

FULL UTILIZATION OF THE HARBOR MAINTENANCE
TRUST FUND ACT

JULY 2, 2019.—Committed to the Committee of the Whole House on the state of the
Union and ordered to be printed

Mr. DEFAZIO, from the Committee on Transportation and
Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 2440]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom
was referred the bill (H.R. 2440) to provide for the use of funds in
the Harbor Maintenance Trust Fund for the purposes for which the
funds were collected and to ensure that funds credited to the Har-
bor Maintenance Trust Fund are used to support navigation, and
for other purposes, having considered the same, report favorably
thereon without amendment and recommend that the bill do pass.

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PURPOSE OF LEGISLATION

The purpose of H.R. 2440 is to ensure revenues deposited by shippers into the Harbor Maintenance Trust Fund (HMTF) are fully used for the Congressionally-intended purpose of maintaining federally authorized harbors.

BACKGROUND AND NEED FOR LEGISLATION

The Role of Harbors and Harbor Maintenance Needs

According to the Congressional Research Service, oceangoing vessels carry more merchandise trade (measured in tons) to and from the United States than all other modes combined (air, trucks, rail, and pipelines).¹ This accounts for 80 percent of the total merchandise trade volume in the Nation. The dependence of trade on ports and shipping channels makes the operation and maintenance of these facilities crucial to the U.S. economy.

Congress provided authority to the U.S. Army Corps of Engineers (Corps) for the construction and maintenance of the nation's approximately 1,067 Federal harbors and shipping channels. These ports and harbors are categorized as high use, moderate, and emerging, and defined by statute (Section 210 of the Water Resources Development Act of 1986; 33 U.S.C. 2238) based on how much tonnage is transited through individual ports.

According to the Corps, navigation channels at our Nation's 59 "high use" ports are at their authorized depths less than 35 percent of the time. A "high use" port is a port that handles more than 10 million tons of freight per year. The conditions of midsize or "moderate" harbors (ports that handle between one million and 10 million tons of cargo) and "emerging" harbors (ports that handle one million tons or less of cargo annually) are far worse. The dredging needs of our ports will only continue to grow unless more resources are devoted to maintenance dredging needs. The opening of the expanded Panama Canal in June 2016 has already increased demand for larger container ships to call on our Nation's ports.

In 2016, the Corps estimated the total cost to dredge and maintain authorized widths and depths of all Federal navigation projects is \$20.5 billion over the next decade. This estimate includes:

- \$11.5 billion—to achieve authorized dimensions in the next five years (\$2.3 billion annually); and
- \$9.0 billion—to maintain authorized dimensions for an additional five years (\$1.8 billion annually).

Moreover, total navigation needs are likely higher. The Corps' \$20.5 billion estimate includes additional expenses related to navigation (e.g., construction of dredged material placement facilities). However, this estimate does not likely include all necessary jetty and breakwater work² or other needs identified by ports to maintain and expand harbor use nationwide.

¹See CRS Report R43222, "Harbor Maintenance Finance and Funding," John Frittelli, September 12, 2013.

²See Testimony of Kristin Meira, Executive Director, Pacific Northwest Waterways Association (PNWA) before the Committee on Transportation and Infrastructure, Hearing on "The Cost of Doing Nothing: Why Investing in our Nation's Infrastructure Cannot Wait," February 7, 2019.

The Harbor Maintenance Tax and Trust Fund

In 1986, Congress enacted the Harbor Maintenance Tax (HMT) to recover the operation and maintenance dredging costs for commercial ports from maritime shippers. The HMT is directly levied on importers and domestic shippers using coastal or inland ports as a 0.125 percent ad valorem tax on the value of imported cargo (e.g., \$1.25 per \$1,000 value)³ and is typically passed along to U.S. taxpayers on the purchase of imported goods or services. These revenues are deposited into the HMTF within the U.S. Treasury, from which Congress currently appropriates funds to the Corps for harbor maintenance dredging.

As noted below in Table 1, the HMTF has collected far more revenues from shippers than Congress has appropriated to the Corps to maintain our Nation’s harbors. Approximately \$9.3 billion in already collected revenues sits unused for its intended purpose in the U.S. Treasury. As a result, while shippers continue to pay into the HMTF for promised maintenance activities, the Federal Government has not carried out many of them.

TABLE 1: COLLECTIONS TO AND APPROPRIATIONS FROM THE HARBOR MAINTENANCE TRUST FUND (IN BILLIONS)—FISCAL YEARS 2015–2020⁴

	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
HMT Collections ⁵	\$1.51	\$1.38	\$1.47	\$1.65	\$1.78	\$1.91
HMT Appropriations ⁶	\$1.05	\$1.16	\$1.23	\$1.34	\$1.49	–
Est. EOY Balance in the HMTF	\$8.68	\$8.78	\$9.10	\$9.33	\$9.50	–

The funds sitting unused in the HMTF would be sufficient to meet the maintenance dredging needs of all Federally-authorized ports. The Water Resources Reform and Development Act of 2014 (WRRDA; P.L. 113–121) created discretionary appropriations targets for expenditures from the Trust Fund, increasing each year, so that by fiscal year 2025 and beyond, 100 percent of the funds collected for harbor maintenance purposes go towards required operation and maintenance activities.

