

MEMORANDUM

TO: Robert M. Gordon, Director, Office of Management and Budget
FROM: Joan Entmacher, Vice President for Family Economic Security,
National Women's Law Center
RE: Exemption of Child Support Enforcement under Sequester
DATE: October 14, 2011

SUMMARY

Child support enforcement (CSE) direct spending is exempt from sequester under the Budget Control Act of 2011, pursuant to the explicit exemption in section 255(h) of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA).¹ Despite this unqualified exemption, questions have been raised about the exempt status of CSE because of the inconsistent provision in section 256(f), which purports to subject CSE to the sequester pursuant to a special rule.² The special rule for CSE was included in the 1985 BBEDCA, which did not exempt CSE from the sequester. Congress explicitly added CSE to the list of exempt low-income programs in 1997—but failed to remove the special rule. The exemption in section 255(h) prevails over the special rule in section 256(f) because under long-standing rules of statutory construction, the more recently enacted of two inconsistent provisions prevails.

ARGUMENT

I. Child support enforcement direct spending is explicitly exempt from sequester under section 255(h) of the BBEDCA.

The Budget Control Act of 2011 (BCA) amends the BBEDCA to require OMB to follow the procedures specified in section 6 of the Statutory Pay-As-You-Go Act of 2010 (PAYGO) and sections 255 and 256 of the BBEDCA when implementing the sequestration of direct spending.³

Section 255(h) of the BBEDCA exempts all CSE direct spending programs from the sequester. It lists fourteen exempt low-income programs, including “family support programs” under budget account number 75-1501-0-1-609.⁴ This budget account includes only, and all of, direct spending CSE programs: matching funds for state child support administrative costs, child support incentive payments, and access and visitation grants.⁵

¹ Balanced Budget and Emergency Deficit Control Act of 1985 § 255(h), 2 U.S.C. § 905(h) (2006).

² *Id.* § 256(f), 2 U.S.C. § 906(f).

³ Budget Control Act of 2011, Pub. L. No. 112-25, § 302(a), 125 Stat. 240, 256 (2011) (to be codified at 2 U.S.C. § 901a).

⁴ *Id.* § 255(h).

⁵ See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT: FISCAL YEAR 2011, at 493 (2010) (listing the three child support enforcement programs under budget account number 75-1501-0-1-609).

When the BBEDCA was enacted in 1985, there was no exemption for family support programs/CSE; CSE was subject to the sequester under a special rule,⁶ discussed in the next section of this memo. However, in 1997, following the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996,⁷ which replaced Aid to Families with Dependent Children (AFDC) with the Temporary Assistance to Needy Families (TANF) block grants, Congress made the necessary changes to the list of exempt low-income programs in section 255(h) of the BBEDCA—and added child support enforcement to the exempt list.⁸ The new exemption for CSE reflected the changing role of CSE under PRWORA as a family support program, rather than primarily a welfare cost recoupment program. The new exempt program, “Family support payments to states,” was accompanied by the budget account number for CSE direct spending programs.⁹

Congress reaffirmed CSE’s status as an exempt low-income program by retaining it in the 2010 PAYGO statute, with the account number designating all three direct spending CSE programs.¹⁰

II. The later-enacted exemption for child support enforcement supersedes the earlier special rule for applying the sequester.

A question about CSE’s exemption from the sequester has arisen because when Congress made CSE an exempt program in 1997, it neglected to remove the special rule that was included in section 256(f) of the 1985 BBEDCA.¹¹ A special rule for applying the sequester to the then non-exempt CSE program was needed in 1985 because of the substantial changes to funding for the federal-state CSE program that were enacted in the 1984 Child Support Amendments to the Social Security Act.¹² The special rule explained that cuts to CSE under sequester were to be made in addition to scheduled reductions in federal funding under the 1984 amendments and that cuts from the sequester were to be made from the matching rate for state administrative costs.¹³ Congress reinforced the special rule in the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (BBEDCRA), inserting the language “[n]otwithstanding any change in the display of budget accounts,” to clarify that, while CSE moved to the exempt Aid to

⁶ Pub. L. No. 99-177, § 256(e), 99 Stat. 1037, 1088 (1985).

⁷ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §§ 301-302, 110 Stat. 2105, 2199-2203 (1996).

⁸ See *id.* § 110(r)(1) (striking “Aid to families with dependent children” and inserting “Block grants to States for temporary assistance for needy families”); Balanced Budget Act of 1997, Pub. L. No. 105-33, § 10207(d), 111 Stat. 251, 704 (1997) (inserting “Temporary assistance for needy families,” “Contingency fund,” “Child care entitlements to States,” and “Family support payments to States”); see also H.R. Rep. No. 105-217, at 1004 (1997) (Conf. Rep.) (explaining that the three new programs were a continuation of AFDC exemption).

⁹ OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT: FISCAL YEAR 1998, at 516 (1997).

¹⁰ See Pub. L. No. 111-139, § 11, 124 Stat. 8, 28 (2010) (referencing budget account no. 75-1501-0-1-609).

¹¹ In other cases, when Congress has exempted a program formerly under a special rule, it has removed the rule. See, e.g., Statutory Pay-As-You-Go Act of 2010 § 9 (repealing section 256(c), the special rule on foster care and adoption assistance programs; *id.* § 11 (amending section 255(h) to include “Payments for Foster Care and Permanency” under exempt low-income programs).

¹² Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 4, 98 Stat. 1305, 1312 (1984).

¹³ Balanced Budget and Emergency Deficit Control Act of 1985 § 256(e); see also *Balanced Budget and Emergency Deficit Control Act of 1985: A Legislative History Vol. 1*, S. Prt. 103-41, pt. 1, at 1335, 1447-48 (1993) (explaining the special rule).

Families with Dependent Children (AFDC) budget account, this did not confer exempt status on the CSE program.¹⁴ However, in 1997, Congress clearly and explicitly added CSE to the list of exempt programs.

The two provisions cannot be reconciled. Under section 255(h), child support direct spending, including administrative matching funds, are completely exempt from the sequester. Under section 256(f), CSE is fully subject to the sequester, with the reduction to be taken from administrative matching funds. It is a basic principle of statutory construction that when two provisions are in irreconcilable conflict, the later provision supersedes the earlier provision. *EC Term of Years Trust v. United States*, 550 U.S. 429, 435 (2007) (quoting *Posadas v. National City Bank*, 296 U.S. 497, 503 (1936)).

For these reasons, CSE direct spending should be completely exempt from the sequester under the Budget Control Act.

¹⁴ Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 401(a)(4), 101 Stat. 754, 779 (1987); *see also* *Balanced Budget and Emergency Deficit Reaffirmation Act of 1987: A Legislative History Vol. 1*, S. Prt. 103-42, pt. 1, at 447 (1993).