



UNITED STATES  
DEPARTMENT OF THE INTERIOR

Director of Budget

9/30/2022

Memorandum

To: Bureau Budget Officers

From: Denise Flanagan, Director *Adrienne L Moss*  
Office of Budget for DF

Subject: Guidance for FY 2023 Funds Execution Under H.R. 6833, the *Continuing Appropriations Act, 2023*

Purpose: To provide available funding amounts and guidance implementing the *Continuing Appropriations Act, 2023* and preliminary guidance regarding the implementation of continuing sequestration provisions of the Budget Control Act.

Background: On September 30, 2022, the President signed into law H.R. 6833, making continuing appropriations from October 1, 2022, through **December 16, 2022**. The bill provides funding at the daily rate of the FY 2022 funding level. Under the terms of the Continuing Resolution (CR), agencies must manage funding consistent with the FY 2022 enacted appropriations and may not assume enactment of the FY 2023 request or pending House and Senate FY 2023 marks. Funds must be managed prudently to maintain ongoing activities in a manner which does not “impinge on final funding prerogatives.”

To remain consistent with the terms of the CR, bureaus are advised to avoid making "one-time" payments in full during the first quarter. This is warranted by the lack of certainty of final Congressional action on the FY 2023 Appropriation and uncertainty regarding whether or not a discretionary sequester will be required. If you have a payment which cannot be delayed, please let your POB analyst know as soon as possible.

Sequestration amounts, if required for discretionary funding, will not be identified by OMB until January 2023. In the absence of overriding Congressional action, the law requires OMB to issue a final sequestration report for 2023. This report will include the final estimates of enacted appropriations and any reductions needed to meet the legislated budget caps. If needed, the final report would include a Presidential Order to implement sequestration of non-exempt discretionary accounts.

No legislation has been enacted to change the automatic reductions in mandatory funding accounts triggered by the Balanced Budget and Emergency Deficit Control Act (BBEDCA) as amended. These requirements remain applicable. The Office of Management and Budget has identified an estimate of the **FY 2023 sequestration reduction for non-exempt mandatory**

**spending to be 5.7 percent.** This estimate was transmitted on March 28, 2022, in the “OMB Report to the Congress on the BBEDCA 251A Sequestration for Fiscal Year 2023.”

## **Operating Under a Continuing Resolution**

A CR provides a formula for calculating the amounts available to continue programs at minimal levels. The formula is generally based on the number of days covered by the CR, assuming a spending rate based on the net amount enacted in the prior year, subtracting any recurring rescissions and adjusting for any transfers mandated by law. This formula is applied by OMB in apportioning funds under the CR.

H.R. 6833 covers a period of 77 days, which is 21.10 percent of the fiscal year. OMB issued an automatic apportionment memo (OMB Bulletin No. 22-02) dated September 30, 2022 (attachment A). The automatic apportionment provides 21.10 percent of the FY 2022 level of funding with adjustments required by the CR. A table providing the amounts available under the CR is provided in attachment B. Bureaus/Offices are responsible for calculating their amounts by TAS and period of availability for the CR.

Under a CR, if either the House or Senate has reported out of Committee or passed an appropriations bill for the current fiscal year that zeroes out an account, the automatic apportionment will not apply, even if that account received funding during the prior year. A written apportionment must be submitted to OMB to request funds for the account during the period of the CR. Please note this applies at the account level and not at the program, project or activity (PPA) level. If a PPA is zeroed out within an account, the account will receive the automatic apportionment and the agency must allocate the minimum necessary to continue operations consistent with Section 103 of the CR, described below. Please coordinate with your POB analyst if you have this circumstance.

For FY 2023, the House reported the FY 2023 Interior Appropriations Bill out of Committee and completed floor action. No accounts were zeroed out.

The current CR includes the following provisions which address the execution of funds during the period of availability:

- Section 103 requires that appropriations “shall be available to the extent and in the manner that would be provided by the pertinent Appropriations Act.” Under this provision programs, projects, or activities may not be terminated under a CR. If the President's request proposes no funding for an activity, bureaus may not eliminate the program under a CR but should provide the minimum needed to continue operations.
- Section 104 provides that no funds which are made available “shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during fiscal year 2022.” This means bureaus and offices may not start new projects or activities during the CR.

- Section 106 provides that funds are available until an appropriation is enacted into law or until December 16, 2022, whichever is first.
- Section 107 requires that spending under the CR be charged to the full-year appropriations bill when such bill is enacted.
- Section 109 provides that for programs with high initial rates of operation at the beginning of the fiscal year, “such high initial rates of operation or complete distribution shall not be made, and no grants shall be awarded for such programs funded by this joint resolution that would impinge on final funding prerogatives.” Under the terms of this provision, bureaus and offices must not complete distribution of appropriations at the beginning of the year including distributions to States, grantees, or others. Bureaus and offices may not obligate funds under the CR that would impinge on the funding prerogatives of Congress, including funding for specific new projects such as land acquisition, construction and grants. Please coordinate with your POB analyst if you have this circumstance.
- Section 110 requires implementation under the CR “so that only the most limited funding action of that permitted in the Act shall be taken in order to provide for continuation of projects and activities.” Plan conservatively to defer or accommodate large payments in the first quarter. Available budget authority under a CR is limited to carryover funding plus new budget authority for the specified portion of the year.
- Section 111 authorizes continuation of mandatory payments whose budget authority was provided in appropriations Acts for fiscal year 2022. For Interior, this provision includes current mandatory funding for BLM Range Improvements, BLM Miscellaneous Trust Funds, and OIA Assistance to Territories.

