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The Sequestration Process and Across-the-Board Spending Cuts for FY2000

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Summary

The sequestration process, which involves automatic, largely across-the-board spending reductions made toward the beginning of the fiscal year, was established under the Balanced Budget and Emergency Deficit Control Act of 1985 as a means of enforcing deficit targets. The Budget Enforcement Act of 1990 amended the 1985 act to supersede the deficit targets with two new enforcement mechanisms—limits on discretionary spending (*i.e.*, spending controlled through the annual appropriations process) and a “pay-as-you go” (PAYGO) requirement applicable to legislation affecting direct spending (*i.e.*, spending controlled outside of the annual appropriations process) and revenues. The discretionary spending limits and PAYGO requirement were revised and extended (affecting legislation enacted through FY2002) most recently by the Budget Enforcement Act of 1997 and the Transportation Equity Act for the 21st Century.

As a general rule, the enforcement procedures for the discretionary spending limits, on the one hand, and the PAYGO requirement, on the other, are separated by a “firewall.” Violations of the discretionary spending limits are remedied by reductions only in discretionary programs; PAYGO violations are corrected by reductions solely in direct spending programs. Further, savings made on one side of the firewall generally cannot be used to the advantage of programs on the other side.

The current sequestration procedures are automatic and are triggered by a report from the OMB director. For sequestration purposes generally, there is only one triggering report issued each year (just after the end of the congressional session), but a “within-session sequester” may occur in the following session (*e.g.*, if the enactment of one or more supplemental appropriations measures causes a breach in the limits). Spending for many programs is exempt from sequestration and reductions in certain programs are limited under “special rules.”

During the 15 years that sequestration has been in effect, sequesters have been triggered five times. The first three sequesters occurred during the 5-year period when deficit targets were in effect, covering FY1986-1990. During the remaining 10 years, sequestration applied to the enforcement of the discretionary spending limits and PAYGO requirement. Two sequesters under the discretionary spending limits occurred for FY1991 and no PAYGO sequester has ever occurred. Initial outlay savings associated with the three deficit target sequesters ranged from \$11.7 billion to \$20.0 billion, but some of these savings were reduced or rescinded later.

In the fall of 1999, as Congress completed action on the regular appropriations acts for FY2000 and other budgetary legislation, there was some concern that a sequester for that fiscal year might be triggered at the end of the session. In January 2000, the OMB director indicated that no sequester was required following the end of the 1999 session. Toward the middle of 2000, Congress and the President enacted supplemental appropriations that breached the limits by \$2.4 billion in budget authority and \$6.8 billion in outlays, but the legislation included a provision barring a within-session sequester for FY2000 (or a reduction in the limits for FY2001).

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The Sequestration Process and Across-the-Board Spending Cuts for FY2000

Origin and Development of the Sequestration Process

Twenty-five years ago, Congress established its current budget process under the Congressional Budget and Impoundment Control Act of 1974.¹ Implementation of the 1974 Congressional Budget Act focuses on the annual adoption of a concurrent resolution on the budget.² The annual budget resolution serves as a guide for House and Senate action each session on revenue legislation, measures increasing the debt limit, annual appropriations acts, and other spending measures. As originally framed, budget resolutions were not developed within any predetermined constraints, such as the allowable size of the deficit. Instead, the House and Senate determined appropriate budgetary levels each year through its action on budget resolutions. Budget resolution policies were enforced primarily by means of points of order that could be raised during the consideration of legislation.

1985 Balanced Budget Act. After a decade of experience under the congressional budget process, burgeoning deficit estimates (exceeding \$200 billion), deeply rooted impasses between Congress and President Reagan over major budget policies, and extensive legislative gridlock impelled Congress and the President to strengthen budget enforcement procedures. In December 1985, President Reagan signed into law the Balanced Budget and Emergency Deficit Control Act of 1985, commonly known at that time as the Gramm-Rudman-Hollings Act.³

The chief purpose of the 1985 Balanced Budget Act was to gradually eliminate the deficit by requiring adherence to a series of fixed deficit targets, beginning at

¹The 1974 Congressional Budget Act was enacted on July 12, 1974, as P.L. 93-344. It has been amended extensively over the years and is codified at 2 *U.S.C.* 621 *et. seq.*

²The 1974 Congressional Budget Act originally required House and Senate action on two budget resolutions each year. Beginning with FY1983, Congress abandoned the practice of adopting more than one budget resolution each year. For more information on this topic, see: U.S. Library of Congress, Congressional Research Service, *Congressional Budget Resolutions: Selected Statistics and Information Guide*, by Bill Heniff Jr., CRS report RL30297 (Washington: September 2, 1999), 37 pages.

³The 1985 Balanced Budget Act was enacted on December 12, 1985, as Title II of P.L. 99-177, a measure raising the public debt limit. It has been amended extensively over the years and is codified at 2 *U.S.C.* 901 *et. seq.* The common title derived from the names of the act's three key sponsors, Senators Phil Gramm, Warren Rudman, and Ernest Hollings.

\$171.9 billion for FY1986 and declining to zero by FY1991.⁴ *Sequestration*, a process involving automatic spending cuts, was established as the means by which the deficit targets would be enforced. Under sequestration, across-the-board spending cuts would be made automatically around the beginning of the fiscal year if needed to keep the estimated deficit within the allowed limits.⁵ As implementation of a required sequester was automatic under these procedures, and perceived to be drastic action, many regarded it as providing a strong incentive for Congress and the President to reach agreement on established budgetary goals through the regular legislative process.

1987 Balanced Budget Reaffirmation Act. Several lawsuits contesting the constitutionality of the 1985 Balanced Budget Act were filed immediately upon its enactment. In February 1986, a special three-judge panel of the U.S. District Court declared that the procedure for triggering sequestration under the act was unconstitutional on the ground that it vested executive power in an officer removable by Congress (sequestration would have been triggered pursuant to a report prepared by the comptroller general, head of the General Accounting Office). The Supreme Court heard arguments in the case, *Bowsher v. Synar* (478 U.S. 714), and issued its ruling on July 7, 1986, affirming the ruling of the District Court by a vote of 7 to 2.

