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The Fiscal Responsibility Act and What It Means for the FY24 Appropriations Process
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The federal government is currently operating under a continuing resolution (CR) that extends funding at last year's levels for all accounts but sets up two different expiration dates. Funding in four appropriations bills—Agriculture-FDA, Energy & Water, Military Construction-VA, and Transportation-HUD—will run out on January 19. Funding in the remaining eight appropriations bills, including the two largest—Defense and Labor-HHS-Education—will run out two weeks later, on February 2, unless legislation is enacted to extend funding again.

The rules for what happens next are established by the debt ceiling deal that Congress and the White House negotiated earlier this year, in the Fiscal Responsibility Act (FRA). The FRA set limits, or "caps," for defense and nondefense spending for fiscal years 2024 and 2025. It also incentivized Congress to pass full-year appropriations for all 12 bills or face serious consequences, including a possible across-the-board cut to virtually every account in every one of those bills.

But the details are complicated. Congress has never enacted budgetary enforcement mechanisms quite like those in the FRA. So let's dig in.

What happens on January 1? I heard there was some kind of change that triggers in the new year.

For all practical purposes, nothing happens on January 1 that will immediately or directly affect any federal spending. What does happen is that the caps on total appropriations for defense and nondefense change from the original levels that were agreed to as part of the FRA to new levels that are equal to 1% lower than FY23 levels (sometimes referred to as the Section 102 caps, or the "backstop caps"). These caps are called "backstop" because they were supposed to incentivize both Republicans and Democrats to abide by the terms of the FRA, including the various "side deals" that were agreed to (more on this later), and therefore only apply in the event that the appropriations process is unable to produce bipartisan full-year bills. *(See Table 1 on page 5.)*

However, the backstop caps do not have any immediate impact. That's because the enforcement mechanism that automatically claws back funding (you will hear that referred to as "sequestration") doesn't kick in until April 30. That gives Congress an additional four months to either adjust the caps, enact full-year appropriations, or both.

What would trigger a sequestration?

In general, sequestrations occur when Congress enacts funding levels above statutory caps. A sequestration is ordered to reduce total spending to match the cap levels. This year, the implementation of a potential sequester would depend on when (and if) Congress enacts full-year appropriations bills.

If Congress enacts full-year appropriations for all accounts before April 30, and the appropriations are at or below the original FRA caps, there would be no sequester.

If, however, we reach April 30 and Congress has not yet enacted full-year appropriations for all accounts, then the applicable caps would be the "backstop" caps, not the original FRA levels. Recall that the backstop caps are 1% lower than the FY23 levels. If the federal government were still operating at FY23 levels, there would be a sequester of roughly 1% below the FY23 levels for both defense and nondefense, to bring them in line with the backstop caps.

What would happen if there was a sequestration? What would be affected?

OMB would first calculate the amount of funding that was appropriated above the caps. This calculation is done for each cap category, defense and nondefense, separately. OMB would then apply a uniform percentage cut to all non-exempt accounts within each cap category.

The key word in the previous sentence was "non-exempt." There are some accounts that would be exempt from the sequester. For example, most veterans' programs are exempt. Mandatory funding is, of course, also not affected by a discretionary sequester.[1]

You said Congress has to meet an April 30 deadline to enact "full-year appropriations" for all accounts. What counts as "full-year appropriations"?

Any legislative means of funding federal accounts through September 30, 2024, the last day of FY24, counts as "full-year appropriations." This includes a full-year CR or negotiated appropriations bills, or a mix of the two. In other words, Congress could meet the April 30 deadline by passing a handful of negotiated 12 appropriations bills and full-year CRs for the rest.

So Congress doesn't have to pass 12 individual bills to avoid the backstop caps?

As long as all accounts are appropriated through the end of FY24, Congress could satisfy the FRA by passing 12 individual bills, an omnibus, a series of minibuses, full-year CRs, or

[1] Note: A sequester would, however, impact emergency-designated appropriations such as disaster relief or Ukraine aid. It would also impact the advance-appropriated funding provided in the Bipartisan Infrastructure Law and the Bipartisan Safer Communities Act. In addition, and out of the scope for this FAQ, there is a sequester for nondefense and defense nonexempt mandatory spending that originated in the Balanced Budget and Emergency Deficit Control Act and is in effect through 2031.

combinations thereof. Doing so would mean the original FRA caps would apply, instead of the backstop caps.

What happens if Congress enacts full-year appropriations for some accounts but not all of them?

This is one of the most important components of the FRA. The law specifies that if any one account, in any of the 12 appropriations bills, is not funded or is funded only temporarily, then the backstop caps (1% below FY23 levels) apply for everything, defense and nondefense.

Why does defense have more to lose than nondefense if Congress doesn't enact full-year appropriations for all accounts?

The FRA set the FY24 cap for defense at 3% higher than the FY23 level. If Congress fails to enact full-year appropriations for all accounts, the backstop caps become operable. This would cap defense spending at $850 billion—4% lower than the FRA level, triggering a roughly $35 billion sequester on April 30.[2] *(See Table 2 on page 5.)*

Meanwhile, the FRA set the FY24 level for nondefense (including side deals that will be explained below) at the same level as in FY23. Therefore, the backstop cap for nondefense is just 1% lower than the FRA level. The sequester against defense would be more painful than the sequester against nondefense (about $9 billion).

