



# Across-the-Board Spending Cuts in End-of-Session Appropriations Acts

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December 13, 2007

Congressional Research Service

7-5700

[www.crs.gov](http://www.crs.gov)

RL32153

**CRS Report for Congress**

*Prepared for Members and Committees of Congress*

## Summary

In five recent fiscal years (FY2000-FY2005, excluding FY2002), Congress and the President brought action on the regular appropriations acts for the fiscal year to a close by incorporating unfinished acts into an omnibus appropriations measure. For FY2006, all of the regular appropriations acts were enacted into law separately. Each of the five omnibus acts, and the Defense Appropriations Act for FY2006 (which was one of the last two regular appropriations acts enacted that session, on December 30, 2005), included an across-the-board spending cut to offset part of the cost of annual appropriations acts for the fiscal year. Full-year funding for the bulk of the FY2007 appropriations was provided at restrictive levels in a continuing resolution, which did not include an across-the-board spending cut.

The six across-the-board spending cuts enacted previously ranged in size from 0.22% to 1.00% of covered appropriations, and an estimated \$1.1 billion to \$8.5 billion in savings:

- the 0.38% cut for FY2000 in P.L. 106-113 saved an estimated \$2.4 billion in budget authority;
- the 0.22% cut for FY2001 in P.L. 106-554 saved an estimated \$1.1 billion in budget authority;
- the 0.65% cut for FY2003 in P.L. 108-7 saved an estimated \$2.6 billion in budget authority;
- the 0.59% cut for FY2004 in P.L. 108-199 saved an estimated \$2.8 billion in budget authority;
- the 0.80% cut for FY2005 in P.L. 108-447 saved an estimated \$3.5 billion in budget authority; and
- the 1.00% cut for FY2006 in P.L. 109-148 saved an estimated \$8.5 billion in budget authority.

The across-the-board cuts may be compared in several ways. First, the range of appropriations subject to the spending cuts varied under each provision because of variations in the number of regular appropriations acts covered and the specification of particular exemptions. Second, the reductions imposed by the percentage cuts had to be made subject to a percentage limitation or a proportionality requirement. Finally, the size of the percentage cut was reduced significantly during the course of legislative action in two of the cases.

The significance of the spending cuts differed with regard to budget enforcement: (1) the FY2000 cut was needed to avoid a sequester; (2) the FY2001 cut was not needed to avoid a sequester, but it contributed to overall discretionary spending being below the statutory limits; (3) the FY2003 and FY2005 cuts were needed to adhere to informal limits reached between congressional leaders and President Bush in the absence of a budget resolution and the expiration of the statutory limits on discretionary spending; and (4) the FY2004 and FY2006 cuts contributed to adherence to the discretionary spending levels assumed in the budget resolutions for those years. This report will be updated as developments warrant.

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In five recent fiscal years (FY2000-FY2005, excluding FY2002), Congress and the President brought action on the regular appropriations acts for the fiscal year to a close by incorporating unfinished acts into an omnibus appropriations measure.<sup>1</sup> For FY2006, all of the regular appropriations acts were enacted into law separately. Each of the five omnibus appropriations acts, and the Defense Appropriations Act for FY2006 (which was one of the last two regular appropriations acts enacted that session, on December 30, 2005), included an across-the-board spending cut to offset part of the cost of annual appropriations acts for the fiscal year.<sup>2</sup> Full-year funding for the bulk of the FY2007 appropriations was provided at restrictive levels in a continuing resolution, which did not include an across-the-board spending cut.

This report examines the use of across-the-board spending cuts in the end-of-session appropriations acts for FY2000-FY2006 identified above, assessing the budgetary context leading to the spending cut, recounting the legislative action on the spending cut provision, and reviewing the provision's design and implementation.

## Background

### Discretionary Spending and Annual Appropriations Acts

*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* (also referred to as *mandatory 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. Discretionary spending and direct spending together make up total federal spending.

Each year, Congress and the President enact discretionary spending in the form of regular appropriations acts, as well as continuing and supplemental appropriations acts.<sup>3</sup> If action is not completed on all of the regular appropriations acts toward the end of a congressional session, Congress sometimes will combine the unfinished appropriations acts into an omnibus measure. An omnibus appropriations act may set forth the full text of each of the regular appropriations acts included therein, or it may enact them individually by cross-reference. In addition, significant

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<sup>1</sup> For more information on this topic, see CRS Report RL32473, *Omnibus Appropriations Acts: Overview of Recent Practices*, by Robert Keith.

<sup>2</sup> The spending cuts also required reductions in obligation limitations for accounts where this was appropriate.

<sup>3</sup> The number of regular appropriations acts was fixed at 13 between FY1968 and FY2005; the number of regular appropriations acts was reduced to 11 for FY2006 and FY2007 following a realignment of subcommittees of the House and Senate Appropriations Committees at the beginning of the 109<sup>th</sup> Congress in 2005. A further realignment in 2007, at the beginning of the 110<sup>th</sup> Congress, increased the number of regular appropriations acts to 12. For more information on these realignments, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2007*, by James V. Saturno.

portions of omnibus appropriations acts may deal with substantive legislation rather than appropriations issues.<sup>4</sup>

## Constraints on Discretionary Spending

The House and Senate consider annual appropriations acts, and other budgetary legislation, within constraints established in a yearly budget resolution required by the Congressional Budget Act of 1974, as amended.<sup>5</sup> Budget resolution policies are enforced by points of order that may be raised during House and Senate consideration of spending, revenue, and debt-limit legislation. On occasion, budget policies may be modified by agreements reached between congressional leaders and the President; such modifications may be accommodated during legislative action through the use of waivers of points of order, emergency spending designations, and other budgetary or procedural devices.

During the period covering FY1991-FY2002, legislative action on annual appropriations acts also was subject to limits on discretionary spending established by the Budget Enforcement Act (BEA) of 1990 (which amended an underlying law, the Balanced Budget and Emergency Deficit Control Act of 1985).<sup>6</sup> Under this statutory mechanism, separate discretionary spending limits were applied 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.

While proposals have been made to renew the discretionary spending limits, efforts to enact them have been unsuccessful.

The discretionary spending limits were enforced by the sequestration process.<sup>7</sup> A sequester involved automatic, largely across-the-board reductions in discretionary spending in order to eliminate any breach of the limits. A separate sequestration process entailed automatic reductions in mandatory spending if the enactment of revenue or mandatory spending measures caused a violation of a “pay-as-you-go” (PAYGO) requirement. Under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, the director of the Office of Management and Budget (OMB) was charged with determining within 15 days after the close of a congressional session whether a sequester of either kind was required for the fiscal year.

In order to adhere to restraints imposed by congressional budget resolutions, the discretionary spending limits, and ad hoc budget agreements between congressional leaders and the President,

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<sup>4</sup> For more information on this topic, see CRS Report RL30619, *Examples of Legislative Provisions in Omnibus Appropriations Acts*, by Robert Keith.

<sup>5</sup> The Congressional Budget Act of 1974 is Titles I-IX of P.L. 93-344 (July 12, 1974); see 88 Stat. 297. For a general discussion of budget enforcement procedures, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith.

<sup>6</sup> 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. The statutory limits, and the process used to enforce them, were modified by subsequent laws.

<sup>7</sup> The sequestration process is discussed in detail in CRS Report RL31137, *Sequestration Procedures Under the 1985 Balanced Budget Act*, by Robert Keith.

or to meet other purposes, Congress and the President from time to time have incorporated across-the-board cuts in discretionary budget authority into annual appropriations acts. While this report addresses across-the-board spending cuts in end-of-session appropriations acts, principally omnibus appropriations acts, the device has been included in other types of appropriations acts considered at other points during a session as well. For example, Section 1403 (116 Stat. 898-899) of the Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States, 2002 (P.L. 107-206; August 2, 2002), required a \$350 million cut in prior appropriations throughout the executive branch for administrative and travel expenses.<sup>8</sup>

## Across-the-Board Spending Cuts in FY2000-FY2006

During the period covering FY2000-FY2006, Congress and the President enacted into law toward the end of the session (or early in the following session) five omnibus appropriations acts and one regular appropriations act containing across-the-board spending cuts.<sup>9</sup>

As shown in **Table 1**, the six acts included across-the-board spending cuts ranging in size from 0.22% to 1.00% of covered appropriations, and an estimated \$1.1 billion to \$8.5 billion in savings in budget authority.

**Table 1. Summary of Across-the-Board Spending Cuts in End-of-Session Appropriations Acts for FY2000-FY2006**

| Congress/<br>Session                | Fiscal<br>Year    | Public Law<br>Number | Date<br>Enacted | Percentage<br>Reduction | Total<br>Estimated<br>Savings<br>(\$ billions) <sup>a</sup> |
|-------------------------------------|-------------------|----------------------|-----------------|-------------------------|-------------------------------------------------------------|
| 106 <sup>th</sup> / 1 <sup>st</sup> | 2000              | P.L. 106-113         | 11/29/99        | 0.38%                   | 2.4                                                         |
| 106 <sup>th</sup> / 2 <sup>nd</sup> | 2001              | P.L. 106-554         | 12/21/00        | 0.22%                   | 1.1                                                         |
| 107 <sup>th</sup> / 1 <sup>st</sup> | 2002              | [none]               | —               | —                       | —                                                           |
| 107 <sup>th</sup> / 2 <sup>nd</sup> | 2003 <sup>b</sup> | P.L. 108-7           | 02/20/03        | 0.65%                   | 2.6                                                         |
| 108 <sup>th</sup> / 1 <sup>st</sup> | 2004 <sup>b</sup> | P.L. 108-199         | 01/23/04        | 0.59%                   | 2.8                                                         |
| 108 <sup>th</sup> / 2 <sup>nd</sup> | 2005              | P.L. 108-447         | 12/08/04        | 0.80%                   | 3.5                                                         |
| 109 <sup>th</sup> / 1 <sup>st</sup> | 2006              | P.L. 109-148         | 12/30/05        | 1.00%                   | 8.5                                                         |

**Source:** Prepared by the Congressional Research Service.

- a. Estimated savings in budget authority. Savings amounts were obtained from the following Office of Management and Budget “Appropriations 7-Day-After Reports” to Congress, available on the OMB website at <http://www.whitehouse.gov/omb/legislative/7day/index.html>: (1) P.L. 106-113, January 3, 2000; (2) P.L. 106-554, January 15, 2001; and (3) P.L. 108-7, March 27, 2003; for FY2004 and FY2005, from the Congressional Budget Office; and, for FY2006, from the *Congressional Record* (daily ed.), Dec. 18, 2005, p.

<sup>8</sup> For further information on this spending cut, see OMB Bulletin 02-05 (July 29, 2002), *Rescissions of Funds in Administrative and Travel Accounts*.

<sup>9</sup> Another measure, which may be considered an “omnibus” appropriations act, was enacted into law during this period. P.L. 106-377 combined the FY2001 VA-HUD Appropriations Act with the FY2001 Energy and Water Development Appropriations Act. The measure is excluded from this analysis because it did not include an across-the-board cut.

H12260. The estimated savings differ from amounts provided by OMB in follow-up reports to Congress, as indicated in tables presented later in this report.

- b. Action on the regular appropriations acts for FY2003 and FY2004 occurred mainly in 2002 and 2003, respectively, but the omnibus appropriations act bringing the process to a close in each year was not enacted until early in the following session.

Following a brief discussion of the similarities and differences between the six spending-cut provisions, each of them is discussed in more detail below.

## Similarities and Differences in the Five Provisions

In addition to the size of the percentage cut and the total amount of savings, as shown in **Table 1**, the six across-the-board spending cuts may be compared in other ways.

First, the types of funding covered by the spending cuts varied under each provision (see **Table 2**). Initially (for FY2000 and FY2001), discretionary budget authority provided for the fiscal year in the applicable appropriations acts, and obligation limits imposed in the acts, was covered. The coverage of the spending cuts was expanded, beginning with FY2003, to advance appropriations for the fiscal year provided in prior-year appropriations acts, as well as to contract authority for the fiscal year subject to limitations set forth in the covered annual appropriations acts.

