DESCRIPTION OF THE CHAIRMAN'S MARK REGARDING
H.R. 743
"THE SOCIAL SECURITY PROGRAM PROTECTION ACT OF 2003"

TITLE I. PROTECTION OF BENEFICIARIES

Subtitle A. Representative Payees

Section 101. Authority to Reissue Benefits Misused by Organizational Representative Payees

Present Law

The Social Security Act requires the re-issuance of benefits misused by any representative payee when the Commissioner finds that the Social Security Administration (SSA) negligently failed to investigate and monitor the payee.

Explanation of Provision

The new provision eliminates the requirement that benefits be reissued only upon a finding of SSA negligence. Thus, the Commissioner would re-issue benefits under Titles II, VIII and XVI in any case in which a beneficiary's funds are misused by an organizational payee or an individual payee representing 15 or more beneficiaries.

The new provision defines misuse as any case in which a representative payee converts the benefits entrusted to his or her care for purposes other than the "use and benefit" of the beneficiary, and authorizes the Commissioner to define "use and benefit" in regulation.

Effective Date

This provision applies to benefit misuse by a representative payee as determined by the Commissioner on or after January 1, 1995.

Section 102. Oversight of Representative Payees

Present Law

Present law requires non-governmental fee-for-service organizational representative payees to be licensed or bonded. Periodic on-site reviews of representative payees by the Social Security Administration are authorized, but not required.

Explanation of Provision

The new provision requires non-governmental fee-for-service organizational representative payees to be both licensed and bonded (provided that licensing is available in the State). In addition, such representative payees must submit yearly proof of bonding and licensing, as well as copies of any available independent audits that were performed on the payee in the past year.

The new provision also requires the Commissioner of Social Security to conduct periodic onsite reviews of: (1) a person who serves as a representative payee to 15 or more beneficiaries, (2) non-governmental fee-for-service representative payees (as defined in Titles II and XVI), and (3) any agency that serves as the representative payee to 50 or more beneficiaries. In addition, the Commissioner is required to submit an annual report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the reviews conducted in the prior fiscal year.

Effective Date

The bonding, licensing, and audit provisions are effective on the first day of the 13th month following enactment of the legislation. The periodic on-site review provision is effective upon enactment.

Section 103. Disqualification from Service as Representative Payee of Persons Convicted of Offenses Resulting in Imprisonment for More Than One Year, of Persons Fleeing Prosecution, Custody or Confinement, and of Persons Violating Probation or Parole.

Present Law

Individuals convicted of fraud under the Social Security Act are disqualified from being representative payees.

Explanation of Provision

The new provision expands the scope of disqualification to prohibit an individual from serving as a representative payee if he or she: 1) has been convicted of any offense resulting in imprisonment for more than one year; 2) is fleeing to avoid prosecution, or custody or confinement after conviction; or 3) violated a condition of probation or parole. An exception applies if the Commissioner of Social Security determines that a person who has been convicted of any offense resulting in imprisonment for more than one year would, notwithstanding such conviction, be an appropriate representative payee.

The new provision requires the Commissioner to submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate evaluating existing procedures and reviews conducted for representative payees to determine whether they are sufficient to protect benefits from being misused.

Effective Date

This provision is effective on the first day of the 13th month beginning after the date of enactment, except that the report to Congress is due no later than 270 days after the date of enactment.

Section 104. Fee Forfeiture in Case of Benefit Misuse by Representative Payees

Present Law

Certain organizational representative payees are authorized to collect a fee for their services. The fee, which is determined by a statutory formula, is deducted from the beneficiary's benefit payments.

Explanation of Provision

The new provision requires representative payees to forfeit the fee for those months during which the representative payee misused funds, as determined by the Commissioner of Social Security or a court of competent jurisdiction.

Effective Date

This provision applies to any month involving benefit misuse by a representative payee as determined by the Commissioner or a court of competent jurisdiction after 180 days after the date of enactment.

Section 105. Liabilities of Representative Payees for Misused Benefits

Present Law

Although the SSA has been provided with expanded authority to recover overpayments (such as the use of tax refund offsets, referral to contract collection agencies, notification of credit bureaus, and administrative offsets of future federal benefits payments), these tools cannot be used to recoup benefits misused by a representative payee.

Explanation of Provision

The new provision treats benefits misused by a non-governmental representative payee (including all individual representative payees) as an overpayment to the representative payee, rather than the beneficiary, thus subjecting the representative payee to current overpayment recovery authorities. Any recovered benefits not already reissued to the beneficiary pursuant to section 101 of this legislation would be reissued to either the beneficiary or their alternate representative payee, up to the total amount misused.

Effective Date

Applies to benefit misuse by a representative payee in any case where the Commissioner of Social Security or a court of competent jurisdiction makes a determination of misuse after 180 days after the date of enactment.

Section 106. Authority to Redirect Delivery of Benefit Payments When a Representative Payee Fails to Provide Required Accounting

Present Law

The Social Security Act requires representative payees to submit accounting reports to the Commissioner of Social Security detailing how a beneficiary's benefit payments were used. A report is required at least annually, but may be requested by the Commissioner at any time if the Commissioner has reason to believe the representative payee is misusing benefits.

Explanation of Provision

The new provision authorizes the Commissioner of Social Security to require a representative payee to receive any benefits under Titles II, VIII, and XVI in person at a Social Security field office if the representative payee fails to provide an annual accounting of benefits report. The Commissioner would be required to provide proper notice and the opportunity for a hearing prior to redirecting benefits to the field office.

Effective Date

This provision is effective 180 days after the date of enactment.