The Committee, on a bipartisan basis, has twice approved legislation⁷ to fully utilize HMT collections for the intended purpose of maintenance dredging; yet this provision has yet to be enacted into law. Enactment of such a provision honors our Nation’s long-term commitment to U.S. shippers and taxpayers for harbor maintenance dredging, maintains and improves the competitiveness of U.S. businesses and industry, and creates and sustains thousands

³The Harbor Maintenance Tax initially applied to both imported and exported goods; however, in 1998, the U.S. Supreme Court unanimously held that imposition of the tax on exported goods was a violation of the U.S. Constitution. See *United States v. U.S. Shoe Corp.*, 523 U.S. 360 (1998).

⁴Levels obtained from Budget Message of the President, Appendixes (fiscal years 2015–2020).

⁵HMT collections reflects the 0.125% HMT and the HMTF’s earnings on investments.

⁶HMT Appropriations reflects the amounts appropriated for the operations and maintenance costs of U.S. commercial navigation harbors and the amounts appropriated for the operations and maintenance costs of the Saint Lawrence Seaway that are operated and maintained by the Saint Lawrence Seaway Corporation. The number does not include any HMT appropriations for activities on Mississippi Rivers and Tributaries projects or construction related activities currently eligible from the HMT (e.g., construction of dredged material disposal facilities that are necessary for the operation and maintenance of any harbor or inland harbor).

⁷Section 108 of H.R. 5303, the Water Resources Development Act of 2016 (As Reported to the House, 114th Congress), and Section 102 of H.R. 8, the Water Resources Development Act of 2018 (As Reported to the House, 115th Congress).

of additional construction jobs and jobs dependent on a vibrant and efficient marine transportation system.

THE FULL UTILIZATION OF THE HARBOR MAINTENANCE TRUST FUND
ACT

H.R. 2440, introduced by Chairman Peter DeFazio, Ranking Member Sam Graves, Subcommittee Chairwoman Grace F. Napolitano, Subcommittee Ranking Member Bruce Westerman, and Representative Mike Kelly, creates a discretionary cap adjustment for the full utilization of the HMTF. This change would enable the investment of approximately \$34 billion over the next decade from the HMTF for the intended purpose of maintaining Federally-authorized harbors. This will allow the Corps to dredge all Federal harbors to their constructed widths and depths.

HEARINGS

For the purposes of section 103(i) of H. Res. 6, 116th Cong. (2019)—

(1) The following hearing was used to develop or consider H.R. 2440:

The Subcommittee on Water Resources and Environment held a hearing on April 10, 2019, entitled, “The Cost of Doing Nothing: Why Full Utilization of the Harbor Maintenance Trust Fund and Investment in our Nation’s Waterways Matter.” The Subcommittee received testimony from Mr. Rick Goche, Commissioner, Port of Bandon, Oregon; Mr. Eugene Seroka, Executive Director, Port of Los Angeles, California; and Ms. Bonnie Brady, Executive Director, Long Island Commercial Fishing Association, Montauk, New York. Topics discussed included the key role that ports and harbors play in our communities and their economies, the fact that the maintenance dredging needs of many ports and harbors are routinely underfunded, and the importance of full utilization of existing collections to the Harbor Maintenance Trust Fund to addressing these unmet needs.

(2) The following related hearing was held:

The Committee on Transportation and Infrastructure held a hearing on February 7, 2019, entitled, “The Cost of Doing Nothing: Why Investing in our Nation’s Infrastructure Cannot Wait.” The Committee received testimony from the following witnesses: The Honorable Tim Walz, Governor, State of Minnesota; the Honorable Eric Garcetti, Mayor, City of Los Angeles, California; the Honorable Ray LaHood, Former Secretary, U.S. Department of Transportation; Mr. Richard Anderson, President and Chief Executive Officer (CEO), Amtrak; the Honorable Eric K. Fanning, President and CEO, Aerospace Industries Association; Mr. Larry Krauter, CEO, Spokane (WA) International Airport; Ms. Angela Lee, Director, Charlotte (NC) Water; Mr. Rich McArdle, President, UPS Freight; Ms. Kristin Meira, Executive Director, Pacific Northwest Waterways Association (PNWA); and Mr. Larry Willis, President, Transportation Trades Department, AFL–CIO. Topics discussed included how U.S. ports and harbors are the economic drivers for local communities, states, regions, and the Nation, and how

seaports support millions of American jobs and generate billions in annual Federal, state, and local taxes.

LEGISLATIVE HISTORY AND CONSIDERATION

H.R. 2440 was introduced in the House on May 1, 2019, by Mr. DeFazio, Mr. Graves of Missouri, Mrs. Napolitano, Mr. Westerman, and Mr. Kelly of Pennsylvania, and referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on the Budget. Within the Committee, H.R. 2440 was referred to the Subcommittee on Water Resources and Environment.

On May 8, 2019, the Subcommittee on Water Resources and Environment was discharged from further consideration of H.R. 2440.

The Full Committee met in open session to consider H.R. 2440 on May 8, 2019, and ordered the measure to be reported favorably to the House, without amendment, by voice vote, with a quorum present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

There were no recorded votes taken in connection with consideration of H.R. 2440.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 2440 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 28, 2019.