**Table 2. Coverage of Across-the-Board Spending Cuts for FY2000-FY2006**

| Fiscal Year            | Subject to Spending Cut:                                                                                                                                                                                            |                                       |                                                                                                                                                                                                                                                                                                                |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        | Types of Funding                                                                                                                                                                                                    | Number of Regular Appropriations Acts | Exemptions From Spending Cut                                                                                                                                                                                                                                                                                   |
| 2000<br>(P.L. 106-113) | <ul style="list-style-type: none"> <li>• FY2000 discretionary BA</li> <li>• FY2000 obligation limits</li> </ul>                                                                                                     | 13                                    | <ul style="list-style-type: none"> <li>• FY2000 military personnel accounts</li> </ul>                                                                                                                                                                                                                         |
| 2001<br>(P.L. 106-554) | <ul style="list-style-type: none"> <li>• FY2001 discretionary BA</li> <li>• FY2001 obligation limits</li> </ul>                                                                                                     | 12                                    | <ul style="list-style-type: none"> <li>• FY2001 military personnel accounts</li> <li>• FY2001 Labor-HHS-Education appropriations act</li> <li>• Specified FY2000 supplementals</li> </ul>                                                                                                                      |
| 2003<br>(P.L. 108-7)   | <ul style="list-style-type: none"> <li>• FY2003 discretionary BA</li> <li>• FY2003 obligation limits</li> <li>• FY2003 advance appropriations in prior acts</li> <li>• Certain FY2003 contract authority</li> </ul> | 11                                    | <ul style="list-style-type: none"> <li>• FY2003 Defense appropriations act</li> <li>• FY2003 Military Construction appropriations act</li> <li>• Women, Infants, and Children (WIC) program</li> <li>• Head Start program</li> <li>• Veterans' medical care</li> <li>• NASA's space shuttle program</li> </ul> |
| 2004<br>(P.L. 108-199) | <ul style="list-style-type: none"> <li>• FY2004 discretionary BA</li> <li>• FY2004 obligation limits</li> <li>• FY2004 advance appropriations in prior acts</li> </ul>                                              | 11                                    | <ul style="list-style-type: none"> <li>• FY2004 Defense appropriations act</li> <li>• FY2004 Military Construction appropriations act</li> <li>• Any FY2004 supplemental</li> </ul>                                                                                                                            |

| Fiscal Year            | Subject to Spending Cut:                      |                                       | Exemptions From Spending Cut                      |
|------------------------|-----------------------------------------------|---------------------------------------|---------------------------------------------------|
|                        | Types of Funding                              | Number of Regular Appropriations Acts |                                                   |
| 2005<br>(P.L. 108-447) | • Certain FY2004 contract authority           | 10                                    | appropriations act                                |
|                        | • FY2005 discretionary BA                     |                                       | • FY2005 Defense appropriations act               |
|                        | • FY2005 obligation limits                    |                                       | • FY2005 Homeland Security appropriations act     |
|                        | • FY2005 advance appropriations in prior acts |                                       | • FY2005 Military Construction appropriations act |
| 2006<br>(P.L. 109-148) | • Certain FY2005 contract authority           | 11                                    | • Any FY2005 supplemental appropriations act      |
|                        | • FY2006 discretionary BA                     |                                       | • FY2006 Veterans Affairs accounts                |
|                        | • FY2006 obligation limits                    |                                       | • FY2006 emergency spending                       |
|                        | • FY2006 advance appropriations in prior acts |                                       |                                                   |
|                        | • Certain FY2006 contract authority           |                                       |                                                   |

**Source:** Prepared by the Congressional Research Service.

Second, the number of regular appropriations acts covered by the spending cuts also varied under each provision, ranging from 10 acts (for FY2005) to 13 acts (for FY2000).

Two of the spending cuts applied to all of the regular appropriations acts, whether they were enacted separately or included in an omnibus appropriations act: (1) the FY2000 spending cut covered the five acts incorporated into the omnibus measure for that year, as well as the eight acts that had been enacted as freestanding laws; and (2) the FY2006 spending cut applied to all of the then-11 regular appropriations acts for that year. The coverage of the spending cuts was expanded by making them apply to funding provided for that fiscal year “in this or any other Act” (or similar language).

In the remaining instances, between one and three of the regular appropriations acts were exempted from the spending cuts: the Labor-HHS-Education appropriations act was exempted for FY2001; the Homeland Security appropriations act was exempted for FY2005; and the Defense and Military Construction appropriations acts were exempted for FY2003, FY2004, and FY2005.<sup>10</sup> Further exemptions were provided for specified accounts and programs and supplemental appropriations acts. Military personnel accounts, for example, were exempted specifically from the spending cuts for FY2000 and FY2001 (these accounts also were exempted in subsequent years by virtue of the exclusion of the entire Defense appropriations act), and appropriations for the Department of Veterans Affairs were exempted from the FY2006 spending cut.

<sup>10</sup> Exempted appropriations acts were referenced explicitly in the spending cut provisions, except for FY2003; in that year, the spending cut was made applicable to the 11 regular appropriations acts covered by the omnibus measure, but not to the Defense and Military Construction appropriations acts, which had been enacted as freestanding measures.

Third, the reductions imposed by the percentage cuts were made subject to a proportionality requirement or a percentage limitation. The FY2000 cut required that defense accounts be reduced uniformly; with regard to nondefense accounts, proportional cuts were not required, but no program, project, or activity (PPA) within an account could be reduced by more than 15%. The cuts for the other five years required proportional reductions to all accounts and PPAs.

Fourth, the size of the percentage cut was reduced significantly during the course of legislative action in two instances. For FY2000, President Clinton first vetoed an appropriations act providing for a 0.97% cut before agreeing to the omnibus legislation requiring a 0.38% cut. During consideration of the FY2003 omnibus legislation, the Senate at one point had endorsed a 2.9% cut, which ultimately was reduced to 0.65%. In a third instance (for FY2005), the cut was reduced slightly, from 0.83% to 0.80%, as a technical adjustment.

Fifth, the significance of the spending cuts differed with regard to budget enforcement. The FY2000 cut was an integral component of the plan that successfully avoided a sequester at the end of the session. The FY2001 cut contributed to overall discretionary spending being below the statutory limits, but the across-the-board proved to be unnecessary in avoiding a sequester. With regard to the FY2003 and FY2005 cuts, the House and Senate did not reach agreement on a budget resolution for those years (and the statutory discretionary limits no longer were in effect); nonetheless, the across-the-board cut was necessary in adhering to an informal limit reached between congressional leaders and President Bush and in avoiding a veto of the omnibus appropriations legislation. The FY2004 and FY2006 cuts contributed to keeping overall discretionary spending within constraints established by the budget resolutions for those years, as modified by agreements between congressional leaders and President Bush.

Finally, the FY2000 and FY2001 cuts instructed the OMB director to report to Congress (in the President's annual budget submission) on the implementation of the reductions, while the FY2004 and FY2006 cuts instructed the OMB director to report such information to the House and Senate Appropriations Committees within 30 days after enactment. The FY2003 and FY2005 cuts did not include any reporting requirement.

## **FY2000**

### **Budgetary Context**

As the federal budget process for FY2000 unfolded in 1999, during the first session of the 106<sup>th</sup> Congress, a policy emerged of keeping the level of discretionary spending within the statutory limits while at the same time not "using" the Social Security surplus (i.e., incurring an on-budget deficit).<sup>11</sup> One of the purposes in adhering to the discretionary spending limits was to avoid a sequester at the end of the session.<sup>12</sup>

In order to enhance its efforts in trying to stay within the discretionary spending limits, Congress and President Clinton used various budgetary devices and techniques, including emergency

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<sup>11</sup> This issue is discussed in more depth in CRS Report RL30353, *Discretionary Spending Limits and the Social Security Surplus*, by Robert Keith.

<sup>12</sup> The application of the process for this fiscal year is explained in detail in CRS Report RL30363, *The Sequestration Process and Across-the-Board Spending Cuts for FY2000*, by Robert Keith.

spending designations, advance appropriations, rescissions, offsets in mandatory programs, obligation and payment delays, and directed scoring.<sup>13</sup> These devices either resulted in upward adjustments in the limits, as was the case with the emergency spending designations, or were counted as savings for the fiscal year. According to OMB, the adjustments and savings from these devices amounted to tens of billions of dollars and averted the need for a sequester; in the aggregate, discretionary spending enacted for FY2000 was \$1.6 billion under the budget authority limit and \$3.5 billion under the outlay limit.<sup>14</sup>

The Congressional Budget Office (CBO) also issued sequestration estimates, but they were only advisory in nature; only the determinations made by the OMB director could have triggered a sequester. For FY2000, CBO indicated that discretionary spending exceeded the limits by \$6.7 billion in budget authority and \$15.2 billion in outlays, which would have necessitated an across-the-board cut of about 4%.<sup>15</sup>

One of the devices used to prevent the violation of the discretionary spending limits was the inclusion of an across-the-board cut in the omnibus appropriations act used to wrap up consideration of the regular appropriations acts for FY2000. According to estimates made by OMB following the measure's enactment, the 0.38% cut was expected to yield savings of \$2.351 billion in budget authority and \$1.356 billion in outlays for the fiscal year.<sup>16</sup> (In the *Final Sequestration Report* for FY2000, OMB increased its estimate of the savings in budget authority to \$2.357 billion.)

The provision requiring an across-the-board spending cut was included in a "miscellaneous appropriations" portion of the omnibus appropriations act that contained other offsets. Savings from the across-the-board cut, combined with the savings from the other offsets, amounted to \$6.827 billion in budget authority and \$9.465 billion in outlays for FY2000.

Without the enactment of the 0.38% spending cut (or comparable offsets), the FY2000 limit for discretionary budget authority would have been exceeded by about \$0.8 billion and a sequester would have occurred.

## **Legislative Action**

House and Senate interest in an across-the-board spending cut surfaced relatively late in the session, after much of the annual appropriations process had been completed. Legislative action on across-the-board cut proposals encompassed several different annual appropriations measures, beginning with S. 1650 and including H.R. 3064 and H.R. 3194. The formulation of the proposal evolved through the different stages of legislative action, from a sense-of-the-Senate statement, to a 0.97% cut, and finally to a 0.38% cut.

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<sup>13</sup> These budgetary devices and techniques are discussed in (1) Congressional Budget Office, *The Economic and Budget Outlook: Fiscal Years 2001-2010*, January 2000, pp. 76-77; and (2) Office of Management and Budget, *OMB Final Sequestration Report to the President and Congress for Fiscal Year 2000*, January 25, 2000 (see especially Table 2 on pp. 4-6).

<sup>14</sup> *OMB Final Sequestration Report*, *ibid.*, Table 6, pp. 13-14.

<sup>15</sup> Congressional Budget Office, *Final Sequestration Report for Fiscal Year 2000*, December 2, 1999, p. 1.

<sup>16</sup> See the Office of Management and Budget's "Appropriations 7-Day-After Report" to Congress on P.L. 106-113, available on the OMB website at <http://www.whitehouse.gov/omb/legislative/7day/index.html>.

## **S. 1650**

On September 29, 1999, the Senate began consideration of S. 1650, its initial version of the Labor-HHS-Education Appropriations Act for FY2000. On October 1, Senator Don Nickles, the assistant majority leader, offered an amendment (number 1851) to the bill stating the sense of the Senate that an across-the-board cut in appropriations should be adopted, if necessary, to avoid incurring an on-budget deficit. On October 6, he offered a further amendment (number 1889) to his underlying amendment. Amendment number 1889 was similar to the underlying amendment and focused on “protecting Social Security surpluses,” stating the sense of the Senate that

Congress should ensure that the fiscal year 2000 appropriations measures do not result in an on-budget deficit (excluding the surpluses generated by the Social Security trust funds) by adopting an across-the-board reduction in all discretionary appropriations sufficient to eliminate such deficit if necessary.<sup>17</sup>

In describing his amendments, Senator Nickles indicated that an across-the-board cut of 1% of discretionary appropriations might be needed to eliminate an estimated overage of about \$5 billion; other Senators provided estimates that the overage might be much larger and that a cut of 5.5% might be needed. On October 6, the Senate adopted amendment number 1889 by a vote of 54-46. After tabling another amendment dealing with the issue, offered by Senator Frank Lautenberg, Senator Nickles withdrew his underlying amendment. The Senate passed the bill the next day without an across-the-board cut provision.

## **H.R. 3064**

Following a veto by President Clinton on September 28 of the first District of Columbia Appropriations Act for FY2000, the House and Senate developed a second version, H.R. 3064, which also included the Labor-HHS-Education appropriations for FY2000. The conferees on the measure inserted an across-the-board cut provision in Section 1001 of Division C of the act. The House agreed to the conference report on the measure on October 28 by a vote of 218-211; the Senate agreed to it on November 2 by a vote of 49-48.

