



INFORMED BUDGETEER: THE BUDGET CONTROL ACT

BUDGET CONTROL ACT UPDATE

- Since the previous [double issue](#) of the [Budget Bulletin](#) (which examined various scenarios for the Super Committee and how possible fallback sequesters might be implemented), even slightly informed budgeteers now know that the Super Committee came up empty. Therefore, unless Congress and the President change the law between now and January 2, 2013, the Budget Control Act (BCA) requires the Office of Management and Budget (OMB) to conduct a sequester on that date (and every year after through 2021) to achieve the \$1.2 trillion in deficit reduction that the Super Committee did not.
- Five months ago, figuring out how the fallback sequester might work was complicated because there were so many scenarios of how the Super Committee’s actions might affect any potential sequester. And while some of the uncertainty has gone away, some aspects of the looming sequester remain complicated because...they just are. Here are a few examples of why it is still confusing.

For 2013, the BCA Set Up an Especially Baffling Process, With a Different Process for 2014-2021

- With regard to the discretionary side of spending, the BCA would implement the fallback mechanism in 2013 only in an entirely different way than for 2014-2021. For 2013, the fallback mechanism would reduce discretionary budgetary resources for defense and non-defense by [an estimated](#) \$55 billion and \$39 billion, respectively, **regardless of the amount of 2013 appropriations enacted by Congress** (these illustrative amounts are carried forward from the calculations in the previous *Bulletin*; the actual amounts ultimately will depend on OMB’s interpretation of the law).
- For subsequent years, the fallback mechanism was designed to work differently: OMB would have to reduce the discretionary

caps for each category. Then the only discretionary sequester that would potentially occur would be one to enforce those lower cap levels.

- For mandatory spending, the fallback sequester would work the same in 2013 as for 2014-2021 – non-exempt accounts would be reduced on an annual basis by the percentage of OMB’s sequester calculation.
- Given this complicated process, the previous *Budget Bulletin* may have left some confusion regarding the implementation of a sequester of discretionary spending in 2013. [Part 2B](#) of that issue (page 2, 3rd bullet under “Worst-Case Scenario”) included the following example of a sequester:

if...Congress enacts appropriation bills for 2013 that provide \$500 billion for defense accounts, OMB would have to sequester about \$9 billion in defense discretionary budgetary resources to get down to \$491 billion.

- This might have served as a helpful illustration of how OMB would be required to use the sequester enforcement mechanism to ensure that the statutory discretionary cap on defense would not be exceeded, IF the defense cap for 2013 was \$491 billion. But the defense cap is currently \$546 billion, so that example was incomplete for describing how the separate fallback-sequester mechanism might work beyond a simple sequester to enforce the BCA caps. So let’s fully investigate the scenarios.
- First, recall that, because the Super Committee failed, the BCA required [OMB](#) (see p. 158) to automatically replace the initial definition of the security and non-security discretionary caps with a new definition of the categories consisting of defense (budget function 050) and non-defense (all other functions) for every year over the 2013-2021 period (see Table 1 below).

Table 1. BCA Fallback Mechanism Redefines Starting Values for Two Categories (budget authority, in \$ billions)

	2013	2014	2015	2016	2017	2018	2019	2020	2021
Defense (050)	546	556	566	577	590	603	616	630	644
Nondefense (all other)	<u>501</u>	<u>510</u>	<u>520</u>	<u>530</u>	<u>541</u>	<u>553</u>	<u>566</u>	<u>578</u>	<u>590</u>
Total	1,047	1,066	1,086	1,107	1,131	1,156	1,182	1,208	1,234

Note: Under the fallback mechanism, the BCA redefines the components for two categories as defense (though the BCA continues, confusingly, to call the category “security” even though it is limited to only the accounts in budget function 050 rather than the broader swath of activities previously included in the security category) and nondefense (which is appropriations for everything else not in budget function 050).

- So now the caps in 2013 are \$546 billion for the defense category and \$501 billion for the non-defense category.
- These caps will potentially be the point of departure for two sequesters. OMB might have to implement one sequester if Congress provides agencies with enacted appropriations that exceed these amounts (under section 251(a) of the Balanced Budget and Emergency Deficit Control Act – BBEDCA). Regardless of whether that sequester needs to happen or not, OMB will have to implement the fallback sequester (under a different section - section 251A of BBEDCA, as added by the BCA).
- Table 2 outlines what the ultimate appropriation level for these categories might end up looking like under four scenarios, depending on the level of enacted appropriations for 2013 and whether one or two sequesters would be required.
- As Example 2 in Table 2 shows, if Congress enacts exactly the current BCA cap levels for 2013, then the \$94 billion fallback

sequester would result in an eventual total appropriation of \$953 billion.

