

**DEFENSE LOGISTICS AGENCY  
ADMINISTRATIVE RECORD  
FY 2013 FURLOUGH APPEALS**

*Note: These core materials do not constitute all of the materials relied upon to support the FY 2013 administrative furlough action. Agency representatives may supplement this file as necessary by submitting additional documents within individual appeals.*

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**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD**

**DECLARATION OF ROBERT F. HALE**

**Personal Background**

I, Robert F. Hale, having personal knowledge of the facts contained in this declaration and being competent to testify to them, hereby state as follows:

1. I currently serve as the Under Secretary of Defense (Comptroller)/Chief Financial Officer in the United States Department of Defense (“DoD” or “the Department”). I have held this position since February 2009 following my nomination by President Barack Obama, confirmation by the United States Senate, and appointment by President Obama.

2. Prior to my appointment, I served as the Executive Director of the American Society of Military Comptrollers (ASMC), the professional association of Defense financial managers. As Executive Director, I led the ASMC’s certification program (the Certified Defense Financial Manager program), and oversaw other training programs, the society’s professional journal, and the ASMC’s National Professional Development Institute, an annual conference attracting more than 3,500 participants. Prior to my ASMC tenure, from 1994 to 2001, I served in the Pentagon as the Assistant Secretary of the Air Force (Financial Management and Comptroller), where I was responsible for annual budgets in excess of \$70 billion, efforts to streamline Air Force financial management, and compliance with the Chief Financial Officers Act. In addition, from 1982 to 1994, I headed the National Security Division at the Congressional Budget Office, developing quantitative analyses of major defense budget issues and testifying frequently before congressional committees. During my career, I was also a senior fellow and head of the acquisition and grants management group at LMI, a consulting firm

specializing in service to the Federal government. I also spent 3 years as an active duty officer in the U.S. Navy and served as a staff analyst and study director at the Center for Naval Analysis.

3. I graduated with honors from Stanford University with a Bachelor of Science (B.S.) in mathematics and statistics. I also hold a Master's degree in operations research from Stanford and a Master of Business Administration (MBA) degree from the George Washington University. I am a Certified Defense Financial Manager (CDFM). I am a fellow of the National Academy of Public Administration and a past member of the Defense Business Board, a high-level Pentagon advisory panel. In addition, I am the recipient of the Department of Defense Exceptional Public Service Award, the Air Force Distinguished Service Award, and the National Defense Medal.

4. In my current position as Under Secretary of Defense (Comptroller), I am the principal advisor to Secretary of Defense Hagel on all budgetary and fiscal matters, including the development and execution of DoD's annual budget of more than \$500 billion, which pays for day-to-day and wartime requirements. As Chief Financial Officer, I also oversee the Department's financial policy, financial management systems, and business modernization efforts. I served in the same capacity for former Secretaries of Defense Panetta and Gates.

#### **Overview of Sequestration and Its Impact on the Department of Defense**

5. As the Department's Comptroller, I have advised both Secretary Hagel and former Secretary Panetta regarding the Department's reduced funding levels and the impact of sequestration on the Department's budget and the various options, including furloughs, for addressing such impact. I advised that an administrative furlough was a management tool that would result in a predictable, recurring amount of money being available for use by the

Department to contribute to addressing the negative fiscal impacts of sequestration, operating for a full-year under a continuing resolution, and increasing war requirements.

6. By way of background, the Budget Control Act (BCA) of 2011, which was enacted in August 2011, provided for a projected \$1.2 trillion in automatic spending cuts, if Congress failed to enact deficit reduction legislation by adopting the recommendations of the Joint Select Committee on Deficit Reduction by January 15, 2012. The cuts were to be evenly divided: (1) over a 9-year period beginning in 2013 and ending in 2021, and (2) between defense spending and discretionary domestic spending. Known as sequestration (or sequester), the above process of automatic spending cuts was intended as a means of encouraging compromise on deficit reduction efforts. When no such compromise was reached, however, the mandatory budget cuts (including \$109 billion in total cuts for fiscal year 2013) were scheduled to go into effect on January 2, 2013. Passage of the American Taxpayer Relief Act on January 2, 2013, delayed the mandatory budget cuts until March 1, 2013.

7. As of February 2013, the Department anticipated, absent another postponement or a compromise, that by the end of the following month, its share of the sequester for fiscal year 2013 would result in an approximate \$42 billion reduction in the Department's total discretionary budgetary topline (later recalculated by the Office of Management and Budget at \$37 billion) with virtually every budget account in the Department's budget – including wartime funding but excluding military personnel accounts – cut by as much as 9 percent.

8. In addition to sequestration, the Department anticipated further budgetary constraints if the funding levels for the remainder of fiscal year 2013 were to stay in effect at the then-current funding levels allowed by the continuing resolution (CR). A CR is an appropriations act that funds specified Federal agencies or the entire Federal government until a

specified date or for the remainder of the fiscal year when agreement cannot be reached on one or more of the regular appropriation acts. Typically it proportionally allocates budget authority into accounts based on amounts appropriated in the prior year appropriations acts. Thus, the lack of a regular DoD appropriations act for fiscal year 2013 created, among other things, the additional constraint of having money in the wrong appropriation accounts. Specifically, under the then-existing CR, the Department had too many dollars in the investment accounts and too few dollars in the operation and maintenance (O&M) accounts.

9. Finally, by February 2013 the Department faced costs of wartime operations in excess of those that were estimated two years earlier when budgets were prepared. At that point we estimated that we could be short as much as \$10 billion in wartime operating costs.

10. These various factors – sequestration, misallocation of funds under the CR, unexpectedly high wartime costs – all affected the DoD budget, especially the Operation and Maintenance (O&M) portion of the budget, which funds the costs for many of our civilian employees. Taken together, these factors left us facing shortfalls of \$40 billion or roughly 20 percent of O&M funding for active forces.

#### **Initial Considerations Regarding the Furlough of Department of Defense Civilian Employees**

11. In response to sequestration and other shortfalls, the DoD determined that if it had to operate under reduced funding levels for an extended period of time, it would have to consider furloughs and other actions to ensure it could execute its core mission and to bring its expenditures down to appropriated levels. As an initial overriding objective, the Department had to protect the warfighter. This objective meant, however, that there would be larger and more disproportionate cuts in the Military Departments' O&M accounts supporting the base budget for

the active forces and from which most civilian positions are funded. The need to protect warfighter funds added to the Department's O&M problems.

12. As of late February 2013, the Department had already begun taking many near-term actions in an attempt to slow spending and avoid more draconian cuts at a later time. Such actions included severe cutbacks in travel and training conferences; civilian hiring freezes; layoffs of more than 7,500 temporary and term employees; sharp cutbacks in facilities maintenance (by as much as 90 percent in the remainder of the year); cutbacks in base operations; reduction of the number of aircraft carriers, embarked air wings, and accompanying defensive and support ships deployed to the Persian Gulf; reductions in the scope of and period of performance of contracts; and delay of contracting actions until the next fiscal year. However, the Department recognized at that time that if sequestration and the CR were to last throughout fiscal year 2013, many more far-reaching changes would be required, including cutbacks and delays in virtually every investment program in the Department (some 2,500 of them) and the furlough of civilian personnel.

13. As a result, on February 20, 2013, Secretary of Defense Panetta notified DoD civilian employees and the Congress about the potential for such furloughs for up to 22 days (176 hours). As I noted that same day in a DoD Press Briefing on "Civilian Furlough Planning Efforts," although the Department would strongly prefer not to impose furloughs, the Department believed that it had no choice but to do so absent further action by Congress, given the severe budget constraints outlined above. As I then stated,

We're more than 20 percent short in O&M, with 7 months to go, much higher in some of the services, particularly the Army. Civilian personnel make up a substantial part of DoD O&M funding. We can't do reductions in force, especially at this point in the year. They'd cost us money in this year because of unused leave and severance pay, so furloughs are really the only way we have to quickly cut civilian personnel funding.

14. During the planning for possible furloughs, the Secretary determined that, as a matter of policy, there would be only limited exceptions to any furloughs that were imposed. Exceptions would include civilians directly involved in support of wartime operations, those needed for protection of life and property, and those involved in a few programs of particularly high priority (especially programs directly and significantly affecting military readiness). Remaining furloughs would be implemented in a fair and even manner across the breadth of the Department (including the Military Departments). We estimated that furloughs of 22 days would reduce DoD expenditures by \$4 to \$5 billion.

15. On March 21, 2013, Congress passed H.R. 933, the “Consolidated and Further Continuing Appropriations Act, 2013,” (hereafter referred to as “the Act”) which, in part, provided fiscal year 2013 full-year appropriations through September 30, 2013, for various Federal agencies, including the Department of Defense, and which modified some aspects of sequestration. Although it retained the overall sequestration spending cuts and their across-the-board nature, and did not provide sufficient funding to cover the OCO shortfalls, it aligned funding closer to the fiscal year 2013 budget request for DoD and provided limited transfer authority to the Department, which is an authority to move money from one account (*e.g.*, Procurement) to another (*e.g.*, O&M) in order to provide some flexibility during budget execution. In anticipation of the President’s signing Public Law No. 113-6, on March 21, 2013, the Department delayed issuance of furlough notices to allow the Department to analyze carefully the impact of the Act on the Department’s resources. After March 26, 2013, when President Obama signed H.R. 933 into law as Public Law No. 113-6, the Department no longer operated under the CR terms and conditions. This corrected approximately \$11 billion of the

shortfall in the Military Departments' base O&M accounts that resulted from operating under the CR at the fiscal year 2012 funding levels and authorized a total of \$7.5 billion in general and special transfer authority under sections 8005 and 9002, respectively.

16. However, even after enactment of this appropriations legislation, the Department still faced an O&M shortfall in excess of \$30 billion. In efforts to minimize the adverse effects of the sequester, and of the overall O&M shortfall, the Department pursued various courses of action. In addition to the short-term actions mentioned above, the Department imposed far-reaching cutbacks in training and maintenance. In April the Air Force began shutting down all flying at 12 combat-coded fighter and bomber squadrons and curtailed exercises, acts that seriously reduced military readiness. By April the Army had already cancelled seven combat training center rotations – culminating training events that are necessary to ready units for deployment – and five brigade-level exercises. The Department of the Navy also cut back steaming days and flying hours across the Navy and Marine Corps. The military services also cut back funding for weapons maintenance. In addition, the Department of the Navy delayed deployment of the USS TRUMAN carrier strike group to the Persian Gulf, curtailed the sailing of the USNS COMFORT to the United States Southern command area of responsibility, and cancelled four other ship deployments.

17. By late April these various actions had reduced the estimated O&M shortfall to about \$11 billion, mostly in our wartime budget and mostly in the Army. Faced with a limited number of options to close this gap, and with uncertainty about the Department's ability to identify and gain Congressional acceptance of further budget cuts, on May 14 the Secretary announced his intention to impose furloughs on civilian personnel rather than making even larger cuts in training and maintenance that would have further eroded military readiness. Overall, the

furloughs impacted approximately 650,000 (or about 85%) of the Department's approximately 767,000 civilian employees paid directly by DoD funds. Rather than the 22 days estimated earlier, the Secretary reviewed budget projections and decided that furloughs could be limited to a maximum of 11 days (88 hours). We estimated that furloughs of 11 days would save DoD about \$2 billion, avoiding substantial further cuts in training and maintenance. The Department began the required "impact and implementation" bargaining with unions and began the process of issuing required notifications to employees and furloughs began during the week of July 8.

#### **Inclusion of Working Capital Fund Employees**

18. On June 21, 2013, a bipartisan group of 31 Members of Congress sent a letter to the Secretary of Defense expressing "concern about the determination that civilian workers at entities funded through Defense Working Capital funds are subject to furlough." Specifically, the members inquired as to the legality of furloughing civilians in these funds in light of section 129 of title 10 of the United States Code.

19. On July 5, 2013, acting based on the Advice of the DoD Office of General Counsel, I responded on behalf of Secretary Hagel. In my letter, which is attached hereto as Attachment 1, I noted that the short-term furlough directed by the Department of Defense does not contradict any of the various prohibitions which are set forth in section 129. As I further explained, to the contrary,

Section 129 directs the Department to manage our civilian workforce based on workload and on the "funds made available to the department for such fiscal year." The \$37 billion reduction levied on the Department by sequestration is a major cause of these furloughs, and therefore our actions satisfy the requirements of section 129. Indeed, section 129 directs the Department to manage our civilian workforce based on workload and funding.

As for your cost concerns, furloughs of all DoD civilians will save about \$2 billion in fiscal year 2013, including more than \$500 million associated with

reduced personnel costs in working capital fund activities. These working capital fund personnel savings provide us the flexibility to adjust maintenance funding downward to meet higher-priority needs. The Air Force, for example, currently expects to reduce funded orders in their working capital funds by about \$700 million to meet higher-priority needs while the Army expects to reduce orders by \$500 million.

*See Attachment 1.*

20. Having imposed furloughs, the Department undertook extensive efforts to identify budget changes that would close the remaining gap and, if possible, reduce cutbacks in training and impose fewer furlough days. In mid-May the Department prepared and submitted two Omnibus reprogramming requests that sought permission from the congressional defense committees to move funds totaling about \$9.6 billion from lower priority budget lines to higher priority budget lines. When the congressional committees did not approve all of the Omnibus reprogramming requests, the Department submitted two additional reprogramming actions on July 22, 2013, that included about \$1 billion of replacement sources for those sources that one or more of the committees had denied or deferred. These reprogrammings moved furlough savings and funds for lower-priority activities to areas of highest budgetary need. The law limits the amount of funds that can be transferred annually under reprogrammings, and these two reprogramming actions used almost all of DoD's transfer authority for FY 2013. Second, pursuant to existing authorities, the Department transferred responsibilities for some specific programs and missions from one Department of Defense component to another and used other available means to reallocate the financial burden for supporting the warfighter. For example, on July 15, 2013, pursuant to section 165(c) of title 10 of the United States Code, the Deputy Secretary of Defense assigned to the Secretary of the Navy the responsibility for providing up to \$450 million for support to U.S. Forces in Afghanistan that previously had been the responsibility of the Army under the Logistics Civil Augmentation Program (LOGCAP). The

Navy ultimately provided \$310 million for the support to U.S. Forces in Afghanistan using the Army's LOGCAP contract. On July 15, 2013, pursuant to section 2571(b) of title 10 of the United States Code, the Deputy Secretary also directed the Director for the Defense Logistics Agency to reduce the standard prices for jet and ground fuel procured under the authority of section 2208 of title 10 of the United States Code and provided to DoD customers in connection with military operations conducted in Afghanistan, retroactive to March 1, 2013 (to coincide with the President's sequestration order). This effectively tapped funds available to the Defense Logistics Agency to support the warfighting costs that would otherwise have been borne by the military departments.

### **The Furlough Outcome**

21. Since Congress approved most of the Department's large reprogramming requests that were submitted in mid-May and late-July, giving the Department flexibility to move funds across accounts, together with the facts that the Military Departments were aggressive in identifying ways to hold down costs, and that the Department was able to transfer some responsibilities for funding specific programs and missions using existing authorities, the Department was successful in shifting savings (including furlough savings) to meet its highest priority needs. As a result, the Department was able to close the remaining budgetary gap and abide by legally binding spending caps. DoD was also able to accomplish two high-priority goals: a reduction in furlough days, and modest improvements in training and readiness. Specifically, DoD was able to reduce furloughs from a maximum of 11 days to 6 days (48 hours) for most DoD civilian employees.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: September 16, 2013

Handwritten signature of Robert F. Hale in cursive script.

Robert F. Hale



COMPTROLLER

UNDER SECRETARY OF DEFENSE  
 1100 DEFENSE PENTAGON  
 WASHINGTON, DC 20301-1100

JUL - 5 2013

The Honorable Derek Kilmer  
 U.S. House of Representatives  
 Washington, DC 20515

Dear Congressman Kilmer:

Thank you for your letter of June 21, 2013 concerning the furlough of working capital fund civilians of the Department of Defense (DoD). Secretary of Defense Hagel asked me to respond on his behalf. I can say in summary that in FY 2013 DoD faced a budget cut of \$37 billion caused by sequestration, in addition to shortfalls in wartime funding. The Department does not want to furlough any of its valued civilian employees but must do so to help meet these budgetary shortfalls. Furloughs of civilians at working capital fund activities are legal and result in personnel cost savings.

Secretary Hagel regrets having to furlough any DoD civilian employees, whether they serve in the Department's working capital fund activities or elsewhere. Unfortunately, in FY 2013 DoD faces a large shortfall in our operating budgets both because of sequestration and a lack of funds to meet all our wartime operating requirements. The Department has taken many steps to close this shortfall including sharp cuts in facilities maintenance, hiring freezes, and layoffs of temporary and term employees. DoD has asked Congress to let us "reprogram" or move money from our investment accounts into operating accounts to help pay DoD's wartime bills, though our Congressional Committees have not yet approved a significant part of that request. The Department has also cut back sharply on training and maintenance, actions that have led to serious damage to our readiness. Finally, and reluctantly, DoD has imposed furloughs for up to 11 days on most of its civilian employees.

You requested the Department's views on the legality of furloughing civilians in working capital fund activities, in particular with respect to section 129 of title 10, United States Code. The Department believes short-term furloughs of working capital fund civilians -- who are indirectly funded Government employees -- are permissible under that statute. Indirectly funded Government employees may not be subjected to constraints or limitations based on the number of such personnel who may be employed on the last day of a fiscal year, and may not be managed on the basis of man years, end strength, full-time equivalent positions, or maximum number of employees. They also may not be controlled under any policy of a Military Department Secretary with respect to civilian manpower resources. A short-term furlough directed by the Secretary of Defense does not contradict these prohibitions. Further, Section 129 directs the Department to manage our civilian workforce based on workload and on the "funds made available to the department for such fiscal year". The \$37 billion reduction levied on the Department by sequestration is a major cause of these furloughs, and therefore our actions satisfy the requirements of section 129. Indeed, section 129 directs the Department to manage our civilian workforce based on workload and funding.

As for your cost concerns, furloughs for all DoD civilians will save about \$2 billion in FY 2013, including more than \$500 million associated with reduced personnel costs in working capital fund activities. These working capital fund personnel savings provide us the flexibility to adjust maintenance funding downward to meet higher-priority needs. The Air Force, for example, currently expects to reduce funded orders in their working capital funds by about \$700 million to meet higher-priority needs while the Army expects to reduce orders by \$500 million. Because Congress has not yet approved about \$2.5 billion of our reprogramming request as of the date of this letter, it is unfortunately possible that these maintenance cutbacks may have to be increased.

The Secretary and the Department appreciate and share your concerns for the efficiency of our operations, the welfare of our civilian employees, and the impact of furloughs on our defense communities. The Department is also seriously concerned with the adverse effects on readiness caused by cutbacks in training and maintenance. The best way for Congress to address all these concerns is to pass a balanced deficit reduction plan that the President can sign and then repeal sequestration.

An identical letter is being provided to the other signatories to your letter.

Sincerely,

A handwritten signature in cursive script that reads "Robert F. Hale".

Robert F. Hale



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

AUG 6 2013

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
DEPUTY CHIEF MANAGEMENT OFFICER  
COMMANDERS OF THE COMBATANT COMMANDS  
ASSISTANT SECRETARIES OF DEFENSE  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION  
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER  
ASSISTANTS TO THE SECRETARIES OF DEFENSE  
DIRECTOR, ADMINISTRATION AND MANAGEMENT  
DIRECTOR, NET ASSESSMENT  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Reducing Furlough Days

I am pleased to announce that, due to a combination of Congressional approvals and Departmental budget management efforts, I am directing that furloughs for most DoD civilians be reduced from 11 days (88 hours) to six days (48 hours).

When I announced furloughs on May 14, I promised that we would try to reduce the number of days. In early May we faced a residual shortfall in our operating budget of \$11 billion. Furloughs of 11 days, which would have saved \$2 billion, were one of the limited number of options we identified to close this gap. Since then, Congress has approved most of a large reprogramming request that we submitted in mid-May, giving us flexibility to move funds across accounts. The military services have been aggressive in identifying ways to hold down costs, and we have been successful in shifting savings (including furlough savings) to meet our highest priority needs.

As a result, we are able to accomplish two goals: a reduction in furlough days, and modest improvements in training and readiness. However, even with these improvements, this is a military whose readiness remains seriously degraded as we head toward the budgetary uncertainties of FY 2014.

Assuming that the majority of employees were furloughed one day per week beginning the week of July 8, this reduction in the number of furlough days will mean that most employees will have achieved six days (48 hours) of furloughs by August 17. However, all civilian employees, unless exempted from furloughs or governed by special rules, must complete six days (48 hours) of furloughs. If they have not accomplished this by August 17, they must do so in a timely manner and before the end of this fiscal year.



OSD009263-13

One specific exception to be implemented immediately is the cancellation of all furloughs for Department of Defense Education Activity (DoDEA) instructional and support staff on 10-month contracts. These personnel were already subject to only five days of furloughs in order to ensure a creditable year of schooling for our students; now the teaching year will not be reduced at all. Newly hired civilian employees whose furlough period began after the week of July 8 must complete an equivalent of two furlough days per full pay period between the starting date for their furloughs and August 17. All other special circumstances will be adjudicated by the Under Secretary of Defense (Personnel and Readiness) and the Under Secretary of Defense (Comptroller).

I want to thank our civilian workforce for their patience and continued dedication to our mission during these extraordinarily tough times and for their continued service and devotion to our Department and our country. Our civilian personnel are essential to ensuring our Department and our military can provide for the nation's defense. I regret the difficulties they and their families had to face during this furlough period. Thank you.

*Charles  
L. Beck*

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT



# Guidance for Administrative Furloughs

June 10, 2013

*a New Day for Federal Service*

## Overview

The U.S. Office of Personnel Management (OPM) has prepared human resources guidance for agencies and employees on administrative furloughs. An administrative furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or other budget situation other than a lapse in appropriations.

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**NOTE:** Certain Qs and As in this document, “Guidance for Administrative Furloughs,” assume coverage under provisions of law or regulation specified in the given Q and A. To the extent that a particular employee is not covered by those specified provisions, the guidance in the Q and A may not be applicable.

## **A. General**

### **1. What is a furlough?**

**A.** A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

### **2. What is an administrative furlough and why are administrative furloughs necessary?**

**A.** An administrative furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other budget situation other than a lapse in appropriations. This type of furlough is typically a non-emergency furlough in that the agency has sufficient time to reduce spending and give adequate notice to employees of its specific furlough plan and how many furlough days will be required. An example of when such a furlough may be necessary is when, as a result of Congressional budget decisions, an agency is required to absorb additional reductions over the course of a fiscal year.

### **3. What human resources guidance applies for furloughs that are caused by a lapse of appropriations (i.e., shutdown furloughs)?**

**A.** In the event that funds are not available through an appropriations law or continuing resolution, a “shutdown” furlough occurs. A shutdown furlough is necessary when an agency no longer has the necessary funds to operate and must shut down those activities which are not excepted pursuant to the Antideficiency Act. For additional information on shutdown furloughs, see OPM’s Guidance for Shutdown Furloughs at <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>.

### **4. What does it mean to be in furlough status?**

**A.** Furlough status means that, because of a furlough (as described in Question A.1.), the employee is placed in a nonpay, nonduty status for designated hours *within* the employee’s tour of duty established for leave usage purposes (i.e., the tour of duty for which absences require the charging of leave). Furlough hours are a type of leave of absence without pay. Employees are in furlough status only during designated furlough hours, not for entire calendar days. Furlough status may be designated as the employee’s full daily tour of duty or part of that tour of duty. For example, an employee may be furloughed for half of an 8-hour daily tour of duty, or 4 hours. An employee who is in furlough status during a daily tour of duty may be ordered to perform work outside that tour, and such work would be subject to normal compensation requirements. (See also Questions D.4. and D.5.)

**5. Does placement in furlough status cause a full-time employee to be converted to part-time or a part-time employee to be converted to a reduced part-time work schedule?**

**A.** No. Placement in furlough status or any other kind of temporary nonpay, nonduty status does not affect the nature of an employee's official work schedule as full-time or part-time. For a full-time employee who is furloughed during a 40-hour basic workweek, the employee continues to have a full-time 40-hour basic workweek. For a part-time employee who is furloughed, the part-time tour of duty established for leave usage purposes also remains the same.

**B. Covered Employees**

**1. Which employees may be affected by an administrative furlough?**

**A.** Agencies are responsible for identifying the employees affected by administrative furloughs based on budget conditions, funding sources, mission priorities (including the need to perform emergency work involving the safety of human life or protection of property), and other mission-related factors. See also Procedures and Labor Management Relations Implications.

**2. How will employees be notified whether they are affected by an administrative furlough?**

**A.** Each agency will determine the method and timing of notifying employees of whether they are affected by an administrative furlough. See also Procedures and Labor Management Relations Implications.

**3. Are political appointees (such as Executive Schedule officials, noncareer members of the Senior Executive Service (SES), and Schedule C appointees) subject to administrative furlough?**

**A.** All political appointees who are covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are subject to administrative furlough. For example, Schedule C appointees in the General Schedule or Senior Level (SL) pay systems and noncareer SES members are all covered by the leave system and subject to administrative furlough. However, regular procedural requirements may not apply. (See Q&As M.5., M.6., N.12., and N.13.) Individuals appointed by the President, with or without Senate confirmation, who are not covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are not subject to furlough. (See Q&A B.4. for more information on why certain Presidential appointees are not subject to furlough.)

#### 4. Why are leave-exempt Presidential appointees not subject to furlough?

A. Individuals appointed by the President, with or without Senate confirmation, who are not covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are not subject to furlough. An exemption from the chapter 63 leave system may be based on 5 U.S.C. 6301(2)(x) or (xi). (See also OPM regulations at 5 CFR 630.211.) These leave-exempt Presidential appointees are not subject to furloughs because they are considered to be entitled to the pay of their offices solely by virtue of their status as an officer, rather than by virtue of the hours they work.

A leave-exempt Presidential appointee cannot be placed on nonduty status. Thus, the appointee's pay cannot be reduced based on placement in nonduty status, including via the mechanism of a furlough. As explained above, a leave-exempt Presidential appointee is entitled to the established pay of the position based on the holding of the office, not on the hours of duty.

Presidential appointees who are covered by the chapter 63 leave system are not considered to be entitled to pay based solely on their status as officers; thus, these individuals are subject to furlough in the same manner as other Federal employees. (See 5 U.S.C. 5508.) Any Presidential appointee who is a member of the Senior Executive Service (SES) or in a senior level (SL/ST) position paid under 5 U.S.C. 5376 may not be exempted from the chapter 63 leave system. All SES and SL/ST employees are subject to furlough on the same basis as other employees. (The furlough of career SES members is subject to the procedures in 5 CFR 359, subpart H, and the furlough of SL/ST employees is subject to the procedures in 5 CFR 752, subpart D, or 5 CFR part 351, as applicable.)

While employees may be subject to furlough, the applicable due process procedures depend on the type of employee in question. For example, all Presidential appointees are excluded from the adverse action procedures in 5 U.S.C. chapter 75, based on 5 U.S.C. 7511(b)(1) and (3). In addition, Presidential appointees subject to Senate confirmation are excluded from reduction in force procedures, based on 5 CFR 351.202(b). If a Presidential appointee is subject to furlough but not subject to adverse action or reduction in force procedures, the agency should follow any administrative procedures required by any applicable internal personnel policies.

Note: A former career Senior Executive Service (SES) appointee who receives a Presidential appointment that would normally convey an exemption from the leave system may be eligible to elect to retain SES leave benefits under 5 U.S.C. 3392(c). If SES leave benefits are so elected, such a Presidential appointee would be subject to furlough under 5 CFR part 359, subpart H.

**5. Are furloughed detailees returned to their home agencies following any furlough?**

A. Detailed employees remain officially assigned to their permanent positions during the detail. During a furlough, each agency will determine the status of their employees on detail within the agency or to another agency.

**6. Do all detailees follow the furlough policies and procedures of their home agencies if the detail continues?**

A. Yes, because all detailees remain officially employed by the agencies from which they are detailed. If furlough is required, the home agency will determine if and how the detailed employee is affected. The home agency and the receiving agency should discuss how a detailee will be affected if a furlough is not required in the home agency but is required in the receiving agency.

**7. I have a detailee from another agency working in my unit. Who can I contact to discuss any flexibility the home agency may be willing to exercise regarding scheduling of any required furlough days?**

A. Generally, the point of contact would be the human resources office of the employee's home agency. If the point of contact within that office is unknown, OPM suggests contacting the employee's supervisor at the home agency to determine who to contact about potential flexibility in scheduling required furlough days.

**8. Can an employee request to be furloughed as a way of reducing the hours of furlough required of other employees?**

A. An employee cannot request to be furloughed. A furlough is an agency adverse action that places an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

An employee may voluntarily request leave without pay which also places an employee in a nonpay, nonduty status. However, approval of leave without pay does not provide any due process rights (unlike a furlough action), and approval is subject to your organization's policies, procedures, and any collective bargaining agreement provisions. An employee should discuss with their human resources office any personnel implications of additional time in a nonpay, nonduty status. An agency should not pressure employees to request leave without pay. Such requests should be made on a purely voluntary basis.

While the granting of leave without pay to a significant number of employees may produce savings that could potentially affect the extent to which an agency needs to use furloughs to achieve the savings required by sequestration, employees should be aware that there is no guarantee that volunteering for unpaid leave will have a significant enough effect on an agency's operations to affect the agency's need to furlough employees. Moreover, there are many other factors that may potentially affect an agency's budget, and therefore affect the extent to which an agency needs to use furloughs to achieve cost savings.

Note 1: Leave-exempt Presidential appointees may not take leave without pay, as explained in Question B.4.

Note 2: This matter, like others involving the impact and implementation of furloughs, may be subject to collective bargaining for union-represented employees.

### **C. Working During Furlough**

#### **1. May an employee volunteer to do his or her job on a nonpay basis during any hours or days designated as furlough time off?**

**A.** No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an employee. (See 31 U.S.C. 1342.)

#### **2. What happens to employees scheduled for training during an administrative furlough?**

**A.** Since agencies typically have sufficient time to give employees adequate notice and to plan for administrative furloughs, furlough time off may be scheduled so as not to conflict with scheduled training. In the event that scheduled training occurs during a furlough period, affected employees must be placed in a furlough status and ordered not to attend the scheduled training.

#### **3. May employees take other jobs during a period designated as furlough time off?**

**A.** While on furlough time off, an individual remains an employee of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical conduct at 5 CFR part 2635). In addition, there are specific statutes that prohibit certain outside activities, and agency-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, an employee should review these regulations and then consult his or her agency ethics official to learn if there are any agency-specific supplemental rules governing the employee. (Also, see the Office of Government Ethics' March 13, 2013, legal advisory entitled, "[A reminder that ethics laws and regulations continue to apply to Federal Government employees during furlough periods.](#)")

#### **4. May an employee work during a period designated as furlough time off to earn credit hours under a flexible work schedule?**

**A.** No. An employee may not work to earn credit hours during hours and/or days designated as furlough time off.

**5. May an employee work during a period designated as furlough time off to accumulate religious compensatory time off hours for religious observances?**

A. No. An employee may not work during a period designated as furlough time off, even to accrue religious compensatory time.

**6. What is the effect of an agency ordering an employee to work during scheduled furlough hours?**

A. If an agency official orders an employee to work during scheduled furlough hours (e.g., to respond to an emergency), the assignment of work cancels the employee's furlough status for the duration of the ordered work, and such work would be subject to normal compensation requirements.

**D. Pay**

**1. When an employee's pay is insufficient to permit all deductions to be made because furlough time off occurs in the middle of a pay period and the employee receives a partial paycheck, what is the order of withholding precedence?**

A. Agencies will follow the guidance at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=1477> to determine the order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions.

**2. May agencies deny or delay within-grade or step increases for General Schedule and Federal Wage System employees during a furlough?**

A. It depends on the length of the furlough. Within-grade and step increases for General Schedule (GS) and Federal Wage System employees are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a GS employee in steps 1, 2, or 3 of the grade who is furloughed an aggregate of more than 2 workweeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406(b).)

**3. What issues arise with the furloughing of employees who would otherwise reach the biweekly cap on premium pay?**

A. Under 5 U.S.C. 5547, premium pay may not normally be paid to the extent the payment would cause the sum of the employee's basic pay plus premium pay received in a biweekly pay period to exceed the higher of (1) the biweekly rate for level V of the Executive Schedule (EX-V) or (2) the biweekly rate of basic pay for GS-15, step 10 (including any applicable locality payment or special rate supplement). (Note: In all locality pay areas within the

United States, the applicable GS-15, step 10, rate is higher than the EX-V rate.) Certain employees regularly receive a recurring type of premium pay that causes them to reach the premium pay cap each biweekly pay period. For example, certain employees regularly receive law enforcement availability pay (LEAP), administratively uncontrollable overtime (AUO) pay, standby duty premium pay, or regularly scheduled firefighter overtime pay.

The biweekly premium pay cap limits premium pay based on the aggregate sum of basic pay plus premium pay in a biweekly pay period. Thus, if a furlough causes basic pay to be reduced, it may result in an increased payment of premium pay that had been limited by the premium pay cap.

If an employee is furloughed, he/she will not receive basic pay or premium pay during the furlough period. If the furlough is for a full pay period, then the employee will not receive any pay for the pay period and the biweekly premium pay cap is not an issue.

However, there are issues if an employee who normally reaches the premium pay cap is furloughed for part of a pay period. The employee's total basic pay will be reduced and, as a result, the *uncapped* amount of premium pay for the pay period will be reduced. ("Uncapped" refers to the amount of premium pay that would be payable if the biweekly premium pay cap did not apply.) If the employee was reaching the premium pay cap in a normal pay period and receiving less than the full amount of premium pay available under the given premium pay provision, the reduction of basic pay could allow otherwise blocked premium pay to become payable—even if the uncapped amount of premium pay is reduced. In fact, the employee could receive the same capped total pay while working less hours. In this case, a furlough would not save money and would actually reduce productivity.

For example, consider a GS-15, step 10, criminal investigator in Washington, DC. Criminal investigators are entitled to LEAP equal to 25% of the investigator's basic pay, subject to the biweekly premium pay cap, which can reduce or eliminate the LEAP payment. Normally, a GS-15, step 10, investigator would receive 0% LEAP since his/her adjusted rate of basic pay is already at the cap.

- Assume the investigator is entitled to a GS-15, step 10, locality rate of \$155,500 (EX-IV locality rate cap). The hourly rate is \$74.51 and the biweekly rate is \$5,960.80. Let's say this investigator is furloughed for 2 workdays. The investigator's basic pay would be reduced to \$4,768.64 (80-16=64 hours, 64 hours x \$74.51 = \$4,768.64).
- Uncapped LEAP for 80 hours of basic pay = 25% x \$5,960.80 = \$1,490.20
- Uncapped LEAP for 64 hours of basic pay = 25% x \$4,768.64 = \$1,192.16.
- Basic pay + uncapped LEAP = \$4,768.64 + \$1,192.16 = \$5,960.80, which equals the premium pay cap. So, the investigator receives the full 25% LEAP.
- In this example, the investigator's hours were reduced by 16 hours out of 80 (20%), leaving basic pay at 80% of the normal amount. 25% LEAP x 80% of normal basic pay =

20% of normal basic pay for an 80-hour biweekly pay period (which would have applied but for the furlough). Thus, the LEAP replaced the lost basic pay exactly.

- Uncapped LEAP decreased from \$1,490.20 to \$1,192.16.
  - Capped LEAP increased from \$0 to \$1,192.16.
  - Basic pay decreased from \$5,960.80 to \$4,768.64, a reduction of \$1,192.16.
  - Capped LEAP increase = Basic pay decrease.
- In this scenario, no budget savings would be realized by furloughing the investigator. The investigator would receive the same amount of pay while working fewer hours, resulting in a loss in productivity.

An agency is not required to furlough an employee when the workings of the premium pay cap prevent budget savings or provide limited savings relative to the loss in productivity. As a general rule, an agency may selectively furlough employees, but an explanation must be provided to employees in the advanced written proposal notice regarding the agency's justification as to why the administrative furlough is being implemented. The notice should contain an explanation of other employees who may not have been furloughed in that particular employee's same competitive level. (See 5 CFR 752.404(b)(2).)

For example, see the language below from Sample Notice 1—Furlough Proposal Due to Planned Reduction in Agency Expenditures (5 CFR Part 752):

If other employees in your competitive level (i.e. generally, positions at the same grade level and classification series, the duties of which are generally interchangeable – see 5 CFR 351.403(a)) are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency or, (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, you must include them in this listing.]*

Based on the above, in deciding which employees should be subject to an administrative furlough, an agency should take into account the effects of the premium pay cap and should address in the furlough notice the exclusion of any employees who are affected by the premium pay cap.

**4. May Federal agencies require employees who are placed on administrative furlough for all or part of their basic workweek to work hours outside the basic workweek?**

**A.** Yes. An agency may assign work during hours outside the employee's basic workweek, subject to any applicable agency policies or collective bargaining agreements.

Employees are only in furlough status for designated furlough hours. Furlough status means the employee is placed in nonpay, nonduty status for certain hours within the employee's tour of duty established for leave usage purposes (i.e., the tour of duty for which absences require the charging of leave). Thus, for full-time employees with a 40-hour basic workweek, furlough hours must be within the 40-hour basic workweek. For part-time employees, furlough hours must be within the employee's part-time basic workweek based on the part-time tour of duty established for leave usage purposes. For employees on an uncommon tour of duty established under 5 CFR 630.210, furlough hours must be within the uncommon tour of duty. (See Question L.3.)

Note: During a [shutdown furlough](#) in response to a lapse in appropriations, an agency may not allow an employee (unless the employee is excepted or exempt from furlough) to perform work outside his or her basic workweek because it would create a budgetary obligation before an appropriation is made, which is barred by the Antideficiency Act (31 U.S.C. 1341 et seq.).

**5. How are employees compensated when they are required to work hours outside a basic workweek in which they have been furloughed?**

**A.** Employees who are required to work hours outside of a basic workweek during which they have been furloughed are compensated with their rate of basic pay if overtime thresholds have not been met, and/or with overtime pay or compensatory time off in lieu of overtime pay, as appropriate, once the thresholds have been met. Normally applicable overtime rules apply. Most employees are subject to a 40-hour weekly overtime threshold and an 8-hour daily overtime threshold. Leave without pay hours (such as furlough hours) do not count as hours of work in applying overtime thresholds.

As provided by 5 CFR 550.112(d)(1), an employee's hours of work outside of his or her basic workweek, but occurring in the same administrative workweek as furlough hours, must be substituted for furlough hours in pay computations, as long as the hours of work outside the basic workweek do not qualify for an overtime rate on the basis of exceeding 40 hours in a workweek. (Note: For hours that qualify for an overtime rate on the basis of exceeding 8 hours of work in a day, this substitution rule does not apply.) Those substituted hours are paid for at the rate applicable to hours in the employee's basic workweek. After all furlough hours during the employee's basic workweek are substituted for, any remaining hours of work are overtime hours on the basis of exceeding 40 hours in a workweek.

Similarly, as provided by 5 CFR 550.112(d)(2), an employee's hours of work outside of his or daily tour of duty, but in the same workday as furlough hours, must be substituted for such furlough hours in pay computations. Those hours are paid for at the rate applicable to the

employee's daily tour of duty. After all furlough hours during the employee's daily tour of duty are substituted for, any remaining hours of work are overtime hours on the basis of exceeding 8 hours in a workday (for employees subject to the 8-hour daily overtime threshold).

The substitution rule in 5 CFR 550.112(d) does not change an employee's basic workweek or daily tour of duty. The hours worked outside the employee's basic workweek or daily tour of duty are substituted for the purpose of pay computations. Under the rule, substituted hours are paid at the rate "applicable to" hours in the basic workweek or daily tour of duty, even though the hours were worked outside those periods. This rule simply recognizes that leave without pay hours (such as furlough hours) do not count toward weekly and daily overtime thresholds.

### *Examples*

For purposes of these examples, an employee with a Monday–Friday, 8-hour per day work schedule is required to work overtime in a workweek during which he or she also has 1 day (8 hours) of designated furlough time off. (As described in Question L.1., agencies have discretion to implement an administrative furlough to best absorb budget reductions over the course of the fiscal year and do not need to follow the same procedures.)

- **Example A.** An employee is furloughed for 8 hours on Monday, works 8 hours per day on Tuesday–Friday, and is required to work 4 hours on Saturday.

The 4 hours of work on Saturday are substituted for 4 of the furlough hours on Monday and paid at the rate applicable to the employee's basic workweek (i.e., basic rate), consistent with 5 CFR 550.112(d)(1). The employee cannot receive overtime pay, or compensatory time off in lieu of overtime pay, for the 4 hours of work on Saturday.

- **Example B.** An employee is furloughed for 8 hours on Monday, works 8 hours per day on Tuesday–Friday, and is required to work 4 additional hours on Friday evening after completing his 8-hour daily tour of duty.

The additional 4 hours of work on Friday evening are beyond the 8-hour daily overtime pay threshold and the employee is entitled to an overtime rate for those hours based on 5 U.S.C. 5542(a). The substitution rule in 5 CFR 550.112(d)(1) bars paying an overtime rate for substitutable hours outside the basic workweek "on the basis of exceeding 40 hours in a workweek." However, the 40-hour overtime pay threshold is not the basis for paying an overtime rate for the 4 additional hours of work on Friday evening. Since the 8-hour overtime pay threshold is being used, those 4 hours are not substituted for the Monday furlough hours in pay computations; thus, an overtime rate applies. If appropriate, the employee may receive compensatory time off in lieu of overtime pay for the 4 additional Friday hours under the normal rules governing compensatory time off.

- **Example C.** An employee is furloughed for 8 hours on Monday and works 8 hours per day

on Tuesday–Friday. The employee is required to work 4 hours on Monday evening during hours outside of his daily tour of duty.

For purposes of pay computations, the 4 hours of work on Monday evening are substituted for 4 hours of furlough time off taken during the employee’s daily tour of duty on Monday and paid for at the rate applicable to the employee’s daily tour of duty (i.e., basic rate), consistent with 5 CFR 550.112(d)(2). The employee cannot receive overtime pay, or compensatory time off in lieu of overtime pay, for the 4 hours worked on Monday evening because the hours are not overtime hours.

Note 1: The above scenarios assume the employee’s administrative workweek and workdays are based on calendar days. The administrative workweek can be based on any 24-hour period. (See 5 CFR 610.102.) That would affect application of 5 CFR 550.112(d), which is based on the applicable “administrative workweek” and “workday.”

Note 2: For employees on flexible or compressed work schedules, the “basic work requirement” is generally equivalent to the “basic workweek.” However, no hour within the basic work requirement can be an overtime hour, even if those basic work requirement hours exceed 8 hours of work in a day or 40 hours of work in a week. For example, if an employee on a flexible or compressed work schedule has a 9-hour basic work requirement on a given day, only hours of work outside the 9-hour basic work requirement could be overtime hours. In other words, while hours of work (including any paid time off but excluding hours in nonpay status) within the basic work requirement count as hours of work in applying the 8-hour daily and 40-hour weekly overtime thresholds, only hours of work outside the basic work requirement may receive an overtime rate. Hours outside the daily or weekly basic work requirement are substituted, as appropriate, for furlough hours under the rules in 5 CFR 550.112(d). For example, if an employee is placed in furlough status during a 9-hour daily basic work requirement and works 4 hours outside the basic work requirement on that same day, those 4 hours would be substituted and paid at the rate for basic work requirement hours. An employee on a flexible work schedule may have the option to earn credit hours by working hours outside the basic work requirement. The rules governing credit hours remain applicable in the context of an administrative furlough. See Questions C.4., D.6., and E.1. for additional information on earning and using credit hours.

**6. May an employee on a flexible work schedule earn credit hours by working during a week or on a day when the employee is furloughed?**

**A.** During a week or on a day when an employee is furloughed during certain basic work requirement hours, the employee may earn credit hours by electing to work in excess of his or her basic work requirement, subject to all legal requirements and applicable agency policies or collective bargaining agreements. An employee may not earn credit hours by working during designated furlough hours within the employee’s basic work requirement. (See Question C.4.) Also, an employee may not use previously earned credit hours during furlough hours. (See Question E.1.)

The substitution rule in 5 CFR 550.112 may not be applied to credit hours—that is, the rule cannot be used to convert earned credit hours into paid hours that substitute for furlough hours in pay computations.

## **E. Leave and Other Time Off**

### **1. May an employee take paid leave or other forms of paid time off (e.g., annual, sick, court, or military leave, leave for bone marrow or organ donor leave, credit hours earned, any compensatory time off earned, or time off awards) instead of taking administrative furlough time off?**

**A.** No. During an administrative furlough, an employee may not substitute paid leave or other forms of paid time off for any hours or days designated as furlough time off.

### **2. Can agencies furlough employees who are on approved leave without pay (LWOP) during a time when administrative furloughs are being conducted for other employees?**

**A.** Agencies have discretion in determining whether to furlough employees who are in LWOP status, since both furloughs and LWOP are periods of nonpay status. Employees may already be scheduled for LWOP for a variety of reasons and for various lengths of time on either a continuous or discontinuous basis. An employee's LWOP may or may not fully encompass the period during which administrative furloughs are being conducted for other employees in the same organization. For example, for one employee, a continuous 1-year period of leave without pay to accompany a military spouse overseas may encompass the entire period during which administrative furloughs are being conducted in an employee's organization, while another employee's continuous LWOP may end during that period. Other employees may be scheduled to take LWOP on a regular but discontinuous basis under the Family and Medical Leave Act. (See Question E.3.)

Agencies are responsible for determining (1) whether employees already scheduled for LWOP during a period when administrative furloughs are being conducted will be subject to furlough and (2) the hours of furlough required of such employees. If an agency decides to place an employee in furlough status during hours that were originally scheduled to be LWOP, all applicable procedural requirements must be met, including a furlough notice.

### **3. May an employee take LWOP under the Family and Medical Leave Act (FMLA) during a time when administrative furloughs are being conducted for other employees?**

**A.** Yes. An employee may take LWOP under FMLA during a time when administrative furloughs are being conducted for other employees in the same organization, subject to the conditions in 5 U.S.C. 6382. (See Question E.2.) However, if an employee is placed in furlough status during hours that were previously scheduled to be LWOP under FMLA, those furlough hours will no longer be considered to be LWOP under FMLA. Furlough hours will not count toward the employee's 12-week FMLA leave entitlement. An employee may not later substitute paid leave for furlough hours.

As explained in Question E.2., agencies are responsible for determining the extent to which employees with scheduled LWOP (including LWOP under FMLA) are placed in furlough status. If employees are placed in furlough status instead of LWOP under FMLA, all applicable procedural requirements must be met, including a furlough notice.

#### 4. Does a furlough affect the accrual of annual leave and sick leave?

A. If an employee is furloughed (i.e., placed in nonpay status) for part of a biweekly pay period, the employee's leave accrual will generally not be affected for that pay period.

However, the accumulation of nonpay status hours during a leave year can affect the accrual of annual leave and sick leave over a period of time. (See 5 CFR 630.208 and Notes 1 and 2 below.) For example, when a full-time employee with an 80-hour biweekly tour of duty accumulates a total of 80 hours of nonpay status from the beginning of the leave year (either in one pay period, or over the course of several pay periods), the employee will not earn annual and sick leave in the pay period in which that 80-hour accumulation is reached. If the employee again accumulates 80 hours of nonpay status, he or she will again not earn leave in the pay period in which that new 80-hour total is reached. At the end of the leave year, any accumulation of nonpay status hours of less than 80 hours is zeroed out so that the accumulation of nonpay status hours for the next leave year starts at zero.

For part-time employees, the rule blocking accrual of leave based on the accumulation of nonpay status hours (5 CFR 630.208) does not apply. Instead, leave accrual for part-time employees is prorated based on hours in a pay status in each pay period; thus, time in nonpay status reduces leave accrual in each pay period containing such time (5 CFR 630.303 and 5 U.S.C. 6307).

Also, please see OPM's fact sheet on the [Effect of Extended Leave Without Pay \(LWOP\) \(or Other Nonpay Status\) on Federal Benefits and Programs](#), which has a section entitled, "Accrual of annual and sick leave."

Note 1: The term "nonpay status" refers to period during which an employee is absent from his or her tour of duty established for leave usage purposes and receives no pay for such absence. Furlough is one type of nonpay status.

Note 2: The term "leave year" is defined as the period beginning on the first day of the first full biweekly pay period in a calendar year and ends on the day immediately before the first day of the first full biweekly pay period in the following calendar year. (For example, for employees on the standard biweekly payroll cycle, the 2013 leave year is January 13, 2013, through January 11, 2014.) (See fact sheet at <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/leave-year-beginning-and-ending-dates/>.)

Note 3: For full-time employees with an uncommon tour of duty under 5 CFR 630.210, the accumulation limit used in applying 5 CFR 630.208 is the number of hours in the uncommon tour of duty for a biweekly pay period.

**5. May an employee who takes furlough hours off be permitted to substitute annual leave retroactively for furlough hours taken, if the agency finds sufficient funds to cover the hours the employee was in a furlough status?**

**A.** Generally no. However, if an employee has proactively taken more than the required number of furlough hours under an agency's phased furlough plan prior to the agency cancellation of the furlough, the employee may retroactively cancel excess furlough hours and substitute annual leave for those hours, as determined by the agency. (See B-219211, December 9, 1985.) For example, an agency's furlough plan requires each employee to take 176 furlough hours (22 days) between April and September. The agency requires the employee to take 8 furlough hours off each week in the month of April (for a total of 32 furlough hours (4 days)) and provides the employee with an option of when to take his/her remaining furlough hours off at a time of the employee's choosing, but no later than the end of September. If the employee takes all 176 furlough hours off (22 days) in April and the agency cancels the furlough on May 1 due to improved financial conditions, the employee would have taken 144 furlough hours more than what was needed (176 hours (22 days) - 32 hours (4 days)). Upon the determination to cancel the furlough, the agency must decide how to handle the 144 furlough hours (18 furlough days) off the employee has taken ahead of schedule in accordance with internal agency procedures and any applicable collective bargaining agreement. Any annual leave substituted for furlough hours would be calculated at the same compensation rate the employee would have received had he or she used annual leave at that time.

Note: This matter may be subject to collective bargaining for union-represented employees to the extent an agency has discretion to retroactively substitute annual leave for furlough hours taken.

**6. May an employee who takes furlough hours off be granted excused absence to substitute retroactively for the furlough hours taken, if the agency finds sufficient funds to cover the hours the employee was in a furlough status?**

**A.** Agencies have the discretionary authority to determine the situations in which an employee may be excused from duty without loss of pay or charge to leave in accordance with internal agency policy and any collective bargaining agreement. However, agencies are not required to provide excused absence unless specifically required by statute or Presidential directive. For example, if an employee has proactively taken more than the required number of furlough hours under an agency's phased furlough plan prior to the agency cancellation of the furlough, the agency is not required to provide excused absence for the excess furlough hours, as determined by the agency. (See B-219211, December 9, 1985.) If the agency decides to cancel certain furlough hours and substitute excused absence, the excused absence should be provided to all similarly situated employees. Any retroactive substitution of excused absence would be calculated at the same compensation rate the employee would have received had he or she used annual leave at that time.

Note: This matter, like others involving the impact and implementation of furloughs, may be

subject to collective bargaining for union-represented employees.

## **F. Holidays**

### **1. May employees be administratively furloughed on a holiday?**

**A.** Employees may be furloughed for periods of time that include holidays. However, an agency should select the furlough days off on programmatic and administrative grounds that are unrelated to the fact that the period includes a holiday. For example, an agency may not properly furlough employees for a 3-day period, the middle of which is a holiday, for the sole purpose of saving 3 days' pay while losing only 2 days of work. (See Comptroller General opinion B-224619, August 17, 1987.) Neither would it be proper to furlough an employee solely on a holiday. (See Comptroller General opinion B-222836, May 8, 1986.)

### **2. If employees have a designated administrative furlough day off on the last workday before a holiday *or* the first workday after a holiday (but not on both days), will they be paid for the holiday?**

**A.** Yes. The general rule is that an employee is entitled to pay for a holiday so long as he or she is in a pay status on either the workday preceding a holiday or the workday following a holiday. The employee is paid for the holiday based on the presumption that, but for the holiday, the employee would have worked. (Note: A holiday should not be the first or last day of the period covered by a furlough.)

### **3. If employees have a designated administrative furlough day off on the last workday before a holiday *and* the first workday after a holiday, will they be paid for the holiday?**

**A.** No. If a furlough includes both the last workday before the holiday and the first workday after the holiday, the employee is not entitled to pay for the holiday because there is no longer a presumption that, but for the holiday, the employee would have worked on that day. (See Comptroller General opinion B-224619, August 17, 1987.) Agencies that allow employees to choose their furlough days off should explain that the employee will not be paid for the holiday if the employee chooses to take a furlough day off both before and after the holiday.

## **G. Benefits**

### **1. How does an administrative furlough impact the Federal Employees Health Benefits Program?**

**A.** Please see Section S (Federal Employees Health Benefits Program).

**2. Will an employee's Federal Flexible Spending Account Program (FSAFEDS) be impacted during an administrative furlough?**

A. The employee's FSAFEDS coverage continues, and allotments made by the employee continue if the employee's salary in each pay period is sufficient to cover the deduction(s). If the employee's salary is insufficient to cover his or her allotment(s), then incurred eligible health care expenses will not be reimbursed until the allotments are successfully restarted (in which case the remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount). Incurred eligible dependent care expenses may be reimbursed up to whatever balance is in the employee's dependent care account, as long as the expenses incurred allow the employee (or employee's spouse if married) to work, look for work or attend school full-time. Once dependent care allotments are successfully restarted, remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount.

**3. How does an administrative furlough impact the Federal Employees' Group Life Insurance (FEGLI) Program?**

A. Please see Section T (Federal Employees' Group Life Insurance Program).

**4. Will an employee continue to be covered under the Federal Dental and Vision Insurance Program (FEDVIP) during an administrative furlough?**

A. Yes. Just as with scheduled LWOP, if BENEFEDS is unable to take the necessary premium deduction from an employee's pay, BENEFEDS collects premium up to twice the biweekly amount from the next full pay period to make up for the missed premium deduction. If the furlough continues for more than two consecutive pay periods, BENEFEDS will mail a direct bill to the employee. The enrollee should pay premiums directly billed to him/her on a timely basis to ensure continuation of coverage.

**5. Will an employee continue to be covered under the Federal Long Term Care Insurance Program (FLTCIP) during an administrative furlough?**

A. Yes, eligible claims will continue to be paid. Coverage will terminate if premiums are not paid. If the contractor does not receive premium for two or fewer pay periods, they will adjust future premium deductions, increasing by no more than \$50 per pay period to recover the missed premiums. Three consecutive pay periods of no premium will result in the contractor billing the participant directly.

The employee also has the option to change to direct billing or to payment via electronic funds transfer (EFT). If premiums are not collected or a final bill is not paid within a 30 day grace period, FLTCP will send a termination letter. The employee has 35 days from the date of the letter to pay the premium; otherwise the employee will be disenrolled retroactively to the last pay period in which premium was paid.

## 6. How does a furlough affect retirement annuity benefits?

A. Generally, furloughs will not affect an annuity benefit under the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS).

The amount of a CSRS or FERS annuity paid by OPM is based primarily on the amount of creditable service an employee performs and the employee's high-3 average salary. Both CSRS and FERS allow service credit for up to 6 months of nonpay status in any calendar year. If a furlough period does not cause an employee to be in a nonpay status for more than 6 months in a calendar year, the furlough period will be included as creditable service in determining the employee's total creditable service used in the annuity computation. If the total amount of time an employee spends in a nonpay status in a calendar year exceeds 6 months, the amount of nonpay status in excess of 6 months in the calendar year will not be creditable for retirement purposes.

The high-3 average salary used to compute CSRS and FERS annuities is the largest annual rate resulting from averaging an employee's *rates of basic pay* in effect over any period of 3 consecutive years of creditable civilian service, with each *rate* weighted by the length of time it was in effect. If a period of nonpay status (such as a furlough) that is creditable for retirement occurs during the 3-year period used to compute the high-3 average salary, the loss of actual pay during that nonpay status period generally would have no effect on the high-3 computation. The basic pay rate in effect during that nonpay status period would be used in the high-3 average salary calculation. For example, if an employee whose annual rate of basic pay is \$85,000 is placed in a furlough status for two weeks and that 2-week period falls in the employee's average salary period, that 2-week furlough period will be credited in the high-3 average salary calculation using the \$85,000 annual rate of basic pay that was in effect during the furlough period. In this example, the loss of actual pay (or earnings) during that period is not material in the high-3 average salary calculation.

Basic pay for retirement includes locality pay and certain types of additional pay, such as law enforcement availability pay (LEAP), administratively uncontrollable overtime (AUO) pay, standby duty pay, firefighter pay (annualized salary), and market pay for physicians. These types of additional pay are included in the basic pay used to calculate the high-3 average salary during periods of creditable nonpay status as long as the authorization for the payments remains in effect.

Other additional types of basic pay, however, including night shift differential and environmental differential for wage grade employees, and certain overtime pay for customs officers are included in the average salary computation only when an employee has received that type of pay.

## H. Employee Assistance

### 1. Are employees entitled to unemployment compensation while on furlough?

A. It is possible that furloughed employees may become eligible for unemployment compensation. The various State unemployment compensation requirements differ. Some States require a 1-week waiting period before an individual qualifies for payments. In general, the law of the State in which an employee's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. Agencies or employees should submit questions to the appropriate State (or the District of Columbia, Puerto Rico, or the Virgin Islands) office. The Department of Labor (DOL) website provides links to individual State offices at <http://www.servicelocator.org/OWSLinks.asp>.

For additional information on Unemployment Compensation for Federal Employees (UCFE), see DOL's UCFE webpage at <http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>, fact sheet at <http://www.dol.gov/sequestration/ucfe.pdf>, and frequently asked questions at <http://www.dol.gov/sequestration/ucfe-faqs.pdf>.

### 2. What resources are available if a Federal employee needs financial assistance during a furlough period?

A. Some agency employee assistance programs (EAPs) include financial consultation services. In addition, employees may want to contact their financial institution or credit union or learn about their options through the Thrift Savings Plan (<http://www.tsp.gov>). The Federal Retirement Thrift Investment Board, which administers TSP, has posted guidance regarding the effect of nonpay status on TSP accounts at [www.tsp.gov/PDF/formspubs/oc95-4.pdf](http://www.tsp.gov/PDF/formspubs/oc95-4.pdf), and specific guidance regarding the March 1, 2013 sequester at <https://www.tsp.gov/PDF/formspubs/oc13-7.pdf>, and can be reached at 1-877-968-3778 for additional information.

### 3. Can I take a TSP loan while I'm furloughed? What is the effect of an administrative furlough on Thrift Savings Plan (TSP) contributions, investments, and loans?

A. Agencies and employees should refer to the TSP website (<http://www.tsp.gov>) or contact their agency representative for information. Specifically, the Federal Retirement Thrift Investment Board, which administers TSP, has posted guidance regarding the effect of nonpay status on TSP accounts at [www.tsp.gov/PDF/formspubs/oc95-4.pdf](http://www.tsp.gov/PDF/formspubs/oc95-4.pdf), and specific guidance regarding the March 1, 2013 sequester at <https://www.tsp.gov/PDF/formspubs/oc13-7.pdf>, and can be reached at 1-877-968-3778 for additional information.

## **I. Service Credit for Various Purposes**

### **1. Is being furloughed or on leave without pay (LWOP) considered a break in service?**

**A.** No, both mean the employee is in a nonpay, nonduty status for those days/hours. However, an extended furlough or extended LWOP may affect the calculation of creditable service for certain purposes.

### **2. To what extent does nonpay status affect Federal employee benefits and programs?**

**A.** The effects of a nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) on Federal employee benefits and programs vary based on current law and regulation. For additional information, see OPM's fact sheet on the "Effect of Extended Leave Without Pay (or Other Nonpay Status) on Federal Benefits and Programs" at <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/effect-of-extended-leave-without-pay-lwop-or-other-nonpay-status-on-federal-benefits-and-programs/>.

