Calendar No. 349

108TH CONGRESS
1st Session

SENATE

REPORT
108–176

SOCIAL SECURITY PROTECTION ACT OF 2003

OCTOBER 29, 2003.—Ordered to be printed

Mr. GRASSLEY, from the Committee on Finance,
submitted the following

R E P O R T

[To accompany H.R. 743]

together with

ADDITIONAL VIEWS

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (H.R. 743) to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, to pass.

CONTENTS

29–010

I. Summary, Background, and Legislative History

A. Summary

The "Social Security Protection Act of 2003," H.R. 743, as amended by the Committee on Finance of the U.S. Senate, provides the Social Security Administration (SSA) with important new tools to fight waste, fraud, and abuse in the Social Security and Supplemental Security Income programs, increases the ability of disability beneficiaries to return to work, and improves the equity and efficiency of both programs.

Passage of the bill would improve the Representative Payee program operated by the Social Security Administration. Representative Payees are individuals or organizations who manage the monthly Social Security or Supplemental Security Income (SSI) payments for beneficiaries who need help managing their financial affairs. The bill would impose stricter standards on individuals and organizations that serve as representative payees for Social Security and SSI recipients. The bill would make non-governmental representative payees liable for misused funds and subject them to civil monetary penalties. The bill also contains funds for the Inspector General of the Social Security Administration to conduct a survey that would for the first time produce statistically significant measures of the degree to which benefit payments managed by representative payees are not being used for the welfare of beneficiaries.

The bill would help disability beneficiaries return to work. The bill would enhance provisions of the Ticket to Work program that would better enable SSA to test ways of helping individuals with disabilities return to employment. The bill would provide more individuals access to support and services that can help them work. The bill would also encourage more employers to hire individuals with disabilities by expanding eligibility for the Work Opportunity Tax Credit.

The bill would improve representation for claimants of disability benefits in the Social Security and SSI programs. The bill would tighten restrictions on attorneys who represent Social Security and SSI disability claimants, as well as limit the processing fee that SSA charges attorneys who elect to have their representative fee paid directly to them by SSA. The bill would also require the General Accounting Office to survey current claimant representation by attorneys and non-attorneys and assess the advantages and disadvantages of extending the current attorney fee withholding process in the Social Security program to the SSI program, and of extending fee withholding to non-attorney representatives in both programs.

The bill would expand and improve important provisions in the current SSI program that deny benefits to fugitive felons and allow SSA to cooperate with law enforcement in order to apprehend these and other felons. The bill would expand the denial of benefits payable to fugitive felons and probation and parole violators to include Social Security benefits, and would provide important technical clarifications as to how the provision would operate for both Social Security and SSI benefits.

The bill would make more equitable the Social Security benefits paid to beneficiaries who receive pensions based on work that was not covered by Social Security. The bill would close the "last day" loophole in the application of the Government Pension Offset. The bill would also require State and local pension plans to report to the Internal Revenue Service whether an individual's pension is based on employment not covered by Social Security. This information would then be shared with the Social Security Administration for the administration of provisions related to pensions based on non-covered employment.

The bill would help stop waste, fraud, and abuse within the Social Security and SSI programs and help SSA to recoup monetary damages from waste, fraud, and abuse. The bill would create new penalties to prevent persons from misrepresenting themselves when they offer Social Security-related services, prohibit disabled individuals who fraudulently conceal work activity from being eligible for a trial work period, and allow the Federal courts to order individuals who break Social Security law to make restitution to the Social Security Trust Funds or the U.S. Treasury's general fund.

The bill would give SSA more flexibility to recover overpayments in one program from underpayments made in another program, with protections for low-income beneficiaries. The bill would also require non-citizens to have work authorization at the time of application for benefits, or to have had work authorization at some point in the past, in order to be eligible to receive Social Security benefits. The bill would also protect Social Security employees from harm while conducting their duties.

The bill would improve benefits and simplify administration of the SSI program. The bill would make the income reporting process less cumbersome, establish greater uniformity of eligibility, increase the asset limit for eligibility, and make other improvements and simplifications in the program.

Finally, passage of the bill would correct, clarify, or modify various technical aspects of current law in the Social Security, SSI, and Railroad Retirement programs.

The Congressional Budget Office estimates that H.R. 743, as reported by the Committee on Finance, would result in net 10-year savings of $595 million.

B. BACKGROUND

The Social Security and SSI programs touch the lives of nearly every American and represented close to one-fourth of all Federal outlays in 2003. Last year, the Federal Government paid nearly $500 billion in Social Security and SSI benefits to about 50 million retired and disabled workers and their families or survivors, and disabled, blind, and aged low-income individuals. Given the programs' size and extensive influence over the economic well-being of American workers and their families, it is important to eliminate inadequate protections for beneficiaries, to improve the ability of disabled beneficiaries to return to work, improve the equity of the application of current law, and fight activities that drain resources from Social Security and thereby undermine the financial security of beneficiaries.

Nearly 7 million Social Security and SSI beneficiaries cannot, for physical or mental reasons, manage their own financial affairs. In these cases, the SSA appoints an individual or organization, called a "representative payee," to manage these beneficiaries' benefits. While most representative payees are conscientious and honest, some violate the trust placed in them. In a report issued in June 2002, "Analysis of Information Concerning Representative Payee Misuse of Beneficiaries' Payments," the SSA Inspector General stated that SSA found that more than 2,400 individuals who served as representative payees misused $12 million in benefits between January 1997 and December 1999. The SSA and the SSA Inspector General have recommended legislation to raise the standards for persons and organizations serving as representative payees and to impose stricter regulation and monetary penalties on those who mismanage benefits.

In addition to protecting the financial security of vulnerable beneficiaries, this bill would also expand and improve the policy adopted in P.L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), denying benefit payments to fugitive felons and individuals who violate their probation or parole and allowing SSA to cooperate with law enforcement in order to apprehend such felons. The 1996 legislation applied to SSI benefits to such individuals; however, no such prohibition exists for Social Security benefits. The Congressional Budget Office estimates that Social Security will pay $525 million in benefits over the next 10 years to Social Security beneficiaries who are fugitives or probation or parole violators. In an August 2000 report, "Old-Age, Survivors and Disability Insurance Benefits Paid to Fugitives," the SSA Inspector General estimated that about 17,000 fugitives received Social Security benefits between PRWORA's enactment and 1999, and recommended legislation similar to the SSI provisions which would prohibit payment of Social Security benefits to fugitive felons and probation or parole violators, and would allow SSA to cooperate with law enforcement in order to apprehend these individuals as well as others seeking to avoid arrest.

The bill would also incorporate recommendations by the SSA Inspector General to provide SSA with new authority to further safeguard Social Security programs, help shield SSA employees from harm while conducting their duties, subject perpetrators of fraud to new civil monetary penalties, and prevent persons from misrepresenting themselves as they provide Social Security-related services.

The bill would assist individuals who are applying for disability benefits by improving the oversight of the attorneys who represent them before the Social Security Administration. Under present law, attorneys disbarred in one jurisdiction, but licensed to practice in another jurisdiction, must be recognized as a claimant's representative. The bill would authorize the Commissioner of Social Security 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.

Advocates for disability claimants and attorney representatives have testified that the SSA's processing fee for withholding attorney fees from past-due benefits is excessive and limits the pool of attorneys willing to help disability claimants. The advocates recommend limiting the fee in order to increase the availability of attorney representation.

Besides encouraging representation of claimants seeking benefits, advocates for individuals with disabilities have discussed the need to improve and clarify provisions of the Ticket to Work program by enhancing demonstration projects, making work incentive services available to more individuals, and expanding eligibility for the Work Opportunity Tax Credit. These recommendations are intended to encourage more disabled beneficiaries to return to work or to maintain work effort.

The bill also contains two provisions highlighted by the Social Security Advisory Board (SSAB). The first provision would allow the SSA to collect outstanding Supplemental Security Income overpayments by offsetting the full amount owed against any lump-sum retroactive Social Security benefit to which the beneficiary may be entitled. The second provision would provide for better information sharing between governmental entities to improve the administration of the Social Security program with regard to the treatment of public employee pensions. Both of these provisions are expected to provide substantial savings to the Social Security programs.

The bill contains numerous provisions aimed at correcting inequities in the application of current law. One of these provisions, which relates to State and local workers who are not covered by Social Security, resulted from an August 2002 General Accounting Office (GAO) report, "Social Security Administration: Revision to the Government Pension Offset Exemption Should Be Considered." The GAO found that teachers in Texas, and to a lesser extent in Georgia, who were not previously covered by Social Security, were using a loophole in the law to receive higher spousal or survivor benefits from Social Security. In effect, teachers contributed to Social Security for as little as one day (an average of $3 in payroll taxes) and could qualify for over $100,000 in spousal or survivor benefits over a lifetime, whereas similar workers who were covered by Social Security throughout their careers received little or no spousal or survivor benefits. The GAO indicated that more State and local workers were likely to use this loophole in the future. The GAO recommended amending the law to treat State and local workers the same as Federal workers in applying the exemption.

Since September 11, 2001, and with the renewed interest in the enforcement of U.S. immigration laws, Members of Congress and the Social Security Inspector General have raised concerns that individuals who were never legally permitted to work in the United States are permitted to collect Social Security (Title II) benefits on the basis of their unauthorized earnings. The 1996 welfare reform legislation limited the payment of benefits to U.S. citizens, nationals, and aliens who are lawfully present in the United States. But, this provision only affects the payment of benefits to individuals within the United States; it does not affect their eligibility (entitlement) to that benefit. Thus, a non-citizen who is not lawfully present in the United States can often receive a benefit by simply moving to another country. The bill would expand on the 1996 welfare reform provision by prohibiting the payment of Title II benefits to any person, regardless of the person's place of residence, unless he or she was legally permitted to engage in employment in the United States at any time prior to (and including) the time he or she applies for benefits. It would also prohibit the payment of benefits to the spouses, dependents, or survivors of these ineligible workers.

For many years, SSA has asked the Congress to enact several provisions to simplify the administration of the Supplemental Security Income (SSI) program. Additionally, the President's Fiscal Year 2003 and Fiscal Year 2004 budgets proposed to expand one of the quality review processes that currently apply to the Social Security disability insurance program to the SSI program. That change is expected to produce savings in the SSI program of $1.5 billion over 10 years. In addition, many of the eligibility rules for the SSI program have not been modified since the program's inception in 1972, due to the associated costs to the Federal budget. In order to allow SSI beneficiaries to keep more of their resources, the bill uses the savings from the proposal in the President's budget to increase the asset limit for SSI eligibility. The bill also includes many of the program simplification provisions requested by SSA for the SSI program.

C. LEGISLATIVE HISTORY

Last Congress, the House of Representatives passed H.R. 4070, "The Social Security Program Protection Act" on June 26, 2002, by a vote of 425–0. The Senate Finance Committee pre-conferenced the bill with the House Ways and Means Committee. The bill was changed to reflect the pre-conference agreement. The bill was taken up on the Senate floor and passed by unanimous consent on November 18, 2002, and a report on the bill was placed in the Congressional Record. The House of Representatives did not act on the Senate passed bill before adjourning.

