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# *A Legislative History of the Social Security Protection Act of 2004*

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## **Summary**

Passage of the original Social Security Act in 1935, Public Law (P.L.) 74-271, represented one of the watershed achievements of social welfare reform in American history. For the first time, workers were guaranteed a basic floor of protection against the hardships of poverty. In the ensuing decades, more than 100 million beneficiaries have realized the value of this protection through the receipt of monthly Social Security payments. As this guarantee has endured and progressed, the policies and administration of such a vast and complex program have required ongoing modifications—more than 150 such revisions over the past 73 years. To some extent, these amendments can be seen as an ongoing refinement process, with the Social Security Protection Act of 2004 (SSPA) being another incremental step in the development of a social insurance program that best meets the evolving needs of American society.

This article discusses the legislative history of the SSPA in detail. It includes summaries of the provisions and a chronology of the modification of these proposals as they passed through the House and Senate, and ultimately to the president's desk.

## **Introduction**

Rather than containing one overarching theme, SSPA (P.L. 108-203) compiles many legislative improvements that emanated from various sources, including the House Ways and Means

Committee, the Senate Finance Committee, and the Social Security Administration (SSA). The close working relationship between Senate and House staffs while crafting the provisions proved instrumental in winning widespread support of the legislation, as it emerged—and reemerged—in Congress. House Social Security Subcommittee Chairman E. Clay Shaw (R-FL) captured this collaborative spirit during his discussion of the SSPA:

This bipartisan bill does the right thing and has the support of many organizations. It was developed using recommendations from and in cooperation with the Social Security Administration and the Social Security Inspector General. It is also supported by the AARP, Citizens Against Government Waste, the National Conference of State Social Security Administrators, the Consortium for Citizens with Disabilities, the National Alliance for the Mentally Ill, the Association of Administrative Law Judges, the National Organization of Social Security Claimants' Representatives, and numerous other national and local law enforcement agencies and organizations (Congressional Record [CR] 2003b, H2643).

The legislation enabled a wide array of new protections, including provisions to strengthen oversight of SSA's representative payee

program, prevent program misuse, reform the attorney fee process, broaden return-to-work opportunities, and simplify the Supplemental Security Income (SSI) program.

The protections ultimately provided by SSPA were developed and modified during a process that took 5 years and three Congresses to complete. The very breadth and number of these provisions—54 in all—indicate the wide scope of the legislation and the varied interests that came together as the process unfolded.

### ***106th Congress: Initial Legislative Efforts, June 2000–December 2000***

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On July 13, 2000, Chairman Shaw introduced H.R. 4857, which would be titled the Social Security Number Privacy and Identity Theft Prevention Act in its final version (CR 2000, H6051).<sup>1</sup> Although Titles I–III of the bill provided safeguards relating to the use of Social Security account numbers in the public and private sectors, Titles IV and V contained early versions of many SSPA provisions:

- Title IV provided for expanded oversight of the representative payee program and included sections on the reissuance of misused payments, bonding and licensing of organizational payees, onsite reviews, liability of payees for misused benefits, forfeiture of payments, and civil monetary penalties. This expanded payee oversight was to become one of the hallmarks, and arguably the standout protection, of SSPA. Also of note, many of these payee provisions were derived from Social Security reform bills presented to Congress in September 1999 and February 2000.
- Title V offered various technical amendments. Among them were the correction of outdated Social Security Act references, changes to the consideration of certain domestic employment benefits and the benefits of ministers, authority for demonstration projects, and the elimination of deemed military wage credits for active duty military service. All of these proposed modifications would reemerge in the 107th Congress.

Even at this early stage, it was obvious that the sense of Congress was in support of the administrative remedies of H.R. 4857, as evidenced by the 48 cosponsors, which included Social Security Subcommittee Ranking Member Robert Matsui (D-CA). H.R. 4857 was referred to the Committees on the Judiciary, Banking and Financial Services, and Commerce.

However, the relatively late submission of the bill, combined with a heavy legislative schedule and referrals to multiple committees, meant the bill did not reach a vote before the 106th Congress adjourned.

Also of note, Chairman Shaw was not alone in the push for greater protection of those beneficiaries served by organizational representative payees. On July 14, 2000, Senator Jim Bunning (R-KY) introduced S. 2876, companion legislation to H.R. 4857. Furthermore, several examples of payee misuse received attention in the national press during the fall of 1999 and spring of 2000.<sup>2</sup> This led to an oversight hearing by the Senate Special Committee on Aging and the introduction, on April 27, 2000, of S. 2477, the Social Security Beneficiaries Protection Act, sponsored by the chairman of the Senate Finance Committee, Charles Grassley (R-IA), and cosponsored by John Breaux (D-LA).

As with H.R. 4857, Chairman Grassley's bill strengthened SSA's oversight of organizational payees and contained provisions that restored benefits when payees misused funds. S. 2477 required bonding and licensing of organizational payees, and provided SSA with overpayment recovery authority for benefits misused by such payees. Also like H.R. 4857, S. 2477 was referred to committee and saw no additional movement before the 106th Congress concluded.

