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

Dear Mr. Chairman:

This report responds to your request that we assess compliance by the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO) with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, more commonly known as Gramm-Rudman-Hollings (GRH), as amended. The Budget Enforcement Act of 1997 (BEA-97)[1] extended GRH budget enforcement provisions through fiscal year 2002 and made other technical changes. Our assessment covers OMB and CBO reports issued on legislation enacted during the 1st session of the 105th Congress, which ended on November 13, 1997.

To assess compliance with GRH, we reviewed OMB and CBO reports issued under the act to determine if they complied with all of the act's requirements. To accomplish this, we reviewed the OMB and CBO preview, update, and final Sequestration reports to determine if they reflected all of the technical requirements specified in GRH, such as (1) estimates of the discretionary spending limits, (2) explanations of any adjustments to the limits, (3) estimates of the amount of net deficit increase or decrease, and (4) the sequestration percentages necessary to achieve the required reduction in the event of a sequester. We interviewed OMB and CBO officials to obtain explanations for differences between reports. We also reviewed OMB and CBO estimates for the 78 provisions in appropriations laws that the President had cancelled using his line item veto authority before OMB issued its final sequester report.

Our work was conducted in Washington, D.C., from July 1997 through December 1997 in accordance with generally accepted government auditing standards. Background information on the budget enforcement process, including the scorekeeping process when the line item veto act is used and the various reports required by the act, and details concerning our scope and methodology are discussed in appendix I.

[1]Title X of the Balanced Budget Act of 1997, Public Law 105-33.

Overall, we found that CBO and OMB substantially complied with the act. We did find one compliance issue—discussed in detail in appendix II—related to the late issuance of some of the required OMB reports. Although CBO met its deadlines, OMB issued both its sequestration update report and a number of its required scorekeeping reports later than the law requires. GRH sets a specific timetable for issuance of OMB reports.[2] By law, OMB must issue sequestration reports at three specific times during the calendar year: (1) when the President submits his budget, (2) on August 20, and (3) 15 days after the end of a congressional session. Instead of issuing its fiscal year 1998 sequestration update report on August 20 as required by law, OMB issued it on September 5, 1997, as part of the mid-session review on the fiscal year 1998 budget. This was 16 days later than the law requires.

Also, as was the case for fiscal year 1997 compliance, OMB issued many of its scorekeeping reports late. All its scorekeeping reports on individual appropriation acts and many of its pay-as-you-go (PAYGO) scorekeeping reports were issued later than the time specified in law. The law requires that OMB issue scorekeeping reports on appropriation and PAYGO legislation at specified times after enactment. During the period under review, BEA-97 lengthened the time frame for issuing reports, effective August 5, 1997, from 5 calendar days to 7 working days.

Of the 34 scorekeeping reports OMB issued by the time it issued its final sequester report on November 24, about 40 percent of the reports (14) were late. The late reports included all 9 appropriation reports and 5 of the 25 PAYGO reports. Twenty-one PAYGO and 6 appropriations scorekeeping reports were issued after OMB's final sequester report. Eighteen (67 percent) of them (including all 6 appropriations reports) were issued late.

In our report on fiscal year 1997 BEA compliance,[3] we raised the issue of late scorekeeping reports. In that review, we looked at 101 scorekeeping reports that had been issued under the 5-day criterion. The average length of time between enactment and scorekeeping report issuance was 7.5 calendar days, making the reports, on average, 2.5 days late. This year, under the 7-day criterion, the 27 most recent scorekeeping reports issued after OMB issued its final sequestration report have averaged 12.5 work days between enactment and report issuance, making the reports, on average, 5.5 work days late. Although OMB has been given additional time

[2]CBO has similar reporting requirements.

[3]Budget Issues: Budget Enforcement Compliance Report (GAO/AIMD-97-28, January 16, 1997).

to prepare scorekeeping reports, the reports have been later than before the law was changed.

In addition to this compliance issue, we also found some implementation issues related to OMB and CBO differences in (1) scorekeeping for the open season for switching to the Federal Employees' Retirement System, (2) cap adjustments, (3) appropriations scoring, and (4) PAYGO estimates for the airport and airway tax reinstatement. These issues are discussed in appendix III.

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

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

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

Sincerely yours,

Susan J. Irving
Associate Director, Budget Issues

Contents

Letter 1

Appendix I Background and Scope and Methodology 6

Appendix II Compliance Issue 13

Appendix III Implementation Issues 16

Appendix IV Major Contributors to This Report 26

Tables

Table I.1: Sequestration Reports and Due Dates 7
Table III.1: OMB Estimates of Fiscal Year 1998 Appropriations Compared to Discretionary Caps 21

Abbreviations

BEA	Budget Enforcement Act of 1990
BEA-97	Budget Enforcement Act of 1997
CBO	Congressional Budget Office
CSRS	Civil Service Retirement System
DOD	Department of Defense
FEMA	Federal Emergency Management Agency
FERS	Federal Employees' Retirement System
GRH	Gramm-Rudman-Hollings
HUD	Department of Housing and Urban Development
IMF	International Monetary Fund
NTEU	National Treasury Employees Union
OBRA 93	Omnibus Budget Reconciliation Act of 1993
OMB	Office of Management and Budget
PAYGO	pay-as-you-go

Background and Scope and Methodology

Background

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

- annual adjustable dollar limits (spending caps) on discretionary spending funded through the regular appropriations process,
- a pay-as-you-go (PAYGO)[1] requirement for direct spending[2] and receipts legislation, and
- a sequestration[3] procedure to be triggered if (1) aggregate discretionary appropriations enacted for a fiscal year exceed the fiscal year's discretionary spending caps or (2) aggregate PAYGO legislation is estimated to increase the combined current and budget year deficits.

