Order Code RL31193

Discretionary Spending Limits for FY2002: A Procedural Assessment

Updated May 23, 2002

Robert Keith
Specialist in American National Government
Government and Finance Division

Discretionary Spending Limits for FY2002: A Procedural Assessment

Summary

Discretionary spending, which is provided in annual appropriations acts, is constrained in part by limits set in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. The limits currently are set to expire at the end of FY2002 (on September 30, 2002). If the director of the Office of Management and Budget (OMB) determines that more spending has been enacted for a fiscal year than is allowed under the limits for that year, a sequester—involving automatic, largely across-the-board spending cuts—must occur to eliminate the violation.

According to the OMB director's *Final Sequestration Report for FY2002*, the regular appropriations acts for that fiscal year enacted during the 2001 congressional session were under the statutory limits by $2 million in budget authority and $3.343 billion in outlays. Accordingly, no sequester was required at the end of the 2001 session. A "within-session sequester" still could be required for FY2002 during the 2002 session if supplemental appropriations are enacted in violation of the limits. However, Congress is expected to use emergency designations, offsets, and other techniques to prevent a sequester from occurring.

Under the FY2002 budget resolution (H.Con.Res. 83) adopted by the House and Senate in May 2001, total discretionary spending for the fiscal year was envisioned at $661.3 billion in budget authority and $682.776 billion in outlays, well above the existing statutory limits on such spending. The budget resolution was predicated on the assumption that the statutory limits would be revised during the 2001 session to accommodate the new spending levels.

On October 2, 2001, the bipartisan leadership of the House and Senate Appropriations Committees, with the concurrence of House and Senate leaders, reached an agreement with the Bush Administration to increase discretionary spending for FY2002 beyond the levels envisioned in the budget resolution. With regard to budget authority, the proposal involved an increase of about $25 billion, from $661.3 billion to $686 billion, to accommodate additional spending for defense, education, and certain natural disasters.

As the House and Senate considered the regular appropriations acts during the 2001 session, the Defense Appropriations Act for FY2002 (H.R. 3338) became the vehicle for revising the discretionary spending limits. The House and Senate agreed to the conference report on the measure on December 20, 2001, the last day of the session. President Bush signed it into law on January 10, 2002, as P.L. 107-117.

Section 101 in Division C of P.L. 107-117 (115 *Stat.* 2341-2342) increased the discretionary spending limits for FY2002 by $134.5 billion in budget authority and a comparable amount in outlays. According to the *Final Sequestration Report for FY2002*, issued by the OMB director on January 31, 2002, the revision required by P.L. 107-117, together with other required adjustments, yielded a new budget authority limit of $706.308 billion and an outlay limit of $731.329 billion for all discretionary spending for the fiscal year.

Contents

List of Figures

Discretionary Spending Limits for FY2002: A Procedural Assessment

The Statutory Discretionary Spending Limits

The Budget Enforcement Act (BEA) of 1990 established limits on discretionary spending as part of an underlying law, the Balanced Budget and Emergency Deficit Control Act of 1985.[1] These limits, which have been revised and extended over the years, presently are in effect for most discretionary spending through FY2002. (Limits for FY2003 and beyond have been established for some discretionary spending, as is discussed below, but no procedures currently are in effect to enforce them.)

Discretionary spending, which accounts for roughly one-third of total federal spending, is spending that is under the control of the House and Senate Appropriations Committees and is provided in annual appropriations acts. For the most part, discretionary spending funds the routine operations of the federal government, including the "salaries and expenses" accounts of most agencies.

Discretionary spending is distinguished from *direct spending*, which is controlled by the legislative committees of the House and Senate through substantive law and funds entitlement and other mandatory programs, such as Medicare, federal military and civilian retirement, and unemployment compensation. (The BEA of 1990 subjects legislative changes in direct spending to a different enforcement mechanism than spending limits; it is referred to as the "pay-as-you-go" (PAYGO) requirement.[2]) Discretionary spending and direct spending together make up total federal spending.

The discretionary spending limits, as originally set forth in the BEA of 1990, covered FY1991-1995. They were revised and extended by the Omnibus Budget Reconciliation Act (OBRA) of 1993, through FY1998, and the Budget Enforcement Act (BEA) of 1997, through FY2002.[3]

---

[1] The BEA of 1990 is Title XIII of P.L. 101-508 (November 5, 1990), the Omnibus Budget Reconciliation Act of 1990; see 104 *Stat*. 1388-573 through 628. The 1985 act is Title II of P.L. 99-177 (December 12, 1985), a measure increasing the public debt limit; see 99 *Stat*. 1037-1101.

