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Testimony

Before the Committee on the Budget,  
House of Representatives

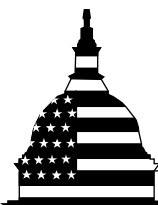
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## AGENCY OPERATIONS

# Agencies Must Continue to Comply with Fiscal Laws Despite the Possibility of Sequestration

Statement of Susan A. Poling  
Deputy General Counsel



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Highlights of [GAO-12-675T](#), a testimony before the Committee on the Budget, House of Representatives.

## Why GAO Did This Study

This testimony addresses two issues: (1) the application of the Antideficiency Act and the Impoundment Control Act as agencies prepare for a possible sequestration under the Budget Control Act; and (2) the meaning of “program, project, and activity,” under the Budget Control Act.

GAO has an oversight role with respect to both the Antideficiency Act and the Impoundment Control Act. GAO provides legal decisions and opinions to Congress and federal officials on the application of the Antideficiency Act. Agencies that violate the Antideficiency Act must report the violation to the President, Congress, and the Comptroller General. GAO compiles and presents certain unaudited data from Antideficiency Act reports filed each fiscal year.

GAO also reviews and reports on each special message made pursuant to the Impoundment Control Act. The Comptroller General must report to Congress any impoundment that the President has failed to report. GAO monitors the status of affected funds as well as prepares statistical summaries and analyses for Congress.

In addition, GAO is statutorily responsible for publishing and maintaining standard terms related to the federal budget process. GAO has previously looked at various definitions of “program, project, and activity” under an earlier iteration of the Balanced Budget and Emergency Deficit Control Act.

View [GAO-12-675T](#). For more information, contact Susan A. Poling at (202) 512-5207 or [polings@gao.gov](mailto:polings@gao.gov).

April 2012

## AGENCY OPERATIONS

### Agencies Must Continue to Comply with Fiscal Laws Despite the Possibility of Sequestration

#### What GAO Found

The Budget Control Act of 2011, amending the Balanced Budget and Emergency Deficit Control Act of 1985, establishes limits on discretionary spending for fiscal years 2012 through 2021. In addition, the Act specifies additional limits on discretionary spending and automatic reductions in direct spending because legislation was not enacted that would reduce projected deficits by at least \$1.2 trillion by the end of fiscal year 2021. Among other things, the Budget Control Act requires the Office of Management and Budget (OMB) to calculate, and the President to order, a sequestration of discretionary and direct spending on January 2, 2013, to achieve reductions for that fiscal year.

Despite the possible impact of any sequestration, agencies must continue to comply with the requirements of the Antideficiency Act and the Impoundment Control Act. The Budget Control Act does not waive the application of these two important fiscal laws, both of which underscore Congress’ constitutional power of the purse. These two laws act in concert: the Antideficiency Act prohibits agencies from spending in excess or in advance of available appropriations or apportionments, while the Impoundment Control Act bars agencies from refusing to obligate the amounts that Congress has appropriated. Agencies must carry out their appropriations in accordance with both the Antideficiency Act and the Impoundment Control Act regardless of the possibility of spending reductions beginning in the second quarter of fiscal year 2013.

The Budget Control Act provides that sequestration for fiscal year 2013 will reduce each nonexempt account by a uniform percentage necessary to achieve the calculated reduction for that fiscal year. OMB is required to implement sequestration such that the same percentage reduction applies across all programs, projects, and activities within a budget account. Programs, projects, and activities are to be identified with reference to the relevant appropriation act or accompanying report for the relevant fiscal year or, for accounts not included in appropriation acts, with reference to the most recently submitted President’s budget. Under this framework, each budget account must be analyzed separately to determine its component programs, projects, and activities, and such a determination may require reference to the original appropriation act, to accompanying reports, or to the President’s budget. In that regard, GAO’s definition of “program, project, or activity” in the *Budget Glossary* may be useful to this analysis.

The Budget Control Act vests in OMB the authority to implement sequestration. The execution and impact of any spending reductions will depend on the legal interpretations and actions taken by OMB. To date, OMB has not issued any guidance to agencies on preparing for implementation of the Budget Control Act or how it would construe “program, project, and activity.”