## **J. Federal Employees on Military Duty**

### **1. Will employees continue to receive a reservist differential payment (5 U.S.C. 5538) if they are affected by an administrative furlough from their Federal civilian position while on active duty?**

**A.** It depends. In computing a reservist differential, the employing agency must compare the employee's projected civilian basic pay to the allocated military pay and allowances for each civilian pay period. If an employee is affected by a furlough from his or her Federal position while on active duty, the employing agency must reduce the employee's projected civilian basic pay during any pay period in which furlough time off occurs. If the allocated military pay and allowances are greater than or equal to the projected civilian basic pay adjusted for furlough time off, no reservist differential is payable for that pay period. If the projected civilian basic pay (as reduced to account for furlough time off) is greater than the allocated military pay and allowances, the difference represents the unadjusted reservist differential.

### **2. Will there be an impact on an employee's General Schedule or Federal Wage System within-grade increases (WGI) waiting period if the employee is affected by an administrative furlough while in an Absent – Uniformed Service status?**

**A.** No. A furlough has no impact on an employee's General Schedule or Federal Wage System WGI waiting period if the employee is affected by a furlough while in an Absent – Uniformed Service status (i.e., Nature of Action Code 473, which is used when the employee has restoration rights). An absence for the purpose of engaging in military service is creditable service in the computation of waiting periods for successive WGIs when an employee returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation. (See 5 CFR 531.406(c)(1)(i) and 5 CFR 532.417(c)(4).)

**K. Benefits under the Federal Employees' Compensation Act (FECA)****1. Are employees who are injured while on furlough or LWOP eligible to receive workers' compensation?**

**A.** No. Federal workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. A Federal employee who is receiving workers' compensation payments under the FECA will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

**2. How does an administrative furlough affect the compensation of an employee who is receiving FECA benefits and is under medical orders to work part-time?**

**A.** When an employee is already out on total or partial wage loss benefits, FECA compensation continues at the usual rate. Claims for FECA compensation benefits submitted as a result of missing a partial day due to a furlough are not payable under the FECA.

**3. How does an administrative furlough impact the compensation of an employee who is receiving FECA benefits and is required to work a modified light duty schedule?**

**A.** FECA compensation benefits are not payable for work days lost as a result of administrative furlough.

**4. How does a furlough affect Continuation of Pay (COP)?**

**A.** If an employee sustains a traumatic injury and is receiving COP before furlough days have been scheduled, COP should continue. However, if an employee sustains a traumatic injury and has already been scheduled for one or more furlough days, then there would be no COP entitlement for any day that the employee was not scheduled to work due to an administrative furlough.

**5. Are schedule awards or medical benefits affected by an administrative furlough?**

**A.** No. Schedule award and medical benefits continue regardless.

**Note to Section K:** Any additional questions regarding Federal workers' compensation benefits should be directed to the Division of Federal Employees' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor. See <http://www.dol.gov/owcp/dfec>.

## L. Scheduling Furlough Time Off

### 1. How should agencies schedule administrative furlough time off? Must all agencies follow the same procedures for furloughing employees?

A. An administrative furlough will impact each agency differently depending on the extent of the agency's budget reduction. Agencies have discretion to implement such a furlough to best absorb budget reductions over the course of the fiscal year and do not need to follow the same procedures. For example, an agency may furlough employees for 1 day a pay period for a finite period of time, designate a number of furlough hours, shut down the entire agency for a defined number of days, designate specific dates as furlough days off, or allow employees to select their own furlough time off, etc.

### 2. How should agencies schedule administrative furlough time off for employees on flexible or compressed work schedules under an alternative work schedule (AWS) program?

A. Because the definition of a workday will vary based on the type of work schedule and/or appointment, it is best for an agency to develop a policy that provides equity and consistency, subject to all legal requirements and applicable agency policies or collective bargaining agreements. For ease of administration and equity, agencies may schedule furloughs for all employees (both alternative work schedule and regular tours of duty) in terms of hours. For example, in the event that all full-time employees are furloughed for 40 hours, for some employees the actual number of furlough days could be more or less than 5 days, depending on their work schedules.

Many employees who are on flexible work schedules normally have a great deal of flexibility in the starting and stopping times within their basic work schedule. When furloughing employees with a flexible work schedule, agencies should identify specific hours during which the employee is in furlough status—e.g., 8:00 am–4:00 pm. Thus, if an employee is called into work (e.g., due to an emergency), it will be clear as to whether the hours of work occur during or outside scheduled furlough hours. Any work ordered during scheduled furlough hours cancels the furlough for those hours, and such work would be subject to normal compensation requirements. (See Question C.6. See also Questions D.4., D.5., and D.6 dealing with employees working outside basic workweek hours during a day or week in which they are placed in administrative furlough status.)

### 3. How should agencies schedule administrative furlough time off for employees who do not work a standard work schedule (e.g., part-time or uncommon tour of duty)?

A. Agencies must enact furloughs in a manner that reduces operation risks and minimizes impacts on agency core mission in service of the American people, but should strive to impact employees in an equitable manner regardless of work schedule. Furloughs of part-time or uncommon tour of duty employees must comply with the procedures of 5 CFR part 752 or part 351, as applicable, if the employees are otherwise covered.

In determining furloughs for part-time employees, agencies should consider whether or not to prorate furlough hours requirements based on the number of scheduled part-time work hours relative to a full-time work schedule of 80 hours in a biweekly pay period to achieve the same percentage pay reduction for both full-time and part-time employees. For example, a part-time work schedule of 64 hours per biweekly pay period would equate to 64/80 of a full-time work schedule, or 80 percent. This percent could then be multiplied by the number of hours that a full-time employee is furloughed to derive the appropriate number of furlough hours for the part-time employee. Thus, if a full-time employee were required to be furloughed for 40 hours, a part-time employee with a 64-hour biweekly tour could be furloughed for 32 hours ( $40 \times .80 = 32$ ).

In the case of employees with an uncommon tour of duty, such as firefighters and paramedics, agencies should consider the impact that a furlough has on regular pay (in percentage terms), rather than the impact on hours (in percentage terms). An uncommon tour of duty is a tour of duty in excess of 80 hours in a biweekly pay period that is established for the purpose of charging leave. Thus, it includes overtime hours for which an employee receives regular overtime pay or standby duty premium pay. (See definition of “uncommon tour of duty” in 5 CFR 630.201 and 630.210.) Generally, for employees on an uncommon tour of duty, furlough hours will reduce regular pay by a greater percentage than the percentage reduction in hours. In connection with the furlough of employees with an uncommon tour of duty, agencies should consider whether or not the number of furlough hours should be set in a manner that achieves the same percentage pay reduction experienced by full-time employees with an 80-hour biweekly tour of duty who are covered by the same furlough policy.

**4. How should agencies schedule administrative furlough time off for employees who work on a seasonal or intermittent basis?**

**A.** Whether either group is called for work during an administrative furlough is discretionary with agencies. Seasonal employees are recalled to duty at identified periods of the year in accordance with pre-established conditions. Intermittent employees are non-full-time employees without a regularly scheduled tour of duty.

**M. Procedures—22 Workdays or Less**

**1. May an agency schedule administrative furlough days consecutively and discontinuously (e.g., one workday per week for 15 weeks)?**

**A.** Yes. Nothing in law or regulation prohibits discontinuous furloughs, and they have been upheld by the Merit Systems Protection Board on appeal. Moreover, discontinuous furloughs can be advantageous to both employees and the agency by distributing the furlough days over time, thereby minimizing the financial impact on employees as well as lessening disruption of agency services to the public.

In *AFGE, Local 32 and OPM*, 22 FLRA 307 (1986), the Federal Labor Relations Authority held that a proposal giving the furloughed employee the right to determine whether his/her furlough was to be continuous or discontinuous is a negotiable 5 U.S.C. 7106(b)(3) “appropriate arrangement.”

For ease of administration and equity, agencies may also schedule furloughs for all employees (both alternative work schedule and regular tours of duty) in terms of hours. For example, all full-time employees would be furloughed for 40 hours, even though for some employees the actual number of furlough days could be more or less than 5 days.

## 2. How is an administrative furlough documented?

A. Agencies must prepare an SF-50, “Notification of Personnel Action,” for each employee subject to furlough (or a List Form of Notice may be prepared for a group of employees who are to be furloughed on the same day or days each pay period). Chapters 15 and 16 of [The Guide to Processing Personnel Actions](#) provide complete guidance on documenting a furlough.

## 3. If a discontinuous administrative furlough extends for more than 30 calendar days, is it a furlough covered by adverse action procedures in 5 CFR part 752, or is it covered by the reduction in force (RIF) procedures of 5 CFR part 351?

A. Based on the definition of “day” as “calendar day” (5 CFR 210.102 and 752.402), OPM has determined that 22 workdays equate to 30 calendar days for adverse action purposes for employees. Thus, a discontinuous furlough of 22 workdays or less would be covered by adverse action procedures, and one of more than 22 workdays would be covered by the RIF procedures of 5 CFR part 351. (If a holiday is included in a furlough of 22 *consecutive* workdays, the furlough might equate to more than 30 calendar days. For example, the month of November has two holidays: Veterans Day and Thanksgiving Day. Therefore, the number of calendar days will be extended beyond 30 by two days.)

## 4. What procedural rights would apply for an administrative furlough of 30 calendar days or less for employees covered under 5 CFR part 752?

A. For a short furlough of a covered employee, the law (5 U.S.C. 7513) gives a covered employee the following rights:

- At least 30 calendar days advance written notice by the agency stating the specific reasons for the proposed action. (Typically, the reasons for the action would involve a lack of work or funds.) The 30 calendar day period begins upon an employee’s *receipt* of the written notice. Therefore, agencies should plan accordingly to allow time for mailing the notice when hand-delivery is not possible. (See Sample Notice 1 for proposal to furlough and Sample Notice 2 for decision to furlough.)
- At least seven calendar days for the employee to answer orally and in writing to the

proposal notice and to furnish documentary evidence in support of his or her answer. (A summary of any oral answer must be made and maintained by the agency.)

- The right of the employee to be represented by an attorney or other representative.
- A written decision by the agency with the specific reasons for its action at the earliest time practicable.
- The right to appeal the agency's action to the Merit Systems Protection Board.

In addition, OPM's regulations (5 CFR 752.404) require that the agency inform the employee of the right to review the material it relied on to support the reasons for its action. The agency must designate an oral reply official who can either make or recommend a decision, and must issue its decision at or before the effective date of the action. The regulations (5 CFR 752.405) also provide that where applicable, the affected employee may elect to grieve under a negotiated grievance procedure (NGP) or appeal to the Merit Systems Protection Board, but not both.

Note: Under 5 CFR 752.404(b)(2), if the agency is furloughing some, but not all, employees in a competitive level, the notice of proposal must state the basis for selecting the particular employee as well as the reasons for the furlough. Agencies who anticipate furloughing some, but not all employees, should ensure the accuracy of established competitive levels in order to meet their obligations under this regulation. In general, the term competitive level refers to positions at the same grade level and classification series, the duties of which are interchangeable (see 5 CFR 351.403(a)). Where bargaining unit employees are concerned, additional procedural rights may be provided by their negotiated agreement.

Adverse action procedures in 5 CFR part 752, subpart F, covering Senior Executive Service (SES) career appointees and certain SES limited term or emergency employees do not apply to short furloughs because those procedures provide only for removal from the civil service or suspension for more than 14 days based upon misconduct, neglect of duty, malfeasance or failure to accept a directed reassignment or to accompany a position in a transfer of function.

**4a. What supporting material must be made available for review by employees to support an administrative furlough action as required under 5 CFR 752.404?**

**A.** Since decisions on whether to conduct an administrative furlough and the length of any furlough are based on each agency's unique circumstances, each agency would need to identify the appropriate documentation that supports its own particular reasons for any administrative furlough action. Because the reasons and methods to furlough may vary from agency to agency, (e.g. downsizing, reduced funding, lack of work, or any other budget situation) supporting documentation may also vary.

While it is the responsibility of each agency to make an independent determination of supporting documentation for any administrative furlough action due to sequestration, potential general documentation related to sequestration could include, but is not limited to:

- 1) Balanced Budget and Emergency Deficit Control Act of 1985
- 2) Budget Control Act of 2011 - <http://www.gpo.gov/fdsys/pkg/BILLS-112s365enr/pdf/BILLS-112s365enr.pdf>,
- 3) American Taxpayer Relief Act - <http://www.gpo.gov/fdsys/pkg/BILLS-112hr8enr/pdf/BILLS-112hr8enr.pdf>,
- 4) OMB Memorandum M-13-03, "Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources," dated January 14, 2013 - <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-03.pdf>,
- 5) OMB Memorandum M-13-05, "Agency Responsibilities for Implementation of Potential Joint Committee Sequestration," dated February 27, 2013 - <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-05.pdf>,  
and
- 6) OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013, dated March 1, 2013 - [http://www.whitehouse.gov/sites/default/files/omb/assets/legislative\\_reports/fy13omb\\_jcsequestrationreport.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/fy13omb_jcsequestrationreport.pdf)

**4b. What procedural rights apply to employees who are veterans covered under 5 U.S.C. chapter 75 and 5 CFR part 752 for an administrative furlough of 30 calendar days or less?**

**A.** For a short furlough of a covered veteran employee, the law (5 U.S.C. 7513) gives a covered veteran employee the same procedural rights as other covered employees as explained in Question M.4. Employees should consult with their agency human resources office to determine whether they are covered by 5 U.S.C. 7513 and what procedures may apply to them.

**5. What procedures are applicable to members of the Senior Executive Service affected by an administrative furlough of 30 calendar days or less?**

**A.** Under SES furlough regulations at 5 CFR part 359, subpart H, an agency need not use competitive procedures in selecting SES appointees to be furloughed for 30 calendar days or less, or for 22 workdays or less if the furlough does not cover consecutive days; however, the agency must provide career SES appointees (other than reemployed annuitants) a 30-day advance written notice of a furlough of any length. The written notice must tell the appointee the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; and the appointee's appeal rights to the Merit Systems Protection Board. For a probationer, the notice should also explain the effect (if any) on the duration of the probationary period. However, the full notice period may be shortened, or waived, in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. This regulation does not require that appointees be afforded an

opportunity to respond or that agencies issue a separate decision notice. A career appointee (other than a reemployed annuitant) who has been furloughed and believes 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

SES noncareer, limited term and limited emergency appointees and reemployed annuitants holding career SES appointments are not covered by 5 CFR part 359, subpart H, and may be furloughed under agency designated procedures, which need not include a 30-day advance written notice, an opportunity to respond, or a separate decision notice.

**6. What procedures and appeal rights are applicable for probationers, employees under temporary appointments in the competitive service, employees who are nonpreference eligible employees in the excepted service with less than 2 years of continuous service, Schedule C employees, and others not covered by 5 U.S.C. chapter 75 but also affected by an administrative furlough?**

**A.** There are no mandatory procedures; however, agencies should ensure that all administrative procedures required by negotiated agreements or internal personnel policies are followed, subject to any exceptions to those procedures that would apply in the event of an administrative furlough.

**6a. What if an agency initiates an administrative furlough for a probationer, but the individual satisfactorily completes their probationary period before furlough days are taken or completed?**

**A.** Once a probationer satisfactorily completes the required probationary period and meets the definition of "employee" under 5 U.S.C. 7511, the employee is entitled to the same procedural rights as other covered employees as explained in Question M.4.

Before any furlough days are taken after the individual has become an "employee" under 5 U.S.C. 7511, the agency should provide: at least 30 calendar days advance written notice; at least 7 calendar days for the employee answer orally and in writing; the right of the employee to be represented by an attorney or other representative; a written decision; and the right of the employee to appeal the agency's action to the Merit System Protection Board. See Question M.4. for additional information on these procedural rights.

**7. How do agencies implement an administrative furlough for administrative law judges?**

**A.** 5 U.S.C. 7521 provides that adverse action furloughs of 30 calendar days or less may be taken against an administrative law judge "only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board." The Merit Systems Protection Board has adopted procedures for implementing such an action, which are described in 5 CFR 1201.137-141.

**8. How should the decision letter for an administrative furlough be framed if the agency**

**has not set a specific number of furlough days?**

A. While it is desirable when possible to inform the affected employee of a specific number of furlough days in the decision letter, the agency needs only to set out the maximum time that may be involved, so employees have as much information as possible.

**9. If an employee decides to challenge a discontinuous administrative furlough, from what point would the time for appeal to the Merit Systems Protection Board run?**

A. Employees must file an appeal within 30 days after the effective date of their first furlough day, or 30 days after the date of their receipt of the decision notice, whichever is later.

**10. May an agency provide an employee electronic notice of a furlough action?**

A. Agencies that issue furlough notices should consult with their respective General Counsels to ensure each step of the process is consistent with regulatory and legal requirements. If an agency determines to electronically notify affected employees of a furlough action, OPM recommends that the agency include each employee's name, address, and/or e-mail address on both the proposal and decision notifications so that it is clear that an employee is receiving personal notification. Agencies should also consider including in the body of the electronic correspondence, the requirement that the employee provide an email acknowledgement of receipt. If an agency doesn't receive a requested acknowledgement of receipt of an e-mail notification, it should consider delivering a paper copy of the proposal and/or decision notifications to the employee at his or her home address by registered mail with a return receipt requested. Similarly, agencies must deliver hard copy furlough notices to those employees without agency email access.

Additionally, OPM recommends that agencies consider informing employees in advance of when and how the furlough notices will be issued and providing a contact person who can confirm whether or not an employee is subject to the furlough and answer questions.

Finally, agencies with bargaining unit employees are reminded that they must provide notice and opportunity to bargain over negotiable procedures and appropriate arrangements to any unions representing their employees.

**11. What are an agency's regulatory obligations in providing an appellant the Merit Systems Protection Board (MSPB) appeal information in the adverse action furlough decision notice?**

A. As summarized in the April 11, 2013, Federal Register (<http://www.gpo.gov/fdsys/pkg/FR-2013-04-11/pdf/2013-08503.pdf>) an agency must satisfy the obligation to provide a copy of the MSPB appeal form when issuing a decision notice. Providing this MSPB appeal hyperlink form electronically (<https://e-appeal.mspb.gov/>) will typically satisfy the requirement of ensuring that employees subject to a decision appealable to MSPB will have effective access to the MSPB regulations and appeal form. However, if

the employee informs the agency that he or she lacks Internet access, the agency is required to take steps to ensure that the employee has actual access to the MSPB's regulations and the appeal form, including providing the employee with a hard copy of these documents upon the employee's request. See Sample Notice 2 for sample decision notice language.

## **N. Procedures—More than 22 Workdays (Extended Furlough)**

### **1. When is an agency required to use reduction in force (RIF) procedures to administratively furlough employees?**

**A.** Agencies must follow RIF procedures for an extended furlough of more than 30 continuous calendar days, or of more than 22 discontinuous workdays (though, importantly, a furlough is a temporary placement in non-pay/non-duty status; it is not a permanent separation from service).

### **2. Is there a maximum period an employee may be administratively furloughed for an extended period?**

**A.** Yes. An employee may be placed on an extended furlough only when the agency plans to recall the employee to his or her position within 1 year. Therefore, the furlough may not exceed 1 year.

### **3. If an agency needs to administratively furlough employees for more than 30 calendar days (or more than 22 workdays), must the complete 5 CFR part 351 procedures be followed?**

**A.** Yes. The complete procedures in 5 CFR part 351 must be followed, including a minimum 60 days specific written notice of the furlough action. (Question 16 has additional information on notice requirements.) The only exception to the regular procedures involves assignment rights (i.e., “bump” and “retreat” rights; see question 4).

### **4. When does an employee who is reached for an extended furlough action during an administrative furlough have a right of assignment to another position?**

**A.** An employee reached for release from the competitive level because of an extended furlough has assignment rights to other positions on the same basis as an employee reached for release as a result of other RIF actions (e.g., separation or downgrading).

Because of the requirement in 5 CFR 351.701(a) that assignment rights apply only to positions lasting at least 3 months, an employee reached for an extended continuous furlough does not have assignment rights to a position held by another employee who is not affected by the furlough unless the furlough extends for 90 or more consecutive days. Also, an employee reached for a discontinuous extended furlough action does not have assignment rights to another position.

The undue interruption standard could apply to an extended furlough over 90 consecutive days. (As defined in 5 CFR 351.203, “undue interruption” essentially means that a higher-standing employee who is otherwise qualified for the assignment may exercise the assignment right only if the employee is able to perform the work of the position of the lower-standing employee within 90 days of the assignment.) The agency must consider whether undue interruption would result from both (1) the displacement of a lower-standing employee from the competitive level affected by the furlough, and (2) the recall of both employees to their official positions at the end of the furlough period.

**5. Are there any other situations in which agencies may restrict employees’ assignment rights in an administrative furlough situation?**

**A.** An agency may make a temporary exception to order of release and assignment rights to keep the incumbent in his or her position for 90 days or less after the commencement of the furlough when needed to continue an activity without undue interruption. (For additional reasons that a temporary exception may be used, see 5 CFR 351.608(a).)

An agency may make a continuing exception to order of release and assignment rights to keep the incumbent in a position that no higher standing employee can take over within 90 days and without undue interruption to the activity. (See 5 CFR 351.607.)

**6. Some employees within a competitive area are paid from appropriated funds. Some are paid from a variety of other funding sources, such as trust funds, working capital, user fees, etc. Are employees who are paid from these other sources exempt from an administrative furlough and the 5 CFR part 351 process?**

**A.** Regardless of the source from which an employee is paid, each employee within a competitive area would be subject to displacement by higher standing employees within the same competitive area.

**7. If a program, project, or activity (PPA) takes other actions to obviate or lessen the need for an extended administrative furlough, how will the employees in the PPA be affected by the process?**

**A.** Even though their positions are not subject to furlough, the employees in the PPA would be subject to displacement by higher standing employees in other PPAs within the competitive area.

**8. What action is taken if an employee refuses an offer of assignment during an administrative furlough?**

**A.** The employee is furloughed from his or her position.

**9. If an employee bumps or retreats to a different job as a result of an administrative furlough, is the employee temporarily assigned to that job?**

A. No. The employee becomes the incumbent of that job even though the furlough anticipates the employee's eventual recall to his or her former job.

**10. If circumstances change and the agency is unable to recall administratively furloughed employees at the point specified in their extended furlough notice, what additional action is required?**

A. In this situation, the agency must issue those employees new notices of either an extended furlough or proposed RIF separation, as the situation requires. This new action must meet all the requirements in the 5 CFR part 351 regulations (for example, 60 days advance notice).

**11. Do these requirements also apply if an agency finds that it can recall employees before they have reached the administrative furlough limits specified in their notice?**

A. No.

**12. Are employees who are appointed by the President with Senate confirmation (PAS), Schedule C employees, and members of the Senior Executive Service (SES) covered by extended furlough procedures of 5 CFR part 351 during an administrative furlough?**

A. Extended furlough procedures of 5 CFR part 351 do not apply to an employee who is a member of the Senior Executive Service or to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of the Senate, except a postmaster. All Schedule C employees are covered by part 351 except those under appointments of 1 year or less who have less than 1 year of service.

**13. What procedures are applicable to members of the Senior Executive Service (SES) affected by an administrative furlough of more than 30 calendar days, or more than 22 discontinuous workdays?**

A. Career SES members (other than reemployed annuitants) are covered by separate furlough procedures in 5 CFR part 359, subpart H, which provide that an agency must use competitive procedures in selecting SES career appointees for furloughs of more than 30 calendar days, or for more than 22 workdays if the furlough does not cover consecutive calendar days. SES regulations at 5 CFR part 359, subpart F, do not apply, but agencies may use the same competitive procedures they have established for SES RIF. Any competitive procedures used must be made known to the SES members. These career appointees are entitled to a 30-day advance written notice of a furlough, which must tell the appointee the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; and the

appointee's appeal rights to the Merit Systems Protection Board. For a probationer, the notice should also explain the effect (if any) on the duration of the probationary period. However, the full notice period may be shortened, or waived, in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. (See, for example, <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough> for information on shutdown furloughs.) This regulation does not require that appointees be afforded an opportunity to respond or that agencies issue a separate decision notice. A career appointee (other than a reemployed annuitant) who has been furloughed and believes 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

SES noncareer, limited term and limited emergency appointees and reemployed annuitants holding career SES appointments are not covered by 5 CFR part 359, subpart H, and may be furloughed under agency designated procedures, which need not include a 30-day advance written notice, an opportunity to respond, or a separate decision notice.

**14. What happens to temporary employees serving under appointments limited to 1 year or less in extended administrative furlough situations?**

**A.** An agency may not retain a temporary employee in pay status to furlough a competing employee in the same competitive level. Temporary employees may be either separated or furloughed in such situations, but they are not entitled to the protections of adverse actions or 5 CFR part 351 procedures when this occurs. As a matter of good human resources management, however, the agency should try to give these employees as much advance written notice as possible.

Time spent in furlough status by temporary employees counts the same as time in a pay status toward their appointment's not-to-exceed date and the 2-year limit on their overall service specified in 5 CFR 316.401(c).

**15. How do agencies administratively furlough administrative law judges for more than 30 calendar days (or more than 22 workdays)?**

**A.** Administrative law judges are subject to the procedures in 5 CFR part 351. However, since judges are not given performance ratings, the provisions dealing with the effect of performance ratings on retention standing would not apply.

**16. What notice must an agency provide an employee of an extended administrative furlough action?**

**A.** An agency must give an employee covered by 5 CFR part 351 a minimum 60-day specific written notice before the effective date of any action, including furlough. The statutory basis for the notice requirements is found in 5 U.S.C. 3502(d). The notice requirements are further implemented through regulations published in 5 CFR part 351, subpart H.

The same notice requirements are applicable to both a continuous and a discontinuous furlough.

**17. What option is available if an agency is unable to provide an employee with the minimum required notice of an extended administrative furlough?**

A. When the action is caused by unforeseeable circumstance, an agency may request OPM to authorize a notice period of less than 60 days. However, the agency must still provide each employee with a minimum of 30 calendar days specific written notice of the action. (See 5 U.S.C. 3502(e) and 5 CFR 351.801(b).)

**18. Section 351.806 of 5 CFR states that during the notice period when, “in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee . . . in a nonpay status without his or her consent.” If an agency is unable to give 60 calendar days notice in an emergency (or longer period if required by administrative or negotiated provisions), may an agency use 5 CFR 351.806 to place employees on administrative furlough before the notice period is satisfied?**

A. Yes.

**19. Is the agency required (or permitted) to register employees administratively furloughed under 5 CFR part 351 in the agency’s Reemployment Priority List, or is the employee eligible for priority consideration under placement programs such as Career Transition Assistance Program or the Interagency Career Transition Assistance Program?**

A. No. All of these programs are available only to employees who are separated, not to employees who are furloughed.

**20. During an administrative furlough, competitive service employees may appeal the action to the Merit Systems Protection Board (MSPB). What about excepted service employees?**

A. Excepted service employees, as well as competitive service employees, who are covered by 5 CFR part 351 may appeal or grieve as follows: An employee covered by a negotiated grievance procedure that does not exclude 5 CFR part 351 actions must use the negotiated grievance procedure. See 5 U.S.C. § 7121, *et seq.* Otherwise, an employee may appeal to MSPB. See 5 CFR 351.202, 351.901, and 1201.3(c).

**21. What if an agency plans for and gives notice of an administrative furlough of 22 workdays or less, but then determines that another furlough is necessary for different reasons? Must the agency use 5 CFR part 351 furlough procedures if it determines that an additional furlough is necessary when the additional furlough follows a 22 workday or less furlough?**

A. If an agency's initial assessment resulted in a furlough of 22 workdays or less, OPM recommends that the agency complete that furlough and then issue new furlough notices under either 5 CFR part 752 or 5 CFR part 351, as appropriate depending on the length of the newly required furlough, in the event it determines that additional savings are necessary for different reasons.

**O. Labor Management Relations Implications**

**1. When an agency is required to effect an administrative furlough, what is the agency's obligation to bargain?**

A. The decisions whether to furlough employees and which activities to except from a furlough are management rights that are not subject to bargaining. See 5 U.S.C. 7106(a). However, when an agency determines that an administrative furlough is necessary, agencies have a duty to notify their exclusive representatives, if any, prior to initiating and implementing any furlough actions. Upon request, agencies must bargain over any negotiable impact and implementation proposals the union may submit, unless the matter of furloughs is already covered by a collective bargaining agreement.

Agencies should be aware that their collective bargaining agreements may also contain provisions with respect to the time frame within which to provide the labor organization notice of a change in conditions of employment. It is advisable to check the agency's individual labor agreements for applicable notice provisions, and for agencies to comply with those provisions.

Agency contracts may also contain provisions regarding adverse actions and reductions in force (RIF) with which agencies must comply in giving notice to bargaining unit employees of pending furloughs. It is advisable to check the agency's individual labor agreements for applicable adverse action and reduction in force notice provisions, and to comply with those provisions.

However, in the event that agencies are required to absorb unexpected substantial budget cuts during a short-term continuing resolution or because of the limited time remaining in the fiscal year to absorb these unexpected budget cuts, then agencies might be required to furlough without delay because the cuts must be absorbed during the term of the continuing resolution or remainder of the fiscal year and cannot be deferred until later in the year or into a new budget year. In this event, OPM regulation 5 CFR 752.404(d)(2) states that written notice of furlough to individual employees and opportunity to be heard are not required because of unforeseeable circumstances. Unforeseeable circumstances could include

unexpected cuts by the Congress to an agency's budget late in the fiscal year. This regulation does not apply to the statutory requirement that agencies provide appropriate notice to labor organizations of changes in conditions of employment.

**1a. Must agencies complete collective bargaining prior to issuing any furlough notices to bargaining unit employees?**

**A.** To the extent required by law, agencies must satisfy applicable collective bargaining obligations prior to issuing any furlough notices to bargaining unit employees. Issuance of a furlough notice itself has been found to constitute a change in employees' conditions of employment, which means that unless the matter is already "covered by" a collective bargaining agreement, an agency must provide a union with advance notice of the proposed change (e.g. furlough notices being sent to employees) and an opportunity to bargain over any aspects of the change that are negotiable.

**2. May an agency effect an administrative furlough for employees in a bargaining unit before negotiations are completed?**

**A.** If the parties bargain to impasse and the union does not invoke the services of the Federal Service Impasses Panel in a timely manner, the agency may furlough employees without further delay provided the agency gives the union adequate notice of its intent to implement its last bargaining offer on a specific date. If the union invokes the services of the Federal Service Impasses Panel by that date, the agency may not furlough employees unless it can show it is necessary to do so without further delay.

Agencies required to absorb substantial budget cuts during a short term continuing resolution or because of the limited time remaining in the fiscal year to absorb those cuts might be required to furlough without further delay because the budget cuts must be absorbed during the term of the continuing resolution or the current fiscal year and cannot be deferred until later in the year or into a new budget year. However, in the case of cuts that can be absorbed over the course of the fiscal year, it would be difficult to demonstrate that the furloughs could not be delayed pending resolution of the bargaining impasses. If bargaining is not completed and the agency must furlough employees, the agency should continue to bargain and, if possible, implement any agreement retroactively. We caution agencies that this should be a last resort approach. All attempts should be made to complete the collective bargaining process first, if possible.

- 3. While no decision has been made to administratively furlough employees, our union has submitted a midterm bargaining request on furlough procedures regarding any possible future administrative furlough. Our collective bargaining agreement is silent on furlough procedures and the union is invoking its right to initiate mid-term bargaining on matters not covered by the agreement. Do we have an obligation to bargain when no decision has been made to furlough employees?**

**A.** Even though no decision has been made to furlough employees, it is possible you have a duty to bargain regarding the union initiated mid-term bargaining request, assuming the matter is not already covered by your collective bargaining agreement. The law requires an agency to bargain during the term of a collective bargaining agreement on negotiable union-initiated proposals concerning matters that are not expressly contained in, or otherwise covered by, the collective bargaining agreement, unless the union has waived its right to bargain about the subject matter involved. With this in mind, you will have to evaluate the circumstances of your situation to determine whether you have a duty to bargain on furlough procedures.

- 4. Along with a bargaining request on furloughs, our union has submitted an information request under 5 U.S.C. 7114 seeking information such as the agency administrative furlough plan and a list of employees expected to be furloughed, and whether or not the furloughs are planned to be continuous or discontinuous. Do we have to provide this information?**

**A.** It depends. An agency is required to provide data that is normally maintained, reasonably available, and necessary to perform the representational duties of a union. A union requesting information must establish a particularized need for the information by articulating, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union's representational responsibilities under the statute. The union must establish that the requested information is required in order for the union to adequately represent its members. An agency denying a request for information must assert and establish any countervailing anti-disclosure interests. An agency may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying "no." With this in mind, you will have to evaluate the circumstances of your situation to determine whether you should provide the requested information.

- 5. If a bargaining unit employee decides to challenge a discontinuous administrative furlough, what is the timeframe for the employee to file a grievance under the negotiated grievance procedure (NGP)?**

**A.** The time limits and other procedures applicable to bargaining unit employees are spelled out in applicable provisions of negotiated agreements.

**6. May a manager or supervisor have a meeting with employees in a bargaining unit to discuss an administrative furlough without a union representative present?**

**A.** The law grants a union the right to be represented at certain meetings between managers and one or more bargaining unit employees if the meeting concerns issues such as personnel policies or practices or other general conditions of employment. Under the law, this meeting is referred to as a “formal discussion.” With this in mind, you will have to evaluate the circumstances of your situation to determine whether the meeting constitutes a formal discussion. If you have determined the meeting is a formal discussion, advance notice of the meeting must be provided to the union. See 5 U.S.C. 7114(a)(2)(A).

**P. Travel**

**1. Must agencies cover travel expenses during a furlough day, if an employee’s travel status requires his/her stay to include that furlough day?**

**A.** Yes. Agencies must provide per diem or actual expenses to employees whose travel status requires a stay that includes a furlough day.

**2. Can an employee be engaged in official travel during furlough hours?**

**A.** No. By statutory definition in 5 U.S.C. 7511(a)(5), a furlough under 5 U.S.C. chapter 75 can apply only when an employee is “without **duties**.” Official travel is a duty within the meaning of the term “duties” in 5 U.S.C. 7511(a)(5). Thus, even if the official travel does not qualify as compensable hours of work, the scheduling of official travel would automatically cancel furlough status during affected hours—just as would the scheduling of work. (See Question A.4. regarding when employees are in furlough status—i.e., only during designated hours *within* the employee’s tour of duty established for leave usage purposes.)

**Note:** As used in Questions P.2.-P.6., “official travel” refers to actual time spent traveling on officially authorized Government business and does not include time spent between travel trips at a temporary location away from the employee’s official duty station.

**3. If official travel cancels furlough status during affected hours, how are those travel hours treated?**

**A.** For days other than holidays, official travel during previously designated furlough hours would be considered compensable hours of work, since those furlough hours would have been within the employee’s regularly scheduled administrative workweek. Any official travel within an employee’s regularly scheduled administrative workweek qualifies as compensable hours of work under 5 U.S.C. 5542(b)(2)(A).

Under certain conditions, an employee may be legitimately scheduled to be furloughed on a holiday (during holiday hours within the employee’s normal tour of duty). (See Section F.) In the case of holidays, official travel during previously designated furlough hours would be

compensated by either holiday premium pay or holiday time off pay. If the travel time qualifies as work under 5 U.S.C. 5542(b)(2)(B), the employee would be entitled to holiday premium pay for those travel hours under 5 U.S.C. 5546(b). If the travel time does not qualify as work under 5 U.S.C. 5542(b)(2)(B), the employee would be entitled to holiday time off pay for those travel hours.

**4. Can official travel hours outside the employee’s basic workweek that are compensable hours of work be substituted and paid at a basic rate under the LWOP substitution rule?**

**A.** Yes. Travel time outside the basic workweek that qualifies as work (i.e., meets one of conditions in 5 U.S.C. 5542(b)(2)(B)) is covered by the LWOP substitution rule in 5 CFR 550.112(d), just like any other period of work. (See Questions D.4. and D.5.)

**5. Can official travel hours outside the employee’s basic workweek for which an employee earns compensatory time off for travel be substituted and paid at a basic rate under the LWOP substitution rule?**

**A.** No. Hours that are credited under the compensatory time off for travel provision in 5 U.S.C. 5550b and 5 CFR part 550, subpart N, are hours that are not otherwise compensable under title 5. The LWOP substitution rule in 5 CFR 550.112(d) applies to a period of qualifying work—that is, service that would qualify as work for the purpose of applying overtime thresholds and would generate compensation.

**6. Can an employee *earn* compensatory time off for travel for official travel time during furlough hours?**

**A.** No. As explained in Question P.2., official travel would cancel the employee’s furlough status. As explained in Question P.3., official travel during previously designated furlough hours would be compensable under the normal pay rules. Since the official travel hours would already be compensable, the employee could not earn compensatory time off for travel for those hours. (Under 5 U.S.C. 5550b, an employee may earn compensatory time off for travel for a period of time only if that period of time is not otherwise compensable.)

**7. Can an employee *use* compensatory time off for travel during furlough hours?**

**A.** No. No paid time off may be used during furlough hours. Under 5 U.S.C. 7511(a)(5), the term “furlough” is defined as a period during which an employee is without duties and pay. Use of compensatory time off for travel results in pay and thus is inconsistent with furlough status. (See Question E.1.)

## **Q. Foreign Area Allowances, Differentials, and Danger Pay**

### **1. Do administrative furloughs interrupt or reduce civilian Living Quarters Allowances (LQA) or a Post Cost of Living Allowances (COLA)?**

**A.** An administrative furlough doesn't interrupt Post COLA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the Post COLA is interrupted for the duration of the furlough status. (Source: [http://aoprals.state.gov/content.asp?content\\_id=231&menu\\_id=92](http://aoprals.state.gov/content.asp?content_id=231&menu_id=92), DSSR 051.2) LQA continues without interruption while the employee is in nonpay status not in excess of 30 consecutive calendar days at any one time. For periods in nonpay status longer than 30 consecutive calendar days, LQA payment shall be suspended as of the day the employee enters such status, and payment is not to be made for any part of such period. (Source: [http://aoprals.state.gov/content.asp?content\\_id=231&menu\\_id=92](http://aoprals.state.gov/content.asp?content_id=231&menu_id=92), DSSR 051.2 and DSSR 132.2b(2))

### **2. Do administrative furloughs interrupt Danger Pay or Post Hardship Differentials for civilians stationed at a those posts? Do they impact differential eligibility for TDY employees at such posts?**

**A.** Yes. Employees do not receive Danger Pay or Post Hardship Differential for any furlough days. (Source: [http://aoprals.state.gov/content.asp?content\\_id=231&menu\\_id=92](http://aoprals.state.gov/content.asp?content_id=231&menu_id=92), DSSR 052.2)

Furlough days do not count toward differential eligibility for TDY employees. (Source: [http://aoprals.state.gov/content.asp?content\\_id=231&menu\\_id=92](http://aoprals.state.gov/content.asp?content_id=231&menu_id=92), DSSR 052.2 and DSSR 541)

### **3. Do administrative furloughs interrupt Difficult-To-Staff Incentive Differentials (SND) for civilians stationed at a those posts?**

**A.** No. Length of furlough does not affect SND eligibility. This benefit is based on continuing presence at post. (Source: [http://aoprals.state.gov/content.asp?content\\_id=231&menu\\_id=92](http://aoprals.state.gov/content.asp?content_id=231&menu_id=92), DSSR 1020)

### **4. Do administrative furloughs interrupt evacuation payments/Subsistence Expense Allowances (SEAs) for civilians evacuated and working from safehavens?**

**A.** An administrative furlough doesn't interrupt an SEA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the SEA is interrupted for the duration of the furlough status. (Source:

[http://aoprals.state.gov/content.asp?content\\_id=231&menu\\_id=92](http://aoprals.state.gov/content.asp?content_id=231&menu_id=92), DSSR 051.2)

**5. I have transferred back to Washington, DC, from a foreign post and am using the subsistence expense portion of the Home Service Transfer Allowance. Do administrative furloughs interrupt my eligibility for reimbursement?**

**A.** An administrative furlough doesn't interrupt an HSTA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the HSTA is interrupted for the duration of the furlough status. (Source:

[http://aoprals.state.gov/content.asp?content\\_id=231&menu\\_id=92](http://aoprals.state.gov/content.asp?content_id=231&menu_id=92), DSSR 051.2)

**6. I am transferring from Washington, DC, to Pakistan. I've been authorized the pre-departure subsistence expense portion of the Foreign Transfer Allowance. Do administrative furloughs interrupt my eligibility for reimbursement?**

**A.** An administrative furlough doesn't interrupt an FTA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the FTA are interrupted for the duration of the furlough status. (Source:

[http://aoprals.state.gov/content.asp?content\\_id=231&menu\\_id=92](http://aoprals.state.gov/content.asp?content_id=231&menu_id=92), DSSR 051.2)

**7. I am stationed at a foreign post and my family is on Separate Maintenance Allowance (SMA) in the United States. Do administrative furloughs interrupt the SMA?**

**A.** An administrative furlough doesn't interrupt an SMA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the SMA is interrupted for the duration of the furlough status. (Source:

[http://aoprals.state.gov/content.asp?content\\_id=231&menu\\_id=92](http://aoprals.state.gov/content.asp?content_id=231&menu_id=92), DSSR 051.2)

**R. VERA/VSIP****1. Can agencies offer early retirements (VERAs) or separation incentives (VSIPs) to furloughed employees? Can VERA/VSIP be offered during sequestration? Can VERA/VSIP be offered in lieu of a furlough?**

**A.** Both Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payments (VSIP) are programs to incentivize voluntary separations to avoid involuntary personnel actions associated with an agency's decision to restructure its workforce. Agencies with OPM-approved VERA and or VSIP may continue offering these options to covered employees during a furlough.

VERA and VSIP result in permanent separations from the agency workforce. (Please note that VSIP recipients may not be reemployed by the Federal Government within 5 years unless they repay the VSIP to the agency that paid it.) Furloughs are associated with temporary issues, such as lack of work or funds, with the intention that employees would return to their jobs after the furlough. The agency would decide which option to take based on its situation, e.g., the need to permanently reduce or restructure its workforce or to save funds by furloughing employees.

**S. Federal Employees Health Benefits Program****1. If an employee is furloughed, does their FEHB coverage continue or terminate?**

**A.** The employee's FEHB coverage will continue if the employee's salary is sufficient to pay the premiums. If pay becomes insufficient to cover premiums, an employee that has FEHB coverage and participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) has several options available.

If the furlough results in pay for a regular pay period to be insufficient for the employee's employing office to withhold the employee's share of premium from that pay (after the agency applies all deductions in accordance with the required order of precedence, see Question D.1.), the employing office must notify the employee and give the employee an opportunity to elect to either continue or terminate FEHB coverage. If the employee does not respond to this notice within the time for response, the employing office will terminate the FEHB coverage. In some instances, an employee may cancel FEHB coverage. See Questions S.7., S.8., and S.9. for more information.

**2. Can an employee terminate FEHB coverage because he/she thinks it's not affordable?**

**A.** No, the employee's view of his/her ability to afford FEHB coverage is not a basis for terminating coverage. However, if the employee has insufficient pay to cover the employee share of the premium (as explained in Question S.1.), the employee may choose to terminate coverage.

**3. How can an employee continue FEHB coverage if his or her pay is not enough to cover the premium?**

**A.** If an employee elects to continue FEHB coverage, the employee may directly pay the employing office to keep premiums current, or the employee may incur a debt that the employing office will recover when the employee's pay becomes sufficient to cover the premium.

**4. What happens if FEHB coverage terminates for insufficient pay during furlough?**

**A.** If an employee elects to terminate FEHB coverage, or if the employee does not respond to the election notice, the coverage will end retroactive to the last day of the last pay period in which the premium was withheld from pay. The employee and any covered family members are entitled to a 31-day temporary extension of coverage which commences retroactively to the day after the coverage ended. The employee will also have the right to convert to an individual contract for health benefits.

**5. If an employee's coverage terminates, can the employee re-enroll once pay returns to a level that covers the employee's share of the FEHB premium?**

**A.** Yes. An employee may re-enroll in FEHB upon returning to sufficient pay status and does not have to wait for an open season to re-enroll. The employee must reenroll within 60 days of becoming eligible as a result of renewed sufficient pay. Otherwise, the employee will be required to wait for an open season or a Qualifying Life Event (QLE) that allows for enrollment outside of open season.

**6. How will the employee's termination affect his or her 5-year participation for purposes of continuing FEHB after retirement?**

**A.** For purposes of meeting the 5-year participation requirement, counting of the time the employee is covered under FEHB will *stop* when the employee's enrollment terminates and *resume* upon re-enrollment *provided* the employee reenrolls within 60 days of becoming eligible as a result of renewed sufficient pay. In other words, the employee does not start a new 5-year participation period in this circumstance. However, the period of time in which the employee is not covered due to insufficient pay will be considered a period of ineligibility for FEHB, and will not be held against the employee for purposes of meeting the 5-year continuous coverage requirement.

An employee who does not re-enroll within 60 days but postpones re-enrollment until the next open season must begin a new 5-year participation period for purposes of continuing FEHB coverage into retirement.

**7. Can an employee who participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) just cancel FEHB coverage if the employee is furloughed?**

**A.** No. For employees participating in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis), an administrative furlough is not a Qualifying Life Event (QLE) that would allow a cancellation.

If the administrative furlough causes an employee's pay for a pay period to become insufficient for the employing office to withhold his or her share of the FEHB premium for that pay period, the employing office must give the employee an opportunity to elect to continue his or her FEHB and incur a debt or to terminate enrollment. The employing office will terminate FEHB coverage if no response is timely received. This termination, either by election or by default, is not a cancellation for FEHB purposes.

**8. What options are available to an employee who does not participate in premium conversion (therefore, paying his or her share of FEHB premiums after taxes) and gets furloughed?**

**A.** An employee who specifically waived premium conversion (therefore, paying their share of FEHB premiums after taxes), and whose pay for a pay period is insufficient to cover the employee's share of premium, will be offered the same choices available to an employee covered by Question S.7. However, unlike an employee who participates in premium conversion, he or she may cancel FEHB coverage at any time. He or she does not need a QLE.

**9. If an employee cancels his or her FEHB enrollment, will the employee forfeit rights to a 31-day temporary extension, Temporary Continuation of Coverage and conversion to an individual policy, coverage while receiving workers' compensation, continuation into retirement, and coverage for survivors?**

**A.** An employee who elects to cancel coverage should be made fully aware that if coverage is cancelled:

(1) the employee and all eligible family members do not get a 31-day temporary extension of coverage upon cancellation, and the employee may not reenroll in FEHB until he or she has another QLE that permits enrollment, or the next FEHB Open Season, even upon transfer to another Federal agency;

(2) if the employee separates from employment without reenrolling before separation, he or she will not be eligible to purchase temporary continuation of coverage (TCC) or an individual conversion policy;

(3) if the employee is injured and receives benefits from the Office of Workers' Compensation Programs (OWCP) during the time coverage is cancelled, the employee will

not have an FEHB enrollment to continue during the period of OWCP coverage;

(4) if the employee retires while coverage is cancelled, the employee will not have a FEHB enrollment to continue into retirement. Moreover, even if the employee while still employed reenrolls in FEHB on account of a QLE or at FEHB Open Season, the period of cancellation is considered a break in FEHB coverage that may preclude his or her ability to continue FEHB coverage into retirement;

(5) if an employee dies while coverage is cancelled, there will be no self and family enrollment for survivors to continue, even if they are eligible for a survivor annuity.

**10. Can an employee make an enrollment change because the employee is under an administrative furlough?**

**A.** No. An administrative furlough is not a QLE that would permit an employee to change his or her FEHB plan or option. An employee who participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) may not change to a self only enrollment.

Note that an employee who waived premium conversion (therefore, paying his or her share of FEHB premiums after taxes) may change to self only at any time. However, the employee should be aware that this will deprive his or her covered family members of FEHB coverage and the employee cannot change back to self and family until the employee has a QLE or the next FEHB Open Season. In the event of the employee's death, there will be no FEHB enrollment for surviving family members to continue, even if they are eligible for a survivor annuity.

**11. Will full-time employees receive a lower, pro-rated Government share of FEHB premiums if their hours are reduced under an administrative furlough?**

**A.** No. FEHB law (title 5, U.S. Code, section 8906(b)(3)) requires the Government contribution toward FEHB premiums to be prorated (thus a larger employee share) for *part-time career employees*, i.e. employees with a documented regularly scheduled workweek of 16-32 hours per week. An administrative furlough does not change an employee's *regular work schedule*, e.g., from full-time to part-time.

Thus, as long as a full-time employee does not change to *part-time career employment*, the employee remains entitled to a full Government contribution and the proration does not apply even if the number of hours per pay period is reduced during the furlough to within 16-32 hours per week.

**12. Will part-time employees receive a lower prorated Government share of the FEHB premiums if their hours are reduced under an administrative furlough?**

**A.** No. The Government contribution toward the FEHB premium for an employee working part-time is prorated based on the employee's *regular work schedule*. An employee's Notification of Personnel Action (SF 50) documents the employee's work schedule and number of part-time hours the employee is scheduled to work per pay period (blocks 32 and 33). This part-time schedule should be the part-time schedule established for leave usage purposes (i.e., the schedule from which leave is charged for absences). A furlough action will place the employee in a non-duty/non-pay status during an otherwise scheduled workday, but it does not change the employee's *regular work schedule*. Therefore, the Government's prorated share of FEHB premium will not decrease.

**Note to Section S: Additional Sources of Information**

A list of QLEs for the FEHB Program may be obtained at [http://www.opm.gov/forms/pdf\\_fill/sf2809.pdf](http://www.opm.gov/forms/pdf_fill/sf2809.pdf).

OPM's FEHB webpage on Leave Without Pay and Insufficient Pay Status may be found at <http://www.opm.gov/healthcare-insurance/healthcare/reference-materials/reference/leave-without-pay-status-and-insufficient-pay>.

**T. Federal Employees' Group Life Insurance Program**

**1. Will an employee continue to be covered under the Federal Employees' Group Life Insurance (FEGLI) Program during an administrative furlough that results in a reduction of hours and pay during a pay period, if there is sufficient pay in the pay period to cover the employee's share of the FEGLI premium for that pay period?**

**A.** If the furlough is for only part of a pay period and the pay for that pay period is sufficient to cover the full FEGLI premium, then the full FEGLI premium will be withheld and the employee will continue to be covered under FEGLI, even during the furlough period.

**2. Will an employee continue to be covered under FEGLI during an administrative furlough that results in no pay at all for at least one pay period and less than 12 months?**

**A.** The employee's FEGLI coverage continues while in a leave without pay (LWOP) status due to furlough for up to 12 months, without cost to the employee or to the agency. Neither the employee nor the agency incurs a debt during this period of furlough. This provision does not apply if the employee in LWOP status is receiving workers' compensation from OWCP.

**3. Will an employee continue to be covered under FEGLI during an administrative furlough that results in no pay at all for more than 12 months?**

A. Generally, Basic and Optional insurance of an insured employee who is in LWOP status stops on the date the employee completes 12 months in LWOP status. Your life insurance coverage terminates at the end of this 12-month period, with a 31-day extension of coverage and right to convert to an individual policy.

**4. What happens if, due to an administrative furlough that results in a reduction of hours and pay during a pay period, an employee's regular pay for a pay period, after all other deductions, will not be enough to cover the employee's share of premium for all of the employee's FEGLI Options?**

A. As a general matter, if an employing agency determines that an employee's regular pay for a pay period, after all other deductions, will not be enough to cover the employee's share of premium for all of the employee's FEGLI Options, the employing agency must notify the employee. The employing office must provide the employee with a choice to either terminate some or all FEGLI coverage, or to make premium payments directly.

If the employee elects to continue coverage and pay directly, the process is detailed in the FEGLI regulations at 5 CFR 870.405(c). See <http://www.opm.gov/healthcare-insurance/life-insurance/reference-materials/#url=Regulations>.

If the employee elects to terminate coverage, any amount available for life insurance withholdings must be applied first to Basic, with any remainder applied to Optional insurance (first to Option B, then Option A, then Option C). If the employee does not respond to the election notice in a timely manner, the employing agency will terminate coverage in the order stated above to the extent required due to insufficient pay. Terminated coverage is subject to a free 31-day extension of coverage and the employee has a right to convert.

As provided for in 5 CFR 870.603, when group coverage terminates for any reason other than voluntary cancellation, an employee may apply to convert all or any part of his or her Basic and Optional insurance to an individual policy. An employee who elects to make premium payments directly and whose coverage is cancelled for nonpayment is not entitled to a 31-day extension of coverage and is not entitled to convert to an individual policy. For more information regarding conversion of insurance, please see 5 CFR 870.603.

**5. If an employee's FEGLI coverage is terminated for insufficient pay during a furlough because the employee initially declined to elect direct premium payments, can the employee reinstate the FEGLI coverage when the furlough ends or pay becomes sufficient?**

A. Yes the employee may reinstate any FEGLI coverage terminated for insufficient pay, back to the original elections, upon return to sufficient pay.

**6. Will an employee incur a debt to the agency if the agency underwithholds FEGLI premium as a result of insufficient pay during a furlough?**

**A.** Yes, the agency may consider underwithholding to be a debt. In such cases, agencies must follow their regular processes (including any applicable processes set forth by statute) regarding the collection of these debts.

### Sample Notice 1

#### Furlough Proposal Due to Planned Reduction In Agency Expenditures (5 CFR Part 752)

*[Note: This is the advance written notice required by 5 U.S.C. 7513, when an agency effects an administrative furlough in order to absorb reductions in funding over a period of time. This sample has been written for the scenario where an agency chooses to furlough on discontinuous days. Agencies who choose to furlough on a continuous-day basis should amend the sample accordingly.]*

This memorandum notifies you that [agency name] proposes to furlough you no earlier than 30 days from receipt of this notice. The furlough is being proposed under the authority of 5 CFR part 752, subpart D [briefly explain reason for furlough, e.g., because the agency has received a 20 percent reduction in salaries and expenses (S&E) funding and the present rate of spending when annualized will result in an expenditure in excess of our authorized budget]. This furlough is proposed to promote the efficiency of the service by avoiding a deficit of funds in FY [year].

If other employees in your competitive level (i.e., generally, positions at the same grade level and classification series, the duties of which are generally interchangeable – see 5 CFR 351.403(a)) are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency, or (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, the agency must include them in this listing.]*

We plan to apply the following procedures and conditions related to the furlough:

1. The furlough will be on discontinuous (intermittent) days, beginning [date], through approximately [date]. Full time employees will be furloughed no more than 22 workdays or 176 hours. If you are a part-time employee, your furlough time off will be prorated, based on your work schedule.

*[Note: The agency determines the maximum number of pay periods over which 22 furlough days would suffice to meet agency spending levels. For example, if an agency's spending limits require 5 furlough days per pay period, employees would reach the 22-day limit in approximately 10 weeks.]*

2. Due to the uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, if the decision is made to furlough, you will be advised in advance of each pay period of the number of furlough hours required to allow this agency to meet its financial obligations. In any case, however, you will not be furloughed for more than [number] hours for each pay period between [date] and [date].

3. You may request a specific schedule for furlough time off subject to management approval based upon mission and workload considerations.
4. Annual, sick, court, or military leave which has been approved for a day which is later designated as a furlough day will be recorded as a furlough and you will be placed in a nonpay status for the day. However, when you receive the notice of your furlough dates, you may request that the furlough time off be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

At this time, we do not reasonably anticipate the need for furlough beyond 22 workdays. However, should additional furlough days be necessary, employees will be given another notice. We recognize the difficult personal financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

You will be allowed seven calendar days from receipt of this letter to respond orally and/or in writing, to review the supporting material, and to furnish any affidavits or other supporting documentary evidence in your answer. You have the right to be represented in this matter by an attorney or other person you may choose. If you are in active duty status, you and/or your representative, if an agency employee, will be allowed up to four hours of official time to review the supporting material, seek assistance, prepare your reply, secure affidavits and statements, consider appropriate courses of action, and make a response. Contact your supervisor to arrange for official time. The deciding official has designated representatives to hear oral replies in his/her behalf. To arrange for an oral reply or review the supporting materials, please contact the appropriate individuals listed below:

[contact names, phone numbers, and email addresses.]

Your written reply should be mailed to the deciding official, Mr./Ms.[ name and title],[address] or may be delivered to [address/room number].

A final written decision, including an explanation of the specific reasons for the action taken, will be given to you as soon as possible after the seven days allowed for your reply.

No decision to furlough you has been made or will be made until full consideration is given to your reply.

\_\_\_\_\_  
Proposing Official      Date

I acknowledge receipt of this notice.

\_\_\_\_\_  
Employee's signature      Date

**Sample Notice 2**  
**Notice of Decision to Furlough (5 CFR Part 752)**

By written notice of [date], you were notified of a proposal to furlough you pursuant to the authority in 5 CFR part 752, subpart D.

All written and oral replies received in response to that notice have been reviewed and carefully considered. I have determined that all of the reasons for the proposed furlough, as stated in the notice of the proposal, remain valid. The procedures and conditions related to the furlough as proposed have been determined to be the most equitable means of implementing the furlough. Therefore, you will be required to be on a discontinuous furlough during the period beginning [date] through [date].

In accordance with the procedures and conditions outlined in the notice of proposal, dated [insert date], if you are a full-time employee, you will be furloughed for no more than [number] hours in each of the pay periods or parts thereof, between [date] and [date]. The maximum furlough time for full-time employees will be no more than 22 workdays, or 176 hours. For full-time employees, this maximum is based on a regular work schedule of 80 hours per pay period. If you are a part-time employee, the number of hours required for furlough will be prorated according to your specific work schedule.

Your supervisor will inform you of the amount of furlough time off required prior to each pay period. To schedule your furlough time off, contact your supervisor.

When you are on furlough, you will be in a nonpay, nonduty status. Also, during any furlough period, you will not be permitted to serve as an unpaid volunteer, but must remain away from your workplace.

If you have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment you may appeal this action to the Merit Systems Protection Board (MSPB). If you are a preference eligible employee in an excepted service appointment you may appeal to the MSPB if you have completed one year of current continuous service in the same position or positions similar to the one you now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less. You have the right to be represented in this matter by an attorney or other person you may choose.

If you have the right of appeal and wish to appeal this action to the MSPB, you must file the appeal within 30 days after the effective date of your first furlough day, or 30 days after the date of your receipt of this decision, whichever is later. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the appeals form and a copy of the Board's regulations from the MSPB

website at <http://www.mspb.gov>.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate field office is [*identify appropriate regional office*]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>.

The Board will send an Acknowledgment Order and copy of your appeal to [*contact information including the official's mailing address, email address, telephone and fax number.*]

If you are a bargaining unit employee, you may grieve this action in accordance with the applicable negotiated agreement [*negotiated agreement citation*] or you may appeal to the MSPB in accordance with the procedures outlined above, but not both. Your election to proceed under one process will be considered made when you timely file a grievance in writing, or timely file a notice of appeal, whichever event occurs first. To obtain information on filing a grievance under the negotiated grievance procedure, contact [*name of exclusive union representative*].

*[Under the Board's October 2012 regulations, notices must also include:*

*Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:*

- (1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;*
- (2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;*
- (3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and*
- (4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.]*

*Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]*

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [*contact name, phone number, and email address*].

\_\_\_\_\_  
Deciding Official      \_\_\_\_\_  
Date

I acknowledge receipt of this decision.

\_\_\_\_\_  
Employee's signature      \_\_\_\_\_  
Date

**Sample Notice 3**  
**Notice of Career SES Furlough (5 CFR Part 359)**

*This is a sample of the 30 day advance written notice of furlough required for career SES appointees by 5 CFR part 359, subpart H. It should be used only as an illustration in preparing an agency's own notice, which must be based on specific circumstances in the agency. This sample communicates the agency's decision to implement an administrative furlough on discontinuous days (i.e., 22 workdays or less). Agencies choosing to furlough on a continuous-day basis (i.e., 30 calendar days or less) should amend the sample accordingly.*

This memorandum notifies you that [agency name] intends to furlough you no earlier than 30 calendar days from receipt of this notice. This furlough is being taken pursuant to the authority in 5 CFR part 359, subpart H [briefly explain the reason for furlough, e.g., "because the agency has received a 20 percent reduction in salaries and expenses (S&E) funding, and the present rate of spending, when annualized, will result in an expenditure in excess of our authorized budget"]. Although many actions are being taken within the agency to curtail spending, this furlough is being taken to avoid a deficit of funds in FY [year].

If other employees in your organization are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency, or (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, the agency must include them in this listing.]*

We plan to apply the following procedures and conditions related to the furlough:

1. The furlough will be on discontinuous [intermittent] days, beginning [date], through [date]. Full time employees will be furloughed no more than 22 workdays or 176 hours. If you are a part-time employee, your furlough time will be prorated, based on your work schedule.