The strong support for H.R. 4070 in the 107th Congress, led to the introduction of H.R. 743, the "Social Security Protection Act of 2003" in the 108th Congress. On March 5, the House of Representatives considered H.R. 743, as amended, under suspension of the rules; it failed by a vote of 249–180 (a two-thirds vote being required). On March 13, 2003, the Committee on Ways and Means ordered favorably reported H.R. 743, the "Social Security Protection Act of 2003," as amended, by a rollcall vote of 35–2. The House of Representatives passed H.R. 743 on April 2, 2003, by a vote of 396–28.

The Senate Committee on Finance marked up H.R. 743 and approved the bill, as modified, on September 17, 2003, by a voice vote with a quorum present.

II. EXPLANATION OF THE BILL

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.

Reason for Change

There have been a number of highly publicized cases involving organizational representative payees that have misused large sums of monies paid to them on behalf of the Social Security and Supplemental Security Income (SSI) beneficiaries they represented. In most instances, these organizations operated as criminal enterprises, bent not only on stealing funds from beneficiaries, but also on carefully concealing the evidence of their wrongdoing. These illegal activities went undetected until large sums had been stolen. If the SSA is not shown to be negligent for failing to investigate and monitor the payee, affected beneficiaries may never be repaid or may be repaid only when the representative payee committing misuse makes restitution to the SSA. Requiring the SSA to reissue benefit payments to these victims of benefit misuse provides essential protection from financial hardship.

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 community-based nonprofit 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 community-based nonprofit 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.

Reason for Change

Strengthening the bonding and licensing requirements for community-based nonprofit social service agencies would add further safeguards to protect beneficiaries’ funds. State licensing provides for some oversight by the State into the organization’s business practices, and bonding provides some assurances that a surety company has investigated the organization and approved it for the level of risk associated with the bond. Requiring annual certification as to the licensing and bonding of the payee, as well as submission of audits performed, should help prevent a payee from dropping their licensing or bonding subsequent to the SSA approving them as payee.

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 1 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 1 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 procedures and reviews conducted for representative payees to determine whether they are sufficient to protect benefits from being misused.

Reason for Change

Prohibiting persons convicted of offenses resulting in imprisonment for more than 1 year and persons fleeing prosecution, custody or confinement for a felony from serving as representative payees decreases the likelihood of mismanagement or abuse of beneficiaries' funds. Also, allowing such persons to serve as representative payees could raise serious questions about the SSA's stewardship of taxpayer funds. The agency's report will assist Congress in its oversight of the representative payee program.

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.

Reason for Change

Payees who misuse their clients' funds are not properly performing the service for which the fee was paid; therefore, they should forfeit such fees. Permitting the payee to retain the fees is tantamount to rewarding the payee for violating his or her responsibility to use the benefits for the individual's needs.

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.

Reason for Change

Treating misused benefits as overpayments to the representative payee would provide the SSA with additional means for recovering misused payments.

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.

Reason for Change

Accounting reports are an important means of monitoring the activities of representative payees to prevent misuse of benefits. Redirecting benefit payments to the field office would enable the agency to promptly address the failure of the representative payee to file a report.

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. The study is to be completed by February 1, 2005.

Reason for Change

When all of the categories of representative payees are considered, there are a total of about 5.3 million payees. In the aggregate, these payees receive and manage about $44 billion of payments on behalf of about 6.7 million Social Security beneficiaries. The payees are supposed to use these payments to meet the needs of the beneficiaries. However, to date, there has not been a statistically significant national survey to estimate the number of payments provided to each type of payee that are not being properly used on behalf of beneficiaries. The Inspector General has proposed that such a survey be conducted in Fiscal Year 2004 at a cost of $17.8 million. This section provides the funds for such a study.

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.

Reason for Change

Providing authority for SSA to impose civil monetary penalties along with an assessment of up to twice the amount of misused benefits would provide the SSA with an additional means to address benefit misuse by representative payees.

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 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.

Reason for Change

Currently the SSA cannot impose civil monetary penalties and assessments on a person who should have come forward to notify the SSA of changed circumstances that affect eligibility or benefit amount, but did not. This amendment is intended to close this loophole in the current law, but is not intended to expand Section 1129 and 1129A to include those individuals whose failure to come forward to notify the SSA was not done for the purpose of improperly obtaining or continuing to receive benefits. For instance, it is not intended that the expanded authority be used against individuals who do not have the capacity to understand that their failure to come forward is misleading.

Examples of the types of individuals intended to be covered under this amendment to Section 1129 and 1129A include (but are not limited to): (1) an individual who has a joint bank account with a beneficiary in which the SSA direct deposited the beneficiary's Social Security checks; upon the death of the beneficiary, this individual fails to advise the SSA of the beneficiary's death, instead spending the proceeds from the deceased beneficiary's Social Security checks; and (2) an individual who is receiving benefits under one SSN while working under another SSN.

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.

Reason for Change

SSA does not currently have an effective system in place for processing and recording Title II and Title XVI disability beneficiaries' reports of changes in work and earnings status. Issuing receipts to disabled beneficiaries who make such reports would provide them with proof that they had properly fulfilled their obligation to report these changes.

Effective Date

This provision requires the Commissioner to begin issuing receipts as soon as possible, but no later than 1 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 for months 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 provision gives the Commissioner of Social Security the authority to pay Title II or Title XVI benefits, if there is "good cause." The provision also requires the Commissioner, upon written request by law enforcement officials, to 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 the individual. Thus, the provision provides that benefits under Title II or Title XVI will be withheld or suspended 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.

Reason for Change

Although the fugitive felon provision applies to Title XVI (SSI), it does not apply to Title II (OASDI). This section of the bill would extend this provision to Title II.

The fugitive felon provision was intended to deny benefits to those seeking to avoid arrest or prosecution, not to deny benefits to those no longer sought by law enforcement. The Committee has been made aware of numerous cases in which law enforcement agencies have chosen not to pursue individuals identified through the current Title XVI fugitive felon program. Such cases often involve minor offenses that may be decades old and will never be prosecuted. As a result, the only effect of the individual's illegal actions is the denial of SSI benefits. The Committee does not believe the Social Security Administration should become the law enforcement agency of last resort. Therefore, this section of the bill provides that benefits under Title II or Title XVI will be withheld or suspended 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. Moreover, the good cause exception will provide the SSA with the ability to pay benefits under circumstances in which the Commissioner deems withholding of benefits to be inappropriate—for example, but not limited to, situations where beneficiaries are found to be victims of identity theft.

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.

Reason for Change

Several individuals and companies offer Social Security services for a fee even though the same services are available directly from the SSA free of charge. For example, the SSA's Inspector General has encountered business entities that have offered assistance to individuals in changing their names (upon marriage) or in obtaining a Social Security number (upon the birth of a child) for a fee, even though these services are directly available from the SSA for free. The offer from the business entities either did not state at all, or did not clearly state, that these services were available from the SSA for free. These practices can mislead and deceive senior citizens, newlyweds, new parents, and other individuals seeking services or products, who may not be aware that the SSA provides these services for free.

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.

Reason for Change

This provision could potentially provide additional protections for beneficiaries who may rely on representatives during all phases of their benefit application process. However, the Committee remains concerned that the SSA does not yet have any system in place to verify whether or not a person seeking appointment as a claimant representative is in fact an attorney. Moreover, SSA has no system to determine whether or not an attorney who seeks appointment has been disbarred.

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 1 year in prison.

Reason for Change

This provision extends to SSA employees the same protections provided to employees of the Internal Revenue Service under the Internal Revenue Code of 1954. These protections will allow SSA employees to perform their work with more confidence that they will be safe from harm.

The Committee expects that judgment will be used in enforcing this section. Social Security and SSI disability claimants and beneficiaries are frequently subject to multiple, severe life stressors, which may include severe physical, psychological, or financial difficulties. In addition, disability claimants or beneficiaries who encounter delays in approval of initial benefit applications or in post-entitlement actions may incur additional stress, particularly if they have no other source of income. Under such circumstances, claimants or beneficiaries may at times express frustration in an angry manner, without truly intending to threaten or intimidate SSA employees. In addition, approximately 25 percent of Social Security disability beneficiaries and 35 percent of disabled SSI recipients have mental impairments, and such individuals may be less able to control emotional outbursts. These factors should be taken into account in enforcing this provision.

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.

Reason for Change

The SSA Inspector General has found these phrases appearing in mailings, solicitations, or flyers, which, when used with the SSA's words, symbols, emblems, and references may be particularly misleading and more likely to convey the false impression that such item is approved, endorsed, or authorized by the SSA, the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services), or the Department of Health and Human Services. Expansion of this list helps to ensure that individuals receiving any type of mail, solicitations or flyers bearing symbols, emblems or names in reference to Social Security or Medicare are not misled into believing that these agencies approved or endorsed the services or products depicted.

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), within any 60-month period, 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).

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 U.S. 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.

Reason for Change

Under current law, if an individual is convicted of fraudulently concealing work activity, the dollar loss to the government is calculated based on the benefits that the individual would have received had he or she not concealed the work activity. During the trial work period, disability beneficiaries continue to receive their monthly benefit amount regardless of their work activity. Therefore, the SSA does not include benefits paid during a trial work period in calculating the total dollar loss to the government, even if the individual fraudulently concealed work activity during that period. As a result, the dollars lost to the government may fall below the thresholds set by the U.S. Attorneys in cases involving fraudulent concealment of work by Title II disability beneficiaries. In such situations, the case would not be prosecuted, even if the evidence of fraud was very clear.

This provision rectifies the situation by establishing that individuals convicted of fraudulently concealing work activity during the trial work period are not entitled to receive any disability benefits for trial work period months prior to the conviction (but within the same period of disability).

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.

Reason for Change

This provision would enhance a judge's ability to compensate the programs and punish persons convicted of violations including, but not limited to, improper receipt of Social Security payments and misuse of Social Security numbers.

Effective Date

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

Sec. 210. Information for the Administration of Provisions Related to Non-covered Employment

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—in 1977 and 1983, respectively—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 reports with SSA for the purpose of equitably administering the GPO and WEP.

Reason for Change

This change would make the application of these provisions more equitable because it would improve SSA's ability to identify persons receiving State and local government pensions based on non-covered work in a manner comparable to SSA's present ability to identify persons receiving Federal pensions based on non-covered work.

SSA has an ongoing computer-matching program with the Federal Office of Personnel Management (OPM) that matches persons receiving Social Security benefits with persons receiving a pension from the Federal government based on non-covered employment. However, SSA does not have any similar program to identify Social Security beneficiaries who are receiving pensions based on non-covered work for a State or local government.

A previous study by the General Accounting Office (GAO) found that there are many beneficiaries who are not subjected to the GPO or WEP because the SSA does not know they are receiving pensions based on non-covered employment.

This provision would allow the SSA to obtain data on pensions based on non-covered work in a more timely and consistent manner, reducing incorrect Social Security benefit payments. In cases where the person begins to receive the pension before filing for Social Security benefits, SSA could annotate the person's record so that this information would be available at the time the person applies for Social Security benefits. The proposal would thereby improve SSA's stewardship over the Social Security program and its trust funds.