Hon. PETER A. DEFAZIO,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2440, the Full Utilization of the Harbor Maintenance Trust Fund Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2440, FULL UTILIZATION OF THE HARBOR MAINTENANCE TRUST FUND ACT

As ordered reported by the House Committee on Transportation and Infrastructure on May 8, 2019

	By Fiscal Year, Millions of Dollars—		
	2019	2019–2024	2019–2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	0

Pay-as-you-go procedures apply? No
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030? No
Mandate Effects:
Contains intergovernmental mandate? No
Contains private-sector mandate? No

H.R. 2440 would amend the Balanced Budget and Emergency Deficit Control Act (BBEDCA) to authorize additional adjustments to the discretionary spending limits established in that act. Specifically, the bill would require an upward adjustment to the caps on appropriations by any amount appropriated from the Harbor Maintenance Trust Fund (HMTF) to operate and maintain commercial harbors of the United States.

Over the past 10 years, deposits into the HMTF from tax revenues and interest credited to the fund averaged \$1.5 billion each year. Amounts appropriated from the fund averaged \$1 billion each year. Current law authorizes the appropriation of whatever amounts are necessary from the fund. The HMTF currently has a \$9 billion unappropriated balance.

Most discretionary funding is limited by caps on annual appropriations originally specified in BBEDCA and modified by subsequent legislation. Those caps expire at the end of 2021. Because the caps would be adjusted upward by the amount appropriated from the HMTF, implementing the bill could lead to increased spending without reducing spending on other programs. If, under current law, future appropriation acts adhere to the existing caps, adjusting those caps could lead to more discretionary appropriations than would otherwise occur. For example, if H.R. 2440 were enacted and the Congress subsequently enacted appropriation bills that otherwise were equal to the new caps—including appropriations from the HMTF—then in 2020 and 2021 up to \$10 billion more could be appropriated from the HMTF for that period without exceeding

those caps. But CBO has no basis for predicting the total budget authority that will be provided in future appropriation acts.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to provide for the full utilization of the HMTF for harbor maintenance dredging.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 2440 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee finds that H.R. 2440 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Sec. 1. Short title

This section provides that this bill may be cited as the “Full Utilization of the Harbor Maintenance Trust Fund Act.”

Sec. 2. Use of Harbor Maintenance Trust Fund to support navigation

This section amends section 210 of the Water Resources Development Act of 1986 (33 U.S.C. 2238) to provide a funding mechanism for authorized expenditures from the Harbor Maintenance Trust Fund in accordance with the changes to the Balanced Budget and Emergency Deficit Control Act of 1985 made by this legislation.

Sec. 3. Annual report to Congress

This section amends section 330 of the Water Resources Development Act of 1992 (26 U.S.C. 9505 note; 106 Stat. 4851) to ensure that the annual report to Congress on Harbor Maintenance Trust Fund Deposits and Expenditures is submitted concurrently with the President’s annual budget request to Congress.

Sec. 4. Harbor Maintenance Trust Fund discretionary spending limit adjustment

This section amends section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 to provide a discretionary cap adjustment for appropriations from the Harbor Maintenance Trust Fund up to the total amount in the Fund on the last day of the fiscal year that is two years prior to that fiscal year.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

WATER RESOURCES DEVELOPMENT ACT OF 1986

* * * * *

TITLE II—HARBOR DEVELOPMENT

* * * * *

SEC. 210. [AUTHORIZATION OF APPROPRIATIONS] FUNDING FOR NAVIGATION.

(a) **TRUST FUND.**—There are authorized to be appropriated out of the Harbor Maintenance Trust Fund, established by section 9505 of the Internal Revenue Code of 1954, for each fiscal year such sums as may be necessary to pay—

(1) 100 percent of the eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation for such fiscal year; and

(2) up to 100 percent of the eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States.

(b) **GENERAL FUND.**—There are authorized to be appropriated out of the general fund of the Treasury of the United States for each fiscal year such sums as may be necessary to pay the balance of all eligible operations and maintenance costs not provided by payments from the Harbor Maintenance Trust Fund under this section.

(c) **OPERATION AND MAINTENANCE OF HARBOR PROJECTS.**—

(1) **IN GENERAL.**—To the maximum extent practicable, the Secretary shall make expenditures to pay for operation and maintenance costs of the harbors and inland harbors referred to in subsection (a)(2), including expenditures of funds appropriated from the Harbor Maintenance Trust Fund, based on an equitable allocation of funds among all such harbors and inland harbors.

(2) **CRITERIA.**—

(A) **IN GENERAL.**—In determining an equitable allocation of funds under paragraph (1), the Secretary shall—

(i) consider the information obtained in the assessment conducted under subsection (e);

(ii) consider the national and regional significance of harbor operations and maintenance; and

(iii) as appropriate, consider national security and military readiness needs.

(B) **LIMITATION.**—The Secretary shall not allocate funds under paragraph (1) based solely on the tonnage transiting through a harbor.

(3) **EMERGING HARBOR PROJECTS.**—Notwithstanding any other provision of this subsection, in making expenditures under paragraph (1) for each fiscal year, the Secretary shall allocate for operation and maintenance costs of emerging harbor projects an amount that is not less than 10 percent of the funds made available under this section for fiscal year 2012 to pay the costs described in subsection (a)(2).

