



January 4, 2024

Honorable Jodey Arrington  
Chairman  
Committee on the Budget  
U.S. House of Representatives  
Washington, DC 20515

Honorable Brendan F. Boyle  
Ranking Member  
Committee on the Budget  
U.S. House of Representatives  
Washington, DC 20515

*Re: Implementing the Statutory Limits on Discretionary Funding for  
Fiscal Year 2024*

Dear Chairman Arrington and Ranking Member Boyle:

At your request, the Congressional Budget Office is providing information concerning implementation of the caps on most discretionary funding for fiscal year 2024 as established by the Fiscal Responsibility Act of 2023 (FRA; Public Law 118-5).<sup>1</sup> The FRA sets separate caps (in law they are called *limits*) on defense funding (in law, *revised security*, which is budget function 050) and on nondefense funding (*revised nonsecurity*, which covers all other budget functions).

This letter provides CBO's assessment of the effects of the caps on discretionary funding in fiscal year 2024. Those effects will depend on the nature and timing of appropriation legislation and on decisions by the Office of Management and Budget (OMB). If necessary, the caps will be enforced by OMB through sequestration, the process by which across-the-board reductions are applied to budgetary resources.<sup>2</sup>

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1. Discretionary funding is budget authority provided and controlled by legislation under the jurisdiction of the House and Senate Committees on Appropriations and considered by the Congress to fund the federal government's operations for a fiscal year. Appropriation acts provide legal authority for federal agencies to incur obligations and make payments out of the Treasury for specified purposes.

2. Budgetary resources include discretionary funding provided in appropriation acts as well as other spending authority—for example, from collections and balances of unobligated funding from prior fiscal years. For more information see Congressional Budget Office, *Glossary* (July 2016), [www.cbo.gov/publication/42904](http://www.cbo.gov/publication/42904).

The discussion here uses the example of discretionary funding under the current continuing resolution (the Further Continuing Appropriations and Other Extensions Act, 2024; P.L. 118-22), which provides funding for fiscal year 2024. In the scenarios CBO examined, if enacted funding equaled the annualized amount of funding under the continuing resolution, sequestration would be required and would result in across-the-board reductions ranging from 5 percent to 9 percent for nondefense funding and from zero to 1 percent for defense funding, depending on when appropriations were enacted and what form they took.

Because CBO's budget projections can differ from those of OMB and because changes to budgetary resources could occur between the time of this writing and the point at which sequestration was required, the sequestration percentages could differ from those estimated for this letter. The ultimate authority to decide those percentages rests with OMB. Lawmakers (that is, the Congress and the President) could affect the outcomes—whether there is a sequestration and how large it would be—by enacting legislation that would provide different amounts of funding than assumed in this letter, cancel budget authority that had been provided previously (which can create more room under the caps), waive or alter the caps, or specify how much funding qualifies for adjustments to the caps.

### **What Are the Caps for 2024?**

The caps on defense and nondefense funding limit most discretionary funding—but not all. They are adjusted if legislation provides funding for certain activities (for example, new funding designated in law as an emergency requirement), and some funding for 2024 is not subject to the caps. The rest, sometimes called base funding, is constrained by the caps specified in two sections of the FRA, which would result in different outcomes for funding (see Figure 1):

- Section 102 sets the caps on defense and nondefense funding at 1 percent below CBO's estimate of defense and nondefense base funding as provided in the Consolidated Appropriations Act, 2023 (CAA, 2023; P.L. 117-328).<sup>3</sup> The amounts in the CAA, 2023, are \$858 billion for defense and \$744 billion for nondefense activities—so the section 102 caps for 2024 are \$850 billion for defense and \$736 billion for nondefense funding.

