

**§ 935. Calculating a sequestration****(a) Reducing nonexempt budgetary resources by a uniform percentage****(1) In general**

OMB shall calculate the uniform percentage by which the budgetary resources of non-exempt direct spending programs are to be sequestered such that the outlay savings resulting from that sequestration, as calculated under subsection (b), shall offset the budget-year debit, if any, on the applicable PAYGO scorecard. If the uniform percentage calculated under the prior sentence exceeds 4 percent, the Medicare programs described in section 906(d) of this title shall be reduced by 4 percent and the uniform percentage by which the budgetary resources of all other non-exempt direct spending programs are to be sequestered shall be increased, as necessary, so that the sequestration of Medicare and of all other nonexempt direct spending programs together produce the required outlay savings.

**(2) Programs and activities in unified budget only**

Subject to the exemptions set forth in section 11,<sup>1</sup> OMB shall determine the uniform percentage required under paragraph (1) with respect to programs and activities contained in the unified budget only.

**(b) Outlay savings**

In determining the amount by which a sequestration offsets a budget-year debit, OMB shall count—

(1) the amount by which the sequestration in a crop year of crop support payments, pursuant to section 906(j) of this title, reduces outlays in the budget year and the subsequent fiscal year;

(2) the amount by which the sequestration of Medicare payments in the 12-month period following the sequestration order, pursuant to section 906(d) of this title, reduces outlays in the budget year and the subsequent fiscal year; and

(3) the amount by which the sequestration in the budget year of the budgetary resources of other nonexempt mandatory programs reduces outlays in the budget year and in the subsequent fiscal year.

(Pub. L. 111–139, title I, § 6, Feb. 12, 2010, 124 Stat. 16.)

**Editorial Notes****REFERENCES IN TEXT**

Section 11, referred to in subsec. (a)(2), means section 11 of Pub. L. 111–139, which amended section 905 of this title.

**§ 936. Adjustment for current policies****(a) Purpose**

The purpose of this section is to provide for adjustments of estimates of budgetary effects of PAYGO legislation for legislation affecting 4 areas of the budget—

(1) payments made under section 1395w–4 of title 42 (referred to in this section as “Payment for Physicians’ Services”);

(2) the Estate and Gift Tax under subtitle B of title 26;

(3) the AMT; and

(4) provisions of EGTRRA or JGTRRA that amended title 26 (or provisions in later statutes further amending the amendments made by EGTRRA or JGTRRA), other than—

(A) the provisions of those 2 Acts that were made permanent by the Pension Protection Act of 2006 (Public Law 109–280);

(B) amendments to the Estate and Gift Tax referred to in paragraph (2);

(C) the AMT referred to in paragraph (3); and

(D) the income tax rates on ordinary income that apply to individuals with adjusted gross incomes greater than \$200,000 for a single filer and \$250,000 for joint filers.

**(b) Duration**

This section shall remain in effect through December 31, 2011.

**(c) Medicare payments to physicians****(1) Criteria**

Legislation that includes provisions amending or superseding the system for updating payments under subsections (d) and (f) of section 1395w–4 of title 42 shall trigger the current policy adjustment required by this chapter.

**(2) Adjustment**

The amount of the maximum current policy adjustment shall be the difference between—

(A) estimated net outlays attributable to the payment rates and related parameters in accordance with subsections (d) and (f) of section 1395w–4 of title 42 (as scheduled on December 31, 2009, to be in effect); and

(B) what those net outlays would have been if—

(i) the nominal payment rates and related parameters in effect for 2009 had been in effect through December 31, 2014, without change; and

(ii) thereafter, the nominal payment rates and related parameters described in subparagraph (A) had applied and the assumption described in clause (i) had never applied.

**(3) Limitation**

If the provisions in the legislation that cause it to meet the criteria in paragraph (1) cover a time period that ends before December 31, 2014, subject to the maximum adjustment provided for under paragraph (2), the amount of each current policy adjustment made pursuant to this section shall be limited to the difference between—

(A) estimated net outlays attributable to the payment rates and related parameters specified in section 1395w–4 of title 42 (as scheduled on December 31, 2009, to be in effect for the period of time covered by the relevant provisions of the eligible legislation); and

(B) what those net outlays would have been if the nominal payment rates and related parameters in effect for 2009 had been in effect, without change, for the same pe-

<sup>1</sup> See References in Text note below.

riod of time covered by the relevant provisions of the eligible legislation as under subparagraph (A).

**(d) Estate and Gift Tax**

**(1) Criteria**

Legislation that includes provisions amending the Estate and Gift Tax under subtitle B of title 26 shall trigger the current policy adjustment required by this chapter.