Unlike the language that the Senate had considered earlier, Section 1001 set in place the requirement for a specific cut in discretionary appropriations—0.97% of the total provided for each account. The section also provided that the pay of Members of Congress, a permanent rather than an annual appropriation, would be subject to the cut. (Under the sequestration process, the pay of Members of Congress was not subject to reduction.)

Senator Ted Stevens, chairman of the Senate Appropriations Committee, described the provision as a placeholder—in the face of a certain veto—until the final necessary reductions could be negotiated with the Clinton Administration:

We have included ... against my best wishes, an across-the-board cut. That is primarily because only the administration can identify some of the areas we can reduce safely without harming the programs, and I am confident when we come to what we call the final period to devise a bill, we will work out with the administration some offsets that will take care of the

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<sup>17</sup> The text of amendments number 1851 and 1889, and the accompanying remarks of Senator Nickles, are found in the *Congressional Record* (daily ed.), vol. 145, no. 131, October 1, 1999, pp. S11774-S11780 and S11808.

bill. I am hopeful we will have no across-the-board cut, but if it comes, it will not be as large as the one in this bill right now.<sup>18</sup>

President Clinton vetoed H.R. 3064 on November 3.<sup>19</sup> In his veto message to Congress, he stated:

I am vetoing H.R. 3064 because the bill, including the offsets section, is deeply flawed. It includes a misguided 0.97 percent across-the-board reduction that will hurt everything from national defense to education and environmental programs ... The bill is clearly unacceptable. I have submitted a budget that would fund these priorities without spending the Social Security surplus, and I am committed to working with the Congress to identify acceptable offsets for additional spending for programs that are important to all Americans.

### ***H.R. 3194 (P.L. 106-113)***

The House's third version of a measure providing FY2000 appropriations for the District of Columbia, H.R. 3194, became, in conference, a vehicle for four additional regular appropriations acts and several legislative measures. In addition to dramatically expanding the scope of H.R. 3194, the conferees changed its title to the Consolidated Appropriations Act for FY2000.<sup>20</sup>

The House adopted the conference report on November 18, 1999, by a vote of 296-135; the Senate adopted it the next day by a vote of 74-24. President Clinton signed the measure into law on November 29 as P.L. 106-113 (113 Stat. 1501-1537).<sup>21</sup>

P.L. 106-113 was divided into two parts. Division A set forth the full text of the FY2000 appropriations for the District of Columbia. Division B provided appropriations for the remaining four regular appropriations acts (in Section 1000(a)). Instead of including the full text of each act, however, the subsection enacted individual measures by cross-reference. Each of the four acts, in a form reflecting the final budget agreement reached between President Clinton and Congress, was introduced as a separate bill on November 17, 1999; these four bills were cross-referenced as introduced on that date.

Section 1000(a) of Division B also enacted five other measures by cross-reference. Each of these measures also was introduced as a separate bill on November 17. The first of these other cross-referenced measures, H.R. 3425, dealt with "miscellaneous appropriations" and included in Title III (Fiscal Year 2000 Offsets and Rescissions) many of the savings required by the budget agreement. In particular, Section 301 of H.R. 3425 (113 Stat. 1501A-303 and 304) required a government-wide cut of 0.38% in discretionary appropriations.

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<sup>18</sup> See the remarks of Senator Ted Stevens in the *Congressional Record* (daily ed.), vol. 145, no. 152, November 2, 1999, p. S13623.

<sup>19</sup> See *District of Columbia Appropriations Act, 2000—Veto Message From the President of the United States* (H.Doc.No. 106-154) in the *Congressional Record* (daily ed.), vol. 145, no. 153, November 3, 1999, pp. H11441-H11443.

<sup>20</sup> For more detailed information on the contents and structure of the act, see CRS Report RS20403, *FY2000 Consolidated Appropriations Act: Reference Guide*, by Robert Keith.

<sup>21</sup> On November 19, the House and Senate both passed H.Con.Res. 239, a measure making a technical correction in the enrollment of the Consolidated Appropriations Act. The correction dealt solely with a portion of H.R. 3194 containing State Department authorizations.

The remaining cross-referenced measures dealt with (1) amendments to the Balanced Budget Act of 1997 pertaining to Medicare and related programs; (2) authorizations for the State Department; (3) the federal Milk Marketing Orders program; and (4) the Intellectual Property and Communications Omnibus Reform Act of 1999.

While the across-the-board cut provision sparked some strong criticism during House and Senate floor debate on the conference report, its legislative history is relatively sparse. The joint explanatory statement accompanying the conference report on the measure merely indicated: “The conference agreement includes several offsets and rescissions.”<sup>22</sup>

In the House, Speaker Dennis Hastert and other House leaders discussed it briefly in the context of reducing waste, fraud, and abuse:

- Speaker Dennis Hastert

This bill also takes a very important first step in eliminating government waste. Every year our government spends billions and billions of dollars, and we are saying in this bill, let us take 38 cents out of every \$100 that the Federal Government spends and find waste and abuse. I think that is doable, and I think next year we ought to do the same thing, over and over again, because that is what the American people expect us to do.

The across-the-board spending cut in this bill will force the agencies of government to take a close look at their budget and see what frivolous spending can be eliminated. Taxpayers deserve to have their money spent responsibly, and this bill will save the American taxpayers from over \$1 billion in excess spending. (*Congressional Record* (daily ed.), vol. 145, no. 164, November 18, 1999, p. H12800.)

- Majority Leader Richard Armey

Beginning in 1998, fiscal year 1999, and now with this budget agreement in fiscal year 2000, we will have retired a third of a trillion dollars’ worth of debt for the American people. We will have stopped the raid on Social Security forever. We will have enforced this with an across-the-board spending reduction that acknowledges truly it is time now to be disciplined to eliminate waste, inefficiency, fraud in the use of the taxpayers’ dollars. A new commitment of good government in government. (*Congressional Record* (daily ed.), vol. 145, no. 164, November 18, 1999, p. H12766.)

- Majority Whip Tom DeLay

We tried to cut waste by just suggesting a 1 percent across-the-board cut. Incredibly, the Democrats maintain that a measly 1 percent of waste could not be found in the Federal Government. Well, even the President eventually agreed with us. Now we have an across-the-board spending cut. (*Congressional Record* (daily ed.), vol. 145, no. 164, November 18, 1999, p. H12767.)

Representative David Obey, the ranking minority member of the House Appropriations Committee, was sharply critical of the provision. In the course of asserting that the FY2000 appropriations measures involved about \$45 billion in “gimmicks,” he observed:

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<sup>22</sup> See H.Rept. 106-479 in the *Congressional Record* (daily ed.), vol. 145, no. 163, pt. II, November 17, 1999, pp. H12230-H12609 (especially p. H12503).

Another issue at the center of negotiations was whether to include a small across-the-board cut. This cut was not necessary to reach the offset targets to make sure the bill was paid for; more than enough money was available from other sources. It is simply an attempt by the majority to create a symbol that could be used to pretend that in the midst of this orgy of gimmickry in spending, that they are continuing to be fiscally responsible. (*Congressional Record* (daily ed.), vol. 145, no. 164, November 18, 1999, p. H12742.)

There was hardly any discussion of the provision during Senate consideration of the conference report. Senator John McCain suggested that it represented an abdication of budgetary responsibility: “It resorts to an across-the-board budget cut to avoid dipping into the Social Security surplus, rather than making the hard choices among other spending priorities.”<sup>23</sup>

In his statement made upon signing H.R. 3194 into law on November 29, President Clinton did not make any reference to the across-the-board cut.<sup>24</sup>

### **Design and Implementation of the 0.38% Spending Cut**

In fashioning the 0.38% spending cut, Congress included several important features (the text of the provision is provided in the **0**). First, reductions made pursuant to the provision were to take the form of rescissions of FY2000 budget authority (i.e., appropriations and offsetting collections). Rescissions permanently cancel budget authority.

Second, the required spending cuts were to be applied only to the total *discretionary* budget authority made available to each department and agency. Any *mandatory* resources made available to a department or agency (e.g., permanent appropriations to fund an entitlement program) would not be affected by the requirement.

Third, reductions were to be applied uniformly to each account for the Department of Defense (and the defense activities of the Department of Energy), except that no reductions were to be made in military personnel accounts. With regard to nondefense activities, there was no stated requirement that reductions be applied uniformly to each department’s or agency’s accounts. However, there was a requirement that no “program, project, or activity” (PPA) within an account be reduced by more than 15%.<sup>25</sup>

Finally, the OMB director was instructed to include in the President’s budget for FY2001 a report specifying the reductions made to each account under the requirement.

Unlike the earlier provision in H.R. 3064 providing for a 0.97% cut, pay for Members of Congress was not made subject to the reductions.

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<sup>23</sup> See the remarks of Senator John McCain in the *Congressional Record* (daily ed.), vol. 145, no. 165, pt. II, November 19, 1999, p. S15036.

<sup>24</sup> See his statement in the *Weekly Compilation of Presidential Documents*, vol. 35, no. 48, December 6, 1999, pp. 2458-2465.

<sup>25</sup> In the case of accounts funded by annual appropriations acts, the PPAs are defined in the acts and accompanying reports. Generally, PPAs are listed in the President’s budget under the “Program and Financing” schedule for each account.

On November 24, 1999, OMB issued Bulletin 00-01, *Rescission of FY2000 Discretionary Budget Authority*, providing guidance to agencies in how to comply with the requirement for the 0.38% cut. OMB advised agencies to observe the following guidelines beyond those specified in the act:

- Reductions should be taken from the least critical funding available to the agency;
- Reductions should be considered from enacted funding above the President's request;
- Wherever possible, no reductions should be taken that would require reductions-in-force; and
- Agencies should make targeted recommendations rather than an across-the-board funding cut.

The report required of the OMB director was part of the budget that President Clinton submitted to Congress on February 7, 2000. The 17-page report was included in the *Analytical Perspectives* volume as a separate chapter.<sup>26</sup>

According to the report, a total of \$2,356,909,000 in discretionary budget authority was rescinded in 492 accounts (see **Table 3**). This included \$9.7 million for the legislative branch and \$14.0 million for the judicial branch.

Reductions in individual accounts ranged from \$2 thousand for the "U.S. Commission for the Preservation of America's Heritage Abroad" account, to \$116.4 million for the "Operation and Maintenance, Navy" account. The largest share of the cuts, amounting to \$1.055 billion and involving 70 accounts, was allocated to military activities of the Department of Defense. The other departments with cuts in excess of \$100 million included the Departments of Transportation (\$179.6 million), Health and Human Services (\$166.8 million), and Education (\$108.6 million).

On January 10, 2000, the OMB communications office issued a fact sheet giving a preliminary assessment regarding implementation of the cuts at the sub-account level. According to media reports based on the fact sheet, OMB indicated that the cuts would be applied to three broad areas: (1) programmatic cuts amounting to \$1.7 billion; (2) reductions in 2,372 congressional earmarks amounting to \$478 million; and (3) cuts in salaries and expenses amounting to \$193 million.<sup>27</sup> The three agencies with the largest numbers of cuts to earmarked projects were the Department of Transportation (nearly 600 projects amounting to \$61 million), the Environmental Protection Agency (more than 300 projects amounting to \$23 million), and the Department of Housing and Urban Development (nearly 500 projects amounting to \$19 million).

The OMB factsheet indicated that agencies intended to avail themselves of the authority to cut individual programs and projects within accounts by as much as 15% in order to spare others from any reduction and to target less-critical ones. Programs expected to be completely protected from reduction included the Head Start pre-school program; the Women, Infants, and Children

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<sup>26</sup> See the section in Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2001, Analytical Perspectives*, February 2000, Section 21, "Report on the Government-Wide Rescissions in the Consolidated Appropriations Act, 2000 (P.L. 106-113)," pp. 381-397.

<sup>27</sup> BNA, Inc., "Appropriations: White House Cuts Under FY2000 Budget Trim Spending by 0.38% or \$2.35 Billion," *Daily Report for Executives*, Tue., January 11, 2000.

