



112 Congress, 1st Session: No. 2A

November 15, 2011

INFORMED BUDGETEER: THE BUDGET CONTROL ACT

Ever since the Budget Control Act (BCA) was enacted on August 2nd, many have attempted to sort through all the provisions of that act and figure out what they might mean for the future, resulting in different takes and inevitable confusion. Now that some time has passed to absorb the complexity of the new law, the Bulletin lays out the key events by date.

2011

August 2

- The President signs the Budget Control Act into law. Right off, Congress now knows the maximum amount of discretionary budget authority (BA) it can appropriate for FY 2012 (\$1.044 trillion) because the BCA sets a BA limit in law (aka statutory caps) for each year from 2012-2021 (see Table 1).
What do these caps mean? In terms of enforcement, they mean that the President's Office of Management and Budget (OMB) has the responsibility for adding up the amounts appropriated for the Department of Defense, Department of Homeland Security, Department of Veterans Affairs, the National Nuclear Security Administration, the intelligence community management account, and all accounts in budget function 150 (International Affairs) and comparing that total to the cap for the security category - \$684 billion for 2012.
If the sum of enacted appropriations for those accounts exceeds \$684 billion, then OMB must implement a sequestration (see previous Budget Bulletin for history) - in other words, an across-the-board reduction - in each account to reduce the amount of total security appropriations to \$684 billion. If, for example, enacted security appropriations totaled \$691 billion, then OMB would reduce each account in the security category by 1.01 percent to eliminate the \$7 billion overage and bring total security appropriations down to \$684 billion. Alternatively, because some spending in the security category may be exempt from sequestration, the universe of spending subject to the reduction may be smaller than the entire \$691 billion appropriated and the percentage reduction would therefore be higher than 1.01 percent (for example, the President

may exempt appropriations for military personnel from the sequester upon notifying Congress of his decision to do that).

- All the other accounts that are not in the security category are in the nonsecurity (this is how the BCA both spells and defines the term) category. If total appropriations in this category exceed the cap of \$360 billion in 2012, then OMB would have to implement a sequester for this category.
The idea behind the separate categories (when such statutory categories previously existed over 1991-2002, people colloquially referred to them as "firewalls") is that spending more than the limit for one category will result in a reduction to accounts only within that category. Spending more than the limit in the nonsecurity category in 2012 or 2013 cannot result in a sequester of accounts in the security category, and vice-versa. For eight years after 2013, the BCA sets only one limit, so any excess appropriation would then result in a sequester of every discretionary account.
What do these caps mean in terms of what will happen to specific programs? The answer is - no one knows. All we know for sure about these initial BCA caps is that, if Congress adheres to them for the entire 10 years, it will appropriate about \$825 billion less than if Congress continued to appropriate for every year the same level of resources (adjusted for inflation) appropriated for 2011 (this assumes that the \$15 billion set aside under the caps over 10 years for program integrity activities will be appropriated for those purposes). (Also see page 2 of this SBC analysis for comparison of the 2012 and 2013 caps to enacted levels for 2011.)
But the foregoing observations deal only with the total caps under BCA. Some have claimed that the initial BCA caps will have specific impacts on subsets of the budget. For example, some argue that the initial caps will cut defense spending by \$350 billion or \$450 billion over the next 10 years. Why might someone make that argument? Of the \$12.1 trillion in discretionary budget authority in CBO's baseline for 2012-2021, about 52 percent of that amount (\$6.1 trillion) is defense spending (budget function 050). If the \$825 billion in total BA reduction called for by the BCA caps is spread proportionally against all programs, about \$425 billion of the reduction would come from defense appropriations.

Table 1: Initial Statutory Limits on Discretionary Appropriations Under the Budget Control Act (budget authority, in \$ billions)

Table with 12 columns: Year (2012-2021) and Total 2012-2021. Rows: Security, Nonsecurity, Total.

a. The BCA defines the security category as discretionary appropriations for the Departments of Defense, Homeland Security, and Veterans Affairs, the National Nuclear Security Administration, the intelligence community management account, and all accounts in budget function 150 (International Affairs).
b. The BCA defines the nonsecurity category as discretionary appropriations for all accounts not included in the security category.
c. The table includes amounts set aside in the statutory limits to be available when Congress appropriates funds for "good government" or program integrity efforts designed to reduce fraud and abuse under the Social Security disability program and federal health care programs, ranging from \$0.9 trillion in 2012 to \$1.8 trillion in 2021.
na = not applicable because currently the BCA does not have separate caps after 2013.