**(2) Adjustment**

The amount of the maximum current policy adjustment shall be the difference between—

(A) total revenues projected to be collected under title 26 (as scheduled on December 31, 2009, to be in effect); and

(B) what those revenue collections would have been if, on the date of enactment of the legislation meeting the criteria in paragraph (1), estate and gift tax law had instead been amended so that the tax rates, nominal exemption amounts, and related parameters in effect for tax year 2009 had remained in effect through December 31, 2011, with nominal exemption amounts indexed for inflation after 2009 consistent with subsection (g).

**(3) Limitation**

If the provisions in the legislation that cause it to meet the criteria in paragraph (1) cover a time period that ends before December 31, 2011, subject to the maximum adjustment provided for under paragraph (2), the amount of each current policy adjustment made pursuant to this section shall be limited to the difference between—

(A) total revenues projected to be collected under title 26 (as scheduled on December 31, 2009, to be in effect for the period of time covered by the relevant provisions of the eligible legislation); and

(B) what those revenues would have been if the estate and gift tax law rates, nominal exemption amounts, and related parameters in effect for 2009, with nominal exemption amounts indexed for inflation after 2009 consistent with subsection (g), had been in effect for the same period of time covered by the relevant provisions of the eligible legislation as under subparagraph (A).

**(4) Duration of policy adjustment**

Adjustments made pursuant to this subsection are available for policies affecting the estate and gift tax through only December 31, 2011. Any adjustments shall include budgetary effects in all years from these policy changes.

**(e) AMT relief**

**(1) Criteria**

Legislation that includes provisions extending AMT relief shall trigger the current policy adjustment required by this chapter.

**(2) Adjustment**

The amount of the maximum current policy adjustment shall be the difference between—

(A) total revenues projected to be collected under title 26 (as scheduled on December 31, 2009, to be in effect); and

(B) what those revenue collections would have been if, on the date of enactment of

legislation meeting the criteria in paragraph (1), AMT law had instead been amended by making commensurate adjustments in the exemption amounts for joint and single filers in such a manner that the number of taxpayers with AMT liability or lost credits that occur as a result of the AMT would not be estimated to exceed the number of taxpayers affected by the AMT in tax year 2008 in any year for which relief is provided, through December 31, 2011.

**(3) Limitation**

If the provisions in the legislation that cause it to meet the criteria in paragraph (1) cover a time period that ends before December 31, 2011, subject to the maximum adjustment provided for under paragraph (2), the amount of each current policy adjustment made pursuant to this section shall be limited to the difference between—

(A) total revenues projected to be collected under title 26 (as scheduled on December 31, 2009, to be in effect for the period of time covered by the relevant provisions of the eligible legislation); and

(B) what those revenues would have been if, on the date of enactment of legislation meeting the criteria in paragraph (1), AMT law had instead been amended by making commensurate adjustments in the exemption amounts for joint and single filers in such a manner that the number of taxpayers with AMT liability or lost credits that occur as a result of the AMT would not be estimated to exceed the number of AMT taxpayers in tax year 2008 for the same period of time covered by the relevant provisions of the eligible legislation as under subparagraph (A).

**(4) Duration of policy adjustment**

Adjustments made pursuant to this subsection are available for policies affecting the AMT through only December 31, 2011. Any adjustments shall include budgetary effects in all years from these policy changes.

**(f) Permanent extension of middle-class tax cuts**

**(1) Criteria**

Legislation that includes provisions extending middle-class tax cuts shall trigger the current policy adjustment required by this chapter if those provisions extend 1 or more of the following provisions:

(A) The 10 percent bracket as in effect for tax year 2010, as provided for under section 101(a) of EGTRRA and any later amendments through December 31, 2009.

(B) The child tax credit as in effect for tax year 2010, as provided for under section 201 of EGTRRA and any later amendments through December 31, 2009.

(C) Tax benefits for married couples as in effect for tax year 2010, as provided for under title III of EGTRRA and any later amendments through December 31, 2009.

(D) The adoption credit as in effect in tax year 2010, as provided for under section 202 of EGTRRA and any later amendments through December 31, 2009.

(E) The dependent care credit as in effect in tax year 2010, as provided for under sec-

tion 204 of EGTRRA and any later amendments through December 31, 2009.

(F) The employer-provided child care credit as in effect in tax year 2010, as provided for under section 205 of EGTRRA and any later amendments through December 31, 2009.

(G) The education tax benefits as in effect in tax year 2010, as provided for under title IV of EGTRRA and any later amendments through December 31, 2009.

(H) The 25 and 28 percent brackets as in effect for tax year 2010, as provided for under section 101(a) of EGTRRA and any later amendments through December 31, 2009.