Invalidation by the courts of the automatic triggering mechanism for sequestration, and the size of the estimated deficit excess for FY1988—more than \$50 billion above the applicable deficit target, according to the Congressional Budget Office (CBO), prompted calls for revision of the 1985 Balanced Budget Act. In September 1987, President Reagan signed into law the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.⁶ The main purposes of the 1987 act were to restore the automatic triggering feature of sequestration in a constitutionally acceptable manner, which it did by vesting that authority in the director of the Office of Management and Budget (OMB), and to extend the time frame for achieving a balanced budget by two years, until FY1993.

Budget Enforcement Act of 1990 and Related Legislation. Continuing difficulties associated with the use of deficit targets prompted Congress and the President to enact the Budget Enforcement Act (BEA) of 1990, which fundamentally revised the procedures under the 1985 Balanced Budget Act. Although the BEA of 1990 extended the deficit targets through FY1995, it effectively replaced them with statutory limits on discretionary spending (*i.e.*, spending controlled through the annual appropriations process) and a “pay-as-you-go” (PAYGO) requirement applicable to

⁴A discussion of the origin and features of the 1985 Balanced Budget Act (and the 1987 Balanced Budget Reaffirmation Act, discussed below) is presented in: U.S. Library of Congress, Congressional Research Service, *General Management Laws: A Selective Compendium*, Ronald C. Moe (project coordinator), CRS report RL30267 (Washington: July 28, 1999), pages 91-96.

⁵For some fiscal years, a margin-of-error amount (*e.g.*, \$10 billion) was added to the deficit target to determine the amount that would trigger a sequester.

⁶The 1987 Balanced Budget Reaffirmation Act was enacted on September 29, 1987, as Title I of P.L. 100-119, a measure raising the public debt limit.

legislation affecting direct spending (*i.e.*, spending controlled outside of the annual appropriations process) and revenues.⁷

Sequestration was retained as the means of enforcing the discretionary spending limits and the PAYGO requirement. The main purpose of these enforcement procedures was to preserve the roughly \$500 billion in deficit savings, covering FY1991-1995, reached in an agreement between President Bush and Congress and implemented in reconciliation and other budgetary legislation.

The discretionary spending limits and PAYGO requirement under the BEA of 1990 have been extended several times and the attendant sequestration procedures have been modified, principally in conjunction with legislation to implement major budget agreements between President Clinton and Congress in 1993 and 1997.

In 1993, the enforcement procedures were extended for three more fiscal years, through FY1998, as part of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66). In 1994, separate sequestration procedures for programs funded by the Violent Crime Reduction Trust Fund were added to the 1985 act by Title XXXI of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322).

The most significant modifications to the sequestration process, following the BEA of 1990, were made by the Budget Enforcement Act (BEA) of 1997, which was included in one of two reconciliation measures enacted into law that year.⁸ The BEA of 1997 extended the discretionary spending limits and PAYGO requirement through FY2002, modified their application, and made various “housekeeping” and technical changes.

In 1998, the discretionary spending limits and associated sequestration procedures were changed again, in this instance by the Transportation Equity Act for the 21st Century (P.L. 105-178), commonly referred to as TEA-21, in order to establish separate discretionary spending limits for highway and mass transit programs.

Description of the Sequestration Process

The sequestration process was established in 1985 as a means of enforcing compliance with a series of annual deficit targets leading to a balanced budget. If the estimate of the deficit made around the beginning of a fiscal year exceeded the allowed level, sequestration was triggered automatically, resulting in largely across-the-board spending reductions in nonexempt appropriations and budget accounts. Appropriations and other forms of budgetary resources were required to be reduced by amounts sufficient to achieve the necessary outlay savings. Half of the spending

⁷The BEA of 1990 was enacted on November 5, 1990, as Title XIII of P.L. 101-508, the Omnibus Budget Reconciliation Act of 1990. See *General Management Laws, op. cit.*, pages 97-102, for a discussion of the origin and features of the BEA of 1990 (and related legislation, discussed below).

⁸The BEA of 1997 was enacted on August 5, 1997, as Title X of P.L. 105-33, the Balanced Budget Act of 1997.

reductions was to come from defense accounts, and the other half was to come from domestic accounts. Some of the reductions in direct spending accounts, such as Medicare, were to be made under “special rules” that determined the amounts to be cut and limited their size or application; the remaining domestic spending programs and all of the defense spending programs were to be cut by uniform reduction percentages (the domestic and defense percentages could differ from each other). Further, the required reductions for each account were to be applied uniformly to programs, projects, and activities within that account.

Initially, the authority to trigger a sequester was lodged with the comptroller general, who was required to issue initial and final sequestration reports based on initial and final sequestration reports prepared jointly by OMB and CBO. In anticipation of a constitutional challenge to this arrangement, the 1985 act included “fallback procedures” under which the necessary reductions could be implemented through the enactment of a joint resolution reported by a Temporary Joint Committee on Deficit Reduction (consisting of the membership of the House and Senate Budget Committees). Whenever a sequester was triggered, the President was required to issue immediately a sequestration order in strict conformity with the requirements of the sequestration report (or joint resolution). As discussed previously, the authority to trigger a sequester eventually was placed solely in the hands of the OMB director.

Under current law, sequestration is used to enforce statutory limits on discretionary spending and a “pay-as-you-go” (PAYGO) requirement that applies to legislation affecting revenues and direct spending.

As a general rule, the enforcement procedures for the discretionary spending limits, on the one hand, and the PAYGO requirement, on the other, are separated by a “firewall.” Violations of the discretionary spending limits are remedied by reductions only in discretionary spending programs; violations of the PAYGO requirement are corrected by reductions solely in direct spending programs. Further, savings made on one side of the firewall cannot be used to the advantage of programs on the other side. For example, the cost of tax-cut legislation could not be offset by reductions in annual appropriations acts in order to avoid a PAYGO sequester.

