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Congress of the United States
House of Representatives
COMMITTEE ON WAYS AND MEANS
WASHINGTON, DC 20515

SUBCOMMITTEE ON SOCIAL SECURITY

May 9, 2002

The Honorable William Thomas
Chairman, Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

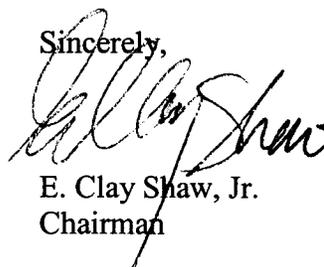
Dear Mr. Chairman:

On April 25, 2002 the Subcommittee on Social Security ordered favorably reported to the Full Committee, H.R. 4070, the "Social Security Program Protection Act of 2002," as amended, by voice vote.

The Subcommittee proposal would remedy and prevent abuses occurring in Social Security programs and make technical amendments.

Transmitted herein, in accordance with Committee Rule 11, is a report containing a comparison with present law, a section-by-section analysis of the proposed changes, and a section-by-section justification.

Sincerely,



E. Clay Shaw, Jr.
Chairman

**Committee on Ways and Means
Subcommittee on Social Security
Subcommittee Report on H.R. 4070
The “Social Security Program Protection Act of 2002”**

A. PURPOSE AND SUMMARY

Purpose

The purpose of H.R. 4070 is to remedy and prevent abuses occurring in Social Security programs and make technical amendments to provisions affecting the Federal Old Age, Survivors, and Disability Insurance Program and the Supplemental Security Income Program.

Summary

Protection of Beneficiaries. – This bill would provide protections for individuals who rely on representative payees to manage their benefits, including: reissuing misused benefits to beneficiaries; requiring increased oversight of representative payees; disqualifying representative payees who are convicted of certain offenses; and holding representative payees liable for misusing beneficiaries’ benefits, by requiring them to forfeit their fee and subjecting them to civil monetary penalties.

Program Protections. – This bill would protect the integrity of Social Security programs by imposing new civil monetary penalties, denying Social Security benefits to fugitive felons, and preventing persons who provide Social Security-related services from misrepresenting themselves.

Attorney Fee Payment System Improvements. – This bill would help individuals with disabilities gain access to representation by extending the withholding of attorney fee payments to Supplemental Security Income (SSI) claims and by capping the current assessment on an attorney’s approved fee.

Miscellaneous and Technical Amendments. – This bill would make amendments to the Ticket to Work and Work Incentives Improvements Act of 1999 to clarify existing waiver authorities with respect to timeframe applicability, current law exceptions, treatment of benefits, and payment status. In addition, it clarifies a number of amendments and makes certain technical corrections in order to bring the Social Security Act up-to-date.

Subcommittee Action

On April 25, 2002, the Subcommittee on Social Security ordered favorably reported to the full Committee H.R. 4070, the “Social Security Program Protection Act of 2002,” on a voice vote with a quorum present.

During the 106th Congress, the Subcommittee held hearings on Social Security program integrity on March 30, 2000; representative payees on May 4, 2000; Social Security number use and misuse on May 9 and 11, and July 17, 2000; and the processing of attorney’s fees on June 14, 2000. The information gained from these hearings led to the introduction of H.R. 4857, the “Social Security Number Privacy and Identity Theft Prevention Act of 2000,” to enhance privacy protections for individuals, prevent fraudulent misuse of the Social Security number, and provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees. In addition, H.R. 4633 was introduced to improve the Social Security Administration’s payment system for representation of claimants. H.R. 4857 was favorably reported by the Subcommittee and the full Committee, but was not considered by the full House as other committees of jurisdiction did not complete consideration of the bill.