(I) The 33 percent bracket as in effect for tax year 2010, as provided for under section 101(a) of EGTRRA and any later amendment through December 31, 2009, affecting taxpayers with adjusted gross income of \$200,000 or less for single filers and \$250,000 or less for joint filers in tax year 2010, with these income levels indexed for inflation in each subsequent year consistent with subsection (g).

(J) The rates on income derived from capital gains and qualified dividends as in effect for tax year 2010, as provided for under sections 301 and 302 of JGTRRA and any later amendment through December 31, 2009, affecting taxpayers with adjusted gross income of \$200,000 or less for single filers and \$250,000 for joint filers with these income levels indexed for inflation in each subsequent year consistent with subsection (g).

(K) The phaseout of personal exemptions and the overall limitation on itemized deductions as in effect for tax year 2010, as provided for under sections 102 and 103 of EGTRRA of 2001, respectively, and any later amendment through December 31, 2009, affecting taxpayer<sup>1</sup> with adjusted gross income of \$200,000 or less for single filers and \$250,000 for joint filers, with these income levels indexed for inflation in each subsequent year consistent with subsection (g).

(L) The increase in the limitations on expensing depreciable business assets for small businesses under section 179(b) of title 26 as in effect in tax year 2010, as provided under section 202 of JGTRRA and any later amendment through December 31, 2009.

## (2) Adjustment

The amount of the maximum current policy adjustment shall be the difference between—

(A) total revenues projected to be collected and outlays to be paid under title 26 (as scheduled on December 31, 2009, to be in effect); and

(B) what those revenue collections and outlay payments would have been if, on the date of enactment of legislation meeting the criteria in paragraph (1), the provisions identified in paragraph (1) were made permanent.

## (3) Limitation

If the provisions in the legislation that cause it to meet the criteria in paragraph (1) are not permanent, subject to the maximum

adjustment provided for under paragraph (2), the amount of each current policy adjustment made pursuant to this section shall be limited to the difference between—

(A) total revenues projected to be collected and outlays to be paid under title 26 (as scheduled on December 31, 2009, to be in effect for the period of time covered by the relevant provisions of the eligible legislation); and

(B) what those revenue collections and outlay payments would have been if, on the date of enactment of legislation meeting the criteria in paragraph (1), the provisions identified in paragraph (1) had been in effect, without change, for the same period of time covered by the relevant provisions of the eligible legislation as under subparagraph (A).

## (g) Indexing for inflation

Indexed amounts are assumed to increase in each year by an amount equal to the cost-of-living adjustment determined under section 1(f)(3) of title 26 for the calendar year in which the taxable year begins, determined by substituting “calendar year 2008” for “calendar year 1992” in subparagraph (B) of such section.

## (h) Guidance on estimates and current policy adjustments

### (1) Middle class tax cuts

For purposes of estimates made pursuant to subsection (f)—

(A) each of the income tax provisions shall be estimated as though the AMT had remained at current law as scheduled on December 31, 2009 to be in effect; and

(B) if more than 1 of the income tax provisions is<sup>2</sup> included in a single piece of legislation, those provisions shall be estimated in the order in which they appear.

### (2) AMT

For purposes of estimates made pursuant to subsection (e), changes to the AMT shall be estimated as if, on the date of enactment of legislation meeting the criteria in subsection (e)(1), all of the income tax provisions identified in subsection (f)(1) were made permanent.

(Pub. L. 111-139, title I, § 7, Feb. 12, 2010, 124 Stat. 16.)

## Editorial Notes

### REFERENCES IN TEXT

EGTRRA, referred to in subsecs. (a)(4) and (f)(1)(C), (G), is the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, June 7, 2001, 115 Stat. 38. Titles III and IV of the Act enacted and amended numerous sections and provisions set out as notes in Title 26, Internal Revenue Code. Section 101(a) of the Act amended section 1 of Title 26. Section 102 of the Act amended section 151 of Title 26 and enacted provisions set out as a note under section 151 of Title 26. Section 103 of the Act amended section 68 of Title 26 and enacted provisions set out as a note under section 68 of Title 26. Section 201 of the Act amended sections 23 to 25, 26, 32, 904, and 1400C of Title 26 and enacted provisions set out as a note under section 24 of Title 26. Section 202 of the Act amended sections 23, 24, 26, 137, 904, and 1400C of Title 26 and enacted provisions set out as

<sup>1</sup> So in original. Probably should be “taxpayers”.

<sup>2</sup> So in original. Probably should be “are”.

a note under section 23 of Title 26. Section 204 of the Act amended section 21 of Title 26 and enacted provisions set out as a note under section 21 of Title 26. Section 205 of the Act enacted section 45F of Title 26, amended sections 38 and 1016 of Title 26, and enacted provisions set out as a note under section 38 of Title 26. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 1 of Title 26 and Tables.