(4) **MANAGEMENT OF GREAT LAKES NAVIGATION SYSTEM.**—To sustain effective and efficient operation and maintenance of the Great Lakes Navigation System, including any navigation feature in the Great Lakes that is a Federal responsibility with respect to operation and maintenance, the Secretary shall manage all of the individually authorized projects in the Great Lakes Navigation System as components of a single, comprehensive system, recognizing the interdependence of the projects.

(d) PRIORITIZATION.—

(1) PRIORITY.—

(A) IN GENERAL.—For each fiscal year, if priority funds are available, the Secretary shall use at least 10 percent of such funds for emerging harbor projects.

(B) ADDITIONAL CONSIDERATIONS.—For each fiscal year, of the priority funds available, the Secretary shall use—

(i) not less than 5 percent of such funds for underserved harbor projects; and

(ii) not less than 10 percent of such funds for projects that are located within the Great Lakes Navigation System.

(C) UNDERSERVED HARBORS.—In determining which underserved harbor projects shall receive funds under this paragraph, the Secretary shall consider—

(i) the total quantity of commerce supported by the water body on which the project is located; and

(ii) the minimum width and depth that—

(I) would be necessary at the underserved harbor project to provide sufficient clearance for fully loaded commercial vessels using the underserved harbor project to maneuver safely; and

(II) does not exceed the constructed width and depth of the authorized navigation project.

(2) EXPANDED USES.—

(A) DEFINITION OF ELIGIBLE HARBOR OR INLAND HARBOR DEFINED.—In this paragraph, the term “eligible harbor or inland harbor” means a harbor or inland harbor at which the total amount of harbor maintenance taxes collected in the immediately preceding 3 fiscal years exceeds the value of the work carried out for the harbor or inland harbor using amounts from the Harbor Maintenance Trust Fund during those 3 fiscal years.

(B) USE OF EXPANDED USES FUNDS.—

(i) FISCAL YEARS 2015 THROUGH 2024.—For each of fiscal years 2015 through 2024, of the priority funds available, the Secretary shall use not less than 10 percent of such funds for expanded uses carried out at an eligible harbor or inland harbor.

(ii) SUBSEQUENT FISCAL YEARS.—For fiscal year 2025 and each fiscal year thereafter, the Secretary shall use not less than 10 percent of the priority funds available for expanded uses carried out at an eligible harbor or inland harbor.

(C) PRIORITIZATION.—In allocating funds under this paragraph, the Secretary shall give priority to projects at eligible harbors or inland harbors for which the difference, calculated in dollars, is greatest between—

(i) the total amount of funding made available for projects at that eligible harbor or inland harbor from the Harbor Maintenance Trust Fund in the immediately preceding 3 fiscal years; and

(ii) the total amount of harbor maintenance taxes collected at that harbor or inland harbor in the immediately preceding 3 fiscal years.

(3) REMAINING FUNDS.—

(A) IN GENERAL.—For each of fiscal years 2015 through 2024, if after fully funding all projects eligible for funding under paragraphs (1)(B) and (2)(B)(i), priority funds made available under those paragraphs remain unobligated, the Secretary shall use those remaining funds to pay for operation and maintenance costs of any harbor or inland harbor referred to in subsection (a)(2) based on an equitable allocation of those funds among the harbors and inland harbors.

(B) CRITERIA.—In determining an equitable allocation of funds under subparagraph (A), the Secretary shall—

- (i) use the criteria specified in subsection (c)(2)(A); and
- (ii) make amounts available in accordance with the requirements of paragraph (1)(A).

(4) EMERGENCY EXPENDITURES.—Nothing in this subsection prohibits the Secretary from making an expenditure to pay for the operation and maintenance costs of a specific harbor or inland harbor, including the transfer of funding from the operation and maintenance of a separate project, if—

(A) the Secretary determines that the action is necessary to address the navigation needs of a harbor or inland harbor where safe navigation has been severely restricted due to an unforeseen event; and

(B) the Secretary provides within 90 days of the action notice and information on the need for the action to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

(e) ASSESSMENT OF HARBORS AND INLAND HARBORS.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, and biennially thereafter, the Secretary shall assess, and issue a report to Congress on, the operation and maintenance needs and uses of the harbors and inland harbors referred to in subsection (a)(2).

(2) ASSESSMENT OF HARBOR NEEDS AND ACTIVITIES.—

(A) TOTAL OPERATION AND MAINTENANCE NEEDS OF HARBORS.—In carrying out paragraph (1), the Secretary shall identify—

- (i) the total future costs required to achieve and maintain the constructed width and depth for the harbors and inland harbors referred to in subsection (a)(2); and
- (ii) the total expected costs for expanded uses at eligible harbors or inland harbors referred to in subsection (d)(2).