- That answer, however, is hypothetical. There is nothing in the BCA that guarantees that result. For 2012 and 2013, nearly all of defense spending is in the security category, and appropriators can cut other accounts in that category (such as international affairs or homeland security) more heavily in order to spare defense spending from its “share” of a proportional cut. For 2014 and after there is just one total cap, so there are many other programs Congress could consider reducing if it decides not to reduce defense spending by a proportional amount.

Box 1A: Treatment of Emergency Appropriations Before BCA

Note that the statutory discretionary limits set in BCA are for “regular” appropriations and do not reflect any amounts that Congress might enact for what has been called emergency, disaster, or war funding. A quick review of previous experience provides helpful context here.

Prior to 1991, there were no statutory limits on how much Congress could appropriate each year. While there were Congressional limits on Congressional action via so-called 302(a) allocations, there was no procedure for handling emergency appropriations.

The 1990 Budget Enforcement Act (BEA, and its successor legislation that extended it in 1993 and 1997) created statutory caps on “regular” discretionary appropriations for 1991-2002, but also acknowledged that sometimes there would be emergency funding requirements for natural disasters, wars, and other events that were not anticipated when Congress set the initial levels of those caps. For such situations, the BEA created the following procedure: if the Congress designated an item as an emergency requirement and the President separately designated the same item as an emergency requirement, then OMB would increase the statutory caps by the amount of funding for that item, so that the emergency spending would not trigger a sequester.

Since the BEA procedure expired at the end of 2002, the President has had no statutory role in designating appropriations as emergency items because the Executive Branch has not had any statutory enforcement role for discretionary spending (however, the President has attempted to “help” Congress with its own internal bookkeeping by sending up appropriation requests that suggest that Congress could designate certain items as an emergency). Only Congress, through its annual budget resolution, has felt the need to maintain the ability to designate appropriations as emergency items (whether for natural disasters, wars, or responding to terrorism) to get around its own internal discretionary allocations (to the extent there was a budget resolution in place to create such allocations).

- While the Defense Department may be preparing on its own to implement reductions they describe as being in the \$350 billion-

\$450 billion range, those plans predate by several months the enactment of the BCA and seem to be derived relative to the President’s request, the Defense Department’s Future Years Defense Program, or some other base. Ultimately, Congress will make annual decisions about how much to appropriate for every account. Only after Congress has made those decisions for 10 years would we be able to measure how much Congress reduced defense (or any other program) spending compared to the 2011 baseline in order to keep total enacted appropriations from exceeding the initial BCA caps.

September 1

- OMB submits a [report](#) required by the BCA to set the maximum amount by which OMB can adjust the 2012 caps for appropriated amounts that both Congress and the President designate as being for disaster relief under section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act (BBEDCA), as amended. (For a historical reminder about how disaster and other emergency appropriations have been treated in the past, see Boxes 1A and 1B.)
- Appropriations eligible for the disaster designation under the BCA are defined as activities carried out pursuant to a Presidential declaration of a “major disaster” (under the Robert T. Stafford Disaster Relief and Emergency Assistance Act), which means:
 - any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance . . . to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.
- The OMB report on September 1 determined that that maximum amount in 2012 by which the statutory discretionary limits can be adjusted for disaster relief is **\$11.3 billion** (based on the average annual amount appropriated for disaster relief over the 2001-2010 period, not including the two years with the highest and the lowest amounts).
- To date, the President has submitted a [budget amendment](#) requesting \$4.6 billion for the Disaster Relief Fund (at the Federal Emergency Management Agency – FEMA) for 2012, designating that appropriation as being for disaster relief, which, if enacted, would count against the \$11.3 billion in allowable disaster adjustments to the BCA cap for 2012.
- Thus far, appropriation bills that have been reported in or passed by the Senate have included disaster-designated items totaling \$8.6 billion. In the House, all appropriations action that has occurred to date preceded enactment of the BCA; therefore, none of the appropriation bills considered by the House thus far include any items designated as a disaster pursuant to the BCA.
- Savvy budgeteers will note the BCA has an especially interesting departure from the past regarding emergency spending.
- Previously, designating an item as an emergency (regardless of the kind of emergency – disaster, wars, or otherwise) was usually sufficient to spend additional amounts not contemplated by the applicable spending limits, in a kind of one-size-fits-all emergencies approach.