The Budget Enforcement Act of 1997 (BEA-97)[4] extended these budget enforcement provisions through fiscal year 2002 and made several other technical and conforming changes to GRH. Changes relevant to this compliance report are reflected in this appendix.

To track progress against the budget enforcement requirements and to implement any needed sequestration, GRH requires CBO and OMB to score (estimate) the budgetary effects of each appropriation action and each piece of PAYGO legislation. As soon as practicable after the Congress completes action on any appropriation involving discretionary spending, CBO is required to report to OMB the estimated amount of new budget authority and outlays provided by the legislation. Within 7 working days after an appropriation is enacted,[5] OMB must report its estimates for these amounts, using the same economic and technical assumptions underlying the most recent budget submission. It must also include the CBO estimates and explain any differences between the two sets of estimates. If there are significant differences between the OMB and CBO estimates, OMB is required

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

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

[3]Sequestration is the cancellation of budgetary resources.

[4]BEA-97 is title X of the Balanced Budget Act of 1997 (Public Law 105-33), signed into law on August 5, 1997.

[5]Prior to the enactment of BEA-97 in August 1997, OMB was required to issue a scorekeeping report within 5 calendar days of enactment of an appropriation.

to consult with the budget committees prior to issuing its scoring report.[6] OMB and CBO have similar requirements for reporting their estimates for any direct spending or receipts legislation.

GRH also requires CBO and OMB to submit a series of three sequestration reports at specified times during each year as shown in table I.1. Each CBO and OMB report must include a discretionary sequestration report that tracks progress against the discretionary spending caps and a PAYGO sequestration report that displays the net deficit decrease or increase for enacted PAYGO legislation. Because OMB's reports are controlling for purposes of sequestration, CBO adjusts its reports to the OMB estimates in its most recent sequestration report as a starting point for each of its reports.

Table I.1:sequestration Reports and Due Dates

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

Discretionary Spending Limits

Annual discretionary spending limits for budget authority and outlays are set forth in GRH. BEA-97 established three separate categories of discretionary spending for 1998 and 1999: defense, non-defense excluding violent crime reduction spending, and violent crime reduction spending. For the year 2000, the law sets two categories—violent crime reduction spending and all other discretionary spending—and for 2001 and 2002, a single category.

The law provides that certain adjustments be made to the discretionary limits when appropriate. The limits may be adjusted for changes in concepts and definitions, emergency appropriations, funding for continuing disability reviews, allowances for International Monetary Fund (IMF) increases, allowances for international arrearages funding, the earned income tax credit compliance initiative, and a special outlay allowance to cover technical scoring differences between OMB and CBO.[7] In

[6]This requirement was added by BEA-97.

[7]Prior to BEA-97, an adjustment for inflation was permitted. Both OMB and CBO preview reports issued prior to the enactment of BEA-97 contained adjustments for inflation. Also, BEA-97 added the adjustments for IMF increases, international arrearages, and EITC compliance.

addition to adjustments to the limits set forth in BEA-97, the Line Item Veto Act of 1996, as discussed later in this appendix, requires adjustments to the discretionary limits for budget authority cancelled by the President that is not enacted into law as a disapproval bill.[8] The spending limits are enforced by sequestration should appropriations exceed the limits. According to both CBO and OMB, no sequestration of discretionary funding was required for fiscal year 1998.

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

Pay-As-You-Go Enforcement

PAYGO enforcement covers all direct spending and receipts legislation. CBO and OMB maintain a "scorecard" showing the cumulative deficit effect of PAYGO legislation to track progress against the PAYGO requirements. If, at the end of a congressional session, cumulative legislated changes enacted in direct spending and receipts increase the deficit for the budget year, a sequester of non-exempt direct spending programs is required to offset the increase. Prior to enactment of BEA-97, net savings in either the current or budget year could be used to offset increases in the next year. The Omnibus Consolidated Appropriations Act, 1997 (Public Law 104-208) required that the PAYGO scorecard balance for fiscal year 1997 be changed to zero on the day following OMB's final sequestration report for fiscal year 1997. This had the effect of requiring any increases in the deficit that result from legislation enacted in the 1st session of the 105th Congress to be offset within that session by either legislation reducing the deficit or sequestration. BEA-97 sets the current year scorecard balance to zero at the end of each session of the Congress each year through fiscal year 2002, which prevents any net savings achieved by legislation enacted during one session from being used to offset deficit-increasing legislation enacted in the future.

BEA-97 extended PAYGO discipline to legislation enacted through fiscal year 2002. The PAYGO scorecard must take into account the effects in the

[8]A disapproval bill is a bill or joint resolution that only disapproves one or more cancellations of dollar amounts of discretionary budget authority, items of new direct spending, or limited tax benefits in a special message transmitted by the President.

current year, budget year, and the following 4 years. Therefore, the effects of PAYGO legislation enacted through fiscal year 2002 could result in the cancellation of budgetary resources through fiscal year 2006.

In their final sequestration reports, both OMB and CBO calculate the net change in the deficit due to PAYGO legislation. However, the OMB report is the sole basis for determining whether any end-of-session sequestration is required. If OMB determines that sequestration is required, the President must issue an order implementing it. For fiscal year 1998, neither CBO's report, issued November 21, 1997, nor OMB's report, issued November 24, 1997, called for a sequester.

