

# Exemptions to the Fiscal Responsibility Act's Discretionary Spending Limits

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# Exemptions to the Fiscal Responsibility Act's Discretionary Spending Limits

The Fiscal Responsibility Act of 2023 (FRA, P.L. 118-5) established statutory limits on discretionary spending (also known as “spending caps”) for FY2024 and FY2025. The FRA created two separate caps for each fiscal year: a limit for defense (or “security”) discretionary spending and a limit for nondefense (or “nonsecurity”) discretionary spending. The Office of Management and Budget (OMB) is responsible for determining compliance with these limits. If enacted budget authority exceeds either limit for a given fiscal year, then the President is required to issue a sequestration order that implements largely across-the-board cuts to non-exempt discretionary spending in the category in which the breach occurred.

OMB is required to count most enacted discretionary spending to determine whether either cap has been exceeded. Current law governing enforcement of the caps, however, establishes that discretionary spending for certain purposes or accounts is effectively exempt from counting toward the caps. Exemptions to the FRA's discretionary spending limits fall under two general categories:

1. **Adjustments.** The law specifies that spending for certain purposes will receive special budgetary treatment that allows for the discretionary spending limits to be adjusted upward to accommodate such enacted spending. These upward adjustments effectively exempt such spending from the limits. Examples of allowable adjustments include spending designated as being for an emergency requirement, disaster relief, wildfire suppression, and certain program integrity initiatives. Additional adjustments are allowed to address potential technical issues that may arise during the enforcement of discretionary spending limits. The amount of some adjustments—most notably for emergency requirements—are unlimited and can be used for broad purposes. Others are limited to a certain amount and may be used for spending only on specific programs or purposes.
2. **Spending not counted under the caps.** Certain discretionary spending is exempt from the caps due to legislative language in the FRA or other previously enacted laws establishing that it not be counted for budget enforcement purposes (including the enforcement of discretionary spending limits). As a result, OMB displays such amounts separately in its sequestration reports and does not include them in its totals. This category includes discretionary spending related to the 21<sup>st</sup> Century Cures Act, the Harbor Maintenance Trust Fund, and certain funds designated as an emergency requirement in previously enacted laws.

According to OMB, the statutory limits for FY2024 were adjusted upward by a total of \$149.51 billion to accommodate enacted discretionary spending for several allowable purposes: \$82.02 billion of these adjustments was made to the limit for the nondefense discretionary category, while \$67.49 billion was made to the limit for the defense discretionary category. In addition, a total of roughly \$73.5 billion was made available for purposes that, by law, are not counted for the purpose of enforcing discretionary spending limits.

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## Introduction

The Fiscal Responsibility Act of 2023 (FRA, P.L. 118-5), enacted in June 2023, established statutory limits on discretionary spending (also known as “spending caps”) for FY2024 and FY2025.<sup>1</sup> As shown in **Table 1**, the FRA created two separate caps for each fiscal year: a limit for defense (or “security”) discretionary spending and a limit for nondefense (or “nonsecurity”) discretionary spending.<sup>2</sup> If discretionary appropriations are enacted that exceed the limit in either category, a sequester is triggered to make largely across-the-board reductions to discretionary spending within the applicable category (defense and/or nondefense). Sequestration is carried out by the President and the Office of Management and Budget (OMB).<sup>3</sup>

**Table 1. FRA Discretionary Limits on Budget Authority, FY2024-FY2025**

In Billions of Nominal Dollars

Fiscal Year	Defense Discretionary	Nondefense Discretionary
FY2024	\$886.35	\$703.65
FY2025	\$895.21	\$710.69

**Source:** Fiscal Responsibility Act (P.L. 118-5).

OMB is required to count most enacted discretionary spending to determine whether a cap has been exceeded. Current law governing enforcement of the caps, however, establishes that discretionary spending for certain purposes or accounts is effectively exempt from counting toward the caps. Spending that is excluded from such calculations falls under two general categories:

1. **Adjustments.** The law specifies that spending for certain purposes, such as those designated as being an emergency requirement or as being for disaster relief, will receive special budgetary treatment. This spending is often thought of as being exempt from, or an exception to, the spending limits. Formally, however, current law allows for the discretionary spending limits to be adjusted upward to accommodate such enacted spending. As a result, these types of spending are referred to as “adjustments.”

<sup>1</sup> For more on the statutory limits on discretionary spending established by the FRA, see CRS Insight IN12168, *Discretionary Spending Caps in the Fiscal Responsibility Act of 2023*, by Grant A. Driessen and Megan S. Lynch.

*Discretionary spending* refers to federal spending that is provided and controlled through appropriations acts, which are generally developed and considered for each fiscal year through the appropriations process. For more on discretionary spending and the appropriations process, see CRS Report R47106, *The Appropriations Process: A Brief Overview*, by James V. Saturno and Megan S. Lynch.

<sup>2</sup> The defense discretionary category consists only of discretionary spending in budget function 050, “national defense.” The nondefense discretionary category consists of discretionary spending in all other budget functions. For more on the FRA in FY2025, see CRS Insight IN12433, *The Fiscal Responsibility Act (FRA) in FY2025: Current Status*, by Drew C. Aherne and Megan S. Lynch.

<sup>3</sup> This means that if discretionary appropriations are enacted that exceed a statutory limit for a fiscal year for either category, across-the-board reductions (i.e., sequestration) of nonexempt budgetary resources are made to eliminate the excess spending within that category. The threat of a sequester is designed to deter enactment of discretionary appropriations that would violate the spending limits or, in the event that such appropriations are enacted violating these limits, to automatically reduce discretionary spending to the limits specified in law. For more on sequestration, see CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*, by Megan S. Lynch.

2. **Spending not counted under the caps.** In addition to the adjustments specified in the FRA, certain discretionary spending is exempt from the caps due to legislative language establishing that it not be counted for budget enforcement purposes. This category includes discretionary spending related to the 21<sup>st</sup> Century Cures Act, the Harbor Maintenance Trust Fund, and certain funds designated as an emergency requirement in previously enacted laws.

