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Report to the Chairman, Committee on the Budget, House of Representatives

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BUDGET ISSUES

Budget Enforcement Compliance Report

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The Honorable John R. Kasich
Chairman
Committee on the Budget
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we assess compliance by the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO) with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, more commonly known as Gramm-Rudman-Hollings (GRH), as amended. Our assessment covers OMB and CBO reports issued on legislation enacted during the second session of the 104th Congress that ended October 4, 1996.

To assess compliance with GRH, we reviewed OMB and CBO reports issued under the act to determine if they reflected all of the act's requirements. We interviewed OMB and CBO officials to obtain explanations for differences between reports. Background information on the budget enforcement process and the various reports required by the act and details concerning our objective, scope, and methodology are discussed in appendix I.

Overall, we found that CBO and OMB substantially complied with the act. We did find three compliance issues and some implementation issues that represent questionable and inconsistent scoring practices. The compliance issues are discussed briefly below and in more detail in appendix II. The implementation issue regarding the scoring of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR) is discussed briefly below and—along with other, less significant, scoring differences—in appendix III.

Compliance Issues

OMB Issued Late Reports

As discussed in appendix II, GRH sets a specific timetable for issuance of CBO and OMB reports. We found two compliance issues regarding timing.

Because OMB delayed the issuance of its final sequestration report so that it could include estimates of all legislation passed during the second session of the 104th Congress, it did not issue the report within 15 days of the end of the congressional session as required by section 254(a). Since the last pay-as-you-go (PAYGO) legislation passed by the Congress was not sent to the President for signature until after the 15-day deadline, OMB was faced with the choice between a timely report that did not include all legislation and a complete report issued late. Although not consistent with the law, OMB's decision to delay the report so it could be complete does not seem unreasonable to us especially since the Omnibus Consolidated Appropriations Act (OCAA), enacted during the 104th Congress, required that PAYGO balances for 1997 be set at zero—i.e., that no balance be carried over to offset the costs of future legislation.[1] Given this requirement, OMB decided it was important that the final report reflect all PAYGO legislation. Since we believe that the main purpose of the final report should be to determine whether a sequester is necessary based on all legislation enacted during a session of the Congress, it would be appropriate to consider changing the timing of the report.

Second, OMB did not issue most of its appropriation and PAYGO scoring reports within 5 days of enactment as required by law. Our analysis of 101 scorekeeping reports issued by OMB for legislation enacted during the second session of the 104th Congress showed that 72 (71 percent) of them were issued more than 5 days after enactment. Although issuance ranged from 2 to 34 days after enactment, the time averaged 7.5 days and 88 percent were issued within 10 days. This differs from the most recent years in which most of OMB's scoring reports were issued within 5 days. While CBO does not have a specified number of days as its requirement for report issuance, it has averaged about the same number of days as OMB in reporting on enacted legislation.

Matter for Congressional Consideration

The Congress may wish to consider changing the required timing of OMB's final sequestration report to link its issuance to the completion of Presidential action on all legislation passed during a session of the Congress.

[1]GRH as amended by the Budget Enforcement Act (BEA) provides that if in the aggregate PAYGO legislation increases the deficit in the current or budget year, there is a sequester. Section 4001 of the Omnibus Consolidated Appropriations Act (P.L. 104-208) requires that if the balance for fiscal year 1997 is not an increase in the deficit (i.e., if no sequester is required) then the day following the issuance of OMB's final sequestration report, the scorecard balance for fiscal year 1997 be set at zero. OMB reported that, on the day after submission of its final sequestration report, $6.3 billion in savings would be removed from the PAYGO scorecard for fiscal year 1997 and will not be available to offset future legislation.

PAYGO Scorecard Charged for Discretionary Cap Adjustment

In two separate acts (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Contract With America Advancement Act), the Congress authorized the appropriation of additional administrative funds for continuing disability reviews (which are scored against the discretionary caps) with the intention of reducing overall PAYGO outlays. The acts also provided that the discretionary caps be increased by the amount appropriated.

In scoring the Personal Responsibility and Work Opportunity Reconciliation Act, OMB charged to the PAYGO scorecard an amount equal to the discretionary cap adjustment provided for in the law, as if it were direct spending.[2] However, it does not meet the definition of direct spending. There is no provision in either GRH or in the scorekeeping guidelines[3] allowing an increase in the discretionary caps to be offset by recording it as a PAYGO cost. And long-standing practice has been not to do so. OMB correctly scored similar provisions in the Contract With America Advancement Act. By scoring the Personal Responsibility and Work Opportunity Reconciliation Act as it did, OMB ensured that the potential increase in discretionary spending was offset by recording it as a PAYGO cost. We have previously commented[4] on the need to consider when and under what circumstances such breaches of the wall between discretionary and PAYGO categories make sense. Both of these issues are discussed more fully in appendix II.

Matter for Congressional Consideration

To enhance its ability to accommodate shifts in spending priorities, the Congress may wish to consider specifying the circumstances and conditions under which tradeoffs between mandatory and discretionary spending are permitted.

[2]The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 increased the previously-authorized discretionary cap adjustment for Social Security Administration continuing disability reviews. OMB showed this increase as an increase in PAYGO outlays, thus in effect "charging PAYGO" for a change in an appropriation ceiling.

[3]The Statement of Managers contains certain scorekeeping guidelines agreed to by the budget committees, CBO, and OMB. Although section 251(d) of GRH anticipates development of scorekeeping guidelines, these guidelines may not always be consistent with a strict interpretation of the law.

[4]Letter to Chairmen and Ranking Members of House Committees on Government Operations and on the Budget and of Senate Committees on Governmental Affairs and on the Budget on possible changes to BEA (B-247667, May 19, 1993). Also, Budget Process: Evolution and Challenges (GAO/T-AIMD-96-129, July 11, 1996).

Implementation Issues

We also found an implementation issue relating to PAYGO estimates for the Federal Agriculture Improvement and Reform Act of 1996 (FAIR) which, while not an issue of compliance with the act, represents questionable and inconsistent scoring practices. Details of this issue, discussed below, and other, less significant, scoring differences for the Small Business Job Protection Act of 1996 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are provided in appendix III.

The Congress typically has passed 5-year farm bills providing lower crop support levels than would be paid under 1949 permanent agriculture law. The 1990 farm act expired on December 31, 1995, but FAIR was not signed into law until April 4, 1996.

Under longstanding practice, both OMB and CBO have included the most recent act in their baselines.[5] However, rather than scoring FAIR against the most recent legislation for all years, OMB scored against the 1949 act for crop year 1996 and against the 1990 act for all other years in its baseline. Although OMB cited a court case as justification for its scoring of FAIR, our view of that case is that it does not support OMB's position. In contrast to OMB, CBO, which was also aware of the court decision, scored against the 1990 act for all years. If OMB had scored FAIR as CBO did, an offset would have been required to avoid a PAYGO sequester. In its Final Sequestration Report, CBO noted that if it used the starting balances in OMB's preview report and its own estimates of the effects of legislation enacted since then, a sequestration would be required in 1997. According to CBO, this different outcome from OMB's final report is because OMB and CBO differed in their estimates of the PAYGO effects of FAIR.

Other implementation issues related to discretionary spending include differences in OMB and CBO treatment for adjustments to the discretionary caps and scoring estimates for appropriations actions. These are discussed fully in appendix IV.

Matter for Congressional Consideration

The Congress may wish to consider clarifying section 257(b) to explicitly require the most recently expiring provisions of law for programs with current year outlays greater than $50 million be used to construct the baseline.

[5]Section 257(b)(2) requires that, in constructing the baseline, no program with estimated current-year outlays greater than $50 million shall be assumed to expire in the budget year or outyears.

We provided a draft of this report to OMB and CBO officials for their review. OMB officials declined to provide comments. CBO officials agreed with our presentation of their views and the facts as presented. We incorporated their comments where appropriate.

Copies of this report are being provided to the Director of the Office of Management and Budget, the Director of the Congressional Budget Office, the Ranking Minority Member of your Committee, and the Chairmen and Ranking Minority Members of the Senate Budget Committee and the House and Senate Appropriations Committees. Copies will be made available to other interested parties on request.

Please contact me at (202) 512-9142 if you or your staff have any questions. Major contributors to this report are listed in appendix V.