Organizations representing State and local employees report their members are often unaware of these provisions until they apply for retirement benefits. The Committee believes the Social Security Administration should utilize the annual earnings statement mailed to every employee over the age of 25 to more explicitly inform State and local employees about the GPO and WEP. These employees should also be informed about their options to avoid these provisions by electing coverage under the Social Security program.

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. The SSA has authority to collect prior SSI overpayments from Title II or Title VIII, but this authority is limited to 10% of the benefits paid.

Explanation of Provision

This provision would allow the Social Security Administration to more fully recover overpayments paid under Title II, Title VIII, or Title XVI from the benefits paid under any of these programs. It would provide for withholding up to 100 percent of any lump-sum underpayment. Any recovery from any continuing monthly benefit under Title II or Title VII would be limited to 10 percent. Recovery under Title XVI would be limited to the lesser of 100 percent of the monthly benefit or 10 percent of individual's total monthly income.

Reason for Change

The amount of outstanding, uncollected overpayments is large and continues to grow. Allowing the withholding of underpayments and monthly benefits between programs will greatly enhance the SSA's ability to recover overpayments. Without these changes, it would be difficult or impossible to recover overpayments, particularly when individuals are no longer eligible for ongoing monthly benefits.

Effective Date

Upon enactment.

Sec. 212. Prohibit Benefits to Persons Not Authorized to Work in the United States

Present Law

Under current law, non-citizens who work illegally in the United States can receive Title II benefits based on the earnings from their illegal work. In addition, although current law prohibits the payment of benefits to persons who are not lawfully present in the United States, such persons can generally receive their benefits outside the United States—with the exception of certain countries, such as Cuba and North Korea. Benefit payments may, in some but not all cases, be limited to a period of 6 months for persons living in other countries. In addition, benefits for dependents or survivors may be limited to 6 months unless they lived in the United States for at least 5 years in the family relationship on which the benefits are based.

Explanation of Provision

This provision would prohibit the payment of Title II benefits to any person who was not legally permitted to engage in employment in the United States prior to (or including) the time he or she applies for Title II benefits. It would also prohibit the payment of benefits to the spouses, survivors, or dependents of illegal workers.

Prior to the enactment of P.L. 92–603 on October 30, 1972, SSA records did not reflect whether an individual was authorized to work when his or her Social Security account number (SSN) was issued. Thus, the Committee expects that all SSNs issued prior to July 1974—when the 1972 provision was first implemented by SSA—shall be deemed to comply with the new requirement, unless the SSA has evidence to the contrary.

The Committee also recognizes that some individuals who are issued a non-work SSN may later become a U.S. citizen or receive authorization to work. Although such individuals are supposed to report these changes to SSA, not all do. In such cases, SSA would not be aware of the change, and would deny benefits, unless the individual maintained records to document the change. To reduce the number of potential denials and the need to rely on documents maintained by the individual, SSA should take two steps. First, SSA should utilize the annual notices it sends to all employees for whom there is a discrepancy between the name and SSN submitted by their employer and the data in SSA's records. SSA should use these mailings to notify employees that their wages are being reported on a non-work SSN, and recommend that these workers report any change in their work status to SSA. Second, SSA should use the annual earnings and benefit statements it sends to all workers over age 25 to notify these workers that their wages are being reported on a non-work SSN. Again, SSA should recommend that these workers report any change in their work status to SSA.

Reason for Change

Individuals who were never legally permitted to work in the United States should not be able to collect Social Security benefits on the basis of their illegal earnings. The Social Security program should not reward those who violate our immigration laws. This provision would begin to address this issue by limiting benefits to those who were authorized to work in the United States at some point in time.

This provision does not fully address this issue as individuals who begin working illegally and later obtain legal status could still use their illegal earnings to qualify for Social Security benefits. However, the Commissioner of Social Security has raised concerns about SSA's ability to administer a more comprehensive approach. The Committee believes the proposal in the bill is the best approach to this issue at this time, but the Committee will continue to consider ways to more fully address this issue in the future.

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 percent 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 percent assessment on approved attorney representative fees for Title II claims, and this cap is indexed for inflation.

Reason for Change

The Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106–170) which created the 6.3 percent assessment also required the General Accounting Office (GAO) to examine the costs incurred by the SSA in administering attorney fees; identify efficiencies that the SSA could implement to reduce such costs; and determine whether the assessment impairs access to legal representation for claimants.

The GAO concluded that inadequate data made a precise estimate of the administrative cost of attorney fees impossible to calculate. It further concluded that the SSA could take additional steps to automate the attorney fee process and thereby achieve significant administrative savings. Finally, GAO concluded that access to legal representation had been largely unaffected by the fee assessment.

Given the uncertainty regarding the true cost of the administering the attorney fee process, dissatisfaction with continued delays in processing attorney fees, and lack of progress in further automating the fee process, the Committee decided to cap the fee. This fee cap attempts to balance the competing goals of having attorneys pay the legitimate costs of fee withholding while at the same time encouraging the SSA to reduce these costs to the greatest extent possible.

Effective Date

After 180 days after the date of enactment.

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

Present Law

An individual applying for Title II or Title XVI disability benefits may seek the assistance of another person. The person assisting the applicant may not charge or receive a fee unless it is first approved by the Social Security Administration (SSA). If the person assisting the individual is an attorney and the individual is awarded past-due benefits under Title II, the SSA will deduct the attorney's fee from the individual's benefits and pay the attorney directly—minus a fee to cover the SSA's administrative costs.

Explanation of Provision

This provision would require the General Accounting Office to conduct a study of the fee-withholding payment process for claimant representatives. The study would include a statistically significant survey of the characteristics of the current fee withholding system. The report would also include an analysis of the costs and benefits of the current system. In addition, the study would also assess the advantages and disadvantages of extending the current fee withholding system for attorneys to SSI cases. Finally, the report would assess the advantages and disadvantages of extending the fee withholding system to non-attorney representatives of both Social Security and SSI claimants.

Reason for Change

The Senate Finance Committee has received letters, testimony, and communications about the effects of the current fee-withholding process on claimants from disability advocates, the Social Security Administration, the Social Security Advisory Board, and attorney and non-attorney representatives of claimants. Among these materials, there is a difference of opinion about whether the current system is helpful or harmful to the claimants. Moreover, in these materials, some people believe that the current fee-withholding system should be extended to attorneys representing SSI disability claimants, while other people believe that the current fee-withholding system should not be extended to SSI claimants or should be eliminated. Furthermore, in the materials, some people believe that the current fee-withholding system should be extended to non-attorney representatives of both Social Security and SSI disability claimants, while others argue against such an extension. Based on these conflicting views and disagreements, the Committee decided that the best way to proceed at this time is to obtain a detailed report on these issues from the General Accounting Office.

Effective Date

The report would be due 24 months after the 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.

Reason for Change

This change would conform the Social Security demonstration project authority with the SSI demonstration authority. The removal of the limitation on authority is warranted because demonstration projects are structured to protect beneficiaries, usually have very minimal costs, and often help to improve the program for both beneficiaries and administrators.

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.

Reason for Change

Under the $1-for-$2 benefit offset demonstration project, earnings of many beneficiaries may not be sufficient to completely eliminate their benefits. However, benefits must be completely eliminated before employment networks participating in the Ticket to Work program are eligible to receive outcome payments. Therefore, employment networks may be reluctant to accept tickets from beneficiaries participating in the $1-for-$2 benefit offset demonstration, making it impossible for the SSA to effectively test this mandated project.

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.

Reason for Change

Administrative costs for demonstration projects conducted under the broader Title II demonstration project authority are paid out of otherwise available annually appropriated funds, and benefits associated with the demonstration projects are paid from the OASDI or HI/SMI Trust Funds. This provision would make funding sources for the $1-for-$2 demonstration project under the Ticket to Work Act consistent with funding sources for other Title II demonstration projects.

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.

Reason for Change

Although disabled beneficiaries may have progressed beyond eligibility for Federal cash benefits, but may still need information about the effects of work on their medical or State benefits, or they may need advocacy or other services to help them maintain or regain employment. Extending eligibility for the BPAO and PABSS programs to beneficiaries who are no longer eligible for Federal cash benefits will help to prevent these beneficiaries from returning to the Federal cash benefit rolls and help them to reach their optimum level of employment.

By extending the current PABSS assistance to maintaining employment, this provision would ensure that disabled individuals would not face a situation in which they would have to wait until they lost their employment in order to once again be eligible to receive PABSS services.

The Committee intends this provision to provide a continuity of services for disabled individuals throughout the process of initially securing employment, the course of their employment and, if needed, their efforts to regain 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.

Sec. 405. Technical Amendment Clarifying Treatment of Referrals 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 percent 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 percent 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.

Reason for Change

The Ticket to Work program was designed to increase choice available to beneficiaries when they select providers of employment services. Employers hiring individuals with disabilities should be able to qualify for the WOTC regardless of whether the employment referral is made by a public or private service provider. This amendment updates eligibility criteria for the WOTC to conform to the expansion of employment services and the increase in number and range of VR providers as a result of the enactment of the Ticket to Work Act.

Effective Date

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

Sec. 406. GAO Study of Ticket to Work and Self-Sufficiency Program

Present Law

The Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106–170) was designed to help disabled beneficiaries who are seeking employment services, vocational rehabilitation services, and other support services to assist them in obtaining, regaining, and maintaining self-supporting employment.

The Ticket to Work Program is being phased in the over a 3-year period. During the first phase which began in February 2002, the program was available in 13 States. In the second phase which began in November 2002, it was expanded to 20 additional States, as well as to the District of Columbia. In the third and final phase beginning in November 2003, SSA will expand the program to the remaining 17 States, as well as to American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands

By implementing the Ticket to Work program in phases, the SSA will have the opportunity to evaluate the program and make any necessary improvements before the program is fully implemented nationwide.

Explanation of Provision

This provision would require the General Accounting Office to provide an interim assessment of the Ticket to Work program.

Reason for Change

Current law requires numerous annual and interim reports analyzing various aspects of the Ticket to Work program, as well as a final report by the Advisory Panel 8 years after the date of enactment. However, no one has compiled all of the information available so far in order to assess how well the Ticket to Work program is working and whether any additional legislative or administrative changes are needed.

Effective Date

The report would be due 12 months after the date of enactment.

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.

Reason for Change

A claimant whose benefits have been denied is provided a transcript of a hearing to be used when the claimant appeals his case in Federal District court. If the Administrative Law Judge issues a fully favorable decision, then transcribing the hearing is unnecessary since the claimant would not appeal this decision.

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, pursuant to a removal notice from the Attorney General or the Secretary of Homeland Security, for smuggling aliens.

Reason for Change

Individuals who are removed from the United States for smuggling aliens have committed an act that should prohibit them from receiving Social Security benefits.

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).

Reason for Change

The reports to be reinstated provide Congress with important information needed to evaluate and oversee the Social Security and Medicare programs.

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 9 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 9–month requirement for cases in which the Commissioner finds that the claimant and the deceased spouse would have been married for longer than 9 months but for the fact that the deceased spouse was legally prohibited from divorcing a prior spouse who was in a mental institution.