(WIC) program; Superfund, the Lands Legacy program; and the Clean Water Action Plan, among others. In making many of the cuts in the Department of Transportation, infrastructure programs were expected to be cut in order to protect safety-sensitive programs, including operations of the Federal Aviation Administration and the Coast Guard. Cuts to 180 highway projects were expected to range from 5% to 12%, while 409 transit projects were expected to be cut uniformly by 0.38%.<sup>28</sup>

**Table 3. FY2000 Rescissions Made Under the 0.38% Cut**

| Category                                      | Number of Accounts | Rescissions (\$ millions) |
|-----------------------------------------------|--------------------|---------------------------|
| Legislative branch                            | 21                 | 9.733                     |
| Judicial branch                               | 9                  | 13.961                    |
| Department of Agriculture                     | 33                 | 95.927                    |
| Department of Commerce                        | 18                 | 32.691                    |
| Department of Defense—Military                | 70                 | 1,054.939                 |
| Department of Education                       | 9                  | 108.643                   |
| Department of Energy                          | 21                 | 66.340                    |
| Department of Health and Human Services       | 45                 | 166.847                   |
| Department of Housing and Urban Development   | 2                  | 91.040                    |
| Department of the Interior                    | 31                 | 31.346                    |
| Department of Justice                         | 15                 | 70.344                    |
| Department of Labor                           | 9                  | 33.219                    |
| Department of State                           | 25                 | 25.441                    |
| Department of Transportation                  | 16                 | 179.638                   |
| Department of the Treasury                    | 17                 | 47.117                    |
| Department of Veterans' Affairs               | 1                  | 79.519                    |
| Corps of Engineers                            | 1                  | 15.690                    |
| Environmental Protection Agency               | 7                  | 28.848                    |
| Executive Office of the President             | 15                 | 1.151                     |
| Federal Emergency Management Agency           | 4                  | 12.734                    |
| General Services Administration               | 1                  | 20.022                    |
| International Assistance Programs             | 20                 | 52.495                    |
| National Aeronautics and Space Administration | 3                  | 51.881                    |
| National Science Foundation                   | 4                  | 14.866                    |
| Small Business Administration                 | 2                  | 3.280                     |
| Social Security Administration                | 3                  | 24.083                    |

<sup>28</sup> See *Daily Report for Executives*, *ibid.*, and, in the same issue, "Transportation: OMB Targets 590 Earmarked Projects For Cuts as Part of 0.38 Percent Reduction."

| Category           | Number of<br>Accounts | Rescissions<br>(\$ millions) |
|--------------------|-----------------------|------------------------------|
| All other accounts | 90                    | 25.114                       |
| <b>Total</b>       | <b>492</b>            | <b>2,356.909</b>             |

**Source:** Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2001, Analytical Perspectives*, February 2000, Section 21, "Report on the Government-Wide Rescissions in the Consolidated Appropriations Act, 2000 (P.L. 106-113)," pp. 381-397.

## FY2001

### Budgetary Context

During the second session of the 106<sup>th</sup> Congress, President Clinton and Congress began the budget cycle for FY2001 by recommending discretionary spending levels well above the existing statutory limits.<sup>29</sup> The assumption was made that the statutory limits eventually would be raised to accommodate the new levels. The positions reflected in part the fact that spending for the prior fiscal year, FY2000, was expected to exceed the existing limits for FY2001 by a substantial margin, and that estimates of the on-budget surplus for FY2001 and subsequent years were larger than first anticipated.

The FY2001 budget resolution, adopted by the House and Senate in April 2000, envisioned total discretionary spending for the fiscal year at about \$600 billion in budget authority and \$625 billion in outlays. 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, which President Clinton signed into law on November 6 (P.L. 106-429).

The Foreign Operations Appropriations Act was the eighth of the 13 regular appropriations acts to be enacted for the fiscal year. The increase in the limits provided by P.L. 106-249 provided sufficient leeway for the House and Senate to consider the remaining appropriations measures, particularly the Labor-HHS-Education Appropriations Act, which was transformed into an omnibus appropriations act (the Consolidated Appropriations Act for FY2001). The 106<sup>th</sup> Congress adjourned on December 15, 2000, having completed the annual appropriations process for FY2001.

The final sequestration report for FY2001, issued by the OMB director on January 16, 2001, indicated that discretionary spending in total was \$6.545 billion in budget authority and \$2.487 billion in outlays below the limits and that no sequester was necessary.<sup>30</sup> CBO's advisory final

<sup>29</sup> Legislative action on discretionary spending for FY2001 is discussed in detail in CRS Report RL30696, *Discretionary Spending Limits for FY2001: A Procedural Perspective*, by Robert Keith.

<sup>30</sup> See Office of Management and Budget, *OMB Final Sequestration Report to the President and Congress For Fiscal Year 2001*, January 16, 2001 (especially Table 4 on pp. 9 and 10).

sequestration report, issued on December 29, 2000, also indicated that no sequester was necessary.<sup>31</sup>

The Consolidated Appropriations Act for FY2001 included an across-the-board cut of 0.22%, yielding savings of about \$1.1 billion in budget authority. Unlike the year before, the cut was not necessary in order to avoid sequestration.

## **Legislative Action**

The annual appropriations process in 2000 was brought to a close by incorporating three of the 13 regular appropriations acts for FY2001, as well as a number of legislative measures, into an omnibus bill.<sup>32</sup> The Consolidated Appropriations Act for FY2001, H.R. 4577, enacted the Labor-HHS-Education, Legislative Branch, and Treasury-Postal Service appropriations acts by cross-reference. In addition, H.R. 4577 enacted by cross-reference a Miscellaneous Appropriations Act and the following legislative measures: the Commodity Futures Modernization Act of 2000 (H.R. 5660); the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (H.R. 5661); the Community Renewal Tax Relief Act of 2000 (H.R. 5662); the New Markets Venture Capital Program Act of 2000 (H.R. 5663); and the Small Business Reauthorization Act of 2000 (H.R. 5667).

President Clinton signed the Consolidated Appropriations Act for FY2001 into law on December 21, 2000 (P.L. 106-554; 114 Stat. 2763-64). The House had agreed to the conference report on the measure on December 15, 2000, by a vote of 292-60; the Senate had agreed to it the same day by voice vote.

As initially sent to conference, H.R. 4577 provided FY2001 appropriations only for the Departments of Labor, Health and Human Services, and Education. In conference, the coverage of the bill was expanded to cover the Legislative Branch and Treasury-Postal Service appropriations bills. Prior to the national election, negotiators from Congress and the Clinton Administration reached a tentative agreement on total spending included in the bill, including a funding level for Labor-HHS-Education programs well in excess of the President's request. Legislative consideration of the measure was delayed, however, in part because of lingering disagreement over an associated provision dealing with the promulgation of an ergonomics regulation by the Department of Labor.

When House and Senate conferees resumed their negotiations on H.R. 4577 after the election break, they faced mounting concern over the cost of the bill and the level of FY2001 appropriations generally. Although the discretionary spending limits for FY2001 had been raised earlier in the session to accommodate FY2001 spending of about \$640 billion, many Members expressed a desire to hold total appropriations well below this level.<sup>33</sup> In response to this concern, the negotiators scaled back total appropriations by several billion dollars, including significant reductions in appropriations for Labor-HHS-Education programs. As Representative David Obey,

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<sup>31</sup> See Congressional Budget Office, *Final Sequestration Report for Fiscal Year 2001*, December 29, 2000, 13 pp.; it also was released as H.Doc. 107-7 (January 3, 2001).

<sup>32</sup> For more information, see CRS Report RS20756, *FY2001 Consolidated Appropriations Act: Reference Guide*, by Robert Keith (archived; available from author).

<sup>33</sup> For information on actions pertaining to the discretionary spending limits for FY2001, see CRS Report RL30696, *Discretionary Spending Limits: A Procedural Assessment*, by Robert Keith.

ranking minority member of the House Appropriations Committee, noted during House consideration of the conference report on H.R. 4577:

To get an agreement in the last week, we had to cut \$3.7 billion from the earlier agreement, we had to take \$1.4 billion from advance funding for LIHEAP, we had to take \$257 million out of handicapped education, \$127 million out of efforts to reduce class size, \$180 million out of after-school programs and \$200 million out of biomedical research.<sup>34</sup>

An important part of the reductions in FY2001 appropriations was the across-the-board cut of 0.22%. The provision was included in one of the measures enacted by cross-reference, H.R. 5666 (the Miscellaneous Appropriations Act), which also included other savings provisions. The conference report on the Consolidated Appropriations Act made only a brief reference to the spending-cut provision,<sup>35</sup> and the provision was not discussed during floor consideration in the House and Senate. President Clinton did not refer to the spending cut in his remarks upon signing the bill into law.<sup>36</sup>

### **Design and Implementation of the 0.22% Spending Cut**

Section 1403 of H.R. 5666 applied the cut, in the form of rescissions, to all discretionary appropriations except for military personnel spending provided in Title I of P.L. 106-259 (the Defense Appropriations Act for FY2001), activities funded under the Labor-HHS-Education Appropriations Act for FY2001, and defense and nondefense emergency supplemental appropriations for FY2000 provided in Division B of P.L. 106-246 (the Military Construction Appropriations Act for FY2001).

According to preliminary estimates prepared at the time of enactment by the Office of Management and Budget (OMB), the provision was expected to save \$1.1 billion. Roughly half of the cuts had to be made in defense spending.

Under Section 1403, the cuts were to be applied on a pro rata basis to each applicable program, project, and activity. The section instructed the OMB director to report on these reductions in the President's budget submission for FY2002. (The text of Section 1403 is provided in the 0.)

On January 5, 2001, OMB issued Bulletin 01-03, *Rescission of FY2001 Discretionary Budget Authority*, providing guidance to agencies in how to comply with the requirement for the 0.22% cut.

The report required of the OMB director was part of the budget that President Bush submitted to Congress on April 9, 2001. The 20-page report was included in the *Analytical Perspectives* volume as a separate chapter.<sup>37</sup>

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<sup>34</sup> See the remarks of Representative Obey in the *Congressional Record* (daily ed.), vol. 146, pt. II, December 15, 2000, pp. H12444-12445.

<sup>35</sup> See the reference, under the heading "Chapter 14," in H.Rept. 106-1033, December 15, 2000, p. 621.

<sup>36</sup> See his statement in the *Weekly Compilation of Presidential Documents*, vol. 36, no. 52, December 22, 2000, pp. 3167-3174.

<sup>37</sup> See the section in Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2002, Analytical Perspectives*, April 2001, Section 21, "FY2001 Government-Wide Rescission, Consolidated Appropriations Act," pp. 339-358.

According to the OMB report, a total of \$1,088.962 million in discretionary spending was rescinded in 632 accounts (see **Table 4**). This included \$5.941 million for the legislative branch and \$8.763 million for the judicial branch.

Reductions in individual accounts ranged from \$2 thousand for the “White House repair and restoration” account to \$51.234 million for the “Operation and Maintenance, Navy” account. The largest share of the cuts, amounting to \$487.6 million and involving 67 accounts, was allocated to military activities of the Department of Defense. The other departments with cuts in excess of \$50 million included the Departments of Transportation (\$125.1 million) and Housing and Urban Development (\$68.8 million).

**Table 4. FY2001 Rescissions Made Under the 0.22% Cut**

| Category                                      | Number of Accounts | Rescissions (\$ millions) |
|-----------------------------------------------|--------------------|---------------------------|
| Legislative branch                            | 28                 | 5.941                     |
| Judicial branch                               | 11                 | 8.763                     |
| Department of Agriculture                     | 70                 | 42.589                    |
| Department of Commerce                        | 24                 | 11.712                    |
| Department of Defense—Military                | 67                 | 487.594                   |
| Department of Education                       | 0                  | 0                         |
| Department of Energy                          | 28                 | 44.503                    |
| Department of Health and Human Services       | 7                  | 8.642                     |
| Department of Housing and Urban Development   | 25                 | 68.753                    |
| Department of the Interior                    | 50                 | 22.547                    |
| Department of Justice                         | 34                 | 46.212                    |
| Department of Labor                           | 0                  | 0                         |
| Department of State                           | 23                 | 16.573                    |
| Department of Transportation                  | 55                 | 125.143                   |
| Department of the Treasury                    | 30                 | 30.925                    |
| Department of Veterans' Affairs               | 14                 | 49.337                    |
| Corps of Engineers                            | 8                  | 10.013                    |
| Environmental Protection Agency               | 8                  | 17.222                    |
| Executive Office of the President             | 15                 | 0.658                     |
| Federal Emergency Management Agency           | 9                  | 5.368                     |
| General Services Administration               | 7                  | 1.470                     |
| International Assistance Programs             | 32                 | 29.070                    |
| National Aeronautics and Space Administration | 4                  | 31.430                    |
| National Science Foundation                   | 5                  | 9.736                     |
| Office of Personnel Management                | 5                  | 0.462                     |
| Small Business Administration                 | 4                  | 1.983                     |
| Export-Import Bank of the United States       | 1                  | 2.039                     |

| Category                | Number of<br>Accounts | Rescissions<br>(\$ millions) |
|-------------------------|-----------------------|------------------------------|
| Smithsonian Institution | 9                     | 1.270                        |
| All other accounts      | 59                    | 9.007                        |
| <b>Total</b>            | <b>632</b>            | <b>1,088.962</b>             |

**Source:** Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2002, Analytical Perspectives*, April 2001, Section 21, "FY2001 Government-Wide Rescission, Consolidated Appropriations Act," pp. 339-358.