Sincerely yours,

Susan J. Irving

Susan J. Irving
Associate Director, Budget Issues

Contents

Abbreviations

BA	budget authority
BEA	Budget Enforcement Act
CBO	Congressional Budget Office
CDR	Continuing Disability Reviews
DBOF	Defense Business Operations Fund
DOD	Department of Defense
FAIR	Federal Agriculture Improvement and Reform Act of 1996
FEMA	Federal Emergency Management Agency
GNMA	Government National Mortgage Association
GRH	Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings)
HHS	Department of Health and Human Services
OBRA	Omnibus Budget Reconciliation Act of 1990
OBRA 93	Omnibus Budget Reconciliation Act of 1993
OCRA	Omnibus Consolidated Rescissions and Appropriations Act of 1996
OCAA	Omnibus Consolidated Appropriations Act, 1997
OMB	Office of Management and Budget
PAYGO	pay-as-you-go
SSI	Supplemental Security Income
USDA	Department of Agriculture
VA/HUD	Department of Veterans Affairs/Department of Housing and Urban Development
VCRTF	Violent Crime Reduction Trust Fund

Background and Objective, Scope, and Methodology

Background

The Balanced Budget and Emergency Deficit Control Act of 1985 (GRH), as amended by the Budget Enforcement Act of 1990 (BEA) and the Omnibus Budget Reconciliation Act of 1993 (OBRA 93), established statutory limits on federal government spending for fiscal years 1991 through 1998 by creating:

(1) annual adjustable dollar limits (spending caps) on discretionary spending, [1]

(2) a pay-as-you-go (PAYGO)[2] requirement for direct spending[3] and receipts legislation, and

(3) a sequestration[4] procedure to be triggered if (a) aggregate discretionary appropriations enacted for a fiscal year exceeds the fiscal year's discretionary spending caps or (b) aggregate PAYGO legislation is estimated to increase the deficit over the current and budget year.

To track progress against the above requirements and to implement any needed sequestration, GRH requires CBO and OMB to score (estimate) the budgetary effects of each appropriation action and each piece of PAYGO legislation. As soon as practicable after the Congress completes action on any appropriation involving discretionary spending, CBO is required to report to OMB the estimated amount of new budget authority and outlays provided by the legislation. Within 5 calendar days after an appropriation is enacted, OMB must report its estimates for these amounts, using the same economic and technical assumptions underlying the most recent budget submission. It must also include the CBO estimates and explain any differences between the two sets of estimates. OMB and CBO have similar PAYGO scoring requirements for reporting their estimates for any direct spending or receipts legislation.

GRH also requires CBO and OMB to submit a series of three sequestration reports at specified times during each year as shown in table I.1. Each CBO and OMB report must include a discretionary sequestration report which tracks progress against the discretionary spending caps and a PAYGO

[1]Programs or activities funded through the regular appropriations process.

[2]BEA requires that any new legislation that increases direct spending or decreases receipts be deficit neutral (that is, not increase the deficit). Such legislation is often referred to as PAYGO legislation.

[3]Direct spending (commonly referred to as mandatory spending) means entitlement authority, the food stamp program, and any budget authority provided by law other than in appropriation acts.

[4]Sequestration is the revocation or cancellation of budgetary resources.

sequestration report that displays the net deficit decrease or increase for enacted PAYGO legislation. Because OMB's reports are controlling for purposes of sequestration, CBO adjusts its reports to the most recent OMB estimates as a starting point for each of its reports.

Table I.1: Sequestration Reports and Due Dates

	Due date	
Report	**CBO**	**OMB**
Preview report	5 days before President's budget submission	With President's budget submission
Update report	August 15	August 20
Final report	10 days after end of congressional session	15 days after end of congressional session

Annual discretionary spending limits for budget authority and outlays are set forth in GRH. It requires that these limits be adjusted for emergency appropriations, funding for continuing disability reviews,[5] and changes in inflation estimates and concepts and definitions. The spending limits are enforced by sequestration should appropriations exceed the limits.

A separate spending limit for budget authority and outlays was established for the Violent Crime Reduction Trust Fund (VCRTF) by the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322). The VCRTF, which was excluded from the general purpose spending caps, is subject to sequestration if estimated outlays from the fund exceed annual spending limits specified in the Violent Crime Control and Law Enforcement Act.

In addition, if an appropriation for a fiscal year in progress that is enacted between end of session adjournment and July 1 of that fiscal year causes any of the spending limits for the year in progress to be exceeded, CBO and OMB must issue Within-Session Sequestration Reports 10 and 15 days, respectively, after enactment. On the same day as the OMB report, the President must issue an order implementing any sequestrations set forth in the OMB report. This year no Within-Session Sequestration Reports were required.

PAYGO enforcement covers all direct spending and receipts legislation. CBO and OMB maintain a "scorecard" showing the cumulative deficit effect of PAYGO legislation to track progress against the PAYGO requirements. If at the

[5]The Contract With America Advancement Act of 1996 (P.L. 104-121) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) amended GRH to provide for adjusting the discretionary spending limits for appropriations for conducting continuing disability reviews by the Social Security Administration when appropriations exceed certain levels set forth in the legislation.

end of a congressional session, cumulative legislated changes in direct spending and receipts enacted since BEA was enacted in 1990 increase the deficit during the period covered by the current and budget year, a sequester of non-exempt direct spending programs is required to offset the increase. Net savings in either the current or budget year can be used to offset increases in the next year during the period. The Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208) requires that on the day following OMB's final sequestration report for fiscal year 1997, the scorecard balance for fiscal year 1997 be changed to zero if such balance for the fiscal year is not an increase in the deficit.

In their final sequestration reports, both OMB and CBO calculate whether a sequester is necessary. However, the OMB report is the sole basis for determining whether any end-of-session sequestration is required. If OMB determines that sequestration is required, the President must issue an order implementing it. For fiscal year 1997, neither CBO's report, issued October 11, 1996, nor OMB's report, issued November 15, 1996, called for a sequester.[6]

Objective, Scope, and Methodology

The objective of our review was to determine whether the OMB and CBO reports complied with the requirements of GRH as amended by BEA and other legislation. To accomplish this, we reviewed the OMB and CBO Preview, Update, and Final Sequestration reports to determine if they reflected all of the technical requirements specified in GRH, such as (1) estimates of the discretionary spending limits, (2) explanations of any adjustments to the limits, (3) estimates of the amount of net deficit increase or decrease, and (4) in the event of a sequester, the sequestration percentages necessary to achieve the required reduction.

We reviewed legislation dealing with budget enforcement including GRH as amended by BEA, OBRA 93, the Violent Crime Control and Law Enforcement Act of 1994, the Contract With America Advancement Act of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and the Omnibus Consolidated Appropriations Act, 1997 (OCAA). We reviewed the pertinent appropriations acts enacted during the second session of the 104th Congress—the 9 continuing appropriations measures

[6]CBO's final sequestration report stated that if it had used the balances in OMB's March preview report and its own estimates of the effects of legislation enacted since then, it would conclude that the combined 1996 and 1997 deficits had increased by about $2.9 billion and that a sequester would be required in 1997. See PAYGO discussion in appendix II for more detail.

and the 6 regular appropriations enacted for fiscal year 1996[7] and the 13 appropriations enacted for fiscal year 1997.[8] We also examined the OMB and CBO scoring reports for all PAYGO reports on mandatory spending and receipts legislation. We compared each OMB and CBO report and obtained explanations for differences of $500 million or more in estimates for the PAYGO reports. For discretionary spending, we compared and analyzed all OMB and CBO scoring reports and obtained explanations for differences of $100 million or more in budget authority estimates and $400 million or more in outlay estimates for all general purpose items. We also examined and analyzed all OMB and CBO adjustments to the discretionary spending limits for the preview, update, and final sequestration reports. We also examined appropriation scoring reports for patterns in reasons for differences between OMB and CBO, irrespective of the dollar amounts.

During the course of our work, we interviewed OMB and CBO officials. Our work was conducted in Washington, D.C., from July through December 1996.

[7]Five of the regular appropriations for 1996 were combined and enacted as the Omnibus Consolidated Rescissions and Appropriations Act of 1996.

[8]Six of the regular appropriations for 1997 were combined and enacted as the Omnibus Consolidated Appropriations Act, 1997.

Compliance Issues

We found three compliance issues during our review. Two of the issues relate to the late issuance of OMB reports—the final sequestration report and 5-day scoring reports. The third issue relates to charging appropriations actions for continuing disability reviews to the PAYGO scorecard. These issues are discussed below.

OMB Issued Late Reports

GRH sets a specific timetable for issuance of CBO and OMB reports. CBO and OMB sequestration reports are required by law to be issued three times during the calendar year as dictated by a specific event or a specific date—the President's budget submission, specific dates in August, and the end of a congressional session. The law also requires that CBO and OMB issue scoring reports on appropriation and PAYGO legislation at specified times after completion of congressional action and enactment. For 1997, OMB, for reasons explained below, did not issue its final sequestration report within the time established in law. OMB also issued most of its scoring reports on individual pieces of legislation after the time specified in law.

Section 254(g) requires that OMB issue a final sequestration report 15 days after the end of a congressional session (as set forth in section 254(a)) updated to reflect laws enacted through that date. The 104th Congress adjourned sine die on October 4, 1996. OMB's final sequester report was required to be issued on October 19, 1996, based on the congressional adjournment date.

OMB, however, did not issue its report until November 15, 27 days later than required by law. OMB decided not to issue a report until all legislation enacted during the 104th Congress had been sent to and signed by the President. The last piece of legislation sent to the President was the Omnibus Parks and Public Lands Management Act of 1996 (HR 4236). Although the Congress completed action on this bill on October 3, 1996, it was not sent to the President for signature until November 5, 1996. The President signed the bill into law on November 12, 1996.

