

GAO

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

April 1999

BUDGET ISSUES

Budget Enforcement Compliance Report



**Accounting and Information
Management Division**

B-281190

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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, as amended (the Deficit Control Act). Our assessment covers OMB and CBO reports issued for legislation enacted during the 2nd session of the 105th Congress, which ended on October 21, 1998.

Results in Brief

Overall, we found that CBO and OMB substantially complied with the act. However, some of the required OMB reports were issued late. The Deficit Control Act (DCA) sets a specific timetable for issuance of OMB reports. By law, OMB must issue sequestration reports at three specific times during the calendar year: (1) the preview report when the President submits his budget, (2) the update on August 20, and (3) the final report 15 days after the end of a congressional session.¹ OMB issued its fiscal year 1999 sequestration update report on August 26, 1998—6 days late. Its final report was issued December 10, 1998—35 days later than the required date of November 5, 1998. However, as noted in appendix II, there is a tension between the completeness and timeliness of the final sequestration report. If OMB had issued its report on the required date, the report would have excluded, at a minimum, nine pieces of legislation that were passed by the Congress but that had not been signed by the President before DCA's 15 day deadline.² In addition, assuming no other changes in the issuance of other scoring reports, the final sequestration report would not have included the impact of 5 of the appropriations acts (including the Omnibus Act) and 18 of the 51 pieces of PAYGO legislation.

¹CBO has similar reporting requirements.

²Although the President is required to take action on legislation within 10 days after it is presented to him by the Congress, there can be delays between final congressional action and when the measure is formally presented to the President for signature.

As was the case for fiscal years 1997 and 1998, OMB issued many of its fiscal year 1999 scorekeeping reports late. All 7 of its discretionary scorekeeping reports and 41 of its 51 pay-as-you-go (PAYGO) scorekeeping reports were issued later than the time specified by law. The DCA requires OMB to issue scorekeeping reports within 7 working days after enactment. On average, the 1999 reports were issued 11.2 working days (4.2 days late) after enactment. Of the 58 reports issued prior to the issuance of the final sequestration report, 83 percent were issued late, a decline in timeliness from the fiscal years 1998 and 1997 reports. Half of the 1998 reports³ and about 70 percent of the 1997 reports were issued late.

According to OMB, part of the reason for the increased delay was the volume of legislation enacted at the end of this session of the Congress. For example, five of the seven discretionary acts were enacted in the last 2 weeks of the session. These five acts included the Omnibus Consolidated and Emergency Supplemental Appropriations Act, which incorporated both eight appropriation acts and emergency spending provisions. Similarly, one-third of the PAYGO legislation was enacted in the last 2 weeks of the session or before the statutory date for OMB's final sequestration report.

In addition to the compliance issue, we found several implementation issues in which OMB and CBO differed in (1) PAYGO scorekeeping, (2) appropriations scoring, and (3) cap adjustments. In addition, the use of emergency spending designations was different this year than in prior years. These issues are discussed in appendixes III and IV.

To assess compliance with DCA we reviewed OMB and CBO reports issued under the act to determine if they complied with all of the act's requirements. 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 DCA, 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) the sequestration percentages necessary to achieve the required reduction in the event of a sequester. In addition we reviewed the

³Reports issued in fiscal year 1998 were governed by two different criteria. Those issued before August 5, 1997 were required to be issued within 5 calendar days of enactment. Those issued after that date had the same 7 working day criteria as the 1999 reports. Nearly 78 percent of the reports issued before the change in criteria were late compared with 48 percent afterwards.

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Abbreviations

BEA	Budget Enforcement Act
CBO	Congressional Budget Office
DCA	Deficit Control Act
IMF	International Monetary Fund
IRS	Internal Revenue Service
OMB	Office of Management and Budget
PAYGO	pay-as-you-go
REIT	Real Estate Investment Trusts
TANF	Temporary Assistance to Needy Families
TEA-21	Transportation Equity Act for the 21 st Century

Background and Scope and Methodology

The DCA,¹ as amended, established statutory limits on federal government spending for fiscal years 1991 through 2002 by creating

- annual adjustable dollar limits (spending caps) on discretionary spending funded through the regular appropriations process,
- a pay-as-you-go (PAYGO)² requirement for direct spending³ and receipts legislation, and
- a sequestration⁴ procedure to be triggered if (1) aggregate discretionary appropriations enacted for a fiscal year exceed the fiscal year's discretionary spending caps or (2) aggregate PAYGO legislation is estimated to increase the combined current and budget year deficits.

