

adjusted sequentially and cumulatively for expiring housing contracts as specified in paragraph (2),<sup>1660</sup> for social insurance administrative expenses as specified in paragraph (3),<sup>1661</sup> to offset pay absorption and for pay annualization as specified in paragraph (4),<sup>1662</sup> for inflation as specified in paragraph (5),<sup>1663</sup> and to account for changes

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<sup>1660</sup> See *infra* p. 609.

<sup>1661</sup> See *infra* p. 609.

<sup>1662</sup> See *infra* p. 609.

<sup>1663</sup> See *infra* p. 610.

Notwithstanding the requirements of this paragraph, the Office of Management and Budget and the Congressional Budget Office have both used the discretionary spending limits of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 301-303) as adjusted under section 251(b) of Gramm-Rudman-Hollings (*see supra* pp. 493-502) as the baseline levels for discretionary appropriations. They reason that the requirements of sections 251 and 253 of Gramm-Rudman-Hollings (*see supra* pp. 475-502 & 523-533), taken as a whole, indicate Congress's intent to ensure that appropriations fall within the caps. As Gramm-Rudman-Hollings requires appropriations to end up there, they reason, it is consistent with the requirements of Gramm-Rudman-Hollings to construct the baseline at that point.

Section 1105 of title 31 of the United States Code requires the President to submit the budget. *See infra* pp. 788-798. As amended by section 13112(c)(2) of the Budget Enforcement Act (*see infra* p. 711), section 1105(f) provides that "[t]he budget . . . for a fiscal year shall be prepared in a manner consistent with the requirements of [Gramm-Rudman-Hollings] that apply to that and subsequent fiscal years." *See infra* p. 798.

On this subject, Gramm-Rudman-Hollings has two mandates with which the President's budget could conform. This section lays out the rules for the Gramm-Rudman-Hollings baseline, and this paragraph directs the calculation of a current services baseline.

Sections 251 and 253 of Gramm-Rudman-Hollings provide the alternative, more general mandates with which the President's budget could conform. *See supra* pp. 475-502 & 523-533. Section 251, which provides the mechanism for enforcing the appropriations caps, ensures that, after Congress adjourns at the end of the year, appropriations do not exceed the caps. *See supra* pp. 475-502. Section 253, which enforces the deficit targets (the maximum deficit amounts), operates on the assumption that appropriations stand at the cap levels. *See supra* pp. 523-533. In its operative sequester language, for example, section 253(a) directs the Office of Management and Budget and the Congressional Budget Office to make their calculations for these purposes after section 251 has ensured that appropriations do not exceed the caps:

(continued...)

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<sup>1603</sup>(...continued)

"Within 15 calendar days after Congress adjourns to end a session . . . and on the same day as a sequestration (if any) under section 251 and section 252, but after any sequestration required by section 251 (enforcing discretionary spending limits) . . . , there shall be a sequestration to eliminate the excess deficit (if any remains) if it exceeds the margin."

See *supra* p. 523 (emphasis added).

Similarly, section 253(g)(2) instructs the Office of Management and Budget and the Congressional Budget Office how to calculate the deficit for purposes of adjustment of the deficit targets. See *supra* pp. 530-533. For these purposes, section 253(g)(2)(A) requires those offices to use the appropriations caps to determine the baseline deficit: "The baseline deficit or surplus shall be calculated using up-to-date economic and technical assumptions . . . , and, in lieu of the baseline levels of discretionary appropriations, using the discretionary spending limits set forth in section 601 of the Congressional Budget Act of 1974 as adjusted under section 251." See *supra* p. 531.

Note that the conclusion that the discretionary spending limits can serve as the discretionary baseline ties less directly to the language of the law than does the conclusion that the law requires a current services baseline. Indeed, section 253(g)(2)(A) itself (quoted for the capped baseline proposition above) provides a basis for questioning the conclusion, as that section states that "[t]he baseline deficit or surplus shall be calculated . . . in lieu of the baseline levels of discretionary appropriations, using the discretionary spending limits set forth in section 601 of the Congressional Budget Act of 1974 as adjusted under section 251." See *id.* (emphasis added). Section 253(g)(2)(A) thus contemplates "baseline levels of discretionary appropriations" that are not equivalent to the discretionary spending limits. Thus, although Gramm-Rudman-Hollings provides a basis for using a capped appropriations baseline, a President who wished foremost to honor the law and its apparent intent would start from a current services baseline.

Of course, regardless of which baseline the President's budget adopts, the President may include additional baselines in the budget. Section 1105(a) of title 31 gives the President free reign to add to the budget, stating that "[t]he President shall include in each budget . . . (3) other desirable classifications of information . . . [and] (11) other financial information the President decides is desirable to explain in practicable detail the financial condition of the Government." See *infra* pp. 789-790. In addition to this statutory authority, the President also retains the Constitutional authority to "recommend to [Congress's] Consideration such Measures as he shall judge necessary and expedient." U.S. Const. art. II, § 3. So the President's budget may use any baseline, as long as it also displays current services baseline data.

Note that the requirement for a current services baseline stands independently. See 31 U.S.C. § 1109 (1988), *infra* p. 806. In addition, a separate requirement to display current services levels for capital investment appears at 31 U.S.C. § 1105(e)(1)(A) (1988). See *infra* p. 795.