According to OMB, the final report was delayed to include all legislation. The Omnibus Consolidated Appropriations Act enacted during the 104th Congress required that PAYGO balances for 1997 in next year's preview report be set at zero—i.e., that no balance be carried over to offset the costs of future legislation. Thus, OMB decided it was important that the final report reflect all PAYGO legislation.[1]

The law clearly requires OMB to issue its report after the end of the session. However, because delays in the final processing of legislation could occur again, the Congress should decide whether OMB should issue an incomplete report by the 15th day or issue the report after all legislation passed by that session of the Congress has been acted upon. We believe that the purpose of the final report should be to determine whether a sequester is necessary based on all legislation enacted during a session of the Congress. Therefore, as noted in the letter, we suggest that the Congress consider amending GRH to direct OMB to issue its final report during a given period after Presidential action has been taken on all legislation passed during a session.

With regard to the scoring reports required to be issued by OMB, section 252(d) requires that "Within 5 calendar days after the enactment of any direct spending or receipts legislation enacted after the enactment of this section, OMB shall transmit a report to the House of Representatives and to the Senate containing such CBO estimate of that legislation, an OMB estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through 1998 resulting from that legislation, and an explanation of any difference between the two estimates." Section 251(a)(7) contains a requirement for reporting estimates of budget authority and current year and budget year outlays within 5 days after the enactment of any discretionary appropriation.

Our analysis of 101 scorekeeping reports for both PAYGO and appropriations actions issued by OMB for legislation enacted during the second session of the 104th Congress showed that 72 (71 percent) of the scoring reports were issued more than 5 days after enactment. Report issuance ranged from 2 days to 34 days after enactment and averaged 7.5 days per report. Most reports (88 percent) were issued within 10 days after enactment.

Timing for CBO reports on bills with completed congressional action was similar to that of OMB. Although CBO had a slightly lower average days per

[1]GRH as amended by BEA provides that if in the aggregate all PAYGO legislation increases the deficit in the current or budget year, there is a sequester. Section 4001 of the Omnibus Consolidated Appropriations Act (P.L. 104-208) requires that if the balance for fiscal year 1997 is not an increase in the deficit (i.e., if no sequester is required) then the day following the issuance of OMB's final sequestration report, the scorecard balance for fiscal year 1997 be set at zero. OMB reported that, on the day after submission of its final sequestration report, $6.3 billion in savings would be removed from the PAYGO scorecard for fiscal year 1997 and will not be available to offset future legislation.

report (7.3), only 54 percent of its reports were issued more than 5 days after the Congress completed action on the legislation. However, unlike OMB, CBO does not have a specified number of days as its requirement for report issuance. CBO is required only to issue its reports "as soon as practicable after Congress completes action."

Matter for Congressional Consideration

The Congress may wish to consider changing the required timing of OMB's final sequestration report to link its issuance to the completion of Presidential action on all legislation passed during a session of the Congress.

OMB Charged Discretionary Cap Adjustment to PAYGO Scorecard

In its scoring for the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, OMB in effect "charged PAYGO" for the increase in the discretionary cap adjustment provided for in the act. To understand this action, it is necessary to look at both this act and the earlier Contract with America Advancement Act of 1996 (P.L. 104-121).

Section 103(b) of the Contract with America Advancement Act of 1996 amended section 251(b)(2) of GRH to adjust the discretionary caps upward by specified amounts for appropriations enacted for continuing disability reviews under the heading "Limitation on Administrative Expenses" for the Social Security Administration.[2] In scoring this act, both OMB and CBO increased the discretionary caps and took no action on the PAYGO scorecard. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, passed later in the session, amended the previously passed act to increase by $150 million in 1997 and $100 million in 1998 the allowable amounts of the cap adjustment. This increase in dollar amounts for continuing disability reviews was the sole change to this section of the law.

In its PAYGO scoring report on the Personal Responsibility and Work Opportunity Act of 1996, OMB increased PAYGO outlays by the $250 million newly authorized to be appropriated. Thus, OMB made a PAYGO adjustment based on authorized future appropriations action. This contrasted with its

[2]Administrative expenses are shown on the discretionary scorecard but benefit payments are part of the PAYGO scorecard. Therefore, although continuing disability reviews reduce Supplemental Security Income (SSI) costs, these savings in SSI payments cannot be used to offset the costs of increased continuing disability reviews. We have previously commented on the problem this presents. [See correspondence to Chairmen and Ranking Members of Government Operations and Budget and Governmental Affairs Committees, B-247667, May 19, 1993]. The increase in the caps provided in these 1996 laws was likely intended to deal with this problem and may have been patterned after the cap adjustment for IRS compliance.

earlier scoring of the Contract with America Advancement Act for which it made no adjustment for PAYGO outlays. OMB said that under the Contract with America Advancement Act, the intention was to fund administrative expenses to achieve a certain level of mandatory savings. OMB further said that since the additional discretionary resources provided in the Personal Responsibility and Work Opportunity Reconciliation Act cap adjustment—unlike those provided in the earlier Contract with America Advancement Act—were not necessary to achieve the mandatory savings, it scored the second cap adjustment as a PAYGO cost.

In its final sequester report of October 11, CBO took exception with OMB's adjustment of PAYGO outlays. It pointed out that a cap adjustment does not involve direct spending and should not be included on the PAYGO scorecard. Section 250(c)(8) defines direct spending as budget authority provided by law other than appropriation acts, entitlement authority, and the food stamp program.

OMB's PAYGO scoring of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 cap adjustments for continuing disability reviews is not consistent with the definition of "direct spending" in GRH nor with the long-standing practices followed by OMB and CBO. OMB's scoring of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in effect constrains mandatory spending to pay for an increase in the discretionary caps by holding the PAYGO part of the budget responsible for the discretionary spending increase permitted by the upward cap adjustment. The scoring attempts to ensure that the potential increase in discretionary spending is offset by recording it as a PAYGO cost. We have previously commented[3] on the need to consider when and under what circumstances breaching the wall between discretionary and mandatory categories makes sense. OMB's scoring of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 raises the issue again, and we suggest that the Congress look at this issue.

Matters for Congressional Consideration

To increase its ability to shift spending priorities, the Congress may wish to consider specifying the circumstances and conditions under which tradeoffs between mandatory and discretionary spending are permitted.

[3]Letter to Chairmen and Ranking Members of House Committees on Government Operations and on Budget and of Senate Committees on Governmental Affairs and Budget on possible changes to BEA (B-247667, May 19, 1993). Also Budget Process: Evolution and Challenges (GAO/T-AIMD-96-129, July 11, 1996).

Implementation Issues Relating to Estimates for PAYGO Legislation

Ninety-seven pieces of direct spending and receipts legislation were enacted during the second session of the 104th Congress. In its final sequestration report, OMB estimated that PAYGO legislation decreased the fiscal year 1996 deficit by $1.2 billion and the 1997 deficit by $6.3 billion for a combined total of $7.5 billion for the 2 years.

GRH requires that, in total, direct spending and receipts legislation not increase the deficit in any year through 1998. Net savings enacted for 1 fiscal year may be used to offset net increases in the next year. The PAYGO process requires that OMB maintain a "scorecard" that shows the cumulative deficit impact of such legislation, beginning with the 102nd Congress.[1]

CBO's final sequestration report estimated that PAYGO legislation reduced the deficit for fiscal year 1996 by $1.1 billion and $6.3 billion for fiscal year 1997. Thus, CBO concluded that no PAYGO sequestration would be necessary. However, this conclusion was only made because CBO adopted OMB's PAYGO balances from OMB's August update report as the basis for calculating the current balances. CBO reported that if it had used the balances in OMB's March preview report and its own estimates of the effects of PAYGO legislation enacted since then, it would conclude that the combined 1996 and 1997 deficits had increased by about $2.9 billion and that a sequestration would be required in 1997. CBO attributed these different outcomes to different estimates of the effects of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR). This issue is discussed in detail in the next section of this report.

Table III.1 shows the five laws for which OMB and CBO PAYGO estimates differed by over $100 million. These differences accounted for most of the total estimating differences. Table III.2 contains a list of PAYGO legislation having a deficit impact in either fiscal year 1996 or 1997 that was enacted during the second session of the 104th Congress.

[1]Section 4001 of the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208) requires that on the day following the issuance of OMB's final sequestration report, the scorecard balance for fiscal year 1997 be set at zero if the balance for fiscal year 1997 is not an increase in the deficit. OMB reported that, on the day after submission of its final sequestration report, $6.3 billion in savings would be removed from the PAYGO scorecard for fiscal year 1997 and will not be available to offset future legislation.