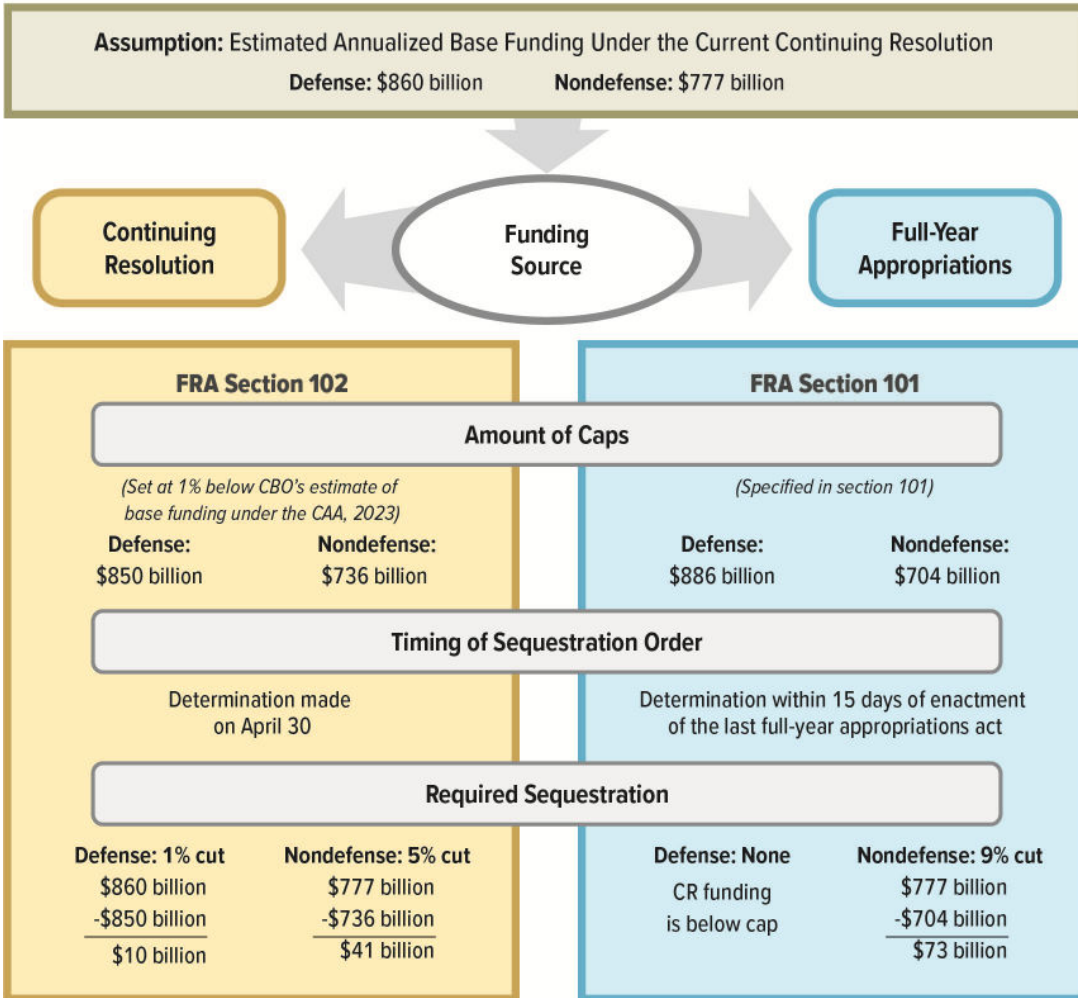
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3. See Congressional Budget Office, CBO estimate for Divisions A through N of H.R. 2617 (as modified by S.A. 6552), the Consolidated Appropriations Act, 2023 (December 21, 2022), [www.cbo.gov/publication/58872](http://www.cbo.gov/publication/58872).

Figure 1.

### Sequestration in 2024 Under Two Scenarios

CBO estimated the reductions to discretionary funding that would be required under sections 102 and 101 of the FRA if funding remained at the amounts specified in the current continuing resolution. If necessary, the caps will be enforced by OMB through sequestration, the process by which across-the-board reductions are applied to budgetary resources.