*[Note: The agency determines the maximum number of pay periods over which 22 furlough days would suffice to meet agency spending levels. For example, if an agency's spending limits require 5 furlough days per pay period, employees would reach the 22-day limit in approximately 10 weeks.]*

2. Due to uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, you will be advised in advance of each pay period of the number of furlough hours required to allow this agency to meet its financial obligations. In any case, however, you will not be furloughed for more than [number] hours for each pay period between [date] and [date].

3. You may request a specific schedule for furlough time off subject to management approval based upon mission and workload considerations.

4. Annual, sick, court, or military leave which has been approved for a day which is later designated as a furlough day will be recorded as a furlough and you will be placed in a nonpay status for the day. However, when you receive the notice of your furlough dates, you may request that the furlough time off be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

When you are on furlough, you will be in a nonpay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer but must remain away from your workplace. At this time, we do not reasonably anticipate the need for furlough of more than 22 workdays; however, should additional days be necessary to meet this agency's financial obligations, affected appointees will be given another notice consistent with the provisions of 5 CFR part 359 subpart H.

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359 subpart H or this agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board (MSPB). Career SES appointees may inspect the regulations and records pertinent to this action at the following location [identify location and times, as appropriate].

If you wish to appeal this action to the MSPB, you must file the appeal within 30 days after the effective date of your first furlough day, or 30 days after the date of your receipt of this decision, whichever is later. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the appeals form and a copy of the Board's regulations from the MSPB website at <http://www.mspb.gov>.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>.

The Board will send an Acknowledgment Order and copy of your appeal to [contact information including the official's mailing address, email address, telephone and fax number.] You also have the right to be represented in this matter by an attorney or other person you may choose.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

---

Issuing Official

I acknowledge receipt of this notice.

\_\_\_\_\_  
Employee's signature

\_\_\_\_\_  
Date

*[Note: For a probationary SES employee, an agency should advise that, as provided in 5 CFR 317.503(d)(2): 1) time in a nonpay status (e.g., LWOP and furlough) while in an SES position is credited up to a total of 30 calendar days (or 22 workdays) toward completion of the SES probationary period; and 2) after 30 calendar days, the probationary period is extended by adding time to it equal to that served in a nonpay status.]*

**Sample Notice 4**  
**Furlough Due to Planned Reduction in Agency Expenditures (5 CFR Part 351)**  
**More Than 22 Discontinuous Workdays**

*[Note: This is a sample written notice for a furlough of more than 22 discontinuous days under the reduction in force procedures of 5 CFR 351 (implementing 5 U.S.C. 3502(d)) when an agency effects an administrative furlough to absorb funding reductions. Agencies choosing to furlough on a continuous basis for more than 90 calendar days may have to conduct full reduction in force procedures (, such as round I competition to remain in the competitive level and round II to determine assignment rights to another position).]*

**SUBJECT:** Specific Notice of Furlough under Reduction in Force Procedures

I regret to inform you that [agency name] will furlough you for 25 discontinuous workdays between [date] and [date]. You will be placed in a non-duty and non-pay status on your designated furlough days. You will continue in your position of record on your non-furlough days.

[Insert the reason for furlough, e.g., The [agency name] has received a 20 percent reduction in salaries and expenses funding. At the present rate of spending, this reduction will result in an expenditure in excess of our authorized budget. Although we have taken other cost-cutting measures, furlough is required to avoid a deficit of funds in FY [year]. You are included in the furlough because you occupy a position that is directly affected by the funding reduction.]

This action is taken in accordance with the reduction in force (RIF) regulations in title 5, Code of Federal Regulations, part 351. Importantly though, while this action is taken in accordance with RIF regulations, a furlough is a temporary action, not a permanent separation from service. We have determined that assigning you to a different position for [number of days] per pay period would result in an undue interruption to required work. Therefore, under 5 CFR 351.607, you do not have a right to another position in your competitive level or within your competitive area.

Your retention standing as of the first furlough date is as follows:

- Competitive area:
- Service [*i.e., competitive or excepted*]:
- Position title, series, and grade:
- Competitive level:
- Tenure and subgroup:
- Service computation date (SCD):
- Three most recent performance rating with years credited:
- Adjusted SCD (SCD-RIF):

Your furlough will be on discontinuous (intermittent) days, beginning [date] through [date]. As a full-time employee, you will be furloughed 25 workdays or 200 work hours. You may request a specific schedule for your discontinuous furlough days or switch your designated furlough day(s)

within a pay period through a written request to your supervisor. We will consider all change requests with approvals based on position function, workload considerations, and employee retention standing.

*[If part-time: As a part-time employee with a work schedule of [xx] hours per pay period, your prorated furlough is XX work hours to be served within your designated work schedule.]*

Annual, sick, court, or military leave which was approved for a designated furlough day is hereby cancelled. However, you may request that the furlough day be rescheduled if you wish to use leave as approved.

Attachment 1 has general information about leave and benefits during a furlough. Attachment 2 has information on *[State]* unemployment insurance program.

At this time, we do not reasonably anticipate the need for furlough beyond 25 workdays. However, should additional furlough days be necessary, you will be issued another notice.

You may review the information related to your furlough action. Copies of retention registers, RIF regulations, and related records are available in the Human Resources Office. You may make an appointment to review this material by contacting *[HRO name and contact information]*.

You may appeal this action to the Merit Systems Protection Board (MSPB). You may file an appeal within 30 calendar days after the effective date of your first furlough day. If you do not file an appeal within this 30-day time limit, the MSPB may dismiss it unless you can show good cause for the delay. A copy of the appeal form and the MSPB's regulations are available on the Board's website at [www.mspb.gov](http://www.mspb.gov). You should send your appeal to the MSPB office at *[appropriate office address]*. The Board will send an Acknowledgment Order and copy of your appeal to *[contact information including the official's mailing address, email address, telephone and fax number.]* *[Note: MSPB appeal rights for furloughs apply to non-bargaining unit employees or bargaining unit employees where the negotiated grievance procedure excludes furloughs from coverage.]*

*[If the employee is a bargaining unit employee and furloughs are covered under the negotiated grievance procedure: You may grieve this action in accordance with the applicable negotiated agreement [negotiated agreement citation] in accordance with the procedures outlined in the agreement. To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].*

*[Under the Board's October 2012 regulations, notices must also include:*

*Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:*

*(1) Whether the election of any applicable grievance procedure will result in*

*waiver of the employee's right to file an appeal with the Board;*

*(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;*

*(3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and*

*(4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.]*

*Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]*

This furlough under the RIF regulations does not reflect on your service, performance, or conduct. It is taken solely for the reason stated in this notice.

We recognize the difficult personal financial implications of any furlough, no matter its length. We will make every effort to keep you informed as additional information regarding agency funding level becomes available. If you have questions, contact [*contact name, phone number, and email address*].

\_\_\_\_\_  
Agency Official Signature

\_\_\_\_\_  
Date

Attachments

I acknowledge receipt of this notice.

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Employee signature

\_\_\_\_\_  
Date

Table of Recent Changes to Guidance for Administrative Furloughs

<b>Date</b>	<b>Question</b>	<b>Change</b>	<b>Description</b>
<b>June 10, 2013</b>	Note	New	Added a note regarding the applicability of the guidance (located before Section A)
	P.2.	New	Effect of scheduling official travel during designated furlough hours
	P.3.	New	Treatment of official travel hours during previously designated furlough hours
	P.4.	New	Treatment of official travel hours outside the basic workweek that are compensable hours of work
	P.5.	New	Treatment of official travel hours outside the basic workweek that are credited as compensatory time off for travel
	P.6.	New	Inability to earn compensatory time off for travel for travel hours during previously designated furlough hours
	P.7.	New	Inability to use compensatory time off during furlough hours
<b>May 23, 2013</b>	G.3.	Revised	Directs readers to new Section T (Federal Employees' Group Life Insurance Program)
	T.1.	New	Impact of employee receiving sufficient pay in pay period to cover employee's share of premium
	T.2.	New	Impact of employee receiving no pay for at least 1 pay period but less than 12 months
	T.3.	New	Impact of employee receiving no pay for more than 12 months
	T.4.	New	Impact of employee's pay in pay period being insufficient to cover premium for all FEGLI options
	T.5.	New	Reinstatement of FEGLI coverage after coverage is terminated because of insufficient pay and employee declines to make direct premium payments
	T.6.	New	Employee's debt to agency if agency underwithholds FEGLI premium as a result of insufficient pay
<b>April 25, 2013</b>	A.4.	New	Explanation of what it means to be in a furlough status
	A.5.	New	Clarification that furlough does not affect an employee's status as full-time or part-time
	C.3.	Revised	Added a link to a relevant Office of Government Ethics legal advisory
	C.6.	New	Effect of an agency ordering an employee to work during his or her scheduled furlough hours
	E.5.	New	Retroactive substitution of annual leave for furlough hours taken in certain limited circumstances
	E.6.	New	Retroactive substitution of excused absence for furlough hours taken in certain limited circumstances

	L.2.	Revised	Added language about identifying specific furlough hours for employees on a flexible work schedule
	M.4a.	New	Appropriate supporting documentation for an administrative furlough action
	M.4b.	New	Procedural rights applicable to veterans for an administrative furlough of 30 calendar days or less
	M.6a.	New	Procedural rights for a probationer who completes his or her probationary period before fulfilling the agency's furlough time off requirement
	M.11.	New	Obligation to provide Merit Systems Protection Board (MSPB) appeal information in adverse action furlough decision notices
	N.21.	Revised	Clarified the previous language about the appropriate procedures to use if an agency determines an additional furlough is necessary
<b>April 2, 2013</b>	G.1.	Revised	Directs readers to new Section S (Federal Employees Health Benefits Program)
	Section K Title	Revised	Changed title of Section K from "Injury While on Furlough" to "Benefits under the Federal Employees' Compensation Act (FECA)"
	K.1.	Revised	Minor edits to guidance involving workers' compensation benefits under the FECA
	K.2.–K.5.	New	Department of Labor guidance on workers' compensation benefits during an administrative furlough
	Section K Note	New	Note regarding additional information on Federal workers' compensation benefits
	M.2.	Revised	Directs readers to OPM's SF-50 processing guidance in its entirety for a fuller understanding of the requirements
	S.1.	New	Continuation of FEHB coverage
	S.2.	New	Ability to afford FEHB coverage
	S.3.	New	Continuing FEHB coverage if pay is insufficient to cover premium
	S.4.	New	Termination of FEHB coverage for insufficient pay
	S.5.	New	Re-enrollment following termination of FEHB coverage
	S.6.	New	Impact of terminating FEHB coverage on 5-year participation requirement for purposes of continuing coverage after retirement
	S.7.	New	Cancellation of FEHB coverage for employees participating in premium conversion
	S.8.	New	Options available to employees not participating in FEHB premium conversion
	S.9.	New	Impact of cancelling FEHB coverage
	S.10.	New	FEHB enrollment changes

	S.11.	New	Government share of FEHB premiums
	S.12.	New	Government share of FEHB premiums for part-time employees
	Section S Note	New	Note regarding additional information on FEHB Program
<b>March 25, 2013</b>	A.3.	Revised	Added language generally describing shutdown furloughs
	Q.1.	New	Living Quarters Allowance and Post Cost of Living Allowance
	Q.2.	New	Danger Pay, Post Hardship Differential, and differential eligibility for TDY employees
	Q.3.	New	Difficult-To-Staff Incentive Differential
	Q.4.	New	Subsistence Expense Allowance
	Q.5.	New	Home Service Transfer Allowance
	Q.6.	New	Foreign Transfer Allowance
	Q.7.	New	Separate Maintenance Allowance
	R.1.	Moved	VERA/VSIP guidance formerly posted as Question H.1. of OPM's "Supplemental Guidance for Sequestration and Administrative Furloughs," which was removed from the OPM website on March 25, 2013
<b>March 8, 2013</b>	B.1.	Revised	Factors used in determining coverage of furlough
	B.6.	Revised	Treatment of detailees
	B.8.	New	Volunteering for leave without pay
	H.2.	Revised	Resources for Thrift Savings Plan guidance
	H.3.	New	Resources for Thrift Savings Plan guidance
	L.3.	Revised	Scheduling furlough time off for employees with part-time or uncommon tours of duty
	M.10.	New	Providing electronic notice of a furlough action
<b>March 5, 2013</b>	B.5.	New	Treatment of detailees
	B.6.	New	Treatment of detailees
	B.7.	New	Treatment of detailees
	E.2.	Revised	Treatment of employees on approved leave without pay
	E.3.	Revised	Taking leave without pay under the Family and Medical Leave Act (FMLA)
	H.1.	Revised	Resources for unemployment compensation guidance
	O.1.	Revised	Collective bargaining obligations
	O.1a.	New	Satisfying collective bargaining obligations before issuing furlough notices
<b>February 27, 2013</b>	P.1.	New	Travel expenses during a furlough
<b>February 26, 2013</b>	E.4.	New	Accrual of annual and sick leave
	G.6.	New	Retirement annuity benefits
<b>February 20, 2013</b>	D.4.	New	Assigning work hours outside the basic workweek
	D.5.	New	Compensating employees who work hours outside the basic workweek

DLA Administrative Record for FY 2013 Furlough Appeals

	D.6.	New	Earning credit hours
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JUN 07 2013

MEMORANDUM FOR DLA EXECUTIVE BOARD

SUBJECT: Defense Logistics Agency (DLA) Guidance for Overtime/Compensatory Time During Administrative Furlough

This memorandum establishes DLA policy guidance for authorizing overtime/compensatory time per DLA Updated Administrative Furlough Execution Policy Guidance, dated May 18, 2013, during an Administrative Furlough. In accordance with the guidance issued by the Secretary of Defense dated May 14, 2013, the budget reductions mandated by sequestration have necessitated unpaid furloughs for most Department of Defense civilian employees. These furloughs are for the purpose of reducing expenses and contributing to immediate savings needed by the Department.

As a result of the implementation of this administrative furlough, DLA will operate with reduced civilian labor for the duration of the furlough period while continuing to execute core, mission-essential activities, to include direct support to the warfighter. It is incumbent upon DLA Senior Leaders at the Primary Level Field Activities (PLFA) and J code level to only allocate these limited resources to the highest priority work and mission-essential activities needed to continue supporting the warfighter. This will require taking active steps and making conscious choices in applying available resources and curtailing or deferring lower priority activities.

The following policy guidance applies effective July 8, 2013:

- For the duration of the furlough period, DLA organizations may not authorize overtime or compensatory time except in rare instances where mission failure (not just diminished mission accomplishment) would result in the absence of authorized overtime or compensatory time.
- Under no circumstances is overtime or compensatory time to be authorized to make up for lost productivity caused by the furlough or to make up for employees' lost compensation resulting from furlough.
- Under no circumstances will contractor work hours be increased or additional contractors hired in order to offset lost productivity resulting from the furlough.
- PLFA Commander/J code Director level (or Deputy), the DLA Chief of Staff for the D code organizations, and the DLA General Counsel (or Deputy) for DLA Office of General Counsel, have the sole and exclusive authority to approve overtime or compensatory time during the furlough period and must ensure sufficient oversight of subordinate activities. The approval level for the rare exceptions is not subject to redelegation to lower organizational levels.

- Mitigating measures, including cancelling or rescheduling preapproved leave (unless it is for an emergency situation or in situations where employees have documentation that there is a financial investment which is non-refundable), rescheduling or canceling training, and/or reprioritizing workload and labor resources must be considered prior to authorizing overtime or compensatory time during the furlough period. Any leave cancellations must comply with the negotiated provisions of Article 24 of the Master Labor Agreement and/or other applicable locally negotiated agreements for bargaining unit employees.
- Authorizing officials may approve overtime/compensatory time only after consideration of a *documented* justification that:
  - Describes the specific number of premium hours, when they would be worked, and the duration of the requirement.
  - Describes actions taken to mitigate the need for overtime or compensatory time (including reprioritizing workload, reallocating resources, cancelling approved leave/training, etc.)
  - Demonstrates/describes how mission failure will occur without the approval of overtime or compensatory time.
- In the rare instance that overtime/compensatory time is authorized, DLA activities must do so in accordance with applicable collective bargaining agreements.
- For the duration of the furlough, J8 will closely monitor Overtime/Compensatory time rates and provide regular reports to ensure compliance with the business rules.



EDWARD J. CASE  
Vice Director



COMPTROLLER

UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100

MAY 23 2013

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Additional Guidance for Handling Budgetary Uncertainty in Fiscal Year 2013

- References:
- (a) Deputy Secretary of Defense's memorandum on "Handling Budgetary Uncertainty in Fiscal Year 2013," dated January 10, 2013.
  - (b) USD(C) Memorandum "Additional Guidance on Handling Budget Uncertainty in Fiscal Year 2013," March 5, 2013 - **Rescinded**
  - (c) DoD Directive 4515.12, DoD Support for Travel of Members and Employees of Congress
  - (d) Title 10, United States Code § 1051, "Bilateral or regional cooperation programs: payment of personnel expenses"
  - (e) DoD Instruction 1015.15, Establishment, Management and Control of Non-appropriated Fund Instrumentalities and Financial Management of Supporting Resources
  - (f) Title 10, United States Code § 1491, "Funeral honors functions at funerals for veterans"
  - (g) Title 31 United States Code § 1353, "Acceptance of Travel and Related Expenses from Non-Federal Sources"

The purpose of this memorandum is to provide additional guidance to reference (a) to ensure consistency in the treatment of issues across the Department of Defense (DoD) as the Department implements sequestration and the funding provided in the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6). All DoD Components need to ensure that funding for wartime operations is protected and critical priority requirements for national security are funded within the limited resources and flexibilities provided. Effective immediately, the guidance in this memorandum supersedes the guidance provided in reference (b), and subsequent clarifications, which are hereby rescinded.

### Congressional Travel Support

The Department will strictly enforce DoD's policies in its support of travel by congressional delegations (CODELs) and congressional staff delegations (STAFFDELS). It is DoD policy that support for approved travel of members and employees of Congress shall be provided on an economical basis upon request from Congress, pursuant to law or where necessary to carry out DoD duties and responsibilities. Organizations shall ensure that travel of members and employees of Congress is sponsored by the DoD *only* where the purpose of the travel is of primary interest to and bears a substantial relationship to programs or activities of DoD and is not solely for the purpose of engendering goodwill or obtaining possible future benefits. Specific guidance is included in reference (c). Some specific policies worth highlighting include:

- Military airlift will not be used for CODELs if commercial airlift is reasonably available.
  - Within the Continental United States (CONUS), no CODELs may use military airlift as commercial airlift is readily available.
  - Military airlift may be authorized for CODELs Outside the CONUS if commercial airlift is limited or unsafe; every effort must be made to minimize costs.
  - Spouses may accompany members if there is an official function as long as they pay their own expenses and do not increase the number or size of aircraft required.
- Minimum number of congressional members for military airlift originating in CONUS.
  - No less than five members for large aircraft.
  - No less than three members for small aircraft.
- Tickets purchased by DoD for CODELs, STAFFDELS, and liaison escorts.
  - Must be economy class; individuals may upgrade at their own expense.
  - DoD does not pay for a member's personal staff traveling to his/her home State/District; this includes travel, lodging, meals, or escorts.
- All itineraries for CODELs/STAFFDELS must be approved by the escorting Service's 2-star Legislative Affairs Director to ensure that the itinerary is an efficient use of taxpayer funds.

#### Tuition Assistance

The Services are to restore funding for tuition assistance to the budgeted level for the remainder of Fiscal Year 2013, without reduction for sequestration. In addition, the Services will not implement any management controls/restrictions that did not exist prior to the tuition assistance stoppage. This will meet, and exceed, the requirement in section 8129 (Requirement to Continue Provision of Tuition Assistance for Members of the Armed Forces) of division C of Public Law 113-6 (Department of Defense Appropriations Act, 2013).

#### Discretionary Monetary Awards for Civilians

In the Office of Management and Budget (OMB) Bulletin #M-13-11, Ongoing Implementation of the Joint Committee Sequestration, dated April 4, 2013, the Controller provides the following guidance with regard to discretionary monetary awards:

“OMB Memorandum 13-05 [Agency Responsibilities for Implementation of Potential Joint Committee Sequestration] directs that discretionary monetary awards should not be issued while sequestration is in place, unless issuance of such awards is legally required. Discretionary monetary awards include annual performance awards, group awards, and special act cash awards, which comprise a sizeable majority of awards and incentives provided by the Federal Government to employees. Until further notice, agencies should not issue such monetary awards from sequestered accounts unless agency counsel determines

the awards are legally required. Legal requirements include compliance with provisions in collective bargaining agreements governing awards.<sup>1</sup>

Consistent with past guidance, certain types of incentives are not considered discretionary monetary awards for the purposes of this policy. These include quality step increases (QSIs); travel incentives recognizing employee savings on official travel; foreign language awards for mission-critical language needs; recruitment, retention, and relocation incentives (3Rs); student loan repayments; and time-off awards. While these items are permitted, in light of current budgetary constraints, they should be used only on a highly limited basis and in circumstances where they are necessary and critical to maintaining the agency's mission. In addition, consistent with the policy set forth in the Guidance on Awards for Fiscal Years 2011 and 2012, jointly issued by the Office of Personnel Management (OPM) and OMB on June 10, 2011, spending for QSIs and 3Rs should not exceed the level of spending on such incentives for fiscal year 2010.

With respect to Federal political appointees, agencies should continue to follow the policy set forth in the August 3, 2010 Presidential Memorandum, Freeze on Discretionary Awards, Bonuses, and Similar Payments for Federal Political Appointees. OPM previously issued guidance on implementation of this memorandum.”

The Office of the Under Secretary of Defense for Personnel and Readiness will be issuing supplemental guidance on award limitations for DoD civilians.

#### **Participation in International Events**

The Department should limit its participation in international events except in those instances where individuals are supporting Foreign Military Sales and the funds supporting these efforts are not being sequestered because the accounts are exempt from sequestration.

Components may continue to participate in military exercises and to conduct military-to-military engagement activities, including participation by DoD personnel in bilateral or regional conferences, seminars, or similar meetings if the appropriate conference approval authority determines that the attendance of such personnel at such conference, seminar, or similar meeting is in the national security interests of the United States. In addition, Components may continue to use - in accordance with established guidance and approval procedures - the authority provided by reference (d) to pay travel and subsistence costs for defense personnel from developing countries in order for them to attend conferences, seminars, or similar meetings considered in the interest of U.S. national security. In this period of sequestered budgets, however, Component Heads should take particular care to ensure that any military-to-military engagement activities, including conferences, seminars, or similar meetings, are mission critical and that the goals of the

<sup>1</sup> Consistent with legal requirements, agencies may consider engaging in discussions with employees' exclusive representatives to explore revisions to such provisions in existing collective bargaining agreements, in recognition of this guidance.

activity cannot be deferred or met through other means. We also ask that you take into account factors that could result in special scrutiny of an event, including size, cost, and location. Utilization of military musical units or ceremonial units in military-to-military engagement activities will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval.

### **Demonstration Flying**

All aerial demonstrations, including flyovers, jump team demonstrations, and participation in civilian air shows and military open houses were to cease as of April 1, 2013, consistent with previous direction. Flyovers in support of military funerals will be given special consideration. To ensure consistency across the Department all exceptions and waivers for demonstration flying will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval.

### **Support to Non-DoD Organizations and Special Events**

All military support to non-DoD organizations and special events for outreach purposes beyond a military installation's local area is prohibited. Military support to outreach activities in the local area is permitted so long as the support is provided using only local assets and personnel, and is at no cost to the Department. This includes, but is not limited to, military equipment displays at civilian air shows, military open houses, Fleet and Service weeks, and CONUS-based ship homeport visits, and in parades and civic events. The use of non-appropriated funds (NAF) to host military installation open houses in support of authorized NAF programs is permitted in accordance with reference (e). To ensure consistency across the Department, all exceptions and waivers for support to non-DoD organizations and special events will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval. This section does not apply to DoD Component Recruiting Marketing activities using Recruiting assets, National Guard outreach activities funded solely by State funds, and attendance by DoD personnel at a non-DoD hosted conference.

### **Military Musical Unit (and Ceremonial Unit) Travel**

As a matter of policy, military musical and ceremonial units will not be permitted to travel beyond their respective duty station's local area for any purpose, including support to another military installation, even if such travel could be conducted at no cost to DoD. Units may continue to perform locally both on and off military installations, including for the purpose of producing and distributing audio and video recordings, as long as those performances, productions and distributions are at no cost to the Department. To ensure consistency across the Department, all exceptions and waivers will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval. Presidential Wreath-Laying Ceremonies are exempt from this restriction. In addition, Military Funeral Honors Details are exempt from this restriction and will continue to be executed in accordance with Service Department policies and reference (f).

### Official Speeches and Related Travel Expenses for DoD Personnel

Department of Defense personnel may not travel beyond the local area at DoD cost, including to deliver official speeches, unless the activity is deemed mission critical. Each organization in the Office of the Secretary of Defense (OSD), Service Component or Combatant Command (COCOM) is responsible for making this "mission critical" determination. Expenditure of DoD travel funds to support a mission critical official speech must be approved by the member's respective OSD organization, Service Component or COCOM leadership. The Department may continue to accept unsolicited travel benefits from non-Federal sources in accordance with reference (g). However, all expenses for non-mission critical travel must be covered by the non-Federal source, including per diem, lodging, meals, transportation and all other travel-related expenses.

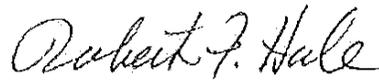
### Conference Attendance

As you know, the Deputy Secretary of Defense has issued guidance requiring that all conferences be mission critical. There are also certain individuals who must approve conferences, depending on their nature and size. If you have questions about this guidance, it is available for review at: <http://dcmo.defense.gov/products-and-services/conference-policies-controls/index.html>.

Even under sequestration, we do not want to prohibit conferences, including hosting of or attendance at DoD-hosted conferences or attendance at conferences hosted by non-DoD entities. However, in this period of sequestered budgets, we ask that commanders and managers take particular care to be certain that conferences are indeed mission critical and that the goals of the conference cannot be met through other means. We also ask that you take into account factors that could result in special scrutiny of conferences including size, cost, and locations that are remote from the workplace of most participants. Particular care should be exercised in assessing the need for conferences held overseas or in other locations likely to attract special attention.

If, after weighing the above considerations, travel approving officials determine that attendance at conferences hosted by non-Federal sources during sequestration is still appropriate, if asked, the host may be informed of DoD's authority to accept payments for travel, subsistence, and related expenses pursuant to reference (g). Payments for travel expenses under reference (g) may not be solicited. Apart from this statute, we do not have authority to accept reimbursements from non-Federal entities in a manner that can be used to offset DoD's costs of participation in a non-Federal source's conference. All DoD travel approving officials should ensure that DoD employees attend only those conferences that satisfy the criteria set forth in the preceding paragraph and that, wherever appropriate, all travel, subsistence and related expenses incurred by DoD are reimbursed in accordance with reference (g).

We will continue to provide additional guidance as issues surface that require a DoD-wide policy. Thank you for your assistance during this difficult fiscal climate.



Robert F. Hale

cc:  
Director of National Intelligence

DISTRIBUTION:  
SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
DEPUTY CHIEF MANAGEMENT OFFICER  
COMMANDERS OF THE COMBATANT COMMANDS  
ASSISTANT SECRETARIES OF DEFENSE  
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**May 18, 2013**

**MEMORANDUM FOR DEFENSE LOGISTICS AGENCY (DLA) EXECUTIVE BOARD**

**Subject: DLA Updated Administrative Furlough Execution Policy Guidance**

This memorandum establishes policy for execution of fiscal year (FY) 2013 administrative furloughs of up to 11 discontinuous workdays, consistent with guidance from the Secretary of Defense, and updates the policy stated in my March 17, 2013 memorandum. The Secretary has determined that the furlough be implemented in as consistent a manner as possible across the Department. As you are aware, DLA negotiated furlough procedures with its labor representatives and has come to agreement with the unions that represent the vast majority of our workforce. Deviations from the specifics of the applicable union Memorandums of Agreement (MOA) are not authorized. The following are the basics of the DLA furlough implementation plan that apply to bargaining and non-bargaining employees:

- The furlough period will begin no earlier than July 8 and last through the end of FY 13.
- The furlough applies to all DLA civilian employees unless they are specifically identified in one of the DoD established exception categories. Those exceptions include deployed civilians (for the period of the actual deployment and including a defined period immediately before and after deployment), positions directly engaged in protecting life and property (certain police and firefighter positions), non-appropriated fund employees and foreign national employees. DLA Human Resources has identified the specific positions and employees included in these exceptions, with approval by the DLA Director.
- DLA civilian employees will serve furloughs of equal length up to 11 discontinuous days. (One furlough day per week for 11 consecutive weeks.)
- For the duration of the furlough period, all affected DLA employees will be placed on one of the three approved work schedules, consisting of five day work weeks with eight hour workdays. Most employees will have flexible start and stop times with the resultant ability to earn and use credit hours. The change to employee work schedules will be implemented at the beginning of the pay period in which the first furlough day will be scheduled and served. Work schedule changes will be implemented the pay period beginning June 30, 2013.
- Furlough days will be discontinuous and will be scheduled for the first or last day of the administrative workweek (Mondays or Fridays for most employees). Employees who currently work an alternate work schedule with a scheduled regular day off of other than the first or last day of the administrative workweek will have the option of retaining their

existing day off as their weekly furlough day. Employees currently working on Sundays as part of their basic work schedule **will not be required** to be furloughed on Sunday.

- Supervisors/managers will determine sufficient staffing levels on designated furlough days in light of mission requirements, but may not “close” DLA activities. Employees will submit their preference of first or last day to their immediate supervisor. In instances where there is conflict with multiple employees requesting the same furlough day and all requests cannot be accommodated within established parameters, supervisors and employees may work together to reach an accommodation, but ties will be broken by applying appropriate service computation date (SCD) dates in accordance with the applicable MOA.
- Supervisors will be provided with an employee roster identifying all employees in their immediate chain. The roster is to assist them in scheduling furlough days and to ensure that all employees are issued the requisite furlough notices and decision letters. Once the furlough day has been set for each employee, it cannot be changed for the duration of the furlough period.
- Supervisors may not assign work to employees to be performed on a designated furlough day, nor may the employee be permitted to volunteer to work on those designated days.
- During the furlough period, when a Federal holiday falls on an employee’s designated furlough day, the employee will serve their furlough day on the next scheduled work day.
- Employees will be notified as soon as practicable if/when the furlough period is cancelled because of a change to the Department’s budget posture. They will be returned to their former work schedule.
- Supervisors will be provided with detailed instructions for completing and issuing the furlough proposal notices to their subordinate employees previously identified.
- Furlough notice letters will be distributed by the supervisor in person or by email on May 29, 2013. The notices will be signed by both the supervisor and employee to document receipt. Explicit instructions will be provided to supervisors covering this process as well as the alternatives for instances where the employee is not available to directly receive their letter in person.
- The actual notice letter provides the employee with notice that they are to be furloughed and specific information about the impact of such a furlough. It identifies the earliest possible effective date; and if applicable, provides them with a right to reply orally and/or in writing, provides a reply period, and identifies the individual to whom the reply should be directed.
- At the conclusion of the reply period, employees will be issued a decision letter that finalizes the specifics of the furlough, notifies them of their various rights to appeal and specifies the effective date. Deciding officials will be provided detailed information for the issuance of decision letters to employees.

Finally, to clarify the guidance with respect to the use of overtime and/or compensatory time, DLA organizations may not use overtime or compensatory time except in rare instances where failure to make use of that option would result in not just diminished mission accomplishment, but mission failure. Overtime or compensatory time may not be used to make up for the lost productivity or compensation resulting from the furlough days. The approval level for any instances of authorized overtime or compensatory time remains at the PLFA Commander/J-Code Director level (or Deputy) or the DLA Chief of Staff for D staff organizations.

Questions pertaining to the agency's furlough policy may be directed to your DLA Human Resources Services Customer Account Manager.



BRAD BUNN  
Director  
DLA Human Resources



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

MAY 14 2013

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
DEPUTY CHIEF MANAGEMENT OFFICER  
CHIEFS OF THE MILITARY SERVICES  
COMMANDERS OF THE COMBATANT COMMANDS  
CHIEF OF THE NATIONAL GUARD BUREAU  
DIRECTOR, COST ASSESSMENT AND PROGRAM  
EVALUATION  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
ASSISTANT SECRETARIES OF DEFENSE  
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTOR, ADMINISTRATION AND MANAGEMENT  
DIRECTOR, NET ASSESSMENT  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Furloughs

This memo directs defense managers to prepare to furlough most Department of Defense (DoD) civilians for up to 11 days. The schedule for furloughs, and some specific exceptions, are described later in this memo and in the attachment. I have made this decision very reluctantly, because I know that the furloughs will disrupt lives and impact DoD operations. I, along with the senior civilian and military leadership of the Department, have spent considerable time reviewing information related to the need for furloughs, and I would like to share with you the reasoning that led me to this difficult decision.

Major budgetary shortfalls drove the basic furlough decision. On March 1, sequestration went into effect across the federal government. DoD's budget for FY 2013 was reduced by \$37 billion, including \$20 billion in the operation and maintenance (O&M) accounts that pay many of our civilian workers. In addition, because our wartime budget is also subject to sequestration, we must utilize funds originally budgeted for other purposes in order to provide our troops at war with every resource they need. To compound our problems, when we estimated future wartime operating costs more than a year ago, we planned on fuel costs below what we are currently experiencing. Taken together, all these factors lead to a shortfall in our O&M accounts of more than \$30 billion – a level that exceeds 15 percent of our budget request, with fewer than six months left in the fiscal year in which to accommodate this dramatic reduction in available resources.

We are taking actions to reduce this shortfall. One main priority has governed our decisions: to minimize the adverse effects on our military mission, including military readiness. With this in mind, early this calendar year we cut back sharply on facilities maintenance and worked to hold down base operating costs -- decisions we knew would build a backlog of maintenance and adversely affect our bases. We are also preparing a request to Congress that would permit us to shift some funding from investment and military personnel accounts into the O&M accounts. If approved by Congress, this initiative -- known as a reprogramming -- would help close the gap.

But these actions are not enough. We have begun making sharp cuts in the training and maintenance of our operating forces -- cutbacks that are seriously harming military readiness. The Army, for example, has terminated most remaining FY 2013 training rotations at its combat training centers. The Air Force has or soon will stop all flying at about one-third of its combat-coded squadrons in the active forces. The Navy and Marine Corps are cutting back on training and on deployments -- including a decision not to send a second carrier strike group to the Gulf. These are only a few of the many cutbacks we have made in training and maintenance. These actions reduce our ability to handle future military contingency needs, both this year and in subsequent years.

Even after taking all these actions, we are still short of needed operating funds for FY 2013, and we cannot rule out unexpected increases in costs during the next few months. So we confront a difficult set of trade offs. We can make even larger cutbacks in training and maintenance, further reducing readiness to handle contingency operations and putting into even greater jeopardy our military readiness in future fiscal years. Alternatively, we can furlough civilian personnel to help close the gap and, knowing that morale, productivity and readiness would be affected. This is an unpleasant set of choices, but this is the situation we face.

Before making a decision, I sought advice and inputs from senior leaders in the military departments and agencies as well as advice from my senior civilian and military staff. I asked them to keep in mind our fundamental criterion to minimize adverse mission effects and, subject to that criterion, to ensure reasonable consistency and fairness across the Department for any furloughs that we impose.

Based on all these inputs, I have decided to direct furloughs of up to 11 days for most of the Department's civilian personnel. Furloughs for up to 11 days represent about half of the 22 days that can legally be imposed in a year and also about half the number we had originally planned. This halving of previous furlough plans reflects vigorous efforts to meet our budgetary shortfalls through actions other than furloughs as well as Congressional passage of an appropriations bill in late March that reduced the shortfalls in our operating budget and expectations of Congressional action on our reprogramming request.

Furloughs will be imposed in every military department as well as almost every agency and in our working capital funds. All of our civilian employees are important, and I would prefer not to furlough any of them. However, there will only be limited exceptions driven by law and by the need to minimize harm to mission execution. We will except civilians deployed to combat zones and civilians necessary to protect life and property (but only to the extent needed to provide that protection). A few categories of workers will be excepted for specific mission reasons while some categories of workers will be excepted because furloughing them would not

free up money for critical DoD mission needs. The attachment provides details regarding approved exceptions. Fewer than one fifth of all civilians paid with appropriated funds will be excepted from furloughs.

The planning and implementation of furloughs will be carried out based on the schedule below:

- May 28 - June 5: Furlough proposal notices will be served to individual employees subject to furloughs.
- June 4 - June 12: Individual employee reply periods end 7 calendar days from when the proposal was received, unless Component procedures allow for a different reply period.
- June 5 - July 5: Furlough decision letters will be served to individual employees subject to furloughs, depending on when the proposal was received and prior to the first day of furlough.
- July 8: Furlough period begins no earlier than this date.

We will begin furloughs on July 8 at the rate of 1 furlough day per week for most personnel. For now, we plan to continue furloughs through the end of FY 2013. That schedule would lead to 11 furlough days – one fifth of the week for about one quarter of the year. Moreover, I am directing all components to monitor funding closely for the remainder of FY 2013. If our budgetary situation permits us to end furloughs early, I would strongly prefer to do so. That is a decision I will make later in the year.

Consistent with this memo and with applicable laws and rules, commanders and managers will have the authority to develop the specifics of furlough procedures in order to minimize adverse mission effects and also limit the harm to morale and productivity. Further bargaining with unions may also be required. The Under Secretary for Personnel and Readiness has already issued guidance as appropriate regarding personnel and union issues related to furloughs and will issue additional guidance as needed. Overall coordination of sequester and furlough policies will be the responsibility of the Under Secretary of Defense (Comptroller).

Each of the Department's civilian employees makes an important contribution to the readiness of our Department to meet the nation's national security needs. I understand that the decision to impose furloughs imposes financial burdens on our valued employees, harms overall morale, and corrodes the long-term ability of the Department to carry out the national defense mission. I deeply regret this decision. I will continue to urge that our nation's leaders reach an agreement to reduce the deficit and de-trigger sequestration. If no agreement is reached, I will continue to look for ways to limit the adverse effects of sequestration and associated budgetary shortfalls both on the men and women of the Department of Defense, and on our national defense.

Attachment:  
As stated.



### Department of Defense Furlough Exceptions

This attachment provides Components with final dispositions on categorical exceptions to the Department of Defense (DoD) plan to furlough civilian employees for a maximum of 88 hours or 11 discontinuous workdays because of the current financial crisis caused by a sequestration for Fiscal Year (FY) 2013, increased costs for ongoing Overseas Contingency Operations, and other emerging requirements. In order to minimize adverse effects on mission, employees in the following categories are excepted from furlough for the reasons noted:

- a) In order to avoid harm to war efforts, all employees deployed (in a Temporary Duty status) or temporarily assigned (to include Temporary Change of Station) to a combat zone (as defined in notes below) are excepted from furlough.
- b) In order to avoid harm to mission, those employees necessary to protect safety of life and property are excepted to the extent necessary to protect life and property. This includes selected medical personnel. Later portions of this attachment provide details.
- c) Employees in Navy shipyards will be excepted from furlough because it would be particularly difficult to make up delays in maintenance work on nuclear vessels and these vessels are critical to mission success. All other depot employees, whether mission-funded or working capital fund employees, will be subject to furlough.
- d) Furloughs for employees funded with National Intelligence Program (NIP) funds will be determined by the Director of National Intelligence. Employees funded with Military Intelligence Program (MIP) funds will be subject to furlough.
- e) Because there would be no savings, Foreign Military Sales (FMS) employees whose positions are exclusively funded from FMS Administrative and FMS case funds (case number may be required to validate funding source) and from Foreign Military Financing accounts are excepted from furlough. Furloughing employees in this category would not reduce the expenditure of DoD budgetary resources and so would not assist in meeting sequestration reductions. The FMS case-funded positions funded in whole or part by DoD appropriations (to include "pseudo-FMS" cases) are subject to furlough.
- f) By law, all individuals appointed by the President, with Senate confirmation, who are not covered by the leave system in title 5, U.S. Code, chapter 63, or an equivalent formal leave system, are excepted from furlough.
- g) All employees funded by non-appropriated funds (NAF) <sup>1</sup> (regardless of source of NAF funding) are excepted from furlough. Furloughing employees in this category would not reduce the DoD budget and so would not assist in meeting sequestration reductions.
- h) All Outside Contiguous United States foreign national employees, many of whom are subject to Status of Forces Agreements, are excepted from furlough because their situation vary greatly by country/region and because, in some cases, they are paid by host governments.

<sup>1</sup> NAF employees are not covered by the requirements and procedures applicable to furloughs of appropriated fund employees under FY13 sequestration. However, NAF employees may be furloughed under DoD NAF and Component policies and procedures for business-based reasons.

- i) Any employees who are not paid directly by accounts included in the Department of Defense-Military (subfunction 051) budget are excepted from furlough. For example, this would include employees funded by the Arlington National Cemetery (705 function) and DoD Civil Works (various non-051 functions) programs. These exceptions have been identified by the Components. Furloughing these employees would not reduce the expenditure of DoD budgetary resources and so would not assist in meeting sequestration reductions.

The following portion of this document provides the definitive list of additional approved exceptions beyond those listed in the preceding paragraph. The exceptions approved for the safety of life and protection of property category are granted with the understanding that these are the minimum exceptions needed to maintain operations and provide security on a 24/7 basis and that furloughing these employees would result in the Department incurring additional costs for premium pay. Similarly, the exceptions for the medical category are approved with the understanding these exceptions preserve the minimum level of personnel needed to maintain quality of care in 24/7 emergency rooms and other critical care areas such as behavioral health, wounded warrior support, and disability evaluation. Furloughing these employees would result in unacceptable care being provided, and the Department would incur increased costs for premium pay or TRICARE. The exception for Child Development Centers is granted with the understanding that this is the minimum level needed to maintain accreditation and maintain quality care for children in military families. Some Department of Defense Education Activity employees, while not excepted from furlough, may only be furloughed when they are in a pay status. Therefore, they will only be subject to furlough for up to five days at the beginning of the 2013 school year.

Recognizing that circumstances can change in this dynamic environment, the Secretaries of the Military Departments, and the Principal Staff Assistants for the Defense Agencies and Field Activities, may approve up to 50 additional individual, mission-based, exceptions as needed to ensure safe and efficient operations of their respective Departments. Any such exception must be reported to the Acting Under Secretary of Defense (USD) for Personnel and Readiness and the USD Comptroller. There are no other approved exceptions provided based on the Components' submissions. Furlough proposal notices should be issued to all impacted employees beginning May 28, 2013.

Relative to the review and decision on individual employee requests for exception, per guidance issued via the Principal Deputy Assistant Secretary of Defense, Readiness and Force Management, memorandum, dated March 13, 2013, activities should designate the Deciding Official. The designated Deciding Official will be no lower than a local Installation Commander, senior civilian or equivalent who would be in the best position to determine the fair and equitable application of the furlough. Deciding Official responsibilities may not be further delegated. Deciding Officials are charged with, and are accountable for, making final decisions on furloughs for individual employees after carefully considering the employee's reply, if any, and the needs of the Department. Deciding Officials must also ensure they make final decisions in cases where an employee does not submit a reply. Deciding Officials will have the authority to execute the full range of options with respect to providing relief in individual employee cases. This authority includes, but is not limited to, reducing the number of days/hours an individual employee is furloughed, or granting the individual employee an exception from the furlough altogether.

Component	Safety of Life & Property	Medical Personnel	Others	Comments
DoN	7,543	1,418	212 CIVPERS at Sea  4,712 CIVMARS  514 Appropriated Fund (APF) Child Development Centers (CDCs)  15  28,000  1,657	CIVPERS deployed at sea are subject to furlough upon return from deployment  CIVMARS are subject to furlough upon return from deployment  Maintain safety standards and quality of care  Support to classified programs  Shipyard Workers, General  Shipyard Workers, Nuclear and Naval Reactors Staff
USA	263	Up to 6,600	555 APF CDC Employees  75  17  257	Maintain safety standards and quality of care  ARNG Dual Status Technicians for Alerts, Firefighting, Personnel Recovery and other missions  Support to classified programs  Non-immigrant employees requiring H-1B visas at Defense Language Institute

Component	Safety of Life & Property	Medical Personnel	Others	Comments
USAF	933	410	62  1,123  30 Students  94 Multi-IOC 24/7 Plant Operators  2  3  1,634 APF CDCs	Support to classified programs  ANG Dual Status Technicians for Alerts, Firefighting, Personnel Recovery and other missions  Intel School & FLETC  Heating/Waste Water Plant minimum safe manning  Contingency Planners  Special Law Enforcement Pay  Maintain safety standards and quality of care
DLA	363			
DA&M	623			546 are from the Pentagon Force Protection Agency; the remaining 77 are Washington Headquarters Services for Pentagon safety and emergency communications.  Most will be furloughed fewer than 11 days due to the need to maintain operations and security 24/7.
US Court of Appeals for Armed Services			59	The Chief Judge will decide how many days to furlough employees, if at all.
JTFCAPMED		368		165 @ Walter Reed  203 @ Fort Belvoir

Component	Safety of Life & Property	Medical Personnel	Others	Comments
USUHS	22		5	Animal Husbandry Technicians Non-immigrant employees requiring H-1B visas
Office of the Military Commissions – Defense Legal Services Agency			9	Civilian Trial Practitioners
Department of Defense Education Activity (DoDEA)			10,950	9-month DoDEA employees, which includes teachers, educational aids, and support staff may only be furloughed for up to 5 days at the beginning of the 2013 school year.
DCAA			1	Non-immigrant employees requiring H-1B visa

Notes:

1. Safety of life and property exceptions are based on need for 24/7 coverage in most instances. It is expected all Components will furlough for less than 88 hours in these areas where feasible.
2. Individuals for whom law enforcement premium pay would result in no loss of pay if furloughed will be excepted from the furlough.
3. 20 CFR 655.731 requires that the employer of a H-1B non-immigrant who is not performing work and is placed in a nonproductive status due to a decision by the employer (e.g., placed in a non-pay/non-duty status due to administrative furlough) pay the salaried employee the full pro-rata amount due, or to pay the hourly-wage employee for a full-time week (40 hours or such other number of hours as the employer can demonstrate to be full-time employment for hourly employees, or the full amount of the weekly salary for salaried employees) at the required wage for the occupation.

## 1. References.

- a) Title 26, U.S. Code, Section 112, Certain combat zone compensation of members of the Armed Forces
- b) Executive Order 12744, January 21, 1991
- c) Executive Order 13119, April 13, 1999
- d) Executive Order 13239, December 12, 2001
- e) Public Law 104-117, To provide that members of the Armed Forces performing services for peacekeeping efforts in Bosnia and Herzegovina, Croatia, and Macedonia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone.

2. The following locations are designated as "Combat Zones" by law, Presidential Executive Order or by DoD certification that members of the Armed Forces serving in such locations are serving in direct support of military operations in a combat zone:

Countries:

Afghanistan (EO 13239)	United Arab Emirates (EO 12744)
Albania (EO 13119)	Uzbekistan (DoD certification)
Bahrain (EO 12744)	Yemen (DoD certification)
Bosnia (PL 104-117)	Croatia (PL 104-117)
Djibouti (DoD certification)	Herzegovina (PL 104-117)
Iraq (EO 12744)	Jordan (DoD certification)
Kuwait (EO 12744)	Kyrgyzstan (DoD certification)
Macedonia (PL 104-1170)	Montenegro (EO 13119)
Oman (EO 12744)	Pakistan (DoD certification)
Philippines (Only troops with orders referencing Operation Enduring Freedom) (DoD certification)	Qatar (EO 12744)
Saudi Arabia (EO 12744)	Serbia (includes Kosovo) (EO 13119)
Somalia (DoD certification)	Tajikistan (DoD certification)

Sea Areas:

Adriatic Sea (EO 13119)

That portion of the Arabian Sea that lies north of 10 degrees north latitude, and west of 68 degrees east longitude (EO 12744)

Gulf of Aden (EO 12744)

Gulf of Oman (EO 12744)

Ionian Sea north of the 39<sup>th</sup> Parallel (EO 13119)

Persian Gulf (EO 12744)

Red Sea (EO 12744)

3. Adherence to the following principles ensures consistency in applying the "deployed to combat zone" exemption to civilian employees in the context of the administrative furlough:

- a) "Deployed civilian" is defined as a civilian employee who is deployed (in temporary duty (TDY) status) or temporarily assigned (to include temporary change of station (TCS)) to a "combat zone" as set forth above.
- b) "Combat zone" is defined as those locations listed as combat zones in Executive Orders 12744, 13119 or 13239 and locations where military are eligible for combat zone tax benefits under law or because DoD has certified that they are providing direct support to military operations.
- c) A "deployed civilian's" period of deployment includes time spent in attendance at mandatory pre-deployment training as well as in completing mandatory post-deployment requirements.
- d) A civilian employee who was deployed to a combat zone but redeploys mid-way through the furlough period will receive a notice of proposed furlough upon return to their parent organization and prior to any furlough. Further, the number of hours for which the employee will be furloughed will be pro-rated.



ADMINISTRATION AND  
MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE  
1950 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-1950

APR 15 2013

MEMORANDUM FOR UNDER SECRETARIES OF DEFENSE  
DEPUTY CHIEF MANAGEMENT OFFICER  
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
GENERAL COUNSEL OF DEPARTMENT OF DEFENSE  
ASSISTANT SECRETARIES OF DEFENSE  
ASSISTANT TO THE SECRETARY OF DEFENSE (PUBLIC AFFAIRS)  
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER  
ASSISTANT TO THE SECRETARY OF DEFENSE (INTELLIGENCE  
OVERSIGHT)  
DIRECTOR, NET ASSESSMENT

SUBJECT: Office of the Secretary of Defense (OSD) Actions for Handling Budget Uncertainty  
in Fiscal Year (FY) 2013

Going forward in this period of sequestration and fiscal constraint, all OSD Components must apply especially discriminating judgment regarding expending or committing resources. Recent legislation regarding appropriations for FY13 requires reductions averaging eight percent for OSD Components, from their Operations and Maintenance mission funding balances, though it differs by Component depending on specified reductions. To ensure general consistency in implementation, the measures and procedures outlined below will apply to all OSD Components. The Deputy Secretary will monitor and determine how long these measures remain in effect, and whether changes are necessary.

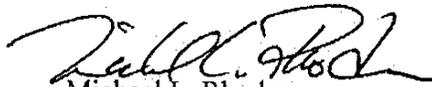
Exceptions to the measures below, in support of mission critical needs (i.e., functions to preclude mission failure), may be approved by an OSD Component Principal or their Deputy. Under Secretary Components may designate one other senior official to serve as an exception approval authority.

- **Overtime/Compensatory Time** will be discontinued. OSD Components will report any approved exceptions for overtime/compensatory time to the Director of Administration and Management (DA&M) on a bi-weekly basis, for aggregation and reporting to the Deputy Secretary.
- **Travel, TDY, and Training** (to include attendance at conferences and seminars) will be significantly curtailed. Personnel will leverage teleconferences and VTC capabilities to the maximum extent possible. Training requested by statute, executive order, and regulation or to maintain professional licensure is exempt. Other mission critical training requires approval at levels highlighted in the second paragraph, above. All OSD travel, TDY, and training exceptions will be reported by the DA&M to the Deputy Secretary on a monthly basis.

- **Studies (not Congressionally directed) and Contract Actions** will be reviewed for necessity and cost savings opportunities. OSD Component Principals or Deputies will validate the necessity of contracts before processing actions for funds certification. Further, OSD Components will limit supply and equipment purchases to essential consumption requirements. The DA&M will report to the Deputy Secretary on a monthly basis the contract actions approved for processing.
- **Non-permanent/Non-political Civilian Appointments** (temporary or term) will be reviewed and, where applicable, certified by OSD Component Principals or Deputies for their need to continue. Where continued, appointments will be subject to any furlough action applied to permanent government personnel. Within 30 days of the release of this guidance, OSD Components will certify to the DA&M the continuation of non-permanent civilian appointments, and the DA&M will aggregate and report all to the Deputy Secretary.
- **Intergovernmental Personnel Act (IPA)** reimbursable contracts will be modified to correspond with the equivalent percentage of any furlough actions applied to permanent government personnel. The percentage reduction will be determined based on final Department of Defense decisions impacting permanent government personnel and will be applied to each IPA monthly invoice payment (to include salary, benefits and, general and administrative costs.) Should furloughs cease, subsequent payments will revert to the amount set forth in the IPA agreements prior to the start of any furlough actions applied to permanent government personnel. Washington Headquarters Services, Executive and Political Personnel will provide 30-day advanced notification to all non-profit organizations that have entered into IPA agreements with OSD Components. Non-profit organizations have the right to terminate the IPA agreement if they choose to.

Following any announcement of furlough, further guidance will be provided, as available, to all OSD organizations.

Thank you for your leadership, patience, and flexibility during these challenging times of fiscal uncertainty.

  
Michael L. Rhodes  
Director

cc:  
IG DoD



COMPTROLLER

UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100

MAR 5 2013

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Additional Guidance for Handling Budgetary Uncertainty in Fiscal Year 2013

The purpose of this memorandum is to provide some additional guidance to the Deputy Secretary of Defense's memorandum on "Handling Budgetary Uncertainty in Fiscal Year 2013," dated January 10, 2013, to ensure consistency in the treatment of issues across the Department of Defense (DoD) as the reductions levied by sequestration and a year-long continuing resolution are implemented. All of these policies are effective immediately.

### Congressional Travel Support

The Department will enforce strictly DoD's policies in its support of travel by congressional delegations (CODELs) and congressional staff delegations (STAFFDELS). It is DoD's policy that support for approved travel of members and employees of Congress shall be provided on an economical basis upon request from Congress, pursuant to law or where necessary to carry out DoD duties and responsibilities. Organizations need to ensure that travel of members and employees of Congress is sponsored by the DoD *only* where the purpose of the travel is of primary interest to and bears a substantial relationship to programs or activities of DoD and is not solely for the purpose of engendering goodwill or obtaining possible future benefits. Specific guidance is included in DoD Directive 4515.12 (DoD Support for Travel of Members and Employees of Congress) dated January 15, 2010. Some specific policies worth highlighting include:

- Military airlift will not be used for CODELs if commercial airlift is reasonably available.
  - Within the Continental United States (CONUS), no CODELs may use military airlift as commercial airlift is readily available.
  - Military airlift may be authorized for CODELs when in a Combatant Commander's theater if commercial airlift is limited or unsafe; every effort must be made to minimize costs.
  - Spouses may accompany members if there is an official function as long as they pay their own expenses and do not increase the number or size of aircraft required.
- Minimum number of congressional members for military airlift originating in CONUS.
  - No less than 5 members for large aircraft
  - No less than 3 members for small aircraft
- Tickets purchased by DoD for CODELs, STAFFDELS, and liaison escorts.
  - Must be economy class; individuals may upgrade at their own expense.
  - DoD does not pay for a member's personal staff traveling to his/her home State/District; this includes travel, lodging, meals, or escorts.



- All itineraries for CODELs/STAFFDELS must be approved by the escorting Service's 2-star Legislative Affairs Director to ensure that the itinerary is an efficient use of taxpayer's funds.

### **Tuition Assistance**

All Services should consider significant reductions in funding new tuition assistance applicants after the date of this memorandum for the duration of the current fiscal situation.

### **Civilian Monetary Awards**

Consistent with guidance from the Office of Management and Budget (OMB Bulletin #M-13-05, Agency Responsibilities for Implementation of Potential Joint Committee Sequestration), the Department will not issue discretionary monetary awards for its civilian employees, which should occur *only if* legally required, until further notice. For bargaining unit employees, all bargaining obligations must be fulfilled prior to implementing the OMB guidance.

### **Participation in International Events**

The Department should limit its participation in international events except in those instances where individuals are supporting Foreign Military Sales and the funds supporting these efforts are not being sequestered because the accounts are exempt from sequestration.

### **Demonstration Flying**

All aerial demonstrations, including flyovers, jump team demonstrations, and participation in civilian air shows and military open houses will cease as of April 1, 2013. Flyovers in support of military funerals will be given special consideration. To ensure consistency across the Department all exceptions and waivers for demonstration flying will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval.

### **Support to Non-DoD Organizations**

All military support to non-DoD organizations for outreach activities will cease, except when the Department has authority to retain any reimbursement and is fully reimbursed for all incremental costs incurred in providing the support. This includes, but is not limited to, military equipment displays at civilian air shows, parades, and civic events. Fleet/ Service weeks as well as military open houses, and local community relations activities are permitted as long as the support/equipment can be provided locally and at no cost to the Department. To ensure consistency across the Department, all exceptions and waivers for support to non-DoD organizations and special events will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval.

**Military Musical Unit (and Ceremonial Unit) Travel**

Military musical and ceremonial units will not be permitted to travel beyond the local area immediately surrounding their respective duty stations except when all transportation, lodging, and subsistence, are provided by the requesting organization and can be accepted in accordance with existing law and Department policies, or where the Department has authority to retain any reimbursement and is fully reimbursed by the requesting organization for all incremental costs. Units may continue to perform locally both on and off military installations as long as those performances can be conducted at no cost to the Department. To ensure consistency across the Department all exceptions and waivers will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval.

Additional guidance will be provided as issues surface that require a DoD-wide policy.



Robert F. Hale

cc:

Director of National Intelligence

**DISTRIBUTION:**

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## Presidential Documents

Order of March 1, 2013

### Sequestration Order for Fiscal Year 2013 Pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act, as Amended

By the authority vested in me as President by the laws of the United States of America, and in accordance with section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (the "Act"), 2 U.S.C. 901a, I hereby order that budgetary resources in each non-exempt budget account be reduced by the amount calculated by the Office of Management and Budget in its report to the Congress of March 1, 2013.

Pursuant to sections 250(c)(6), 251A, and 255(e) of the Act, budgetary resources subject to sequestration shall be new budget authority, unobligated balances of defense function accounts carried over from prior fiscal years, direct spending authority, and obligation limitations.

All sequestrations shall be made in strict accordance with the requirements of section 251A of the Act and the specifications of the Office of Management and Budget's report of March 1, 2013, prepared pursuant to section 251A(11) of the Act.

THE WHITE HOUSE,  
*Washington, March 1, 2013.*

[FR Doc. 2013-05397  
Filed 3-5-13; 11:15 am]  
Billing code 3295-F3



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

March 1, 2013

The Honorable John A. Boehner  
Speaker of the House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed please find the Office of Management and Budget (OMB) Report to the Congress on the sequestration for fiscal year (FY) 2013 required by section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (the "Joint Committee sequestration"). This report provides calculations of the amounts and percentages by which various budgetary resources are required to be reduced, and a listing of the reductions required for each non-exempt budget account.

In August 2011, as part of the Budget Control Act of 2011 (BCA), bipartisan majorities in both the House of Representatives and Senate voted for sequestration as a mechanism to compel the Congress to act on deficit reduction. The threat of destructive across-the-board cuts under the BCA was intended to drive both sides to compromise. Yet, a year and a half has passed, and the Congress still has failed to enact balanced deficit reduction legislation that avoids sequestration.

As a result of the Congress's failure to act, the law requires the President to issue a sequestration order today canceling \$85 billion in budgetary resources across the Federal Government for FY 2013. Specifically, OMB calculates that, over the course of the fiscal year, the sequestration requires a 7.8 percent reduction in non-exempt defense discretionary funding and a 5.0 percent reduction in non-exempt nondefense discretionary funding. The sequestration also requires reductions of 2.0 percent to Medicare, 5.1 percent to other non-exempt nondefense mandatory programs, and 7.9 percent to non-exempt defense mandatory programs.

Because these cuts must be achieved over only seven months instead of 12, the effective percentage reductions will be approximately 13 percent for non-exempt defense programs and 9 percent for non-exempt nondefense programs.

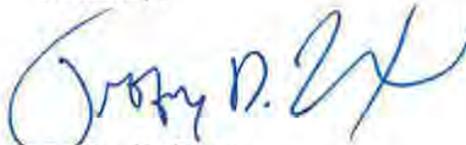
The cuts required by sequestration will be deeply destructive to national security, domestic investments, and core Government functions. While the Department of Defense will shift funds where possible to minimize the impact on war-fighting capabilities and critical military readiness, sequestration will result in a reduction in readiness of many non-deployed units, delays in investments in new equipment, cutbacks in equipment repairs and needed facilities maintenance, disruptions in military research and development efforts, significant reductions in weapons programs, and furloughs of most civilian employees for a significant

amount of time. Sequestration will also undermine nondefense investments vital to economic growth, threaten the safety and security of the American people, and cause severe harm to programs that benefit the middle class, seniors, and children. According to analysis by outside experts, sequestration would reduce real GDP growth for 2013 by 0.5 to 0.7 percentage points were it to continue for the rest of the calendar year.

