



United States Government Accountability Office
Washington, DC 20548

B-324723

July 31, 2013

The Honorable Paul Ryan
Chairman
Committee on the Budget
House of Representatives

Subject: *March 1 Joint Committee Sequestration for Fiscal Year 2013*

Dear Mr. Chairman:

The failure of the Joint Select Committee on Deficit Reduction to propose, and Congress and the President to enact, legislation to reduce the deficit by \$1.2 trillion triggered the sequestration process in section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended. Section 251A required the Office of Management and Budget (OMB) to calculate, and the President to order, a sequestration of discretionary and direct spending on March 1, 2013. BBEDCA also required OMB to submit a report to Congress on that same date. You requested that GAO review several aspects of sequestration including the President's March 1 sequestration order and OMB's March 1 report; agencies' planning and implementation of sequestration and what alternatives were considered; and the effects of sequestration on agency operations and on services to the public. As agreed with your staff, this opinion responds to your request that we review whether the March 1 actions—OMB's calculations, the President's sequestration order, and OMB's report—complied with section 251A of BBEDCA.¹ As explained below, we conclude that OMB's calculations, the March 1 sequestration order, and the March 1 report satisfied the BBEDCA requirements.

BACKGROUND

Sequestration is the cancellation of budgetary resources under a presidential order. GAO, *A Glossary of Terms Used in the Federal Budget Process*,

¹ Forthcoming GAO reports will address the remaining questions and examine how agencies planned for and implemented sequestration. The reports also plan to discuss the effects of sequestration on agency operations and on services for the public.

GAO-05-734SP (Washington, D.C.: Sept. 2005), at 90. It was first established in the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), commonly known as the Gramm-Rudman-Hollings Act. Pub. L. No. 99-177, title II, 99 Stat. 1037 (Dec. 12, 1985). BBEDCA set deficit reduction targets for the federal government and established sequestration to enforce those targets. BBEDCA has been amended many times, including by the Budget Enforcement Act of 1990, the Statutory Pay-As-You-Go Act of 2010, the Budget Control Act of 2011, and the American Taxpayer Relief Act of 2012 (ATRA). This body of law is classified in sections 900 through 907d in title 2 of the U.S. Code.

Budget Control Act of 2011

In August 2011, Congress and the President enacted the Budget Control Act (BCA), amending BBEDCA. Pub. L. No. 112-25, 125 Stat. 240 (Aug. 2, 2011). Among other things, the BCA imposed discretionary spending limits for fiscal years 2012 to 2021 to reduce projected spending by about \$1 trillion. See 2 U.S.C. § 901(c). The law provides that new budget authority may not exceed the discretionary spending limits for a fiscal year. 2 U.S.C. §§ 901, 901a. The BCA established the Joint Select Committee on Deficit Reduction (Joint Committee), which was tasked with proposing legislation to reduce the deficit by at least an additional \$1.2 trillion through fiscal year 2021. *Id.* § 901a.² The Joint Committee had to report its proposal by December 2, 2011, and Congress and the President had to enact legislation by January 15, 2012. Pub. L. No. 112-25, § 401(b)(3)(B)(iv); 2 U.S.C. § 901a.

The Joint Committee failed to report a proposal, and Congress and the President did not enact legislation. This failure triggered the sequestration process in section 251A of BBEDCA. Under section 251A, OMB must calculate, and the President must order, a sequestration of discretionary appropriations and direct spending to achieve a certain amount of deficit reduction for fiscal year 2013.³ OMB refers to this process as the “Joint Committee sequestration for fiscal year 2013.” OMB, *OMB Report to the Congress on the Joint Committee Sequestration for Fiscal*

² See also Pub. L. No. 112-25, § 401 (establishing the Joint Committee).

³ Discretionary appropriations are “budgetary resources (except to fund direct-spending programs) provided in appropriations [a]cts.” 2 U.S.C. § 900(c)(7). Direct spending is “(A) budget authority provided by laws other than appropriations [a]cts; (B) entitlement authority; and (C) the Supplemental Nutrition Assistance Program.” *Id.* § 900(c)(8). Direct spending is also known as “mandatory spending.” *Glossary*, at 66.