### ***107th Congress: H.R. 4070, March 2002–November 2002***

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After making further refinements and substantial enhancements, including the incorporation of additional SSA-provided proposals, Chairman Shaw introduced the Social Security Protection Act of 2002 (H.R. 4070) on March 20, 2002. Much closer to the version that would be signed into law almost 2 years later, H.R. 4070 added extensive new representative payee provisions and technical amendments from the prior session that would have:

- Prohibited payment of Social Security benefits to fugitive felons, required the Commissioner of SSA to provide information on such felons to law enforcement officers, and prevented persons from misrepresenting themselves when providing services for a fee that SSA provides free of charge.
- Provided a \$100 cap on assessments owed by attorney representatives upon receiving past due Social Security benefits and permanently extended fee withholding to the SSI program.<sup>3</sup> The attorney fee provisions were substantially derived from

H.R. 3332, another bill before the Social Security Subcommittee.

- Amended the Ticket to Work and Work Improvements Act to clarify existing waiver authorities and treatment of benefits, and provided for technical corrections.

The Social Security Subcommittee favorably reported on H.R. 4070 by voice vote to the full Ways and Means Committee on April 25 2002. The legislation reached the House floor on June 25 2002. Once again, Chairman Shaw's introductory comments indicated that the bill had already benefited from extensive collaboration:

This bill is the culmination of extensive joint efforts by both the majority and minority Members of the Committee on Ways and Means and the full cooperation and support of the Social Security Administration and the Office of Inspector General. The legislation also benefited from the feedback provisions by advocacy groups and law enforcement agencies (CR 2002a, H3895).

On June 26, 2002, H.R. 4070 passed by a vote of 425-0 (CR 2002b, H3888-H3895), reemphasizing that the House of Representatives considered the bill an important administrative remedy. Negotiations between staffs of the Senate Finance Committee and the House Ways and Means Committee further refined H.R. 4070, establishing a version of the recommendations that was supported by the leadership of both committees. The full Senate took up and passed this revised version by unanimous consent on November 18, 2002 (CR 2002c, S11343-S11352). The bill then returned to the House, which took no further action before it adjourned on November 22, 2002.

Although the Social Security Program Protection Act of 2002 had proceeded with widespread support, other business before the 107th Congress prevented passage of any final legislation. The strong support and the extensively vetted language of the bill, however, meant it would resurface, finally becoming law during the 108th Congress.

### ***108th Congress: Introduction of H.R. 743, February 2003–March 2003***

On February 12, 2003, less than 30 days after the beginning of the 108th Congress, Chairman Shaw reintroduced the Senate-passed version of H.R. 4070, renamed the Social Security Protection Act of 2003 and numbered H.R. 743. Once again, the bill was

cosponsored by Ranking Member Matsui, who was joined by 30 other members in support of the legislation. On February 25, 2003, Senator Jim Bunning introduced the Senate companion version of the bill (S. 439), and promoted the legislation in much the same way as previously voiced by Chairman Shaw:

The Social Security Protection Act makes several common-sense and much-needed changes, including denying Social Security benefits to individuals who are fugitive felons and parole violators, creating new civil monetary penalties to combat fraud, and providing additional protections to Social Security employees while on the job (CR 2003a, S2707).

However, H.R. 743 would quickly find itself immersed in a heated debate over a relatively minor portion of the bill. On March 5, 2003, Chairman Shaw brought H.R. 743 to the House Floor under suspension of the rules, limiting debate and requiring a two-thirds majority for passage. The chairman used this fast-track maneuver because the bill's predecessor received unanimous approval in the prior Congress. However, discussion quickly turned to Section 418, a government pension offset (GPO) rule modification.<sup>4</sup>

During the 1970s and 1980s, Congress had enacted two laws containing provisions intended to provide greater benefit equity between individuals (usually government employees) who worked in noncovered<sup>5</sup> employment and those who paid Social Security taxes through their employment. The first, the Social Security Amendments of 1977 (P.L. 95-216), included a GPO that reduced a spouse's or surviving spouse's benefits by two-thirds of the amount of any pension he or she received based on noncovered employment. The other, the Social Security Amendments of 1983 (P.L. 98-21), contained a Windfall Elimination Provision that reduced Social Security benefits received by an individual who was also receiving a pension based on his or her own noncovered work.

### ***The GPO Debate***

Under the original GPO provision, benefits were exempt from the offset if the employee's last day of state or local government work was covered under Social Security and was in the period upon which the pension was based. In practice, a number of state and local entities had been transferring employees to different jobs for one day at the end of their careers for the express purpose of avoiding the GPO.<sup>6</sup> If enacted, Section 418 of H.R. 743 would have closed

this loophole by extending the exemption requirement from 1 day to 60 months.

Conflicting perspectives on the proposal quickly became evident, as typified by comments made by Rep. Sheila Jackson-Lee (D-TX):

Last Congress I joined with every voting Member of this House in support of the Social Security Act of 2002. It was an excellent piece of bipartisan legislation... With such support and progress this should have been an easy piece of work... Instead a wrench has been thrown into the works, through the addition of a small section that has provoked a deluge of phone calls into my office from, it seems like every school-teacher in my district. The Texas branch of the American Federation of Teachers describes Section 418 as "poison for Texas school employees" (CR 2003b, H1545).

Strong opposition to the GPO revision ensued from other members of the Texas delegation, including Ruben Hinojosa (D-TX) and Solomon Ortiz (D-TX). Although this impassioned debate was unable to sway the majority of legislators, the argument was effective enough to prevent H.R. 743 from receiving the two-thirds majority required for passage under suspension of the rules. The measure failed on a 249-180 vote (CR 2003b, H1601).

