



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

March 20, 2003

H.R. 743
Social Security Protection Act of 2003

As ordered reported by the Committee on Ways and Means on March 13, 2003

SUMMARY

H.R. 743 would strengthen oversight of representative payees (people who handle benefit checks for others, such as children or mentally impaired adults), bar Social Security benefits to fugitives, revamp the Social Security Administration's (SSA's) procedures for paying attorneys who represent successful claimants, and tighten the rules for some state and local retirees who switch jobs briefly in order to boost their Social Security benefits. In all, the bill contains three dozen provisions, although many would have little or no budgetary effect.

On balance, enacting H.R. 743 would lead to small net costs in 2004 but net savings thereafter—by amounts that grow from \$16 million in 2005 to \$147 million in 2013. In total, CBO estimates that enacting the bill would trim direct spending and boost revenue by a combined \$655 million over the 2004-2013 period. About two-thirds of those effects are in Social Security, which is off-budget.

H.R. 743 would also affect discretionary spending. CBO estimates that implementing the bill would cost SSA \$15 million to \$20 million a year through 2010, and smaller amounts after that, for extra enforcement and processing activities.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the requirements of that act any provision that relates to the Old-Age, Survivors, and Disability Insurance program (OASDI) under title II of the Social Security Act. Many provisions of H.R. 743 would fall within that exclusion. The other provisions of the bill contain no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. They do contain private-sector mandates as defined in UMRA. CBO estimates that the costs to the private sector of those mandates would not exceed the threshold established by UMRA (\$117 million in 2003, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 743 is shown in the following table. The costs of this legislation fall within budget functions 570 (Medicare), 600 (income security), and 650 (Social Security).

	By Fiscal Year, in Millions of Dollars									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
CHANGES IN DIRECT SPENDING (OUTLAYS)										
Title I. Protection of beneficiaries										
Authority to reissue benefits misused by organizational representative payees										
OASDI benefits	2	*	*	*	*	*	*	*	*	*
SSI benefits	1	*	*	*	*	*	*	*	*	*
Title II. Program protections										
Denial of benefits to fugitives										
OASDI benefits	-10	-30	-44	-55	-59	-61	-63	-66	-68	-70
Medicare	-1	-4	-11	-15	-19	-22	-23	-25	-25	-27
Title III. Attorney fee payment system improvements										
Cap of \$75 (indexed) on processing charges in title II										
OASDI receipts	12	24	25	27	28	29	31	32	33	34
Temporary extension of attorney-fee payment system to title XVI										
SSI receipts	-1	-4	-4	-4	-4	-5	-5	*	*	*
Title IV. Miscellaneous and technical amendments										
60-month employment requirement for exemption from Government Pension Offset										
OASDI benefits	*	*	-1	-2	-4	-8	-15	-26	-49	-80
										Continued

Continued

	By Fiscal Year, in Millions of Dollars									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Permission for Kentucky to operate divided retirement systems										
OASDI benefits	*	*	*	*	*	*	*	*	*	1
Total changes in direct spending										
On-budget	*	-8	-15	-19	-23	-26	-28	-25	-25	-27
Off-budget (OASDI)	<u>4</u>	<u>-7</u>	<u>-20</u>	<u>-30</u>	<u>-35</u>	<u>-40</u>	<u>-48</u>	<u>-59</u>	<u>-83</u>	<u>-115</u>
Total	4	-14	-35	-49	-58	-66	-75	-84	-109	-142

CHANGES IN REVENUES

Title IV. Miscellaneous and technical amendments

Permission for Kentucky to operate divided retirement systems										
OASDI revenues	1	1	2	2	3	3	3	4	4	5
Other revenues	*	*	*	*	*	*	*	*	*	*
Clarification of eligibility for Work Opportunity Credit	-2	*	0	0	0	0	0	0	0	0
Total changes in revenues										
On-budget	-2	*	0	0	0	0	0	0	0	0
Off-budget (OASDI)	<u>1</u>	<u>1</u>	<u>2</u>	<u>2</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>4</u>	<u>4</u>	<u>5</u>
Total	-1	1	2	2	3	3	3	4	4	5