Line Item Veto Act and BEA

The Line Item Veto Act of 1996 (Public Law 104-130) directly affects the discretionary spending caps and scorekeeping reports issued by OMB. The act authorizes the President to cancel discretionary budget authority, new items of direct spending, and limited tax benefits with specified characteristics that are in a bill signed into law.

The President must notify the Congress of any such cancellations within 5 calendar days (excluding Sundays) after enactment of a law to which the cancellation applies. Items vetoed must be transmitted to the Congress in a special message setting forth specified information which includes, among other things, budgetary effects and adjustments to the discretionary spending limits. The cancellations are effective on the date the special message is received in the House and Senate.

Under the expedited disapproval procedures provided in the Line Item Veto Act, the Congress has 30 calendar days of session in which to pass a disapproval bill. If a disapproval bill overturning the President's cancellations is passed in both houses, it is sent to the President for his signature. The President may veto the disapproval bill under his constitutional authority to veto laws; a two-thirds vote in both the House and the Senate would be required to override the veto. Under the Line Item Veto Act procedures, if the disapproval bill is enacted into law, it voids the cancellations disapproved and the original provisions of law are effective as of the original date provided in the law to which the cancellation applied. If the Congress adjourns at the end of a Congress prior to the expiration of the 30-day period of consideration and a disapproval bill is then pending, a disapproval bill for the same special message may be introduced within the first 5 calendar days of session of the next Congress.

For discretionary budget authority and each item of new direct spending cancelled from an appropriation law, the law requires that the reduction in budget authority and outlays be reflected in the estimates in OMB's scorekeeping reports and that the discretionary spending limits for budget authority and outlays be reduced by amounts reported in the scorekeeping reports. "As soon as practicable" after the President makes a cancellation, CBO is required to provide the budget committees of the House and Senate with an estimate of the reduction in budget authority and outlays. Ten calendar days (excluding Sundays) after the expiration of the 30-day period set for consideration of a disapproval bill, the spending limits are adjusted; these adjusted limits are included in the next sequester report.

For new direct spending or limited tax benefit cancellations, the law directs OMB to include an estimate of the deficit decrease as a separate entry in its PAYGO scorekeeping reports. However, the law specifies that OMB shall not include any change in the deficit resulting from a cancellation in its sequestration reports.

At the time that OMB issued its final sequester report, the President had sent 78 special messages cancelling budget authority provided in 8 of the 11 appropriations acts he had signed.[9] The Congress had passed one disapproval bill (H.R. 2631) to overturn cancellations related to the Military Construction Appropriation Act; the President vetoed that disapproval bill on November 13, 1997, the same day that the Congress adjourned. There was no attempt to override the President's veto.

BEA-97 Incorporated GAO Recommendations and Issues

BEA-97 made many technical and conforming changes, corrected certain drafting errors in BEA, and brought the law up to date for various changes enacted since 1990. Included in the changes are some that address issues raised by GAO in previous BEA compliance reports. In several reports on OMB and CBO compliance with BEA,[10] we reported on incomplete inflation adjustments to the discretionary caps and the use of different bases for computing inflation. BEA-97 resolved these problems by eliminating inflation as an adjustment to the discretionary caps. In several other

[9]On December 2, 1997, the President issued an additional special message cancelling budget authority in the Departments of Commerce, Justice, and State, and Related Agencies Appropriations Act, 1998, one of the two appropriations acts not signed at the time OMB issued its final sequester report on November 24.

[10]Budget Issues: Compliance With the Budget Enforcement Act of 1990 (GAO/AFMD-93-38, November 23, 1992), Budget Issues: Compliance Report Required by the Budget Enforcement Act of 1990 (GAO/AIMD-94-66, January 10, 1994), Budget Issues: Compliance Report Required by the Budget Enforcement Act of 1990 (GAO/AIMD-96-41, February 16, 1996).

reports,[11] we pointed out large differences in OMB and CBO estimates for discretionary and PAYGO legislation. BEA-97 added a provision that now requires OMB to consult with the budget committees when there are significant differences between CBO and OMB estimates on legislation.

In our report on BEA compliance for fiscal year 1997,[12] we reported on OMB delays in issuing reports and its erroneous interpretation of baseline construction in its scoring of the 1996 farm legislation. CBO also had raised the baseline issue in its August 1996 sequestration update report on OMB's departure from longstanding scoring practices when it scored the farm bill. In response to these problems, BEA-97 extended the time allotted to OMB for issuance of scoring reports from 5 calendar days to 7 working days. It also clarified baseline construction for expiring or recently expired programs by requiring the use of the law most recently in effect in determining the baseline.

Scope and Methodology

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

We reviewed legislation dealing with budget enforcement, including GRH as amended by BEA, OBRA 93, the Violent Crime Control and Law Enforcement Act of 1994, the Contract With America Advancement Act of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Omnibus Consolidated Appropriations Act, 1997, and the Budget Enforcement Act of 1997. We reviewed appropriations acts enacted during the 1st session of the 105th Congress—1 for supplemental emergency appropriations for fiscal year 1997, the 6 continuing

[11]Budget Issues: Compliance Report Required by the Budget Enforcement Act of 1990 (GAO/AFMD-92-43, February 14, 1992), Budget Issues: Compliance With the Budget Enforcement Act of 1990 (GAO/AFMD-93-38, November 23, 1992), Budget Issues: Compliance Report Required by the Budget Enforcement Act of 1990 (GAO/AIMD-94-66, January 10, 1994), Budget Issues: Compliance Report Required by the Budget Enforcement Act of 1990 (GAO/AIMD-95-66, January 13, 1995), Budget Issues: Compliance Report Required by the Budget Enforcement Act of 1990 (GAO/AIMD-96-41, February 16, 1996), Budget Issues: Budget Enforcement Compliance Report (GAO/AIMD-97-28, January 16, 1997).