Year 2013, at 1 (Mar. 1, 2013) (OMB Report).⁴ It is this Joint Committee sequestration that we address in this opinion.

Joint Committee Sequestration for Fiscal Year 2013

BBEDCA vests in the President the authority to order a sequestration and in OMB the authority to implement sequestration under section 251A of BBEDCA. *Id.* For the Joint Committee sequestration for fiscal year 2013, BBEDCA directed OMB to calculate a sequestration of discretionary and direct spending on March 1, 2013.⁵ *Id.* §§ 901a(7), (8). OMB was directed to calculate the sequestration consistent with sections 251A, 255, and 256 of BBEDCA, which limit or exempt the sequestration of certain budget accounts. For instance, Medicare nonadministrative spending cannot be reduced by more than two percent under a sequestration order. *Id.* § 901a. Many direct spending programs are exempt from sequestration, such as Medicaid state grants and the Supplemental Nutrition Assistance Program (formerly known as the Food Stamp Program). *See id.* § 905(h).

BBEDCA required the President to order the fiscal year 2013 Joint Committee sequestration, consistent with OMB's calculations, on March 1, 2013. *Id.* §§ 901A(7), 908A(8). On that same date, BBEDCA required OMB to submit a report to Congress, which contains "information about the calculations required under this section, . . . a listing of the reductions required for each nonexempt direct spending account, and any other data and explanations that enhance public understanding of this title and actions taken under it." *Id.* § 901a(11).

As agreed with your staff, this opinion addresses the Joint Committee sequestration for fiscal year 2013. Specifically, we verified OMB's March 1 calculations, reviewed the President's March 1 sequestration order, and examined OMB's March 1 report to see if it included the information required by BBEDCA. For the reasons set forth below, we conclude that the fiscal year 2013 Joint Committee sequestration satisfied the BBEDCA requirements.

⁴ Section 251A of BBEDCA provides for automatic, across-the-board cuts of both discretionary and direct spending to achieve \$1.2 trillion of deficit reduction by fiscal year 2021. 2 U.S.C. § 901a. This opinion only addresses the process for fiscal year 2013.

⁵ BCA originally provided that OMB and the President implement the Joint Committee sequestration on January 2, 2013, but the date was postponed to March 1, 2013, in the American Taxpayer Relief Act of 2012 (ATRA). Pub. L. No. 112-240, § 901(c), 126 Stat. 2313, 2370 (Jan. 2, 2013).

ANALYSIS

Under section 251A of BBEDCA, OMB and the President were responsible for implementation of the Joint Committee sequestration. Section 251A required that OMB calculate the sequestration and submit a detailed report to Congress, and that the President order the sequestration.

OMB's March 1 Calculations

Section 251A(3) set out a formula for OMB to use to calculate the amount of deficit reduction for fiscal year 2013:

“(A) start[] with \$1,200,000,000,000;
(B) subtract[] the amount of deficit reduction achieved by the enactment of a joint committee bill, as provided in section 401(b)(3)(B)(i)(II) of the Budget Control Act of 2011;
(C) reduc[e] the difference by 18 percent to account for debt service;
(D) divid[e] the result by 9; and
(E) for fiscal year 2013, reduc[e] the amount calculated under subparagraphs (A) through (D) by \$24,000,000,000.”⁶

Id. § 901a(3). Under subsections A through D, OMB calculated that the reduction for each fiscal year should be \$109.333 billion. OMB Report, at 3. Then, consistent with subsection E, OMB reduced the amount calculated by \$24 billion for fiscal year 2013. *Id.* Therefore, OMB calculated that the amount of deficit reduction for fiscal year 2013 was \$85.333 billion. *Id.*

Next, section 251A(4) of BBEDCA directs OMB to allocate half of the total reduction for fiscal year 2013 to the defense function and half to the nondefense function. The “defense function” means accounts in budget function 050,⁷ while the “nondefense function” means “accounts in all other functions.” 2 U.S.C. § 901a(4). Accordingly, OMB split the \$85.333 billion reduction for fiscal year 2013, and allocated a \$42.667 billion reduction to the defense function and a \$42.667 billion reduction to

⁶ On January 2, 2013, ATRA amended section 251A(3) of BBEDCA and reduced the amount of deficit reduction calculated for fiscal year 2013 by \$24 billion. Pub. L. No. 112-240, § 901(a).