Section 107. Survey of Use of Payments to Representative Payees

Present Law

The Social Security Act authorizes the appointment of representative payees to receive and manage Title II (OASDI) and Title XVI (SSI) benefits on behalf of beneficiaries who cannot manage their own finances because of mental or physical impairments. A representative payee may be an individual or an organization, including non-profits, State or local government agencies.

Explanation of Provision

This provision would authorize and appropriate $17.8 million to the Inspector General of the Social Security Administration for Fiscal Year 2004 to conduct a statistically significant survey to determine how the payments made to each category of representative payee are being used on behalf of beneficiaries.

Effective Date

Upon enactment

Subtitle B: Enforcement

Section 111. Civil Monetary Penalty Authority with Respect to Wrongful Conversions by Representative Payees

Present Law

The Social Security Act authorizes the Commissioner to impose a civil monetary penalty (of up to $5,000 for each violation) along with an assessment (of up to twice the amount wrongly paid) upon any person who knowingly uses false information or knowingly omits information to wrongly obtain Title II, VIII or XVI benefits.

Explanation of Provision

The new provision expands the application of civil monetary penalties to include misuse of Title II, VIII or XVI benefits by representative payees. A civil monetary penalty of up to $5,000 may be imposed for each violation, along with an assessment of up to twice the amount of misused benefits.

Effective Date

This provision applies to violations occurring after the date of enactment.

TITLE II. PROGRAM PROTECTIONS

Sec. 201. Civil Monetary Penalty Authority with Respect to Knowingly Withholding Material Facts

Present Law

The Social Security Act authorizes the Commissioner of Social Security to impose civil monetary penalties and assessments on any person who makes a statement or representation of a material fact for use in determining initial or continuing rights to Title II, VIII, or XVI benefits that the person knows or should know omits a material fact or is false or misleading. In order for the penalty or assessment to be imposed, the law requires an affirmative act on the part of the individual of making (or causing to be made) a statement that omits a material fact or is false or misleading.

Explanation of Provision

This provision authorizes civil monetary penalties and assessments and sanctions for the failure to come forward and notify the SSA of changed circumstances that affect eligibility or benefit amount when that person knows or should know that the failure to come forward is misleading.

Effective Date

Applies to violations committed after the date on which the Commissioner implements the centralized computer file described in Section 202.

Section 202. Issuance by Commissioner of Social Security of Receipts to Acknowledge Submission of Reports of Changes in Work or Earnings Status

Present Law

Changes in employment or earnings can affect an individual's continued entitlement to disability benefits under Title II or Title XVI. Beneficiaries are required to report such changes, but the SSA has not implemented a system to acknowledge that beneficiaries have properly fulfilled their obligation.

Explanation of Provision

The new provision requires the Commissioner to issue a receipt to a disabled beneficiary (or representative of a beneficiary) who reports a change in his or her work or earnings status. The Commissioner is required to continue issuing such receipts until the Commissioner has implemented a centralized computer file that would record the date on which the disabled beneficiary (or representative) reported the change in work or earnings status.

Effective Date

This provision requires the Commissioner to begin issuing receipts as soon as possible, but no later than one year after the date of enactment.

Section 203. Denial of Title II Benefits to Persons Fleeing Prosecution, Custody, or Confinement, and to Persons Violating Probation or Parole

Present Law

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) included provisions making persons ineligible to receive Social Security benefits under Title XVI (SSI) during any month in which they are fleeing to avoid prosecution for a felony, or to avoid custody or confinement after conviction for a felony, or are in violation of a condition of probation or parole. However, the same prohibition does not apply to Social Security benefits under Title II (OASDI).

Explanation of Provision

This provision makes persons ineligible to receive Social Security benefits under Title II during any month in which they are fleeing to avoid prosecution for a felony, or to avoid custody or confinement after conviction for a felony, or are in violation of a condition of probation or parole. The Commissioner of Social Security, upon written request by law enforcement officials, shall assist such officials in apprehending fugitives by providing them with an address, Social Security number, and if available, a photograph.

The provision clarifies that in order for an individual to be considered "fleeing," law enforcement must be pursuing. Thus, the provision provides that benefits under Title II or Title XVI will be withheld only in those cases in which the relevant law enforcement agency notifies SSA that it intends to pursue the individual by seeking arrest, extradition, prosecution, or the revocation of probation or parole.

Effective Date

This provision is effective on the first day of the first month that begins on or after the date that is 9 months after the date of enactment.

Section 204. Requirements Relating to Offers to Provide for a Fee a Product or Service Available Without Charge from the Social Security Administration

Present Law

The Social Security Act prohibits or restricts various activities involving the use of Social Security and Medicare symbols, emblems, or references which give a false impression that an item is approved, endorsed, or authorized by the Social Security Administration, the Health Care Financing Administration, or the Department of Health and Human Services. It also provides for the imposition of civil monetary penalties with respect to violations of the section.

Explanation of Provision

The new provision requires persons or companies charging a fee for services available for free from SSA to include in their solicitations a statement that the services they provide for a fee are available directly from SSA free of charge. The statements would be required to comply with standards promulgated through regulation by the Commissioner of Social Security with respect to their content, placement, visibility, and legibility.

Effective Date

Applies to offers of assistance made after the sixth month following the issuance of these standards. Requires the Commissioner to promulgate regulations within 1 year after the date of enactment.

Section 205. Refusal to Recognize Certain Individuals as Claimant Representatives

Present Law

An attorney in good standing is entitled to represent claimants before the Commissioner of Social Security. The Commissioner may prescribe rules and regulations governing the recognition of persons other than attorneys representing claimants before the Commissioner. Under present law, attorneys disbarred in one jurisdiction, but licensed to practice in another jurisdiction, must be recognized as a claimant's representative.