To track progress against the budget enforcement requirements and to implement any needed sequestration, DCA 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 7 working 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. If there are significant differences between the OMB and CBO estimates, OMB is required to consult with the budget committees prior to issuing its scoring report. OMB and CBO have similar requirements for reporting their estimates for any direct spending or receipts legislation.

The DCA also requires CBO and OMB to submit a series of three sequestration reports at specified times during each year as shown in

¹The Balanced Budget and Emergency Deficit Control Act of 1985 as amended by the Budget Enforcement Act of 1990 (BEA), the Omnibus Budget Reconciliation Act of 1993 (OBRA 93), and the Budget Enforcement Act of 1997 (BEA-97). In addition to being known as the Deficit Control Act, it is sometimes called Gramm-Rudmann-Hollings or GRH. It is also referred to as BEA since that legislation amended GRH in 1990 by adding the current discretionary spending caps and PAYGO procedures.

²The DCA requires that the aggregate effect of 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.

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

⁴Sequestration is the cancellation of budgetary resources.

table I.1. Each CBO and OMB report must include a discretionary sequestration report that adjusts the discretionary spending caps and a PAYGO 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 uses estimates from OMB's most recent sequestration report as the starting point for each of its reports.

Table I.1: Sequestration Reports and Due Dates

Report	Due date	
	CBO	OMB
Preview report	5 days before President's budget submission	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

Discretionary Spending Limits

Annual discretionary spending limits for budget authority and outlays are set forth in the Deficit Control Act. The Budget Enforcement Act of 1997 amended DCA to establish three separate categories of discretionary spending for 1998 and 1999: defense, nondefense excluding violent crime reduction spending, and violent crime reduction spending. For fiscal year 2000, defense and nondefense are combined resulting in two categories--violent crime reduction spending and all other discretionary spending. For 2001 and 2002, these are combined into a single category. The Transportation Equity Act for the 21st Century (TEA-21)⁵ altered the spending cap structure by establishing two new outlay caps that apply separately to highway and mass transit programs for 1999 and continuing through 2002. (See table I.2.) Since these programs had been included under the nondefense caps, the nondefense cap for 1999 and the overall discretionary caps for 2000, 2001, and 2002 were reduced. Because the new caps on highway and mass transit outlays exceed the reductions in the other caps by about \$15.4 billion, the amount of total discretionary outlays permitted under all of the caps has been increased for each year from 1999 through 2002.

⁵Title VIII of TEA-21 (P.L. 105-178, enacted June 9, 1998) amended DCA to add these two new caps.

Table I.2: Discretionary Spending Categories by Fiscal Year

1998	1999	2000	2001	2002
Violent crime reduction	Violent crime reduction	Violent crime reduction	Discretionary	Discretionary
Defense	Defense	Discretionary		
Nondefense	Nondefense			
	Highway	Highway	Highway	Highway
	Mass transit	Mass transit	Mass transit	Mass transit

Note: The highway and mass transit categories were formerly included in the nondefense category.

The DCA provides that adjustments be made to the discretionary limits for certain specified reasons. The limits must be adjusted for (1) changes in concepts and definitions, (2) emergency appropriations, (3) funding for continuing disability reviews, (4) funding for International Monetary Fund (IMF) increases, (5) international arrearages funding, (6) the earned income tax credit compliance initiative, and (7) a special outlay allowance to cover technical scoring differences between OMB and CBO. In addition to adjustments to the limits required by DCA, TEA-21 added adjustments for the two transportation caps. It requires that OMB adjust the highway spending caps in each year's sequestration preview report to reflect differences between current and future estimates of revenues that will be credited to the Highway Trust Fund. It also requires that both transportation caps be adjusted each year to reflect any changes in technical estimates of the outlays that will result from the TEA-21 funding levels.

The spending limits are enforced by sequestration should budget authority or outlays exceed the limits. According to CBO's final sequestration report issued on October 30, 1998, discretionary outlays for all categories combined are estimated to exceed the adjusted caps by \$2.8 billion for fiscal year 1999. CBO estimates that a sequestration of about 1 percent would be required for the defense category and a sequestration of about 0.5 percent would be required for the nondefense category. In contrast, OMB's final sequestration report, issued on December 10, 1998, estimates that no sequestration of discretionary funding will be required for fiscal year 1999. Since by law OMB's estimates are controlling, there will be no sequester in fiscal year 1999.

In addition the law specifies that for a fiscal year in progress, if an appropriation 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. No within-session sequestration reports were required for fiscal year 1998.