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Chairman Ryan, Ranking Member Van Hollen, and Members of the Committee:

Good morning. Thank you for inviting us here to speak with you today. My name is Susan Poling, and I am Deputy General Counsel of the Government Accountability Office. Prior to assuming this position, I was responsible for GAO's appropriations law decisions and opinions, the Red Book,<sup>1</sup> and legal support for our budget issues group.

You asked GAO to talk about two topics today. First, you asked us to discuss the application of two fiscal laws – the Antideficiency Act and the Impoundment Control Act – as agencies prepare for a possible sequestration under the Budget Control Act. You will hear that GAO has an oversight role with respect to both the Antideficiency Act and the Impoundment Control Act. Second, you asked us to discuss the meaning of “program, project, and activity,” or “PPA,” under the Budget Control Act. GAO is statutorily responsible for publishing and maintaining standard terms related to the federal budget process.<sup>2</sup>

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## Application of the Antideficiency Act and Impoundment Control Act

As you know, the Budget Control Act of 2011, amending the Balanced Budget and Emergency Deficit Control Act of 1985<sup>3</sup>, establishes limits on discretionary spending for fiscal years 2012 through 2021. In addition the Act specifies additional limits on discretionary spending and automatic reductions in direct spending because legislation was not enacted that would reduce projected deficits by at least \$1.2 trillion by the end of fiscal year 2021.<sup>4</sup> Among other things, the Budget Control Act requires the Office of Management and Budget (OMB) to calculate, and the President

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<sup>1</sup>The *Principles of Federal Appropriations Law*, commonly referred to as the Red Book, is a multi-volume treatise published by GAO on federal fiscal law.

<sup>2</sup>31 U.S.C. § 1112(c). See GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: Sept. 2005) (published in cooperation with the Secretary of the Treasury and the Directors of the OMB and the Congressional Budget Office).

<sup>3</sup>Pub. L. No. 99-177, title II, 99 Stat. 1037, 1038 (Dec. 12, 1985).

<sup>4</sup>Budget Control Act (BCA), Pub. L. No. 112-25, § 302, 125 Stat. 240, 256-59 (Aug. 2, 2011).

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to order, a sequestration of discretionary and direct spending on January 2, 2013, to achieve reductions for that fiscal year.<sup>5</sup>

Regardless of the possible effects of any sequestration, agencies must continue to comply with the requirements of the Antideficiency Act and the Impoundment Control Act. The Budget Control Act neither explicitly nor implicitly waives the application of these two important fiscal laws. The Antideficiency Act and the Impoundment Control Act are two of the major laws in the statutory scheme by which Congress exercises its constitutional control of the public purse. These two acts go hand-in-hand: the Antideficiency Act bars agencies from spending in excess of available appropriations or apportionments,<sup>6</sup> while the Impoundment Control Act generally bars agencies from refusing to obligate the amounts that Congress has appropriated. Thus, these two laws in concert require that agencies may spend neither more nor less than what Congress has appropriated for their use. Instead, agencies must carry out the appropriations that Congress has enacted. I will discuss each of these laws in turn.

First, let me provide you with a bit of background on the Antideficiency Act. During the 19th century, agencies often abused their power by incurring obligations that exceeded available appropriations, entering into obligations prior to receiving an appropriation, encouraging employees and others to “volunteer” their services to the agency, and depleting their appropriation early in the fiscal year. As a result, Congress felt compelled to enact appropriations to cover deficiencies in budget authority. Congress enacted a series of statutes to regain control over federal spending. Together, these laws make up the Antideficiency Act.

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<sup>5</sup>Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), § 251A, *added by* BCA, § 302.

<sup>6</sup>An apportionment is the action by which OMB (for the Executive Branch) distributes amounts available for obligation in an appropriation or fund account. An apportionment divides amounts available for obligation by specific time periods (usually quarters), projects, activities, objects, or a combination thereof. An apportionment may be further subdivided by an agency into allotments, suballotments, and allocations. *Glossary*, at 12.