Source: Congressional Budget Office and information provided by the Office of Management and Budget.

As of January 1, 2024, discretionary funding was as specified by the Further Continuing Appropriations and Other Extensions Act, 2024 (the current continuing resolution).

According to OMB, if full-year appropriations were enacted after sequestration was ordered on April 30, 2024, the section 101 caps would apply but the reductions in budgetary resources (which would be ordered to comply with section 102) would not be reversed automatically without legislative action. Therefore, the total amount of defense funding for fiscal year 2024 might remain at the amount in section 102 if full-year funding that equaled funding provided in the current continuing resolution was enacted after April 30 and if that law did not reverse the sequestration order.

The situation for nondefense funding is different: If 2024 nondefense funding is first reduced to comply with the section 102 cap on April 30, OMB may need to order another sequestration to comply with the lower section 101 nondefense cap 15 days after the enactment of all of the full-year appropriation acts if the funding those acts provide is the same as the funding provided in the continuing resolution.

CAA, 2023 = Consolidated Appropriations Act, 2023; FRA = Fiscal Responsibility Act of 2023; OMB = Office of Management and Budget.

- Section 101 specifies caps for 2024 of \$886 billion for defense and \$704 billion for nondefense funding.

### **Which Caps Will Apply and When?**

The set of caps that applies to discretionary funding depends on the timing of the enactment of appropriation acts and the duration for which funding is provided. The caps specified in section 102 were triggered because discretionary funding was provided by the continuing resolution that was in place on January 1, 2024. Unless all full-year appropriations have been enacted by April 30, 2024, OMB will use the section 102 caps to determine whether sequestration is required.

Within 15 days of the enactment of the last full-year appropriation act, OMB will use the section 101 caps to determine whether sequestration is required. Additional sequestration orders might be required if more base funding is provided after enactment of all full-year appropriations.

Ultimately, new legislation (enacted with appropriations or separately) can direct which set of caps will be applied and how.

### **What Is Discretionary Sequestration?**

Discretionary sequestration is an administrative process for reducing budgetary resources in the event of a breach of statutory caps. (OMB also uses sequestration to enforce other statutory requirements for the federal budget.)

In this instance, to determine whether sequestration is required, OMB must compare its estimates of defense and nondefense discretionary funding provided for 2024 with the caps specified in the FRA. If OMB determines that funding for one or both categories exceeds the relevant cap, the President must issue a sequestration order to eliminate the breach.

To formulate that order, OMB decides how each budgetary account is treated under the statutory rules for sequestration. OMB then determines the amount of budgetary resources subject to sequestration, which differs from the amount of funding estimated to have exceeded the caps. Some categories of spending that can cause a breach are not subject to sequestration. Other

categories—even though they cannot cause a breach—are subject to such an action.<sup>4</sup>

For example, funding for programs administered by the Department of Veterans Affairs is exempt from sequestration. Likewise, the President has exempted funding for service members' pay from sequestration in fiscal year 2024.<sup>5</sup> Despite that, base discretionary funding for those activities is considered in the determination of whether total base funding complies with the caps. Excluding those programs from sequestrable resources increases the size of the cuts that would be imposed on other discretionary programs.

Some factors work in the opposite direction: Budgetary resources that are not part of base funding can be sequestered. Examples include certain funding designated as an emergency requirement and unspent defense appropriations from prior years.

### **Required Sequestration in 2024 Under the Caps**

To illustrate how the caps in the FRA could affect discretionary funding, CBO estimated the reductions required under each set of caps if enacted funding equaled the annualized amount of base funding under the current continuing resolution. CBO estimates those amounts at \$860 billion for defense and \$777 billion for nondefense activities.

**Section 102 Caps.** CBO estimates that the annualized base budget authority provided by the current continuing resolution exceeds the section 102 defense cap by \$10 billion and the nondefense cap by \$41 billion. Thus, on April 30, 2024, OMB would be required to cancel 1 percent of sequestrable defense budgetary resources and 5 percent of sequestrable nondefense budgetary resources (see Table 1).

