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Expiration of the Discretionary Spending Limits: Frequently Asked Questions

April 8, 2021

Congressional Research Service
https://crsreports.congress.gov
R46752

CRS REPORT
Prepared for Members and
Committees of Congress

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SUMMARY

R46752

April 8, 2021

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Expiration of the Discretionary Spending Limits: Frequently Asked Questions

In 2011, during a period in which many Members of Congress expressed concern over rising budget deficits, the Budget Control Act of 2011 (BCA, P.L. 112-25) established legal limits on the amount of discretionary spending that could be provided each fiscal year. Under the BCA, for each fiscal year, two separate spending limits have been in effect: one for defense discretionary spending and one for nondefense discretionary spending.

To enforce the spending limits, the law requires that if discretionary appropriations are enacted that exceed a statutory limit for a fiscal year, an automatic process, referred to as sequestration, is triggered to eliminate the excess spending.

Under current law, the discretionary spending limits are in effect only through FY2021. Unless the limits are extended in law, there are no similar statutory limits for FY2022 or beyond.

This report addresses several frequently asked questions related to the expiration of the discretionary spending limits.

Contents

What are the discretionary spending limits? ... 1
Why were the discretionary spending limits created? ... 2
Did Congress and the President ever amend the discretionary spending limits? ... 2
When will the discretionary spending limits expire? ... 3
Can Congress extend the discretionary spending limits? ... 4
How has spending changed during the time period in which the discretionary spending limits were in place? ... 4
How does the expiration of the discretionary spending limits affect baseline projections for discretionary spending? ... 4
What other mechanisms can Congress use to set or limit spending levels in appropriations bills? ... 5
Budget Resolution ... 5
Deeming Resolutions ... 6
Other Procedural Enforcement ... 7

Tables

Table A-1. Discretionary Budget Authority Limits Under the BCA as Amended, August 2011-Present ... 8

Appendixes

Appendix. Discretionary Budget Authority Limits Under the BCA as Amended, August 2011-Present ... 8

Contacts

Author Information ... 9

What are the discretionary spending limits?

The Budget Control Act of 2011 (BCA, P.L. 112-25) established legal limits on the amount of discretionary spending that could be provided each fiscal year.[1] Similar limits on discretionary spending had previously been in effect between FY1991 and FY2002,[2] and the BCA reinstituted limits for FY2012-FY2021.[3] Under the BCA, for each fiscal year, two separate spending limits have been in effect: one for defense discretionary spending and one for nondefense discretionary spending.[4] (See the **Appendix** for the amounts of these separate spending limits for each year.)

To enforce the spending limits, the law requires that if discretionary appropriations are enacted that exceed a statutory limit for a fiscal year, an automatic process is triggered to eliminate the excess spending. This process, referred to as *sequestration*, requires across-the-board reductions of nonexempt budgetary resources within the applicable category (defense or nondefense).

When the BCA was enacted, Congress and the President ensured that certain types of spending would be effectively exempt from the limits. Specifically, the BCA stipulates that the enactment of certain spending—such as appropriations designated as emergency requirements or for overseas contingency operations—allows for an upward adjustment of the discretionary limits, meaning that such spending is effectively exempt from the limits.[5]

A second component of the BCA required annual reductions to the initial discretionary spending limits. (These reductions were triggered by the absence of agreement on deficit reduction legislation from the Joint Select Committee on Deficit Reduction.[6]) The BCA required these

[1] Discretionary spending is controlled through the appropriations process and is generally provided annually. The appropriations committees have jurisdiction over the funding for discretionary spending programs, while authorizing committees have jurisdiction over the funding for mandatory (or direct) spending programs. For more information, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, coordinated by James V. Saturno.

[2] The spending limits were part of the Budget Enforcement Act of 1990 (BEA; P.L. 101-508). For more information, see CRS Report R41901, *Statutory Budget Controls in Effect Between 1985 and 2002*, by Megan S. Lynch. During the period of FY1991-FY2002, separate caps existed and varied by year. The concept of capping defense and nondefense spending separately was discussed as early as 1984 and is often cited as "the rose garden proposal." Senator Howard Baker, Senate debate, *Congressional Record*, April 24, 1984, p. 9681.