The Joint Committee sequestration is a blunt and indiscriminate instrument. It was never intended to be implemented and does not represent a responsible way for our Nation to achieve deficit reduction.

On multiple occasions, the President has proposed comprehensive and balanced deficit reduction plans to avoid sequestration. The President and Congress, working together, have already reduced the deficit by \$2.5 trillion. The President has been clear that he is willing to make tough choices to reach an agreement on further deficit reduction. The Administration continues to stand ready to work with the Congress to enact balanced deficit reduction legislation that replaces sequestration and puts the Nation on a sound long-term fiscal path.

Sincerely,



Jeffrey D. Zients  
Deputy Director for Management

Enclosure

Identical Letter Sent to the President of the Senate

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**OMB REPORT TO THE CONGRESS  
ON THE JOINT COMMITTEE SEQUESTRATION  
FOR FISCAL YEAR 2013**

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**March 1, 2013**



**OMB REPORT TO THE CONGRESS  
ON THE JOINT COMMITTEE SEQUESTRATION  
FOR FISCAL YEAR 2013**

The Balanced Budget and Emergency Deficit Control Act, as amended (BBEDCA), 2 U.S.C. § 901a, requires the Office of Management and Budget (OMB) to calculate, and the President to order on March 1, 2013, reductions in budgetary resources triggered by the failure of the Joint Select Committee on Deficit Reduction to propose, and the Congress to enact, legislation to reduce the deficit by \$1.2 trillion (Joint Committee sequestration). This report provides OMB's calculations of the percentage and dollar amount of the reduction for each non-exempt budget account and an explanation of the calculations.

OMB calculates that the Joint Committee sequestration requires a 7.8 percent reduction in non-exempt defense discretionary funding and a 5.0 percent reduction in non-exempt non-defense discretionary funding. The sequestration also imposes reductions of 2.0 percent to Medicare, 5.1 percent to other non-exempt nondefense mandatory programs, and 7.9 percent to non-exempt defense mandatory programs.

**Basis for Calculations**

**Discretionary Appropriations.** As of the date of this report, no full-year regular appropriations bills have been enacted for fiscal year (FY) 2013. Instead, all agencies are operating under the Continuing Appropriations Resolution, 2013 (CR), Pub. L. 112-175. In addition, the Disaster Relief Appropriations Act, 2013 (Hurricane Sandy supplemental), Pub. L. 113-2, provided supplemental funding to various agencies for Hurricane Sandy relief and recovery efforts. Accordingly, as required by sections 251A(7)(A) and 253(f)(2) of BBEDCA, OMB's estimates for the level of sequestrable budgetary resources and resulting reductions assume that budget accounts with discretionary appropriations are funded at the annualized level provided by the CR, plus funding provided by the Hurricane Sandy supplemental and any funding enacted as advance appropriations for FY 2013. Unless another amount is specified by the CR, the annualized level equals the FY 2012 enacted appropriations, including changes in mandatory programs, net of any recurring rescissions, and increased by 0.612 percent pursuant to section 101(c) of the CR.<sup>1</sup> Spending authority from offsetting collections is only increased by the 0.612 percent when that spending authority is used to determine the annualized level. Amounts designated in the CR for Overseas Contingency Operations (OCO)/Global War on Terrorism (GWOT), and amounts incorporated in the CR by reference to the Disaster Relief Appropriations Act, 2012, Pub. L. 112-77, do not receive the 0.612 percent increase. As provided by section 101(b) of the CR, whenever an amount designated for OCO/GWOT pursuant to section 251(b)(2)(A) of BBEDCA in either the Department of Defense Appropriations Act, 2012 (division A of Pub. L. 112-74) or in the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2012 (division H of Pub. L. 112-74) differs from the amount in the President's FY 2013 Budget request, the annualized level equals the amount in the President's FY 2013 Budget request. The CR levels are also adjusted for any transfers mandated by law.

**Unobligated Balances in the Defense Function.** Pursuant to section 255(e) of BBEDCA, unobligated balances in the defense function are sequestrable budgetary resources. The majority of estimated unobligated balances in the defense function are in Department of Defense accounts. In general, for multiyear accounts, the Department of Defense estimated unobligated balances as of March 1, 2013, by reducing unobligated balances as of December 31, 2012, by a historically-based estimate of obligations from prior year funds in January and February.

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<sup>1</sup> Information about OMB's calculation of the amounts appropriated by the CR can be found in OMB Bulletin 12-02, which is available online at <http://www.whitehouse.gov/sites/default/files/omb/bulletins/fy2012/b12-02.pdf>.

**Direct Spending.** Estimates of sequestrable budgetary resources and outlays for budget accounts with direct spending are equal to the current law baseline amounts contained in the President's FY 2013 Budget, adjusted for the effects of legislation enacted since the Budget was transmitted. Two changes with the largest effect on the amount of sequestrable direct spending—providing for a zero percent update for Medicare payments to physicians under the Sustainable Growth Rate formula for calendar year 2013, and extending Emergency Unemployment Compensation (EUC) through the end of 2013—were enacted in the American Taxpayer Relief Act of 2012 (ATRA), Pub. L. 112-240.

**Special Sequestration Rules.** The Joint Committee sequestration order is not an order under section 254 of BBEDCA.<sup>2</sup> Accordingly, as set forth in this report, the special rules in section 256 that apply only to a sequestration order issued under section 254 do not apply to the Joint Committee sequestration, except to the extent those rules are otherwise made applicable by another provision of law. Section 251A(7)(A) of BBEDCA does not include any such provision for discretionary spending; as a result, in calculating the reduction in discretionary spending required by the Joint Committee sequestration, this report does not apply the special rules in section 256 that apply only to a sequestration order issued under section 254. The special rules in section 256 do, however, apply to the reduction in direct spending required by the Joint Committee sequestration, pursuant to the explicit direction in section 251A(8) of BBEDCA.

**Federal Administrative Expenses.** Under section 256(h) of BBEDCA, Federal administrative expenses are subject to sequestration pursuant to an order issued under section 254 “without regard to any exemption, exception, limitation, or special rule which is otherwise applicable.” For the reasons set forth in the preceding paragraph, for the Joint Committee sequestration, this rule applies only to Federal administrative expenses that constitute direct spending. BBEDCA does not define “administrative expenses.” For purposes of this report, “administrative expenses” for typical Government programs are defined as the object classes for personnel compensation, travel, transportation, communication, equipment, supplies, materials, and other services. For Government programs engaging in commercial, business-like activities, administrative expenses constitute overhead costs that are necessary to run a business, and not expenses that are directly tied to the production and delivery of goods or services.

**American Taxpayer Relief Act of 2012.** In addition to the changes to direct spending mentioned above, this report reflects three changes to the calculation of the Joint Committee sequestration required by ATRA. Section 901(a) reduced the amount of the FY 2013 sequestration by \$24 billion, which was paid for by \$12 billion of revenue increases and \$12 billion in total reductions to the discretionary spending limits for FYs 2013 and 2014. Section 901(c) delayed the date for submission of this report from January 2, 2013 to March 1, 2013. Section 901(e) altered the discretionary spending limits for FY 2013 for purposes of calculating the Joint Committee sequestration.

### **Calculation of Sequestration Percentages**

Under section 251A of BBEDCA, the failure of the Joint Select Committee on Deficit Reduction to propose, and the Congress to enact, legislation to reduce the deficit by \$1.2 trillion triggers automatic reductions in discretionary appropriations and direct spending to achieve the deficit reduction that the Joint Select Committee process was meant to achieve. As shown in Table 1, the total annual amount of deficit reduction required is specified by formula in section 251A(3), starting with the total reduction of \$1.2 trillion required for FY 2013 through

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<sup>2</sup> For further discussion, see the OMB Report Pursuant to the Sequestration Transparency Act of 2012 (STA Report) issued in September.

FY 2021, deducting a specified 18 percent for debt service savings, and then dividing the result by 9 to calculate the annual reduction of \$109 billion for each year from FY 2013 to FY 2021. As discussed previously, ATRA lowered the amount of the reduction required for FY 2013 by \$24 billion, leaving \$85 billion to be achieved through sequestration. The annual reduction is split evenly between budget accounts in function 050 (defense function) and in all other functions (nondefense function), so that each function group will be reduced by \$42.667 billion in FY 2013.

**Table 1. CALCULATION OF TOTAL ANNUAL REDUCTION BY FUNCTION**

(In billions of dollars)

Joint Committee required savings .....	1,200.000
Deduct debt service savings (18%) .....	-216.000
Net programmatic reductions .....	984.000
Divide by 9 to calculate annual reduction .....	109.333
Reduction for FY 13 pursuant to section 901(a) of ATRA .....	-24.000
Net remaining programmatic reduction for FY 2013 .....	85.333
Split 50/50 between defense and nondefense functions .....	42.667

**Base for Allocating Reductions.** The annual reduction is further allocated between discretionary and direct spending within each of the function groups in proportion to their share of total spending within the function group. The base for allocating reductions to discretionary appropriations is the discretionary spending limit for FY 2013 listed in section 251(c)(2) as revised by section 251A(2)(A), and as applied pursuant to section 901(e) of ATRA. For purposes of this report, the discretionary spending limits have not been revised to include adjustments pursuant to section 251(b)(2) for certain funding included in the CR and Hurricane Sandy supplemental because these adjustments cannot be made until OMB issues its Discretionary Final Sequestration Report for FY 2013 on March 27<sup>th</sup> pursuant to section 901(b) of ATRA. Pursuant to paragraphs (5) and (6) of section 251A, and consistent with section 6 of the Statutory Pay-As-You-Go Act of 2010, 2 U.S.C. § 935, the base for allocating reductions to budget accounts with direct spending is the sum of the direct spending outlays in the budget year and the subsequent year that would result from new sequestrable budget authority in FY 2013.

**Sequestrable Base.** Once the reductions are allocated between discretionary appropriations and direct spending using the bases above, the sequestration percentage for discretionary appropriations is obtained by dividing the discretionary reduction required by the discretionary sequestrable base, which is described above in the “Basis for Calculations” section. By statute, the discretionary sequestrable base differs from the base used to allocate the reductions between discretionary appropriations and direct spending. For discretionary defense programs, the sequestrable base equals total discretionary appropriations (including funding that would trigger cap adjustments), plus unobligated balances and funding financed by fees, minus exemptions. Except for funding for military personnel accounts, most discretionary defense funding is sequestrable.<sup>3</sup> For discretionary nondefense programs, the sequestrable base equals total discretionary appropriations (including funding that would

<sup>3</sup> Defense sequestrable budgetary resources include non-exempt new budget authority and unobligated balances carried over from prior fiscal years. Budgetary resources for military personnel accounts are exempt pursuant to section 255(f) of BBEDCA and the July 31, 2012 letter from OMB notifying the Congress of the President’s intent to exempt military personnel accounts from sequestration, available at: <http://www.whitehouse.gov/sites/default/files/omb/legislative/letters/military-personnel-letter-biden.pdf>.

trigger cap adjustments) and funding financed by fees, adjusted to exclude funding for the Department of Veterans Affairs, Pell Grants, and other exempt amounts. For mandatory programs, the sequestrable base is the same as the mandatory base for allocating the reduction. Pursuant to sections 251A(8), 255, and 256 of BBEDCA, most mandatory spending is exempt from sequestration or, in the case of the Medicare program and certain health programs, is subject to a 2 percent limit on sequestration.

### **Defense Function Reduction**

Table 2 shows the calculation of the sequestration percentages and dollar reductions required for budget accounts with discretionary appropriations or direct spending within the defense function. The calculation involves the following steps:

- Step 1. Pursuant to section 251A(5), the total reduction of \$42.667 billion is allocated proportionately between discretionary appropriations and direct spending. The total base is the sum of the FY 2013 revised discretionary spending limit for the security category<sup>4</sup> (\$544 billion) and OMB's baseline estimates of sequestrable direct spending outlays in the defense function in FY 2013 and FY 2014 from new direct spending budget authority in FY 2013 (\$0.662 billion). Discretionary appropriations comprise more than 99 percent of the total base in the defense function.
- Step 2. Total defense function spending must be reduced by \$42.667 billion. As required by section 251A(5)(A), allocating the reduction based on the ratio of the revised discretionary spending limit to the total base (the sum of the defense discretionary spending limit and sequestrable direct spending) yields a \$42.615 billion reduction required for discretionary appropriations. Under section 251A(5)(B), the remaining \$0.052 billion is the reduction required for budget accounts with direct spending.
- Step 3. As required by section 251A(7)(A), the discretionary percentage reduction for FY 2013 is calculated by dividing the discretionary reduction amount calculated in step 2 (\$42.615 billion) by the sequestrable budgetary resources (\$549.325 billion) for budget accounts with discretionary appropriations in the defense function, which yields a 7.8 percent sequestration rate for budget accounts with non-exempt discretionary appropriations. A similar calculation is required by section 251A(8) for the sequestration of direct spending. Dividing the direct spending reduction amount (\$0.052 billion) by the sequestrable budgetary resources (\$0.662 billion) for budget accounts with direct spending yields a 7.9 percent sequestration rate for budget accounts with non-exempt direct spending.

**Table 2. DEFENSE FUNCTION REDUCTION**

(Dollars in billions)

		Discretionary	Direct Spending	Total
Step 1.	Base for allocating reduction .....	544.000	0.662	544.662
	Percentage allocation of reductions .....	99.88%	0.12%	
Step 2.	Allocation of total reduction .....	42.615	0.052	42.667
	Percentage allocation of reductions .....	99.88%	0.12%	
Step 3.	Sequestration percentages calculation:			
	Sequestrable base .....	549.325	0.662	
	Sequestration percentage .....	7.8%	7.9%	

<sup>4</sup> For purposes of this report, the "security category" means discretionary appropriations in budget function 050, National Defense, and "nonsecurity category" means discretionary appropriations other than in budget function 050.

### **Nondefense Function Reduction**

Table 3 shows the calculation of the sequestration percentages and dollar reductions required for budget accounts with discretionary appropriations or direct spending within all other functions besides 050 (nondefense function). The calculation is more complicated than the calculation for the defense function due to a two percent limit on sequestration of Medicare non-administrative spending, a two percent limit on sequestration of community and migrant health centers (which applies only to mandatory funding for those programs), and a special rule for applying the sequestration to student loans. The calculation involves the following steps:

Step 1. Total spending in the nondefense function must be reduced by \$42.667 billion. The portion of Medicare subject to the two percent limit is estimated to have combined FY 2013 and FY 2014 outlays of \$567.340 billion<sup>5</sup> from FY 2013 budgetary resources, so a two percentage point reduction would reduce outlays by \$11.347 billion, leaving a reduction of \$31.320 billion to be taken from discretionary appropriations and other direct spending in the nondefense function.

Step 2. Pursuant to section 251A(6), the remaining reduction of \$31.320 billion is allocated proportionately between discretionary appropriations and other direct spending in the nondefense function. The remaining base (\$605.839 billion) is the sum of the FY 2013 revised discretionary spending limit for the nonsecurity category (\$499.000 billion) and the remaining sequestrable direct spending base (\$106.839 billion).<sup>6</sup> The latter amount equals OMB's 2013 Budget baseline estimates of total sequestrable direct spending outlays adjusted for legislation enacted since the Budget's transmittal (\$674.179 billion), minus the portion of Medicare subject to the two percent limit (\$567.340 billion) in the nondefense function in FY 2013 and FY 2014 from new direct spending budget authority in FY 2013. The discretionary spending limit accounts for 82.37 percent of the remaining base in the nondefense function, and direct spending accounts for 17.63 percent.

Applying these percentage allocations to the non-Medicare reduction required for programs in the nondefense function yields the reduction for discretionary appropriations (\$25.798 billion) and for remaining direct spending (\$5.522 billion).

Step 3. The sequestration for the mandatory portions of certain health programs is limited to two percentage points pursuant to sections 251A(8) and 256(e)(2). The portion of these two programs subject to the two percent limit is estimated to have combined FY 2013 and FY 2014 outlays of \$1.344 billion from FY 2013 budgetary resources, so a two percentage point reduction would reduce outlays by \$0.027 billion. Deducting these savings from the non-Medicare direct spending reduction leaves \$5.495 billion to be taken by a uniform percentage reduction of the remaining sequestrable direct spending of \$105.495 billion in the nondefense function.

Step 4. As required by section 251A(7)(A), dividing the discretionary reduction amount (\$25.798 billion) calculated in step 2 by the sequestrable budgetary resources for discretionary appropriations (\$511.785 billion) in the nondefense function yields an 5.0 percent sequestration rate for budget accounts with non-exempt discretionary appropriations.<sup>7</sup>

<sup>5</sup> As stated above, the Medicare base is higher than the amount stated in the STA Report due primarily to provisions in ATRA providing for a zero percent update for Medicare payments to physicians under the Sustainable Growth Rate formula for calendar year 2013.

<sup>6</sup> As stated above, the non-Medicare direct spending base is higher than the amount stated in the STA Report due primarily to a provision in ATRA extending EUC through the end of 2013.

<sup>7</sup> As stated above, the nondefense discretionary base is higher than the amount stated in the STA Report due primarily to the Hurricane Sandy supplemental.

The remaining reduction (\$5.495 billion) to direct spending is applied as a uniform percentage reduction to the remaining budget accounts with sequestrable direct spending and by increasing student loan fees by the same uniform percentage, as specified in sections 251A(8) and 256(b). Each percentage point increase in the sequestration rate is estimated to result in \$0.016 billion of savings in the direct student loan program. Solving simultaneously for the percentage that would achieve the remaining reduction when applied to both the remaining sequestrable direct spending (\$105.495 billion) and to student loan fees yields a 5.1 percent reduction. This percentage reduction would yield savings of \$0.082 billion in the direct student loan program and \$5.413 billion from the remaining budget accounts with non-exempt direct spending.

**Table 3. NONDEFENSE FUNCTION REDUCTION**

(Dollars in billions)

	Discretionary	Direct Spending	Total
1. Total reduction, excluding savings from Medicare 2% limit:			
Medicare base subject to 2% limit .....		567.340	
Total nondefense function reduction .....			42.667
Reduce Medicare by 2% .....			-11.347
Non-Medicare reduction amounts .....			31.320
2. Allocate non-Medicare reduction:			
Total base for allocating reduction .....	499.000	674.179	1,173.179
Exclude Medicare (portion subject to 2% limit) .....		-567.340	-567.340
Non-Medicare base .....	499.000	106.839	605.839
Percentage allocation of non-Medicare base .....	82.37%	17.63%	
Non-Medicare reduction amounts .....	25.798	5.522	31.320
Percentage allocation of non-Medicare reduction .....	82.37%	17.63%	
3. Savings from 2% limit on sequestration of other health programs*			
Other health programs sequestrable base .....		1.344	
Reduce other health programs by 2% .....		-0.027	
4. Sequestration percentages calculation:			
Remaining reduction amounts .....	25.798	5.495	
Savings from uniform percentage reduction:			
From 5.1% increase in student loan fee .....		0.082	
From remaining sequestrable budget accounts .....	25.798	5.413	
Sequestrable base for uniform percentage reduction .....	511.785	105.495	
Sequestration percentage .....	5.0%	5.1%	
Summary of reductions:			
2% sequestration of Medicare .....		11.347	
2% limit on sequestration of other health programs .....		0.027	
Student loan fee increase .....		0.082	
Uniform percentage reduction .....	25.589	5.380	
Rounding .....	0.209	.033	
Total reduction .....	25.798	16.869	42.667

\* Includes funding for community and migrant health centers, and for Indian health services.

**Reductions by Budget Account (Appendix)**

The Appendix of this report sets forth the percentage and dollar amount of the reductions required for each budget account with sequestrable funding. Specifically, the Appendix shows the sequestrable budgetary resources in each budget account, the percentage reduction required for each sequestrable budgetary resource, and the resulting reduction. For illustrative purposes only, the Appendix shows the application of the same percentage reduction to each type of budgetary resource within a budget account. There is no requirement that sequestration be applied equally to each type of budgetary resource within a budget account. Section 256(k)(2) of BBEDCA requires that sequestration be applied equally at the program, project, and activity level within each budget account.



**APPENDIX: SEQUESTERABLE BASE  
AND REDUCTIONS BY BUDGET ACCOUNT**

(Fiscal year 2013; in millions of dollars)

Based on sections 251A, 255, and 256 of the Balanced Budget and Emergency  
Deficit Control Act of 1985 (BBEDCA), as amended

**Percentages Used:**

- 7.8 percent – Defense discretionary
- 7.9 percent – Defense mandatory
- 5.0 percent – Nondefense discretionary
- 5.1 percent – Nondefense mandatory

For illustrative purposes only, the Appendix shows the application of the same percentage reduction to each type of budgetary resource within a budget account. Pursuant to section 256(k)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985, the sequestration must be applied equally at the program, project, and activity level, but need not be applied equally to each type of budgetary resource within a budget account.

## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Legislative Branch</b>			
<b>Senate</b>			
001-05-0110 Salaries, Officers and Employees			
Nondefense      Discretionary      Appropriation	177	5.0	9
001-05-0123 Miscellaneous Items			
Nondefense      Discretionary      Appropriation	19	5.0	1
001-05-0126 Secretary of the Senate			
Nondefense      Discretionary      Appropriation	6	5.0	*
001-05-0127 Sergeant at Arms and Doorkeeper of the Senate			
Nondefense      Discretionary      Appropriation	132	5.0	7
001-05-0128 Inquiries and Investigations			
Nondefense      Discretionary      Appropriation	132	5.0	7
001-05-0130 Senators' Official Personnel and Office Expense Account			
Nondefense      Discretionary      Appropriation	399	5.0	20
001-05-0185 Office of the Legislative Counsel of the Senate			
Nondefense      Discretionary      Appropriation	7	5.0	*
001-05-0188 Congressional Use of Foreign Currency, Senate			
Nondefense      Mandatory          Appropriation	6	5.1	*
001-05-9911 Senate Items			
Nondefense      Discretionary      Appropriation	2	5.0	*
<b>House of Representatives</b>			
001-10-0400 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	1,233	5.0	62
001-10-0488 Congressional Use of Foreign Currency, House of Representatives			
Nondefense      Mandatory          Appropriation	1	5.1	*
<b>Joint Items</b>			
001-11-0181 Joint Economic Committee			
Nondefense      Discretionary      Appropriation	4	5.0	*
001-11-0186 Joint Congressional Committee on Inaugural Ceremonies of 2013			
Nondefense      Discretionary      Appropriation	1	5.0	*
001-11-0190 Office of Congressional Accessibility Services			
Nondefense      Discretionary      Appropriation	1	5.0	*
001-11-0425 Office of the Attending Physician			
Nondefense      Discretionary      Appropriation	3	5.0	*
001-11-0460 Joint Committee on Taxation			
Nondefense      Discretionary      Appropriation	10	5.0	1
<b>Office of Compliance</b>			
001-12-1600 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	4	5.0	*
<b>Capitol Police</b>			
001-13-0476 General Expenses			
Nondefense      Discretionary      Appropriation	63	5.0	3
001-13-0477 Salaries			
Nondefense      Discretionary      Appropriation	279	5.0	14

\* denotes \$500,000 or less.

## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Congressional Budget Office</b>			
001-14-0100 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	44	5.0	2
<b>Architect of the Capitol</b>			
001-15-0100 General Administration			
Nondefense      Discretionary      Appropriation	102	5.0	5
001-15-0105 Capitol Building			
Nondefense      Discretionary      Appropriation	36	5.0	2
001-15-0108 Capitol Grounds			
Nondefense      Discretionary      Appropriation	10	5.0	1
001-15-0123 Senate Office Buildings			
Nondefense      Discretionary      Appropriation	72	5.0	4
001-15-0127 House Office Buildings			
Nondefense      Discretionary      Appropriation	95	5.0	5
001-15-0133 Capitol Power Plant			
Nondefense      Discretionary      Appropriation	124	5.0	6
001-15-0155 Library Buildings and Grounds			
Nondefense      Discretionary      Appropriation	47	5.0	2
001-15-0161 Capitol Visitor Center			
Nondefense      Discretionary      Appropriation	21	5.0	1
001-15-0171 Capitol Police Buildings and Grounds			
Nondefense      Discretionary      Appropriation	22	5.0	1
001-15-1833 House Historic Buildings Revitalization Trust Fund			
Nondefense      Discretionary      Appropriation	30	5.0	2
001-15-4518 Judiciary Office Building Development and Operations Fund			
Nondefense      Mandatory      Borrowing authority	12	5.1	1
<b>Botanic Garden</b>			
001-18-0200 Botanic Garden			
Nondefense      Discretionary      Appropriation	12	5.0	1
<b>Library of Congress</b>			
001-25-0101 Salaries and Expenses, Library of Congress			
Nondefense      Discretionary      Appropriation	416	5.0	21
001-25-0102 Copyright Office: Salaries and Expenses			
Nondefense      Discretionary      Appropriation	16	5.0	1
001-25-0127 Congressional Research Service: Salaries and Expenses			
Nondefense      Discretionary      Appropriation	107	5.0	5
001-25-0141 Books for the Blind and Physically Handicapped: Salaries and Expenses			
Nondefense      Discretionary      Appropriation	51	5.0	3
<b>Government Printing Office</b>			
001-30-0201 Office of Superintendent of Documents: Salaries and Expenses			
Nondefense      Discretionary      Appropriation	35	5.0	2
001-30-0203 Congressional Printing and Binding			
Nondefense      Discretionary      Appropriation	91	5.0	5





## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Department of Agriculture</b>			
<b>Office of the Secretary</b>			
005-03-9913 Office of the Secretary			
Nondefense Discretionary Appropriation	16	5.0	1
<b>Departmental Management</b>			
005-05-0117 Agriculture Buildings and Facilities and Rental Payments			
Nondefense Discretionary Appropriation	232	5.0	12
005-05-0500 Hazardous Materials Management			
Nondefense Discretionary Appropriation	4	5.0	*
005-05-9915 Departmental Administration			
Nondefense Discretionary Appropriation	86	5.0	4
<b>Office of Communications</b>			
005-06-0150 Office of Communications			
Nondefense Discretionary Appropriation	8	5.0	*
<b>Office of Civil Rights</b>			
005-07-3800 Office of Civil Rights			
Nondefense Discretionary Appropriation	21	5.0	1
<b>Office of Inspector General</b>			
005-08-0900 Office of Inspector General			
Nondefense Discretionary Appropriation	86	5.0	4
<b>Office of Chief Economist</b>			
005-09-0123 Office of the Chief Economist			
Nondefense Discretionary Appropriation	11	5.0	1
<b>Office of the General Counsel</b>			
005-10-2300 Office of the General Counsel			
Nondefense Discretionary Appropriation	40	5.0	2
<b>National Appeals Division</b>			
005-11-0706 National Appeals Division			
Nondefense Discretionary Appropriation	13	5.0	1
<b>Economic Research Service</b>			
005-13-1701 Economic Research Service			
Nondefense Discretionary Appropriation	78	5.0	4
<b>National Agricultural Statistics Service</b>			
005-15-1801 National Agricultural Statistics Service			
Nondefense Discretionary Appropriation	160	5.0	8
<b>Agricultural Research Service</b>			
005-18-1400 Salaries and Expenses			
Nondefense Discretionary Appropriation	1,102	5.0	55
005-18-8214 Miscellaneous Contributed Funds			
Nondefense Mandatory Administrative expenses in otherwise exempt resources	2	5.1	*
<b>National Institute of Food and Agriculture</b>			

\* denotes \$500,000 or less.



## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Risk Management Agency</b>			
005-47-2707 Administrative and Operating Expenses			
Nondefense      Discretionary      Appropriation	75	5.0	4
005-47-4085 Federal Crop Insurance Corporation Fund			
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	58	5.1	3
<b>Farm Service Agency</b>			
005-49-0170 State Mediation Grants			
Nondefense      Discretionary      Appropriation	4	5.0	*
005-49-0171 Emergency Forest Restoration Program			
Nondefense      Discretionary      Appropriation	23	5.0	1
005-49-0600 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	1,206	5.0	60
005-49-1140 Agricultural Credit Insurance Fund Program Account			
Nondefense      Discretionary      Appropriation	408	5.0	20
005-49-1336 Commodity Credit Corporation Export Loans Program Account			
Nondefense      Discretionary      Appropriation	7	5.0	*
005-49-2701 USDA Supplemental Assistance			
Nondefense      Discretionary      Appropriation	2	5.0	*
005-49-3304 Grassroots Source Water Protection Program			
Nondefense      Discretionary      Appropriation	4	5.0	*
005-49-3305 Reforestation Pilot Program			
Nondefense      Discretionary      Appropriation	1	5.0	*
005-49-3316 Emergency Conservation Program			
Nondefense      Discretionary      Appropriation	15	5.0	1
005-49-4336 Commodity Credit Corporation Fund			
Nondefense      Mandatory      Borrowing authority	6,460	5.1	329
005-49-5531 Agricultural Disaster Relief Fund			
Nondefense      Mandatory      Borrowing authority	1,372	5.1	70
005-49-8161 Tobacco Trust Fund			
Nondefense      Mandatory      Appropriation	960	5.1	49
<b>Natural Resources Conservation Service</b>			
005-53-1000 Conservation Operations			
Nondefense      Discretionary      Appropriation	833	5.0	42
Nondefense      Discretionary      Spending authority	9	5.0	*
<i>Account Total</i>	842		42
005-53-1002 Watershed Rehabilitation Program			
Nondefense      Discretionary      Appropriation	15	5.0	1
005-53-1004 Farm Security and Rural Investment Programs			
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	108	5.1	6
Nondefense      Mandatory      Appropriation	3,249	5.1	166
<i>Account Total</i>	3,357		171
005-53-1072 Watershed and Flood Prevention Operations			
Nondefense      Discretionary      Appropriation	180	5.0	9
005-53-3320 Water Bank Program			
Nondefense      Discretionary      Appropriation	8	5.0	*
<b>Rural Development</b>			

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
005-68-2903 McGovern-Dole International Food for Education and Child Nutrition Program			
Nondefense      Discretionary      Appropriation	185	5.0	9
<b>Food and Nutrition Service</b>			
005-84-3505 Supplemental Nutrition Assistance Program			
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	93	5.1	5
005-84-3507 Commodity Assistance Program			
Nondefense      Discretionary      Appropriation	73	5.0	4
Nondefense      Mandatory      Appropriation	21	5.1	1
<i>Account Total</i>	94		5
005-84-3508 Nutrition Programs Administration			
Nondefense      Discretionary      Appropriation	140	5.0	7
005-84-3510 Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)			
Nondefense      Discretionary      Appropriation	6,659	5.0	333
Nondefense      Mandatory      Appropriation	1	5.1	*
<i>Account Total</i>	6,660		333
005-84-3539 Child Nutrition Programs			
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	36	5.1	2
Nondefense      Mandatory      Appropriation	13	5.1	1
<i>Account Total</i>	49		3
<b>Forest Service</b>			
005-96-1103 Capital Improvement and Maintenance			
Nondefense      Discretionary      Appropriation	430	5.0	22
Nondefense      Discretionary      Spending authority	16	5.0	1
<i>Account Total</i>	446		22
005-96-1104 Forest and Rangeland Research			
Nondefense      Discretionary      Appropriation	298	5.0	15
Nondefense      Discretionary      Spending authority	2	5.0	*
<i>Account Total</i>	300		15
005-96-1105 State and Private Forestry			
Nondefense      Discretionary      Appropriation	260	5.0	13
005-96-1106 National Forest System			
Nondefense      Discretionary      Appropriation	1,615	5.0	81
Nondefense      Discretionary      Spending authority	14	5.0	1
<i>Account Total</i>	1,629		81
005-96-1115 Wildland Fire Management			
Nondefense      Discretionary      Appropriation	2,448	5.0	122
Nondefense      Discretionary      Spending authority	53	5.0	3
<i>Account Total</i>	2,501		125
005-96-1119 Management of National Forest Lands for Subsistence Uses			
Nondefense      Discretionary      Appropriation	3	5.0	*
005-96-4605 Working Capital Fund			
Nondefense      Discretionary      Spending authority	3	5.0	*
005-96-5207 Range Betterment Fund			
Nondefense      Discretionary      Appropriation	3	5.0	*
005-96-5540 Stewardship Contracting Product Sales			
Nondefense      Mandatory      Appropriation	8	5.1	*

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
005-96-9921 Forest Service Permanent Appropriations			
Nondefense Mandatory Administrative expenses in otherwise exempt resources	1	5.1	*
Nondefense Mandatory Appropriation	646	5.1	33
<i>Account Total</i>	<u>647</u>		<u>33</u>
005-96-9923 Land Acquisition			
Nondefense Discretionary Appropriation	74	5.0	4
Nondefense Mandatory Appropriation	9	5.1	*
<i>Account Total</i>	<u>83</u>		<u>4</u>
005-96-9974 Forest Service Trust Funds			
Nondefense Mandatory Administrative expenses in otherwise exempt resources	2	5.1	*
Nondefense Mandatory Appropriation	77	5.1	4
<i>Account Total</i>	<u>79</u>		<u>4</u>

## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Department of Commerce</b>			
<b>Departmental Management</b>			
006-05-0120 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	57	5.0	3
006-05-0123 HCHB Renovation and Modernization			
Nondefense      Discretionary      Appropriation	5	5.0	*
006-05-0126 Office of the Inspector General			
Nondefense      Discretionary      Appropriation	29	5.0	1
Nondefense      Discretionary      Spending authority	1	5.0	*
<i>Account Total</i>	<u>30</u>		<u>2</u>
<b>Economic Development Administration</b>			
006-06-0125 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	38	5.0	2
006-06-2050 Economic Development Assistance Programs			
Nondefense      Discretionary      Appropriation	221	5.0	11
<b>Bureau of the Census</b>			
006-07-0401 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	255	5.0	13
Nondefense      Mandatory          Appropriation	30	5.1	2
<i>Account Total</i>	<u>285</u>		<u>14</u>
006-07-0450 Periodic Censuses and Programs			
Nondefense      Discretionary      Appropriation	638	5.0	32
<b>Economic and Statistical Analysis</b>			
006-08-1500 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	97	5.0	5
<b>International Trade Administration</b>			
006-25-1250 Operations and Administration			
Nondefense      Discretionary      Appropriation	458	5.0	23
006-25-5521 Grants to Manufacturers of Worsted Wool Fabrics			
Nondefense      Mandatory          Appropriation	5	5.1	*
<b>Bureau of Industry and Security</b>			
006-30-0300 Operations and Administration			
Defense          Discretionary      Appropriation	34	7.8	3
Nondefense      Discretionary      Appropriation	67	5.0	3
Nondefense      Discretionary      Spending authority	1	5.0	*
<i>Account Total</i>	<u>102</u>		<u>6</u>
<b>Minority Business Development Agency</b>			
006-40-0201 Minority Business Development			
Nondefense      Discretionary      Appropriation	30	5.0	2
<b>National Oceanic and Atmospheric Administration</b>			
006-48-1450 Operations, Research, and Facilities			
Nondefense      Discretionary      Appropriation	3,289	5.0	164
Nondefense      Mandatory          Spending authority	6	5.1	*
<i>Account Total</i>	<u>3,295</u>		<u>165</u>
006-48-1451 Pacific Coastal Salmon Recovery			
Nondefense      Discretionary      Appropriation	65	5.0	3

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
006-48-1460 Procurement, Acquisition and Construction Nondefense Discretionary Appropriation	2,013	5.0	101
006-48-1465 Medicare-eligible Retiree Health Fund Contribution, NOAA Nondefense Discretionary Appropriation	2	5.0	*
006-48-4316 Damage Assessment and Restoration Revolving Fund Nondefense Mandatory Appropriation	6	5.1	*
006-48-5139 Promote and Develop Fishery Products and Research Pertaining to American Fisheries Nondefense Mandatory Appropriation	16	5.1	1
006-48-5284 Limited Access System Administration Fund Nondefense Mandatory Appropriation	10	5.1	1
006-48-5362 Environmental Improvement and Restoration Fund Nondefense Mandatory Appropriation	1	5.1	*
<b>U.S. Patent and Trademark Office</b>			
006-51-1006 Salaries and Expenses Nondefense Discretionary Spending authority	2,951	5.0	148
<b>National Institute of Standards and Technology</b>			
006-55-0500 Scientific and Technical Research and Services Nondefense Discretionary Appropriation	580	5.0	29
006-55-0515 Construction of Research Facilities Nondefense Discretionary Appropriation	56	5.0	3
006-55-0525 Industrial Technology Services Nondefense Discretionary Appropriation	129	5.0	6
<b>National Telecommunications and Information Administration</b>			
006-60-0516 State and Local Implementation Fund Nondefense Mandatory Borrowing authority	69	5.1	4
006-60-0550 Salaries and Expenses Nondefense Discretionary Appropriation	46	5.0	2
006-60-8233 Public Safety Trust Fund Nondefense Mandatory Borrowing authority	105	5.1	5

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
007-10-1106 Operation and Maintenance, Marine Corps Defense Discretionary Appropriation	9,643	7.8	752
007-10-1107 Operation and Maintenance, Marine Corps Reserve Defense Discretionary Appropriation	299	7.8	23
007-10-1804 Operation and Maintenance, Navy Defense Discretionary Appropriation	44,274	7.8	3,453
Defense Discretionary Unobligated balance in 050	15	7.8	1
<i>Account Total</i>	44,289		3,455
007-10-1806 Operation and Maintenance, Navy Reserve Defense Discretionary Appropriation	1,369	7.8	107
007-10-2020 Operation and Maintenance, Army Defense Discretionary Appropriation	59,336	7.8	4,628
Defense Discretionary Unobligated balance in 050	84	7.8	7
<i>Account Total</i>	59,420		4,635
007-10-2065 Operation and Maintenance, Army National Guard Defense Discretionary Appropriation	7,352	7.8	573
Defense Discretionary Unobligated balance in 050	1	7.8	*
<i>Account Total</i>	7,353		574
007-10-2080 Operation and Maintenance, Army Reserve Defense Discretionary Appropriation	3,245	7.8	253
007-10-2091 Afghanistan Security Forces Fund Defense Discretionary Appropriation	5,749	7.8	448
Defense Discretionary Unobligated balance in 050	4,519	7.8	352
<i>Account Total</i>	10,268		801
007-10-2096 Afghanistan Infrastructure Fund Defense Discretionary Appropriation	400	7.8	31
Defense Discretionary Unobligated balance in 050	69	7.8	5
<i>Account Total</i>	469		37
007-10-3400 Operation and Maintenance, Air Force Defense Discretionary Appropriation	44,443	7.8	3,467
007-10-3740 Operation and Maintenance, Air Force Reserve Defense Discretionary Appropriation	3,415	7.8	266
007-10-3840 Operation and Maintenance, Air National Guard Defense Discretionary Appropriation	6,162	7.8	481
007-10-4965 Emergency Response Defense Discretionary Unobligated balance in 050	12	7.8	1
007-10-5188 Disposal of Department of Defense Real Property Defense Discretionary Appropriation	8	7.8	1
Defense Discretionary Unobligated balance in 050	55	7.8	4
<i>Account Total</i>	63		5
007-10-5189 Lease of Department of Defense Real Property Defense Discretionary Appropriation	11	7.8	1
Defense Discretionary Unobligated balance in 050	71	7.8	6
<i>Account Total</i>	82		6
007-10-5193 Overseas Military Facility Investment Recovery Defense Discretionary Unobligated balance in 050	2	7.8	*

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Department of Education</b>			
<b>Office of Elementary and Secondary Education</b>			
018-10-0101 Indian Student Education			
Nondefense      Discretionary      Appropriation	132	5.0	7
018-10-0102 Impact Aid			
Nondefense      Discretionary      Appropriation	1,299	5.0	65
018-10-0203 Supporting Student Success			
Nondefense      Discretionary      Appropriation	257	5.0	13
018-10-0900 Accelerating Achievement and Ensuring Equity			
Nondefense      Discretionary      Advance appropriation	10,841	5.0	542
Nondefense      Discretionary      Appropriation	4,931	5.0	247
<i>Account Total</i>	<u>15,772</u>		<u>789</u>
018-10-1000 Education Improvement Programs			
Nondefense      Discretionary      Advance appropriation	1,681	5.0	84
Nondefense      Discretionary      Appropriation	2,881	5.0	144
<i>Account Total</i>	<u>4,562</u>		<u>228</u>
<b>Office of Innovation and Improvement</b>			
018-12-0204 Innovation and Instructional Teams			
Nondefense      Discretionary      Appropriation	1,537	5.0	77
<b>Office of English Language Acquisition</b>			
018-15-1300 English Learner Education			
Nondefense      Discretionary      Appropriation	737	5.0	37
<b>Office of Special Education and Rehabilitative Services</b>			
018-20-0300 Special Education			
Nondefense      Discretionary      Advance appropriation	9,283	5.0	464
Nondefense      Discretionary      Appropriation	3,378	5.0	169
<i>Account Total</i>	<u>12,661</u>		<u>633</u>
018-20-0301 Rehabilitation Services and Disability Research			
Nondefense      Discretionary      Appropriation	392	5.0	20
Nondefense      Mandatory          Appropriation	3,231	5.1	165
<i>Account Total</i>	<u>3,623</u>		<u>184</u>
018-20-0600 American Printing House for the Blind			
Nondefense      Discretionary      Appropriation	25	5.0	1
018-20-0601 National Technical Institute for the Deaf			
Nondefense      Discretionary      Appropriation	66	5.0	3
018-20-0602 Gallaudet University			
Nondefense      Discretionary      Appropriation	126	5.0	6
<b>Office of Vocational and Adult Education</b>			
018-30-0400 Career, Technical and Adult Education			
Nondefense      Discretionary      Advance appropriation	791	5.0	40
Nondefense      Discretionary      Appropriation	952	5.0	48
<i>Account Total</i>	<u>1,743</u>		<u>87</u>
<b>Office of Postsecondary Education</b>			
018-40-0201 Higher Education			
Nondefense      Discretionary      Appropriation	1,881	5.0	94
Nondefense      Mandatory          Appropriation	428	5.1	22
<i>Account Total</i>	<u>2,309</u>		<u>116</u>

\* denotes \$500,000 or less.



















**Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013**

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
024-85-0862 Systems Acquisition			
Nondefense      Discretionary      Appropriation	41	5.0	2

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Department of Housing and Urban Development</b>			
<b>Public and Indian Housing Programs</b>			
025-03-0163 Public Housing Operating Fund			
Nondefense      Discretionary      Appropriation	3,986	5.0	199
025-03-0223 Indian Housing Loan Guarantee Fund Program Account			
Nondefense      Discretionary      Appropriation	6	5.0	*
025-03-0235 Native Hawaiian Housing Block Grant			
Nondefense      Discretionary      Appropriation	13	5.0	1
025-03-0302 Tenant Based Rental Assistance			
Nondefense      Discretionary      Advance appropriation	4,000	5.0	200
Nondefense      Discretionary      Appropriation	14,753	5.0	738
<i>Account Total</i>	18,753		938
025-03-0303 Project-based Rental Assistance			
Nondefense      Discretionary      Advance appropriation	400	5.0	20
Nondefense      Discretionary      Appropriation	8,995	5.0	450
<i>Account Total</i>	9,395		470
025-03-0304 Public Housing Capital Fund			
Nondefense      Discretionary      Appropriation	1,886	5.0	94
025-03-0313 Native American Housing Block Grant			
Nondefense      Discretionary      Appropriation	654	5.0	33
025-03-0349 Choice Neighborhoods			
Nondefense      Discretionary      Appropriation	121	5.0	6
<b>Community Planning and Development</b>			
025-06-0162 Community Development Fund			
Nondefense      Discretionary      Appropriation	19,308	5.0	965
025-06-0176 Self-help Homeownership Opportunity Program			
Nondefense      Discretionary      Appropriation	54	5.0	3
025-06-0192 Homeless Assistance Grants			
Nondefense      Discretionary      Appropriation	1,913	5.0	96
025-06-0198 Community Development Loan Guarantees Program Account			
Nondefense      Discretionary      Appropriation	6	5.0	*
025-06-0205 Home Investment Partnership Program			
Nondefense      Discretionary      Appropriation	1,006	5.0	50
025-06-0308 Housing Opportunities for Persons with AIDS			
Nondefense      Discretionary      Appropriation	334	5.0	17
<b>Housing Programs</b>			
025-09-0156 Housing Counseling Assistance			
Nondefense      Discretionary      Appropriation	45	5.0	2
025-09-0183 FHA-mutual Mortgage Insurance Program Account			
Nondefense      Discretionary      Appropriation	208	5.0	10
025-09-0237 Housing for Persons with Disabilities			
Nondefense      Discretionary      Appropriation	166	5.0	8
025-09-0320 Housing for the Elderly			
Nondefense      Discretionary      Appropriation	377	5.0	19

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
025-09-4041 Rental Housing Assistance Fund			
Nondefense      Mandatory      Spending authority	3	5.1	*
025-09-4044 Flexible Subsidy Fund			
Nondefense      Discretionary      Spending authority	21	5.0	1
025-09-8119 Manufactured Housing Fees Trust Fund			
Nondefense      Discretionary      Appropriation	7	5.0	*
<b>Government National Mortgage Association</b>			
025-12-0186 Guarantees of Mortgage-backed Securities Loan Guarantee Program Account			
Nondefense      Discretionary      Spending authority	20	5.0	1
<b>Policy Development and Research</b>			
025-28-0108 Research and Technology			
Nondefense      Discretionary      Appropriation	46	5.0	2
<b>Fair Housing and Equal Opportunity</b>			
025-29-0144 Fair Housing Activities			
Nondefense      Discretionary      Appropriation	71	5.0	4
<b>Office of Lead Hazard Control and Healthy Homes</b>			
025-32-0174 Lead Hazard Reduction			
Nondefense      Discretionary      Appropriation	121	5.0	6
<b>Management and Administration</b>			
025-35-0189 Office of Inspector General			
Nondefense      Discretionary      Appropriation	135	5.0	7
025-35-0334 Housing Personnel Compensation and Benefits			
Nondefense      Discretionary      Appropriation	394	5.0	20
025-35-0335 Administrative Support Offices			
Nondefense      Discretionary      Appropriation	541	5.0	27
025-35-0337 Public and Indian Housing Personnel Compensation and Benefits			
Nondefense      Discretionary      Appropriation	201	5.0	10
025-35-0338 Community Planning and Development Personnel Compensation and Benefits			
Nondefense      Discretionary      Appropriation	111	5.0	6
025-35-0339 Policy Development and Research Personnel Compensation and Benefits			
Nondefense      Discretionary      Appropriation	22	5.0	1
025-35-0340 Fair Housing and Equal Opportunity Personnel Compensation and Benefits			
Nondefense      Discretionary      Appropriation	73	5.0	4
025-35-0341 Office of Healthy Homes and Lead Hazard Control Personnel Compensation and Benefits			
Nondefense      Discretionary      Appropriation	7	5.0	*
025-35-0402 Transformation Initiative			
Nondefense      Discretionary      Appropriation	50	5.0	3
025-35-4586 Information Technology Portfolio			
Nondefense      Discretionary      Appropriation	200	5.0	10

\* denotes \$500,000 or less.

## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Department of the Interior</b>			
<b>Bureau of Land Management</b>			
010-04-1109 Management of Lands and Resources			
Nondefense Discretionary Appropriation	966	5.0	48
Nondefense Discretionary Spending authority	75	5.0	4
<i>Account Total</i>	1,041		52
010-04-1110 Construction			
Nondefense Discretionary Appropriation	4	5.0	*
010-04-1116 Oregon and California Grant Lands			
Nondefense Discretionary Appropriation	113	5.0	6
010-04-4053 Helium Fund			
Nondefense Mandatory Administrative expenses in otherwise exempt resources	16	5.1	1
010-04-4525 Working Capital Fund			
Nondefense Discretionary Spending authority	9	5.0	*
010-04-5017 Service Charges, Deposits, and Forfeitures			
Nondefense Discretionary Appropriation	31	5.0	2
010-04-5033 Land Acquisition			
Nondefense Discretionary Appropriation	22	5.0	1
010-04-5132 Range Improvements			
Nondefense Mandatory Appropriation	10	5.1	1
010-04-9921 Miscellaneous Permanent Payment Accounts			
Nondefense Mandatory Appropriation	62	5.1	3
010-04-9926 Permanent Operating Funds			
Nondefense Mandatory Administrative expenses in otherwise exempt resources	16	5.1	1
Nondefense Mandatory Appropriation	131	5.1	7
<i>Account Total</i>	147		8
010-04-9971 Miscellaneous Trust Funds			
Nondefense Mandatory Administrative expenses in otherwise exempt resources	21	5.1	1
<b>Bureau of Ocean Energy Management</b>			
010-06-1917 Ocean Energy Management			
Nondefense Discretionary Appropriation	60	5.0	3
Nondefense Discretionary Spending authority	101	5.0	5
<i>Account Total</i>	161		8
<b>Office of Surface Mining Reclamation and Enforcement</b>			
010-08-1801 Regulation and Technology			
Nondefense Discretionary Appropriation	124	5.0	6
Nondefense Discretionary Spending authority	3	5.0	*
<i>Account Total</i>	127		6
010-08-1803 Payments to States in Lieu of Coal Fee Receipts			
Nondefense Mandatory Appropriation	128	5.1	7
010-08-5015 Abandoned Mine Reclamation Fund			
Nondefense Discretionary Appropriation	28	5.0	1
Nondefense Mandatory Appropriation	221	5.1	11
<i>Account Total</i>	249		13
<b>Bureau of Reclamation</b>			

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
010-10-0680 Water and Related Resources			
Nondefense Discretionary Appropriation	883	5.0	44
Nondefense Discretionary Spending authority	212	5.0	11
Nondefense Mandatory Appropriation	1	5.1	*
<i>Account Total</i>	1,096		55
010-10-0687 California Bay-Delta Restoration			
Nondefense Discretionary Appropriation	40	5.0	2
010-10-4079 Lower Colorado River Basin Development Fund			
Nondefense Discretionary Appropriation	6	5.0	*
Nondefense Mandatory Administrative expenses in otherwise exempt resources	247	5.1	13
Nondefense Mandatory Spending authority	1	5.1	*
<i>Account Total</i>	254		13
010-10-4081 Upper Colorado River Basin Fund			
Nondefense Discretionary Appropriation	11	5.0	1
Nondefense Mandatory Administrative expenses in otherwise exempt resources	81	5.1	4
<i>Account Total</i>	92		5
010-10-4524 Working Capital Fund			
Nondefense Discretionary Spending authority	13	5.0	1
010-10-5065 Policy and Administration			
Nondefense Discretionary Appropriation	60	5.0	3
010-10-5173 Central Valley Project Restoration Fund			
Nondefense Discretionary Appropriation	53	5.0	3
010-10-5656 Colorado River Dam Fund, Boulder Canyon Project			
Nondefense Mandatory Administrative expenses in otherwise exempt resources	16	5.1	1
010-10-8070 Reclamation Trust Funds			
Nondefense Mandatory Administrative expenses in otherwise exempt resources	2	5.1	*
<b>Central Utah Project</b>			
010-11-0787 Central Utah Project Completion Account			
Nondefense Discretionary Appropriation	27	5.0	1
010-11-5174 Utah Reclamation Mitigation and Conservation Account			
Nondefense Discretionary Appropriation	2	5.0	*
<b>United States Geological Survey</b>			
010-12-0804 Surveys, Investigations, and Research			
Nondefense Discretionary Appropriation	1,075	5.0	54
<b>United States Fish and Wildlife Service</b>			
010-18-1611 Resource Management			
Nondefense Discretionary Appropriation	1,234	5.0	62
Nondefense Discretionary Spending authority	55	5.0	3
<i>Account Total</i>	1,289		64
010-18-1612 Construction			
Nondefense Discretionary Appropriation	91	5.0	5
010-18-1652 Multinational Species Conservation Fund			
Nondefense Discretionary Appropriation	10	5.0	1
010-18-1696 Neotropical Migratory Bird Conservation			
Nondefense Discretionary Appropriation	4	5.0	*
010-18-5020 Land Acquisition			
Nondefense Discretionary Appropriation	55	5.0	3

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
010-76-2100 Operation of Indian Programs			
Nondefense      Discretionary      Appropriation	2,382	5.0	119
010-76-2301 Construction			
Nondefense      Discretionary      Appropriation	124	5.0	6
010-76-2628 Indian Guaranteed Loan Program Account			
Nondefense      Discretionary      Appropriation	7	5.0	*
010-76-5051 Operation and Maintenance of Quarters			
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	3	5.1	*
010-76-9925 Miscellaneous Permanent Appropriations			
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	19	5.1	1
<b>Departmental Offices</b>			
010-84-0102 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	624	5.0	31
010-84-5003 Mineral Leasing and Associated Payments			
Nondefense      Mandatory      Appropriation	2,144	5.1	109
010-84-5045 National Petroleum Reserve, Alaska			
Nondefense      Mandatory      Appropriation	3	5.1	*
010-84-5243 National Forests Fund, Payment to States			
Nondefense      Mandatory      Appropriation	9	5.1	*
010-84-5248 Leases of Lands Acquired for Flood Control, Navigation, and Allied Purposes			
Nondefense      Mandatory      Appropriation	19	5.1	1
010-84-5574 Geothermal Lease Revenues, Payment to Counties			
Nondefense      Mandatory      Appropriation	4	5.1	*
<b>Insular Affairs</b>			
010-85-0412 Assistance to Territories			
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	10	5.1	1
<b>Office of the Solicitor</b>			
010-86-0107 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	67	5.0	3
<b>Office of Inspector General</b>			
010-88-0104 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	50	5.0	3
<b>Office of the Special Trustee for American Indians</b>			
010-90-0120 Federal Trust Programs			
Nondefense      Discretionary      Appropriation	153	5.0	8
<b>National Indian Gaming Commission</b>			
010-92-0118 Salaries and Expenses			
Nondefense      Discretionary      Spending authority	3	5.0	*
010-92-5141 National Indian Gaming Commission, Gaming Activity Fees			
Nondefense      Mandatory      Appropriation	18	5.1	1
<b>Department-Wide Programs</b>			
010-95-1114 Payments in Lieu of Taxes			
Nondefense      Mandatory      Appropriation	398	5.1	20
010-95-1121 Central Hazardous Materials Fund			
Nondefense      Discretionary      Appropriation	10	5.0	1

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Department of Justice</b>			
<b>General Administration</b>			
011-03-0129 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	112	5.0	6
011-03-0132 Tactical Law Enforcement Wireless Communications			
Nondefense      Discretionary      Appropriation	88	5.0	4
011-03-0134 Justice Information Sharing Technology			
Nondefense      Discretionary      Appropriation	44	5.0	2
011-03-0136 Detention Trustee			
Nondefense      Discretionary      Appropriation	1,590	5.0	80
011-03-0328 Office of Inspector General			
Nondefense      Discretionary      Appropriation	85	5.0	4
011-03-0339 Administrative Review and Appeals			
Nondefense      Discretionary      Appropriation	307	5.0	15
011-03-1102 National Drug Intelligence Center			
Nondefense      Discretionary      Appropriation	20	5.0	1
<b>United States Parole Commission</b>			
011-04-1061 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	13	5.0	1
<b>Legal Activities and U.S. Marshals</b>			
011-05-0100 Salaries and Expenses, Foreign Claims Settlement Commission			
Nondefense      Discretionary      Appropriation	2	5.0	*
011-05-0128 Salaries and Expenses, General Legal Activities			
Nondefense      Discretionary      Appropriation	868	5.0	43
011-05-0133 Construction			
Nondefense      Discretionary      Appropriation	15	5.0	1
011-05-0311 Fees and Expenses of Witnesses			
Nondefense      Mandatory          Appropriation	270	5.1	14
011-05-0319 Salaries and Expenses, Antitrust Division			
Nondefense      Discretionary      Appropriation	43	5.0	2
011-05-0322 Salaries and Expenses, United States Attorneys			
Nondefense      Discretionary      Appropriation	1,972	5.0	99
011-05-0324 Salaries and Expenses, United States Marshals Service			
Nondefense      Discretionary      Appropriation	1,179	5.0	59
011-05-0340 September 11th Victim Compensation (general Fund)			
Nondefense      Mandatory          Appropriation	322	5.1	16
011-05-0500 Salaries and Expenses, Community Relations Service			
Nondefense      Discretionary      Appropriation	11	5.0	1
011-05-5042 Assets Forfeiture Fund			
Nondefense      Discretionary      Appropriation	21	5.0	1
Nondefense      Mandatory          Appropriation	1,358	5.1	69
<i>Account Total</i>	<hr/>		<hr/>
	1,379		70
011-05-5073 United States Trustee System Fund			
Nondefense      Discretionary      Appropriation	224	5.0	11
<b>Interagency Law Enforcement</b>			

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
014-25-0202 East-West Center			
Nondefense      Discretionary      Appropriation	17	5.0	1
014-25-0210 National Endowment for Democracy			
Nondefense      Discretionary      Appropriation	118	5.0	6
014-25-0525 Payment to the Asia Foundation			
Nondefense      Discretionary      Appropriation	17	5.0	1
014-25-1015 Complex Crises Fund			
Nondefense      Discretionary      Appropriation	40	5.0	2
014-25-1022 International Narcotics Control and Law Enforcement			
Nondefense      Discretionary      Appropriation	2,051	5.0	103
014-25-1031 Global Health Programs			
Nondefense      Discretionary      Appropriation	8,218	5.0	411
014-25-1121 Democracy Fund			
Nondefense      Discretionary      Appropriation	115	5.0	6
014-25-1143 Migration and Refugee Assistance			
Nondefense      Discretionary      Appropriation	1,885	5.0	94
014-25-8276 Israeli Arab and Eisenhower Exchange Fellowship Programs			
Nondefense      Discretionary      Appropriation	1	5.0	*



## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
021-15-0534 Payment to the Transportation Trust Fund			
Nondefense      Mandatory      Appropriation	6,200	5.1	316
021-15-8083 Federal-aid Highways			
Nondefense      Mandatory      Contract authority	739	5.1	38
<b>Federal Motor Carrier Safety Administration</b>			
021-17-8159 Motor Carrier Safety Operations and Programs			
Nondefense      Discretionary      Spending authority	27	5.0	1
<b>National Highway Traffic Safety Administration</b>			
021-18-0650 Operations and Research			
Nondefense      Discretionary      Appropriation	141	5.0	7
<b>Federal Railroad Administration</b>			
021-27-0121 Operating Subsidy Grants to the National Railroad Passenger Corporation			
Nondefense      Discretionary      Appropriation	469	5.0	23
021-27-0125 Capital and Debt Service Grants to the National Railroad Passenger Corporation			
Nondefense      Discretionary      Appropriation	958	5.0	48
021-27-0700 Safety and Operations			
Nondefense      Discretionary      Appropriation	180	5.0	9
021-27-0704 Grants to the National Railroad Passenger Corporation			
Nondefense      Discretionary      Appropriation	118	5.0	6
021-27-0745 Railroad Research and Development			
Nondefense      Discretionary      Appropriation	35	5.0	2
<b>Federal Transit Administration</b>			
021-36-1120 Administrative Expenses			
Nondefense      Discretionary      Appropriation	99	5.0	5
021-36-1128 Washington Metropolitan Area Transit Authority			
Nondefense      Discretionary      Appropriation	151	5.0	8
021-36-1134 Capital Investment Grants			
Nondefense      Discretionary      Appropriation	1,923	5.0	96
021-36-1137 Research and University Research Centers			
Nondefense      Discretionary      Appropriation	44	5.0	2
021-36-1140 Public Transportation Emergency Relief Program			
Nondefense      Discretionary      Appropriation	10,894	5.0	545
<b>Saint Lawrence Seaway Development Corporation</b>			
021-40-8003 Operations and Maintenance			
Nondefense      Discretionary      Appropriation	32	5.0	2
<b>Pipeline and Hazardous Materials Safety Administration</b>			
021-50-1400 Operational Expenses			
Nondefense      Discretionary      Appropriation	20	5.0	1
021-50-1401 Hazardous Materials Safety			
Nondefense      Discretionary      Appropriation	42	5.0	2
021-50-5172 Pipeline Safety			
Nondefense      Discretionary      Appropriation	92	5.0	5
021-50-5282 Emergency Preparedness Grants			
Nondefense      Mandatory      Appropriation	28	5.1	1

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Department of the Treasury</b>			
<b>Financial Crimes Enforcement Network</b>			
015-04-0173 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	111	5.0	6
<b>Departmental Offices</b>			
015-05-0101 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	310	5.0	16
015-05-0106 Office of Inspector General			
Nondefense      Discretionary      Appropriation	30	5.0	2
015-05-0119 Treasury Inspector General for Tax Administration			
Nondefense      Discretionary      Appropriation	153	5.0	8
015-05-0123 Terrorism Insurance Program			
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	3	5.1	*
015-05-0126 GSE Mortgage-Backed Securities Purchase Program Account			
Nondefense      Mandatory      Appropriation	11	5.1	1
015-05-0140 Grants for Specified Energy Property in Lieu of Tax Credits, Recovery Act			
Nondefense      Mandatory      Appropriation	3,671	5.1	187
015-05-0141 Small Business Lending Fund Program Account			
Nondefense      Mandatory      Appropriation	26	5.1	1
015-05-1881 Community Development Financial Institutions Fund Program Account			
Nondefense      Discretionary      Appropriation	222	5.0	11
Nondefense      Discretionary      Spending authority	1	5.0	*
<i>Account Total</i>	223		11
015-05-5081 Presidential Election Campaign Fund			
Nondefense      Mandatory      Appropriation	34	5.1	2
015-05-5590 Financial Research Fund			
Nondefense      Mandatory      Appropriation	158	5.1	8
015-05-5697 Treasury Forfeiture Fund			
Nondefense      Mandatory      Appropriation	583	5.1	30
<b>Fiscal Service</b>			
015-12-0520 Salaries and Expenses, Fiscal Service			
Nondefense      Discretionary      Appropriation	393	5.0	20
Nondefense      Discretionary      Spending authority	1	5.0	*
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	68	5.1	3
<i>Account Total</i>	462		23
015-12-1710 Payment of Government Losses in Shipment			
Nondefense      Mandatory      Appropriation	1	5.1	*
015-12-1825 Payment to FRA for AMTRAK Debt Restructuring			
Nondefense      Mandatory      Appropriation	59	5.1	3
015-12-8209 Cheyenne River Sioux Tribe Terrestrial Wildlife Habitat Restoration Trust Fund			
Nondefense      Mandatory      Appropriation	2	5.1	*
<b>Alcohol and Tobacco Tax and Trade Bureau</b>			
015-13-1008 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	100	5.0	5
Nondefense      Discretionary      Spending authority	4	5.0	*
<i>Account Total</i>	104		5

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Other Defense Civil Programs</b>			
<b>American Battle Monuments Commission</b>			
200-15-0100 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	77	5.0	4
<b>Armed Forces Retirement Home</b>			
200-20-8522 Armed Forces Retirement Home			
Nondefense      Discretionary      Appropriation	62	5.0	3
<b>Cemeterial Expenses</b>			
200-25-1805 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	46	5.0	2
<b>Forest and Wildlife Conservation, Military Reservations</b>			
200-30-5095 Wildlife Conservation			
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	3	5.1	*
<b>Selective Service System</b>			
200-45-0400 Salaries and Expenses			
Defense          Discretionary      Appropriation	24	7.8	2

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Executive Office of the President</b>			
<b>The White House</b>			
100-05-0209 The White House			
Nondefense Discretionary Appropriation	57	5.0	3
<b>Executive Residence at the White House</b>			
100-10-0109 White House Repair and Restoration			
Nondefense Discretionary Appropriation	1	5.0	*
100-10-0210 Operating Expenses			
Nondefense Discretionary Appropriation	13	5.0	1
Nondefense Discretionary Spending authority	3	5.0	*
<i>Account Total</i>	<u>16</u>		<u>1</u>
<b>Special Assistance to the President and the Official Residence of the Vice President</b>			
100-15-1454 Special Assistance to the President and the Official Residence of the Vice President			
Nondefense Discretionary Appropriation	5	5.0	*
<b>Council of Economic Advisers</b>			
100-20-1900 Salaries and Expenses			
Nondefense Discretionary Appropriation	4	5.0	*
<b>Council on Environmental Quality and Office of Environmental Quality</b>			
100-25-1453 Council on Environmental Quality and Office of Environmental Quality			
Nondefense Discretionary Appropriation	3	5.0	*
<b>National Security Council and Homeland Security Council</b>			
100-35-2000 Salaries and Expenses			
Nondefense Discretionary Appropriation	13	5.0	1
<b>Office of Administration</b>			
100-50-0038 Salaries and Expenses			
Nondefense Discretionary Appropriation	114	5.0	6
<b>Office of Management and Budget</b>			
100-55-0300 Office of Management and Budget			
Nondefense Discretionary Appropriation	90	5.0	5
<b>Office of National Drug Control Policy</b>			
100-60-1457 Office of National Drug Control Policy			
Nondefense Discretionary Appropriation	25	5.0	1
<b>Office of Science and Technology Policy</b>			
100-65-2600 Office of Science and Technology Policy			
Nondefense Discretionary Appropriation	5	5.0	*
<b>Office of the United States Trade Representative</b>			
100-70-0400 Office of the United States Trade Representative			
Nondefense Discretionary Appropriation	52	5.0	3
<b>Unanticipated Needs</b>			
100-95-0037 Unanticipated Needs			
Nondefense Discretionary Appropriation	1	5.0	*

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## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>General Services Administration</b>			
<b>Real Property Activities</b>			
023-05-4542 Federal Buildings Fund			
Nondefense      Discretionary      Appropriation	7	5.0	*
023-05-5254 Disposal of Surplus Real and Related Personal Property			
Nondefense      Mandatory      Appropriation	9	5.1	*
<b>Supply and Technology Activities</b>			
023-10-5250 Expenses of Transportation Audit Contracts and Contract Administration			
Nondefense      Mandatory      Appropriation	13	5.1	1
<b>General Activities</b>			
023-30-0105 Allowances and Office Staff for Former Presidents			
Nondefense      Discretionary      Appropriation	3	5.0	*
023-30-0108 Office of Inspector General			
Nondefense      Discretionary      Appropriation	58	5.0	3
023-30-0110 Operating Expenses			
Nondefense      Discretionary      Appropriation	70	5.0	4
023-30-0401 Government-wide Policy			
Nondefense      Discretionary      Appropriation	61	5.0	3
023-30-0600 Electronic Government (E-GOV) Fund			
Nondefense      Discretionary      Appropriation	12	5.0	1
023-30-4549 Federal Citizen Services Fund			
Nondefense      Discretionary      Appropriation	34	5.0	2

## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>International Assistance Programs</b>			
<b>Millennium Challenge Corporation</b>			
184-03-2750 Millennium Challenge Corporation			
Nondefense      Discretionary      Appropriation	904	5.0	45
<b>International Security Assistance</b>			
184-05-1032 Peacekeeping Operations			
Nondefense      Discretionary      Appropriation	386	5.0	19
184-05-1037 Economic Support Fund			
Nondefense      Discretionary      Appropriation	5,675	5.0	284
184-05-1075 Nonproliferation, Antiterrorism, Demining, and Related Programs			
Nondefense      Discretionary      Appropriation	714	5.0	36
184-05-1081 International Military Education and Training			
Nondefense      Discretionary      Appropriation	106	5.0	5
184-05-1082 Foreign Military Financing Program			
Nondefense      Discretionary      Appropriation	6,344	5.0	317
184-05-1083 Pakistan Counterinsurgency Capability Fund			
Nondefense      Discretionary      Appropriation	850	5.0	43
<b>Multilateral Assistance</b>			
184-10-0071 Strategic Climate Fund			
Nondefense      Discretionary      Appropriation	50	5.0	3
184-10-0072 Contribution to the Inter-American Development Bank			
Nondefense      Discretionary      Appropriation	80	5.0	4
184-10-0073 Contribution to the International Development Association			
Nondefense      Discretionary      Appropriation	1,501	5.0	75
184-10-0076 Contribution to the Asian Development Bank			
Nondefense      Discretionary      Appropriation	208	5.0	10
184-10-0077 Contribution to the International Bank for Reconstruction and Development			
Nondefense      Discretionary      Appropriation	208	5.0	10
184-10-0080 Clean Technology Fund			
Nondefense      Discretionary      Appropriation	186	5.0	9
184-10-0082 Contribution to the African Development Bank			
Nondefense      Discretionary      Appropriation	214	5.0	11
184-10-0089 Contribution to Enterprise for the Americas Multilateral Investment Fund			
Nondefense      Discretionary      Appropriation	25	5.0	1
184-10-0091 Debt Restructuring			
Nondefense      Discretionary      Appropriation	12	5.0	1
184-10-1005 International Organizations and Programs			
Nondefense      Discretionary      Appropriation	351	5.0	18
184-10-1039 Contributions to the International Fund for Agricultural Development			
Nondefense      Discretionary      Appropriation	30	5.0	2
184-10-1045 International Affairs Technical Assistance Program			
Nondefense      Discretionary      Appropriation	27	5.0	1
184-10-1475 Global Food Security Fund			
Nondefense      Discretionary      Appropriation	136	5.0	7

\* denotes \$500,000 or less.



## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>National Aeronautics and Space Administration</b>			
026-00-0109 Office of Inspector General			
Nondefense Discretionary Appropriation	39	5.0	2
026-00-0115 Space Operations			
Nondefense Discretionary Appropriation	4,247	5.0	212
026-00-0120 Science			
Nondefense Discretionary Appropriation	5,116	5.0	256
026-00-0122 Cross Agency Support			
Nondefense Discretionary Appropriation	3,012	5.0	151
026-00-0124 Exploration			
Nondefense Discretionary Appropriation	3,790	5.0	190
026-00-0126 Aeronautics			
Nondefense Discretionary Appropriation	573	5.0	29
026-00-0128 Education			
Nondefense Discretionary Appropriation	137	5.0	7
026-00-0130 Construction, Environmental Compliance, and Remediation			
Nondefense Discretionary Appropriation	402	5.0	20
026-00-0131 Space Technology			
Nondefense Discretionary Appropriation	579	5.0	29
026-00-8978 Science, Space, and Technology Education Trust Fund			
Nondefense Mandatory Appropriation	1	5.1	*



## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Office of Personnel Management</b>			
027-00-0100 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	99	5.0	5
027-00-0400 Office of Inspector General			
Nondefense      Discretionary      Appropriation	3	5.0	*
027-00-0800 Flexible Benefits Plan Reserve			
Nondefense      Mandatory      Spending authority	30	5.1	2
027-00-8135 Civil Service Retirement and Disability Fund			
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	48	5.1	2
027-00-8424 Employees Life Insurance Fund			
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	2	5.1	*
027-00-9981 Employees and Retired Employees Health Benefits Funds			
Nondefense      Mandatory      Administrative expenses in otherwise exempt resources	17	5.1	1

## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Small Business Administration</b>			
028-00-0100 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	440	5.0	22
028-00-0200 Office of Inspector General			
Nondefense      Discretionary      Appropriation	21	5.0	1
028-00-0300 Office of Advocacy			
Nondefense      Discretionary      Appropriation	9	5.0	*
028-00-1152 Disaster Loans Program Account			
Nondefense      Discretionary      Appropriation	896	5.0	45
028-00-1154 Business Loans Program Account			
Nondefense      Discretionary      Appropriation	487	5.0	24

## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Social Security Administration</b>			
016-00-0400 Office of the Inspector General			
Nondefense      Discretionary      Appropriation	29	5.0	1
016-00-8006 Federal Old-age and Survivors Insurance Trust Fund			
Nondefense      Discretionary      Appropriation	2,744	5.0	137
016-00-8007 Federal Disability Insurance Trust Fund			
Nondefense      Discretionary      Appropriation	2,954	5.0	148

## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
<b>Access Board</b>			
<b>Architectural and Transportation Barriers Compliance Board</b>			
310-00-3200 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	7	5.0	*
<b>Administrative Conference of the United States</b>			
302-00-1700 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	3	5.0	*
<b>Advisory Council on Historic Preservation</b>			
306-00-2300 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	6	5.0	*
<b>Affordable Housing Program</b>			
530-00-5528 Affordable Housing Program			
Nondefense      Mandatory      Appropriation	198	5.1	10
<b>Appalachian Regional Commission</b>			
309-00-0200 Appalachian Regional Commission			
Nondefense      Discretionary      Appropriation	64	5.0	3
309-00-9971 Miscellaneous Trust Funds			
Nondefense      Mandatory      Appropriation	8	5.1	*
<b>Broadcasting Board of Governors</b>			
514-00-0204 Broadcasting Capital Improvements			
Nondefense      Discretionary      Appropriation	7	5.0	*
514-00-0206 International Broadcasting Operations			
Nondefense      Discretionary      Appropriation	749	5.0	37
<b>Bureau of Consumer Financial Protection</b>			
581-00-5577 Bureau of Consumer Financial Protection Fund			
Nondefense      Mandatory      Appropriation	448	5.1	23
<b>Chemical Safety and Hazard Investigation Board</b>			
510-00-3850 Chemical Safety and Hazard Investigation Board			
Nondefense      Discretionary      Appropriation	11	5.0	1
<b>Christopher Columbus Fellowship Foundation</b>			
465-00-0100 Payment to the Christopher Columbus Fellowship Foundation			
Nondefense      Discretionary      Appropriation	*	5.0	*
<b>Commission of Fine Arts</b>			
323-00-2600 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	2	5.0	*
323-00-2602 National Capital Arts and Cultural Affairs			
Nondefense      Discretionary      Appropriation	2	5.0	*
<b>Commission on Civil Rights</b>			
326-00-1900 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	9	5.0	*
<b>Committee for Purchase from People Who Are Blind or Severely Disabled</b>			
<b>Committee for Purchase from People who are Blind or Severely Disabled, activities</b>			

\* denotes \$500,000 or less.

## Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
338-00-2000 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	5	5.0	*
<b>Commodity Futures Trading Commission</b>			
339-00-1400 Commodity Futures Trading Commission			
Nondefense      Discretionary      Appropriation	206	5.0	10
339-00-4334 Customer Protection Fund			
Nondefense      Mandatory      Spending authority	13	5.1	1
<b>Consumer Product Safety Commission</b>			
343-00-0100 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	115	5.0	6
<b>Corporation for National and Community Service</b>			
485-00-2721 Inspector General			
Nondefense      Discretionary      Appropriation	4	5.0	*
485-00-2722 Salaries and Expenses			
Nondefense      Discretionary      Appropriation	83	5.0	4
485-00-2726 Payment to National Service Trust Fund			
Nondefense      Discretionary      Appropriation	213	5.0	11
485-00-2728 Operating Expenses			
Nondefense      Discretionary      Appropriation	755	5.0	38
<b>Corporation for Public Broadcasting</b>			
344-00-0151 Corporation for Public Broadcasting			
Nondefense      Discretionary      Advance appropriation	445	5.0	22
<b>Corporation for Travel Promotion</b>			
580-00-5585 Travel Promotion Fund			
Nondefense      Mandatory      Appropriation	100	5.1	5
<b>Court Services and Offender Supervision Agency for the District of Columbia</b>			
511-00-1733 Public Defender Service for the District of Columbia			
Nondefense      Discretionary      Appropriation	37	5.0	2
511-00-1734 Federal Payment to Court Services and Offender Supervision Agency for the District of Columbia			
Nondefense      Discretionary      Appropriation	214	5.0	11
<b>Defense Nuclear Facilities Safety Board</b>			
347-00-3900 Salaries and Expenses			
Defense      Discretionary      Appropriation	29	7.8	2
Defense      Discretionary      Unobligated balance in 050	1	7.8	*
<i>Account Total</i>	<u>30</u>		<u>2</u>
<b>Delta Regional Authority</b>			
517-00-0750 Delta Regional Authority			
Nondefense      Discretionary      Appropriation	12	5.0	1
<b>Denali Commission</b>			
513-00-1200 Denali Commission			
Nondefense      Discretionary      Appropriation	12	5.0	1
513-00-8056 Denali Commission Trust Fund			
Nondefense      Discretionary      Appropriation	4	5.0	*
<b>District of Columbia</b>			

\* denotes \$500,000 or less.













**Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013**

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
519-00-5365 Vietnam Debt Repayment Fund			
Nondefense      Mandatory      Appropriation	5	5.1	*

\* denotes \$500,000 or less.

Sequestrable Budgetary Resources and Reductions in Sequestrable Resources by OMB Account -- FY 2013

(Amounts in millions)

Agency / Bureau / Account / Function / BEA Category / Budgetary Resource	Sequestrable BA Amount	Sequester Percentage	Sequester Amount
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Amounts may not sum to total due to rounding.

Mandatory Federal administrative expenses of otherwise exempt accounts are sequestrable pursuant to section 251A(8) and section 256(h) of BBEDCA.

Pursuant to section 255(f) of BBEDCA, the President notified the Congress of his decision to exempt all military personnel accounts from sequester for FY 2013. See the July 31, 2012 letter to the Congress, available at <http://www.whitehouse.gov/sites/default/files/omb/legislative/letters/military-personnel-letter-biden.pdf>.

Unobligated balances of budget authority carried over from prior fiscal years in defense function 050 accounts are sequestrable.

For intragovernmental payments, sequestration is applied to the paying account. The funds are generally exempt in the receiving account in accordance with section 255(g)(1)(A) of BBEDCA so that the same dollars are not sequestered twice.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

March 1, 2013

M-13-06

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jeffrey D. Zients *JDC*  
Deputy Director for Management

SUBJECT: Issuance of the Sequestration Order Pursuant To Section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985, as Amended

This memorandum is to inform executive departments and agencies (agencies) that the President has issued a sequestration order (order) in accordance with section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (BBEDCA), 2 U.S.C. 901a. The order requires that budgetary resources in each non-exempt budget account be reduced by the amount calculated by the Office of Management and Budget (OMB) in its report to Congress of March 1, 2013, entitled *OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013* (sequestration report).

Due to the failure of the Joint Select Committee on Deficit Reduction, the President was required by law to issue an order canceling \$85 billion in budgetary resources across the Federal Government for the remainder of Fiscal Year (FY) 2013. OMB has calculated that, over the course of the fiscal year, the order requires a 7.8 percent reduction in non-exempt defense discretionary funding and a 5.0 percent reduction in non-exempt nondefense discretionary funding. The sequestration also requires reductions of 2.0 percent to Medicare, 5.1 percent to other non-exempt nondefense mandatory programs, and 7.9 percent to non-exempt defense mandatory programs. The sequestration report provides calculations of the amounts and percentages by which various budgetary resources are required to be reduced, and a listing of the reductions required for each non-exempt budget account.

Agencies shall apply the same percentage reduction to all programs, projects, and activities within a budget account, as required by section 256(k)(2) of BBEDCA, 2 U.S.C. 906(k)(2). Agencies should operate in a manner that is consistent with guidance provided by OMB in Memorandum 13-03, *Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources* and Memorandum 13-05, *Agency Responsibilities for Implementation of Potential Joint Committee Sequestration*.

MEMORANDUM OF AGREEMENT (MOA)  
 Between the  
 Defense Logistics Agency  
 And the  
 American Federation of Government Employees, Council 169 (AFGE)  
 ADMINISTRATIVE FURLOUGH

This MOA establishes procedures and describes actions the Agency will take in the event of a furlough of 30 days or less in accordance with applicable law, Government-wide rule or regulation.

For furloughs caused by a lapse of appropriations, see the MOA between DLA and AFGE, Emergency Furlough, signed by the parties on October 17 & 19, 2011.

For furloughs of a non-emergency basis (administrative furloughs), to include such furloughs caused by Sequestration under the Budget Control Act (BCA):

1. The Agency will determine those positions to be "excepted" in the event of a furlough in accordance with established DoD guidance. In general, exceptions will be based on position requirements and will be limited based on the determination of the DLA Director. Where organizations will have multiple employees performing essentially identical functions but only a portion of them will be excepted from the furlough, the exception of individual employees will be based on seniority using the RIF SCD. As soon as practicable and after approval by the appropriate authorities, the Agency will furnish the respective local union (with a copy to the Council President) a copy of the list of excepted bargaining unit positions.
2. To the extent practicable employees will serve furloughs of equal length.
3. DLA Employees subject to furlough will be placed on a five (5) day, eight (8) hour work week, with flexible start/end time. Furlough days will be discontinuous and will be either the first or last day of the work week. Employees will submit their desired furlough day (first or last day of their work week) to their immediate supervisor. In those instances where there is conflict from multiple employees requesting the same furlough day and all requests cannot be accommodated, ties will be broken by the supervisor applying the RIF SCD. In considering employee requests within the above parameters, supervisors will ensure sufficient staffing to meet curtailed mission requirements. Those employees who currently have an alternative work schedule with a scheduled regular day off will have the option of retaining their current day off as their weekly furlough day. For furlough days that fall on a holiday, the next business day will serve as the furlough day.
4. Furlough days will be discontinuous and will be served on either the first or last day of the employee's work week. Employees who currently have a Sunday as part of their basic work schedule will not be required to be furloughed on Sunday. In those

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instances the supervisor and the employee will work together to determine the standard furlough day.

5. Employees who were working any type of alternative work schedule will return to such work schedule effective the first full pay period following the end of the furlough period.
6. Supervisors will work with part-time employees to define a set schedule for duration of the furlough period. Based on this established schedule supervisors will compute a pro-rated number of furlough hours per pay period commensurate with that part-time schedule.
7. Employees who are hired or transferred into the bargaining unit after the furloughs begin will serve a proportionate number of days on furlough.
8. Employees will be provided a 30-day written notice of the furlough. The notice will include a description of the reason for the furlough, applicable rights to appeal, and a proposed date for the furlough to be effected.
9. All provisions of the Master Labor Agreement will be applicable during the furlough except those that are in conflict with this memorandum of agreement or laws related to furlough actions.
10. For the purposes of timeframes for grievances and ADR furlough days will be treated as non-work days.
11. Should the Department's situation change so that furloughs can be shortened, the Agency will act promptly to cancel additional furlough days. The AFGE Council 169 President will be notified immediately. Employees will be notified of the cancellation of additional furlough days as soon as practicable; this will include multiple communication vehicles including public media.
12. Employees on an approved telework agreement who are not furloughed on their scheduled telework day may continue to telework. Those employees who are furloughed on their telework day may request to change their telework day during the furlough period. Requests for additional telework in accordance with current procedures may be considered, subject to mission and workload requirements.
13. DLA will pursue reducing fees associated with DLA operated child development centers to the extent practicable during the period of the furlough.
14. Employees are entitled to benefits outlined in guidance issued by the Office of Personnel Management related to non-emergency furloughs. This guidance can be found at <http://www.opm.gov/furlough/furlough.asp>.

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15. The parties agree to abide by applicable laws, rules, and regulations regarding furloughs. If Congress and the President enact legislation regarding retroactive compensation for furloughed employees, the parties agree to engage in discussions regarding the implementation of such legislation to bargaining unit employees, as applicable.
16. In light of budget cuts associated with sequestration under the Budget Control Act, DLA will pursue cost reductions in non-labor areas, including administrative expenses, infrastructure and facilities, contract services, and information technology.

The parties agree that the terms of this MOA may change as updated guidance/instructions are received by DLA from the President, Congress or the Department.

  
Brad Bunn, Director  
DLA Human Resources

  
Frank D. Rienti, President  
AFGE Council 169

3-1-13



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

February 27, 2013

M-13-05

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Danny Werfel  
Controller

SUBJECT: Agency Responsibilities for Implementation of Potential Joint Committee  
Sequestration

Unless Congress acts to amend current law, the President is required to issue a sequestration order on March 1, 2013, canceling \$85 billion in budgetary resources across the Federal Government. Because these cuts must be achieved over the remaining seven months of the fiscal year, the Office of Management and Budget (OMB) estimates that the effective percentage reductions are approximately 9 percent for nondefense programs and 13 percent for defense programs. These reductions will result in significant and harmful impacts to national security and domestic priorities.

The President has been clear that sequestration is bad policy that was never intended to be implemented, and the Administration remains hopeful that Congress will act to avoid it through an agreement on balanced deficit reduction. However, because legislation may not be enacted to avoid sequestration before the current deadline of March 1, 2013, executive departments and agencies (agencies) with sequestrable accounts have been engaged in planning activities to operate at the lower, post-sequestration funding levels should it be necessary.

This guidance builds on prior communications with agencies about the implementation of sequestration, and addresses questions that have been raised as to certain categories of planning activities.

**Agency Planning Activities**

OMB Memorandum 13-03, *Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources*, directed agencies to begin planning activities to operate with reduced budgetary resources in the event that sequestration occurs. Agencies' planning efforts must be guided by the principle of protecting the agency's mission to serve the public to the greatest extent practicable. Planning efforts should be done with sufficient detail and clarity to determine the specific actions that will be taken to operate under the lower level of budgetary resources

required by sequestration. For example, agencies should identify any major contracts that they plan to cancel, re-scope or delay as well as any grants that they plan to cancel, delay, or for which they plan to change the payment amount. Similarly, agencies should identify the number of employees who will be furloughed, the length of expected furloughs, the timing of when furlough notices will be issued, and the manner in which furloughs will be administered. In some cases, agencies may not be able to ascertain all of this information prior to March 1. However, agencies should continue to engage in intense and thorough planning activities to determine all specific actions that will be taken as soon as practicable.

### **Communications**

To the extent permitted by law, agencies should inform their various partners and stakeholders in a timely and complete manner of the impact of sequestration so that third parties are able to adjust their operations and plans as appropriate. Accordingly, at this time, agencies should be actively and continuously communicating with affected stakeholders—including States, localities, tribal governments, Federal contractors, Federal grant recipients, and Federal employees—regarding elements of the agency's planning that have a direct impact on these groups. These communications will vary greatly by agency and by stakeholder, but agencies should be as specific as possible in order to provide sufficient detail to be helpful to these stakeholders in understanding the implications of the reduced budget authority resulting from sequestration.

With regard to any planned personnel actions to reduce Federal civilian workforce costs, consistent with Section 3(a)(ii) of Executive Order 13522, agencies must allow employees' exclusive representatives to have pre-decisional involvement in these matters to the fullest extent practicable and permitted under the law. In particular, in instances where agencies are considering potential furloughs, agencies have a duty to notify their exclusive representatives and, upon request, bargain over any negotiable impact and implementation proposals the union may submit, unless the matter of furloughs is already covered by a collective bargaining agreement. Agencies should ensure that they are fully aware of and in compliance with any and all collective bargaining requirements, and should consult with their General Counsel or appropriate labor relations office for questions regarding these requirements and appropriate interaction with employees and unions on these matters.

### **Acquisition**

Due to the Government's large acquisition footprint, sequestration will inevitably affect agency contracting activities and require agencies to reduce contracting costs where appropriate. As with all actions taken as a result of sequestration, agencies should ensure that any contract actions are both cost-effective and minimize negative impact on the agency's mission to the extent practicable.

Program, acquisition, financial/budget management, information technology, and legal personnel should work together to make determinations regarding contracts in light of sequestration. As a general matter, agencies should only enter into new contracts or exercise options when they support high-priority initiatives or where failure to do so would expose the

government to significantly greater costs in the future. Agencies may also consider de-scoping or terminating for convenience contracts that are no longer affordable within the funds available for Fiscal Year 2013, should no other options exist to reduce contracting costs in these instances. Should such steps be necessary, agencies must evaluate the associated costs and benefits of such actions, and appropriately inform and negotiate with contractors. Finally, agencies should take all appropriate steps to minimize to the extent practicable the impact on small businesses of reduced contracting activities.

### **Financial Assistance**

Given the widespread use of grants, loans and other Federal financial assistance to non-federal entities (e.g., State, local and tribal governments, non-profit organizations, and companies), sequestration will impact the funding of these activities.

As a general matter, agencies should ensure that any new financial assistance obligations or funding increases under existing agreements are consistent with the need to protect the agency's mission at the post-sequestration level. In light of sequestration, agencies may also consider delaying awarding of new financial assistance obligations, reducing levels of continued funding, and renegotiating or reducing the current scope of assistance. Agencies may be forced to reduce the level of assistance provided through formula funds or block grants. Should any such steps be necessary, agencies should evaluate the associated costs and benefits of such actions and appropriately engage and inform recipient(s) as early as possible.

### **Increased Scrutiny of Certain Activities**

In determining the appropriate manner to achieve funding reductions, agency heads must also ensure that their agencies have risk management strategies and internal controls in place that provide heightened scrutiny of certain types of activities funded from sequestered accounts. To the extent these accounts remain at the post-sequestration funding level, increased scrutiny should apply to:

- hiring new personnel;<sup>1</sup>
- issuing discretionary monetary awards to employees, which should occur only if legally required until further notice; and
- incurring obligations for new training, conferences, and travel (including agency-paid travel for non-agency personnel).

In light of the reduced budgetary resources available due to sequestration, expending funds on these activities at this time would in many circumstances not be the most effective way to protect agency mission to the extent practicable. Therefore, agency leadership should review processes and controls around these activities, and ensure that these activities are conducted only

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<sup>1</sup> Agencies must also ensure that appropriate controls are in place to prevent the increased use of contractors to perform work due to any restrictions on hiring. Agencies should bear in mind the statutory restrictions contained in 10 U.S.C. 2461 and 41 U.S.C. 1710 on the conversion of functions from performance by Federal employees to performance by contractors.

to the extent they are the most cost-effective way to maintain critical agency mission operations under sequestration.

Please contact your OMB Resource Management Office (RMO) if you have any questions about or need assistance with this guidance.



**U.S. Department of Defense**  
Office of the Assistant Secretary of Defense (Public Affairs)

## News Release

On the Web:

<http://www.defense.gov/Releases/Release.aspx?ReleaseID=15826>

Media contact: +1 (703) 697-5131/697-5132

Public contact:

<http://www.defense.gov/landing/comment.aspx>

or +1 (703) 571-3343

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**IMMEDIATE RELEASE**

**No. 097-13**  
**February 20, 2013**

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### **Message to the Department from Secretary of Defense Leon E. Panetta on the Preparations for Potential Sequestration on March 1 and Furlough Notifications**

To All Department of Defense Personnel:

“For more than a year and a half, the president, the Joint Chiefs of Staff and I have repeatedly voiced our deep concerns over the half a trillion dollars in automatic across-the-board cuts that would be imposed under sequestration and the severe damage that would do both to this department and to our national defense.”

“The administration continues to work with Congress to reach agreement on a balanced deficit reduction plan to avoid these cuts. Meanwhile, because another trigger for sequestration is approaching on March 1, the department’s leadership has begun extensive planning on how to implement the required spending reductions. Those cuts will be magnified because the department has been forced to operate under a six-month continuing resolution that has already compelled us to take steps to reduce spending.”

“In the event of sequestration we will do everything we can to be able to continue to perform our core mission of providing for the security of the United States, but there is no mistaking that the rigid nature of the cuts forced upon this department, and their scale, will result in a serious erosion of readiness across the force.”

“I have also been deeply concerned about the potential direct impact of sequestration on you and your families. We are doing everything possible to limit the worst effects on DoD personnel -- but I regret that our flexibility within the law is extremely limited. The president has used his legal authority to exempt military personnel funding from sequestration, but we have no legal authority to exempt civilian personnel funding from reductions. As a result, should sequestration occur and continue for a substantial period, DoD will be forced to place the vast majority of its civilian workforce on administrative furlough.”

“Today, I notified Congress that furloughs could occur under sequestration. I can assure you that, if we have to implement furloughs, all affected employees will be provided at least 30 days’ notice prior to executing a furlough and your benefits will be protected to the maximum extent possible. We also will work to ensure that furloughs are executed in a consistent and appropriate manner, and we will also continue to engage in discussions with employee unions as appropriate.”

“Working with your component heads and supervisors, the department’s leaders will continue to keep you informed. As we deal with these difficult issues, I want to thank you for your patience, your hard work, and your continued dedication to our mission of protecting the country.”

“Our most important asset at the department is our world-class personnel. You are fighting every day to keep our country strong and secure, and rest assured that the leaders of this department will continue to fight with you and for you.”



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

FEB 20 2013

MEMORANDUM FOR DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES

SUBJECT: Preparations for Potential Sequestration on March 1 and Furlough Notifications

For more than a year and a half, the President, the Joint Chiefs of Staff, and I have repeatedly voiced our deep concerns over the half a trillion dollars in automatic across-the-board cuts that would be imposed under sequestration and the severe damage that it would do to both this Department and our national defense.

The Administration continues to work with Congress to reach agreement on a balanced deficit reduction plan to avoid these cuts. Meanwhile, because another trigger for sequestration is approaching on March 1<sup>st</sup>, the Department's leadership has begun extensive planning on how to implement the required spending reductions. These cuts will be magnified because the Department has been forced to operate under a six-month continuing resolution that has already compelled us to take steps to reduce spending.

In the event of sequestration, we will do everything we can to continue to perform our core mission of providing for the security of the United States, but there is no mistaking that the rigid nature and scale of the cuts forced upon this Department will result in a serious erosion of readiness across the force.

I have also been deeply concerned about the potential direct impact of sequestration on you and your families. We are doing everything possible to limit the worst effects on DoD personnel – but I regret that our flexibility within the law is extremely limited. The President has used his legal authority to exempt military personnel funding from sequestration, but we have no legal authority to exempt civilian personnel funding from reductions. As a result, should sequestration occur and continue for a substantial period, DoD will be forced to place the vast majority of its civilian workforce on administrative furlough.

Today, I notified Congress that furloughs could occur under sequestration. I can assure you that, if we have to implement furloughs, all affected employees will be provided at least 30 days' notice prior to executing a furlough and your benefits will be protected to the maximum extent possible. We will work to ensure that furloughs are executed in a consistent and appropriate manner, and we will also continue to engage in discussions with employee unions as appropriate. More information and answers to frequently asked questions regarding furloughs can be found at [www.opm.gov/furlough](http://www.opm.gov/furlough), under the "administrative furlough" section.



OSD001644-13

Working with your component heads and supervisors, the Department's leaders will continue to keep you informed. As we deal with these difficult issues, I want to thank you for your patience, hard work, and continued dedication to our mission of protecting the country.

Our most important asset in the Department is our world-class personnel. You are fighting every day to keep our country strong and secure, and rest assured that the leaders of this Department will continue to fight with you and for you.

A handwritten signature in black ink, appearing to be "John S. ...", with a long horizontal flourish extending to the right.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

January 14, 2013

M-13-03

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jeffrey D. Zients   
Deputy Director for Management

SUBJECT: Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources

In the coming months, executive departments and agencies (agencies) will confront significant uncertainty regarding the amount of budgetary resources available for the remainder of the fiscal year. In particular, unless Congress acts to amend current law, the President is required to issue a sequestration order on March 1, 2013, canceling approximately \$85 billion in budgetary resources across the Federal Government. Further uncertainty is created by the expiration of the Continuing Appropriations Resolution, 2013 (CR) on March 27, 2013. This memorandum directs agencies to take certain steps to plan for and manage this budgetary uncertainty.

The Administration continues to urge Congress to take prompt action to address the current budgetary uncertainty, including through the enactment of balanced deficit reduction to avoid sequestration. Should Congress fail to act to avoid sequestration, there will be significant and harmful impacts on a wide variety of Government services and operations. For example, should sequestration remain in place for an extended period of time, hundreds of thousands of families will lose critical education and wellness services through Head Start and nutrition assistance programs. The Department of Defense will face deep cuts that will reduce readiness of non-deployed units, delay needed investments in equipment and facilities, and cut services for military families. And Federal agencies will likely need to furlough hundreds of thousands of employees and reduce essential services such as food inspections, air travel safety, prison security, border patrols, and other mission-critical activities.

At this time, agencies do not have clarity regarding the manner in which Congress will address these issues or the amount of budgetary resources that will be available through the remainder of the fiscal year. Until Congress acts, agencies must continue to prepare for the possibility that they will need to operate with reduced budgetary resources.

Prior to passage of the American Taxpayer Relief Act of 2012 (ATRA), the President was required to issue a sequestration order on January 2, 2013. Although the ATRA postponed this date by two months, agencies had already engaged in extensive planning for operations under post-sequestration funding levels before this postponement was effected. In light of persistent budgetary uncertainty, all agencies should continue these planning activities, in coordination with the Office of Management and Budget (OMB), and should intensify efforts to identify actions that may be required should sequestration occur.

Agencies should generally adhere to the following guiding principles, to the extent practicable and appropriate, in preparing plans to operate with reduced budgetary resources in the event that sequestration occurs:

- use any available flexibility to reduce operational risks and minimize impacts on the agency's core mission in service of the American people;
- identify and address operational challenges that could potentially have a significant deleterious effect on the agency's mission or otherwise raise life, safety, or health concerns;
- identify the most appropriate means to reduce civilian workforce costs where necessary – this may include imposing hiring freezes, releasing temporary employees or not renewing term or contract hires, authorizing voluntary separation incentives and voluntary early retirements, or implementing administrative furloughs (appropriate guidance for administrative furloughs can be found on the OPM website [\[here\]](#)); consistent with Section 3(a)(ii) of Executive Order 13522, allow employees' exclusive representatives to have pre-decisional involvement in these matters to the fullest extent practicable;
- review grants and contracts to determine where cost savings may be achieved in a manner that is consistent with the applicable terms and conditions, remaining mindful of the manner in which individual contracts or grants advance the core mission of the agency;
- take into account funding flexibilities, including the availability of reprogramming and transfer authority; and,
- be cognizant of the requirements of the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. §§ 2101-2109.

While agency plans should reflect intensified efforts to prepare for operations under a potential sequestration, actions that would implement reductions specifically designed as a response to sequestration should generally not be taken at this time. In some cases, however, the overall budgetary uncertainty and operational constraints may require that certain actions be taken in the immediate- or near-term. Agencies presented with these circumstances should continue to act in a prudent manner to ensure that operational risks are avoided and adequate funding is available for the remainder of the fiscal year to meet the agency's core requirements and mission. Should circumstances require an agency to take actions that would constitute a change from normal practice and result in a reduction of normal spending and operations in the

immediate- or near-term, the agency must coordinate closely with its OMB Resource Management Office (RMO) before taking any such actions.

All agencies should work with their OMB RMO on the appropriate timing to submit draft contingency plans for operating under sequestration for review. Furthermore, should Congress take action that affects the current budgetary uncertainty, OMB will provide agencies with additional guidance as appropriate.

## Panetta: Fiscal Crisis Poses Biggest Immediate Threat to DOD

By Karen Parrish  
American Forces Press Service

WASHINGTON, Jan. 10, 2013 – The “perfect storm of budget uncertainty” howling around his department is the biggest immediate threat facing the U.S. military, Defense Secretary Leon E. Panetta told reporters here today.



*Defense Secretary Leon E. Panetta and Army Gen. Martin E. Dempsey, chairman of the Joint Chiefs of Staff, brief the press at the Pentagon, Jan. 10, 2013. Panetta and Dempsey discussed the effects of sequestration if it were to take effect at the end of March. DOD photo by Erin Kirk-Cuomo (Click photo for screen-resolution image):[high-resolution image](#) available.*

Panetta and Army Gen. Martin E. Dempsey, chairman of the Joint Chiefs of Staff, stressed during a regular Pentagon press conference that unless Congress acts, the nation’s military readiness will be compromised.

The United States has a number of adversaries around the world, Panetta said, “but the most immediate threat to our ability to achieve our mission is fiscal uncertainty: not knowing what our budget will be; not knowing if our budget will be drastically cut; and not knowing whether the strategy that we put in place can survive.”

Panetta emphasized that DOD “is doing its part” by implementing over the next decade the \$487 billion spending reduction set by Congress. “We designed a strategy; we know what the elements of that strategy are; we built a budget based on that, and we achieved our savings by virtue of that strategy,” he said.

But the additional half-trillion-dollar “meat-axe cuts” sequester would trigger still loom “less than 50 days away,” the secretary noted.

“While we appreciate ... that both parties came together to delay sequester, the unfortunate thing is sequester itself, and the sequester threat, [was] not removed,” Panetta said. “And the prospect ... is undermining our ability to responsibly manage this department.”

Two other fiscal crises are meanwhile converging on the nation’s forces, he added:

- Because Congress didn’t approve an appropriations act for fiscal 2013, DOD has been operating under a continuing resolution and will do so at least through March 27. The continuing resolution funds operations at fiscal 2012 levels, instead of the higher proposed fiscal 2013 levels Pentagon officials had anticipated.
- The debt-ceiling crisis, Panetta said, “could create even further turmoil that could impact on our budget and our economy.”

Looking at all three factors, the secretary said simply, “We have no idea what the hell is going to happen.” But DOD leaders do know that the worst-case scenario would mean “serious harm” to military readiness, he said.

Panetta noted defense strategy places the highest priority on operations and maintenance funding as the key to a ready force. He described the triple threat facing those funds:

- If Congress fails to pass an appropriations bill for fiscal 2013 and instead extends the continuing resolution through the fiscal year, “overall operating accounts would decrease by about 5 percent ... about \$11 billion that would come out of [operations and maintenance funds].”
- If sequester occurs, “We would have to cut, in this fiscal year, another 9 percent, almost \$18 billion from ... these operating accounts as well.”
- To protect funding for the war in Afghanistan from required cuts, “We would again have to cut another 5 percent, another \$11 billion, from readiness money available in the active-duty base budget, and more for the Army and the Marine Corps.”

Panetta summed up: “We’re looking at a 19 to 20 percent reduction in the base budget operating dollars for active units, including a cut of what looks like almost 30 percent for the Army.”

The secretary said practical results of these cuts would be less training for units not imminently deploying to Afghanistan; less shipboard training for all but the highest priority missions; less pilot training and fewer flight hours; curtailed ship maintenance and disruption to research and weapons modernization programs.

Civilian employees would also take a hit, he said: unpaid layoffs, which the government calls furloughs, would put civilian employees temporarily out of work. This “would further harm our readiness, and create hardship on them and their families,” Panetta noted.

A plan is in place to implement such layoffs if sequester happens, the secretary said. “This action is strictly precautionary,” he said. “I want to make that clear: It's precautionary. But I have an obligation to ... let Congress know that we may have to do that, and I very much hope that we will not have to furlough anyone. But we've got to be prepared to do that if we face this situation.”

Panetta said the net result of sequester under a continuing resolution would be “what I said we should not do with the defense budget, which is to hollow out the defense force of this nation.” Rather than let that happen, Panetta added, DOD leaders have decided to take steps to minimize the damage that would follow Congressional inaction.

“We still have an obligation to protect this country,” the secretary said. “So for that reason, I've asked the military services and the other components to immediately begin implementing prudent measures that will help mitigate our budget risk.”

Panetta said he has directed any actions taken “must be reversible to the extent feasible and must minimize harmful effects on readiness.”

But, he added, “We really have no choice but to prepare for the worst.” First steps to containing budget risk will include cutting back on facility maintenance, freezing civilian hiring and delaying some contract awards, the secretary said.

Panetta has also directed the services to develop detailed plans for how they will implement sequester-triggered cuts, if required, he said, "because there will be so little time to respond in the current fiscal year. I mean, we're almost halfway through the fiscal year."

The secretary said the intensive planning effort now under way will ensure the military is prepared to accomplish its core missions.

"I want to emphasize, however, that ... no amount of planning that we do can fully offset the harm that would result from sequestration, if that happens," he added.

Panetta said U.S. service members are working and fighting, and some are dying, every day.

"Those of us in Washington need to have the same courage as they do to do the right thing and try to protect the security of this country," he added. "We must ensure we have the resources we need to defend the nation and meet our commitments to our troops, to our civilian employees, and to their families, after more than a decade of war."

Congress must pass a balanced deficit reduction plan, de-trigger sequester, and pass the appropriations bills for fiscal 2013, he said.

"I'm committed to do whatever I can in the time I have remaining [in office] to try to work with the Congress to ... resolve these issues," Panetta said. "We have a vital mission to perform, one that the American people expect and that they are entitled to, which is to protect their safety and to protect our national security. Congress must be a partner in that mission. I'd love to be able to do this alone, but I can't."

Dempsey offered his view of what wreckage the fiscal "storm" would leave behind.

"As I've said before, sequestration is a self-inflicted wound on national security," the chairman said. "It's an irresponsible way to manage our nation's defense. It cuts blindly, and it cuts bluntly. It compounds risk, and it ... compromises readiness. In fact, readiness is what's now in jeopardy. We're on the brink of creating a hollow force, the very thing we said we must avoid."

Dempsey noted sequestration may now "hit" while the department, under a continuing resolution, is also implementing "the deep cuts already made in the Budget Control Act" and fighting a war in Afghanistan.

"Any one of these would be a serious challenge on its own," Dempsey said. "Together, they set the conditions for readiness to pass a tipping point as early as March."

DOD won't shortchange those in combat, and will resource those who are next to deploy while still caring for wounded warriors and their families, the chairman said.

"But for the rest of the force, operations, maintenance and training will be gutted," Dempsey said. "We'll ground aircraft, return ships to port, and sharply curtail training across the force. ... [W]e may be forced to furlough civilians at the expense of maintenance and even health care. We'll be unable to reset the force following a decade of war."

Military readiness will begin to erode immediately, Dempsey said, telling reporters, "Within

months, we'll be less prepared. Within a year, we'll be unprepared.”

The crisis “can and must be avoided, the sooner, the better,” the chairman said.

“We need budget certainty; we need time to absorb the budget reductions; we need the flexibility to manage those reductions across the entire budget,” he said. “We have none of these things right now. And without them, we have no choice but to steel ourselves for the consequences.”

**Biographies:**

[Leon E. Panetta](#)

[Army Gen. Martin E. Dempsey](#)

**Related Sites:**

[Transcript](#)

[Video](#)

**Related Articles:**

[Budget Process ‘A Mess,’ Pentagon Spokesman Says](#)

[DOD Comptroller: Budget Stability Key to National Security](#)

[Panetta Thanks Congress, Seeks End to Sequestration](#)

[Panetta Memo Describes Possible Sequestration Effects](#)



DEPUTY SECRETARY OF DEFENSE  
 1010 DEFENSE PENTAGON  
 WASHINGTON, DC 20301-1010

JAN 10 2013

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
 CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
 UNDER SECRETARIES OF DEFENSE  
 DEPUTY CHIEF MANAGEMENT OFFICER  
 DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION  
 DIRECTOR, OPERATIONAL TEST AND EVALUATION  
 GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
 INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
 ASSISTANT SECRETARIES OF DEFENSE  
 DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER  
 ASSISTANTS TO THE SECRETARY OF DEFENSE  
 DIRECTOR, ADMINISTRATION AND MANAGEMENT  
 DIRECTOR, NET ASSESSMENT  
 DIRECTORS OF THE DEFENSE AGENCIES  
 DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Handling Budgetary Uncertainty in Fiscal Year 2013

Two sources of uncertainty are creating budgetary challenges for the Department of Defense (DoD) in 2013. The first is the fact that the Department is operating under a Continuing Resolution (CR) through at least March 27, 2013. Because most operating funding was planned to increase from Fiscal Year (FY) 2012 to FY 2013, but is instead being held at FY 2012 levels under the CR, funds will run short at current rates of expenditure if the CR continues through the end of the fiscal year in its current form. The Secretary will continue to urge the Congress to enact appropriations bills for FY 2013. But if the CR were to be extended through the end of the fiscal year, it would hinder our ability to maintain a ready force.

The second source of uncertainty is the potential sequestration recently deferred from January 2, 2013 to March 1, 2013 by the American Taxpayer Relief Act of 2012. The possibility of sequestration occurring as late as the beginning of the sixth month of the fiscal year creates significant additional uncertainty for the management of the Department.

Either of these problems, in isolation, would present serious budget execution challenges to the Department, negatively impacting readiness and resulting in other undesirable outcomes. This situation would be made even more challenging by the need to protect funds for wartime operations.

Near-Term Actions

Given the overall budgetary uncertainty faced by the Department, and in particular the immediate operational issues presented by the CR, it is prudent to take certain steps now in order to help avoid serious future problems. I therefore authorize all Defense Components to begin implementing measures that will help mitigate our budget execution risks. For now, and to the extent possible, any actions taken must be reversible at a later date in the event that Congress acts to remove the risks I have described. The actions should be structured to minimize harmful effects on our people and on operations and unit readiness.

Categories of approved actions are identified in Table 1. The authority to implement these actions shall remain in effect until they are revoked in a subsequent memorandum from my office. If Components believe they must take actions that go beyond the categories listed in Table 1, they should present the options for my review and approval prior to their implementation.

Intensified Planning for Longer-Term Budgetary Uncertainty

Given the added challenge of a potential sequestration in March, we must also intensify efforts to plan future actions that might be required should that happen. This planning does not assume these unfortunate events will occur, only that we must be ready.

As they formulate draft plans, Components should follow the guidance that directs the Department to take all possible steps to mitigate harmful effects associated with this budgetary uncertainty and to maintain a strong defense. The details of the guidance are summarized below:

- For the operating portions of the DoD budget:
  - Exempt all military personnel funding from sequestration reductions, in accordance with the decision made by the President in July 2012.
  - Fully protect funding for wartime operations.
  - Fully protect Wounded Warrior programs.
  - To the extent feasible, protect programs most closely associated with the new defense strategy.
  - Reduce civilian workforce costs using the following actions (all subject to mission-critical exemptions, and appropriate consultation with union representatives consistent with Executive Order 13522):
    - Release temporary employees and do not renew term hires.
    - Impose hiring freezes.
    - Authorize voluntary separation incentives and voluntary early retirements to the extent feasible.
    - Consider the possibility of furloughs of up to 30 calendar days or 22 discontinuous workdays.
  - To the extent feasible, protect family programs.

- To the extent feasible, protect funding most directly associated with readiness; focus the necessary cuts on later deploying units.
- For the investment portions of the DoD budget (procurement, RDT&E, construction):
  - Protect investments funded in Overseas Contingency Operations if associated with urgent operational needs.
  - To the extent feasible, protect programs mostly closely associated with the new defense strategy.
  - Take prudent steps to minimize disruption and added costs (e.g., avoid penalties associated with potential contract cancellations where feasible; prudently manage construction projects funded with prior-year monies).

While we are hopeful of avoiding budgetary problems, draft Component plans should reflect the possibility that we may have to operate under a year-long CR and that sequestration takes place. Table 2 shows the types of information that should be included in the plans. Components should submit these draft plans to the Under Secretary of Defense (Comptroller) by February 1, 2013. The Under Secretary of Defense (Comptroller) will work with the Components to adjust this schedule if changes are required due to the deadlines for the preparation of the FY 2014 President's Budget submission.

I appreciate your patience as we work through these difficult budgetary times. The Department will continue to do its best to resolve these budgetary uncertainties in a manner that permits us to support our current defense strategy and maintain a strong defense.

If addressees have questions about this memorandum, they should direct them to the Under Secretary of Defense (Comptroller).

A handwritten signature in black ink that reads "Ashton Carter". The signature is written in a cursive, flowing style.

Attachments:  
As stated

**Table 1. Categories of Approved Near-Term Actions**

- Freeze civilian hiring (with exceptions for mission-critical activities\*).
- Provide authority to terminate employment of temporary hires and to notify term employees that their contracts will not be renewed (with exceptions for mission-critical activities and when appropriate in terms of personnel timing\*).
- Reduce base operating funding.
- Curtail travel, training, and conferences (all with exceptions for mission-critical activities\* including those required to maintain professional licensure or equivalent certifications).
- Curtail facilities maintenance or Facilities Sustainment, Restoration, and Modernization (FSRM) (with exceptions for mission-critical activities\*).
  - If necessary, services/agencies are authorized to fund FSRM at levels below current guidance.
- Curtail administrative expenses such as supply purchases, business IT, ceremonies, etc. (with exceptions for mission-critical activities\*).
- Review contracts and studies for possible cost-savings.
- Cancel 3<sup>rd</sup> and 4<sup>th</sup> quarter ship maintenance availabilities and aviation and ground depot-level maintenance activities. Take this action no earlier than February 15, 2013.
- Clear all R&D and production contracts and contract modifications that obligate more than \$500 million with the USD(AT&L) prior to award.
- For Science and Technology accounts, provide the USD(AT&L) and the Assistant Secretary of Defense (Research & Engineering) with an assessment of the impact that budgetary uncertainty may have on meeting Departmental research priorities.

\*Approvals will be granted by Component heads or by senior officials designated by the Component head.

Components with personnel serving Combatant Commanders (COCOMs) must consult with the COCOMs before implementing actions that affect them. Disputes will be brought to the attention of the Chairman of the Joint Chiefs of Staff for further resolution.

Components receiving reimbursements should coordinate with customer before taking actions that would affect the customer's mission.

**Table 2. Information to Be Included in Draft Implementation Plans**

The following information should be provided at the Component level. Information by commands and bases/installations is not required.

- For operating accounts, identify major actions to include, at a minimum:
  - Extent of civilian hiring freezes; expected number of temps/terms released; expected number, duration, and nature of furloughs.
  - Reductions in flying hours, steaming days, vehicle miles, and other operations/training/support activities that affect force readiness.
  - Areas of budgets experiencing disproportionate cuts.
- For investment accounts:
  - Plans for large programs (ACAT 1D and 1C, and MAIS programs).
    - Include major changes in unit buys, delays, etc.
  - Significant changes in all joint programs.
- Identify and prioritize any essential reprogramming actions with offsets.



H. R. 8

One Hundred Twelfth Congress  
of the  
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,  
the third day of January, two thousand and twelve*

An Act

Entitled the "American Taxpayer Relief Act of 2012".

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE, ETC.**

(a) **SHORT TITLE.**—This Act may be cited as the "American Taxpayer Relief Act of 2012".

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title, etc.

TITLE I—GENERAL EXTENSIONS

- Sec. 101. Permanent extension and modification of 2001 tax relief.  
Sec. 102. Permanent extension and modification of 2003 tax relief.  
Sec. 103. Extension of 2009 tax relief.  
Sec. 104. Permanent alternative minimum tax relief.

TITLE II—INDIVIDUAL TAX EXTENDERS

- Sec. 201. Extension of deduction for certain expenses of elementary and secondary school teachers.  
Sec. 202. Extension of exclusion from gross income of discharge of qualified principal residence indebtedness.  
Sec. 203. Extension of parity for exclusion from income for employer-provided mass transit and parking benefits.  
Sec. 204. Extension of mortgage insurance premiums treated as qualified residence interest.  
Sec. 205. Extension of deduction of State and local general sales taxes.  
Sec. 206. Extension of special rule for contributions of capital gain real property made for conservation purposes.  
Sec. 207. Extension of above-the-line deduction for qualified tuition and related expenses.  
Sec. 208. Extension of tax-free distributions from individual retirement plans for charitable purposes.  
Sec. 209. Improve and make permanent the provision authorizing the Internal Revenue Service to disclose certain return and return information to certain prison officials.

TITLE III—BUSINESS TAX EXTENDERS

- Sec. 301. Extension and modification of research credit.  
Sec. 302. Extension of temporary minimum low-income tax credit rate for non-federally subsidized new buildings.  
Sec. 303. Extension of housing allowance exclusion for determining area median gross income for qualified residential rental project exempt facility bonds.  
Sec. 304. Extension of Indian employment tax credit.

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- Sec. 305. Extension of new markets tax credit.
- Sec. 306. Extension of railroad track maintenance credit.
- Sec. 307. Extension of mine rescue team training credit.
- Sec. 308. Extension of employer wage credit for employees who are active duty members of the uniformed services.
- Sec. 309. Extension of work opportunity tax credit.
- Sec. 310. Extension of qualified zone academy bonds.
- Sec. 311. Extension of 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements.
- Sec. 312. Extension of 7-year recovery period for motorsports entertainment complexes.
- Sec. 313. Extension of accelerated depreciation for business property on an Indian reservation.
- Sec. 314. Extension of enhanced charitable deduction for contributions of food inventory.
- Sec. 315. Extension of increased expensing limitations and treatment of certain real property as section 179 property.
- Sec. 316. Extension of election to expense mine safety equipment.
- Sec. 317. Extension of special expensing rules for certain film and television productions.
- Sec. 318. Extension of deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.
- Sec. 319. Extension of modification of tax treatment of certain payments to controlling exempt organizations.
- Sec. 320. Extension of treatment of certain dividends of regulated investment companies.
- Sec. 321. Extension of RIC qualified investment entity treatment under FIRPTA.
- Sec. 322. Extension of subpart F exception for active financing income.
- Sec. 323. Extension of look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules.
- Sec. 324. Extension of temporary exclusion of 100 percent of gain on certain small business stock.
- Sec. 325. Extension of basis adjustment to stock of S corporations making charitable contributions of property.
- Sec. 326. Extension of reduction in S-corporation recognition period for built-in gains tax.
- Sec. 327. Extension of empowerment zone tax incentives.
- Sec. 328. Extension of tax-exempt financing for New York Liberty Zone.
- Sec. 329. Extension of temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands.
- Sec. 330. Modification and extension of American Samoa economic development credit.
- Sec. 331. Extension and modification of bonus depreciation.

## TITLE IV—ENERGY TAX EXTENDERS

- Sec. 401. Extension of credit for energy-efficient existing homes.
- Sec. 402. Extension of credit for alternative fuel vehicle refueling property.
- Sec. 403. Extension of credit for 2- or 3-wheeled plug-in electric vehicles.
- Sec. 404. Extension and modification of cellulosic biofuel producer credit.
- Sec. 405. Extension of incentives for biodiesel and renewable diesel.
- Sec. 406. Extension of production credit for Indian coal facilities placed in service before 2009.
- Sec. 407. Extension and modification of credits with respect to facilities producing energy from certain renewable resources.
- Sec. 408. Extension of credit for energy-efficient new homes.
- Sec. 409. Extension of credit for energy-efficient appliances.
- Sec. 410. Extension and modification of special allowance for cellulosic biofuel plant property.
- Sec. 411. Extension of special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.
- Sec. 412. Extension of alternative fuels excise tax credits.

## TITLE V—UNEMPLOYMENT

- Sec. 501. Extension of emergency unemployment compensation program.
- Sec. 502. Temporary extension of extended benefit provisions.
- Sec. 503. Extension of funding for reemployment services and reemployment and eligibility assessment activities.
- Sec. 504. Additional extended unemployment benefits under the Railroad Unemployment Insurance Act.

## TITLE VI—MEDICARE AND OTHER HEALTH EXTENSIONS

## Subtitle A—Medicare Extensions

- Sec. 601. Medicare physician payment update.

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- Sec. 602. Work geographic adjustment.
- Sec. 603. Payment for outpatient therapy services.
- Sec. 604. Ambulance add-on payments.
- Sec. 605. Extension of Medicare inpatient hospital payment adjustment for low-volume hospitals.
- Sec. 606. Extension of the Medicare-dependent hospital (MDH) program.
- Sec. 607. Extension for specialized Medicare Advantage plans for special needs individuals.
- Sec. 608. Extension of Medicare reasonable cost contracts.
- Sec. 609. Performance improvement.
- Sec. 610. Extension of funding outreach and assistance for low-income programs.

## Subtitle B—Other Health Extensions

- Sec. 621. Extension of the qualifying individual (QI) program.
- Sec. 622. Extension of Transitional Medical Assistance (TMA).
- Sec. 623. Extension of Medicaid and CHIP Express Lane option.
- Sec. 624. Extension of family-to-family health information centers.
- Sec. 625. Extension of Special Diabetes Program for Type I diabetes and for Indians.

## Subtitle C—Other Health Provisions

- Sec. 631. IPPS documentation and coding adjustment for implementation of MS-DRGs.
- Sec. 632. Revisions to the Medicare ESRD bundled payment system to reflect findings in the GAO report.
- Sec. 633. Treatment of multiple service payment policies for therapy services.
- Sec. 634. Payment for certain radiology services furnished under the Medicare hospital outpatient department prospective payment system.
- Sec. 635. Adjustment of equipment utilization rate for advanced imaging services.
- Sec. 636. Medicare payment of competitive prices for diabetic supplies and elimination of overpayment for diabetic supplies.
- Sec. 637. Medicare payment adjustment for non-emergency ambulance transports for ESRD beneficiaries.
- Sec. 638. Removing obstacles to collection of overpayments.
- Sec. 639. Medicare advantage coding intensity adjustment.
- Sec. 640. Elimination of all funding for the Medicare Improvement Fund.
- Sec. 641. Rebasing of State DSH allotments.
- Sec. 642. Repeal of CLASS program.
- Sec. 643. Commission on Long-Term Care.
- Sec. 644. Consumer Operated and Oriented Plan program contingency fund.

## TITLE VII—EXTENSION OF AGRICULTURAL PROGRAMS

- Sec. 701. 1-year extension of agricultural programs.
- Sec. 702. Supplemental agricultural disaster assistance.

## TITLE VIII—MISCELLANEOUS PROVISIONS

- Sec. 801. Strategic delivery systems.
- Sec. 802. No cost of living adjustment in pay of members of congress.

## TITLE IX—BUDGET PROVISIONS

## Subtitle A—Modifications of Sequestration

- Sec. 901. Treatment of sequester.
- Sec. 902. Amounts in applicable retirement plans may be transferred to designated Roth accounts without distribution.