Unable to win approval from the entire House, Chairman Shaw returned H.R. 743 to the Ways and Means Committee for markup on March 13, 2003. The GPO question resurfaced, this time in the form of two amendments. Rep. William Jefferson (D-LA) proposed limiting the offset by applying the two-thirds reduction only to combined benefits exceeding \$2,000. This resolution failed by a roll call vote of 14-21. The second amendment, proposed by Rep. Pete Stark (D-CA) to reduce the GPO from two-thirds to one-third, was also defeated by a 15-22 roll call vote. Ultimately, H.R. 743 was favorably reported by a 35-2 majority (House Ways and Means Committee 2003).

### ***H.R. 743 Returns to the House Floor: April 2003***

On April 2, 2003, H.R. 743 reached the full House for a second time, and again it met resistance from those who believed the GPO amendment was unfair to government workers. Rep. Gene Green (D-TX) proposed removing the "last 60 months" language, essentially advocating retention of the "last day" standard, but

this amendment failed by a vote of 196-228 (CR 2003c, H2666).

Ranking Member Matsui agreed that a review of the entire policy may be needed, but also stressed that H.R. 743 was designed to address many issues beyond the GPO provision, and said that the merit of the overall package should override objections to Section 418:

It would have been my hope that we would have dealt with this issue and the larger issue of trying to deal with the government pension offset, because in this situation it would put pressure on all of us to try to deal with this comprehensively...but at the same time I would hope that my colleagues on both sides of the aisle would support the final passage of this legislation, because it is a good bill and certainly we do believe that the other provisions of this legislation must move forward (CR 2003c, H2644).

Efforts to impose the GPO more effectively also found support on the House floor, as evidenced in Kevin Brady's (R-TX) comments on the "last day" exemption:

Alarming, this 25-year-old obscure loophole just recently discovered is now being institutionalized. In Texas, in my home State, teachers groups regularly hold retirement seminars to instruct their members on how to take advantage of the loophole... Congress has a clear choice. We can keep open this lucrative loophole for a few that is draining \$450 million from everyone else's Social Security, or we can stand up for our seniors, stand up for our elderly, stand up for the 99 percent of America's workers who are playing by the fair rules (CR 2003c, H2645).

Rep. Green, unable to remove the "last 60 months" language, next attempted to have the bill recommitted to the House Ways and Means Committee for further examination. This motion failed on a 203-220 vote. The House then voted in favor of H.R. 743, 396 to 28 (CR 2003c, H2668), and the bill was on its way to the Senate.

### ***Senate Finance Committee Revisits H.R. 743: September 2003–February 2004***

On September 17, 2003, the Senate Finance Committee marked up an amendment in the nature of a substitute to H.R. 743. This substitute bill contained several notable additions, including:

- A provision prohibiting Old-Age, Survivors, and Disability Insurance (OASDI) benefit payments to any noncitizen not authorized to work in the United States either at the time of Social Security number (SSN) issuance or at some later point. This provision would not apply to noncitizens who had been assigned a valid SSN, with or without work authorization, prior to January 1, 2004.
- A provision specifying that state and local pension plan administrators must report benefits based on noncovered earnings to the Internal Revenue Service (IRS). The IRS was likewise charged with forwarding such reports to SSA.

The Finance Committee also requested and received a cost estimate from the Congressional Budget Office. This report, released on October 28, 2003, estimated savings of \$600 million from cost reductions and revenue boosts over the 10-year period 2004–2013.

The modified bill was favorably reported by the Senate Finance Committee by voice vote, returning H.R. 743 to the full Senate.

### ***Senate Amendments***

On December 9, 2003, H.R. 743 returned to the Senate floor, revised by a manager’s amendment authored by Chairman Grassley and Ranking Member Max Baucus (D-MT). Chairman Grassley’s comments that day further indicated the behind-the-scenes efforts to push the bill to the President’s desk:

In order to expedite passage of this legislation, Senator Baucus and I have worked closely with the chairman and the ranking member of the Social Security Subcommittee of the House Ways and Means Committee over the past several weeks. The result of this work is reflected in the managers’ amendment that has now been incorporated into this bill (CR 2003d, S16180).

The manager’s amendment, which was adopted without objection, provided several technical corrections to H.R. 743 and authorized additional demonstrations and studies to be performed by SSA and the Government Accountability Office (GAO). In addition, the amendment:

- Clarified the Commissioner’s authority to pay benefits to individuals defined as fleeing prosecution, by articulating conditions that constitute “good cause” for an exception.

- Required SSA to provide full disclosure (through modified Social Security Statements) of the effects of a noncovered pension on Social Security benefits.
- Stripped provisions modifying the SSI dedicated account requirement, excluding Americorps benefits from consideration for SSI or Disability Insurance (DI), and changing the SSI resource limit, from the bill.
- Excluded the requirement that state and local pension plan administrators report payments based on noncovered earnings.