[3] For more information on the BCA, see CRS Report R44874, *The Budget Control Act: Frequently Asked Questions*, by Grant A. Driessen and Megan S. Lynch; or CRS Video WVB00305, *Budget Control Act: Overview*, by Megan S. Lynch and Grant A. Driessen.

[4] The statutory limits included in the BCA are described in statute as security and nonsecurity. Currently, the security category is defined to include discretionary appropriations classified as budget function 050 (national defense) only, and the nonsecurity category is defined to include all other discretionary appropriations. Originally, however, the BCA caps defined the security category to include discretionary spending for the Departments of Defense, Homeland Security, and Veterans Affairs; the National Nuclear Security Administration; the intelligence community management account; and all accounts in the international affairs budget function (budget function 150) and defined the nonsecurity category to include discretionary spending in all other budget accounts. This change in category definitions occurred as part of the automatic spending reduction process that resulted from the lack of enactment of a bill reported by the Joint Committee on Deficit Reduction.

[5] For more information, see CRS Report R45778, *Exceptions to the Budget Control Act's Discretionary Spending Limits*, by Megan S. Lynch.

[6] The BCA established the Joint Select Committee on Deficit Reduction to develop a proposal that would reduce the deficit by at least $1.5 trillion over FY2012-FY2021. The BCA also established an automatic process to produce savings, beginning in 2013, in the event that a bill reported by the Joint Select Committee on Deficit Reduction reducing the deficit by at least $1.2 trillion was not enacted by January 15, 2012. (No recommendation was made and such a bill was not enacted.) This automatic process requires annual downward adjustments of the discretionary spending limits, as well as a sequester of nonexempt mandatory spending programs. For more information on the Joint Select Committee on Deficit Reduction, see CRS Report R44874, *The Budget Control Act: Frequently Asked*

reductions to the statutory limits on both defense and nondefense discretionary spending for each year through FY2021. These reductions are often referred to as a sequester, although they are not a sequester per se because they do not make automatic, across-the-board cuts to programs. Instead, they lower the spending limits, allowing Congress the discretion to develop appropriations legislation within the reduced limits.

During the 10 years in which the spending limits were in effect, Congress and the President typically enacted legislation increasing the spending limits, thereby counteracting some or all of the annual reductions. For more information, see "Did Congress and the President ever amend the discretionary spending limits?"

Why were the discretionary spending limits created?

The BCA was developed in 2011, during a period in which many Members of Congress expressed concern over rising budget deficits. While the federal budget recorded surpluses during the years of FY1998-FY2001, budget deficits returned in FY2002 and slowly increased over the next several years due to reduced revenues and increased spending. Net deficits peaked, however, during the Great Recession from FY2009 to FY2011,[7] with deficits averaging 9.0% of gross domestic product (GDP), which was higher than any other year since World War II. The deficits during the Great Recession were attributed to negative and low economic growth coupled with increased spending provided by the American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

Concern with deficit levels has sometimes led Congress and the President to enact new budget rules or enforcement mechanisms that mandate specific budgetary policies or fiscal outcomes. In 2011, congressional leaders and President Barack Obama participated in extended budget policy negotiations in conjunction with the government's borrowing authority approaching the statutory debt limit. The legislative result of those negotiations was the BCA, which paired an increase in the debt limit with several new budget enforcement mechanisms, including the discretionary spending limits.

Did Congress and the President ever amend the discretionary spending limits?

After the enactment of the BCA, Congress and the President enacted legislation altering the discretionary spending limits for almost every fiscal year in which they were effect (for each year from FY2013 through FY2021).[8] Some of the most significant of these changes are the following:

- The American Taxpayer Relief Act of 2012 (ATRA, P.L. 112-240) postponed the start of the FY2013 sequester from January 2 to March 3 and increased the defense and nondefense caps by $24 billion each (to $518 billion and $484 billion, respectively), among other things.
- The Bipartisan Budget Act of 2013 (BBA 2013, P.L. 113-67, referred to as the Murray-Ryan agreement) increased discretionary spending limits for both

Questions, by Grant A. Driessen and Megan S. Lynch, or CRS Video WVB00305, *Budget Control Act: Overview*, by Megan S. Lynch and Grant A. Driessen.

