



United States Government Accountability Office
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May 21, 2012

The Honorable Patty Murray
Chairman
The Honorable Richard Burr
Ranking Member
Committee on Veterans' Affairs
United States Senate

The Honorable Jeff Miller
Chairman
The Honorable Bob Filner
Ranking Member
Committee on Veterans' Affairs
House of Representatives

Subject: *The Budget Control Act and the Department of Veterans Affairs' Programs*

This responds to the request for a legal opinion on the effect of the Budget Control Act¹ on the Department of Veterans Affairs (VA). Letter from Chairman, Committee on Veterans' Affairs, United States Senate, to Comptroller General (Feb. 16, 2012) (Request Letter). The Budget Control Act, which amended the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA),² provides that the Office of Management and Budget (OMB) shall calculate, and the President shall order, a sequestration of discretionary and direct spending on January 2, 2013, to achieve the necessary deficit reduction for fiscal year 2013.³ The request arises because of an apparent conflict between two provisions of BBEDCA. Section 255(b) exempts all programs administered by the Department of Veterans Affairs from sequestration. However, section 256(e) provides for a reduction in one VA account, the veterans'

¹ Pub. L. No. 112-25, 125 Stat. 240 (Aug. 2, 2011).

² Pub. L. No. 99-177, title II, 99 Stat. 1037 (Dec. 12, 1985). BBEDCA, as amended, is classified at 2 U.S.C. §§ 900–907d.

³ Pub. L. No. 112-25, § 302.

medical care account, of up to two percent. The request asked for our opinion on how to resolve the “legal ambiguity . . . if sequestration is imposed.” *Id.*

We conclude that all programs administered by the Department of Veterans Affairs, including veterans’ medical care, are exempt from sequestration. Section 255(b) and section 256(e) cannot be reconciled, and consequently, the more recently enacted provision should be given effect as the latest expression of congressional intent. Section 255(b), which was enacted in the Statutory Pay-As-You-Go Act of 2010 (Statutory PAYGO), therefore takes precedence over section 256(e), which was enacted as part of BBEDCA in 1985. We note, however, that it appears administrative expenses incurred in connection with VA programs may be subject to sequestration under another section of BBEDCA.

Our practice when issuing decisions and opinions is to obtain the views of the relevant agencies. GAO, *Procedures and Practices for Legal Decisions and Opinions*, [GAO-06-1064SP](#) (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/resources.html. Accordingly, we solicited the views of both the Department of Veterans Affairs, which administers the programs at issue, and the Office of Management and Budget (OMB), which is responsible for implementing sequestration under the Budget Control Act. OMB responded on behalf of both agencies. Letter from Deputy General Counsel, OMB, to Assistant General Counsel, GAO (Apr. 23, 2012) (OMB Letter).

BACKGROUND

The Budget Control Act of 2011, amending BBEDCA, established limits on discretionary spending for fiscal years 2012 through 2021 and automatic reductions in direct spending because legislation was not enacted by January 15, 2012, that would reduce projected deficits by at least \$1.2 trillion by the end of fiscal year 2021. Pub. L. No. 112-25, § 302, 125 Stat. 240, 256-59 (Aug. 2, 2011). Among other things, the Budget Control Act requires OMB to calculate, and the President to order, a sequestration of discretionary and direct spending on January 2, 2013, to achieve the calculated reduction for fiscal year 2013. *Id.* Sequestration will reduce each nonexempt account by a uniform percentage. *Id.*

Section 255 of BBEDCA provides a list of programs and activities that are exempt from sequestration. Section 256 of BBEDCA provides a list of exceptions, limitations, and special rules for implementing sequestration. With respect to VA programs, section 255(b), as originally enacted in 1985, exempted veterans’ compensation and veterans’ pension accounts. Pub. L. No. 99-177, title II, 99 Stat. 1037, 1083 (Dec. 12, 1985). In the 1985 act, section 256(e)⁴ subjected the veterans’

⁴ This section, originally designated as section 256(k), was redesignated as section 256(e) in 1990. Pub. L. No. 101-508, title XIII, § 13101(d)(2), 104 Stat. 1388-573 (Nov. 5, 1990).

medical care account to sequestration, but limited any reduction to two percent. In 2010, 25 years later, the Statutory Pay-As-You-Go Act amended section 255(b) to exempt from sequestration “all programs administered by the Department of Veterans Affairs.” Pub. L. No. 111-139, title I, § 11, 124 Stat. 8, 23 (Feb. 12, 2010). The amendment left unchanged the language of section 256(e) pertaining to the maximum two percent reduction of veterans’ medical care.⁵