By selectively adding and removing specific provisions, Chairman Grassley’s manager’s amendment was a strategic effort to resolve conflicts between the House and Senate versions of the bill. From the House-passed bill, it included provisions temporarily extending direct payment of attorney fees to the SSI program and to certain non-attorneys. Also conforming to the House-passed bill, the manager’s amendment struck a provision requiring SSA to review certain SSI awards made by states. By crafting an amendment that would be acceptable to both chambers, Chairman Grassley, Ranking Member Baucus, and their corresponding House negotiators were able to smooth consideration of the bill and effectively bypass the conference process.

The Senate approved H.R. 743 as amended by unanimous consent, and upon return to the House, the legislation passed without further amendment by a 402-19 vote (CR 2004, H477). The staff negotiations between the Senate Finance Committee and House Ways and Means Committee had finally resulted in a bill that had the right amount of compromise—and momentum—to succeed.

### ***President Bush Signs P.L. 108-203: March 2004***

On March 2, 2004, President Bush signed SSPA into law, concluding 5 years of bipartisan efforts to provide greater protections for both Social Security programs and for the millions of individuals who benefit from them. Chairman of the House Ways and Means Committee Bill Thomas (R-CA) praised the bill’s enactment, perhaps reflecting the relief of lawmakers on both sides of the aisle that SSPA had come to fruition:

Our seniors deserve a strong, dependable Social Security program; and taxpayers deserve to have their dollars spent as intended—helping seniors and Americans

with disabilities. President Bush's signature on this common-sense, good-government legislation is long overdue (House Ways and Means Committee 2004).

## **Conclusion**

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By its very nature, SSPA should be viewed as an exercise in pragmatic problem solving. As such, it illustrates one of the crucial, if overlooked, functions of Congress—the oversight and refinement of federal programs. Chairman Shaw, who worked on the bill as much as anyone in either chamber, seemed acutely aware of this unglamorous aspect of H.R. 743, commenting, “While this bill probably will not make front page news tomorrow, it is vitally important legislation given the tremendous impact Social Security has on all Americans” (House Ways and Means Committee 2004). With more than 50 provisions, many of which are unrelated, SSPA is “thematic” only within a rather broad context—that of Social Security administrative modifications. However, the administrative significance of this bill, along with the regulatory role of Congress revealed in its provisions, should not be understated.

As much as SSPA reflects the legislative process as an exercise in practical considerations, it also illustrates the art of consensus building through revision and compromise. For example, while the GPO provision—a rather polarizing aspect of SSPA—was the focus of much floor debate, Congress supported the vast majority of this legislation throughout the entire process. Much of this can be attributed to behind-the-scenes negotiations between the House Social Security Subcommittee and the Senate Finance Committee, reflected in the very early drafts of H.R. 743, and continuing through the manager's amendment of December 2003. Just as compromise and consensus building are critical within the larger policy debates of Congress, they were also critical here.

Finally, we also see in SSPA the juxtaposition of programmatic ideals and administrative needs. For example, the authority to reissue benefits misused by payees represents the ideals of the legislature—doing something because we believe it should be done. On the other end of the spectrum are provisions such as “technical corrections of outdated references”—amendments concerned more with housekeeping than broad concepts. Some of this variance is attributable to the variety of contributors (and their respective concerns) to the legislation. It makes sense, for example, that amendments proposed by SSA's Office of the

Inspector General would deal with criminal penalties and not with exclusions of income in the SSI program.

If we view Social Security as a work in progress, then each of these amendments to the Social Security Act—these contributions to the whole—represents an important building block in our ongoing efforts to maintain this basic floor of protection for the elderly, the disabled, and their dependents. SSPA provides substantial program protections by shoring up civil and criminal penalties, and by revising the circumstances under which benefits are payable. It provides substantial beneficiary protections by subjecting representative payees to greater scrutiny. But beyond all of this, the Social Security Protection Act of 2004 provides yet another example of our nation's continuing commitment to a social insurance program that is both equitable and adaptive to the changing needs of society.

## **Provisions Contained in P.L. 108-203, as Signed by the President**

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### **Provisions Involving the Representative Payee Program**

**Authority to reissue benefits misused by organizational representative payees.** This provision allows the Commissioner to reissue OASDI, SSI, and Special Veterans Benefits (SVB) payments whenever an individual representative payee serving 15 or more beneficiaries, or an organizational representative payee, is found to have misused a beneficiary's funds. Previously, these beneficiaries could not receive replacement payments unless SSA negligently failed to investigate or monitor the payee.<sup>7</sup>

**Oversight of representative payees.** This provision requires the Commissioner to perform periodic onsite reviews for all nonprofit fee-for-service payees, organizational payees (both governmental and non-governmental) representing 50 or more beneficiaries, and individual payees representing 15 or more beneficiaries. Additionally, all fee-for-service organizational representative payees are required to be licensed and bonded. Prior to this legislation, these payees had to be licensed or bonded, but not both.

**Disqualification from service as representative payee of persons convicted of offenses resulting in imprisonment for more than 1 year or fleeing prosecution, custody, or confinement.** This provision disqualifies an individual from serving as a representative payee if he or she was convicted of an offense resulting in more than 1 year of imprisonment,

unless the Commissioner determines that such certification would still be appropriate. It also requires the Commissioner to share information with law enforcement on persons disqualified from service as representative payees. In addition, the provision prohibits the appointment as representative payees of any persons fleeing prosecution, custody, or confinement.<sup>8</sup>

**Fee forfeiture in case of benefit misuse by representative payees.** This provision specifies that representative payees forfeit fees collected from the beneficiary's benefits for any months during which the payees misuse funds, as determined by the Commissioner or a court of competent jurisdiction.

