

# CRS Report for Congress

Received through the CRS Web

## Social Security and Medicare “Lock Boxes”

David Koitz, Geoffrey Kollmann,  
and Dawn Nuschler  
Domestic Social Policy Division

### Summary

With the onset of large federal budget surpluses over the past few years, Social Security and Medicare’s treatment in the budget has become a major policy issue. Congressional views about what to do with the budget surpluses are diverse — ranging from “buying down” the federal government’s outstanding debt to cutting taxes to increasing spending. Despite the differences, support was substantial in the 106<sup>th</sup> Congress for setting aside an amount equal to Social Security and Medicare Hospital Insurance (HI) trust fund surpluses. This posture was reflected to varying degrees in the congressional budget resolutions passed during the period (H.Con.Res. 68 and H.Con.Res. 290), which assumed at a minimum that an amount equal to Social Security trust fund surpluses would go toward debt reduction until passage of a Social Security reform measure. The 106<sup>th</sup> Congress also considered various “lock box” measures designed to impose procedural obstacles on bills attempting to use the Social Security and, in some cases, HI set asides for purposes other than Social Security or Medicare reform. The House approved a number of such measures, including H.R. 3859, H.R. 5173, and H.R. 5203. The Senate, however, failed to complete action on them before adjourning sine die. Debate over “lock box” measures continues in the 107<sup>th</sup> Congress. On February 13, 2001, the House approved H.R. 2, *Social Security and Medicare Lock-box Act of 2001*, as amended, by a vote of 407-2. Attempts to consider similar measures in the Senate failed on March 13, 2001 and July 10, 2001. This report will be updated as legislative activity occurs.

### Legislation in 1999

The concurrent budget resolution for FY2000 established budget goals for the following 10 years that set aside a portion of projected unified budget surpluses equal to the Social Security trust fund surpluses pending consideration of Social Security and/or Medicare reforms (H.Con.Res. 68, passed by the House and Senate in April 1999). Congress went on to consider so-called “lock box” measures that would attempt to protect the Social Security-related set aside (and in some instances, a Medicare HI portion as well) with procedural and other process constraints that would apply to subsequent bills. Although passing the House, none cleared the Senate because of conflicts over the form they should take.

**Congressional Budget Resolution for FY2000.** The House-passed resolution had included a new “point of order,” under a provision entitled “*Safe Deposit Box for Social Security Surpluses*,” allowing a floor objection to be raised against any budget bill that would permit a budget deficit. The term “budget deficit” meant one reflecting federal receipts and expenditures excluding Social Security and the Postal Service, what is referred to as an “on-budget” deficit. In the House, such an objection could be waived by a simple majority; in the Senate, however, it would require approval by 60% of the Members. It also called for creation of a “*Reserve Fund For Retirement Security And, As Needed, Medicare*” permitting the chairman of the Budget Committee to increase expenditures or reduce revenues during the 10-year period covered by the budget resolution, FY2000-2009, if the House Ways and Means Committee reported a bill to reform Social Security or Medicare. Specifically, it would have permitted an on-budget deficit for legislation to enhance “retirement security” or to extend the solvency or reform “the benefit or payment structure of Medicare.” The amount of the on-budget deficit (or increase thereof) could not exceed the projected Social Security trust fund surplus. It further contained a “sense of the Congress” statement that (1) legislation be considered precluding the Office of Management and Budget (OMB), the Congressional Budget Office (CBO), or any other federal government entity from publishing federal budget totals in official documents that include the operations of the Social Security system, and (2) that Congress should consider legislation to establish either safeguards of the following 10 years’ Social Security surpluses, or a new limit on federal debt *held by the public* that would decline each year by the amount of the Social Security surplus. The intent of the latter would be to require a reduction in federal debt equal to the Social Security surpluses, and by so doing, free up resources in the financial markets that could add to national savings pending action to reform Social Security or Medicare.

The Senate-passed resolution assumed that an amount equal to the following 10 years’ Social Security surpluses would be used exclusively to retire publicly-held federal debt and contained corresponding declining debt levels. The debt levels, however, were not to be binding. The resolution called for a subsequent statute to reaffirm that Social Security is not to be counted in the budgets proposed by the President or Congress, and that violations of such would be “out of order” in the Senate; mandate that Social Security surpluses be used only for paying Social Security benefits, Social Security reform or to reduce publicly-held debt, and not spent on non-Social Security programs or used to offset tax cuts (subject to a Senate super-majority point of order); and ensure that all Social Security benefits are paid on time. It allowed the Chairman of the Budget Committee to alter the budget totals to accommodate Senate consideration of certain legislation, including tax cuts, Medicare reform, Medicare coverage of prescription drugs (if part of legislation that extends the solvency of Medicare), and changes in Medicare managed plans. It also extended the duration of the Senate “pay-as-you-go” budget rules until there was an “on-budget” surplus, thereby precluding expenditure of Social Security surpluses but allowing “on-budget” surpluses to be used for tax cuts and spending increases.