Explanation of Provision

The new provision authorizes the Commissioner to refuse to recognize as a representative, or disqualify as a representative, an attorney who has been disbarred or suspended from any court or bar, or who has been disqualified from participating in or appearing before any Federal program or agency. Due process (i.e., notice and an opportunity for a hearing) would be required before taking such action. Also, if a representative has been disqualified or suspended as a result of collecting an unauthorized fee, full restitution is required before reinstatement can be considered. This provision is effective upon the date of enactment.

Effective Date

Upon enactment

Section 206. Penalty for Corrupt or Forcible Interference with Administration of the Social Security Act

Present Law

No provision.

Explanation of Provision

The new provision imposes a fine of not more than $5,000, and imprisonment of not more than 3 years, or both, for attempting to intimidate or impede – corruptly or by using force or threats of force – any Social Security Administration officer, employee or contractor (including State employees of disability determination services and any individuals designated by the Commissioner) while they are acting in their official capacities under the Social Security Act. If the offense is committed only by threats of force, however, the offender is subject to a fine of not more than $3,000 and/or no more than one year in prison. This provision is effective upon enactment.

Effective Date

Upon enactment

Section 207. Use of Symbols, Emblems or Names in Reference to Social Security or Medicare

Present Law

The Social Security Act prohibits (subject to civil penalties) the use of Social Security or Medicare symbols, emblems and references on any item in a manner that conveys the false impression that such item is approved, endorsed or authorized by the Social Security Administration, the Health Care Financing Administration, or the Department of Health and Human Services.

Explanation of Provision

The new provision expands the prohibition in present law to several other references to Social Security and Medicare, including the Centers for Medicare and Medicaid Services.

Effective Date

Applies to items sent after 180 days after the date of enactment.

Section 208. Disqualification from Payment During Trial Work Period Upon Conviction of Fraudulent Concealment of Work Activity

Present Law

An individual entitled to disability benefits under Title II (OASDI) is entitled to a "trial work period" to test his or her ability to work. The trial work period allows beneficiaries to work with earnings above the substantial gainful activity level for up to 9 months (which need not be consecutive) without any loss of benefits. A month counts as a trial work period month if the individual earns above a level established by regulation (this amount is $570 a month in 2003). If the individual does not use the full 9 months within a 60 month period, he or she is entitled to another 9 month trial work period.

SSA's Inspector General has pursued criminal prosecution of Title II disability beneficiaries who fraudulently conceal work activity. As benefits received during the trial work period are not included in the dollar-loss totals, the dollar loss to the government may fall below the thresholds set by the United States Attorneys in determining which fraud cases to prosecute.

Explanation of Provision

Under the new provision, an individual who is convicted of fraudulently concealing work activity during the trial work period would not be entitled to receive a disability benefit for trial work period months that occur prior to the conviction but within the same period of disability. If the individual had already been paid benefits for these months, he or she would be liable for repayment of these benefits, in addition to any restitution, penalties, fines, or assessments that were otherwise due.

In order to be considered to be fraudulently concealing work activity under this provision, the individual must have: (1) provided false information to SSA about his or her earnings during that period; (2) worked under another identity, including under the social security number of another person or a false social security number; or (3) taken other actions to conceal work activity with the intent to fraudulently receive benefits that he or she was not entitled to.

Effective Date

Effective with respect to work activity performed after the date of enactment

Sec. 209. Authority for Judicial Orders of Restitution

Present Law

A court may order restitution when sentencing a defendant convicted of various offenses. However, violations of the Social Security Act are not included among those for which the court may order restitution.

Explanation of Provision

This provision amends the Social Security Act to allow a Federal court to order restitution to the Social Security Administration for violations of the Social Security Act. Restitution in connection with benefit misuse by a representative payee would be credited to the Social Security Trust Funds for cases involving OASDI recipients and to the general fund for cases involving Supplemental Security Income and Special Veterans benefits. Other restitution funds, credited to a special fund established in the Treasury, would be available to defray expenses incurred in implementing Title II, Title VIII, and Title XVI. If the court does not order restitution, or only orders partial restitution, the court must state the reason on the record.

Effective Date

Effective with respect to violations occurring on or after the date of enactment.

Sec. 210. Require State and Local Government Pension Paying Entities to Indicate on a Modified Form 1099R whether a Pension is Based on Work Not Covered By Social Security

Present Law

There are approximately 6.6 million workers who do not pay taxes into the Social Security system. The majority of these workers are State and local government employees. Many of these government workers may eventually qualify for Social Security as the result of other employment, or as the spouse or survivor of a worker covered by Social Security. The Government Pension Offset (GPO) and the Windfall

Elimination Provision (WEP) were enacted to reduce the advantage these government workers may have when they apply for Social Security benefits.

However, the Social Security Administration (SSA) has had difficulty implementing these provisions due to the lack of data. State and local governments provide annual reports of pension benefits to the IRS on Form 1099R, but the current Form does not indicate whether the pension was based on employment covered by Social Security. Moreover, the SSA does not have access to this IRS data.

Explanation of Provision

This provision would require State and local government pension paying entities to indicate on their Form 1099R report whether the pension is based in whole or in part on earnings not covered by Social Security. This proposal would also allow the IRS to share these data with SSA for the purposes of administering the GPO and WEP.

Effective Date

Taxable Years beginning after December 31, 2003

Sec. 211. Authorize Cross-Program Recovery for Benefit Overpayments

Present Law

The Social Security Administration has the authority to recover SSI overpayments from subsequent SSI monthly benefits and OASDI overpayments from subsequent OASDI monthly benefits. But, recovery efforts may be blocked when the beneficiary's eligibility changes from one program to another.

In 1998, Congress provided the SSA with limited authority to collect overpayments between one program and another. However, this authority was limited to 10% of benefits paid each month. Moreover, the SSA is still prevented from collecting an overpayment under one program from an underpayment payment made under another program.