Pay-As-You-Go Enforcement

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 end of a congressional session, cumulative legislated changes enacted in direct spending and receipts increase the deficit (or reduce a projected surplus)⁶ for the budget year, a sequester of non-exempt direct spending programs is required to offset the increase. BEA-97, upon its enactment, set the scorecard balance to zero for the then-current year and each year through fiscal year 2002. This prevents any net savings achieved by legislation enacted prior to the enactment of BEA-97 from being used to offset deficit-increasing legislation enacted through 2002. BEA-97 also extended PAYGO discipline to legislation enacted through fiscal year 2002. However, because the PAYGO scorecard must take into account not only the current year and the budget year, but also the following 4 years, a sequester could occur in the years 2003 through 2006 based on the effects of PAYGO legislation enacted through fiscal year 2002.

In their final sequestration reports, both OMB and CBO calculated the net change in the deficit due to PAYGO legislation. 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 1999, both CBO's report, issued October 30, 1998, and OMB's report, issued December 10, 1998, concluded that a PAYGO sequester was not needed.

Scope and Methodology

To determine whether the OMB and CBO reports complied with the requirements of DCA as amended by BEA and other legislation, we reviewed the OMB and CBO preview, update, and final sequestration

⁶The question has been raised about the applicability of the PAYGO rules when the federal government has a surplus. CBO has opined that BEA enforcement applies regardless of whether or not there is a deficit. OMB has noted that there is still an "on-budget" deficit so the question is moot.

reports to determine if they reflected all of the technical requirements specified in DCA, 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) the sequestration percentages necessary to achieve the required reduction in the event of a sequester.

We reviewed legislation dealing with budget enforcement, including DCA, as amended, and TEA-21. We reviewed appropriations acts enacted during the 2nd session of the 105th Congress—the one supplemental emergency appropriations for fiscal year 1998, the six continuing appropriations measures, the five separately enacted regular appropriations for fiscal year 1999, and the eight appropriations bills included in the Omnibus Consolidated Appropriations Act, as well as all applicable OMB and CBO appropriations scoring reports issued as of December 10, 1998. We also examined the OMB and CBO PAYGO scoring reports for 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 OMB and CBO scoring reports and obtained explanations for differences of \$500 million or more in budget authority or outlay estimates. We also examined 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 also interviewed OMB and CBO officials.

Our work was performed in Washington, D.C., from September 1998 through January 1999, in accordance with generally accepted government auditing standards. We provided a draft of this report to OMB and CBO officials for their review and comment. OMB and CBO officials agreed with our presentation of their views and the facts as presented. We incorporated their comments where appropriate.

Compliance Issues

We identified several compliance issues related to the timing of reports: (1) OMB issued both the update and final sequestration reports later than their required dates and (2) OMB issued most of its scorekeeping reports late. Each of these issues is discussed in more detail below.

OMB Issued Sequestration Reports Late

The DCA sets a specific timetable for issuance of OMB reports, as shown in table II.1 below.¹

Table II.1: Timing of OMB Sequestration Reports	
Report	Date
Preview report	With President's budget (first Monday in February)
Update report	August 20
Final report	15 days after the end of the congressional session

This year, OMB met these requirements for the preview report. The update report was issued 6 days late on August 26, 1998. The final report was issued 35 days late on December 10, 1998 (50 days after the end of the session). One of the factors that contributed to the late issuance of the final sequestration report was conflicting requirements of the DCA. On one hand, OMB's final sequestration report is supposed to include the deficit impact of all legislation enacted during the session of the Congress and on the other hand there is the requirement to issue the sequestration report 15 days after the end of the session. If OMB had issued its report on the required date, the report would have excluded nine pieces of PAYGO legislation that were passed by the Congress but that had not been signed by the President before DCA's 15 day deadline.² In addition, assuming no other changes in the timing of other scoring reports, a final sequestration report issued on time would not have included the impact of 5 of the appropriations acts (including the Omnibus Act) and 18 of the 51 pieces of PAYGO legislation. However, if OMB had completed the scoring reports for the five appropriations acts within the required 7 working days of their

¹CBO has similar reporting requirements.

²Although the President is required to take action on legislation within 10 days after it is presented to him by the Congress, there can be delays between final congressional action and when the measure is formally presented to the President for signature.

enactment, a final sequestration report issued on time could have included them.