[2] For more information on this topic, see CRS Report RL31194, *Pay-As-You-Go Requirement for FY2002: A Procedural Assessment*, by Robert Keith.

[3] OBRA of 1993 is P.L. 103-66 (August 10, 1993); see: Title XIV at 107 *Stat*. 683-685. The BEA of 1997 is Title X of P.L. 105-33 (August 5, 1997); see 111 *Stat*. 677-712.

Separate discretionary spending limits have applied in past fiscal years to two different measurements of spending—budget authority and outlays. *Budget authority* represents the legal authority for agencies to incur obligations. Annual appropriations are perhaps the most well known form of budget authority. *Outlays* represent the liquidation of the obligation, usually in the form of an electronic funds transfer or the issuance of a check by the Treasury Department.

Enforcement of the discretionary spending limits applies to different categories of discretionary spending. The scheme of categories has varied from year to year, initially from three categories (defense, international, and domestic) to two (defense and nondefense); later, these categories were merged for FY2000-2002 into a single "other discretionary" category (also called the "general purpose discretionary" category or simply the "discretionary" category).[4] In addition, separate categories currently exist for highway and mass transit spending through FY2003. The "other discretionary" category has separate budget authority and outlay limits, but the highway and mass-transit categories have outlay limits only. A separate category for spending from the Violent Crime Reduction Trust Fund ended with FY2000.

On October 11, 2000, President Clinton signed the Interior Appropriations Act for FY2001 into law as P.L. 106-291. Section 801(a) of the act (114 *Stat*. 1026-1029), in Title VIII (Land Conservation, Preservation and Infrastructure Improvement), amended the 1985 Balanced Budget Act by establishing limits for FY2002-2006 under a new category, "conservation spending." The total amount of budget authority and outlays allowed under the limits over the 5 fiscal years is \$10.400 billion and \$9.680 billion, respectively, rising from \$1.760 billion in budget authority and \$1.232 billion in outlays for FY2002, to \$2.400 billion in budget authority and \$2.352 in outlays for FY2006.

Further, Section 801(a) established six different subcategories under the conservation category for each of the fiscal years covered. These subcategories include: (1) federal land and state land water conservation fund; (2) state and other conservation; (3) urban and historic preservation; (4) payments in lieu of taxes; (5) federal deferred maintenance; and (6) coastal assistance. A list of the budget accounts covered under the category and each subcategory is provided in Section 801(c) of the act.

---

[4] The BEA of 1990 set separate limits for new budget authority and outlays for FY1991-1993 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. OBRA 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 (P.L. 103-322) 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 with new categories 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, the Transportation Equity Act for the 21st Century (P.L. 105-178) established separate outlay limits for two new categories, highways and mass transit.

Although there are outlay limits on highway and mass transit spending for FY2003, and budget authority and outlay limits for conservation spending through FY2006, the procedures necessary to enforce them are scheduled to expire at the end of FY2002 under current law.

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).[5] With regard to the new conservation category established by the Interior Appropriations Act for FY2001, the amount, if any, by which appropriations for a fiscal year fall below the limit for that fiscal year is added to the limit for the following fiscal year; this adjustment applies to each of the subcategories as well.

Enforcement by Sequestration

The sequestration process, established by the 1985 Balanced Budget Act and used to enforce annual deficit targets, was retained by the BEA of 1990 and later laws as the means of enforcing the discretionary spending limits (as well as the PAYGO requirement).[6] Under current sequestration procedures, the director of the Office of Management and Budget (OMB) issues a sequestration report at the time the President's budget is submitted to Congress (the preview report), mid-way through the congressional session (the update report), and within 15 days after the end of the session (the final report). The Congressional Budget Office (CBO) issues sequestration reports in advance of the OMB reports, but they are advisory only.

If the OMB director's final sequestration report indicates that enacted spending levels have breached any of the discretionary spending limits, then the President must immediately issue a sequestration order to eliminate the overage through automatic, across-the-board spending reductions. 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. Under a "look-back" feature, 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. A consistent rule of the sequestration process has been that 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 "other discretionary" category.

---

[5] Factors upon which adjustments are based have changed periodically. For example, the BEA of 1990 provided for adjustments due to changes in inflation, but this was dropped in 1997.