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The Antideficiency Act includes two main prohibitions:

- First, agencies cannot obligate or expend federal funds in excess or in advance of an appropriation, apportionment, or allotment.<sup>7</sup> In other words, agencies cannot spend more money than they have or spend money before they have it.
- Second, agencies cannot accept voluntary services.<sup>8</sup>

GAO regularly provides legal decisions and opinions to Congress, its committees and Members, and federal officials on the application of the Antideficiency Act.<sup>9</sup> The Antideficiency Act requires agencies violating its proscriptions to report to the President and Congress all relevant facts and a statement of actions taken, and transmit a copy of each report to the Comptroller General on the same date the report is transmitted to the President and Congress.<sup>10</sup> GAO compiles and presents certain unaudited information from reports filed each fiscal year.<sup>11</sup>

Agencies must continue to comply with the Antideficiency Act even as they prepare for a possible sequestration. In anticipation of sequestration, an agency may not overobligate its first-quarter apportionment, enter into contracts without available appropriations, or ask its employees to volunteer their time or waive compensation. An agency must continue to operate within the confines of its appropriations despite the possibility of sequestration.

The Impoundment Control Act, on the other hand, requires that agencies obligate the amounts that Congress has appropriated. At various times in

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<sup>7</sup>31 U.S.C. §§ 1341, 1517(a). See also OMB Circular No. A-11, *Instructions on Budget Execution*, pt. 4, § 145 (Aug. 18, 2011).

<sup>8</sup>31 U.S.C. § 1342.

<sup>9</sup>Congress authorizes the Comptroller General to settle the accounts of the United States. 31 U.S.C. § 3526. Our authority to issue appropriations law decisions and opinions is drawn from this authority and a statutory direction to issue decisions upon the request of certain federal officials in advance of a payment of appropriated funds. 31 U.S.C. §§ 3527–3529.

<sup>10</sup>31 U.S.C. §§ 1351, 1517(b).

<sup>11</sup>GAO, *Antideficiency Act Resources*, available at [www.gao.gov/legal/lawresources/antideficiency.html](http://www.gao.gov/legal/lawresources/antideficiency.html) (last visited Apr. 20, 2012).

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history, Presidents have occasionally refused to spend money that Congress appropriated for policy reasons, *i.e.*, because they disagreed with the need for the expenditure or the amount of the expenditure. For instance, in 1972, President Nixon directed the Environmental Protection Agency to disburse to the States only about half of the funds appropriated for water pollution assistance. The Supreme Court found that the President did not have the authority to withhold the funds.<sup>12</sup>

Congress enacted the Impoundment Control Act of 1974 to tighten congressional control over presidential impoundments and to establish a procedure under which Congress could consider the merits of impoundments proposed by the President.<sup>13</sup> An impoundment is any action or inaction by an officer or employee of the federal government that precludes obligation or expenditure of budget authority.<sup>14</sup> The Impoundment Control Act separates impoundments into two categories: deferrals and proposed rescissions. Under the Act, if the President wishes to defer or temporarily postpone the obligation of any budget authority provided for a specific purpose or project, he must transmit a special message to Congress proposing such a deferral.<sup>15</sup> The special message must describe, among other things, the amount of budget authority proposed for deferral, the reasons for the deferral, and the period of time during which the budget authority will be deferred.<sup>16</sup> Deferrals are permissible only to provide for contingencies, to achieve savings made possible by or through changes in requirements or greater efficiency of operations, or as specifically provided by law.<sup>17</sup> Deferrals are

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<sup>12</sup>*Train v. City of New York*, 420 U.S. 35 (1975).

<sup>13</sup>2 U.S.C. §§ 681–688. See also B-320091, July 23, 2010; GAO, *Impoundment Control Act: Use and Impact of Rescission Procedures*, [GAO-10-320T](#) (Washington, D.C.: Dec. 16, 2009), at 1.

<sup>14</sup>*Glossary*, at 61.

<sup>15</sup>2 U.S.C. § 684(a).

<sup>16</sup>*Id.*

<sup>17</sup>*Id.* § 684(b). Programmatic delays are not impoundments and therefore do not need to be reported. Programmatic delays arise because of factors outside the exclusive control of the agency, such as a lengthy procurement. GAO, *Impoundment Control: Deferral of DOD Budget Authority Not Reported*, [GAO/OGC-91-8](#) (Washington, D.C.: May 7, 1991), at 3-4.

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not authorized for policy reasons, *i.e.*, just because the agency disagrees with Congress' priorities.<sup>18</sup>

Under the other category of impoundments, proposed rescissions, the President must transmit a special message to Congress whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of the programs for which it is provided, or that the budget authority should be rescinded for fiscal policy or other reasons.<sup>19</sup> The special message must describe, among other things, the amount of budget authority proposed for rescission and the reasons it should be rescinded.<sup>20</sup> Any amount of budget authority proposed to be rescinded must be made available for obligation unless Congress, within 45 legislative days, completes action on a bill rescinding all or part of the amount proposed for rescission.<sup>21</sup> Unless Congress rescinds the budget authority in a public law, the agency must make the funds available for obligation to carry out the purposes of the appropriation.