Some flexibility in these procedures is provided by “scorekeeping rule number three.”⁹ The rule provides that changes in direct spending made in an annual appropriations act be counted under the discretionary spending limits. Accordingly, a reduction in direct spending made in an annual appropriations act would be treated as an offset to an equivalent increase in discretionary spending; such changes in direct spending are referred to as “mandatory offsets.” In addition, “directed scorekeeping” provisions have been included in legislation from time to time that have instructed the

⁹The joint explanatory statement accompanying the conference report on the BEA of 1990 set forth several scorekeeping rules to be used in scoring legislation under these enforcement procedures. The scorekeeping rules were revised under the BEA of 1997. They are presented as an addendum at the end of OMB Circular A-11, which deals with budget formulation, and may be found on OMB’s web site at <http://www.whitehouse.gov/omb>.

OMB director not to score the direct spending or revenue impact of a measure for purposes of the PAYGO requirement.¹⁰

Like the earlier deficit sequestration procedures, the current sequestration procedures are automatic and are triggered by a report from the OMB director. For sequestration purposes generally, there is only one triggering report issued each year (just after the end of the congressional session). However, OMB reports triggering a sequester in one or more categories of discretionary spending may be issued during the following session if legislative developments so warrant (*i.e.*, the enactment of a supplemental appropriations measure that violates the limit for one or more discretionary spending categories).

Spending for the Social Security program, except for administrative expenses, is exempt from sequestration, as are many other programs. Reductions in certain programs are made under “special rules.” For example, one special rule limits any reductions in Medicare spending to 4%.

Discretionary Spending Limits. Federal spending that is controlled through the annual appropriations process is referred to as *discretionary spending*. This type of spending, which is expected to exceed \$600 billion for FY2000, generally provides funding for the routine operations of federal agencies. Discretionary spending is distinguished from *direct spending*, which stems from substantive law rather than annual appropriations acts and funds entitlement and other mandatory programs.

Enforcement of the discretionary spending limits applies to different categories of discretionary spending. In the past, discretionary spending sometimes was divided into two or more broad categories, such as defense and nondefense, but these categories were merged into a single “other discretionary” category for FY2000.¹¹ In addition, separate categories exist for spending from the Violent Crime Reduction Trust Fund, highway spending, and mass-transit spending. Within these categories, separate limits exist for budget authority and outlays, except for the highway and mass-transit categories (which have outlay limits only).

¹⁰ For example, see Section 1001(b) of P.L. 106-113 (113 *Stat.* 1536), the Consolidated Appropriations Act for Fiscal Year 2000. Provisions changing direct spending or revenue levels in Medicare and other mandatory programs were incorporated into the omnibus appropriations act.

¹¹For FY1991 through FY1993, separate limits were set for new budget authority and outlays for three different categories—defense, international, and domestic. For fiscal years 1994-1995, the limits on new budget authority and outlays were established for a single category—total discretionary spending. The Omnibus Budget Reconciliation Act of 1993 retained the existing limits for FY1994 and FY1995 without change, and added new limits on total discretionary spending for FY1996-1998. In 1994, the Violent Crime Control Act established separate sequestration procedures for spending from the Violent Crime Reduction Trust Fund through FY2000. The BEA of 1997 revised the discretionary spending limits again and extended them through FY2002. New categories were established for defense and nondefense spending for FY1998 and FY1999; for FY2000-2002, all discretionary spending was merged into a single category (except for the separate Violent Crime Reduction category in effect through FY2000). In 1998, TEA-21 established separate outlay limits for two new categories, highways and mass transit.

Any violation of the discretionary spending limits is enforced only in the category in which the violation occurs, except that breaches of the highway and mass-transit outlay limits are counted toward the single discretionary category.

The discretionary spending limits are adjusted from time to time by the OMB director. Adjustments may be made for several factors specified in law, including changes in budgetary concepts, the enactment of measures containing spending designated by the President and Congress as an emergency requirement, and the enactment of legislation meeting certain predetermined criteria (*i.e.*, spending for continuing disability reviews, adoption incentive payments, the earned income tax credit compliance initiative, and international arrearages).¹²

A sequester under the discretionary spending limits is triggered by a sequestration report prepared by the OMB director, generally within 15 days after the end of a congressional session. If a sequester under this process is required at the end of a session, it must occur on the same day as any sequestration tied to enforcement of the PAYGO procedures. During the following session, a “within-session sequester” could occur prior to July 1 if Congress and the President enacted legislation (*e.g.*, a supplemental appropriations act) causing a violation of one or more of the discretionary spending limits for the ongoing fiscal year. Any breaches of the limits that occur during the final quarter of the ongoing fiscal year (*i.e.*, July 1-September 30) would result in a lowering of the applicable limits for the following fiscal year rather than a within-session sequester.

These enforcement procedures also are linked to the congressional budget process. The annual budget resolution sets forth discretionary spending levels consistent with the statutory limits; these levels also are adjusted for the same factors that cause the statutory limits to be adjusted. While OMB is responsible for scoring the effects of budgetary legislation to determine whether a sequester is necessary, CBO (under the direction of the House and Senate Budget Committees) is responsible for scoring legislation for purposes of enforcement in the congressional budget process.

“Pay-As-You-Go” (PAYGO) Requirement. Under the PAYGO process, legislation proposing new *direct spending*, or legislation decreasing *revenues*, must be offset so that the net surplus for a fiscal year is not reduced (or the net deficit increased). Direct spending stems from substantive law rather than annual appropriations acts and funds entitlement and other mandatory programs such as Medicare, Medicaid, federal employee retirement, and unemployment compensation.

The PAYGO balances for each fiscal year are maintained on a rolling PAYGO “scorecard” that accumulates the budgetary effects of laws enacted during the session and in prior years (beginning with FY1991).¹³ The threshold test for a PAYGO

¹²Factors upon which adjustments are based have changed from time to time. For example, the BEA of 1990 provided for adjustments due to changes in inflation, but this was removed by the BEA of 1997.

¹³On several occasions, PAYGO balances have been reset to zero or otherwise modified
(continued...)

sequester deals with how legislation changes the surplus or deficit for a fiscal year on the PAYGO scorecard, not the surplus or deficit for that fiscal year in the federal budget generally.