Table III.1: Comparison of OMB and CBO Scoring of PAYGO Legislation With a Difference Greater Than $100 Million in Fiscal Years 1996 or 1997

Dollars in millions

	Change in fiscal year baseline deficit	
Act	**1996**	**1997**
Contract with America Advancement Act		
OMB estimate	$ –26	$ –212
CBO estimate	–6	–341
Difference	–20	129
Federal Agriculture Improvement and Reform Act of 1996		
OMB estimate	–1,941	–3,746
CBO estimate	3,175	1,476
Difference	–5,116	–5,222
Small Business Job Protection Act of 1996		
OMB estimate	–255	126
CBO estimate	–92	–579
Difference	–163	705
Health Insurance Portability and Accountability Act of 1996		
OMB estimate	–10	191
CBO estimate	52	–275
Difference	42	466
Personal Responsibility and Work Opportunity Reconciliation Act of 1996		
OMB estimate	–18	–3,932
CBO estimate	[a]	–2,994
Difference	–18	–938

[a]Less than $500,000.

We examined the reasons for the differences between CBO and OMB for the three pieces of PAYGO legislation where the scoring difference exceeded $500 million. A discussion of those analyses follows.

Federal Agriculture Improvement and Reform Act of 1996

OMB and CBO differed by $5.1 billion for 1996 and $5.2 billion for 1997 in their estimates of the deficit impact of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR) (P.L. 104-127).[2] FAIR is a comprehensive law authorizing agriculture programs for fiscal years 1996 through 2002 and includes commodities, credit, conservation, rural

[2]This represents the largest difference in scoring between CBO and OMB since the establishment of PAYGO procedures in BEA.

development, trade, nutrition, research, and market promotion programs. As shown in table III.1, OMB estimated that FAIR would reduce the deficit by $1.9 billion in 1996 and $3.7 billion in 1997. CBO estimated that the act would increase the deficit by $3.2 billion in 1996 and $1.5 billion in 1997. Had OMB scored FAIR as CBO did, an offset would have been required to avoid a PAYGO sequester.

The primary reason for this difference, according to both OMB and CBO, is the use of different baseline assumptions against which to compare FAIR for the 1996 crop year.[3] Based on longstanding practice, both CBO and OMB would have been expected to calculate the impact of FAIR against a baseline that assumed the provisions of the 1990 farm act[4] were in effect—and CBO did so. OMB, however, assumed the provisions of the 1938 and 1949 agriculture acts were in effect for crop year 1996 (affecting fiscal years 1996 and 1997) but that the 1990 act was in effect for crop years 1997 and beyond. OMB's use of two different sets of legislative assumptions in its baseline calculations is unprecedented.

Baseline assumptions are derived from section 257(b)(2) of GRH which requires that, in constructing the baseline, "No program with estimated current-year outlays greater than $50 million shall be assumed to expire in the budget year or outyears." The conference report on OBRA 93 addressed the issue of baseline construction specifically by stating that, "In case of CCC, which reverts to older, very general authority, existing practice is to assume that authority would be used in the same manner as the just expired law."

The Congress has typically passed 5-year farm bills providing lower crop support levels than would be paid under the 1949 permanent agriculture law. The 1990 farm act expired in December 1995, but FAIR was not signed into law until April 4, 1996.

Although section 257(b)(2) conceivably could be interpreted as assuming a reversion, for baseline purposes, to laws which had been superseded by the expired law, a more reasonable interpretation—and one which consistently has been used by both OMB and CBO in all past instances—is to construct the baseline based on the law that is set to expire (or that was most recently in effect if it has already expired). This usual interpretation ensures that scoring of new legislation is compared with what actually

[3]A crop year is the 12-month period beginning at the time of harvest and is identified by the year in which it begins.

[4]Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624).

exists or was most recently in effect. Thus, for purposes of constructing the baseline, had OMB used standard scoring conventions, it would have scored FAIR against the 1990 legislation.

Notwithstanding this longstanding practice, OMB seems to have been of two minds on this issue. In the President's 1997 budget issued March 19, 1996, the current services estimates for 1995-2002 used the 1990 farm act as the basis for estimates of mandatory programs for farmers. However, a footnote to the current services budget noted that at the time the budget was prepared new authority for farm programs—which had expired in December 1995—had not yet been enacted. This footnote stated further that legislation enacted after the release of the 1997 budget would be scored against the permanent law baseline (1938 and 1949 farm bills). When OMB issued its 5-day scoring estimates after the passage of FAIR,[5] it said it scored the commodity provisions against the extension of the 1990 act for all crop years except 1996. According to OMB, because a recent federal court decision prior to the enactment of FAIR affirmed implementation of "permanent law" for commodity programs for the 1996 crop year, the OMB baseline for 1996 was prepared assuming this permanent law. Despite the footnote in the 1997 budget, an OMB official told us that absent this court case OMB would have used the 1990 farm bill as the baseline for all years.

Our review of the court order in that case,[6] along with a transcript of the hearing, does not support OMB's characterization of the Morris v. Glickman decision as having "affirmed USDA implementation of 'permanent law' for its commodity programs with the 1996 crop year." In the Morris v. Glickman case, plaintiff farmers sued to compel the Secretary of Agriculture to establish commodity price support levels under the 1949 act for the 1996 crop year. At the hearing, the court determined that the Secretary was not legally compelled to establish support levels "in advance of the planting season," but rather to establish such levels "as soon as practicable." Although the court stated that the 1949 act was in effect until a new act was signed, the court stated that it was unlikely that the farmers would receive payments under the 1949 act. Accordingly, the court dismissed the case with prejudice.

It appears that, except for the claimed effect of the Morris v. Glickman decision, both OMB and CBO agree on the baseline assumptions for farm

[5]The President signed FAIR on April 4, 1996, and OMB issued its 5-day scoring estimates on April 9.

[6]Morris v. Glickman (DCDC Civ. No. 96-0373, March 21, 1996).

commodity programs—i.e., that commodity credit programs should be scored against the expiring act.

Even if OMB had used the 1990 act as its baseline for fiscal years 1996 and 1997, there would have been sizable scoring differences with CBO due to long-acknowledged differences in technical program assumptions. According to OMB, these assumptions include the number of program participants, amount of cropland in production, and differences in commodity prices. CBO has also reported in the past that OMB's baseline was consistently higher than its projected outlays with the biggest differences in 1992 and 1993 when CBO's projections were $1.9 billion and $1.6 billion lower, respectively, than the administration's.[7]

Matter for Congressional Consideration

The Congress may wish to consider clarifying section 257(b) to explicitly require the most recently expiring provisions of law for programs with current year outlays greater than $50 million to be used to construct the baseline.

Small Business Job Protection Act of 1996

OMB and CBO differed by $163 million for 1996 and $705 million for 1997 in their estimates of the PAYGO impact of the Small Business Job Protection Act of 1996 (P.L. 104-188). The act makes numerous changes in the tax code that reduce revenues while providing relief to small businesses, simplifying pension plans, and extending certain expiring provisions.

CBO estimated that, due to increased revenues, the deficit would decrease by $92 million in 1996 and $579 million in 1997 for a total deficit reduction totaling $671 for the 2 years. OMB estimated that the 1996 deficit would decrease by $255 million due to increased revenues. However, it estimated that decreased revenues would cause the 1997 deficit to increase by $126 million, for a 2-year deficit reduction of $129 million.

The largest revenue increases result from the repeal of the possessions tax credit given to domestic corporations with operations in Puerto Rico and other U.S. possessions (Section 936) and the extension of expired Airport and Airway Trust Fund excise taxes through the end of 1996. CBO, which receives its estimates of changes in tax laws from the Joint Committee on Taxation, estimated that these two provisions would result in higher revenue gains than OMB, which receives its estimates of tax law changes

[7]The Outlook for Farm Commodity Program Spending, Fiscal Years 1992-1997 Congressional Budget Office, June 1992.

from the Treasury Department. These increases were either partially offset or more than offset by extending tax credits such as that for employer-provided educational assistance.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996

OMB and CBO estimates for 1997 differed by $938 million for the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193). This legislation repealed certain welfare entitlements and replaced them with a block grant to states. It also requires welfare recipients to work and places time limits on the receipt of welfare benefits as well as amending a variety of other federal programs.

OMB estimated that this legislation would reduce the deficit by $3.9 billion for fiscal year 1997 while CBO estimated that it would reduce the deficit by $3.0 billion. Despite this large difference for 1997, the total difference for the 7-year period 1996-2002 amounts to only $154 million.

While there were relatively small overall differences between OMB and CBO estimates, larger differences at the program level result from different technical assumptions and different program baselines. OMB and CBO analysts told us that the program level differences were attributable primarily to assumptions about implementation of immigrant provisions of the law. OMB assumed that provisions denying immigrant benefits could be implemented sooner than CBO assumed. In addition, OMB and CBO estimates for receipts relating to the Earned Income Tax Credit differ because OMB uses Treasury estimates and CBO uses Joint Committee on Taxation estimates for receipts.

Of more analytic significance was OMB's adjustment of PAYGO outlay estimates in response to an authorization for appropriations for continuing disability reviews. OMB increased PAYGO outlay estimates by $150 million for 1997 and $100 million in 1998 for amounts authorized as a discretionary cap adjustment for Social Security Administration continuing disability reviews. CBO did not include any PAYGO effects for this item. This is discussed in detail under compliance issues in appendix II.