During the 107th Congress, the Subcommittee held hearings on May 10, 2001 on ensuring the integrity of Social Security programs; on May 17, 2001 on Social Security’s processing of attorney fees; and, on July 26, 2001 on misleading mailings targeted to seniors. The hearings included testimony from the SSA, the GAO, and representatives from the private sector and advocacy groups. The information gained in these hearings led to the introduction of two bills, H.R. 3332, to improve the system for paying fees to attorneys who represent claimants; and H.R. 4070, to remedy and prevent abuses occurring in Social Security programs. Several provisions of H.R. 4857 (representative payees and several technical amendments), along with certain provisions relating to the processing of attorneys fees included in H.R. 3332, have been included in H.R. 4070.

Analysis of Legislation, Justification, and Comparison with Present Law

1. Short Title; Table of Contents

Present Law

No provision.

Explanation of Provision

The Act is named the “Social Security Program Protection Act of 2002.”

Reason for Change

Not applicable.

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 an individual or organizational representative payee when the Commissioner finds that the Social Security Administration (SSA) negligently failed to investigate and monitor the payee.

Explanation of provision

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

The 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. In crafting a regulatory definition for “use and benefit,” the Commissioner should take special care to distinguish between the situation in which the representative payee violates his or her trust responsibility by converting the benefits to further the payee’s own self interest, and the situation in which the payee faithfully serves the beneficiary by using the benefits in a way that principally aids the beneficiary but which also incidentally aids the payee or another individual. For instance, the Subcommittee does not envision misuse to include cases in which a representative payee uses the benefits entrusted to his or her care to help pay the rent on an apartment that he or she and the beneficiary share.

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 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. As a result, the affected beneficiaries may never be repaid, or may be repaid only when the representative payee who committed the misuse makes restitution to the Social Security Administration (SSA).

Requiring the SSA to reissue benefit payments to the victims of such misuse protects beneficiaries served by organizational representative payees. These beneficiaries are among the most vulnerable because they have no family members or friends who are willing or able to protect their interests by managing their benefits for them.

With respect to individual representative payees, the provision applies only to representative payees serving 15 or more beneficiaries. Limiting the provision in this manner is justified because the aggregate amount that can be misused in cases involving representative payees serving many beneficiaries is much greater.

Moreover, extending the provision to cases involving individual payees serving fewer beneficiaries may lead to fraudulent claims of misuse. These claims, which often turn on information available only from close family members, would be difficult to disprove. Similarly, extension of this provision to these cases could potentially encourage misuse or poor money management by these individual representative payees if they believed that the beneficiary could eventually be paid a second time by SSA.

Effective date

The provision applies to benefit misuse by a representative payee as determined by the Commissioner on or after January 1, 1995. This effective date would protect the interests of beneficiaries affected by those cases of egregious misuse that have been identified in recent years.

Section 102. Oversight of Representative Payees

Present Law

Present law requires nongovernmental fee-for-service organizational representative payees to be licensed or bonded.

Explanation of provision

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

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

Reason for change

Strengthening the requirements for representative payees would add further safeguards to protect beneficiaries' funds. State licensing provides for some oversight by the State into the fee-for-service 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 for all community based non-profit social service agencies serving as representative payees.

On-site periodic visits should be conducted regularly and, to the degree possible, appropriate auditing and accounting standards should be utilized in conducting such reviews.

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 onsite review provision is effective upon enactment.

Section 103. Disqualification from Service as Representative Payee Upon
Conviction of Offenses Resulting in Imprisonment for More Than One Year and
Upon Fugitive Felon Status

Present law

Sections 205, 807, and 1631 of the Social Security Act disqualify individuals from being representative payees if they have been convicted of fraud under the Social Security Act.

Explanation of provision

The provision would expand the scope of disqualification to prohibit an individual from serving as a representative payee if he or she has been convicted of an offense resulting in imprisonment for more than one year, unless the Commissioner of Social Security determines that payee status would be appropriate despite the conviction. Fugitive felons would also be disqualified from serving as a representative payee.