[12]Budget Issues: Budget Enforcement Compliance Report (GAO/AIMD-97-28, January 16, 1997).

appropriations measures, and the 13 regular appropriations enacted for fiscal year 1998[13] and any applicable OMB and CBO scoring reports issued by December 31, 1997. We also examined the OMB and CBO PAYGO scoring reports for mandatory spending and receipts legislation. We compared each OMB and CBO report and obtained explanations for differences of $500 million or more in estimates for the PAYGO reports. For discretionary spending, we compared OMB and CBO scoring reports and obtained explanations for differences of $500 million or more in budget authority or outlay estimates. We also examined OMB and CBO adjustments to the discretionary spending limits for the preview, update, and final sequestration reports. We also examined appropriation scoring reports for patterns in reasons for differences between OMB and CBO, irrespective of the dollar amounts. Finally, we reviewed OMB and CBO estimates of items cancelled by the President under authority in the Line Item Veto Act of 1996. During the course of our work, we also interviewed OMB and CBO officials.

[13]At the time OMB issued its final sequester report for fiscal year 1998 on November 24, 1997, covering legislation enacted through November 21, two appropriations acts were not yet signed by the President. He signed both bills (Commerce and Foreign Operations) on November 26, 1997, two days after OMB issued its final sequestration report.

Compliance Issue

Some OMB Reports Issued Late

Although CBO met its deadlines, OMB issued its sequestration update report and a number of its required scorekeeping reports later than the law requires. Because BEA-97 changed the timing requirements for scorekeeping reports, two different timing requirements were effective for fiscal year 1998 legislation. Prior to August 5, 1997 (the effective date of BEA-97), scorekeeping reports were due within 5 calendar days of enactment of appropriations and PAYGO legislation. Last year, we reported that OMB issued 72 scorekeeping reports late.[1] Since August 5, 1997, the scorekeeping reports have been due within 7 working days of enactment.

OMB Issued Late Sequestration Update Report

GRH sets a specific timetable for issuance of OMB reports.[2] By law OMB must issue sequestration reports at three specific times during the calendar year: when the President submits his budget, on August 20, and 15 days after the end of a congressional session. OMB did not issue its fiscal year 1998 sequestration update report on August 20 as required by law. Instead, OMB issued its report on September 5, 1997, as part of the mid-session review on the fiscal year 1998 budget.[3] This was 16 days later than required by law.

In its letter transmitting the mid-session report, OMB said it delayed the sequestration update report so that it might incorporate policy changes called for by the Balanced Budget Act and the Taxpayer Relief Act, both of which were signed into law by the President on August 5, 1997.

OMB Issued Late Scorekeeping Reports

As was the case for fiscal year 1997 compliance, OMB issued many of its reports for fiscal year 1998 later than the time specified in law. All of its scorekeeping reports on individual appropriation acts and several of its PAYGO scorekeeping reports were issued late. The law requires that OMB issue scorekeeping reports on appropriation and PAYGO legislation at specified times after enactment.[4] As noted above, during the period under review, the time frame for issuing reports was lengthened by BEA-97. For scorekeeping reports required to be issued by OMB prior to August 5, 1997, section 251(a)(7) required the following:

[1]Budget Issues: Budget Enforcement Compliance Report (GAO/AIMD-97-28, January 16, 1997).

[2]CBO has similar reporting requirements.

[3]Section 1106(a) of Title 31, United States Code, requires the President to issue before July 16 of each year a supplemental summary of the budget (commonly known as the Mid-Session Review).

[4]CBO is required to issue scorekeeping reports "as soon as practicable" after the Congress completes action on any discretionary appropriation and any direct spending or receipts legislation.

"Within 5 calendar days after the 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 two estimates."

For direct spending or receipts legislation, section 252(d) contained a requirement for reporting estimates of changes in outlays or receipts resulting from that legislation within 5 days after the enactment of that legislation.

Nine scorekeeping reports for both appropriations and PAYGO actions were issued when the time frame was 5 days. Report issuance ranged from 5 to 11 days after enactment, with an average of 7.7 days. Seven of these 9 reports (78 percent) of the scoring reports were issued more than 5 days after enactment. Both appropriations reports were issued 11 days after enactment—i.e., 6 days late. The 5 PAYGO reports were an average of 2.4 days late.

BEA-97 changed the time allowed for OMB's submission of scorekeeping reports for appropriations and PAYGO legislation from 5 calendar days to 7 work days (calendar days excluding Saturdays, Sundays, and legal holidays). Since enactment of the longer time frame to issue reports, the results have been mixed. Our analysis of the 25 scorekeeping reports issued under the new time frame criteria at the time OMB issued its final sequester report showed that all 7 reports on appropriations were from 1 to 8 work days late and averaged 11 work days from enactment. In contrast, all 18 PAYGO reports were issued on time and averaged 6.1 work days from enactment.

At the time OMB issued its final sequester report on November 24 (which covered legislation enacted through November 21), the President had not yet signed two appropriations bills. In addition to those two appropriations, OMB had not yet issued appropriation scorekeeping reports for 4 other appropriations which had been enacted. OMB did, however, include estimates for all appropriations actions for fiscal year 1998 in its final sequester report.