The conference agreement on the resolution included a modified version of the House “*Safe Deposit Box*” provision permitting an objection to be raised against any revision of the FY2000 resolution or consideration of a FY2001 resolution that would envision an “on-budget” deficit. It then permitted the Budget Committee chairmen to alter the budget totals to increase expenditures or reduce revenues, if the House Ways and Means or Senate Finance Committees reported a bill that enhances “retirement security through structural programmatic reform.” Under a separate provision, it permitted a similar

adjustment to be made for a bill “that implements structural medicare reform and significantly extends the solvency of the Medicare Hospital Insurance Trust Fund without the use of transfers of new subsidies from the general fund . . .” This latter adjustment could not cause an “on-budget” deficit. It also included language stating that it is the sense of the Congress that additional measures be passed to enforce the separation of Social Security from the budget, the setting aside of Social Security surpluses pending consideration of reform legislation, and the possible creation of a super-majority point of order against measures that would violate limits on publicly-held debt designed to ensure that Social Security surpluses are used only for “the payment of social security benefits, social security reform, retirement security, or the reduction” of publicly-held debt.

Through these mechanisms, the FY2000 budget resolution established a congressional goal of setting aside an amount equal to the Social Security trust fund surpluses pending consideration of reform measures. In the absence of such legislation, the expectation was that publicly-held federal debt would fall as surplus tax receipts were used to buy up outstanding federal securities (that being the natural consequence of current law). Under the House-passed resolution, the principal enforcement mechanisms were to be existing budget act rules that would allow objections, i.e., points of order, to be lodged against bills that would create an “on-budget” deficit for something “other than reforming Social Security or Medicare” and passage of subsequent process constraints. Under rules already in the Budget Enforcement Act of 1990, with passage of the FY2000 budget resolution points of order could be raised against bills brought up in the coming year that would violate the budget resolution totals or instructions. Subsequent legislation, called for by the resolution, was to create additional points of order applicable for the following 10-year period or mandate use of Social Security surpluses for debt reduction.

Under the Senate-passed resolution and in the sense of the Congress statement in the subsequent conference agreement, the implicit enforcement mechanism was to be the creation of a new statutory ceiling (or target ceiling) on the portion of the federal debt held by the public. The current statutory debt ceiling pertains to aggregate federal debt (or nearly so), including the portion held in the government’s own accounts. The new ceiling on the portion held by the public was to be set so that it would decline annually by the amount of the yearly Social Security surplus, thereby precluding the use of those surpluses for other spending increases or tax cuts pending consideration of reform legislation. The final resolution itself did not contain language creating the declining debt ceilings, but suggested their creation as a possible “lock box” measure.

Since a point of order can be waived by a sufficient majority in Congress and legislation enacted today can be superseded later, the implicit enforcement mechanism under either approach is the potential political hurdle against using Social Security surpluses for purposes other than to enhance retirement security, reform Medicare, or reduce publicly-held federal debt. Whether such a hurdle provides a binding impediment is problematic; its forcefulness is not the result of a constitutional directive; it depends heavily on the President’s and Congress’ general perspective about the overall needs of the Nation as time passes.

**Subsequent Action.** The idea of enhancing the budget resolutions’ “lock box” concepts or to further alter Social Security’s and Medicare’s budget treatment was reflected in more than 40 bills introduced in the 106<sup>th</sup> Congress. Despite their apparent popularity, however, considerable controversy arose over the form such changes should

take. A Senate amendment to S. 557 (a bill to reform the budget process), supported by the Senate Republican leadership, attempted to protect the following 10 years' Social Security set asides by requiring a new limit on publicly-held debt that would decline by the amount of each year's Social Security trust fund surplus. Motions to set a time limit on debate so that the Senate could consider the amendment were defeated on April 22 and 30, and again on June 15, 1999. An agreement appeared at hand on July 1, 1999, but when the motion was raised a fourth time on July 16, 1999, the Senate again failed to set a time limit. Proponents argued that the measure would discourage bills that would use the Social Security portion of budget surpluses for tax cuts or spending increases since doing so could cause the new debt ceiling to be exceeded, thereby threatening a government shut down. Opponents, including the Administration, argued that the measure was too extreme – that it would threaten the agencies whose existence the program needed to function.