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

Reason for change

The Subcommittee believes that allowing convicted persons to serve as representative payees, especially those convicted of criminal fraud offenses, increases the likelihood of mismanagement or abuse of beneficiaries' funds. Also, allowing fugitive felons to serve as representative payees places beneficiary payments in potential jeopardy and could raise serious questions about the SSA's stewardship of taxpayer funds. The agency's report to Congress will assist the committee of jurisdiction in both the House and Senate in its oversight of the representative payee program.

It is the Subcommittee's understanding that the same criminal background information provided by those who apply to be representative payees will be the same information considered by the Commissioner to implement this provision.

Effective date

Effective on the first day of the 13th month beginning after the date of enactment, except the report to Congress would be 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 provision would require representative payees to forfeit the fee for those months during which the representative payee misused the funds, as determined by the Commissioner of Social Security or a court of competent jurisdiction.

Reason for change

The Subcommittee believes that payees who misuse their clients' funds are not properly performing the service for which the fee was paid and therefore such fees should be forfeited. 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

Applies to any month involving benefit misuse by a representative payee as determined by the Commissioner after December 31, 2002.

Section 105. Liabilities of Representative Payees for Misused Benefits

Present law

No provision.

Explanation of provision

This provision would treat benefits misused by a nongovernmental 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 reissued to the beneficiary pursuant to section 101 of this legislation would be reissued under this provision to either the beneficiary or their alternate representative payee, up to the total amount misused.

Reason for change

Although the SSA has been provided with expanded authority to recover overpayments (such as tax refund offsets, referral to contract collection agencies, notifying credit

bureaus, and administrative offsets of future federal benefits/payments), these tools cannot be used to recoup benefits misused by a representative payee. Treating misused benefits as overpayments to the representative payee, rather than the beneficiary, would provide the SSA with additional means for recovering misused payments. The change would enhance protections for all beneficiaries with individual payees, regardless of the number of persons they serve, as well as beneficiaries with nongovernmental representative payees.

Effective date

Applies to benefit misuse by a representative payee in any case where the Commissioner of Social Security makes a determination of misuse after December 31, 2002.

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 provision would authorize the Commissioner of Social Security to require a representative payee to collect benefits under Titles II, VIII, and XVI in person at a Social Security field office if a 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, thereby preventing fraud and abuse. Redirecting benefit payments to the field office would enable the agency to promptly address report noncompliance.

Effective date

180 days after the date of 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), and an assessment (of up to twice the amount wrongly paid) upon any person who knowingly uses false information or knowingly omits information to obtain Title II, VIII or XVI benefits.

Explanation of provision

The provision would expand the application of civil monetary penalties to include a representative payee's misuse of Title II, VIII or XVI benefits. 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 civil monetary penalties, in addition to the SSA's present authority permitting recovery of misused funds, would provide the SSA with an additional means of addressing misuse by representative payees.

Effective date

Applies to violations occurring after the date of enactment of this Act.

Title II: PROGRAM PROTECTIONS

Section 201. Civil Monetary Penalty Authority with Respect to Knowing Withholding of Material Facts

Present law

The Social Security Act authorizes the Commissioner to impose civil monetary penalties and assessments on any person who – in order to obtain Title II, VIII, or XVI benefits – knowingly gives false information, omits material information, or makes an untrue statement. Section 1129A provides the administrative procedures for imposing penalties in the case of Title II and XVI benefits.

Explanation of provision

The provision would clarify that civil monetary penalties and assessments can be imposed for failure to notify the SSA of changed circumstances affecting eligibility or benefit amount. It would also require that the SSA issue a receipt to the beneficiary when he or she reports any change in work or earnings status.

The provision would also extend the administrative procedures to Title VIII benefits and make other clarifying and conforming changes.

Reason for change

Beneficiaries may be subject to civil monetary penalties under sections 1129 and 1129A of the Social Security Act if they make a statement or representation that omits information that is relevant to determining their initial eligibility to benefits or benefit amounts. However, once they begin receiving benefits, they cannot be penalized under these sections if they fail to notify the SSA about any circumstances that would affect their benefit status or amount. This provision extends sections 1129 and 1129A to include the obligation of the beneficiary to notify the SSA about relevant information to situations absent a written statement or a representation. It would also provide a technical change to make abuses under Title VIII subject to the same penalties as Title II and Title XVI.