NET CHANGES IN DIRECT SPENDING AND REVENUES (EFFECT ON DEFICITS)

On-budget	2	-8	-15	-19	-23	-26	-28	-25	-25	-27
Off-budget (OASDI)	<u>4</u>	<u>-8</u>	<u>-21</u>	<u>-32</u>	<u>-38</u>	<u>-43</u>	<u>-51</u>	<u>-63</u>	<u>-88</u>	<u>-120</u>
Total	5	-16	-37	-52	-61	-69	-79	-88	-113	-147

CHANGES IN SPENDING SUBJECT TO APPROPRIATION (OUTLAYS)

OASDI administrative expenses	4	3	2	2	2	2	2	3	3	4
SSI administrative expenses	<u>14</u>	<u>13</u>	<u>13</u>	<u>14</u>	<u>15</u>	<u>16</u>	<u>16</u>	<u>2</u>	<u>2</u>	<u>2</u>
Total	18	17	15	16	17	18	19	5	5	6

NOTES: Details may not add to totals because of rounding.

OASDI = Old-Age, Survivors, and Disability Insurance (title II); SSI = Supplemental Security Income (title XVI).

* = Less than \$500,000.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 743 will be enacted in September 2003.

Direct Spending and Revenues

Title I. Nearly seven million people—three million adults and four million children—who get Social Security, Supplemental Security Income (SSI), or both have their checks sent to a representative payee who helps manage the beneficiary's finances. The payee must also report certain events, such as changes in the beneficiary's income or school attendance, to SSA. In about 85 percent of cases, a family member serves as a representative payee. But an attorney or guardian, a social service agency, an institution, or other nonrelative may act as a payee, especially for a disabled adult. About 45,000 organizations serve as representative payees for about 750,000 clients. SSA monitors representative payees by requiring annual reports and by conducting on-site reviews every three years of certain payees who serve a large number of beneficiaries.

H.R. 743 would direct SSA to certify annually that social service agencies meet licensing and bonding requirements and to conduct periodic on-site inspections of more representative payees. It would enhance SSA's ability to recover misused funds and to impose civil monetary penalties.

Most of the provisions would have negligible effects on benefit payments or recoveries. One section, however, would require SSA to pay beneficiaries any amounts that had been misused by an organizational representative payee. (Currently, such claimants must show negligence by SSA.) "Misuse" means converting funds to the payee's own use or any purpose other than the use and benefit of the client. The provision would be retroactive to January 1, 1995.

According to SSA, representative payees misuse about \$3 million in benefits each year. Although SSA's Inspector General (IG) has found weaknesses in internal controls of organizational payees, few of the resulting errors would constitute misuse. Because organizations handle about 12 percent of the dollars flowing through representative payees, CBO estimates that reimbursing nine years' worth of misused benefits would cost \$3 million in 2004. Extra costs in 2005 through 2013 would be negligible.

Title II. H.R. 743 would forbid fugitive felons and people fleeing prosecution from collecting Social Security benefits. CBO estimates that this policy would reduce Social Security spending by \$10 million in 2004 and \$525 million over the 2004-2013 period. CBO also estimates that the policy would save \$172 million in Medicare over the 10 years.

CBO used data from a report by SSA's Inspector General to estimate those savings. The IG extrapolated from a sample of about 400 cases in 10 states to estimate that fugitives received between \$40 million and \$180 million in Social Security benefits in 1999. The midpoint of that range (\$110 million) reflected an estimated 15,000 fugitives with an average benefit of almost \$600 per month. Assuming that their number and average benefit keep pace with the overall program, CBO extrapolated that total to \$130 million in 2004 and \$175 million in 2013.

