
Subtitle D

Treatment of Fiscal Year 1991 Sequestration

§ 13401 SEC. 13401. RESTORATION OF FUNDS SEQUESTERED.¹⁸³⁴

§ 13401(a) (a) **ORDER RESCINDED.** — Upon the enactment of this Act, the orders issued by the President on August 25, 1990, and October 15, 1990, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 are hereby rescinded.

§ 13401(b) (b) **AMOUNTS RESTORED.** — Any action taken to implement the orders referred to in subsection (a) shall be reversed, and any sequestrable resource that has been reduced or sequestered by such orders is hereby restored, revived, or released and shall be available to the same extent and for the same purpose as if the orders had not been issued.

§ 13401(c)(1) (c) **FURLOUGHED EMPLOYEES.** — (1) Federal employees furloughed as a result of the lapse in appropriations from midnight October 5, 1990, until the enactment of House Joint Resolution 666 shall be compensated at their standard rate of compensation for the period during which there was a lapse in appropriations.

§ 13401(c)(2) (2) All obligations incurred in anticipation of the appropriations made and authority granted by House Joint Resolution 666 for the purposes of maintaining the essential level of

¹⁸³⁴ For legislative history of this section, see *infra* note 1835 (at the end of the section).

activity to protect life and property and bringing about orderly termination of government functions are hereby ratified and approved if otherwise in accord with the provisions of that Act.¹⁸³⁵

¹⁸³⁵ The statement of managers accompanying the conference report on the Budget Enforcement Act explains section 13401 generally:

IV. RESTORATION OF FUNDS SEQUESTERED

Current law

Under current law, an initial sequestration order, issued August 25, withholds budgetary resources at the sequestered levels effective October 1. A final sequestration order, issued October 15, permanently cancels budgetary resources, effective that date, and supersedes the initial sequestration order. After their issuance, initial and final sequestration orders can be rescinded and sequestered funds restored only upon the enactment of a law specifically directing those actions. The sequester for fiscal year 1991 was suspended temporarily by four continuing appropriations measures enacted in October: H.J. Res. 655 (P.L. 101-403), H.J. Res. 666 (P.L. 101-412), H.J. Res. 677 (P.L. 101-444), and H.J. Res. 681 (P.L. 101-461).

House bill

The House bill rescinds both the initial and final sequestration order for fiscal year 1991, reverses any action taken to implement the orders, and restores any sequestered budgetary resources.

Senate amendment

The Senate amendment proposes identical language.

Conference agreement

The conference agreement incorporates the House and Senate language rescinding the fiscal year 1991 sequester and restoring sequestered amounts.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1157 (1990), *reprinted in* 1990 U.S.C.A.N. 2017, 2862.

Contrast with this treatment the only limited restoration of funds sequestered in fiscal year 1990. Section 11002 of the Omnibus Budget Reconciliation Act of 1989 provides:

SEC. 11002. RESTORATION OF FUNDS SEQUESTERED.

(continued...)

¹⁸⁸⁹(...continued)

(a) **ORDER RESCINDED.** — (1) Upon the issuance of a new final order by the President under subsection (b)(3), the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is rescinded.

(2) Except as otherwise provided in sections 6001, 6101, and 6201, and subject to subsection (b), any action taken to implement the order issued by the President on October 16, 1989, shall be reversed, and any sequesterable budgetary resource that has been reduced or sequestered by such order is restored, revived, or released and shall be available to the same extent and for the same purpose as if an order had not been issued.

(3) For purposes of section 702(d) and 1101(c) of the Ethics Reform Act of 1989, the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is deemed to be rescinded on January 31, 1990.

(b) **ADJUSTED REDUCTION.** —

(1) Before the close of the fifteenth calendar day beginning after the date of enactment of this Act, the Director of OMB shall issue a revised report using the exact budget baseline set forth in the report of October 16, 1989, and following the requirements, specifications, definitions, and calculations required by the Balanced Budget and Emergency Deficit Control Act of 1985 for the final report issued under section 251(c)(2) for fiscal year 1990, except that the aggregate outlay reduction to be achieved shall be an amount equal to \$16.1 billion multiplied by 130 divided by 365. Calculations made to carry out the preceding sentence shall take into account the reductions and cancellations achieved by paragraphs (2) and (3) and shall not be affected by subsection (d).

(2) Notwithstanding any provision of law other than this paragraph, the reductions and cancellations in the student loan programs described in section 256(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 achieved by the order issued by the President on October 16, 1989, shall remain in effect through December 31, 1989, and no reductions or cancellations in such programs shall be made by the order issued under paragraph (4).

(3) Notwithstanding any provision of law other than this paragraph, any automatic spending increase suspended or cancelled by the order issued by the President on October 16, 1989, shall be paid at a rate that is $\frac{130}{365}$ ths less than the rate that would have been paid under the laws providing for such automatic spending increase.