Total PAYGO Legislation

Table III.2 lists all PAYGO legislation enacted during the second session of the 104th Congress having an impact of more than $500,000 on the deficit in fiscal years 1996 or 1997. Both OMB and CBO estimates are included, along with the difference between the two. Complete lists of PAYGO legislation with deficit impact and without deficit impact are included in OMB's final sequestration report dated November 15, 1996.

Table III.2: PAYGO Legislation Enacted During the Second Session of the 104th Congress That Has a Deficit Impact Greater Than $500,000 in Fiscal Years 1996 or 1997

Dollars in millions

		1996			1997		
P.L. No.	Title	OMB	CBO	Difference	OMB	CBO	Difference
104-96	Smithsonian Institution Sesquicentennial Commemorative Coin Act of 1995	$ 0	$ –3	$ 3	$ 0	$ –3	$ 3
104-104	Telecommunications Act of 1996	0	0	0	4	1	3
104-105	Farm Credit System Reform Act of 1996	–1	–1	0	–1	–1	0
104-106	Defense Authorization Act of 1996	315	395	–80	609	672	–63
104-110	Extension of VA Medical and Housing Programs	–3	–5	2	–1	–1	0
104-117	Tax Relief for Troops in "Operation Joint Endeavor"	38	38	0	45	45	0
104-121	Contract With America Advancement Act	–26	–6	–20	–212	–341	129
104-123	Greens Creek Land Exchange	[a]	0	[a]	–1	0	–1
104-127	Federal Agriculture Improvement and Reform Act of 1996	–1,941	3,175	–5,116	–3,746	1,476	–5,222
104-132	Antiterrorism and Effective Death Penalty Act	–2	–2	0	–2	–3	1
104-134	Omnibus Consolidated Rescissions and Appropriations Act	[b]	0	0	[b]	–4	4
104-164	Defense and Security Assistance Improvements	–72	0	–72	0	0	0
Pvt Law 104- 1	Private Relief for Benchmark Rail Group	1	1	0	0	0	0
104-168	Taxpayer Bill of Rights 2	26	30	–4	16	15	1
104-185	Federal Oil and Gas Royalty Simplification and Fairness Act of 1996	0	0	0	–1	–1	0
104-188	Small Business Job Protection Act of 1996	–255	–92	–163	126	–579	705
104-190	AID Buyout Authority	[b]	0	0	[b]	–1	1
104-191	Health Insurance Portability and Accountability Act of 1996	–10	–52	42	191	–275	466

(continued)

Dollars in millions

		1996			1997		
P.L. No.	Title	OMB	CBO	Difference	OMB	CBO	Difference
104-193	Personal Responsibility and Work Opportunity Reconciliation Act of 1996	–18	[a]	—18	–3,932	–2,994	–938
104-201	National Defense Authorization Act for Fiscal Year 1997	0	0	0	–22	–22	0
104-208	Omnibus Consolidated Appropriation Act	[b]	0	0	[b]	1	–1
104-251	Railroad Unemployment Insurance Amendments Act of 1996	0	0	0	12	12	0
104-264	Federal Aviation Authorization Act of 1996	0	0	0	0	50	–50
104-275	Veterans Benefits Improvements Act of 1996	0	0	0	–34	0	–34
104-286	Central Utah Project Completion Act Amendments	0	0	0	–75	–72	–3
104-294	Economic Espionage Act of 1996	0	0	0	–5	–5	0
104-295	Miscellaneous Trade and Technical Corrections Act of 1996	0	0	0	15	9	6
104-297	Sustainable Fisheries Act	0	0	0	0	–2	2
104-301	The Navajo-Hopi Land Dispute Settlement Act of 1996	0	0	0	0	48	–48
104-304	Accountable Pipeline and Partnership Act of 1996	0	0	0	3	3	0
104-308	Compensation for Patent Owners in Certain Suits Against the United States	0	0	0	4	3	1
104-315	Change in Medicaid Nursing Facility Resident Review Requirements	0	0	0	–10	–8	–2
104-318	Emergency Drought Relief Act	0	0	0	7	7	0
104-324	Coast Guard Authorization Act of 1996	0	0	0	3	3	0
104-329	United States Commemorative Coin Act of 1996	0	0	0	–6	–6	0
	Total Enacted This Session	**–1,948**	**3,484**	**–5,432**	**–7,013**	**–1,973**	**–5,040**

Note: A negative number in the OMB or CBO column represents a reduction in the deficit, whereas a positive number represents an increase in the deficit.

[a]Less than $500,000.

[b]OMB did not score this legislation as PAYGO.

Implementation Issues for Discretionary Spending

In our review of compliance with discretionary spending controls during the second session of the 104th Congress, we identified several instances in which OMB and CBO differed in (a) making adjustments to discretionary spending limits, or caps, and (b) scoring appropriations, that is, estimating the amounts of discretionary new budget authority and outlays for enacted appropriations bills. These two areas are discussed in separate sections below, after a brief introductory section describing (1) the unusual circumstances for appropriations during the year and (2) the overall level of fiscal year 1996 and 1997 discretionary spending in relation to the discretionary spending limits.

1996 Was an Unusual Budget Year

The second session of the 104th Congress was an unusual year for appropriations because the Congress and the President had not reached agreement on 6 of 13 fiscal year 1996 appropriations when the session began in January 1996, 3 months after the start of fiscal year 1996. From January through April 1996, nine different continuing appropriations measures for fiscal year 1996 were enacted to keep nearly one-third of the government operating until final agreement was reached between the Congress and the President on the six remaining fiscal year 1996 appropriations.[1] The fiscal year 1996 appropriation for Foreign Operations was enacted on February 12, 1996, while the remaining five regular appropriations for fiscal year 1996—for Commerce, the District of Columbia, Interior, Labor/HHS/Education, and VA/HUD—were combined into the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (OCRA), enacted on April 26, 1996, almost 7 months after the start of the fiscal year.

In contrast with the fiscal year 1996 appropriations, all fiscal year 1997 appropriations were enacted into law before the start of fiscal year 1997 on October 1, 1996. Seven of the 13 regular appropriations bills—for Agriculture, District of Columbia, Military Construction, Legislative Branch, VA/HUD, Transportation, and Energy/Water—were enacted during August and September. The remaining six bills were combined into the Omnibus Consolidated Appropriations Act, 1997 (OCAA), enacted on September 30.

Discretionary Spending During the Year Was Well Below BEA Spending Caps

Appropriations enacted during the second session were well below the 1996 and 1997 discretionary spending limits—by about $29-$34 billion in budget authority and $12-$14 billion in outlays (see table IV.1). As a result,

[1]Prior to the second session, four continuing resolutions for fiscal year 1996 were enacted.

OMB and CBO differences over discretionary cap adjustments and scoring of appropriations were not of the same consequence as the PAYGO scoring differences discussed in appendix III, since such differences posed no sequester threat for discretionary spending as they did for the PAYGO spending.

Table IV.1: Enacted Appropriations as of November 15, 1996, Under Discretionary Caps[a]

Dollars in millions

	Fiscal Year 1996		Fiscal Year 1997	
	BA[b]	Outlays[b]	BA[b]	Outlays[b]
Discretionary spending limits[c]	$526,663	$552,734	$532,031	$550,991
Total appropriations enacted	492,484	538,209	502,388	538,702
Amount under spending limits	34,179	14,525	29,643	12,289

[a]In addition to the statutory spending limits discussed above, the Congress also sets separate discretionary spending caps in its budget resolutions. These budget resolution caps were lower than the statutory caps for fiscal year 1997. The budget resolution caps were $497.4 billion in budget authority ($35 billion less than the statutory cap for budget authority (BA)) and $538.6 billion in outlays ($12 billion lower than the statutory cap for outlays). Fiscal year 1997 appropriations enacted during the session exceeded the budget resolution discretionary budget authority caps by about $3 billion according to CBO, the scorekeeper for congressional budgeting purposes. Total estimated fiscal year 1997 outlays were below the budget resolution caps by $141 million in the Senate and by $3 billion in the House, the main difference being that the House counted as an offset to fiscal year 1997 outlays $3.1 billion from the Banking and Savings Association Insurance Funds as provided for in OCAA.

[b]OMB estimates.

[c]Includes both General Purpose and Violent Crime Reduction Trust Fund Limits.

OMB and CBO Differed on Adjustments to Discretionary Spending Limits

Section 251(b) of GRH requires that discretionary spending limits be adjusted to account for (a) changes in concepts and definitions, (b) changes in inflation, (c) emergency appropriations, and (d) spending for continuing disability reviews by the Social Security Administration in excess of certain amounts. While both CBO and OMB are required to calculate how much the spending limits should be adjusted, OMB's adjustments control for the purposes of budget enforcement, such as determining whether enacted appropriations fall within the spending limits or whether a sequestration is required to avoid a breach of them. CBO's cap adjustment estimates are advisory. During the year, OMB and CBO made cap adjustments for changes in concepts and definitions, changes in inflation, emergency appropriations, and continuing disability reviews. Overall, based on our calculations, CBO and OMB increased the 1996 spending caps by over $1 billion for these adjustments, while CBO and OMB decreased the 1997 and 1998 caps in making these adjustments by over

$2 billion for 1997 and $7 billion for 1998.[2] OMB's cap adjustments were lower than CBO's for 1996 by less than $100 million for both budget authority and outlays, and OMB's were lower for 1997 by about $200 million in budget authority and $600 million in outlays. On the other hand, OMB's cap adjustments were higher than CBO's for 1998 by about $550 million for both budget authority and outlays. Our analysis of these differences follows.