The tension between completeness and timeliness is not new and in the past OMB has resolved this conflict in two very different ways. In our report covering fiscal year 1997 compliance we reported that OMB delayed the final report to include all enacted legislation. In contrast, in our report covering fiscal year 1998 compliance we reported that OMB issued the final sequestration report several days before the statutory deadline with the result that several pieces of enacted legislation were not included in the final report. Instead, as permitted by DCA, the PAYGO effect of these provisions was simply carried over to the preview report for the following year. In our report covering fiscal year 1997 compliance, we reported that, although not consistent with the report timing specified in law, OMB's decision to delay the final sequestration report so it could be complete seemed reasonable. We stated our belief 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. Thus, to do so, it would be appropriate to consider changing the timing of the final report if necessary. However, in 1997 when the Congress changed the requirements for scorekeeping reports, it did not change the timing of the final sequestration report. This would not, however, explain OMB's decision to issue the 1998 report early.

OMB Issued Scoring Reports Late

Sections 251 and 252 of DCA require OMB to issue scorekeeping reports for all enacted appropriation and PAYGO legislation within 7 working days of enactment. OMB met this time frame for 10 of the 58 required scorekeeping reports, with reports issued an average of 11.2 working days after enactment. All 10 of the on-time reports were PAYGO reports. The time to issuance of the other 41 PAYGO reports ranged from 8 to 24 working days, with an average time of 10.4 working days (over 3 days late). The time to issuance of the 7 discretionary spending reports ranged from 10 to 33 working days, with an average of 22.1 working days (over 15 days late).

The scorekeeping reports were issued later, on average, this fiscal year than last. The change in reporting deadline from 5 calendar days to 7 working days as a result of BEA-97, makes it difficult to compare the timeliness of the fiscal year 1999 reports to reports issued prior to that time. On average the 1999 reports were 4.2 days late compared to 3.1 days for the 1998 reports issued after the passage of BEA-97.

Compared to previous years, more 1999 reports were late. Because of the change in the reporting deadlines, we calculated how many scorekeeping reports were late for a given compliance requirement. Table II.2 shows that a higher percentage of 1999 reports were late than in the previous 4 years.

Table II.2: Percentage of Scorekeeping Reports Issued Late

Fiscal year	1995	1996	1997	1998	1999
Percentage of reports issued late	20	40	71.3	52.5	82.8

According to OMB, part of the reason for the increased delay was the volume of legislation enacted at the end of this session of the Congress. For example, five of the seven discretionary acts were enacted in the last 2 weeks of the session. These five acts included the Omnibus Act, which incorporated eight appropriation acts and emergency spending provisions. Similarly, one-third of the PAYGO legislation was enacted in the last 2 weeks of the session or before the statutory date for OMB's final sequestration report.

Implementation Issues

In addition to the compliance issue, we found several implementation issues in which OMB and CBO differed in (1) PAYGO scorekeeping, (2) appropriations scoring, and (3) cap adjustments.

PAYGO Scoring

In its final sequester report, OMB included the deficit effect of PAYGO legislation enacted through the end of the 2nd session of the 105th Congress. According to OMB, this legislation reduced the deficit for 1999 by \$872 million, so no PAYGO sequester was required. In its final sequester report, CBO reported that the same PAYGO legislation decreased the deficit by \$763 million for 1999 and similarly concluded that no sequester for 1999 would be required. We analyzed those reports for which OMB and CBO estimates differed by \$500 million or more. Only estimates for 4 of the 53 laws enacted in the 2nd session of the 105th Congress met this criteria: (1) the Internal Revenue Service Restructuring and Reform Act of 1998, (2) the Transportation Equity Act for the 21st Century, (3) the Higher Education Amendments of 1998, and (4) the Omnibus Consolidated and Emergency Supplemental Appropriations Act.

Internal Revenue Service Restructuring and Reform Act of 1998

The Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206) restructured the Internal Revenue Service (IRS), created an IRS oversight board, created new rights and protections for taxpayers, changed the holding period for capital gains tax rates from 18 to 12 months, enabled more taxpayers to convert traditional Individual Retirement Accounts (IRAs) to Roth IRAs, and made technical corrections to the Transportation Equity Act for the 21st Century.

Most of the budgetary costs of this act were associated with the new rights and protections for taxpayers that were included in the taxpayer bill of rights. Among the almost 70 provisions in the taxpayer bill of rights were provisions that (1) shift the burden of proof from taxpayers to the IRS in judicial proceedings when the taxpayer produces “credible evidence,” (2) provide relief for innocent spouses, and (3) provide certain interest and penalty relief for taxpayers. The costs of these provisions and the change in the capital gains holding period were partially offset by provisions which limit employer deductions for vacation and severance pay (commonly referred to as the Schmidt Baking provision) and a provision making

certain trade receivables ineligible for mark-to-market accounting treatment.¹

For fiscal year 1999, OMB estimated the net budgetary cost of this act as \$82 million dollars.² In contrast, CBO³ estimated savings of \$659 million—a difference of \$741 million. This difference is largely due to different assumptions about the timing of the receipts from the capital gains and other provisions. For fiscal years 1999-2003, OMB's total cost of \$2.8 billion greatly exceeded CBO's estimate of \$1 billion. Approximately one-half of this difference is attributable to the mark-to-market provision. While OMB estimates that this provision produces a one-time increase in revenues (\$0.4 billion over 5 years), CBO's estimate assumes continuing additional receipts (\$1.3 billion over 5 years). Most of the remaining difference is due to different baseline assumptions which result in OMB estimating larger revenue losses for the taxpayer bill of rights provisions.