Explanation of Provision

This provision would allow the Social Security Administration to more fully recover overpayments paid under one program from the benefits paid under another program. It would provide for withholding up to 100% of any underpayment. To protect low-income beneficiaries, any recovery from SSI would be limited to the lesser of 100% of the monthly benefit or 10% of individual's total monthly income.

Effective Date

Upon enactment

Sec. 212. Prohibit Benefits to Persons Not Authorized to Work in the U.S.

Present Law

In general, to receive Social Security Title II (OASDI) benefits, non-citizens must have sufficient work credits and be legally present in the U.S. at the time of (1) obtaining a valid SSN and (2) applying for benefits. However, present law allows non-citizens who work illegally in the U.S. to have their illegal earnings posted to a valid SSN and receive benefits even though they were never legally permitted to work in the U.S.

Explanation of Provision

This provision would prohibit the payment of Title II benefits to any person who is not legally permitted to engage in employment in the United States at the time of application for Title II benefits.

Effective Date

Benefit applications filed on or after January 1, 2004.

TITLE III – ATTORNEY REPRESENTATIVE FEE PAYMENT SYSTEM IMPROVEMENTS

Section 301. Cap on Attorney Representative Assessments

Present Law

The Social Security Act allows the fees of claimant representatives who are attorneys to be paid by the SSA directly to the attorney out of the claimant's past-due benefits for Title II claims. The SSA is authorized to charge an assessment at a rate not to exceed 6.3% of approved attorney fees for the costs of determining, processing, withholding and distributing attorney representative fees for Title II claims.

Explanation of Provision

The new provision imposes a cap of $75 on the 6.3% assessment on approved attorney representative fees for Title II claims, and this cap is indexed for inflation.

Effective Date

After 180 days after the date of enactment.

Sec. 302. GAO Study of Fee Payment Process for Claimant Representatives

Present Law

No Provision

Explanation of Provision

This provision would require the General Accounting Office to study the fee payment process and report on the potential effects of extending fee withholding to Title XVI, and allowing non-attorneys the option of fee withholding under both Title II and Title XVI.

Effective Date

Report is due 24 months after date of enactment

TITLE IV: MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A: Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

Section 401. Eliminate Demonstration Authority Sunset Date

Present Law

The Commissioner of Social Security may waive compliance with the benefit requirements of Title II as necessary for a thorough evaluation of experiments and demonstration projects designed to encourage the disabled to return to work. This authority expires on December 17, 2004

Explanation of Provision

This provision would eliminate the expiration date, thus providing permanent authority for the Commissioner to waive compliance with the benefit requirements under Title II.

Effective Date

Upon enactment

Section 402. Expansion of Waiver Authority Available in Connection with Demonstration Projects Providing for Reductions in Disability Insurance Benefits Based on Earnings

Present Law

The Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170) directs the Commissioner to conduct demonstration projects for the purpose of evaluating a program for Title II disability beneficiaries under which benefits are reduced by $1 for each $2 of the beneficiary's earnings above a level determined by the Commissioner. To permit a thorough evaluation of alternative methods, the Ticket to Work Act allows the Commissioner to waive compliance with the benefit provisions of Title II and allows the Secretary of Health and Human Services to waive compliance with the benefit requirements of Title XVIII.

Explanation of Provision

This provision allows the Commissioner to also waive requirements in Section 1148 of the Social Security Act, related to outcome payments provided to employment networks participating in the Ticket to Work Program.

Effective Date

Upon enactment

Section 403. Funding of Demonstration Projects Providing for Reductions in Disability Insurance Benefits Based on Earnings

Present Law

The Ticket to Work Act provides that the benefits and administrative expenses of conducting the $1-for-$2 demonstration projects will be paid out of the Old-Age, Survivors, and Disability Insurance (OASDI) and Federal Hospital Insurance and Federal Supplementary Medical Insurance (HI/SMI) trust funds, to the extent provided in advance in appropriations acts.

Explanation of Provision

The new provision establishes that administrative expenses for the $1-for-$2 demonstration project will be paid out of otherwise available annually-appropriated funds, and that benefits associated with the demonstration project will be paid from the OASDI or HI/SMI trust funds.

Effective Date

Upon Enactment

Section 404. Availability of Federal and State Work Incentive Services to Additional Individuals

Present Law

The Ticket to Work Act directs SSA to establish a community-based program to provide benefit planning and assistance to disabled beneficiaries. To establish this program, SSA is required to award cooperative agreements (or grants or contracts) to State or private entities. In fulfillment of this requirement, SSA has established the Benefits Planning, Assistance, and Outreach (BPAO) program. The Act also authorizes SSA to award grants to State protection and advocacy (P&A) systems so that they can provide protection and advocacy services to disabled beneficiaries. SSA has established the Protection and Advocacy to Beneficiaries of Social Security (PABSS) Program pursuant to this authorization.

To be eligible for services under either the BPAO or PABSS programs, an individual must be entitled to Title II (OASDI) or Title XVI (SSI) benefits based on disability or blindness.

Explanation of Provision

The new provision expands eligibility for the BPAO and PABSS programs to include individuals who (1) are no longer eligible for SSI benefits because of an increase in earnings, but remain eligible for Medicaid; (2) receive only a State Supplementary payment (a payment that some States provide as a supplement to the federal SSI benefit); or (3) are in an extended period of Medicare eligibility under Title XVIII after a period of Title II disability has ended.

This provision also expands the current PABSS assistance (which is available for securing and regaining employment) to include maintaining employment.

Effective Date

The amendment to the BPAO program is effective with respect to grants, cooperative agreements or contracts entered into on or after the date of enactment. The amendment to the PABSS program is effective for payments provided after the date of enactment.