H.R. 1259, passed by the House on May 26, 1999 by a vote of 416 to 12 would have created new points of order against bills causing or increasing an “on-budget” deficit (i.e., that dip into Social Security set aside). Again, 3/5ths approval in the Senate would have been needed to waive them. It also precluded official publication of budget totals that include Social Security's income and outgo (currently, budget documents prepared by OMB and CBO show budget totals both with and without Social Security). Supporters argued that the bill would have made it harder to use the Social Security set aside for other government spending or to offset revenue losses from tax cuts. Critics contended that it offered no truly binding constraint and as such was mostly a symbolic political measure. Although H.R. 1259 was considered to be less stringent than the pending amendment to S. 557, in a vote on June 16, 1999, it too failed to garner Senate support.

A Senate Democratic alternative, raised on July 29, 1999 in consideration of a major tax cut bill supported by the Republican leadership (S. 1429), also was defeated on a procedural motion. It would have required the Finance Committee to report out a measure similar to the House-passed bill, H.R. 1259, and, in addition, would have reduced the aggregate 10-year tax cuts such that one-third of the projected “on-budget” surpluses would have been earmarked for Medicare reform.

## Legislation in 2000

**Congressional Budget Resolution for FY2001.** The “lock box” issue re-emerged in the 2<sup>nd</sup> session of the 106<sup>th</sup> Congress, beginning with House passage of the FY2001 budget resolution. It included another Social Security “lock box” measure closely resembling the provision in the previous year's House-passed resolution providing for a point of order against any bill that would result in an “on-budget” deficit and stating that it was the sense of the Congress that subsequent legislation should be enacted that would enforce the reduction in debt held by the public assumed in the resolution by the imposition of a statutory limit on such debt or other appropriate means.

The Senate then passed its version of the resolution including a similar but more detailed provision. It, too, provided for a point of order against any bill that would result in an “on-budget” deficit and called upon Congress to consider subsequent legislation to reduce publicly held debt by the amount of annual Social Security trust fund surpluses. It further specified that such legislation should (1) call for suspension of the prescribed debt reduction if economic growth was less than 1% and (2) provide that if any prior-year Social Security surplus “is used to finance general operations of the Federal Government, an amount equal to the amount used shall be deducted from the available amount of

discretionary spending for the following fiscal year for purposes of any concurrent resolution on the budget.” In debate on the resolution on April 5, 2000, the Senate set aside an enforcement measure (offered as part of a broader amendment by Senator Allard, et.al.), which would have required that an amount equal to Social Security trust fund surpluses be used for debt reduction until “major” reform measures were enacted. Also set aside on April 7, 2000 was (1) a “lock box” alternative (offered by Senators Conrad and Baucus), similar to the Democratic measure proposed in July 1999 that would have allowed points of order to be raised against measures using the Social Security portion of the budget surpluses and 1/3 of the “on-budget” surplus (the latter amount being reserved for Medicare reforms including the enactment of a prescription drug benefit); and (2) a measure (offered by Senator Ashcroft, et.al.) that would have taken Medicare (HI) trust fund surpluses off budget, precluded any subsequent “on budget” deficits, and called for sequestration of discretionary spending if the portion of the budget surplus equal to the HI trust fund surplus for other purposes.

The conference agreement on the resolution included a blended version of the respective lock box provisions. It made it out of order to consider changes to the resolution that would result in an “on budget” deficit with exceptions for a declaration of war or if economic growth is less than 1%. It further provided that if any part of the FY2001 Social Security set aside were used to finance general operations of the federal government, an equivalent amount would be deducted from the available level of overall discretionary spending in FY2002. In addition, it included a sense of the Congress resolution calling for enactment of subsequent legislation to reduce publicly-held debt by the amount of annual Social Security trust fund surpluses.

**Action on H.R. 3859.** On June 20, 2000, the House passed H.R. 3859 (Herger, et. al.), *the Social Security and Medicare Safe Deposit Box of 2000*. It would have permitted objections to be raised against bills attempting to use the portion of budget surpluses equal to the Social Security or Medicare HI trust fund surpluses.