**Liability of representative payees for misused benefits.** This provision establishes that benefits misused by a nongovernmental representative payee shall be treated as overpayments to that payee, rather than an overpayment to the beneficiary. Any recovered benefits are reissued under this provision to the beneficiary or his/her alternate representative payee, up to the total amount misused.

**Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting.** This provision authorizes SSA to redirect OASDI, SSI, and SVB payments to local Social Security field offices if a representative payee fails to provide an annual accounting-of-benefits report. The Commissioner must notify the beneficiary and the payee prior to redirecting benefits.

**Survey of use of payments to representative payees.** This provision authorizes and appropriates up to \$8.5 million to the Commissioner to conduct surveys to determine how payments made to representative payees are being used on behalf of OASDI and SSI beneficiaries. SSA is also required to report on the results of this survey to the House Ways and Means Committee and the Senate Finance Committee no later than 18 months after enactment.<sup>9</sup>

**Civil monetary penalty authority with respect to wrongful conversions by representative payees.** This provision gives SSA the authority to impose a civil monetary penalty for offenses involving misuse of OASDI, SSI, or SVB payments received by a representative payee on behalf of another individual. The maximum penalty is \$5,000 for each violation. In addition, the representative payee shall be subject to an assessment of not more than twice the amount of the misused payments.<sup>10</sup>

## ***Provisions Establishing Greater Social Security Program Protection***

**Civil monetary penalty authority with respect to withholding of material facts.** This provision authorizes SSA to impose civil monetary penalties of up to \$5,000 (in addition to any other penalties that may apply) for withholding information that is material in determining eligibility for or the amount of benefits if the person knows, or should know, that the withholding of such information is misleading.<sup>11</sup>

**Issuance by Commissioner of Social Security of receipts to acknowledge submission of reports of changes in work or earnings status of disabled beneficiaries.** This provision requires the Commissioner to issue a receipt to disabled beneficiaries each time they report their work and earnings.<sup>12</sup>

**Denial of OASDI benefits to persons fleeing prosecution, custody, or confinement, and to persons violating probation or parole.** This provision prohibits payment of OASDI benefits to persons fleeing prosecution, custody, or confinement after conviction, and to persons violating probation or parole, unless the Commissioner determines that good cause exists for paying such benefits. This "good cause" exception also applies to SSI benefits. Good cause is found if the person is not guilty, charges are dismissed, a warrant for arrest is vacated, or similar exonerating circumstances are identified by the court. The Commissioner will also apply the good cause exception if the individual establishes to SSA's satisfaction that he or she was the victim of identity fraud and the warrant was issued on such basis. The Commissioner also has discretion to apply a good cause exception under certain circumstances when the involved offense is nonviolent and not drug-related. Upon written request, the Commissioner is also required to furnish law enforcement officers with the current address, SSN, and photograph (if applicable) of beneficiaries fleeing prosecution to assist in their apprehension.<sup>13</sup>

**Requirements relating to offers to provide for a fee, a product or service available without charge from the Social Security Administration.** This provision requires all persons or companies providing SSA-related services to disclose that services for which they charge a fee are available directly from SSA free of charge. Additionally, these disclosures must comply with standards promulgated by the Commissioner with respect to their content, placement, visibility, and legibility.<sup>14</sup>

**Refusal to recognize certain individuals as claimant representatives.** This provision gives the Commissioner authority to disqualify an attorney or nonattorney representative who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. The Commissioner also has the authority to refuse recognition of disbarred or suspended representatives before any other federal agency or program.<sup>15</sup>

**Criminal penalty for corrupt or forcible interference with administration of Social Security Act.** This provision imposes penalties for any attempt to intimidate or impede (by force or threats of force) any officer, employee, or contractor of the United States acting in an official capacity under the Social Security Act and for any effort to otherwise obstruct or impede the administration of the Social Security Act. Upon conviction of the use of force, the maximum penalties will be \$5,000 and 3 years imprisonment. Upon conviction of the use of threat, but not force, the maximum penalties will be \$3,000 and 1 year imprisonment.

**Use of symbols, emblems, or names in reference to Social Security or Medicare.** This provision updates section 1140 of the Social Security Act to reflect the Health Care Financing Administration's new name, Centers for Medicare & Medicaid Services (CMS). The section also prohibits the use by solicitors of symbols, emblems, names, and certain words and phrases (such as Death Benefits Update, Federal Benefit Information, Funeral Expenses, and Final Supplemental Program) that may provide a false impression that the item is approved or endorsed by SSA, CMS, or the Department of Health and Human Services.<sup>16</sup>

**Disqualification from payment during trial work period upon conviction of fraudulent concealment of work activity.** Under this provision, an individual who is convicted by a federal court of fraudulently concealing work activity during the trial work period (TWP) is not entitled to receive a disability benefit for TWP months that occur prior to the conviction but within the same period of disability. If payment has already been made, he or she is liable for repayment plus restitution, fines, penalties and assessments.<sup>17</sup>

**Authority for judicial orders of restitution.** This provision authorizes federal courts to order a defendant convicted of defrauding OASDI, SVB, or SSI to make restitution to SSA. Restituted funds are to be deposited to the Social Security trust funds or general fund of the Treasury, as appropriate.