Due to these exemptions, total enacted discretionary spending for a given fiscal year may exceed the amounts established in the FRA for either category without violating the limits and triggering sequestration. While the discretionary spending discussed in this report is exempt from congressional budget enforcement rules, it still appears within budget aggregates, such as those for total federal spending and deficits.

## Allowable Adjustments to Discretionary Spending Limits

While the categories of spending described in this section are often thought of as being exempt from the spending limits, in practice, the discretionary limits are adjusted upward to accommodate it. For this reason, this category of spending may be referred to as “adjustments.” Most allowable adjustments to the discretionary spending limits for FY2024 and FY2025 are specified in Section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended by the FRA.<sup>4</sup>

To provide transparency to the process of evaluating compliance, OMB is required to submit sequestration reports to Congress.<sup>5</sup> In these reports and in the President’s annual budget submissions, OMB is required to calculate all adjustments made for permissible purposes and to specify the discretionary spending limits for the fiscal year and each succeeding year that the caps are in effect.

The amount of some adjustments—most notably the adjustments for spending designated as an emergency requirement—are unlimited and can be used for broad purposes. Others, however, are limited to certain amounts and may be used for spending only on specific purposes or programs. These include adjustments for spending related to disaster relief, wildfire suppression, and certain program integrity initiatives. Additional adjustments are allowed to address potential technical issues that can arise during the enforcement of discretionary spending limits.

The following sections provide information on adjustments to the discretionary spending limits made under the FRA in FY2024, as well as detailed information on each purpose for which adjustments are allowed under current law.

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<sup>4</sup> 2 U.S.C. §901(b).

<sup>5</sup> 2 U.S.C. §904(e), (f), and (g). While OMB is responsible for evaluating compliance with limits and implementing a sequester, the Congressional Budget Office (CBO) is also required to submit to Congress estimates and assessments related to the discretionary spending limits and adjustments as specified in Title 2, Sections 904 (e), (f), and (g), of the *U.S. Code*. Those reports can be found at CBO, “Sequestration,” <https://www.cbo.gov/topics/budget/sequestration>.

## Discretionary Spending Under the FRA Limits and Adjustments in FY2024

The FRA established separate statutory limits on discretionary spending for both FY2024 and FY2025. As shown in **Table 1**, for FY2024, the limit for defense discretionary spending was \$886.35 billion, and the limit for nondefense discretionary spending was \$703.65 billion.

The 12 regular appropriations acts for FY2024 were enacted in the Consolidated Appropriations Act, 2024 (P.L. 118-42, signed into law March 9, 2024), and the Further Consolidated Appropriations Act, 2024 (P.L. 118-47, signed into law March 23, 2024).<sup>6</sup> Discretionary spending for FY2024 was also enacted through continuing appropriations (known as continuing resolutions, or CRs) and supplemental appropriations acts.<sup>7</sup> As required by law, OMB submitted a final sequestration report for FY2024 to Congress on April 12, 2024.<sup>8</sup> In addition, OMB's sequestration update report for FY2025, submitted to Congress on August 16, 2024, provides updated estimates for discretionary spending enacted for FY2024 to reflect supplemental appropriations enacted after the final report for FY2024 was submitted.<sup>9</sup>

Information on total adjustments made to the discretionary spending limits for FY2024, as estimated by OMB, is provided in **Figure 1**. According to OMB, the statutory limits were adjusted upward by a total of \$149.51 billion to accommodate spending for several allowable purposes: \$82.02 billion of these adjustments was made to the limit for the nondefense discretionary category, while \$67.49 billion was made to the limit for the defense discretionary category. In total, \$1.74 trillion in discretionary budget authority was enacted across all appropriations legislation for FY2024. This includes a total of \$785.67 billion in the nondefense discretionary category and \$953.84 billion in the defense discretionary category.

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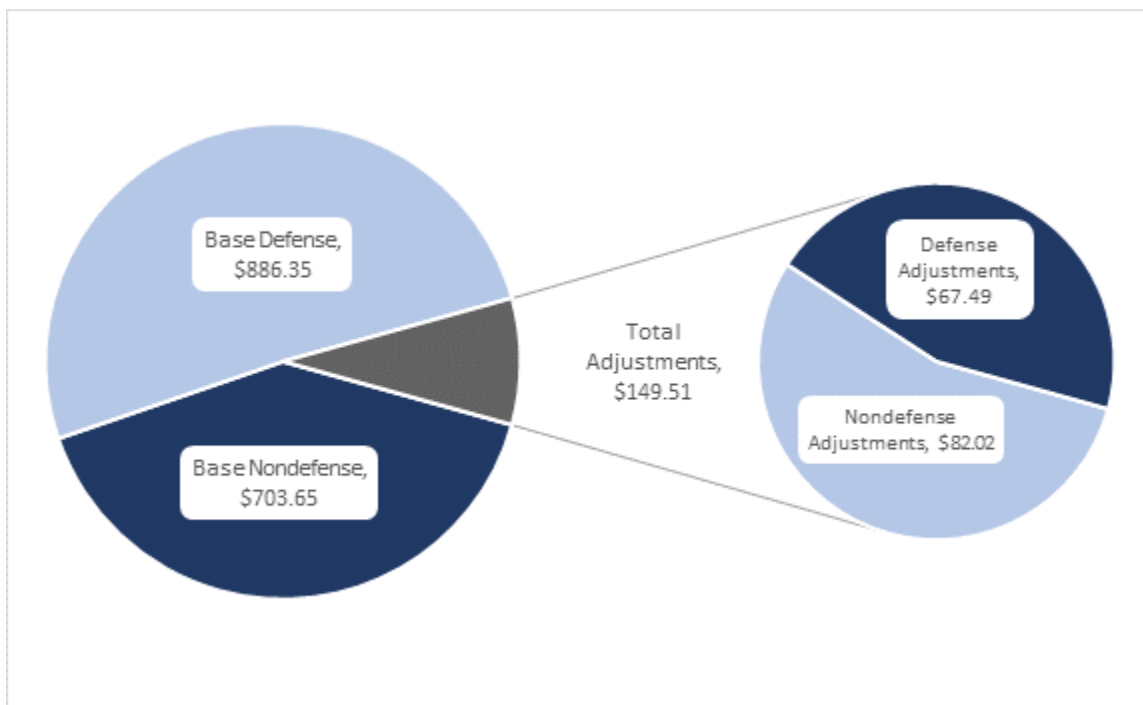
<sup>6</sup> P.L. 118-42 included the Military Construction, Veterans Affairs (Division A); Agriculture (Division B); Commerce, Justice, Science (Division C); Energy and Water (Division D); Interior and Environment (Division E); and Transportation, Housing and Urban Development (Division F) appropriations bills for FY2024. P.L. 118-47 included the Defense (Division A); Financial Services (Division B); Homeland Security (Division C); Labor, Health and Human Services, Education (Division D); Legislative Branch (Division E); and State, Foreign Operations (Division F) appropriations acts for FY2024.