[6] For a more detailed discussion of the sequestration process, see: CRS Report RL31137, *Sequestration Procedures Under the 1985 Balanced Budget Act*, by Robert Keith.

Enforcement in the Congressional Budget Process

The enforcement procedures under the BEA of 1990 are linked to the congressional budget process established by the Congressional Budget Act of 1974. The annual budget resolution sets forth aggregate and functional spending levels consistent with the statutory limits; the spending levels allocated to the House and Senate Appropriations Committees under Section 302(a) of the 1974 act likewise are consistent with the statutory limits. Section 311(a) of the act provides a point of order against legislation exceeding the aggregate spending levels in the budget resolution, while Section 302(f) provides a point of order against any appropriations bill exceeding the Appropriations Committees' suballocations of their total spending allotments. The functional spending levels in the budget resolution are not binding.

In order to maintain consistency in enforcement, the aggregate spending levels in the budget resolution, and the Section 302 spending allocations made thereunder, 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.

In the Senate (but not the House), Section 312(b) of the 1974 act provides a point of order against the consideration of any legislation that would exceed the statutory discretionary spending limits. The point of order requires a three-fifths vote to waive.

FY2002 Policy Regarding Discretionary Spending

Both President George W. Bush and Congress began the budget cycle for FY2002 by recommending discretionary spending levels well above the existing limits. The initial approach taken by the President and Congress for FY2002 mirrored actions taken the year before by President Clinton and Congress when the discretionary spending limits for FY2001 were raised by nearly $100 billion.[7]

The President's Budget. President Bush submitted his budget for FY2002 on April 9, 2001, recommending that Congress pass legislation revising and extending the discretionary spending limits through FY2006.[8] President Bush's April budget submission followed the release of a preliminary budget document issued on February 28, 2001, *A Blueprint for New Beginnings: A Responsible Budget for America's Priorities*. For FY2002, he proposed a revised budget

---

[7] These actions are discussed in detail in CRS Report RL30696, *Discretionary Spending Limits for FY2001: A Procedural Assessment*, by Robert Keith. See also the companion CRS Report RL30706, *Pay-As-You-Go Requirement for FY2001: A Procedural Assessment*, by Robert Keith.

[8] U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2002, Analytical Perspectives* (Washington: April 9, 2001), see the "Preview Report" on pages 243-251. Although the Preview Report mentions extension of the limits through FY2005, the budget generally provides discretionary spending figures through FY2006.

authority limit of $661 billion and a revised outlay limit of $692 billion. The President's request was $112 billion higher than the existing limit on budget authority ($549 billion) and $120 billion higher than the existing limit on outlays ($572 billion). The budget authority proposed for FY2002 exceeded the FY2001 enacted level, $635 billion, by about $26 billion, representing a 4% increase.

The President reserved $841 billion over 10 years, covering FY2002-2011, for "contingencies," which was expected to include, among other things, additional discretionary spending stemming from a review of defense needs and other factors.

President Bush also recommended two budget process changes to "restore discipline to the budget process by making it more difficult to skirt the discretionary caps."[9] First, he proposed a "national emergency reserve," beginning at $5.6 billion in budget authority for FY2002, that would be set aside for responding to natural disasters. Second, he proposed curtailing the use of advanced appropriations except where required for programmatic reasons.

In its May analysis of the President's budget, the CBO estimate of discretionary budget authority for FY2002 was the same as the President's estimate, but CBO's estimate of discretionary outlays for the fiscal year was about $8 billion lower ($684 billion).[10] Further, CBO estimated the reserve for contingencies at about $700 billion over 10 years ($141 less than the President's estimate) and noted that the recommended 4% growth in budget authority for FY2002 compared to about 6.4% growth for FY2001.

The Congressional Budget Resolution. On May 10, the House and Senate reached final agreement on the budget resolution for FY2002, H.Con.Res. 83. According to the joint explanatory statement accompanying the conference report, discretionary spending for FY2002 assumed in the budget resolution amounted to $661.3 billion in budget authority and $682.776 billion in outlays.[11]

The House Budget Committee included in the joint explanatory statement a spending allocation to the House Appropriations Committee for FY2001 consistent with these amounts. House procedures under the 1974 Congressional Budget Act allow it to consider annual appropriations bills at variance with the statutory discretionary spending limits as long as the budget resolution levels are not violated (or any violations are waived by a simple majority vote). Accordingly, the House planned to consider regular appropriations acts for FY2002 compatible with the budget resolution policy and expected that the statutory limits would be revised later in the session so that no sequester would occur.