Transportation Equity Act for the 21st Century (TEA-21)

TEA-21 (Public Law 105-178)⁴ reauthorized federal surface transportation programs and had budgetary effects on both the discretionary and mandatory components of the budget. For discretionary spending, TEA-21 established new mass transit and highway categories, each with its own caps through fiscal year 2003. The allowable spending under these caps was partially offset by a decrease in the existing discretionary caps.

TEA-21 contains a provision that specifically exempts these cap changes from the PAYGO rules. If it had not contained this provision, CBO and OMB would have differed on the issue of whether this spending increase required an offset. CBO officials stated that adjusting the caps does not have a PAYGO effect (because changing the caps does not provide budget authority) and therefore this provision would not require any PAYGO offset. Conversely, OMB officials stated that adjusting the caps has a PAYGO effect, and thus it would have required a PAYGO offset.

¹Under this method, securities that are in the hands of securities dealers must be included in inventory at fair market value.

²The cost estimates in this paragraph exclude costs (\$125 million for fiscal years 1999-2003) of a provision designated as an emergency.

³The DCA requires that CBO use revenue estimates prepared by the Joint Committee on Taxation (JCT) for provisions affecting income taxes.

⁴Technical corrections to TEA-21 were made by the Internal Revenue Service Restructuring and Reform Act of 1998. Unless otherwise noted, all references to TEA-21 include these corrections.

Several other TEA-21 provisions were also exempt from the PAYGO requirements. These provisions altered the highway program obligation limits for fiscal year 1998, which resulted in lower outlays in 1998 and 1999 and increased outlays thereafter, reduced outlays for veterans benefits, changed interest rates for student loans issued between July 1 and October 1, 1998, and changed the Social Services Block Grant and TANF programs.

OMB estimated total savings of \$1.5 billion for the TEA-21 provisions that were not exempted from PAYGO requirements, while CBO estimated total costs of \$0.2 billion. This \$1.7 billion difference is largely attributable to the scoring of the extension of the 2.5 cents per gallon tax on gasoline and other alcohol fuels that is currently deposited into the general fund instead of being deposited in the Highway Trust Fund. CBO's baseline assumes the continuation of these taxes while OMB's does not. Thus, CBO assumes there are no savings from their extension and OMB assumes that there are. We believe OMB's position to be correct under the law because section 257 of DCA states that, for purposes of the baseline, only those excise taxes associated with trust funds are assumed to continue after their expiration date and these excise taxes are not deposited into trust funds.⁵

Higher Education Amendments of 1998

The Higher Education Amendments of 1998 (Public Law 105-244) amended the Higher Education Act of 1965 by making numerous changes in the student loan programs and eliminating the Perkins loan revolving fund. It also amended the Bankruptcy Code regarding student loan bankruptcies. For 1999-2003, OMB estimated that this bill would increase the deficit by \$0.7 billion, while CBO estimated that the increase would be \$2.5 billion. Most of the difference between OMB and CBO stems from the scoring of the impact of changing the interest rates for guaranteed student loans. The interest rates on these loans is calculated using the 91-day Treasury bill rate plus an additional factor depending on whether the student is still in school or in loan repayment. However, the interest rate charged to borrowers is capped at 8.25 percent, with the federal government assuming any costs above that. In preparing its estimates, CBO used a probabilistic model to simulate the variation of the 91-day Treasury bill rate around the CBO baseline estimate. The model provided probabilities of how often and by how much the simulated rates exceeded the 8.25 percent interest rate cap. These probabilities were then used in CBO's model of the student loan

⁵Section 257(b)(2)(C)

program to estimate changes in subsidy costs. OMB's estimate did not include these probabilistic effects. Instead, it relied on traditional point estimates of the 91-day Treasury bill rate to calculate additional costs. In CBO's view, this understates the expected costs of the provision.