- But what if Congress were to try to anticipate the sequester and determine for itself where the cuts should occur so that initial appropriations added up to only \$953 billion (see Example 4)? *Unless Congress simultaneously turned off the fallback sequester mechanism*, OMB would still come along and sequester another \$94 billion, thereby reducing eventual 2013 budget authority to \$859 billion.
- In reality, the final level of 2013 new budget authority available after the fallback sequester would be different than the illustrative amounts shown because the total amount of budgetary resources that would be subject to the fallback sequester is unknown.
- Why? Because in addition to the new budget authority Congress appropriates for 2013, unobligated balances in the defense category also would be sequesterable. And it is possible that 2013 appropriations for the war, disasters, and program integrity

Table 2.
Four Examples of the Interaction Between 2013 Appropriations Action
and the Fallback Sequester
 (Budget Authority, \$ billions)

	DEFENSE	NON-DEFENSE	TOTAL
BCA CAP	546	501	1,047
Example 1.			
If Congress Enacts <i>More Than</i> BCA Cap	551	505	1,056
Sequester to Enforce BCA Cap Reduces BA by	-5	-4	-9
Fallback Sequester Still Reduces BA by	-55	-39	-94
Resulting Final 2013 BA*	491	462	953
Example 2.			
If Congress Enacts <i>Same As</i> BCA Cap	546	501	1,047
Sequester to Enforce BCA Cap Reduces BA by	N/A	N/A	
Fallback Sequester Reduces BA by	-55	-39	-94
Resulting Final 2013 BA*	491	462	953
Example 3.			
If Congress Enacts <i>Less Than</i> BCA Cap	536	492	1,028
Sequester to Enforce BCA Cap Reduces BA by	NA	NA	
Fallback Sequester Reduces BA by	-55	-39	-94
Resulting Final 2013 BA*	481	453	934
Example 4.			
If Congress Tries to Anticipate the Fallback Sequester Result	491	462	953
Sequester to Enforce BCA Cap Reduces BA by	N/A	N/A	
Fallback Sequester Still Reduces BA by	-55	-39	-94
Resulting Final 2013 BA*	436	423	859

* The final BA level shown for each example is for ease of illustration purposes only. In real life, the amount of budgetary resources that would be subject to the fallback sequester is unknown since 1) war appropriations and unobligated balances in the defense category would be sequesterable, and 2) it is possible that appropriations for disasters and program integrity initiatives would also be sequesterable, although OMB refuses provide clarity on those points. To the extent and amount those additional budgetary resources are sequesterable, the amount by which the fallback sequester reduces the 2013 enacted level for regular defense and non-defense would be smaller than the illustrative amount shown and the final available BA level would be higher.

initiatives would be subject to sequestration as well (although OMB refuses to provide clarity on that; see below). To the extent those additional budgetary resources are sequesterable, then the amount by which the fallback mechanism reduces the 2013 enacted level for regular defense and non-defense would be smaller than the illustrative amounts shown, and the final available BA level would be higher.

- But the oversimplified example illustrates that, short of legislating a repeal or change to the operation of the fallback sequester, **there is no way for Congress to otherwise game the incidence of the sequesters through timing of enactment of appropriation bills** (as [some](#) have suggested). The fallback sequester mechanism that BCA requires OMB to implement is an even blunter, more ignorant instrument than your average sequester.

The President Proposes to Change the Definition of What Is in the Capped Category... Again?

- Other developments since November are also noteworthy in terms of the possible implementation (or not) of the fallback sequester.
- One development is that the President submitted a 2013 budget requesting \$551 billion for the base defense budget function (so by subtraction, $1047-551 = \$496$ billion is the President's request for non-defense).
- Does this mean that if Congress decides to appropriate every penny of the President's defense request, OMB subsequently will have to sequester \$5 billion from defense to get down to the current defense cap level of \$546 billion, and then take away another \$55 billion from defense to implement the fallback sequester?
- It depends. If all Congress does is enact the amount of defense appropriations that the President requested, then yes, there will be two sequesters: one of \$5 billion and another of \$55 billion.
- But the President's budget also proposed (see pages 159-163 of the [Analytical Perspectives](#) volume of the President's 2013 budget) to restore the 2013 categories of security and non-security to their original definitions under the BCA and to their original amounts.
- Because the President's budget proposed changing in law both the definition and the amount (\$686 billion) of the security category (which would include the Departments of Defense, Homeland Security, and Veterans Affairs, the international affairs budget function 150, the National Nuclear Security Administration, and the intelligence community management account), there would not need to be a sequester to enforce the security cap level **as long as Congress enacted both parts of the President's request** (i.e., the appropriations level and the definition changes to the BCA).
- But what about the fallback sequester? The President's budget ([p. 159](#)) states the following:

To accompany these proposals [to redefine the caps], the 2013 Budget proposes savings across the discretionary, mandatory and revenue categories in an amount that would exceed the Joint Committee's minimum deficit reduction target and advocates enactment of those savings to replace the automatic reductions and restore the caps to the original definitions in Title I of the BCA.

- Basically, the President's budget asks that Congress change the law to turn off the fallback sequester and instead enact other proposals (essentially tax increases) to reduce the deficit. If Congress enacts a new law to implement all of these elements of the President's budget, then there would be no sequesters next January.