OMB and CBO Differed on Adjustments for Changes in Concepts and Definitions

Discretionary spending limits are adjusted for changes in accounting and scorekeeping conventions, and budget concepts definitions, including reclassification of spending and programs between the direct and discretionary spending categories. In their March 1996 preview sequestration reports, both OMB and CBO adjusted the 1997 and 1998 spending caps for changes in concepts and definitions. OMB increased the budget authority spending caps for such changes by $117 million and $86 million for 1997 and 1998, respectively, while OMB decreased the outlay spending caps by $1.9 billion and $1.8 billion for 1997 and 1998, respectively. Compared to OMB, CBO's proposed cap adjustments for changes in concepts and definitions would have resulted in lower spending caps: for budget authority by $161 million in 1997 and $33 million in 1998, and for outlays by $437 million in 1997 and $130 million in 1998. These differences were the result of three factors.

First, OMB increased the caps more because it estimated greater savings than CBO from legislative changes made to direct spending programs in appropriations acts (which are "reclassified" and scored as discretionary changes with corresponding changes to the discretionary spending limits), primarily the savings from acreage limitations placed on the wetlands and conservation reserve programs by provisions in the 1996 Agriculture Appropriations Act (P.L. 104-37). For this reason, OMB estimated $73 million and $139 million more budget authority savings than CBO in fiscal years 1997 and 1998, respectively. OMB's related outlay savings were $47 million and $30 million more than CBO's for fiscal year 1997 and 1998, respectively.

Second, the spending limits were reduced to reflect a reclassification of the portion of the Department of Transportation's federal aid to highways account that is not subject to appropriations committee control through obligation limitations. This highway spending was reclassified from

[2]The CBO numbers are based on our estimates of what the spending limits would have been had CBO's cap adjustments not been conformed to OMB's adjustments during the year.

discretionary to mandatory spending beginning in 1997 and the caps were reduced to reflect the discretionary outlays that would have been included in the discretionary spending baseline if the category change had not occurred. OMB reduced the outlay caps by $2.12 billion and $1.86 billion for 1997 and 1998, respectively, to reflect the reclassification of the highway spending. Since CBO projected lower highway outlays, it would have reduced the outlay caps by $2.18 billion and $1.99 billion for 1997 and 1998, or $62 million in 1997 and $126 million in 1998 more than OMB actually reduced the outlay caps for the reclassified highway spending.

Third, apparent cap adjustment differences between OMB and CBO in budget authority of $88 million in 1997 and $-106 million in 1998 and in outlays of $328 million in 1997 and $-26 million in 1998 were due to a sign error (transposition of (+/-) signs to a set of budget figures in a list of reclassified programs) by CBO that was corrected in its August 1996 update report.

CBO and OMB Differed in Adjusting 1998 Discretionary Spending Limits for Changes in Inflation

Discretionary spending limits are adjusted to reflect changes in prior inflation estimates. This year both CBO and OMB revised downward prior inflation estimates for 1997 and 1998 reflected in the President's 1996 Budget. Thus both CBO and OMB called for reducing the discretionary spending caps—by the same amount for 1997 and by different amounts for 1998—to reflect the lower inflation forecasts.[3] Since CBO projected a 0.1 percent lower rate of inflation for 1998 than OMB, CBO would have reduced the 1998 caps by $520 million more in budget authority and by $312 million more in outlays than OMB actually did.

CBO's and OMB's updated inflation estimates were reflected in their March 1996 preview reports. For 1997, since CBO and OMB each projected the same 1997 inflation rate of 2.7 percent, down about 0.5 percent from the prior inflation estimate for 1997 of 3.2 percent, both agencies called for reducing the 1997 caps by the same amount: $4.7 billion in budget authority and $2.8 billion in outlays.

For 1998 inflation, CBO projected a rate of 2.6 percent, while OMB projected 2.7 percent, different rates, but both down from the prior estimate of about

[3]This year CBO and OMB each began using a new chain-weighted methodology for computing their respective inflation estimates. Because of this shift in method, the prior inflation forecast contained in the economic assumptions for the President's 1996 Budget had to be restated on a chain-weighted basis. Then, the difference between the restated 1996 budget inflation estimates and each agency's comparable 1997 inflation estimates were compared to produce CBO's proposed inflation adjustment and OMB's actual inflation adjustment to the discretionary caps.

3.2 percent. Due to this difference over the projected 1998 inflation rate, the CBO and OMB preview reports had differing estimates of how much the 1998 caps needed to be adjusted. OMB reduced the 1998 caps by $7.3 billion in budget authority and $5.6 billion in outlays to reflect its updated, lower 1998 inflation estimate. CBO would have reduced the 1998 discretionary spending caps by $7.8 billion in budget authority and $5.9 billion in outlays to reflect its revised inflation estimate. The 0.1 percent inflation estimate difference resulted in a cap adjustment difference of $520 million in budget authority and $312 million in outlays.

CBO and OMB Differed in Scoring and Adjusting Discretionary Spending Limits for Emergency Spending and Rescissions

Discretionary spending caps are adjusted to reflect emergency appropriations. There are two types of emergency appropriations: (1) emergency appropriations so designated in statute and (2) contingent emergency appropriations designated in statute as emergencies contingent upon later action by the President officially designating them as emergency requirements.

The amount of emergency cap adjustments by CBO and OMB differ for two reasons. First, CBO and OMB can and always do differ in when they score the contingent emergency appropriations for purposes of cap adjustments. Second, CBO and OMB can differ in how they score the budget authority and outlays for an emergency appropriation. For example, the two agencies can have different estimates of the rate at which the emergency funds appropriated will be obligated and then outlayed.

The first reason cap adjustments for emergencies differ is that OMB and CBO can and always do differ in when they score contingent emergency appropriations. CBO scores and adjusts the spending caps for contingent emergencies when they are enacted into law because the Congress does not need to take any further action to make them available. OMB, however, does not adjust the caps for contingent emergencies until the President designates (releases) them as emergency requirements. This means that between enactment and Presidential release of funds, there is usually a difference in cap adjustment for contingent emergencies between CBO and OMB. For example, CBO's update sequestration report issued in August 1996 included a budget authority cap adjustment of $87 million for 1996 for the amounts of unreleased contingent emergencies included in OCRA. OMB did not make this adjustment. CBO in its final sequestration report then made an adjustment to its estimates of the caps for 1996 to reconcile the $87 million budget authority difference with OMB's update report.

The different rules used by CBO and OMB for scoring contingent emergency appropriations led to OMB's 1997 budget authority cap adjustment being $364 million lower than CBO's in its final sequestration report. In its October 11, 1996, Final Report, CBO estimated that $1.9 billion in 1997 budget authority for emergencies had been enacted since OMB's August Update Report, which included $1.3 billion in regular emergency appropriations and $566 million for contingent emergencies. It adjusted the cap upward by the total amount. OMB, in its final report, adjusted the cap upward for the $1.3 billion for regular emergencies and $202 million of the $566 million of contingent emergency appropriations that were released by the President on November 12, 1996. OMB did not adjust the cap for the remaining $364 million of 1997 unreleased contingent emergency funds, leading to the $364 million 1997 budget authority cap adjustment difference with CBO.

The second reason cap adjustments for emergencies differ is that OMB and CBO can differ in how they score budget authority or outlays from an emergency appropriation. The August 1996 OMB and CBO update reports reflected such a difference in the scoring of outlays. Due to different outlay timing estimates, OMB called for smaller emergency cap adjustments than CBO for 1996 and 1997 outlays, by $84 million and $746 million respectively, but OMB called for a $147 million higher cap than CBO for 1998 outlays. These emergency outlay differences between OMB and CBO were due primarily to the scoring of outlays from two emergency items included in OCRA enacted on April 26, 1996: (1) an $820 million Defense emergency supplemental appropriation and (2) a $1.0 billion rescission from the unobligated balance in the Federal Emergency Management Agency (FEMA) disaster relief fund.

OMB estimated that the $820 million supplemental for Department of Defense (DOD) military personnel and operations and maintenance activities would result in outlays of $335 million more than CBO for 1996 and over $245 million less for 1997. CBO estimated that about $336 million (41 percent) of the DOD emergency supplemental would be outlayed in the remaining 5-plus months of fiscal year 1996, and another $394 million (48 percent) in 1997. In contrast, OMB projected that DOD would spend about $670 million (82 percent) of the supplemental funds during the remainder of fiscal year 1996. It based its faster outlay spendout estimate on knowledge that DOD anticipated the increased funding and was ready to spend it.