The Senate Budget Committee was faced with a more difficult procedural situation because of the point of order provided in Section 312(b) against any

---

[9] OMB, *Analytical Perspectives*, *ibid*., page 243.

[10] U.S. Congressional Budget Office, *An Analysis of the President's Budgetary Proposals for Fiscal Year 2002* (Washington: May 2001), pages 9 and 24 (Table 11).

[11] See the conference report on H.Con.Res. 83, H. Rept. 107-60 (May 8, 2001), page 48.

appropriation measure violating the statutory discretionary spending limits. Further, waivers of the point of order could be obtained only with a three-fifths vote.

Section 203 of the budget resolution provided a mechanism for the Senate to begin consideration of the regular appropriations acts for FY2002 without the statutory limits having first been increased. Section 203(a)(2) states that the functional totals in the budget resolution envision $659.540 billion in budget authority and $647.780 billion in outlays for the single discretionary spending category in FY2002. In addition, $28.489 billion and $5.275 billion in highway and mass transit outlays are envisioned, as well as $1.760 billion in budget authority and $1.232 billion in outlays for the conservation category. Section 206(a)(3) reflects Senate anticipation of the need to raise the statutory limits for FY2001 in order to accommodate these spending levels by stating:

> To facilitate the Senate completing its legislative responsibilities for the 1st Session of the 107th Congress in a timely fashion, it is imperative that the Senate consider legislation which establishes appropriate discretionary spending limits for fiscal year 2002 as soon as possible.

Further, Section 203(b) provides for the necessary adjustments under the budget resolution, including increased allocations to the Appropriations Committees, whenever legislation raising the statutory limits became law. In the interim, the “Allowances (920)” functional category of the budget resolution reflects a $103.548 billion budget authority and $99.379 billion offset for FY2002, largely to accommodate the anticipated increase in the discretionary spending limits.

Finally, Section 203(c) of the budget resolution imposes, in the Senate only, a “firewall” between defense and nondefense discretionary spending for FY2002 by establishing separate categories and providing for a point of order against any legislation that violated the separate limits. These limits are $325.070 billion in budget authority for defense spending and $336.230 billion in budget authority for nondefense spending. A three-fifths vote is necessary to waive the point of order.

The October 2nd Agreement. On September 20, 2001, the chairmen and ranking minority members of the House and Senate Appropriations Committees, with the concurrence of House and Senate leaders, jointly proposed to the Bush Administration an increase in total discretionary spending for FY2002 beyond the levels envisioned in the budget resolution. With regard to budget authority, the proposal involved an increase of about $25 billion, from $661.3 billion to $686 billion. The increase was intended to accommodate President Bush’s request for an additional $18.4 billion in budget authority for defense spending, as well as additional budget authority for education ($4 billion) and emergency appropriations for Hurricane Allison, Western forest fires, and other natural disasters.[12]

---

[12] The President’s request for $18.4 billion in additional defense funding was intended to meet needs “consistent with the early results of Secretary Rumsfeld’s strategy review.” See the letter from President George Bush to the Honorable Richard A. Gephardt, Democratic Leader, House of Representatives, June 27, 2001, which accompanied Estimate #9, accessible through the OMB Website: [www.omb.gov].

Following negotiations between OMB Director Mitch Daniels and the Appropriations Committee leaders, an agreement was reached on October 2 to limit discretionary spending for FY2002 to $686 billion.[13] Although some House and Senate Members had asked that President Bush submit a formal budget request for the full $25 billion increase, they accepted his request in the form of a letter. In his letter (see **Figure 1**), President Bush cited the "strong bipartisan effort" that led to the agreement but noted that in the course of implementing the agreement he would review "the policy and program content of legislation before agreeing to sign it."

Figure 2. Text of President Bush's Letter Regarding October 2nd Agreement

October 2, 2001

Dear Mr. Leader:

I support the bipartisan agreement to set FY 2002 discretionary appropriations levels at a total of $686 billion. If the Congress presents appropriations bills to me that comply with this aggregate spending level, and are otherwise acceptable, I will sign them.

Within this total, I understand that defense activities will be funded at the amended budget level. In addition, I understand that an appropriations bill for education will include $4 billion above my budget request and will be accommodated within the total discretionary level. I also understand that the agreement includes $2.2 billion in contingent emergency appropriations, within the $686 billion agreement. These emergency funds would be available only to the extent that they are necessary to fund unexpected costs that may arise as a consequence of urgent requirements beyond the program funding levels provided in the regular appropriations bills.