The immediate effects on federal agencies' operations could be much greater than those percentages suggest, however. If an agency operates through April 30 (seven months into the fiscal year) at the amounts provided by the continuing resolution, a 1 percent reduction in defense funding for the fiscal

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4. The Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the FRA, provides for certain cap adjustments (2 U.S.C. § 901) and designates certain funding categories exempt from sequestration (2 U.S.C. § 905). Most funding that cannot cause a breach but is sequestrable is designated in the text of the law as requiring a cap adjustment. To determine whether budgetary resources are exempt from sequestration, OMB must determine whether one of the exemptions applies.

5. Shalanda Young, Director, Office of Management and Budget, letter to the Honorable Kevin McCarthy, Speaker, U.S. House of Representatives (August 9, 2023), <http://tinyurl.com/mrxc2h4p>.

year would require a 2.4 percent reduction over the period from May 1 to September 30. Similarly, an overall reduction of 5 percent imposed by the nondefense cap would require a 12 percent reduction in funding for the final five months of the year.<sup>6</sup>

**Table 1.**  
**Enforcement Required by FRA Section 102 for Base Funding Under the Current Continuing Resolution**

Billions of Dollars

	Defense	Nondefense
Section 102 Caps (One or more continuing appropriations)		
Estimated 2023 Base Funding Under the CAA, 2023	858	744
1 Percent Reduction	<u>-9</u>	<u>-7</u>
Estimate of Section 102 Caps	850	736
Estimated Annualized Base Funding Under the Current Continuing Resolution	860	777
Base Funding Over the Caps	10	41
Estimated Sequestrable Budgetary Resources	849	780
Estimated Sequestration Percentage on April 30, 2024	1	5

Source: Congressional Budget Office.

Discretionary funding shown was provided by the current continuing resolution (the Further Continuing Appropriations and Other Extensions Act, 2024).

Numbers do not sum to totals because of rounding.

CAA, 2023 = Consolidated Appropriations Act, 2023; FRA = Fiscal Responsibility Act of 2023.

**Section 101 Caps.** CBO estimates that to comply with the FRA’s section 101 caps, base nondefense funding must be \$73 billion lower after full-year appropriations are enacted than the amount now provided by the current continuing resolution (see Table 2). If full-year funding is set at the amounts in the continuing resolution, a sequestration of 9 percent would be required to enforce the nondefense cap. Defense funding provided under the continuing resolution is \$27 billion below the section 101 cap, so no sequestration would be required in that category.

Enacting all of the full-year appropriation acts would cause the section 101 caps to apply—even if the section 102 caps had been enforced on April 30. Reverting to the section 101 caps from the section 102 caps would increase allowable defense funding by \$37 billion (a 4 percent increase) but would further decrease allowable nondefense funding by \$33 billion (a 4 percent decrease).

6. OMB has advised agencies that the caps have no effect on funding under the current continuing resolution until April 30. For more information, see Office of Management and Budget memorandum for the heads of executive departments and agencies concerning frequently asked questions related to fiscal year 2024 discretionary spending limits (December 22, 2023), <http://tinyurl.com/26ybyf24>.

**Table 2.**  
**Enforcement Required by FRA Section 101 With Full-Year Base Funding at Amounts Set in the Current Continuing Resolution**

Billions of Dollars	<b>Defense</b>	<b>Nondefense</b>
Section 101 Caps (Full-year funding)	886	704
Estimated Annualized Base Funding Under the Current Continuing Resolution	860	777
Base Funding Over the Caps	n.a.	73
Estimated Sequestrable Budgetary Resources	849	780
Estimated Sequestration Percentage 15 Days After Last Full-Year Funding Enacted	n.a.	9

Source: Congressional Budget Office.