Recently, as the budget has moved from an overall deficit to an overall surplus, and as the prospect of an on-budget surplus has emerged, there has been some confusion regarding whether the PAYGO requirement would continue to apply. The concern arises from the fact that the stated purpose of the PAYGO requirement (in Section 252(a) of the 1985 Balanced Budget Act) refers only to legislation “that increases the deficit.” In the report accompanying the FY2000 budget resolution, the House Budget Committee stated:

The law is somewhat unclear whether PAYGO lapses when there is an on-budget surplus. OMB has hinted that PAYGO would indeed lapse if the budget was in balance without counting excess Social Security receipts.¹⁴

In response to this concern, OMB Director Jacob Lew issued a statement indicating that such a position was not correct, stating “we believe that PAYGO does apply when there is an on-budget surplus.”¹⁵ The controlling factor, as stated previously, is how legislation changes the balance on the PAYGO scorecard.

Enforcement of the PAYGO process, like the discretionary spending limits, also is accomplished through a special sequestration procedure. If a sequester under this process is required, it must occur within 15 calendar days after Congress adjourns at the end of a session and on the same day as any sequestration tied to enforcement of the discretionary spending limits. The sequester would offset any net negative balance on the PAYGO scorecard, for that fiscal year and the prior fiscal year combined, caused by the enactment of legislation during the session and in prior years. Any required reductions would be made in non-exempt direct spending programs.

Emergency direct spending and revenue legislation, so designated by the President and in statute, is not covered by the PAYGO sequestration process. As mentioned previously, spending for the Social Security program, except for administrative expenses, is exempt from sequestration.

Sequestration Reports and Orders. OMB and CBO must each prepare annually three different types of sequestration reports, as discussed below. The CBO reports, which are advisory only, precede the OMB reports by several days. In all three types of reports, OMB must explain any differences between its estimates and those of CBO.

¹³(...continued)

pursuant to law, primarily to prevent the sizeable savings from reconciliation legislation from being used as offsets to subsequent direct spending increases.

¹⁴See the report of the House Budget Committee to accompany H.Con.Res. 68 (H.Rept. 106-73), March 23, 1999, at page 87.

¹⁵Letter of April 6, 1999, from OMB Director Jacob Lew to the Honorable John Spratt, ranking minority member of the House Budget Committee.

If the President must issue a sequestration order in any year, the order is issued on the same day that the final OMB sequestration report is issued and the order must implement without change all of the reductions identified in the OMB report.

Two preliminary sequestration reports are issued before the final sequestration report, in order to give the President and Congress advance warning of any possible sequester. Early in the session, OMB and CBO issue sequestration preview reports. The reports provide estimates of the discretionary spending limits, with the adjustments prescribed by law. Also, the reports provide estimates of any net change in the balances on the PAYGO scorecard caused by the enactment of direct spending or revenue legislation subject to the PAYGO process. The OMB preview report contains the same information as the CBO preview report and explains any differences between its estimates and those of CBO.

In August, OMB and CBO issue sequestration update reports to reflect the impact of legislation enacted in the interim.

Finally, OMB and CBO issue final sequestration reports shortly after Congress adjourns to end the session. Both reports must reflect any pertinent legislation enacted since the update reports were issued. The final reports must indicate the baseline amount of budgetary resources and the amount and percentage of the reduction for each account subject to sequestration. Further sequestration reports are issued if a “within-session sequester” is required.

In preparing its update and final sequestration reports, OMB must use the economic and technical assumptions that were used in the earlier preview report. (Previously, OMB could determine in late summer the economic and technical assumptions that it would use for sequestration in October.)

During the course of the session, OMB must provide Congress with cost estimates of budgetary legislation within seven days of its enactment, so that compliance with the discretionary spending limits and PAYGO requirements can be monitored. The cost estimates must be based on the economic and technical assumptions used in the President’s most recent budget, and must include similar cost estimates prepared by CBO together with an explanation of any differences between the two sets of estimates.

History of Sequesters: FY1986-1999

During the 14 years that sequestration was in effect prior to the FY2000 budget cycle, sequesters were triggered five times (see **Table 1**). One sequester occurred each year for FY1986, 1988, and 1990, and two sequesters occurred for FY1991. No sequester was triggered during the eight fiscal years covering FY1992-1999.

Table 1. Summary of Sequesters: FY1986-1999
(outlays in billions of dollars)

Fiscal year	Congress/ session	Initial outlay savings	Subsequent outcome
Enforcement of deficit targets ^a			
1986	99/2	11.7	Full savings achieved. ^b
1987	99/2	None	[No sequester was required]
1988	100/1	20.0	Reductions superseded by budget agreement. ^c
1989	100/2	None	[No sequester was required]
1990	101/1	16.1	Reduced to \$4.55 billion by subsequent law. ^d
Enforcement of discretionary spending limits and PAYGO requirement ^a			
1991	101/2	0.2	Reduced to \$0.0014 billion by subsequent law. ^e
1992	102/1	None	[No sequester was required]
1993	102/2	None	[No sequester was required]
1994	103/1	None	[No sequester was required]
1995	103/2	None	[No sequester was required]
1996	104/1	None	[No sequester was required]
1997	104/2	None	[No sequester was required]
1998	105/1	None	[No sequester was required]
1999	105/2	None	[No sequester was required]

^a The Balanced Budget and Emergency Deficit Control Act of 1985, as amended, established sequestration to enforce deficit targets leading to a balanced budget by FY1993. The Budget Enforcement Act of 1990 amended the 1985 act, effectively replacing the deficit targets with statutory limits on discretionary spending and a “pay-as-you-go” (PAYGO) requirement for revenue and direct spending legislation. Accordingly, the sequestration process was used to enforce deficit targets for FY1986-1990 and discretionary spending limits and the PAYGO requirement for FY1991-1999.

^b Outlay reductions under the FY1986 sequester were limited by the 1985 Balanced Budget Act to this amount.

^c The FY1988 sequester was in effect from October 20 until December 22, 1987, when legislation implementing a budget summit agreement of November 20 was enacted. Outlay reductions of \$20.0 billion were expected to occur had the sequester been in effect for the full fiscal year.

^d The required outlay reduction of \$16.1 billion was reduced to \$5.75 billion by Section 11002 of the Omnibus Budget Reconciliation Act of 1989 and a new sequestration order, consistent with the lower amount, was issued. CBO estimated that the application of the “crediting rule” under Section 252(f) of the 1985 Balanced Budget Act would reduce the savings from \$5.75 billion to \$4.55 billion.