CBO judges, however, that several obstacles would keep savings from reaching those figures. First, large-scale enforcement poses challenges—a fact highlighted by the IG's work with a small sample. By tapping the National Crime Information Center (NCIC) and obtaining data directly from some states that do not report fully to the NCIC, SSA has access to more than half of fugitive warrants; some, though, lack key information (such as full name and Social Security number) for an accurate match. Illustrating that hurdle, an IG study of the SSI program—three years after fugitives became ineligible—found that about 20 percent of ineligible recipients were suspended from the rolls promptly, another 30 percent were suspended eventually, and 50 percent were apparently missed. That study covered years before 2000, when SSA began matching data with the NCIC; nevertheless, the findings lead CBO to assume that matching will ultimately be about 60 percent effective.

Second, some people spotted by computer matching will probably clear their records when their benefits stop, resulting in little or no long-term savings. CBO found that many warrants are dated—about 15 percent of state warrants, for example, are more than 10 years old—and most are for nonviolent offenses such as drug possession and probation or parole violation. In such cases, "fugitives" with no subsequent convictions may face nothing worse than a suspended sentence or probation. Faced with a lifetime cutoff from Social Security, CBO assumes that some would run that risk. To account for such cases, CBO subtracted another one-third from potential savings, bringing the result to 40 percent of the IG's figure. CBO assumes those savings are attainable about two years after enactment; initial savings are more modest, as SSA signs data-sharing agreements with more states and writes regulations.

CBO assumes that 80 percent of fugitives who would be affected by this provision are disabled beneficiaries who qualify for Medicare. If they lost their health benefits too, extra savings in 2013 (when their average Medicare benefit—about \$9,600—almost matches their assumed Social Security benefit, \$9,900) could reach \$54 million. However, they would not lose Medicare eligibility. Technically their Social Security benefit would be suspended, not terminated. A suspension does not erase Medicare eligibility. Some Medicare savings would probably occur simply because beneficiaries fail to realize they remain eligible, fear using their Medicare card, or stop paying the premium (which is usually withheld from Social Security checks) for Part B coverage. CBO assumes that the resulting drop in use of Medicare benefits would save about half as much as an outright ban, or about \$27 million in 2013.

Title III. Many Social Security claimants, especially disability applicants who win benefits on appeal, are represented by attorneys. A standard fee agreement between attorney and client pledges that the attorney will receive 25 percent of any past-due benefits up to a cap of \$5,300. (By the time someone wins on appeal, past-due benefits typically amount to about 18 months' worth.) That cap stood at \$4,000 for more than a decade until SSA raised it in 2002. When SSA awards OASDI benefits in such cases, it pays the attorney fee directly from the past-due amounts. In contrast, when SSA awards SSI benefits only, or denies all benefits, the attorney must seek his or her fee from the client. Processing attorney fees is a labor-intensive chore, and in 1999 the Congress permitted SSA to withhold up to 6.3 percent of the amounts paid to offset some of those costs.

SSA pays attorney fees in about 200,000 OASDI cases and concurrent (OASDI and SSI) cases a year. The average fee, still dampened by the \$4,000 lid, is now about \$2,700, and the average processing charge about \$170. By 2013, CBO expects that annual volume will be about 240,000, the average fee about \$3,600, and hence the average charge about \$225. H.R. 743 proposes to cap the charge at \$75 with future adjustments for inflation. That would erase more than half of expected receipts, a loss of \$34 million in 2013. CBO estimates that over the 2004-2013 period the proposed cap would cost \$275 million.

H.R. 743 also proposes to extend the attorney-fee system temporarily to SSI, starting nine months after enactment and ending with agreements for representation that are signed five years later. Because attorneys are most active in appealed cases, which may take a year to decide, those five years actually translate into more than six years of budgetary effects. SSA now approves, though it does not disburse, attorney fees in about 55,000 SSI-only cases a year. The average fee is about \$1,900. (Because SSI benefits are lower than Disability Insurance's (DI's), the average fee—which cannot exceed 25 percent of past-due benefits—is also lower.) By 2010, CBO estimates those figures would be about 60,000 and \$2,200 respectively. Extending the payment system, including the 6.3 percent processing charge, to SSI would bring in about \$9 million. Capping the charge at \$87 (the initial \$75, adjusted for inflation), as H.R. 743 also proposes, would generate \$5 million. Total collections over the 10-year period would be \$26 million.