The Subcommittee recognizes that the current process of determining whether to impose penalties takes into account the individual's mental state, including any mental impairment of the individual, and expects that the Commissioner would continue to take any mental impairment into consideration in determining whether to impose penalties under this provision.

In the February 2001 hearing on the Administration's proposal to implement Ticket to Work legislation, the Subcommittee heard testimony that the SSA's current process of recording changes in work and earnings status may be inadequate and may lead to inaccurate or incomplete reporting. The SSA has reported that they are in the process of implementing a system, which once implemented, would ensure the accuracy of recording reported wages and overpayment processing. Until the SSA has such system operational, beneficiaries who timely report changes in their work or earnings status should receive proof of that receipt by the agency. Therefore, in order to ensure sufficient documentation of when a beneficiary submits work and earnings information, and to ensure that beneficiaries who do report changes are not unfairly penalized, the Commissioner would be required to provide a person with a receipt when they report this information to the agency.

The Subcommittee anticipates that once the Commissioner announces the implementation of the system to record reporting information or to issue receipts, the civil monetary penalties would be effective and that such announcement would be published in the Federal Register.

Effective date

Applies to violations committed after the later of (1) 180 days after the date of enactment, or (2) the earlier of the date on which the Commissioner implements the system for issuing the receipts or the date on which the Commissioner implements the centralized computer file.

Section 202. Denial of Title II Benefits to Fugitive Felons and Persons Fleeing Prosecution

Present law

The welfare reform law, *Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)*, included provisions making fugitive felons ineligible to receive SSI benefits during any month in which they are fleeing to avoid prosecution for a felony, fleeing to avoid custody or confinement after conviction for a felony, or are in violation of a condition of probation or parole.

Explanation of provision

This provision would deny Title II benefits to fugitive felons and persons fleeing prosecution. However, the Commissioner may, for good cause, pay withheld benefits. Finally, the Commissioner may assist law enforcement officials in apprehending fugitives by providing them with the address, Social Security number, and photograph of a fugitive.

Reason for change

The Inspector General has estimated that fugitive felons receive at least \$39 million in Social Security benefits annually, and has recommended that this law be changed to prohibit fugitive felons from using Social Security benefits to fund their flight.

The Commissioner would develop regulations within one year of the date of enactment that specify the use of the “good cause” exception in paying Title II benefits to fugitive felons. The Subcommittee envisions that this definition would provide the Commissioner with the ability to reissue benefits in certain unique circumstances.

Effective date

Upon enactment.

Section 203. Requirements Relating to Offers to Provide for a Fee a Product or Service Available Without Charge from the Social Security Administration

Present law

Section 1140 of 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 the item is approved, endorsed, or authorized by the Social Security Administration, the Health Care Financing Administration (now known as the Centers for Medicare and Medicaid Services), 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 provision would require persons or companies to include in their solicitations a statement that the services, which they provide for a fee, are available directly from the SSA free of charge. The statements would be required to comply with standards promulgated by the Commissioner of Social Security with respect to their content, placement, visibility, and legibility.

Reason for change

Several individuals or 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 Office of Counsel to the SSA 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. These practices mislead and deceive senior citizens, newlyweds, new parents, and other individuals seeking services who may not be aware that the SSA provides these same services for free.

Effective date

The Commissioner shall promulgate regulations within 1 year after the date of enactment. The amendments would apply to solicitations made after the 6th month following the issuance of these standards.

Section 204. 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 current law, attorneys disbarred in one jurisdiction, but licensed to practice in another jurisdiction, must be recognized as a claimant's representative.

Explanation of provision

This provision would authorize the Commissioner to, with due process (i.e., with notice and an opportunity to respond), refuse to recognize as a representative (or may disqualify) an attorney who has been disbarred, suspended or disqualified from participating in or appearing before any Federal program or agency. Also, if a representative has been disqualified or suspended as a result of collecting an unauthorized fee, full restitution would be required before any considerations of reinstatement.