^e Two sequesters under the discretionary spending limits occurred for FY1991. On November 9, 1990, \$395 million in budget authority was sequestered in the international category, leading to estimated outlay savings of \$191 million; the sequester was rescinded on April 10, 1991,

by Section 401 of P.L. 102-27, a supplemental appropriations act. On April 25, 1991, \$2.4 million in budget authority was sequestered in the domestic category, leading to estimated outlay savings of \$1.4 million.

The first three sequesters occurred during the 5-year period when deficit targets were in effect, covering FY1986-1990.¹⁶ During the remaining nine years, covering FY1991-1999, sequestration applied to the enforcement of the discretionary spending limits and PAYGO requirement. Two sequesters under the discretionary spending limits occurred for FY1991 and no PAYGO sequester has ever occurred.

Initial outlay savings associated with the three deficit target sequesters were substantial, ranging from \$11.7 billion for FY1986, to \$20.0 billion for FY1988, and to \$16.1 billion for FY1990. While the savings for FY1986 remained intact, the savings for FY1988 were superseded completely by legislation implementing a budget summit agreement and the savings for FY1990 were reduced to \$4.55 billion by subsequent legislation. Notwithstanding the implementation of a sequester for each of these three fiscal years, the deficit targets proved to be ineffective on the whole. The actual deficit for each of these years exceeded the applicable target by an average of about \$60 billion.

The two sequesters for FY1991 under the discretionary spending limits had a minuscule impact compared to the earlier deficit target sequesters. Both of the sequesters were triggered inadvertently and the larger of the two was rescinded completely.

Each of the five sequesters is discussed in more detail below.

Deficit Target Sequesters (FY1986-1990).

FY1986. Because the 1985 Balanced Budget Act was enacted several months after FY1986 had begun, sequestration actions for the fiscal year were taken in 1986 under a truncated schedule. On January 15, 1986, the CBO and OMB directors submitted a joint *Sequestration Report for Fiscal Year 1986* to the comptroller general. Differences in their estimates were averaged, resulting in a deficit estimate of \$220.5 billion. Although the deficit was estimated to exceed the target of \$171.9 billion by \$48.6 billion, outlay reductions for the fiscal year were capped by the 1985 act at \$11.7 billion. Accordingly, the uniform reduction percentages were 4.9% for defense programs (military personnel accounts were exempted) and 4.3% for nondefense programs.

In issuing his sequestration report, *Budget Reductions for FY 1986*, on January 21, the comptroller general generally agreed with the averaged estimates and calculations made by the CBO and OMB directors. Consequently, President Reagan issued a sequestration order on February 1.

¹⁶As mentioned previously, although the deficit targets were extended through FY1995, they effectively were superseded by the discretionary spending limits and PAYGO requirement beginning with FY1991.

As previously discussed, rulings by a U.S. District Court on February 7 and by the Supreme Court on July 7 invalidated the sequestration order for FY1986, but the judgments of the courts were stayed to allow Congress to ratify the sequestration order under “fallback procedures” in the 1985 act. On July 17, the Temporary Joint Committee on Deficit Reduction reported identical House and Senate joint resolutions aimed at restoring the sequester. The House and Senate acted on a comparable measure (H.J.Res. 672), which passed the House and Senate on July 17 and was signed into law on July 31 as P.L. 99-366.

The actual deficit for fiscal year 1986 amounted to \$221.2 billion, almost \$50 billion over the deficit target.

FY1988. Under the “fallback procedures,” the CBO and OMB directors submitted a joint sequestration report for FY1988 to Congress on August 20, 1987. The averaged deficit estimate of \$153.4 billion indicated a deficit excess of \$45.4 billion. The House and Senate deferred action on sequester resolutions pending revision of the 1985 Balanced Budget Act in conjunction with passage of an increase in the statutory limit on the public debt. The revisions in the sequestration process and deficit targets made in September by the 1987 Balanced Budget Reaffirmation Act provided that new sequestration actions for FY1988 be taken under a modified timetable covering October and November 1987.

The CBO and OMB directors separately issued initial sequestration reports for FY1988 on October 15 and 20, respectively. The OMB director estimated the deficit for the fiscal year at \$163.0 billion—\$19.0 billion above the revised deficit target—and President Reagan issued an initial sequestration order on October 20. The two directors issued revised sequestration reports on November 16 and 20, respectively. Under the revised OMB deficit estimate of \$164.0 billion, defense programs (with military personnel accounts exempted) were reduced uniformly by 10.5% and nondefense programs by 8.5%. President Reagan issued the final sequestration order on November 20.

Negotiators from the House and Senate leadership and the administration, participating in a “budget summit,” reached agreement on a compromise plan on November 20. Although the summit agreement came too late to forestall issuance of the final sequestration order, the initial and final sequestration orders were canceled on December 22 upon the enactment of appropriations and reconciliation measures implementing the agreement. Budgetary resources that had been sequestered were restored. In total, the compromise plan proposed about \$76 billion in savings over two years—\$30 billion for FY1988 and \$46 billion for FY1989. According to estimates made by CBO in February 1987, savings in a full-year continuing resolution (P.L. 100-202) and the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) amounted to \$34 billion, exceeding the goal set in the summit agreement by about \$4 billion.

The actual deficit for FY1988 amounted to \$155.1 billion, more than \$11 billion above the deficit target.

FY1990. On August 21, 1989, the CBO and OMB directors issued initial sequestration reports for FY1990 (the OMB report was issued several days ahead of

the statutory deadline). The OMB director estimated the deficit at \$116.2 billion—\$6.2 billion over the triggering threshold. President Bush issued an initial sequestration order on August 25 directing that the reductions in the OMB report be made, effective October 1, on a provisional basis.

The CBO and OMB directors issued revised sequestration reports on October 10 and 16, respectively. Due to largely offsetting changes in spending, the OMB director adjusted his deficit estimate by only \$0.1 billion, bringing it down to \$116.1 billion. On October 16, President Bush issued a final sequestration order adjusting slightly and finalizing the reductions made earlier. In order to eliminate the deficit excess of \$16.1 billion, defense programs were cut by 4.3% (military personnel accounts were not exempted) and nondefense programs were cut by 5.3%.