## FY2003

### Budgetary Context

The budgetary context for FY2003 differed quite markedly in two key respects from the ones in effect for FY2000 and FY2001. First, the statutory limits on discretionary spending expired at the end of FY2002. For the first time in more than a decade, Congress and the President did not have to contend with the threat of a discretionary spending sequester at the end of the session.

Second, the House and Senate were unable to agree on a budget resolution for FY2003. This marked only the second time in the history of the congressional budget process that the House and Senate had failed to agree on a budget resolution. Although the House put a "deeming resolution" into effect as a basis for the enforcement of discretionary spending and other budgetary levels, the Senate took no comparable action.<sup>38</sup>

Differences regarding the appropriate level of discretionary spending for FY2003—the Senate advocated spending about \$9 billion more for discretionary programs than did the House—helped stymie action on most of the regular appropriations acts during the 2002 session. Following the November elections, which signaled that the Republicans would regain control of the Senate in 2003, congressional leaders worked out a plan with the administration to complete the appropriations process for FY2003 early in 2003, at the beginning of the next Congress.<sup>39</sup>

### Legislative Action

Toward the beginning of the first session of the 108<sup>th</sup> Congress, the House and Senate brought the consideration of the regular appropriations acts for FY2003 to a close by incorporating the remaining 11 bills into a single bill, H.J.Res. 2, the Consolidated Appropriations Resolution for FY2003.<sup>40</sup> Two of the regular appropriations acts for that fiscal year were enacted in 2002, during

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<sup>38</sup> House and Senate practices regarding the use of a "deeming resolution" as a substitute for a budget resolution are discussed in CRS Report RL31443, *The "Deeming Resolution": A Budget Enforcement Tool*, by Robert Keith.

<sup>39</sup> BNA, Inc. *Daily Report for Executives*, "Republican Appropriators Begin Work of Paring Down FY2003 Spending Bills," by Adam Wasch, Wed., December 4, 2002.

<sup>40</sup> For more information, see CRS Report RS21433, *FY2003 Consolidated Appropriations Resolution: Reference Guide*, by Robert Keith.

the second session of the 107<sup>th</sup> Congress, just after the start of the fiscal year.<sup>41</sup> In its final form, H.J.Res. 2 provided \$397.4 billion in discretionary budget authority.<sup>42</sup>

The House passed H.J.Res. 2 by voice vote on January 8, 2003. In its House-passed form, H.J.Res. 2 was a continuing resolution for FY2003 providing for the continuation of stop-gap funding through January 31, 2003. It was anticipated, however, that the Senate would use the measure as a vehicle for incorporating the remaining regular appropriations acts. The Senate did so, and passed the measure as amended on January 23 by a vote of 69-29. The House and Senate agreed to the conference report (H.Rept. 108-10) on February 13, by votes of 338-83 and 76-20, respectively. H.J.Res. 2 was presented to President Bush on February 19 and he signed it into law on February 20, as P.L. 108-7 (117 Stat. 11-554).

The act was organized by division, with each division (A through K) corresponding to one of the regular appropriations acts. Further, there were five other divisions (L through P), which involved such matters as additional emergency funding, amendments to the Homeland Security Act of 2002 and the Price-Anderson Act, and the United States-China Economic and Security Review Commission.

In order to offset part of the costs of the act, an across-the-board cut of 0.65% was included in Section 601 of Division N (the Division is referred to as the Miscellaneous Appropriations Act for FY2003). In final form, the cut was expected to yield \$2.647 billion in savings.<sup>43</sup>

The across-the-board cut provision originated on January 15, 2003, during the first day of Senate consideration of H.J.Res. 2. It was included as part of a substitute amendment offered by Appropriations Committee Chairman Stevens and agreed to by unanimous consent.<sup>44</sup> In its initial form, the provision required an across-the-board cut of 1.6%.

The following day, January 16, the Senate adopted Gregg Amendment number 19, providing additional funds to finance innovative State and local programs dealing with education and other matters. Part of the amendment provided a mechanism for increasing the across-the-board cut in Section 601 of Division N by an amount sufficient to offset the additional funds.<sup>45</sup> Senator Ted Kennedy, one of the sponsors of the amendment, indicated that it would increase the across-the-board cut by another 1.3%, resulting in a total across-the-board cut of 2.9%.<sup>46</sup>

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<sup>41</sup> The Department of Defense Appropriations Act for FY2003 (P.L. 107-248) and the Military Construction Appropriation Act for FY2003 (P.L. 107-249) were enacted into law on October 23, 2002.

<sup>42</sup> See the remarks of Representative C.W. Bill Young, the chairman of the House Appropriations Committee, during consideration of H.J.Res. 2 in the *Congressional Record* (daily ed.), vol. 149, no. 27, February 13, 2003, pp. H558-H559.

<sup>43</sup> See the table inserted by Representative C.W. Bill Young, the chairman of the House Appropriations Committee, in the *Congressional Record* (daily ed.), vol. 149, no. 27, February 13, 2003, p. H658. The Senate included an across-the-board cut of nearly 3% in the version of H.J.Res. 2 which it passed on January 23, 2003. According to the table on page H658, the larger cut would have yielded savings of \$11.392 billion.

<sup>44</sup> The text of Stevens Amendment number 1 is set forth in the *Congressional Record* (daily ed.), vol. 149, no. 7, January 15, 2003, pp. S867-S992. The across-the-board spending cut, contained in Section 601 of Division N of the amendment, may be found at page S992.

<sup>45</sup> The text of the amendment may be found in the *Congressional Record* (daily ed.), vol. 149, no. 8, January 16, 2003, p. S1036.

<sup>46</sup> See the remarks of Senator Kennedy in the *Congressional Record* (daily ed.), vol. 149, no. 8, January 16, 2003, pp. S1037-S1037.

The 2.9% cut generated considerable controversy during Senate consideration of the measure. On January 17, Senator Robert Byrd, ranking minority member of the Senate Appropriations Committee, offered an amendment (number 36) to strike it. Chairman Stevens explained that the purpose of the spending cut was to accommodate two unforeseen needs while staying within the overall limit agreed to earlier with President Bush:

The offsets listed in title VI, which Senator Byrd would strike, are offsets that are necessary to achieve basically two things: One is the full funding for the amount that can be spent of the election reform bill in the 7½ to 8 months that are remaining, a bill that is absolutely necessary to be funded and put into place if we are to avoid, or at least try to avoid the problems of the election in the year 2000 ...

Secondly, the tremendous drought disaster areas of the country demand help. We faced a problem of how to deal with that, so we added the monies for drought and disaster to this bill and we offset it by an across-the-board cut in all programs.<sup>47</sup>

Senator Byrd explained that his objection to the across-the-board cut stemmed from his concern about its impact on a wide range of domestic programs and his concern that discretionary spending should not be reduced to offset increases in mandatory spending included in the omnibus appropriations act:

This country is faced with a cut of 2.9 percent, or \$11.4 billion, in domestic spending. This is no technical adjustment. This is a real cut. Nor can it be characterized as capturing the savings from agencies operating under a continuing resolution for 4 months. Don't you believe that. The President's budget for fiscal year 2003 was simply inadequate when it came to critical domestic programs ...

Approximately \$4 billion of the \$11.4 billion across-the-board cut is included in the bill to pay for increased mandatory spending in Medicare, in assistance for needy families, and for drought relief ...

Once we start down this road of paying for increases in mandatory programs by cutting domestic funding, where will it stop?<sup>48</sup>

On February 13, 2003, the House and Senate agreed to the conference report on H.J.Res. 2.<sup>49</sup> During consideration of the conference report, House Members did not address the across-the-board cut. In the Senate, Chairman Stevens indicated that various concessions had been made that allowed the across-the-board cut to be reduced from 2.9% down to 0.65% while retaining increased spending for several crucial items, including aid for agricultural disasters. He further indicated that the 0.65% cut was necessary to keep the cost of the measure within the limit negotiated with President Bush, thereby avoiding a veto:

There is a .65 percent across-the-board cut to all discretionary accounts in this bill to assure that the total remains within the top line that was agreed to by myself, House Chairman Bill Young, and the President. This is [an] arbitrary line, I will admit, but in order to get the bill signed, if we joined them together, it was my judgment we could not risk a final veto from

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<sup>47</sup> See the remarks of Senator Stevens in the *Congressional Record* (daily ed.), vol. 149, no. 9, January 17, 2003, pp. S1108-S1109.

<sup>48</sup> See the remarks of Senator Byrd in the *Congressional Record* (daily ed.), vol. 149, no. 9, January 17, 2003, pp. S1106-S1107.

<sup>49</sup> See H.Rept. 108-10, February 13, 2003, which includes a brief description of the across-the-board cut on page 1504.

the President of the United States after working so hard to put them all through in one package. So we have worked as closely as possible with all concerned to try and make certain that the bills will be in a form the President could sign it.<sup>50</sup>

In the statement made upon signing H.J.Res. 2 into law, President Bush expressed concern about excessive spending in several components of the measure but did not specifically comment on the across-the-board cut.<sup>51</sup>

## **Design and Implementation of the 0.65% Spending Cut**

Section 601(a) imposed the cut on the regular appropriations provided in Divisions A-K, as well as to advance appropriations for FY2003 that were enacted in prior appropriations acts. The text of Section 601 is provided in the **0**.

Section 601(b) provided that the 0.65% cut be applied on a proportionate basis to each account, and to each program, project, and activity within an account.

Finally, Section 601(c) exempted from the reductions the budget authority provided in the act for specified programs in the following amounts:

- \$4.696 billion for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
- \$6.668 billion for the Head Start program;
- \$23.889 billion for the Veterans' Medical Care program; and
- \$3.836 billion for NASA's space shuttle program.

Unlike the across-the-board spending cut provisions for FY2000 and FY2001, Section 601 did not impose a reporting requirement on the OMB director.

On February 21, 2003, OMB issued Bulletin 03-02, *Across-the-Board Rescission in H.J.Res. 2*, providing guidance to agencies on how to comply with the requirement for the 0.65% cut.

Although the OMB director was not required to report to Congress on the implementation of the spending cut, data furnished by OMB indicate that a total of \$2,225 million in discretionary spending was rescinded (see **Table 5**). This included \$21 million for the legislative branch and less than \$0.5 million for the judicial branch. Reductions ranged from \$1 million for the National Endowment for the Humanities and several other agencies to \$395 million for the Department of Health and Human Services.

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<sup>50</sup> See the remarks of Senator Stevens in the *Congressional Record* (daily ed.), vol. 149, no. 27, February 13, 2003, pp. S2428-S2429.

<sup>51</sup> See his statement in the *Weekly Compilation of Presidential Documents*, vol. 39, no. 8, February 20, 2003, pp. 227-228.

