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SEC. 255.¹⁵¹⁹ EXEMPT PROGRAMS AND ACTIVITIES¹⁵²⁰

§ 255(a)

(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.¹⁵²¹ — Benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, and benefits payable

¹⁵¹⁹ Section 255 is codified as amended at 2 U.S.C. § 905 (1988 & Supp. IV 1992).

¹⁵²⁰ As did the original Gramm-Rudman-Hollings, the current law exempts a number of programs from across-the-board cuts. The Budget Enforcement Act did not significantly change the list of exempt programs and activities set forth in this section. This section sets forth exemptions for Social Security benefits and tier I railroad retirement benefits (in subsection (a)), most veterans programs (in subsection (b)), net interest on the public debt (in subsection (c)), payments to individuals made under the earned income tax credit (under subsection (d)), non-defense unobligated balances (under subsection (e)), outlays for the three programs the National Wool Act, the special milk program, and the vocational rehabilitation basic state grants, other than their automatic spending increases (under subsection (f)), and several other enumerated programs and activities (under subsection (g)), including certain prior legal obligations of the Government and most low-income programs. In addition, the President has the option to exempt military personnel from sequestration (under subsection (h)), if he or she wishes to increase the cuts in other defense programs.

Exemption from sequestration does not, however, remove these programs from coverage by Gramm-Rudman-Hollings. As set forth in the pay-as-you-go provisions of section 252 (*see supra* pp. 509-517), any legislation (enacted after the 101st Congress) affecting direct spending (that is, spending other than appropriations or Social Security) or taxes that increases the deficit will trigger offsetting across-the-board cuts in those entitlement programs that the law does not exempt. Thus, increasing spending in an exempt account without paying for it may trigger cuts in the non-exempt accounts.

¹⁵²¹ Section 13101(c)(1) of the Budget Enforcement Act amended subsection (a) to read as it does now. *See infra* p. 702. Prior to enactment of the Budget Enforcement Act, subsection (a) read as follows:

(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS. — Increases in benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, or in benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall not be considered "automatic spending increases" for purposes of this title; and no reduction in any such increase or in any of the benefits involved shall be made under any order issued under this part.

under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall be exempt from reduction under any order issued under this part.

§ 255(b) (b) **VETERANS PROGRAMS.** — The following programs shall be exempt from reduction under any order issued under this part:

National Service Life Insurance Fund (36-8132-0-7-701);

Service-Disabled Veterans Insurance Fund (36-4012-0-3-701);

Veterans Special Life Insurance Fund (36-8455-0-8-701);

Veterans Reopened Insurance Fund (36-4010-0-3-701);

United States Government Life Insurance Fund (36-8150-0-7-701);

Veterans Insurance and Indemnity (36-0120-0-1-701);

Special Therapeutic and Rehabilitation Activities Fund (36-4048-0-3-703);

Veterans' Canteen Service Revolving Fund (36-4014-0-3-705);

Benefits under chapter 21 of title 38, United States Code, relating to specially adapted housing and mortgage-protection life insurance for certain veterans with service-connected disabilities (36-0137-0-1-702);

Benefits under section 907 of title 38, United States

Code, relating to burial benefits for veterans who die as a result of service-connected disability (36-0155-0-1-701);

Benefits under chapter 39 of title 38, United States Code, relating to automobiles and adaptive equipment for certain disabled veterans and members of the Armed Forces (36-0137-0-1-702);

Veterans' compensation (36-0153-0-1-701); and

Veterans' pensions (36-0154-0-1-701).

§ 255(o) (c) **NET INTEREST.** — No reduction of payments for net interest (all of major functional category 900) shall be made under any order issued under this part.

§ 255(d) (d) **EARNED INCOME TAX CREDIT.** — Payments to individuals made pursuant to section 32 of the Internal Revenue Code of 1954 shall be exempt from reduction under any order issued under this part.

