⁰⁰ does not exceed its limit for that category (after application of the first step of a sequestration¹³⁰¹ described in subsection (a)(2), if necessary), the adjustment in outlays is the amount of the excess, but not to exceed \$2,500,000,000 in the defense category, \$1,500,000,000 in the international category, or \$2,500,000,000 in the domestic category (as applicable) in fiscal year 1991, 1992, or 1993, and not to exceed \$6,500,000,000 in fiscal year 1994 or 1995 less any of the outlay adjustments made under subparagraph (E) for a category for a fiscal year, and not to exceed 0.5 percent of the adjusted discretionary spending limit on outlays for the fiscal year in fiscal year 1996, 1997, or 1998.¹³⁰²

¹²⁹⁷ Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

¹²⁹⁸ Section 250(c)(4) defines "category." *See supra* p. 441.

¹²⁹⁹ Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 440) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 301-303) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 475-502, 523-533.

¹³⁰⁰ Section 250(c)(1) (*see supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

¹³⁰¹ Section 250(c)(2) defines "sequestration." *See supra* p. 440.

¹³⁰² Section 14002(c)(1)(B)(vi) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 14002(c)(1)(B)(vi), 107 Stat. 312 (1993), added ", and not to exceed 0.5 percent of the adjusted discretionary spending limit on outlays for the fiscal year in fiscal year 1996, 1997, or 1998" at this point, providing for fiscal years 1996 through 1998. For legislative history of the extension, *see supra* notes 870 & 936 & *infra* note 1807. The drafters of this clause relied on historical experience of technical differences to formulate the adjustment percentage.

The drafters of the Budget Enforcement Act added this subparagraph to protect
(continued...)

¹³⁰²(...continued)

against estimating differences between the Congressional Budget Office and the Office of Management and Budget. Even so, the acting general counsel of the Office of Management and Budget has issued an opinion that the President may take advantage of this outlay allowance in requests for supplemental appropriations, notwithstanding its original purpose:

MEMORANDUM FOR THE DIRECTOR

FROM: Robert G. Damus
Acting General Counsel

SUBJECT: Scoring Supplementals Under the
Special Outlay Allowance

This addresses the issue of whether the Administration's proposed 1991 supplementals are consistent with application of the "special outlay allowance" provision of the Budget Enforcement Act of 1990 (BEA).

Background

At the conclusion of appropriations action on the 13 regular appropriations bills for fiscal year 1991, OMB and CBO issued their reports scoring the bills and making their sequester calculations as required by section 254 of the Gramm-Rudman-Hollings Act (GRH), as amended by the BEA. Within the domestic discretionary category defined by the BEA, OMB scored budget authority (BA) of \$182,381 million, and outlays of \$199,863 million; CBO scored BA of \$182,192 million and outlays of \$197,814 million. The domestic discretionary limit under the BEA for 1991 is BA of \$182,891 million and outlays of \$198,283 million.

The BEA provides for a number of adjustments to the cap. One adjustment is provided by section 251(b)(2)(F), which states:

"...."

This adjustment is explained in the Joint Explanatory Statement of Managers accompanying the conference report on the BEA (as enacted in Title XII of the Omnibus Budget Reconciliation Act of 1990): "Outlay limits for categories of discretionary spending also shall be increased by specified dollar amounts so long as the budget authority limits for the applicable categories are not breached; this special outlay allowance insulates the legislative process from estimating differences." (H.Rep. No.101-964 p. 1153).

As stated by the conferees, the purpose of the provision is to allow an adjustment for outlays estimating differences between CBO and OMB. Under the rule, CBO can score appropriations as meeting the BA and outlay
(continued...)

¹³⁸²(...continued)

caps, and OMB can score appropriation as just meeting the BA cap by up to \$2.5 billion without triggering a sequester of the OMB-scored outlay excess. If this rule did not exist, and OMB scored outlays as just meeting the cap, the full amount of the cap could not be used by Congress, which must use lower CBO scoring. The maximum adjustment for these CBO-OMB scorekeeping differences is equal to \$2.5 billion plus the amount by which CBO-scored outlays fall short of the cap.