**Table 5. FY2003 Rescissions Made Under the 0.65% Cut**

| <b>Category</b>                                | <b>Rescissions<br/>(\$ millions)</b> |
|------------------------------------------------|--------------------------------------|
| Legislative Branch                             | 21                                   |
| Judicial Branch                                | 0                                    |
| Department of Agriculture                      | 100                                  |
| Department of Commerce                         | 33                                   |
| Department of Education                        | 334                                  |
| Department of Energy                           | 150                                  |
| Department of Health and Human Services        | 395                                  |
| Department of Housing and Urban Development    | 234                                  |
| Department of Justice                          | 130                                  |
| Department of Labor                            | 76                                   |
| Department of State                            | 57                                   |
| Department of the Interior                     | 151                                  |
| Department of the Treasury                     | 70                                   |
| Department of Transportation                   | 98                                   |
| Department of Veterans Affairs                 | 19                                   |
| Broadcasting Board of Governors                | 3                                    |
| Corporation for National and Community Service | 5                                    |
| Corporation for Public Broadcasting            | 3                                    |
| Corps of Engineers-Civil Works                 | 30                                   |
| Environmental Protection Agency                | 52                                   |
| Export-Import Bank of the United States        | 4                                    |
| General Services Administration                | 3                                    |
| International Assistance Programs              | 93                                   |
| National Aeronautics and Space Administration  | 75                                   |
| National Science Foundation                    | 35                                   |
| Small Business Administration                  | 4                                    |
| Smithsonian Institution                        | 5                                    |
| Social Security Administration                 | 39                                   |
| All others                                     | 6                                    |
| <b>Total</b>                                   | <b>2,225</b>                         |

**Source:** Table derived from unpublished data furnished by the Office of Management and Budget.

## **FY2004**

### **Budgetary Context**

The budgetary context for FY2004 differed from the context in effect for the preceding year. As was the case for the FY2003, the statutory discretionary spending limits had previously expired; however, unlike FY2003, the House and Senate reached agreement on a budget resolution for the fiscal year.

The conference report on the FY2004 budget resolution was agreed to by the House and Senate on April 11, 2003.<sup>52</sup> The measure assumed a level of discretionary budget authority of about \$785 billion for FY2004, the level requested by the Bush Administration.<sup>53</sup> As the legislative strategy for consideration of the regular appropriations acts for FY2004 developed, congressional leaders reached an agreement with administration officials to modify the allocation of defense and nondefense discretionary spending for the year. By shifting funds between fiscal years, the agreement effectively accommodated roughly \$5 billion dollars in additional nondefense appropriations for FY2004 without raising the overall limit.<sup>54</sup>

In developing the omnibus appropriations act for FY2004, congressional leaders and administration officials agreed to accommodate about \$4.5 billion dollars in additional initiatives and to offset their costs, thereby abiding by the overall limit on discretionary spending agreed to earlier, with \$1.8 billion in rescissions of defense spending and across-the-board cuts in nondefense discretionary spending amounting to about \$2.8 billion.<sup>55</sup> According to a press release of the House Appropriations Committee, some of the additional initiatives included:

... \$350 million for the Millennium Challenge Corporation, \$1 billion for Election Reform, \$1.3 billion for Veteran's Medical Care, \$1.65 billion for priority education programs and \$50 million for security expenses at the national party conventions in Boston and New York City.<sup>56</sup>

### **Legislative Action**

In the waning days of the first session of the 108<sup>th</sup> Congress, the House and Senate had cleared six of the 13 regular appropriations acts for FY2004 and President Bush had signed them into law.<sup>57</sup> Congressional leaders decided to bring action on the remaining seven regular

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<sup>52</sup> See the report to accompany H.Con.Res. 95, H.Rept. 108-71, April 10, 2003.

<sup>53</sup> See "With Budget Completed, Action on Spending Bills Will Take Center Stage," by Joseph J. Schatz, in *CQ Today*, April 24, 2003.

<sup>54</sup> See (1) "Bush Tentatively Backs Adding \$5.2 Billion to Get Spending Process Started," by Andrew Taylor and Joseph J. Schatz, in *CQ Today*, June 10, 2003; and (2) "After Getting Green Light, Appropriators Release 302(b) Allocations," by Cheryl Bolen, in *BNA's Daily Report for Executives*, June 12, 2003.

<sup>55</sup> The Congressional Budget Office estimated that the 0.59% across-the-board spending cut will yield savings for FY2004 of \$2.761 billion in budget authority and \$1.407 billion in outlays.

<sup>56</sup> See the November 25, 2003 press release of the House Appropriations Committee, "Highlights of the FY2004 Consolidated Appropriations," available at <http://appropriations.house.gov>.

<sup>57</sup> The FY2004 regular appropriations acts signed into law were as follows: (1) Legislative Branch, P.L. 108-83 (September 30, 2003); (2) Defense, P.L. 108-87 (September 30, 2003); (3) Homeland Security, P.L. 108-90 (October 1, 2003); (4) Interior, P.L. 108-108 (November 10, 2003); (5) Military Construction, P.L. 108-132 (November 22, 2003); and (6) Energy and Water Development, P.L. 108-137 (December 1, 2003).

appropriations acts for FY2004 to a close by incorporating them into a single bill, H.R. 2673, the Consolidated Appropriations Act for FY2004. The act, which passed the House on July 14, 2003, and the Senate on November 6, initially provided appropriations only for the Department of Agriculture and related agencies. It was expanded at the conference stage to cover the other six regular appropriations acts (see the conference report, H.Rept. 108-401, November 25, 2003).

The House passed the conference report on H.R. 2673 on December 8, 2003 (the last day the chamber was in session), by a vote of 242-176. The Senate considered the conference report the next day, but did not complete action on the matter. Final Senate action was delayed until the following month, after the start of the second session of the 108<sup>th</sup> Congress. The Senate resumed consideration of the conference report on January 20, 2004, and agreed to it on January 22, by a vote of 65-28. President signed the measure into law on January 23 (P.L. 108-199; 118 Stat. 3-457).

The Consolidated Appropriations Act for FY2004 provided \$328 billion in discretionary spending. In addition, \$492 billion in mandatory spending was provided by the act, bringing the total spending in the measure to \$820 billion.<sup>58</sup>

The act was organized into eight divisions, with each of the first seven divisions (A through G) corresponding to one of the unfinished regular appropriations acts. The last division, Division H, pertained to “Miscellaneous Appropriations and Offsets.” As mentioned previously, the costs of some initiatives in the act were offset by requirements for rescissions in both defense and nondefense spending. These requirements were set out in Section 168 of Division H.

## **Design and Implementation of the 0.59% Spending Cut**

Section 168(b) required an across-the-board cut of 0.59% in all FY2004 appropriations, except for funding provided in the Defense and Military Construction Appropriations Acts and supplemental appropriations acts. In addition, the cut applied to advance appropriations for FY2004 provided in prior appropriations acts and certain contract authority. According to an estimate made by the Congressional Budget Office, the 0.59% cut was expected to yield about \$2.8 billion in savings.

Rescissions made under the 0.59% across-the-board cut had to be made proportionately at the account and PPA level (Section 168(c)). Additionally, the OMB director was required to submit a report to the House and Senate Appropriations Committees “specifying the account and amount of each rescission” made pursuant to the requirement for the across-the-board cut (Section 168(d)). The OMB report was due within 30 days after enactment of the Consolidated Appropriations Act.

In addition to the across-the-board cut in nondefense spending required by Section 168(b) of the act, Section 168(a) required that rescissions of \$1.8 billion be made in Defense appropriations, including unobligated balances made available in two prior appropriations acts, P.L. 107-38 (the emergency supplemental appropriations act enacted into law three days after the terrorist attacks of September 11, 2001) and P.L. 107-117 (the Defense Appropriations Act for FY2002). The subsection exempted from this requirement funds for disaster recovery and assistance for New York, Virginia, and Pennsylvania relating to the terrorist attacks provided in P.L. 107-38 (“by the

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<sup>58</sup> House Appropriations Committee, November 25, 2003 press release, *ibid*.

seventh proviso under the heading ‘Emergency Response Fund’”). All rescissions were required to take effect no later than September 30, 2004, the last day of the fiscal year. Section 168(a) was repealed by Section 9003(c) of the Defense Appropriations Act for FY2005, which President Bush signed into law on August 5, 2004, as P.L. 108-287 (118 Stat. 951 et. seq.).

Pursuant to Section 168(a), the director of the Office of Management and Budget, in consultation with the House and Senate Appropriations Committees and the Secretary of Defense, was required to determine the amounts to be rescinded from each affected account; unlike the reductions in nondefense spending, the defense reductions did not have to be made uniformly. Further, the director was required to notify the Appropriations Committees 30 days prior to making the rescissions, indicating which programs, projects, and activities (PPAs) were to have been cut.

The text of Section 168 is provided in the 0.

On January 29, 2004, OMB issued Bulletin 04-02, *Guidance on Implementing Across-the-Board Reductions in the Consolidated Appropriations Act, 2004 (H.R. 2673)*, providing guidance to agencies on how to comply with the requirement for the 0.59% cut.

On March 4, 2004, the OMB director submitted the required report to the House and Senate Appropriations Committees regarding the implementation of the spending cut. The OMB report indicated that a total of \$2,674.691 million in discretionary spending was rescinded (see **Table 6**).<sup>59</sup> The spending reductions in accounts, grouped in the OMB report by appropriations act, ranged from \$2.751 million for the Legislative Branch Appropriations Act to \$821.974 million for the Labor-HHS-Education Appropriations Act.

**Table 6. FY2004 Rescissions Made Under the 0.59% Cut**

| <b>Category</b>                                  | <b>Rescissions<br/>(\$ millions)</b> |
|--------------------------------------------------|--------------------------------------|
| Agriculture and Rural Development Appropriations | 105.032                              |
| Commerce, Justice, State Appropriations          | 210.442                              |
| District of Columbia Appropriations              | 3.208                                |
| Energy and Water Development Appropriations      | 158.414                              |
| Foreign Operations Appropriations                | 35.265                               |
| Homeland Security Appropriations                 | 217.163                              |
| Interior Appropriations                          | 124.032                              |
| Labor-HHS-Education Appropriations               | 821.974                              |
| Legislative Branch Appropriations                | 2.751                                |
| Treasury-Transportation Appropriations           | 418.485                              |

<sup>59</sup> The OMB estimate of total spending reductions is \$87 million less than the CBO estimate, which may be explained largely by the omission of some accounts from the OMB report; for example, the General Accounting Office was the only entity for which cuts were identified under the Legislative Branch Appropriations Act although other legislative entities reported cuts in subsequent budget submissions.

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| Category              | Rescissions<br>(\$ millions) |
|-----------------------|------------------------------|
| VA-HUD Appropriations | 577.926                      |
| <b>Total</b>          | <b>2,674.691</b>             |

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**Source:** Office of Management and Budget, *FY2004 Government-wide Reduction*, Mar. 1, 2004, pp. 1-20, available on the OMB website at <http://www.whitehouse.gov/omb>

## FY2005

### Budgetary Context

The budgetary context for FY2005 was similar in two key respects to the one in effect for FY2003. First, the statutory limits on discretionary spending, which had expired at the end of FY2002, had not been renewed. Congress and the President, therefore, did not have to deal with the possibility of a discretionary spending sequester at the end of the session.

Second, the House and Senate were unable to agree on a budget resolution for the third time in the history of the congressional budget process. A conference report on the FY2005 budget resolution, which recommended total discretionary appropriations for the year of \$821 billion, was filed in the House on May 19 (H.Rept. 108-498). Although the House agreed to the conference report on May 19, the Senate did not consider it.

The House considered the conference report on the FY2005 budget resolution under the terms of a special rule, H.Res. 649 (H.Rept. 108-500, May 19, 2004); the special rule was adopted on May 19 by a vote of 220-204. In anticipation of the possibility that final Senate approval of the budget resolution might be delayed, or might not occur at all, a “deeming resolution” provision was included in Section 2 of H.Res. 649.

By adopting H.Res. 649, the House put into effect the budget policies embodied in the conference report on S.Con.Res. 95 as adopted by the House, as well as the procedures under Title III of the 1974 Congressional Budget Act used to enforce them. Accordingly, in the House regular appropriations acts for FY2005 and other budgetary measures were subject to aggregate spending ceilings and revenue floors, as well as allocations of spending to committees.

For the two months following House action on the deeming resolution provision, the Senate did not consider the conference report on the FY2005 budget resolution nor act on a deeming resolution. During this period, however, Senate action on the regular appropriations acts for FY2005 was subject to a ceiling of \$814 billion on total appropriations for that year included in the prior year’s budget resolution, which remained in effect.

The \$814 billion ceiling for FY2005 presented the Senate with two problems. First, the conference agreement on the FY2005 budget resolution revised the recommended level of appropriations for that fiscal year upward by \$7 billion to a new total of \$821 billion. In order for the Senate to consider regular appropriations acts for FY2005 at a level comparable to House action, the \$7 billion difference would have to be accommodated through a procedure such as designating an equivalent amount of appropriations to be emergency spending, a course of action that was considered less desirable. Second, the \$814 billion ceiling applied to total appropriations only; it did not provide a basis for the enforcement of spending levels during the consideration of

individual acts (unless all 13 of the individual acts were packaged together into a single, omnibus act).