[7] *The Great Recession* describes the contractionary period (which lasted from December 2007 to June 2009) and subsequent recovery of the U.S. economy.

[8] See **Appendix**.

defense and nondefense for FY2014, each by about $22 billion (to $520 billion and $492 billion, respectively). In addition, it increased discretionary spending limits for both defense and nondefense for FY2015, each by about $9 billion (to $521 billion and $492 billion, respectively). It also extended the mandatory spending sequester by two years through FY2023. Soon after the enactment of BBA 2013, a bill was enacted to "ensure that the reduced annual cost-of-living adjustment to the retired pay of members and former members of the armed forces under the age of 62 required by the Bipartisan Budget Act of 2013 will not apply to members or former members who first became members prior to January 1, 2014, and for other purposes (P.L. 113-82)." This legislation extended the mandatory spending sequester by one year through FY2024.

- The Bipartisan Budget Act of 2015 (BBA 2015, P.L. 114-74) increased discretionary spending limits for both defense and nondefense for FY2016, each by $25 billion (to $548 billion and $518 billion, respectively). In addition, it increased discretionary spending limits for both defense and nondefense for FY2017, each by $15 billion (to $551 billion and $519 billion, respectively). It also extended the direct spending sequester by one year through FY2025. In addition, it established nonbinding spending targets for Overseas Contingency Operations/Global War on Terrorism levels for FY2016 and FY2017 and amended the limits of adjustments allowed under the discretionary spending limits for Program Integrity Initiatives.
- The Bipartisan Budget Act of 2018 (BBA 2018, P.L. 115-123) increased nondefense and defense discretionary limits in FY2018 and FY2019. In FY2018, BBA 2018 increased the defense limit by $80 billion (to $629 billion) and increased the nondefense limit by $63 billion (to $579 billion). In FY2019, it increased the defense limit by $85 billion (to $647 billion) and increased the nondefense limit by $68 billion (to $597 billion). BBA 2018 also extended the mandatory spending sequester by two years through FY2027.
- The Bipartisan Budget Act of 2019 (BBA 2019, P.L. 116-37) increased discretionary spending limits for FY2020 and FY2021. In FY2020, it increased the discretionary defense cap by $90 billion (to $667 billion) and increased the nondefense cap by $78 billion (to $622 billion). In FY2021, it increased the discretionary defense cap by $81 billion (to $672 billion) and increased the nondefense cap by $72 billion (to $627 billion). BBA 2019 also extended the mandatory spending sequester by two years through FY2029.

When will the discretionary spending limits expire?

Under current law, the discretionary spending limits are in effect only through FY2021. Unless the limits are extended in law, there are no similar statutory limits for FY2022 or beyond.

It may be of note, however, that while limits are in place through FY2021, there is no effective enforcement mechanism for the fourth quarter of FY2021. The law specifies that the enforcement of the limits varies depending on the quarter in which a breach occurs. If a limit were breached in the first quarter of the fiscal year, a sequester would occur when the Office of Management and Budget issues a final sequestration report within 15 calendar days after the end of a session of Congress. If a limit were breached during the second or third quarter of the fiscal year, a sequester would take place 15 days after the enactment of the appropriation. If a limit were breached in the fourth quarter of a fiscal year, the spending limit for the following fiscal year for that category

would be reduced by the amount of the breach. Since no limits exist for FY2022, any breach that occurred in the fourth quarter of FY2021 (July 1 through September 30) would presumably not trigger any sequester.

Can Congress extend the discretionary spending limits?

Congress may extend, or otherwise modify, the discretionary spending limits, but such changes would require the enactment of legislation.

How has spending changed during the time period in which the discretionary spending limits were in place?

Prior to the establishment of the BCA caps, real spending (i.e., adjusted for inflation) during the Great Recession (from FY2009 to FY2011) reached their highest levels since World War II. Negative and low economic growth coupled with increased spending commitments provided for by the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) contributed to real outlays (spending) averaging 23.7% of GDP in those years.[9]

Real spending declined over the FY2012-FY2019 period relative to FY2009-FY2011 levels largely due to the modifications made by the BCA (which reduced discretionary spending) and the winding down of stimulus programs (which reduced both mandatory and discretionary spending). However, the average of real outlays between FY2012 and FY2019 (20.7% of GDP) remained higher than average outlays from FY1969 through FY2019 (20.3% of GDP).