OMB Mum(bling) on Exemptions

- But what if there IS a sequester? One of the uncertainties explored in the last [Bulletin](#) is which programs might be exempt and which might be sequesterable? Others have been interested in this too.
- For example, at a Senate Budget Committee hearing on February 14, 2012, Senator Murray asked the Acting OMB Director when Congress could expect OMB to make a determination on the issue of whether appropriations for veterans medical care would be exempt from sequestration or not. The Acting Director would not answer, and instead simply said "Will do," in response to Senator Murray's entreaty of "as soon as you can let us know on that..."
- Curiously, on April 23, 2012, OMB did finally get around to partially answering Senator Murray's question, but indirectly through a [letter](#) sent to the Government Accountability Office. In that letter, OMB's Deputy General Counsel wrote that –

the conclusion we have reached is that all programs administered by the VA [Department of Veterans Affairs], including Veterans' Medical Care, are exempt from sequestration.

- But the letter stops short of saying unequivocally that all budgetary resources of the VA would be exempt, since the last paragraph of the letter leaves administrative expenses of the VA in limbo:

In providing this response we do not address other potential sequester questions..., including the application to VA programs of the "Federal Administrative Expenses" sequester provision at Section 256(h) of [the Balanced Budget and Emergency Deficit Control Act].

- Other questions linger about how the sequester will be implemented. At a hearing of the House Budget Committee (HBC) on April 25, 2012, the OMB Controller would not answer questions about whether other programs would be exempt from a sequester (see box on page 4).
- When asked about whether war appropriations would be subject to sequestration (perhaps because the Congressional Research Service recently released a [report](#) that said that war funding would be part of the sequester), the Controller said that war spending is

one of those activities that warrant further examination, and once those reviews are complete we'd be happy to provide that answer and that conclusion back to the committee.

OMB Refuses to Provide Sequestration Information to the House Budget Committee Chairman

HBC Chairman – So here's my question: will you provide for the record in an electronic format a listing of each budget account [that] is exempt from the sequester including the statutory basis for the exemption...

OMB Controller – What we certainly can commit to is an explanation and a listing of those programs and activities that are explicitly exempt from sequester in the law. . . . [B]ut I want to clarify because I don't want there to be any mistake about what I'm indicating here is that there are certain categories of activities that I think and I believe require further review before determination can be made in terms of whether they're exempt or not. . . . You said something associated with planning to mitigate. And I can't overstate enough, it is so important to understand that planning, while we will do it when necessary and if necessary, is not going to mitigate the impacts of this sequester.

HBC Chairman – No that's right, but we want to know what it is so we can prepare for it.

OMB Controller – Absolutely, but what our position is on the issue of planning for the sequester is that there are certain activities that would need to take place, but some of those activities are premature. . . . And we want to make sure that the primary focus of everyone's efforts is on passing a bill and getting it to the president's desk to avoid the sequester. We don't want to create a scenario in which we're prematurely running a lot of different activities and drills for something that is -- that is eight months in the future.

HBC Chairman – So you're saying you're not going to provide it basically?

OMB Controller – We will provide. . . those programs that are explicit in statute, but I cannot commit to provide you the programs that are required for the review because those reviews have not taken place yet. . . .

HBC Chairman – All right. When can we expect it?

OMB Controller – I don't know that there's a specific time frame here. I mean, again I think our position would be the activity should be rendered moot by a plan that the President can sign to avoid the sequester. But at the appropriate time we will review the activities and we will provide Congress with that information.

HBC Chairman – So we don't even know how it's going to work when it hits, how can we prepare in Congress to replace it if we don't know what's going to happen? I don't understand that.

Source: <http://budget.edgeboss.net/wmedia/budget/2012/hbc2012-0425v.vvx>

- The next day, the HBC Chairman wrote a letter to the Acting OMB Director requesting information about OMB's preparation for implementing the fallback sequester. On May 25, 2012, the Acting Director [responded](#):

Funds designated by Congress for [the war] are subject to sequester. . . . Your letter [also] requests a listing of each budget account [that is] exempt from a sequester. . . . OMB currently does not maintain such a list. If Congress fails to act to avoid the sequester then, at the appropriate time, OMB will work with executive departments and agencies on this classification of programs.

Narrowing of an Emergency Loophole

- Another development since November deals with a partial fix of a loophole created in the BCA. The previous [Bulletin](#) (see Boxes 1A

and 1B) discussed the change in the ability of Senators to raise a point of order against emergency designations of appropriations relating to disasters, wars, and other emergencies before and after enactment of the BCA.

- Because the BCA effectively eliminated a Senate point of order, it became easier to designate appropriations as an emergency to escape the discretionary BCA caps.
- But the [two-month payroll tax holiday extension bill](#) (section 511) enacted in December 2011, partially restored the Senate point of order so that senators can now raise a point of order against an [emergency designation](#) in an appropriation bill (though there still is no point of order a senator can raise against designations on appropriations for disaster spending or for Overseas Contingency Operations, otherwise known as war spending, which [are](#) permitted as increases to the caps under the BCA).