Reason for change

This provision would provide additional protections for beneficiaries who may rely on representatives in their disability application process.

Effective date

Upon date of enactment.

Section 205. Penalty for Corrupt or Forcible Interference with Administration of Social Security Act

Present law

No provision.

Explanation of provision

This provision would impose 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 SSA officer, employee or contractor (including State employees of disability determination services or any individual designated by the Commissioner) while acting in their official capacities under the Social Security Act. Offenses involving force would be subject to a fine up to \$5,000 and/or up to 3 years

imprisonment. If the offense is committed only by threats of force, then the person would be subject to a fine of not more than \$3,000 and/or no more than one year in prison.

Reason for change

The employees of the Social Security Administration consistently provide high quality face-to-face service to the public and should be able to continue to perform their work free from fear of harm. This provision extends to SSA employees the same protections provided to Internal Revenue Service employees.

Effective date

Upon enactment.

Section 206. 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 and Medicare symbols, emblems, and references that gives a false impression of Federal endorsement.

Explanation of Provision

This provision would expand this prohibition to several other references to Social Security and Medicare.

Reason for Change

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 would not be misled into believing these agencies approved or endorsed the services or products rendered by the solicitations.

Effective Date

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

TITLE III: ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

Section 301. Cap on Attorney Assessments

Present law

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

Explanation of provision

This provision would impose a cap of \$100 on the 6.3% assessment on approved attorney fees for Title II claims.

Reason for change

In an oversight hearing in May 2001 on Social Security's processing of attorney's fees, the Subcommittee heard testimony that the amount of the fee assessment is unfair to the attorneys providing an important service to claimants. The attorneys who receive fee payments from the agency have their gross revenue reduced by 6.3%, which is about a 20% reduction in the net revenue for most attorneys. Because of this revenue loss and the time it takes for the SSA to issue the fee payments to attorneys, a number of attorneys have decided to take fewer or none of these cases. The cap on the amount of the assessment would help ensure that enough attorneys remain available to represent claimants before the Social Security Administration.

Effective date

180 days after date of enactment.

Section 302. Extension of Attorney Fee Payment System to Title XVI Claims

Present law

The Social Security Act allows attorney fees for Title II claims to be paid by the SSA directly to the attorney out of the claimant's past-due benefits (subject to an assessment to cover the SSA's costs). However, attorney fees for Title XVI claims are not paid directly by the SSA out of past-due benefits; instead, the attorney must collect the fee from the beneficiary.

Explanation of provision

The provision would extend to Title XVI claims the application of attorney-fee withholding from past-due benefits. It would also authorize the SSA to charge a processing assessment of up to 6.3% of the approved attorney fees, subject to a cap of \$100.

In addition, in cases where the States would be reimbursed for interim assistance they had provided to a beneficiary awaiting a decision on a claim for SSI benefits, the State would be paid first, and the attorney would be paid second out of the past-due benefit amount.

The Commissioner would be required to submit a report to the House Ways and Means Committee and the Senate Committee on Finance evaluating the feasibility of extending the fee withholding process to non-attorney representatives. This report would be due no later than 270 days after enactment.

Reason for change

Withholding the attorney fee payments from the SSI benefit claim would improve SSI applicants' access to representation, as more attorneys would be willing to represent claimants if they are guaranteed payment.

The order of payment (to States first and attorneys second) would ensure that States that provide interim assistance to individuals would not receive less reimbursement, while also providing a method of ensuring that attorneys receive payment and continue to provide representation.

The Subcommittee continues to be concerned about the agency's processing time for attorney fee payments and expects the SSA to further automate the payment process as soon as possible. The Subcommittee also wishes to evaluate the potential advantages and disadvantages of extending the fee withholding process to non-attorney representatives.

Effective date

270 days after date of enactment.

