
enactment of OBRA.¹⁹⁶⁶ This order shall apply to direct spending targets¹⁹⁶⁷ for fiscal years 1994 through 1997 and shall expire at the end of fiscal year 1997.

William J. Clinton¹⁹⁶⁸

THE WHITE HOUSE,
August 4, 1993.¹⁹⁶⁹

¹⁹⁶⁶ The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993), enacted August 10, 1993.

¹⁹⁶⁷ Section 2 of this order establishes the "direct spending targets" (*see supra* pp. 819-821) and section 6 of this order provides for their annual adjustment (*see supra* pp. 827-831).

¹⁹⁶⁸ Signed.

¹⁹⁶⁹ For the President's remarks on signing this Executive order, see issue 31 of the *Weekly Compilation of Presidential Documents*.

The Federal Register notes the following information in the margin: "[FR Doc. 93-19098 Filed 8-5-93; 10:15 am] Billing code 3195-01-P."

This order repeats nearly verbatim House-passed language on the same subject that died in conference. *See* H.R. 2264, 103d Cong., 1st Sess., tit. XVI, 139 CONG. REC. H3029, H3199-201 (daily ed. May 27, 1993) (as passed by the House of Representatives). For the text of the House-passed language, *see infra* note 2024. For legislative history of this language, *see* H. Res. 186, 103d Cong., 1st Sess., 139 CONG. REC. H2952 (daily ed. May 27, 1993) (the House rule that provided for inclusion of the language in H.R. 2264); H.R. REP. NO. 103-112, 103d Cong., 1st Sess. 3, 50-55 (1993) (the report to accompany H. Res. 186, first publishing the language); 139 CONG. REC. H2952-70 (daily ed. May 27, 1993) (House debate on H. Res. 186); *id.* at S7821-30 (daily ed. June 24, 1993) (Senate debate on a Sasser amendment similar to the language); *id.* at S8122-25 (text of the Sasser amendment); H.R. CONF. REP. NO. 103-213, 103d Cong., 1st Sess. 936, 964-66 (1993) (joint statement of managers discussing the language), *reprinted in* 139 CONG. REC. H6036, H6044 (daily ed. Aug. 4, 1993); *cf.* H. Res. 235, 103d Cong., 1st Sess., 139 CONG. REC. H6122 (daily ed. Aug. 3, 1993) (applying the House-passed procedures of H.R. 2264 to the House); H. Res. 240, 103d Cong., 1st Sess. § 2, 139 CONG. REC. H6110-11 (daily ed. Aug. 5, 1993) (providing for adoption of H. Res. 235); H.R. REP. NO. 103-217, 103d Cong., 1st Sess. (1993) (to accompany H. Res. 240); 139 CONG. REC. H6110-21 (daily ed. Aug. 5, 1993) (debate on H. Res. 240).

The joint statement of managers accompanying H.R. 2264, 103d Cong., 1st Sess. § 15301, 139 CONG. REC. H5792 (daily ed. Aug. 4, 1993), discusses entitlement review as
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¹⁹⁸⁹ (...continued)
follows:

Title XIV — Budget Process Provisions

Note that the House recedes to the Senate on all material related to the executive and congressional budget process. The House conferees agreed to recede based on their understanding that inclusion of that material would make the entire conference report subject to a point of order in the Senate under section 306 of the Congressional Budget Act of 1974 and thereby endanger final enactment of the reconciliation bill. Therefore, the conferees' decisions should not be considered as necessarily judging the relative merits of the Senate and House positions.

....

ENTITLEMENT REVIEW

Current Law

Current law includes no analogous provision for monitoring and budgeting federal expenditures for entitlement and mandatory programs.

The House Bill

Federal spending for entitlements and other mandatory programs represent, along with interest on the national debt, the fastest growing area of federal spending. The Congressional Budget Office projects outlays for entitlement and mandatory programs to increase by 6.4% per year ([fiscal years] 1993-98). However, Congress is acutely aware that entitlement programs represent important commitments to the public in vital areas such as health, income security and economic stability.

Growth in entitlement spending has resulted in large part from the explosion in health care costs throughout society. National spending on health care currently represents more than 14% of the nation's total economic output and is projected to rise to 18% of Gross Domestic Product by the year 2000 if corrective action is not taken. Through its various programs, the federal government pays approximately 25% of the nation's health care costs, primarily through the medicare and medicaid entitlement programs. The social security, medicare and medicaid programs represent nearly 70% of all entitlement spending.

The House is concerned with our ability to project, monitor and pay for rising health care costs within the federal budget. Federal spending for entitlements and other mandatory programs is expected to total approximately \$770 billion in 1993, representing one-half of federal outlays and more than
(continued...)

¹⁹⁸⁹ (...continued)

12% of our nation's Gross Domestic Product.

The House, acknowledging the acute budgetary pressure placed on the federal government through rising health care costs, created an entitlement review process requiring the following action on the part of the President:

(1) Following enactment of reconciliation, the Office of Management and Budget sets targets for the total level of entitlement spending, excluding interest and deposit insurance. These targets would be equal to the spending levels expected to result from enactment of reconciliation.

(2) The targets would be adjusted annually for:

(a) Increases in the number of beneficiaries for direct spending programs in which the number of beneficiaries is a variable in determining costs (e.g., Social Security, Medicare, Medicaid, Food Stamps, Unemployment Compensation, Federal Civilian/Military Retirement and Veterans' Pensions/Compensation).

(b) Subsequently enacted legislation increasing or decreasing revenues and legislation designated as an "emergency" measure under the Balanced Budget and Emergency Deficit Control Act of 1985.