On December 27, President Bush issued a sequestration order for FY1990 as required by Section 11002 of the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239). The new order, which replaced the order of October 16 issued pursuant to the 1985 Balanced Budget Act, reduced the estimated outlay savings from sequestration by about two-thirds (to \$5.75 billion). Under the “crediting rule” in the 1985 act, the expected outlay savings under the new order were reduced to \$4.55 billion. The modified sequestration reductions, together with other savings in the reconciliation act and other measures, were expected at the time to bring the deficit estimate down to a point below the \$110 billion triggering threshold. However, several weeks later, in January 1990, OMB revised the deficit estimate for FY1990 upward to \$122 billion.

The actual deficit for FY1990 amounted to \$220.4 billion, more than \$120 billion above the deficit target.

Avoidance of Sequesters for FY1987 and FY1989. Sequesters under the deficit targets for FY1987 and FY1989 were avoided. For FY1987, Congress and the President enacted an omnibus reconciliation measure and other acts that reduced the estimated deficit to \$3 billion below the triggering threshold of \$154 billion. For FY1989, the estimated deficit was \$0.5 billion below the triggering threshold of \$146 billion. The actual deficits for FY1987 and FY1989 exceeded the targets by about \$5 billion and \$17 billion, respectively.

Discretionary Spending Limit Sequesters (FY1991-1999). There have been two sequesters under the discretionary spending limits and both of them applied to FY1991. The first occurred late in 1990 and the other occurred in the spring of 1991.

During most of 1990, while Congress and the President conducted negotiations on the budget for FY1991 (and before the BEA of 1990 was enacted), sequestration procedures keyed to the deficit targets were still in place. The deficit target for the fiscal year was set at \$64 billion. Under the sequestration procedures as they existed at that time, President Bush issued initial and final sequestration orders—on August 25 and October 15, 1990, respectively—that would have sequestered sufficient budgetary resources to yield the more than \$80 billion in outlay savings necessary to meet the \$64 billion deficit target. The implementation of the orders, however, was suspended through November 5 by provisions enacted in a series of joint resolutions providing continuing appropriations.

On November 5, the sequestration process was modified substantially when President Bush signed the reconciliation act containing the BEA of 1990 into law. The reconciliation law, which implemented much of the \$500 billion in savings over five years assumed by the budget resolution, also rescinded the sequestration orders issued on August 25 and October 15.

On November 9, OMB identified in its final sequestration report for FY1991 a breach of \$395 million in the limit on discretionary budget authority for international programs caused by a drafting error in the Foreign Operations Appropriations Act for FY1991. President Bush issued a sequestration order that day. The “mini-sequester” required a 1.9% uniform reduction in covered international programs and was estimated to yield \$191 million in outlay savings.

In 1991, just prior to adjourning for the spring recess, Congress enacted two measures providing supplemental appropriations for FY1991: H.R. 1281, providing “dire emergency” supplemental appropriations, and H.R. 1282, providing supplemental appropriations for Operation Desert Storm. President Bush signed them into law on April 10, 1991, as P.L. 102-27 and P.L. 102-28, respectively. The two bills together provided about \$45.3 billion in new budget authority, but most of the supplemental appropriations (\$44.0 billion) was designated as emergency spending and did not violate the budget enforcement procedures under the 1985 act.

With regard to non-emergency spending, however, H.R. 1281 provided \$512 million in budget authority in the domestic category, causing the limit for that category to be exceeded by about \$2 million. Although \$835 million in non-emergency budget authority was provided in the defense category, it did not cause a breach. Further, outlay breaches in the international and domestic categories were covered by special outlay allowances amounting to \$1.5 billion and \$2.5 billion, respectively.

Accordingly, on April 25, OMB issued a within-session sequestration report for FY1991, indicating that budget authority for accounts in the domestic category would be reduced by 13 ten-thousandths (0.0013) of one percent (\$13 for every one million dollars in an account). The outlay savings associated with the \$2.4 million reduction in budget authority were estimated at \$1.4 million. President Bush issued a sequestration order on the same day.

In his report on compliance with procedures under the BEA for FY1991, the comptroller general asserted that the April 25 sequester would have been avoided had OMB properly excluded from its calculations \$26 million in previously *obligated* funds that were exempted by P.L. 102-27 from new account-closing requirements.¹⁷

One of the two supplemental appropriations acts, P.L. 102-27, contained a provision relating to the sequester of November 9, 1990. Section 401 of the act (105 *Stat.* 154-155) corrected the drafting error in the Foreign Operations Appropriations

¹⁷U.S. General Accounting Office, *Budget Enforcement Act Compliance Report*, report number GAO/AFMD-92-43 (Washington: February 14, 1992).

Act, rescinded the November 9 sequestration order, and restored the sequestered amounts.

Sequestration for FY2000

As the House and Senate worked in the fall of 1999 to complete action on the regular appropriations acts for FY2000 and other budgetary legislation, there was some concern that a sequester for that fiscal year might be triggered at the end of the session. However, in January 2000 the OMB director issued the *OMB Final Sequestration Report to the President and Congress for Fiscal Year 2000*, indicating that no sequester would be required following the end of the 1999 session.¹⁸ Toward the middle of 2000, Congress and the President enacted supplemental appropriations that breached the limits by \$2.4 billion in budget authority and \$6.8 billion in outlays, but the legislation included a provision barring a within-session sequester for FY2000 (or a reduction in the limits for FY2001). This action brought potential sequestration actions for FY2000 to a close. These developments are discussed in more detail below.

Discretionary Spending Limits. On February 1, 1999, in the sequestration preview report for FY2000, OMB detailed various adjustments made in the discretionary spending limits since the final sequestration report for FY1999 was issued.¹⁹ At the time OMB prepared its sequestration update report (August 15), the House and Senate had passed most of the 13 regular appropriations acts for FY2000, but none of them had been enacted into law.²⁰ Based on House and Senate action through August 15, on the Section 302(b) spending allocations made under the 1974 Congressional Budget Act (for appropriations measures that had not yet been acted on), and other factors, OMB concluded that a sequester of between \$1.1 billion and \$3.7 billion in budget authority would occur if appropriate offsets were not developed.