Section 405. Technical Amendment Clarifying Treatment for Certain Purposes of Individual Work Plans Under the Ticket to Work and Self-Sufficiency Program

Present Law

Employers may claim a Work Opportunity Tax Credit (WOTC) for newly hired employees with disabilities who have been referred by a State vocational rehabilitation (VR) agency. The WOTC is equal to 40% of the first $6,000 of wages paid to newly hired employees during their first year of employment when the employee is retained for at least 400 work hours. A lesser credit rate of 25% is provided to employers when the employee remains on the job for 120-399 hours.

The Ticket to Work Act provides a "ticket" to eligible Title II (OASDI) and Title XVI (SSI) beneficiaries that allows them to obtain employment and other support services from an approved “employment network” of their choice. Employment networks may include State, local, or private entities that can provide directly, or arrange for other organizations or entities to provide, employment services, VR services, or other support services.

Under current law, an employer hiring a disabled individual referred by an employment network does not qualify for the WOTC unless the employment network is a State VR agency.

Explanation of Provision

The new provision allows employers who hire disabled workers through referrals by any employment network approved under the Ticket to Work Act to qualify for the WOTC.

Effective Date

This provision is effective as if it were included in section 505 of the Ticket to Work Act.

Subtitle B. Miscellaneous Amendments

Section 411. Elimination of Transcript Requirement in Remand Cases Fully Favorable to the Claimant

Present Law

The Social Security Act requires SSA to file a hearing transcript with the District Court for any SSA hearing that follows a court remand of an SSA decision.

Explanation of Provision

The new provision clarifies that SSA is not required to file a transcript with the court when SSA, on remand, issues a decision fully favorable to the claimant.

Effective Date

Upon enactment

Section 412. Nonpayment of Benefits Upon Removal From the United States

Present Law

In most cases, the Social Security Act prohibits the payment of Social Security benefits to non-citizens who are deported from the United States. However, the Act does not prohibit the payment of Social Security benefits to non-citizens who are deported for smuggling other non-citizens into the United States.

Explanation of Provision

The new provision requires SSA to suspend benefits of beneficiaries who are removed from the United States for smuggling aliens. This provision applies to individuals for whom the Commissioner receives a removal notice from the Attorney General after the date of enactment.

Effective Date

Upon enactment

Section 413. Reinstatement of Certain Reporting Requirements

Present Law

The Federal Reports Elimination and Sunset Act of 1995 "sunsetted" most annual or periodic reports from agencies to Congress that were listed in a 1993 House inventory of congressional reports.

Explanation of Provision

The new provision reinstates the requirements for several periodic reports to Congress that were subject to the 1995 "sunset" Act, including annual reports on the financial solvency of the Social Security and Medicare programs (the Board of Trustees' reports on the OASDI, HI, and SMI trust funds) and annual reports on certain aspects of the administration of the Title II disability program (the SSA Commissioner's reports on pre-effectuation reviews of disability determinations and continuing disability reviews).

Effective Date

Upon enactment

Section 414. Clarification of Definitions Regarding Certain Survivor Benefits

Present Law

Under the definitions of "widow" and "widower" in Section 216 of the Social Security Act, a widow or widower must have been married to the deceased spouse for at least nine months before his or her death in order to be eligible for survivor benefits.

Explanation of Provision

The new provision creates an exception to the nine-month requirement for cases in which the Commissioner finds that the claimant and the deceased spouse would have been married for longer than nine months but for the fact that the deceased spouse was legally prohibited from divorcing a prior spouse who was in a mental institution.

Effective Date

Effective for benefit applications filed after the date of enactment.

Section 415. Clarification Respecting the FICA and SECA Tax Exemptions for an Individual Whose Earnings are Subject to the Laws of a Totalization Agreement Partner

Present Law

In cases where there is a totalization agreement with a foreign country, a worker's earnings are exempt from United States Social Security payroll taxes when those earnings are subject to the foreign country's retirement system.

Explanation of Provision

The new provision clarifies the legal authority to exempt a worker's earnings from United States Social Security tax in cases where the earnings were subject to a foreign country's retirement system in accordance with a U.S. totalization agreement, but the foreign country's law does not require compulsory contributions on those earnings. The provision establishes that such earnings are exempt from United States Social Security tax whether or not the worker elected to make contributions to the foreign country's retirement system.

Effective Date

Upon enactment

Section 416. Coverage Under Divided Retirement System for Public Employees

Present Law

Social Security coverage for State and local employees covered under a public pension plan is established through an agreement between the States and the Federal government. Every State and local government has the option of electing Social Security coverage for its employees by a majority vote in a referendum. In certain States, however, there is an alternative method known as a divided retirement system. Under this system, employees voting in the referendum may individually choose whether they want Social Security coverage, provided that all newly hired employees are required to participate in Social Security.

Explanation of Provision

This provision would extend the authority to operate a divided retirement system to all States.

Effective Date

Upon enactment

Section 417. Compensation for the Social Security Advisory Board

Present Law

The Social Security Advisory Board is an independent, bipartisan Board established by the Congress under the Social Security Act. The seven-member Board is appointed by the President and the Congress to advise the President, the Congress and the Commissioner of Social Security on matters related to the Social Security and Supplemental Security Income programs. Members of the Board serve without compensation, except that while engaged in Board business away from their homes or regular places of business members may be allowed travel expenses, including per diem in lieu of subsistence.

Explanation of Provision

The new provision establishes that compensation for Social Security Advisory Board members will be provided, at the daily rate of basic pay for level IV of the Executive Schedule, for each day (including travel time) during which the member is engaging in the business of the Board.