Omnibus Consolidated and Emergency Supplemental Appropriations Act

The Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105-277) contained revenue and direct spending provisions subject to PAYGO scoring. The revenue provisions extend certain expiring tax and trade provisions, provide relief for farmers, close certain tax loopholes and make other changes to the tax code. The direct spending provisions made changes to a wide variety of programs, including Medicare, veterans compensation, and Tennessee Valley Authority debt refinancing.

For 1999, there was a difference of \$330 million between the OMB and CBO estimates—a \$250 million cost for OMB compared to \$80 million in savings for CBO. Over 5 years, there is a larger cumulative difference of \$7.7 billion dollars with OMB estimating \$7.65 billion in savings and CBO estimating costs of \$25 million.

The largest single difference is associated with a receipts provision restricting abusive liquidating Real Estate Investment Trusts (REIT) transactions. As required by the Omnibus Act, OMB scored this provision using the economic and technical assumptions used in preparing the fiscal year 1999 Mid-Session Review baseline receipts forecast which contained an explicit adjustment for anticipated revenue losses associated with liquidating REIT transactions. Since CBO's baseline did not fully capture this adjustment, its estimates of the increased revenues from the provision (\$5.6 billion) were lower than OMB's (\$15 billion). There were also significant 5-year scoring differences on the tax and trade extensions (\$886 million) and special tax provisions for farmers (\$675 million), with OMB estimating higher revenue losses in both cases. These differences were both attributable to technical modeling differences.

Cap Adjustments

Section 251(b) of DCA requires that the discretionary spending limits be adjusted to account for (1) changes in concepts and definitions, (2) emergency appropriations, (3) an allowance for the International Monetary Fund, (4) international arrearages, (5) earned income tax credit compliance initiative, and (6) spending for continuing disability reviews by the Social Security Administration. 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 and, if so, how much sequestration is required. CBO's cap adjustment estimates are advisory.

Overall, CBO's estimates of the 1999 caps are \$7.3 billion higher than OMB's for budget authority and \$2.1 billion higher for outlays. All of the difference in budget authority and nearly all the difference in outlays is due to long-standing differences in the way each treats contingent emergencies. CBO scores contingent emergency budget authority in the fiscal year it is appropriated because it does not know what the President is going to release and it tries to reflect the total enacted amounts. OMB scores the authority only after it is officially released by the President and designated by the President as emergency requirements. This results in CBO increasing the caps more than OMB immediately after emergency legislation is enacted. For example, CBO scores all \$8.3 billion in defense emergency appropriations included in the Omnibus Act but OMB only scores the approximately \$4.1 billion that has been released.

When CBO makes the adjustment to the discretionary caps in its final sequestration report, it first calculates the difference between OMB's and CBO's update caps since OMB's are controlling. When calculating the final 1998 nondefense cap, CBO inadvertently did not include a \$50 million contingent emergency release of Low-Income Home Energy Assistance Program funds that had been released prior to the issuance of OMB's update report. If CBO had included this contingent emergency, its 1999 outlay cap would have increased by \$13 million. The same contingent emergency also was excluded from the "Status of Fiscal Year 1998 Appropriations" table in OMB's update report even though it was included in the reported cap adjustment. According to OMB this occurred because the release of the funds occurred after the report had been typeset and the table was inadvertently not updated.

Status of 1999 Appropriations and Discretionary Scoring Differences

Only one appropriations act (Military Construction (Public Law 105-237)) was enacted prior to the start of fiscal year 1999. An additional four acts were separately enacted (Energy and Water Development Appropriations Act, 1999 (Public Law 105-245), Department of Defense Appropriations Act, 1999 (Public Law 105-262), Legislative Branch Appropriations Act, 1999 (Public Law 105-275), and Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act,

1999 (Public Law 105-276)) after the start of the fiscal year. The remaining eight acts were combined into the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277).

CBO's and OMB's final sequestration reports differed on the potential need for sequestration in fiscal year 1999. As shown in table III.1, CBO estimates that outlays for defense, nondefense and mass transit categories slightly exceed the caps. In contrast, OMB shows budget authority and outlays in all categories as meeting the caps. Since OMB's estimates and caps are controlling, sequestration was not triggered. The difference between the CBO and OMB estimates is accounted for by many scorekeeping differences, detailed below.