Twenty-one PAYGO scorekeeping reports were issued after OMB's final sequester report. In contrast to those issued between August 5 and November 21 (the cut-off date for OMB's final sequester report), 12 PAYGO scorekeeping reports (57 percent) issued after OMB's final sequester report

were late. The late reports were from 1 to 3 work days late and averaged 9.1 work days from enactment to issuance of the scorekeeping report. In its final sequester report, OMB did include preliminary estimates for bills enacted or pending presidential signature for which OMB had not yet issued a PAYGO report, but the estimates were not included in deficit calculations. Those cost estimates will be included in deficit calculations reported in OMB's preview sequestration report issued in the President's fiscal year 1999 budget submission.

Six appropriations scorekeeping reports were not issued until January 5, 1998. These reports were late an average of 21.8 work days. Issuance ranged from 17 to 27 work days late.

In our report on fiscal year 1997 BEA compliance, we raised the issue of late scorekeeping reports. In that review, we looked at 101 scorekeeping reports that had been issued under the 5-day criteria. The average length of time between enactment and scorekeeping report issuance was 7.5 calendar days, or 2.5 days late. This year, the 27 most recent scorekeeping reports issued after OMB's final sequestration report have averaged 12.6 work days between enactment and report issuance, making them an average of 5.6 work days late. Although OMB has been given additional time to prepare scorekeeping reports, the reports have been later than before the law was changed.

Implementation Issues

We identified several implementation issues in which OMB and CBO differed in making (1) estimates of the open season for federal employees' retirement, (2) adjustments to the discretionary spending limits, (3) estimates of discretionary appropriations, and (4) an estimate of PAYGO legislation.

Open Season for Federal Employees' Retirement System

The Treasury and General Government Appropriations Act for fiscal year 1998 (Public Law 105-61) included a provision to provide an open season for federal employees covered by the Civil Service Retirement System (CSRS) to switch to the Federal Employees' Retirement System (FERS). Differences between OMB and CBO in estimating the impact of this provision affect both discretionary and PAYGO estimates. The primary difference in discretionary estimates stems from very different OMB and CBO assumptions on the number of employees who would switch from CSRS to FERS. The difference in PAYGO is attributable to a disagreement over whether revenue provisions in appropriations acts must be scored against the PAYGO scorecard (CBO's view) or may be scored as discretionary (OMB's view).

The Federal Employees' Retirement System Open Enrollment Act of 1997 (section 642 of the Treasury and General Government Appropriations Act, 1998) provided that employees currently enrolled in CSRS could elect to transfer from CSRS to FERS between July 1, 1998, and December 31, 1998. The President signed the appropriation act on October 10, 1997, but on October 16 elected to use his power under the Line Item Veto Act to cancel the provision authorizing the transfer program.[1]

The President's cancellation notice and accompanying press release contained an estimate that a new open season would reduce revenues for the CSRS trust fund by $8 million in fiscal year 1998 and $854 million over the 1998-2002 period and result in additional costs to agencies of $1.3 billion in discretionary resources in future years to pay higher retirement benefits.[2] The cancellation notice identified these estimated costs as savings resulting from the line item veto. CBO estimated that a new open season would reduce CSRS revenues by $4 million in fiscal year 1998 and

[1]The National Treasury Employees Union (NTEU) filed a lawsuit challenging the President's authority to veto this provision. NTEU argued that employee contributions to the CSRS fund are not "dollar amounts of discretionary budget authority" subject to cancellation under the Line Item Veto Act. Pursuant to an agreement reached between NTEU and the Department of Justice, the court issued an order which invalidated the veto and reinstated the provision for an open season to switch to FERS.

[2]These increased agency costs estimated by OMB and CBO are subject to future appropriations which are not scored until actually appropriated.

$139 million from 1998 through 2002. CBO estimated the increase in agency costs (excluding the Postal Service) to be $262 million. The President's recent decision to withdraw the cancellation means that the OMB estimates represent estimated costs, not savings.

These different estimates result primarily from different assumptions about how many workers would take advantage of the opportunity to switch retirement plans. OMB made an assumption that the federal workers who would switch would have at least 37 years of federal service—about 60,000 people or 5 percent of the eligible workforce. CBO, on the other hand, estimated that about 11,500, or only 1 percent of eligible employees, would switch to FERS if given the opportunity. CBO based its estimates on the rates at which employees switched from CSRS to FERS in 1987 and its assumption that today's CSRS employees would switch at a lower rate than in 1987. CBO officials testified that if CBO had used OMB's assumption that 60,000 workers would switch plans, its estimate would have been similar to OMB's.

In addition to the differences noted above, CBO reported PAYGO costs due to loss of on-budget revenues of $4 million in 1998, $151 million for the period 1998-2002, and $312 million over the 1998-2007 period. OMB did not consider the Treasury and General Government Appropriations Act to be subject to PAYGO so it did not score any PAYGO costs. These revenue losses scored by CBO represent the loss of income tax revenue resulting from an estimated increase in employees' contributions to the Thrift Savings Plan and the loss of on-budget revenue resulting from the switch of 6.2 percentage points of employees' contributions from the Civil Service trust fund to the off-budget social security trust fund.

Under GRH, both CBO and OMB count changes in direct spending caused by provisions in appropriation acts as increases or decreases in discretionary spending for purposes of determining compliance with the discretionary caps. According to CBO, changes in revenues in appropriation acts are not counted in determining compliance with discretionary caps but should be recorded on the PAYGO scorecard. OMB did not consider the bill to be subject to PAYGO and thus did not score any PAYGO costs. OMB did not provide any further explanation for its scoring.