**Authority for cross-program recovery of benefit overpayments.** This provision allows SSA to recover overpayments of either OASDI or SSI benefits from benefits payable under the other program. Up to 100 percent of any overpayment or 10 percent of ongoing monthly benefits may be withheld from payments due under the other program. To protect low-income beneficiaries, however, any recovery from SSI is limited to the smallest of either 100 percent of the monthly benefit or 10 percent of the individual's total monthly income.<sup>18</sup>

**Prohibition on payment of OASDI benefits to persons not authorized to work in the United States.** This provision prohibits payment of OASDI benefits based on the earnings of a noncitizen whose SSN was issued on or after January 1, 2004. Exceptions are granted if the noncitizen was ever issued an SSN authorizing work in the United States, or was admitted to the United States for certain business purposes when quarters of coverage were earned.

### ***Provisions Expanding the Attorney Fee Payment Process***

**Cap on attorney assessments.** This provision caps the amount SSA assesses attorneys for determining and paying attorney fees directly using funds withheld from claimant benefits. The cap is the lower of \$75 or 6.3 percent of the attorney's fee, and is revised annually based on cost-of-living adjustments.<sup>19</sup>

**Temporary extension of attorney fee payment system to SSI claims.** This provision extends the attorney fee withholding process currently used in DI cases to SSI cases for a period of 5 years, to take effect with fees to be certified or paid on or after the date the Commissioner notifies Congress of full implementation of the demonstration project.<sup>20</sup>

**Nationwide demonstration project providing for extension of fee withholding procedures to nonattorney representatives.** This provision authorizes a 5-year demonstration project to allow nonattorneys representing claimants in DI and SSI cases to use fee withholding. Nonattorney representatives must hold a bachelor's degree, pass an examination written and administered by the Commissioner, secure professional liability insurance or the equivalent, undergo a criminal background check, and complete continuing education courses. SSA is required to submit annual interim reports on the progress of the demonstration and a final report after it concludes.<sup>21</sup>



**GAO study regarding the fee payment process for claimant representatives.** This provision requires GAO to study the results of extending DI fee withholding to attorneys in SSI cases, and to nonattorney representatives for both DI and SSI benefits. The report is to include a survey that compares outcomes by type of representative.<sup>22</sup>

### ***Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999***

**Application of demonstration authority sunset date to new projects.** This provision extends demonstration authority through December 18, 2005, and will allow projects initiated by December 17, 2005, to be completed thereafter. The previous authority expired on December 17, 2004.

**Expansion of waiver authority available in connection with demonstration projects providing for reductions in DI benefits based on earnings.** This provision authorizes the Commissioner to waive requirements of section 1148 (Ticket to Work) of the Social Security Act for mandated demonstration projects.

**Funding of demonstration projects providing for reductions in DI benefits based on earnings.** This provision clarifies that benefits payable as a part of demonstration projects are to come from the applicable trust fund, while the administrative costs associated with the demonstration projects will normally come from funds available for administration.

**Availability of federal and state work incentive services to additional individuals.** This provision extends Benefits Planning, Assistance, and Outreach (BPAO) services and Protection and Advocacy (P&A) services to additional beneficiaries based on certain program eligibility and participation statuses, and also allows P&A services for the purpose of maintaining employment (in addition to securing or regaining employment).

**Technical amendment clarifying treatment for certain purposes of individual work plans under the Ticket to Work and Self-Sufficiency Program.** This provision treats, for tax purposes, an individual work plan established pursuant to the Ticket to Work program the same as an individualized written employment plan established under a state plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973. Employers who hire participants are eligible for the worker opportunity tax credit.

**GAO study regarding the Ticket to Work and Self-Sufficiency Program.** This provision requires the GAO to assess the effectiveness of the Ticket to Work program. The GAO study is to include a review of reports issued by the state, the Ticket to Work Advisory Panel, and SSA, and recommend administrative or legislative changes.<sup>23</sup>

**Reauthorization of appropriations for certain work incentives programs.** This provision extends the authorization to provide appropriate funding for the BPAO program and the state P&A systems established by the Ticket to Work Act through fiscal year 2009.

### ***Miscellaneous Amendments***

**Elimination of transcript requirement in remand cases fully favorable to the claimant.** This provision eliminates the requirement that SSA prepares and files a transcript with the district court after a court-ordered remand for further administrative proceedings results in a fully favorable award of benefits.

**Nonpayment of benefits upon removal from the United States.** This provision prohibits SSA from making payments to aliens removed from the United States for smuggling other aliens into the United States.<sup>24</sup>

**Reinstatement of certain reporting requirements.** This provision extends the requirement for the Board of Trustees to report on the OASDI, Hospital Insurance, and Supplementary Medical Insurance trust funds, continuing disability reviews, and the disability preeffectuation review process.

**Clarification of definitions regarding certain survivor benefits.** This provision allows a limited exception to the 9-month duration-of-marriage requirement for widow(er)'s benefits. This exception applies in cases in which the marriage was postponed by legal impediments caused by state restrictions on divorce due to mental incompetence or similar incapacity.