Reason for Change

This provision allows the Commissioner to issue benefits in certain unusual cases in which the duration of marriage requirement could not be met due to a legal impediment over which the individual had no control and the individual would have met the legal requirements were it not for the legal impediment.

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 U.S. 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 U.S. 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 U.S. Social Security tax whether or not the worker elected to make contributions to the foreign country's retirement system.

Reason for Change

In U.S. totalization agreements, a person's work is generally subject to the Social Security laws of the country in which the work is performed. In most cases, the worker (whether subject to the laws of the United States or the other country) is compulsorily covered and required to pay contributions in accordance with the laws of that country. In some instances, however, work that would be compulsorily covered in the United States is excluded from compulsory coverage in the other country (such as Germany). In such cases, the IRS has questioned the exemption from U.S. Social Security tax for workers who elect not to make contributions to the foreign country's retirement system. This provision would remove any question regarding the exemption and would be consistent with the general philosophy behind the coverage rules of totalization agreements.

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.

Reason for Change

In the past, Congress has provided 21 States with the authority to operate divided retirement systems. This authority has generally been granted as a result of a merger between two political subdivisions. Without this authority, a majority vote would determine whether or not every employee would participate in Social Security. As the number of non-covered employees often exceeds the number of Social Security-covered employees in the new merged political subdivision, those employees currently covered by Social Security could lose that coverage. This provision was originally proposed in February 2002 to address the proposed merger between the governments of the city of Louisville and Jefferson County, in the State of Kentucky. Enactment of this provision would allow other States to operate a divided system in the future as the need arises.

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 reimbursement for 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.

Reason for Change

Other government advisory boards—such as the Employee Retirement Income Security Act Advisory Council, the Pension Benefit Guaranty Corporation Advisory Committee and the Thrift Savings Plan Board—provide compensation for their members. This provision allows for similar treatment of Social Security Advisory Board members with respect to compensation.

Effective Date

January 1, 2003.

Section 418. 60-Month Period of Employment Requirement for 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 an amount equal to 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 both a government pension and Social Security on their last day of government employment.

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 the last 5 years of their government employment in order to be exempt from the GPO.

Reason for Change

The GPO was enacted in 1977 to equalize the treatment of workers covered by Social Security and those with government pensions not covered by Social Security. However, current law effectively provides an unintended exemption when State or local government workers are covered by both Social Security and their government pension on their last day of employment. In such cases, the GPO does not apply.

Although individuals could have used this exemption since 1977, knowledge of this "last-day" loophole did not become widespread until recent years. According to the General Accounting Office (GAO), nearly all of the cases they identified in which individuals took advantage of this loophole occurred in the last several years.

For example, the GAO reported one-fourth (3,521) of all Texas public education retirees took advantage of this loophole in 2002. In most cases, teachers typically worked a single day in a non-teaching position (clerical, food service, or maintenance). Most of these employees paid about $3 in Social Security payroll taxes. The average spousal benefit resulting from these last-day loophole jobs would be an additional $5,200 a year.

The 5-year rule adopted in this provision has precedent in 1987 legislation allowing Federal employees covered by the old Civil Service Retirement System (CSRS) to elect coverage under Social Security as part of the transition to the new Federal Employees Retirement System (FERS). That legislation required Federal employees who transferred from CSRS to FERS and Social Security to work for at least 5 years before retirement in order to be exempt from the GPO.

This change will establish uniform application of the GPO exemption for all Federal, State, and local government workers who elect to join Social Security through the referendum process provided under current law.

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 by giving them credit for various tax-free benefits such as in-kind food and housing allowances. The Social Security trust funds (and later the Medicare HI trust fund) have received various transfers from general funds over the years (most recently from DoD appropriations) 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 to the Social Security and Medicare trust funds the remaining balance owed for 2000 and 2001, and make conforming amendments to reflect the termination of deemed military wage credits.

Reason for Change

This provision would constitute a full and final accounting of the amount owed to the trust funds for 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.

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.

Reason for Change

The "Social Security Independence and Program Improvements Act of 1994" (P.L. 103–296) made the Social Security Administration an independent agency separate from the Department of Health and Human Services. This provision updates Section 1143 to reflect that change.

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.

Reason for Change

P.L. 104–188 provided that certain retirement benefits received by ministers and members of religious orders are not subject to payroll taxes. However, a conforming change was not made to the Social Security Act to exclude these benefits from being counted as wages for the purpose of acquiring insured status and calculating Social Security benefit amounts. This income is therefore not treated in a uniform manner. This provision would conform the Social Security Act to the Internal Revenue Code with respect to such income.

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.

Reason for Change

Prior to 1994, domestic service on a farm was treated as agricultural labor and was subject to the coverage threshold for agricultural labor. According to the SSA, in 1994, when Congress amended the law with respect to domestic employment, the intent was that domestic employment on a farm would be subject to the coverage threshold for domestic employees instead of the threshold for agricultural labor. However, the current language is unclear, making it appear as if farm domestics are subject to both thresholds.

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 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.

Reason for Change

Over the years, provisions in the Social Security Act, the Internal Revenue Code and other related laws have been deleted, re-designated or amended. However, necessary conforming changes have not always been made. Consequently, the Social Security law and the Internal Revenue Code contain some outdated references.

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.

Reason for Change

Present law was found to be unconstitutional in several court cases in 1980. Since then, income from a trade or business that is not a partnership in a community property State has been treated the same as income from a trade or business that is not a partnership in a non-community property State—it is taxed and credited to the spouse who is found to be carrying on the business.

This change will conform the provisions in the Social Security Act and the Internal Revenue Code to current practice in both community property and non-community property States.

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).

Reason for Change

All nine changes are technical in nature and are needed to promote the efficient implementation of the Railroad Retirement and Survivors' Improvement Act of 2001.

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 $552 a month for an individual or $829 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 monthly 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.

Explanation of Provision

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.

Reason for Change

The original SSI legislation enacted in 1972 contained a provision excluding infrequent and irregular unearned income of $60 per quarter and earned income of $30 per quarter. The intent in excluding these amounts was to simplify administration of the SSI program by allowing SSA to ignore occasional small gifts and small amounts of earnings. However, the "Omnibus Budget Reconciliation Act of 1981" changed the amount of the exclusion to $20 a month for unearned and $10 a month for earned income to conform with the change from a quarterly to a monthly accounting system. This change unintentionally disadvantaged some SSI beneficiaries by lowering the cap on the amount of infrequent or irregular income that could be excluded at one time.

The provision restores the exclusion for infrequent or irregular income to its original quarterly basis. This change will permit an individual to receive small gifts, or payment for infrequent jobs such as babysitting, without worrying that fairly insignificant amounts of income would adversely affect his or her benefits. For example, under current law, a $25 cash birthday gift would be counted as income to the individual. Under this proposal, such a relatively insignificant gift would not be counted as income if the income did not exceed the quarterly limit. The change will also simplify program administration by reducing the need to make benefit adjustments due to small amounts of infrequently-received income.

The exclusion from countable income of all interest and dividend income earned on countable resources under this provision would simplify the administration of the program by eliminating the need to track small interest or dividend payments (which would generally amount to only a few dollars a month because they would be earned on resources currently limited to a maximum value of $2,000 or $3,000) and the need to adjust benefit amounts and pursue the recovery of overpayments arising from to minor fluctuations in interest and dividend income.

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.

Explanation of Provision

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.

Reason for Change

The resource exclusion periods are intended to allow beneficiaries who receive significant sums of money sufficient time to meet outstanding obligations or needs before the sums become countable as assets, which could result in SSI ineligibility. The legislative history of these provisions provides no rationale for the differing exclusion time periods permitted for excluding various types of payments. Uniformity simplifies SSI administration and improves the public's understanding of the SSI program. Moreover, increasing the length of the exclusion period for some of these payments allows beneficiaries more time to meet outstanding obligations or needs and reduces current incentives to spend payments rapidly, and perhaps imprudently, to avoid exceeding resource limits.

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 to a disabled child that are greater than six times the maximum monthly SSI benefit be deposited in a special account and be used by the child's parents or representative payee only for certain specified purposes related to the impairment (or combination of impairments) of the beneficiary.

Explanation of Provision

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 child's parent or representative payee that were for the good of the beneficiary. The modification also clarifies that funds from the dedicated account can be 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.

Reason for Change

Field office employees of the Social Security Administration have remarked that the current law rules and regulations for dedicated accounts are overly intrusive, very cumbersome administratively, and lead to unsatisfactory results for some families trying to meet the needs of a disabled child in their family. The change will allow more flexibility in the administration of dedicated accounts by clearly allowing any expenses that are for the good of the beneficiary to be drawn from the account. This change to the SSI program will also make the treatment of funds in these accounts consistent with the requirements placed on representative payees, including parents, who receive payments on behalf of children who do not have dedicated accounts, and those children who are survivors or dependents under Title II.

Effective Date

The provision would be effective on 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 beneficiary who is a child and who is determined to be a student is excluded subject to limits prescribed by SSA. Currently, the program excludes up to $1,340 a month, but no more than $5,410 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.

Explanation of Provision

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.

Reason for Change

The intent of the original student earned income exclusion was to help a student to finance school attendance, to recognize the special expenses that many students with disabilities incur to attend school, and to provide tangible incentives to encourage work and education. Because the definition of the term "child" under SSI rules includes the requirement that an individual be neither married nor the head of a household, young married and single parent students do not have the incentive from an earned income exclusion that is available to other students. It is not reasonable or equitable to deny married individuals or heads of households an exclusion which may make the difference in their ability to attend school and progress toward self-sufficiency.

Effective Date

The change is effective for benefits payable for months that begin 1 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 for 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.

Explanation of Provision

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.

Reason for Change

This provision eliminates the disparate treatment in the SSI and Title II disability programs between payments to volunteers in the Americorps VISTA program and payments to other Americorps volunteers, and between payments in cash and in-kind. This change removes current disincentives that may prevent young people with disabilities from participating in the Americorps program.

Effective Date

The change is effective for benefits payable for months that begin 60 days after the date of enactment.

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.

Explanation of Provision

Under this provision, one-time, nonrecurring income is counted only for the month that the income is received, and not for any other month in 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.

Reason for Change

In some cases in which an individual has non-recurring income in the first month of SSI payment eligibility, the application of RMA during the first 3 months of such eligibility can result in more income being counted than is actually received. In such cases during the 3-month period, SSI benefits may be reduced by $3 for each $1 of income received, instead of by the normal and equitable $1 for each $1 of income received. This provision would eliminate the triple counting of one-time, nonrecurring income, thereby more accurately and fairly reflecting an individual's financial means.

Effective Date

The provision is effective for benefits payable for months that begin on or after 1 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 United States 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.

Explanation of Provision

This provision extends the current law eligibility for SSI 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.

Reason for Change

This amendment would eliminate the disparate treatment with regard to SSI eligibility between blind and disabled children of military personnel overseas who were eligible for SSI before they went overseas and those children who were born, became blind or disabled, or first applied for SSI benefits after going overseas. This provision would be a reasonable change in the law to protect a specific, limited group of children who reside outside the United States only because their parents are serving their country by being stationed 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.