OMB and CBO Differed on Adjustments to Discretionary Spending Limits

Adjustments to the spending limits for fiscal year 1998 are covered by two sets of criteria: those in effect prior to enactment of BEA-97 and those set forth in BEA-97. OMB and CBO preview sequestration reports were issued under the pre-BEA-97 criteria and the update and final sequestration reports were issued under BEA-97 criteria.

Section 251(b) of GRH, which is applicable to the preview sequestration reports, required that spending limits be adjusted to account for (1) changes in concepts and definitions, (2) changes in inflation, (3) emergency appropriations, and (4) spending for continuing disability reviews by the Social Security Administration in excess of certain amounts. While both CBO and OMB are required to calculate how much the spending limits should be adjusted, OMB's adjustments control for the purposes of budget enforcement, such as determining whether enacted appropriations fall within the spending limits or whether a sequestration is required to avoid a breach of them. CBO's cap adjustment estimates are advisory.

In the preview reports, both OMB and CBO made fiscal year 1998 cap adjustments for changes in inflation and concepts and definitions. OMB and CBO adjustments to the preview report caps differed by $6.4 billion in budget authority and $1.5 billion in outlays. OMB lowered the general purpose caps for 1998 by $577 million in budget authority, while CBO lowered them by $7 billion. For outlays, OMB lowered the caps by $2.6 billion and CBO by $4.1 billion.

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

Prior to enactment of BEA-97, discretionary spending limits were adjusted to reflect changes in earlier inflation estimates. After enactment of BEA-97, inflation is no longer an adjustment item. Both CBO and OMB preview sequestration reports for fiscal year 1998 issued prior to the enactment of BEA-97 contained downward inflation estimates for 1998. Thus both CBO and OMB called for reducing the discretionary spending caps to reflect the lower inflation forecasts. CBO estimated the 1998 inflation rate at 2.4 percent[3] while OMB estimated it at 2.6 percent.

Inflation adjustments were calculated using the cumulative inflation factor of the current year divided by the cumulative inflation factor estimates from OMB's preview report for the prior year. Since CBO and OMB had

[3]CBO's preview report cited 2.6 percent inflation for 1998 but CBO officials advised us that this was a typographical error. CBO's calculations in its preview report correctly were based on the 2.4 percent estimate which was the amount published in its January 1997 publication, The Economic and Budget Outlook: Fiscal Years 1998-2007.

different estimates of inflation, the CBO and OMB preview reports had different estimates of how much the 1998 caps needed to be adjusted. OMB reduced the 1998 caps by $4.2 billion in budget authority and $2.5 billion in outlays to reflect its updated, lower 1998 inflation estimate. Using OMB's methodology but CBO's inflation estimate, CBO reduced the caps by $6.7 billion in budget authority and $4.0 billion in outlays.

OMB and CBO Made Different Adjustments for Changes in Concepts and Definitions

Discretionary spending limits are adjusted for changes in accounting and scorekeeping conventions and budget concepts definitions, including reclassification of spending and programs between the direct and discretionary spending categories. In their preview sequestration reports for fiscal year 1998, both OMB and CBO adjusted the 1998 spending caps for changes in concepts and definitions. OMB increased the budget authority spending caps for such changes by $3.6 billion for 1998, while CBO decreased the budget authority spending caps by $220 million. This difference was due primarily to a single adjustment.

OMB included an upward cap adjustment of $3.7 billion in budget authority for the redefinition of certain obligation limitations as discretionary budget authority. The funding for administrative expenses for some trust fund accounts had been counted as a discretionary obligation limitation rather than discretionary budget authority and was not covered under the discretionary budget authority spending caps although its outlays were covered. Beginning with the 1998 budget, obligation limitations enacted in appropriations acts were defined as discretionary budget authority to treat administrative expenses for all trust funds consistently. Although CBO officials did not include an adjustment for this item because the change occurred in the 1998 budget which was submitted after CBO's report had been issued, they told us that they did not disagree with the adjustment that OMB made.

OMB and CBO Made Different Adjustments for Emergency Spending

OMB and CBO update sequestration reports differed in their fiscal year 1998 cap adjustments for emergency spending due to different estimates of budget authority and outlays for emergency funding enacted since issuance of the preview reports. A difference of $16 million in 1998 budget authority reflects CBO scoring of a reappropriation of funds for the U.S. Customs Service. Those funds were originally appropriated as emergency spending in fiscal year 1997 in the 1997 Emergency Supplemental Appropriations Act for Recovery From Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those in Bosnia (Public Law 105-18). In

our opinion, OMB correctly scored the reappropriation as a regular appropriation and did not adjust the caps, whereas CBO treated it as emergency spending and adjusted the caps upward. Although the original appropriation had used an emergency designation, the reappropriation language did not.

The largest difference in cap adjustment outlays is due to different assumptions about the spend-out rates for outlays associated with additional resources provided in Public Law 105-18 for the Federal Emergency Management Agency's (FEMA) Disaster Relief Fund. CBO did not score any outlays in 1998, while OMB scored $1.3 billion. Another large difference is due to different assumptions about the spend-out rate of Department of Defense (DOD) resources in Public Law 105-18. CBO scored $419 million and $1.1 billion for 1997 and 1998, respectively, while OMB scored $1.5 billion and $301 million for 1997 and 1998, respectively. OMB's faster spendout rate for FEMA and DOD was also discussed in last year's compliance report[4]

OMB and CBO also had different estimates of fiscal year 1998 cap adjustments in their final sequester reports for budget authority and outlays. The $307 million difference in budget authority was attributable primarily to a $300 million contingent emergency appropriation for the Low-Income Home Energy Assistance Program in the Labor, Health and Human Services, Education and Related Agencies Appropriation Act. CBO scores contingent emergency appropriations at the time the appropriation is made because congressional action is completed. In contrast, OMB scores budget authority only when the President officially releases those contingent appropriations.