Title IV. This title, labeled "Miscellaneous and Technical Amendments," contains two provisions with significant budgetary effects. Both would affect state and local government employees.

60-month employment requirement for exemption from Government Pension Offset. State and local governments have been permitted to join Social Security since the 1950s; since 1983, jurisdictions that had already joined have been barred from withdrawing. The Census Bureau counts 14 million active members and 6 million beneficiaries in 2,200 state and local government retirement plans. About one-quarter are not covered by Social Security.

Under current law, a retiree with a pension from noncovered state or local employment cannot collect a full Social Security benefit as a spouse or widow(er) of a covered worker. Instead, the government pension offset (GPO) trims the Social Security benefit by \$2 for every \$3 of the noncovered pension—often erasing the Social Security benefit entirely. The GPO's drafters liken that to the way Social Security treats other spouses. A wife, for example, cannot collect her own retired-worker benefit plus an extra 50 percent of her husband's benefit; instead, she gets the larger amount. In that analogy, two-thirds of the pension from noncovered work is akin to a retired-worker benefit.

H.R. 743 would limit a tactic that some public employees are using to skirt the GPO. The offset applies to state and local retirees whose last day of employment under their pension plan was not covered. The General Accounting Office (GAO) reports that some workers have learned that by switching jobs for a short time—sometimes just one day—they can avoid a lifetime of GPO-related reductions. Specifically, GAO found 4,800 such transfers through June 2002. Almost all were in Texas. H.R. 743 proposes to replace the "last-day" rule with a 60-month requirement—the same rule that applies to federal civil servants.

CBO had to judge how the job-switching detected by GAO might evolve over time. Of the 4,800 transfers that GAO found, 3,500 occurred in 2002 alone, where they amounted to a quarter of retirements in the Teachers' Retirement System of Texas that year. GAO found only a handful of cases outside Texas but voiced concern that the practice would spread.

To gauge that possibility, CBO looked at retirement plans in the six states—California, Colorado, Illinois, Louisiana, Massachusetts, and Ohio—that with Texas account for 75 percent of noncovered employees. CBO concluded that conditions in Texas are uniquely favorable to "last-day" switches. Texas combines a huge noncovered sector, a small covered sector, and a statewide plan that recognizes service in both. In other states, employees who sought a covered job would have to change occupations (for example, from law enforcement to teacher) and forfeit some advantages of their original plan; in others, such as Ohio and Massachusetts, no covered positions exist. California, with its mix of covered and noncovered jurisdictions, bears the closest resemblance to Texas but has fewer noncovered jobs and thus fewer employees with an incentive to switch. If the "last-day" rule remains, states could face pressure to amend their plans to make such transfers easier. But plan amendments are complex and time-consuming.

Under current law, CBO assumes that annual transfers spurred by the "last-day" rule will climb to 7,000 in 2004—twice the number in 2002, enough to accommodate further growth in Texas (where the practice clearly had not peaked) and some spillover to other states. Under H.R. 743, significant savings in Social Security would follow in about seven years. That lag stems from the programs' contrasting rules for eligibility: a typical retiree under the Texas teachers' plan qualifies for a pension at age 55 and (if the GPO does not erase it) for

Social Security at age 62. Thus, the first batch of 7,000 annuitants who retire in calendar 2004 would reach 62 in 2011. Spouses and widow(er)s affected by the GPO in December 2001 saw their Social Security reduced by an average of \$312 and \$479, respectively. Adjusting those figures for inflation and for the age and sex of the affected group led CBO to assume those 7,000 would lose an average of \$525, or \$4 million in December 2011. Savings in 2011 are just \$26 million because the fiscal year ends in September and birthdays occur throughout the year. By December 2013, three cohorts of retirees push the monthly savings up to \$10 million; savings in fiscal year 2013 equal \$80 million.