<sup>7</sup> CRs enacted for FY2024 include P.L. 118-15 (signed into law September 30, 2023), P.L. 118-22 (signed into law November 16, 2023), P.L. 118-35 (signed into law January 19, 2024), and P.L. 118-40 (signed into law March 1, 2024). Supplemental appropriations legislation providing discretionary spending includes P.L. 118-50 (making emergency supplemental appropriations for the fiscal year ending September 30, 2024, and for other purposes, signed into law April 24, 2024). Another supplemental appropriations act for FY2024—P.L. 118-82, the Veterans Benefits Continuity and Accountability Supplemental Appropriations Act, 2024—was enacted on September 20, 2024. P.L. 118-82 provided funding only to mandatory spending accounts, however, and therefore these amounts do not count toward the statutory limits on discretionary spending for FY2024.

<sup>8</sup> OMB, "OMB Final Sequestration Report to the President and Congress for Fiscal Year 2024," 89 *Federal Register* 27804, April 12, 2024, <https://www.federalregister.gov/documents/2024/04/18/2024-08264/omb-final-sequestration-report-to-the-president-and-congress-for-fiscal-year-2024>.

<sup>9</sup> OMB, "OMB Sequestration Update Report to the President and Congress for Fiscal Year 2025," 89 *Federal Register* 67674, August 16, 2024, <https://www.federalregister.gov/documents/2024/08/21/2024-18690/omb-sequestration-update-report-to-the-president-and-congress-for-fiscal-year-2025>.

**Figure 1. Enacted Discretionary Budget Authority and Cap Adjustments for FY2024**  
In Billions of Dollars



**Sources:** CRS analysis of OMB, “OMB Final Sequestration Report to the President and Congress for Fiscal Year 2024,” 89 *Federal Register* 27804, April 12, 2024, <https://www.federalregister.gov/documents/2024/04/18/2024-08264/omb-final-sequestration-report-to-the-president-and-congress-for-fiscal-year-2024>; and OMB, “OMB Sequestration Update Report to the President and Congress for Fiscal Year 2025,” 89 *Federal Register* 67674, August 16, 2024, <https://www.federalregister.gov/documents/2024/08/21/2024-18690/omb-sequestration-update-report-to-the-president-and-congress-for-fiscal-year-2025>.

**Notes:** This figure provides OMB estimates of discretionary budget authority enacted across all appropriations acts for FY2024. “Base Defense” and “Base Nondefense” represent discretionary budget authority in the defense and nondefense categories, respectively, that is not designated as being for purposes for which adjustments to the caps are permitted and is therefore constrained under the caps. “Total adjustments” represents the total amount the caps were adjusted upward to accommodate spending designated as being for purposes that are exempt from budget enforcement. “Defense Adjustments” and “Nondefense Adjustments” represent the total amount of adjustments made to the caps for permissible purposes in the defense and nondefense categories, respectively.

**Table 2** provides a breakdown of adjustments by allowable purpose in each category (defense and nondefense) across all appropriations acts enacted for FY2024. Spending designated by Congress and the President as an emergency requirement accounted for the majority of adjustments to the discretionary spending limits for FY2024. In total, the caps were adjusted upward by \$124.01 billion to accommodate spending designated as an emergency requirement. This includes \$56.52 billion in adjustments to the nondefense limit and \$67.49 billion in adjustments to the defense limit. Adjustments for spending designated as an emergency requirement were the only adjustments made to the defense limit, but adjustments for several other purposes were made to the nondefense limit.



**Table 2. Enacted Budget Authority for FY2024, Base and by Adjustment Category**

	In Billions of Dollars		
	Nondefense	Defense	Total
<b>Original FY2024 Cap</b>	\$703.65	\$886.35	\$1,590.00
<b>Enacted Base</b>	\$703.65	\$886.35	\$1,590.00
<b>Adjustments</b>			
Emergency Requirements	\$56.52	\$67.49	\$124.01
Disaster Relief	\$20.40	—	\$20.40
Social Security Dedicated Program Integrity	\$1.58	—	\$1.58
Health Care Fraud and Abuse Control	\$0.60	—	\$0.60
Reemployment Services and Eligibility Assessments	\$0.27	—	\$0.27
Wildfire Suppression	\$2.65	—	\$2.65
<b>Total Enacted</b>	<b>\$785.67</b>	<b>\$953.84</b>	<b>\$1,739.51</b>

**Source:** CRS analysis of OMB, “OMB Final Sequestration Report to the President and Congress for Fiscal Year 2024,” and OMB, “OMB Sequestration Update Report to the President and Congress for Fiscal Year 2025.”

**Notes:** “Original FY2024 Cap” represents the limits specified for FY2024 in Section 101 of the FRA. “Enacted Base” represents all enacted budget authority for FY2024 that counts under the caps and is not for purposes that allow for adjustments to the caps. “Adjustments” represents budget authority enacted for purposes that allow for the caps to be adjusted upward to accommodate such spending. “Total Enacted” represents all budget authority enacted across all appropriations bills for FY2024, including both base budget authority and budget authority for the adjustment categories.