Discussion

The adjustment allowed under section 251(b)(2)(F) has been applied in 1991. OMB scored outlays as exceeding the cap (unadjusted for this item) by \$1,580 million, with BA under the cap by \$510 million. CBO scored BA as \$699 million under the cap and outlays as \$469 million under the cap. Due to the adjustment provision, no sequester was triggered despite the unadjusted cap having been exceeded on OMB scoring.

The President's budget for a fiscal year must be "prepared in a manner consistent with the requirements" of GRH "that apply to that and subsequent fiscal years." 31 U.S.C. 1105(f) (as amended by the BEA). The budget will propose 1991 supplementals (and rescissions) with net BA of \$304 million and net outlays of \$247 million within the domestic discretionary category.

The supplementals are consistent with the caps on domestic discretionary spending. The supplementals fit within the room left under the caps as scored by CBO and so will not trigger any point of order during Congressional consideration. The BA will fit within the cap as scored by OMB when OMB prepares its sequester report. The outlays will also fit within the unadjusted cap, not counting the estimating differences for which the adjustment is provided, and fit within the adjusted cap counting such differences. Thus, no sequester will be triggered.

This analysis is consistent with the purpose of the adjustment: to ensure that estimating differences permit the cap to be met by Congress under CBO scoring without triggering a sequester under OMB scoring. Despite the estimating difference, the cap is met under CBO scoring (without the adjustment), and under OMB scoring (with the adjustment). The amount of the estimating difference is the adjustment to the cap (less the amount by which CBO-scored outlays fall below the cap). Not counting the amount provided by the adjustment — the estimating difference between CBO and OMB on 1991 appropriations — the Administration proposals are below the unadjusted 1991 caps.

Conclusion

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Supplementals are consistent with the BEA, and trigger no enforcement procedure applied in Congress or sequester applied by the Executive, so long as the resulting BA and outlays are under the BA and outlay caps as scored by CBO, and under the BA cap as scored by OMB, and the CBO-OMB outlay estimating difference is less than \$2.5 billion plus the amount of the CBO-scored shortfall below the outlay cap. These conditions apply to the proposed supplementals for both domestic and international spending, given 1991 appropriations action to date. The proposed supplementals are therefore consistent with the BEA.

Memorandum from Robert G. Damus to Director Richard G. Darman (Jan. 17, 1991).

Section 13101(a) of the Budget Enforcement Act amended section 251 to read substantially as it does now. *See infra* p. 701. The statement of managers accompanying the conference report on the Budget Enforcement Act explains section 251 generally:

I. ENFORCING DISCRETIONARY SPENDING LIMITS

Current law

Under the Congressional Budget Act of 1974, the Senate and the House of Representatives limit discretionary spending primarily through overall allocations to their respective Appropriations Committees in the joint statement of the managers accompanying the concurrent resolution on the budget. These allocations, made pursuant to section 302(a) of the Congressional Budget Act of 1974, are sometimes called "302(a)s" or "crosswalks." All committees must then divide these allocations among their subcommittees or programs. The Committees on Appropriations — which have jurisdiction over discretionary spending — must divide the allocations among their 13 subcommittees (including their Subcommittees on Defense and on Foreign Operations) under section 302(b) of the Congressional Budget Act. A point of order (requiring 60 votes to waive in the Senate and a simple majority to waive in the House) lies against any legislation that would cause spending to exceed these subdivided limits.

House bill

The House bill sets forth, in a new section of the Congressio[n]al Budget Act, limits for discretionary spending in three categories — defense, international, and domestic — for fiscal years 1991 through 1993, and in one category — discretionary spending — for fiscal years 1994 and 1995. The House bill creates a new mechanism for across-the-board cuts — called "sequestration" — within a category if discretionary spending for a fiscal year exceeds spending in that category. The President orders these cuts for that fiscal year within 15 days after the end of a session. Under a "look-back" procedure, if legislation is enacted for that fiscal year in the next session that causes

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spending to exceed a category's limit, then the applicable spending limits for the next fiscal year are reduced accordingly, and a further sequestration occurs unless appropriations legislation adjusts spending downward.