Real-life cases would be more varied than these simple examples. Some annuitants retire after 55 (and reach 62 years old before 2011); some are widowed (and qualify for Social Security at age 60, not at age 62); and others must wait for a younger spouse to reach 62 years old. But these typical cases illustrate why CBO estimates small savings through 2010 and rapidly growing amounts after that.

Permission for Kentucky to operate divided retirement systems. Under section 218 of the Social Security Act, 21 states are allowed to operate retirement systems in which some but not all employees are covered under Social Security. In divided systems, new employees must pay Social Security tax, but employees already on the payroll may choose their coverage. H.R. 743 would add Kentucky to the list. A planned merger of two Louisville-area fire and police departments apparently spurs the provision. CBO assumes that 200 of the 1,300 workers affected would choose Social Security, and 60 or so new hires each year would add to their ranks. Extra Social Security taxes would grow from \$1 million in 2004 to \$5 million in 2013. Workers who switch coverage can avoid or soften the GPO and the windfall elimination provision, another rule that limits retired-worker (rather than spouse or survivor) benefits when beneficiaries get a pension from noncovered employment. Only a minority of the newly covered employees, though, would qualify for Social Security in the next 10 years, and CBO estimates extra costs of \$1 million in 2013.

Other provisions. H.R. 743 would correct sections of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170) that govern SSA's research and demonstration projects. It would allow SSA to continue waiving certain provisions of law, when appropriate, for projects initiated before December 2004. Currently such waivers will expire abruptly on that date, even for projects already launched. SSA does not expect to use such waivers extensively other than for the \$1-for-\$2 demonstrations (see below), so CBO ascribes a negligible cost.

DI beneficiaries face limits on their earnings. Applicants who earn more than \$800 a month (labeled substantial gainful activity, or SGA) in 2003 cannot qualify for DI; beneficiaries who make more than that for a nine-month trial work period and three-month grace period lose their entire check. The 1999 law directed SSA to conduct demonstrations in which

checks would be reduced by \$1 for each \$2 of earnings over certain thresholds. But that law left unclear how the projects would be funded. H.R. 743 clarifies that SSA would pay benefits from the trust fund and other costs—for the design, conduct, and evaluation of the demonstrations—from its appropriation for administrative expenses.

In the meantime, statisticians and other experts have advised SSA to conduct \$1-for-\$2 demonstrations narrower in scope than CBO assumed in 1999. In particular, they believe SSA cannot realistically measure "induced filers" via the demonstrations. Induced filers—workers with severe impairments who would not otherwise have applied for benefits but who are attracted by a more liberal treatment of earnings—dominated CBO's earlier analyses of the demonstrations' costs. (As SSA's plans became clearer, CBO removed those estimated costs from its baseline.) CBO expects that targeting the experiments only at a sample of current recipients would lead to little net change in benefits.

H.R. 743 would broaden the Work Opportunity Tax Credit to cover people who use a ticket for vocational rehabilitation (VR) under the 1999 law. That credit, which expires after December 2003, allows employers to subtract up to 40 percent of the first \$6,000 of wages from income tax when they hire members of targeted groups. People referred by state VR agencies are one such group; H.R. 743 would add DI and SSI beneficiaries who choose other VR providers, such as private firms or nonprofit organizations. The first tickets were distributed in 2002 and nationwide implementation will take three years. Because the tickets program is still in its early stages, the Joint Committee on Taxation estimates that broadening eligibility for the tax credit would reduce revenues by \$2 million in 2004.