§ 255(e) (e) **NON-DEFENSE UNOBLIGATED BALANCES.**¹⁵²² — Unobligated balances of budget authority¹⁵²³ carried over from prior fiscal years, except balances in the defense category,¹⁵²⁴ shall be exempt from reduction under any order issued under this part.

¹⁵²² Section 13101(c)(2) of the Budget Enforcement Act amended subsection (e) to read as it does now. *See infra* p. 702. Prior to enactment of the Budget Enforcement Act, subsection (e) read as follows:

(e) **OFFSETTING RECEIPTS AND COLLECTIONS.** — Offsetting receipts and collections shall not be reduced under any order issued under this part.

¹⁵²³ Section 250(c)(1) (*see supra* p. 440) defines "budget authority" at least in part by reference to the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 11-13.

¹⁵²⁴ Section 250(c)(4) defines "category." *See supra* p. 441.

§ 255(f) (f) CERTAIN PROGRAM BASES. — Outlays¹⁵²⁵ for programs specified in paragraph (1) of section 257¹⁵²⁶ shall be subject to reduction only in accordance with the procedures established in section 251(a)(3)(C)¹⁵²⁷ and 256(b).¹⁵²⁸

¹⁵²⁵ Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

¹⁵²⁶ This reference is to programs for which Gramm-Rudman-Hollings calls for cuts in automatic spending increases only. Under Gramm-Rudman-Hollings as it existed before enactment of the Budget Enforcement Act, section 257(1) set forth the provisions on these programs. *See supra* note 1197. Those provisions now appear in section 256(a), so this reference should be to section 256(a). Section 256(a) states:

(a) AUTOMATIC SPENDING INCREASES. — Automatic spending increases are increases in outlays due to changes in indexes in the following programs:

- (1) National Wool Act;
- (2) Special milk program; and
- (3) Vocational rehabilitation basic State grants.

In those programs all amounts other than the automatic spending increases shall be exempt from reduction under any order issued under this part.

See infra p. 578.

Congress's intent to refer to section 256(a) can be seen from the fact that there is no longer any section 257(1). Section 257(a) sets forth general principles relating to the baseline. *See infra* p. 600. At least some drafters of the Budget Enforcement Act intended to amend section 255(f) to read as does the new section 255(h), on "OPTIONAL EXEMPTION OF MILITARY PERSONNEL." *See infra* note 576. These drafters would thus have repealed the provisions of subsection (f) as it reads now, and thus did not change the cross-references set forth here.

¹⁵²⁷ This reference is to procedures for the reduction of automatic spending increases. Under Gramm-Rudman-Hollings as it existed before enactment of the Budget Enforcement Act, section 251(a)(3)(C) set forth such procedures, stating:

(C) The amount by which outlays for automatic spending increases scheduled to take effect during the fiscal year are to be reduced shall be credited as reductions in outlays under non-defense programs, and the total amount of reductions in outlays under non-defense programs required under subparagraph (B) shall be reduced accordingly.

(continued...)

¹⁵²⁷(...continued)

This provision no longer exists in section 251.

Related provisions now appear in sections 252(c)(1)(A) and 253(e)(1), so this reference should be to those sections. Section 252(c)(1)(A), regarding the pay-as-you-go sequester, states:

(c) **ELIMINATING A DEFICIT INCREASE.** — (1) The amount required to be sequestered in a fiscal year under subsection (b) shall be obtained from non-exempt direct spending accounts from actions taken in the following order:

(A) **FIRST.** — All reductions in automatic spending increases specified in section 256(a) shall be made.

See supra p. 513.

Section 253(e)(1), regarding deficit target sequesters, states:

(e) **NON-DEFENSE.** — Actions to reduce non-defense accounts shall be taken in the following order:

(1) **FIRST.** — All reductions in automatic spending increases under section 256(a) shall be made.

See supra p. 525.

Congress's intent to refer to sections 252(c)(1)(A) and 253(e)(1), and not to section 251(a)(3)(C), can be seen from the fact that there is no longer any section 251(a)(3)(C). Section 251(a)(3) deals with procedures for sequestration when the President exempts military personnel. *See supra* p. 477. At least some drafters of the Budget Enforcement Act intended to amend section 255(f) to read as does the new section 255(h), on "OPTIONAL EXEMPTION OF MILITARY PERSONNEL." *See infra* note 1544. These drafters would thus have repealed the provisions of subsection (f) as it reads now, and thus did not change the cross-references set forth here.

¹⁵²⁸ This reference is to procedures for the treatment of Federal administrative expenses under sequestration and thus should be to section 256(h). *See infra* pp. 587-589. Under Gramm-Rudman-Hollings as it existed before enactment of the Budget Enforcement Act, section 256(b) set forth such procedures. So as to put the subsections of section 255 in the order that they take would effect, section 13101(d)(2) of the Budget Enforcement Act moved what used to be subsection (b) to be what is now subsection (h) and moved what used to be subsection (c) to be what is now subsection (b). *See infra* p. 704.

At least some drafters of the Budget Enforcement Act intended to amend section 255(f) to read as does the new section 255(h), on "OPTIONAL EXEMPTION OF MILITARY
(continued...)

§ 255(g)

(g) OTHER PROGRAMS AND ACTIVITIES. —

§ 255(g)(1)(A)

(1)(A) The following budget accounts¹⁵³⁹ and activities shall be exempt from reduction under any order issued under this part:

Activities resulting from private donations, bequests, or voluntary contributions to the Government;

Administration of Territories, Northern Mariana Islands Covenant Grants (14-0412-0-1-806);

Thrift Savings Fund (26-8141-0-7-602);

Alaska Power Administration, Operations and maintenance (89-0304-0-1-271);

Appropriations for the District of Columbia (to the extent they are appropriations of locally raised funds);

Bonneville Power Administration fund and borrowing authority established pursuant to section 13 of Public Law 93-454 (1974), as amended (89-4045-0-3-271);

Bureau of Indian Affairs, miscellaneous payments to Indians (14-2303-0-1-452);

Bureau of Indian Affairs miscellaneous trust

¹⁵³⁹(...continued)

PERSONNEL." See *infra* note 1544. These drafters would thus have repealed the provisions of subsection (f) as it reads now, and thus did not change the cross-references set forth here.

¹⁵³⁹ Section 250(c)(11) defines "account." See *supra* p. 445.

funds, tribal trust funds (14-9973-0-7-999);

Claims, defense (97-0102-0-1-051);

Claims, judgments, and relief acts (20-1895-0-1-806);

Coinage profit fund (20-5811-0-2-803);

Compensation of the President (11-0001-0-1-802);

Customs Service, miscellaneous permanent appropriations (20-9922-0-2-852);

Comptroller of the Currency;

Director of the Office of Thrift Supervision;¹⁵³⁰

Dual benefits payments account (60-0111-0-1-601);

Eastern Indian land claims settlement fund (14-2202-0-1-806);

Exchange stabilization fund (20-4444-0-3-155);

Federal Deposit Insurance Corporation;

Federal Deposit Insurance Corporation, Bank

¹⁵³⁰ Section 743(a)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added the words "Director of the Office of Thrift Supervision;" at this point. Pub. L. No. 101-73, § 743(a)(1), 103 Stat. 183, 437 (1989).

Insurance Fund;¹⁵³¹

**Federal Deposit Insurance Corporation,
FSLIC¹⁵³² Resolution Fund;**

**Federal Deposit Insurance Corporation,
Savings Association Insurance Fund;**

Federal Housing Finance Board;¹⁵³³

**Federal payment to the railroad retirement
account (60-0113-0-1-601);**

**Foreign military sales trust fund (11-8242-0-7-
155);**

**Health professions graduate student loan
insurance fund (Health Education Assistance Loan
Program) (75-4305-0-3-553);**

¹⁵³¹ Section 743(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck out the words "Federal Home Loan Bank Board;" at this point and inserted:

Federal Deposit Insurance Corporation, Bank Insurance Fund;

Federal Deposit Insurance Corporation, FSLIC Resolution Fund;

Federal Deposit Insurance Corporation, Savings Association
Insurance Fund;

Pub. L. No. 101-73, § 743(a)(2), 103 Stat. 183, 437 (1989).

¹⁵³² "FSLIC" stands for the "Federal Savings and Loan Insurance Corporation," abolished August 9, 1989, by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [FIRREA], Pub. L. No. 101-73, § 401(a)(1), 103 Stat. 183, 354 (1989), 12 U.S.C. § 1437 note (Supp. III 1991).

¹⁵³³ Section 743(a)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck out the words "Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation;" at this point and inserted "Federal Housing Finance Board;" Pub. L. No. 101-73, § 743(a)(3), 103 Stat. 183, 437 (1989).

**Higher education facilities loans and insurance
(91-0240-01-502);**

**Internal Revenue collections for Puerto Rico
(20-5737-0-2-852);**

Intragovernmental funds, including those from which the outlays¹⁵³⁴ are derived primarily from resources paid in from other government accounts,¹⁵³⁵ except to the extent such funds are augmented by direct appropriations for the fiscal year during which an order is in effect;

Panama Canal Commission, operating expenses (95-5190-0-2-403), and Panama Canal Commission, capital outlay¹⁵³⁶ (95-5190-0-2-403);

Medical facilities guarantee and loan fund, Federal interest subsidies for medical facilities (75-4430-03-551);

National Credit Union Administration;

National Credit Union Administration, central liquidity facility;

National Credit Union Administration, credit union share insurance fund;

Payment of Vietnam and USS Pueblo prisoner-of-war claims (15-0104-0-1-153);

¹⁵³⁴ Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

¹⁵³⁵ Section 250(c)(11) defines "account." *See supra* p. 445.

¹⁵³⁶ Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

Payment to civil service retirement and disability fund (24-0200-0-1-805);

Payments to copyright owners (03-5175-0-2-376);

Payments to health care trust funds (75-0580-0-1-572);

Payments to military retirement fund (97-0040-0-1-054);

Compact of Free Association, economic assistance pursuant to Public Law 99-658 (14-0415-0-1-806);

Payments to social security trust funds (75-0404-0-1-571);

Payments to state and local government fiscal assistance trust fund (20-2111-0-1-851);

Payments to the foreign service retirement and disability fund (11-1036-0-1-153 and 19-0540-0-1-153);

Payments to trust funds from excise taxes or other receipts properly creditable to such trust funds;

Payments to the United States territories, fiscal assistance (14-0418-0-1-852);

Payments to widows and heirs of deceased Members of Congress (00-0215-0-1-801);

Postal service fund (18-4020-0-3-372);

Resolution Funding Corporation;¹⁵³⁷

Resolution Trust Corporation;

Salaries of Article III judges;

Soldiers and Airmen's Home, payment of claims (84-8930-0-7-705);

Southeastern Power Administration, Operations and maintenance (89-0302-0-1-271);

Southwestern Power Administration, Operations and maintenance (89-0303-0-1-271);

Tennessee Valley Authority fund, except non-power programs and activities (64-4110-0-3-999);

Washington Metropolitan Area Transit Authority, interest payments (46-0300-0-1-401);

Western Area Power Administration, Construction, rehabilitation, operations, and maintenance (89-5068-0-2-271); and

Western Area Power Administration, Colorado River basins power marketing fund (89-4452-0-3-271).

¹⁵³⁷ Section 743(a)(4) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added at this point:

Resolution Funding Corporation;

Resolution Trust Corporation;

§ 255(c)(1)(B)

(B) The following budget accounts¹⁵³⁸ and activities shall be exempt from reduction under any order issued under this part:

Black lung benefits (20-8144-0-7-601);

Central Intelligence Agency retirement and disability system fund (56-3400-0-1-054);

Civil service retirement and disability fund (24-8135-0-7-602);

Comptrollers general retirement system (05-0107-0-1-801);

Foreign service retirement and disability fund (19-8186-0-7-602);

Judicial survivors' annuities fund (10-8110-0-7-602);

Longshoremen's and harborworkers' compensation benefits (16-9971-0-7-601);

Military retirement fund (97-8097-0-7-602);

National Oceanic and Atmospheric Administration retirement (13-1450-0-1-306);

Pensions for former Presidents (47-0105-0-1-802);

Railroad retirement tier II (60-8011-0-7-601);

Railroad supplemental annuity pension

¹⁵³⁸ Section 250(c)(11) defines "account." See *supra* p. 445.

fund (60-8012-0-7-602);¹⁵³⁹

Retired pay, Coast Guard (69-0241-0-1-403);

Retirement pay and medical benefits for commissioned officers, Public Health Service (75-0379-0-1-551);

Special benefits, Federal Employees' Compensation Act (16-1521-0-1-600);

Special benefits for disabled coal miners (75-0409-0-1-601); and

Tax Court judges survivors annuity fund (23-8115-0-7-602).

§ 255(g)(2)

(2) Prior legal obligations of the Government in the following budget accounts¹⁵⁴⁰ and activities shall be exempt from any order issued under this part:

Agency for International Development, Housing, and other credit guarantee programs (72-4340-0-3-151);

Agricultural credit insurance fund (12-4140-0-3-351);

Biomass energy development (20-0114-0-1-271);

Check forgery insurance fund (20-4109-0-3-833);

¹⁵³⁹ Section 13101(c)(3) of the Budget Enforcement Act added the item for "Railroad supplemental annuity pension fund (60-8012-0-7-602)". See *infra* p. 702.

¹⁵⁴⁰ Section 250(c)(11) defines "account." See *supra* p. 445.

Community development grant loan guarantees (86-0162-0-1-451);

Credit union share insurance fund (25-4468-0-3-371);

Economic development revolving fund (13-4406-0-3-452);

Employees life insurance fund (24-8424-0-8-602);

Energy security reserve (Synthetic Fuels Corporation) (20-0112-0-1-271);

Export-Import Bank of the United States, Limitation of program activity (83-4027-0-3-155);

Federal Aviation Administration, Aviation insurance revolving fund (69-4120-0-3-402);

Federal Crop Insurance Corporation fund (12-4085-0-3-351);

Federal Deposit Insurance Corporation (51-8419-0-8-371);

Federal Emergency Management Agency, National flood insurance fund (58-4236-0-3-453);

Federal Emergency Management Agency, National insurance development fund (58-4235-0-3-451);

Federal Housing Administration fund (86-4070-

0-3-371);¹⁵⁴¹

Federal ship financing fund (69-4301-0-3-403);

**Federal ship financing fund, fishing vessels
(13-4417-0-3-376);**

**Geothermal resources development fund (89-
0206-0-1-271);**

**Government National Mortgage Association,
Guarantees of mortgage-backed securities (86-4238-
0-3-371);**

Health education loans (75-4307-0-3-553);

**Homeowners assistance fund, Defense (97-
4090-0-3-051);**

**Indian loan guarantee and insurance fund (14-
4410-0-3-452);**

**International Trade Administration, Opera-
tions and administration (13-1250-0-1-376);**

**Low-rent public housing, Loans and other
expenses (86-4098-0-3-604);**

**Maritime Administration, War-risk insurance
revolving fund (69-4302-0-3-403);**

**Overseas Private Investment Corporation (71-
4030-0-3-151);**

¹⁵⁴¹ Section 743(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck "Federal Savings and Loan Insurance Corporation fund (82-4037-0-3-371);" which originally appeared at this point. Pub. L. No. 101-73, § 743(c), 103 Stat. 183, 437 (1989).

**Pension Benefit Guaranty Corporation fund
(16-4204-0-3-601);**

Rail service assistance (69-0122-0-1-401);

**Railroad rehabilitation and improvement
financing fund (69-4411-0-3-401);**

**Rural development insurance fund (12-4155-0-
3-452);**

**Rural electric and telephone revolving fund
(12-4230-8-3-271);**

**Rural housing insurance fund (12-4141-0-3-
371);**

**Small Business Administration, Business loan
and investment fund (73-4154-0-3-376);**

**Small Business Administration, Lease guaran-
tees revolving fund (73-4157-0-3-376);**

**Small Business Administration, Pollution
control equipment contract guarantee revolving fund
(73-4147-0-3-376);**

**Small Business Administration, Surety bond
guarantees revolving fund (73-4156-0-3-376);**

**Veterans Administration, Loan guaranty
revolving fund (36-4025-0-3-704);**

**Veterans Administration, Servicemen's group
life insurance fund (36-4009-0-3-701);**

§ 255(h) (h)¹⁵⁴² **LOW-INCOME PROGRAMS.** — The following programs shall be exempt from reduction under any order issued under this part:

Aid to families with dependent children (75-0412-0-1-609);

Child nutrition (12-3539-0-1-605);

Food stamp programs (12-3505-0-1-605 and 12-3550-0-1-605);

Grants to States for Medicaid (75-0512-0-1-551);

Supplemental Security Income Program (75-0406-0-1-609); and

Women, infants, and children program (12-3510-0-1-605).

§ 255(i) (i) **IDENTIFICATION OF PROGRAMS.** — For purposes of subsections (g) and (h), programs are identified by the designated budget account¹⁵⁴³ identification code numbers set forth in the Budget of the United States Government, 1986 — Appendix.

§ 255(h) (h)¹⁵⁴⁴ **OPTIONAL EXEMPTION OF MILITARY PERSON.**

¹⁵⁴² Section 13101(c)(4) of the Budget Enforcement Act added another subsection (h) at the end of section 255. See *infra* p. 703. As section 13101(c)(4) of the Budget Enforcement Act simply added the new subsection (h) at the end of section 255 and did not amend the existing subsection (h) to read as the new subsection (h), Congress evidently wanted to add another subsection and not to repeal the existing subsection (h).

¹⁵⁴³ Section 250(c)(11) defines "account." See *supra* p. 445.

¹⁵⁴⁴ Section 13101(c)(4) of the Budget Enforcement Act added subsection (h) "at the end" of section 255. See *infra* p. 703. As section 13101(c)(4) of the Budget Enforcement Act simply added the new subsection (h) at the end of section 255 and did not amend the

(continued...)

NEL. —

§ 255(h)(1) (1) The President may, with respect to any military personnel account,¹⁵⁴⁵ exempt that account from sequestration¹⁵⁴⁶ or provide for a lower uniform percentage reduction than would otherwise apply.

§ 255(h)(2) (2) The President may not use the authority provided by paragraph (1) unless he notifies the Congress of the manner in which such authority will be exercised on or before the initial snapshot date¹⁵⁴⁷ for the budget year.¹⁵⁴⁸

¹⁵⁴⁴ (...continued)
existing subsection (h) to read as the new subsection (h), Congress evidently wanted to add another subsection and not to repeal the existing subsection (h). As subsections (h) and (i) already existed, however, the Budget Enforcement Act should have added a new subsection (j) at the end of section 255, or perhaps have inserted the new subsection (h) in place of the existing subsection (f), which at least some drafters of the Budget Enforcement Act intended to repeal, as section 256(a) (*see infra* p. 578) now accomplishes effectively the same thing as section 255(f) (among other things).

¹⁵⁴⁵ Section 250(c)(11) defines "account." *See supra* p. 445.

¹⁵⁴⁶ Section 250(c)(2) defines "sequestration." *See supra* p. 440.

¹⁵⁴⁷ Gramm-Rudman-Hollings formerly defined this snapshot date. Sections 254(a) (*see supra* pp. 541-542) and 254(e) (*see supra* p. 547) make clear that this reference is to August 10.

¹⁵⁴⁸ Section 250(c)(12) defines "budget year." *See supra* p. 446.