⁷ Budget function 050, or the national defense function, includes the following subfunctions: “Department of Defense-Military,” “atomic energy defense activities,” and “defense-related activities.” OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, pt. 2, § 79, Ex. 79A (Aug. 3, 2012). See also *Glossary*, at 125–26.

the nondefense function. OMB Report, at 3. Then, sections 251A(5) and 251A(6) of BBEDCA instruct OMB to further allocate the reduction between discretionary and direct spending within each function in proportion to their share of total spending within the function. 2 U.S.C. §§ 901a(5), (6).

Finally, sections 251A(7) and 251A(8) of BBEDCA direct OMB to determine the requisite percentage reduction to nonexempt budget accounts in each function. *Id.* §§ 901a(7), (8). In that regard, before making these calculations, OMB had to define the sequestrable base.⁸ Because the federal government was operating under a continuing resolution on March 1, OMB's estimates were based on the annualized level of amounts provided by the Continuing Appropriations Resolution, 2013.⁹ See *id.* § 903(f)(2); OMB Report, at 1. OMB reported that the sequestrable base also included funding provided by the Hurricane Sandy Supplemental appropriations¹⁰ and funding enacted as advance appropriations¹¹ for fiscal year 2013. OMB Report, at 1. Defense unobligated balances,¹² remaining available from previously enacted appropriations, are subject to sequestration under section 255 of BBEDCA. 2 U.S.C. § 905(e). OMB reported that it used the Department of Defense's estimates of these balances. OMB Report, at 1. Finally, OMB reported that its estimates of direct spending are equal to the "current baseline amounts contained in the President's FY 2013 Budget, adjusted for the effects of legislation enacted since the Budget was transmitted." *Id.*, at 2.

⁸ The sequestrable base is the total of nonexempt budget accounts within each function. As agreed with your staff, we do not assess whether OMB properly limited or exempted certain budget accounts from the sequestrable base.

⁹ See Continuing Appropriations Resolution, 2013, Pub. L. No. 112-75, 126 Stat. 1313 (Sept. 28, 2012).

¹⁰ Disaster Relief Appropriations Act, 2013, Pub. L. No. 113-2, 127 Stat. 4 (Jan. 29, 2013).

¹¹ An advance appropriation is "budget authority provided in an appropriation act that becomes available one or more fiscal years after the fiscal year for which the appropriation act was enacted." *Glossary*, at 8. For example, a fiscal year 2012 appropriation could provide that budget authority for a specified activity would not become available until October 1, 2012 (the start of fiscal year 2013), or later.

¹² An unobligated balance is the portion of an appropriation that has not yet been obligated. *Glossary*, at 72. An obligation is a "definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received." *Id.* at 70. Unobligated balances of budget authority for fiscal year 2013 in the nondefense function are exempt from sequestration. 2 U.S.C. § 905(e).

OMB's calculations of the reductions to nonexempt budget accounts and the applicable percentages are as follows:¹³