(B) USES OF HARBORS AND INLAND HARBORS.—In carrying out paragraph (1), the Secretary shall identify current uses (and, to the extent practicable, assess the national, regional, and local benefits of such uses) of harbors and inland harbors referred to in subsection (a)(2), including the use of those harbors for—

- (i) commercial navigation, including the movement of goods;
- (ii) domestic trade;
- (iii) international trade;
- (iv) commercial fishing;
- (v) subsistence, including use by Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) for subsistence and ceremonial purposes;
- (vi) use as a harbor of refuge;
- (vii) transportation of persons;
- (viii) purposes relating to domestic energy production, including the fabrication, servicing, or supply of domestic offshore energy production facilities;
- (ix) activities of the Secretary of the department in which the Coast Guard is operating;
- (x) activities of the Secretary of the Navy;
- (xi) public health and safety related equipment for responding to coastal and inland emergencies;
- (xii) recreation purposes; and
- (xiii) other authorized purposes.

(C) OPPORTUNITIES FOR BENEFICIAL USE OF DREDGED MATERIALS.—In carrying out paragraph (1), the Secretary shall identify potential opportunities for the beneficial use of dredged materials obtained from harbors and inland harbors referred to in subsection (a)(2), including projects eligible under section 1122 of the Water Resources Development Act of 2016 (130 Stat. 1645; 33 U.S.C. 2326 note).

(3) REPORT TO CONGRESS.—

(A) IN GENERAL.—For fiscal year 2016, and biennially thereafter, in conjunction with the President's annual budget submission to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives a report that, with respect to harbors and inland harbors referred to in subsection (a)(2)—

- (i) identifies the operation and maintenance costs associated with the harbors and inland harbors, including those costs required to achieve and maintain the constructed width and depth for the harbors and inland harbors and the costs for expanded uses at eligible harbors and inland harbors, on a project-by-project basis;
- (ii) identifies the amount of funding requested in the President's budget for the operation and maintenance costs associated with the harbors and inland harbors, on a project-by-project basis;
- (iii) identifies the unmet operation and maintenance needs associated with the harbors and inland harbors, on a project-by-project basis; and
- (iv) identifies the harbors and inland harbors for which the President will allocate funding over the sub-

sequent 5 fiscal years for operation and maintenance activities, on a project-by-project basis, including the amounts to be allocated for such purposes.

(B) **ADDITIONAL REQUIREMENT.**—In the first report submitted under subparagraph (A) following the date of enactment of the Water Resources Development Act of 2016, the Secretary shall identify, to the maximum extent practicable, transportation cost savings realized by achieving and maintaining the constructed width and depth for the harbors and inland harbors referred to in subsection (a)(2), on a project-by-project basis.

(C) **PUBLIC AVAILABILITY.**—The Secretary shall make the report submitted under subparagraph (A) available to the public, including on the Internet.

(f) **DEFINITIONS.**—In this section:

(1) **CONSTRUCTED WIDTH AND DEPTH.**—The term “constructed width and depth” means the width and depth to which a project has been constructed, which may not exceed the authorized width and depth of the project.

(2) **EMERGING HARBOR PROJECT.**—The term “emerging harbor project” means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits less than 1,000,000 tons of cargo annually.

(3) **EXPANDED USES.**—The term “expanded uses” means the following activities:

(A) The maintenance dredging of a berth in a harbor that is accessible to a Federal navigation project and that benefits commercial navigation at the harbor.

(B) The maintenance dredging and disposal of legacy-contaminated sediment, and sediment unsuitable for open water disposal, if—

(i) such dredging and disposal benefits commercial navigation at the harbor; and

(ii) such sediment is located in and affects the maintenance of a Federal navigation project or is located in a berth that is accessible to a Federal navigation project.

(4) **GREAT LAKES NAVIGATION SYSTEM.**—The term “Great Lakes Navigation System” includes—

(A)(i) Lake Superior;

(ii) Lake Huron;

(iii) Lake Michigan;

(iv) Lake Erie; and

(v) Lake Ontario;

(B) all connecting waters between the lakes referred to in subparagraph (A) used for commercial navigation;

(C) any navigation features in the lakes referred to in subparagraph (A) or waters described in subparagraph (B) that are a Federal operation or maintenance responsibility; and

(D) areas of the Saint Lawrence River that are operated or maintained by the Federal Government for commercial navigation.

(5) HARBOR MAINTENANCE TAX.—The term “harbor maintenance tax” means the amounts collected under section 4461 of the Internal Revenue Code of 1986.

(6) HIGH-USE HARBOR PROJECT.—The term “high-use harbor project” means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits not less than 10,000,000 tons of cargo annually.

(7) MODERATE-USE HARBOR PROJECT.—The term “moderate-use harbor project” means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits annually—

- (A) more than 1,000,000 tons of cargo; but
- (B) less than 10,000,000 tons of cargo.

(8) PRIORITY FUNDS.—The term “priority funds” means the difference between—

- (A) the total funds that are made available under this section to pay the costs described in subsection (a)(2) for a fiscal year; and
- (B) the total funds made available under this section to pay the costs described in subsection (a)(2) in fiscal year 2012.

(9) UNDERSERVED HARBOR PROJECT.—

(A) IN GENERAL.—The term “underserved harbor project” means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2)—

- (i) that is a moderate-use harbor project or an emerging harbor project;
- (ii) that has been maintained at less than the constructed width and depth of the project during each of the preceding 6 fiscal years; and
- (iii) for which State and local investments in infrastructure have been made at those projects during the preceding 6 fiscal years.

(B) ADMINISTRATION.—For purposes of this paragraph, State and local investments in infrastructure shall include infrastructure investments made using amounts made available for activities under section 105(a)(9) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(9)).