## Emergency Requirements

Section 251(b)(2)(A) of BBEDCA establishes that statutory limits on discretionary spending may be adjusted upward to accommodate enacted discretionary spending that Congress and the President have designated as being an emergency requirement.<sup>10</sup> There is no statutory limit on the amount of discretionary spending that may be designated as an emergency requirement in a given fiscal year. Likewise, there is no statutory classification of which accounts or activities may be eligible to be designated as an emergency requirement. This means that Congress and the President can, together, designate discretionary spending up to any amount and for any purpose they agree upon as an emergency requirement and thus effectively exempt such spending from enforcement under the caps.

The only statutory requirements for the use of emergency designations that allow spending to be effectively exempted from the caps are that (1) the legislation states that a specified amount is designated as being an emergency requirement, (2) the emergency designation is made on an account-by-account basis—meaning that a single emergency designation cannot exempt amounts

<sup>10</sup> 2 U.S.C. §901(b)(2)(A). For more on emergency designations in the congressional budget process, see CRS Report R47594, *Budget Enforcement Rules: Emergency Designations*, by Drew C. Aherne.

Section 251(b)(2)(A) also allows for adjustments to the caps, up to any amount, for appropriations Congress and the President designate as being for “Overseas Contingency Operations/Global War on Terrorism” (OCO/GWOT). No such designations or adjustments were made to the discretionary spending limits in FY2024. The last fiscal year for which adjustments were made to discretionary spending limits to accommodate spending with an OCO/GWOT designation was FY2021.



provided to several accounts, and (3) the President must also designate the spending as being an emergency requirement.

The emergency designation is the only allowable adjustment to the caps that requires the President to also designate. Congress often includes language in bills that contain emergency designations establishing that such spending will be available for obligation only if the President also designates it as being an emergency requirement. Further, this language typically establishes that the President designate either “all such amounts” as an emergency requirement or none.

For example, in the Consolidated Appropriations Act, 2024 (P.L. 118-42), Congress designated amounts provided to several accounts as an emergency requirement. One such designation is shown below:

For necessary expenses for the acquisition, construction, commissioning, and upgrading of major research equipment, facilities, and other such capital assets pursuant to the National Science Foundation Act of 1950 (42 U.S.C. 1861 et seq.), including authorized travel, \$234,000,000, to remain available until expended: Provided, That of the amounts made available under this heading, \$234,000,000 is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.<sup>11</sup>

In addition, P.L. 118-42 included language making the availability of amounts designated as an emergency contingent on a subsequent designation by the President, as shown below:

Each amount designated in this Act by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or repurposed, rescinded, or transferred, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

After this legislation was enacted, President Biden formally designated all relevant amounts provided in P.L. 118-42 as an emergency requirement. An excerpt of the President’s message to Congress is shown below:

In accordance with section 6 of the Consolidated Appropriations Act, 2024 (H.R. 4366; the “Act”), I hereby designate as emergency requirements all funding (including the transfer and repurposing of funds) so designated by the Congress in the Act pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as outlined in the enclosed list of accounts.<sup>12</sup>

As mentioned above, there is no statutory limit on the amount of discretionary spending that may be designated as an emergency requirement, nor are there restrictions on which accounts or activities receive such a designation. As a result, Congress has occasionally designated appropriations that may otherwise fall under the purposes specified for other adjustments as an emergency requirement. This is particularly true for adjustments that are capped at specified amounts and are related to potentially unforeseen funding needs (e.g., disaster relief and/or wildfire suppression).<sup>13</sup> Amounts for such purposes may still be exempted through an emergency designation even if the adjustment limit for that purpose has been met for a given fiscal year.

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<sup>11</sup> Division C of P.L. 118-42, the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2024.

<sup>12</sup> President Joseph R. Biden Jr., “Message to the Congress on the Designation of Funding as an Emergency Requirement in Accordance with Section 6 of the Consolidated Appropriations Act, 2024,” March 9, 2024, <https://www.presidency.ucsb.edu/documents/message-the-congress-the-designation-funding-emergency-requirement-accordance-with-section>.

<sup>13</sup> For example, the Bipartisan Budget Act of 2018 (P.L. 115-123) included appropriations of \$23.50 billion for the (continued...)

## Disaster Relief

Section 251(b)(2)(D) of BBEDCA allows for adjustments to discretionary spending limits to accommodate certain spending designated by Congress as being for disaster relief.<sup>14</sup> For the purpose of this designation, *disaster relief* is defined as activities carried out pursuant to a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act).<sup>15</sup>

Adjustment amounts permitted under the disaster relief designation are limited to an amount calculated pursuant to a formula in statute. The formula used to calculate the maximum adjustments allowed for FY2024 and FY2025 comprises the sum total of:

- the average funding provided for disaster relief over the previous 10 years, excluding the highest and lowest years;
- 5% of the total appropriations provided in the previous 10 years, net of any rescissions enacted in the same period, for major disasters declared pursuant to the Stafford Act; and
- the cumulative net total of the unused carryover for FY2018, as well as unused carryover for any subsequent fiscal years.<sup>16</sup>

Not all spending enacted for the purposes of disaster relief are exempted under this designation—only amounts Congress has designated as such. Also, as stated above (in the section of this report titled “Emergency Requirements”), Congress has on occasion exempted spending on disaster relief activities using an emergency requirement designation.

OMB is required by law to include in its sequestration update report a preview estimate of the adjustment for disaster relief for the upcoming fiscal year. For example, OMB included a preview estimate of \$20.40 billion as the maximum amount for the disaster relief adjustment in its sequestration update report for FY2024 (published in the *Federal Register* on August 20, 2023).<sup>17</sup> As referenced in **Table 1**, this is the same amount the caps were adjusted upward pursuant to the disaster relief designation in FY2024. For FY2025, OMB has estimated that the maximum amount for the disaster relief adjustment will be \$22.88 billion.<sup>18</sup>

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Federal Emergency Management Agency’s Disaster Relief Fund for major disasters declared pursuant to the Stafford Act related to Hurricanes Harvey, Irma, and Maria. These appropriations were designated as an emergency requirement and therefore employed the emergency requirement adjustment, as opposed to the disaster relief adjustment, which is capped. At the time, statutory discretionary spending limits enacted in the Budget Control Act of 2011 (P.L. 112-25), as amended, were in effect.