The other major scoring difference in OCRA involved how fast savings would be produced as a result of the $1 billion rescission from the unobligated balance in FEMA's disaster relief fund. CBO estimated that outlay savings from the rescission would not begin until 1998 based on a "first-in first-out" method of calculating outlay savings. The "first-in first-out" method assumes that outlays are made from the oldest budget authority first, and that savings would occur later. Using this method, CBO projected that outlay savings from the rescission would not begin until 1998, when savings of 30 percent ($300 million) of the $1 billion rescission would occur. In contrast, OMB estimated savings to begin in 1996, when 40 percent ($400 million) of the savings from the rescission would occur, followed by another 40 percent ($400 million) in 1997, and the remaining 20 percent ($200 million) in 1998. Unlike CBO, OMB used a simple 3-year 40:40:20 percent method of projecting future outlay savings from the rescission, with all outlay savings to occur over 3 years (1996-1998), that is, 40 percent in year 1 (the current fiscal year of 1996), 40 percent in year 2 (1997), and 20 percent in year 3 (1998).

Primarily as a result of the scoring of these two emergency items, OMB, in its update sequestration report, adjusted the 1996 outlay cap downward by $84 million more than CBO. OMB's faster outlay savings estimate for the FEMA rescission was offset by its faster spendout (outlay or spending rate) estimate for the DOD emergency supplemental (that is, $400-$335=$65 of the $84 million difference in 1996 outlays). For the 1997 cap adjustment, the scoring differences on the DOD and FEMA items accounted for over $645 million of the $746 million lower OMB 1997 outlay cap. In contrast with 1996 and 1997, for 1998 CBO projected a lower cap than OMB, as CBO estimated an initial $300 million in savings from the FEMA rescission to begin, while OMB estimated the final $200 million in FEMA savings to end, accounting for $100 million of the $147 million lower CBO 1998 outlay cap.

Common Reasons for Different Appropriation Scoring

Section 251(a)(7) of GRH requires CBO and OMB to score the budget authority and outlays of each discretionary appropriation bill enacted. Within 5 days of enactment of an appropriation bill, OMB is required to transmit its and CBO's scoring estimates to the House and the Senate, with an explanation of any differences between the OMB and CBO estimates. We examined all the CBO and OMB scoring reports for appropriations enacted during the second session of the 104th Congress which included fiscal year 1996 appropriations for nearly one-third of the government as well as all fiscal year 1997 appropriations. We focused primarily on items with the largest scoring differences and discussed reasons for scoring differences with OMB and CBO analysts.

We identified seven reasons for differences between OMB and CBO in the scoring of discretionary budget authority:

1. different assumptions,

2. different cost estimates,

3. baseline differences,

4. timing differences,

5. errors,

6. different scoring of contingent emergency, and

7. different classifications of spending between discretionary and direct spending categories.

We also identified three reasons for differences in the scoring of outlays:

1. different spendout rates of new budget authority;

2. different spendout rates of prior year authority, including spendout of account balances from prior year budget authority as well as prior authority to spend receipts from offsetting collections; and

3. different new/current year budget authority estimates.

While there were many discretionary scoring differences between OMB and CBO, none involved substantive compliance issues. Also, the scoring differences were not consequential because estimated discretionary spending was well below the spending caps, thus posing no sequester threat for discretionary spending like they did for the PAYGO spending.

Overall Budget Authority Differences Were Quite Small

Overall, during the session, CBO and OMB discretionary budget authority scoring differences were relatively small, amounting to less than 1 percent of total budget authority. OMB and CBO differed in their estimates of budget authority on 30 spending items (budget accounts or groups of related accounts) for 1996 and 33 spending items for 1997 according to our review of OMB's 5-day reports. There were 8 items in 1996 and 5 items in 1997 that had differences of $100 million or more. The total budget authority (BA) scoring difference for these 13 items totaled about $3 billion in absolute value, accounting for nearly 75 percent of the about $4 billion absolute BA scoring difference between CBO and OMB.

Absolute scoring differences represent the sum of the absolute value of scoring differences for spending items, in contrast with net scoring differences that represent the sum of positive and minus number differences which tend to offset or cancel each other out. A net scoring difference is never larger and is usually much smaller than the absolute difference. Absolute scoring differences are a better indicator than net scoring differences of the magnitude or extent of scoring differences between OMB and CBO, since the positive and minus number differences comprising a net scoring difference within a bill and between bills offset each other.

Tables IV.2 and IV.3 show items exceeding $100 million in BA scoring differences for fiscal years 1996 and 1997, respectively, along with the stated reasons for the differences. The eight items for 1996 in Table IV.2 accounted for about 80 percent ($1.9 billion of $2.4 billion) of the absolute BA scoring difference between OMB and CBO in 1996 appropriations enacted during the 2nd session of the 104th Congress.

Table IV.2: BA Scoring Differences: Fiscal Year 1996 Items Exceeding $100 Million[a]

Dollars in millions

Appropriation	Item: program or account	Budget authority difference	Stated reason(s) for difference
VA/HUD in OCRA	Government National Mortgage Association (GNMA): Guarantees of Mortgage-Backed Securities	$499	Different assumptions: CBO estimated that GNMA would make a profit for the government in FY 96, scoring a $499 million profit or negative subsidy. OMB assumes that GNMA is designed to break even, and therefore it has no subsidy by definition. However, OMB did estimate that GNMA fee collections and other income would exceed expenses by $477 million in FY 96, but noted that this amount would be retained by GNMA in order to cover future year expenses and serve as a reserve against losses that may be incurred on GNMA guarantees in the future.
VA/HUD in OCRA	FHA General and Special Risk Program Account	–337	Different cost estimates: OMB had a $170 million lower net present value estimate of the subsidy than CBO based on different volume and subsidy assumptions, including a negative subsidy for the Nursing Home loan program that OMB included but CBO did not. Also, OMB scored $167 million in projected proceeds for a loan asset sale which CBO did not. CBO did not think the sale proceeds belong in the program account, since the sale was allowed under current law and involved pre-1992 loans. Also, CBO questioned whether the sale would make any money.
Labor/HHS in OCRA	Grants to States for Medicaid: Sec. 519 (Optional Alternative Medicaid Payment Method)	258	Baseline differences: Difference resulted from a difference in OMB and CBO baseline estimates for this program. OMB's Medicaid baseline included the latest state estimate of federal spending for Louisiana: $2.4 billion in FY 96. The appropriation act capped the federal share of payments to Louisiana at $2.6 billion; therefore, OMB scored the provision with a cost of $258 million. OCRA defined the periods covered in state fiscal years, and the $258 million reflects the cost in FY 96. CBO's baseline included $2.6 billion as the federal share of costs, not the earlier state estimate of $2.4 billion, and therefore CBO scored no costs in FY 96.
Energy in OCRA	U.S. Enrichment Corporation (USEC) Fund	239	Timing differences: OMB continued its assumption made in the President's FY 97 budget that the sale of USEC to the private sector would take place at the start of the 4th quarter of FY 96, and scored lost USEC 4th quarter income of $39 million and $200 million in working capital to be provided from the sale proceeds. CBO did not project the sale to take place in FY 96 and scored no BA for FY 96, but did project $90 million additional outlays to prepare for the sale. Neither CBO nor OMB scored the $1.6 billion in expected proceeds from the sale itself, since OCRA did not contain a waiver of BEA's asset sale scoring rule.
Interior in OCRA	Strategic Petroleum Reserve	227	Errors: CBO, under congressional budget resolution rules, scored proceeds of $227 million from the sale of Weeks Island oil, but mistakenly forgot to change its scoring to zero as required under BEA before sending its scoring data to OMB. OMB did not score the sale since BEA does not allow scoring of non-routine asset sales.
VA/HUD in OCRA	FHA Mutual Mortgage Insurance	–184	Different cost estimates: OMB and CBO had the same estimates for the negative subsidy. OMB scored proceeds of $184 million for a loan asset sale, but CBO did not think the sale would make any money.

(continued)

Dollars in millions

Appropriation	Item: program or account	Budget authority difference	Stated reason(s) for difference
Labor/HHS in OCRA	Family Education Loan Account and Federal Direct Student Loan Program Account	102	Baseline differences: OMB did not score any BA savings associated with the reduction in authority from $550 million to $436 million to obligate the FY 96 permanent appropriations for loan administration. CBO scored BA savings of $114 million. OMB scored $12 million in BA savings associated with the elimination of the $10 loan origination payment to schools. CBO scored no savings, assuming savings would be completely offset by increased payments to alternative originators.
Interior in OCRA	Strategic Petroleum Reserve	100	Errors: CBO, under congressional budget resolution rules, scored proceeds of $100 million from the sale of Weeks Island oil, but mistakenly forgot to change its scoring to zero as required under BEA before sending its scoring data to OMB. OMB did not score the sale since BEA does not allow scoring of non-routine asset sales.

[a]A positive BA difference means OMB scored higher BA; a negative BA difference means CBO scored higher BA.

The 5 items for 1997 in table IV.3 accounted for about 64 percent ($1 billion of $1.6 billion) of the absolute BA scoring difference between OMB and CBO in fiscal year 1997 appropriations bills enacted during the second session of the 104th Congress.