Explanation of Provision

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.

Reason for Change

Permitting the exclusion of such gifts when determining SSI eligibility and benefit amounts could permit and encourage familial and community support of an individual's education and thus increase the chances that such an individual might become self-sufficient and leave the SSI rolls.

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 1 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 1 month's income, and the income reported on each statement must be broken down to determine how much was received in each month.

Explanation of Provision

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.

Reason for Change

The provision would simplify the determination of countable income in SSA field offices by making it unnecessary to view earnings statements for two months to determine one month's earnings.

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 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.

Explanation of Provision

This provision changes the resource limits to $3,000 for individuals and $4,500 for couples, and subsequently indexes the amounts for inflation in the same manner as the maximum SSI benefit amount is indexed.

Reason for Change

If the resource limits for SSI had been indexed for inflation since the enactment of the program in 1972, the limits would currently be roughly $6,000 for an individual and $9,000 for a couple. This provision to update the resource limits will allow SSI beneficiaries to save more of their resources to cover costs of an urgent nature or of significant size—such as health emergencies, storm damage, home repairs, or winter utility bills—that because of their size or immediacy could not be covered by the monthly benefit payment that the recipient uses to pay for ongoing basic needs such as food, clothing and shelter. In addition, the change will allow some individuals who are elderly or disabled and have very low incomes to apply for and receive SSI while holding onto a slightly larger amount of resources for these types of future "rainy day" needs. The Committee recognizes that the change to the resource limits will increase Federal expenditures by $3.8 billion over 10 years. Therefore, the Committee has included in this legislation several provisions that will produce an equal amount of budgetary savings. The Committee believes that savings in the SSI program should be used to improve the benefits in the SSI program.

Effective Date

The increase to $3,000 and $4,500 is effective for benefits payable for January 2004. Indexing the resource limits is effective January 1, 2005.

Section 440. Review of State Agency Blindness and Disability Determinations

Present Law

State agencies are required to conduct blindness and disability determinations to establish an individual's eligibility for: (1) Title II (Federal Old-Age, Survivors, and Disability Insurance (OASDI) benefits); and (2) Title XVI (Supplemental Security Income (SSI)). Disability determinations are made in accordance with disability criteria defined in statute as well as standards promulgated under regulations or other guidance.

Under current law, the Commissioner of Social Security is required to review the State agencies' Title II blindness and disability determinations in advance of awarding or continuing payment to individuals. This requirement for review is met when: (1) at least 50 percent of all initial allowances have been reviewed, and (2) other such determinations have been reviewed as necessary to ensure a high level of accuracy.

Explanation of Provision

After a 1-year phase-in, the bill aligns disability and blindness review requirements for Title XVI with those currently required under Title II. As under Title II, the Commissioner of Social Security would be required to review initial Title XVI blindness and disability determinations made by State agencies in advance of awarding payments. For FY2004, the review would be required for at least 25 percent of all State-determined allowances made after March 2004. In FY2005 and thereafter, review would be required for at least 50 percent of State-determined allowances. To the extent feasible, the bill requires the Commissioner to select for review those State agency determinations that are most likely to be incorrect.

Reason for Change

The provision will improve the integrity of the Supplemental Security Income program.

Effective Date

The proposal is effective January 1, 2004.

III. Budget Effects of the Bill

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office on the budgetary impact of the legislation:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 28, 2003.

Hon. CHARLES E. GRASSLEY,
Chairman, Committee on Finance,
U.S. SENATE, WASHINGTON, DC.

DEAR CHAIRMAN: The Congressional Budget Office has prepared the enclosed revised cost estimate for H.R. 743, the Social Security Protection Act of 2003. We have made minor clarifications in the text of an estimate that we sent you on October 24. The estimated budgetary effects, however, are unchanged.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathy Ruffing.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 743—Social Security Protection Act of 2003

Summary: H.R. 743 would:

- Strengthen the Social Security Administration's (SSA's) oversight of representative payees (people who handle benefit checks for others, such as children or mentally impaired adults);
- Bar fugitives from receiving Social Security benefits;
- Enhance SSA's ability to enforce rules that limit Social Security benefits for people with pensions from noncovered work in state and local government, and close a loophole that now enables some to skirt those restrictions by switching jobs briefly;
- Broaden the agency's ability to recover past overpayments in the Supplemental Security Income (SSI) program from Social Security benefits and vice versa;
- Reduce how much SSA may charge attorneys when it remits their fee directly from accrued benefits of successful claimants;
- Expand eligibility of people with some resources for SSI and, consequently, Medicaid; and
- Step up federal review of SSI awards made by state agencies.

On balance, enacting H.R. 743 would lead to small net costs in 2004 and 2005 and net savings thereafter. In total, CBO estimates that H.R. 743 would reduce direct spending and boost revenue by $0.6 billion over the 2004–2013 period. The federal budget classifies the Social Security portion of that figure (−$3.3 billion) as "off budget" and the rest ($2.7 billion) as "on-budget." (One provision would transfer $0.7 billion from the on- to the off-budget side of the ledger, which swells both figures but does not affect the total.)

H.R. 743 would also affect discretionary spending. CBO estimates that implementing the bill would cost SSA about $20 million to $30 million annually for extra enforcement and processing activities.

The Joint Committee on Taxation has reviewed the tax provisions of H.R. 743 and determined those provisions contain no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO reviewed the rest of the act for mandates. Section 4 of UMRA excludes from the provisions of that act any provision in a bill or act that relates to the Old-Age, Survivors, and Disability Insurance program (OASDI) under title II of the Social Security Act. The provisions of H.R. 743 that amend title II of the Social Security Act would fall within that exclusion. Other provisions would preempt certain state laws; the costs resulting from those mandates, if any, would be significantly below the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation). Changes to the SSI program would lead to additional state spending for Medicaid, but those changes would not result in mandates as defined in UMRA. The act does contain one private-sector mandate, but CBO estimates that its cost would not exceed the UMRA threshold ($120 million in 2004, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effects of H.R. 743 are shown in Table 1. The costs of the legislation fall within budget functions 550 (health), 570 (Medicare), 600 (income security), and 650 (Social Security).

Basis of estimate: About a dozen of H.R. 743's provisions account for its estimated budgetary effects. They are listed in Table 2. For this estimate, CBO assumes that H.R. 743 will be enacted this fall.

TABLE 1.—ESTIMATED EFFECTS OF H.R. 743, THE SOCIAL SECURITY PROTECTION ACT OF 2003, BY TITLE

	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	7	9	5	*	*	*	*	*	*	*
Title II: Program Protections	−59	−116	−226	−279	−328	−390	−424	−413	−415	−420
Title III: Attorney Fee Payment System Improvements	12	24	25	27	28	29	31	32	33	34
Title IV: Miscellaneous and Technical Amendments:	49	116	183	226	268	285	288	277	269	243
Total Direct Spending:										
On-budget	735	40	130	187	241	263	270	269	283	284
Off-budget	−727	−8	−143	−213	−273	−338	−376	−372	−395	−427
Total	9	32	−12	−26	−32	−75	−105	−104	−113	−143
CHANGES IN REVENUES										
Title IV: Miscellaneous and Technical Amendments:										
On-budget	−2	*	*	*	*	*	*	*	*	*
Off-budget	1	1	2	2	3	3	3	4	4	5
Total	−1	1	2	2	3	3	3	4	4	5
NET CHANGES IN DIRECT SPENDING AND REVENUES (EFFECT ON DEFICITS)										
Direct Spending and Revenues (Net):										
On-budget	737	40	130	187	241	263	270	269	283	284
Off-budget	−727	−9	−144	−215	−276	−341	−379	−376	−400	−432
Total	10	31	−14	−28	−34	−78	−109	−108	−117	−148
CHANGES IN SPENDING SUBJECT TO APPROPRIATION (OUTLAYS)										
Spending Subject to Appropriation										
On-budget	14	16	15	16	17	17	18	18	18	19
Off-budget	5	4	11	7	8	8	8	6	7	7
Total	19	20	26	23	25	25	26	24	26	26

NOTES: Details may not add to totals because of rounding.
The Congressional Budget Act labels revenues and outlays of the Social Security trust funds "off-budget."
* = Less than $500,000.

TABLE 2.—ESTIMATED EFFECTS OF H.R. 743, THE SOCIAL SECURITY PROTECTION ACT OF 2003, BY MAJOR PROVISION

	By Fiscal Year, in Millions of Dollars									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
CHANGES IN DIRECT SPENDING (OUTLAYS)										
Title 1: Protection of Beneficiaries										
Authority to Reissue Certain Misused Benefits:										
OASDI[a]	2	*	*	*	*	*	*	*	*	*
SSI	1	*	*	*	*	*	*	*	*	*
Survey of Use of Payments by Representative Payees	4	9	5	*	*	*	*	*	*	*
Subtotal, Title I	7	9	5	*	*	*	*	*	*	*
Title II: Program Protections										
Denial of Title II Benefits to Fugitives:										
OASDI[a]	−10	−30	−44	−55	−59	−61	−63	−66	−68	−70
Medicare	−1	−4	−11	−15	−19	−22	−23	−25	−25	−27
Infomation on Pensions from Noncovered Employment	0	*	−125	−185	−240	−300	−330	−315	−315	−315
Cross-program Recovery of Overpayments:										
OASDI[a]	−1	−3	−3	−3	−3	−3	−3	−3	−2	−2
SSI	−48	−79	−43	−21	−7	−4	−5	−5	−5	−6
Subtotal, Title II	−59	−116	−226	−279	−328	−390	−424	−413	−415	−420
Title III: Attorney Fee Payment System Improvements:										
Cap on Attorney Assessments Offsetting Receipts, OASDI[a]	12	24	25	27	28	29	31	32	33	34
Title IV: Miscellaneous and Technical Amendments										
Demonstration Authority Sunset Date:										
OASDI[a]	*	2	5	5	5	5	5	5	5	5
Coverage under Divided Retirement Systems:										
OASDI[a]	*	*	*	*	*	*	*	*	*	1
60-month Employment Requirement for Exemption from GPO:										
OASDI[a]	*	*	−1	−2	−4	−8	−15	−26	−49	−80
Post-1956 Military Wage Credits:										
Payments to Trust Funds	903	0	0	0	0	0	0	0	0	0
Offsetting Receipt, OASDI[a]	−730	0	0	0	0	0	0	0	0	0
Offsetting receipt, HI	−173	0	0	0	0	0	0	0	0	0
Amendments related to SSI (Subtitle D)										
Update for Resource Limit:										