Title IV would expand eligibility for widows' and widowers' benefits in narrow circumstances. To collect Social Security on a deceased worker's record, a widow or widower must either have been married to the worker for nine months or be actively caring for the worker's child. Lawmakers recently learned about an unusual case in which a worker could not marry his longtime companion because state law forbade him from divorcing his wife, who was in a mental institution. When his wife's death finally permitted him to remarry, he was already terminally ill and died a few months later. H.R. 743 would waive the duration-of-marriage requirement in those rare circumstances. Only one such case has come to light and CBO assumes that the provision would have little cost.

Spending Subject to Appropriation

CBO estimates that implementing H.R. 743 would cost SSA \$15 million to \$20 million a year in extra enforcement and processing expenses through 2010. Extending the attorney-fee program to SSI is the biggest piece, accounting for \$11 million to \$14 million a year.

Under H.R. 743, SSA would split the first SSI check into at least two parts—one for the attorney and one for the beneficiary—as it does in DI. (A third party—the state—may also claim a share if it paid benefits under a so-called interim assistance program.) Based on a GAO report, CBO assumes that each DI case that involves attorney fees will cost SSA about \$235 in 2004. About \$50 of that is for fee approval (which SSA already performs in SSI) but \$185 is for fee processing (which SSA does not do in SSI). Multiplying by the assumed volume of cases yields expected costs of \$11 million in 2004 and slightly more through 2010, when the provision would expire.

Other provisions—chiefly those that would mandate more on-site inspections, bonding and licensing, and related scrutiny of representative payees and require SSA to produce new studies and reports—would cost an estimated \$8 million in 2004 and \$4 million to \$6 million a year thereafter. The SSI and DI programs each would account for about half of those amounts.

ON-BUDGET EFFECTS ON DIRECT SPENDING AND REVENUES

The Congressional Budget Act labels Social Security "off-budget" and excludes it from the President's budget, the House and Senate budget resolutions, and the Balanced Budget and Emergency Deficit Control Act of 1985. The net changes in governmental receipts (i.e., revenues) and outlays from direct spending—excluding Social Security—over the 2004-2013 period are shown in the following table.

	By Fiscal Year, in Millions of Dollars									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Changes in outlays	0	-8	-15	-19	-23	-26	-28	-25	-25	-27
Changes in receipts	-2	0	0	0	0	0	0	0	0	0

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

Section 4 of the Unfunded Mandates Reform Act excludes from the provisions of that act any provision in a bill that relates to the Old-Age, Survivors, and Disability Insurance program under title II of the Social Security Act. The provisions of H.R. 743 that amend title II would fall within that exclusion.

Other provisions of the bill contain no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. They do, however, contain private-sector mandates as defined in UMRA. Section 204 would prohibit private entities from charging a fee for certain products and services that are available for free from SSA unless, at the time the offer is made, they provide a statement to that effect. Section 302 would impose a processing charge on private attorneys to whom SSA would disburse fees related to their representation of successful SSI claimants. CBO estimates that the costs to the private sector of those mandates would not exceed the threshold established by UMRA (\$117 million in 2003, adjusted annually for inflation).

PREVIOUS CBO ESTIMATE

On March 4, CBO transmitted a cost estimate for the introduced version of H.R. 743. That estimate cited a combined \$649 million in direct spending reductions and revenue increases over the 2004-2013 period. The version of the bill approved by the Committee on Ways and Means on March 13 differs slightly from the introduced version. Changes in the attorney-fee provisions—rounding the future cap on processing charges to the next lower \$1 (rather than \$10) and extending the program to SSI for five years (rather than three)—would add \$32 million to SSA’s receipts over the 2004-2013 period. CBO changed its estimate of the Medicare savings that would stem from the ban on Social Security benefits for fugitives, shrinking them by \$25 million. The earlier estimate had assumed incorrectly that the ban on Social Security benefits also led to a ban on Medicare benefits. In total, CBO judges that H.R. 743 as ordered reported would trim direct spending and boost revenues by a combined \$655 million over the 10-year period.

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