TITLE IV: MISCELLANEOUS AND TECHNICAL AMENDMENTS

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

Section 401. Application of Demonstration Authority Sunset Date to New Projects

Present law

The Social Security Act provides the Commissioner with general authority to conduct demonstration projects for the disability insurance program. These projects can test (1) alternative methods of treating work activity, (2) altering other limitations and conditions that apply (such as lengthening the trial work period), and (3) implementing sliding scale benefit offsets. To conduct the projects, the Commissioner may waive compliance with the benefit requirements of Title II and Section 1148, and the HHS Secretary may waive the benefit requirements of Title XVIII. The Commissioner's authority to conduct demonstration projects terminates on December 17, 2004 – i.e., five years after enactment in the Ticket to Work and Work Incentives Improvement Act of 1999.

Explanation of provision

The provision would clarify that the Commissioner is authorized to conduct demonstration projects that extend beyond December 17, 2004, if such projects are initiated on or before that date (i.e., initiated within the five-year window after enactment of the Ticket to Work Act).

Reason for change

The current five-year limitation on waiver authority restricts the options that may be tested to improve work incentives and return-to-work initiatives, since several potential options the Commissioner may test would extend past the current five-year limit. Implementing a well-designed demonstration project generally requires several years, further limiting the length of time waivers may be offered.

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 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, Section 302 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

The provision would allow the Commissioner to waive requirements in Section 1148 of the Social Security Act (which governs the Ticket to Work and Self-Sufficiency Program), as they relate to Title II, in order to test effectively the combination of benefit offsets and return to work services.

Reason for change

The additional waiver authority is needed to overcome the anticipated reluctance of certain employment networks to accept tickets from beneficiaries under certain \$1-for-\$2 benefit offset options. Since the earnings of these beneficiaries may not be sufficient to eliminate benefits, employment networks would not become eligible for outcome payments in such situations, and the SSA would be unable to test the combination of benefit offset with return-to-work services. Additionally, the section 1148 waiver authority was provided for general Title II disability program demonstration projects but not for this mandated project.

The Subcommittee has an ongoing interest in the implementation of the Ticket to Work Act, and will continue to provide oversight of all aspects of the project in the coming months and years. The Subcommittee has begun this oversight process with a hearing on proposed rulemaking in implementing the Ticket, and expects to continue to hold hearings as implementation of the Ticket to Work program continues.

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 and Work Incentives Improvement Act of 1999 provides that the benefits and administrative expenses of conducting the \$1-for-\$2 demonstration projects will be paid out of the Old-Age and Survivors Insurance 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

Provides that administrative expenses of the \$1-for-\$2 demonstration projects would be paid out of otherwise available annually-appropriated funds similar to other demonstration project authority, whereas the benefits associated with the projects would be paid from the OASDI and HI/SMI trust funds.

Reason for change

Demonstration projects provide valuable insight to determine the potential success of a project before agency-wide implementation. Because this demonstration project will be a multi-year effort, single-year funding limits for benefit payments may compromise the continuity and the validity of the test.

Effective date

Upon enactment.

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

Present law

Currently, Benefit Planning, Assistance and Outreach (BPAO) awardees and Protection and Advocacy (P&A) systems can use funds from the SSA to serve only those individuals who are eligible for certain Title XVI benefits. In addition, Protection and Advocacy systems can assist beneficiaries or former beneficiaries secure or regain gainful employment.

Section 122 of Public Law 106-170 authorizes the Commissioner to make payments to State protection and advocacy systems for the purpose of providing services to disabled beneficiaries. These services may include information and advice about obtaining vocational rehabilitation and employment services, and advocacy or other services that a disabled beneficiary may need to secure or regain gainful employment.

Explanation of provision

The provision would expand the availability of BPAO services and P&A system services so that they can also be provided to individuals who (1) are no longer eligible for SSI benefits because of an earnings increase but remain eligible for Medicaid, (2) receive only a State Supplementary payment, or (3) are in an extended period of Medicare eligibility under Title XVIII after a period of Title II disability has ended.