Discretionary funding shown was provided by the current continuing resolution (the Further Continuing Appropriations and Other Extensions Act, 2024).

FRA = Fiscal Responsibility Act of 2023; n.a. = not applicable.

According to OMB, if full-year appropriations were enacted after sequestration was ordered on April 30, the section 101 caps would apply but the reductions in budgetary resources (which would be ordered to comply with section 102) would not be reversed automatically without legislative action. Therefore, the total amount of defense funding for fiscal year 2024 might remain at the amount set in section 102 if full-year funding that equaled the amounts provided in the current continuing resolution was enacted after April 30 and if that law did not reverse the sequestration order.

The situation for nondefense funding is different: If 2024 nondefense funding is first reduced to comply with the section 102 cap on April 30, OMB may need to order another sequestration to comply with the lower section 101 nondefense cap 15 days after the enactment of all of the full-year appropriation acts if the funding those acts provide is the same as the funding provided in the continuing resolution.

### **Why Does the Nondefense Sequestration Percentage Exceed 1 Percent?**

To determine the FRA caps under section 102, a 1 percent reduction is applied to CBO’s estimate of CAA, 2023, base funding. It is not applied to the amount of funding in place under the current continuing resolution. CBO’s estimate of budget authority under the CAA, 2023, is \$34 billion less than such funding under the continuing resolution. (Of that amount, \$33 billion is attributable to nondefense funding; the remainder is for defense.) Because of that difference, funding that is 1 percent below CAA, 2023, base funding is below the amounts in the current continuing resolution by a larger percentage.

Most of the difference between the funding under the continuing resolution and base funding under the CAA, 2023, stems from these factors:

- Enacted advance appropriations for 2024 for the Department of Veterans Affairs and the Indian Health Service are higher than the amounts under the CAA, 2023, by \$17 billion and \$5 billion, respectively.
- The Federal Housing Administration is expected by CBO to collect roughly \$7 billion less in receipts in fiscal year 2024 than it did in 2023. In the budget, those receipts are counted as offsets to discretionary budget authority and outlays.
- Base budget authority provided by the CAA, 2023, was reduced by several cancellations of budget authority that had been provided previously. CBO estimates that the affected agencies lack enough budget resources to fully repeat those cancellations in 2024, thus increasing by \$1 billion the net budget authority provided in the continuing resolution.

### **Uncertainty**

Significant uncertainty surrounds the effects of the limits on discretionary funding contained in section 102 and section 101 of the FRA. Ultimately, funding will depend on the actions of lawmakers and on OMB's decisions about sequestration.

In this letter, CBO uses the current continuing resolution to illustrate the ways that the caps could affect discretionary funding for fiscal year 2024. However, future legislation may provide different amounts of funding, cancel previously provided budget authority, alter the amount to be constrained by the caps, or determine how much funding might qualify for adjustments. The form and timing of any legislation that provides funding, and whether it specifies any requirements for the Administration to follow in implementing sequestration procedures, also will be important.

Once appropriation legislation is enacted, OMB will need to make several determinations, all of which will have consequences for the effects of the statutory caps in 2024. In particular, OMB will need to:

- Determine which set of caps will apply (although lawmakers can specify that in legislation),
- Estimate and determine whether funding complies with the caps, and
- Calculate the budgetary resources that could be sequestered if caps were breached.



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OMB's estimates of a breach of the caps (if any) and the amount of sequestrable budgetary resources will probably differ from CBO's estimates. Some differences will stem from differences in baseline projections or budget concepts, and some factors may change between now and the time at which OMB might be required to prepare a sequestration order.

I hope this information is useful to you. If you wish further details on this analysis, we would be pleased to provide them.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip L. Swagel". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Phillip L. Swagel  
Director

cc: Honorable Mike Johnson  
Speaker  
U.S. House of Representatives

Honorable Hakeem Jeffries  
Democratic Leader  
U.S. House of Representatives