Final congressional action for the session on the FY2000 budget was guided by the Republican leadership plan to abide by the discretionary spending limits, use a \$14 billion on-budget surplus projected by CBO for a variety of budgetary initiatives, and not spend the Social Security surplus.²¹ Considerable controversy was generated regarding the use of various devices, such as “directed scorekeeping,” emergency spending designations, and shifts in the timing of payments, to adhere to the

¹⁸ The report was printed as H.Doc. 106-182 (*OMB Final Sequestration Report for Fiscal Year 2000*, January 31, 2000).

¹⁹ See “Preview Report,” in the *Budget of the United States Government, Fiscal Year 2000, Analytical Perspectives*, February 1, 1999, on pages 275-285.

²⁰ OMB’s sequestration update report was issued on August 25, 1999, and is available on the OMB web site referred to above.

²¹ For a discussion on this topic, see: U.S. Library of Congress, Congressional Research Service, *Discretionary Spending Limits and the Social Security Surplus*, by Robert Keith, CRS report RL30353 (Washington: October 27, 1999), 8 pages.

discretionary spending limits.²² At that time, informal estimates as to whether the discretionary spending limits had been exceeded and whether the Social Security surplus had been used varied widely, depending on the assumptions upon which the estimates were based.²³

One proposal to keep discretionary spending within the limits involved a 0.97% across-the-board spending cut included as Section 1001 in Division C of H.R. 3064, the District of Columbia-Departments of Labor, Health and Human Services, and Education Appropriations Act for FY2000. The across-the-board cut would have applied in a manner very similar to a reduction under a discretionary spending limit sequester. One important modification, however, was that the cut also was made to apply to salaries of Members of Congress. President Clinton vetoed H.R. 3064 on November 3, in part because it included the across-the-board cut.

Congressional action on the remaining regular appropriations acts for FY2000 culminated with the passage of the Consolidated Appropriations Act for FY2000 (P.L. 106-113).²⁴ An across-the-board cut also was incorporated into this act, but its size was reduced considerably from earlier formulations—to 0.38%.²⁵

In his final sequestration report covering the end of the 1999 session, issued on January 25, 2000, the OMB director indicated that the total levels of budget authority and outlays enacted for FY2000 fell below the aggregated limits by \$1.558 billion and \$3.463 billion, respectively (see **Table 2**). The budget authority limit in the aggregate was \$568.102 billion and the enacted level was \$566.545 billion; the outlay limit in the aggregate was \$599.905 billion and the enacted level was \$596.442 billion. The enacted levels exactly equaled the limits for the Violent Crime Reduction, Highway, and Mass Transit categories and fell below the “other discretionary” category by the amounts indicated above.

²²See, for example: (1) “Democrats Keep Attacking ‘Gimmicks,’ Republicans Accuse Dems of Sabotage” in the Bureau of National Affairs’ *Daily Report for Executives*, no. 200, Monday, October 18, 1999, on page A-27; and (2) “Congress Making Greater Use of Creative Accounting,” by Eric Pianin and George Hager, in the *Washington Post* of October 16, 1999, on page A15.

²³See, for example, letters of October 28, 1999, from CBO Director Dan L. Crippen to Speaker Hastert and Representative Spratt, posted on the CBO web site at <http://www.cbo.gov>.

²⁴For information on this act, see: U.S. Library of Congress, Congressional Research Service, *FY2000 Consolidated Appropriations Act: Reference Guide*, by Robert Keith, CRS Report RS20403 (Washington: November 30, 1999), 4 pages.

²⁵The provision is discussed in detail in: U.S. Library of Congress, Congressional Research Service, *The 0.38 Percent Across-the-Board Cut in FY2000 Appropriations*, by Robert Keith, CRS Report RL30443 (Washington: February 25, 2000), 11 pages.

**Table 2. Enacted Levels of Discretionary Spending for FY2000
Compared to Limits: End of 1999 Session**
(amounts in billions of dollars)

Category	Budget authority	Outlays
Violent Crime Reduction		
Limit	4.500	6.344
Enacted Level	4.500	6.344
Under (-)/Over Limit	-----	-----
Highway		
Limit	n/a	24.574
Enacted Level	n/a	24.574
Under (-)/Over Limit	n/a	-----
Mass Transit		
Limit	n/a	4.117
Enacted Level	n/a	4.117
Under (-)/Over Limit	n/a	-----
Other Discretionary		
Limit	563.602	564.870
Enacted Level	562.045	561.407
Under (-)/Over Limit	-1.558	-3.463
Total		
Limit	568.102	599.905
Enacted Level	566.545	596.442
Under (-)/Over Limit	-1.558	-3.463

Source: H.Doc. 106-182 (*OMB Final Sequestration Report for Fiscal Year 2000*, January 31, 2000).

The discretionary spending limits in the OMB final sequestration report were increased substantially from the levels set forth in the August update sequestration report. All but about \$2 billion of the nearly \$32 billion in budget authority adjustments was explained by the enactment of designated emergency spending. Outlay adjustments amounted to about \$23 billion, nearly all of which was attributable to designated emergency spending.

In his final sequestration report, the CBO director indicated that breaches of the FY2000 discretionary spending limits—aggregating \$6.726 billion in budget authority and \$16.567 billion in outlays—occurred in all categories except for Violent Crime Reduction.²⁶ Had the CBO director’s estimates been controlling instead of advisory, a sequester of about 4% of budget authority would have occurred in the other discretionary category.

During the 2000 session, the House and Senate attempted to bring action on the FY2000 budget to a close by considering supplemental appropriations for the fiscal year in a single bill (in the House) or as elements incorporated into several regular appropriations bills for FY2001 (in the Senate). Eventually, the supplemental appropriations for FY2000 were merged into a single regular appropriations bill, the Military Construction Appropriations Act for FY2001. The measure was enacted into law on July 13, 2000, as P.L. 106-246 (114 *Stat.* 511).