GAO also has a role with respect to the Impoundment Control Act. The Comptroller General is required to review each special message and report his findings to Congress as soon as practicable.<sup>22</sup> The Impoundment Control Act also requires the Comptroller General to report to Congress any impoundment which the President has failed to report.<sup>23</sup> GAO monitors the status of affected funds as well as prepares statistical summaries and analyses for Congress.<sup>24</sup>

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<sup>18</sup>GAO, *President's Third Special Impoundment Message for FY 1990*, GAO/OGC-90-4 (Washington, D.C.: Mar. 6, 1990) ("Deferrals intended to further executive branch policies or priorities in place of those policies established in the legislative process are, absent specific statutory authority, unauthorized deferrals.").

<sup>19</sup> 2 U.S.C. § 683(a).

<sup>20</sup>*Id.*

<sup>21</sup>*Id.* § 683(b).

<sup>22</sup>*Id.* § 685(b).

<sup>23</sup>*Id.* § 686(a).

<sup>24</sup>*See, e.g.*, B-321125, June 23, 2011.

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Agencies must also continue to comply with the Impoundment Control Act as they prepare for a possible sequestration. We have previously concluded that an agency may not set aside funds<sup>25</sup> or intentionally slow down spending<sup>26</sup> in anticipation of proposed cancellations or rescissions of previously appropriated funds. If an agency proposes to defer the obligation of funds in the wake of a possible sequestration, it would need to show that the deferral met a statutory exception and it would need to send a special message to Congress.<sup>27</sup>

Agencies do have some experience in maintaining operations in uncertain budget times. In the past decade, agencies have continued to carry out their missions with temporary appropriations under continuing resolutions for many months into the fiscal year. While continuing resolutions allow agencies to continue operations at a certain rate, the agencies cannot predict the amount of their final appropriation, which may be lower than anticipated.<sup>28</sup> Similarly, if OMB implements sequestration for fiscal year 2013, agencies will have to absorb reductions beginning in the second quarter of the fiscal year.

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<sup>25</sup>B-307122, B-307122.2, Mar. 2, 2006. In October 2005, the President transmitted to Congress a proposal to rescind \$2.3 billion of available funding to offset the cost of Hurricane Katrina relief. According to the President, the proposal called for cancellations, not rescissions. GAO contacted each affected agency to determine whether it was withholding budget authority in response to the President's proposal. GAO found that agencies withheld over \$470 million in budget authority, affecting 12 programs, for approximately two months. These withholdings constituted impoundments that should have been reported to Congress under the Impoundment Control Act.

<sup>26</sup>B-320091, July 23, 2010. President Obama proposed the cancellation of the National Aeronautic and Space Administration's (NASA) Constellation program in his fiscal year 2011 budget request. In response to a congressional request, GAO determined that NASA had not violated the Impoundment Control Act in its obligation of Constellation funds after the release of the President's budget request. NASA had not withheld funds from obligation or slowed down its rate of spending in fiscal year 2010 in response to the policy proposal.

<sup>27</sup>See 2 U.S.C. § 684(a).

<sup>28</sup>GAO has found that continuing resolutions limit management choices and result in inefficiencies. GAO, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, [GAO-09-879](#) (Washington, D.C.: Sept. 24, 2009).



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**“Program, Project, and Activity” (PPA) under the Budget Control Act**

The Budget Control Act provides that sequestration for fiscal year 2013 will reduce each nonexempt account by a uniform percentage necessary to achieve the calculated reduction for that fiscal year.<sup>29</sup> “Account” is defined as “an item for which appropriations are made in any appropriation Act and, for items not provided for in appropriation Acts, such term means an item for which there is a designated budget account identification code number in the President’s budget.”<sup>30</sup> The Budget Control Act also instructs OMB to implement sequestration in accordance with section 256(k) of the Balanced Budget and Emergency Deficit Control Act.<sup>31</sup> This section states that except as otherwise provided, the same percentage sequestration shall apply:

“to all programs, projects, and activities within a budget account (with programs, projects, and activities as delineated in the appropriation Act or accompanying report for the relevant fiscal year covering that account, or for accounts not included in appropriation Acts, as delineated in the most recently submitted President’s budget).”<sup>32</sup>

Under this framework, each budget account must be analyzed separately to determine its component programs, projects, and activities, as such a determination may require reference to the original appropriation act, to accompanying reports, or to the President’s budget.