On July 22, 2004, the Senate resolved these problems by adopting the conference report on H.R. 4613, the Defense Appropriations Act for FY2005. President Bush signed the measure into law on August 5, 2004, as P.L. 108-287 (118 Stat. 951 et. seq.). Section 14007 of the act, which took effect upon enactment, established the revised level of \$821 billion as the allocation of new budget authority to the Senate Appropriations Committee for purposes of Section 302(a) of the 1974 act (and repealed the outdated limit of \$814 billion in the prior year's budget resolution).

## **Legislative Action**

In 2004, during the second session of the 108<sup>th</sup> Congress, the House and Senate cleared four of the 13 regular appropriations acts for FY2005 individually and President George W. Bush signed them into law.<sup>60</sup> Congress and the President brought action on the remaining nine regular appropriations acts for FY2005 to a close through the enactment of a single bill, H.R. 4818, the Consolidated Appropriations Act for FY2005. The act, which first passed the House on July 12, 2004, and the Senate on September 21, initially provided appropriations only for Foreign Operations, Export Financing, and Related Programs. It was expanded at the conference stage to cover the other eight regular appropriations acts. The conference report, H.Rept. 108-792, was reported on November 19, 2004.

The House agreed to the conference report on H.R. 4818, by a vote of 344-51, on November 20, 2004. The conference report was considered pursuant to the terms of a special rule, H.Res. 866, that had been reported by the House Rules Committee earlier that day (H.Rept. 108-794).<sup>61</sup> During House consideration of the special rule, it was amended to provide for automatic adoption in the House of a measure (discussed below) providing for enrollment corrections in H.R. 4818. The Senate agreed to the conference report, by a vote of 65-30, later that day.

On December 6, 2004, the House completed action on H.Con.Res. 528, a measure correcting the enrollment of H.R. 4818, thus clearing the bill for the President's approval. Among other things, the enrollment correction measure removed from the bill a controversial provision pertaining to congressional access to income tax returns. The provision, originally found in Division H (Transportation-Treasury Appropriations Act), Title II, Section 222, read as follows:

Sec. 222. Hereafter, notwithstanding any other provision of law governing the disclosure of income tax returns or return information, upon written request of the Chairman of the House or Senate Committee on Appropriations, the Commissioner of the Internal Revenue Service shall allow agents designated by such Chairman access to Internal Revenue Service facilities and any tax returns or return information contained therein.<sup>62</sup>

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<sup>60</sup> The four FY2005 regular appropriations acts signed into law individually earlier in 2004 were (1) Defense, P.L. 108-287 (August 5, 2004); (2) Military Construction, P.L. 108-324 (October 13, 2004); (3) Homeland Security, P.L. 108-334 (October 18, 2004); and (4) District of Columbia, P.L. 108-335 (October 18, 2004).

<sup>61</sup> House consideration of H.Res. 866 is found in the *Congressional Record* (daily ed.), vol. 150, no. 135, November 20, 2004, pp. H10087-H10098.

<sup>62</sup> Section 222, as contained in the conference report on H.R. 4818, is set forth in the *Congressional Record* (daily ed.), vol. 150, no. 134, bk. II, November 19, 2004, p. H10352.

As automatically adopted by the House on November 20, pursuant to Section 3 of H.Res. 866, the enrollment correction measure provided for two changes in H.R. 4818: (1) substituting new language for Division H, Title VI, Section 643, pertaining to debt collection procedures; and (2) changing the across-the-board reduction percentage in Division J, Section 122 from 0.83% to 0.80%. Later that day, the Senate by unanimous consent adopted H.Con.Res. 528 with an amendment (Stevens amendment no. 4076) removing the provision relating to income tax returns, and then returned the measure to the House. Earlier on November 20, the Senate had passed by unanimous consent S.J.Res. 42, a measure declaring that the tax return provision “shall have no force and effect.” Senate action on H.Con.Res. 528, however, superseded its earlier passage of S.J.Res. 42.

President Bush signed the bill into law on December 8, as P.L. 108-447 (118 Stat. 2809 et. seq.).

### **Design and Implementation of the 0.80% Spending Cut**

In order to offset part of the costs of the act in order to keep total discretionary appropriations within the FY2005 limit of \$821 billion, Division J, Section 122, required that FY2005 appropriations (and obligation limitations), with certain exceptions, be cut across the board. (The exceptions pertain to funding provided in the Defense, Homeland Security, and Military Construction Appropriations Acts enacted earlier in the session, as well as any supplemental appropriations for FY2005.) In addition, the cut applied to advance appropriations for FY2005 provided in prior appropriations acts and certain contract authority. Under the enrollment correction measure, the across-the-board reduction percentage was changed from 0.83% to 0.80%. According to estimates made by the Congressional Budget Office, the across-the-board cut was expected to yield savings of about \$3.5 billion in budget authority and \$1.9 billion in outlays for FY2005.

Pursuant to Section 122, rescissions made under the 0.80% across-the-board cut had to be made proportionately at the account and program, project, and activity (PPA) level. Unlike across-the-board cut provisions included in past consolidated appropriations acts, there was no requirement that the director of OMB report to Congress on the implementation of the cuts. OMB Bulletin 05-01, issued on December 16, 2004, provided guidance to agencies on implementing the 0.80% cut, as well as the other spending cuts discussed below.<sup>63</sup> The text of Section 122, as it was modified by H.Con.Res. 528 and enacted into law, is provided in the **0**.

In his statement on the act, Chairman Young indicated that the across-the-board cut in Section 122 and two other provisions in the act were involved in constraining total funding to the capped level:

All additional spending is paid for by an across the board cut of .80% in all non-defense and non-homeland security spending, [a] \$300 million rescission in non-war, non-emergency defense funds, [and] \$283 million from limitations on expenditures from the Crime Victims Fund.<sup>64</sup>

The Consolidated Appropriations Act for FY2005 also included three other provisions requiring across-the-board spending cuts focused on particular divisions of the act. The cuts had to be made

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<sup>63</sup> The bulletin may be found on the OMB website at <http://www.whitehouse.gov/omb/bulletins/fy05/b05-01.pdf>.

<sup>64</sup> See the *Congressional Record*, *ibid.*, p. H10186.

on a proportionate basis and were expected to yield total savings of about \$367 million in budget authority for FY2005.

First, Division B (Commerce-Justice-State-the Judiciary Appropriations Act), Section 640 rescinded 0.54% of discretionary appropriations for FY2005 provided in the act. According to the House Appropriations Committee, savings from the cut were estimated at \$229 million in budget authority.<sup>65</sup>

Second, Division E (Interior Appropriations Act), Section 501 rescinded 0.594% of discretionary appropriations for FY2005 provided in the act, as well as advance appropriations for FY2005 provided in the Interior Appropriations Act for FY2004. The estimated savings from the cut, according to the House Appropriations Committee, were \$120.024 million in budget authority.<sup>66</sup>

Finally, Division F (Labor-HHS-Education Appropriations Act), Section 519 reduced amounts made available under the act for administrative and related expenses for departmental management (except for the Food and Drug Administration and the Indian Health Service) by \$18 million.<sup>67</sup>

On December 16, 2004, OMB issued Bulletin 05-01, *Guidance on Implementing Across-the-Board Reductions in the Consolidated Appropriations Act, 2005 (H.R. 4818)*, providing guidance to agencies on how to comply with the requirement for the government-wide cut of 0.80% in Division J of the act, as well as the departmental cuts in Division E and Division F.

OMB did not publish data on the implementation of the 0.80% across-the-board spending cut.

## **FY2006**

### **Budgetary Context**

The House and Senate considered the FY2006 appropriations acts within the framework of a budget resolution for that year. As was the case for the preceding several years, however, the discretionary spending limits that had lapsed in statute were not renewed.

The conference report on the FY2006 budget resolution was agreed to by the House and Senate on April 28, 2005, by votes of 214-211 and 52-47, respectively.<sup>68</sup> The measure assumed a level of discretionary budget authority of \$843 billion for FY2006 (excluding an additional \$50 billion for

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<sup>65</sup> The *Congressional Record* (daily ed.), vol. 150, no. 134, bk. II, November 19, 2004, sets forth the text of Section 640 on p. H10265 and the pertinent portion of the joint explanatory statement on p. H10476. The estimated savings from Section 640 are set forth in materials inserted by Chairman Young in the *Congressional Record* (daily ed.), vol. 150, no. 135, November 20, 2004, p. H10117.

<sup>66</sup> The *Congressional Record* (daily ed.), vol. 150, no. 134, bk. II, November 19, 2004, sets forth the text of Section 501 on p. H10317 and the pertinent portion of the joint explanatory statement on p. H10609. The estimated savings from Section 501 are set forth in materials inserted by Chairman Young in the *Congressional Record* (daily ed.), vol. 150, no. 135, November 20, 2004, p. H10137.

<sup>67</sup> The *Congressional Record* (daily ed.), vol. 150, no. 134, bk. II, November 19, 2004, sets forth the text of Section 519 on p. H10331 and the pertinent portion of the joint explanatory statement on p. H10700. The required savings are specified in the text of the provision and included in the cost data in materials inserted by Chairman Young in the *Congressional Record* (daily ed.), vol. 150, no. 135, November 20, 2004, p. H10158 (see line code 50240).

<sup>68</sup> See the report to accompany H.Con.Res. 95, H.Rept. 109-62, April 28, 2005.

the war in Iraq and Afghanistan), an amount equivalent to the total level requested by the Bush Administration.<sup>69</sup>

## **Legislative Action**

As indicated previously, at the beginning of the 109<sup>th</sup> Congress, in early 2005, the House and Senate Appropriations Committees realigned their subcommittees. In doing so, they reduced the number of regular appropriations acts from 13 to 11 (the Senate considered a separate regular appropriations act for the District of Columbia, but it was incorporated into another appropriations act later in the legislative process).

In conjunction with this change, the Appropriations Committee chairmen committed to enacting all of the regular appropriations acts for FY2006 separately, thus avoiding the use of an omnibus appropriations act to wrap up action at the end of the session.

Two of the regular appropriations acts for FY2006 (the Interior and Environment Appropriations Act and the Legislative Branch Appropriations Act) were enacted into law on August 2, 2005, well before the start of the fiscal year. Seven more regular appropriations acts were enacted into law in October and November. The final two acts for FY2006, the Defense Appropriations Act (P.L. 109-148) and the Labor-HHS-Education Appropriations Act (P.L. 109-149), were signed into law by President George W. Bush on December 30, thus concluding action on the regular appropriations acts for the session.

Although the House and Senate Appropriations Committees did not use an omnibus appropriations act for FY2006, the Defense Appropriations Act (H.R. 2863) became a vehicle for carrying several major non-defense matters.<sup>70</sup> In addition to providing defense appropriations (in Division A), H.R. 2863, which became P.L. 109-148, included a division (Division B) dealing with supplemental appropriations for relief and reconstruction associated with Hurricanes Katrina and Rita and with pandemic influenza, and another (Division C) containing the Public Readiness and Emergency Preparedness Act. On December 18, the conference report on H.R. 2863 was filed (H.Rept. 109-359). The House agreed to the conference report early in the morning on December 19, by a vote of 308-106, and the Senate agreed to it on December 21, by a vote of 93-0.

One point of controversy pertained to the inclusion of two divisions in H.R. 2863 dealing with the opening of the Arctic National Wildlife Refuge to oil drilling and the distribution of the proceeds. The two divisions, originally Division C (American Energy Independence and Security Act of 2005) and Division D (Distribution of Revenues and Disaster Assistance), were removed from the measure at the enrollment stage pursuant to S.Con.Res. 74. The Senate adopted S.Con.Res. 74 on December 21, by a vote of 48-45, and the House passed it on December 22, without objection.

## **Design and Implementation of the 1.00% Spending Cut**

In addition to providing about \$400 billion for defense activities, P.L. 109-148 provided \$29 billion for hurricane recovery efforts and \$3.8 billion for avian flu preparedness. The 1% across-

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<sup>69</sup> Ibid., p. 31.