TABLE 2.—ESTIMATED EFFECTS OF H.R. 743, THE SOCIAL SECURITY PROTECTION ACT OF 2003, BY MAJOR PROVISION—Continued

	By Fiscal Year, in Millions of Dollars									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
SSI	6	14	19	18	21	22	23	26	23	26
Medicaid	45	110	185	240	290	335	370	405	440	485
Medicare	5	20	35	55	80	90	100	105	115	120
Review of State Agency Determinations:										
SSI	−3	−11	−20	−28	−39	−48	−57	−71	−67	−81
Medicaid	−4	−19	−40	−62	−85	−111	−138	−167	−198	−233
Other SSI Provisions	*	*	*	*	*	*	*	*	*	*
Subtotal, Title IV	49	116	183	226	268	285	288	277	269	243
Total Changes in Direct Spending:										
On-budget	735	40	130	187	241	263	270	269	283	284
Off-budget	−727	−8	−143	−213	−273	−338	−376	−372	−395	−427
Total	9	32	−12	−26	−32	−75	−105	−104	−113	−143
CHANGES IN REVENUES										
Title IV: Miscellaneous and Technical Amendments										
Coverage under Divided Retirement Systems:										
OASDI Revenues [a]	1	1	2	2	3	3	3	4	4	5
Other Revenues	*	*	*	*	*	*	*	*	*	*
Clarification of Tax Treatment of Individual Work Plans	−2	*	*	*	*	*	*	*	*	*
Total Changes in Revenues:										
On-budget	−2	*	*	*	*	*	*	*	*	*
Off-budget	1	1	2	2	3	3	3	4	4	5
Total	−1	1	2	2	3	3	3	4	4	5
CHANGES IN SPENDING SUBJECT TO APPROPRIATION (OUTLAYS)										
OASDI Administrative Expenses [a]	5	4	11	7	8	8	8	6	7	7
SSI Administrative Expenses	14	16	15	16	17	17	18	18	19	19
Total Changes	19	20	26	23	25	25	26	24	26	26

Notes: Details may not add to totals because of rounding.
OASDI=Old-Age, Survivors, and Disability Insurance (title II of Social Security Act); SSI=Supplemental Security Income (title XVI); GPO=government pension offset; HI=Hospital Insurance (title XVIII).
*=Less than $500,000.
[a] Off-budget.

Direct-Spending and Revenues

Title I—Protection of Beneficiaries. Nearly seven million people—three million adults and four million children—who get Social Security, SSI, or both have their checks sent to a representative payee who helps manage their finances. The payee must use the money to meet the beneficiary's needs and report certain events, such as changes in the beneficiary's income or school attendance, to SSA. In most cases, a family member serves as a representative payee. But attorneys, guardians, and other nonrelatives, social service agencies, institutions, and organizations also serve as payees, especially for disabled adults. About 45,000 organizations serve as representative payees for about 750,000 clients. SSA approves representative payees, requires annual reports from them, and conducts 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. This 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 some 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.

The IG has issued many audits of representative payees, but most have focused on particular organizations and make it difficult to draw conclusions about nationwide patterns. H.R. 743 would direct the IG to conduct a national, statistically representative study of all types of payees—relatives, nonrelatives, institutions, local government agencies, and organizations. The legislation would provide $17.8 million for that study from SSA's section 1110 research budget, normally reserved for research performed outside SSA under grants or contracts. CBO assumes that those funds would be spent in 2004 through 2006.

Title II—Program Protection. This title would add to SSA's tools for avoiding or recovering erroneous payments and would bar payment of Social Security benefits to fugitives from the law.

Fugitive Provisions. In 1996, Congress barred SSI benefits to people with outstanding arrest warrants, whether they were convicted felons or people avoiding prosecution. H.R. 743 would extend that policy to Social Security. CBO estimates the provision 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 reported by SSA's IG to estimate those savings. The IG generalized 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 benefits keep pace with the overall program, CBO extrapolated that total to $130 million in 2004 and $175 million in 2013.

CBO expects, however, that savings would fall short of those figures. First, large-scale enforcement poses challenges. By tapping the National Crime Information Center (NCIC) and obtaining data directly from some states that do not report fully to the NCIC, SSA already has automated access to more than 80 percent of fugitive warrants. But the SSI experience shows that some records lack key information, such as full name and Social Security number, for an accurate match; some subjects are incarcerated (and have their benefits suspended under other provisions of law); some are even victims of identity theft. Verification, when successful, takes about two months, so that even a swift suspension almost inevitably involves some overpayments that are difficult to recover. Based on those hurdles, CBO assumes that about 60 percent of the savings identified by the IG are attainable.

Second, some people spotted when checking fugitive lists clear their records when their benefits stop, resulting in little or no long-term savings. Law-enforcement authorities focus on the most-serious offenders (either pursuing them aggressively or arresting them on new offenses) but rarely clear other warrants from the books. Thus, remaining warrants are disproportionately older—about 15 percent of state warrants, for example, are more than 10 years old—and usually cite nonviolent offenses such as drug possession and probation or parole violation. In such cases, "fugitives" with no subsequent convictions typically face nothing worse than a suspended sentence or probation. Some will take that calculated risk and voluntarily contact authorities. In a new study of the SSI provisions, the Inspector General found that one-third of people suspended under the fugitive provisions sometime during the 1996–2002 period were receiving SSI in February 2003, having satisfied their warrants. CBO thus subtracted another one-third from the potential savings, bringing the result to 40 percent of the IG's figure. CBO assumes those savings are attainable about two years after enactment. Early savings are more modest, as SSA signs data-sharing agreements with more states, writes regulations, and follows its verification and notice practices.

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 benefits—about $9,600—almost match their assumed Social Security benefits, $9,900) could reach $54 million. However, their Social Security benefits would be suspended, not terminated. Suspension does not interrupt 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 estimates 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.

Information on Pensions from Noncovered Employment. State and local governments have been permitted to join Social Security since the 1950s. The Census Bureau counts 14 million active members and 6 million beneficiaries in 2,200 state and local government retirement plan. About one-quarter are not covered by Social Security. Most are clustered in a few states: California, Colorado, Georgia, Illinois, Louisiana, Maine, Massachusetts, Missouri, Ohio, and Texas. Elsewhere, exempt employees (if any) are usually police officers or firefighters.

A retiree with a pension from noncovered state or local employment, or from the federal system that covers civil servants hired before 1984, may have his or her Social Security benefit reduced or eliminated by two provisions of current law: the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO). CBO estimates that the GPO and WEP, as currently administered, will save Social Security $56 billion over the 2004–2013 period and that H.R. 743 would boost that by $2.1 billion. Because the GPO and WEP provisions also are discussed later, here is a brief description.

- Since 1986, the WEP has trimmed benefits for noncovered annuitants with "split careers"—those who also worked long enough in covered employment to qualify for Social Security (primary beneficiaries, in the program's lexicon). It removes the tilt in favor of lower earners from their benefit formula. Social Security benefits depend on lifetime earnings, usually averaged over 35 years. Low average earnings, however, could result just as well from 25 years of well-paid noncovered work and 10 years under Social Security as from decades of covered employment at modest earnings. The Congress enacted the WEP, a slimmed-down formula that applies when workers also have an annuity from noncovered work, to make that distinction.[1]
- The GPO reduces Social Security benefits when the annuitant qualifies for benefits as a spouse or widow(er)—that is, as secondary beneficiaries. The GPO's drafters likened it to Social Security's rules for other two-earner couples. A wife, for example, collects on her husband's record only if the resulting benefit (about half of his) exceeds her own retired-worker benefit. She cannot combine the two amounts. Specifically, the GPO trims the Social Security benefit by $2 for every $3 of the noncovered pension—often erasing it entirely. The Congress acted quickly to enact the GPO after the Supreme Court held in 1977 that Social Security programs could no longer discriminate on the basis of gender.

For federal civil service retirees, SSA enforces the GPO and WEP provisions by matching data from the Office of Personnel Management. Otherwise, it must rely on claimants' reports and alert em-

[1] All Social Security benefits are based on a Primary Insurance Amount (PIA), which in turn depends on Average Indexed Monthly Earnings (AIME). For a retired worker, AIME is calculated by adjusting past earnings to current values, then averaging the top 35 years—essentially, ages 22 through 61, with the lowest 5 years dropped. For someone who reaches 62 in 2003, the PIA equals 90 percent times the first $606 of AIME, 32 percent times the next $3,047, and 15 percent times AIME over $3,653, if any. (Those "bend points" rise with average wages.) The WEP formula generally uses 40 percent in place of the 90 percent factor. It makes exceptions for annuitants with at least 20 years of covered work and those with very small pensions.

ployees to spot potential GPO and WEP cases. (SSA staff ask about government pensions and are trained to notice gaps in earnings histories that may suggest noncovered employment.) H.R. 743 would direct the Internal Revenue Service (IRS) to require administrators of state and local pension plans to add coverage status to payment reports, presumably the 1099–R forms sent to participants and to the IRS, and share that information with SSA.

Studies in the mid–1990s by the General Accounting Office (GAO) and SSA of Illinois and Ohio pensioners, respectively, found that SSA had missed about 9 percent of people who ought to have been subject to GPO or WEP. State and local annuitants make up almost exactly half of people affected by the provisions. If the Illinois and Ohio patterns are typical, that suggests about 4.5 percent of potential cases avoid the GPO and WEP reductions. In fact, CBO assumed that figure had improved since the mid–1990s, through greater staff experience plus enhanced data on earnings in noncovered employment after 1977 (when the government switched from quarterly to annual crediting of wages). Thus, CBO substituted a 4 percent error rate.

CBO assumed that SSA would gain access to IRS data from the biggest noncovered plans even as IRS and SSA work out what changes, if any, to require in future 1099–R reports. By targeting in that way, CBO assumes that SSA could use some reports of pension income in 2004, which will be filed in 2005, to target the first batch of cases for suspension or reduction in 2006. SSA would also launch efforts to recover past overpayments to those beneficiaries. Although a few overpayments would stretch back 20 years, the average would be roughly 6 years. Some would not be recovered; SSA's most effective tool is to withhold them from regular monthly benefits, but the GPO—unlike the WEP—often erases the entire benefit. CBO assumed one-third of the overpayments would not be recovered and that SSA would recoup the bulk of the rest within the 4 years after discovery. As SSA matches with more pension plans' reports each year, annual savings would mount to an estimated $300 million in 2009, peak at $330 million in 2010, then stabilize as recoveries fade in importance.

Cross-program Recovery of Overpayments. As noted above, SSA's best tool for recovering overpayments is to subtract them from regular monthly checks. Current law permits SSA to do that under both titles II (Social Security) and XVI (SSI) of the Social Security Act, although deductions may not exceed 10 percent of monthly income in SSI.

Special rules apply when SSI recipients qualify for Social Security. If an SSI beneficiary receives a Social Security award that includes retroactive benefits, all of his or her SSI benefits for the same months are withheld from that lump-sum check. And if he or she has stopped receiving SSI but gets monthly Social Security checks, past SSI overpayments can be withheld, within limits.

Almost one-third of disabled adults on SSI get Social Security, and some title II beneficiaries formerly received SSI. As a means-tested program, SSI permits recipients to keep $20 a month of unearned income (which includes Social Security) and offsets the rest.

In 2001, SSA found 130,000 people who were getting SSI when they should have received Social Security in addition or instead. Further digging by SSA boosted that number to about 300,000.

(Some are no longer receiving benefits.) Labeled “special-workload” cases, those people are entitled to a lump-sum payment for the months they should have received Social Security. Because of the programs’ interactions, that lump-sum check will be split: for example, of a retroactive check for $300 a month for five years, $1,200 will go to the individual and $16,800 will go from the trust funds to the general fund of the Treasury as a recovered overpayment. SSA anticipates that about $4 billion of the lump-sum payments to special-workload cases will be sent to the Treasury under that rule.