- But the BCA separates the allowable designations for “unexpected” spending needs into three different buckets:

1. As indicated already, the BCA allows the caps to be adjusted specifically for natural disasters (up to the limit that OMB calculates and reports each year, which, for 2012, is \$11.3 billion).
2. The caps can also be adjusted by unlimited amounts for any appropriation that both the President and Congress separately designate as an emergency.
3. Finally, the BCA allows the caps to be adjusted by unlimited amounts for any appropriation that both the President and Congress separately designate for wars (using the “overseas contingency operations-OCO/global war on terrorism” terminology that has evolved over the past 10 years with the wars in Afghanistan and Iraq).

- How might these designations work in practice? An example helps illustrate the possibilities.
- What if the U.S. were to experience a bad earthquake in 2012 that costs \$20 billion to respond to? First, Congress could enact \$11.3 billion in disaster-designated assistance, using up the entire \$11.3 billion disaster adjustment allowed by the BCA. Then Congress and the President could designate another \$8.7 billion as an emergency in order to provide the entire \$20 billion needed, while increasing the caps by the same \$20 billion (\$11.3 billion in disaster adjustment + \$8.7 in emergency adjustment) so that no sequester occurs.
- Alternatively, Congress and the President could designate the entire \$20 billion for earthquake response simply as an emergency, and leave the entire \$11.3 billion in potential disaster adjustment unused.
- For war-related spending, the President has requested \$126 billion for 2012, and Congress appears on the path to providing that amount. But if the U.S. were to suddenly become engaged in increased or new war activity that would cost, say, \$300 billion in 2012, Congress could simply appropriate \$300 billion and the President could also designate that larger amount as OCO-related, and the statutory caps would be increased by a matching amount.
- Alternatively, some of the military service chiefs recently have testified before the House Armed Services Committee that if the security/defense discretionary limit bites too hard for the Department of Defense to fund regular defense activities, then Congress should even use the OCO designation to fund more regular defense activities than could be funded under the statutory limits.
- Either way, **there is no limit to the amount of additional appropriations Congress can enact for any purpose with an OCO or emergency designation**, as long as the President and Congress agree to those designations.

September 7

- The [Chairman of the Senate Budget Committee files](#) budget resolution allocations and levels through 2012 as required by the BCA. Because the Senate failed to attempt a budget resolution for 2012 through the regular process, the BCA deemed that the Senate has an enforceable (10-year) budget resolution for 2012 at the CBO baseline levels from March 2011 (adjusted for legislation enacted since March).

Box 1B: Treatment of Emergency Appropriations in the Senate

Before and After the BCA

Recall from the end of Box 1A that for the 2003-2011 period when statutory caps on discretionary spending did not exist, Congress still allowed an “escape option” to get around its own internal spending limits by designating an item as an emergency.

While designating an item as an emergency meant that it **did not count** for purposes of budget enforcement in the House or Senate, use of such a designation was not necessarily willy-nilly. At least in the Senate, the ability to make emergency-designated items “not count” for Senate budget enforcement was paired with the ability of any Senator to question whether such a designation was deserved and to bring the rest of the Senate’s attention to it by raising a point of order against the emergency designation itself (the House had no comparable point of order).

If a Senator did raise that point of order (as outlined in section 403(e)(1) of S. Con. Res. 13 [111th Congress], the 2010 Budget Resolution), then it took 60 votes to waive it in order to preserve the emergency designation in the measure. If the waiver motion could not attain 60 votes, then the emergency designation would be struck, leaving the rest of the measure still before the Senate.

The Budget Control Act (BCA), however, changed the treatment of emergency disaster appropriations and other emergency appropriations. Under the BCA, Congress can designate up to \$11.3 billion in disaster funding in 2012. In addition, Congress and the President jointly can agree to designate an unlimited amount of funding for emergencies and wars. To the extent any of these specific designations (for disasters, wars, or other emergencies) are included in an appropriation bill, the statutory discretionary cap and the allocation in the Senate for 2012 is automatically adjusted for those amounts.