## Subtitle B—Budgetary Effects

- Sec. 911. Budgetary effects.

**TITLE I—GENERAL EXTENSIONS****SEC. 101. PERMANENT EXTENSION AND MODIFICATION OF 2001 TAX RELIEF.****(a) PERMANENT EXTENSION.—**

**(1) IN GENERAL.—**The Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking title IX.

**(2) CONFORMING AMENDMENT.—**The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 is amended by striking section 304.

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(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable, plan, or limitation years beginning after December 31, 2012, and estates of decedents dying, gifts made, or generation skipping transfers after December 31, 2012.

(b) APPLICATION OF INCOME TAX TO CERTAIN HIGH-INCOME TAXPAYERS.—

(1) INCOME TAX RATES.—

(A) TREATMENT OF 25-, 28-, AND 33-PERCENT RATE BRACKETS.—Paragraph (2) of section 1(i) is amended to read as follows:

“(2) 25-, 28-, AND 33-PERCENT RATE BRACKETS.—The tables under subsections (a), (b), (c), (d), and (e) shall be applied—

“(A) by substituting ‘25%’ for ‘28%’ each place it appears (before the application of subparagraph (B)),

“(B) by substituting ‘28%’ for ‘31%’ each place it appears, and

“(C) by substituting ‘33%’ for ‘36%’ each place it appears.”

(B) 35-PERCENT RATE BRACKET.—Subsection (i) of section 1 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) MODIFICATIONS TO INCOME TAX BRACKETS FOR HIGH-INCOME TAXPAYERS.—

“(A) 35-PERCENT RATE BRACKET.—In the case of taxable years beginning after December 31, 2012—

“(i) the rate of tax under subsections (a), (b), (c), and (d) on a taxpayer’s taxable income in the highest rate bracket shall be 35 percent to the extent such income does not exceed an amount equal to the excess of—

“(I) the applicable threshold, over

“(II) the dollar amount at which such bracket begins, and

“(ii) the 39.6 percent rate of tax under such subsections shall apply only to the taxpayer’s taxable income in such bracket in excess of the amount to which clause (i) applies.

“(B) APPLICABLE THRESHOLD.—For purposes of this paragraph, the term ‘applicable threshold’ means—

“(i) \$450,000 in the case of subsection (a),

“(ii) \$425,000 in the case of subsection (b),

“(iii) \$400,000 in the case of subsection (c), and

“(iv)  $\frac{1}{2}$  the amount applicable under clause (i) (after adjustment, if any, under subparagraph (C)) in the case of subsection (d).

“(C) INFLATION ADJUSTMENT.—For purposes of this paragraph, with respect to taxable years beginning in calendar years after 2013, each of the dollar amounts under clauses (i), (ii), and (iii) of subparagraph (B) shall be adjusted in the same manner as under paragraph (1)(C)(i), except that subsection (f)(3)(B) shall be applied by substituting ‘2012’ for ‘1992’.”

(2) PHASEOUT OF PERSONAL EXEMPTIONS AND ITEMIZED DEDUCTIONS.—

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(A) OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.—  
Section 68 is amended—

(i) by striking subsection (b) and inserting the following:

“(b) APPLICABLE AMOUNT.—

“(1) IN GENERAL.—For purposes of this section, the term ‘applicable amount’ means—

“(A) \$300,000 in the case of a joint return or a surviving spouse (as defined in section 2(a)),

“(B) \$275,000 in the case of a head of household (as defined in section 2(b)),

“(C) \$250,000 in the case of an individual who is not married and who is not a surviving spouse or head of household, and

“(D)  $\frac{1}{2}$  the amount applicable under subparagraph (A) (after adjustment, if any, under paragraph (2)) in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

“(2) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in calendar years after 2013, each of the dollar amounts under subparagraphs (A), (B), and (C) of paragraph (1) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that section 1(f)(3)(B) shall be applied by substituting ‘2012’ for ‘1992’.

If any amount after adjustment under the preceding sentence is not a multiple of \$50, such amount shall be rounded to the next lowest multiple of \$50.” and

(ii) by striking subsections (f) and (g).

(B) PHASEOUT OF DEDUCTIONS FOR PERSONAL EXEMPTIONS.—

(i) IN GENERAL.—Paragraph (3) of section 151(d) is amended—

(I) by striking “the threshold amount” in subparagraphs (A) and (B) and inserting “the applicable amount in effect under section 68(b)”,

(II) by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C), and

(III) by striking subparagraphs (E) and (F).

(ii) CONFORMING AMENDMENTS.—Paragraph (4) of section 151(d) is amended—

(I) by striking subparagraph (B),

(II) by redesignating clauses (i) and (ii) of subparagraph (A) as subparagraphs (A) and (B), respectively, and by indenting such subparagraphs (as so redesignated) accordingly, and

(III) by striking all that precedes “in a calendar year after 1989,” and inserting the following:

“(4) INFLATION ADJUSTMENT.—In the case of any taxable year beginning”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2012.

(c) MODIFICATIONS OF ESTATE TAX.—

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(1) **MAXIMUM ESTATE TAX RATE EQUAL TO 40 PERCENT.**—The table contained in subsection (c) of section 2001, as amended by section 302(a)(2) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, is amended by striking “Over \$500,000” and all that follows and inserting the following:

“Over \$500,000 but not over \$750,000.	\$155,800, plus 37 percent of the excess of such amount over \$500,000.
Over \$750,000 but not over \$1,000,000.	\$248,300, plus 39 percent of the excess of such amount over \$750,000.
Over \$1,000,000 .....	\$345,800, plus 40 percent of the excess of such amount over \$1,000,000.”.

(2) **TECHNICAL CORRECTION.**—Clause (i) of section 2010(c)(4)(B) is amended by striking “basic exclusion amount” and inserting “applicable exclusion amount”.

(3) **EFFECTIVE DATES.**—

(A) **IN GENERAL.**—Except as otherwise provided by in this paragraph, the amendments made by this subsection shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2012.

(B) **TECHNICAL CORRECTION.**—The amendment made by paragraph (2) shall take effect as if included in the amendments made by section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.

**SEC. 102. PERMANENT EXTENSION AND MODIFICATION OF 2003 TAX RELIEF.**

(a) **PERMANENT EXTENSION.**—The Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended by striking section 303.

(b) **20-PERCENT CAPITAL GAINS RATE FOR CERTAIN HIGH INCOME INDIVIDUALS.**—

(1) **IN GENERAL.**—Paragraph (1) of section 1(h) is amended by striking subparagraph (C), by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F) and by inserting after subparagraph (B) the following new subparagraphs:

“(C) 15 percent of the lesser of—

“(i) so much of the adjusted net capital gain (or, if less, taxable income) as exceeds the amount on which a tax is determined under subparagraph (B), or

“(ii) the excess of—

“(I) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 39.6 percent, over

“(II) the sum of the amounts on which a tax is determined under subparagraphs (A) and (B),

“(D) 20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the sum of the amounts on which tax is determined under subparagraphs (B) and (C).”.

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(2) **MINIMUM TAX.**—Paragraph (3) of section 55(b) is amended by striking subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (B) the following new subparagraphs:

“(C) 15 percent of the lesser of—

“(i) so much of the adjusted net capital gain (or, if less, taxable excess) as exceeds the amount on which tax is determined under subparagraph (B), or

“(ii) the excess described in section 1(h)(1)(C)(ii),

plus

“(D) 20 percent of the adjusted net capital gain (or, if less, taxable excess) in excess of the sum of the amounts on which tax is determined under subparagraphs (B) and (C), plus”.

(c) **CONFORMING AMENDMENTS.**—

(1) The following provisions are each amended by striking “15 percent” and inserting “20 percent”:

(A) Section 531.

(B) Section 541.

(C) Section 1445(e)(1).

(D) The second sentence of section 7518(g)(6)(A).

(E) Section 53511(f)(2) of title 46, United States Code.

(2) Sections 1(h)(1)(B) and 55(b)(3)(B) are each amended by striking “5 percent (0 percent in the case of taxable years beginning after 2007)” and inserting “0 percent”.

(3) Section 1445(e)(6) is amended by striking “15 percent (20 percent in the case of taxable years beginning after December 31, 2010)” and inserting “20 percent”.

(d) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as otherwise provided, the amendments made by subsections (b) and (c) shall apply to taxable years beginning after December 31, 2012.

(2) **WITHHOLDING.**—The amendments made by paragraphs (1)(C) and (3) of subsection (c) shall apply to amounts paid on or after January 1, 2013.

**SEC. 103. EXTENSION OF 2009 TAX RELIEF.**

(a) **5-YEAR EXTENSION OF AMERICAN OPPORTUNITY TAX CREDIT.**—

(1) **IN GENERAL.**—Section 25A(i) is amended by striking “in 2009, 2010, 2011, or 2012” and inserting “after 2008 and before 2018”.

(2) **TREATMENT OF POSSESSIONS.**—Section 1004(c)(1) of division B of the American Recovery and Reinvestment Tax Act of 2009 is amended by striking “in 2009, 2010, 2011, and 2012” each place it appears and inserting “after 2008 and before 2018”.

(b) **5-YEAR EXTENSION OF CHILD TAX CREDIT.**—Section 24(d)(4) is amended—

(1) by striking “2009, 2010, 2011, AND 2012” in the heading and inserting “FOR CERTAIN YEARS”, and

(2) by striking “in 2009, 2010, 2011, or 2012” and inserting “after 2008 and before 2018”.

(c) **5-YEAR EXTENSION OF EARNED INCOME TAX CREDIT.**—Section 32(b)(3) is amended—

(1) by striking “2009, 2010, 2011, AND 2012” in the heading and inserting “FOR CERTAIN YEARS”, and

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(2) by striking “in 2009, 2010, 2011, or 2012” and inserting “after 2008 and before 2018”.

(d) PERMANENT EXTENSION OF RULE DISREGARDING REFUNDS IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.—Section 6409 is amended to read as follows:

**“SEC. 6409. REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.**

“Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds.”.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2012.

(2) RULE REGARDING DISREGARD OF REFUNDS.—The amendment made by subsection (d) shall apply to amounts received after December 31, 2012.

**SEC. 104. PERMANENT ALTERNATIVE MINIMUM TAX RELIEF.**

(a) 2012 EXEMPTION AMOUNTS MADE PERMANENT.—

(1) IN GENERAL.—Paragraph (1) of section 55(d) is amended—

(A) by striking “\$45,000” and all that follows through “2011” in subparagraph (A) and inserting “\$78,750”,

(B) by striking “\$33,750” and all that follows through “2011” in subparagraph (B) and inserting “\$50,600”, and

(C) by striking “paragraph (1)(A)” in subparagraph (C) and inserting “subparagraph (A)”.

(b) EXEMPTION AMOUNTS INDEXED FOR INFLATION.—

(1) IN GENERAL.—Subsection (d) of section 55 is amended by adding at the end the following new paragraph:

“(4) INFLATION ADJUSTMENT.—

“(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2012, the amounts described in subparagraph (B) shall each be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2011’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(B) AMOUNTS DESCRIBED.—The amounts described in this subparagraph are—

“(i) each of the dollar amounts contained in subsection (b)(1)(A)(i),

“(ii) each of the dollar amounts contained in paragraph (1), and

“(iii) each of the dollar amounts in subparagraphs (A) and (B) of paragraph (3).

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“(C) ROUNDING.—Any increase determined under subparagraph (A) shall be rounded to the nearest multiple of \$100.”

## (2) CONFORMING AMENDMENTS.—

(A) Clause (iii) of section 55(b)(1)(A) is amended by striking “by substituting” and all that follows through “appears.” and inserting “by substituting 50 percent of the dollar amount otherwise applicable under subclause (I) and subclause (II) thereof.”

(B) Paragraph (3) of section 55(d) is amended—

(i) by striking “or (2)” in subparagraph (A),

(ii) by striking “and” at the end of subparagraph (B), and

(iii) by striking subparagraph (C) and inserting the following new subparagraphs:

“(C) 50 percent of the dollar amount applicable under subparagraph (A) in the case of a taxpayer described in subparagraph (C) or (D) of paragraph (1), and

“(D) \$150,000 in the case of a taxpayer described in paragraph (2).”

## (c) ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE CREDITS.—

(1) IN GENERAL.—Subsection (a) of section 26 is amended to read as follows:

“(a) LIMITATION BASED ON AMOUNT OF TAX.—The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the sum of—

“(1) the taxpayer’s regular tax liability for the taxable year reduced by the foreign tax credit allowable under section 27(a), and

“(2) the tax imposed by section 55(a) for the taxable year.”

## (2) CONFORMING AMENDMENTS.—

(A) ADOPTION CREDIT.—

(i) Section 23(b) is amended by striking paragraph (4).

(ii) Section 23(c) is amended by striking paragraphs (1) and (2) and inserting the following:

“(1) IN GENERAL.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 25D and 1400C), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.”

(iii) Section 23(c) is amended by redesignating paragraph (3) as paragraph (2).

(B) CHILD TAX CREDIT.—

(i) Section 24(b) is amended by striking paragraph (3).

(ii) Section 24(d)(1) is amended—

(I) by striking “section 26(a)(2) or subsection (b)(3), as the case may be,” each place it appears in subparagraphs (A) and (B) and inserting “section 26(a)”, and

(II) by striking “section 26(a)(2) or subsection (b)(3), as the case may be” in the second last sentence and inserting “section 26(a)”.

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(C) CREDIT FOR INTEREST ON CERTAIN HOME MORTGAGES.—Section 25(e)(1)(C) is amended to read as follows:

“(C) APPLICABLE TAX LIMIT.—For purposes of this paragraph, the term ‘applicable tax limit’ means the limitation imposed by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 25D, and 1400C).”

(D) HOPE AND LIFETIME LEARNING CREDITS.—Section 25A(i) is amended—

(i) by striking paragraph (5) and by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively, and

(ii) by striking “section 26(a)(2) or paragraph (5), as the case may be” in paragraph (5), as redesignated by clause (i), and inserting “section 26(a)”.

(E) SAVERS’ CREDIT.—Section 25B is amended by striking subsection (g).

(F) RESIDENTIAL ENERGY EFFICIENT PROPERTY.—Section 25D(c) is amended to read as follows:

“(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.”

(G) CERTAIN PLUG-IN ELECTRIC VEHICLES.—Section 30(c)(2) is amended to read as follows:

“(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.”

(H) ALTERNATIVE MOTOR VEHICLE CREDIT.—Section 30B(g)(2) is amended to read as follows:

“(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.”

(I) NEW QUALIFIED PLUG-IN ELECTRIC VEHICLE CREDIT.—Section 30D(c)(2) is amended to read as follows:

“(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.”

(J) CROSS REFERENCES.—Section 55(c)(3) is amended by striking “26(a), 30C(d)(2),” and inserting “30C(d)(2)”.

(K) FOREIGN TAX CREDIT.—Section 904 is amended by striking subsection (i) and by redesignating subsections (j), (k), and (l) as subsections (i), (j), and (k), respectively.

(L) FIRST-TIME HOME BUYER CREDIT FOR THE DISTRICT OF COLUMBIA.—Section 1400C(d) is amended to read as follows:

“(d) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and section 25D), such excess shall be carried to the

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succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

## TITLE II—INDIVIDUAL TAX EXTENDERS

### SEC. 201. EXTENSION OF DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) is amended by striking “or 2011” and inserting “2011, 2012, or 2013”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

### SEC. 202. EXTENSION OF EXCLUSION FROM GROSS INCOME OF DISCHARGE OF QUALIFIED PRINCIPAL RESIDENCE INDEBTEDNESS.

(a) IN GENERAL.—Subparagraph (E) of section 108(a)(1) is amended by striking “January 1, 2013” and inserting “January 1, 2014”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to indebtedness discharged after December 31, 2012.

### SEC. 203. EXTENSION OF PARITY FOR EXCLUSION FROM INCOME FOR EMPLOYER-PROVIDED MASS TRANSIT AND PARKING BENEFITS.

(a) IN GENERAL.—Paragraph (2) of section 132(f) is amended by striking “January 1, 2012” and inserting “January 1, 2014”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to months after December 31, 2011.

### SEC. 204. EXTENSION OF MORTGAGE INSURANCE PREMIUMS TREATED AS QUALIFIED RESIDENCE INTEREST.

(a) IN GENERAL.—Subclause (I) of section 163(h)(3)(E)(iv) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) TECHNICAL AMENDMENTS.—Clause (i) of section 163(h)(4)(E) is amended—

(1) by striking “Veterans Administration” and inserting “Department of Veterans Affairs”, and

(2) by striking “Rural Housing Administration” and inserting “Rural Housing Service”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued after December 31, 2011.

### SEC. 205. EXTENSION OF DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES.

(a) IN GENERAL.—Subparagraph (I) of section 164(b)(5) is amended by striking “January 1, 2012” and inserting “January 1, 2014”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

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**SEC. 206. EXTENSION OF SPECIAL RULE FOR CONTRIBUTIONS OF CAPITAL GAIN REAL PROPERTY MADE FOR CONSERVATION PURPOSES.**

(a) **IN GENERAL.**—Clause (vi) of section 170(b)(1)(E) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) **CONTRIBUTIONS BY CERTAIN CORPORATE FARMERS AND RANCHERS.**—Clause (iii) of section 170(b)(2)(B) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2011.

**SEC. 207. EXTENSION OF ABOVE-THE-LINE DEDUCTION FOR QUALIFIED TUITION AND RELATED EXPENSES.**

(a) **IN GENERAL.**—Subsection (e) of section 222 is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

**SEC. 208. EXTENSION OF TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.**

(a) **IN GENERAL.**—Subparagraph (F) of section 408(d)(8) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) **EFFECTIVE DATE; SPECIAL RULE.**—

(1) **EFFECTIVE DATE.**—The amendment made by this section shall apply to distributions made in taxable years beginning after December 31, 2011.

(2) **SPECIAL RULES.**—For purposes of subsections (a)(6), (b)(3), and (d)(8) of section 408 of the Internal Revenue Code of 1986, at the election of the taxpayer (at such time and in such manner as prescribed by the Secretary of the Treasury)—

(A) any qualified charitable distribution made after December 31, 2012, and before February 1, 2013, shall be deemed to have been made on December 31, 2012, and

(B) any portion of a distribution from an individual retirement account to the taxpayer after November 30, 2012, and before January 1, 2013, may be treated as a qualified charitable distribution to the extent that—

(i) such portion is transferred in cash after the distribution to an organization described in section 408(d)(8)(B)(i) before February 1, 2013, and

(ii) such portion is part of a distribution that would meet the requirements of section 408(d)(8) but for the fact that the distribution was not transferred directly to an organization described in section 408(d)(8)(B)(i).

**SEC. 209. IMPROVE AND MAKE PERMANENT THE PROVISION AUTHORIZING THE INTERNAL REVENUE SERVICE TO DISCLOSE CERTAIN RETURN AND RETURN INFORMATION TO CERTAIN PRISON OFFICIALS.**

(a) **IN GENERAL.**—Paragraph (10) of section 6103(k) is amended to read as follows:

“(10) **DISCLOSURE OF CERTAIN RETURNS AND RETURN INFORMATION TO CERTAIN PRISON OFFICIALS.**—

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“(A) IN GENERAL.—Under such procedures as the Secretary may prescribe, the Secretary may disclose to officers and employees of the Federal Bureau of Prisons and of any State agency charged with the responsibility for administration of prisons any returns or return information with respect to individuals incarcerated in Federal or State prison systems whom the Secretary has determined may have filed or facilitated the filing of a false or fraudulent return to the extent that the Secretary determines that such disclosure is necessary to permit effective Federal tax administration.

“(B) DISCLOSURE TO CONTRACTOR-RUN PRISONS.—Under such procedures as the Secretary may prescribe, the disclosures authorized by subparagraph (A) may be made to contractors responsible for the operation of a Federal or State prison on behalf of such Bureau or agency.

“(C) RESTRICTIONS ON USE OF DISCLOSED INFORMATION.—Any return or return information received under this paragraph shall be used only for the purposes of and to the extent necessary in taking administrative action to prevent the filing of false and fraudulent returns, including administrative actions to address possible violations of administrative rules and regulations of the prison facility and in administrative and judicial proceedings arising from such administrative actions.

“(D) RESTRICTIONS ON REDISCLOSURE AND DISCLOSURE TO LEGAL REPRESENTATIVES.—Notwithstanding subsection (h)—

“(i) RESTRICTIONS ON REDISCLOSURE.—Except as provided in clause (ii), any officer, employee, or contractor of the Federal Bureau of Prisons or of any State agency charged with the responsibility for administration of prisons shall not disclose any information obtained under this paragraph to any person other than an officer or employee or contractor of such Bureau or agency personally and directly engaged in the administration of prison facilities on behalf of such Bureau or agency.

“(ii) DISCLOSURE TO LEGAL REPRESENTATIVES.—The returns and return information disclosed under this paragraph may be disclosed to the duly authorized legal representative of the Federal Bureau of Prisons, State agency, or contractor charged with the responsibility for administration of prisons, or of the incarcerated individual accused of filing the false or fraudulent return who is a party to an action or proceeding described in subparagraph (C), solely in preparation for, or for use in, such action or proceeding.”.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 6103(a) is amended by inserting “subsection (k)(10),” after “subsection (e)(1)(D)(iii).”.

(2) Paragraph (4) of section 6103(p) is amended—

(A) by inserting “subsection (k)(10),” before “subsection (l)(10),” in the matter preceding subparagraph (A),

(B) in subparagraph (F)(i)—

(i) by inserting “(k)(10),” before “or (l)(6),” and

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- (ii) by inserting “subsection (k)(10) or” before “subsection (l)(10),” and
- (C) by inserting “subsection (k)(10) or” before “subsection (l)(10),” both places it appears in the matter following subparagraph (F)(iii).
- (3) Paragraph (2) of section 7213(a) is amended by inserting “(k)(10),” before “(l)(6).”
- (c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

### TITLE III—BUSINESS TAX EXTENDERS

#### SEC. 301. EXTENSION AND MODIFICATION OF RESEARCH CREDIT.

##### (a) EXTENSION.—

(1) IN GENERAL.—Subparagraph (B) of section 41(h)(1) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(2) CONFORMING AMENDMENT.—Subparagraph (D) of section 45C(b)(1) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

##### (b) INCLUSION OF QUALIFIED RESEARCH EXPENSES AND GROSS RECEIPTS OF AN ACQUIRED PERSON.—

(1) PARTIAL INCLUSION OF PRE-ACQUISITION QUALIFIED RESEARCH EXPENSES AND GROSS RECEIPTS.—Subparagraph (A) of section 41(f)(3) is amended to read as follows:

###### “(A) ACQUISITIONS.—

“(i) IN GENERAL.—If a person acquires the major portion of either a trade or business or a separate unit of a trade or business (hereinafter in this paragraph referred to as the ‘acquired business’) of another person (hereinafter in this paragraph referred to as the ‘predecessor’), then the amount of qualified research expenses paid or incurred by the acquiring person during the measurement period shall be increased by the amount determined under clause (ii), and the gross receipts of the acquiring person for such period shall be increased by the amount determined under clause (iii).

“(ii) AMOUNT DETERMINED WITH RESPECT TO QUALIFIED RESEARCH EXPENSES.—The amount determined under this clause is—

“(I) for purposes of applying this section for the taxable year in which such acquisition is made, the acquisition year amount, and

“(II) for purposes of applying this section for any taxable year after the taxable year in which such acquisition is made, the qualified research expenses paid or incurred by the predecessor with respect to the acquired business during the measurement period.

“(iii) AMOUNT DETERMINED WITH RESPECT TO GROSS RECEIPTS.—The amount determined under this clause is the amount which would be determined under clause (ii) if ‘the gross receipts of’ were substituted for ‘the qualified research expenses paid or incurred by’ each place it appears in clauses (ii) and (iv).

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“(iv) ACQUISITION YEAR AMOUNT.—For purposes of clause (ii), the acquisition year amount is the amount equal to the product of—

“(I) the qualified research expenses paid or incurred by the predecessor with respect to the acquired business during the measurement period, and

“(II) the number of days in the period beginning on the date of the acquisition and ending on the last day of the taxable year in which the acquisition is made,

divided by the number of days in the acquiring person’s taxable year.

“(v) SPECIAL RULES FOR COORDINATING TAXABLE YEARS.—In the case of an acquiring person and a predecessor whose taxable years do not begin on the same date—

“(I) each reference to a taxable year in clauses (ii) and (iv) shall refer to the appropriate taxable year of the acquiring person,

“(II) the qualified research expenses paid or incurred by the predecessor, and the gross receipts of the predecessor, during each taxable year of the predecessor any portion of which is part of the measurement period shall be allocated equally among the days of such taxable year,

“(III) the amount of such qualified research expenses taken into account under clauses (ii) and (iv) with respect to a taxable year of the acquiring person shall be equal to the total of the expenses attributable under subclause (II) to the days occurring during such taxable year, and

“(IV) the amount of such gross receipts taken into account under clause (iii) with respect to a taxable year of the acquiring person shall be equal to the total of the gross receipts attributable under subclause (II) to the days occurring during such taxable year.

“(vi) MEASUREMENT PERIOD.—For purposes of this subparagraph, the term ‘measurement period’ means, with respect to the taxable year of the acquiring person for which the credit is determined, any period of the acquiring person preceding such taxable year which is taken into account for purposes of determining the credit for such year.”

(2) EXPENSES AND GROSS RECEIPTS OF A PREDECESSOR.—Subparagraph (B) of section 41(f)(3) is amended to read as follows:

“(B) DISPOSITIONS.—If the predecessor furnished to the acquiring person such information as is necessary for the application of subparagraph (A), then, for purposes of applying this section for any taxable year ending after such disposition, the amount of qualified research expenses paid or incurred by, and the gross receipts of, the predecessor during the measurement period (as defined in

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subparagraph (A)(vi), determined by substituting ‘predecessor’ for ‘acquiring person’ each place it appears) shall be reduced by—

“(i) in the case of the taxable year in which such disposition is made, an amount equal to the product of—

“(I) the qualified research expenses paid or incurred by, or gross receipts of, the predecessor with respect to the acquired business during the measurement period (as so defined and so determined), and

“(II) the number of days in the period beginning on the date of acquisition (as determined for purposes of subparagraph (A)(iv)(II)) and ending on the last day of the taxable year of the predecessor in which the disposition is made, divided by the number of days in the taxable year of the predecessor, and

“(ii) in the case of any taxable year ending after the taxable year in which such disposition is made, the amount described in clause (i)(I).”

(c) AGGREGATION OF EXPENDITURES.—Paragraph (1) of section 41(f) is amended—

(1) by striking “shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit” in subparagraph (A)(ii) and inserting “shall be determined on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by such controlled group for purposes of this section”, and

(2) by striking “shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit” in subparagraph (B)(ii) and inserting “shall be determined on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by all such persons under common control for purposes of this section”.

(d) EFFECTIVE DATE.—

(1) EXTENSION.—The amendments made by subsection (a) shall apply to amounts paid or incurred after December 31, 2011.

(2) MODIFICATIONS.—The amendments made by subsections (b) and (c) shall apply to taxable years beginning after December 31, 2011.

**SEC. 302. EXTENSION OF TEMPORARY MINIMUM LOW-INCOME TAX CREDIT RATE FOR NON-FEDERALLY SUBSIDIZED NEW BUILDINGS.**

(a) IN GENERAL.—Subparagraph (A) of section 42(b)(2) is amended by striking “and before December 31, 2013” and inserting “with respect to housing credit dollar amount allocations made before January 1, 2014”.

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(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

**SEC. 303. EXTENSION OF HOUSING ALLOWANCE EXCLUSION FOR DETERMINING AREA MEDIAN GROSS INCOME FOR QUALIFIED RESIDENTIAL RENTAL PROJECT EXEMPT FACILITY BONDS.**

(a) IN GENERAL.—Subsection (b) of section 3005 of the Housing Assistance Tax Act of 2008 is amended by striking “January 1, 2012” each place it appears and inserting “January 1, 2014”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of section 3005 of the Housing Assistance Tax Act of 2008.

**SEC. 304. EXTENSION OF INDIAN EMPLOYMENT TAX CREDIT.**

(a) IN GENERAL.—Subsection (f) of section 45A is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

**SEC. 305. EXTENSION OF NEW MARKETS TAX CREDIT.**

(a) IN GENERAL.—Subparagraph (G) of section 45D(f)(1) is amended by striking “2010 and 2011” and inserting “2010, 2011, 2012, and 2013”.

(b) CARRYOVER OF UNUSED LIMITATION.—Paragraph (3) of section 45D(f) is amended by striking “2016” and inserting “2018”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 2011.

**SEC. 306. EXTENSION OF RAILROAD TRACK MAINTENANCE CREDIT.**

(a) IN GENERAL.—Subsection (f) of section 45G is amended by striking “January 1, 2012” and inserting “January 1, 2014”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2011.

**SEC. 307. EXTENSION OF MINE RESCUE TEAM TRAINING CREDIT.**

(a) IN GENERAL.—Subsection (e) of section 45N is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

**SEC. 308. EXTENSION OF EMPLOYER WAGE CREDIT FOR EMPLOYEES WHO ARE ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.**

(a) IN GENERAL.—Subsection (f) of section 45P is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2011.

**SEC. 309. EXTENSION OF WORK OPPORTUNITY TAX CREDIT.**

(a) IN GENERAL.—Subparagraph (B) of section 51(c)(4) is amended by striking “after” and all that follows and inserting “after December 31, 2013”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to individuals who begin work for the employer after December 31, 2011.

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**SEC. 310. EXTENSION OF QUALIFIED ZONE ACADEMY BONDS.**

(a) **IN GENERAL.**—Paragraph (1) of section 54E(c) is amended by inserting “, 2012, and 2013” after “for 2011”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to obligations issued after December 31, 2011.

**SEC. 311. EXTENSION OF 15-YEAR STRAIGHT-LINE COST RECOVERY FOR QUALIFIED LEASEHOLD IMPROVEMENTS, QUALIFIED RESTAURANT BUILDINGS AND IMPROVEMENTS, AND QUALIFIED RETAIL IMPROVEMENTS.**

(a) **IN GENERAL.**—Clauses (iv), (v), and (ix) of section 168(e)(3)(E) are each amended by striking “January 1, 2012” and inserting “January 1, 2014”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to property placed in service after December 31, 2011.

**SEC. 312. EXTENSION OF 7-YEAR RECOVERY PERIOD FOR MOTORSPORTS ENTERTAINMENT COMPLEXES.**

(a) **IN GENERAL.**—Subparagraph (D) of section 168(i)(15) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to property placed in service after December 31, 2011.

**SEC. 313. EXTENSION OF ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON AN INDIAN RESERVATION.**

(a) **IN GENERAL.**—Paragraph (8) of section 168(j) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to property placed in service after December 31, 2011.

**SEC. 314. EXTENSION OF ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.**

(a) **IN GENERAL.**—Clause (iv) of section 170(e)(3)(C) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to contributions made after December 31, 2011.

**SEC. 315. EXTENSION OF INCREASED EXPENSING LIMITATIONS AND TREATMENT OF CERTAIN REAL PROPERTY AS SECTION 179 PROPERTY.**

(a) **IN GENERAL.**—

(1) **DOLLAR LIMITATION.**—Section 179(b)(1) is amended—  
(A) by striking “2010 or 2011,” in subparagraph (B) and inserting “2010, 2011, 2012, or 2013, and”,  
(B) by striking subparagraph (C),  
(C) by redesignating subparagraph (D) as subparagraph (C), and

(D) in subparagraph (C), as so redesignated, by striking “2012” and inserting “2013”.

(2) **REDUCTION IN LIMITATION.**—Section 179(b)(2) is amended—

(A) by striking “2010 or 2011,” in subparagraph (B) and inserting “2010, 2011, 2012, or 2013, and”,  
(B) by striking subparagraph (C),  
(C) by redesignating subparagraph (D) as subparagraph (C), and

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(D) in subparagraph (C), as so redesignated, by striking “2012” and inserting “2013”.

(3) CONFORMING AMENDMENT.—Subsection (b) of section 179 is amended by striking paragraph (6).

(b) COMPUTER SOFTWARE.—Section 179(d)(1)(A)(ii) is amended by striking “2013” and inserting “2014”.

(c) ELECTION.—Section 179(c)(2) is amended by striking “2013” and inserting “2014”.

(d) SPECIAL RULES FOR TREATMENT OF QUALIFIED REAL PROPERTY.—

(1) IN GENERAL.—Section 179(f)(1) is amended by striking “2010 or 2011” and inserting “2010, 2011, 2012, or 2013”.

(2) CARRYOVER LIMITATION.—

(A) IN GENERAL.—Section 179(f)(4) is amended by striking “2011” each place it appears and inserting “2013”.

(B) CONFORMING AMENDMENT.—Subparagraph (C) of section 179(f)(4) is amended—

(i) in the heading, by striking “2010” and inserting “2010, 2011 AND 2012”, and

(ii) by adding at the end the following: “For the last taxable year beginning in 2013, the amount determined under subsection (b)(3)(A) for such taxable year shall be determined without regard to this paragraph.”

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

**SEC. 316. EXTENSION OF ELECTION TO EXPENSE MINE SAFETY EQUIPMENT.**

(a) IN GENERAL.—Subsection (g) of section 179E is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2011.

**SEC. 317. EXTENSION OF SPECIAL EXPENSING RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.**

(a) IN GENERAL.—Subsection (f) of section 181 is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to productions commencing after December 31, 2011.

**SEC. 318. EXTENSION OF DEDUCTION ALLOWABLE WITH RESPECT TO INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES IN PUERTO RICO.**

(a) IN GENERAL.—Subparagraph (C) of section 199(d)(8) is amended—

(1) by striking “first 6 taxable years” and inserting “first 8 taxable years”, and

(2) by striking “January 1, 2012” and inserting “January 1, 2014”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

**SEC. 319. EXTENSION OF MODIFICATION OF TAX TREATMENT OF CERTAIN PAYMENTS TO CONTROLLING EXEMPT ORGANIZATIONS.**

(a) IN GENERAL.—Clause (iv) of section 512(b)(13)(E) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

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(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments received or accrued after December 31, 2011.

**SEC. 320. EXTENSION OF TREATMENT OF CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.**

(a) IN GENERAL.—Paragraphs (1)(C)(v) and (2)(C)(v) of section 871(k) are each amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

**SEC. 321. EXTENSION OF RIC QUALIFIED INVESTMENT ENTITY TREATMENT UNDER FIRPTA.**

(a) IN GENERAL.—Clause (ii) of section 897(h)(4)(A) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect on January 1, 2012. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act.

(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

(A) which makes a distribution after December 31, 2011, and before the date of the enactment of this Act; and

(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code, such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.

**SEC. 322. EXTENSION OF SUBPART F EXCEPTION FOR ACTIVE FINANCING INCOME.**

(a) EXEMPT INSURANCE INCOME.—Paragraph (10) of section 953(e) is amended—

(1) by striking “January 1, 2012” and inserting “January 1, 2014”, and

(2) by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) SPECIAL RULE FOR INCOME DERIVED IN THE ACTIVE CONDUCT OF BANKING, FINANCING, OR SIMILAR BUSINESSES.—Paragraph (9) of section 954(h) is amended by striking “January 1, 2012” and inserting “January 1, 2014”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

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**SEC. 323. EXTENSION OF LOOK-THRU TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER FOREIGN PERSONAL HOLDING COMPANY RULES.**

(a) **IN GENERAL.**—Subparagraph (C) of section 954(c)(6) is amended by striking “January 1, 2012” and inserting “January 1, 2014”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

**SEC. 324. EXTENSION OF TEMPORARY EXCLUSION OF 100 PERCENT OF GAIN ON CERTAIN SMALL BUSINESS STOCK.**

(a) **IN GENERAL.**—Paragraph (4) of section 1202(a) is amended—  
(1) by striking “January 1, 2012” and inserting “January 1, 2014”, and

(2) by striking “AND 2011” and inserting “, 2011, 2012, AND 2013” in the heading thereof.

(b) **TECHNICAL AMENDMENTS.**—

(1) **SPECIAL RULE FOR 2009 AND CERTAIN PERIOD IN 2010.**—Paragraph (3) of section 1202(a) is amended by adding at the end the following new flush sentence:

“In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223.”.

(2) **100 PERCENT EXCLUSION.**—Paragraph (4) of section 1202(a) is amended by adding at the end the following new flush sentence:

“In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223.”.

(c) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—The amendments made by subsection (a) shall apply to stock acquired after December 31, 2011.

(2) **SUBSECTION (b)(1).**—The amendment made by subsection (b)(1) shall take effect as if included in section 1241(a) of division B of the American Recovery and Reinvestment Act of 2009.

(3) **SUBSECTION (b)(2).**—The amendment made by subsection (b)(2) shall take effect as if included in section 2011(a) of the Creating Small Business Jobs Act of 2010.

**SEC. 325. EXTENSION OF BASIS ADJUSTMENT TO STOCK OF S CORPORATIONS MAKING CHARITABLE CONTRIBUTIONS OF PROPERTY.**

(a) **IN GENERAL.**—Paragraph (2) of section 1367(a) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2011.

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**SEC. 326. EXTENSION OF REDUCTION IN S-CORPORATION RECOGNITION PERIOD FOR BUILT-IN GAINS TAX.**

(a) IN GENERAL.—Paragraph (7) of section 1374(d) is amended—  
 (1) by redesignating subparagraph (C) as subparagraph (D), and

(2) by inserting after subparagraph (B) the following new subparagraph:

“(C) SPECIAL RULE FOR 2012 AND 2013.—For purposes of determining the net recognized built-in gain for taxable years beginning in 2012 or 2013, subparagraphs (A) and (D) shall be applied by substituting ‘5-year’ for ‘10-year.’, and

(3) by adding at the end the following new subparagraph:

“(E) INSTALLMENT SALES.—If an S corporation sells an asset and reports the income from the sale using the installment method under section 453, the treatment of all payments received shall be governed by the provisions of this paragraph applicable to the taxable year in which such sale was made.”.

(b) TECHNICAL AMENDMENT.—Subparagraph (B) of section 1374(d)(2) is amended by inserting “described in subparagraph (A)” after “, for any taxable year”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

**SEC. 327. EXTENSION OF EMPOWERMENT ZONE TAX INCENTIVES.**

(a) IN GENERAL.—Clause (i) of section 1391(d)(1)(A) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) INCREASED EXCLUSION OF GAIN ON STOCK OF EMPOWERMENT ZONE BUSINESSES.—Subparagraph (C) of section 1202(a)(2) is amended—

(1) by striking “December 31, 2016” and inserting “December 31, 2018”; and

(2) by striking “2016” in the heading and inserting “2018”.

(c) TREATMENT OF CERTAIN TERMINATION DATES SPECIFIED IN NOMINATIONS.—In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary’s designee) may provide.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after December 31, 2011.

**SEC. 328. EXTENSION OF TAX-EXEMPT FINANCING FOR NEW YORK LIBERTY ZONE.**

(a) IN GENERAL.—Subparagraph (D) of section 1400L(d)(2) is amended by striking “January 1, 2012” and inserting “January 1, 2014”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after December 31, 2011.

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**SEC. 329. EXTENSION OF TEMPORARY INCREASE IN LIMIT ON COVER  
OVER OF RUM EXCISE TAXES TO PUERTO RICO AND THE  
VIRGIN ISLANDS.**

(a) **IN GENERAL.**—Paragraph (1) of section 7652(f) is amended by striking “January 1, 2012” and inserting “January 1, 2014”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to distilled spirits brought into the United States after December 31, 2011.

**SEC. 330. MODIFICATION AND EXTENSION OF AMERICAN SAMOA ECO-  
NOMIC DEVELOPMENT CREDIT.**

(a) **MODIFICATION.**—

(1) **IN GENERAL.**—Subsection (a) of section 119 of division A of the Tax Relief and Health Care Act of 2006 is amended by striking “if such corporation” and all that follows and inserting “if—

“(1) in the case of a taxable year beginning before January 1, 2012, such corporation—

“(A) is an existing credit claimant with respect to American Samoa, and

“(B) elected the application of section 936 of the Internal Revenue Code of 1986 for its last taxable year beginning before January 1, 2006, and

“(2) in the case of a taxable year beginning after December 31, 2011, such corporation meets the requirements of subsection (e).”

(2) **REQUIREMENTS.**—Section 119 of division A of such Act is amended by adding at the end the following new subsection:

“(e) **QUALIFIED PRODUCTION ACTIVITIES INCOME REQUIREMENT.**—A corporation meets the requirement of this subsection if such corporation has qualified production activities income, as defined in subsection (c) of section 199 of the Internal Revenue Code of 1986, determined by substituting ‘American Samoa’ for ‘the United States’ each place it appears in paragraphs (3), (4), and (6) of such subsection (c), for the taxable year.”

(b) **EXTENSION.**—Subsection (d) of section 119 of division A of the Tax Relief and Health Care Act of 2006 is amended by striking “shall apply” and all that follows and inserting “shall apply—

“(1) in the case of a corporation that meets the requirements of subparagraphs (A) and (B) of subsection (a)(1), to the first 8 taxable years of such corporation which begin after December 31, 2006, and before January 1, 2014, and

“(2) in the case of a corporation that does not meet the requirements of subparagraphs (A) and (B) of subsection (a)(1), to the first 2 taxable years of such corporation which begin after December 31, 2011, and before January 1, 2014.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

**SEC. 331. EXTENSION AND MODIFICATION OF BONUS DEPRECIATION.**

(a) **IN GENERAL.**—Paragraph (2) of section 168(k) is amended—

(1) by striking “January 1, 2014” in subparagraph (A)(iv) and inserting “January 1, 2015”, and

(2) by striking “January 1, 2013” each place it appears and inserting “January 1, 2014”.

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(b) SPECIAL RULE FOR FEDERAL LONG-TERM CONTRACTS.— Clause (ii) of section 460(c)(6)(B) is amended by inserting “, or after December 31, 2012, and before January 1, 2014 (January 1, 2015, in the case of property described in section 168(k)(2)(B))” before the period.

(c) EXTENSION OF ELECTION TO ACCELERATE THE AMT CREDIT IN LIEU OF BONUS DEPRECIATION.—

(1) IN GENERAL.—Subclause (II) of section 168(k)(4)(D)(iii) is amended by striking “2013” and inserting “2014”.

(2) ROUND 3 EXTENSION PROPERTY.—Paragraph (4) of section 168(k) is amended by adding at the end the following new subparagraph:

“(J) SPECIAL RULES FOR ROUND 3 EXTENSION PROPERTY.—

“(i) IN GENERAL.—In the case of round 3 extension property, this paragraph shall be applied without regard to—

“(I) the limitation described in subparagraph (B)(i) thereof, and

“(II) the business credit increase amount under subparagraph (E)(iii) thereof.

“(ii) TAXPAYERS PREVIOUSLY ELECTING ACCELERATION.—In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, a taxpayer who made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008, or a taxpayer who made the election under subparagraph (I)(iii) for its first taxable year ending after December 31, 2010—

“(I) the taxpayer may elect not to have this paragraph apply to round 3 extension property, but

“(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer the bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is round 3 extension property.

The amounts described in subclause (II) shall be computed separately from any amounts computed with respect to eligible qualified property which is not round 3 extension property.

“(iii) TAXPAYERS NOT PREVIOUSLY ELECTING ACCELERATION.—In the case of a taxpayer who neither made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, nor made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008, nor made the election under subparagraph (I)(iii) for any taxable year ending after December 31, 2010—

“(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2012, and each subsequent taxable year, and

“(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to

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eligible qualified property which is round 3 extension property.

“(iv) ROUND 3 EXTENSION PROPERTY.—For purposes of this subparagraph, the term ‘round 3 extension property’ means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 331(a) of the American Taxpayer Relief Act of 2012 (and the application of such extension to this paragraph pursuant to the amendment made by section 331(c)(1) of such Act).”.

(d) NORMALIZATION RULES AMENDMENT.—Clause (ii) of section 168(i)(9)(A) is amended by inserting “(respecting all elections made by the taxpayer under this section)” after “such property”.

(e) CONFORMING AMENDMENTS.—

(1) The heading for subsection (k) of section 168 is amended by striking “JANUARY 1, 2013” and inserting “JANUARY 1, 2014”.

(2) The heading for clause (ii) of section 168(k)(2)(B) is amended by striking “PRE-JANUARY 1, 2013” and inserting “PRE-JANUARY 1, 2014”.

(3) Subparagraph (C) of section 168(n)(2) is amended by striking “January 1, 2013” and inserting “January 1, 2014”.

(4) Subparagraph (D) of section 1400L(b)(2) is amended by striking “January 1, 2013” and inserting “January 1, 2014”.

(5) Subparagraph (B) of section 1400N(d)(3) is amended by striking “January 1, 2013” and inserting “January 1, 2014”.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2012, in taxable years ending after such date.

## TITLE IV—ENERGY TAX EXTENDERS

### SEC. 401. EXTENSION OF CREDIT FOR ENERGY-EFFICIENT EXISTING HOMES.

(a) IN GENERAL.—Paragraph (2) of section 25C(g) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2011.

### SEC. 402. EXTENSION OF CREDIT FOR ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.

(a) IN GENERAL.—Paragraph (2) of section 30C(g) is amended by striking “December 31, 2011.” and inserting “December 31, 2013”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2011.

### SEC. 403. EXTENSION OF CREDIT FOR 2- OR 3-WHEELED PLUG-IN ELECTRIC VEHICLES.

(a) IN GENERAL.—Section 30D is amended by adding at the end the following new subsection:

“(g) CREDIT ALLOWED FOR 2- AND 3-WHEELED PLUG-IN ELECTRIC VEHICLES.—

“(1) IN GENERAL.—In the case of a qualified 2- or 3-wheeled plug-in electric vehicle—

“(A) there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the applicable amount with respect

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to each such qualified 2- or 3-wheeled plug-in electric vehicle placed in service by the taxpayer during the taxable year, and

“(B) the amount of the credit allowed under subparagraph (A) shall be treated as a credit allowed under subsection (a).

“(2) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount is an amount equal to the lesser of—

“(A) 10 percent of the cost of the qualified 2- or 3-wheeled plug-in electric vehicle, or

“(B) \$2,500.

“(3) QUALIFIED 2- OR 3-WHEELED PLUG-IN ELECTRIC VEHICLE.—The term ‘qualified 2- or 3-wheeled plug-in electric vehicle’ means any vehicle which—

“(A) has 2 or 3 wheels,

“(B) meets the requirements of subparagraphs (A), (B), (C), (E), and (F) of subsection (d)(1) (determined by substituting ‘2.5 kilowatt hours’ for ‘4 kilowatt hours’ in subparagraph (F)(i)),

“(C) is manufactured primarily for use on public streets, roads, and highways,

“(D) is capable of achieving a speed of 45 miles per hour or greater, and

“(E) is acquired after December 31, 2011, and before January 1, 2014.”

(b) CONFORMING AMENDMENTS.—

(1) NO DOUBLE BENEFIT.—Paragraph (2) of section 30D(f) is amended—

(A) by striking “new qualified plug-in electric drive motor vehicle” and inserting “vehicle for which a credit is allowable under subsection (a)”, and

(B) by striking “allowed under subsection (a)” and inserting “allowed under such subsection”.

(2) AIR QUALITY AND SAFETY STANDARDS.—Section 30D(f)(7) is amended by striking “motor vehicle” and inserting “vehicle”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to vehicles acquired after December 31, 2011.

**SEC. 404. EXTENSION AND MODIFICATION OF CELLULOSIC BIOFUEL PRODUCER CREDIT.**

(a) EXTENSION.—

(1) IN GENERAL.—Subparagraph (H) of section 40(b)(6) is amended to read as follows:

“(H) APPLICATION OF PARAGRAPH.—

“(i) IN GENERAL.—This paragraph shall apply with respect to qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2014.

“(ii) NO CARRYOVER TO CERTAIN YEARS AFTER EXPIRATION.—If this paragraph ceases to apply for any period by reason of clause (i), rules similar to the rules of subsection (e)(2) shall apply.”

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 40(e) is amended by striking “or subsection (b)(6)(H)”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in section 15321(b) of the Heartland, Habitat, and Horticulture Act of 2008.

(b) ALGAE TREATED AS A QUALIFIED FEEDSTOCK.—

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(1) IN GENERAL.—Subclause (I) of section 40(b)(6)(E)(i) is amended to read as follows:

“(I) is derived by, or from, qualified feedstocks, and”.

(2) QUALIFIED FEEDSTOCK; SPECIAL RULES FOR ALGAE.—Paragraph (6) of section 40(b) is amended by redesignating subparagraphs (F), (G), and (H), as amended by this Act, as subparagraphs (H), (I), and (J), respectively, and by inserting after subparagraph (E) the following new subparagraphs:

“(F) QUALIFIED FEEDSTOCK.—For purposes of this paragraph, the term ‘qualified feedstock’ means—

“(i) any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and

“(ii) any cultivated algae, cyanobacteria, or lemna.

“(G) SPECIAL RULES FOR ALGAE.—In the case of fuel which is derived by, or from, feedstock described in subparagraph (F)(ii) and which is sold by the taxpayer to another person for refining by such other person into a fuel which meets the requirements of subparagraph (E)(i)(II) and the refined fuel is not excluded under subparagraph (E)(iii)—

“(i) such sale shall be treated as described in subparagraph (C)(i),

“(ii) such fuel shall be treated as meeting the requirements of subparagraph (E)(i)(II) and as not being excluded under subparagraph (E)(iii) in the hands of such taxpayer, and

“(iii) except as provided in this subparagraph, such fuel (and any fuel derived from such fuel) shall not be taken into account under subparagraph (C) with respect to the taxpayer or any other person.”.

(3) CONFORMING AMENDMENTS.—(A) Section 40, as amended by paragraph (2), is amended—

(i) by striking “cellulosic biofuel” each place it appears in the text thereof and inserting “second generation biofuel”,

(ii) by striking “CELLULOSIC” in the headings of subsections (b)(6), (b)(6)(E), and (d)(3)(D) and inserting “SECOND GENERATION”, and

(iii) by striking “CELLULOSIC” in the headings of subsections (b)(6)(C), (b)(6)(D), (b)(6)(H), (d)(6), and (e)(3) and inserting “SECOND GENERATION”.

(B) Clause (ii) of section 40(b)(6)(E) is amended by striking “Such term shall not” and inserting “The term ‘second generation biofuel’ shall not”.

(C) Paragraph (1) of section 4101(a) is amended by striking “cellulosic biofuel” and inserting “second generation biofuel”.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to fuels sold or used after the date of the enactment of this Act.

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**SEC. 405. EXTENSION OF INCENTIVES FOR BIODIESEL AND RENEWABLE DIESEL.**

(a) CREDITS FOR BIODIESEL AND RENEWABLE DIESEL USED AS FUEL.—Subsection (g) of section 40A is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) EXCISE TAX CREDITS AND OUTLAY PAYMENTS FOR BIODIESEL AND RENEWABLE DIESEL FUEL MIXTURES.—

(1) Paragraph (6) of section 6426(c) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(2) Subparagraph (B) of section 6427(e)(6) is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after December 31, 2011.

**SEC. 406. EXTENSION OF PRODUCTION CREDIT FOR INDIAN COAL FACILITIES PLACED IN SERVICE BEFORE 2009.**

(a) IN GENERAL.—Subparagraph (A) of section 45(e)(10) is amended by striking “7-year period” each place it appears and inserting “8-year period”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to coal produced after December 31, 2012.

**SEC. 407. EXTENSION AND MODIFICATION OF CREDITS WITH RESPECT TO FACILITIES PRODUCING ENERGY FROM CERTAIN RENEWABLE RESOURCES.**

(a) PRODUCTION TAX CREDIT.—

(1) EXTENSION FOR WIND FACILITIES.—Paragraph (1) of section 45(d) is amended by striking “January 1, 2013” and inserting “January 1, 2014”.

(2) EXCLUSION OF PAPER WHICH IS COMMONLY RECYCLED FROM DEFINITION OF MUNICIPAL SOLID WASTE.—Section 45(c)(6) is amended by inserting “, except that such term does not include paper which is commonly recycled and which has been segregated from other solid waste (as so defined)” after “(42 U.S.C. 6903)”.

(3) MODIFICATION TO DEFINITION OF QUALIFIED FACILITY.—

(A) IN GENERAL.—The following provisions of section 45(d), as amended by paragraph (1), are each amended by striking “before January 1, 2014” and inserting “the construction of which begins before January 1, 2014”:

- (i) Paragraph (1).
- (ii) Paragraph (2)(A)(i).
- (iii) Paragraph (3)(A)(i)(I).
- (iv) Paragraph (6).
- (v) Paragraph (7).
- (vi) Paragraph (9)(B).
- (vii) Paragraph (11)(B).

(B) CERTAIN CLOSED-LOOP BIOMASS FACILITIES.—Subparagraph (A) of section 45(d)(2) is amended by adding at the end the following new flush sentence:

“For purposes of clause (ii), a facility shall be treated as modified before January 1, 2014, if the construction of such modification begins before such date.”.

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(C) CERTAIN OPEN-LOOP BIOMASS FACILITIES.—Clause (ii) of section 45(d)(3)(A) is amended by striking “is originally placed in service” and inserting “the construction of which begins”.

(D) GEOTHERMAL FACILITIES.—

(i) IN GENERAL.—Paragraph (4) of section 45(d) is amended by striking “and before January 1, 2014” and all that follows and inserting “and which—

“(A) in the case of a facility using solar energy, is placed in service before January 1, 2006, or

“(B) in the case of a facility using geothermal energy, the construction of which begins before January 1, 2014. Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.”.

(E) INCREMENTAL HYDROPOWER PRODUCTION.—Paragraph (9) of section 45(d) is amended—

(i) by redesignating subparagraphs (A) and (B), as amended by subparagraph (A), as clauses (i) and (ii), respectively, and by moving such clauses (as so redesignated) 2 ems to the right,

(ii) by striking “In the case of a facility” and inserting the following:

“(A) IN GENERAL.—In the case of a facility”,

(iii) by redesignating subparagraph (C) as subparagraph (B), and

(iv) by adding at the end the following new subparagraph:

“(C) SPECIAL RULE.—For purposes of subparagraph (A)(i), an efficiency improvement or addition to capacity shall be treated as placed in service before January 1, 2014, if the construction of such improvement or addition begins before such date.”.

(b) EXTENSION OF ELECTION TO TREAT QUALIFIED FACILITIES AS ENERGY PROPERTY.—Subparagraph (C) of section 48(a)(5) is amended to read as follows:

“(C) QUALIFIED INVESTMENT CREDIT FACILITY.—For purposes of this paragraph, the term ‘qualified investment credit facility’ means any facility—

“(i) which is a qualified facility (within the meaning of section 45) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d),

“(ii) which is placed in service after 2008 and the construction of which begins before January 1, 2014, and

“(iii) with respect to which—

“(I) no credit has been allowed under section 45, and

“(II) the taxpayer makes an irrevocable election to have this paragraph apply.”.

(c) TECHNICAL CORRECTIONS.—

(1) Subparagraph (D) of section 48(a)(5) is amended—

(A) by striking “and” at the end of clause (i)(II),

(B) by striking the period at the end of clause (ii) and inserting a comma, and

(C) by adding at the end the following new clauses:

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“(iii) which is constructed, reconstructed, erected, or acquired by the taxpayer, and

“(iv) the original use of which commences with the taxpayer.”.

(2) Paragraphs (1) and (2) of subsection (a) of section 1603 of division B of the American Recovery and Reinvestment Act of 2009 are each amended by striking “placed in service” and inserting “originally placed in service by such person”.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) MODIFICATION TO DEFINITION OF MUNICIPAL SOLID WASTE.—The amendments made by subsection (a)(2) shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

(3) TECHNICAL CORRECTIONS.—The amendments made by subsection (c) shall apply as if included in the enactment of the provisions of the American Recovery and Reinvestment Act of 2009 to which they relate.

**SEC. 408. EXTENSION OF CREDIT FOR ENERGY-EFFICIENT NEW HOMES.**

(a) IN GENERAL.—Subsection (g) of section 45L is amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) ENERGY SAVINGS REQUIREMENTS.—Clause (i) of section 45L(c)(1)(A) is amended by striking “2003 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section” and inserting “2006 International Energy Conservation Code, as such Code (including supplements) is in effect on January 1, 2006”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to homes acquired after December 31, 2011.

**SEC. 409. EXTENSION OF CREDIT FOR ENERGY-EFFICIENT APPLIANCES.**

(a) IN GENERAL.—Section 45M(b) is amended by striking “2011” each place it appears other than in the provisions specified in subsection (b) and inserting “2011, 2012, or 2013”.

(b) PROVISIONS SPECIFIED.—The provisions of section 45M(b) specified in this subsection are subparagraph (C) of paragraph (1) and subparagraph (E) of paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2011.

**SEC. 410. EXTENSION AND MODIFICATION OF SPECIAL ALLOWANCE FOR CELLULOSIC BIOFUEL PLANT PROPERTY.**

(a) EXTENSION.—

(1) IN GENERAL.—Subparagraph (D) of section 168(l)(2) is amended by striking “January 1, 2013” and inserting “January 1, 2014”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to property placed in service after December 31, 2012.

(b) ALGAE TREATED AS A QUALIFIED FEEDSTOCK FOR PURPOSES OF BONUS DEPRECIATION FOR BIOFUEL PLANT PROPERTY.—

(1) IN GENERAL.—Subparagraph (A) of section 168(l)(2) is amended by striking “solely to produce cellulosic biofuel” and

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inserting “solely to produce second generation biofuel (as defined in section 40(b)(6)(E))”.

(2) CONFORMING AMENDMENTS.—Subsection (l) of section 168, as amended by subsection (a), is amended—

(A) by striking “cellulosic biofuel” each place it appears in the text thereof and inserting “second generation biofuel”,

(B) by striking paragraph (3) and redesignating paragraphs (4) through (8) as paragraphs (3) through (7), respectively,

(C) by striking “CELLULOSIC” in the heading of such subsection and inserting “SECOND GENERATION”, and

(D) by striking “CELLULOSIC” in the heading of paragraph (2) and inserting “SECOND GENERATION”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after the date of the enactment of this Act.

**SEC. 411. EXTENSION OF SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FERC OR STATE ELECTRIC RESTRUCTURING POLICY FOR QUALIFIED ELECTRIC UTILITIES.**

(a) IN GENERAL.—Paragraph (3) of section 451(i) is amended by striking “January 1, 2012” and inserting “January 1, 2014”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions after December 31, 2011.

**SEC. 412. EXTENSION OF ALTERNATIVE FUELS EXCISE TAX CREDITS.**

(a) IN GENERAL.—Sections 6426(d)(5) and 6426(e)(3) are each amended by striking “December 31, 2011” and inserting “December 31, 2013”.

(b) OUTLAY PAYMENTS FOR ALTERNATIVE FUELS.—Paragraph (6) of section 6427(e) is amended—

(1) in subparagraph (C)—

(A) by striking “or alternative fuel mixture (as defined in subsection (d)(2) or (e)(3) of section 6426)” and inserting “(as defined in section 6426(d)(2))”, and

(B) by striking “December 31, 2011, and” and inserting “December 31, 2013,”,

(2) in subparagraph (D)—

(A) by striking “or alternative fuel mixture”, and

(B) by striking the period at the end and inserting “, and”, and

(3) by adding at the end the following new subparagraph:“(E) any alternative fuel mixture (as defined in section 6426(e)(2)) sold or used after December 31, 2011.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after December 31, 2011.

## TITLE V—UNEMPLOYMENT

**SEC. 501. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.**

(a) EXTENSION.—Section 4007(a)(2) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended by striking “January 2, 2013” and inserting “January 1, 2014”.

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(b) **FUNDING.**—Section 4004(e)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(1) in subparagraph (H), by striking “and” at the end; and

(2) by inserting after subparagraph (I) the following:

“(J) the amendments made by section 501(a) of the American Taxpayer Relief Act of 2012;”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 (Public Law 112–96)

**SEC. 502. TEMPORARY EXTENSION OF EXTENDED BENEFIT PROVISIONS.**

(a) **IN GENERAL.**—Section 2005 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note), is amended—

(1) by striking “December 31, 2012” each place it appears and inserting “December 31, 2013”; and

(2) in subsection (c), by striking “June 30, 2013” and inserting “June 30, 2014”.

(b) **EXTENSION OF MATCHING FOR STATES WITH NO WAITING WEEK.**—Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 26 U.S.C. 3304 note) is amended by striking “June 30, 2013” and inserting “June 30, 2014”.