The law, though, limits SSA’s powers of “cross-program recovery” in certain narrow situations. Most immediately, it fails to cover some special-workload cases with SSI overpayments unrelated to the months covered by the Social Security award. If the two periods do not match exactly, SSA must withhold those unrelated overpayments chiefly from future Social Security benefits, not from the lump-sum check. H.R. 743 would authorize SSA to deduct them from the lump-sum. It also would authorize cross-program recovery in the rare cases where an SSI-only beneficiary has outstanding title II overpayments. (Current law has no provision for recovering Social Security overpayments from SSI benefits.)

Based on information from SSA, CBO estimates that enhanced tools for cross-program recovery would increase SSI recoveries by $223 million over 10 years and Social Security recoveries by $26 million. The SSI savings largely come from speeding up recoveries that SSA would have achieved eventually. Thus, most of the savings occur in 2004 through 2007 as SSA finishes processing the special workload.

Denial of Title II Benefits to Aliens Not Authorized to Be Employed in the United States. Section 212 of H.R. 743 would stipulate that, effective in January 2004, noncitizens who claim Social Security benefits must have been issued a Social Security number (SSN) “consistent with the requirements of subclause (I) or (III) of section 205(c)(2)(B)(I) [of the Social Security Act].” Those subclauses spell out the rules for assigning SSNs to aliens who are authorized to work in the United States: those admitted as legal permanent residents, and those who enter in another category (such as student or tourist, or “legal temporary resident” under the 1986 amnesty) and later change their status to legal permanent resident. The huge majority of native-born citizens, in contrast, receive SSNs soon after birth.

Subclause II of the same section governs the issuance of special numbers for nonwork purposes—specifically, when individuals seek benefits from federal, state, or local programs that require an SSN. Although there are no documented cases where an individual received Social Security benefits solely on a nonwork SSN, there are hypothetical situations where benefits might be paid.

In CBO’s judgment, H.R. 743 essentially reiterates the current-law link between Social Security benefits and valid SSNs, and thus would lead to little or no savings.

Title III—Attorney Representative Fee Payment System Improvements. 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. (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 fee cap would cost $275 million.

Title IV—Miscellaneous and Technical Amendments. This title contains a variety of provisions with significant budgetary effects.

Demonstration Projects. H.R. 743 would amend 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 permanently authorize SSA to waive certain provisions of law, when appropriate, for demonstration projects. Currently such waivers expire in December 2004, even for projects already launched. The Congress first adopted the waiver language in 1980 and has extended it four times since then. In the near term, SSA does not plan to use such waivers extensively other than for the $1-for-$2 demonstrations (see below). In the longer term, because SSA has no specific pipeline of projects, CBO estimates spending on such projects of about $5 million a year, a typical level for the 1990–2002 period (adjusted for inflation).

Disability Insurance (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, although they retain Medicare and some other privileges. 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 demonstrations from its appropriation for administrative expenses.

Permission 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 extend that to all states.

A planned merger of two Louisville-area fire and police departments spurs this provision. That merger involves about 1,300 employees. CBO assumes that 200 of them 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 WEP. Only a few of the newly covered employees, though, would qualify for Social Security in the next 10 years, and CBO estimates extra benefits of $1 million in 2013 (with effects of less than $500,000 a year before then).

Extending divided-retirement authority to all states would avoid the need for piecemeal legislation in the future. CBO and SSA have not found widespread interest elsewhere, although isolated situations like Louisville's may occur. Noncovered states have resisted mandatory coverage, and no state has been added to the divided-retirement list since 1977. (In fact, Congress acted in 1983 to bar states that already had coverage agreements from ending them.) Therefore, CBO assumes negligible effects aside from the Louisville merger.

60-month Employment Requirement for Exemption from Government Pension Offset. H.R. 743 would limit a tactic that some public employees are using to skirt the GPO. The GPO applies to state and local retirees whose last day of employment under their pension plan was not covered under Social Security. The General Accounting Office reports that some workers discovered 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; nearly all were in Texas. H.R. 743 would replace the "last-day" rule with a 60-month requirement—the same rule that applies to federal civil servants.

CBO had to estimate 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. 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 other states with large noncovered sectors. 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. Elsewhere, employees who sought a covered job would have to change occupations (for example, from law enforcement to teacher) and give up some advantages of their original plan; in some states, 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 a much smaller noncovered sector and thus fewer employees with an incentive to switch. If the "last-day" rule remains intact, states may face pressure from employees to amend their plans to accommodate such transfers. But amending a plan, especially when the state legislature must approve, is 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 2002 saw their Social Security reduced by an average of $325 and $505, respectively, or about $400 overall. Adjusting those figures for inflation and for the age and sex of the affected group led CBO to estimate those 7,000 would lose an average of $475, or $4 million in December 2011. 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.

Military Wage Credits. The original Social Security Act of 1935 did not cover members of the armed services. The 1950 Act provided them with free wage credits of $160 a month for 1940 through 1947. Later acts kept those "deemed" credits even after Social Security began to cover members' basic pay in 1956. The 1967 amendments set deemed credits at $300 a quarter, where they remained until 2002. The credits were an ad hoc way to acknowledge the noncash allowances—for food, housing, and so forth—that supplemented basic pay. Until 1983, the services reimbursed Social Security intermittently for the estimated cost of the resulting benefits. The Congress then amended the law to require annual payments, which amounted to about $300 million a year in the 1980s and 1990s—about $10 million annually from small agencies (the Coast Guard, Public Health Service, and National Oceanic and Atmospheric Administration) and the rest from the Department of Defense.

The Congress repealed deemed military credits in the 2002 defense appropriation bill. By then, however, the Defense Department had failed to pay amounts owed for 2000 and 2001. (The smaller agencies had kept up their contributions.)

H.R. 743 would transfer $903 million—the Social Security actuaries' estimate of arrears plus interest—from the Treasury to the trust funds. Intragovemmental transfers do not affect total outlays or the deficit. Here, however, they would have one peculiar effect: the entire $903 million payment would count as an on-budget outlay, as would the receipt by Hospital Insurance ($173 million), but the rest ($730 million) would be credited to Social Security as an off budget receipt.

Other Provisions Affecting Social Security. 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. 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 expects that the provision would have little cost.

Increase Resource Limits in SSI H.R. 743 would increase the amount of countable resources that an individual or couple may own and still qualify for SSI. Under current law, to be eligible for SSI, an individual can have countable resources valued at up to $2,000, while couples can have resources of up to $3,000. (Besides the applicant's own resources, SSA counts resources belonging to others in some situations—to parents of disabled children, and to sponsors of immigrants.) Those ceilings have not changed since 1989. Countable resources include cash, liquid assets, and real or personal property that could be converted to cash. Some items—including the value of a primary residence, an automobile, medical equipment, and certain household goods—are not counted. Resources are only used to determine whether someone is eligible for SSI; they do not determine benefit amounts.

The legislation would increase the resource limits to $3,000 for individuals and $4,500 for couples beginning in January 2004. After 2004, the limits would rise by the annual cost-of-living adjustment granted to SSI recipients. By increasing the resource limits, the act would allow more people to become eligible for the program and reduce the amount of time it takes some applicants to "spend down" their assets to become eligible, It also would affect some current beneficiaries who lose benefits, either temporarily or permanently, when their countable resources grow.

CBO estimates the provision would gradually increase SSI enrollment up to about 18,000 additional people in 2006 and about 21,000 in 2013. CBO based its estimate on information from SSA about the characteristics of applicants and beneficiaries who would be affected and assumptions about how long the current limits bar them from the program. Applicants who are rejected for excess resources are older, on average, than the current SSI caseload; are more likely to have other income that would trim their SSI benefit; and, CBO assumes, might prevail on a second or third application even under current law as they draw down their resources for living expenses.

In most states, SSI eligibility automatically confers entitlement to Medicaid benefits. For these predominantly adult cases, CBO assumes that the average Medicaid cost would greatly exceed the SSI benefit. We estimate that H.R. 743 would increase spending on SSI by $6 million in 2004, $78 million over the 2004–2008 period, and $198 million over the 2004–2013 period. We also estimate that it would increase federal Medicaid outlays by $45 million in 2004, $870 million over the 2004–2008 period, and $2.9 billion over the 2004–2013 period.

Part of that effect comes from additional participants in the Qualified Medicare Beneficiary (QMB) and Specified Low-Income Medicare Beneficiary (SLMB) programs, who do not necessarily receive SSI. Under those programs, Medicaid pays some or all of the premiums and cost-sharing under Parts A and B of Medicare for enrollees who have incomes below 120 percent of the federal poverty level and countable assets up to two times the resource limit used in the SSI program. By raising and indexing the resource limit in SSI, H.R. 743 would set that threshold at about $7,500 in 2013, compared with $4,000 under current law.

Based on current participation in the programs, CBO estimates that the act would eventually increase the number of QMB and SLMB beneficiaries by about 225,000. That effect would occur gradually, with most of the cost in the second half of CBO's 10-year horizon. The extra participants would increase federal Medicaid spending for the QMB and SLMB programs by $10 million in 2004, $380 million over the 2004–2008 period, and $1.5 billion over the 2004–2013 period. (Those amounts are a subset of the Medicaid totals cited above.)

CBO estimates that additional participation in the QMB program would increase Medicare spending as well. That program covers all Medicare cost-sharing for enrollees with incomes below the federal poverty level and limited assets. CBO anticipates that new QMB participants would use more Medicare services than under current law because they would no longer have to pay anything for them. As a result, CBO estimates extra Medicare spending (net of premiums) of $5 million in 2004, $195 million over the 2004–2008 period, and $725 million over the 2004–2013 period.

Review of State Agency SSI Awards. H.R. 743 would require SSA to conduct reviews of initial decisions to award SSI benefits to certain disabled adults. The legislation would direct SSA to review at least 25 percent of all favorable adult-disability determinations made by the states' Disability Determination Service (DDS) offices in 2004. The agency would have to review at least half of the adult-disability awards made by DDS offices in 2005 and beyond.

CBO anticipates that state DDS offices will approve between 350,000 and 400,000 SSI claims from disabled adults annually between 2004 and 2013. Based on similar reviews in the Social Security Disability Insurance program, CBO projects that by 2013 the extra reviews would ultimately overturn more than 20,000 of those awards, leading to lower outlays for SSI and Medicaid. CBO estimates that the provision would reduce SSI benefits by $3 million and Medicaid outlays by $4 million in 2004. Over the 2004–2013 period, CBO estimates the savings at $425 million in SSI and $1.1 billion in Medicaid.

Other SSI Provisions. H.R. 743 would make a limited exception to SSI's retrospective monthly accounting when a claimant has certain nonrecurring income. An SSI check may fluctuate depending on a recipient's other income. Retrospective monthly accounting is used to determine those benefit amounts. When someone first qualifies for SSI, the amount of countable income in the first month determines benefits for the first three months of eligibility.