**Clarification respecting the FICA and SECA tax exemptions for an individual whose earnings are subject to the laws of a totalization agreement partner.** This provision establishes clear legal authority to exempt workers' earnings from U.S. Social Security tax when their earnings are subject to a foreign country's laws in accordance with a U.S. totalization agreement, but the foreign country's laws do not require contributions for those earnings.

**Coverage under divided retirement system for public employees in Kentucky and Louisiana.**

This provision extends to Kentucky and Louisiana the authority to establish divided retirement systems that allow public employees to choose between OASDI and alternative coverage.

**Compensation for the Social Security Advisory Board.** This provision establishes compensation for Social Security Advisory Board members at the Executive Schedule level IV basic daily pay rate for each day in which the member is engaged in Board business.

**Sixty-month period of employment requirement for application of government pension offset exemption.** This provision requires state and local government employees to work in a Social Security-covered position throughout the last 60 months (5 years) of employment with the government entity in order to be exempt from the government pension offset provision. Previously, these government workers were exempt from the offset if they worked their last day under a covered position.

**Disclosure to workers of effect of windfall elimination provision and government pension offset provision.** This provision requires SSA to send a modified Social Security Statement to noncovered employees that describes the benefit reductions that may result from the receipt of a federal, state, or local government pension based on employment that is not subject to Social Security payroll taxes. The provision is effective for statements issued on or after January 1, 2007. It also requires government employers to notify noncovered employees hired on or after January 1, 2005, of the potential effect of noncovered work on their Social Security benefits.

**Post-1956 Military Wage Credits.** This provision transfers from general funds the remaining balance owed to the Social Security and Medicare trust funds for deemed military wage credits for 2000 and 2001, and makes conforming amendments to reflect the termination of deemed military wage credits.<sup>25</sup>

**Elimination of disincentive to return-to-work for childhood disability beneficiaries.** This provision allows reentitlement to childhood disability benefits after the existing 7-year reentitlement period, if the beneficiary's previous entitlement terminated because of the performance of substantial gainful activity.<sup>26</sup>

**Technical Amendments**

**Technical correction relating to responsible agency head.** This technical correction replaces all references to the "Secretary of Health and Human Services" found in Section 1143 of the Social Security Act, which requires issuance of Social Security Statements, with "Commissioner of Social Security."

**Technical correction relating to retirement benefits of ministers.** This technical correction excludes, for OASDI benefit calculation purposes, certain benefits received by retired ministers and members of religious orders. This change conforms to the treatment of these benefits for OASDI tax purposes.

**Technical corrections relating to domestic employment.** This correction removes references to domestic employment from the provisions that define agricultural employment, and specifies that domestic service performed on a farm is encompassed in the provisions that define domestic employment.

**Technical corrections of outdated references.** This provision corrects various outdated references in the Social Security Act and related laws. Over the years, provisions of the Social Security Act, the Internal Revenue Code, and other laws have been deleted, redesignated, or otherwise amended.

**Technical correction respecting self-employment income in community property states.** This technical correction provides that income from a nonpartnership trade or business will be taxed and credited to the spouse who operates the trade or business or, if jointly operated, to each spouse based on the distributive shares of gross earnings. This change conforms to current practice in both community property and noncommunity property states.

**Technical amendments to the Railroad Retirement and Survivors' Improvement Act of 2001.** This provision makes technical and clerical changes regarding Railroad Retirement Investment Trusts relating to quorum rules, transfers, investments, administrative expenses, and exemption from state and local taxes.

**Amendments Related to SSI**

**Exclusion from income for certain infrequent or irregular income and certain interest or dividend income.** This provision changes the calculation of infrequent and irregular income from a monthly to a quarterly basis. It also excludes from the determination of an individual's income all interest and dividend income earned on countable resources.<sup>27</sup>

**Uniform 9-month resource exclusion periods.** This provision makes uniform and increases to 9 months the period for excluding from determinations of personal resources past-due OASDI and SSI benefits, earned income credits, and federal child tax credits.

**Elimination of certain restrictions on the application of the student earned income exclusion.** This provision extends the student earned income exclusion to any student under age 22. Students under age 22 who were married or heads of households were previously ineligible.<sup>28</sup>

**Exception to retrospective monthly accounting for nonrecurring income.** This provision eliminates triple counting by providing that one-time, nonrecurring income will be counted only for the month that the income is received, and not for any other month during the transition to retrospective monthly accounting that takes place over the first 3 months of an individual's SSI eligibility.

**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.** This provision extends SSI eligibility 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. Eligibility was formerly restricted to determinations made prior to going overseas.

**Treatment of education-related income and resources.** This provision excludes from the determination of income any gift to an individual for use in paying tuition or educational fees, consistent with the treatment of grants, scholarships and fellowships. It also excludes grants, scholarships, fellowships, or gifts used for tuition or education fees from the determination of an individual's countable resources for 9 months after receipt.<sup>29</sup>

**Monthly treatment of uniformed service compensation.** This provision allows SSA to count cash military compensation on the same basis in which it is reported on a military monthly leave and earnings statement. Military statements report compensation earned in the prior month as received in the prior month.<sup>30</sup>

## Notes

<sup>1</sup> For full text of final version of H.R. 4857, see House Ways and Means Committee (2000).