This agreement does not compromise my discretion to consider the policy and program content of legislation before agreeing to sign it. However, passage of appropriations measures within the agreed total will mean that there will be no disagreement between the Congress and my Administration over aggregate funding levels.

This agreement is the result of extensive discussions to produce an acceptable bipartisan solution to facilitate the orderly enactment of appropriations measures. This agreement and the aggregate spending level are the result of a strong bipartisan effort at this critical time for our Nation, and I expect that all parties will now proceed expeditiously and in full compliance with the agreement.

Sincerely,
[signed, George Bush]

[13] See: "White House, Appropriators Agree On Discretionary Spending of $686 Billion," by Cheryl Bolen, BNA *Daily Report for Executives*, No. 190, Wednesday, October 3, 2001, page A-20.

Implementation of the FY2002 Policy

Implementation of the FY2002 policy for discretionary spending involved the consideration of regular appropriations acts for that fiscal year during the 2001 congressional session and the issuance of the sequestration report by the OMB director shortly after the session ended. During the 2002 session, it involves the consideration of supplemental appropriations legislation. Each of these phases is discussed in more detail below.

Congressional Action on Regular Appropriations Acts in 2001. Following adoption of the budget resolution in May 2001, the House and Senate considered the regular appropriations acts for FY2002 during the remainder of the session. By the beginning of FY2002 on October 1, 2001, the necessary revisions in the discretionary spending limits for that year still had not yet been enacted.

On October 11, the House Budget Committee ordered reported H.R. 3084, the Interim Budget Control and Enforcement Act of 2001. Among other things, the measure would increase the statutory limit on budget authority for FY2002 to $681.4 billion; this amount, when combined with certain increases already authorized under current law and anticipated emergency spending, would accommodate the $686 billion spending level agreed upon earlier. Senator Pete Domenici, the ranking minority member of the Senate Budget Committee, introduced similar legislation (S. 1575) on October 25. Neither chamber acted on the legislation.

In the wake of the September 11 terrorist attacks, Congress and the President enacted P.L. 107-38, the 2001 Emergency Supplemental Appropriations Act for Recovery and Response to Terrorist Attacks on the United States Act.[14] The act provided $40 billion in funding, but provided that half of the amount could be obligated only when enacted in a subsequent emergency appropriations bill. Because the funds were designated as an emergency requirement, they effectively were exempted from the discretionary spending limits.

As action on the regular appropriations acts drew to a close in December, the Defense Appropriations Act for FY2002, H.R. 3338, became the vehicle for revising the discretionary spending limits. Section 101(a) in Division C of the act (115 *Stat*. 2341-2342) revised the limits for FY2002 in a manner accommodating the $686 billion level agreed to on October 2 and preventing a sequester.[15] In addition, Section 101(d) provided for a further increase of 0.12% in the limits on discretionary budget authority if needed to cover technical estimates made by the OMB director. President George W. Bush signed the act into law on January 10, 2002 (P.L. 107-117).

---

[14] P.L. 107-38 (115 *Stat*. 220-221), enacted on September 18, 2001, provided $40 billion in supplemental appropriations for FY2001, but provided that the funds shall "remain available until expended."

[15] The provision originated in the substitute amendment recommended by the Senate Appropriations Committee (see S.Rpt. 107-109, December 5, 2001, page 232).

Issuance of the OMB Final Sequestration Report. OMB's *Final Sequestration Report for FY2002* was issued on January 31, 2002.[16]

According to the report, P.L. 107-117 increased the discretionary spending limits for FY2002 by $134.5 billion in budget authority and a comparable amount in outlays. This revision, together with other required adjustments, yielded a new budget authority limit of $706.308 billion and an outlay limit of $731.329 billion for all discretionary spending for the fiscal year.

The regular appropriations acts for FY2002 enacted during the 2001 session were under the revised statutory limits in the aggregate by $2 million in budget authority and $3.343 billion in outlays.

Congressional Action on Supplemental Appropriations Acts in 2002. The House and Senate usually consider at least one supplemental appropriations act during a session for the fiscal year that is underway. Any supplemental appropriations act for FY2002 enacted prior to July 1 that violates the discretionary spending limits for that fiscal year could trigger a "within-session sequester." (Under the "look-back" feature of the process, the enactment after June 30 of a measure violating the limits would require the limits for the succeeding fiscal year to be reduced by the appropriate amounts. As mentioned previously, however, the limits on most discretionary spending under current law expire at the end of FY2002.)