Effective Date

Upon enactment

Section 418. 60-Month Period of Employment Requirement for Application of Government Pension Offset Exemption

Present Law

The dual entitlement rule reduces a spouse's or survivor's Social Security benefit $1-for-$1 by his or her own Social Security retirement or disability benefit. For government workers who are not covered by Social Security, the Government Pension Offset (GPO) reduces their Social Security spouse's or survivor's benefit by two-thirds of their public pension. However, under the "last day rule," State and local government workers are exempt from the GPO if they are covered by Social Security on their last day of government employment. In contrast, Federal workers covered by the Civil Service Retirement System (CSRS) were given the option to elect coverage under Social Security as part of the transition to the Federal Employees Retirement System. However, Federal employees must work for at least 5 years under Social Security in order to be exempt from the GPO.

Explanation of Provision

This provision requires that State and local government workers covered by a public pension who subsequently elect coverage under Social Security (pursuant to a referendum approved under Section 218 of the Social Security Act) must be covered by Social Security for at least 5 years in order to be exempt from the GPO.

Effective Date

The provision is effective for applications filed after the month of enactment. However, the provision would not apply to individuals whose last day of employment for the State or local governmental entity was covered by Social Security and occurs on or before December 31, 2003.

Sec. 419. Post-1956 Military Wage Credits

Present Law

Prior to January 1, 2002, members of the uniformed services were deemed to be paid amounts greater than their actual taxable wages. These deemed wages were designed to increase Social Security benefits for persons with military service. The Social Security trust funds (and later the Medicare HI trust fund) have received various transfers from general funds, most recently from DoD appropriations, over the years designed to offset the cost of these additional benefits. The FY 2002 Department of Defense Appropriations Act (Public Law 107-117) eliminated deemed wage credits for all years after calendar year 2001. However, the amount owed for 2000 and 2001 remains outstanding.

Explanation of Provision

This provision would transfer from general funds the remaining balance owed to the Social Security and Medicare trust funds for 2000 and 2001 and make conforming amendments to reflect the termination of deemed military wage credits.

Effective Date

Upon enactment

Subtitle C. Technical Amendments

Section 421. Technical Correction Relating to Responsible Agency Head

Present Law

The Social Security Act directs "the Secretary of Health and Human Services" to send periodic Social Security Statements to individuals.

Explanation of Provision

The new provision makes a technical correction by inserting a reference to the Commissioner of Social Security in place of the Secretary of Health and Human Services.

Effective Date

Upon enactment

Section 422. Technical Correction Relating to Retirement Benefits of Ministers

Present Law

The "Small Business Job Protection Act of 1996" (P.L. 104-188) established that certain retirement benefits received by ministers and members of religious orders (such as the rental value of a parsonage or parsonage allowance) are not subject to Social Security payroll taxes. However, these retirement benefits are treated as net earnings from self-employment for the purpose of acquiring insured status and calculating Social Security benefit amounts.

Explanation of Provision

The new provision makes a conforming change to exclude these benefits received by retired clergy from Social Security-covered earnings for the purpose of acquiring insured status and calculating Social Security benefit amounts.

Effective Date

Effective for years beginning before, on, or after December 31, 1994 which is the same Section 1456 of P.L. 104-188.

Section 423. Technical Correction Relating to Domestic Employment

Present Law

Present law is ambiguous concerning the Social Security coverage and tax treatment of domestic service performed on a farm. Domestic employment on a farm appears to be subject to two separate coverage thresholds (one for agricultural labor and another for domestic employees).

Explanation of Provision

The new provision clarifies that domestic service on a farm is treated as domestic employment, rather than agricultural labor, for Social Security coverage and tax purposes.

Effective Date

Upon enactment

Section 424. Technical Correction of Outdated References

Present Law

The Social Security Act and the Internal Revenue Code of 1986 each contain a number of outdated references that relate to the Social Security program.

Explanation of Provision

The new provision corrects outdated references in the Social Security Act and the Internal Revenue Code by updating references regarding the removal of non-citizens from the United States; correcting a citation respecting a tax deduction related to health insurance costs of self-employed individuals; and eliminating a reference to an obsolete 20-day agricultural work test.

Effective Date

Upon enactment

Section 425. Technical Correction Respecting Self-Employment Income in Community Property States

Present Law

The Social Security Act and the Internal Revenue Code provide that, in the absence of a partnership, all self-employment income from a trade or business operated by a married person in a community property State is deemed to be the husband's unless the wife exercises substantially all of the management and control of the trade or business.

Explanation of Provision

Under the new provision, self-employment income from a trade or business that is not a partnership, and that is operated by a married person in a community property State, is taxed and credited to the spouse who is carrying on the trade or business. If the trade or business is jointly operated, the self-employment income is taxed and credited to each spouse based on his or her distributive share of gross earnings.

Effective Date

Upon enactment

Section 426. Technical Changes to the Railroad Retirement and Survivors' Improvement Act of 2001

Present Law

The "Railroad Retirement and Survivors' Improvement Act of 2001" (Public Law 107-90) established the Railroad Retirement Investment Trust to invest the assets of the railroad retirement program in a special trust fund created outside of the general fund of the U.S. Treasury. An independent Board of Trustees was appointed to administer the Trust. The Trustees are responsible for establishing investment guidelines for the prudent management of trust fund assets and for selecting outside investment advisors and managers to implement investment policies.

Explanation of Provisions

Quorum Rules - Clarifies that a vacancy on the Board of the Trust does not preclude the Board from making changes in the Investment Guidelines with the unanimous vote of all remaining Trustees.

Certain Transfers - Clarifies that the Railroad Retirement Board can require the Trust to transfer amounts to the Railroad Retirement Account (RRA), and that excess Social Security Equivalent Benefits Account assets can be transferred to the RRA until used to pay benefits.

Investment of Assets - Clarifies that the Trust may invest the assets in accordance with its investment guidelines either directly or through the retention of outside investment managers.