(c) **EXTENSION OF MODIFICATION OF INDICATORS UNDER THE EXTENDED BENEFIT PROGRAM.**—Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) is amended—

(1) in subsection (d), by striking “December 31, 2012” and inserting “December 31, 2013”; and

(2) in subsection (f)(2), by striking “December 31, 2012” and inserting “December 31, 2013”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 (Public Law 112–96).

**SEC. 503. EXTENSION OF FUNDING FOR REEMPLOYMENT SERVICES AND REEMPLOYMENT AND ELIGIBILITY ASSESSMENT ACTIVITIES.**

(a) **IN GENERAL.**—Section 4004(c)(2)(A) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended by striking “through fiscal year 2013” and inserting “through fiscal year 2014”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 (Public Law 112–96).

**SEC. 504. ADDITIONAL EXTENDED UNEMPLOYMENT BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.**

(a) **EXTENSION.**—Section 2(c)(2)(D)(iii) of the Railroad Unemployment Insurance Act, as added by section 2006 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) and as amended by section 9 of the Worker, Homeownership, and Business Assistance Act of 2009 (Public Law 111–92), section 505 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law 111–312), section 202 of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public

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Law 112–78), and section 2124 of the Unemployment Benefits Extension Act of 2012 (Public Law 112–96), is amended—

(1) by striking “June 30, 2012” and inserting “June 30, 2013”; and

(2) by striking “December 31, 2012” and inserting “December 31, 2013”.

(b) CLARIFICATION ON AUTHORITY TO USE FUNDS.—Funds appropriated under either the first or second sentence of clause (iv) of section 2(c)(2)(D) of the Railroad Unemployment Insurance Act shall be available to cover the cost of additional extended unemployment benefits provided under such section 2(c)(2)(D) by reason of the amendments made by subsection (a) as well as to cover the cost of such benefits provided under such section 2(c)(2)(D), as in effect on the day before the date of enactment of this Act.

(c) FUNDING FOR ADMINISTRATION.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Railroad Retirement Board \$250,000 for administrative expenses associated with the payment of additional extended unemployment benefits provided under section 2(c)(2)(D) of the Railroad Unemployment Insurance Act by reason of the amendments made by subsection (a), to remain available until expended.

## TITLE VI—MEDICARE AND OTHER HEALTH EXTENSIONS

### Subtitle A—Medicare Extensions

#### SEC. 601. MEDICARE PHYSICIAN PAYMENT UPDATE.

(a) IN GENERAL.—Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) is amended by adding at the end the following new paragraph:

“(14) UPDATE FOR 2013.—

“(A) IN GENERAL.—Subject to paragraphs (7)(B), (8)(B), (9)(B), (10)(B), (11)(B), (12)(B), and (13)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2013, the update to the single conversion factor for such year shall be zero percent.

“(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2014 AND SUBSEQUENT YEARS.—The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2014 and subsequent years as if subparagraph (A) had never applied.”.

(b) ADVANCEMENT OF CLINICAL DATA REGISTRIES TO IMPROVE THE QUALITY OF HEALTH CARE.—

(1) IN GENERAL.—Section 1848(m)(3) of the Social Security Act (42 U.S.C. 1395w–4(m)(3)) is amended—

(A) by redesignating subparagraph (D) as subparagraph (F); and

(B) by inserting after subparagraph (C) the following new subparagraphs:

“(D) SATISFACTORY REPORTING MEASURES THROUGH PARTICIPATION IN A QUALIFIED CLINICAL DATA REGISTRY.—For 2014 and subsequent years, the Secretary shall treat

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an eligible professional as satisfactorily submitting data on quality measures under subparagraph (A) if, in lieu of reporting measures under subsection (k)(2)(C), the eligible professional is satisfactorily participating, as determined by the Secretary, in a qualified clinical data registry (as described in subparagraph (E)) for the year.

“(E) QUALIFIED CLINICAL DATA REGISTRY.—

“(i) IN GENERAL.—The Secretary shall establish requirements for an entity to be considered a qualified clinical data registry. Such requirements shall include a requirement that the entity provide the Secretary with such information, at such times, and in such manner, as the Secretary determines necessary to carry out this subsection.

“(ii) CONSIDERATIONS.—In establishing the requirements under clause (i), the Secretary shall consider whether an entity—

“(I) has in place mechanisms for the transparency of data elements and specifications, risk models, and measures;

“(II) requires the submission of data from participants with respect to multiple payers;

“(III) provides timely performance reports to participants at the individual participant level; and

“(IV) supports quality improvement initiatives for participants.

“(iii) MEASURES.—With respect to measures used by a qualified clinical data registry—

“(I) sections 1890(b)(7) and 1890A(a) shall not apply; and

“(II) measures endorsed by the entity with a contract with the Secretary under section 1890(a) may be used.

“(iv) CONSULTATION.—In carrying out this subparagraph, the Secretary shall consult with interested parties.

“(v) DETERMINATION.—The Secretary shall establish a process to determine whether or not an entity meets the requirements established under clause (i). Such process may involve one or both of the following:

“(I) A determination by the Secretary.

“(II) A designation by the Secretary of one or more independent organizations to make such determination.”

(2) GAO STUDY AND REPORT ON INCORPORATING REGISTRY DATA INTO THE MEDICARE PROGRAM IN ORDER TO IMPROVE QUALITY AND EFFICIENCY.—

(A) STUDY.—The Comptroller General of the United States shall conduct a study on the potential of clinical data registries to improve the quality and efficiency of care in the Medicare program, including through payment system incentives. Such study shall include an analysis of the role of health information technology in facilitating clinical data registries and the use of data from such registries among private health insurers as well as other entities the Comptroller General determines appropriate.

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(B) REPORT.—Not later than November 15, 2013, the Comptroller General of the United States shall submit to Congress a report on the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

**SEC. 602. WORK GEOGRAPHIC ADJUSTMENT.**

Section 1848(e)(1)(E) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)(E)) is amended by striking “before January 1, 2013” and inserting “before January 1, 2014”.

**SEC. 603. PAYMENT FOR OUTPATIENT THERAPY SERVICES.**

(a) EXTENSION.—Section 1833(g) of the Social Security Act (42 U.S.C. 1395l(g)) is amended—

(1) in paragraph (5)(A), in the first sentence, by striking “December 31, 2012” and inserting “December 31, 2013”; and

(2) in paragraph (6)—

(A) by striking “December 31, 2012” and inserting “December 31, 2013”; and

(B) by inserting “or 2013” after “during 2012”.

(b) APPLICATION OF THERAPY CAP TO THERAPY FURNISHED AS PART OF OUTPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—Section 1833(g)(6) of the Social Security Act (42 U.S.C. 1395l(g)(6)), as amended by subsection (a), is amended—

(1) by striking “In applying” and inserting “(A) In applying”; and

(2) by adding at the end the following new subparagraph:

“(B)(i) With respect to outpatient therapy services furnished beginning on or after January 1, 2013, and before January 1, 2014, for which payment is made under section 1834(g), the Secretary shall count toward the uniform dollar limitations described in paragraphs (1) and (3) and the threshold described in paragraph (5)(C) the amount that would be payable under this part if such services were paid under section 1834(k)(1)(B) instead of being paid under section 1834(g).

“(ii) Nothing in clause (i) shall be construed as changing the method of payment for outpatient therapy services under section 1834(g).”.

(c) BENEFICIARY PROTECTIONS.—Section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)) is amended by adding at the end the following new subparagraph:

“(D) With respect to services furnished on or after January 1, 2013, where payment may not be made as a result of application of paragraphs (1) and (3), section 1879 shall apply in the same manner as such section applies to a denial that is made by reason of section 1862(a)(1).”.

(d) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the provisions of, and the amendments made by, this section by program instruction or otherwise.

**SEC. 604. AMBULANCE ADD-ON PAYMENTS.**

(a) GROUND AMBULANCE.—Section 1834(l)(13)(A) of the Social Security Act (42 U.S.C. 1395m(l)(13)(A)) is amended—

(1) in the matter preceding clause (i), by striking “January 1, 2013” and inserting “January 1, 2014”; and

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(2) in each of clauses (i) and (ii), by striking “January 1, 2013” and inserting “January 1, 2014” each place it appears.

(b) AIR AMBULANCE.—Section 146(b)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), as amended by sections 3105(b) and 10311(b) of the Patient Protection and Affordable Care Act (Public Law 111–148), section 106(b) of the Medicare and Medicaid Extenders Act of 2010 (Public Law 111–309), section 306(b) of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112–78), and section 3007(b) of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112–96), is amended by striking “December 31, 2012” and inserting “June 30, 2013”.

(c) SUPER RURAL AMBULANCE.—Section 1834(l)(12)(A) of the Social Security Act (42 U.S.C. 1395m(l)(12)(A)) is amended in the first sentence by striking “January 1, 2013” and inserting “January 1, 2014”.

(d) STUDIES OF AMBULANCE COSTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this subsection referred to as the “Secretary”) shall conduct a study of each of the following:

(A) A study that analyzes data on existing cost reports for ambulance services furnished by hospitals and critical access hospitals, including variation by characteristics of such providers of services.

(B) A study of the feasibility of obtaining cost data on a periodic basis from all ambulance providers of services and suppliers for potential use in examining the appropriateness of the Medicare add-on payments for ground ambulance services furnished under the fee schedule under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)) and in preparing for future reform of such payment system.

(2) COMPONENTS OF ONE OF THE STUDIES.—In conducting the study under paragraph (1)(B), the Secretary shall—

(A) consult with industry on the design of such cost collection efforts;

(B) explore use of cost surveys and cost reports to collect appropriate cost data and the periodicity of such cost data collection;

(C) examine the feasibility of development of a standard cost reporting tool for providers of services and suppliers of ground ambulance services; and

(D) examine the ability to furnish such cost data by various types of ambulance providers of services and suppliers, especially by rural and super-rural providers of services and suppliers.

(3) REPORTS.—

(A) EXISTING COST REPORTS.—Not later than October 1, 2013, the Secretary shall submit a report to Congress on the study conducted under paragraph (1)(A), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(B) OBTAINING COST DATA.—Not later than July 1, 2014, the Secretary shall submit a report to Congress on the study conducted under paragraph (1)(B), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

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**SEC. 605. EXTENSION OF MEDICARE INPATIENT HOSPITAL PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.**

Section 1886(d)(12) of the Social Security Act (42 U.S.C. 1395ww(d)(12)) is amended—

- (1) in subparagraph (B), in the matter preceding clause (i), by striking “2013” and inserting “2014”;
- (2) in subparagraph (C)(i), by striking “and 2012” each place it appears and inserting “, 2012, and 2013”; and
- (3) in subparagraph (D), by striking “and 2012” and inserting “, 2012, and 2013”.

**SEC. 606. EXTENSION OF THE MEDICARE-DEPENDENT HOSPITAL (MDH) PROGRAM.**

(a) **EXTENSION OF PAYMENT METHODOLOGY.**—Section 1886(d)(5)(G) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(G)) is amended—

- (1) in clause (i), by striking “October 1, 2012” and inserting “October 1, 2013”; and
- (2) in clause (ii)(II), by striking “October 1, 2012” and inserting “October 1, 2013”.

(b) **CONFORMING AMENDMENTS.**—

(1) **EXTENSION OF TARGET AMOUNT.**—Section 1886(b)(3)(D) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(D)) is amended—

- (A) in the matter preceding clause (i), by striking “October 1, 2012” and inserting “October 1, 2013”; and
- (B) in clause (iv), by striking “through fiscal year 2012” and inserting “through fiscal year 2013”.

(2) **PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.**—Section 13501(e)(2) of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 1395ww note) is amended by striking “through fiscal year 2012” and inserting “through fiscal year 2013”.

**SEC. 607. EXTENSION FOR SPECIALIZED MEDICARE ADVANTAGE PLANS FOR SPECIAL NEEDS INDIVIDUALS.**

Section 1859(f)(1) of the Social Security Act (42 U.S.C. 1395w–28(f)(1)) is amended by striking “2014” and inserting “2015”.

**SEC. 608. EXTENSION OF MEDICARE REASONABLE COST CONTRACTS.**

Section 1876(h)(5)(C)(ii) of the Social Security Act (42 U.S.C. 1395mm(h)(5)(C)(ii)) is amended, in the matter preceding subclause (I), by striking “January 1, 2013” and inserting “January 1, 2014”.

**SEC. 609. PERFORMANCE IMPROVEMENT.**

(a) **EXTENSION OF FUNDING FOR CONTRACT WITH CONSENSUS-BASED ENTITY REGARDING PERFORMANCE MEASUREMENT.**—

(1) **IN GENERAL.**—Section 1890(d) of the Social Security Act (42 U.S.C. 1395aaa(d)) is amended by striking “fiscal years 2009 through 2012” and inserting “fiscal years 2009 through 2013”.

(2) **REVISION TO DUTIES.**—Section 1890(b) of the Social Security Act (42 U.S.C. 1395aaa(b)) is amended by striking paragraph (4).

(b) **PROVIDING DATA FOR PERFORMANCE IMPROVEMENT IN A TIMELY MANNER.**—

(1) **IN GENERAL.**—The Secretary of Health and Human Services (in this subsection referred to as the “Secretary”) shall

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develop a strategy to provide data for performance improvement in a timely manner to applicable providers under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), including with respect to the provision of the following:

- (A) Utilization data, including such data for items and services under parts A, B, and D of the Medicare program.
  - (B) Feedback on quality data submitted by the applicable provider under the Medicare program.
- (2) CONSIDERATIONS.—In developing the strategy under paragraph (1), the Secretary shall consider—
- (A) the type of applicable provider receiving the data;
  - (B) the frequency of providing the data so that it can be the most relevant in improving provider performance;
  - (C) risk adjustment methods;
  - (D) presentation of the data in a meaningful manner and easily understandable format;
  - (E) with respect to utilization data, the provision of data that the Secretary determines would be useful to improve the performance of the type of applicable provider involved; and
  - (F) administrative costs involved with providing data.
- (3) SUBMISSION AND AVAILABILITY OF INITIAL STRATEGY.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall—
- (A) submit to the relevant committees of Congress the strategy described in paragraph (1); and
  - (B) post such strategy on the website of the Centers for Medicare & Medicaid Services.
- (4) STRATEGY UPDATE.—
- (A) FEEDBACK FROM STAKEHOLDERS.—The Secretary shall seek feedback from stakeholders on the initial strategy submitted under paragraph (3).
  - (B) STRATEGY UPDATE.—The Secretary shall—
    - (i) update the strategy described in paragraph (1) based on the feedback submitted under subparagraph (A); and
    - (ii) not later than 18 months after the date of the enactment of this Act—
      - (I) submit such updated strategy to the relevant committees of Congress; and
      - (II) post such updated strategy on the website of the Centers for Medicare & Medicaid Services.
- (5) GAO STUDY AND REPORT ON PRIVATE SECTOR INFORMATION SHARING ACTIVITIES.—
- (A) STUDY.—The Comptroller General of the United States (in this paragraph referred to as the “Comptroller General”) shall conduct a study on information sharing activities. Such study shall include an analysis of—
    - (i) how private sector entities share timely data with hospitals, physicians, and other providers and what lessons can be learned from those activities;
    - (ii) how the Medicare program currently shares data with providers, including what data is provided and to which providers, and what divisions within the Centers for Medicare & Medicaid Services oversee those efforts;

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(iii) what, if any, differences there are between the private sector and the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) in terms of sharing data; and

(iv) what, if any, barriers there are for the Centers for Medicare & Medicaid Services to sharing timely data with applicable providers and recommendations to eliminate or reduce such barriers.

(B) REPORT.—Not later than 8 months after the date of the enactment of this Act, the Comptroller General shall submit to the relevant committees of Congress a report containing the results of the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(6) DEFINITIONS.—In this subsection:

(A) APPLICABLE PROVIDER.—The term “applicable provider” means the following:

(i) A critical access hospital (as defined in section 1861(mm)(1) of the Social Security Act (42 U.S.C. 1395xx(mm)(1))).

(ii) A hospital (as defined in section 1861(e) of such Act (42 U.S.C. 1395x(e))).

(iii) A physician (as defined in section 1861(r) of such Act (42 U.S.C. 1395x(r))).

(iv) Any other provider the Secretary determines should receive the information described in subsection (a).

(B) PERFORMANCE IMPROVEMENT.—The term “performance improvement” means improvements in quality, reducing per capita costs, and other criteria the Secretary determines appropriate.

**SEC. 610. EXTENSION OF FUNDING OUTREACH AND ASSISTANCE FOR LOW-INCOME PROGRAMS.**

(a) ADDITIONAL FUNDING FOR STATE HEALTH INSURANCE PROGRAMS.—Subsection (a)(1)(B) of section 119 of the Medicare Improvements for Patients and Providers Act of 2008 (42 U.S.C. 1395b–3 note), as amended by section 3306 of the Patient Protection and Affordable Care Act Public Law 111–148), is amended—

(1) in clause (i), by striking “and” at the end;

(2) in clause (ii), by striking the period at the end and inserting “; and”; and

(3) by inserting after clause (ii) the following new clause: “(iii) for fiscal year 2013, of \$7,500,000.”.

(b) ADDITIONAL FUNDING FOR AREA AGENCIES ON AGING.—Subsection (b)(1)(B) of such section 119, as so amended, is amended—

(1) in clause (i), by striking “and” at the end;

(2) in clause (ii), by striking the period at the end and inserting “; and”; and

(3) by inserting after clause (ii) the following new clause: “(iii) for fiscal year 2013, of \$7,500,000.”.

(c) ADDITIONAL FUNDING FOR AGING AND DISABILITY RESOURCE CENTERS.—Subsection (c)(1)(B) of such section 119, as so amended, is amended—

(1) in clause (i), by striking “and” at the end;

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(2) in clause (ii), by striking the period at the end and inserting “; and”; and

(3) by inserting after clause (ii) the following new clause:  
“(iii) for fiscal year 2013, of \$5,000,000.”.

(d) ADDITIONAL FUNDING FOR CONTRACT WITH THE NATIONAL CENTER FOR BENEFITS AND OUTREACH ENROLLMENT.—Subsection (d)(2) of such section 119, as so amended, is amended—

(1) in clause (i), by striking “and” at the end;

(2) in clause (ii), by striking the period at the end and inserting “; and”; and

(3) by inserting after clause (ii) the following new clause:  
“(iii) for fiscal year 2013, of \$5,000,000.”.

### Subtitle B—Other Health Extensions

#### SEC. 621. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM.

(a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking “2012” and inserting “2013”.

(b) EXTENDING TOTAL AMOUNT AVAILABLE FOR ALLOCATION.—Section 1933(g) of such Act (42 U.S.C. 1396u–3(g)) is amended—  
(1) in paragraph (2)—

(A) in subparagraph (Q), by striking “and” after the semicolon;

(B) in subparagraph (R), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

“(S) for the period that begins on January 1, 2013, and ends on September 30, 2013, the total allocation amount is \$485,000,000; and

“(T) for the period that begins on October 1, 2013, and ends on December 31, 2013, the total allocation amount is \$300,000,000.”; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by striking “or (R)” and inserting “(R), or (T)”.

#### SEC. 622. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA).

Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r–6(f)) are each amended by striking “2012” and inserting “2013”.

#### SEC. 623. EXTENSION OF MEDICAID AND CHIP EXPRESS LANE OPTION.

Section 1902(e)(13)(I) of the Social Security Act (42 U.S.C. 1396a(e)(13)(I)) is amended by striking “2013” and inserting “2014”.

#### SEC. 624. EXTENSION OF FAMILY-TO-FAMILY HEALTH INFORMATION CENTERS.

Section 501(c)(1)(A)(iii) of the Social Security Act (42 U.S.C. 701(c)(1)(A)(iii)) is amended by striking “2012” and inserting “2013”.

#### SEC. 625. EXTENSION OF SPECIAL DIABETES PROGRAM FOR TYPE I DIABETES AND FOR INDIANS.

(a) SPECIAL DIABETES PROGRAMS FOR TYPE I DIABETES.—Section 330B(b)(2)(C) of the Public Health Service Act (42 U.S.C. 254c–2(b)(2)(C)) is amended by striking “2013” and inserting “2014”.

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(b) SPECIAL DIABETES PROGRAMS FOR INDIANS.—Section 330C(c)(2)(C) of the Public Health Service Act (42 U.S.C. 254c-3(c)(2)(C)) is amended by striking “2013” and inserting “2014”.

### Subtitle C—Other Health Provisions

#### SEC. 631. IPPS DOCUMENTATION AND CODING ADJUSTMENT FOR IMPLEMENTATION OF MS-DRGS.

(a) RULE OF CONSTRUCTION AND CLARIFICATION.—

(1) RULE OF CONSTRUCTION.—Nothing in the amendments made by subsection (b) shall be construed as changing the existing authority under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) to make prospective documentation and coding adjustments to the standardized amounts under such section 1886(d) to correct for changes in the coding or classification of discharges that do not reflect real changes in case mix.

(2) CLARIFICATION.—Effective on the date of the enactment of this section, except as provided in section 7(b)(1)(B)(ii) of the TMA, Abstinence Education, and QI Programs Extension Act of 2007, as added by subsection (b)(2)(A)(ii)(IV) of this section, the Secretary of Health and Human Services shall not have authority to fully recoup past overpayments related to documentation and coding changes from fiscal years 2008 and 2009.

(b) ADJUSTMENT.—Section 7 of the TMA, Abstinence Education, and QI Programs Extension Act of 2007 (Public Law 110–90; 121 Stat. 986) is amended—

(1) in the heading, by striking “LIMITATION” and all that follows through “ADJUSTMENT” and inserting “DOCUMENTATION AND CODING ADJUSTMENTS”; and

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in the matter before subparagraph (A)—

(I) by striking “or 2009” and inserting “, 2009, or 2010”; and

(II) by inserting “or otherwise applied for such year” after “applied under subsection (a)”; and

(ii) in subparagraph (B)—

(I) by inserting “(i)” after “(B)”; and

(II) by striking “or decrease”; and

(III) by striking the period at the end and inserting “; and”; and

(IV) by adding at the end the following:

“(ii) make an additional adjustment to the standardized amounts under such section 1886(d) based upon the Secretary’s estimates for discharges occurring only during fiscal years 2014, 2015, 2016, and 2017 to fully offset \$11,000,000,000 (which represents the amount of the increase in aggregate payments from fiscal years 2008 through 2013 for which an adjustment was not previously applied).”; and

(B) in paragraph (3)—

(i) in subparagraph (A), by inserting before the semicolon the following: “or affecting the Secretary’s authority under such paragraph to apply a prospective

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adjustment to offset aggregate additional payments related to documentation and coding improvements made with respect to discharges during fiscal year 2010”; and

(ii) in subparagraph (B), by striking “and 2012” and inserting “2012, 2014, 2015, 2016, and 2017”.

**SEC. 632. REVISIONS TO THE MEDICARE ESRD BUNDLED PAYMENT SYSTEM TO REFLECT FINDINGS IN THE GAO REPORT.**

(a) **ADJUSTMENT TO ESRD BUNDLED PAYMENT RATE TO ACCOUNT FOR CHANGES IN THE UTILIZATION OF CERTAIN DRUGS AND BIOLOGICALS.**—Section 1881(b)(14) of the Social Security Act (42 U.S.C. 1395rr(b)(14)) is amended by adding at the end the following new subparagraph:

“(I) For services furnished on or after January 1, 2014, the Secretary shall, by comparing per patient utilization data from 2007 with such data from 2012, make reductions to the single payment that would otherwise apply under this paragraph for renal dialysis services to reflect the Secretary’s estimate of the change in the utilization of drugs and biologicals described in clauses (ii), (iii), and (iv) of subparagraph (B) (other than oral-only ESRD-related drugs, as such term is used in the final rule promulgated by the Secretary in the Federal Register on August 12, 2010 (75 Fed. Reg. 49030)). In making reductions under the preceding sentence, the Secretary shall take into account the most recently available data on average sales prices and changes in prices for drugs and biological reflected in the ESRD market basket percentage increase factor under subparagraph (F).”

(b) **TWO-YEAR DELAY OF IMPLEMENTATION OF ORAL-ONLY ESRD-RELATED DRUGS IN THE ESRD PROSPECTIVE PAYMENT SYSTEM; MONITORING.**—

(1) **DELAY.**—The Secretary of Health and Human Services may not implement the policy under section 413.174(f)(6) of title 42, Code of Federal Regulations (relating to oral-only ESRD-related drugs in the ESRD prospective payment system), prior to January 1, 2016.

(2) **MONITORING.**—With respect to the implementation of oral-only ESRD-related drugs in the ESRD prospective payment system under subsection (b)(14) of section 1881 of the Social Security Act (42 U.S.C. 1395rr(b)(14)), the Secretary of Health and Human Services shall monitor the bone and mineral metabolism of individuals with end stage renal disease.

(c) **ANALYSIS OF CASE MIX PAYMENT ADJUSTMENTS.**—By not later than January 1, 2016, the Secretary of Health and Human Services shall—

(1) conduct an analysis of the case mix payment adjustments being used under section 1881(b)(14)(D)(i) of the Social Security Act (42 U.S.C. 1395rr(b)(14)(D)(i)); and

(2) make appropriate revisions to such case mix payment adjustments.

(d) **UPDATED GAO REPORT.**—Not later than December 31, 2015, the Comptroller General of the United States shall submit to Congress a report that updates the report submitted to Congress under section 10336 of the Patient Protection and Affordable Care Act (Public Law 111–148; 124 Stat. 974). The updated report shall include an analysis of how the Secretary of Health and Human Services has addressed points raised in the report submitted under

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such section 10336 with respect to the Secretary's preparations to implement payment for oral-only ESRD-related drugs in the bundled prospective payment system under section 1881(b)(14) of the Social Security Act (42 U.S.C. 1395rr(b)(14)).

**SEC. 633. TREATMENT OF MULTIPLE SERVICE PAYMENT POLICIES FOR THERAPY SERVICES.**

(a) SERVICES FURNISHED BY PHYSICIANS AND CERTAIN OTHER PROVIDERS.—Section 1848(b)(7) of the Social Security Act (42 U.S.C. 1395w-4(b)(7)) is amended—

(1) by striking “2011,” and inserting “2011, and before April 1, 2013,”; and

(2) by adding at the end the following new sentence: “In the case of such services furnished on or after April 1, 2013, and for which payment is made under such fee schedules, instead of the 25 percent multiple procedure payment reduction specified in such final rule, the reduction percentage shall be 50 percent.”

(b) SERVICES FURNISHED BY OTHER PROVIDERS.—Section 1834(k) of the Social Security Act (42 U.S.C. 1395m(k)) is amended by adding at the end the following new paragraph:

“(7) ADJUSTMENT IN DISCOUNT FOR CERTAIN MULTIPLE THERAPY SERVICES.—In the case of therapy services furnished on or after April 1, 2013, and for which payment is made under this subsection pursuant to the applicable fee schedule amount (as defined in paragraph (3)), instead of the 25 percent multiple procedure payment reduction specified in the final rule published by the Secretary in the Federal Register on November 29, 2010, the reduction percentage shall be 50 percent.”

**SEC. 634. PAYMENT FOR CERTAIN RADIOLOGY SERVICES FURNISHED UNDER THE MEDICARE HOSPITAL OUTPATIENT DEPARTMENT PROSPECTIVE PAYMENT SYSTEM.**

Section 1833(t)(16) of the Social Security Act (42 U.S.C. 1395l(t)(16)) is amended by adding at the end the following new subparagraph:

“(D) SPECIAL PAYMENT RULE.—

“(i) IN GENERAL.—In the case of covered OPD services furnished on or after April 1, 2013, in a hospital described in clause (ii), if—

“(I) the payment rate that would otherwise apply under this subsection for stereotactic radiosurgery, complete course of treatment of cranial lesion(s) consisting of 1 session that is multi-source Cobalt 60 based (identified as of January 1, 2013, by HCPCS code 77371 (and any succeeding code) and reimbursed as of such date under APC 0127 (and any succeeding classification group)); exceeds

“(II) the payment rate that would otherwise apply under this subsection for linear accelerator based stereotactic radiosurgery, complete course of therapy in one session (identified as of January 1, 2013, by HCPCS code G0173 (and any succeeding code) and reimbursed as of such date under APC 0067 (and any succeeding classification group)),

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the payment rate for the service described in subclause (I) shall be reduced to an amount equal to the payment rate for the service described in subclause (II).

“(ii) HOSPITAL DESCRIBED.—A hospital described in this clause is a hospital that is not—

“(I) located in a rural area (as defined in section 1886(d)(2)(D));

“(II) classified as a rural referral center under section 1886(d)(5)(C); or

“(III) a sole community hospital (as defined in section 1886(d)(5)(D)(iii)).

“(iii) NOT BUDGET NEUTRAL.—In making any budget neutrality adjustments under this subsection for 2013 (with respect to covered OPD services furnished on or after April 1, 2013, and before January 1, 2014) or a subsequent year, the Secretary shall not take into account the reduced expenditures that result from the application of this subparagraph.”

**SEC. 635. ADJUSTMENT OF EQUIPMENT UTILIZATION RATE FOR ADVANCED IMAGING SERVICES.**

Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended—

(1) in subsection (b)(4)(C)—

(A) by striking “and subsequent years” and inserting “, 2012, and 2013”; and

(B) by adding at the end the following new sentence: “With respect to fee schedules established for 2014 and subsequent years, in such methodology, the Secretary shall use a 90 percent utilization rate.”; and

(2) in subsection (c)(2)(B)(v)(III), by striking “change in the utilization rate applicable to 2011, as described in” and inserting “changes in the utilization rate applicable to 2011 and 2014, as described in the first and second sentence, respectively, of”.

**SEC. 636. MEDICARE PAYMENT OF COMPETITIVE PRICES FOR DIABETIC SUPPLIES AND ELIMINATION OF OVERPAYMENT FOR DIABETIC SUPPLIES.**

(a) APPLICATION OF COMPETITIVE BIDDING PRICES FOR DIABETIC SUPPLIES.—Section 1834(a)(1) of the Social Security Act (42 U.S.C. 1395m(a)(1)) is amended—

(1) in subparagraph (F), in the matter preceding clause (i), by striking “subparagraph (G)” and inserting “subparagraphs (G) and (H)”; and

(2) by adding at the end the following new subparagraph: “(H) DIABETIC SUPPLIES.—

“(i) IN GENERAL.—On or after the date described in clause (ii), the payment amount under this part for diabetic supplies, including testing strips, that are non-mail order items (as defined by the Secretary) shall be equal to the single payment amounts established under the national mail order competition for diabetic supplies under section 1847.

“(ii) DATE DESCRIBED.—The date described in this clause is the date of the implementation of the single payment amounts under the national mail order competition for diabetic supplies under section 1847.”

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(b) OVERPAYMENT ELIMINATION FOR DIABETIC SUPPLIES.—Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

“(22) SPECIAL PAYMENT RULE FOR DIABETIC SUPPLIES.—Notwithstanding the preceding provisions of this subsection, for purposes of determining the payment amount under this subsection for diabetic supplies furnished on or after the first day of the calendar quarter during 2013 that is at least 30 days after the date of the enactment of this paragraph and before the date described in paragraph (1)(H)(ii), the Secretary shall recalculate and apply the covered item update under paragraph (14) as if subparagraph (J)(i) of such paragraph was amended by striking ‘but only if furnished through mail order’.”.

**SEC. 637. MEDICARE PAYMENT ADJUSTMENT FOR NON-EMERGENCY AMBULANCE TRANSPORTS FOR ESRD BENEFICIARIES.**

Section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)) is amended by adding at the end the following new paragraph:

“(15) PAYMENT ADJUSTMENT FOR NON-EMERGENCY AMBULANCE TRANSPORTS FOR ESRD BENEFICIARIES.—The fee schedule amount otherwise applicable under the preceding provisions of this subsection shall be reduced by 10 percent for ambulance services furnished on or after October 1, 2013, consisting of non-emergency basic life support services involving transport of an individual with end-stage renal disease for renal dialysis services (as described in section 1881(b)(14)(B)) furnished other than on an emergency basis by a provider of services or a renal dialysis facility.”.

**SEC. 638. REMOVING OBSTACLES TO COLLECTION OF OVERPAYMENTS.**

(a) IN GENERAL.—The last sentence of subsections (b) and (c) of section 1870 of the Social Security Act (42 U.S.C. 1395gg) are each amended—

- (1) by striking “third year” and inserting “fifth year”; and
- (2) by striking “three-year” and inserting “five-year”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

**SEC. 639. MEDICARE ADVANTAGE CODING INTENSITY ADJUSTMENT.**

Section 1853(a)(1)(C)(ii)(III) of the Social Security Act (42 U.S.C. 1395w-23(a)(1)(C)(ii)(III)) is amended—

- (1) by striking “1.3 percentage points” and inserting “1.5 percentage points”; and
- (2) by striking “5.7 percent” and inserting “5.9 percent”.

**SEC. 640. ELIMINATION OF ALL FUNDING FOR THE MEDICARE IMPROVEMENT FUND.**

Section 1898(b)(1) of the Social Security Act (42 U.S.C. 1395iii(b)(1)) is amended by striking subparagraphs (A), (B), and (C) and inserting the following new subparagraphs:

- “(A) fiscal year 2014, \$0; and  
“(B) fiscal year 2015, \$0.”.

**SEC. 641. REBASING OF STATE DSH ALLOTMENTS.**

Section 1923(f)(8) of the Social Security Act (42 U.S.C. 1396r-4(f)(8)) is amended to read as follows:

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**“(8) SPECIAL RULES FOR CALCULATING DSH ALLOTMENTS FOR CERTAIN FISCAL YEARS.—**

**“(A) FISCAL YEAR 2021.—**Only with respect to fiscal year 2021, the DSH allotment for a State, in lieu of the amount determined under paragraph (3) for the State for that year, shall be equal to the DSH allotment for the State as reduced under paragraph (7) for fiscal year 2020, increased, subject to subparagraphs (B) and (C) of paragraph (3), and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for fiscal year 2020.

**“(B) FISCAL YEAR 2022.—**Only with respect to fiscal year 2022, the DSH allotment for a State, in lieu of the amount determined under paragraph (3) for the State for that year, shall be equal to the DSH allotment for the State for fiscal year 2021, as determined under subparagraph (A), increased, subject to subparagraphs (B) and (C) of paragraph (3), and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for fiscal year 2021.

**“(C) SUBSEQUENT FISCAL YEARS.—**The DSH allotment for a State for fiscal years after fiscal year 2022 shall be calculated under paragraph (3) without regard to this paragraph and paragraph (7).”.

**SEC. 642. REPEAL OF CLASS PROGRAM.**

(a) **REPEAL.—**Title XXXII of the Public Health Service Act (42 U.S.C. 3001l et seq.; relating to the CLASS program) is repealed.

(b) **CONFORMING CHANGES.—**

(1) Title VIII of the Patient Protection and Affordable Care Act (Public Law 111–148; 124 Stat. 119, 846–847) is repealed.

(2) Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(A) by striking paragraphs (81) and (82);

(B) in paragraph (80), by inserting “and” at the end; and

(C) by redesignating paragraph (83) as paragraph (81).

(3) Paragraphs (2) and (3) of section 6021(d) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396p note) are amended to read as such paragraphs were in effect on the day before the date of the enactment of section 8002(d) of the Patient Protection and Affordable Care Act (Public Law 111–148). Of the funds appropriated by paragraph (3) of such section 6021(d), as amended by the Patient Protection and Affordable Care Act, the unobligated balance is rescinded.

**SEC. 643. COMMISSION ON LONG-TERM CARE.**

(a) **ESTABLISHMENT.—**There is established a commission to be known as the Commission on Long-Term Care (referred to in this section as the “Commission”).

(b) **DUTIES.—**

(1) **IN GENERAL.—**The Commission shall develop a plan for the establishment, implementation, and financing of a comprehensive, coordinated, and high-quality system that ensures the availability of long-term services and supports for individuals in need of such services and supports, including elderly individuals, individuals with substantial cognitive or functional limitations, other individuals who require assistance to perform

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activities of daily living, and individuals desiring to plan for future long-term care needs.

(2) EXISTING HEALTH CARE PROGRAMS.—For purposes of developing the plan described in paragraph (1), the Commission shall provide recommendations for—

(A) addressing the interaction of a long-term services and support system with existing programs for long-term services and supports, including the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), and private long-term care insurance;

(B) improvements to such health care programs that are necessary for ensuring the availability of long-term services and supports; and

(C) issues related to workers who provide long-term services and supports, including—

(i) whether the number of such workers is adequate to provide long-term services and supports to individuals with long-term care needs;

(ii) workforce development necessary to deliver high-quality services to such individuals;

(iii) development of entities that have the capacity to serve as employers and fiscal agents for workers who provide long-term services and supports in the homes of such individuals; and

(iv) addressing gaps in Federal and State infrastructure that prevent delivery of high-quality long term services and supports to such individuals.

(3) ADDITIONAL CONSIDERATIONS.—For purposes of developing the plan described in paragraph (1), the Commission shall take into account projected demographic changes and trends in the population of the United States, as well as the potential for development of new technologies, delivery systems, or other mechanisms to improve the availability and quality of long-term services and supports.

(4) CONSULTATION.—For purposes of developing the plan described in paragraph (1), the Commission shall consult with the Medicare Payment Advisory Commission, the Medicaid and CHIP Payment and Access Commission, the National Council on Disability, and relevant consumer groups.

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 15 members, to be appointed not later than 30 days after the date of enactment of this Act, as follows:

(A) The President of the United States shall appoint 3 members.

(B) The majority leader of the Senate shall appoint 3 members.

(C) The minority leader of the Senate shall appoint 3 members.

(D) The Speaker of the House of Representatives shall appoint 3 members.

(E) The minority leader of the House of Representatives shall appoint 3 members.

(2) REPRESENTATION.—The membership of the Commission shall include individuals who—

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- (A) represent the interests of—
- (i) consumers of long-term services and supports and related insurance products, as well as their representatives;
  - (ii) older adults;
  - (iii) individuals with cognitive or functional limitations;
  - (iv) family caregivers for individuals described in clause (i), (ii), or (iii);
  - (v) the health care workforce who directly provide long-term services and supports;
  - (vi) private long-term care insurance providers;
  - (vii) employers;
  - (viii) State insurance departments; and
  - (ix) State Medicaid agencies;
- (B) have demonstrated experience in dealing with issues related to long-term services and supports, health care policy, and public and private insurance; and
- (C) represent the health care interests and needs of a variety of geographic areas and demographic groups.
- (3) CHAIRMAN AND VICE-CHAIRMAN.—The Commission shall elect a chairman and vice chairman from among its members.
- (4) VACANCIES.—Any vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made and shall not affect the power of the remaining members to execute the duties of the Commission.
- (5) QUORUM.—A quorum shall consist of 8 members of the Commission, except that 4 members may conduct a hearing under subsection (e)(1).
- (6) MEETINGS.—The Commission shall meet at the call of its chairman or a majority of its members.
- (7) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—
- (A) IN GENERAL.—To enable the Commission to exercise its powers, functions, and duties, there are authorized to be disbursed by the Senate the actual and necessary expenses of the Commission approved by the chairman and vice chairman, subject to subparagraph (B) and the rules and regulations of the Senate.
- (B) MEMBERS.—Members of the Commission are not entitled to receive compensation for service on the Commission. Members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Commission.
- (d) STAFF AND ETHICAL STANDARDS.—
- (1) STAFF.—The chairman and vice chairman of the Commission may jointly appoint and fix the compensation of staff as they deem necessary, within the guidelines for employees of the Senate and following all applicable rules and employment requirements of the Senate.
- (2) ETHICAL STANDARDS.—Members of the Commission who serve in the House of Representatives shall be governed by the ethics rules and requirements of the House. Members of the Senate who serve on the Commission and staff of the Commission shall comply with the ethics rules of the Senate.
- (e) POWERS.—
- (1) HEARINGS AND OTHER ACTIVITIES.—For the purpose of carrying out its duties, the Commission may hold such hearings

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and undertake such other activities as the Commission determines to be necessary to carry out its duties.

(2) **STUDIES BY GENERAL ACCOUNTING OFFICE.**—Upon the request of the Commission, the Comptroller General of the United States shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

(3) **COST ESTIMATES BY CONGRESSIONAL BUDGET OFFICE.**—Upon the request of the Commission, the Director of the Congressional Budget Office shall provide to the Commission such cost estimates as the Commission determines to be necessary to carry out its duties.

(4) **DETAIL OF FEDERAL EMPLOYEES.**—Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(5) **TECHNICAL ASSISTANCE.**—Upon the request of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

(6) **USE OF MAILS.**—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

(7) **OBTAINING INFORMATION.**—The Commission may secure directly from any Federal agency information necessary to enable it to carry out its duties, if the information may be disclosed under section 552 of title 5, United States Code. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(8) **ADMINISTRATIVE SUPPORT SERVICES.**—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) **COMMISSION CONSIDERATION.**—

(1) **APPROVAL OF REPORT AND LEGISLATIVE LANGUAGE.**—

(A) **IN GENERAL.**—Not later than 6 months after appointment of the members of the Commission (as described in subsection (c)(1)), the Commission shall vote on a comprehensive and detailed report based on the long-term care plan described in subsection (b)(1) that contains any recommendations or proposals for legislative or administrative action as the Commission deems appropriate, including proposed legislative language to carry out the recommendations or proposals (referred to in this section as the “Commission bill”).

(B) **APPROVAL BY MAJORITY OF MEMBERS.**—The Commission bill shall require the approval of a majority of the members of the Commission.

(2) **TRANSMISSION OF COMMISSION BILL.**—

(A) **IN GENERAL.**—If the Commission bill is approved by the Commission pursuant to paragraph (1), then not later than 10 days after such approval, the Commission

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shall submit the Commission bill to the President, the Vice President, the Speaker of the House of Representatives, and the majority and minority Leaders of each House on Congress.

(B) COMMISSION BILL TO BE MADE PUBLIC.—Upon the approval or disapproval of the Commission bill pursuant to paragraph (1), the Commission shall promptly make such proposal, and a record of the vote, available to the public.

(g) TERMINATION.—The Commission shall terminate 30 days after the vote described in subsection (f)(1).

(h) CONSIDERATION OF COMMISSION RECOMMENDATIONS.—If approved by the majority required by subsection (f)(1), the Commission bill that has been submitted pursuant to subsection (f)(2)(A) shall be introduced in the Senate (by request) on the next day on which the Senate is in session by the majority leader of the Senate or by a Member of the Senate designated by the majority leader of the Senate and shall be introduced in the House of Representatives (by request) on the next legislative day by the majority leader of the House or by a member of the House designated by the majority leader of the House.

**SEC. 644. CONSUMER OPERATED AND ORIENTED PLAN PROGRAM CONTINGENCY FUND.**

(a) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a fund to be used to provide assistance and oversight to qualified nonprofit health insurance issuers that have been awarded loans or grants under section 1322 of the Patient Protection and Affordable Care Act (42 U.S.C. 18042) prior to the date of enactment of this Act.

(b) TRANSFER AND RESCISSION.—

(1) TRANSFER.—From the unobligated balance of funds appropriated under section 1322(g) of the Patient Protection and Affordable Care Act (42 U.S.C. 18042(g)), 10 percent of such sums are hereby transferred to the fund established under subsection (a) to remain available until expended.

(2) RESCISSION.—Except as provided for in paragraph (1), amounts appropriated under section 1322(g) of the Patient Protection and Affordable Care Act (42 U.S.C. 18042(g)) that are unobligated as of the date of enactment of this Act are rescinded.

**TITLE VII—EXTENSION OF AGRICULTURAL PROGRAMS**

**SEC. 701. 1-YEAR EXTENSION OF AGRICULTURAL PROGRAMS.**

(a) EXTENSION.—Except as otherwise provided in this section and amendments made by this section and notwithstanding any other provision of law, the authorities provided by each provision of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 1651) and each amendment made by that Act (and for mandatory programs at such funding levels), as in effect on September 30, 2012, shall continue, and the Secretary of Agriculture shall carry out the authorities, until the later of—

(1) September 30, 2013; or

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(2) the date specified in the provision of that Act or amendment made by that Act.

(b) COMMODITY PROGRAMS.—

(1) IN GENERAL.—The terms and conditions applicable to a covered commodity or loan commodity (as those terms are defined in section 1001 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8702)) or to peanuts, sugarcane, or sugar beets for the 2012 crop year pursuant to title I of that Act (7 U.S.C. 8702 et seq.) and each amendment made by that title shall be applicable to the 2013 crop year for that covered commodity, loan commodity, peanuts, sugarcane, or sugar beets.

(2) MILK.—

(A) IN GENERAL.—Notwithstanding subsection (a), the Secretary of Agriculture shall carry out the dairy product price support program under section 1501 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8771) through December 31, 2013.

(B) MILK INCOME LOSS CONTRACT PROGRAM.—Section 1506 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8773) is amended by striking “2012” each place it appears in subsections (c)(3), (d)(1), (d)(2), (e)(2)(A), (g), and (h)(1) and inserting “2013”.

(3) SUSPENSION OF PERMANENT PRICE SUPPORT AUTHORITIES.—The provisions of law specified in subsections (a) through (c) of section 1602 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8782) shall be suspended—

(A) for the 2013 crop or production year of a covered commodity (as that term is defined in section 1001 of that Act (7 U.S.C. 8702)), peanuts, sugarcane, and sugar, as appropriate; and

(B) in the case of milk, through December 31, 2013.

(c) CONSERVATION PROGRAMS.—

(1) CONSERVATION RESERVE.—Section 1231(d) of the Food Security Act of 1985 (16 U.S.C. 3831(d)) is amended in the second sentence by striking “and 2012” and inserting “2012, and 2013”.

(2) VOLUNTARY PUBLIC ACCESS.—Section 1240R of the Food Security Act of 1985 (16 U.S.C. 3839bb-5) is amended by striking subsection (f) and inserting the following:

“(f) FUNDING.—

“(1) FISCAL YEARS 2009 THROUGH 2012.—Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section, to the maximum extent practicable, \$50,000,000 for the period of fiscal years 2009 through 2012.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$10,000,000 for fiscal year 2013.”

(d) SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.—

(1) EMPLOYMENT AND TRAINING PROGRAM.—Section 16(h)(1)(A) of the Food and Nutrition Act of 2008 (7 U.S.C. 2025(h)(1)(A)) is amended by inserting “, except that for fiscal year 2013, the amount shall be \$79,000,000” before the period at the end.

(2) NUTRITION EDUCATION.—Section 28(d)(1) of the Food and Nutrition Act of 2008 (7 U.S.C. 2036a(d)(1)) is amended—

(A) in subparagraph (A), by striking “and” after the semicolon at the end; and

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(B) by striking subparagraph (B) and inserting the following:

“(B) for fiscal year 2012, \$388,000,000;

“(C) for fiscal year 2013, \$285,000,000;

“(D) for fiscal year 2014, \$401,000,000;

“(E) for fiscal year 2015, \$407,000,000; and

“(F) for fiscal year 2016 and each subsequent fiscal year, the applicable amount during the preceding fiscal year, as adjusted to reflect any increases for the 12-month period ending the preceding June 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.”.

(e) RESEARCH PROGRAMS.—

(1) ORGANIC AGRICULTURE RESEARCH AND EXTENSION INITIATIVE.—Section 1672B(f) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925b(f)) is amended—

(A) in the heading of paragraph (1), by striking “IN GENERAL” and inserting “MANDATORY FUNDING FOR FISCAL YEARS 2009 THROUGH 2012”;

(B) in the heading of paragraph (2), by striking “ADDITIONAL FUNDING” and inserting “DISCRETIONARY FUNDING FOR FISCAL YEARS 2009 THROUGH 2012”; and

(C) by adding at the end the following:

“(3) FISCAL YEAR 2013.—There is authorized to be appropriated to carry out this section \$25,000,000 for fiscal year 2013.”.

(2) SPECIALTY CROP RESEARCH INITIATIVE.—Section 412(h) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7632(h)) is amended—

(A) in the heading of paragraph (1), by striking “IN GENERAL” and inserting “MANDATORY FUNDING FOR FISCAL YEARS 2008 THROUGH 2012”;

(B) in the heading of paragraph (2), by inserting “FOR FISCAL YEARS 2008 THROUGH 2012” after “APPROPRIATIONS”;

(C) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(D) by inserting after paragraph (2) the following:

“(3) FISCAL YEAR 2013.—There is authorized to be appropriated to carry out this section \$100,000,000 for fiscal year 2013.”.

(3) BEGINNING FARMER AND RANCHER DEVELOPMENT PROGRAM.—Section 7405(h) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3319f(h)) is amended—

(A) in the heading of paragraph (1), by striking “IN GENERAL” and inserting “MANDATORY FUNDING FOR FISCAL YEARS 2009 THROUGH 2012”;

(B) in the heading of paragraph (2), by inserting “FOR FISCAL YEARS 2008 THROUGH 2012” after “APPROPRIATIONS”; and

(C) by adding at the end the following:

“(3) FISCAL YEAR 2013.—There is authorized to be appropriated to carry out this section \$30,000,000 for fiscal year 2013.”.

(f) ENERGY PROGRAMS.—

(1) BIOBASED MARKETS PROGRAM.—Section 9002(h) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C.

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8102(h)) is amended in paragraph (2) by striking “2012” and inserting “2013”.

(2) BIOREFINERY ASSISTANCE.—Section 9003(h)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8103(h)(2)) is amended by striking “2012” and inserting “2013”.

(3) REPOWERING ASSISTANCE.—Section 9004(d)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8104(d)(2)) is amended by striking “2012” and inserting “2013”.

(4) BIOENERGY PROGRAM FOR ADVANCED BIOFUELS.—Section 9005(g)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8105(g)(2)) is amended by striking “2012” and inserting “2013”.

(5) BIODIESEL FUEL EDUCATION PROGRAM.—Section 9006 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106) is amended by striking subsection (d) and inserting the following:

“(d) FUNDING.—

“(1) FISCAL YEARS 2009 THROUGH 2012.—Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section \$1,000,000 for each of fiscal years 2008 through 2012.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$1,000,000 for fiscal year 2013.”

(6) RURAL ENERGY FOR AMERICA PROGRAM.—Section 9007(g)(3) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8107(g)(3)) is amended by striking “2012” and inserting “2013”.

(7) BIOMASS RESEARCH AND DEVELOPMENT.—Section 9008(h)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8108(h)(2)) is amended by striking “2012” and inserting “2013”.

(8) RURAL ENERGY SELF-SUFFICIENCY INITIATIVE.—Section 9009(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8109(d)) is amended by striking “2012” and inserting “2013”.

(9) FEEDSTOCK FLEXIBILITY PROGRAM FOR BIOENERGY PRODUCERS.—Section 9010(b) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8110(b)) is amended in paragraphs (1)(A) and (2)(A) by striking “2012” each place it appears and inserting “2013”.

(10) BIOMASS CROP ASSISTANCE PROGRAM.—Section 9011(f) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8111(f)) is amended—

(A) by striking “(f) FUNDING.—Of the funds” and inserting “(f) FUNDING.—

“(1) FISCAL YEARS 2008 THROUGH 2012.—Of the funds”; and

(B) adding at the end the following:

“(2) FISCAL YEAR 2013.—

“(A) IN GENERAL.—There is authorized to be appropriated to carry out this section \$20,000,000 for fiscal year 2013.

“(B) MULTIYEAR CONTRACTS.—For each multiyear contract entered into by the Secretary during a fiscal year under this paragraph, the Secretary shall ensure that sufficient funds are obligated from the amounts appropriated

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for that fiscal year to fully cover all payments required by the contract for all years of the contract.”

(11) FOREST BIOMASS FOR ENERGY.—Section 9012(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8112(d)) is amended by striking “2012” and inserting “2013”.

(12) COMMUNITY WOOD ENERGY PROGRAM.—Section 9013(e) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8113(e)) is amended by striking “2012” and inserting “2013”.

(g) HORTICULTURE AND ORGANIC AGRICULTURE PROGRAMS.—  
(1) FARMERS MARKET PROMOTION PROGRAM.—Section 6(e) of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3005(e)) is amended—

(A) in the heading of paragraph (1), by striking “IN GENERAL” and inserting “FISCAL YEARS 2008 THROUGH 2012”;

(B) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(C) by inserting after paragraph (1) the following:

“(2) FISCAL YEAR 2013.—There is authorized to be appropriated to carry out this section \$10,000,000 for fiscal year 2013.”;

(D) in paragraph (3) (as so redesignated), by striking “paragraph (1)” and inserting “paragraph (1) or (2)”; and

(E) in paragraph (5) (as so redesignated), by striking “paragraph (2)” and inserting “paragraph (3)”.

(2) NATIONAL CLEAN PLANT NETWORK.—Section 10202(e) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7761(e)) is amended—

(A) by striking “Of the funds” and inserting the following:

“(1) FISCAL YEARS 2009 THROUGH 2012.—Of the funds”; and  
(B) by adding at the end the following:

“(2) FISCAL YEAR 2013.—There is authorized to be appropriated to carry out the Program \$5,000,000 for fiscal year 2013.”.

(3) NATIONAL ORGANIC CERTIFICATION COST-SHARE PROGRAM.—Section 10606 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 6523) is amended—

(A) in subsection (a), by striking “Of funds of the Commodity Credit Corporation, the Secretary of Agriculture (acting through the Agricultural Marketing Service) shall use \$22,000,000 for fiscal year 2008, to remain available until expended, to” and inserting “The Secretary of Agriculture (acting through the Agricultural Marketing Service) shall”; and

(B) by adding at the end the following:

“(d) FUNDING.—

“(1) MANDATORY FUNDING FOR FISCAL YEARS 2008 THROUGH 2012.—Of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this section \$22,000,000 for the period of fiscal years 2008 through 2012.

“(2) FISCAL YEAR 2013.—There is authorized to be appropriated to carry out this section \$22,000,000 for fiscal year 2013, to remain available until expended.”.

(4) ORGANIC PRODUCTION AND MARKET DATA INITIATIVES.—Section 7407(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 5925c(d)) is amended—

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(A) in the heading of paragraph (1), by striking “IN GENERAL” and inserting “MANDATORY FUNDING THROUGH FISCAL YEAR 2012”;

(B) in the heading of paragraph (2), by striking “ADDITIONAL FUNDING” and inserting “DISCRETIONARY FUNDING FOR FISCAL YEARS 2008 THROUGH 2012”; and

(C) by adding at the end the following:

“(3) FISCAL YEAR 2013.—There is authorized to be appropriated to carry out this section \$5,000,000, to remain available until expended.”.

(h) OUTREACH AND TECHNICAL ASSISTANCE FOR SOCIALLY DISADVANTAGED FARMERS OR RANCHERS.—Section 2501(a)(4) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)(4)) is amended—

(1) in the heading of subparagraph (A), by striking “IN GENERAL” and inserting “FISCAL YEARS 2009 THROUGH 2012”;

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(3) by inserting after subparagraph (A) the following:

“(B) FISCAL YEAR 2013.—There is authorized to be appropriated to carry out this section \$20,000,000 for fiscal year 2013.”;

(4) in subparagraph (C) (as so redesignated), by striking “subparagraph (A)” and inserting “subparagraph (A) or (B)”; and

(5) in subparagraph (D) (as so redesignated), by striking “subparagraph (A)” and inserting “subparagraph (A) or (B)”.

(i) EXCEPTIONS.—

(1) IN GENERAL.—Subsection (a) does not apply with respect to mandatory funding provided by programs authorized by provisions of law amended by subsections (d) through (h).

(2) CONSERVATION.—Subsection (a) does not apply with respect to the programs specified in paragraphs (3)(B), (4), (6), and (7) of section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)), relating to the conservation stewardship program, farmland protection program, environmental quality incentives program, and wildlife habitat incentives program, for which program authority was extended through fiscal year 2014 by section 716 of Public Law 112–55 (125 Stat. 582).

(3) TRADE.—Subsection (a) does not apply with respect to the following provisions of law:

(A) Section 3206 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1726c) relating to the use of Commodity Credit Corporation funds to support local and regional food aid procurement projects.

(B) Section 3107(1)(1) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1(1)(1)) relating to the use of Commodity Credit Corporation funds to carry out the McGovern-Dole International Food for Education and Child Nutrition Program.

(4) SURVEY OF FOODS PURCHASED BY SCHOOL FOOD AUTHORITIES.—Subsection (a) does not apply with respect to section 4307 of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 1893) relating to the use of Commodity Credit Corporation funds for a survey and report regarding foods purchased by school food authorities.

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(5) RURAL DEVELOPMENT.—Subsection (a) does not apply with respect to the following provisions of law:

(A) Section 379E(d)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008s(d)(1)), relating to funding of the rural microentrepreneur assistance program.

(B) Section 6029 of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 1955) relating to funding of pending rural development loan and grant applications.

(C) Section 231(b)(7)(A) of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1632a(b)(7)(A)), relating to funding of value-added agricultural market development program grants.

(D) Section 375(e)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j(e)(6)(B)) relating to the use of Commodity Credit Corporation funds for the National Sheep Industry Improvement Center.

(6) MARKET LOSS ASSISTANCE FOR ASPARAGUS PRODUCERS.—Subsection (a) does not apply with respect to section 10404(d) of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 2112).

(7) SUPPLEMENTAL AGRICULTURAL DISASTER ASSISTANCE.—Subsection (a) does not apply with respect to section 531 of the Federal Crop Insurance Act (7 U.S.C. 1531) and title IX of the Trade Act of 1974 (19 U.S.C. 2497 et seq.) relating to the provision of supplemental agricultural disaster assistance.

(8) PIGFORD CLAIMS.—Subsection (a) does not apply with respect to section 14012 of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 2209) relating to determination on the merits of Pigford claims.

(9) HEARTLAND, HABITAT, HARVEST, AND HORTICULTURE ACT OF 2008.—Subsection (a) does not apply with respect to title XV of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 2246), and amendments made by that title, relating to the provision of supplemental agricultural disaster assistance under title IX of the Trade Act of 1974 (19 U.S.C. 2497 et seq.), certain revenue and tax provisions, and certain trade benefits and other matters.

(j) EFFECTIVE DATE.—Except as otherwise provided in this section, this section and the amendments made by this section take effect on the earlier of—

- (1) the date of the enactment of this Act; or
- (2) September 30, 2012.

**SEC. 702. SUPPLEMENTAL AGRICULTURAL DISASTER ASSISTANCE.**

(a) IN GENERAL.—Section 531 of the Federal Crop Insurance Act (7 U.S.C. 1531) is amended—

(1) in subsection (a)(5)—

(A) in the matter preceding clause (i), by striking the first “under”; and

(B) by redesignating clauses (i) through (iii) as subparagraphs (A), (B), and (C), respectively, and indenting appropriately;

(2) in subsection (c)—

(A) in paragraph (1), by striking “use such sums as are necessary from the Trust Fund to”; and

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(B) by adding at the end the following:

“(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$80,000,000 for each of fiscal years 2012 and 2013.”;

(3) in subsection (d)—

(A) in paragraph (2), by striking “use such sums as are necessary from the Trust Fund to”; and

(B) by adding at the end the following:

“(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$400,000,000 for each of fiscal years 2012 and 2013.”;

(4) in subsection (e)—

(A) in paragraph (1), by striking “use up to \$50,000,000 per year from the Trust Fund to”; and

(B) by adding at the end the following:

“(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$50,000,000 for each of fiscal years 2012 and 2013.”;

(5) in subsection (f)—

(A) in paragraph (2)(A), by striking “use such sums as are necessary from the Trust Fund to”; and

(B) by adding at the end the following:

“(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$20,000,000 for each of fiscal years 2012 and 2013.”; and

(6) in subsection (i), by inserting “or, in the case of subsections (c) through (f), September 30, 2013” after “2011.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 2012.

## TITLE VIII—MISCELLANEOUS PROVISIONS

### SEC. 801. STRATEGIC DELIVERY SYSTEMS.

(a) IN GENERAL.—Paragraph 3 of section 495(c) of title 10, United States Code, as added by section 1035 of the National Defense Authorization Act for Fiscal Year 2013, is amended—

(1) by striking “that” before “the Russian Federation” and inserting “whether”; and

(2) by inserting “strategic” before “arms control obligations”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2013.

### SEC. 802. NO COST OF LIVING ADJUSTMENT IN PAY OF MEMBERS OF CONGRESS.

Notwithstanding any other provision of law, no adjustment shall be made under section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) (relating to cost of living adjustments for Members of Congress) during fiscal year 2013.

H. R. 8—58

**TITLE IX—BUDGET PROVISIONS****Subtitle A—Modifications of Sequestration****SEC. 901. TREATMENT OF SEQUESTER.**

(a) **ADJUSTMENT.**—Section 251A(3) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in subparagraph (C), by striking “and” after the semicolon;

(2) in subparagraph (D), by striking the period and inserting “; and”; and

(3) by inserting at the end the following:

“(E) for fiscal year 2013, reducing the amount calculated under subparagraphs (A) through (D) by \$24,000,000,000.”