<sup>14</sup> 2 U.S.C. §901(b)(2)(D). For more on the disaster relief adjustment, see CRS In Focus IF10720, *Calculation and Use of the Disaster Relief Allowable Adjustment*, by William L. Painter. For more on funding for disaster relief, see CRS Report R47676, *Disaster Relief Fund State of Play: In Brief*, by William L. Painter.

<sup>15</sup> 42 U.S.C. §5122(2).

<sup>16</sup> *Unused carryover* is defined by this provision as “the sum of the amounts in subclauses (I) and (II) less the enacted appropriations for that fiscal year that have been designated as being for disaster relief” (2 U.S.C. §901(b)(2)(D)(i)(III)).

<sup>17</sup> OMB, “OMB Sequestration Update Report to the President and Congress for Fiscal Year 2024,” 88 *Federal Register* 57134, August 20, 2023, pp. 11-13, <https://www.federalregister.gov/documents/2023/08/22/2023-18052/omb-sequestration-update-report-to-the-president-and-congress-for-fiscal-year-2024>.

<sup>18</sup> OMB, “OMB Sequestration Update Report to the President and Congress for Fiscal Year 2025,” 89 *Federal Register* 67674, August 16, 2024, pp. 11-13, <https://www.federalregister.gov/documents/2024/08/21/2024-18690/omb-sequestration-update-report-to-the-president-and-congress-for-fiscal-year-2025>.

## Wildfire Suppression

Section 251(b)(2)(F) of BBEDCA allows for adjustments to the caps to accommodate appropriations up to a certain amount for wildfire suppression operations in the Wildland Fire Management Accounts at the Department of Agriculture or the Department of the Interior.<sup>19</sup> Specifically, the law allows adjustments to the caps to accommodate “additional new budget authority” provided to these accounts in excess of \$1.39 billion.<sup>20</sup> The maximum amount of the adjustment for “additional new budget authority” above \$1.39 billion is specified in the law for each fiscal year from FY2020 through FY2027. The wildfire suppression adjustment was capped at \$2.65 billion for FY2024. In its final sequestration report for FY2024, OMB indicated that the caps had been adjusted upward by the full \$2.65 billion to accommodate appropriations made to both accounts, stating:

The Department of the Interior, Environment, and Related Agencies Appropriations Act, 2024 (division E of the CAA of 2024) provided for the base activities and the total \$2,650 million as a cap adjustment for wildfire suppression purposes—the maximum allowable adjustment specified for 2024 in BBEDCA. The adjustment is split with USDA receiving \$2,300 million and DOI receiving \$350 million.<sup>21</sup>

The wildfire suppression adjustment is capped for FY2025 at \$2.75 billion in “additional new budget authority” exceeding \$1.39 billion.

## Program Integrity

Section 251(b) of BBEDCA includes three separate adjustments to accommodate spending related to program integrity initiatives for certain programs or activities.

### Continuing Disability Reviews and Redeterminations

Section 251(b)(2)(B) provides for adjustments to the caps to accommodate appropriations above a certain amount for two types of program integrity activities conducted by the Social Security Administration: (1) continuing disability reviews, which are periodic medical reviews of Social Security disability beneficiaries and Supplemental Security Income (SSI) recipients under the age of 65;<sup>22</sup> and (2) redeterminations, which are periodic financial reviews of SSI recipients. The Bipartisan Budget Act of 2015 (P.L. 114-74) expanded the types of program integrity activities for which the adjustments are permitted. The expanded definition may also accommodate spending for (3) cooperative disability investigation units, which investigate cases of suspected disability fraud; (4) fraud prosecutions by Special Assistant U.S. Attorneys; and (5) work-related

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<sup>19</sup> 2 U.S.C. §901(b)(2)(F). The law defines *wildfire suppression operations* as “the emergency and unpredictable aspects of wildland firefighting, including—(aa) support, response, and emergency stabilization activities; (bb) other emergency management activities; and (cc) the funds necessary to repay any transfers needed for the costs of wildfire suppression operations.”

<sup>20</sup> This level represents the amount requested for these purposes in the President’s budget request for FY2015. The \$1.39 billion is the combination of \$1,011,060 for the Forest Service and \$383,657 for the Department of the Interior. See U.S. Department of Agriculture, Forest Service, *Fiscal Year 2015 Budget Justification*, March 2014, Table I, p. 259; and U.S. Department of the Interior, Wildland Fire Management, *Budget Justifications and Performance Information FY2015*, p. 33.

<sup>21</sup> OMB, “OMB Final Sequestration Report for Fiscal Year 2024,” p. 6.

<sup>22</sup> Under Titles II and XVI of the Social Security Act (42 U.S.C. §401 *et seq.*, 1381 *et seq.*).

continuing disability reviews, which are periodic earnings reviews of Social Security disability beneficiaries.<sup>23</sup>

The adjustment for continuing disability reviews, redeterminations, and other specified activities is capped for each fiscal year from FY2012 through FY2025 at a specified amount of “additional new budget authority” exceeding \$0.273 billion.<sup>24</sup> The adjustment for FY2024 was capped at \$1.58 billion. Congress used the full amount of this adjustment in FY2024 by appropriating a total of \$1.85 billion for these purposes, as shown below, which reflects \$0.273 billion plus the \$1.58 billion in “additional new budget authority” allowable under the adjustment:

From funds provided under the first paragraph under this heading, not more than \$1,851,000,000, to remain available through March 31, 2025, is for the costs associated with continuing disability reviews under titles II and XVI of the Social Security Act, including work-related continuing disability reviews to determine whether earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity, for the cost associated with conducting redeterminations of eligibility under title XVI of the Social Security Act, for the cost of co-operative disability investigation units, and for the cost associated with the prosecution of fraud in the programs and operations of the Social Security Administration by Special Assistant United States Attorneys: Provided, That, of such amount, \$273,000,000 is provided to meet the terms of section 251(b)(2)(B)(ii)(III) of the Balanced Budget and Emergency Deficit Control Act of 1985 and \$1,578,000,000 is additional new budget authority specified for purposes of section 251(b)(2)(B) of such Act.<sup>25</sup>