OMB and CBO also differed in outlay adjustments to the caps for violent crime reduction spending. OMB adjusted the caps upward by $1.2 billion using the special outlay allowance permitted under law,[5] while CBO made no adjustment. The difference was due to OMB's estimate of a faster spendout rate for violent crime reduction spending than CBO.

[4]Budget Issues: Budget Enforcement Compliance Report (GAO/AIMD-97-28, January 16, 1997).

[5]The special outlay allowance is included in the BEA to cover technical scoring differences that result when OMB scoring exceeds CBO scoring. If, in any fiscal year, outlays for a discretionary spending category exceed its spending limit but new budget authority does not, the special outlay allowance may be used.

OMB and CBO Scored Appropriations Differently

Appropriations enacted during the 1st session of the 105th Congress did not exceed the 1997 or 1998 discretionary spending caps. However, as shown in table II.1, OMB's estimates of both budget authority and outlays from appropriations for violent crime reduction spending were at the spending cap level. CBO's estimates of 1998 discretionary spending were all less than the discretionary caps except for violent crime reduction spending, which equaled the budget authority cap. OMB estimated a higher spendout of violent crime reduction funding than did CBO and used the special outlay allowance to adjust the cap upward by $1.2 billion to cover the estimated spending.

Table III.1: OMB Estimates of Fiscal Year 1998 Appropriations Compared to Discretionary Caps

(Dollars in millions)

	Defense		Non-Defense		Violent Crime Reduction	
	Budget Authority[a]	Outlays[a]	Budget Authority[a]	Outlays[a]	Budget Authority[a]	Outlays[a]
Discretionary spending limits	$269,000	$267,124	$253,500	$285,680	$5,500	$4,833[b]
Total appropriations enacted	$268,491	$262,391	$252,123	$284,797	$5,500	$4,833
Amount under spending limits	$-509	$-4,733	$-1,377	$-883	$0	$0

[a]OMB estimates contained in final sequester report. Estimates of appropriations include cancellations transmitted by the President as of November 21, 1997. Not all scorekeeping reports had been issued when OMB issued its final sequester report on November 24, 1997.

[b]Contains special outlay allowance adjustment of $1,241 million to avoid a sequester.

Differences in Scoring Appropriations

Section 251(a)(7) of GRH requires CBO and OMB to score the budget authority and outlays of each discretionary appropriation bill enacted. Not later than 7 work days after the date of enactment of an appropriation bill, OMB is required to transmit its and CBO's scoring estimates to the House and the Senate, with an explanation of any differences between the two estimates. We examined all CBO and OMB scoring reports for appropriations enacted during the 1st session of the 105th Congress for which scoring reports were released by November 24, 1997, the date of OMB's final sequestration report. As of December 31, 1997, OMB had not released scoring reports for the last 6 appropriations[6] enacted even though it had included estimates for all appropriations in its final sequester report. Therefore, our analysis of differences in OMB and CBO scoring of appropriations legislation was limited to those for which OMB had issued a scorekeeping report.

[6]Scorekeeping reports for appropriations for Agriculture, Commerce, District of Columbia, Foreign Operations, Interior, and Labor were not issued at the time OMB issued its final sequester report.

OMB and CBO differed less on budget authority than on outlays. Differences in budget authority generally result from different program assumptions where specific program levels are not specified. Appropriation acts specify the exact dollar amount of budget authority for most discretionary programs and scoring budget authority is relatively simple and straightforward. In contrast, outlays for a particular fiscal year depend on the pace at which budget authority is obligated and payments are made, and can be more difficult to score with precision. Outlays during a fiscal year consist of payments for obligations incurred in prior years as well as in the current year.

Small differences in total scoring of an appropriation may be comprised of several offsetting components. For example, a difference of $316 million in scoring 1998 emergency spending outlays in the 1997 Emergency Supplemental Appropriations and Rescissions Act resulted from six instances in which CBO's estimates exceeded OMB's by a total of $996 million and one instance in which OMB's estimate exceeded CBO's by $1.3 billion.

Sizable differences between OMB and CBO scoring[7] occurred for four appropriations acts—the emergency supplemental appropriations act and regular appropriations acts for Energy and Water Development, Defense, and Veterans Affairs and Housing and Urban Development (HUD).[8]

Emergency Appropriations

OMB and CBO differed in their scoring of the 1997 Emergency Supplemental Appropriations and Rescissions Act (Public Law 105-18) for outlays for 1997 and for both budget authority and outlays for 1998. OMB estimated that emergency spending outlays in this act would be $1.7 billion higher in 1997 and $316 million higher in 1998 than did CBO. These differences were due to different OMB and CBO assumptions as to the spendout rate for emergency funding. OMB assumes a faster spendout rate than does CBO.

For nonemergency spending in Public Law 105-18, the differences were $471 million and $91 million in budget authority for 1997 and 1998, respectively, and $864 million and $272 million in outlays for 1997 and 1998, respectively. The largest item affecting 1997 budget authority was a $700 million difference in the estimate for Payments to States for job opportunities and basic skills training program in the Department of

[7]We adjusted OMB estimates where applicable to eliminate any differences due to any amounts subject to a line-item veto.