Table III.1: Status of Fiscal Year 1999 Appropriations

Dollars in millions

	OMB		CBO	
	Budget Authority	Outlays	Budget Authority	Outlays
Defense Discretionary				
Total Enacted Appropriations	275,645	268,911	279,891	274,160
End-of-Session Limits	275,651	270,207	279,891	271,978
Difference	-6	-1,296	0	2,182
Nondefense Discretionary				
Total Enacted Appropriations	283,928	272,228	286,952	275,042
End-of-Session Limits	284,090	273,999	287,107	274,377
Difference	-162	-1,771	-155	653
Violent Crime Reduction				
Total Enacted Appropriations	5,797	4,946	5,798	4,951
End-of-Session Limits	5,800	4,953	5,800	4,953
Difference	-3	-7	-2	-2
Highway				
Total Enacted Appropriations		21,568		21,977
End-of-Session Limits		21,991		21,977
Difference		-423		0
Mass Transit				
Total Enacted Appropriations		3,942		4,404
End-of-Session Limits		4,401		4,401
Difference		-459		3
Total				
Total Enacted Appropriations	565,370	571,595	572,641	580,534
End-of-Session Limits	565,541	575,551	572,798	577,698
Difference	-171	-3,956	-157	2,836

Note: Highway and Mass Transit Categories were created by TEA-21 and include only outlay caps.

Scorekeeping Differences

Although, as discussed below, there were scorekeeping differences between OMB and CBO, for the most part these differences were relatively small. Over 75 percent of the 187 differences in either budget authority or outlays that we identified were less than \$100 million with only 5 greater than \$500 million. The five provisions with the largest differences are shown in table III.2.

Table III.2: Provisions With More Than \$500 Million Difference Between OMB and CBO Estimates

Dollars in millions

Act	Agency	Account	Difference between OMB and CBO estimates (OMB-CBO)			
			1998		1999	
			Budget Authority	Outlays	Budget Authority	Outlays
Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act, fiscal year 1999	Department of Housing and Urban Development	Housing Certificate Fund	a	a	0	-1,112
Supplemental Appropriations and Rescissions Act, fiscal year 1998	Department of Defense	Overseas Contingency Operations Transfer	0	989	0	-805
Supplemental Appropriations and Rescissions Act, fiscal year 1998	Federal Emergency Management Agency	Disaster Relief	0	0	0	640
Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999	Department of Education	Student Financial Assistance	a	a	0	-610
Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act, fiscal year 1999	Department of Housing and Urban Development	Annual Contributions for Assisted Housing	a	a	0	533

^aThis law had no budgetary impact in 1998.

Notes:

Negative numbers indicate provisions where CBO's estimates were higher than OMB's.

Positive numbers indicate provisions where CBO's estimates were lower than OMB's.

For these provisions, the difference between the OMB and CBO estimates can be grouped into the following categories:

- **Economic differences:** Scoring differences related to the Housing Certificate Funds and Annual Contributions for Assisted Housing are largely the result of different OMB and CBO economic assumptions. CBO assumes higher rental inflation (3.2 percent per year compared to

OMB's 2 percent per year) and slower tenant income growth (2.5 to 2.8 percent per year compared to OMB's 3 percent). These different assumptions result in CBO's outlay estimate for the Housing Certificate Fund account being \$1.1 billion higher than OMB's and its estimate for Annual Contributions for Assisted Housing account being \$533 million lower.

- Spendout rates: Differences in the Overseas Contingency Operations Transfer account are the result of OMB assuming a faster spendout rate for emergency funds than does CBO which results in OMB assuming that outlays were \$989 million higher in 1998 but \$805 million lower in 1999. Similarly, most of the differences in the Student Financial Aid account are the result of CBO assuming 1999 outlays of \$7.5 billion from previously available authority, while OMB assumes the prior year outlays of \$7.0 billion. The rest of the difference is because OMB assumes a slower spendout rate for new authority provided in 1999.
- Faster obligation rates: For the Disaster Relief account, OMB assumed that obligations for emergency needs will occur quickly and outlays will begin in fiscal year 1999, while CBO assumed that outlays will begin in fiscal year 2000.

Emergency Spending

The Deficit Control Act allows spending to be designated as “emergency spending” which is exempt from the discretionary spending caps. When a spending provision is designated as an emergency the discretionary caps are increased by the amount of the resulting budget authority and outlays. The emergency spending provisions in the Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105-277) were a departure from recent budgetary practice in terms of size, use of offsets and the nature of the provisions.

The Deficit Control Act does not set forth any criteria determining what constitutes an emergency. It provides only the following definition, “any appropriations...that the President designates as emergency requirements and that the Congress so designates in statute.” Typically, emergency appropriations are provided in supplemental appropriations acts, although they have been included in “normal” appropriations acts. Defense-related emergency spending has included such items as Operation Desert Storm and peacekeeping operations in Bosnia. Nondefense emergency spending has typically occurred following natural disasters such as hurricanes, floods, and earthquakes.