- **Defense Function Calculation:** According to OMB, discretionary appropriations make up 99.88 percent of the defense function and direct spending makes up 0.12 percent of the defense function. *Id.*, at 4. Accordingly, OMB determined that the \$42.667 billion reduction to the defense function should be allocated as follows: \$42.615 billion to discretionary appropriations and \$0.052 billion to direct spending. *Id.* Finally, OMB determined the percentage reduction to nonexempt budget accounts by dividing these amounts by the sequestrable base for the defense function. *Id.* OMB found that defense discretionary appropriations should be reduced by 7.8 percent and that defense direct spending should be reduced by 7.9 percent. *Id.*
- **Nondefense Function Calculation:** OMB first calculated the reduction to Medicare nonadministrative spending, which is subject to a 2 percent limitation. 2 U.S.C. §§ 901A(8), (9); OMB Report, at 5. OMB computed that Medicare would be reduced by \$11.347 billion. The remaining \$31.320 billion reduction was then required to come from discretionary appropriations and other direct spending in the nondefense function. OMB Report, at 5. OMB calculated that discretionary appropriations make up 82.37 percent of the remaining amounts in the nondefense function and direct spending makes up 17.63 percent. *Id.* Accordingly, OMB determined that the \$31.320 billion remaining reduction to the nondefense function should be divided as follows: \$25.798 billion to discretionary appropriations and \$5.522 billion remaining to direct spending. *Id.* Finally, OMB determined the sequestration percentages by dividing these amounts by the sequestrable base for the nondefense function. OMB found that nondefense discretionary appropriations should be reduced by 5.0 percent and that nondefense direct spending should be reduced by 5.1 percent. *Id.*, at 6.

We verified OMB's calculations under the methods prescribed by section 251A of BBEDCA, and find that OMB satisfied the section 251A requirement when it calculated spending reductions for fiscal year 2013.

¹³ OMB provides further detail on its calculations, including the application of the exemptions and special rules in sections 255 and 256 of BBEDCA, in tables 2 and 3 of its March 1 report. OMB Report, at 4–6. For instance, OMB shows that sequestration of funding for community and migrant health centers, and for Indian health services, was limited to 2 percent. *Id.*, at 6. See 2 U.S.C. § 906(e).

Contents of OMB's March 1 Report

Section 251A(11) of BBEDCA provides that OMB must “submit a report to Congress containing information about the calculations required under this section, . . . a listing of the reductions required for each nonexempt direct spending account, and any other data and explanations that enhance public understanding of this title and actions taken under it” on March 1, 2013. See 2 U.S.C. § 901a(11). OMB submitted a comprehensive report to Congress on that date. See OMB Report. In the report, OMB outlined its assumptions and its process for calculating the reductions for fiscal year 2013. OMB Report, at 1–7. In an Appendix, OMB listed each budget account subject to sequestration, including the amount of sequestrable budget authority, the percentage reduction, and the resulting sequestration amount. *Id.*, at Appendix.

Section 251A(10) of BBEDCA provides that sequestration should be implemented in accordance with section 256(k) of BBEDCA, which in turn provides that sequestration should be applied equally at the program, project, and activity (PPA) level within each budget account. 2 U.S.C. §§ 901a(10), 906(k)(2). According to BBEDCA, PPAs are “delineated in the appropriation Act or accompanying report for the relevant fiscal year covering that account, or for accounts not included in appropriation Acts, as delineated in the most recently submitted President’s budget.” *Id.* § 906(k)(2). Therefore, each budget account must be analyzed separately to determine the component PPAs. BBEDCA does not require OMB to list the reductions for each budget account at the PPA level.¹⁴ We find that OMB’s report to Congress on March 1, 2013, contained all the information required by section 251A(11) of BBEDCA.

Section 251A(11) of BBEDCA also requires OMB to report on the “adjusted discretionary spending limits” for a given fiscal year. *Id.* § 901a(11). In its March 1 report, OMB explained that “the discretionary spending limits have not been revised to include adjustments pursuant to section 251(b)(2) for certain funding included in the [Continuing Resolution] and Hurricane Sandy supplemental because these adjustments cannot be made until OMB issues its Discretionary Final Sequestration

¹⁴ The Sequestration Transparency Act of 2012 (STA), enacted on August 7, 2012, required the President to submit a detailed report to Congress on the then-pending Joint Committee sequestration, including “an identification of each account to be sequestered . . . and resulting reductions at the [PPA] level.” Pub. L. No. 112-155, § 2, 126 Stat. 1210, 1210 (Aug. 7, 2012). In the resulting report, OMB stated that “because of the STA’s reporting deadline of just 30 days, the large number of PPAs across all agencies and budget accounts, and inconsistencies in the way PPAs are defined, additional time is necessary to identify, review, and resolve issues associated with providing information at this level of detail.” OMB, *OMB Report Pursuant to the Sequestration Transparency Act of 2012*, at 9 (Sept. 14, 2012).