(g) *ADJUSTMENTS TO DISCRETIONARY SPENDING LIMITS.—Amounts made available from the Harbor Maintenance Trust Fund under this section or section 9505 of the Internal Revenue Code of 1986 shall be made available in accordance with section 251(b)(2)(G) of the Balanced Budget and Emergency Deficit Control Act of 1985.*

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WATER RESOURCES DEVELOPMENT ACT OF 1992

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TITLE III—MISCELLANEOUS PROVISIONS

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SEC. 330. HARBOR MAINTENANCE TRUST FUND DEPOSITS AND EXPENDITURES.

(a) REPORT.—Not later than March 1, 1993, [and annually thereafter,] *and annually thereafter concurrent with the submission of the President's annual budget request to Congress*, the President shall transmit to the Committee on [Public Works and Transportation] *Transportation and Infrastructure* of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on expenditures from and deposits into the Harbor Maintenance Trust Fund.

(b) CONTENTS.—

(1) IN GENERAL.—Each report to be transmitted under subsection (a) shall contain the following:

(A) A description of expenditures made from the trust fund in the previous fiscal year on a project-by-project basis.

(B) A description of deposits made into the trust fund in the previous fiscal year and the sources of such deposits.

(C) A 5-year projection of expenditures from and deposits into the trust fund.

(D) *A description of the expected expenditures from the trust fund to meet the needs of navigation for the fiscal year of the budget request.*

(2) PREVIOUS YEARS INFORMATION.—In addition to information required under paragraph (1), the initial report to be transmitted under subsection (a) shall contain the information described in subparagraphs (A) and (B) of paragraph (1) for fiscal years 1987 through 1992.

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BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

PART C—EMERGENCY POWERS TO ELIMINATE DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT

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SEC. 251. ENFORCING DISCRETIONARY SPENDING LIMITS.

(a) ENFORCEMENT.—

(1) SEQUESTRATION.—Within 15 calendar days after Congress adjourns to end a session there shall be a sequestration to eliminate a budget-year breach, if any, within any category.

(2) ELIMINATING A BREACH.—Each non-exempt account within a category shall be reduced by a dollar amount calculated by multiplying the enacted level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to eliminate a breach within that category.

(3) MILITARY PERSONNEL.—If the President uses the authority to exempt any personnel account from sequestration under

section 255(f), each account within subfunctional category 051 (other than those military personnel accounts for which the authority provided under section 255(f) has been exercised) shall be further reduced by a dollar amount calculated by multiplying the enacted level of non-exempt budgetary resources in that account at that time by the uniform percentage necessary to offset the total dollar amount by which outlays are not reduced in military personnel accounts by reason of the use of such authority.

(4) PART-YEAR APPROPRIATIONS.—If, on the date specified in paragraph (1), there is in effect an Act making or continuing appropriations for part of a fiscal year for any budget account, then the dollar sequestration calculated for that account under paragraphs (2) and (3) shall be subtracted from—

(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

(B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation for that account.

(5) LOOK-BACK.—If, after June 30, an appropriation for the fiscal year in progress is enacted that causes a breach within a category for that year (after taking into account any sequestration of amounts within that category), the discretionary spending limits for that category for the next fiscal year shall be reduced by the amount or amounts of that breach.

(6) WITHIN-SESSION SEQUESTRATION.—If an appropriation for a fiscal year in progress is enacted (after Congress adjourns to end the session for that budget year and before July 1 of that fiscal year) that causes a breach within a category for that year (after taking into account any prior sequestration of amounts within that category), 15 days later there shall be a sequestration to eliminate that breach within that category following the procedures set forth in paragraphs (2) through (4).

(7) ESTIMATES.—

(A) CBO ESTIMATES.—As soon as practicable after Congress completes action on any discretionary appropriation, CBO, after consultation with the Committees on the Budget of the House of Representatives and the Senate, shall provide OMB with an estimate of the amount of discretionary new budget authority and outlays for the current year, if any, and the budget year provided by that legislation.

(B) OMB ESTIMATES AND EXPLANATION OF DIFFERENCES.—Not later than 7 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of enactment of any discretionary appropriation, OMB shall transmit a report to the House of Representatives and to the Senate containing both the CBO and OMB estimates of the amount of discretionary new budget authority for the current year, if any, and the budget year provided by that legislation, and an explanation of any difference between the 2 estimates. If during the preparation of the report OMB determines that there is a significant difference between OMB and CBO, OMB shall consult with the Com-

mittees on the Budget of the House of Representatives and the Senate regarding that difference and that consultation shall include, to the extent practicable, written communication to those committees that affords such committees the opportunity to comment before the issuance of the report.

(C) ASSUMPTIONS AND GUIDELINES.—OMB estimates under this paragraph shall be made using current economic and technical assumptions. OMB shall use the OMB estimates transmitted to the Congress under this paragraph. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeeping guidelines determined after consultation among the Committees on the Budget of the House of Representatives and the Senate, CBO, and OMB.

(D) ANNUAL APPROPRIATIONS.—For purposes of this paragraph, amounts provided by annual appropriations shall include any discretionary appropriations for the current year, if any, and the budget year in accounts for which funding is provided in that legislation that result from previously enacted legislation.