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¹⁸⁸³(...continued)

(4) On the date that the Director submits a revised report to the President under paragraph (1) for fiscal year 1990, the President shall issue a new final order to make all of the reductions and cancellations specified in such report in conformity with section 252(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985. Such order shall be deemed to have become effective on October 16, 1989.

(c) COMPLIANCE REPORT BY COMPTROLLER GENERAL. — Before the close of the thirtieth day beginning after the date the President issues a new final order under subsection (b)(4), the Comptroller General shall submit to the Congress and the President a compliance report setting forth the information required under section 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 with respect to such order.

(d) NO DOUBLE REDUCTION IN MEDICARE. — With respect to items and services described in section 6001(a), 6101, or 6201(a) for periods for which reductions are made pursuant to the respective sections, no reduction shall be made under subsection (b).

Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 11002, 103 Stat. 2106, 2490-91 (1989).

The conference report to accompany the Omnibus Budget Reconciliation Act of 1989 explains the treatment in fiscal year 1990:

SECTION 11002. RESTORATION OF FUNDS SEQUESTERED

Section 11002 provides for additional budget savings by retroactively replacing the President's October 16 sequester order with a new order. The new order exactly follows all the procedures, rules, definitions, calculations, and other requirements of the Balanced Budget and Emergency Deficit Reduction Act of 1985 (as amended) with one major and three minor exceptions.

The major exception is that, instead of the \$16.1 billion in outlay reductions that were stated in the October 16 order, the new order shall be based on a required outlay reduction only 35.6 percent as large. The new order will be in effect for the entire fiscal year, but at a lower rate of reductions. Since the new order saves a smaller amount, the old order is rescinded and any amounts (beyond those needed to be saved under the new order) are restored. If, under the old order, individual payments or contracts were reduced, rebates will be made or contracts will be adjusted to reflect the smaller savings required by the new order.

The conferees are aware that, because of the application of the
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"crediting" rule in section 252(f) of the Balanced Budget Act, the stated \$16.1 billion in savings in the President's October 16 order would actually have achieved \$12.3 billion, according to CBO. Since that section also applies to this new order with regard to appropriation bills enacted after October 16, 1989, the new order will also achieve actual savings smaller than the apparent \$5.75 billion -- an estimated \$4.55 billion.

One minor exception applies to the Guaranteed Student Loan program. The Balanced Budget Act does not contain a mechanism to achieve different savings in that program when the size of the sequester is altered. Therefore, section 11002 provides that the [Guaranteed Student Loan] savings will be achieved by the full Balanced Budget Act savings in effect in the first three months of the year, with no reductions under the new order for the remainder of the year. According to CBO, those three months will achieve more than 35.6 percent of the total amount of savings that would be achieved by a full-year sequester. The savings achieved during those three months will count as savings under the new order.

A second minor exception applies to Vocation Rehabilitation Basic State Grants and the Special Milk programs. The entitlement formulas in those programs are indexed to price increases; in the event of a sequester, the COLAs are frozen. Section 11002 overrides the COLA freeze that would otherwise be in place for the full year, and instead reduces the COLA by 35.6 percent. As with [Guaranteed Student Loans], the savings achieved by partial COLAs will count as savings under the new order.

Except as noted above, all the provisions of the Balanced Budget Act apply to the calculation and implementation of the new order. Specifically, it is still required that reductions in each program, project, or activity within a budget account be proportional to the reduction in the full account. However, since the new order is not technically the order of October 16, 1989, various requirements or procedures that are ancillary to that order do not apply. Specifically, the special Congressional procedures under section 258 of the Balanced Budget Act are not available, and the administration is not required to file a new accompanying message under section 252(a)(4) of the Act.

The final minor exception to the overlap between section 11002 and provisions in Title VI that achieve reconciliation savings by continuing the Medicare sequester under the original order of October 16 in full force for part of the year (e.g. through March 31, 1990, in the case of Part B Medicare). In order to prevent the Medicare sequester that would occur under this new order from applying on top of the Title VI sequester during the period when the two are concurrent, subsection (d) provides that during that period the Medicare cuts under Title XI will not take place. In effect, the continued Medicare cuts under Title VI (at a rate higher than the rate under Title XI) are deemed to achieve the Title XI Medicare savings during the

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period when the Title VI savings are in effect. After they expire, however, the Title XI Medicare savings will be in effect for the remainder of the year. This rule for the application of the Medicare reductions under Title XI is not taken into account in calculating the new OMB report and in the President's new order, although this rule then supercedes the President's new order with regard to Medicare cuts.

H.R. CONF. REP. No. 101-386, 101st Cong., 1st Sess. 942-44 (1989), *reprinted in* 1989 U.S.C.A.N. 3018, 3545-47.