In May, the House and Senate Appropriations Committees reported supplemental appropriations measures amounting to roughly $30 billion (H.R. 4775; S. 2551). The measures include emergency designations, offsets, and other techniques intended to keep a sequester from occurring.

Previous Techniques for Preventing a Sequester

Congress and the President have been able to avoid a sequester under the discretionary spending limits since FY1992 by ensuring that annual appropriations acts were not in violation of the statutory goals. At times, Congress and the President had to take advantage of flexibility in the procedures, such as the ability to designate certain spending as "emergency requirements," in order to achieve this outcome. Prior to the FY2002 cycle, however, Congress and the President twice prevented a sequester that otherwise would have occurred by enacting into law provisions that intervened in the normal operation of the process.[17]

It should be noted that legislative provisions containing such techniques could violate Section 306 of the 1974 Congressional Budget Act. The section bars the consideration in the House or Senate of any legislation containing subject matter

---

[16] The *Final Sequestration Report for FY2002* is available on the OMB Website [www.omb.gov].

[17] For more detailed information on this matter, see: CRS Report RL31155, *Techniques for Preventing a Budget Sequester*, by Robert Keith.

within the jurisdiction of the respective Budget Committee unless it has been reported by (or discharged from) that committee. Violations of Section 306 may be waived, typically by a special rule in the House or a motion in the Senate. In the Senate, such waivers require a three-fifths majority. Further, the prohibition in Section 306 is not self-enforcing; a Member must raise a point of order to enforce the prohibition.

Congress and the President enacted a provision in 2000 with the intent of preventing a "within-session" sequester under the discretionary spending limits for FY2000. Additionally, a significant upward revision of the discretionary spending limits for FY2001 was enacted to prevent a sequester at the end of the 2000 session. This action had been assumed in the budget resolution adopted earlier in the year (although the revision increased the limits more than had been assumed). These two actions are discussed in more detail below.

FY2000. In the middle of 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.

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. Levels in the remaining 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 had 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:

> Sec. 5107. 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.

Because the measure was enacted into law in July, the "look-back" feature in Section 251 of the 1985 Balanced Budget Act would have required that the FY2001 limits for the "other discretionary" category be reduced by the amounts of the breach. The ultimate effect of the section in P.L. 106-246, therefore, was to prevent the reduction in the FY2001 limits.

FY2001. Under the FY2001 budget resolution adopted by the House and Senate in April 2000, total discretionary spending for the fiscal year was envisioned at about $600 billion in budget authority and $625 billion in outlays, well above the existing statutory limits on such spending, and the assumption was made that the statutory limits would be raised to accommodate the new levels. (The statutory limits also are adjusted from time to time by the OMB director as required by law.)

During the following six months, Congress considered the regular appropriations acts for FY2001 without enacting the necessary revisions in the discretionary spending limits. On October 18, 2000, the Republican leadership in Congress proposed increasing the FY2001 limits in order to accommodate total discretionary spending of $637 billion in budget authority and $645 billion in outlays, considerably more than had been envisioned by the budget resolution. After a brief period of negotiation between the parties, the proposal was incorporated into the conference report on the Foreign Operations Appropriations Act for FY2001 (H.R. 4811). The two chambers agreed to the conference report on October 25, and President Clinton signed H.R. 4811 into law on November 6 (P.L. 106-429).

The measure enacted into law by cross-reference another appropriations bill for foreign operations, H.R. 5526, which effectively superseded H.R. 4811. Section 701 of H.R. 5526 increased the budget authority limit for FY2001 in the "other discretionary" category to $637.000 billion and the outlay limit in that category to $612.695 billion. The outlay limits for highway and mass transit programs, amounting to about $31.6 billion for FY2001, remained unchanged.

In addition to increasing the discretionary spending limits for FY2001, Section 701 prohibited the OMB director from adjusting the limits in the final sequestration report for FY2001 for legislation providing emergency appropriations and for certain other factors, but other adjustments under existing authority still were allowed. Further, Section 701 authorized rounding adjustments of 0.5% in the budget authority limit for the "other discretionary" category, which increased the discretionary budget authority limit for FY2001 by about $3.2 billion.

Following the changes in the discretionary spending limits, no sequester for FY2001 was required