Outlays increased significantly in FY2020 (to 31.2% of GDP) due to the federal response to the COVID-19 pandemic, with outlays of a similar real magnitude projected in FY2021. The latest baseline from the Congressional Budget Office (CBO) projects real deficits to remain above their historical averages after the expiration of federal COVID relief and stimulus programs and a return to normal economic conditions, with forecasted outlays of 23.2% of GDP in FY2031.[10] Those increases are mostly attributable to continued increases in mandatory spending and increases in net interest payments on the federal debt.

How does the expiration of the discretionary spending limits affect baseline projections for discretionary spending?

As Congress considers budgetary policy, it relies on baseline projections of spending, revenue, and deficits. These baseline projections help Congress understand the implications of existing

[9] All of the budget data in this question draws from Congressional Budget Office, *Historical Budget Data*, February 2021, https://www.cbo.gov/data.

[10] CBO, *The Budget and Economic Outlook: 2021 to 2031*, February 2021, https://www.cbo.gov/publication/56970.

budget policy and also provide a point of reference for measuring the budgetary effects of proposed legislation. The Congressional Budget Act (P.L. 93-344) requires CBO to provide Congress with such baseline projections, which are included in a document referred to as *The Budget and Economic Outlook*.[11] In calculating the baseline, CBO makes its own technical and economic assumptions but must assume that spending and revenue policies continue or expire based on what is currently slated to occur in statute, with some exceptions.[12]

For the fiscal years in which the discretionary spending limits were in place, CBO's baseline projections for discretionary spending were calculated by (1) assuming levels of discretionary funding consistent with the spending levels permitted under the statutory limits; and (2) for types of spending that are essentially exempt from the limits (such as spending designated as an emergency or overseas contingency operations), assuming a continuation of the amounts provided in the previous fiscal year, adjusted for inflation.[13]

For the years after FY2021, during which spending limits are assumed not to be in place, CBO's baseline projections for discretionary spending are calculated using the methodology required by law.[14] Generally, the projections assume that discretionary funding increases with inflation.[15] Under this methodology, discretionary spending levels for the years after FY2021 will generally use the amounts provided in FY2021 as the basis for discretionary spending projections for the remainder of the 10-year budget window.[16]

What other mechanisms can Congress use to set or limit spending levels in appropriations bills?

Budget Resolution

In the absence of the discretionary spending limits, Congress has other tools that it can employ to set levels of discretionary spending or to limit the amount of spending that can be provided in appropriations bills. One option, created before the existence of discretionary spending limits, is a

[11] The requirement that CBO submit annual baseline projections is in Section 202(e)(1) of the Congressional Budget Act.

[12] CBO is required to calculate baseline projections using the statutory requirements included in Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA, Title II of P.L. 99-177), commonly known as the Gramm-Rudman-Hollings Act. These statutory requirements assume that spending and revenue policies continue or expire based on what is currently slated to occur in statute, with important exceptions for many direct spending programs. In particular, any program with estimated current year outlays greater than $50 million is assumed to continue to operate under the terms of the law at the time of its expiration.

[13] See CBO, *The Budget and Economic Outlook: 2020 to 2030*, January 2020, pp. 20-21, https://www.cbo.gov/publication/56073.

[14] BBEDCA, §257.

[15] Discretionary spending related to federal personnel is adjusted using the employment cost index for wages and salaries of workers in private industry. Other discretionary funding is adjusted using the GDP price index. CBO, March 2021.

[16] According to CBO, "Laws governing the construction of the budget baseline require CBO to assume that discretionary appropriations in future years will match current funding, with adjustments for inflation. Discretionary appropriations provided thus far for 2021 total $1.6 trillion. In consultation with the House and Senate Committees on the Budget, however, CBO did not extrapolate the $184 billion in emergency discretionary budget authority that has been provided so far in 2021 in response to the pandemic. Emergency funding provided for other purposes was projected to continue in the future with increases for inflation each year after 2021." CBO, *Additional Information About the Budget Outlook: 2021 to 2031*, March 2021, p. 6, https://www.cbo.gov/publication/56996.

budget resolution. A budget resolution reflects an annual agreement between the House and Senate on budgetary levels for the upcoming fiscal year and at least four additional years. Once agreed to by both chambers in the exact same form, certain levels in the budget resolution may be enforced by points of order.