The adjustment for continuing disability reviews and redeterminations for FY2025 is capped at \$1.63 billion in “additional new budget authority” exceeding \$0.273 billion.<sup>26</sup>

## **Health Care Fraud and Abuse Control**

Section 251(b)(2)(C) of BBEDCA allows for adjustments to the discretionary spending limits for appropriations above a certain amount for the health care fraud and abuse control program at the Department of Health and Human Services.<sup>27</sup>

The adjustment for the health care fraud and abuse control program is capped for each fiscal year from FY2012 through FY2025 at a specified amount of “additional new budget authority” exceeding \$0.311 billion.<sup>28</sup> The adjustment for FY2024 was capped at \$0.604 billion.<sup>29</sup> Congress used the full amount of this adjustment in FY2024 by appropriating a total of \$0.915 billion for these purposes, as shown below, which reflects \$0.311 billion plus the \$0.604 billion in “additional new budget authority” allowable under the adjustment:

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<sup>23</sup> The law includes definitions of the terms *continuing disability reviews* and *redeterminations*. See Section 251(b)(2)(B)(ii)(I and II) of BBEDCA, as amended.

<sup>24</sup> Title 2, Section 901(b)(2)(B)(ii)(III), defines *additional new budget authority* as “the amount provided for a fiscal year, in excess of \$273,000,000, in an appropriation Act and specified to pay for the costs of continuing disability reviews, redeterminations, co-operative disability investigation units, and fraud prosecutors under the heading ‘Limitation on Administrative Expenses’ for the Social Security Administration.”

<sup>25</sup> Division D of P.L. 118-47, pp. 242-243.

<sup>26</sup> 2 U.S.C. §901(b)(2)(B)(i)(XII).

<sup>27</sup> 2 U.S.C. §901(b)(2)(C).

<sup>28</sup> Title 2, Section 901(b)(2)(C)(ii), defines *additional new budget authority* as “the amount provided for a fiscal year, in excess of \$311,000,000, in an appropriation Act and specified to pay for the costs of the health care fraud and abuse control program.”

<sup>29</sup> 2 U.S.C. §901(b)(2)(C)(i)(XI).

In addition to amounts otherwise available for program integrity and program management, \$915,000,000, to remain available through September 30, 2025.... Provided further, That of the amount provided under this heading, \$311,000,000 is provided to meet the terms of section 251(b)(2)(C)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985, and \$604,000,000 is additional new budget authority specified for purposes of section 251(b)(2)(C) of such Act for additional health care fraud and abuse control activities.<sup>30</sup>

The adjustment for the health care fraud and abuse control program for FY2025 is capped at \$0.630 billion in “additional new budget authority” exceeding \$0.311 billion.<sup>31</sup>

## **Reemployment Services and Eligibility Assessments**

The third adjustment permitted for program integrity activities is provided for in Section 251(b)(2)(E) of BBEDCA, which allows for adjustments to the caps to accommodate appropriations for reemployment services and eligibility assessments under Section 306 of the Social Security Act (42 U.S.C. §506).<sup>32</sup>

As with the other two adjustments described in this section, this adjustment is capped at specified amounts for each fiscal year. Specifically, the adjustment is capped in law for each fiscal year from FY2018 through FY2025 at specified amounts of “additional new budget authority” exceeding \$0.117 billion.<sup>33</sup> The adjustment for FY2024 was capped at \$0.265 billion.<sup>34</sup> Congress used the full amount of this adjustment in FY2024 by appropriating a total of \$0.382 billion for these purposes, as shown below, which reflects \$0.117 billion plus the \$0.265 billion in “additional new budget authority” allowable under the adjustment:

[N]ot less than \$382,000,000 to carry out reemployment services and eligibility assessments under section 306 of such Act, any claimants of regular compensation, as defined in such section, including those who are profiled as most likely to exhaust their benefits, may be eligible for such services and assessments: Provided, That of such amount, \$117,000,000 is specified for grants under section 306 of the Social Security Act and is provided to meet the terms of section 251(b)(2)(E)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 and \$265,000,000 is additional new budget authority specified for purposes of section 251(b)(2)(E) of such Act.<sup>35</sup>

The adjustment for reemployment services and eligibility assessments for FY2025 is capped at \$0.271 billion in “additional new budget authority” exceeding \$0.117 billion.<sup>36</sup>

## **Changes in Concepts and Definitions**

Section 251(b)(1) of BBEDCA allows for adjustments to the discretionary spending limits to address changes in concepts and definitions.<sup>37</sup> The law requires that OMB calculate such adjustments when the President submits the budget request for the upcoming fiscal year and that

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<sup>30</sup> Division D of P.L. 118-47, p. 205.

<sup>31</sup> 2 U.S.C. §901(b)(2)(C)(i)(XII).

<sup>32</sup> 2 U.S.C. §901(b)(2)(E).

<sup>33</sup> Title 2, Section 901(b)(2)(E), defines *additional new budget authority* as “the amount provided for a fiscal year, in excess of \$117,000,000, in an appropriation Act and specified to pay for grants to States under Section 306 of the Social Security Act.”

<sup>34</sup> 2 U.S.C. §901(b)(2)(E)(i)(V).

<sup>35</sup> Division D of P.L. 118-47, pp. 174-175.

<sup>36</sup> 2 U.S.C. §901(b)(2)(E)(i)(VI).

<sup>37</sup> 2 U.S.C. §901(a)(7)(A).

such adjustments may be made only after consultation with the House and Senate Appropriations Committees and the House and Senate Budget Committees. Further, such committee consultation must include written communication that affords the committees an opportunity to comment before official action is taken.

The law states that adjustments to discretionary spending limits for changes in concepts and definitions “shall equal the baseline levels of new budget authority and outlays using up-to-date concepts and definitions, minus those levels using the concepts and definitions in effect before such changes.”