DISCUSSION

This opinion addresses the conflict between sections 255(b) and 256(e) of BBEDCA. When two laws appear on their face to conflict, the Supreme Court strives to harmonize the laws to give the maximum possible effect to both. See *Posadas v. National City Bank of New York*, 296 U.S. 497, 503 (1936); B-307720, Sept. 27, 2007; B-193282, Dec. 21, 1978. However, when two, equally specific provisions are in irreconcilable conflict, the Supreme Court views the later act as an implied repeal of the earlier one to the extent of the conflict. *Posadas*, 296 U.S. at 503; B-203900, Feb 2, 1989.⁶ This is because the more recent enactment is the latest expression of Congress. See B-226389, Nov 14, 1988 (“[T]he second enactment is taken to represent a purposeful intention by Congress to supersede its earlier enactment . . .”). For example, in *Eisenberg v. Corning*, a federal appeals court considered two incompatible provisions – (1) a provision in the D.C. Code waiving “tutelage charges” for nonresident pupils in District of Columbia (D.C.) public schools if their parents paid specified taxes to D.C., and (2) a later provision in a D.C. appropriations act prohibiting the use of D.C. appropriations to provide “free instruction” to nonresident pupils. 179 F.2d 275, 277 (D.C. Cir. 1949). The court concluded that the “statutes [were] thus in conflict, the earlier permitting and the later prohibiting,” so the court concluded that the later appropriations act provision controlled. *Id.*

We are faced with a similar situation here. In this case, section 256(e) permits a limited sequestration of the veterans’ medical care account, while section 255(b)

⁵ Section 256(e) provides the following budget identification code for veterans’ medical care: 36-0160-0-1-703. Pub. L. No. 99-177, § 256(e). That code currently refers to VA’s “Medical Services” appropriation. See, *The Appendix, Budget of the United States Government, Fiscal Year 2013*, “Department of Veterans Affairs,” (Feb. 13, 2012) at 1123-25.

⁶ See also *Morton v. Mancari*, 417 U.S. 535, 550 (1974) (“In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable.”); *Lockhart v. United States*, 546 U.S. 142, 149 (2005) (Scalia, J., concurring) (“When the plain import of a later statute directly conflicts with an earlier statute, the later enactment governs . . .”).

prohibits sequestration of *all* VA programs. The language in section 256(e) was enacted as part of BBEDCA in 1985. The amendment to section 255(b) exempting all VA programs was enacted in Statutory PAYGO in 2010, 25 years later. The two provisions are in irreconcilable conflict. An alternative reading that tries to give effect to both, *e.g.*, all VA programs are exempt except for veterans' medical care, which would be limited to a two percent sequestration, ignores the totality of the word "all." We think the better view is that because the conflict is irreconcilable, the more recently enacted law, Statutory PAYGO, should be given effect as it is the latest expression of congressional intent. We conclude, therefore, that section 255(b) takes precedence over section 256(e), and all programs administered by the Department of Veterans Affairs, including those within veterans' medical care, are exempt from sequestration under the Budget Control Act. OMB reached this same conclusion: "all programs administered by the VA, including Veterans' Medical Care, are exempt from sequestration." OMB Letter at 1.

It appears, however, that administrative expenses incurred in connection with VA programs may be subject to sequestration. With regard to administrative expenses, section 256(h)(1) of BBEDCA provides:

"Notwithstanding any other provision of this title, administrative expenses incurred by the departments and agencies, including independent agencies, of the Federal Government in connection with any program, project, activity, or account shall be subject to reduction pursuant to an order issued under section 254, without regard to any exemption, exception, limitation, or special rule which is otherwise applicable with respect to such program, project, activity, or account under this part."

Pub. L. No. 99-177, § 256(h)(1), *as amended* (emphasis added).⁷ BBEDCA does not define "administrative expenses." The conference agreement accompanying the original BBEDCA legislation provides that federal administrative expenses "incurred in connection with any program, activity, or account shall be subject to reduction under a sequester order." H.R. Conf. Rep. No. 99-433, at 92 (1985). The conferees explained that the term "administrative or operating expenses is intended to include obligations for items such as personnel compensation, travel, transportation, communication, equipment, supplies, materials, and other services." *Id.*

The Budget Control Act instructs OMB to implement sequestration. Pub. L. No. 112-25, § 302. In its letter to us, OMB did not address the application of section 256(h)(1) to VA programs or "other potential sequester questions under BBEDCA." OMB Letter at 2. The execution and impact of any

⁷ This section was originally enacted as section 256(b)(1), but was later redesignated as section 256(h)(1). Pub. L. No. 101-508, § 13101(d)(2).

spending reductions will depend on the legal interpretations and actions taken by OMB.

CONCLUSION

As discussed above, we conclude that all programs administered by the Department of Veterans Affairs are exempt from sequestration under the Budget Control Act. We trust that this opinion is responsive to the request. If you have questions, please call Thomas H. Armstrong, Managing Associate General Counsel, at (202) 512-8257, or Julia C. Matta, Assistant General Counsel, at (202) 512-4023.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lynn H. Gibson". The signature is written in a cursive, flowing style.

Lynn H. Gibson
General Counsel