(b) ADJUSTMENTS TO DISCRETIONARY SPENDING LIMITS.—

(1) CONCEPTS AND DEFINITIONS.—When the President submits the budget under section 1105 of title 31, United States Code, OMB shall calculate and the budget shall include adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each outyear to reflect changes in concepts and definitions. Such changes 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. Such changes may only be made after consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate, and that consultation shall include written communication to such committees that affords such committees the opportunity to comment before official action is taken with respect to such changes.

(2) SEQUESTRATION REPORTS.—When OMB submits a sequestration report under section 254(e), (f), or (g) for a fiscal year, OMB shall calculate, and the sequestration report and subsequent budgets submitted by the President under section 1105(a) of title 31, United States Code, shall include adjustments to discretionary spending limits (and those limits as adjusted) for the fiscal year and each succeeding year, as follows:

(A) EMERGENCY APPROPRIATIONS; OVERSEAS CONTINGENCY OPERATIONS/GLOBAL WAR ON TERRORISM.—If, for any fiscal year, appropriations for discretionary accounts are enacted that—

(i) the Congress designates as emergency requirements in statute on an account by account basis and the President subsequently so designates, or

(ii) the Congress designates for Overseas Contingency Operations/Global War on Terrorism in statute on an account by account basis and the President subsequently so designates,

the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements or for Overseas Contingency Operations/Global War on Terrorism, as applicable.

(B) CONTINUING DISABILITY REVIEWS AND REDETERMINATIONS.—(i) If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for continuing disability reviews under titles II and XVI of the Social Security Act, 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, then the adjustments for that fiscal year shall be the additional new budget authority provided in that Act for such expenses for that fiscal year, but shall not exceed—

(I) for fiscal year 2012, \$623,000,000 in additional new budget authority;

(II) for fiscal year 2013, \$751,000,000 in additional new budget authority;

(III) for fiscal year 2014, \$924,000,000 in additional new budget authority;

(IV) for fiscal year 2015, \$1,123,000,000 in additional new budget authority;

(V) for fiscal year 2016, \$1,166,000,000 in additional new budget authority;

(VI) for fiscal year 2017, \$1,546,000,000 in additional new budget authority;

(VII) for fiscal year 2018, \$1,462,000,000 in additional new budget authority;

(VIII) for fiscal year 2019, \$1,410,000,000 in additional new budget authority;

(IX) for fiscal year 2020, \$1,309,000,000 in additional new budget authority; and

(X) for fiscal year 2021, \$1,302,000,000 in additional new budget authority.

(ii) As used in this subparagraph—

(I) the term “continuing disability reviews” means continuing disability reviews under sections 221(i) and 1614(a)(4) 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;

(II) the term “redetermination” means redetermination of eligibility under sections 1611(c)(1) and 1614(a)(3)(H) of the Social Security Act; and

(III) the term “additional new budget authority” means 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 prosecutions under the heading “Lim-

itation on Administrative Expenses” for the Social Security Administration.

(C) HEALTH CARE FRAUD AND ABUSE CONTROL.—(i) If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for the health care fraud abuse control program at the Department of Health and Human Services (75–8393–0–7–571), then the adjustments for that fiscal year shall be the amount of additional new budget authority provided in that Act for such program for that fiscal year, but shall not exceed—

(I) for fiscal year 2012, \$270,000,000 in additional new budget authority;

(II) for fiscal year 2013, \$299,000,000 in additional new budget authority;

(III) for fiscal year 2014, \$329,000,000 in additional new budget authority;

(IV) for fiscal year 2015, \$361,000,000 in additional new budget authority;

(V) for fiscal year 2016, \$395,000,000 in additional new budget authority;

(VI) for fiscal year 2017, \$414,000,000 in additional new budget authority;

(VII) for fiscal year 2018, \$434,000,000 in additional new budget authority;

(VIII) for fiscal year 2019, \$454,000,000 in additional new budget authority;

(IX) for fiscal year 2020, \$475,000,000 in additional new budget authority; and

(X) for fiscal year 2021, \$496,000,000 in additional new budget authority.

(ii) As used in this subparagraph, the term “additional new budget authority” means 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.

(D) DISASTER FUNDING.—

(i) If, for fiscal years 2012 through 2021, appropriations for discretionary accounts are enacted that Congress designates as being for disaster relief in statute, the adjustment for a fiscal year shall be the total of such appropriations for the fiscal year in discretionary accounts designated as being for disaster relief, but not to exceed the total of—

(I) the average over the previous 10 years (excluding the highest and lowest years) of the sum of the funding provided for disaster relief (as that term is defined on the date immediately before the date of enactment of the Wildfire Suppression Funding and Forest Management Activities Act);

(II) notwithstanding clause (iv), starting in fiscal year 2018, five percent of the total appropriations provided after fiscal year 2011 or in the previous 10 years, whichever is less, net of any rescissions of budget authority enacted in the same period, with respect to amounts provided for major

disasters declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and designated by the Congress and the President as an emergency pursuant to subparagraph (A)(i) of this paragraph; and

(III) the cumulative net total of the unused carryover for fiscal year 2018 and all subsequent fiscal years, where the unused carryover for each fiscal year is calculated 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.