Report for FY 2013 on March 27th pursuant to section 901(b) of ATRA.” OMB Report, at 3.¹⁵

President’s March 1 Sequestration Order

Finally, sections 251A(7) and 251A(8) direct the President to order a sequestration on March 1, 2013, of discretionary appropriations and direct spending to achieve the requisite reductions for the fiscal year. 2 U.S.C. §§ 901a(7), (8). BBEDCA does not prescribe the contents of the President’s sequestration order under section 251A. The President issued the following order on March 1, 2013:

“By the authority vested in me as President by the laws of the United States of America, and in accordance with section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (the ‘Act’), 2 U.S.C. 901a, I hereby order that budgetary resources in each non-exempt budget account be reduced by the amount calculated by the Office of Management and Budget in its report to the Congress of March 1, 2013.

“Pursuant to sections 250(c)(6), 251A, and 255(e) of the Act, budgetary resources subject to sequestration shall be new budget

¹⁵ On April 9, 2013, OMB issued its final sequestration report for fiscal year 2013. OMB, *OMB Final Sequestration Report to the President and Congress for Fiscal Year 2013* (Apr. 9, 2013). In its April 9 report, OMB rescinded 0.032 percent from all security programs and 0.200 percent from all nonsecurity programs in accordance with section 3004 of the Consolidated and Further Continuing Appropriations Act, 2013. *Id.*; Pub. L. No. 113-6, div. F, title I, § 3004, 127 Stat. 198, 436 (Mar. 26, 2013). Under BBEDCA, the definition of security programs overlaps, but is not synonymous, with the definition of the defense function.

On April 11, 2013, OMB advised agencies that it would recalculate the sequestration amount for a limited number of accounts, consistent with section 3002 of the Consolidated and Further Continuing Appropriations Act, 2013. OMB Budget Procedures Memorandum No. 937, *Implementing the Sequestration Reductions for Fiscal Year 2013 Funding*, at 3 (April 11, 2013). Section 3002 states that the Joint Committee sequestration shall apply to the amounts provided in the Consolidated and Further Continuing Appropriations Act, 2013, consistent with section 253(f) of BBEDCA. Pub. L. No. 113-6, § 3002. Section 253(f) of BBEDCA provides that when a full-year appropriation for an account is enacted, the reduction should be subtracted from the amount provided by the appropriation, except that the amount to be sequestered should be reduced “by the savings achieved by that appropriation when the enacted amount is less than the baseline for that account.” 2 U.S.C. § 903(f).

authority, unobligated balances of defense function accounts carried over from prior fiscal years, direct spending authority, and obligation limitations.

“All sequestrations shall be made in strict accordance with the requirements of section 251A of the Act and the specifications of the Office of Management and Budget's report of March 1, 2013, prepared pursuant to section 251A(11) of the Act.”

Executive Office of the President, Order of March 1, 2013, *Sequestration Order for Fiscal Year 2013 Pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act, As Amended*, 78 Fed. Reg. 14633 (published Mar. 6, 2013).

The President ordered the sequestration on March 1, 2013, per the statutory requirement in BBEDCA. The sequestration order directed that budgetary resources be reduced consistent with OMB's calculations and section 251A of BBEDCA. Thus, the March 1 sequestration order satisfied the requirements of section 251A of BBEDCA.

CONCLUSION

OMB's calculations, the President's sequestration order, and OMB's report met the requirements of section 251A of BBEDCA. OMB's calculations of the sequestration were accurate, and OMB's report to Congress was submitted on March 1, 2013, the date set by BBEDCA. OMB's report also contained the requisite information. The President's sequestration order was issued on time and was based on OMB's calculations.

If you have any questions, please contact Edda Emmanuelli Perez, Managing Associate General Counsel, at (202) 512-2853.

Sincerely yours,

A handwritten signature in black ink, appearing to read "S. Poling".

Susan A. Poling
General Counsel