According to OMB estimates, the non-emergency supplemental appropriations included in P.L. 106-246 caused a breach in the budget authority and outlay limits for the “other discretionary” category of \$2.359 billion and \$6.763 billion, respectively (see **Table 3**). Levels in the remaining three discretionary spending categories were not changed by P.L. 106-246. In anticipation that the measure would become law in late June or early July, Congress inserted into the bill a provision barring a sequester (which would have been required if enactment occurred in June) or a reduction in the FY2001 limits (which would have been required because of enactment on or after the July 1 triggering date). Section 5107 (114 *Stat.* 582), in Title V of Division B of the act, stated:

Notwithstanding section 251(a) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, there shall be no sequestration under that section to eliminate a fiscal year 2000 breach or no reductions in discretionary spending limits for fiscal year 2001 that might be caused by the appropriations or other provisions in this Act.

Table 3. Enacted Levels of “Other Discretionary” Spending for FY2000 Compared to Limits: Middle of 2000 Session (amounts in billions of dollars)

Category	Budget authority	Outlays
Limit	580.289	569.224
Enacted Level	582.648	575.987
Under (-)/Over Limit	2.359	6.763

Source: *OMB Sequestration Update Report to the President and Congress for Fiscal Year 2001*, September 8, 2000, page 8.

²⁶ The CBO *Final Sequestration Report for Fiscal Year 2000* was printed as H.Doc. 106-168 (January 27, 2000).

PAYGO Requirement. The sequestration preview report issued by OMB in February 1999 indicated a credit on the PAYGO scorecard for FY2000 of \$2.9 billion.²⁷ President Clinton proposed to use this credit to offset increased spending for discretionary programs. His proposal would have required a change in budget enforcement rules, but Congress did not take any action on it.

In the sequestration update report issued in August 1999, OMB indicated that there was no material change in the PAYGO balance. However, reconciliation legislation enacted earlier in the session, the Taxpayer Refund and Relief Act of 1999 (H.R. 2488), proposed \$792 billion in tax cuts over ten years. Initially, the measure included a “directed scorekeeping” provision that would have required the OMB director to not count its impact on the PAYGO scorecard. The provision was removed from the conference report in order to avoid a point of order under the Senate’s “Byrd rule,” which bars extraneous matter in reconciliation measures. Consequently, OMB determined that enactment of the measure would have required a PAYGO sequester of \$4.8 billion in FY2000, including a \$4.1 billion reduction in Medicare spending. President Clinton vetoed H.R. 2488 on September 23, in part because of his concern regarding a sequester.

As Congress and the President worked to complete action on the FY2000 budget for the session, there was considerable uncertainty regarding the likelihood of a PAYGO sequester because significant legislation still was pending. Pertinent measures included, among others, bills extending expiring tax provisions, making tax cuts (coupled with a proposal to increase the minimum wage), and providing increased payments to Medicare providers. If the FY2000 costs of such measures beyond the \$2.9 billion credit were not offset, a PAYGO sequester could have ensued.

Unlike discretionary spending programs, most direct spending programs are exempt from reductions under a sequester. Social security and deposit insurance programs are exempt from the process altogether; the revenue and direct spending impacts of legislative changes in other large entitlement programs, such as Medicaid, federal employee retirement, and unemployment compensation are recorded on the PAYGO scorecard, but the programs themselves are exempt from any cuts. Any required cuts in Medicare spending, the largest entitlement program subject to a PAYGO sequester, are limited to 4%. Accordingly, only a small portion of direct spending is required to bear the brunt of a PAYGO sequester.

A sequester of about \$200 million for FY2000 would have been absorbed by vocational rehabilitation, special milk, student loan, and foster care/adoption assistance programs, which must be cut first under PAYGO rules. If the required savings were larger, Medicare and the remaining programs would have been cut next. Under current estimates of Medicare spending, the maximum 4% cut in Medicare spending would have amounted to between \$7 billion and \$8 billion. A sequester greater than this amount, up to a ceiling of about \$20 billion, would have reduced or eliminated completely the remaining direct spending programs subject to a PAYGO sequester. These programs include, among others, the Commodity Credit

²⁷See *Analytical Perspectives*, *op. cit.*

Corporation, social services block grants, child support enforcement, crop insurance, immigration support, Mineral Leasing Act payments, and veterans' education and readjustment benefits.

In his final sequestration report, the OMB director determined that direct spending and revenue legislation enacted during the session had increased the FY2000 credit on the PAYGO scorecard from \$2.9 billion to \$3.1 billion. The FY2000 credit, when combined with a small cost (\$58 million) for FY1999, yielded a net credit (\$3.014 billion) that eliminated the need for a PAYGO sequester.

Two provisions in the Consolidated Appropriations Act for FY2000 modified the treatment of direct spending and revenue legislation in the final sequestration report. Neither of these provisions was necessary to prevent a PAYGO sequester for FY2000, but they made significant changes in the balances on the PAYGO scorecard for future years.

First, the Consolidated Appropriations Act enacted several major direct spending measures by cross-reference. One of these measures, the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (H.R. 3426), would have added \$1.5 billion in costs for FY2000 and \$15.2 billion in costs for FY2000-2004 to the PAYGO scorecard. Ordinarily, scorekeeping rule number three would have required that the impact of direct spending provisions included in an annual appropriations act be counted under the discretionary spending limits. However, Section 1001(a) of the Consolidated Appropriations Act for FY2000 provided that they not be treated in this manner; further, Section 1001(b) of the act instructed the OMB director not to count these costs on the PAYGO scorecard.

Second, the Ticket to Work and Work Incentives Improvement Act (P.L. 106-170), had modest savings for FY2000 (\$80 million), but added nearly \$18 billion to the PAYGO balances for FY2001-2004. Pursuant to Section 1001(c) of the Consolidated Appropriations Act for FY2000, the balances on the PAYGO scorecard for FY1999 and succeeding years were reset to zero on January 3, 2000, thereby eliminating the effects of the Ticket to Work Act.

In his advisory final sequestration report, the CBO director concluded that no PAYGO sequester was required for FY2000.

Unlike the discretionary spending limits, the PAYGO requirement does not provide for a within-session sequester during the following session. Accordingly, the actions at the end of the 1999 session brought the sequestration process for FY2000 to a close.