Is there a scenario in which nondefense loses more than defense?

Yes. If Congress passes a full-year CR for all accounts and bills without any modifications, defense would be level funded while nondefense would face a major sequestration—roughly 6%. *(See Table 3 on page 5.)*

We should note up front that although some short-term CRs simply change the date on which they will expire, Congress has never passed a full-year CR without numerous "anomalies," or modifications to the previous year's terms and conditions.

But in this scenario, in which the government operates under a full-year CR in FY24 under the strict parameters of the debt ceiling deal, then the caps would be the original FRA caps. In that case, there would be no sequester for defense, because the FY23 level for defense is lower than the FRA cap for defense. (Recall that the FRA allows a 3% increase for defense in FY24.) But there would be a substantial cut of at least $40 billion for nondefense. That's because the FRA cap for nondefense is roughly 6% lower than last year's levels.

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[2] All dollar figures in this memo are rounded. The values will change depending on the levels enacted by Congress and on OMB's ultimate scoring of those levels.

You may be asking: Why did the White House and congressional Democrats agree to an FRA cap for nondefense that's lower than the FY23 level? Well, this gets a little tricky. In FY23 the nondefense base level was supplemented by additional funding known as "adjustments," such as emergencies and CHIMPs.[3] During the FRA negotiations, then-Speaker McCarthy and the White House agreed to increase the amount of those adjustments in FY24, enough to approximately offset the FRA's $40 billion cut in the nondefense cap below the FY23 level. Importantly, not all adjustments were cited in the FRA; this is why people refer to the nondefense adjustments as "side deals" to the FRA. Democrats essentially said, "We can live with a lower cap in statute as long as we shake hands on providing more adjustments when we actually write the FY24 bills." The backstop caps were an attempt to ensure that these adjustments would be honored, or else defense would not get an increase, and non-defense would suffer much smaller cuts than under the straight FRA caps. It is worth noting that the draft Senate appropriations bills do, by and large, abide by the terms of the handshake deal.

But under a simple "date change" year-long CR, the increased adjustments wouldn't be counted. The nondefense cap for FY24 would be significantly lower than the FY23 level, so it would trigger a roughly 6% sequestration.

How likely is the above scenario?

Pretty unlikely, given Democratic control of the Senate and White House. There would presumably be a negotiation, in order to secure Democratic support, to agree on a CR that truly extends funding at the same levels as last year, which would require incorporating the side deals into legislative text. Put another way, it is unlikely that Congress would pass or that the President would sign a full-year CR that automatically triggers $40 billion in cuts to nondefense funding. In fact, House Democrats have already defined a "clean" CR as one that has no cuts below FY23 levels; that was a key reason why there was Democratic support for the current CR.

Can Congress pass a full-year CR that doesn't trigger sequestration? Can Congress adjust the caps or turn off sequestration?

Yes. With bipartisan support to provide sufficient votes, Congress can always override a previously enacted law. In this case, Congress could decide to enact a full-year CR at the FY23 levels and simply adjust the FY24 caps accordingly, thereby avoiding sequestration and maintaining the status quo in funding levels.

Congress can adjust the caps, make them non-enforceable (i.e., turn off the sequester) or repeal the caps entirely as was done frequently under the Budget Control Act of 2011.

[3] "CHIMPs" is short for "changes in mandatory programs." In overly simple terms, they're a way of increasing the total funding available for discretionary programs by reducing spending on mandatory ones.

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Table 1. On January 1, 2024, the FY24 spending limits for defense and nondefense will change from the FRA caps to the "backstop caps," which are roughly 1% lower than the FY23 levels.

	FY23 Enacted	FY24	
		FRA Caps	**"Backstop" Caps**
		The original terms of the debt-limit deal, as enacted in the FRA	*Adjusted levels if full-year appropriations are not enacted for all accounts*
Spending Category	(All $ in billions)		
Defense Topline	$858	$886	$850
Nondefense Topline	$745	$704	$736
NDD Adjustments (CHIMPs, Emergencies, etc.)	$28	$48	$28
Agreed-to Offsets		$21	
Total Nondefense Resources	*$773*	*$773*	*$764*

Table 2. If Congress fails to enact full-year appropriations for all accounts by April 30, the sequester reduction would be steeper for defense.

	Defense	Nondefense*
FY24 FRA level	$886	$773
FY24 backstop caps	$850	$764
Potential sequester	-$37	-$9
% change	-4%	-1%

* FRA level includes the NDD adjustments, as agreed to as part of the FRA. Backstop caps level assumes the same level of standard NDD adjustments as in FY23.

Table 3. Under a full-year CR at FY23 levels, without any adjustments to the FRA caps, nondefense would face a sequester of roughly 6%, to bring the total in line with the lower FRA cap. Defense would be frozen at the FY23 level; it wouldn't face a sequester.

	Defense	Nondefense
Full-year CR at FY23 levels	$858	$745
FRA caps	$886	$704
Potential sequester	$0	-$41
% change from FY23 levels	0%	-6%

Note: All dollar figures are rounded. The values will change depending on the levels enacted by Congress and on OMB's ultimate scoring of those levels.