No proposed or actual adjustments to the caps for changes in concepts in definitions were indicated in any of OMB’s sequestration reports for FY2024.<sup>38</sup> Likewise, neither OMB’s sequestration preview report for FY2025 nor its sequestration update report for FY2025 indicate any proposed or actual adjustments to the statutory spending caps resulting from changes in concepts and definitions.<sup>39</sup>

## **Technical Adjustment (Allowance) for Estimating Differences**

Under the law, the Congressional Budget Office (CBO) is required to provide OMB with estimates of newly enacted discretionary budget authority and outlays “as soon as practicable” after Congress completes action on any discretionary appropriation.<sup>40</sup> OMB is then required to submit a report to Congress containing both CBO and OMB estimates of new discretionary budget authority provided by the legislation and an explanation of any differences between the two estimates.<sup>41</sup>

It is common for Congress to include a provision in an annual appropriations act that allows for an adjustment to the discretionary spending limits in the event they would be breached as a result of estimating differences between CBO and OMB. In recent practice, this provision has been included in the Financial Services and General Government Appropriations Act.<sup>42</sup> For example, this act for FY2024 included the following language:

If, for fiscal year 2024, new budget authority provided in appropriations Acts exceeds the discretionary spending limit for any category set forth in section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 due to estimating differences with the Congressional Budget Office, an adjustment to the discretionary spending limit in such category for fiscal year 2024 shall be made by the Director of the Office of Management and Budget in the amount of the excess but the total of all such adjustments shall not exceed

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<sup>38</sup> OMB, “OMB Sequestration Update Report for Fiscal Year 2024”; and OMB, “OMB Final Sequestration Report for Fiscal Year 2024.”

<sup>39</sup> OMB, “OMB Sequestration Preview Report to the President and Congress for Fiscal Year 2025,” March 11, 2024, [https://bidenwhitehouse.archives.gov/wp-content/uploads/2024/03/President\\_Sequestration\\_Preview\\_March\\_2024.pdf](https://bidenwhitehouse.archives.gov/wp-content/uploads/2024/03/President_Sequestration_Preview_March_2024.pdf); and OMB, “OMB Sequestration Update Report for Fiscal Year 2025.”

<sup>40</sup> 2 U.S.C. §901(b)(1).

<sup>41</sup> 2 U.S.C. §901(a)(7)(B). OMB refers to these reports as “Seven-Day-After” reports due to the requirement that it submit the reports to Congress within seven calendar days of enactment (excluding weekends and holidays). OMB’s “Seven-Day-After” reports can be found on their website at <https://www.whitehouse.gov/omb/legislative/budget-enforcement-act-7-day-reports/>.

<sup>42</sup> Such provisions were included in the Financial Services and General Government appropriations acts for FY2018 (Division E of P.L. 115-141), FY2019 (Division G of P.L. 116-6), FY2020 (Division C of P.L. 116-93), FY2021 (Division E of P.L. 116-260), and FY2024 (Division B of P.L. 118-47).



0.2 percent of the sum of the adjusted discretionary spending limits for all categories for that fiscal year.<sup>43</sup>

OMB's final sequestration report for FY2024 indicates that no adjustments were made to the limits for FY2024 due to estimating differences between OMB and CBO:

For 2024, OMB finds there is no breach of either the defense or non-defense caps due to estimating differences with CBO and no adjustment pursuant to this provision is made to the caps at this time.<sup>44</sup>

## Other Spending Not Subject to Discretionary Spending Limits Under the FRA

In addition to the allowable adjustments to the spending caps outlined above, Congress has established that discretionary amounts provided in several recently enacted laws will also be exempt from the discretionary spending limits under the FRA. Unlike the adjustments described above, which provide for upward adjustments to the caps, discretionary spending for the purposes outlined in this section are not counted toward the discretionary spending limits. As a result, OMB displays amounts provided for these purposes separately in its sequestration reports:

The appropriations summarized here are exempted from counting for purposes of statutory budget enforcement pursuant to legislative language enacted in authorizing Acts. Therefore, they are presented separately and are not included in the totals.<sup>45</sup>

### 21<sup>st</sup> Century Cures Act

Title I in Division A of the 21<sup>st</sup> Century Cures Act (P.L. 114-255), enacted in December 2016, authorized appropriations for programs and activities related to health care, research, and opioid abuse.<sup>46</sup> The act, in part, established certain accounts that receive special budgetary treatment that effectively exempts them from congressional and statutory budget enforcement rules. Funds appropriated to two such accounts—the National Institutes of Health (NIH) Innovation Account and the Food and Drug Administration (FDA) Innovation Account—maintain this special budgetary treatment for FY2024 and FY2025, respectively, and are therefore effectively exempt from the spending limits established in the FRA.

The act transferred funds from the general fund of the Treasury to these accounts and authorized those funds to be appropriated at specified dollar amounts for specified fiscal years.<sup>47</sup> The funds transferred to these accounts from the general fund are not available for obligation until they are appropriated in appropriations acts for each fiscal year. The act further established that when appropriations are enacted for these accounts—up to the amount authorized for each fiscal year—those appropriations are to be subtracted from any cost estimate provided for the purpose of

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<sup>43</sup> Section 753 of Division B of P.L. 118-47.

<sup>44</sup> OMB, "OMB Final Sequestration Report for Fiscal Year 2024," p. 6.

<sup>45</sup> OMB, "OMB Sequestration Update Report for Fiscal Year 2025," p. 7.

<sup>46</sup> For more information on the 21<sup>st</sup> Century Cures Act and the accounts described in this section, see CRS Report R44720, *The 21st Century Cures Act (Division A of P.L. 114-255)*, coordinated by Amanda K. Sarata.

<sup>47</sup> The act also created a third account with the same funding structure—the Account for the State Response to the Opioid Crisis—but provided for appropriations to this account only for FY2017 and FY2018.



enforcing discretionary spending limits.<sup>48</sup> This effectively exempts any appropriations to these accounts for FY2024 and FY2025 from the spending caps under the FRA.