The CR includes the following provisions specific to the Department of the Interior:

- Section 126 extends authorities for the CALFED-Bay-Delta Program, which is set to expire at the end of FY 2022.
- Section 127 extends dates in the Reclamation States Emergency Drought Relief Act of 1991 and section 9106(g)(2) of the Omnibus Public Lands Management Act of 2009, which ensures continuation of these Reclamation programs in 17 western states, including emergency drought assistance.
- Section 142 allows the Secretary of the Interior to provide financial assistance through December 16, 2022, to any National Heritage Area established as of September 1, 2022.
- Section 143 allows amounts for the DOI Working Capital Fund to be apportioned up to the rate for operations necessary to implement enterprise cybersecurity safeguards.

The **OMB Bulletin 22-02** continues the following rescissions and changes in mandatory programs (CHIMPs) included in the FY 2022 appropriation which affects the calculation of the

amount available under the daily rate during the CR. The rescissions shown below are consistent with bureau responses to BDR 22-33 submitted to OMB earlier this year:

- Bureau of Safety and Environmental Enforcement, Offshore Safety and Environmental Enforcement Rescission, -\$10.0 million
- Fish and Wildlife Service, Construction, -\$1.24 million
- Fish and Wildlife Service, Cooperative Endangered Species Conservation Fund Rescission, -\$0.945 million
- Office of the Secretary, Payments in Lieu of Taxes (CHIMP), \$515.0 million

H.R. 6833 does not require agencies to submit an Operating Plan for the period of the CR and therefore any additional flexibility afforded in an Operating Plan is not available. Under a CR, funding is provided at the account level and bureaus and offices have flexibility to manage cash flow within the account by prioritizing obligations. Any proposed reallocation which would impact the annualized level of activities remains limited to the current reprogramming and transfer authorities which apply during the CR and are the only flexibilities available. As always, bureaus and offices seeking to reprogram funds in excess of the thresholds must first coordinate such action with the Office of Budget.

### **Contract Obligations Under A Continuing Resolution**

Bureaus and offices are reminded to use good contracting practices consistent with current contracting requirements and to monitor prudent funds control measures during the period of the CR. The terms and conditions of the CR do not limit the ability to fully fund contract actions; only the total amount of funding available under the period of the CR is limited by the daily rate. Contract actions subject to full funding requirements may be executed during this period, though full funding may require reductions in other expenses to stay within the 21.10 percent overall funding limitation for each account. Bureaus and offices have the latitude to determine how to best allocate funds available during the CR within accounts, based on mission and other necessary requirements.

### **Availability of Mandatory Funding for GAOA Programs Under a Continuing Resolution**

Section 431(b) of P.L. 117-103 (Omnibus Appropriations Act, 2022) carries forward a provision that authorizes the allocation of amounts for the continuing administration of the Legacy Restoration Fund (LRF) and Land and Water Conservation Fund (LWCF) programs. This provision allows Bureaus to allocate FY 2023 LRF and LWCF funding for program administration activities during a CR. Apportionments for both LRF and LWCF accounts include footnotes limiting obligations to necessary administrative funding pending Congressional allocations in a full year appropriation bill for the Department.

### **2023 Sequestration**

The current annual apportionments reflect sequester reductions at the TAFS or Treasury Account level for mandatory accounts only. Bureaus and offices are reminded that sequestration reductions must be applied below this level uniformly, to each program, project and activity level

(PPA). For the purposes of sequestration, PPAs for mandatory funding are defined as the detail below the account level displayed in the President's Budget Appendix. Bureaus should ensure positive funds control in the financial system to reserve expected sequester amounts at the PPA level.

*Non-exempt Mandatory Funding:* The sequestration reductions for mandatory programs are effective beginning October 1, 2022 (FY 2023). The initial apportionments for FY 2023 reflect a 5.7 percent reduction from the mandatory funding estimates. As such, bureaus and offices should assume 5.7 percent of **actual** mandatory funding will be unavailable for programs or for distribution as payments. Sequestration reductions **must be rounded to the nearest whole dollar.**

As a reminder, the basis for the calculation of the sequestered amounts will be against actual mandatory funding received and not on the estimates assumed in reports or previous budget submissions. For accounts where the final available authority will not be known until the end of the fiscal year, for example in mineral receipt accounts, the sequester percentage shall be withheld against actual payments as they are made.

To ensure the proper coordination, bureaus and offices with mandatory payments (BLM, ONRR, OSM, and FWS) are asked to submit a schedule of planned awards/payments to the Office of Budget before making awards or payments in FY 2023. For each authorized award or payment activity, the schedule should identify the TAFS account, when payments or awards are typically made, whether awards or payments are recurring or one-time, and whether or not they have a statutorily required deadline.

*Non-Exempt Discretionary Funding:* The amount of or need for a FY 2023 sequestration of discretionary funding will not be known until after adjournment of this session of Congress. OMB will then calculate funding against the caps and if needed, the President would issue a Sequestration Order. Bureaus and offices should anticipate this would occur in January.

In planning funds execution for the full fiscal year, bureaus and offices should execute the amount provided in the CR but keep in mind the possibility of an additional sequester reduction after January 2023. The amount available under the CR may not reflect the annualized amount appropriated for the full year and annual program planning should anticipate the possible need to ramp down activities after the first quarter.

Attachments