Clerical Changes - Makes a number of grammatical and typographical changes.

Other Board Powers - Consolidates the Board's administrative powers and specifies that such powers include the ability to execute necessary business functions such as entering into contracts and taking all other necessary steps to make and secure trust investments in a prudent manner.

State and Local Taxes - Clarifies that the Trust is exempt from income, sales and use taxes imposed or levied by a State, political subdivision, or local taxing authority

Funding of Administrative Expenses - Deletes a redundant paragraph regarding the Trust's authority to pay its administrative expenses.

Investment in Federal Securities in Non-Governmental Accounts - Clarifies that the Trust may purchase qualifying federal obligations for investment of assets transferred from the SSEB Account either directly or through a commingled account that is invested only in such qualifying federal obligations, and reinvest earnings on such federal obligations in the same manner.

Quarterly Transfers to RRB - Clarifies that the Trust may transfer amounts to the RRB for the payment of benefits on a quarterly basis (or on such other basis upon which the RRB and Trust may agree).

Effective Date

Upon enactment

Subtitle D. Amendments Related to Title XVI

Section 430. Exclusion from Income for Certain Infrequent or Irregular Income and Certain Interest or Dividend Income

Present Law

An individual who has no countable income, and who meets all other SSI eligibility criteria, is eligible to receive federal Supplemental Security Income (SSI) benefits equal to the amount of the federal benefit rate (FBR), which is $545 a month for an individual or $817 a month for a couple in 2003. If the individual has countable income (i.e., total income minus applicable exclusions), the payment amount is reduced by $1 for each $1 of countable income, whether earned or unearned. An individual with countable income greater than the FBR is not eligible for a federal cash benefit.

Several exclusions apply to the calculation of countable earned and unearned income. One such provision is for the exclusion of infrequent or irregular income. Under current law, an individual can receive up to $20 of infrequent or irregular unearned income per month and up to $10 of infrequent or irregular earned income per month. Income is considered to be infrequent if it is received no more than once in a calendar quarter from a single source. Income is considered to be irregular if the recipient could not reasonably expect to receive the income. Both exclusions are "all or nothing." That is, if either the "infrequent or irregular" earned income or "infrequent or irregular" unearned income exceeds their respective limits, none of the income in that category can be excluded.

In order to be eligible for SSI, recipients must have countable resources of no more than $2,000 for individuals or $3,000 for couples. If an SSI recipient receives interest or dividend income on these countable resources, this income is excluded as infrequent or irregular income only if it is credited on a quarterly basis. Interest or dividend income received on a monthly basis is countable as unearned income.

Description of Proposal

This provision changes the calculation of infrequent and irregular income from a monthly to a quarterly basis. Therefore, individuals could exclude $60 per quarter of unearned income and $30 per quarter of earned income that is received irregularly and infrequently. This provision also excludes from the determination of an individual's income all interest and dividend income earned on countable resources.

Effective Date

The change is effective with respect to benefits payable for months that begin more than 90 days after the date of enactment.

Section 431. Uniform 9-Month Resource Exclusion Periods

Present Law

The SSI program limits the amount of resources beneficiaries may have to $2,000 for individuals and $3,000 for couples. Resources consist of cash, other liquid assets, or property that an individual owns and could convert to cash. Certain types of cash payments are excluded from resources for specific periods of time. Currently, state and local crime victim's assistance and state and local relocation assistance payments are excluded for 9 months after the month of receipt; retroactive Social Security and SSI payments are excluded for 6 months after the month of receipt; and Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) payments are excluded for 1 month after the month of receipt. After the expiration of the time period, any remaining value of the payment becomes a countable resource for purposes of determining SSI eligibility.

Description of Proposal

This provision increases to 9 months and makes uniform the time period for excluding from resources amounts attributable to payments of past-due Social Security and SSI benefits, EITC payments, and CTC payments.

Effective Date

The change is effective for benefits payable on or after the date of enactment.

Section 432. Modification of the Dedicated Account Requirement

Present Law

The SSI program requires that past-due benefits greater than six times the maximum monthly benefit be deposited in a special account and be used only for certain specified purposes related to the impairment (or combination of impairments) of the beneficiary.

Description of Proposal

This provision modifies the dedicated account requirement by allowing the funds in the account to be used for reimbursement of past expenditures incurred by the representative payee that were for the good of the beneficiary. The modification also clarifies that funds from the dedicated account can used for any purpose that is for the good of the beneficiary, not just for certain specified purposes related to the impairment of the beneficiary.

Effective Date

The provision would be effective upon January 1, 2004, and apply with respect to expenditures of funds from dedicated accounts on or after that date or accounts established on or after that date.

Section 433. Elimination of Certain Restrictions on the Application of the Student Earned Income Exclusion

Present Law

The earned income of a child who is determined to be a student is excluded subject to limits prescribed by SSA. Currently, the program excludes up to $1,320 a month, but no more than $5,340 a year. To be eligible for the exclusion, an individual must be a child – defined as an unmarried individual under age 22 who is not the head of a household – and must also be a student regularly attending a school, college, university, or a course of vocational or technical training designed to prepare him or her for gainful employment.

Description of Proposal

This provision permits the student earned income exclusion to apply to any individual under age 22 who is a student. Therefore, students under age 22 who are married or heads of households will now be eligible for the exclusion.

Effective Date

The change is effective for benefits payable for months that begin one year after the date of enactment.