**Action on H.R. 5173.** On September 18, 2000, the House passed another measure, H.R. 5173. Like H.R. 3859, H.R. 5173 would have reserved an amount equal to Social Security and Medicare HI surpluses for public debt reduction until legislation was passed to “reform” Social Security and Medicare. It would have done so by creating procedural points of order against measures causing a reduction in the portion of budget surpluses attributable to these programs. In addition, it called for reserving \$42 billion of the FY2001 budget surplus not attributable to Social Security and Medicare for public debt reduction. An off-budget account in the Treasury (the *Public Debt Reduction Payment Account*) was to be created to which the \$42 billion would be appropriated, and the statutory limit on the federal debt was to be reduced accordingly. In total, the measure would have reserved 90% of the projected FY2001 budget surplus for debt reduction. The measure would have excluded Social Security and the Public Debt Reduction Payment Account from official federal budget documents requiring such receipts and outlays to be reported in separate budget documents. Similar provisions were included in H.R. 5203 passed by the House on September 19, 2000 (see CRS Report RS20676). As in the previous year, the Senate failed to garner support for any of the lock box measures sent over by the House in 2000.

## Legislation in 2001

On February 13, 2001, the House passed **H.R. 2** (*Social Security and Medicare Lock-box Act of 2001*, Herger, et. al.), as amended, by a vote of 407-2. H.R. 2 would attempt to enforce setting aside a portion of federal budget surpluses equal to the Social Security and Medicare HI trust fund surpluses pending enactment of Social Security and Medicare reform legislation.<sup>1</sup> The measure, which contains provisions similar to H.R. 5173 and H.R. 5203 passed by the House in 2000,<sup>2</sup> would provide for points of order against spending or tax legislation causing a reduction in the portion of projected budget surpluses equal to the amount of projected Social Security and Medicare HI trust fund surpluses.<sup>3</sup> Points of order could be overridden only by a majority vote in the House and a three-fifths majority vote in the Senate. In the absence of enactment of such spending or tax measures, the Social Security and Medicare HI set-asides would automatically go toward paying down the debt.<sup>4</sup> The measure does not alter the current “*off-budget*” status of the Social Security trust funds or the “*on-budget*” status of the Medicare HI trust fund.<sup>5</sup>

In the Senate, similar Democratic and Republican provisions were offered as amendments to S. 420, *Bankruptcy Reform Act of 2001*. One offered by Senator Conrad would have taken Medicare HI off-budget and enhanced procedural points of order for Social Security. Another offered by Senator Sessions contained provisions similar to H.R. 2 (described above). Neither was adopted having been set aside due to procedural points of order raised during Senate debate on March 13, 2001.<sup>6</sup> Similar amendments by Senators Conrad and Voinovich to S. 1077, a *Supplemental Appropriation Act for 2001*, were set aside again on July 10, 2001.

---

<sup>1</sup> H.R. 2 defines reform legislation as a bill or joint resolution that includes the following provision: “For purposes of section 316(a) of the Congressional Budget Act of 1974, this Act constitutes medicare [or social security] reform legislation.”

<sup>2</sup> H.R. 2 does not include provisions in these measures that would have created a *Public Debt Reduction Payment Account* in the Treasury and required reporting of budget totals for this new, off-budget account and Social Security separate from official budget documents.

<sup>3</sup> Projected surpluses of the Medicare Supplementary Medical Insurance(SMI) trust fund are not included in the measure. Unlike the Medicare HI trust fund which is funded primarily by payroll tax revenues, the Medicare SMI trust fund is funded primarily by general revenues and premiums paid by SMI beneficiaries.

<sup>4</sup> In its latest report (August 2002), the Congressional Budget Office projects total budget surpluses of \$3.4 trillion over the 2002-2011 period. It also projects 10-year Social Security trust fund surpluses of \$2.6 trillion and Medicare HI trust fund surpluses \$404 billion.

<sup>5</sup> In keeping with the provisions of H.R. 2, the *Concurrent Resolution on the Budget for Fiscal Year 2002* (H.Con.Res. 83) passed by the House provides that the surplus specified in the resolution for any fiscal year may not be less than the annual surplus in the Medicare HI trust fund. However, both the House- and Senate-passed versions of H.Con.Res. 83 include provisions that authorize the Chairman of the Budget Committee to increase spending levels specified in the resolution to pay for Medicare reform and prescription drug coverage.

<sup>6</sup> See also: CRS Report 95-206, *Social Security's Treatment Under the Federal Budget: A Summary*; CRS Report 98-422, *Social Security and the Federal Budget: What Does Social Security's Being “Off-Budget” Mean?*; and CRS Issue Brief IB98048, *Social Security Reform*.