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<sup>29</sup>BBEDCA, § 251A(7)(A), *added by* BCA, § 302. Some programs are exempt from sequestration or subject to a limited sequestration. The BBEDCA provides a list of exemptions in section 255 and a list of special rules in section 256. These two BBEDCA sections were most recently updated by the Statutory Pay-As-You-Go Act of 2010. Pub. L. No. 111-139, title I, § 11, 123 Stat. 8, 23-29 (Feb. 12, 2010). For instance, a number of mandatory programs are exempt from sequestration, including Social Security benefits and Supplemental Nutrition Assistance Program (formerly known as the Food Stamp Program). BBEDCA, §§ 255(a), 255(h). Additionally, funding for Medicare payments cannot be cut by more than two percent. BBEDCA, § 251A(9), *added by* BCA, § 302.

<sup>30</sup>BBEDCA, § 250(c)(11).

<sup>31</sup>*Id.* § 251A(10), *added by* BCA, § 302.

<sup>32</sup>BBEDCA, § 256(k).

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In that regard, GAO's definition of "program, project, or activity" in the *Budget Glossary* may be useful to this analysis. The *Budget Glossary* provides that a "program, project, or activity (PPA)" is:

"an element within a budget account. For annually appropriated accounts, [OMB] and agencies identify PPAs by reference to committee reports and budget justifications; for permanent appropriations, OMB and agencies identify PPAs by the program and financing schedules that the President provides in the 'Detailed Budget Estimates' in the budget submission for the relevant fiscal year."<sup>33</sup>

For example, where Congress barred the National Aeronautics and Space Administration (NASA) from using an appropriation for the "termination or elimination of any program, project, or activity" of a particular program, GAO found the relevant programs, projects, and activities in NASA's budget request.<sup>34</sup>

History can also provide some insight into understanding definitions of "programs, projects, and activities." In 1986, the Balanced Budget and Emergency Deficit Control Act required that the President sequester funds in accordance with definitions of "program, project, and activity" provided by the committees on appropriations. The fiscal year 1986 "program, project, and activity" definitions varied from agency to agency and sometime within agencies from account to account. The definitions were separated into categories corresponding to the different appropriations acts, which generally tied them back to specific language in the appropriations act and committee reports, similar to the Budget Control Act provision. We noted in our review that despite the variety of definitions, "most agencies had little difficulty in identifying information sources needed to determine what programs, projects and activities existed within a given account."<sup>35</sup> We did identify ambiguities in various definitions and some oversights and omissions in the way agencies carried out the sequestration. In addition, some difficulties arose when the language in the appropriations acts and committee reports did not coincide with functional program or project information used by agency budget officials for actual program execution and when the committee

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<sup>33</sup>*Glossary*, at 80.

<sup>34</sup>B-320091, July 23, 2010.

<sup>35</sup>GAO, *Compliance Report for FY 1986: Balanced Budget and Emergency Deficit Control Act of 1985*, [GAO/OCG-86-2](#) (Washington, D.C.: Mar. 31, 1986), at 4.

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reports did not reflect current programs and activities financed within the account in question.

In the final analysis, the Budget Control Act vests in OMB the authority to implement sequestration. The execution and impact of any spending reductions will depend on the legal interpretations and actions taken by OMB. To date, OMB has not issued any guidance to agencies on preparing for implementation of the Budget Control Act or how it would construe “program, project, and activity.”

If you or your staff have any questions about this testimony, please contact me at (202) 512-5207 or [polings@gao.gov](mailto:polings@gao.gov). Contact points for our Office of Congressional Relations and Office of Public Affairs are on the last page of this statement. Susan J. Irving, Director for Federal Budget Analysis, Julia C. Matta, Assistant General Counsel, Lauren Grossman, Senior Staff Attorney, and Omari Norman, Senior Attorney, made key contributions to this statement.

Thank you, Mr. Chairman. This concludes my prepared statement. I would be happy to answer any questions that you or other members of the Committee have at this time.

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