<sup>70</sup> The full title of P.L. 109-148 is the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006.

the-board spending cut, required by Section 3801 of the act, was an important component in offsets to these additional amounts, as explained by Representative Jerry Lewis:

The conference report funds the DoD at \$403.5 billion plus a bridge fund of \$50 billion for military operations in Iraq and Afghanistan. The conference report also includes a total of \$29 billion for disaster assistance to hurricane damaged areas as well as \$3.8 billion for avian flu preparedness. The conference report includes no new net spending for hurricane assistance and avian flu. Any additional expenditures are offset by the following: reallocating previously appropriated funds in FEMA's Disaster Relief Fund, rescissions of unobligated balances, and a one percent across-the-board reduction applied to all FY06 discretionary spending with the exception of VA funding.<sup>71</sup>

As indicated in a status report submitted by Representative Jim Nussle, Chairman of the House Budget Committee, early in the following session, total discretionary spending provided in the regular appropriations acts for FY2006 was about \$9.6 billion below the cap of \$843 billion reflected in the budget resolution.<sup>72</sup>

Section 3801(a) required an across an across-the-board cut of 1.00% in all FY2006 discretionary appropriations, except for appropriations for the Department of Veterans Affairs and appropriations designated as emergency requirements under procedures set forth in Section 402 of the FY2006 budget resolution. In addition, the cut applied to advance appropriations for FY2006 provided in prior appropriations acts and certain contract authority.

According to an estimate furnished by the House Appropriations Committee, the 1.00% cut was expected to yield about \$8.5 billion in savings.

Rescissions made under the across-the-board cut had to be made proportionately at the account and program, project, and activity level (Section 3801(b)). Additionally, the OMB director was required to submit a report to the House and Senate Appropriations Committees "specifying the account and amount of each rescission" made pursuant to the requirement for the across-the-board cut (Section 3801(d)). The OMB report was due within 30 days after enactment of P.L. 109-148.

The text of Section 3801 is provided in the 0.

On January 5, 2006, OMB issued Bulletin 06-02, *Guidance on Implementing the Government-wide Across-the-Board Reduction in the Department of Defense Appropriations Act, 2006 (H.R. 2863)*, providing guidance to agencies on how to comply with the requirement for the 1.00% cut.

On February 8, 2006, the OMB director submitted the required report to the House and Senate Appropriations Committees regarding the implementation of the spending cut. The OMB report indicated that a total of \$9,045.988 million in discretionary spending was rescinded (see **Table 7**).<sup>73</sup>

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<sup>71</sup> See the remarks of Representative Lewis in the *Congressional Record* (daily ed.) of December 18, 2005, at p. H12260.

<sup>72</sup> See the remarks of Representative Nussle in the *Congressional Record* (daily ed.) of February 1, 2006, at pp. H129-H132, especially the table at the bottom of p. H130.

<sup>73</sup> Office of Management and Budget, *FY2006 Government-wide Reduction*, Feb. 8, 2006, pp. 1-48, available on the OMB website at <http://www.whitehouse.gov/omb>.

The spending reductions in accounts, grouped in the OMB report by appropriations act, ranged from \$23.4 million for the Legislative Branch Appropriations Act to \$1,703.0 million for the Transportation-Treasury-HUD-Judiciary-D.C. Appropriations Act.

**Table 7. FY2006 Rescissions Made Under the 1.00% Cut**

| <b>Category</b>                                           | <b>Rescissions<br/>(\$ millions)</b> |
|-----------------------------------------------------------|--------------------------------------|
| Agriculture and Rural Development Appropriations          | 188.142                              |
| Defense Appropriations                                    | 3,928.689                            |
| Energy and Water Development Appropriations               | 311.153                              |
| Foreign Operations Appropriations                         | 130.539                              |
| Homeland Security Appropriations                          | 307.123                              |
| Interior and Environment Appropriations                   | 261.438                              |
| Labor-HHS-Education Appropriations                        | 1,429.287                            |
| Legislative Branch Appropriations                         | 23.362                               |
| Military Quality of Life-Veterans Affairs Appropriations  | 125.583                              |
| Science-State-Justice-Commerce Appropriations             | 637.727                              |
| Treasury-Transportation-HUD-Judiciary-D.C. Appropriations | 1,702.956                            |
| <b>Total</b>                                              | <b>9,045.998</b>                     |

**Source:** Office of Management and Budget, *FY2006 Government-wide Reduction*, Feb. 8, 2006, pp. 1-48, available on the OMB website at <http://www.whitehouse.gov/omb>

## Appendix. Text of the Across-the-Board Spending Cut Provisions

### FY2000

#### **Sec. 301 of H.R. 3425, as Cross-Referenced in P.L. 106-113, the Consolidated Appropriations Act for FY2000**

##### **(113 Stat. 1501A-303 and 304)**

Sec. 301. (a) Government-Wide Rescissions.—There is hereby rescinded an amount equal to 0.38 percent of the discretionary budget authority provided (or obligation limit imposed) for FY2000 in this or any other Act for each department, agency, instrumentality or entity of the Federal Government.

(b) Restrictions.—In carrying out the rescissions made by subsection (a),—

(1) no program, project or activity of any department, agency, instrumentality or entity may be reduced by more than 15 percent (with “programs, projects, and activities” as delineated in the appropriations Act or accompanying report for the relevant account, or for accounts and items not included in appropriations Acts, as delineated in the most recently submitted President’s budget),

(2) no reduction shall be taken from any military personnel account, and

(3) the reduction for the Department of Defense and Department of Energy Defense Activities shall be applied proportionately to all Defense accounts.

(c) Report.—The Director of the Office of Management and Budget shall include in the President’s budget submitted for FY2001 a report specifying the reductions made to each account pursuant to this section.

### FY2001

#### **Division A, Section 1403 of H.R. 5666, as Cross-Referenced in P.L. 106-554, the Consolidated Appropriations Act for FY2001**

##### **(114 Stat. 2763A-214)**

Sec. 1403. (a) Government-Wide Rescissions.—There is hereby rescinded an amount equal to 0.22 percent of the discretionary budget authority provided (or obligation limit imposed) for FY2001 in this or any other Act for each department, agency, instrumentality, or entity of the Federal Government, except for those programs, projects, and activities which are specifically exempted elsewhere in this provision: *Provided*, That this exact reduction percentage shall be applied on a pro rata basis only to each program, project, and activity subject to the rescission.

(b) Restrictions.—This reduction shall not be applied to the amounts appropriated in Title I of P.L. 106-259: *Provided*, That this reduction shall not be applied to the amounts appropriated in Division B of P.L. 106-246: *Provided further*, That this reduction shall not be applied to the amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2001, as contained in this act, or in prior Acts.

(c) Report.—The Director of the Office of Management and Budget shall include in the President’s budget submitted for FY2002 a report specifying the reductions made to each account pursuant to this section.

**Notes:** In P.L. 106-259, the Department of Defense Appropriations Act for FY2001, Title I (114 Stat. 656-658) pertained to military personnel accounts. In P.L. 106-246, the Military Construction Appropriations Act for FY2001, Division B (114 Stat. 525-583) pertained to defense and nondefense emergency supplemental appropriations for FY2000.

## **FY2003**

### **Division N, Section 601 of P.L. 108-7, the Consolidated Appropriations Resolution for FY2003**

**(117 Stat. 550-551)**

Sec. 601. (a) Across-the-Board Rescissions.—There is hereby rescinded an amount equal to 0.65 percent of—

- (1) the budget authority provided (or obligation limitation imposed) for FY2003 for any discretionary account in divisions A through K of this joint resolution;
- (2) the budget authority provided in any advance appropriation for FY2003 for any discretionary account in any prior fiscal year appropriations Act; and
- (3) the contract authority provided in FY2003 for any program subject to limitation contained in this joint resolution.

(b) Proportionate Application.—Any rescission made by subsection (a) shall be applied proportionately—

- (1) to each discretionary account and each item of budget authority described in subsection (a); and
- (2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget).

(c) The rescission in subsection (a) shall not apply to budget authority appropriated or otherwise made available by this joint resolution in the following amounts in the following activities or accounts:

- \$4,696,000,000 provided for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) in the Department of Agriculture in division A;
- \$6,667,533,000 provided for the Head Start Act in the Department of Education in division G;
- \$23,889,304,000 provided for medical care in the Department of Veterans Affairs in division K; and
- \$3,836,000,000 provided for the Shuttle program in the National Aeronautics and Space Administration in division K.

## **FY2004**

### **Division H, Section 168 of P.L. 108-199, the Consolidated Appropriations Act for FY2004**

**(118 Stat. 456-457)**

Sec. 168(a). Rescissions.—From unobligated balances of amounts made available in P.L. 107-38, and in P.L. 107-117, and in appropriations Acts for the Department of Defense, \$1,800,000,000 is hereby rescinded: *Provided*, That the Director of the Office of Management and Budget, after consultation with the Committees on Appropriations of the House and Senate and the Secretary of Defense, shall determine the amounts to be rescinded from each account that is to be so reduced: *Provided further*, That the rescissions shall take effect no later than September 30, 2004: *Provided further*, That the Director of the Office of Management and Budget shall notify the Committees on Appropriations of the House and Senate 30 days prior to rescinding such amounts: *Provided further*, That such notification shall include the accounts, programs, projects and activities from which the funds will be rescinded: *Provided further*, That this section shall not apply to any amounts appropriated or otherwise made available by the seventh proviso under the heading “Emergency Response Fund” in P.L. 107-38.

(b) Across-the-Board Rescissions.—There is hereby rescinded an amount equal to 0.59 percent of—

(1) the budget authority provided (or obligation limitation imposed) for FY2004 for any discretionary account in divisions A through H of this act and in any other FY2004 appropriation Act (except any FY2004 supplemental appropriation Act, the Department of Defense Appropriations Act, 2004, or the Military Construction Appropriations Act, 2004);

(2) the budget authority provided in any advance appropriation for FY2004 for any discretionary account in any prior fiscal year appropriation Act; and

(3) the contract authority provided in FY2004 for any program subject to limitation contained in any division or appropriation Act subject to paragraph (1).

(c) Proportionate Application.—Any rescission made by subsection (b) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in such subsection; and

(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President’s budget).

(d) OMB Report.—Within 30 days after the date of the enactment of this section the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report specifying the account and amount of each rescission made pursuant to subsection (b).

## **FY2005**

### **Division J, Section 122 of P.L. 108-447, the Consolidated Appropriations Act for FY2005**

**(118 Stat. 3348)**

Sec. 122 (a) Across-the-Board Rescissions.—There is hereby rescinded an amount equal to 0.80 percent of—

(1) the budget authority provided (or obligation limitation imposed) for FY2005 for any discretionary account in divisions A through J of this Act and in any other FY2005 appropriation Act (except any FY2005 supplemental appropriation Act, the Department of Homeland Security Appropriations Act, 2005, the Department of Defense Appropriations Act, 2005, or the Military Construction Appropriations Act, 2005);

(2) the budget authority provided in any advance appropriation for FY2005 for any discretionary account in any prior fiscal year appropriation Act; and

(3) the contract authority provided in FY2005 for any program subject to limitation contained in any division or appropriation Act subject to paragraph (1).

(b) Proportionate Application.—Any rescission made by subsection (a) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in such subsection; and

(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget).

## **FY2006**

### **Division B, Section 3801 of P.L. 109-148, the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act for FY2006**

**(119 Stat. 2791-2792)**

Sec. 3801 (a) Across-the-Board Rescissions.—There is hereby rescinded an amount equal to 1 percent of—

- (1) the budget authority provided (or obligation limitation imposed) for FY2006 for any discretionary account of this Act and in any other FY2006 appropriation Act;
- (2) the budget authority provided in any advance appropriation for FY2006 for any discretionary account in any prior fiscal year appropriation Act; and
- (3) the contract authority provided in FY2006 for any program subject to limitation contained in any FY2006 appropriation Act.

(b) Proportionate Application.—Any rescission made by subsection (a) shall be applied proportionately—

- (1) to each discretionary account and each item of budget authority described in such subsection; and
- (2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget).

(c) Exceptions.—This section shall not apply—

- (1) to discretionary budget authority that has been designated pursuant to section 402 of H.Con.Res. 95 (109<sup>th</sup> Congress), the concurrent resolution on the budget for FY2006; and
- (2) to discretionary authority appropriated or otherwise made available to the Department of Veterans Affairs.

(d) OMB Report.—Within 30 days after the date of the enactment of this section the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report specifying the account and amount of each rescission made pursuant to this section.

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