(b) **AFTER SESSION SEQUESTER.**—Notwithstanding any other provision of law, the fiscal year 2013 spending reductions required by section 251(a)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be evaluated and implemented on March 27, 2013.

(c) **POSTPONEMENT OF BUDGET CONTROL ACT SEQUESTER FOR FISCAL YEAR 2013.**—Section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in paragraph (4), by striking “January 2, 2013” and inserting “March 1, 2013”; and

(2) in paragraph (7)(A), by striking “January 2, 2013” and inserting “March 1, 2013”.

(d) **ADDITIONAL ADJUSTMENTS.**—

(1) **SECTION 251.**—Paragraphs (2) and (3) of section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 are amended to read as follows:

“(2) for fiscal year 2013—

“(A) for the security category, as defined in section 250(c)(4)(B), \$684,000,000,000 in budget authority; and

“(B) for the nonsecurity category, as defined in section 250(c)(4)(A), \$359,000,000,000 in budget authority;

“(3) for fiscal year 2014—

“(A) for the security category, \$552,000,000,000 in budget authority; and

“(B) for the nonsecurity category, \$506,000,000,000 in budget authority;”.

(e) **2013 SEQUESTER.**—On March 1, 2013, the President shall order a sequestration for fiscal year 2013 pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by this section, pursuant to which, only for the purposes of the calculation in sections 251A(5)(A), 251A(6)(A), and 251A(7)(A), section 251(c)(2) shall be applied as if it read as follows:

“(2) For fiscal year 2013—

“(A) for the security category, \$544,000,000,000 in budget authority; and

“(B) for the nonsecurity category, \$499,000,000,000 in budget authority;”.

H. R. 8—59

**SEC. 902. AMOUNTS IN APPLICABLE RETIREMENT PLANS MAY BE TRANSFERRED TO DESIGNATED ROTH ACCOUNTS WITHOUT DISTRIBUTION.**

(a) **IN GENERAL.**—Section 402A(c)(4) is amended by adding at the end the following:

“(E) **SPECIAL RULE FOR CERTAIN TRANSFERS.**—In the case of an applicable retirement plan which includes a qualified Roth contribution program—

“(i) the plan may allow an individual to elect to have the plan transfer any amount not otherwise distributable under the plan to a designated Roth account maintained for the benefit of the individual,

“(ii) such transfer shall be treated as a distribution to which this paragraph applies which was contributed in a qualified rollover contribution (within the meaning of section 408A(e)) to such account, and

“(iii) the plan shall not be treated as violating the provisions of section 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), or 457(d)(1)(A), or of section 8433 of title 5, United States Code, solely by reason of such transfer.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to transfers after December 31, 2012, in taxable years ending after such date.

**Subtitle B—Budgetary Effects****SEC. 911. BUDGETARY EFFECTS.**

(a) **PAYGO SCORECARD.**—The budgetary effects of this Act shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) **SENATE PAYGO SCORECARD.**—The budgetary effects of this Act shall not be entered on any PAYGO scorecard maintained for purposes of section 201 of S. Con. Res. 21 (110th Congress).

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*



S. 365

One Hundred Twelfth Congress  
of the  
United States of America

AT THE FIRST SESSION

*Began and held at the City of Washington on Wednesday,  
the fifth day of January, two thousand and eleven*

An Act

To provide for budget control.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Budget Control Act of 2011”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Severability.

**TITLE I—TEN-YEAR DISCRETIONARY CAPS WITH SEQUESTER**

- Sec. 101. Enforcing discretionary spending limits.
- Sec. 102. Definitions.
- Sec. 103. Reports and orders.
- Sec. 104. Expiration.
- Sec. 105. Amendments to the Congressional Budget and Impoundment Control Act of 1974.
- Sec. 106. Senate budget enforcement.

**TITLE II—VOTE ON THE BALANCED BUDGET AMENDMENT**

- Sec. 201. Vote on the balanced budget amendment.
- Sec. 202. Consideration by the other House.

**TITLE III—DEBT CEILING DISAPPROVAL PROCESS**

- Sec. 301. Debt ceiling disapproval process.
- Sec. 302. Enforcement of budget goal.

**TITLE IV—JOINT SELECT COMMITTEE ON DEFICIT REDUCTION**

- Sec. 401. Establishment of Joint Select Committee.
- Sec. 402. Expedited consideration of joint committee recommendations.
- Sec. 403. Funding.
- Sec. 404. Rulemaking.

**TITLE V—PELL GRANT AND STUDENT LOAN PROGRAM CHANGES**

- Sec. 501. Federal Pell grants.
- Sec. 502. Termination of authority to make interest subsidized loans to graduate and professional students.
- Sec. 503. Termination of direct loan repayment incentives.
- Sec. 504. Inapplicability of title IV negotiated rulemaking and master calendar exception.

**SEC. 2. SEVERABILITY.**

If any provision of this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the application of this Act to any other person or circumstance shall not be affected.

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## TITLE I—TEN-YEAR DISCRETIONARY CAPS WITH SEQUESTER

### SEC. 101. ENFORCING DISCRETIONARY SPENDING LIMITS.

Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended to read as follows:

#### “SEC. 251. ENFORCING DISCRETIONARY SPENDING LIMITS.

“(a) ENFORCEMENT.—

“(1) SEQUESTRATION.—Within 15 calendar days after Congress adjourns to end a session there shall be a sequestration to eliminate a budget-year breach, if any, within any category.

“(2) ELIMINATING A BREACH.—Each non-exempt account within a category shall be reduced by a dollar amount calculated by multiplying the enacted level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to eliminate a breach within that category.

“(3) MILITARY PERSONNEL.—If the President uses the authority to exempt any personnel account from sequestration under section 255(f), each account within subfunctional category 051 (other than those military personnel accounts for which the authority provided under section 255(f) has been exercised) shall be further reduced by a dollar amount calculated by multiplying the enacted level of non-exempt budgetary resources in that account at that time by the uniform percentage necessary to offset the total dollar amount by which outlays are not reduced in military personnel accounts by reason of the use of such authority.

“(4) PART-YEAR APPROPRIATIONS.—If, on the date specified in paragraph (1), there is in effect an Act making or continuing appropriations for part of a fiscal year for any budget account, then the dollar sequestration calculated for that account under paragraphs (2) and (3) shall be subtracted from—

“(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

“(B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation for that account.

“(5) LOOK-BACK.—If, after June 30, an appropriation for the fiscal year in progress is enacted that causes a breach within a category for that year (after taking into account any sequestration of amounts within that category), the discretionary spending limits for that category for the next fiscal year shall be reduced by the amount or amounts of that breach.

“(6) WITHIN-SESSION SEQUESTRATION.—If an appropriation for a fiscal year in progress is enacted (after Congress adjourns to end the session for that budget year and before July 1 of that fiscal year) that causes a breach within a category for that year (after taking into account any prior sequestration of amounts within that category), 15 days later there shall be a sequestration to eliminate that breach within that category following the procedures set forth in paragraphs (2) through (4).

“(7) ESTIMATES.—

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“(A) CBO ESTIMATES.—As soon as practicable after Congress completes action on any discretionary appropriation, CBO, after consultation with the Committees on the Budget of the House of Representatives and the Senate, shall provide OMB with an estimate of the amount of discretionary new budget authority and outlays for the current year, if any, and the budget year provided by that legislation.

“(B) OMB ESTIMATES AND EXPLANATION OF DIFFERENCES.—Not later than 7 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of enactment of any discretionary appropriation, OMB shall transmit a report to the House of Representatives and to the Senate containing the CBO estimate of that legislation, an OMB estimate of the amount of discretionary new budget authority and outlays for the current year, if any, and the budget year provided by that legislation, and an explanation of any difference between the 2 estimates. If during the preparation of the report OMB determines that there is a significant difference between OMB and CBO, OMB shall consult with the Committees on the Budget of the House of Representatives and the Senate regarding that difference and that consultation shall include, to the extent practicable, written communication to those committees that affords such committees the opportunity to comment before the issuance of the report.

“(C) ASSUMPTIONS AND GUIDELINES.—OMB estimates under this paragraph shall be made using current economic and technical assumptions. OMB shall use the OMB estimates transmitted to the Congress under this paragraph. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeeping guidelines determined after consultation among the Committees on the Budget of the House of Representatives and the Senate, CBO, and OMB.

“(D) ANNUAL APPROPRIATIONS.—For purposes of this paragraph, amounts provided by annual appropriations shall include any discretionary appropriations for the current year, if any, and the budget year in accounts for which funding is provided in that legislation that result from previously enacted legislation.

“(b) ADJUSTMENTS TO DISCRETIONARY SPENDING LIMITS.—

“(1) CONCEPTS AND DEFINITIONS.—When the President submits the budget under section 1105 of title 31, United States Code, OMB shall calculate and the budget shall include adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each outyear to reflect changes in concepts and definitions. Such changes shall equal the baseline levels of new budget authority and outlays using up-to-date concepts and definitions, minus those levels using the concepts and definitions in effect before such changes. Such changes may only be made after consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate, and that consultation shall include written communication to such committees that affords such committees the opportunity to comment before official action is taken with respect to such changes.

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“(2) SEQUESTRATION REPORTS.—When OMB submits a sequestration report under section 254(e), (f), or (g) for a fiscal year, OMB shall calculate, and the sequestration report and subsequent budgets submitted by the President under section 1105(a) of title 31, United States Code, shall include adjustments to discretionary spending limits (and those limits as adjusted) for the fiscal year and each succeeding year, as follows:

“(A) EMERGENCY APPROPRIATIONS; OVERSEAS CONTINGENCY OPERATIONS/GLOBAL WAR ON TERRORISM.—If, for any fiscal year, appropriations for discretionary accounts are enacted that—

“(i) the Congress designates as emergency requirements in statute on an account by account basis and the President subsequently so designates, or

“(ii) the Congress designates for Overseas Contingency Operations/Global War on Terrorism in statute on an account by account basis and the President subsequently so designates,

the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements or for Overseas Contingency Operations/Global War on Terrorism, as applicable.

“(B) CONTINUING DISABILITY REVIEWS AND REDETERMINATIONS.—(i) If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for continuing disability reviews under titles II and XVI of the Social Security Act and for the cost associated with conducting redeterminations of eligibility under title XVI of the Social Security Act, then the adjustments for that fiscal year shall be the additional new budget authority provided in that Act for such expenses for that fiscal year, but shall not exceed—

“(I) for fiscal year 2012, \$623,000,000 in additional new budget authority;

“(II) for fiscal year 2013, \$751,000,000 in additional new budget authority;

“(III) for fiscal year 2014, \$924,000,000 in additional new budget authority;

“(IV) for fiscal year 2015, \$1,123,000,000 in additional new budget authority;

“(V) for fiscal year 2016, \$1,166,000,000 in additional new budget authority;

“(VI) for fiscal year 2017, \$1,309,000,000 in additional new budget authority;

“(VII) for fiscal year 2018, \$1,309,000,000 in additional new budget authority;

“(VIII) for fiscal year 2019, \$1,309,000,000 in additional new budget authority;

“(IX) for fiscal year 2020, \$1,309,000,000 in additional new budget authority; and

“(X) for fiscal year 2021, \$1,309,000,000 in additional new budget authority.

“(ii) As used in this subparagraph—

“(I) the term ‘continuing disability reviews’ means continuing disability reviews under sections 221(i) and 1614(a)(4) of the Social Security Act;

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“(II) the term ‘redetermination’ means redetermination of eligibility under sections 1611(c)(1) and 1614(a)(3)(H) of the Social Security Act; and

“(III) the term ‘additional new budget authority’ means the amount provided for a fiscal year, in excess of \$273,000,000, in an appropriation Act and specified to pay for the costs of continuing disability reviews and redeterminations under the heading ‘Limitation on Administrative Expenses’ for the Social Security Administration.

“(C) HEALTH CARE FRAUD AND ABUSE CONTROL.—(i) If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for the health care fraud abuse control program at the Department of Health and Human Services (75–8393–0–7–571), then the adjustments for that fiscal year shall be the amount of additional new budget authority provided in that Act for such program for that fiscal year, but shall not exceed—

“(I) for fiscal year 2012, \$270,000,000 in additional new budget authority;

“(II) for fiscal year 2013, \$299,000,000 in additional new budget authority;

“(III) for fiscal year 2014, \$329,000,000 in additional new budget authority;

“(IV) for fiscal year 2015, \$361,000,000 in additional new budget authority;

“(V) for fiscal year 2016, \$395,000,000 in additional new budget authority;

“(VI) for fiscal year 2017, \$414,000,000 in additional new budget authority;

“(VII) for fiscal year 2018, \$434,000,000 in additional new budget authority;

“(VIII) for fiscal year 2019, \$454,000,000 in additional new budget authority;

“(IX) for fiscal year 2020, \$475,000,000 in additional new budget authority; and

“(X) for fiscal year 2021, \$496,000,000 in additional new budget authority.

“(ii) As used in this subparagraph, the term ‘additional new budget authority’ means the amount provided for a fiscal year, in excess of \$311,000,000, in an appropriation Act and specified to pay for the costs of the health care fraud and abuse control program.

“(D) DISASTER FUNDING.—

“(i) If, for fiscal years 2012 through 2021, appropriations for discretionary accounts are enacted that Congress designates as being for disaster relief in statute, the adjustment for a fiscal year shall be the total of such appropriations for the fiscal year in discretionary accounts designated as being for disaster relief, but not to exceed the total of—

“(I) the average funding provided for disaster relief over the previous 10 years, excluding the highest and lowest years; and

“(II) the amount, for years when the enacted new discretionary budget authority designated as being for disaster relief for the preceding fiscal

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year was less than the average as calculated in subclause (I) for that fiscal year, that is the difference between the enacted amount and the allowable adjustment as calculated in such subclause for that fiscal year.

“(ii) OMB shall report to the Committees on Appropriations and Budget in each House the average calculated pursuant to clause (i)(II), not later than 30 days after the date of the enactment of the Budget Control Act of 2011.

“(iii) For the purposes of this subparagraph, the term ‘disaster relief’ means activities carried out pursuant to a determination under section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

“(iv) Appropriations considered disaster relief under this subparagraph in a fiscal year shall not be eligible for adjustments under subparagraph (A) for the fiscal year.

“(c) DISCRETIONARY SPENDING LIMIT.—As used in this part, the term ‘discretionary spending limit’ means—

“(1) with respect to fiscal year 2012—

“(A) for the security category, \$684,000,000,000 in new budget authority; and

“(B) for the nonsecurity category, \$359,000,000,000 in new budget authority;

“(2) with respect to fiscal year 2013—

“(A) for the security category, \$686,000,000,000 in new budget authority; and

“(B) for the nonsecurity category, \$361,000,000,000 in new budget authority;

“(3) with respect to fiscal year 2014, for the discretionary category, \$1,066,000,000,000 in new budget authority;

“(4) with respect to fiscal year 2015, for the discretionary category, \$1,086,000,000,000 in new budget authority;

“(5) with respect to fiscal year 2016, for the discretionary category, \$1,107,000,000,000 in new budget authority;

“(6) with respect to fiscal year 2017, for the discretionary category, \$1,131,000,000,000 in new budget authority;

“(7) with respect to fiscal year 2018, for the discretionary category, \$1,156,000,000,000 in new budget authority;

“(8) with respect to fiscal year 2019, for the discretionary category, \$1,182,000,000,000 in new budget authority;

“(9) with respect to fiscal year 2020, for the discretionary category, \$1,208,000,000,000 in new budget authority; and

“(10) with respect to fiscal year 2021, for the discretionary category, \$1,234,000,000,000 in new budget authority;

as adjusted in strict conformance with subsection (b).”.

#### SEC. 102. DEFINITIONS.

Section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended as follows:

(1) Strike paragraph (4) and insert the following new paragraph:

“(4)(A) The term ‘nonsecurity category’ means all discretionary appropriations not included in the security category defined in subparagraph (B).

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“(B) The term ‘security category’ includes discretionary appropriations associated with agency budgets for the Department of Defense, the Department of Homeland Security, the Department of Veterans Affairs, the National Nuclear Security Administration, the intelligence community management account (95-0401-0-1-054), and all budget accounts in budget function 150 (international affairs).

“(C) The term ‘discretionary category’ includes all discretionary appropriations.”

(2) In paragraph (8)(C), strike “the food stamp program” and insert “the Supplemental Nutrition Assistance Program”.

(3) Strike paragraph (14) and insert the following new paragraph:

“(14) The term ‘outyear’ means a fiscal year one or more years after the budget year.”

(4) At the end, add the following new paragraphs:

“(20) The term ‘emergency’ means a situation that—

“(A) requires new budget authority and outlays (or new budget authority and the outlays flowing therefrom) for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security; and

“(B) is unanticipated.

“(21) The term ‘unanticipated’ means that the underlying situation is—

“(A) sudden, which means quickly coming into being or not building up over time;

“(B) urgent, which means a pressing and compelling need requiring immediate action;

“(C) unforeseen, which means not predicted or anticipated as an emerging need; and

“(D) temporary, which means not of a permanent duration.”

#### SEC. 103. REPORTS AND ORDERS.

Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended as follows:

(1) In subsection (c)(2), strike “2002” and insert “2021”.

(2) At the end of subsection (e), insert “This report shall also contain a preview estimate of the adjustment for disaster funding for the upcoming fiscal year.”

(3) In subsection (f)(2)(A), strike “2002” and insert “2021”; before the concluding period insert “, including a final estimate of the adjustment for disaster funding”.

#### SEC. 104. EXPIRATION.

(a) REPEALER.—Section 275 of the Balanced Budget and Emergency Deficit Control Act of 1985 is repealed.

(b) CONFORMING CHANGE.—Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not apply to the Congressional Budget Office.

#### SEC. 105. AMENDMENTS TO THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974.

(a) ADJUSTMENTS.—Section 314 of the Congressional Budget Act of 1974 is amended as follows:

(1) Strike subsection (a) and insert the following:

“(a) ADJUSTMENTS.—After the reporting of a bill or joint resolution or the offering of an amendment thereto or the submission

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of a conference report thereon, the chairman of the Committee on the Budget of the House of Representatives or the Senate may make appropriate budgetary adjustments of new budget authority and the outlays flowing therefrom in the same amount as required by section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985.”

(2) Strike subsections (b) and (e) and redesignate subsections (c) and (d) as subsections (b) and (c), respectively.

(3) At the end, add the following new subsections:

“(d) EMERGENCIES IN THE HOUSE OF REPRESENTATIVES.— (1) In the House of Representatives, if a reported bill or joint resolution, or amendment thereto or conference report thereon, contains a provision providing new budget authority and outlays or reducing revenue, and a designation of such provision as an emergency requirement pursuant to 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, the chair of the Committee on the Budget of the House of Representatives shall not count the budgetary effects of such provision for purposes of title III and title IV of the Congressional Budget Act of 1974 and the Rules of the House of Representatives.

“(2)(A) In the House of Representatives, if a reported bill or joint resolution, or amendment thereto or conference report thereon, contains a provision providing new budget authority and outlays or reducing revenue, and a designation of such provision as an emergency pursuant to paragraph (1), the chair of the Committee on the Budget shall not count the budgetary effects of such provision for purposes of this title and title IV and the Rules of the House of Representatives.

“(B) In the House of Representatives, a proposal to strike a designation under subparagraph (A) shall be excluded from an evaluation of budgetary effects for purposes of this title and title IV and the Rules of the House of Representatives.

“(C) An amendment offered under subparagraph (B) that also proposes to reduce each amount appropriated or otherwise made available by the pending measure that is not required to be appropriated or otherwise made available shall be in order at any point in the reading of the pending measure.

“(e) ENFORCEMENT OF DISCRETIONARY SPENDING CAPS.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause the discretionary spending limits as set forth in section 251 of the Balanced Budget and Emergency Deficit Control Act to be exceeded.”

(b) DEFINITIONS.—Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end the following new paragraph:

“(11) The terms ‘emergency’ and ‘unanticipated’ have the meanings given to such terms in section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985.”

(c) APPEALS FOR DISCRETIONARY CAPS.—Section 904(c)(2) of the Congressional Budget Act of 1974 is amended by striking “and 312(c)” and inserting “312(c), and 314(e)”.

#### SEC. 106. SENATE BUDGET ENFORCEMENT.

(a) IN GENERAL.—

(1) For the purpose of enforcing the Congressional Budget Act of 1974 through April 15, 2012, including section 300 of

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that Act, and enforcing budgetary points of order in prior concurrent resolutions on the budget, the allocations, aggregates, and levels set in subsection (b)(1) shall apply in the Senate in the same manner as for a concurrent resolution on the budget for fiscal year 2012 with appropriate budgetary levels for fiscal years 2011 and 2013 through 2021.

(2) For the purpose of enforcing the Congressional Budget Act of 1974 after April 15, 2012, including section 300 of that Act, and enforcing budgetary points of order in prior concurrent resolutions on the budget, the allocations, aggregates, and levels set in subsection (b)(2) shall apply in the Senate in the same manner as for a concurrent resolution on the budget for fiscal year 2013 with appropriate budgetary levels for fiscal years 2012 and 2014 through 2022.

(b) COMMITTEE ALLOCATIONS, AGGREGATES, AND LEVELS.—

(1) As soon as practicable after the date of enactment of this section, the Chairman of the Committee on the Budget shall file—

(A) for the Committee on Appropriations, committee allocations for fiscal years 2011 and 2012 consistent with the discretionary spending limits set forth in this Act for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(B) for all committees other than the Committee on Appropriations, committee allocations for fiscal years 2011, 2012, 2012 through 2016, and 2012 through 2021 consistent with the Congressional Budget Office's March 2011 baseline adjusted to account for the budgetary effects of this Act and legislation enacted prior to this Act but not included in the Congressional Budget Office's March 2011 baseline, for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(C) aggregate spending levels for fiscal years 2011 and 2012 and aggregate revenue levels for fiscal years 2011, 2012, 2012 through 2016, 2012 through 2021 consistent with the Congressional Budget Office's March 2011 baseline adjusted to account for the budgetary effects of this Act and legislation enacted prior to this Act but not included in the Congressional Budget Office's March 2011 baseline, and the discretionary spending limits set forth in this Act for the purpose of enforcing section 311 of the Congressional Budget Act of 1974; and

(D) levels of Social Security revenues and outlays for fiscal years 2011, 2012, 2012 through 2016, and 2012 through 2021 consistent with the Congressional Budget Office's March 2011 baseline adjusted to account for the budgetary effects of this Act and legislation enacted prior to this Act but not included in the Congressional Budget Office's March 2011 baseline, for the purpose of enforcing sections 302 and 311 of the Congressional Budget Act of 1974.

(2) Not later than April 15, 2012, the Chairman of the Committee on the Budget shall file—

(A) for the Committee on Appropriations, committee allocations for fiscal years 2012 and 2013 consistent with the discretionary spending limits set forth in this Act for

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the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(B) for all committees other than the Committee on Appropriations, committee allocations for fiscal years 2012, 2013, 2013 through 2017, and 2013 through 2022 consistent with the Congressional Budget Office's March 2012 baseline for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(C) aggregate spending levels for fiscal years 2012 and 2013 and aggregate revenue levels for fiscal years 2012, 2013, 2013–2017, and 2013–2022 consistent with the Congressional Budget Office's March 2012 baseline and the discretionary spending limits set forth in this Act for the purpose of enforcing section 311 of the Congressional Budget Act of 1974; and

(D) levels of Social Security revenues and outlays for fiscal years 2012 and 2013, 2013–2017, and 2013–2022 consistent with the Congressional Budget Office's March 2012 baseline budget for the purpose of enforcing sections 302 and 311 of the Congressional Budget Act of 1974.

(c) SENATE PAY-AS-YOU-GO SCORECARD.—

(1) Effective on the date of enactment of this section, for the purpose of enforcing section 201 of S. Con. Res. 21 (110th Congress), the Chairman of the Senate Committee on the Budget shall reduce any balances of direct spending and revenues for any fiscal year to 0 (zero).

(2) Not later than April 15, 2012, for the purpose of enforcing section 201 of S. Con. Res. 21 (110th Congress), the Chairman of the Senate Committee on the Budget shall reduce any balances of direct spending and revenues for any fiscal year to 0 (zero).

(3) Upon resetting the Senate paygo scorecard pursuant to paragraph (2), the Chairman shall publish a notification of such action in the Congressional Record.

(d) FURTHER ADJUSTMENTS.—

(1) The Chairman of the Committee on the Budget of the Senate may revise any allocations, aggregates, or levels set pursuant to this section to account for any subsequent adjustments to discretionary spending limits made pursuant to this Act.

(2) With respect to any allocations, aggregates, or levels set or adjustments made pursuant to this section, sections 412 through 414 of S. Con. Res. 13 (111th Congress) shall remain in effect.

(e) EXPIRATION.—

(1) Subsections (a)(1), (b)(1), and (c)(1) shall expire if a concurrent resolution on the budget for fiscal year 2012 is agreed to by the Senate and House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974.

(2) Subsections (a)(2), (b)(2), and (c)(2) shall expire if a concurrent resolution on the budget for fiscal year 2013 is agreed to by the Senate and House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974.

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## TITLE II—VOTE ON THE BALANCED BUDGET AMENDMENT

### SEC. 201. VOTE ON THE BALANCED BUDGET AMENDMENT.

After September 30, 2011, and not later than December 31, 2011, the House of Representatives and Senate, respectively, shall vote on passage of a joint resolution, the title of which is as follows: "Joint resolution proposing a balanced budget amendment to the Constitution of the United States."

### SEC. 202. CONSIDERATION BY THE OTHER HOUSE.

#### (a) HOUSE CONSIDERATION.—

(1) REFERRAL.—If the House receives a joint resolution described in section 201 from the Senate, such joint resolution shall be referred to the Committee on the Judiciary. If the committee fails to report the joint resolution within five legislative days, it shall be in order to move that the House discharge the committee from further consideration of the joint resolution. Such a motion shall not be in order after the House has disposed of a motion to discharge the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion except twenty minutes of debate equally divided and controlled by the proponent and an opponent. If such a motion is adopted, the House shall proceed immediately to consider the joint resolution in accordance with paragraph (3). A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(2) PROCEEDING TO CONSIDERATION.—After the joint resolution has been referred to the appropriate calendar or the committee has been discharged (other than by motion) from its consideration, it shall be in order to move to proceed to consider the joint resolution in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed with respect to the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(3) CONSIDERATION.—The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent and one motion to limit debate on the joint resolution. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

(b) SENATE CONSIDERATION.—(1) If the Senate receives a joint resolution described in section 201 from the House of Representatives, such joint resolution shall be referred to the appropriate committee of the Senate. If such committee has not reported the joint resolution at the close of the fifth session day after its receipt by the Senate, such committee shall be automatically discharged from further consideration of the joint resolution and it shall be placed on the appropriate calendar.

(2) Consideration of the joint resolution and on all debatable motions and appeals in connection therewith, shall be limited to

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not more than 20 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order. Any debatable motion or appeal is debatable for not to exceed 1 hour, to be divided equally between those favoring and those opposing the motion or appeal. All time used for consideration of the joint resolution, including time used for quorum calls and voting, shall be counted against the total 20 hours of consideration.

(3) If the Senate has voted to proceed to a joint resolution, the vote on passage of the joint resolution shall be taken on or before the close of the seventh session day after such joint resolution has been reported or discharged or immediately following the conclusion of consideration of the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

### **TITLE III—DEBT CEILING DISAPPROVAL PROCESS**

#### **SEC. 301. DEBT CEILING DISAPPROVAL PROCESS.**

(a) IN GENERAL.—Subchapter I of chapter 31 of subtitle III of title 31, United States Code, is amended—

- (1) in section 3101(b), by striking “or otherwise” and inserting “or as provided by section 3101A or otherwise”; and
- (2) by inserting after section 3101 the following:

#### **“§ 3101A. Presidential modification of the debt ceiling**

“(a) IN GENERAL.—

“(1) \$900 BILLION.—

“(A) CERTIFICATION.—If, not later than December 31, 2011, the President submits a written certification to Congress that the President has determined that the debt subject to limit is within \$100,000,000,000 of the limit in section 3101(b) and that further borrowing is required to meet existing commitments, the Secretary of the Treasury may exercise authority to borrow an additional \$900,000,000,000, subject to the enactment of a joint resolution of disapproval enacted pursuant to this section. Upon submission of such certification, the limit on debt provided in section 3101(b) (referred to in this section as the ‘debt limit’) is increased by \$400,000,000,000.

“(B) RESOLUTION OF DISAPPROVAL.—Congress may consider a joint resolution of disapproval of the authority under subparagraph (A) as provided in subsections (b) through (f). The joint resolution of disapproval considered under this section shall contain only the language provided in subsection (b)(2). If the time for disapproval has lapsed without enactment of a joint resolution of disapproval under this section, the debt limit is increased by an additional \$500,000,000,000.

“(2) ADDITIONAL AMOUNT.—

“(A) CERTIFICATION.—If, after the debt limit is increased by \$900,000,000,000 under paragraph (1), the

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President submits a written certification to Congress that the President has determined that the debt subject to limit is within \$100,000,000,000 of the limit in section 3101(b) and that further borrowing is required to meet existing commitments, the Secretary of the Treasury may, subject to the enactment of a joint resolution of disapproval enacted pursuant to this section, exercise authority to borrow an additional amount equal to—

“(i) \$1,200,000,000,000, unless clause (ii) or (iii) applies;

“(ii) \$1,500,000,000,000 if the Archivist of the United States has submitted to the States for their ratification a proposed amendment to the Constitution of the United States pursuant to a joint resolution entitled ‘Joint resolution proposing a balanced budget amendment to the Constitution of the United States’; or

“(iii) if a joint committee bill to achieve an amount greater than \$1,200,000,000,000 in deficit reduction as provided in section 401(b)(3)(B)(i)(II) of the Budget Control Act of 2011 is enacted, an amount equal to the amount of that deficit reduction, but not greater than \$1,500,000,000,000, unless clause (ii) applies.

“(B) RESOLUTION OF DISAPPROVAL.—Congress may consider a joint resolution of disapproval of the authority under subparagraph (A) as provided in subsections (b) through (f). The joint resolution of disapproval considered under this section shall contain only the language provided in subsection (b)(2). If the time for disapproval has lapsed without enactment of a joint resolution of disapproval under this section, the debt limit is increased by the amount authorized under subparagraph (A).

“(b) JOINT RESOLUTION OF DISAPPROVAL.—

“(1) IN GENERAL.—Except for the \$400,000,000,000 increase in the debt limit provided by subsection (a)(1)(A), the debt limit may not be raised under this section if, within 50 calendar days after the date on which Congress receives a certification described in subsection (a)(1) or within 15 calendar days after Congress receives the certification described in subsection (a)(2) (regardless of whether Congress is in session), there is enacted into law a joint resolution disapproving the President’s exercise of authority with respect to such additional amount.

“(2) CONTENTS OF JOINT RESOLUTION.—For the purpose of this section, the term ‘joint resolution’ means only a joint resolution—

“(A)(i) for the certification described in subsection (a)(1), that is introduced on September 6, 7, 8, or 9, 2011 (or, if the Senate was not in session, the next calendar day on which the Senate is in session); and

“(ii) for the certification described in subsection (a)(2), that is introduced between the date the certification is received and 3 calendar days after that date;

“(B) which does not have a preamble;

“(C) the title of which is only as follows: ‘Joint resolution relating to the disapproval of the President’s exercise of authority to increase the debt limit, as submitted under section 3101A of title 31, United States Code, on

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\_\_\_\_\_’ (with the blank containing the date of such submission); and

“(D) the matter after the resolving clause of which is only as follows: That Congress disapproves of the President’s exercise of authority to increase the debt limit, as exercised pursuant to the certification under section 3101A(a) of title 31, United States Code.’

“(c) EXPEDITED CONSIDERATION IN HOUSE OF REPRESENTATIVES.—

“(1) RECONVENING.—Upon receipt of a certification described in subsection (a)(2), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this section, the House shall convene not later than the second calendar day after receipt of such certification.

“(2) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House without amendment not later than 5 calendar days after the date of introduction of a joint resolution described in subsection (a). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

“(3) PROCEEDING TO CONSIDERATION.—After each committee authorized to consider a joint resolution reports it to the House or has been discharged from its consideration, it shall be in order, not later than the sixth day after introduction of a joint resolution under subsection (a), to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on a joint resolution addressing a particular submission. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

“(4) CONSIDERATION.—The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

“(d) EXPEDITED PROCEDURE IN SENATE.—

“(1) RECONVENING.—Upon receipt of a certification under subsection (a)(2), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

“(2) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be immediately placed on the calendar.

“(3) FLOOR CONSIDERATION.—

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“(A) IN GENERAL.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the day after the date on which Congress receives a certification under subsection (a) and, for the certification described in subsection (a)(1), ending on September 14, 2011, and for the certification described in subsection (a)(2), on the 6th day after the date on which Congress receives a certification under subsection (a) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

“(B) CONSIDERATION.—Consideration of the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

“(C) VOTE ON PASSAGE.—If the Senate has voted to proceed to a joint resolution, the vote on passage of the joint resolution shall occur immediately following the conclusion of consideration of the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

“(D) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

“(e) AMENDMENT NOT IN ORDER.—A joint resolution of disapproval considered pursuant to this section shall not be subject to amendment in either the House of Representatives or the Senate.

“(f) COORDINATION WITH ACTION BY OTHER HOUSE.—

“(1) IN GENERAL.—If, before passing the joint resolution, one House receives from the other a joint resolution—

“(A) the joint resolution of the other House shall not be referred to a committee; and

“(B) the procedure in the receiving House shall be the same as if no joint resolution had been received from the other House until the vote on passage, when the joint resolution received from the other House shall supplant the joint resolution of the receiving House.

“(2) TREATMENT OF JOINT RESOLUTION OF OTHER HOUSE.—If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of the House shall be entitled to expedited floor procedures under this section.

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“(3) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

“(4) CONSIDERATION AFTER PASSAGE.—(A) If Congress passes a joint resolution, the period beginning on the date the President is presented with the joint resolution and ending on the date the President signs, allows to become law without his signature, or vetoes and returns the joint resolution (but excluding days when either House is not in session) shall be disregarded in computing the appropriate calendar day period described in subsection (b)(1).

“(B) Debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

“(5) VETO OVERRIDE.—If within the appropriate calendar day period described in subsection (b)(1), Congress overrides a veto of the joint resolution with respect to authority exercised pursuant to paragraph (1) or (2) of subsection (a), the limit on debt provided in section 3101(b) shall not be raised, except for the \$400,000,000,000 increase in the limit provided by subsection (a)(1)(A).

“(6) SEQUESTRATION.—(A) If within the 50-calendar day period described in subsection (b)(1), the President signs the joint resolution, the President allows the joint resolution to become law without his signature, or Congress overrides a veto of the joint resolution with respect to authority exercised pursuant to paragraph (1) of subsection (a), there shall be a sequestration to reduce spending by \$400,000,000,000. OMB shall implement the sequestration forthwith.

“(B) OMB shall implement each half of such sequestration in accordance with section 255, section 256, and subsections (c), (d), (e), and (f) of section 253 of the Balanced Budget and Emergency Deficit Control Act of 1985, and for the purpose of such implementation the term ‘excess deficit’ means the amount specified in subparagraph (A).

“(g) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This subsection and subsections (b), (c), (d), (e), and (f) (other than paragraph (6)) are enacted by Congress—

“(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

“(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.”.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 31 of title 31, United States Code, is amended by inserting after the item relating to section 3101 the following new item:

“3101A. Presidential modification of the debt ceiling.”.

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**SEC. 302. ENFORCEMENT OF BUDGET GOAL.**

(a) IN GENERAL.—The Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting after section 251 the following new section:

**“SEC. 251A. ENFORCEMENT OF BUDGET GOAL.**

“Unless a joint committee bill achieving an amount greater than \$1,200,000,000,000 in deficit reduction as provided in section 401(b)(3)(B)(i)(II) of the Budget Control Act of 2011 is enacted by January 15, 2012, the discretionary spending limits listed in section 251(c) shall be revised, and discretionary appropriations and direct spending shall be reduced, as follows:

“(1) REVISED SECURITY CATEGORY; REVISED NONSECURITY CATEGORY.—(A) The term ‘revised security category’ means discretionary appropriations in budget function 050.

“(B) The term ‘revised nonsecurity category’ means discretionary appropriations other than in budget function 050.

“(2) REVISED DISCRETIONARY SPENDING LIMITS.—The discretionary spending limits for fiscal years 2013 through 2021 under section 251(c) shall be replaced with the following:

“(A) For fiscal year 2013—

“(i) for the security category, \$546,000,000,000 in budget authority; and

“(ii) for the nonsecurity category, \$501,000,000,000 in budget authority.

“(B) For fiscal year 2014—

“(i) for the security category, \$556,000,000,000 in budget authority; and

“(ii) for the nonsecurity category, \$510,000,000,000 in budget authority.

“(C) For fiscal year 2015—

“(i) for the security category, \$566,000,000,000 in budget authority; and

“(ii) for the nonsecurity category, \$520,000,000,000 in budget authority.

“(D) For fiscal year 2016—

“(i) for the security category, \$577,000,000,000 in budget authority; and

“(ii) for the nonsecurity category, \$530,000,000,000 in budget authority.

“(E) For fiscal year 2017—

“(i) for the security category, \$590,000,000,000 in budget authority; and

“(ii) for the nonsecurity category, \$541,000,000,000 in budget authority.

“(F) For fiscal year 2018—

“(i) for the security category, \$603,000,000,000 in budget authority; and

“(ii) for the nonsecurity category, \$553,000,000,000 in budget authority.

“(G) For fiscal year 2019—

“(i) for the security category, \$616,000,000,000 in budget authority; and

“(ii) for the nonsecurity category, \$566,000,000,000 in budget authority.

“(H) For fiscal year 2020—

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“(i) for the security category, \$630,000,000,000 in budget authority; and

“(ii) for the nonsecurity category, \$578,000,000,000 in budget authority.

“(I) For fiscal year 2021—

“(i) for the security category, \$644,000,000,000 in budget authority; and

“(ii) for the nonsecurity category, \$590,000,000,000 in budget authority.

“(3) CALCULATION OF TOTAL DEFICIT REDUCTION.—OMB shall calculate the amount of the deficit reduction required by this section for each of fiscal years 2013 through 2021 by—

“(A) starting with \$1,200,000,000,000;

“(B) subtracting the amount of deficit reduction achieved by the enactment of a joint committee bill, as provided in section 401(b)(3)(B)(i)(II) of the Budget Control Act of 2011;

“(C) reducing the difference by 18 percent to account for debt service; and

“(D) dividing the result by 9.

“(4) ALLOCATION TO FUNCTIONS.—On January 2, 2013, for fiscal year 2013, and in its sequestration preview report for fiscal years 2014 through 2021 pursuant to section 254(c), OMB shall allocate half of the total reduction calculated pursuant to paragraph (3) for that year to discretionary appropriations and direct spending accounts within function 050 (defense function) and half to accounts in all other functions (nondefense functions).

“(5) DEFENSE FUNCTION REDUCTION.—OMB shall calculate the reductions to discretionary appropriations and direct spending for each of fiscal years 2013 through 2021 for defense function spending as follows:

“(A) DISCRETIONARY.—OMB shall calculate the reduction to discretionary appropriations by—

“(i) taking the total reduction for the defense function allocated for that year under paragraph (4);

“(ii) multiplying by the discretionary spending limit for the revised security category for that year; and

“(iii) dividing by the sum of the discretionary spending limit for the security category and OMB’s baseline estimate of nonexempt outlays for direct spending programs within the defense function for that year.

“(B) DIRECT SPENDING.—OMB shall calculate the reduction to direct spending by taking the total reduction for the defense function required for that year under paragraph (4) and subtracting the discretionary reduction calculated pursuant to subparagraph (A).

“(6) NONDEFENSE FUNCTION REDUCTION.—OMB shall calculate the reduction to discretionary appropriations and to direct spending for each of fiscal years 2013 through 2021 for programs in nondefense functions as follows:

“(A) DISCRETIONARY.—OMB shall calculate the reduction to discretionary appropriations by—

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“(i) taking the total reduction for nondefense functions allocated for that year under paragraph (4);

“(ii) multiplying by the discretionary spending limit for the revised nonsecurity category for that year; and

“(iii) dividing by the sum of the discretionary spending limit for the revised nonsecurity category and OMB’s baseline estimate of nonexempt outlays for direct spending programs in nondefense functions for that year.

“(B) DIRECT SPENDING.—OMB shall calculate the reduction to direct spending programs by taking the total reduction for nondefense functions required for that year under paragraph (4) and subtracting the discretionary reduction calculated pursuant to subparagraph (A).

“(7) IMPLEMENTING DISCRETIONARY REDUCTIONS.—

“(A) FISCAL YEAR 2013.—On January 2, 2013, for fiscal year 2013, OMB shall calculate and the President shall order a sequestration, effective upon issuance and under the procedures set forth in section 253(f), to reduce each account within the security category or nonsecurity category by a dollar amount calculated by multiplying the baseline level of budgetary resources in that account at that time by a uniform percentage necessary to achieve—

“(i) for the revised security category, an amount equal to the defense function discretionary reduction calculated pursuant to paragraph (5); and

“(ii) for the revised nonsecurity category, an amount equal to the nondefense function discretionary reduction calculated pursuant to paragraph (6).

“(B) FISCAL YEARS 2014–2021.—On the date of the submission of its sequestration preview report for fiscal years 2014 through 2021 pursuant to section 254(c) for each of fiscal years 2014 through 2021, OMB shall reduce the discretionary spending limit—

“(i) for the revised security category by the amount of the defense function discretionary reduction calculated pursuant to paragraph (5); and

“(ii) for the revised nonsecurity category by the amount of the nondefense function discretionary reduction calculated pursuant to paragraph (6).

“(8) IMPLEMENTING DIRECT SPENDING REDUCTIONS.—On the date specified in paragraph (4) during each applicable year, OMB shall prepare and the President shall order a sequestration, effective upon issuance, of nonexempt direct spending to achieve the direct spending reduction calculated pursuant to paragraphs (5) and (6). When implementing the sequestration of direct spending pursuant to this paragraph, OMB shall follow the procedures specified in section 6 of the Statutory Pay-As-You-Go Act of 2010, the exemptions specified in section 255, and the special rules specified in section 256, except that the percentage reduction for the Medicare programs specified in section 256(d) shall not be more than 2 percent for a fiscal year.

“(9) ADJUSTMENT FOR MEDICARE.—If the percentage reduction for the Medicare programs would exceed 2 percent for a fiscal year in the absence of paragraph (8), OMB shall

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increase the reduction for all other discretionary appropriations and direct spending under paragraph (6) by a uniform percentage to a level sufficient to achieve the reduction required by paragraph (6) in the non-defense function.

“(10) IMPLEMENTATION OF REDUCTIONS.—Any reductions imposed under this section shall be implemented in accordance with section 256(k).

“(11) REPORT.—On the dates specified in paragraph (4), OMB shall submit a report to Congress containing information about the calculations required under this section, the adjusted discretionary spending limits, a listing of the reductions required for each nonexempt direct spending account, and any other data and explanations that enhance public understanding of this title and actions taken under it.”.

(b) CONFORMING AMENDMENT.—The table of contents set forth in section 250(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting after the item relating to section 251 the following:

“Sec. 251A. Enforcement of budget goal.”.

## **TITLE IV—JOINT SELECT COMMITTEE ON DEFICIT REDUCTION**

### **SEC. 401. ESTABLISHMENT OF JOINT SELECT COMMITTEE.**

(a) DEFINITIONS.—In this title:

(1) JOINT COMMITTEE.—The term “joint committee” means the Joint Select Committee on Deficit Reduction established under subsection (b)(1).

(2) JOINT COMMITTEE BILL.—The term “joint committee bill” means a bill consisting of the proposed legislative language of the joint committee recommended under subsection (b)(3)(B) and introduced under section 402(a).

(b) ESTABLISHMENT OF JOINT SELECT COMMITTEE.—

(1) ESTABLISHMENT.—There is established a joint select committee of Congress to be known as the “Joint Select Committee on Deficit Reduction”.

(2) GOAL.—The goal of the joint committee shall be to reduce the deficit by at least \$1,500,000,000,000 over the period of fiscal years 2012 to 2021.

(3) DUTIES.—

(A) IN GENERAL.—

(i) IMPROVING THE SHORT-TERM AND LONG-TERM FISCAL IMBALANCE.—The joint committee shall provide recommendations and legislative language that will significantly improve the short-term and long-term fiscal imbalance of the Federal Government.

(ii) RECOMMENDATIONS OF COMMITTEES.—Not later than October 14, 2011, each committee of the House of Representatives and the Senate may transmit to the joint committee its recommendations for changes in law to reduce the deficit consistent with the goal described in paragraph (2) for the joint committee’s consideration.

(B) REPORT, RECOMMENDATIONS, AND LEGISLATIVE LANGUAGE.—

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(i) IN GENERAL.—Not later than November 23, 2011, the joint committee shall vote on—

(I) a report that contains a detailed statement of the findings, conclusions, and recommendations of the joint committee and the estimate of the Congressional Budget Office required by paragraph (5)(D)(ii); and

(II) proposed legislative language to carry out such recommendations as described in subclause (I), which shall include a statement of the deficit reduction achieved by the legislation over the period of fiscal years 2012 to 2021.

Any change to the Rules of the House of Representatives or the Standing Rules of the Senate included in the report or legislative language shall be considered to be merely advisory.

(ii) APPROVAL OF REPORT AND LEGISLATIVE LANGUAGE.—The report of the joint committee and the proposed legislative language described in clause (i) shall require the approval of a majority of the members of the joint committee.

(iii) ADDITIONAL VIEWS.—A member of the joint committee who gives notice of an intention to file supplemental, minority, or additional views at the time of final joint committee vote on the approval of the report and legislative language under clause (ii) shall be entitled to 3 calendar days in which to file such views in writing with the staff director of the joint committee. Such views shall then be included in the joint committee report and printed in the same volume, or part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the joint committee report may be printed and transmitted immediately without such views.

(iv) TRANSMISSION OF REPORT AND LEGISLATIVE LANGUAGE.—If the report and legislative language are approved by the joint committee pursuant to clause (ii), then not later than December 2, 2011, the joint committee shall submit the joint committee report and legislative language described in clause (i) to the President, the Vice President, the Speaker of the House of Representatives, and the majority and minority Leaders of each House of Congress.

(v) REPORT AND LEGISLATIVE LANGUAGE TO BE MADE PUBLIC.—Upon the approval or disapproval of the joint committee report and legislative language pursuant to clause (ii), the joint committee shall promptly make the full report and legislative language, and a record of the vote, available to the public.

(4) MEMBERSHIP.—

(A) IN GENERAL.—The joint committee shall be composed of 12 members appointed pursuant to subparagraph (B).

(B) APPOINTMENT.—Members of the joint committee shall be appointed as follows:

(i) The majority leader of the Senate shall appoint three members from among Members of the Senate.

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(ii) The minority leader of the Senate shall appoint three members from among Members of the Senate.

(iii) The Speaker of the House of Representatives shall appoint three members from among Members of the House of Representatives.

(iv) The minority leader of the House of Representatives shall appoint three members from among Members of the House of Representatives.

(C) CO-CHAIRS.—

(i) IN GENERAL.—There shall be two Co-Chairs of the joint committee. The majority leader of the Senate shall appoint one Co-Chair from among the members of the joint committee. The Speaker of the House of Representatives shall appoint the second Co-Chair from among the members of the joint committee. The Co-Chairs shall be appointed not later than 14 calendar days after the date of enactment of this Act.

(ii) STAFF DIRECTOR.—The Co-Chairs, acting jointly, shall hire the staff director of the joint committee.

(D) DATE.—Members of the joint committee shall be appointed not later than 14 calendar days after the date of enactment of this Act.

(E) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the joint committee. Any vacancy in the joint committee shall not affect its powers, but shall be filled not later than 14 calendar days after the date on which the vacancy occurs, in the same manner as the original designation was made. If a member of the joint committee ceases to be a Member of the House of Representatives or the Senate, as the case may be, the member is no longer a member of the joint committee and a vacancy shall exist.

(5) ADMINISTRATION.—

(A) IN GENERAL.—To enable the joint committee to exercise its powers, functions, and duties, there are authorized to be disbursed by the Senate the actual and necessary expenses of the joint committee approved by the co-chairs, subject to the rules and regulations of the Senate.

(B) EXPENSES.—In carrying out its functions, the joint committee is authorized to incur expenses in the same manner and under the same conditions as the Joint Economic Committee is authorized by section 11 of Public Law 79–304 (15 U.S.C. 1024 (d)).

(C) QUORUM.—Seven members of the joint committee shall constitute a quorum for purposes of voting, meeting, and holding hearings.

(D) VOTING.—

(i) PROXY VOTING.—No proxy voting shall be allowed on behalf of the members of the joint committee.

(ii) CONGRESSIONAL BUDGET OFFICE ESTIMATES.—The Congressional Budget Office shall provide estimates of the legislation (as described in paragraph (3)(B)) in accordance with sections 308(a) and 201(f) of the Congressional Budget Act of 1974 (2 U.S.C. 639(a) and 601(f)) (including estimates of the effect of

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

## (E) MEETINGS.—

(i) INITIAL MEETING.—Not later than 45 calendar days after the date of enactment of this Act, the joint committee shall hold its first meeting.

(ii) AGENDA.—The Co-Chairs of the joint committee shall provide an agenda to the joint committee members not less than 48 hours in advance of any meeting.

## (F) HEARINGS.—

(i) IN GENERAL.—The joint committee may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, require attendance of witnesses and production of books, papers, and documents, take such testimony, receive such evidence, and administer such oaths as the joint committee considers advisable.

## (ii) HEARING PROCEDURES AND RESPONSIBILITIES OF CO-CHAIRS.—

(I) ANNOUNCEMENT.—The Co-Chairs of the joint committee shall make a public announcement of the date, place, time, and subject matter of any hearing to be conducted, not less than 7 days in advance of such hearing, unless the Co-Chairs determine that there is good cause to begin such hearing at an earlier date.

(II) WRITTEN STATEMENT.—A witness appearing before the joint committee shall file a written statement of proposed testimony at least 2 calendar days before the appearance of the witness, unless the requirement is waived by the Co-Chairs, following their determination that there is good cause for failure to comply with such requirement.

(G) TECHNICAL ASSISTANCE.—Upon written request of the Co-Chairs, a Federal agency shall provide technical assistance to the joint committee in order for the joint committee to carry out its duties.

## (c) STAFF OF JOINT COMMITTEE.—

(1) IN GENERAL.—The Co-Chairs of the joint committee may jointly appoint and fix the compensation of staff as they deem necessary, within the guidelines for employees of the Senate and following all applicable rules and employment requirements of the Senate.

(2) ETHICAL STANDARDS.—Members on the joint committee who serve in the House of Representatives shall be governed by the ethics rules and requirements of the House. Members of the Senate who serve on the joint committee and staff of the joint committee shall comply with the ethics rules of the Senate.

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(d) **TERMINATION.**—The joint committee shall terminate on January 31, 2012.

**SEC. 402. EXPEDITED CONSIDERATION OF JOINT COMMITTEE RECOMMENDATIONS.**

(a) **INTRODUCTION.**—If approved by the majority required by section 401(b)(3)(B)(ii), the proposed legislative language submitted pursuant to section 401(b)(3)(B)(iv) shall be introduced in the Senate (by request) on the next day on which the Senate is in session by the majority leader of the Senate or by a Member of the Senate designated by the majority leader of the Senate and shall be introduced in the House of Representatives (by request) on the next legislative day by the majority leader of the House or by a Member of the House designated by the majority leader of the House.

(b) **CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.**—

(1) **REFERRAL AND REPORTING.**—Any committee of the House of Representatives to which the joint committee bill is referred shall report it to the House without amendment not later than December 9, 2011. If a committee fails to report the joint committee bill within that period, it shall be in order to move that the House discharge the committee from further consideration of the bill. Such a motion shall not be in order after the last committee authorized to consider the bill reports it to the House or after the House has disposed of a motion to discharge the bill. The previous question shall be considered as ordered on the motion to its adoption without intervening motion except 20 minutes of debate equally divided and controlled by the proponent and an opponent. If such a motion is adopted, the House shall proceed immediately to consider the joint committee bill in accordance with paragraphs (2) and (3). A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(2) **PROCEEDING TO CONSIDERATION.**—After the last committee authorized to consider a joint committee bill reports it to the House or has been discharged (other than by motion) from its consideration, it shall be in order to move to proceed to consider the joint committee bill in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed with respect to the joint committee bill. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(3) **CONSIDERATION.**—The joint committee bill shall be considered as read. All points of order against the joint committee bill and against its consideration are waived. The previous question shall be considered as ordered on the joint committee bill to its passage without intervening motion except 2 hours of debate equally divided and controlled by the proponent and an opponent and one motion to limit debate on the joint committee bill. A motion to reconsider the vote on passage of the joint committee bill shall not be in order.

(4) **VOTE ON PASSAGE.**—The vote on passage of the joint committee bill shall occur not later than December 23, 2011.

(c) **EXPEDITED PROCEDURE IN THE SENATE.**—

(1) **COMMITTEE CONSIDERATION.**—A joint committee bill introduced in the Senate under subsection (a) shall be jointly

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referred to the committee or committees of jurisdiction, which committees shall report the bill without any revision and with a favorable recommendation, an unfavorable recommendation, or without recommendation, not later than December 9, 2011. If any committee fails to report the bill within that period, that committee shall be automatically discharged from consideration of the bill, and the bill shall be placed on the appropriate calendar.

(2) MOTION TO PROCEED.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order, not later than 2 days of session after the date on which a joint committee bill is reported or discharged from all committees to which it was referred, for the majority leader of the Senate or the majority leader's designee to move to proceed to the consideration of the joint committee bill. It shall also be in order for any Member of the Senate to move to proceed to the consideration of the joint committee bill at any time after the conclusion of such 2-day period. A motion to proceed is in order even though a previous motion to the same effect has been disagreed to. All points of order against the motion to proceed to the joint committee bill are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint committee bill is agreed to, the joint committee bill shall remain the unfinished business until disposed of.

(3) CONSIDERATION.—All points of order against the joint committee bill and against consideration of the joint committee bill are waived. Consideration of the joint committee bill and of all debatable motions and appeals in connection therewith shall not exceed a total of 30 hours which shall be divided equally between the Majority and Minority Leaders or their designees. A motion further to limit debate on the joint committee bill is in order, shall require an affirmative vote of three-fifths of the Members duly chosen and sworn, and is not debatable. Any debatable motion or appeal is debatable for not to exceed 1 hour, to be divided equally between those favoring and those opposing the motion or appeal. All time used for consideration of the joint committee bill, including time used for quorum calls and voting, shall be counted against the total 30 hours of consideration.

(4) NO AMENDMENTS.—An amendment to the joint committee bill, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint committee bill, is not in order.

(5) VOTE ON PASSAGE.—If the Senate has voted to proceed to the joint committee bill, the vote on passage of the joint committee bill shall occur immediately following the conclusion of the debate on a joint committee bill, and a single quorum call at the conclusion of the debate if requested. The vote on passage of the joint committee bill shall occur not later than December 23, 2011.

(6) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure

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relating to a joint committee bill shall be decided without debate.

(d) AMENDMENT.—The joint committee bill shall not be subject to amendment in either the House of Representatives or the Senate.

(e) CONSIDERATION BY THE OTHER HOUSE.—

(1) IN GENERAL.—If, before passing the joint committee bill, one House receives from the other a joint committee bill—

(A) the joint committee bill of the other House shall not be referred to a committee; and

(B) the procedure in the receiving House shall be the same as if no joint committee bill had been received from the other House until the vote on passage, when the joint committee bill received from the other House shall supplant the joint committee bill of the receiving House.

(2) REVENUE MEASURE.—This subsection shall not apply to the House of Representatives if the joint committee bill received from the Senate is a revenue measure.

(f) RULES TO COORDINATE ACTION WITH OTHER HOUSE.—

(1) TREATMENT OF JOINT COMMITTEE BILL OF OTHER HOUSE.—If the Senate fails to introduce or consider a joint committee bill under this section, the joint committee bill of the House shall be entitled to expedited floor procedures under this section.

(2) TREATMENT OF COMPANION MEASURES IN THE SENATE.—If following passage of the joint committee bill in the Senate, the Senate then receives the joint committee bill from the House of Representatives, the House-passed joint committee bill shall not be debatable. The vote on passage of the joint committee bill in the Senate shall be considered to be the vote on passage of the joint committee bill received from the House of Representatives.

(3) VETOES.—If the President vetoes the joint committee bill, debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

(g) LOSS OF PRIVILEGE.—The provisions of this section shall cease to apply to the joint committee bill if—

(1) the joint committee fails to vote on the report or proposed legislative language required under section 401(b)(3)(B)(i) not later than November 23, 2011; or

(2) the joint committee bill does not pass both Houses not later than December 23, 2011.

#### SEC. 403. FUNDING.

Funding for the joint committee shall be derived in equal portions from—

(1) the applicable accounts of the House of Representatives;

and

(2) the contingent fund of the Senate from the appropriations account “Miscellaneous Items”, subject to the rules and regulations of the Senate.

#### SEC. 404. RULEMAKING.

The provisions of this title are enacted by Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply,

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and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

### **TITLE V—PELL GRANT AND STUDENT LOAN PROGRAM CHANGES**

#### **SEC. 501. FEDERAL PELL GRANTS.**

Section 401(b)(7)(A)(iv) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(7)(A)(iv)) is amended—

(1) in subclause (II), by striking “\$3,183,000,000” and inserting “\$13,183,000,000”; and

(2) in subclause (III), by striking “\$0” and inserting “\$7,000,000,000”.

#### **SEC. 502. TERMINATION OF AUTHORITY TO MAKE INTEREST SUBSIDIZED LOANS TO GRADUATE AND PROFESSIONAL STUDENTS.**

Section 455(a) of the Higher Education Act of 1965 (20 U.S.C. 1087e(a)) is amended by adding at the end the following new paragraph:

“(3) TERMINATION OF AUTHORITY TO MAKE INTEREST SUBSIDIZED LOANS TO GRADUATE AND PROFESSIONAL STUDENTS.—

“(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding any provision of this part or part B, for any period of instruction beginning on or after July 1, 2012—

“(i) a graduate or professional student shall not be eligible to receive a Federal Direct Stafford loan under this part; and

“(ii) the maximum annual amount of Federal Direct Unsubsidized Stafford loans such a student may borrow in any academic year (as defined in section 481(a)(2)) or its equivalent shall be the maximum annual amount for such student determined under section 428H, plus an amount equal to the amount of Federal Direct Stafford loans the student would have received in the absence of this subparagraph.

“(B) EXCEPTION.—Subparagraph (A) shall not apply to an individual enrolled in course work specified in paragraph (3)(B) or (4)(B) of section 484(b).”

#### **SEC. 503. TERMINATION OF DIRECT LOAN REPAYMENT INCENTIVES.**

Section 455(b)(8) of the Higher Education Act of 1965 (20 U.S.C. 1087e(b)(8)) is amended—

(1) in subparagraph (A)—

(A) by amending the header to read as follows: “(A) INCENTIVES FOR LOANS DISBURSED BEFORE JULY 1, 2012.—”; and

(B) by inserting “with respect to loans for which the first disbursement of principal is made before July 1, 2012,” after “of this part”;

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(2) in subparagraph (B), by inserting “with respect to loans for which the first disbursement of principal is made before July 1, 2012” after “repayment incentives”; and

(3) by adding at the end the following new subparagraph:

“(C) NO REPAYMENT INCENTIVES FOR NEW LOANS DISBURSED ON OR AFTER JULY 1, 2012.—Notwithstanding any other provision of this part, the Secretary is prohibited from authorizing or providing any repayment incentive not otherwise authorized under this part to encourage on-time repayment of a loan under this part for which the first disbursement of principal is made on or after July 1, 2012, including any reduction in the interest or origination fee rate paid by a borrower of such a loan, except that the Secretary may provide for an interest rate reduction for a borrower who agrees to have payments on such a loan automatically electronically debited from a bank account.”

**SEC. 504. INAPPLICABILITY OF TITLE IV NEGOTIATED RULEMAKING AND MASTER CALENDAR EXCEPTION.**

Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the amendments made by this title, or to any regulations promulgated under those amendments.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*