The Congress appropriated the second highest amount of emergency budget authority for fiscal year 1999 than for any fiscal year since the enactment of the Budget Enforcement Act in 1990, as shown in table IV.1. The \$7.8 billion in defense emergency spending is the second largest total, surpassed only by budget authority associated with Operation Desert Storm in fiscal year 1991. The \$13.8 billion in nondefense budget authority represents the largest amount of emergency spending authority. The only other fiscal year with more than \$10 billion in nondefense emergency budget authority was fiscal year 1994, which included spending associated with the Northridge earthquake. Almost all of the emergency spending enacted so far for fiscal year 1999 was included in the Omnibus Consolidated and Emergency Supplemental Appropriations Act.

Appendix IV
Emergency Spending

Table IV.1: Emergency Budget Authority, Fiscal Years 1991-1999

Dollars in millions

	1991	1992	1993	1994	1995	1996	1997	1998	1999
Defense	44,387	7,527	642	1,497	2,448	982	2,077	2,834	7,796
Nondefense	1,459	8,641	5,387	12,363	5,487	4,069	7,459	3,064	13,778
Total	45,846	16,168	6,029	13,860	7,935	5,051	9,536	5,898	21,574

Note: Data current as of November 16, 1998. The final 1999 amounts after the end of the fiscal year will likely be higher depending on the additional emergency spending designations during the year.

Source: CBO.

The Omnibus Act differed from most recent emergency spending acts in two ways. First, it provided much larger amounts of emergency appropriations. Second, unlike recent practice, it did not offset the emergency appropriations with reductions in other discretionary spending. Although as noted above, emergency spending is exempt from the caps, since 1994 the practice has been to offset some or all of the emergency spending with cuts in other programs. For example, the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105-174) enacted on May 1, 1998, included \$5.4 billion in emergency appropriations and \$2.6 billion in reductions in other programs. In contrast, with the exception of \$0.1 billion in defense spending, none of the emergency appropriations in the 1999 Omnibus Act was explicitly offset.

Since 1991, there have been two major types of emergency spending legislation— that focusing on a particular emergency need and legislation that is of a broader omnibus nature. An example of the narrower legislation is the Dire Emergency Supplemental Appropriations Act, 1992 (Public Law 102-368) which provided emergency disaster relief following hurricanes Andrew and Iniki. As shown in table IV.2, the 1999 Omnibus Act is an example of the broader type of act.

Table IV.2: Components of the Omnibus Act

Purpose	Budget authority in billions of dollars
Agriculture disaster relief	5.9
Antiterrorism/embassy security	2.4
Y2K conversion	3.4
Natural disasters	1.4
Other emergencies	0.1
Counter-drug & interdiction	0.9
National defense	6.6
Total	20.8

Source: CRS.

Within these broad purposes, the variety of programs addressed by the emergency provisions is also broad. For example, the defense provisions range from funding U.S. troops in Bosnia to funds for ballistic missile defense, and the agriculture disaster relief provisions range from direct payments to producers to increased crop insurance costs. In order to enact the producer payments provision as an emergency, the Congress included language in the Omnibus Act that overrode a prohibition in the Deficit Control Act that prohibited emergency designations for such payments.

During the debate on the Omnibus Act, the issue of what constitutes emergency spending was raised. This debate has continued into the 106th Congress with the introduction of several proposals to change the treatment of emergency spending.¹ These proposals range from requiring committee reports to include justifications for emergency spending provisions to including some emergency spending within the spending caps. For example, the Budget Enforcement Act of 1999 (S. 93) would require that committee reports proposing emergency spending analyze whether the requirement meets the following criteria:

- A necessary expenditure—an essential or vital expenditure, not one that is merely useful or beneficial.
- Sudden—quickly coming into being, not building up over time.
- Urgent—a pressing and compelling need requiring immediate action.
- Unforeseen—not predictable or anticipated as a coming need.

¹See, for example, Senate Resolution 5, S. 93 and H.R. 853.

-
- Not permanent--the need is temporary.²

Additional information on issues related to emergency spending can be found in the CBO report Emergency Spending Under the Budget Enforcement Act issued in December 1998.

²These criteria are similar to those proposed by OMB in 1991.

Major Contributors to This Report

Accounting and
Information
Management Division,
Washington, D.C.

Christine E. Bonham, Assistant Director
Robert M. Sexton, Senior Evaluator
John W. Mingus, Senior Evaluator
Joseph G. Heisler, Evaluator

Office of the General
Counsel

Charles Roney, Assistant General Counsel
Frank Maguire, Attorney-Advisor

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