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Increased CBP Funding, Flexibility Could Mitigate Sequester, But Overtime Cuts May Still Sting

CBP's increased budget under the Fiscal Year 2013 appropriations bill will ease the sting of sequestration and grant the agency some leeway in how it administers cuts, industry experts said. The increased funding, combined with discretion in implementing the cuts, may even allow the agency to entirely avoid furloughs, they said. But even if furloughs are avoided, cuts to overtime for CBP staff could still result in port delays, particularly at peak processing times.

More than one month post-sequestration, agencies are still coping with how to administer the cuts. CBP initially said personnel furloughs could begin in mid-April and warned of delays in trade processing and its efforts towards the Automated Commercial Environment (see [13030416](#) and [13022831](#)). Yet after President Obama signed the continuing resolution – which added about \$215 million to the agency's FY 2012 budget – CBP said it was seeking guidance from the Office of Management and Budget and delaying furloughs (see [13040213](#)).

"We understand that DHS has been given some flexibility in how it applies the cuts that the sequester inflicted," said David Pagan, former Acting Director of Policy and Planning at CBP and now a principal at Command Consulting Group. "After a meeting with officials on Friday, Secretary Napolitano mentioned that CBP may be able to avoid furloughs altogether."

Agencies Have Flexibility in Implementing Sequester

Federal agencies are granted limited flexibility in how they choose to administer sequester-induced cuts. There's timing flexibility: Since agencies independently manage week-to-week or month-to-month activities, they can choose when to snip money from their budget. For operating agencies dealing with the sequester, that can often mean deciding whether "to furlough a large number for a small time or a small number for a large time," said Richard Kogan, senior fellow at the Center on Budget and Policy Priorities, a nonpartisan think tank.

Agencies are also granted flexibility through transfer and reprogramming authority. The first allows transfers of a certain dollar or percentage amount from one line item to another: the bill will include a provision allowing an agency to move five percent of its operations and maintenance costs to intelligence analysis, for example. Reprogramming authority is very similar, and allows agencies to move around money within accounts unless the law has a specific statutory set aside. In the continuing resolution, for example, CBP's line item "automation modernization" has a budget of \$719,866,000; with a caveat that "not less than \$138,794,000 shall be for the development of the Automated Commercial Environment."

Reprogramming authority routinely appears in appropriations bills, Kogan said. If agencies use it, they must notify Congress about the change – since Congress, in its budget recommendation, delineates each budget line item.

In a January memo, the Office of Management and Budget urged federal agencies to "use any available flexibility to reduce operational risks and minimize impacts on the agency's core mission" and "take into account funding flexibilities, including the availability of reprogramming and transfer authority."

Reprogramming authority does carry some political risk, Kogan said, because it means the federal agency sidesteps the budget outlines laid by Congress. The move could make legislators less amenable the following year, when the agency reappears before appropriations committees asking for funds.

Furloughs May be Avoided, but Overtime Cuts Will Still Bite

Combined with its flexibility in implementing cuts, the bump in funding CBP got as a result of the continuing resolution will also ease the sequester's impact. "The [continuing resolution] makes it easier for the Pentagon to deal with sequestration, and obviously makes it easier for the [Department of Homeland Security] because it provides additional funding," said Brandon Torres Declet of McAllister & Quinn. The discretion provided in implementing the cuts mean that DHS will be able to prioritize where the cuts fall, said Torres Declet. "If CBP can find a way to cut from someplace else and not actually furlough customs officers or border patrol officers, they will."

"Something like Customs and Border Protection is considered critical," said Torres Declet. "You can't furlough people who have responsibilities for trade [and] for security at the border." DHS is going to have to find other areas to cut, he said. Areas that could potentially face the chopping block include information technology, use of drones, and overtime.

So even if the continuing resolution allows CBP to avoid furloughs, a cut in funding for overtime could still have an adverse impact on trade, said Stewart Verdery of Monument Policy Group, a former Assistant Secretary for Policy and Planning at CBP. "I think it's going to help a good bit, but I think still, if their overtime account is going to be curtailed, that is really going to put the squeeze on wait times at the peak times of entry," he said.

The cut in overtime could be a "huge issue, because they use overtime at these outer margins of their staffing," Verdery said. For example, CBP staff works overtime when cargo or travelers enter outside of normal processing windows. More ominously, overtime is also used when delays pile up at ports of entry. CBP will ask its staff to stay beyond their normal working hours to process the backlog, he said. But if CBP no longer has the funding to do that, the cargo or passengers will just have to sit until the next shift is ready to deal with them, he said.

CBP has increasingly come to rely on overtime from its staff because of a growing hole in its budget, Verdery said. "CBP has a general funding dilemma," he said. "For field operations at the ports of entry they just do not have enough officers." Faced with increasing cargo and passenger traffic, overtime allows the agency to avoid upfront costs for hiring new officers, such as training. It also allows CBP more flexibility, Verdery said: "It's easier for them to dial overtime back and forth depending on need, as opposed to training full time people."

The hole in CBP's budget is partly because of an increase in CBP's journeyman pay grade. CBP bumped up the pay of all of its officers, Verdery said, but the agency did so without the mechanism to pay for it, he said. "Each year, that additional amount of pay is escalating, and creating a bigger and bigger hole in their baseline budget."

But the biggest problem for CBP is decreasing fee collections relative to cargo and passenger traffic, Verdery said. Because the fees are not tied to inflation, they generate less and less money each year. Each year, cargo and passenger traffic rise, but the fees associated with that traffic generate less revenue per passenger or unit of cargo.

According to Verdery, CBP is going to issue a staffing model for field operations to Congress as part of the fiscal year 2014 budgeting process. He expects the model will show that CBP needs thousands of officers to meet its internal preferred performance guidelines for cargo and passenger processing. "We don't know how they're going to propose to pay for that, whether it's new fees or other things," Verdery said. "But we think there's a big disconnect in their baseline needs and their funds." —*Brian Feito, Jessica Arriens*