(ii) OMB shall report to the Committees on Appropriations and Budget in each House the average calculated pursuant to clause (i)(II), not later than 30 days after the date of enactment of the Wildfire Suppression Funding and Forest Management Activities Act.

(iii) For the purposes of this subparagraph, the term “disaster relief” means activities carried out pursuant to a determination under section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(iv) Appropriations considered disaster relief under this subparagraph in a fiscal year shall not be eligible for adjustments under subparagraph (A) for the fiscal year.

(E) REEMPLOYMENT SERVICES AND ELIGIBILITY ASSESSMENTS.—

(i) **IN GENERAL.**—If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for grants to States under section 306 of the Social Security Act, then the adjustment for that fiscal year shall be the additional new budget authority provided in that Act for such grants for that fiscal year, but shall not exceed—

- (I) for fiscal year 2018, \$0;
- (II) for fiscal year 2019, \$33,000,000;
- (III) for fiscal year 2020, \$58,000,000; and
- (IV) for fiscal year 2021, \$83,000,000.

(ii) **DEFINITION.**—As used in this subparagraph, the term “additional new budget authority” means 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.

(F) WILDFIRE SUPPRESSION.—

(i) **ADDITIONAL NEW BUDGET AUTHORITY.**—If, for fiscal years 2020 through 2027, a bill or joint resolution making appropriations for a fiscal year is enacted that provides an amount for wildfire suppression operations in the Wildland Fire Management accounts at the Department of Agriculture or the Department of the Interior, then the adjustments for that fiscal year

shall be the amount of additional new budget authority provided in that Act for wildfire suppression operations for that fiscal year, but shall not exceed—

- (I) for fiscal year 2020, \$2,250,000,000;
- (II) for fiscal year 2021, \$2,350,000,000;
- (III) for fiscal year 2022, \$2,450,000,000;
- (IV) for fiscal year 2023, \$2,550,000,000;
- (V) for fiscal year 2024, \$2,650,000,000;
- (VI) for fiscal year 2025, \$2,750,000,000;
- (VII) for fiscal year 2026, \$2,850,000,000; and
- (VIII) for fiscal year 2027, \$2,950,000,000.

(ii) DEFINITIONS.—In this subparagraph:

(I) ADDITIONAL NEW BUDGET AUTHORITY.—The term “additional new budget authority” means the amount provided for a fiscal year in an appropriation Act that is in excess of the average costs for wildfire suppression operations as reported in the budget of the President submitted under section 1105(a) of title 31, United States Code, for fiscal year 2015 and are specified to pay for the costs of wildfire suppression operations in an amount not to exceed the amount specified for that fiscal year in clause (i).

(II) WILDFIRE SUPPRESSION OPERATIONS.—The term “wildfire suppression operations” means 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.

(G) HARBOR MAINTENANCE TRUST FUND.—

(i) IN GENERAL.—*If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for harbor maintenance activities, then the adjustments for that fiscal year shall be the total of such amount in that Act for such purpose for that fiscal year, but may not exceed the total amount within the Harbor Maintenance Trust Fund under subsection (a) of section 9505 of the Internal Revenue Code of 1986 on the last day of the fiscal year that is two years prior to that fiscal year.*

(ii) LIMITATION.—*The adjustment under clause (i) with respect to an amount made available for harbor maintenance activities may only be made if such amount—*

(I) is derived solely from funds in such Trust Fund; and

(II) is made available for expenditures described under subsection (c) of such section 9505.

(c) DISCRETIONARY SPENDING LIMIT.—As used in this part, the term “discretionary spending limit” means—

- (1) for fiscal year 2014—
 - (A) for the revised security category, \$520,464,000,000 in new budget authority; and
 - (B) for the revised nonsecurity category, \$491,773,000,000 in new budget authority;
 - (2) for fiscal year 2015—
 - (A) for the revised security category, \$521,272,000,000 in new budget authority; and
 - (B) for the revised nonsecurity category, \$492,356,000,000 in new budget authority;
 - (3) for fiscal year 2016—
 - (A) for the revised security category, \$548,091,000,000 in new budget authority; and
 - (B) for the revised nonsecurity category \$518,491,000,000 in new budget authority;
 - (4) for fiscal year 2017—
 - (A) for the revised security category, \$551,068,000,000 in new budget authority; and
 - (B) for the revised nonsecurity category, \$518,531,000,000 in new budget authority;
 - (5) for fiscal year 2018—
 - (A) for the revised security category, \$629,000,000,000 in new budget authority; and
 - (B) for the revised nonsecurity category \$579,000,000,000 in new budget authority;
 - (6) for fiscal year 2019—
 - (A) for the revised security category, \$647,000,000,000 in new budget authority; and
 - (B) for the revised nonsecurity category, \$597,000,000,000 in new budget authority;
 - (7) for fiscal year 2020—
 - (A) for the revised security category, \$630,000,000,000 in new budget authority; and
 - (B) for the revised nonsecurity category, \$578,000,000,000 in new budget authority; and
 - (8) for fiscal year 2021—
 - (A) for the revised security category, \$644,000,000,000 in new budget authority; and
 - (B) for the revised nonsecurity category, \$590,000,000,000 in new budget authority;
- as adjusted in strict conformance with subsection (b).

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