JGTRRA, referred to in subsecs. (a)(4) and (f)(1)(J), (L), is the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, May 28, 2003, 117 Stat. 752. Section 202 of the Act amended section 179 of Title 26, Internal Revenue Code, and enacted provisions set out as a note under section 179 of Title 26. Section 301 of the Act amended sections 1, 55, 57, 1445, and 7518 of Title 26 and section 1177 of Title 46, Appendix, Shipping, and enacted provisions set out as notes under section 1 of Title 26. Section 302 of the Act amended sections 1, 163, 301, 306, 338, 467, 531, 541, 584, 702, 854, 857, 1255, and 1257 of Title 26, repealed section 341 of Title 26, and enacted provisions set out as a note under section 1 of Title 26. For complete classification of this Act to the Code, see Short Title of 2003 Amendment note set out under section 1 of Title 26 and Tables.

The Pension Protection Act of 2006, referred to in subsec. (a)(4)(A), is Pub. L. 109–280, Aug. 17, 2006, 120 Stat. 780. For complete classification of this Act to the Code, see Short Title of 2006 Amendment note set out under section 1001 of Title 29, Labor, and Tables.

This chapter, referred to in subsecs. (c)(1), (d)(1), (e)(1), and (f)(1), was in the original “this title”, meaning title I of Pub. L. 111–139, Feb. 12, 2010, 124 Stat. 8, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 931 of this title and Tables.

### § 937. Application of BBEDCA

For purposes of this chapter—

(1) notwithstanding section 275 of BBEDCA, the provisions of sections 905, 906, 907, and 922 of this title, as amended by this title,<sup>1</sup> shall apply to the provisions of this chapter;

(2) references in sections 905, 906, 907, and 922 of this title to “this subchapter” or “this title”<sup>1</sup> shall be interpreted as applying to this chapter;

(3) references in sections 905, 906, 907, and 922 of this title to “section 904 of this title” shall be interpreted as referencing section 934 of this title;

(4) the reference in section 906(b) of this title to “section 902 or 903 of this title” shall be interpreted as referencing section 934 of this title;

(5) the reference in section 906(d)(1) of this title to “section 902 or 903 of this title” shall be interpreted as referencing section 935 of this title;

(6) the reference in section 906(d)(4) of this title to “section 902 or 903 of this title” shall be interpreted as referencing section 934 of this title;

(7) section 906(k) of this title shall apply to a sequestration, if any, under this chapter; and

(8) references<sup>2</sup> in section 907(e) of this title to “section 901, 902, or 903 of this title” shall be interpreted as referencing section 933 of this title.

(Pub. L. 111–139, title I, § 8, Feb. 12, 2010, 124 Stat. 21.)

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be “the reference”.

## Editorial Notes

### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title I of Pub. L. 111–139, Feb. 12, 2010, 124 Stat. 8, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 931 of this title and Tables.

Section 275 of BBEDCA, referred to in par. (1), is section 275 of the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99–177, which is set out as a note under section 900 of this title.

As amended by this title, referred to in par. (1), means as amended by title I of Pub. L. 111–139.

“This title”, appearing in quotes in par. (2), refers to the references to “this title” in the original in sections 905, 906, 907, and 922 of this title. “This title” appears untranslated in sections 906(h)(1), (j)(1), (3) and 922(a)(2), (3) of this title and translated as “this chapter” following “subchapter I of” in section 922(d) of this title. Those references to “this title” mean title II of Pub. L. 99–177, known as the Balanced Budget and Emergency Deficit Control Act of 1985. See References in Text notes set out under section 906 and 922 of this title.

### § 938. Determinations and points of order

Nothing in this chapter shall be construed as limiting the authority of the chairmen of the Committees on the Budget of the House and Senate under section 643 of this title. CBO may consult with the Chairmen of the House and Senate Budget Committees to resolve any ambiguities in this chapter.

(Pub. L. 111–139, title I, § 12, Feb. 12, 2010, 124 Stat. 29.)

## Editorial Notes

### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title I of Pub. L. 111–139, Feb. 12, 2010, 124 Stat. 8, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 931 of this title and Tables.

### § 939. Limitation on changes to the Social Security Act

#### (a) Limitation on changes to the Social Security Act

Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any bill or resolution pursuant to any expedited procedure to consider the recommendations of a Task Force for Responsible Fiscal Action or other commission that contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act [42 U.S.C. 401 et seq.], or the taxes received under subchapter A of chapter 9; the taxes imposed by subchapter E of chapter 1; and the taxes collected under section 86 of part II of subchapter B of chapter 1 of the Internal Revenue Code.

#### (b) Waiver

This section may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

#### (c) Appeals

An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall