

Subtitle C **Social Security¹⁸³⁰**

§ 13301 SEC. 13301. OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

§ 13301(a) (a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS. — Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of —

§ 13301(a)(1) (1) the budget of the United States Government as submitted by the President,

§ 13301(a)(2) (2) the congressional budget, or

§ 13301(a)(3) (3) the Balanced Budget and Emergency Deficit Control Act of 1985.

§ 13301(b) (b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET. — Section 301(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any

¹⁸³⁰ For legislative history of the amendments made by subtitle C, see *infra* note 1831 (at the end of section 13301).

other surplus or deficit totals required by this title.”¹⁸³¹

¹⁸³¹ The statement of managers accompanying the conference report on the Budget Enforcement Act explains generally the amendments made by subtitle C:

VI. TREATMENT OF SOCIAL SECURITY

Current law

Under current law, the Social Security trust funds are off-budget but are included in deficit estimates and calculations made for purposes of the sequestration process. However, Social Security benefit payments are exempt from any sequestration order.

Section 310(g) of the Congressional Budget Act of 1974 prohibits the consideration of reconciliation legislation “that contains recommendations” with respect to Social Security. (A motion to waive this point of order requires 60 votes in the Senate and a simple majority in the House.)

House bill

The House bill reaffirms the off-budget status of Social Security and removes the trust funds — excluding interest receipts — from the deficit estimates and calculations made in the sequestration process. The House bill retains the current law exemption of Social Security benefit payments from any sequestration order.

The House bill creates a “fire wall” point of order (as free-standing legislation) to prohibit the consideration of legislation that would change the actuarial balance of the Social Security trust funds over a 5-year or 75-year period. In the case of legislation decreasing Social Security revenues, the prohibition would not apply if the legislation also included an equivalent increase in Medicare taxes for the period covered by the legislation.

Senate amendment

The Senate amendment also reaffirms the off-budget status of Social Security and removes the trust funds from the deficit estimates and calculations made in the sequestration process. However, unlike the House bill, the Senate amendment removes the gross trust fund transactions — including interest receipts — from the sequestration deficit calculations. The Senate amendment also retains the current law exemption of Social Security benefit payments from any sequestration order.

The Senate amendment also creates a procedural fire wall to protect Social Security financing, but does so by expanding certain budget enforcement provisions of the Congressional Budget Act of 1974. The Senate amendment expands the prohibition in Section 310(g) of the Budget Act to
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specifically protect Social Security financing, prohibits the consideration of a reported budget resolution calling for a reduction in Social Security surplus, and includes Social Security in the enforcement procedures under Sections 302 and 311 of the Budget Act. The Senate amendment also requires the Secretary of Health and Human Services to provide an actuarial analysis of any legislation affecting Social Security, and generally prohibits the consideration of legislation lacking such an analysis.

For more on the budgetary treatment of Social Security under current law and historically, see SENATE COMM. ON THE BUDGET, SOCIAL SECURITY PRESERVATION ACT, S. REP. NO. 101-426, 101ST CONG. 2D SESS. (1990).

Conference agreement

The conference agreement incorporates the Senate position on the budgetary treatment of the Social Security trust funds, reaffirming their off-budget status and removing all their transactions from the deficit estimates and calculations made in the sequestration process.

Further, the conference agreement provides that the "fire wall" procedure proposed by the House shall apply only to the House and that the "fire wall" procedures proposed by the Senate shall apply only to the Senate.

H.R. CONF. REP. NO. 101-964, 101ST CONG., 2D SESS. 1160-61 (1990), *reprinted in* 1990 U.S.C.C.A.N. 2374, 2865-66.

For legislative history of the effort to remove Social Security from the budget, see generally 136 CONG. REC. 15,777-81 (daily ed. Oct. 18, 1990) (Senate debate on the related amendment to the Omnibus Budget Reconciliation Act of 1990); SENATE COMM. ON THE BUDGET, SOCIAL SECURITY PRESERVATION ACT, S. REP. NO. 101-426, 101ST CONG. 2D SESS. (1990); CONGRESSIONAL RESEARCH SERV., SOCIAL SECURITY, MEDICARE, AND THE UNIFIED BUDGET, S. PRINT NO. 83, 99TH CONG., 1ST SESS. (Sen. Comm. on Budget Print 1985); *Concurrent Resolution on the Budget for Fiscal Year 1989: Hearings Before the Senate Comm. on the Budget*, 100th Cong., 2d Sess. 85-160 (1988) (S. Hrg. No. 578, Vol. III) (hearing March 24, 1988, on "Social Security, Deficits, and the Baby Boomers' Retirement"); *Budget Reform Proposals: Joint Hearings Before the Senate Comm. on Governmental Affairs & Comm. on the Budget*, 101st Cong., 1st Sess. 30-42 (S. Hrg. No. 101-560) (1989) (testimony of Sen. Heinz Oct. 18, 1989, on S. 1752); 129 CONG. REC. S3587-603 (daily ed. Mar. 22, 1983) (Heinz amendment to remove Social Security trust funds from the unified budget); 135 CONG. REC. S15,137-47 (daily ed. Nov. 7, 1989) (statements of Sen. Heinz, Majority Leader Mitchell, and others regarding scheduling of legislation regarding Social Security); 136 CONG. REC. S7935-36, S7949-50, S7956-59, S7974-79 (daily ed. June 14, 1990) (same); 136 CONG. REC. S8153-56 (daily ed. June 18, 1990) (statement of Sen. Heinz on his amendment requiring Congressional action on Social Security before action on the debt limit); 136 CONG. REC. S8192-210 (daily ed. June 19, 1990) (debate on the Heinz amendment); S. 2211, 100th Cong., 2d Sess., 134 CONG. REC. S3038-39 (daily ed. (continued...))

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Mar. 24, 1988) (Sen. Sanford); S. 2914, 100th Cong., 2d Sess., 134 CONG. REC. S16,889-95 (daily ed. Oct. 19, 1988) (Sen. Moynihan); S. 101, 101st Cong., 1st Sess., 135 CONG. REC. S170, S425-29 (daily ed. Jan. 25, 1989) (Sen. Sanford); S. 219, 101st Cong., 1st Sess., 135 CONG. REC. S173, S636-37 (daily ed. Jan. 25, 1989) (Sen. Moynihan); S. 240, 101st Cong., 1st Sess., 135 CONG. REC. S173, S682-84 (daily ed. Jan. 25, 1989) (Sen. Heinz); S. 401, 101st Cong., 1st Sess., 135 CONG. REC. S1413, S1421-22 (daily ed. Feb. 9, 1989) (Sen. Hollings); S. 852, 101st Cong., 1st Sess., 135 CONG. REC. S4384, S4419 (daily ed. Apr. 19, 1989) (Sen. Bryan); S. 1752, 101st Cong., 1st Sess., 135 CONG. REC. S13,297, S13,299-300 (daily ed. Oct. 12, 1989) (Sen. Heinz); S. 1785, 101st Cong., 1st Sess., 135 CONG. REC. S13,893 (daily ed. Oct. 24, 1989) (Sen. Moynihan); S. 1795, 101st Cong., 1st Sess., 135 CONG. REC. S14,129, S14,137-38 (daily ed. Oct. 25, 1989) (Sen. Hollings).

For a general discussion of the removal of Social Security from the budget and its consequences, see DAVID KORTZ, *SOCIAL SECURITY: ITS REMOVAL FROM THE BUDGET AND PROCEDURES FOR CONSIDERING CHANGES TO THE PROGRAM* (Jan. 4, 1993) (Cong. Res. Serv. rep. no. 93-23 EPW).

Some have argued that section 13301 conflicts with the listing of discretionary accounts set forth in the joint statement of managers accompanying the conference report on the Budget Enforcement Act. *See supra* p. 466. In a letter to the Director of the Office of Management and Budget, the Chairman of the Budget Committee argued that the congressional intent is plain:

I am writing to express my concern regarding a possible interpretation of the Budget Enforcement Act of 1990 with respect to the budgetary treatment of Social Security. I understand that your Office is considering whether the administrative expenses of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall be counted in the deficit and as part of the domestic discretionary caps for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings). I wish to express in the strongest terms my view that these administrative expenses should not be included in either the deficit or the domestic discretionary cap for purposes of Gramm-Rudman-Hollings.

Section 13301(a) of the Budget Enforcement Act states:

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The all-inclusive breadth of this language could not be more clear. The subsection heading speaks of "exclusion . . . from *all* budgets." The operative language is unambiguous: "the receipts and disbursements . . . shall not be counted." Paragraph (3) specifically mentions the Gramm-Rudman-Hollings law as one of the purposes for which Social Security must be excluded.

The joint statement of managers accompanying the conference report
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on the legislation that includes the Budget Enforcement Act similarly makes clear the intent of section 13301:

The conference agreement incorporates the Senate position on the budgetary treatment of the Social Security trust funds, reaffirming their off-budget status and removing *all their transactions* from the deficit estimates and calculations made in the sequestration process.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1161 (1990)[, *reprinted in* 1990 U.S.C.A.N. 2017, 2865-66] (emphasis added).

I understand that it may be argued that statement of managers language specifically includes references to the Social Security trust funds as two account items in a 39-page listing of accounts incorporated by reference in the definition of the term "category" for purposes of the Gramm-Rudman-Hollings law. It would strain credulity to argue that this reference overcomes the plain language of section 13301(a). Although I concede that some conflict between these two provisions may exist, that conflict must be resolved in favor of implementing the intent of Congress as evident in section 13301(a).

The legislative intent to remove Social Security completely from all budgets is clear. The language of section 13301 indicates that it must apply "[n]otwithstanding any other provision of law." The Senate debated the removal of Social Security at length. The Senate voted 98-2 in favor of the amendment — sponsored by Senators Hollings, Heinz, and Moynihan, among others — that specifically took Social Security out of the Gramm-Rudman-Hollings process. (See 136 CONG. REC. 15,777-81 (Oct. 18, 1990).) Congressional examination of the 39-page listing in the statement of managers is nowhere evident in the debates.

I urge you to follow section 13301(a) of the Budget Enforcement Act and remove the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds from the budget in their entirety. I recommend that the President use his authority under section 251(b)(1)(A) of the Gramm-Rudman-Hollings law to recognize any adjustments to the discretionary spending limits that such a position would require as a change in a concept or definition. I believe that this is the approach needed to ensure that all of Social Security is taken off budget.

Letter from Sen. Jim Sasser to Richard G. Darman (Jan. 4, 1991).

The acting general counsel of the Office of Management and Budget replied to Chairman Sasser as follows:

You expressed the view that the administrative costs of the social security pro-
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gram should be excluded from the domestic discretionary spending category.

We recognize that the Omnibus Budget Reconciliation Act (OBRA) contains a provision generally excluding the social security trust funds from the budget as well as the Gramm-Rudman-Hollings Act. Social security was previously excluded from the budget, but not from the deficit calculations under the Gramm-Rudman-Hollings Act (GRH).

However, other provisions of OBRA specifically address whether social security administrative expenses are included in the domestic discretionary spending category. The portion of the social security trust funds that are annually appropriated as administrative expenses are specifically identified in the list of domestic discretionary programs that is part of the Joint Statement of Managers Accompanying the Conference Report on OBRA. OBRA expressly provides that discretionary appropriations in each of the three categories "shall be those so designated in the joint statement of managers." Section 250 (c) (4) (A) of GRH, as amended by OBRA. Because of this express designation of social security administrative expenses in the list of accounts that are required to be included in the domestic discretionary category identified in the law, we have concluded that the expenses must be so included.

While the OBRA provision excluding Social Security (section 13301(1)) applies as a general matter, it does not directly conflict with the specific OBRA provisions directing the treatment of one element of social security only for certain purposes. For example, Section 13303 of OBRA specifically requires that the congressional budget include social security revenue and outlays for purposes of enforcement of the Senate social security "firewall" points of order. This specific provision should not be disregarded simply because the general social security exclusion provision states that social security outlays and receipts "shall not be counted" for purposes of "the congressional budget." Section 13301 (a). The same is true of the specific provision on administrative expenses. Indeed, even if there were a direct conflict between the general and specific provisions, the result would be the same. It is a basic principle of statutory construction that "Where there is inescapable conflict between general and specific terms or provisions of a statute, the specific will prevail." 2A Sutherland, *Statutory Construction* Sec. 46.05 at p. 92 (4th Ed.).

The Congressional Budget Office (CBO) included social security administrative expenses within the domestic discretionary category in its Final Sequestration Report for Fiscal Year 1991, issued on November 6, 1990. OMB did the same in its Final OMB Sequester Report To The President and Congress for Fiscal Year 1991, issued on November 9, 1990. The Comptroller General of the United States, in his statutorily required report on the extent to which the CBO and OMB reports complied with law, issued December 10,

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1990, did not state that OMB or CBO failed to comply with OBRA or committed any error by including social security administrative expenses in the domestic discretionary category. General Accounting Office, "The Budget for Fiscal Year 1991 — Compliance with the Balanced Budget and Emergency Deficit Control Act of 1985" B-221498 (December 10, 1990).

In view of the specific direction on the subject contained in OBRA, OMB will continue to classify social security program administrative expenses as within the domestic discretionary spending category.

Letter from Robert G. Damus to Sen. Jim Sasser (Jan. 24, 1991).