In addition, it would extend the ability of Protection and Advocacy services to help individuals maintain their gainful employment.

Reason for change

The definition of a “disabled beneficiary” does not include several groups of beneficiaries, including those beneficiaries who are no longer eligible for SSI benefits because of an earnings increase but remain eligible for Medicaid; those beneficiaries receiving only a State Supplement payment; and, those beneficiaries in an extended period of Medicare eligibility. Both BPAO and P&A services should be available to serve all disabled beneficiaries regardless of payment status.

This provision would allow advocacy and other services to “maintain” employment to be included among the services that may be provided to disabled beneficiaries. The Subcommittee recognizes that beneficiaries face a variety of barriers and disincentives to return to work and stay in their jobs. The intent of this provision, as with the Ticket to Work and Work Incentives Improvement Act of 1999, is to encourage disabled individuals to work.

The Subcommittee intends that Protection and Advocacy to Beneficiaries of Social Security (PABSS) programs be available to provide assistance to beneficiaries who have successfully obtained employment but who continue to encounter job-related difficulties. Therefore, the current PABSS assistance (which is available for *securing* and *regaining* employment) would be extended to *maintaining* employment – thus providing a continuity of services for disabled individuals throughout the process of initially securing employment, the course of their being employed and, if needed, their efforts to regain employment. This provision would ensure that disabled individuals would not face a situation where they would have to wait until they lost their employment in order to once again be eligible to receive PABSS services. Payments for services to maintain employment will be subject to Section 1150(c) of the Social Security Act. The Subcommittee will continue to monitor the implementation of PABSS programs to assure that assistance is directed to areas where beneficiaries face obstacles in securing, maintaining and regaining work.

Effective date

Effective with respect to grants, cooperative agreements, or contracts entered into on or after the date of enactment, or payments provided after the date of the enactment.

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

Present law

Employers may claim a Work Opportunity Tax Credit if they hire a person with disabilities who is undergoing vocational training pursuant to an individualized written plan for employment. The credit is equal to 40% of the first \$6,000 of wages paid to newly hired employees during their first year of employment when retained for at least 400 work hours. As such, the maximum credit per employee is \$2,400, but may be less depending on the employer's tax bracket and other criteria. The amount of the credit reduces the company's deduction for the employee's wages. A lesser credit rate of 25% is provided to employers when the employee remains on the job for 120-399 hours.

Under the Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170), individuals with disabilities may use their ticket to receive employment services from an employment network, which may or may not be the State vocational rehabilitation agency. The employment network must develop an individual work plan detailing the vocational goal and services needed to achieve that goal. However, unless the employment network happens to be the State vocational rehabilitation agency meeting the Internal Revenue Code conditions, an employer hiring an individual with disabilities from an employment network would not be able to claim the Work Opportunity Tax Credit.

Explanation of provision

This section would provide that employers who hire disabled workers through referrals by employment networks under the Ticket to Work program also qualify for the Work Opportunity Tax Credit. Specifically, the individual work plan under Section 1148 would qualify, under Section 51(d) of the Internal Revenue Code, as an approved work plan under the Rehabilitation Act of 1973.

Reason for change

The Ticket to Work and Work Incentives Improvement Act was designed to remove return to work barriers and increase choice available to consumers when they select providers of employment services. Employers hiring individuals with disabilities should be able to qualify for the Work Opportunity Tax Credit regardless of whether the employment referral is made by a public or private service provider.

Effective date

This would be effective as if it were included in Section 505 of the Ticket to Work and Work Incentives Improvement Act of 1999.

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 the SSA to file with the District Court a hearing transcript regarding any SSA hearing that follows a court remand of an SSA decision.

Explanation of provision

This provision would clarify that the SSA is not required to file a transcript with the court when the 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 Judge ruled in the claimant's favor.

Effective date

Upon enactment.

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

Present law

No provision.

Explanation of provision

This provision would require the Social Security Administration to suspend benefits of beneficiaries who are removed from the U.S. for smuggling aliens.