Thus, nonrecurring income in that first month can shrink benefits in the next two months. H.R. 743 would permit SSA to exclude certain nonrecurring income when calculating SSI benefits for the second and third (but not the first) month. Based on data provided by SSA, CBO estimates the provision would increase benefits by an average of $160 per month for around 1,000 beneficiaries in 2004. Although costs in any single year would not reach $500,000, the provision would increase outlays by a total of $1 million over the 2004–2008 period, and $2 million over the 2004–2013 period.

H.R. 743 also would enable some blind or disabled children of U.S. military personnel stationed overseas to receive SSI. Under current law, those children may continue to collect SSI only if they were already eligible when the family moved overseas. The legislation would allow them to qualify overseas even if they did not previously receive SSI. Based on information from SSA, CBO expects the provision would add fewer than a dozen children, some of them infants born overseas, to the SSI rolls at an average benefit of about $500 a month. Extra costs would not reach $500,000 in any year but would total about $1 million over the 2004–2013 period.

Finally, H.R. 743 proposes several liberalizations to the SSI program that, in CBO's estimate, each would cost less than $500,000 over the 2004–2013 period. They include:

- Expanding the exclusions for certain infrequent or irregular income;
- Making the 9-month resource exclusion periods uniform;
- Modifying the dedicated account requirement;
- Eliminating certain restrictions on student earned income;
- Excluding AmeriCorps and other volunteer benefits from income;
- Changing the treatment of education-related income and resources; and
- Altering the monthly treatment of uniformed service compensation.

Spending Subject to Appropriation

H.R. 743 would increase SSA's administrative cost by increasing standards for certain program integrity activities and by slightly increasing program caseloads. These costs are subject to annual appropriation and are thus classified as discretionary spending. CBO estimates added costs would be $19 million in 2004, $113 million over the 2004–2008 period and $240 million through 2013. About two-thirds would be for SSI administration with the remainder for the OASDI program.

Title I. H.R. 743 would require SSA to monitor representative payees more stringently. Currently, SSA conducts on-site inspections every three years for high-volume payees—organizations serving more than 100 beneficiaries and individuals (such as attorneys) serving more than 20; the legislation would lower those thresholds to 50 and 15 beneficiaries, respectively. That would permanently add about $4 million a year to SSA's costs. H.R. 743 also would require SSA to enforce bonding and licensing requirements, redirect benefit checks when a representative payee fails to file an annual accounting, and compensate beneficiaries for any funds misused by organizational payees since 1995. Those costs would be largest in the early years of implementation, pushing SSA's required funding for title I to an estimated $8 million in 2004 and $6 million in 2005. Social Security and SSI would each account for about half of those amounts.

Title II. Provisions of title II to bar fugitives from receiving Social Security benefits and to enforce the GPO and WEP using IRS information also would entail administrative costs, especially in the early phases. Obtaining the IRS data is just the first step; SSA must match to its records and follow-up potential cases manually, at an estimated cost of $250 each. Some investigations will lead nowhere; some people will be exempt because they collect a survivor payment (not a retirement annuity) from state or local government, or qualified before the GPO or WEP took effect. CBO assumes that SSA will track down 3 cases for every 2 ultimately affected. Once SSA finds them, however, annual costs are more modest, chiefly to verify the pension amount in case of cost-of-living adjustments or other changes. CBO assumes that using 1099–R reports of pension income to help enforce the GPO and WEP provisions would ultimately boost the number of GPO and WEP cases by about 4 percent, or 60,000 people by 2013. To get there, CBO assumes that SSA would detect more than 300,000 apparent matches, weed out 200,000 based on information already in its records, and investigate the remaining 100,000 intensively. Costs would peak at $8 million in 2006, as SSA uses the first batch of IRS information, before subsiding. Enforcing the fugitive provision would cost SSA $1 million to $2 million annually, chiefly because SSA already screens fugitive lists to enforce the ban in SSI.

Title IV. Title IV would increase SSA's costs of administering the SSI program. Lifting the resource limit would increase the number of beneficiaries. Most of the new beneficiaries, however, would apply and be rejected under current law; changing these denials to allowances would not involve significant costs. The new reviews of state agency allowances—roughly 125,000 cases annually when fully phased-in—would cost $145 million over the 2004–2013 period. On top of the reviews, which are estimated to cost about $100 each (in 2004 dollars), SSA estimates some additional start-up costs in the first year. Thus, the estimated annual costs would rise from $9 million in 2004 to $17 million in 2013.

Intergovernmental and private-sector impact: The Joint Committee on Taxation has reviewed the tax provisions of the act and determined that those provisions contain no intergovernmental or private-sector mandates as defined in UMRA.

Section 4 of UMRA excludes from that law's requirements any provision in a bill or act that relates to the OASDI programs under title II of the Social Security Act. The provisions of H.R. 743 that amend title II of the Social Security Act fall within that exclusion.

Other provisions of H.R. 743, however, contain mandates as defined in UMRA. The act would preempt state laws that might otherwise prohibit the exchange of information between SSA and state and local law enforcement officers conducting background checks on representative payees. That preemption could limit the application of state privacy laws in some cases, but it would impose no duty on state or local governments that would result in additional spending.

H.R. 743 also would exempt the Railroad Retirement Investment Trust from state and local taxes. The Trust was created in 2002 to invest most of the funds of the government's Railroad Retirement program. CBO has found no state that has attempted to collect or plans to collect any type of tax from the Trust. Consequently, CBO estimates that this preemption of state taxing authority, while an intergovernmental mandate as defined in UMRA, would result in no significant revenue losses to state or local governments, and any potential losses would be far below the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation).

Finally, the act would alter income and eligibility requirements in the SSI program. Because SSI beneficiaries are eligible for Medicaid, CBO estimates that state spending for Medicaid would increase by about $2.2 billion over the 2004–2013 period. However, states have significant flexibility in Medicaid to alter their programmatic responsibilities, so this additional spending would not be the result of a mandate as defined in UMRA.

H.R. 743 contains one private-sector mandate as defined in UMRA, It would prohibit private entities from charging a fee for products and services that are available for free from SSA, unless they disclose that alternative when they make the offer. CBO estimates that the resulting cost to the private sector would not exceed the threshold established in UMRA ($120 million in 2004, adjusted annually for inflation).

Previous CBO Estimate: On March 20, 2003, CBO transmitted a cost estimate for H.R. 743 as ordered reported by the House Committee on Ways and Means on March 13, 2003. We estimated that version of H.R. 743 would lead to a combined $655 million in direct spending reductions and revenue increases over the 2004–2013 period. This version totals $594 million over the same period. Provisions that differ significantly between the two versions, and their effects on the 10-year totals, are:

- The nationwide study of representative payees (at a cost of $18 million);
- A provision of the House version, dropped by the Senate, that would temporarily extend the attorney-fee program to SSI (forgoing receipts of $26 million);
- New provisions to enforce the GPO and WEP using IRS information (saving $2.1 billion) and to allow additional cross-program recovery (saving $249 million);
- Permanent authority for SSA to grant waivers in demonstration projects involving Social Security disability beneficiaries (at an estimated cost of $42 million); and
- All of the SSI provisions in title IV, subtitle D of the Senate version (net cost of $2.3 billion).

Estimate prepared by: Federal Spending: Social Security-Kathy Ruffing; SSI-Geoffrey Gerhardt; Medicaid Eric Rollins.

Federal revenues. Edward Harris and Annabelle Bartsch; Impact on state, local, and tribal governments: Leo Lex; Impact on the private sector: Ralph Smith.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

IV. Votes of the Committee

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the following statements are made concerning the votes of the Committee on Finance in consideration of the bill, H.R. 743.

A. MOTION TO REPORT THE BILL

The bill, H.R. 743, as amended, was ordered favorably reported by a voice vote (with a quorum being present).

V. REGULATORY IMPACT AND OTHER MATTERS

A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the legislation will not significantly increase regulation of any individuals or businesses; will not adversely impact the personal privacy of individuals; and will result in no significant additional paperwork.

For further discussion of the impact of the bill on tax complexity, see section C. below.

B. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

C. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have widespread applicability to individuals or small businesses.

VI. CHANGES TO EXISTING LAW MADE BY THE BILL AS REPORTED

In the opinion of the Committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate, relating to changes in existing law made by the bill reported by the Committee.

VII. ADDITIONAL VIEWS

I write to express my concerns about an effect of a proposal in Section 210 of this bill that came to light after the Committee ordered the bill reported. I am concerned that the inclusion in this bill of a proposal from the President's budget could require some retirees of State and local governments to repay the Federal government thousands or tens of thousands of dollars of Social Security benefit overpayments. I plan to work to change this provision as the bill moves through the legislative process to prevent this outcome.

Under current law, some State and local government workers do not participate in the Social Security program, but instead are covered by separate pensions administered by these governments. At some point these workers may also receive Social Security benefits as a widow, widower, or spouse of a worker who did participate in Social Security. Under the Government Pension Offset (GPO)—a longstanding provision of the Social Security program—these widow's, widower's, and spousal monthly Social Security benefits are reduced by an amount equal to two-thirds of the monthly amounts of the State and local government pensions they receive. The Social Security Administration is not aware, however, that some of these widows, widowers, and spouses are receiving State and local government pensions. Therefore, the GPO is not applied to the Social Security benefits of the individuals in these cases.

Pension-issuing entities—including State and local governments' pension-issuing agencies—must submit to the IRS each year Form 1099R, which indicate the amount of pension payments issued to retirees. The President's budget included a proposal to require these State and local government agencies to also include indicators on these Form 1099R that denote whether or not these pension recipients were covered by Social Security as workers. The proposal also included a provision that would allow the IRS to share this Form 1099R information with the Social Security Administration (SSA) on a confidential basis. SSA would use this information to help determine whether the current widow's, widower's, or spousal Social Security benefits of these pension recipients would be subject to the GPO. If so, these monthly Social Security benefits of current beneficiaries would henceforth be reduced or eliminated according to current law. In addition, the monthly benefits of all future beneficiaries would also be reduced or eliminated. Moreover, if the information on these Form 1099Rs had been known by SSA at the time that current Social Security beneficiaries first began drawing benefits, the current beneficiaries would have received smaller benefits than what they actually received in each of the months dating back to their first monthly benefit. The total of such "overpayments" could amount to thousands or tens of thousands of dollars.

Subsequent to the time that H.R. 743 was reported by the Senate Finance Committee, it became apparent, however, that there were two different views of how these overpayments could be treated. One view of the language in the "Chairman's Mark" would result in SSA working with the individual to have him or her repay these overpayments over time. Another view of the language in the "Chairman's Mark" would only result in prospective benefit payments being reduced or eliminated.

By allowing SSA to recover these overpayments, current beneficiaries would face the necessity of repayment just as their monthly Social Security benefits would be eliminated or significantly reduced by the GPO. This could leave these beneficiaries—including widows and widowers—in severe financial straits. This is unacceptable to me. Therefore, I will work to see that the language of this provision is changed as it moves through the legislative process, so that the receipt of the information contained in the modified Form 1099Rs by SSA would not cause these Social Security beneficiaries to have to repay any overpayments.

MAX BAUCUS

○