<sup>2</sup> One high-profile example of this publicity was "When Nobody's Looking," an exposé of the Aurora Foundation

on the television newsmagazine 20/20. An internal investigation by SSA's Inspector General ultimately revealed that the head of the Aurora Foundation, Gregory Gamble, had embezzled over \$300,000 between April 1995 and May 1999. The majority of these diverted funds were SSA benefit payments. In another extreme example, Theresa King, an organizational payee from the State of Washington, pleaded guilty to fraudulently obtaining Social Security benefits during a 2-year period in the mid-1990s. She received 30 months in jail, 3 years of probation and was ordered to pay \$31,757 in restitution (Senate Special Committee on Aging 2000).

<sup>3</sup> In a court judgment favorable to a Disability Insurance (DI) claimant represented by an attorney, a fee for such representation is allowed. The commissioner may determine the amount and pay the attorney directly through withholdings from the client's past-due benefits. For this service, SSA may deduct an assessment from the attorney's fee, and credit the amount assessed to the appropriate trust fund.

<sup>4</sup> This specific provision addressed the question of state and local government employees covered by public pensions, who subsequently elect coverage under Social Security. This provision had not been in the original House version of H.R. 4070, but was added to the language passed by the Senate during the 107th Congress (S. AMDT. 4967). Interestingly, the GPO had not been a source of contention during the earlier legislative process.

<sup>5</sup> "Noncovered" means that Social Security taxes were not paid on wages. While such circumstances used to be more common, the number of noncovered jobs has continued to decline as the United States has moved towards universal Social Security coverage.

<sup>6</sup> According to GAO, as of June 2002 an estimated 4,819 state employees in Texas and Georgia performed work in Social Security-covered positions for short periods in order to qualify for the GPO last-day exemption (General Accounting Office 2002).

<sup>7</sup> Final rules implementing this provision were published in the *Federal Register* on October 7, 2004 (69 FR 60224).

<sup>8</sup> Final rules implementing this provision were published in the *Federal Register* on January 18, 2006 (71 FR 2871).

<sup>9</sup> A final report on this issue was prepared by the National Research Council of the National Academies for SSA, and published July 30, 2007. In the report, the Council concluded that representative payees generally perform their duties well, but changes are needed to better prevent and detect misuse of funds.

<sup>10</sup> Final rules implementing this provision were published in the *Federal Register* on May 17, 2006 (71 FR 28574).

<sup>11</sup> Final rules regarding this new penalty were published in the *Federal Register* on May 17, 2006 (71 FR 28574).

<sup>12</sup> Final rules regarding work report receipts were published in the *Federal Register* on November 17, 2006 (71 FR 66860).

<sup>13</sup> In a December 6, 2005 ruling (*Fowlkes v. Adamec*), the U.S. Court of Appeals for the 2nd Circuit held that “fleeing” is understood to mean a conscious evasion of arrest or prosecution as opposed to the mere existence of a warrant. SSA agreed to use this definition of “fleeing” within the confines of the 2nd Circuit in an acquiescence ruling of April 6, 2006 (71 FR 17551).

<sup>14</sup> Final rules were published in the *Federal Register* on May 17, 2006 (71 FR 28574).

<sup>15</sup> Final rules implementing this provision were published in the *Federal Register* on January 18, 2006 (71 FR 2871).

<sup>16</sup> Final rules restricting use of SSA emblems were published in the *Federal Register* on May 17, 2006 (71 FR 28574).

<sup>17</sup> Final rules were published in the *Federal Register* on November 17, 2006 (71 FR 66860).

<sup>18</sup> Final rules implementing this provision were published in the *Federal Register* on March 30, 2005 (70 FR 16111).

<sup>19</sup> Final rules for the assessment were published in the *Federal Register* on August 9, 2007 (72 FR 44765). Effective December 2008, the limit on the attorney assessment is \$83.00 (73 FR 64653).

<sup>20</sup> Final rules regarding the temporary extension of direct payment to attorneys representing Title XVI recipients were published in the *Federal Register* on August 9, 2007 (72 FR 44765).

<sup>21</sup> Final rules regarding the demonstration project were published in the *Federal Register* on August 9, 2007 (72 FR 44765).

<sup>22</sup> In its final report, GAO found that SSA-initiated fee payment changes show promise, but eligibility criteria and representative overpayments require further monitoring (GAO 2007).

<sup>23</sup> In March 2005, GAO reported that SSA should provide Congress with a plan that would assess changes to the Ticket to Work program that might increase participation and the number of beneficiaries becoming self-sufficient (and thus no longer on the disability rolls) (GAO 2005).

<sup>24</sup> Final rules implementing this provision were published in the *Federal Register* on March 31, 2005 (70 FR 16409).

<sup>25</sup> Final rules implementing this provision were published in the *Federal Register* on March 10, 2005 (70 FR 11864).

<sup>26</sup> Final rules were published in the *Federal Register* on November 17, 2006 (71 FR 66860).

<sup>27</sup> Final rules clarifying counting of irregular or infrequent income were published in the *Federal Register* on August 9, 2006 (71 FR 45375).

<sup>28</sup> Final rules were published in the *Federal Register* on November 17, 2006 (71 FR 66860).

<sup>29</sup> Final rules were published in the *Federal Register* on August 9, 2006 (71 FR 45375).

<sup>30</sup> Final rules regarding treatment of military compensation were published in the *Federal Register* on August 9, 2006 (71 FR 45375).

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