

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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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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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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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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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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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

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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

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- 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

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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 fund¹⁰
12-4141-0-3-371
Rural communication development fund
12-4142-0-3-452
Rural development insurance fund¹¹
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

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¹²⁹(...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

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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

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§ 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.