The budget resolution is required to include a level of total spending for the upcoming fiscal year and then to allocate that spending among committees.[17] Under this process, the House and Senate Appropriations Committees receive a spending allocation (referred to as a *302(a) allocation*) that acts as a limit on how much total discretionary spending can be provided in all of the appropriations bills for the fiscal year. The Congressional Budget Act also requires that the House and Senate Appropriations Committees then subdivide their 302(a) allocation among their 12 subcommittees and report these sub-allocations—referred to as 302(b) sub-allocations—to their respective chambers.[18] These sub-allocations act as a procedural limit on the level of funding that can be provided in each individual appropriations bill.

The allocations are then enforceable by points of order, meaning that if legislation is being considered on the House or Senate floor that would violate these levels, a Member may raise a point of order against the consideration of that legislation. Points of order are not self-enforcing, however, meaning that if no Member raises a point of order, a chamber may consider and pass legislation regardless of whether it would violate levels established in the budget resolution. In addition, either chamber may waive the point of order. The process for waiving points of order, and the number of Members required to waive points of order, varies by chamber. Generally, such points of order can be waived in the House by a simple majority of Members and in the Senate by three-fifths of all Senators.[19]

Deeming Resolutions

Often, the House and Senate do not reach agreement on a budget resolution. This means that there is no allocation of spending made to the Appropriations Committees. This absence means that there is no procedural limit to the amount that can be included in appropriations measures and no formal basis for the Appropriations Committees to make the required spending sub-allocations. Without such enforceable budgetary levels, the development and consideration of individual appropriations measures may encounter difficulties.

In the absence of agreement on a budget resolution, however, Congress often employs alternative legislative tools to substitute for a budget resolution. These substitutes are typically referred to as "deeming resolutions," because they are *deemed* to serve in place of a budget resolution for the

[17] Congressional Budget Act, §301(a). These committee spending allocations are required to be included in the joint explanatory statement accompanying the conference report on the budget resolution.

[18] Congressional Budget Act, §301(b).

[19] In the House, most measures are considered in one of two ways, both of which routinely waive points of order. First, a measure may be considered under terms specified in a resolution (referred to as a special rule) reported from the House Rules Committee. Such resolutions often include language waiving points of order against the underlying legislation as well as certain specified amendments. A special rule requires for adoption a simple majority of those voting, assuming a quorum is present. The second common way that measures are considered in the House is under the suspension of the rules procedure. When measures are considered under this procedure, such points of order are automatically waived. Measures considered under this procedure require for passage a two-thirds vote of those voting, assuming a quorum is present. In the Senate, such points of order can be waived with the support of three-fifths of Senators duly chosen and sworn. In such a situation, a Senator may make a motion to waive the point of order either after one has been raised or before it has been raised (in anticipation of the point of order). The waiver motion may apply to one or more points of order as specified by the Senator making the motion.

purposes of establishing enforceable budget levels for the upcoming fiscal year. Employing a deeming resolution, however, does not preclude Congress from subsequently agreeing to a budget resolution.

Such mechanisms are not formally defined and have no specifically prescribed form or content. The mechanisms vary in form and function, but they always (1) include or reference certain budgetary levels (e.g., aggregate spending limits and committee spending allocations) and (2) contain language stipulating that such levels are to be enforceable by points of order as if they had been included in a budget resolution.

In the past, such deeming resolutions have given 302(a) allocations to the Appropriations Committee to act as overall limits on discretionary spending. For example, to establish discretionary spending levels for FY2020, on April 9, 2019, the House passed deeming resolution H.Res. 293. It gave the House Appropriations Committee a 302(a) allocation of $1.295 trillion.[20]

Other Procedural Enforcement

In the absence of a budget resolution or deeming resolution, Congress might adopt other procedural mechanisms for setting or limiting discretionary spending levels. This may include employing informal mechanisms or other formal procedural devices. For example, for FY2017, the House moved forward with appropriations in the absence of a budget resolution or deeming resolution. First, the House Appropriations Committee adopted "interim 302(b) sub-allocations" for some individual appropriations bills.[21] While such levels did not act as an enforceable cap on appropriations measures when they were considered on the floor, the House adopted a separate order as a part of H.Res. 5 (114th Congress) that prohibited floor amendments from increasing spending in a general appropriations bill.[22] This effectively created a limit on individual appropriations bills when they were considered by the House.