(3) The President's budget must include annual review of actual and projected costs for direct spending and revenues ([fiscal years] 1994-97). The report shall include: total outlays for direct spending programs and projections for the following five fiscal years; the basis of any variance from the targets, including permissible adjustments; and information regarding major categories of fiscal receipts, including any variance between projected and actual receipts.

(4) If actual outlays for direct spending programs for the prior fiscal year or projected outlays for the current fiscal year or budget year exceed the targets, the President is required to propose measures to address any overage, either through spending cuts, revenue increases or outlay target increases. However, no proposal is required if projected outlays exceed the targets by 1/2% estimating margin of error or less.

(5) The President and Congress should "seriously consider" all other proposals (outlay target/revenue increases, discretionary cuts or non-means tested program cuts) prior to considering reductions

(continued...)

¹⁹⁸⁹ (...continued)

for means-tested programs.

The entitlement review also requires the following action on the part of Congress:

(1) If the President identifies an overage and recommends legislation to recoup or eliminate it, the budget resolution must incorporate a title to address the overage through reconciliation. The reconciliation directive can reflect any combination of spending cuts or revenue increases, but must achieve legislative savings equal to or greater than the amount recommended by the President (up to the amount of the overage).

(2) If the budget resolution recommends recouping less than the full overage, the House Budget Committee must report a House resolution directing that the outlay target shall be increased by the amount which is not offset.

(3) If the House resolution requires raising the outlay targets, the House must vote directly on the issue by a separate vote on the House resolution. If the House rejects raising the target, the budget resolution may not be considered as reported.

(4) Points of order are created: (a) The House cannot consider the budget resolution conference report unless the overage has been fully addressed, either by increasing the target or reporting reconciliation instructions to eliminate the overage or both; (b) No appropriations bills may be considered unless a budget resolution complying with this act has been adopted for the current fiscal year. However, this point of order may be waived by vote or resolution for all appropriations bills for the fiscal year.

The Senate Bill

The Senate bill adopts no analogous provisions.

The Conference Agreement

The conference agreement does not include the House entitlement review provisions. The House conferees agreed to recede to the Senate, based on their understanding that inclusion of the entitlement review provisions would make the entire conference report subject to a point of order in the Senate and thereby endanger final enactment of the reconciliation bill, and based on their further understanding that President Clinton has agreed to establish by Executive Order a mechanism for monitoring entitlement outlays and making recommendations to address overages.

(continued...)

Executive Order 12858 of August 4, 1993¹⁹⁷⁰**Deficit Reduction Fund**

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of

¹⁹⁶⁹ (...continued)

H.R. CONF. REP. NO. 103-213, 103d Cong., 1st Sess. 936, 964-66 (1993), *reprinted in* 139 CONG. REC. H6036, H6044 (daily ed. Aug. 4, 1993).

For an excellent analysis of the House-passed language, see ROBERT KEITH & EDWARD DAVIS, BUDGET PROCESS CHANGES IN THE HOUSE-PASSED RECONCILIATION ACT OF 1993 18-23 (June 14, 1993) (Cong. Res. Serv. rep. no. 93-583 GOV), *reprinted in* 139 CONG. REC. H6115-16 (daily ed. Aug. 5, 1993) (debate on H. Res. 240). For a similar treatment of the language that failed in the Senate, see EDWARD DAVIS & ROBERT KEITH, BUDGET PROCESS CHANGES CONSIDERED BY THE SENATE: THE RECONCILIATION ACT OF 1993 10-13 (June 30, 1993) (Cong. Res. Serv. rep. no. 93-625 GOV). For a history and criticism of entitlement caps generally, see William G. Dauster, *Budget Process Issues for 1993*, 9 J.L. & POL. 9, 25-35 (1992). For a discussion of entitlements generally, see KENNETH R. CAHILL, ENTITLEMENTS AND OTHER MANDATORY SPENDING (Apr. 6, 1993) (Cong. Res. Serv. rep. no. 93-391 EPW).

For legislative history of entitlement caps, see LEON E. PANETTA, CHAIRMAN, HOUSE COMM. ON THE BUDGET, 102D CONG., 1ST SESS., RESTORING AMERICA'S FUTURE: PREPARING THE NATION FOR THE 21ST CENTURY 20-21 (Comm. Print 1991) (serial no. CP-5); OFFICE OF MANAGEMENT AND BUDGET, BUDGET OF THE UNITED STATES GOVERNMENT: FISCAL YEAR 1993, pt. 1, at 9, 16-17 (1992); OFFICE OF MANAGEMENT AND BUDGET, MID-SESSION REVIEW: THE PRESIDENT'S BUDGET AND ECONOMIC GROWTH AGENDA 407 (1992); H.R. 4150, 102d Cong., 2d Sess. tit. XLVI (1992); S. 2217, 102d Cong., 2d Sess. tit. XLVI, 138 CONG. REC. S1475 (daily ed. Feb. 7, 1992) (President Bush's legislation); 138 CONG. REC. S5414-62, S5531-35 (daily ed. Apr. 10, 1992) (debate on and text of the Domenici amendment, which Senator Domenici withdrew after the Senate voted 66-28 to except Veterans' Compensation from the cap); 139 CONG. REC. S3609-21, S3675-79 (daily ed. Mar. 24, 1993) (debate on and text of the Nunn-Domenici amendment, which the Senate tabled by a vote of 51-47); *id.* at S7703-21, S7769, S7807-08 (daily ed. June 23, 1993) (debate on and text of the Dole-Domenici amendment, which failed by a vote of 43-55 on a motion to waive the Congressional Budget Act).

¹⁹⁷⁰ This order appears at 58 Fed. Reg. 42,185 (1993). For history of the order, see *infra* note 1984.