Table IV.3: BA Scoring Differences: Fiscal Year 1997 Items Exceeding $100 Million[a]

Dollars in millions

Appropriation	Item: program or account	Budget authority difference	Stated reason(s) for difference
Labor/HHS in OCAA	Low Income Home Energy Assistance Program	$-300	Different scoring of contingent emergency: CBO scored this $300 million contingent emergency for FY 97, included in OCRA, to OCAA. OMB will score this contingency if and when it is released by the President.
Labor/HHS in OCAA	Federal Direct Student Loan Program, Financing Account	218	Baseline differences: CBO scored $218 million in BA savings as a result of limitations on spending for student loan administration, while OMB did not, consistent with each agency's baseline for the program.
VA/HUD	GNMA: Guarantees of Mortgage-Backed Securities	209	Different assumptions: CBO estimated that GNMA would make a profit for the government in FY 97, thus scoring a $209 million profit or negative subsidy. OMB assumes that GNMA is designed to break even, and therefore it has no subsidy by definition. OMB estimated that GNMA fees and income would exceed expenses by $532 million in FY 97 but that these amounts would be retained to cover future costs.
VA/HUD	FHA General and Special Risk Program Account	–160	Different cost estimates: OMB and CBO have different estimates of the negative subsidy for this credit program due to different volume and subsidy assumptions. OMB scored $25 million in BA, while CBO scored $185 million in BA.
VA/HUD	FHA Assignment Reform	–132	Different cost estimates: CBO has a lower estimate of the net present value of savings associated with this reform than does OMB. CBO calculates a $128 million savings, OMB $260 million.

[a]A positive BA difference means OMB scored higher BA; a negative BA difference means CBO scored higher BA.

Outlay Scoring Differences Were Larger Than Budget Authority Scoring Differences

Overall, during the session, the absolute value of CBO and OMB discretionary outlay scoring differences amounted to about 3 percent of total outlays, that is, $23 billion out of the estimated $731 billion in total budget year outlays from all fiscal year 1996 and 1997 discretionary appropriations enacted during the second session. Not unexpectedly, absolute discretionary outlay scoring differences were much larger (nearly 6 times larger) than the $4 billion or 0.6 percent absolute budget authority scoring differences between CBO and OMB. Since appropriation acts specify the exact dollar amount of budget authority for most discretionary programs, scoring budget authority is relatively simple. In contrast, outlays for a particular fiscal year depend on the pace at which budget authority is used and so can be more difficult to score with precision. Outlays during a fiscal year may be for obligations incurred in prior years as well as in the current fiscal year, and current year obligations and outlays may be from permanent (no-year) and prior year authority as well as new (current fiscal year) budget authority.[4]

Net outlay scoring differences amounted to only $109 million, about 0.01 percent of the $731 billion in total estimated budget year outlays for all fiscal year 1996 and 1997 appropriations passed in the second session, versus the $23 billion or 3 percent absolute outlay scoring difference. Both the net and absolute outlay scoring differences were smaller for 1997 appropriations than for the 1996 appropriations.

Table IV.4: Outlay Estimates for Appropriations Enacted in Second Session

Dollars in millions

			Difference		Percent difference	
Fiscal year appropriations	**OMB**	**CBO**	**Net**	**Absolute**	**Net**	**Absolute**
All 1996 Bills	$197,175	$194,641	$2,534	$10,187	1.29	5.17
All 1997 Bills	533,499	535,924	–2,425	12,709	0.45	2.38
Total	**$730,674**	**$730,565**	**$109**	**$22,896**	**0.01**	**3.13**

OMB and CBO differed in their estimates of outlays on 87 spending items in 1996 appropriations bills and 106 separate spending items for 1997 bills according to our review of OMB's 5-day reports. There were 10 items (5 items in 1996 and 5 items in 1997) that had outlay differences of $400 million or more.[5] The absolute value of the outlay scoring difference for these 10 items totaled almost $7 billion, accounting for about 30 percent of the $23 billion absolute outlay scoring difference between CBO and OMB.

Tables IV.5 and IV.6 show items exceeding $400 million in outlay differences for fiscal years 1996 and 1997, respectively, along with the stated reasons for the scoring differences. The 5 items in table IV.5 accounted for nearly 28 percent ($2.8 billion of $10.2 billion) of the absolute outlay scoring difference between OMB and CBO for fiscal year

[4]According to CBO estimates, about 75 percent of the total amount of budget authority appropriated for fiscal year 1997 will be outlayed during 1997, while almost 30 percent of outlays in 1997 will be from prior year or permanent budget authority.

[5]We used a larger threshold ($400 million) for outlays than for budget authority ($100 million) since outlay estimating differences between CBO and OMB tend to offset over the time that finite amounts of budget authority "spend out." The rates at which budget authority is spent (outlayed) is called the spendout rate. Spendout rates vary across the budget due to the differing nature of government programs, projects, and activities comprising the budget. Budget authority for salaries and expenses, for example, spends out much faster than budget authority for large construction projects such as shipbuilding or the procurement of aircraft. For large budget accounts, even small spendout rate differences between OMB and CBO can lead to large differences in outlay estimates for a given fiscal year.

1996 appropriations enacted during the second session of the 104th Congress.

Table IV.5: Outlay Scoring Differences: Fiscal Year 1996 Items Exceeding $400 Million[a]

Dollars in millions

Appropriation	Item: program or account	Outlay difference	Stated reason(s) for difference
Labor/HHS in OCRA	Student Financial Assistance	$713	Spendout of prior year authority: OMB estimated a 10.5 percent higher spendout from prior year budget authority balances than CBO in this $7.5 billion per year account that funds Pell Grants and other campus-based aid for college students.
VA/HUD in OCRA	Community Development Block Grants	632	Spendout of prior year authority: OMB estimated a 13 percent higher spendout from prior year budget authority balances, due in large part to OMB's use of more recent technical assumptions for outlays in this $5 billion per year account.
VA/HUD in OCRA	GNMA: Guarantees of Mortgage-Backed Securities	499	Different current year BA estimate: The outlay difference is due to the different BA estimates for FY 96, which are based on different views OMB and CBO have of the program and whether or not it makes a profit and the associated $499 million difference in budget authority scoring.
P.L. 104-91	National Institutes of Health	–490	Spendout of prior year authority: CBO estimated an aggregate 8 percent higher spendout from prior year budget authority balances than OMB for the $12 billion per year programs and activities comprising NIH.
VA/HUD in OCRA	FEMA Disaster Relief	475	Spendout of new budget authority and prior year authority: CBO calculates outlays based on historical averages for FEMA spending, while OMB uses a simple 40:40:20 percentage spendout of new BA over 3 years.

[a]A positive outlay difference means OMB scored higher outlays; a negative outlay difference means CBO scored higher outlays.

The 5 items in table IV.6 accounted for nearly 33 percent ($4.1 billion of $12.7 billion) of the absolute outlay scoring difference between OMB and CBO in fiscal year 1997 appropriations bills enacted during the second session.

Table IV.6: Outlay Scoring Differences: Fiscal Year 1997 Items Exceeding $400 Million[a]

Dollars in millions

Appropriation	Item: program or account	Outlay difference	Stated reason(s) for difference
Defense in OCAA	Defense Business Operations Fund (DBOF)	$-1,208	Spendout of prior year authority: CBO and OMB projected the same 86.3 percent year 1 spendout rate of $948 million in new BA for the DBOF. DBOF also has balances from prior year budget authority and permanent authority to spend offsetting collections. OMB projects FY 97 DBOF collections (of $68.2 billion) will exceed projected outlays from such authority by $588 million, while CBO estimates such outlays will exceed collections by $620 million. The $1.2 billion difference represents less than 2 percent of the total estimated DBOF collections/outlays for FY 97.
VA/HUD	Annual Contributions for Assisted Housing	–1,093	Spendout of prior year authority: About $700 million of the difference is due to CBO's estimate of faster spendout of balances. Some of the difference is the result of different estimates of outlays resulting from the transfer of balances. (OMB later adjusted spendout assumptions in its mid-session review significantly reducing the difference with CBO).
VA/HUD	Public Housing Capital Fund	757	Spendout of prior year authority: OMB estimated 18 percent higher spendout ($4.3 billion to CBO's $3.5 billion) from prior year balances transferred from the Annual Contributions Account.
VA/HUD	FEMA Disaster Relief	617	Spendout of new and prior year authority: OMB used a faster spendout rate for $1.3 billion in new budget authority that accounted for $464 million of the difference, and a $153 million higher spendout of balance from prior year authority.
Defense in OCAA	Defense Shipbuilding and Conversion, Navy	–482	Spendout of new and prior year authority: CBO had a 6.5 percent or $465 million higher spendout of prior year balances than OMB ($6.6 billion to CBO's $7.1 billion), and a 0.3 percent or $17 million higher spendout (5.2 percent for CBO versus 4.9 percent for OMB) of the $5.6 billion in new BA.

[a]A positive outlay difference means OMB scored higher outlays; a negative outlay difference means CBO scored higher outlays.

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