Section 434. Exclusion of Americorps and other volunteer benefits for Purposes of Determining Supplemental Security Income Eligibility and Benefit Amounts and Social Security Disability Insurance Entitlement

Present Law

Americorps volunteers receive a living allowance during their participation in the program, and may also receive an educational award. For volunteers in the Americorps VISTA programs, these payments are categorically excluded from income in the SSI program and are not counted as earnings for trial work period (TWP) and substantial gainful activity (SGA) purposes in the Title II disability program. However, Americorps volunteers who are not in the Vista program have these payments counted as earnings both in the SSI program and for TWP and SGA purposes in the Title II disability program. In addition, current SSI rules count room and board provided for non-VISTA volunteers under the Americorps program as in-kind support and maintenance.

Description of Proposal

This provision excludes all payments and benefits to all Americorps volunteers, both cash and in-kind, for the purpose of determining SSI eligibility and benefit amounts and for the purpose of determining initial and continuing eligibility for Social Security disability insurance benefits.

Effective Date

The change is effective for benefits payable for months after the month of enactment of this legislation.

Section 435. Exception to Retrospective Monthly Accounting for Nonrecurring Income

Present Law

SSI benefit amounts are determined under a system known as "retrospective monthly accounting" (RMA). Under RMA, the SSI benefit payment for the current month is based on a recipient's circumstances in the second prior month. For example, countable income received in October determines the SSI payment for December. For individuals newly eligible for SSI, however, there is a transition to RMA during the first 3 months of eligibility for payment. During this transition period, countable income received in the first month determines the payment amount for the first month and also for each of the following 2 months. For example, if the first month of payment eligibility is October, countable income received in October determines the payment amounts for October, November and December.

Description of Proposal

Under this provision, one-time, nonrecurring income is counted only for the month that the income is received, and not for any other month during the transition to RMA during the first 3 months of an individual's SSI eligibility. This exception would not apply to income that is ongoing but the amounts of which fluctuate.

Effective Date

The provision is effective for benefits payable for months that begin on or after one year following the date of enactment.

Section 436. Removal of Restriction on Payment of Benefits to Children Who Are Born or Who Become Blind or Disabled after Their Military Parents Are Stationed Overseas

Present Law

An individual must generally be a U.S. resident and present in the U.S. to receive SSI benefits. An exception is made for blind and disabled children of U.S. military personnel stationed overseas. These children are eligible for SSI benefits if the child received SSI benefits in the month before the parents reported overseas. Those children of U.S. military personnel who are born, who become blind or disabled, or who first apply for SSI benefits while overseas are not eligible for SSI benefits.

Description of Proposal

This provision extends the current law exception for SSI eligibility for blind and disabled children of military personnel overseas to blind and disabled children of military personnel who were born overseas, who became blind or disabled while overseas, or who first applied for SSI benefits overseas.

Effective Date

The provision is effective for benefits payable for months beginning after enactment but only on the basis of an application filed after enactment.

Section 437. Treatment of Education-Related Income and Resources

Present Law

Income from grants, scholarships or fellowships used to pay for tuition or educational fees is excluded in determining SSI eligibility and benefit amounts. However, monetary gifts to an SSI recipient are counted as unearned income even if the money is used to pay for tuition or educational fees.

Description of Proposal

This provision excludes from the determination of income any gift to an individual for use in paying tuition or educational fees, just as grants, scholarships and fellowships for such use are currently excluded from the determination of income. The provision also excludes grants, scholarships, fellowships, or gifts to be used for tuition or education fees from an individual’s countable resources for 9 months after the month of receipt.

Effective Date

The change is effective for benefits payable for months that begin more than 90 days after the date of enactment.

Section 438. Monthly Treatment of Uniformed Service Compensation

Present Law

Members of the uniformed services are paid on the first day of the month for work performed in the previous calendar month, and are paid at mid-month as partial payment of the amount due for the current calendar month. Earnings statements are issued monthly, reflecting monthly compensation earned in one month, but paid in two installments in two different months. For example, a leave and earnings statement dated February 1 shows the compensation for January in one sum, which includes payments received on January 15 and February 1 (the date of the statement). Therefore, SSA field office personnel must have two monthly leave and earnings statements to determine one month's income, and the income reported on each statement must be broken down to determine how much was received in each month.

Description of Proposal

This provision would count cash military compensation as reported on a monthly leave and earnings statement issued by the military, which reflects compensation earned in the prior month, as received in the prior month.

Effective Date

The change is effective for benefits payable for months beginning at least 90 days after the date of enactment.

Section 439. Update for Earned Income Exclusion

Present Law

The first $65 of earned income per month plus one-half of the remainder is excluded from aged or disabled SSI beneficiaries' countable income. The $65 earned income exclusion has not been modified since the initial 1972 SSI legislation was enacted.

Description of Proposal

This provision changes the earned income exclusion to the first $130 of earned income per month and indexes the amount for inflation.

Effective Date

The change is effective for months that begin more than 90 days after the date of enactment.

Section 440. Update for Resource Limit

Present Law

The SSI program limits the amount of resources beneficiaries may own and still be eligible for benefits. These limits are $2,000 for individuals and $3,000 for couples. The resource limits were last updated by *The Deficit Reduction Act of 1984* (PL 98-369), with the last installment of the update taking place in 1989.

<u>Description of Proposal</u>

This provision changes the resource limits to $3,000 for individuals and $4,500 for couples, and indexes both amounts for inflation.

<u>Effective Date</u>

The change is effective for months that begin more than 90 days after the date of enactment.

Section 441. Review of State Agency Blindness and Disability Determinations

<u>Present Law</u>

The Social Security Administration (SSA) is required to review 50% of all favorable Title II initial disability decisions. This provision does not apply to Title XVI.

<u>Description of Proposal</u>

This provision would require the quality assurance division of the Social Security Administration (SSA) to review 25% of all favorable Supplemental Security Income (SSI) initial disability decisions for adults in 2004. The percentage would increase to 50% for 2005 and beyond.

<u>Effective Date</u>

The proposal is effective January 1, 2004.