Reason for change

The integrity of the Social Security program depends, in part, on ensuring that the correct individuals are receiving their benefits. Individuals who are removed from the U.S. for

smuggling aliens have committed an act that should prohibit them from receiving Social Security benefits.

Effective date

Applies to individuals for whom the Commissioner receives a removal notice from the Attorney General after the date of enactment.

Section 413. Reinstatement of Certain Reporting Requirements

Present law

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

Explanation of provision

The provision would reinstate the requirements for several periodic reports that were subject to the 1995 “sunset” Act. It re-enacts annual reports to Congress on the financial solvency of Social Security (i.e., the Board of Trustees' reports on the OASDI, HI, and SMI trust funds) and on the operation of the Title II disability program (i.e., the Commissioner’s reports on disability determinations and continuing disability reviews).

Reason for change

The reports to be reinstated provide Congress with important information needed to evaluate and oversee Social Security 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 nine months before his or her death in order to be eligible for survivor benefits.

Explanation of provision

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

Reason for change

Social Security survivor benefits should not be withheld in cases where the requirement for benefits was not met, through no fault of the individual, and in fact, would have been met were it not for a 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 an agreement with a foreign country (i.e., a totalization agreement), a worker's earnings are exempt from the U.S. Social Security payroll taxes when those earnings are subject to the foreign country's retirement system.

Explanation of provision

This provision would clarify the legal authority to exempt a worker's earnings from U.S. Social Security tax in cases where their 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.

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. Usually, 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 U.S. is excluded from compulsory coverage in the other country (such as Germany). The IRS has questioned the exemption from U.S. Social Security tax in such cases. 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.

Subtitle C. Technical Amendments

Section 431. Technical Correction Relating to Responsible Agency Head

Present law

Section 1143 of the Social Security Act directs “the Secretary of Health and Human Services” to send periodic Social Security Statements to individuals.

Explanation of provision

This provision would make a technical correction, to reflect the SSA’s independence from HHS, by inserting 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 would make the necessary corrections when referring to actions to be taken by the Social Security Administration.

Effective date

Upon enactment.

Section 432. Technical Correction Relating to Retirement Benefits of Ministers

Present law

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 under the Internal Revenue Code. However, they are treated as net earnings from self-employment under the Social Security Act for the purpose of acquiring insured status and calculating Social Security benefits.

Explanation of provision

This provision would make a conforming change to exclude certain benefits received by retired clergy from Social Security-covered earnings for benefit purposes, thus conforming its treatment to its current-law payroll tax treatment.

Reason for change

In 1996, PL 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 in the Social Security benefit computation. Therefore, some types of income are not subject to Social Security payroll taxes, but they are used to earn insured status under Social Security and to compute benefits under the Social Security program. Thus, the income is 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. The effective date of this provision would conform to the effective date of Section 1456 of PL 104-188.

Section 433. Technical Correction Relating to Domestic Employment

Present law

Present law is ambiguous concerning the 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

This provision would clarify that domestic service on a farm is treated as domestic employment, rather than agricultural labor, for 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 agricultural labor. However, the language is unclear and it appears that farm domestics are subject to both thresholds.

Effective date

Upon enactment.

Section 434. Technical Correction of Outdated References

Present law

Current law includes three outdated references that relate to the Social Security program.

Explanation of provision

This provision would correct outdated references in the Social Security Act and the Internal Revenue Code by (1) inserting “removal” in place of “deportation;” (2) correcting a citation to a provision on self-employed health cost tax deductions; and (3) 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, Social Security law contains some outdated references.

Effective date

Upon enactment.

Section 435. 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 the management and control of the trade or business.

Explanation of provision

This section would conform the Social Security Act and the Internal Revenue Code to current practice in both community property and non-community property States. Income from a trade or business that is not a partnership would be taxed and credited to the spouse who is carrying on the trade or business.

Reason for change

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

This section would conform the provision 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.