Unlike 2003-2011, any appropriation in 2012 that is designated for a disaster, war, or emergency now does count in the Senate, but since the statutory caps and Senate allocations are commensurately adjusted, appropriating funds with those designations cannot cause a bill to exceed its allocation (the House allocations are not adjusted since the BCA states that House will continue to use the “does not count” treatment for emergencies).

So the pre-existing Senate rule that allows emergency appropriations to “not count” for budget enforcement has been superseded by the BCA treatment. **As a result, Senators no longer have the right to raise a point of order against a funding item in an appropriation bill that designates the item as a disaster emergency or any other kind of emergency.**

The BCA statutory caps and related adjustment mechanisms only apply to discretionary appropriations, so that only changes how the Senate’s emergency point of order applies to appropriation bills. The Senate’s rule that items designated as an emergency do not count for budget enforcement still does apply to authorizing bills affecting mandatory spending or revenues. And Senators still have the right to raise a point of order challenging an emergency designation in those bills.

Unfortunately, now that any Senator can offer an amendment to an appropriation bill to increase spending and call it a disaster or an emergency without worrying that another Senator might challenge that amendment with the emergency point of order, the **BCA has made the Senate’s tools for preventing members from getting around budget limits weaker instead of stronger.**

- The 302(a) allocation to the Appropriations Committee under this deemed budget resolution matches the statutory cap on appropriations for 2012. This level – initially \$1.044 trillion (including planned adjustments for program integrity initiatives) – is \$25 billion higher than the \$1.019 trillion allocation the House deemed for itself on June 1, so the **House and Senate currently are enforcing different budget resolutions and different 302(a) allocations for appropriations for 2012.** (Since the Senate Budget Chairman filed the initial aggregates and allocations for 2012, he has made several subsequent adjustments to reflect increases for war or disaster appropriations in Senate bills as they come to the floor.)

- Also in September, the Joint Select Committee on Deficit Reduction (aka the Super Committee, created by the BCA to produce legislation that will reduce the deficit over 10 years by at least \$1.2 trillion) begins public meetings.

October 14

- The BCA set this date for each committee in the House and Senate to submit its recommendations to the Super Committee for changes in law that will contribute to the deficit reduction goal.

November 23

- The BCA set this date as the deadline for the Super Committee to vote on legislation that will reduce the deficit. Seven of the 12 members of the Super Committee must vote to report the legislation. Note that while congressional committees often obtain a CBO cost estimate after they have voted to report out legislation, the Super Committee will likely want to have some idea before the vote how close their package comes to meeting their mandate, and CBO Director Elmendorf has suggested to the Committee that it will need to have draft legislation for CBO to begin estimating by early November if CBO is to produce an estimate before November 23.

December 23

- If the Super Committee reports out legislation with at least seven votes, then that would trigger procedures giving expedited and privileged consideration to that legislation in the House and Senate. The BCA sets a deadline of December 23 for a vote on final passage.

January 15

- Like any other bill, if Congress passes a Super Committee bill and sends it to the President, he has 10 days to sign it into law. Since the deadline for Congress to pass a Super Committee bill and send it to the President is December 23, 2011, we will know before January 15 whether it becomes law or not.
- If Congress passes a bill that reduces the deficit by at least \$1.2 trillion and the President signs it into law, then nothing else need occur under the BCA except continued enforcement of the initial statutory caps on discretionary spending.
- But if Congress and the President fail to enact any legislation and accomplish zero towards the \$1.2 trillion target, then the BCA fallback mechanism will apply. The fallback mechanism commences with OMB revising the starting point for the two statutory limits on discretionary spending on January 15, 2012, but then OMB takes no other action for the next 12 months. If a Super Committee bill is enacted that reduces the deficit, but not by the full \$1.2 trillion, then the fallback mechanism would still go into effect.
- Who gets to decide whether the \$1.2 trillion is met and whether the fallback mechanism in the BCA will apply?
- In the part of the [BCA](#) that creates the Super Committee, section 401(b)(5)(D)(ii) states:

The Congressional Budget Office shall provide estimates of the legislation . . . (including estimates of the effect of interest payment on the debt). In addition, the Congressional Budget Office shall provide information on the budgetary effect of the legislation beyond the year 2021. The joint committee may not vote on any version of the report, recommendations, or legislative language unless such estimates are available for consideration by all members of the joint committee at least 48 hours prior to the vote as certified by the Co-Chairs.

BE SURE TO CONTINUE READING IN ISSUE 2B