May 17, 2023

Dear Senator or Representative,

We write to highlight concerns with the proposed reinstatement of sequestration in the Limit, Save, Grow Act of 2023, H.R. 2811. By enforcing discretionary spending limits through sequestration led by the Office of Management and Budget (OMB), the Act cedes significant power to the executive branch over the next decade, undermining Congress’s constitutional power of the purse and its ability to direct and oversee federal spending. We therefore urge you to oppose the use of sequestration to meet Congress’s budgetary goals.

Drawing on the frameworks set forth in the Balanced Budget and Emergency Deficit Control Act of 1985 and the Budget Control Act of 2011, the Limit, Save, Grow Act establishes annual limits (or “caps”) on non-defense discretionary spending for fiscal years 2024 through 2033. The Act enforces these caps through sequestration—a process in which OMB legally determines whether enacted appropriations exceed statutory caps and, if they do, makes across-the-board cuts to those appropriations.

This system departs from and weakens the congressional-led process of budget development and enforcement established in the Congressional Budget Act of 1974—a law passed in response to executive overreach to reassert Congress’s control over federal spending. In the process created by that statute, the House and Senate Budget Committees set spending parameters through budget resolutions, the Congressional Budget Office (CBO) scores proposed spending legislation to determine whether it complies with those parameters, and members of Congress enforce those parameters through points of order. Under sequestration, however, the executive branch enforces budgetary parameters. And it is instead OMB’s scoring, which occurs after legislation has been enacted, that determines whether spending complies with budgetary caps or if cuts are necessary.

This regime undermines Congress’s power in several ways. First, it effectively eliminates Congress’s role in enforcing budgetary limits. Second, by giving OMB the final say on when cuts are necessary, sequestration adds uncertainty to the annual appropriations process. Because CBO and OMB may rely on different economic and technical estimates to calculate the cost of proposed spending legislation, CBO may advise Congress that legislation complies with a spending cap and OMB may later find that the cap has been breached, leading to automatic, across-the-board cuts.

That OMB’s scoring both determines whether cuts are necessary and may differ from CBO’s raises a third concern: that the executive branch, over the next decade, could abuse the process to avoid sequestration or intentionally trigger it. OMB could, for example, rely on a scoring method that allows it to find appropriations to be compliant with spending caps, ensuring that the
executive branch does not have to cut funding for federal programs the president supports. Or OMB could rely on a scoring method that allows the executive branch to find that spending caps have been breached, thereby justifying across-the-board cuts to spending.

Finally, because OMB’s scorekeeping is controlling, sequestration expands the executive branch’s ability to shape annual appropriations legislation by incentivizing lawmakers to consult with OMB to understand how particular provisions might be scored. This incentive structure also puts members of Congress in the difficult position of having to decide whether to share potentially confidential information with the executive branch while drafting legislation. But even if OMB indicates to lawmakers prior to a bill’s passage that various spending provisions comply with statutory caps, that indication is not a final scoring determination. In other words, nothing would stop OMB from arriving at a different conclusion after legislation has been enacted.

For these reasons, we urge you not to reinstate sequestration. Should Congress wish to limit discretionary spending, it should consider doing so through other means that preserve Congress’s constitutional power of the purse.

Sincerely,

Protect Democracy
Demand Progress