[20] Specifically, the deeming resolution allocated new discretionary budget authority of $1,295,018,000,000.

[21] Such levels were made available on the House Appropriations Committee website.

[22] Specifically, H.Res. 5, Section 3(d)(3), stated, "It shall not be in order to consider an amendment to a general appropriation bill proposing a net increase in budget authority in the bill (unless considered en bloc with another amendment or amendments proposing an equal or greater decrease in such budget authority pursuant to clause 2(f) of rule XXI)." This standing order—which was in effect as a separate order in the 112th, 113th, and 114th Congresses and was incorporated into House Rule XXI by H.Res. 5 (115th Congress)—is no longer in effect.

Appendix. Discretionary Budget Authority Limits Under the BCA as Amended, August 2011-Present

Table A-1. Discretionary Budget Authority Limits Under the BCA as Amended, August 2011-Present

(in billions of nominal dollars)

			2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
BCA	Aug. 2011	Defense	*555*	*546*	556	566	577	590	603	616	630	644
		Non-defense	*507*	*501*	510	520	530	541	553	566	578	590
Auto-enforcement	Jan. 2012	Defense	*555*	***492***	**501**	**511**	**522**	**535**	**548**	**561**	**575**	**589**
		Non-defense	*507*	***458***	**472**	**483**	**493**	**505**	**517**	**531**	**545**	**557**
ATRA	Jan. 2013	Defense	*555*	***518***	**497**	511	522	535	548	561	575	589
		Non-defense	*507*	***484***	**469**	483	494	505	518	532	545	558
BBA 2013	Dec. 2013	Defense	*555*	*518*	**520**	**521**	523	536	549	562	576	590
		Non-defense	*507*	*484*	**492**	**492**	493	504	516	530	543	556
BBA 2015	Nov. 2015	Defense	*555*	*518*	520	521	**548**	**551**	549	562	576	590
		Non-defense	*507*	*484*	492	492	**518**	**519**	516	530	543	555
BBA 2018	Feb. 2018	Defense	*555*	*518*	520	521	548	551	**629**	**647**	576	590
		Non-defense	*507*	*484*	492	492	518	519	**579**	**597**	543	555
BBA 2019	Aug. 2019	Defense	*555*	*518*	520	521	548	551	629	647	**667**	**672**
		Non-defense	*507*	*484*	492	492	518	519	579	597	**622**	**627**

Sources: CBO, *Letter to the Honorable John A. Boehner and Honorable Harry Reid estimating the impact on the deficit of the Budget Control Act of 2011*, August 2011; CBO, *Final Sequestration Report for Fiscal Year 2012*, January 2012; CBO, *Final Sequestration Report for Fiscal Year 2013*, March 2013; CBO, *Final Sequestration Report for Fiscal Year 2014*, January 2014; CBO, *Final Sequestration Report for Fiscal Year 2016*, December 2015; CBO, *Sequestration Update Report: August 2017*, August 2017; CBO, *Updated Budget and Economic Projections: 2019 to 2029*, May 2019; CBO, *Final Sequestration Report for Fiscal Year 2021*, January 2021.

Notes: Spending limits apply to fiscal years. Bold figures indicate statutory changes. The BCA as amended provided for "Security" and "Nonsecurity" categories in FY2012 and FY2013: Italicized figures denote CRS estimates of budget authority for defense and nondefense categories in those years. Small changes in FY2016-FY2021 budget authority shown in ATRA, BBA 2013, and BBA 2015 rows are caused by adjustments in the annual proportional allocations of automatic enforcement measures as calculated by OMB: For more information on these adjustments, see CBO, *Estimated Impact of Automatic Budget Enforcement Procedures Specified in the Budget Control Act*, September 2011.

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