The initial limits proposed by the House include separate amounts of new budget authority and outlays by category (for fiscal years 1991 through 1993) and by total (for fiscal years 1994 and 1995).

The House bill provides that the President shall adjust the spending limits in the annual budget submission for changes in concepts and definitions, inflation, credit reestimates, Internal Revenue Service compliance funding, debt forgiveness, International Monetary Fund funding, Presidentially-determined emergencies, and for limited defined special allowances.

Senate amendment

The Senate amendment sets forth as a freestanding part of the Omnibus Budget Reconciliation Act of 1990 limits for discretionary spending in the same categories and for the same years as in the House bill. The Senate amendment also creates a new mechanism for across-the-board cuts — called "sequestration" — within a category if discretionary spending exceeds spending for that category. In the Senate amendment, however, the President orders these cuts on November 15 for appropriations bills enacted before November 1 or after June 30 of a fiscal year, or 15 days after enactment for bills enacted between October 31 and July 1.

The initial limits on discretionary spending proposed by the Senate are the same as those proposed by the House. As does the House bill, the Senate amendment provides that the President may adjust the spending limits in the annual budget submission for changes in inflation, credit reestimates, Internal Revenue Service compliance funding, International Monetary Fund funding, Presidentially-determined emergencies, and for limited defined special allowances.

The Senate amendment allows for changes in the definition of "budget authority" (which it changes elsewhere) — but not changes in other concepts and definitions, and allows for adjustment for debt forgiveness for the Arab Republic of Egypt and the Polish government — but not other debts.

Conference agreement

The conference agreement establishes the limits on discretionary spending by category, as proposed by the House and Senate, as a new title VI of the Congressional Budget Act of 1974.

The initial limits on discretionary spending are as follows (in billions
(continued...))

1993 (...continued)
of dollars):

	Fiscal year —				
	1991	1992	1993	1994	1995
Defense:					
Budget Authority	288.918	291.643	291.785	.....	.....
Outlays	297.660	295.744	292.686	.....	.....
International:					
Budget Authority	20.100	20.500	21.400	.....	.....
Outlays	18.600	19.100	19.600	.....	.....
Domestic:					
Budget Authority	182.700	191.300	198.300	.....	.....
Outlays	188.100	210.100	221.700	.....	.....
Total Discretionary:					
Budget Authority				510.800	517.700
Outlays				534.800	540.800

The President shall adjust the spending limits according to the method proposed by the House, except with regard to limited defined special allowances. The conference agreement accepts the Senate approach for adjustments for the International Monetary Fund and debt forgiveness. The special allowances authorize the President to adjust the spending limits for new budget authority and associated outlays by specified percentages, depending on the spending category and the fiscal year. Outlay limits for categories of discretionary spending also shall be increased by specified dollar amounts so long as the budget authority limits for the applicable categories are not breached; this special outlay allowance insulates the legislative process from estimating differences.

The conference agreement accepts a compromise mechanism for initiating across-the-board spending cuts if discretionary spending-limits are breached. During the session in which the fiscal year begins, the enactment of legislation causing a breach in the spending limits of any category would trigger a presidential sequestration order that would impose across-the-board cuts in that category bringing spending down to the established limits. This presidential sequestration order would be issued within 15 days after the end of a session of Congress. During the following session, the enactment of legislation causing a breach in the spending limits would trigger sequestration 15 days after enactment if the legislation were enacted before July 1, or would reduce the applicable spending limits for the next fiscal year by the amount of the breach if the legislation were enacted on or after July 1.

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U.S.C.C.A.N. 2374, 2856-58.**