The act establishes the amounts to be transferred from the general fund to these accounts for specified fiscal years, which in turn represent the maximum allowable amounts to be exempt from the caps. Amounts specified for the NIH Innovation Account and FDA Innovation Account for FY2024 and FY2025 are shown in **Table 3**.<sup>49</sup>

**Table 3. 21<sup>st</sup> Century Cures Act Spending Not Subject to the Limits**

In Billions of Dollars

Fiscal Year	Allowable Amount
<b>NIH Innovation Account (§1001)</b>	
2024	\$0.407
2025	\$0.127
<b>FDA Innovation Account (§1002)</b>	
2024	\$0.050
2025	\$0.055

**Source:** Section 1001 and Section 1002 of the 21<sup>st</sup> Century Cures Act (P.L. 114-255).

In its final sequestration report for FY2024, OMB estimated that a total of \$0.457 billion was appropriated for these purposes for FY2024.<sup>50</sup> As required by law, these amounts were not counted for the purposes of enforcing the caps. In its sequestration update report for FY2025, OMB anticipated that \$0.182 billion will be appropriated for these purposes for FY2025.<sup>51</sup>

## Harbor Maintenance Trust Fund

The Water Resources Development Act of 2020 (Division AA of P.L. 116-260) established that certain amounts appropriated to the U.S. Army Corps of Engineers will receive special budgetary treatment that effectively exempts them from the discretionary spending limits. Specifically, it establishes that amounts appropriated to the Corps, up to a certain amount for specified fiscal years, that are either (1) derived from the Harbor Maintenance Trust Fund or (2) for the Operations and Maintenance account—which is designated in statute to carry out certain activities related to donor ports and energy transfer ports<sup>52</sup>—will be subtracted from any estimate

<sup>48</sup> Sections 1001(b)(3)(B) (for the NIH Innovation Account) and 1002(b)(3)(b) (for the FDA Innovation Fund), respectively, state that amounts appropriated to these accounts “shall be subtracted from the estimate of discretionary budget authority and the resulting outlays for any estimate under the Congressional Budget and Impoundment Control Act of 1974 or the Balanced Budget and Emergency Deficit Control Act of 1985, and the amount transferred to the Account shall be reduced by the same amount.”

<sup>49</sup> The act specifies amounts for the NIH Innovation Account for FY2017-FY2026 and for the FDA Innovation Account for FY2017-FY2025.

<sup>50</sup> OMB, “OMB Final Sequestration Report for Fiscal Year 2024,” p. 7.

<sup>51</sup> OMB, “OMB Sequestration Update Report for Fiscal Year 2025,” p. 7.

<sup>52</sup> Specifically, amounts appropriated to the Operations and Maintenance Account of the Corps of Engineers, which is designated in statute as being to carry out subsection (c) of Section 2106 of the Water Resources Reform and Development Act of 2014 (P.L. 113-121; 33 U.S.C. §2238c).

used for enforcing congressional and statutory budget rules.<sup>53</sup> This, in effect, exempts such appropriations from the discretionary spending limits for FY2024 and FY2025 established in the FRA.

The act establishes that amounts effectively exempt from budget enforcement are limited to the sum of (1) the total amount deposited in the Harbor Maintenance Trust Fund in the fiscal year that is two years prior to the fiscal year for which the appropriation is being made and (2) the amounts specified in **Table 5** for FY2024 and FY2025.<sup>54</sup>

**Table 4. Harbor Maintenance Trust Fund Spending Not Subject to the Limits**

In Billions of Dollars

Fiscal Year	Allowable Amount
<b>Funds Derived from the Harbor Maintenance Trust Fund</b>	
2024	\$0.800
2025	\$0.900
<b>Funds to Carry Out Subsection (c) of Section 2106 of P.L. 113-121</b>	
2024	\$0.058
2025	\$0.060

**Source:** Section 101 of the Water Resources Development Act of 2020 (Division AA of P.L. 116-260).

In its final sequestration report for FY2024, OMB estimated that a total of \$2.83 billion was appropriated for these purposes for FY2024.<sup>55</sup> As required by law, these amounts were not counted toward the caps. In its sequestration update report for FY2025, OMB anticipated that \$3.15 billion will be appropriated for these purposes for FY2025.<sup>56</sup>

## Certain Funds Designated as an Emergency Requirement in Previously Enacted Laws

Section 103 of the FRA establishes that certain funds designated as an emergency requirement in several laws enacted in recent years shall not be counted toward the discretionary spending limits for FY2024 and FY2025. Specifically, this includes funds designated as an emergency requirement:

- provided in Division B of the Bipartisan Safer Communities Act (P.L. 117-159);
- provided in Division J of the Infrastructure Investment and Jobs Act (P.L. 117-58); and
- available to the Hazardous Substance Superfund pursuant to Section 443(b) in Division G of the Consolidated Appropriations Act, 2023 (P.L. 117-328).

<sup>53</sup> Section 101 of the act states that such amounts “shall be subtracted from the estimate of discretionary budget authority and outlays for any estimate of an appropriations Act under the Congressional Budget and Impoundment Control Act of 1974 or the Balanced Budget and Emergency Deficit Control Act of 1985.”

<sup>54</sup> The act specifies amounts for each fiscal year from FY2021 through FY2030.

<sup>55</sup> OMB, “OMB Final Sequestration Report for Fiscal Year 2024,” p. 7.

<sup>56</sup> OMB, “OMB Sequestration Update Report for Fiscal Year 2025,” p. 7.

**Table 5** shows OMB estimates of enacted discretionary budget authority made available for these purposes in FY2024, as well as estimates of anticipated discretionary budget authority for these purposes to be made available in FY2025. As required by Section 103 of the FRA, these amounts are not counted toward the discretionary spending limits for FY2024 and FY2025 and are displayed separately in OMB's sequestration reports.

**Table 5. Emergency-Designated Funds in Previously Enacted Law Not Subject to the Limits**

In Billions of Dollars	
Fiscal Year	Estimated Amounts
<b>Bipartisan Safer Communities Act</b>	
2024	\$0.695
2025	\$0.695
<b>Infrastructure Investment and Jobs Act</b>	
2024	\$66.931
2025	\$66.135
<b>Hazardous Substance Superfund</b>	
2024	\$2.544
2025	\$2.174

**Source:** FY2024 estimates are from OMB, "OMB Final Sequestration Report for Fiscal Year 2024," p. 7. FY2025 estimates are from OMB, "OMB Sequestration Update Report to the President and Congress for Fiscal Year 2025," p. 7.

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