
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 Supplements Under the
Special Outlay Allowance

This addresses the issue of whether the Administration's proposed 1991 supplements 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...)

¹³⁰²(...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

(continued...)

¹³⁰²(...continued)

Supplements 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 supplements for both domestic and international spending, given 1991 appropriations action to date. The proposed supplements 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 Congressional 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

(continued...)

¹³⁰³(...continued)

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...)

¹³⁰²(...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	198.100	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.

(continued...)

¹⁰²(...continued)

**H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1151-53 (1990), reprinted in 1990
U.S.C.C.A.N. 2374, 2856-58.**