[8]Scorekeeping reports for only 7 of the 13 regular appropriations acts had been issued as of December 31, 1997.

Health and Human Services. OMB and CBO had different assumptions about the effect of the language in the bill. CBO assumed that the language would result in a rescission of $700 million in budget authority for fiscal year 1997 and scored a savings. OMB does not score a rescission to an appropriated entitlement that does not change the authorization for the entitlement. Therefore, OMB did not score any savings from this provision.

With regard to OMB and CBO differences in scoring outlays, several Department of Defense accounts represented $635 million of the $864 million difference in 1997. This was attributed to different assumptions about the spendout rates for Defense accounts in the act. For 1998, these same Defense accounts represented $197 million of the $272 million difference in outlays. Another difference between OMB and CBO budget authority and outlay scoring was in the Commodity Credit Corporation export loans program account. CBO assumed a lower demand for guarantees than was assumed in the 1998 budget and estimated no savings. The budget assumed $5.5 billion in guarantee commitments. According to OMB, the bill decreased the loan level to $3.5 billion, resulting in savings of $160 million in subsidy budget authority and outlays.

Energy and Water Development Appropriation

OMB's outlay estimates for the Energy and Water Development Appropriation accounts in the non-defense category were $601 million higher than CBO's. The largest item making up that difference was related to Department of Energy General Science and Research Activities where OMB estimated $382 million more in outlays than CBO. Although CBO assumed $205 million more in outlays from prior balances than OMB did, CBO's first-year spendout rate for new appropriations was 49 percent, compared to OMB's 76 percent. For the defense discretionary category, CBO estimated $758 million more in outlays than OMB did. This was due primarily to different spendout rates and estimates of outlays from prior budget authority for the Weapons activities and the defense environmental restoration and waste management accounts in the Department of Energy, which differed by $159 million and $587 million, respectively.

Defense Appropriation

OMB and CBO differed by about $2.6 billion in their outlay estimates of the Defense Appropriations bill in the defense discretionary category. OMB estimated that Defense Working Capital Funds would generate $798 million in revenues in excess of expenditures, while CBO estimated this amount to be only $250 million. For several other Defense accounts, OMB and CBO differed on spendout rates and estimates of outlays from prior year balances, resulting in a total outlay difference of about $2.8 billion. In

almost all of these instances CBO estimated higher spendout rates than OMB did.

Veterans Affairs and HUD Appropriation

OMB and CBO differed in scoring of the Veterans Affairs and HUD Appropriation for the non-defense discretionary category by about $1 billion. OMB estimated that outlays from the Department of Veterans Affairs account for construction of major projects would be $164 million less than CBO estimated. The differences were due to different estimates of initial spendout rates for new appropriations and for outlays from prior balances. OMB also estimated that Federal Emergency Management Agency disaster relief outlays would be $191 million lower than CBO estimated. OMB had estimated that $128 million of new budget authority would be outlayed, while CBO estimated that none would be outlayed. However, this difference was more than offset by a difference of $319 million in outlays from prior year balances. OMB also made an adjustment of $1.4 billion to score outlays for previously enacted emergency spending to this act. OMB stated that the adjustment was made so that final OMB scoring would be comparable to the discretionary caps that were included in its sequestration update report, which included adjustments for emergency spending.

OMB and CBO Differed on PAYGO Estimate

In its final sequester report, OMB included the deficit effect of PAYGO legislation enacted (as of November 21, 1997) during the 1st session of the 105th Congress. According to OMB, this legislation reduced the deficit for 1998 by $11 million, so no PAYGO sequester was required. The $11 million savings for 1998 will be removed from the PAYGO scorecard as required by BEA-97. CBO's final sequester report reported that the same PAYGO legislation decreased the deficit by $7 million for 1998. CBO also concluded that no sequester for 1998 would be required.

OMB's final report also included preliminary estimates for 22 additional pieces of PAYGO legislation pending OMB PAYGO reports or enactment. OMB estimated that these items would decrease the 1998 deficit by $155 million. These estimates are not included in the final totals for 1998 and will be included in OMB's preview report issued with the fiscal year 1999 budget.

None of the PAYGO estimates for fiscal year 1998 met our criteria for further analysis, that is, no OMB and CBO PAYGO estimates for 1998 differed by more than $100 million. We did, however, do additional analysis on the fiscal year 1997 PAYGO calculations for the Airport and Airway Trust Fund Tax

Reinstatement Act of 1997 (Public Law 105-2), where there was a $324 million difference in the estimates.

The Airport and Airway Trust Fund Tax Reinstatement Act reinstated aviation excise taxes that expired on December 31, 1996. The reinstated taxes were a 10 percent excise tax on domestic passenger tickets, a $6 per person international departure tax, and various taxes on freight and aviation fuel. CBO's estimate, which was provided by the Joint Committee on Taxation, anticipated increased receipts of $2,730 million. OMB's lower estimate, which was provided by the Department of Treasury, was $2,406 million. OMB and CBO analysts told us that the difference between the estimates was mainly a result of different estimates of the number of people expected to be taking international flights and of the pricing and volume of domestic flights. The other causes for the difference in the estimates were different assumptions about the amount of freight to be shipped and the number of gallons of aviation fuel to be used.

CBO prepared a PAYGO estimate for the Treasury and General Government Appropriations Act, 1998 (Public Law 106-61), for a provision that permitted federal employees to transfer from CSRS to FERS. OMB did not consider this a PAYGO matter. Although the difference for 1998 is only $4 million, the 5-year cost is $151 million, according to CBO. This case was discussed earlier in this appendix.

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